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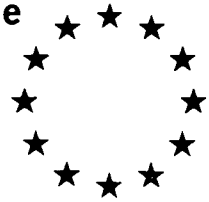

Strasbourg, 23 avril 1996
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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

REPLIES TO THE QUESTIONNAIRE ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY

by

Albania, Autriche, Belarus, Bulgarie, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Grèce, Hongrie, Ireland, Italy, Japan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Roumanie, Russie, Slovakia, Slovenia, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine

A L B A N I A

A N S W E R S T O T H E Q U E S T I O N A I R E

ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY

1.From 15th century till to the beginning of 20th century Albania was under the occupation of Ottoman Empire.On the 28th of November 1912 a National Assambly was gathered.This Assambly proclaimed the indipendence of Albania and nominated a temporary government.

2.The Albanian question was discussed and examined by Great Powers in the Ambasador's Conference in London during 1912-1913 years.This Conference recognised Albanian indipendence, made the determination of boundaries,which are till now,nominated a German Princ W.Wied as a head of state and assigned an International Commission for checking with a special duty of over - looking on the state administration of Albania.The Commission drafted and approved the Organic Statute of Albania at 10 April 1914 which is the first constitution of indipendent Albania.

The Organic Statute of Albania solved the succession for citizenship.According to the articles Number 22-25 of this Sta - tute Albanians citizens are all the inhabitants that were bor[illegible]r have beeb established in Albania before 28 November 1912 and under Ottoman Government have been Ottoman citizens.They that don't wanted Albanian citizenship had the right to leave it and and to choose another citizenship within 6 months,conditionaly emigrated from Albania.Any person of Albanian origin but inhabitant or resident outside the country,had the right to declare the albanian citizenship near by a competent organ.Albanians removed from their places annexeted from Balcanic States and established in Albania after 28 November 1912 were under consideration as Albanian ciitizens,with exeption of cases when they declared the

opposite due in six months from the day of proclamation of this statute.*)

3.After the first World War the problem of nationality in Albania was regulated by Civil Code of 1929 year.This Code in accordance with the Basic Statute of Albanian Monarchy prohibited cases of double nationality.According to the Civil Code there were three manners te get albanian nationality:

A.To be born from an albanian citizen

According to the Article 4,every albanian child is an albanian citizen if his/her father is an albanian citizen.If

*) Vlora,10 avril 1914

STATUT ORGANIQUE DE L'ALBANIE

C h a p i t r e III

Population

22.Sont citoyens albanais tous ceux qui,nés ou domiciliés en Albanie avant le 28 Novembre 1912,jouissent sous le gouvernement ottoman,de la nationalité ottomane.

23. Les personnes visées par l'article précédent pouront dans un délai de six mois,à partir de la promulgation du present Statut,opter pour une nationalité étrangère mais à condition d'émigrer.

24. Toute personne d'origine albanaise résidant actuellement à l'étranger pourr,dans le délai qui sera fixé par le guvernement confirmer sa qualité d'Albanais moyeant une declaration écrite à présenter à une autorité compétente.

25. Les Albanais,provenant des contrées annexées aux Etats balkaniques et ayant établi leur résidence dans la Principauté d'Albanie aprés le 28 Novembre 1912,seront considérés comme citoyens albanais à moins d'une déclaration contraire de leur part dans les six mois qui suivront la promulgation du Statut organique.

AMAE.Albanie.Etablissement de l'indépendance,Vol.XI,fos.219-222.
A.Puto,La question albanaise dans les actes internationaux de l'epoque imperialiste,II,Tirana,1988,pg.582-583.

his/her fadher is unknown or is known,but has not albanian nationality,nor another nationality,and his/her mother is an albanian citizen,this child attend the nationality of his/her mother.

B.The wife takes nationality of her husband.

According to the Article 14 of Civil Code a foreign woman who is married with an albanian man,takes automatically the nationality of her husband (albanian) and bear it after divorce. The same was for an albanian woman who married an man of foreign nationality.She lost albanian nationality if the legislation allowed the woman to take the nationality of her husband.

C.With the decision of the state competent organ.

According to the Article 7 of Civil Code albanian nationality might give to the foreiners with the decision of the Council of Ministers of Albania.

4.After the second World War was approved The Decree Nr.1874 Dt.7.06.1954 "On Albanian Nationality",which is in force till now.

According to this decree are albanian citizen all that they have had this nationality on the date 29 November 1944 (liberation day) and have not lost latter.Albanian nationality can derives from the origin,when both of parents are albanians.If one of the parents is of albanian nationality and the other is foreign,the nationality of the child is decided from the domicile The marriage does not bring any change to the nationality of the wife and the husband.If the parents take or leave albanian nationality,the children till 14 years old attend the nationality of their parents.From 14 till 18 years old it is necessary their approval.

The albanian nationality can grant to the foreigners by their application andwith decree of the President of Republic of Albania.

5.In regulating the question of nationality were not measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessess.But,according to the Law Nr.3920 Date 21.11.1964 "On the enjoyment of the civil rights

by the foreigners and on the application of the foreign law",the stateless persons,resident in Albania,enjoy the same civil rights as the albanians citizens.

6.The nationality of legal persons is not regulated by law.

7.Yes,to this person should be accorded the same nationality as other inhabitants irrespective of his orher ethnic origin.

8.The authorities of my country are of the view that the choise of criteria for according nationality is within the exclusive competence and discretionarypower of the state.But at the same time they recognise that the matteris circumscribed by rules ofinternational law which must be respected. Generally it is not clear which rules must be respected.

9.The legislation does not express anything on the criterions of granting albanian nationality,not for links between a person and a territory,norfor ethnic origin.But usually in practice albanian nationality is granting to the ethnic albanians from Kosovo and diaspora (USA).

10.The applicable legislation in Albania take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of the perons.The grant and withdrawal of nationality is doing only through the application of interested persons.

Réponse de l'Autriche

LES INCIDENCES DE LA SUCCESSION D'ETATS SUR LA NATIONALITE/AUTRICHE

1. a) Dissolution de la monarchie austro-hongroise en 1918/1919

   b) Annulation de l'occupation de la République d'Autriche par le Reich allemand et intégration dans ce dernier (1938) en 1945

2. a) 1918/1919 : Traité de paix de St. Gemain-en-Laye du 10 septembre 1919 avec les Puissances alliées et associées

   b) 1945 : Loi interne autrichienne plus ou moins accordée avec la RFA

3. a) 1918/1919 : réglementation très complexe aux art. 70 - 82 (en principe acquisition automatique de la nationalité autrichienne par les personnes y possédant le droit d'indigénat dans une commune du territoire de la nouvelle République d'Autriche ; certaines exclusions pour des raisons administratives, par ex. acquisition du droit d'indigénat à une date récente, mais pas pour des raisons politiques ; possibilité d'option en particulier pour les personnes d'une ethnie différente de celle de la majorité.

   b) 1945 : Loi régissant la transition de la nationalité (Staatsbürgerschafts-Überleitungsgesetz 1945), plusieurs fois réformée dans la suite : les personnes ou leurs descendants qui, sans l'occupation de la République d'Autriche en 1938 et l'acquisition automatique de la nationalité allemande à cette date, auraient possédé la nationalité autrichienne le 27 avril 1945, la possèdent à nouveau à partir de ce jour ; toute personne majeure qui réside en Autriche depuis 1915 peut acquérir la nationalité autrichienne par simple déclaration (en sont exclues les personnes ayant occupé un certain rang dans le Parti nationalsocialiste, qui ont été condamnées pour les activités nationalsocialistes, pour des crimes de guerre et pour certains autres délits).

4. En principe, ius soli, ius sanguinis, pour les descendants (voir sous n° 3.)

5. Les régimes adoptés en 1918/1919 et en 1945 ne prévoient rien au sujet d'une double nationalité.

   La loi en vigueur sur la nationalité (Staatsbürgerschaftsgesetz 1985) stipule qu'en principe la renonciation à la nationalité étrangère (ou la perte automatique de celle-ci) constitue une condition pour l'acquisition de la nationalité autrichienne ; dans le même ordre d'idées, une personne qui acquiert de sa propre volonté une nationalité étrangère perd la nationalité autrichienne, sauf si son maintien lui avait été permis pour des raisons exceptionnelles.

Voir aussi la Convention du Conseil de l'Europe (n° 43) de 1963, le Protocole (n° 95) et le Protocole additionnel (n° 96) de 1977 ; d'après mes informations, ces instruments sont en train d'être modifiés.

6. Pour les personnes morales, on ne peut pas parler de nationalité stricto sensu ; leur allégeance à un certain Etat dépend de leur siège social. Les problèmes qui en résultent dans des cas de succession d'Etats (mais aussi en dehors de cette hypothèse) concernent avant tout l'expropriation ou la nationalisation des biens et avoirs, et les solutions qui ont ont été adoptées ou imposées par d'autres Etats dans le cadre de traités de paix ou autres sont très variées, sans qu'il soit possible de les décrire ici en détail ; d'ailleurs, ces problèmes semblent dépasser le cadre du questionnaire.

Voir pourtant l'article 75 du traité de St. Germain-en-Laye de 1919 concernant les personnes morales existant sur les territoires ex-autrichiens, transférés à l'Italie.

7. En principe oui. La pratique varie beaucoup d'un Etat à l'autre. Je ne crois pas qu'il existe une règle de droit international à cet égard (j'omets d'approfondir le problème du point de vue de la protection des réfugiés, des apatrides etc).

A noter qu'en 1945, l'Italie a refusé la reconnaissance de la nationalité italienne, pour des raisons politiques, à certains sud-tyroliens qui l'avaient perdue à la suite de l'option pour l'Allemagne en 1939. Le problème avait fait l'objet de négociations avec l'Autriche (art. 3 lit.b de l'Accord de Paris du 5 septembre 1946 ; mesures 122, 123 du "Paquet" accordé entre l'Italie et l'Autriche en 1969). Depuis lors, tous - ou presque tous - les cas ont été réglés.

En ce qui concerne la conduite civique irréprochable voir aussi sous n° 3/b in fine.

8. Voir sous n° 7 ; en dehors des problèmes résultant des situations de succession d'Etats, il n'existe pas, à mon avis, des règles générales de droit international positif relatives à l'attribution de la nationalité (hormis l'ancienne règle que des octrois de nationalité "en masse", sans le consentement des intéressés, seraient contraires au droit international).

La doctrine Nottebohm (arrêt de la CIJ de 1955) ne concerne pas l'attribution de la nationalité mais l'exigence d'un lien effectif (genuine link) comme condition à l'exercice de la protection diplomatique.

9. La loi sur la nationalité (Staatsbürgerschaftsgesetz 1985) a adoptée comme critère pour l'attribution de la nationalité autrichienne en premier lieu la durée de la résidence en Autriche, la procédure étant différente selon que cette durée de résidence est inférieure à quatre ans, de quatre à dix ans

ou supérieure à dix ans ; si elle dépasse les 30 ans, l'intéressé a droit à l'acquisition de la nationalité autrichienne ; facilités pour une personne dont l'époux possède la nationalité autrichienne, pour les apatrides nés en Autriche. Tous ces critères constituent indirectement une prise en considération du critère général de l'effectivité du lien.

10. La doctrine des droits acquis n'est pas d'une application générale. En ce qui concerne les droits privés, en particulier ceux de la personne, il s'agit là d'un problème de droit international privé dit de "changement de statut" (Art. 7 de la loi autrichienne sur le droit international privé de 1975). Pour ce qui est des droits de type administratif (titres académiques, permis de conduire, habilités pour l'exercice de certains professions etc.. acquis sous le régime d'une loi étrangère (dans la ou en dehors de l'hypothèse de succession d'Etats), il n'existe pas de règle uniforme ; en principe il y a une tendance à reconnaître une position juridique acquise sous l'empire d'une loi étrangère ou, au moins, à faciliter l'acquisition d'une position juridique analogue suivant le régime de la "nouvelle loi".

STUDY OF THE CONSEQUENCES OF STATE SUCCESSION ON NATIONALITY
(REPUBLIC OF BELARUS)

1. *In your country's recent or relatively recent history (for example, since the first World War), has there been one or more cases of state succession and, if so, what type or types of succession occurred (annexation, union of states, separation so as to form a new state)?*

In recent history of our state, since the first World War, there have been cases of state succession. The first Constitution of our Republic which was adopted by the first Congress of the Soviets of Byelorussia (February 2-3, 1919) consolidated the single official title: the Soviet Socialist Republic of Belarus. But the first Congress of Soviets of the Byelorussian Soviet Socialist Republic (February 2, 1919) adopted the Declaration in which it resolved "to acknowledge it necessary for the BSSR to merger urgently with the Lithuanian Soviet Republic..." into a single Lithuanian-Byelorussian Soviet Socialist Republic (LitBel).

On July 31, 1920 there was adopted the Declaration on announcement of independence of the Byelorussian Soviet Socialist Republic which restored the BSSR.

On December 30, 1920 the first All-Union Congress of Soviets adopted the declaration and the Treaty on formation of the USSR. The Byelorussian SSR was also among the initiators of the formation of the USSR. Later the entry of the Byelorussian SSR within the USSR was consolidated by the Constitution of the Byelorussion SSR of 1927.

In 1939 the West Byelorussia was united with the BSSR.

On July 27, 1990 the higher legislative body of the Republic of Belarus, the Supreme Soviet, adopted the Declaration on state sovereignty which proclaimed the complete state sovereignty of the Republic of Belarus as the supremacy, independence and completeness of state power of the Republic within the framework of its territory, competence of its laws, independence of the Republic in internal relations, and declared its resoluteness to create legal state.

The nationality of the Republic of Belarus is an integral part of its sovereignty. The Republic of Belarus protects the honour, dignity and lawful interests of its citizens, secures them of being socially protected; the citizens are under the protection of the Republic of Belarus when they are beyond its borders. The President of the Republic of Belarus decides on the acquisition

and restoration of the nationality, on the withdrawal out of the nationality and loss of the nationality. Deprivation of the nationality is not provided for.

2.*In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor state governed:*

a). by an international agreement, whether bilateral or multilateral?
b). by the internal law of the successor state?
c). jointly by both these procedures?
d). in another manner (pursuant to a decision of an international organisation, or to an international judgement, or to decisions of domestic courts, etc.)?

The nationality of the citizens of the Republic of Belarus is fixed on the basis of the Law on nationality of the Republic of Belarus of October 18, 1991, as amended to June 15, 1995. Article 2 of the Law states that the citizens of the Republic of Belarus are:

- the persons having permanent residence on the territory of the Republic of Belarus at the moment the present Law gets into effect;
- the persons who was granted the nationality of the Republic of Belarus in accordance with the present Law.

According to the Law, the nationality of the Republic of Belarus may be acquired:

a). by birth;
b). as a matter of registration;
c). as a result of acceptance into the nationality of the Republic of Belarus;
d). on other grounds stipulated for by the international treaties of the Republic of Belarus or by the present Law.

3.*Which solutions were adopted in these cases:*

a), Was the acquisition of the nationality of the successor state automatically (ipso facto) conferred upon all inhabitants of the new territory or only upon certain categories of such inhabitants?

b). In the event that nationality was automatically or massively conferred by the successor state, were there nonetheless cases of exclusion of certain categories of group or persons? If so, which categories?

c). Was the right to chose one's nationality recognised in respect of all inhabitants of the new territory or only in respect of certain categories among them? In the latter case, what were the categories, and by what legal procedure was the choice exercised (for example, individual choice,

referendum)? Similarly, what were the consequences for persons who did not elect for nationality of the successor state?

a). The nationality of the Republic of Belarus was automatically conferred only upon that persons who have had permanent residence on the territory of the Republic of Belarus at the moment the Law on nationality gets into effect.

b). In the event that nationality was automatically conferred by the successor state, there were cases of exclusion of certain categories of persons. The nationality was not granted automatically to the persons having no permanent residence on the territory of the Republic of Belarus on the day the Law on nationality gets into effect.

c). The point "nationality" was eliminated from the passport of the Republic of Belarus of the new standard. This move is closely connected with the guarantee of the rights and freedoms of citizens in general, and with the respect of rights and lawful interests of different national minorities in particular.

4. *Upon what criteria were the solutions adopted in the above cases?*

The criteria of adoption of the resolutions in the above cases:

a). acquisition of the nationality according to the nationality of the parents.

The child whose parents are citizens of the Republic of Belarus at the moment of his birth is considered to be the citizen of the Republic irrespective of the place of his birth.

b). in case when at the moment of the child's birth one of his parents was the citizen of the Republic of Belarus the child is considered the citizen of Belarus if:

- he was born on the territory of the Republic of Belarus;
- he was born beyond the borders of the Republic, but at that moment his parents, or one of them, have permanent residence on the territory of the Republic of Belarus;
- at the moment of the child's birth his parents - one of whom is the citizen of the Republic - have had permanent residence beyond the borders of the Republic of Belarus, the nationality of a child born beyond the borders of the Republic is determined according to the decision of the parents expressed in writing.

If at the moment of the child's birth one of his parents was unknown or didn't have any nationality at all, and the other was the citizen of the Republic of Belarus, the child is considered to be the citizen of the Republic of Belarus.

c). Other criteria of acquisition of the nationality:

1. as a matter of registration. The right to acquire the nationality of the Republic of Belarus as a matter of registration have the persons who had had the permanent residence on the territory of the Republic of Belarus but had left the Republic before the Law on nationality was put into force, have proof of their belonging to the nationality of the former USSR, and didn't and don't have the nationality of other state;

2. as a result of acquisition of the nationality of the Republic of Belarus if the following norms of acquisition are observed:

- the person pledges himself to observe and respect the Constitution and laws of the Republic of Belarus;
- possesses the state language of the Republic of Belarus within the limits necessary for communication;
- has been living continually on the territory of the Republic of Belarus for seven years;
- has the legal means of subsistence on the territory of the Republic;

3. the acquisition and preservation of the nationality of the Republic of Belarus when entering into a marriage and dissolving marriage. Entering into a marriage and dissolving marriage by the citizen of the Republic of Belarus with the citizen of the other state or with the stateless person doesn't change the nationality of a spouse. A person who entered into a marriage with the citizen of the Republic of Belarus acquires the nationality of the Republic of Belarus, if he/she so wishes and observes the terms of admittance thereof.

5. *In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?*

Double nationality is not stipulated for in the legislation of the Republic of Belarus. The Law "On Nationality of the Republic of Belarus" envisages the cases of loss of nationality. The nationality of the Republic of Belarus is considered to be lost in the following cases:

- owing to acquisition of the nationality of other state, unless otherwise provided for by the international treaties of the Republic of Belarus;
- in consequence of being enlisted in the army, in security services, police, bodies of justice and other departments of state power and government in the foreign state;

- if the nationality of the Republic of Belarus is acquired as a result of deliberately given false evidence or false documents.

The loss of nationality of the Republic of Belarus starts at the moment of the registration of the given fact by the competent state bodies.

6.*How was the question of the nationality of legal persons regulated?*

There isn't such a notion as "nationality of juridical persons" in our legislation. There are such notions as "capability and legal capacity of juridical persons" and "the location of a juridical person".

The agreement on co-operation of economic and arbitration courts of the Republic of Belarus, Russian Federation and the Ukraine states that the legal capacity and capability of the subjects of economic relations are determined in accordance with the legislation of the state-member of the Community on which territory they are situated and operate.

The location of a juridical person is deemed to be the location of its permanently operating body (Article 31 of the Civil Code of the Republic of Belarus).

The civil legal capacity of foreign enterprises and organisations is determined according to the law of the country where the enterprise or organisation was founded (Article 559 of the Civil Code of the Republic of Belarus).

7.*Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethic origin? If not, do you consider that such a person should at least be accorded the status of a permanent resident?*

According to the Law "On Nationality of the Republic of Belarus" and the Resolution of the Supreme Soviet on putting into force of this Law, persons having permanent residence on the territory of the Republic of Belarus on the day the present Law came into force are considered to be the citizens of the Republic of Belarus. But foreign citizens and stateless persons having permanent residence within the Republic on the day the Law "On Nationality of the Republic of Belarus" came into force do not fall under the effect of the abovementioned provision of the Article of this Law.

Thus, in relation to a person of untainted civic record who has resided for a significant period of time on the territory of the Republic of Belarus it should be dealt solely in regard to acquiring the nationality.

According to the Law on nationality, one of the bases of its acquisition is the admittance into the nationality of the Republic of Belarus; the terms of admittance are enumerated in Article 13 of the said Law.

Thus, a person of untainted civic record - irrespective of his/her ethic origin - may acquire the nationality of the Republic of Belarus if he/she sends in the relevant application and observes the norms stipulated for in the Law on nationality.

What concerns the authorisation for permanent residence within the Republic, the order of its issue is regulated by the Law "On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus". Such authorisation may be issued to foreign citizens or stateless persons if:

- they are close relatives of the citizens of the Republic of Belarus;
- they have entered into a marriage with the citizen of the Republic of Belarus.

Besides, according to the above Law, such authorisation can be issued to foreign citizens or stateless persons "also in other cases stipulated for by the legislation of the Republic of Belarus", for example, for the period of his/her study on the territory of the Republic of Belarus.

8. *Are the authorities of your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the state or do they recognise that the matter is circumscribed by rules of international law? In latter case, which rules?*

The criteria for according nationality are determined by the legislation of the Republic of Belarus. It is consolidated in legislation that if the international treaty of the Republic of Belarus envisages other Rules than those of the present Law, the Rules of international treaty are applied.

9. *To what extend is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality?*

According to the Law "On Nationality of the Republic of Belarus" and the Resolution of the Supreme Soviet on putting into force of this Law: -
persons having permanent residence on the territory of the Republic of Belarus on the day the present Law came into force are considered to be the citizens of the Republic of Belarus;

- in case when at the moment of a child's birth one of his parents was a citizen of the Republic of Belarus the child is considered to be the citizen of the Republic if:

a). he was born on the territory of the Republic of Belarus;

b). he was born beyond the borders of the Republic of Belarus, but his parents, or one of them, had permanent residence on the territory of the Republic at that moment;

- if at the moment of a child's birth his parents, one of whom is the citizen of the Republic of Belarus, have had permanent residence beyond the borders of the Republic, the child is considered to be the citizen of the Republic of Belarus irrespective of his place of birth.;

- the child whose parents are stateless persons and who was born on the territory of the Republic of Belarus is considered to be the citizen of the Republic of Belarus;

- the right to acquire the nationality of the Republic of Belarus is reserved for the persons who have had permanent residence on the territory of the Republic of Belarus but were compulsory evicted from the territory of the Republic or left this territory before the present Law was put into force; this right is reserved also for their descendants;

- the right to acquire the nationality of the Republic of Belarus as a matter of registration belong to the persons who had had permanent residence on the territory of the Republic of Belarus but had left the Republic before the present Law was put into force; have the proof of their belonging to the nationality of the former USSR; didn't and don't have the nationality of other state (the right for acquiring the nationality of the Republic of Belarus as a matter of registration, referred to in this article, may be realised till January 1, 1996);

- if nationality was granted to one of the parents and the other remains a stateless person, the child, living on the territory of the Republic of Belarus, acquires the nationality of the Republic.

Besides, one of the terms for granting the nationality of the Republic of Belarus is the permanent residence on the territory of the Republic of Belarus during the period of seven years.

10. *To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?*

According to the Law on nationality currently in force, a citizen of the Republic of Belarus cannot be withdrawn of the nationality, and no one can be deprived of the right arbitrarily to change his/her nationality.

In accordance with the Law "On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" these persons have the same rights and freedoms and perform the same obligations as the citizens of the

Republic of Belarus, unless otherwise results from the Constitution of the Republic of Belarus, the present Law and other legislative acts of the Republic of Belarus. Restrictions of rights and freedoms of foreign citizens and stateless persons are only admissible in cases necessary for protection of rights and basic freedoms of the citizens of the Republic of Belarus, for ensuring of state security, for protection of public order and public health. Foreign citizens and stateless persons in the Republic of Belarus are equal before the law irrespective of their birth, social and property status, racial and national belonging, sex, education, language, attitude to religion, type and character of activity, and other circumstances.

Réponse de la Bulgarie

1. Dans son histoire depuis la première guerre mondiale la Bulgarie n'a aucun des cas énumérés de succession d'Etats. Dans le droit international le terme "succession d'Etats" a une signification presque générale qui est donnée dans la Convention de la succession d'Etats par rapport aux traités internationaux de 1978 et la Convention de la succession d'Etats concernant la propriété d'Etat, les archives et les dettes de 1983.

D'après les conventions citées, le terme "succession d'Etats" est compris comme un échange fait d'un Etat avec un autre Etat concernant la charge de la responsabilité pour les relations internationales d'un territoire donné.

Dans ce sens il n'existe qu'un seul exemple. C'est le Traité de Kraïova conclu entre la Bulgarie et la Roumanie le 7 septembre 1940. Avec cet accord est changé le Traité de Bucarest de 1913 et sont partiellement révisées les ordonnances du Traité de paix de Neuilly de 1919. Le changement ne concerne que la frontière entre la Bulgarie et la Roumanie. Une succession d'Etats est effectuée par rapport à la Dobroudja de sud qui est annexée à la Bulgarie. La Roumanie rend à la Bulgarie un territoire de 7739 m.carrés et une population de 320 000 personnes. Les changements faits selon le traité sont en vigueur de nos jours. Ils sont confirmés par l'article 1 du Traité de paix entre la Bulgarie et les Forces associées et unies, conclu à Paris le 10 février 1947. Une confirmation représente aussi les traités bilatéraux dont le premier est le Traité d'amitié, de collaboration et d'entraide mutuelle entre la Bulgarie et la Roumanie du 16 janvier 1948.

2. La nationalité des personnes habitant le territoire passé sous la souveraineté de la Bulgarie est réglée par un traité bilatéral international, cité ci-dessus. Le traité entre la Bulgarie et la Roumanie du 7 septembre 1940, connu sous le nom de Traité de Kraïova, est publié dans le Journal d'Etat, supplément du numéro 206 du 12 septembre 1940 (ne fonctionnant plus). Dans le Traité est conçu le principe de l'échange et de l'expatriation par force des minorités nationales. Le nombre total des expatriés bulgares de la Dobroudja de nord est 67 000 personnes.

3. La population du territoire annexé se divise en deux par signe ethnique : personnes d'origine bulgare et personnes d'origine roumaine. Il n'y a que la population d'origine bulgare qui acquiert la nationalité bulgare.

Ensuite le Traité prévoit encore une division : à des personnes qui restent habiter le territoire - objet de la succession d'Etats - et à des personnes qui sont sujet à une expatriation par force. Le Traité de Kraïova prévoit un échange bilatéral par force suivant le signe ethnique. L'article 3 du traité ordonne que dans un délai de trois mois du moment de l'échange des documents de ratification, on commence l'échange obligatoire des citoyens roumains d'origine bulgare des départements de Toultcha et de Kustendja, et des citoyens bulgares d'origine roumaine des départements de Dorostol et de Kaliakra.

Il est prévu ensuite une expatriation facultative des personnes habitant d'autres domaines de la Roumanie et de la Bulgarie. L'expatriation facultative peut amener aussi à une expatriation par force dans le but d'égaliser le nombre des immigrés des deux pays. L'acquisition d'une nouvelle nationalité pour les habitants de l'annexée à la Bulgarie, Dobroudja de sud qui est l'objet de la succession d'Etats, ainsi que pour les

territoires cités ci-dessus, est automatique. Des exceptions ne sont pas prévues.

4. Le Traité de Kraïova ne permet pas que tous les cas de changements de nationalité soient traités au total. Il crée deux différents régimes juridiques qui correspondent aux catégories de la population. Dans le premier cas on peut indiquer comme critère dominant l'origine. Cela est formellement convenu dans le traité.

L'expatriation obligatoire se fait selon le signe national et en résultat de l'expatriation de la Roumanie et du peuplement dans les territoires nouveaux, la nationalité bulgare est acquise. Voilà pourquoi bien que le signe national soit primaire, par rapport aux expatriés on utilise la combinaison des deux critères - origine et résidence.

Quant aux personnes d'origine bulgare habitant la Dobroudja de sud avant la conclusion du Traité de Kraïova, on applique jus soli.

5. Le règlement prévu pour l'expatriation par force inclut la substitution de la nationalité avec une autre. Ainsi sont évités de façon générale les cas de double nationalité qui pourraient être causés par l'action du Traité de Kraïova. L'article 3 du Traité prévoit que ces questions doivent être réglées par un accord spécial. C'est l'Application B - Accord concernant l'échange de la population bulgare et roumaine. L'article II de l'Accord signifie que les personnes quittant la Bulgarie ou la Roumanie "vont perdre d'après le règlement leur qualité de citoyen roumain ou bulgare au moment où il quitte le territoire de l'Etat correspondant".

L'acquisition de la nouvelle nationalité par les personnes se trouvant sous l'action de l'article II n'est pas objet du Traité.

6. Pas de règlement spécial.

Le Traité prévoit que les biens immobiliers appartenant aux personnes quittant leur résidence ancienne changent leur propriétaire. On accepte les biens immobiliers champêtres comme délaissés par leurs propriétaires. Les indemnisations pour eux sont dues des Etats l'un à l'autre. Les biens immobiliers se trouvant à la Dobroudja de sud, acquis par les lois roumaines et appartenant à des roumains qui ne sont pas concernés par l'échange, doivent être liquidés bénévolement par leurs propriétaires (on a en vu des personnes d'origine roumaine qui n'habitent pas les départements de Dorostol et Kaliacra). Après un délai déterminé, ils sont objet d'une expropriation contre une indemnisation préliminaire dont la dimension est déterminée par une Commission mixte pour l'échange de la population créée d'après l'article 6 du traité. Les biens mobiles sont transportés librement et sans obstacles.

7. La réponse exige une appréciation personnelle.

La question suppose que la personne avant la succession d'Etats ait eu aussi une nationalité différente de celle de la population du territoire objet de la succession d'Etats. Elle peut être apatride ou étranger de résidence permanente ou temporaire.

La succession d'Etats est une occasion favorable pour légaliser la résidence réelle continue sur ce territoire en lien durable que représente la nationalité. Le droit bulgare répond positivement aux deux questions et met ces catégories de personnes en situation privilégiée. La loi pour la nationalité bulgare prévoit dans l'article 8 qu'un citoyen étranger peut acquérir la nationalité bulgare ayant résidé 5 ans sur le territoire bulgare.

Le délai de la résidence d'après l'article 8 ne concerne pas les personnes sans nationalité (apatrides) ou celles de nationalité inconnue si elles sont mariées avec un citoyen bulgare (art.12), si les parents d'une telle personne ont été ou sont des citoyens bulgares, si l'un des parents a été ou bien est citoyen bulgare, ainsi que si la personne a été adoptée par un citoyen bulgare (art.11). Le régime juridique pour les réfugiés est le plus favorable. Les réfugiés qui se sont installés en Bulgarie sont dispensés des exigences de l'article 8.

La loi pour le séjour des étrangers en Bulgarie comprend sous étranger toute personne qui n'est pas un citoyen bulgare, et qui est citoyen d'un autre pays ou qui n'a pas de nationalité (art.3). D'après l'article 8a la permission pour un séjour continu est obtenue excepté les autres raisons après un séjour continu sur le territoire du pays pendant les 10 dernières années. Ce délai est diminué en 6 ans quand il s'agit des étrangers ayant une régistration juridique pour effectuer une activité économique et une permission de séjour pour un an qui peut être prolongée chaque année.

Dans tous les cas cependant, cette question n'est pas liée à l'appartenance ethnique. Cela s'en suit des articles 6(2) et 26(2) de la Constitution de la République de la Bulgarie.

8. L'Etat agit par ses organes et ses fonctionnaires. Eux, de leur côté, ne peuvent pas avoir une conduite autre que celle prescrite par la loi.

Dans le domaine de la nationalité, le droit bulgare est contradictoire. La Constitution de la République de la Bulagrie prévoit dans l'article 25(6) que les conditions et l'ordre pour acquérir, garder et perdre la nationalité bulgare sont déterminés par une loi. Une telle loi n'est toujours pas votée bien que sa nécessité soit reconnue unanimement. En même temps la Constitution a une action directe et d'après le paragraphe 1 des Ordonnances transitives et finales, les lois déjà existantes, sont en vigueur si elles n'entrent pas en contradiction avec la Constitution.

D'après la Constitution en vigueur, le droit bulgare donne avangage au droit international vis-à-vis le droit interne. Cela se rapporte comme nous avons déjà dit ci-dessus, à la nationalité aussi. L'article 5(4) statue que les traités internationaux ratifiés par ordre constitutionnel, publié et entrés en vigueur pour la République de la Bulgarie, font partie du droit interne du pays. Ils ont avantage à ces normes du droit interne qui leur sont contradictoires. De cette façon la Bulgarie est engagée avec les normes de plusieurs traités internationaux. Ce sont le Pacte international des droits économiques, sociaux et culturels, le Pacte international des droits civiques et politiques, la Convention européenne pour la défense des droits de l'homme et des libertés fondamentales - obligatoire pour le Conseil de l'Europe, la Convention internationale pour la liquidation de toutes les formes de discrimination de race, la Convention pour les droits de l'enfant, la Convention pour la nationalité de la femme mariée, la Convention pour le statut des réfugiés. Tous les traités cités correspondent aux exigences citées dans l'article 5(4) de la Constitution.

9. La nationalité est déterminée comme un lien juridique durable entre l'individu et l'Etat s'exprimant dans la totalité de leurs droits et obligations mutuels, et signifiant une soumission de la

personne au pouvoir souverain de l'Etat n'importe où la personne réside.

La stabilité est un signe fondamental de la nationalité se manisfestant dans le temps et l'espace. La nationalité est toujours dans le temps et ne s'influence pas de l'éloignement de la personne du territoire de l'Etat. De là vient le caractère formel de la nationalité qui n'exige pas toujours un lien réel avec l'Etat. Dans la théorie juridique le lien effectif est examiné comme une condition préalable pour une naturalisation. Dans presque tous les Etats ouest-européens c'est la résidence réelle qui est le critère pour un tel lien effectif. Il est désigné qu'en conséquence d'un séjour continu dans le pays apparaît la nationalité appelée "nationalité réelle". Dans certains pays la condition pour un séjour continu est acceptée comme accomplie même si l'étranger fait son service pour un certain temps sur un bateau dont le propriétaire est l'Etat (Suède) ou s'il fait son service dans l'armée (USA). En examinant des cas litigeux de nationalité, y compris les cas de double nationalité, le critère pour le séjour est dominant. Mais dans le droit international public on accepte qu'il est nécessaire tout simplement un lien effectif. On ne précise pas quel caractère il doit avoir. Il y a des raisons de parler de l'existence d'un usage juridique international selon lequel la personne doit avoir un lien effectif avec l'Etat correspondant.

Dans le droit en vigueur deux méthodes sont distinguées. Le droit bulgare en admettant l'existence de double nationalité ne pose pas formellement l'exigence d'un lien effectif mais pour une catégorie de personnes seulement. L'article 25(2) et (3) mettent en première place l'origine de la personne ou l'acquisation de la nationalité bulgare par naissance. Les notions sont déterminées dans les articles 6 et 7 de la Loi pour la nationalité bulgare. Par conséquent, pour acquérir la nationalité bulgare, l'origine et le lieu de naissance sont des raisons suffisantes. La deuxième méthode est déjà vu ci-dessus. D'après elle on exige des qualités de séjour. La résidence continue comme preuve de lien effectif est influencée d'autres facteurs aussi. Ce sont par exemple certains liens de famile ou une activité économique.

10. Dans le droit bulgare il n'existe pas l'ordonnance générale. On peut marquer comme un principe général que les questions du statut personnel sont élaborées sur l'application du droit national des personnes. Cela suppose une influence continue de l'Etat national sur ses citoyens. Si l'on part du droit de chaque homme de choisir librement son lieu de résidence, les imperfections de cette réglementation juridique deviennent évidentes. La société bulgare qui dans les dernières années s'est ouverte vers le monde subit l'influence d'une migration considérable. Il serait socialement plus juste que si envers ces personnes on applique le régime réel étant en vigueur dans l'Etat de leur résidence habituelle. Voilà pourquoi en ce moment le droit bulgare suit un processus d'une préorientation totale et d'une précision de sens de sa règlementation juridique.

Reply by Croatia

1. In your country, has there been one or more cases of State succession, and if so, what types of succession occured (annexion, union of States, separation so as to form a new State)?

1. The dissolution of the Austro-Hungarian Monarchy (1918) and the establishment of the Slovene-Croat-Serbian State (1918).

The Slovene-Croat-Serbian State was established after the First World War, on 29. X 1918, on the territories of the former Austro-Hungarian Monarchy - Croatia, Bosnia and Herzegovina, Slovenia, Vojvodina). It lasted only 30 days, after which it entered a union with the Kingdom of Serbia.

The union (1.12.1918) of the Slovene-Croat-Serbian State with the Kingdom of Serbia and the establishment of the Serb-Croat-Slovene Kingdom.

The Serb-Croat-Slovene Kingdom/State was formed on 1. XII 1918, by the Kingdom of Serbia (on the territorries of Serbia, Montenegro and Macedonia) and the Slovene-Croat-Serbian State (on the territories of the former Austro-Hungarian Monarchy - Slovenia, Croatia and Bosnia and Herzegovina). From 1929 the country was named Yugoslavia.

2. At the beginning of the World War II, the dissolution of the Kingdom of Yugoslavia and, at the end of the World War II, the establishment of the Democratic Federal Yugoslavia (subsequently named Federal Peoples' Republic of Yugoslavia, and then Socialist Federal Republic of Yugoslavia).

3. Transfer of a part of the Italian territory to FPRY (1947 and 1954).

4. The dissolution of SFR Yugoslavia (1991), and the establishment of the Republic of Croatia.

2. In such cases, was the nationality of the inhabitants of the territory which passed under the sovereignity of the successor State governed: by an international agreement, internal law, jointly by both or in a another manner?

1. The dissolution of the Austro-Hungarian Monarchy and the establishment of the Slovene-Croat-Serbian State; and the union of the Slovene-Croat-Serbian State with the Kingdom of Serbia in the Serb-Croat-Slovene Kingdom;

- by the international agreements - multilateral and bilateral, as well as by the internal rules of the Serb-Croat-Slovene Kingdom/State - for the implemantation of those international agreements:

i. Treaty of Peace between the Allied and Associated Powers and Austria. Signed at Saint Germain-en-Laye, on 10 September 1919,

ii. Treaty of Peace between the Allied and Associated Powers and Hungary. Signed at Trianon, on 4 June 1920,

iii. Treaty between the Serb-Croat-Slovene Kingdom and the Italian Kingdom. Signed at Rapallo, on 12 November 1920.(?)

- by the internal law: The Law on citizenship of the Serb-Croat-Slovene Kingdom from 1928.

2. The dissolution of the Kingdom of Yugoslavia, and the establishment of the Democratic Federal Yugoslavia;

- by the internal law of the successor State (DFY/FPRY): The Law on citizenship of the Democratic Federal Yugoslavia from 1945, The Law on citizenship of the Federal Peoples' Republic of Yugoslavia from 1946.

3. Transfer of a part of the Italian territory to FPRY;

3.1. The territory transferred under the Peace Treaty with Italy, 1947,

3.2. The territory defined by Article 21 of the Peace Treaty, 1947 - "Free Territory of Trieste" - transferred to Italy and FPRY in 1954.

- by the international agreements, both mulitlateral and bilateral;

i. Treaty of Peace between the Allied and Associated Powers and Italy, signed at Paris, on 10. February, 1947

ii. Memorandum of Understanding between the Governments of Italy, United Kingdom, United States of America and Yugoslavia on the Free Territory of Trieste, London 5.10.1954.

iii. Agreement between FPRY and the Republic of Italy on the Regulation of Certain Questions Relating to the Options, Rome, 23.12.1950.

iv. Treaty between SFRY and the Republic of Italy, Osimo (Ancona), 10.11.1975. (Osimo Agreements)

- by the internal law of the successor State:

i. The Law on citizenship of persons from the territory transferred to FPRY under the Peace Treaty with Italy, dated 6.12.1947.

ii. Regulations concerning the right to opt of persons from the territory transferred to FPRY under the Peace Treaty with Italy, from 24.12.1947.

4. The dissolution of SFR Yugoslavia, and the establishment of the Republic of Croatia;

- by the internal law of the sucessor State: The Law on Croatian Citizenship from 1991.

- the attempt to regulate it by a multilateral international agreement: The Draft Treaty Concerning Succession to the Former SFRY - proposed in 1994. by the International Conference on the Former Yugoslavia to all the successor States. It is an attempt for the regulation, by an international agreement, of various questions arising from the succession to the former SFRY (the question of nationality being one of them).

3. Which solutions were adopted in these cases:

1. The dissolution of the Austro-Hungarian Monarchy and the establishment of the Slovene-Croat-Serbian State; and the union of the Slovene-Croat-Serbian State with the Kingdom of Serbia in the Serb-Croat-Slovene Kingdom;

a) The acquisition of the nationality of the successor State was automatically conferred upon the following category of inhabitants:

- every person possessing "rights of citizenship"*** (pertinenza) in territory which had formed part of the territories of the former Austro-Hungarian Monarchy obtained ipso facto to the exclusion of Austrian/Hungarian nationality the nationality of the State exercising sovereignty over such territory. See Treaty of Saint Germain (Article 70) and Treaty of Trianon (Article 61).

(*** the person's adherence (pripadnost) to the territory - according to the Law on the Regulation of the Pertinenza in the Kingdom of Croatia and Slavonia from April 30, 1880, only a Croato-Hungrian citizen could acquire the pertinenza in the Kingdom of Croatia and Slavonia (within the Austro-Hungarian Monarchy), having it in one commune only)

b) Nonetheless, there were cases in which certain categories were excluded from automatic acquisition of the new nationality:

- persons who acquired rights of citizenship after January 1, 1919 in the territory transfered to the Serb-Croat-Slovene State/Kingdom, acquired Serb-Croat-Slovene nationality only with the permit from that respective State.

- if the permit was not applied or it was refused, the person concerned obtained ipso facto the nationality of the State exercising sovereignity over the territory in which the person concerned previously had possessed rights of citizenship.

See Treaty of Saint Germain (Article 76 and 77) and Treaty of Trianon (Article 62, Paras 1 and 2).

c) The right to choose one's nationality was recognized in respect of certain categories of inhabitants of the new territory.

- persons over 18 years of age losing their Austrian nationality and obtaining ipso facto a new nationality under Article 70 were entitled to opt for the nationality of the State in which they possesed rights of citizenship before acquiring such rights in the new territory.

- persons possesing rights of citizenship in territory forming part of the former Austro-Hungarian Monarchy, and differing in race and language..(minority members) were entitled to opt for the particular State in which the population is of the same race and language as the person exercising the right to opt. It was an individual choice.

See Treaty of Saint Germain (Articles 78, 79 and 80) and Treaty of Trianon (Articles 63 and 64).

In addition, Treaty of Saint Germain established in its Article 79 the third category;

- persons who were entitled to plebiscites provided for in this Treaty were entitled to opt, after the definitive (final) attribution of the area, for the nationality(citizenship) of the State to which the area was not assigned.

All abovementioned categories of inhabitants, after having exercised the right to opt, had to transfer their place of residence to the State for which they had opted (Articles 78. and 63. respectively). It was an individual choice.

However, the bilateral Treaty of Rapallo from 1920 established a particular privileged category of inhabitants, not being obliged to transfer their place of residence to Italy after exercising their rights to opt for the Italian citizenship. Its Article 7, Para 2 defined that category as follows:

- Italians possessing rights of citizenship (pertinenza?) in the territories of the former Austro-Hungarian Monarchy, which were under the Treaties from Saint-Germain and Trianon transferred to the Serb-Croat-Slovene State/Kingdom. It was an individual choice.

The Law on citizenship of the Serb-Croat-Slovene Kingdom, from 1928, regulated the question of the nationality IN THE VERY SAME WAY AS THE ABOVEMENTIONED INTERNATIONAL AGREEMENTS . Thus in its paragraph 53 it provides that:

On the date of entering into force of the present Law (November 1, 1928) the following persons are considered to be the nationals of the Serb-Croat-Slovene Kingdom:

(Para 1) persons possessing the rights of citizenship of the former Kingdom of Croatia and Slavonia (as a part of the Austro-Hungarian Monarchy), as well as

(Para 2) persons to whom it was recognized or who obtained the nationality of the Serb-Croat-Slovene Kingdom by the Treaties of Saint Germain and Trianon.

2. The dissolution of the Kingdom of Yugoslavia, and the establishment of the Democratic Federal Yugoslavia/FPRY/SFRY;

THE ACQUISITION OF BOTH, FEDERAL AND REPUBLICAN CITIZENSHIP
See The Law on citizenship of the Democratic Federal Yugoslavia from 1945, and revised as The Law on citizenship of the Federal Peoples Republic of Yugoslavia from 1946.

a) The acquisition of the nationality of the DFY/PFRY was automatically conferred upon certain categories of inhabitants of the new territory:

- All persons being nationals of Yugoslavia on the date of August 28, 1945, are considered to be the nationals of the FPRY (Article 35).

The nationality of persons born before August 28, 1945, is to be determined according to the rules concerning the citizenship valid before April 6, 1941, i.e. The Law on Citizenship of the Serb-Croat-Slovene Kingdom, from 1928.

- persons possessing the rights of citizenship (pertinenza) or being registered in the communes in the territory transferred to the FPRY and

- persons residing in the transferred territory belonging to the one of the nations forming FPRY, unless otherwise stipulated by the international agreemenet (see Treaty of Peace with Italy from 1947) - Article 36

It has to be stressed that besides having the general Yugoslav citizenship (Article 35, Para 1), each and every national of the FPRY was, at the same time, a national of one of the People's Republics (People's Republic of Croatia being one of them). - Article 1, Para 2

Thus, Part II of that Law regulated in the same way the acquisition or loss of federal and republican citizenships.

b) and c) in the way provided for in the Treaty of Peace with Italy from 1947 - see below ad 3.

3. Transfer of a part of the Italian territory to FPRY;

3.1. The territory transferred under the 1947 Peace Treaty with Italy,

a) The acquisition of the nationality of the FPRY was automatically conferred upon the following category of inhabitants of the new territory:

- Italian citizens domiciled on June 10, 1940, in the territory transferred to FPRY by Italy under the Treaty of Peace with Italy automatically became Yugoslav citizens with full civil and political rights (Article 19, Para 1 of the Treaty of Peace between the Allied and Associated Powers and Italy, signed at Paris, on 10 February, 1947)

On the date of entering into force of the Peace Treaty - on September 15, 1947 - these persons obtained the federal citizenship of the FPRY as well as the citizenship of the People's Republic on whose territory the person concerned was domiciled on June 10, 1940. (Article 1, Para 1 of the Law on Citizenship of Persons from the Territory Transferred to FPRY under the Peace Treaty with Italy, from 6.12.1947).

However, persons being of the same ethnic origin as the nation of some other People's Republic, had the right to give a statement before the Yugoslav authorities applying for the citizenship of that other Republic. In that case, it was considered that the person concerned obtained the republican citizenship of that other People's Republic as of September 15, 1947.

b) Nonetheless there were cases of exclusions of automatical acquisition for certain categories of persons:

- Italian citizens who had been domiciled on June 10, 1940, in the territory transferred to FPRY by Italy under the Peace Treaty and whose customary language was Italian and who exercised their right to opt, retained Italian citizenship and had not been considered to have acquired the citizenship of FPRY (Article 19, Para 2 of the Peace treaty)

c) The right to choose one's nationality was recognized only in respect of the following category of persons:

- Italian citizens who had been domiciled on June 10, 1940, in the territory transferred to FPRY by Italy under the Peace Treaty and whose

customary language was Italian, were entitled to opt for the Italian citizenship within one year from entering into force of the Peace Treaty. Any person so opting retained the Italian citizenship. (Article 19, Para 2)

Persons who exercised their right to opt and thus did not choose the nationality of the successor State (FPRY), may had been required by the State to which the territory was transferred (FPRY) to move to Italy within one year from the date the opting was exercised. (Article 19, Para 3). It was an individual choice.

The right to opt was further defined by the Law on Citizenship of Persons from the Territory Transferred to FPRY under the Peace Treaty with Italy, from 6.12.1947. and Regulations concerning the right to opt for persons from the territory transferred to FPRY under the Peace Treaty with Italy, from 24.12.1947.

A similar right to choose the citizenship (Yugoslav - federal as well as republican) was provided for the Italian citizens whose customary language was one of the Yugoslav languages (Serb, Croat or Slovene) and who were domiciled on the Italian territory. After submitting an application to the Yugoslav representative in Italy, and its acceptance by the Yugoslav authorities, they would acquire Yugoslav nationality. Such persons could have been required by the Italian Government to transfer their residence to Yugoslavia within one year from the date of official communication. (Article 20)

3.2. The territory defined by Article 21 of the Peace Treaty, 1947 - "Free Territory of Trieste" - transferred to Italy and FPRY in 1954.

a) The acquisition of the nationality of the FPRY was automatically conferred upon the following category of persons:

- Italian citizens with permanent residence on June 10, 1940, on the part of the territory of the former Free Territory of Trieste being part of the territory of FPRY (by the internal legislation of FPRY - The Law on Citizenship of Persons from the Territory Transferred to FPRY under the Peace Treaty with Italy from 6.12.1947) - Article 3, Para 1 of the Osimo Agreements from 1975.

b) There were no exclusion from the automatic acquisition of the FPRY citizenship. The persons exercising the right to move to Italy and acquire the Italian citizenship, were released from the Yugoslav (federal as well as republican) nationality (citizenship).

c) The right to choose one's nationality was recognized only in respect of the following category of persons:

- members of the Italian minority, who were Italian citizens and had permanent residence on June 10, 1940, on the part of territory of the former Free Territory of Trieste being part of the territory of FPRY. Article 3, Para 2 of the Osimo Agreements from 1975.

The right to choose the nationality was provided in an indirect way - by choosing to move to Italy under the conditions set forth in the exchange of letters - enclosed to the Osimo Agreement in Annex VI.

It was an individual choice. A member of the abovementioned Italian minority had to express his or her intention to move to Italy via Yugoslav

authorities; the Italian authorities had to inform the Yugoslav authorities, after examining the applicant's status, that they consider the applicant to be a member of the Italian minority and that they recognize the Italian citizenship for him or her. The Yugoslav authorities were bound, in such cases, to give the applicant the release from the Yugoslav citizenship. The applicant was obliged to move out of FPRY within 3 months from receiving the communication that the release from the Yugoslav citizenship was given to him or her. The day he or she moved away was considered as the day of loosing the Yugoslav citizenship.

The same right was recognized for the members of the various Yugoslav minorities - who were Italian citizens and had permanent residence on June 10, 1940 on the part of territory of the former Free Territory of Trieste being part of the Italian territory.

4. The dissolution of SFR Yugoslavia, and the establishment of the Republic of Croatia;

LAW ON CROATIAN CITIZENSHIP from 1991. (Official Gazette No. 53/91, 70/91 and 28/92):

a) **The acquisition of the nationality of the Republic of Croatia as a successor State was automatically conferred upon the following category of persons:**

- all persons having the citizenship of the Socialist Republic of Croatia on the date of entering into force of the Law on Croatian Citizenship (nationality) - Article 30, Para 1 of the Law on Croatian Citizenship.

As all citizens of the former SFRY used to hold simultaneosly a republican citizenship as well, it has been seen to it that nobody becomes stateless.

- in addition, a person without the citizenship of the Socialist Republic of Croatia on the date of entering into force of the Law on Croatian Citizenship but being a member of the Croatian people and having the residence in the Republic of Croatia on that day, if he or she gives a statement that he or she considers himself or herself as the Croatian citizen - is considered to be the citizen of the Republic of Croatia as of the date of entering into force of the Law on Croatian Citizenship - Article 30, Para 2.

b) **There were no exclusions from the conversion of the citizenship of the Socialist Republic of Croatia into the citizenship of the Republic of Croatia.**

c) **No right to choose one's nationality was proclaimed. However, one can always apply for the citizenship of another successor State of the former SFRY or any other State, without being deprived of the Croatian citizenship at the same time.** The Constitution of the Republic of Croatia (Article 9(2)) prescribes that a citizen of the Republic of Croatia cannot under any circumstances be deprived of the Croatian citizenship.

Furthermore, a person born in the Republic of Croatia or married to a Croatian citizen (Articles 9 and 10) can apply for the citizenship of the Republic of Croatia even without renouncing his or hers other citizenship.

THE DRAFT TREATY CONCERNING SUCCESSION TO THE FORMER SFRY (Part II, Articles II.1 and II.2) - proposed in 1994 by the International Conference on the Former Yugoslavia to all the successor States.

a) The acquisition of the nationality of any successor State (Republic of Croatia as well) would be automatically conferred upon the following category of persons and in the folowing way:

- persons who were citizens of SFRY and of one of its Republics on the date on which the respective Republic was established (as one of the successor States), would, as of that date, be considered as citizens of the State that succeeded that Republic. See Article II.1 of the Draft Treaty

The provision is based on the consideration that within the SFRY every citizen of SFRY also had the citizenship of one of the Republics, which was not necessarily that of the Republic in which such person was domiciled.

b) No exclusions of certain categories are proposed.

c) No right to choose one's nationality is proposed.

However, it is proposed that a citizen of one successor State could not be deprived of his or her citizenship merely by acquiring the citizenship of another successor State. Article II.2.3.(a)

In addition, it is proposed that a citizen of a successor State can not be prevented from acquiring the citizenship of another successor State or be required to renounce the former citizenship. Article II.2.3(b)

4. Upon what criteria were solutions adopted in the above cases; ius sanguinis (origin), ius soli (domicile or residence), both of these criteria or resort to other criteria?

1. The dissolution of the Austro-Hungarian Monarchy (1918) and the establishment of the Slovene-Croat-Serbian State (1918); and the union (1.12.1918) of the Slovene-Croat-Serbian State with the Kingdom of Serbia and the establishment of the Serb-Croat-Slovene Kingdom.

The general criteria for the acquisition of the nationality of the successor State was "the right of citizenship" - so called pertinenza (ius soli) - the person's adherence to the territory (according to the Law on the Regulation of the Pertinenza in the Kingdom of Croatia and Slavonia from April 30, 1880, only a Croato-Hungrian citizen could acquire the pertinenza in the Kingdom of Croatia and Slavonia /within the Austro-Hungarian Monarchy/, and in one commune only).

With respect to the right to opt, some categories of persons were defined by their ethnic origin as members of a minority.

2. The dissolution of the Kingdom of Yugoslavia, and the establishment of the Democratic Federal Yugoslavia/FPRY/SFRY;

The general criteria for the acquisition of the nationality of the successor State was "the nationality/citizenship of the former State" (acquired rights). In addition, some categories for the acquisition of the new nationality were defined by "the right of citizenship" - pertinenza (ius soli) and some by "residence" - ius soli in conjunction with "ethnic origin" (of one of the nations forming FPRY).

3. Transfer of a part of the Italian territory to FPRY;

3.1. The territory transferred under the Peace Treaty with Italy, 1947

The general criterion for the acquisition of the nationality of the successor State was "the citizenship" (acquired rights) of the former State in conjunction with "the domicile" - ius soli.

In addition, the category of persons with the right to opt were defined cumulatively by "citizenship", "domicile" and "customary language".

3.2. The territory defined by Article 21 of the Peace Treaty, 1947 - "Free Territory of Trieste" - transferred to Italy and FPRY in 1954.

The general criterion for the acquisition of the nationality of the successor State was "the citizenship" of the former State in conjunction with "the permanente residence" - ius soli.

The category of persons with the right to opt was defined cumulatively by "the citizenship", "permanent residence" and "national origin" - minority membership.

4. The dissolution of SFR Yugoslavia, and the establishment of the Republic of Croatia - The Law on Croatian Citizenship from 1991.

The general criterion for the acquisition of the nationality of the successor State was "the citizenship" of the former State

However, there is yet another category of persons considered to be the citizens of the successor State, and it is defined by several cumulative features: "ethnic origin" - membership of Croatian people, "residence" and "written statement that he considers himself being the Croatian citizen".

In the attempt to regulate it by a multilateral international agreement: The Draft Treaty Concerning Succession to the Former SFRY.

The general criterion for the acquisition of the nationality of the successor State was "the citizenship" of the respective Republic of the former SFRY.

5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?

1. The dissolution of the Austro-Hungarian Monarchy (1918) and the establishment of the Slovene-Croat-Serbian State (29.10.1918); and the union (1.12.1918) of the Slovene-Croat-Serbian State with the Kingdom of Serbia and the establishment of the Serb-Croat-Slovene Kingdom.

Persons who automatically obtained the nationality of the Serb-Croat-Slovene Kingdom were at the same time automatically excluded from their previous nationality.

The loss of the previous nationality occured also in the cases in which the acquisition of the new nationality was not automatic but made conditional upon the previous permit from the respective State.

Persons who exercised their right to opt for another nationality than the one which they had obtained automatically, were automatically excluded from that respective nationality.

Simultaneously, the provisions of the Law on Citizenship of the Serb-Croat-Slovene Kingdom had seen to it, in its Article 53, that nobody became stateless. All persons who had possesed "the rigt of citizenship" of the former Kingdom of Croatia and Slavonia as well as all persons to whom it was recognized or who obtained the nationality of the new State were considered to be the nationals of the new State.

2. The dissolution of the Kingdom of Yugoslavia, and the establishment of the Democratic Federal Yugoslavia/FPRY/SFRY;

By the provision of Article 35 of The Law on Citizenship of the FPRY from 1946, it was provided that all nationals of Yugoslavia on the date of August 28, 1945, were considered to be nationals of the new State as well.

Furthermore, it was provided for the persons who possessed "the right of citizenship" (pertinenza) or were registered in the communes in the territory transferred to FPRY to obtain the nationality of the new State. The same right was provided for persons who resided in the respective territory but belonged to one of the nations forming FPRY.

3. Transfer of a part of the Italian territory to FPRY;

3.1. The territory transferred under the Peace Treaty with Italy, 1947

On the date of entering into force of the Peace Treaty with Italy, on September 15, 1947, the Italian citizens domiciled on June 10, 1940, in the transferred territory obtained the federal citizenship of the FPRY as well as the citizenship of the respective People's Republic. The cases of statelessness were avoided.

However, the abovementioned Italian citizens whose customary language was Italian and who had exercised their right to opt had not been considered to have acquired the citizenship of FPRY and retained the Italian citizenship. That way the cases of double nationality (citizenship) were avoided.

3.2. The territory defined by the Article 21 of the Peace Treaty, 1947 - "Free Territory of Trieste" - transferred to Italy and FPRY in 1954.

Italian citizens with permanent residence on June 10, 1940, in the respective territory automatically obtained the Yugoslav nationality. No cases of statelessness had occured.

On the other hand, respective members of the Italian minority who exercised their right to move to Italy and acquire the Italian nationality were released from the Yugoslav (both federal and republican) nationality. The cases of double nationality were avoided.

4. The dissolution of SFR Yugoslavia, and the establishment of the Republic of Croatia - The Law on Croatian Citizenship from 1991.

The cases of statelessness were avoided by the fact that all persons having the citizenship of the Socialist Republic of Croatia on the respective date were considered to have the citizenship of the successor State, the Republic of Croatia. Due to the fact that all citizens of the former SFRY used to simultaneously hold a republican citizenship as well, it has been seen to it that nobody becomes stateless.

On the other hand, cases of double or multiple citizenship have not been avoided. Thus, person without the citizenship of the Socialist Republic of Croatia (having the citizenship of some other state) but being a member of the Croatian people and having the residence in the Republic of Croatia is considered to be a Croatian citizen after giving a statement that he or she considers himself or herself as the Croatian citizen. Furthermore, a person born in the Republic of Croatia or married to a Croatian citizen can apply for the citizenship of the Republic of Croatia without renouncing his or her other citizenship.

The attempt to regulate the issue by a multilateral international agreement: The Draft Treaty Concerning Succession to the Former SFRY.

The cases of statelessness would be avoided by automatic conversion of citizenship of one of the Republics of the former SFRY to the citizenship of the respective successor State.

On the other hand, no measures would be provided to avoid double or multiple citizenship. On the contrary, it is proposed that no citizen of one of the successor State could, without his consent, be deprived of that citizenship merely by acquiring the citizenship of another successor State. In addition, because of his or her citizenship no citizen of a successor State could be prevented from acquiring the citizenship of another successor State or be required to renounce the former citizenship as a condition for acquiring the new one.

6. How was the question of the nationality of legal persons regulated?

The nationality of legal persons in the Republic of Croatia is regulated in the same way as it was in the former SFRY. The Law on Resolution of Conflicts of Laws with Provisions of other Countries, originaly a SFRY law from 1982, has been taken over by the Republic of Croatia in 1991 and implemented since then as a domestic law of the Republic of Croatia.

In its Article 17, Para 1, it is provided that the nationality of a legal person is to be determined by the law of the State under which it is established.

However Article 17, Para 2, of the abovementioned Law, provides that if the actual seat of a legal person is in a State other than the State in which the legal person was established and if in accordance with the law of that other State (actual seat) the legal person has its nationality, it is deemed to be a legal person of that other State.

7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin? If not, do you consider that such a person should at least be accorded the status of permanent resident?

In my opinion, a person of untainted civic record who has resided for a significant period on the respective territory should be accorded the same nationality as other inhabitants of that territory.

8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognise that the matter is circumscribed by rules of international law? In the latter case, which rules?

The authorities in my country are of the view that the choice of criteria for according nationality is within the competence of the State. However, the domestic rules on citizenship should be in accordance with the rules of international law in the respective matter, i.e. rules on avoidance of double or multiple citizenship, statelessness etc.

9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality?

According to the Law on Croatian Citizenship, birth on the territory of the Republic of Croatia is one of the criteria for the acquisition of the Croatian citizenship. Thus, a child who was born or found on the territory of

her parents are unknown or are persons whose citizenship is unknown or are stateless persons. However, it is prescribed that the child shall loose Croatian citizenship if by the time he or she is fourteen it is established that both of his or her parents are foreign citizens. (Article 7)

In addition, the effective link between a person and a territory is taken into account in the case of acquiring Croatian citizenship by naturalization. Thus, a person applying for the Croatian citizenship by naturalization does not have to meet all the prerequisites for naturalization stated in Article 8. if he or she is born on the territory of the Republic of Croatia (Article 9). In the same way, the foreigner who is married to a Croatian citizen does not have to meet all the prerequisites for naturalization if permanent resident status was accorded to him or her on the territory of the Republic of Croatia (Article 10).

Furthermore, a member of the Croatian people without the Croatian citizenship on the date on which the Law entered into force, is deemed to be a Croatian citizen if he or she makes a written statement that he or she considers himself or herself a Croatian citizen and has registered place of residence in the Republic of Croatia.

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10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

In accordance with the Constitution of the Republic of Croatia (Article 9), no citizen of the Republic of Croatia shall be deprived of citizenship. In case of revocation or renouncement of the Croatian citizenship, termination of the Croatian citizenship does not have any effect on the rights acquired under the Croatian legislation.

In the same way the acquisition of the Croatian citizenship does not have any effect on the rights of person acquired under legislation he or she was formerly subject to.

Answers to Questionnaire on the Consequences of State Succession on Citizenship

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Question 1: Once only, when Cyprus ceased to be a British Crown Colony and became an Independent State.

Question 2: By a multilateral international agreement.

Questions 3,4,5 and 6: The answers to these questions are to be derived from Annex D to the Treaty Concerning the Establishement of the Republic of Cyprus which was given constitutional force by virtue of Article 198 of the Constitution (copies of Annex D and Article 198 are attached hereto).

Question 7: Yes.

Question 8: Yes, but till now the issue of the effect of Rules of International Law on the matters covered by this Question does not seem to have been fully considered in Cyprus.

Question 9: Such link is taken into consideration mainly from the point of view of the period of time during which a person has established it by residing in Cyprus.

Question 10: There do not seem to exist specific provisions to that effect.

Consequences of succession for citizenship (nationality)

We base our considerations on the fact that succession both in theory and in practice of international law can be perceived in two manners. For the purposes of this document we perceive succession in a restricted manner, i.e. as a legal notion according to which, a country
- which has succeeded to the territory of another state, or
- which has been created in the territory or another state
has taken over all rights and obligations of the state to which the given territory previously belonged.

1. Succession in 1918 occurred due to separation of a certain territory and successive creation of a new state which was recognized by winning powers and other countries in a number of international treaties (the important ones are those signed during the peace conference in Paris :Versailles - Articles 85 and 91, St. Germain - Articles 78 and 80 and Trianon - Articles 53, 64 and others).

We should add other complementary treaties signed by the most important allies (United States, Great Britain, France, Italy and Japan) with other countries (Poland, Czechoslovakia, Jugoslavia, Rumania and Greece) upon protection of minorities and freedom of transit.

The treaty between the above mentioned allies and Czechoslovakia was signed in Saint-Germain-en Laye on 10th September 1919 and ratified on 16th July 1920 ("Little Saint Germain" - Article 3).

Apart from that other treaties upon dissolution of the Austro-Hungarian Empire were signed. Their contents varied (these were not only treaties upon settlement of affairs between belligerent countries, but also documents governing international law reforms and international guarantees related to some internal legal affairs such as for instance protection of minorities or citizenship (nationality).

The principles laid down in peace treaties were incorporated in the Czech legal system by the Constitutional Act no. 236/1920 Coll. This Act specifies who can be considered a Czech citizen and governs the issues related to acquisition and loss of citizenship (nationality). In the Austro-Hungarian Empire the right to citizenship was related to the right of domicile. Therefore the Act reposed on the fact that anyone who, on the 28th of October, had his/her domicile in a village or town upon which the Czechoslovak state executed its sovereignty was considered to be a Czech citizen. However, he/she had to exercise this right in a uninterrupted manner from 1st January 1910 to the effective day of the mentioned Act, i.e. 15th July 1920. Special provisions governed children, wives and other special provisions governed citizenship of persons living in the areas of Těšín, Orava, Spiš and Hlučín. Person who did not meet the above mentioned provisions could, under specific circumstances, elect for the Czech citizenship (nationality) till 1921.

Succession in 1938 occurred through changes in the territory due to annexation of the Czechoslovak frontier zone on the basis of the Munich Treaty, when in the majority of cases the non-German population had to leave.

In 1945 another important change in the territorial sovereignty occurred. Although this is sometimes perceived as annexation, this was in fact cession of a certain territory on the basis of an international bilateral treaty. This is the case of the cession of Ruthenia in favour of the Soviet Union.

The last case occurred in 1993 due to the split and dissolution of the former entity of international law in the event of the Czech and Slovak Federative Republic.

2. The citizenship (nationality) in the first and second cases was governed by a mix of international treaties and internal legal regulations. In the third case citizenship (nationality) was governed exclusively by internal legal provisions.

3. In the last case, the citizenship (nationality) was conferred *ipso facto* upon all inhabitants of the Czech Republic who were Czech nationals and then all persons who upon the date of application had a uninterrupted permanent residence in the Czech Republic for at least five years could elect for the Czech citizenship (nationality) in comliance with Act no. 40/1993 Coll. upon citizenship. Such persons had to prove that they had been released from a citizenship regime of another state, that they had not been convicted for a voluntary offence in the previous years and then they had to prove their knowledge of the Czech language, However, a special resolution of the Czech government no. 337/1993 Coll. was adopted to govern the citizenship acquisition by the Slovak nationals who enjoyed extended deadlines for choosing and granting of the Czech citizenship.

4. In the majority of cases, the general practice was to apply

the origin (*jus sanguinis*) criterion for those who had Czech parents (Czech nationals) and in some specific cases also the criterion *ius soli* for those who were born in the territory of the country. However, the problem with such solutions did not reside in the issue of filiation, i.e. acquisition of the citizenship (nationality) at birth when the Czech legal system applies the generally applicable principles (jus sanguinis or jus soli or a combination of both). The situations when people could elect for citizenship (nationality) were also governed by normal standard rules. However, the most difficult was to solve the situation of naturalization in the restricted sense, i.e. when the Czech citizenship was explicitly conferred upon inhabitants having the Slovak nationality.

It should be noted that the citizens of the former Czech and Slovak Federative Republic who had either the Czech nationality or the Slovak nationality were citizens of the Federation while such "federal" citizenship was considered as a derived citizenship, the primary one being either the Czech or Slovak nationality. However, according to international law no subjective entitlement to naturalization exists. This entitlement exists only when the conditions stipulated by the given naturalizing state are met.

5. When establishing the rules governing citizenship (nationality), measures were taken to prohibit cases of double nationality.

6. The nationality of legal persons is determined according to their domicile.

7. Yes, with the proviso that such a person gives his/her consent.

8. We believe that the Czech authorities generally recognise that the criteria for the grant of nationality can be set forth by an international treaty. However, in general they respect the principle of discreationary powers of the Czech Republic as a sovereign state.

9. The effective link between a person and a territory is taken into consideration as one of the criteria for the purpose of naturalization.

10. In terms of interference with private rights, the grant of nationality has no impact. Nationality can be withdrawn only in an anti-constitutional manner.

Reply by Estonia

1.

The Estonian State was founded in 1918 and then was unlawfully occupied by Soviet Forces. The Estonian State, however did not cease to exist and continued *de jure*. In 1991, Estonia regained its independence and restored legal personality *de facto*. The The status of the Estonian State was examined by a special commission of the Estonian Academy of Sciences and later in 1989, by a commission of Supreme Soviet of Estonian Socialist Republic. The later Commission gave its opinion in the newspaper "Rahva Hääl" on 7th and 11th of October, 1989. In it's detailed analysis the Commission concluded, that Estonia was violently annexed in 1940 .

A later decision by the Supreme Soviet of Estonian Soviet Republic on 30 March, 1990 found that the Soviet occupation in 17 of June 1940 did not distinguish the existence of the Estonian Republic *de jure*. It also declared that the state power of the USSR in Estonia was been illegal from the moment of its imposition and proclaims the restoration of the Republic of Estonia (*restitutio in integrum*). In addition it stated that for the period of transition the Supreme Soviet shall work out a provisional rule with juridical guarantees for all the inhabitants, irrespective of their nationality.

Subsequently, on 20 of August, 1991 the Supreme Soviet of Estonia declared the independence of the State of Estonia. The Constitution was adopted by referendum on 28 of June, 1992. The Declaration by Parliament (Riigikogu) 7th.October of 1992 on Restatement of Constitutional State Order ceased the transition period in Estonia.

2.

These legal problems are resolved by the internal law of the state. The Estonian Republic never ceased to exist (existing *de jure*). Upon regaining its independence, Estonia restored Law of Citizenship of 1938 as amended in 1940. Later on, this law was replaced by the new Law of Citizenship (effective on 1th April, 1995). The Art. 8 of the Constitution of the Republic of Estonia sets forth the main principles of citizenship including fundamental rights, liberties and duties.

Estonian Constitution is in conformity with basic principles of international law, including the Universal Declaration Art.15.2 requirement "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".

In addition to the foregoing, the Treaty on Relations between the States (signed 12 January 1991, ratified 15 January 1991) between Estonia and Socialist Republic of Russia also applies. By Art. III, the High Contracting Parties are obliged to grant persons, living in the Estonian Republic or in the Socialist Republic of Russia at the moment of signing the Treaty and having citizenship of USSR, the right to retain or obtain citizenship of either the Russian Socialist Republic or the Estonian Republic according to their own free choice. The Treaty also provides that the two States shall guarantee equivalent rights and freedoms for their citizens regardless of nationality.

Art IV deciares, that inhabitants who have the citizenship of the other High Contracting Party or stateless persons regardless of nationality have all recognized Human Rights, including the right to enjoy their national culture and right to obtain citizenship in accordance with the legislation of their State of residence and on the basis of treaties concluded between the States.

Art. V of the Treaty states, that the question of mutual obligations in regard to compensation and other help for emigrants and their families who have freely chosen to repatriate to their historic or ethnic native country shall be resolved through special agreements. By a Protocol to the Treaty a special bilateral Commission was established protective mechanism for ensuring the provisions of the Treaty.

3.

As set forth in the answer to the question 1, Estonia regained its independence. Whereupon, Estonia applied its 1938 Law of Citizenship stating that Estonian citizen is person who had Estonian citizenship before 16. June 1940, his descendants and persons obtained citizenship with later legal procedure. Also, under this law, there were certain categories of persons who had no right to submit an application for obtaining Estonian citizenship (§ 16):

a. Military servants in active servance of Foreign State;
b. Persons having criminal punishment for serious crimes against person or in case of having repeadetly punished in criminal order for commiting intentional crimes;
c. Persons without legal permanent income.

The new Law of Citizenship (effective 1 April, 1995) which replace the former legislation clarifies what is "legal permanent income" (§ 7). Also, § 21 of the new Law specifies that citizenship shall not revocated or reinstated if the person :

a. has intentionally given incorrect information in applying for or restoring Estonian citizenship;
b. is not follows Estonian constitutional order, or not follows the Laws of Estonia;
c. has acted against State of Estonia and it's security;
d. has commited a crime and having punishment of detention over one year and the punishment is not extinguished or the person who has repeadetly punished in criminal order for intentional crimes;
e. has acted or acting in intelligence or security service of Foreign State;
f. has acted in military servance as military servant, discharged or retired. Also regading to his or her husband who has arrived to Estonia in connection of

sending military servant to service, reserve or retirement.

4.

According to Decision of Supreme Soviet of Estonia about applying of Citizenship Law of 1938 (26 February, 1992) as amended in 16th June 1940 :The citizens of Estonia are persons who received Estonian citizenship by birth, according to para 3 of Citizenship Law or persons who received it before current Decision according to paragraphs 4 and 5 of the 1938 Law. So, the principle which dominated was *Jus Sanguinis* (origin). § 4 and 5 of the Law regulated how to obtain citizenship (marriage, children, naturalization).

The Amendment Law of Citizenship on 23 March,1993 states, that Estonian citizens are :
- persons, who are recognized as Estonian citizens,
- on the basis of international treaties, ratified by Estonia,
- children, if their parents were Estonian nationals at the time of their birth,
- children, born after death of their father if he was Estonian citizen at the time of his death,
- children found in Estonia since is not proved their other nationality.

The current Law of 1995 (§1) describes that Estonian citizen is person having citizenship at the time of enforcement of the Law and person who shall received , obtained or restored his or her citizenship. §2 : It can receive by birth, obtain by naturalization and reinstate to person who lost the citizenship when he or she was minor. So, in normal cases citizenship is acquired by birth (one of the parents must be an Estonian citizen) on the basis of law or in the case of adoption. Consecuently, *Jus Sanguinis* principle dominates as other principles are important for naturalization. The Constitution of 1992 also emphasises the aforesaid principle (Art.8).

5.

Internationally, there exists avoiding rule in regard of dual nationality - acquisition of a new nationality automatically entailed loss of the old. As a general rule, in case of double citizenship both involved States cannot protect the person against each other.

The Law of Citizenship,1995 §1 gives the rule of prohibiting to have Estonian and some other citizenship at the same time. § 3 : The person who additionally to Estonian citizenship has right by birth to citizenship of some other State is obliged to waive with one of them if he or she reaches 18 year old. § 16.2 : The person who apply to restore the Estonian citizenship must reside in Estonia continously and be released from other citizenship or prove that he or she will released from it in regarding of restoring Estonian citizenship.

§ 29 states that a person shall be automatically released from Estonian citizenship if he or she has obtained citizenship of the other State or waived Estonian citizenship in favour of citizenship of other State. The question how to avoid cases of statelessness is somehow solved with § 26 which states among the rest that a person may not be released from Estonian citizenship if the result of it is statelessness.

6.

The question of the nationality of legal persons was solved by nationalization and with treaties between involved States. By international practice and *opinio juris communis* every State has right to self-determination also in economical sense: States are free to nationalize and expropriate foreign enterprises and investments.

There exists the Ruling of Estonian Government about privatization of State enterprises, institutions and organizations having subordination of Soviet Union on 7th of May, 1991. This document declares, that whether the public enterprises in territory of Estonia having Soviet subordination are not ownership of Soviet Union and as their privatization shall held under the laws of Estonian Republic. Since adopting legislation of privatization the heads of these entities were obliged to retain of transaction which would cause a change of ownership of these entities.

One example: Ruling of 28th June 1991: factory "Ilmarine" shall be regarded under governance of Estonian Republic.

7.

The Alien's Law of 1993 with its § 4 gives the definition of permanent resident: A permanent resident is Estonian citizen residing in Estonia or alien residing in Estonia who has permit of permanent residence. The Law also states, that this definition of permanent resident in the sense of current law does not extend to legislation which have been adopted before the Law is enforced.

Estonian Law of Citizenship 1995 requires at least five years with permit of permanent residence to apply for Estonian citizenship.

8.

According to International law principles, the terms under which a State may award nationality are solely within its control. The principle of self-determination is recognized by international community as legal concept.

9.

The Citizenship Law of 1938 was severally amended. So, at first the Law prescribed the basis of naturalization as the person applying to citizenship has to reside in Estonia two years before and one year after the applying and to know estonian language (§ 6. 2and 3).These requirements were amended (1993)by Law of amendment of Decision of Estonian Supreme Soviet (1992) to apply the Law of 1938 in regard to the permanent residents who have registrated himself as applicants of citizenship before the Elections of Estonian Congress. (As the Supreme Soviet was legislative power, the Congress was organ which represented the citizenry of Estonia).

The current Law of Citizenship,1995 with it's § 6 states among the rest, that an alien who wish to obtain Estonian citizenship must before applying have resided in Estonia at least five years on the basis of permanent residential permit and one year after the day of application is registrated.

§ 11 of the same Law describes, that permanent residing in Estonia in the sense of the law is at least 183 days per year whereby being away from Estonia should not exceed continously 90 days per year. The link between a person and a territory is connected also with § 7 of the aforesaid Law - "Legal permanent income".

Taking account humanitarian considerations, the Aliens Law treats aliens differently i.e. more flexible conditions for aliens residing in Estonia before 1 July of 1990 and having passport of Soviet Estonia. They can apply for work- and residence permit irrespective from immigration quota. If he does not apply for residence permit within two years, he must leave the State.

On 15th of June 1995 the Aliens Law was amended with clause stating that government must elaborate the new procedure for aliens who have not made their applications for temporary living and working permission until 12th of July 1995 which was deadline given by Law (now the excercise of new government). At the same time, the former Estonian government solved the question of former Soviet military servants. 68 of them obtained living permission for five years. Today, ratification of the Treaty between Estonia and Russia of 26 July 1994 in this field is in consideration.

10.

See the question 2 in regard to Treaty between Estonia and Russia (1991).
§ 9 of Estonian Constitution (1992) declares, that rights, liberties and obligations enumerated in Constitution are equal for Estonian citizens as well for aliens and stateless persons residing in Estonia. However, there are some rights which belongs to citizen and also for alien and stateless person "if the law does not prescribe otherwise". It regards for example to State help in case of oldness, deficiency, to right to choose profession, etc.

Citizens of the other States and stateless persons residing in Estonia are obliged to follow Estonian constitutional order (Constitution's § 55). The constitution respects Human Rights and generally recognized principles of international law.

Consequences of State Succession for Nationality

Reply to Questionnaire CDL-NAT (95) 1 rev.

Finland

1. Instances of state succession concerning Finland

I. Finland (which had been an autonomous Grand Duchy within the Russian Empire) declared its independence on 6 December 1917. The All-Russian Executive Central Committee of Workers' and Soldiers' Soviets approved on 4 January 1918 the proposal of the Council of People's Commissars of 31 December 1917 to recognize the independence of Finland.

II. During the last days of January, 1918, a civil war broke out in Finland. Soviet Russian troops took part in the war on the revolutionary (Red) side. After the Whites had brought home a victory in the war in May, 1918, a state of war was considered to continue between Finland and Soviet Russia, until a Peace Treaty between the Republic of Finland and the Russian Socialist Federated Soviet Republic was concluded in Tartu (Dorpat) on 14 October 1920. The old borders of the Grand Duchy were confirmed as the border line between Finland and Russia. In addition, Russia ceded to Finland the area of Petsamo (Pechenga) at the Arctic Ocean. Finland returned to Russia the parishes of Repola and Porajärvi in Eastern Carelia (outside the borders of the Grand Duchy), which had been under occupation by Finnish troops.

III. A peace treaty was concluded in Moscow on 12 March 1940, to terminate the "Winter War" between Finland and the Soviet Union. According to the treaty, Finland ceded to Russia about 10 per cent of its area (a small portion of the Petsamo area, ceded to Finland in 1920, included). Finland also leased to the Soviet Union the town of Hanko, with surroundings, for thirty years, to be used as a naval base.

IV. After the war had broken out anew in June, 1941, and Finnish troops had occupied the area ceded and leased to the Soviet Union in 1940 (and in addition large areas in Eastern Carelia), the

areas ceded in 1940 were in a Proclamation, issued by the President of the Republic with the consent of the Parliament on 6 December 1941, declared to have been reunified with Finland. In the same Proclamation, the undertakings made by Finland in the Moscow peace treaty with regard to the Hanko area, were declared to have lapsed.

V. The continued war was terminated with an armistice concluded in Moscow on 19 September 1944. According to the armistice treaty, the borders set in 1940 were confirmed, except that the entire Petsamo area, ceded to Finland in 1920, was ceded to the Soviet Union. The Hanko area, leased to the Soviet Union in 1940, remained in Finnish hands, but the Porkkala peninsula with surroundings, near Helsinki, was in stead leased to the Soviet Union for fifty years. All these regulations in the armistice treaty were confirmed in the peace treaty concluded in Paris on 10 February 1947.

VI. The Jäniskoski and Niskakoski rapids with surrounding areas were transferred for power plant purposes with full sovereignty to the Soviet Union with an agreement of 3 February 1947 as a partial payment of former German assets in Finland.

VII. The Soviet Union relinquished its leasing rights to the Porkkala area with a treaty of 19 September 1955, and the area was returned to Finland on 26 January 1956.

2. **Means to govern the nationality**

ad I. Finland had its own citizenship law already as a Grand Duchy. No changes were made in this branch of law.

ad II. The fate of the inhabitants of the Petsamo area and the Repola and Porajärvi parishes were regulated in the Tartu peace treaty of 1920.

ad III. There were no express provisions on nationality questions in the Moscow peace treaty of 1940. Neither was any internal Finnish legislation on this question adopted.

ad IV. In addition to the few Finnish people that had in 1940 remained on the areas ceded to the Soviet Union by virtue of the Moscow peace treaty of 1940, these areas had thereafter been to some extent settled by Soviet people. After the withdrawal of the Soviet troops, there were, however, very few civilian (Soviet or former Fin-

nish) persons remaining on these areas. The nationality of these few persons was regulated by a Finnish Act of Parliament of 6 December 1941 "on the nationality of certain inhabitants of the area reunified with the Realm". No Finnish rules were adopted concerning the nationality of the pre-1940 Finnish population moving back to these areas after they had been occupied by Finnish troops and reunified with Finland. The nationality of the Soviet population of Eastern Carelia (occupied by Finnish troops but outside the pre-1940 area of Finland) was not regulated by Finland.

ad V. There were no provisions on nationality questions in the Moscow armistice treaty of 1944 or in the Paris peace treaty of 1947. Neither was any internal Finnish legislation adopted on this question, or pertaining to the nationality of the population of the Eastern Carelian areas which had been occupied by Finnish troops.

ad VI. The Jäniskoski and Niskakoski area transferred to the Soviet Union in 1947 consisted of State-owned territory without private inhabitants. No need to regulate nationality questions either internationally or nationally arose.

ad VII. Nationality questions were not treated in the treaty of 1955 returning the Porkkala area to Finland. No Soviet population remained in the area after it was emptied by the Soviet troops. The area was thereafter resettled by Finnish population.

3. **The solutions in each case**

ad I. The Grand Duchy of Finland had its own citizenship, separate from the citizenship of Russia. Finnish citizens were sometimes (e.g. in passports issued by Finnish authorities) designated as "citizens of Finland, subjects of Russia". Russian subjects which were not citizens of Finland had certain privileges in Finland, e.g. to settle in the country, to acquire and own there real property, and to carry on certain (but not all) trades and professions, but no political rights and no right to be automatically accorded Finnish citizenship (although the conditions required for Finnish citizenship were until 1900 in most cases very lenient). The Russian Act on Equal Rights, enacted towards the end of Russian rule in 1912, purported to grant to all Russian subjects all the rights in Finland that Finnish citizens had; but this act was treated by Finnish courts and authorities as unlawful and null

and void.

The separation from Russia caused no change in the Finnish citizenship. All persons who had been Finnish citizens under Finnish law retained their Finnish citizenship. The "former Russian citizens" in the country (so designated as they were not recognized as citizens of Soviet Russia) were now aliens like any foreign persons, and they could be naturalized like any foreign citizens or stateless persons. (In fact, most "former Russian citizens" living in Finland in the time following the separation were not former inhabitants of Finland but refugees after the October revolution). The privileges of Russian subjects to acquire and possess real property in Finland were expressly revoked in July, 1918.

ad II. According to the Tartu peace treaty of 1920, the Russian citizens living in the Petsamo area became Finnish citizens, with the right, however, to opt within one year for Soviet Russian citizenship. Those choosing the Soviet citizenship were allowed to move to Soviet Russia within one year with their personal property, and they were assured the property rights to their real property within the area.

The inhabitants of Repola and Porajärvi who so wished had the right to leave Russia within one year with their personal property. They were also assured property rights to their real property within the area "within the limits of the law in force in the Autonomous Region of Eastern Carelia" (which meant nothing, as no private ownership to real property was recognized in Soviet Russia). There were no provisions as to the nationality of the persons leaving Russia. Those who moved to Finland were in practice naturalized pretty soon.

ad III. The overwhelming majority of the population of the areas ceded to the Soviet Union in 1940 moved to the remaining area of Finland. No one was allowed to stay on the leased Hanko area. The Finnish citizens leaving the ceded and leased areas kept their Finnish citizenship. Also the people who had involuntarily fallen in the hands of Soviet troops and who were later in 1940 returned to Finland were considered to have retained their Finnish citizenship. The few Finnish citizens who had voluntarily remained on the ceded areas were, in accordance with the then current international law textbooks, considered to have, in virtue of the provisions on area transfers in the peace treaty, lost their

Finnish citizenship and become citizens of the Soviet Union.

All those who moved to the remaining Finland retained the personal property that had been evacuated from the areas within the short time limits available. They lost the title to all personal and real property left there, but legislation was passed for a total or partial recompensation by the Government of Finland (to be financed with s general capital levy).

ad IV. The Finnish citizens moving to the reunified areas of course kept their Finnish citizenship. According to the Act on the nationality of certain inhabitants of the area reunified with the Realm, already mentioned, the persons that had remained to live on the area ceded to the Soviet Union in 1940 and had because of the area transfer lost their Finnish citizenship were entitled to regain it if they still lived in Finland and notified the proper Finnish authorities about their intention within three months after the effective date of the Act. By the same procedure, children of such former Finnish citizens, born after their parents had lost their citizenship of Finland, were admitted to citizenship. Other inhabitants of the reunified area were referred to the ordinary procedure of naturalization. Until a possible naturalization they, as well as the remaining inhabitants of the Finnish-occupied Eastern Carelia (about one fourth of the pre-war population of the area, the rest having been evacuated by Soviet authorities), retained their status as Soviet citizens.

In another Act, the pre-1940 rights concerning property on the reunified area were declared to be restored. The legislation of 1940 on compensation for that property was revoked. Instead, the owners were granted a total or partial compensation for their actual damages.

ad V. In 1944, practically all Finnish citizens living in the ceded areas moved again to the remaining area of Finland. No one was allowed to stay on the leased Porkkala area. In regard to this population, he same principles were applied as in 1940 (see ad III, *supra*).

The overwhelming majority of the Soviet population of Eastern Carelia remained there after the withdrawal of the Finnish troops. Of those who had transferred to Finland many were returned to the Soviet Union, to a large extent involuntarily (in virtue of a clause in the armistice treaty providing expressly for the return of those

who had been transferred to Finland involuntarily). No Finnish rules were adopted on the nationality of these persons. Of those remaining in Finland many were eventually naturalized in the ordinary way.

ad VI. As the Jäniskoski and Niskakoski area was without private inhabitants, no nationality question arose. The transfer did not only cover the sovereignty over, but also the title to, the area.

ad VII. Quite as in 1941, the Finnish citizens moving to the returned lease area of course kept their Finnish citizenship. The pre-lease owners of property on the area (or their successors) were declared to own the property again. As far as the property was found intact the owners were required to return the compensation they had been granted for that property, increased on account of the fall of the value of money. All Soviet buildings and constructions within the area that were not removed before the return of the area were according to the treaty of 1955 transferred to the ownership of the Government of Finland. As far as such property was situated on land owned by someone else, the owner was in Finnish legislation entitled to buy off the property. There was no need to adopt rules pertaining to any Soviet citizens on the area.

4. Criteria for the determination of nationality

ad I. Finnish nationality was determined exclusively on the basis of existing Finnish citizenship (or lack of it).

ad II. Nationality (Finnish or Soviet Russian) was determined on the basis of existing citizenship, on domicile within the area in question, and on individual choice.

ad III to VII.
Existing Finnish nationality continued in most cases as such, and the area transfers had no consequences as to the citizenship of those who moved back and forth because of the transfers. This might be regarded as an expression of *jus sanguinis*. *Jus soli* was applied as to those Finnish citizens who remained voluntarily on the ceded area, while the unilateral Finnish solution in 1941 (entitling the former Finnish citizens of the reunified area to regain their citizenship by notification but denying Finnish citizenship to other inhabitants of the area) was more an expression of *ius sanguinis*.

5. **Measures as to double nationality or statelessness**

ad I. No cases of double nationality did ensue on account of Finland's separation from Russia. Imperial Russian subjects remaining in Finland or emigrating elsewhere outside Soviet Russia became (at the latest by virtue of Soviet rules adopted on 15 December 1921) stateless until they were eventually naturalized somewhere.

ad II. The peace treaty of Tartu in 1920 did not create cases of double nationality. Nor did it cause statelessness for inhabitants of the Petsamo area. The inhabitants of Repola and Porajärvi making use of the option to leave Russia became stateless until they were naturalized (as a rule very soon in case they remained in Finland).

ad III to VII.
The area transfers did not create cases of double nationality. In case the few persons who in 1940 or 1944 remained voluntarily on the ceded area and were in Finland considered to have lost their Finnish citizenship and become Soviet citizens, were not recognized by the Soviet Union as its citizens, they in fact became stateless. No other cases of statelessness did ensue.

6. **Nationality of legal persons**

In connection with the cases of State succession treated in this reply there was no international regulation of the nationality of legal persons.

ad I. Legal persons that had been created under the law of the Grand Duchy of Finland remained Finnish also after the separation of Finland from Russia. No other legal persons became Finnish.

ad II. There were no legal persons of importance on the area affected by the Tartu peace treaty except for the Orthodox monastery in the Petsamo area. It was not specifically treated in the treaty, but in Finnish law and practice it was regarded as Finnish.

ad III. Finnish legal persons domiciled within the areas ceded or leased in 1940 to the Soviet Union retained their Finnish nationality (and were accorded or could choose a new domicile within the new borders of Finland). The municipalities (communes-local authorities) and Evangelical Lutheran and Orthodox Congregations which had had their administrative area within the ceded

or leased areas also retained their Finnish nationality and legal personality. They of course lost their administrative area and most or all of their real property, but retained at least some of their personal property (e.g., bank accounts), and continued to handle administrative tasks pertaining to their members (i.e. mainly persons which had been domiciled within their former administrative areas). Legislation was, however, passed to dissolve the munipalities with no administrative area by 31 December 1942.

Several property items (machines, etc.) of private-law and public-law legal persons that had been evacuated from the ceded area were required to be returned there.

ad IV. No Soviet legal persons were considered to exist on the reunified areas. Finnish legal persons which had had their domiciles there were entitled to take up their former domiciles by means of a simple Board decision (without need to amend their by-laws). The legislation on the dissolution of municipalities from the area ceded in 1940 was revoked, and the municipalities and congregations that had had their administrative areas on the reunified areas returned to their former seats, were considered owners of their former property on the reunified areas, and were eventually accorded their former legal powers and administratrive tasks. No legal persons were created for the occupied Eastern Carelian area, which remained under military administration.

ad V. In 1944, the same principles were applied as in 1940 (see ad III, *supra*). The municipalities which had had their administrative areas on the ceded or leased areas were dissolved in 1948, and their remaining assets were transferred to foundations to be used for the benefit of the population of the dissolved municipalities. The Evangelical Lutheran and Orthodox congregations from the ceded and leased areas were correspondingly dissolved as from 1 January 1950. The remaining assets of the dissolved Evangelical Lutheran congregations were transferred to the central authority of the Evangelical Lutheran Church, to be used for spiritual work among the members of the dissolved congregations. As most members of the Orthodox Church in Finland had belonged to the dissolved congregations, several new Orthodox congregations were founded, and the remaining assets of the dissolved congregations were transferred to the State, to be used for the benefit of the Orthodox congregations, especially those having many members from the dis-

solved congregations.

ad VI. The transfer of the Jäniskoski and Niskakoski area had no repercussions on the nationality of legal persons.

ad VII. No Soviet legal persons were considered to exist on the returned lease area. The only municipality and the only congregation that had been dissolved on account of the lease were not reerected. Instead, the administrative area of these units was transferred to an existing municipality and an existing congregation (which had their main area outside the leased area); and these units also became owners of the dissolved units' former property on the returned area. No need arose for new regulations on the domicile of existing legal persons.

7. Residents' right to a status in the successor State

In my personal opinion, there is no universal answer to the question whether a person who has resided for a significant period on a territory subject to State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin. An affirmative answer seems natural e.g. in connection with border readjustments between States on about the same cultural and economic level, as for instance between Denmark and Germany after World War I. But should a former colony be required to grant its nationality to citizens of the former colonial power? Still less should a State which has been under foreign occupation be required to recognize as its citizens persons who settled there under the authority of the occupying power.

At least in most cases it would in my opinion be unjust to deny the status of permanent resident to persons mentioned in the preceding paragrapl who have been denied citizenship in the successor State. Via the status of permanent resident they can eventually-but not necessarily automatically-also acquire nationality in the successor State. (But in the case of persons who have been allowed to choose between the nationalities of the two states it is in my opinion natural that those who have not opted for the nationality of the successor State can be denied the status of permanent resident there.)

8. State competence to regulate the criteria for according nationality

The established geenral rule is that nationality and the criteria for according nationality are determined by national legislation. In Finland the matter is regulated by the Nationality Act of 1968, as amended, and the Nationality Decree of 1985. In addition, Finland is bound by several international agreements regulating nationality. These are:

(1) Convention Relating to the Status of Stateless Persons of 28 September 1954;
(2) Convention on the Nationality of Married Women of 20 February 1957;
(3) Vienna Convention on Diplomatic Relations of 18 April 1961: Optional Protocol Concerning Acquisition of Nationality;
(4) Protocol of 19 June 1968 on Finland's Accession to the Agreement of 3 March 1956 on the Relation of Compulsory Military Service and Nationality in Denmark, Norway and Sweden; and
(5) Agreement of 15 January 1969 between Denmark, Finland, Norway and Sweden on the Implementation of Certain Provisions on Nationality.

In the United Nations Declaration of Human Rights there are certain rules about citizenship (Art. 15), but in general the human rights conventions do not regulate issues relating to nationality.

As to the rules of international law circumscribing the matter, it is somewhat difficult to name comprehensively the rules recognized by the Finnish authorities. The basic principle is, as already stated above, that the criteria for according nationality are within the exclusive competence of the State. The nationality should, however, be based on factual, effective connection between the individual and the state in question (e.g. birth, marriage, long-term residence etc.). Most of the rules of international law relate to questions of double citizenship and statelessness.

The rule of effective connection has particular significance in cases of double citizenship and statelessness. For instance, it is considered that a State cannot give diplomatic protection to its citizen against the other home State in the territory of the latter. Furthermore, a State caanot arbitrarily take a stateless person

as a citizen without sufficient factual connection and the consent of the person in question.

9. **Territorial criteria in the acquisition of nationality**

Finnish nationality can be acquired by different means: by birth, by naturalization on application, and upon notification.

A. *Nationality by birth*

As Finnish nationality is at birth in the first place acquired according to *jus sanguinis*, a territorial criterion is used only exceptionally. A child who is born in Finland and does not at birth receive the citizenship of any other State thus acquires Finnish nationality. A foundling found in Finland is considered to be citizen of Finland as long as he is not proved to be citizen of any other State.

B. *Naturalization*

One of the criteria which must be fulfilled before an alien may be naturalized is that he has for the last five years had, and still has, his regular home and domicile in Finland. Exceptions are allowed in the case of former Finnish citizens, spouses of Finnish citizens, and citizens of Denmark, Iceland, Norway and Sweden, and also upon special grounds.

C. *Acquisition of nationality upon notification*

An alien is in some cases entitled to acquire Finnish nationality simply by notifying the Ministry of Interior of his intention.

a. An unmarried child under 18 and living permanently in Finland is entitled to Finnish citizenship upon notification, if the child's fathe. was at the child's birth and still is citizen of Finland and has, either alone or together with some other person, the custody of the child. (This option refers only to the case that the child's mother is analien and the child's father is not, and has not after the birth of the child been, married to her: in other cases, the child is Finnish citizen from birth or from the marriage of the parents, as the case may be.)

b. An alien of at least 21 and at most 23 years of age is entitled to Finnish citizenship upon notification, if he has had his permanent home and domicile in Finland for at least five years before he attained the age of sixteen and perma-

nently after having attained that age. The right to citizenship begins already at the age of 18 in the case of a stateless person or a person who will lose his foreign citizenship upon the acquisition of Finnish citizenship, if he has had his permanent home and domicile in Finland permanently for the last five years and for at least five earlier years. Permanent home and domicile in Denmark, Norway or Sweden for at least five years before the notification and before the age of 17 is considered equivalent to permanent home and domicile in Finland. If a state of defence has been declared, a citizen or former citizen of an enemy State has no right to citizenship under these regulations.

c. A native-born Finnish citizen, who has had his permanent home and domicile in Finland until the age of 18 but has thereafter emigrated from the country and has lost his Finnish citizenship, is entitled to renew his Finnish citizenship upon notification if he has lived in the country for the last two years and if he will lose his foreign citizenship-if any-upon the renewal of the Finnish citizenship. Living in Denmark, Norway or Sweden before the age of 12 is considered equivalent to living in Finland, and a person who has after the loss of his Finnish citizenship been without interruption a citizen of Denmark, Norway or Sweden is entitled to Finnish citizenship immediately after he has taken up a permanent residence in Finland.

d. If a person acquires Finnish citizenship under the rules expounded in paragraphs b. and c., *supra*, the acquisition is as a rule extended to his unmarried child under 18, if the child lives permanently in Finland.

e. A citizen of Denmark, Norway or Sweden of at least 18 years of age is as a rule entitled to Finnish citizenship upon notification, if he has acquired his Danish, Norwegian or Swedish citizenship otherwise than by naturalization and he has had his permanent home and domicile in Finland for the last seven years.

10. Taking of account of foreign consequences

A Finnish citizen cannot be denaturalized, upon application or otherwise, except in case he already possesses, or will upon or after the denaturalization acquire, a foreign citizenship.

There are no other provisions in Finnish nationality legislation on the influence of foreign consequences of the granting or withdrawal of Finnish nationality.

To the Summary tables of replies to the questionnaire on the consequences of States succession for nationality [CDL-NAT (95) 2 Appendix II Provisional]

1. Table on Finland (p. 10)

In the column independence of (1917) and in the row Exclusion of certain categories of persons, the entry "former Russian citizens" might be completed with the words "not possessing citizenship of Finland". In the row Consequences for persons who did not obtain the nationality of the successor State, the question mark might be replaced with the entry "status of alien in Finland". In the row Statelessness, the question mark might be replaced with the entry "Under subsequent Soviet legislation for Russian citizens not returning to the Soviet Union".

2. Table on Russia/former USSR (pp. 26-27, entries based on the reply from Finland)

According to a remark on the cover sheet, temporary occupations or annexations which occurred during a state of war are not taken into account. Therefore, the column cession of the Repola and Porajärvi parishes by Finland (1920) might be deleted altogether, as these parishes never were parts of Finland. Alternatively, the title of the column might read "end of Finnish occupation of the Repola and Porajärvi parishes (1920)". In the row Acquisition of nationality of the successor State, the entry might be "inhabitants remaining in the area retained their (Soviet) Russian citizenship". In the row Consequences for persons who did not obtain the nationality of the successor State, the question mark might be replaced with a hyphen (-). In the row Statelessness, the question mark might be replaced with the entry "for persons choosing to move to Finland, until they eventually were naturalized there or elsewhere". In the row Nationality of legal persons, the question mark might be replaced with a hyphen (-).

Finnish territories were ceded to Russia in two stages: first part in 1940 and second part in 1944. Therefore, the title of the column cession of Finnish territories (1944) should read "cession of Finnish territories (1940 and 1944)". The entry in the row Governed by should begin "neither the Moscow Peace Treaty (1940) nor the Armistice Treaty (1944) or the Paris Peace Treaty (1947)...". In the row Acquisition of nationality of the successor State, the entry might be "automatically for the few inhabitants remaining in the ceded area". (N.B. Under Finnish application of international law, these persons were considered to have lost their Finnish citizenship. Whether they under Soviet rules and practice obtained the Soviet citizenship, is unknown to me.) In the row Right to choose, the entry might be "Finnish citizens moving to the remaining area of Finland retained their Finnish citizenship". In the row Nationality of legal persons, the entry might be "Finnish legal persons could choose, or failing that were given, a new domicile in the remaining area of Finland". The remaining question marks in this column depend on Soviet legislation and practice.

Réponse de la France

REPONSES AU QUESTIONNAIRE SUR LES INCIDENCES DE LA SUCCESSION D'ETATS SUR LA NATIONALITE

N° 1

1. 1919 - Traité de Versailles 28.06.1919 - Réintégration des territoires d'Alsace-Lorraine cédés en 1871.

2. 1947 - Traité de Paris 10.02.1947. Annexion à la France de quelques territoires italiens. Renvoi, par le traité, à la loi de l'Etat successeur - loi 13.12.47 D 7.1.48 et L. 2.8.49.

3. Cessions des Etablissements français de l'Inde.

1. Chandernagnor - Traité 02.02.1951

2. Pondichéry)
Karikal) Traité 28.05.1956
Mahé)
Yanaon)

4. Rattachement au Vietnam suite aux accords du 08.03.1949

Convention bilatérale 16.08.1955

5. Afrique noire)
Madagascar) accession à l'indépendance
Algérie)

6. Comores)
Afars et Issas (Djibouti)) Idem
Nouvelles Hébrides (Vanuatu))

N° 2

Dans les cas 1, 2 et 3 il s'agit de traités, éventuellement complétés par des instruments législatifs (cas n° 2)

Pour le Vietnam, c'est une convention bilatérale signée 6 ans après qui règle rétroactivement les problèmes de nationalités liés au rattachement au Vietnam de territoires anciennement sous domination coloniale.

Dans le cas de l'accession à l'indépendance :

. Cas n° 5 : Les accessions n'ont pas été accompagnées de la conclusion de conventions diplomatiques sur les problèmes de nationalité qu'elles suscitaient.

C'est donc une loi unilatérale de l'Etat anciennement souverain qui règle les problèmes de nationalité.

- n° 60-752 du 28.07.1960 pour le TOM
- n° 62-825 du 21.07.1962 pour l'Algérie
- Loi du 09.01.1973 - Madagascar et Afrique noire

. Cas n° 6 : lois unilatérales mais concomitantes de l'accession à l'indépendance.

. 75-560 du 03.07.1975) Comores
. 75-1337 du 31.12.1975)

. 77-625 du 20.06.1977 - Djibouti

. 80-703 du 05.09.1980 - Vanuatu

D'une manière générale les articles 15 et 16 du Code de la nationalité précisent que :

- les traités ne peuvent être interprétés comme portant changement de nationalité que s'ils le disent expressément.

- dans le cas où ils prévoient une option de nationalité, la forme de celle-ci est régie par la loi du pays contractant dans lequel elle doit être exercée.

N° 3

a) - Acquisition de la nationalité de l'Etat successeur

1 - de plein droit seulement pour les personnes -et leurs descendants- qui auraient perdu la nationalité française en 1871 ainsi que les individus nés en Alsace-Lorraine de parents inconnus ou dont la nationalité est inconnue.

2 - de plein droit les résidents au 10.06.1940 ainsi que leurs enfants nés après le 10.06.1940, ainsi que ceux nés dans les territoires cédés et résidant en France ou à Monaco.

3.1 - Les Français et les citoyens de l'Union deviennent de plein droit nationaux et citoyens de l'Inde.

3.2 - acquièrent de plein droit la nationalité indienne, à la date d'entrée en vigueur du traité, les nationaux français nés de domiciliés sur le territoire de ces établissements ou de celui de l'union indienne.

4 - Les Français domiciliés au Vietnam conservent la nationalité française, les autres, anciens sujets français prennent la nationalité vietnamienne quelle que soit leur domiciliation sans condition d'expatriation.

5 et 6 - Pas de signature de conventions diplomatiques sur les problèmes de nationalité suscités par l'accession de l'indépendance.

Pour éviter que ne s'applique la règle selon laquelle les nationaux français domiciliés dans les territoires cédés au jour du transfert de la souveraineté perdent cette nationalité, c'est le législateur qui, unilatéralement décidera de faire une distinction entre :

- les personnes à qui la nationalité française devrait être maintenue de plein droit ;

- celles qui devraient l'établir selon une procédure de reconnaissance de la nationalité française soumise à certaines conditions dont la plus importante était le transfert du domicile en France.

Ont conservé la nationalité française de plein droit :

- Français originaire du territoire de la République et qui étaient domiciliés au jour de son accession à l'indépendance sur le territoire d'un Etat qui avait eu antérieurement le statut de territoire d'outre-mer de la République française, leur

.../...

conjoint, veufs ou veuves et descendants ;

non originaires domiciliés sur le territoire d'outre mer et à qui aucune autre nationalité n'a été conférée par la loi de cet Etat ;

- non originaires, non domiciliés dans l'Etat à la date de l'indépendance.

(Pour l'Algérie, voir les documents joints).

b) - Exclusion de certaines catégories

Dans le cas n° 1, les personnes domiciliées sur les territoires réintégrés et provenant de l'immigration allemande se sont seulement vu reconnaître le droit de réclamer la nationalité française. La difficulté d'application de ce système rigide, notamment pour les descendants des personnes visées par le Traité qui avaient des difficultés à produire l'extrait de réintégration a conduit à accorder par une loi du 22 décembre 1961, modifiée par celle du 29 juin 1971, dans certaines conditions, la nationalité "subsidiairement" si elles ont joui de façon constante de la possession d'état de français.

Si bien qu'aujourd'hui, seules les personnes nées dans les trois départements du Haut-Rhin, du Bas-Rhin et de la Moselle entre le 20 mai 1871 et le 11 novembre 1918 n'ayant aucune possession d'état de français depuis cette dernière date demeurent astreintes à la production d'un extrait du registre de réintégration.

Cas n° 4, certains originaires du Vietnam ont conservé de plein droit leur nationalité française (sous réserve d'utilisation du droit d'option) :

- personnes âgées de plus de 18 ans à la date d'entrée en vigueur de la Convention ;

- citoyens français de naissance ;

- citoyens français avant le 8 mars 1949 (date des accords rattachant au Vietnam les territoires anciennement soumis au droit colonial) soit sous le régime du droit commun des étrangers, soit par mesure administrative ou décision de justice.

Cas n° 5 et 6 - Exclusion de certaines catégories au maintien de nationalité française.

La France n'a pas reconnu, après l'indépendance, aux personnes domiciliées sur ces territoires, une nationalité française qu'elle ne leur avait pas accordée auparavant.

c) - Droit d'option

Dans le cas n° 2, le droit d'option des Italiens domiciliés sur ces territoires, à exercer dans un délai d'un an, implique l'obligation de quitter le territoire français dans le même délai et est subordonné à la conservation de la nationalité italienne.

Option personnelle mais qui entraîne celle de l'enfant mineur de 18 ans non marié.

Cas n° 3.1, option possible en faveur de la nationalité française pour les ressortissants français et citoyens de l'Union française dans les six mois, sans obligation d'expatriation.

Cas n° 3.2, option possible dans les six mois de l'entrée en vigueur du traité.

Cas n° 4

Plusieurs options possibles qui devaient être exercées dans les six mois de l'entrée en vigueur de la Convention ou le jour où les intéressés atteignaient l'âge de 18 ans.

L'option du père entraîne celle de ses enfants mineurs sauf droit d'option propre à 18 ans (cas des Eurasiens).

Cas n° 5 et 6 (hors Algérie)

Les originaires des territoires devenus indépendants ou les Français par acquisition ainsi que leurs descendants n'ont pu rester français qu'en transférant leur domicile en France et en souscrivant une déclaration d'option pour la nationalité française. Possibilité ouverte jusqu'au 31 juillet 1973.

N° 4

Dans le silence du traité, le principe est, d'une part, que "les nationaux de l'Etat cédant, domiciliés dans les territoires annexés au jour du transfert de la souveraineté acquièrent la nationalité française, à moins qu'ils n'établissent effectivement leur domicile hors de ces territoires", d'autre part, que, "sous la même réserve, les nationaux français, domiciliés dans les territoires cédés au jour du transfert de la souveraineté perdent cette nationalité" (art. 12, C. nat., rédaction loi 9 janvier 1973).

Cas n° 4 - Le principe est que les Français non originaires du Viet Nam (c'est-à-dire non issus de parents de génération vietnamienne ou d'une minorité ethnique dont l'habitat se trouve sur le territoire du Viet Nam) domiciliés au Viet Nam conservent la nationalité française, sans condition d'expatriation (art. 2), tandis que les anciens sujets français originaires du Viet Nam prennent la nationalité vietnamienne, en quelques lieux qu'ils se fussent trouvés au 8 mars 1949 (art. 3).

Cas n° 5 et 6 - Originaires et cas assimilés - La loi du 28 juillet 1960 a retenu le critère de l'origine ethnique et distingué entre les originaires du territoire de la République française et les non-originaires.

Algérie - Le critère de l'origine a également été retenu par la loi du 20 juin 1977 relative à l'indépendance du territoire français des Afars et des Issas (v. infra n° 318).

Le critère de l'origine aurait été difficilement praticable en Algérie, car l'origine européenne des "pieds noirs" qui avaient vocation à rester français de plein droit était souvent ancienne et n'était pas toujours française. Le critère du statut personnel, déjà utilisé par les accords d'Evian (supra, n° 296), a paru plus adapté et correspondre à la volonté présumée des intéressés, y compris des originaires d'Algérie de statut civil de droit commun qui étaient les plus assimilés aux modes de vie français et peut-être les plus suspects aux yeux des nouveaux dirigeants algériens.

N° 5

Apatride - Article 155-1 du Code de la nationalité cf. plus haut cas où la nationalité française est maintenue de plein droit à des non originaires du territoire de la République française.

Limitation des cas de double nationalité Ex. art. 19 de la Convention franco-vietnamienne.

FRANCE ALGERIE

CAS DE SUCCESSION D'ETATS

Accession à l'indépendance de l'Algérie (1962)

Régi par :

. Les accords d'Evian (18 mars 1962)

. Référendum sur l'autodétermination (1er juillet 1962)
Scrutin d'autodétermination (3 juillet 1962) indépendance de l'Algérie

. Textes traitant de la question de la nationalité :

- ordonnance du 21 juillet 1962 prise en application de la loi du 13 avril 1962, complétée par le décret du 27 novembre 1962 ;

- ordonnance modifiée par les loi du 10 juillet 1965 et du 20 décembre 1966.

ACQUISITION DE LA NATIONALITE FRANCAISE

1) - Le maintien de plein droit de la nationalité française :

- Les personnes de statut civil de droit commun

Les Français de statut civil de droit commun domiciliés en Algérie à la date de l'annonce officielle des résultats du scrutin d'autodétermination (3 juillet 1962) conservent la nationalité française quelle que soit leur situation au regard de la nationalité algérienne.

La nationalité française de ces personnes nées en Algérie avant la publication de l'Ordonnance de 1962 est tenue pour établie si elles ont joui de façon constante de la possession d'état de Français.

- Les personnes de statut civil de droit local

Les personnes de statut civil de droit local originaires d'Algérie qui n'ont pas souscrit de déclaration sont réputées avoir perdu la nationalité française (au 1er janvier 1963). Toutefois, les personnes de statut civil de droit local, originaires d'Algérie, conservent de plein droit la nationalité française si une autre nationalité ne leur a pas été conférée postérieurement au 3 juillet 1962. Il est de même pour les enfants mineurs,

. . . / . . .

de 18 ans, à la date de l'accession à l'indépendance du territoire où leurs parents étaient domiciliés.

2) - La reconnaissance de la nationalité française

Les personnes de statut personnel de droit local, originaires d'Algérie, où qu'ait été situé leur domicile à la date du 3 juillet 1962, à l'exception de celles à qui la nationalité algérienne n'avait pas été conférée, peuvent, ainsi que leurs enfants, en France, se faire reconnaître la nationalité française jusqu'au 23 mars 1967 (expiration d'un délai de trois mois suivant la publication de la loi du 20 décembre 1966).

Peuvent recouvrer la nationalité française les enfants mineurs de personnes de statut civil de droit local originaires d'Algérie nés avant le 1er janvier 1963 dans des territoires demeurés depuis cette date sous la souveraineté française lorsque le parent dont ils suivent la condition n'a pas bénéficié de la reconnaissance de la nationalité française.

Les enfants mineurs de 18 ans en date du 20 décembre 1966 de personnes de statut civil de droit local originaires d'Algérie, qui ont été élevés ou recueillis en France avant l'entrée en vigueur de la loi du 20 décembre 1966, jusqu'à l'accomplissement de leur dix-huitième année, peuvent se faire reconnaître la nationalité française si le parent dont ils suivent la condition est décédé ou a disparu ou les a abandonnés sans avoir souscrit la déclaration recognitive de la nationalité française.

Les effets de la reconnaissance :

Il s'agit d'une condition suspensive de la conservation de la nationalité française : la nationalité française est conservée par l'intéressé qui est censé ne jamais l'avoir perdue.

L'absence de reconnaissance :

Si aucune déclaration n'a été souscrite dans les délais alors l'intéressé a perdu la nationalité française à compter du 1er janvier 1963 ou à la date à laquelle il a atteint l'âge de 18 ou 21 ans (la date limite étant le 31 juillet 1973).

En son absence, les personnes nées avant le 1er janvier 1963 devenaient algériennes, quel que soit leur lieu de résidence, notamment en France alors même qu'elles y étaient nées.

Loi 1973 (9 janvier) : Les enfants nés en France avant le 1er janvier 1963 dont les parents n'avaient pas souscrit de déclaration de reconnaissance de la nationalité française avaient perdu la nationalité française et ne pouvaient pas bénéficier de la réintégration par déclaration. Seule la réintégration par décret était possible. En

.../...

revanche, leurs frères et soeurs nés après cette date étaient français par attribution du double droit du sol (tout en conservant leur nationalité algérienne).

3) - La réintégration spéciale de la loi du 9 janvier 1973

Il s'agit d'une faculté de réintégration par déclaration. Sont visées les personnes de nationalité française domiciliées au jour de l'indépendance sur un ancien territoire d'outre-mer et à qui la nationalité française n'a pas été maintenue de plein droit.

Les Algériens de statut personnel de droit local ne sont pas compris parmi les bénéficiaires.

Les effets de la réintégration

La réintégration fait recouvrer à l'intéressé la nationalité française qu'il avait perdue du fait du défaut de déclaration de reconnaissance.

Cette réintégration, à la différence de la reconnaissance, n'est pas rétroactive.

DROIT D'OPTION

Oui (cf. la reconnaissance de la nationalité française et la réintégration).

EXCLUSION DE CERTAINES CATÉGORIES DE PERSONNES

Oui. Le gouvernement français pouvait prendre un décret d'opposition à la reconnaissance de la nationalité française. Les motifs d'opposition sont : l'indignité, le défaut d'assimilation, une grave incapacité physique ou mentale.

CONSÉQUENCES POUR LES PERSONNES QUI N'OBTENAIENT PAS LA NATIONALITÉ FRANÇAISE

Maintien de la nationalité algérienne.

APATRIDIE

Non

PLURALITÉ DE NATIONALITÉS

Oui (cf. la loi 9 janvier 1973)

CRITÈRES DE NATIONALITÉ

Statut personnel, nationalité précédente, résidence, âge, lieu de naissance.

NATIONALITÉ DES PERSONNES MORALES

Reply by Georgia

to the questionary
ANSWERS on the competences of
State Succession for Nationality in Georgia.

1. In the years of 1918-1921 Georgia was independent state. On February 21st, 1921 Georgia entered the Union of Soviet Socialist Republics which disintegrated on Desember 2[illegible], 1991; consequantly the Republic of Georgia became successor state of the Socialist Republic of Georgia.

2. Citizen of the Republic of Georgia aquire citizenship by multi-lateral International treaty of Alma-ata and International law of the successor state,namely by the law of the Republic of Georgia 'on Citizenship of Georgia' (March/25/1993) i.e. was used cause (c) given in the questionary.

3. In these cases following decisions were taken:

a) ipso facto;

b) Hadn't got;

c) The individual choice was exercised. Those persons who hadn't chosen the citizenship of the Republic of Georgia were announced as stateless persons.

4. In the above noted cases the decision was taken according to cause (c) i.e. according to the jus sanguinis and jus soli.

5. Double citizenship is prohibited by law and the constitution, but it should be noted that the citizens of Abkhazia and Adjaria autonomous Republics have their own citizenship and they automatically become citizens of Georgia.

6. Issues of citizenship of legal persons are regulated by Interna[illegible]l state law.

7. Ethnical origin doesn't matter while acquiring Georgian citizenship. If a person doesn't refuse the citizenship of Georgia within six months after law becomes acting he is authomatically considered as a citizen of Georgia.

8. "Law on citizenship of Georgia" of the Republic of Georgia of March/25/1993,is adopted with the respect to the demands of International law.

9. As it was noted in causes 4 and 7 the legislation of our country pays great attention to the criterion of effective links

between person and territory, namely person willing to become a citizen of Georgia should permanently live on the territory of Georgia for the last ten years.

10. There are some differencies among citizens of Georgia, foreigners and stateless persons which are determined by following internal state laws:

a) Law "on Citizenship of Georgia" of the Republic of Georgia of March/25/1995.

b) Law "on Legal Regime of Foreigners" of the Republic of Georgia of June/03/1993.

Questionnaire on the Consequences of State Succession For Citizenship

National Report for the Federal Republic of Germany

Preliminary Remarks

Since World War I and until German reunification in 1990, Germany has faced many instances of state succession. These instances involved various kinds of state succession, i.e.

- transfer of territories by treaty (e.g. the case of Alsace-Lorraine after 1918),
- annexation of territory (e.g. the annexation of Austria in 1938),
- separation of a part of Gemany claiming to form a new state (case of the GDR after 1949) and finally
- merger of such entity with the Federal Republic of Germany the GDR to the Basic Law of the Federal Republic of Germany).

Some of the cases cannot be classified very easily, however. Thus, in certain cases new entities *sui generis* were created, which cannot be referred to as states under international law (see e.g. the cases of the Saar territory 1918-1935 and 1945-1955 and the case of the Free City of Danzig created by the Treaty of Versailles).

Furthermore, the legal status of certain areas which came under Polish/Soviet authority after 1945 remained doubtful for

some time until their status was finally settled - at the latest - in the wake and after German reunification.

Generally four different phases have to be distinguished:

(A) - the loss of territories after World War I foreseen in the peace treaty of Versailles

(B) - the acquisition of territory before and during World War II, starting with the incorporation of the Saar territorry into Germany

(C) - the post - World War II developments, i.e. the creation of the GDR and the loss of the territories east of the Oder and Neisse

(D) - German reunification of 1990.

In view of the high number of cases, we will deal with each case individually and respond to questions one through six for each of them before then moving on to the next case.

The report does not contain references as to the legal status of juridical persons, since this would have meant an in-depth analysis of the law of corporations of the respective state, which had acquired German territory (i.e. Poland, Denmark, France etc.). This information may be found, however, in the respective national report of these countries.

The relevant texts of the treaties and/ or national laws dealing with the questions under consideration can be found in the annexes.

ANSWERS AS TO QUESTIONS 1 THROUGH 6

A. PHASE 1: TERRITORIAL CHANGES AFTER WORLD WAR I

1. Transfer of territory: The Eupen-Malmedy-Moresnet area (Art. 32-37 Versailles Treaty)

ad 1.: Under Art. 32 - 34 of the Treaty of Versailles[1], the area of Eupen and Malmedy as well as Moresnet came under Belgium sovereignty.

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[1] For the text see Annex 1.

ad 2.: The question of the citizenship of the inhabitants of the areas under consideration was regulated in Art. 36 and 37 of the Treaty of Versailles, a German-Belgium Declaration on Exercising the Right to an Option[2] and a German-Belgium Agreement on Exercising the Right of Option[3].

ad 3. a): Under Art. 36 of the Treaty of Versailles, German citizens domiciled in the area ('Personen, die ihren Wohnsitz haben') acquired Belgium citizenship and *ipso facto* lost their German citizenship.

b): Germans, who had moved to the area after August 1, 1914 did not *ipso facto* acquire Belgium citizenship, but could only do so with the permission of the Belgium government.

c): Within two years after the transfer of sovereignity, former German citizens could opt for regaining their German citizenship[4]. They then had to leave Belgium within twelve months.

ad 4.: Art. 36 of the Treaty of Versailles referred only to the inhabitants, who are German citizens. According to the Belgium Law on the Right of Option, however, all inhabitants of the area could exercise the option in favour of Belgian citizenship.

ad 5.: Since the vast majority of persons living in the area automatically acquired Belgian citizenship and at the same time lost their German citizenship (see Art. 36 of the Treaty of Versailles) problems of double citizenship or statelessness did normally not arise.

ad 6.: N/A.

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[2] The relevant part of the text can be found in Lichter/ Hoffmann, Staatsangehörigkeitsrecht (3. ed., 1966), p. 566-567.

[3] Reichsgesetzblatt 1924 II, p. 227 et seq.

[4] For details see Belgian Law on exercising the Right of Option, Moniteur Belge, November 4, 1919.

2. Separation so as to form an entity *sui generis*: the case of the Saar basin 1918 - 1935

ad 1.: Under Art. 49 of the Versailles Treaty, the government of the territory was to be exercised by the League of Nations in the capacity of a trustee. Germany, however,retained sovereignty over the territory

ad 2.: Under Sect. 27 of the Annex to Art. 49 of the Treaty of Versailles, the newly created status of the Saar territory "will not affect the existing citizenship of the inhabitants". The inhabitants therefore remained German citizens. Nevertheless, the administrative authority responsible for governing the territory in 1921, enacted the "Verordnung der Regierungskommission des Saargebiets über die Eigenschaft als 'Saareinwohner'"[5], which governed the 'citizenship' of the "inhabitants of the Saar territory".

ad 3. a): As mentioned, the previous citizenship of the inhabitants was not touched upon by the creation of the Saar territory. Para. 2 of Section 27 of the Annex to Art. 49 of the Treaty of Versailles contained however a regulation as to the loss of any previous citizenship in case a person acquired a different one.

When the notion of "Saareinwohner" (inhabitant of the Saar) was created in 1921, the following groups of persons acquired this 'citizenship':

- persons, who were born in the area and were the father had been domiciled there at that time
- persons, whose father (in case of birth out of wedlock, the mother) had been born in the area and who had had their domicile in the area for at least ten years
- persons who had their legal domicile in the area on November 11, 1918.

b) No.

c) No individual choice was granted, which can be explained by the fact that the status of 'Saareinwohner' cannot be considered a citizenship *stricto sensu*.

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[5] Amtsblatt of June 15, 1921, p. 92; text also to be found in Lichter/ Hoffmann, Staatsangehörigkeitsrecht (3. ed., 1966), p. 684 et seq.

4.: See above.

ad 5.: Not relevant, since under Sect. 27 of Annex to Art. 49 of the Treaty of Versailles, the citizenship of the inhabitants remained untouched.

ad 6.: N/A.

3. Transfer of territory: Alsace-Lorraine 1918

ad 1.: According to Art. 51 of the Versailles Treaty, the area of Alsace-Lorraine, which had become part of Germany in 1871, came again under French sovereignity.

ad 2.: The citizenship of the population of Alsace-Lorraine was regulated by Art. 53 and 54 of the Treaty of Versailles, the Annex to Art. 79 of said treaty and a French regulation of 1920[6].

ad 3. a) - b): French citizenship was only conferred automatically upon certain categories of persons, i.e.

- persons who had, lost their French citizenship by virtue of the French-German treaty of 1871,
- their offspring unless they had a German ascendant who had migrated to the area after 1870
- all persons born in Alsace-Lorraine of unknown parents[7].

Other groups could apply for French citizenship, i.e.

- persons whose French citizenship was not restored but whose ascendants included a Frenchman or Frenchwoman
- all foreigners, not German citizens, who acquired the status of a citizen of Alsace-Lorraine before August 3, 1914
- all German domiciled in the area prior to 1870 or if one of their ascendants had been domiciled there
- all German domiciled there who had served in one of the Allied armies
- husbands and wifes of one of the upove-mentioned groups

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[6] For details as to this regulation see the French national report.

[7] See also Sect. 3 of the above-mentioned Annex to the Treaty of Versailles, which expressly stipulates that - unless otheriwse provided for - the sole fact that the territory was restored to France did not involve an automatic acquisition of french nationality.

In each of those cases, however, France retained the right to reject such claim.

c) See above[8].

ad 4.: Mixture of *jus sanguinis* and domicile during certain periods, as well as service in Allied forces, see above.

ad 5.: The sole provision relevant in that regard is Sect. 1, para. 3 of the Annex under which 'persons whose citizenship is unknown' (what presumably included stateless persons) automatically acquired French citizenship.

ad 6.: N/A.

4. Transfer of certain territories to the newly created Czechoslovakia 1918

ad 1: In accordance with Art. 81 et seq. of the Treaty of Versailles, certain parts of Silesian territory, i.e. the so-called 'Hultschiner Ländchen' and the 'Olsagebiet'[9] were transferred to the newly created Czecheslovakian state.

ad 2.: Questions of cizenship in regard of those areas were regulated by Art. 84 and 85 of the Treaty of Versailles, a minority protection treaty concluded between the Allied Powers and Czecheslovakia[10] and finally a German-Czecheslovakian Treaty on Questions of Citizenship of 1920[11]. Information as to Czecheslovakian laws and regulations is not available.

ad 3. a): All German citizens living in the area automatically acquired Czecho-Slovak citizenship and lost their German citizenship.

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[8] As to the consequences for those who did not acquire French citizenship, see the French national report.

[9] For a more detailed description of the area see Art. 83 of the Treaty of Versailles.

[10] Treaty dated September 10, 1919, in force since July 16, 1920; text to be found in Lichter/ Hoffmann, Staatsangehörigkeitsrecht (3. ed., 1966), p. 673 et seq.

[11] Staatsangehörigkeitsvertrag zwischen dem Deutschen Reiche und der Tschecheslowakischen Republik, June 29, 1920, Reichsgesetzblatt 1920, p. 2284.

b): No groups were excluded.

c): Only German citizens of German ethnicity ('deutsche Reichsangehörige') living in the area could opt for German citizenship.

ad 4.: See above 3.

ad 5.: Avoidance of statelessness: According to Art. 6 of the above-mentioned minority treaty, any person born in Czecheslovakia, who by virtue of birth did not acquire any other citizenship acquired the citizenship of said state.

ad 6.: N/A.

5. Transfer of parts of Upper Silesia, Posen and Western Prussia to Poland 1918

ad 1.: Parts of Upper Silesia, Posen and Western Prussia came under Polish sovereignity according to Art. 87 of the Treaty of Versailles. In certain other areas, plebiscites were held, where the population could decide whether to stay with Germany or become part of Poland.

ad 2.: Rules as to the acquisition of the Polish citizenship and the possible loss of the German citizenship of the population concerned were contained in Art. 91 of the Treaty of Versailles, a Minority Protection Treaty concluded between the Allied Powers and Poland of June 28, 1919[12], the German-Polish Treaty on Upper Silesia of 1922[13] supplemented by a Prussian regulation[14] and a German-Polish Treaty of 1924 on Questions of Options and Citizenship[15]. Information on further Polish legislation is not available.

ad 3. a) - b): All German, Austrian, Hungarian and Russian citizens living in the areas under consideration automatically

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[12] Text to be found in Lichter/ Hoffmann, Staatsangehörigkeitsrecht (3. ed., 1966), p. 673 et seq.

[13] Deutsch-polnisches Abkommen über Oberschlesien, Reichsgesetzblatt 1922 II, p. 237.

[14] Preußische Ausführungs-Anweisung zum 2. Teil des deutsch-polnischen Abkommens über Oberschlesien, dated may 16, 1924, text to be found in Lichter/ Hoffmann, Staatsangehörigkeitsrecht (3. ed., 1966), p. 642 et seq.

[15] Reichsgesetzblatt 1925 II, p. 33 et seq.

acquired the Polish citizenship, provided however, that under Art. 91 of the Treaty of Versailles, German citizens who had moved into these areas after 1908 needed a special permission by the Polish authorities. German citizens automatically lost their German citizenship.

c) All German citizens of German ethnicity ('deutsche Reichsangehörige') could - within two years - individually choose to retain their German citizenship. It was doubtful, whether under Art. 91 para. 6 of the Treaty of Versailles, persons, who did elect the citizenship of Germany had the right or the obligation to leave the new Polish territories. This question was later settled by Art. 12 of the German-Polish Treaty of 1924, whereby all persons who had elected German citizenship had to leave the area within a given period of time.

ad 4.: See above.

ad 5.: Since normally persons living in the area automatically acquired Polish citizenship and lost their German citizenship, problems of double citizenship in principle did not arise. Special provisions on the elimination of statelessness are not foreseen in any of the relevant texts.

ad 6.: N/A.

6. Creation of an entity *sui generis*, later followed by a transfer of territory: Memel territory 1918/ 1924

ad 1.: Under Art. 99 of the Treaty of Versailles, Germany renounced all rights and title over the Memel territory, which was provisionally administered by France on behalf of the Allied powers until it was later incorporated into Lithuania by virtue of the Memel Convention of 1924.

ad 2.: Art. 99 of the Treaty of Versailles left the question of the citizenship of the inhabitants of the Memel area unsolved; Germany only undertook to accept the settlement agreed upon by the Allied Powers. Such settlement was reached in the Memel Convention of 1924 between the Principal Allied

Powers and Lithuania[16], which was later supplemented by a German-Lithuanian Treaty on the Exercise of the Right of Option[17].

ad 3. a) - b): All German citizens, older than 18 years und who since the date of transfer (Jan., 10, 1920) had their permanent residence in the territory acquired Lithuanian citizenship. (see Art. 8 para. 1 of the Memel Convention). Furthermore, the two following groups of persons could elect Lithuanian citizenship under Art. 8 para. 2 of the Memel Convention:

- all persons older than 18 in 1924 (i.e. the entry into force of the Memel Convention), born in the area and who had lived for more than 10 years in the area
- all other persons of the same age who had been granted permission to settle in the area by the Allied Powers, provided that they had lived in the territory since at least 1922.

c) German citizens, who under Art. 8 para. 1 had automatically acquired Lithuanian citizenship, could elect German citizenship within 18 months; they then had to leave Lithuania within two years (Art. 9 Memel Convention).

ad 4.: The solutions were adopted according to the previous citizenship of the persons concerned, i.e. whether they had previously been German citizens or not.

ad 5.: Since persons acquiring Lithuanian citizenship lost their German citizenship, problems of double citizenship normally did not arise. Special provisions on the elimination of statelessness are not foreseen.

ad 6.: N/A.

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[16] Official Journal of the Memel territory, May 8, 1924, p. 741.

[17] See Reichsgesetzblatt 1925 II, p. 59.

7. Creation of a territory *sui generis*: Free City of Danzig

ad 1.: Danzig was separated from Germany and became a territory of its own, known as the Free City of Danzig (Art. 100 et seq. of the Treaty of Versailles).

ad 2.: The citizenship of the inhabitants of Danzig was regulated in Art. 105 and 106 of the Treaty of Versailles, a German-Danzig Option Agreement of 1920[18] and the Law enacted by the City of Danzig as to the Acquisition and the Loss of the Citizenship of Danzig[19].

ad 3. a): Effective January 10, 1920, all German inhabitants of the city lost their German citizenship under Art. 105 of the Treaty of Versailles and acquired the citizenship of the city of Danzig, which however was only constituted later, i.e. on November 15, 1920.

b) No exclusions.

c) According to Art. 106 of the Treaty of Versailles, all German citizens living in the City of Danzig could within 18 months after the entry into force of the Treaty of Versailles elect the German citizenship thereby abandoning the citizenship of the Free City of Danzig. They then had to leave the City within another twelve months.

ad 4.: Citizenship and domicile, i.e. the question whether the person had previously been a German national and lived in the area.

ad 5.: N/A, since all inhabitants normally acquired the Danzig citizenship (at least after the formation of the Free City[20]) and lost their German citizenship.

ad 6.: N/A.

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[18] Reichsgesetzblatt 1920, p. 186.

[19] Gestz über den Erwerb und den Verlust der Danziger Staatsangehörigkeit as amended in 1935.

See also the Danzig-Polish Agreement of November 9, 1920 (so-called Paris Agreement) and the Danzig-Polish Agreement of October 245, 1921 (so-called Warsaw Agreement).

[20] As to the interim period see Lichter-Hoffmann, ibid., p. 581 with further references.

8. Transfer of territory in favor of Denmark 1918: Schleswig area

ad 1.: Under Art. 109 et seq. of the Treaty of Versailles, plebiscites were held in certain areas of Schleswig, whereby the population involved could decide whether their territory should remain with Germany or become part of the Kingdom of Denmark.

ad 2.: The citizenship of the inhabitants of the Schleswig area was regulated by Art. 112 and 113 of the Treaty of Versailles and a German-Danish Supplementary Agreement of 1922[21], which in turn was implemented by different German regulations[22].

ad 3. a) -b): Under Art. 112 of the Treaty of Versailles, all inhabitants of the area automatically acquired Danish citizenship. Those inhabitants, however, who had moved to the area after October 1, 1918 had to be granted special authorization by the Danish government.

c) Inhabitants, who within two years elected to keep their German citizenship, which they could, had to leave the area within another twelve months.

ad 4.: The solution was purely based on the fact, that the person involved had previouslv lived in the area.

ad 5.: Normally problems of double citizenship would not exist, since the inhabitants would automatically acquire Danish citizenship and by the same toke loose their German citizenship. The sole norm trying to avoid statelessness is Art. 7 para. 4 of the Danish-German Suplemental Agreement under which even those persons who had previously lost their German citizenship due to the fact that they had deserted from the German army would still acquire the Danish citizenship.

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[21] Deutsch-Dänisches Abkommen zur Ausführung der Art. 112 und 113 des Versailler Vertrages, April 10, 1922, Reichsgesetzblatt 1922, p. 141.

[22] Regulation of July 24, 1922 (Reichsgesetzblatt II, p. 686), 'Ausführungsbestimmungen', July 27, 1922, (Reichsgesetzblatt II, p. 688) and 'Rundverfügung' of the Prussian Minister of the Interior, May 31, 1922 and August 11, 1922, MBliV, p. 567 and 805.

ad 6.: N/A.

9. German colonies[23]

ad 1.: Under the terms of the Treaty of Versailles, Germany renounced all sovereign rights over its former colonies, which were then placed under the administration of different mandate powers[24].

ad 2.: The question of the citizenship of the inhabitants of the German colonies was regulated but only in an indirect way in Art. 122 and 127 of the Treaty of Versailles.

ad 3. a) - b): Inhabitants of the German colonies fell into two different categories, i.e. German citizens in the proper sense and German protected persons ('Schutzangehörige')[25]. In principle, members of the indigineous population could not be German citizens. Under the Treaty of Versailles, German citizens domiciled in the German colonies retained their German citizenship while German protected persons ('Schutzangehörige') were placed under the diplmatic protection of the respective Allied power exercising authority over the territory.

c) No opportunity for an option was granted. The respective government exercising authority over the area was granted the right to repapriate German citizens or to regulate the conditions under which they could stay.

ad 4.: The distinction was drawn according to the distinction made under German law between German citizens ('Reichsangehörige') and German protected persons ('Schutzangehörige'), which however largely coincided with a racial distinction.

ad 5.: No such measures were taken.

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[23] For details see H. Hecker, Schutzangehörigkeit und Staatsangehörigkeit in Deutschland, AVR 1983, p. 433 et seq. (443 et seq.).

[24] For details see Art. 119, 122, 127, 156 of the Treaty of Versailles.

[25] It is doubtful whether German protected persons could be considered German nationals for international law purposes, see Hecker, ibid., p. 477 et seq.

ad 6.: N/A.

B. SECOND PHASE: TERRITORIAL CHANGES BETWEEN 1935 AND 1945

1. Introduction

When analysing German state practice after 1935, one has to take into account, that the legality of the territorial changes taking place after 1938 is - to say the least - doubtful. Thus, any description of or reference to German legislative acts or to treaties concluded by Germany does not amount to a recognition as to their legality or validity.

Furthermore, it has to be also recognized that acts of the German government in the field of citizenship during this period were strongly influenced by the prevailing racial ideology.

2. Reincorporation of the Saar territory into Germany in 1935

ad 1.: After a plebiscite being held in 1935, the Saar territory was fully reintegrated into Germany.

ad 2. - 5.: As mentioned above[26], the inhabitants of the Saar territory had never lost their German citizenship. Thus no changes were necessary from the point of view of German citizenship law; the only exception being that the above-mentioned 'Verordnung betreffend die Eigenschaft als Saareinwohner' was abolished.

ad 6.: N/A.

3. Annexation/occupation of Austria 1938/1945

ad 1.: Any legal analysis of the effects of the so-called *Anschluß* of 1938 on the citizenship of the inhabitants of Austria depends on the question, how to characterize this process. It can be either considered an annexation by Germany. Thus it could indeed be considered as one example of state

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[26] See above the description of the creation of an 'independent' Saar territory in 1918.

succession. Another alternative is to consider the *Anschluß* as a pure military occupation. This would have the logical consequence that Austria has never legally ceased to exist and that it resumed its sovereignity in 1945. While this qualifications will not be discussed here[27], the case is still dealt with here since at least German practice has considered German citizenship validly conferred upon Austrians after 1938[28].

ad 2. - 3.: The citizenship of the citizens of Austria after 1938 was exclusively regulated by German law, i.e. the 'Gesetz über die Wiedervereinigung mit dem Deutschen Reich'[29] and a supplementary regulation[30]. Under this law, almost all Austrian citizens with only minor exceptions were then considered as being German citizens.

In 1945, Austria itself considered that it had never ceased to exist. Accordingly, from this perspective only the persons who had been Austrian citizen in 1938 and their offspring were considered as being Austrian citizens in 1945.

In Germany, the question of the legal status of persons who had acquired German citizenship after 1938 remained somewhat doubtful until 1955. The Second German Law on Regulating certain Questions of Citizenship ('Zweites Gesetz zur Regelung von Fragen der Staatsangehörigkeit')[31] then clarified that none of those persons who where considered Austrian citizens by Austria were still to be considered German citizens. Those persons who had acquired German citizenship after 1938 and who since 1945 lived in Germany were, however, granted the right to reapply for German citizenship.

ad 4.: The granting of German citizenship was largely based on the fact, whether the person had previously been

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[27] See e.g. H. Miehsler/C. Schreuer, Austria, 12 Encycl. Publ. Int. L. 81990), p. 28 et seq. with further references.

[28] For details see below.

[29] Reichsgesetzblatt 1938 I, p. 237.

[30] Verordnung über die deutsche Staatsangehörigkeit im Lande Österreich, Reichsgesetzblatt 1938 I, p. 790.

[31] Bundesgesetzblatt 1956 I, p. 431.

considered an Austrian citizen under applicable Austrian legislation.

ad 5.: The problem of double citizenship could not arise, since from the point of view of Germany, Austrian citizenship had ceased to exist. No particular measures were taken to avoid statelessness.

ad 6.: N/A.

4. Annexation: Munich agreement of 1938 concerning Czecheslovakia

ad 1.: By virtue of the Munich agreement concluded between Germany, France, Italy and the United Kingdom certain parts of Tchecheslovakia, i.e. the so-called area of the Sudeten, was transferred to Germany[32].

ad 2.: Questions of citizenship were not regulated in the Munich agreement. Instead they were contained in a bilateral German-Czecheslovakian Treaty on Questions of Citizenship[33] und a supplementary German law[34].

ad 3. a) - b): Under Sect. 1 of the bilateral treaty referred to above, only the following Czecheslovakian citizens

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[32] For details see e.g T. Schieder, Münchner Abkommen, in: Strupp/ Schlochauer, Wörterbuch des Völkerrechts, vol. 2 (1961), p. 554-555.

[33] Vertrag zwischen dem Deutschen Reich und der Tschecheslowakischen Republik über Staatsangehörigkeits- und Optionsfragen, Reichsgesetzblatt 1938 II, p. 896.

[34] Gesetz über die Wiedervereinigung der sudentendeutschen Gebiete mit dem Deutschen Reich, November 21, 1938, Reichsgesetzblatt I, p .1641. See also the German-Czecheslovakian Treaty on the Normalisation of their Mutual Relations ('Vertrag über die gegenseitigen Beziehungen zwischen der Bundesrepublik Deutschland und der Tschecheslowakischen Sozialistischen Republik'), Bundesgesetzblatt 1974 II, p. 900, which in its Art. 1 declared that in their mutual relationship the Munich agreement was considered to be null and void. According to its Art. 2 para. 2, however, any questions of citizenship were left aside.

living permanently in the area acquired German citizenship and by the same token lost their previous citizenship:

- persons born before January 1, 1910 in the said territory
- German citizens who had lost their German citizenship under the Treaty of Versailles
- children and espouses of the persons referred to above.

c) Under Sect. 3 of the bilateral treaty, persons not of German ethnicity ('Personen nicht deutscher Volkszugehörigkeit'), who automatically acquired German citizenship under the above-mentioned provison could until March 29, 1939 elect to be Czecho-Slovakian citizens. *Vice versa*, persons of German ethnicity ('Personen deutscher Volkszugehörigkeit'), who remained Czecho-Slovakian citizens could choose German citizenship, provided however, that they had not acquired this citizenship after January, 30, 1933 and had previously been German/ Austrian citizens.

The German government could require that persons not of German ethnicity , who remained Czecho-Slovakian citizens and who had moved into the area after 1910, would leave the area.

ad 4.: The solution was partly based on the previous citizenship of the inhabitants, partly on the fact whether they were born in the area and partly on ethnic considerations.

ad 5.: No such measures were taken, but generally the automatic acquisition of the new citizenship combined with the loss of the previous one avoided such problems.

ad 6.: N/A.

5. Creation of the Protectorate Böhmen-Mähren

ad 1.: In March 1939, Germany invaded the remaining parts of Czecheslovakia after Slovakia had been declared an independant state. Germany then created the so-called 'Protectorate Böhmen-Mähren', which also involved the regulation of certain questions of citizenship. Since the territory was never formally annexed by Germany, it could not

be considered a case of state succession and will accordingly not be dealt with here.

6. Reincorporation of the Memel territory into Germany

ad 1.: By virtue of a treaty concluded between Lithuania and Germany on March 22, 1939[35], the above-mentioned Memel-territory became again part of Germany[36].

ad 2.: The citizenship of the inhabitants was regulated by a German-Lithuanian Treaty on the Citizenship of the Inhabitants of the Memel Territory[37] and section 2 of the German 'Law on the Reintegration of the Memel Territory with Germany'[38].

Under Sect. 1 of the German Law on the Regulation of Certain Questions of Citizenship of 1955[39], the granting of German citizenship to those persons was considered as valid; they were however granted the right to renounce their German citizenship.

ad 3. a) - b): The follwing three groups of Lithuanian citizens acquired German citizenship under Art. 1 of the above-mentioned treaty:

- former German citizens who in 1924 had lost their German citizenship[40] or had opted for Lithuanian citizenship
- persons of German ethnicity ('deutsche Volkszugehörige'), who had acquired the Lithuanian citizenship by option
- offspring and espouses of those groups,

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[35] Reichsgesetzblatt 1939 II, p. 608 et seq.

[36] For the previous developments after World War I see above 6.

[37] Vertrag zwischen dem Deutschen Reich und der Republik Litauen über die Staatsangehörigkeit der Memelländer, Reichsgesetzblatt 1939 II, p. 999.

[38] Gesetz über die Wiedervereinigung des Memellandes mit dem Deutschen Reich, Reichsgesetzblatt 1939, I, p. 559.

[39] Gesetz zur Regelung von Fragen der Staatsangehörigkeit, Bundesgesetzblatt 1955 I, p. 65.

[40] For details see above 6.

provided however, that this provision would not apply to persons of Lithuanian ethnicity ('litauische Volkszugehörige'), who before the signing of the treaty had taken permanent residence out of the area.

c) Persons of Lituanian ethnicity, who under the provisions referred to above, had acquired German citizenship could instead choose to retain their Lituanian citizenship.

ad 4.: The solutions adopted were partly based on the previous citizenship of the inhabitants and partly on ethnic considerations.

ad 5.: Under Art. 3 of the German-Lituanian Treaty on Citizenship, the acquisition of the citizenship of the other party automatically lead to the loss of the former one; thus no issues of double citizenship could arise.

No special rules as to stateless persons were included.

ad 6.: N/A.

7. Annexation and reincorporation of Danzig into Germany 1939

ad 1.: After the beginning of World War II and the invasion of Poland, Germany annexed Danzig and reincorporated it again into Germany[41].

ad 2.: The citizenship of the inhabitants of the Free City of Danzig was regulated by the German Law on the Reintegration of Danzig into Germany[42] and two regulations enacted in 1939[43], all of which were later replaced by another regulation[44].

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[41] See Gesetz über die Wiedereingliederung der Freien Stadt Danzig mit dem Deutschen Reich, Reichsgesetzblatt 1939 I, p. 1547.

[42] Gesetz über die Wiedervereinigung der Freien Stadt Danzig mit dem Deutschen Reich, Reichsgesetzblatt 1939 I, p. 1547.

[43] See 'Erlaß des Führers und Reichskanzlers über Gliederung und Verwaltung der Ostgebiete', Reichsgesetzblatt 1939 I, p. 2042 and 'Runderlaß des Reichsministers des Inneren, betr. Erwerb der deutschen Staatsangehörigkeit in den

ad 3. a) - c): Under the law of 1939 and the supplementary regulations, only 'citizens' of the Free City of Danzig of German ethnicity ('deutsche Volkszugehörige') were to be considered German citizens. No right of individual choice was acknowledged.

After the war, those persons were still considered as German citizens by the Federal Republic of Germany in accordance with Sect. 1 lit d) of the Law on the Regulation of Certain Questions of Citizenship of 1955[45]. Those persons were, however, granted the right to renounce their German citizenship.

ad 4.: German ethnicity ('deutsche Volkszugehörigkeit').

ad 5.: No such measures were taken.

ad 6.: N/A.

8. Annexation of certain parts of Poland 1939

ad 1.: Both those parts of Poland which had been ceded by Germany to Poland after 1914 in accordance with the Treaty of Versailles and territories beyond were incorporated into Germany after the military defeat of Poland[46].

ad 2.: The citizenship of the inhabitants was goverened by the same rules, which were applicable to Danzig[47].

ad 3. a - c): According to a set of regulations of 1939 and 1941/42[48] respectively only those inhabitants of the annexed territories, who were 'of German or similar blood'

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in das Deutsche Reich eingegliederten Ostgebieten', Reichsgesetzblatt 1939, p. 2385.

[44] See 'Verordnung über die Deutsche Volksliste und die deutsche Staatsangehörigkeit in den eingegliederten Ostgebieten', as amended, see Reichsgesetzblatt 1941 I, p. 118 and Reichsgesetzblatt 1942 I, p. 51.

[45] Gesetz zur Regelung von Fragen der Staatsangehörigkeit, Bundesgesetzblatt 1955 I, p. 65.

[46] See Erlaß des Führers und Reichskanzlers über Gliederung und Verwaltung der Ostgebiete, Reichsgesetzblatt 1939 I, p. 2042.

[47] See above.

[48] See above footnote 43 et seq. and accompanying text.

('Bewohner deutschen oder artverwandten Blutes') could acquire German citizenship. Those persons were later listed in different categories of the so-called 'deutsche Volksliste', whereby they acquired German citizenship.

Under Sect. 1 lit. d) of the German Law on the Regulation of Certain Questions of Citizenship of 1955[49], the granting of German citizenship to those persons was considered as valid; they were however granted the right to renounce their German citizenship.

ad 4.: The solution was based on racial distinctions.

ad 5.: No such measures were taken.

ad 6.: N/A.

9. Annexation: Eupen, Malmedy, Moresnet 1940

ad 1.: After the occupation of Belgium in 1940, the German authorities annexed those territories, which after 1914 had been ceded by Germany to Belgium under the Treaty of Versailles[50].

ad 2. - 6.: The fact that those territories had been annexed by Germany was never recognized by Belgium. Instead almost all of the persons concerned were after 1945 considered to be Belgium citizens[51]. Accordingly, the German Minister of Foreign Affairs, in a note in 1954 clarified that any acts pertaining to the citizenship of the inhabitants were considerd null and void and did not have the effect of granting these persons German citizenship[52]. Accordingly the

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[49] Gesetz zur Regelung von Fragen der Staatsangehörigkeit, Bundesgesetzblatt 1955 I, p. 65.

[50] See already above under No. 1.

[51] For details as to the execptions see A. Makarov/ H. von Mangoldt, Deutsches Staatsangehörigkeitsrecht, § 1 StARegG, Rdnr. 14 with further references.

[52] Text of the note to be found in Makarov/ von Mangoldt, ibid.

whole population had retained their Belgium citizenship[53]. For that reason the question will not be dealt with here.

C. THIRD PHASE: INSTANCES OF STATE SUCCESSION AFTER 1945 UNTIL GERMAN REUNIFICATION IN 1990

1. Introduction

Issues of German citizenship, which arose out of the effects of World War II are very complicated and can be only understood against a general background of the legal situation of Germany after 1945. In this context the following principles have to be taken into consideration: After May 8, 1945, Germany did not cease to exist as a state, since the Allied Powers did not purport to annex the territory. The Federal Republic of Germany was not a successor state of the German Reich, but continued the identity of this state[54]. The fact that Poland and the USSR exercised *de facto* control over certain former German territories did not *ipso facto* bring about that they were considered by (West) Germany as the territorial sovereigns in regard of those territories. This exercise of *de facto* control did neither automatically change the citizenship of the German population remaining in these territories; instead those who had been German citizens ('deutsche Staatsangehörige') retained that status.

The West German government, by signing the so-called Warsaw and Moscow treaties in 1970, recognized the sovereignty of the Polish and Soviet state over these territories on behalf of the Federal Republic of Germany, as had been previously done by the East German government acting on behalf of the GDR. In 1990, those borders were then confirmed by reunified Germany.

In 1972 the Federal Republic of Germany and the German Democratic Republic signed the Treaty on the Fundamentals of

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53 For further details see Dischler, Das Staatsangehörigkeitsrecht von Belgien und Luxemburg, 1950, p. 52-53.

54 See *inter alia* the decisions of the Bundesverfassungsgericht, BVerfGE 36, 1; 77, 137.

their Mutual Relations. Questions of citizenship were, however, expressly excluded from the treaty; instead the Federal Republic of Germany - unlike the GDR - took the view that there still continued to exist only one German citizenship, i.e. the citizenship of the one German state, which had continuously been in existence and which was represented by the Federal Republic of Germany. Thus any action of the Federal Republic of Germany in matters of citizenship did not regulate a separate "West German citizenship", but exclusively the 'common' German citizenship. At the same time, acts of the GDR in this field could also have a direct bearing on this all-German citizenship of a person[55].

2. The creation of the Saar territory in 1945

ad 1.: After the end of World War II, the Saar territory was separated from the rest of Germany and an "independent" Saar Territory was created. Nevertheless, the area still remained part of Germany from the point of view of the German government. Thus the changes in the political status of the area did not have any effect as to the German citizenship of the inhabitants.

ad 2.: The 'citizenship' of the inhabitants of the Saar territory was regulated by the 'Law on the Saar Citizenship'[56] enacted by the *Landtag* (parliament) of the Saar territory. This 'citizenship' could, however, not be considered a citizenship in the sense of international law, since the entity conferring this status, i.e. the Saar territory, was not a state under international law.

ad 3. a) - b): By the above mentioned law the 'citizenship' of the Saar territory was conferred on the following groups of persons:

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[55] For an example, see the decision of the Bundesverfassungsgericht in the so-called Teso-case, BVerfGE 77, p. 137 et seq.

[56] Gesetz betr. die saarländische Staatsangehörigkeit, as amended, Amtsblatt Saarland 1948, p. 947.

- persons born in the area
- children of a father (or of a mother in case of birth out of wedlock) itself born the area
- persons who had their domicile in the area before January 30, 1933 und had continuously resided there for at least ten years
- espouses and children of one of the above groups

provided that they were residing in the area at the time of the entry into force of the law, i.e. August 14, 1948.

c) No possibilty for an option was provided.

ad 4.: The solution was based on a combined application of domicile and origin.

ad 5.: Under Sect. 4 of the law, stateless persons, who had lived in the territory for at least one year prior to 1935 and who had "actively fought against the National-Socialist regime" could be granted the Saar citizenship.

According to Sect. 2 of the law, persons, who were German citizens or acquired German citizenship were to solely considered as citizens of the Saar territory.

ad 6.: N/A.

3. The incorporation of the Saar territory into the Federal Republic of Germany in 1955

ad 1.: In accordance with a treaty concluded between France and the Federal Republic of Germany[57], the Saarland diet proclaimed the adherence of the Saarland to the German Basic Law ('Grundgesetz').

ad 2.: While the French-German treaty regulating the question of the Saar did still contain some references as to the Saar 'citizenship', the seperate Saar citizenship was

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[57] Vertrag zwischen der Bundesrepublik Deutschland und der Französischen Republik zur Regelung der Saarfrage, Bundesgesetzblatt II 1957, p. 1587 et seq.

eventually abolished by a law enacted by the Saarland diet on December 20, 1956[58].

ad 3. a): There was no question of conferring German citizenship on inhabitants of the area, since it was settled German practice that the inhabitants had retained their German citizenship respectively that their children had acquired German citizenship by *jus sanguinis* according to the regular rules of German citizenship law..

b) N/A.

c) Under Art. 5 of the French-German Treaty, persons who had been both 'citizens' of the Saarland and German citizens, could relinquish the latter status, unless they would otherwise become stateless[59].

Persons, who had been considered 'citizens' of the Saar territory but who were not considered German citizens and who prior to the entry into force had exercised a profession in the area could continue to do so under the same conditions (see Art. 6 of the above-mentioned French-German treaty).

ad 4.: N/A, since the population had retained their German citizenship; thus there was no necessity to regulate the acquisition or the loss of German citizenship.
ad 5.: Questions of double citizenship did not arise since the 'citizenship' of the Saarland ceased to exist.

As to the question of statelessness see above 3 c).

4. Status of German inhabitants of the territories which after 1945 came under Polish/ Soviet authority

4.1. Territories which came under Soviet control (i.e. the Memel territory and the Kaliningrad/Königsberg area

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[58] Gesetz Nr. 549 betreffend Aufhebung der Gesetze über die saarländische Staatsangehörigkeit, Amtsblatt Saarland 1956, p. 1569.

[59] See in the context the relevant French rules, which allowed the acquistion of the French citizenship, for details see Makarov/ von Mangoldt, supra note 51, No. 15, Rdnr. 43 et seq.

ad 1.: See above Introduction to III[60].

ad 2.: None of the treaties concluded by the Federal Republic of Germany with its eastern neighbouring states did regulate questions of citizenship[61]. Instead only domestic regulations were enacted by the parties concerned, i.e. in the case of the Memel territory and the Kaliningrad area by the (former) USSR.

ad 3. a) - c): There are only very few and contradictory sources as to the legal situation of the inhabitants of the Memel territory after 1945. One has to first take into consideration that the question of the citizenship of the German population of th area was a largely theoretical one since almost all of the persons had either fled the area when the Soviet Army arrived or were later forced to leave. Most authors acknowledge, however, that only persons of Lithuanian ethnicity automatically acquired Soviet citizenship[62]. No option was granted.

The situation in the Kaliningrad/ Königsberg area seems to have followed the same pattern. No specific laws were enacted by the USSR as to the citizenship of the remaining German population. They were not automatically considered USSR citizens but could only request naturalization[63]. Further information is not available to this author.

ad 4.: It seems that the distinction drawn was based on ethnic origin, i.e. whether the persons were German citizens and/ or persons of German origin.

ad 5.: No such measures are reported in the literature available.

ad 6.: N/A.

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[60] The citizenship status of those persons from the point of view of Polish or Soviet/Russian/Lithuanian citizenship laws will not be dealt here.

[61] See e.g. Bundesverfassungsgericht BVerfGE 40, 141 as to the treaty concluded with Poland in 1970.

[62] See, e.g., Geilke, Das Staatsangehörigkeitsgesetz der Sowjetunion, 1964, p. 234; but see also W. Meder, Das Staatsangehörigkeitsrecht der UdSSR und der Baltischen Staaten (1950), p. 66.

[63] Geilke, supra note 62, p. 236 with further references.

4.2. Territories which came under Polish control (i.e. the territories east of the Oder and Neisse including Danzig)

ad 1.: See above Introduction to III[64].

ad 2.: None of the treaties concluded by the Federal Republic of Germany with its eastern neighbouring states did regulate questions of citizenship[65]. Instead only domestic regulations were enacted by the parties concerned, i.e. in the case of the territories east of the Oder and the Neisse by Poland. These were the "Law of April 28 1946 relating to the Polish citizenship of the persons of Polish ethnicity, domiciled in the regained territories"[66] and two supplementary orders of the Polish government[67].

ad 3. a) b): The Polish citizenship was granted by an individualized procedure. Persons, who had been living in the area before January 1, 1945, had given proof of their Polish origin before a so-called verification commission und who had made an oath of allegiance to the Polish people and state were granted Polis citizenship.

c) All persons, who either were not willing to acquire the Polish citizenship or who were not accepted as being of Polish origin had to leave the area. In fact almost all persons of German origin had already previously been forced to leave the area.

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[64] The citizenship status of those persons from the point of view of Polish or Soviet/Russian/Lithuanian citizenship laws will not be dealt intensively, see generally G. Geilke, Das Staatsangehörigkeitsrecht von Polen, 1952, in particular p. 27 et seq.; as to the situation in the former USSR see G. Geilke, Das Staatsangehörigkeitsgesetz der Sowjetunion, 1964, in particular p. 233-237.

[65] See e.g. Bundesverfassungsgericht BVerfGE 40, 141 as to the treaty concluded with Poland in 1970.

[66] Official Journal of Poland 1946, No. 15, pos. 106.

[67] "Order Nr. 46 of May 112, 1946 of the Ministry for the Regained Territories relating to the Entry into Force of the Law of April 28, 1946 as to the Polish Citizenship of Persons of Polish Origin, domiciled in the Regained Territories", Official Journal of the Ministry for the Regained Territories, Geb. No. 4, Pos. 30.

ad 4.: The distinction drawn was based on ethnic origin, i.e. whether the persons were German citizens and/ or persons of German origin.

ad 5.: No such measures are reported in the documentation available.

ad 6.: N/A.

5. Transfer of territory: German-Belgium Treaty of Certain Border Corrections[68]

ad 1.: In 1956 certain small territorial areas were exchanged between the two parties, which involved only a small number of persons.

ad 2. c): The citizenship was regulated by the above-mentioned bilateral treaty and was supplemented by a Belgian law[69].

ad 3. a) - b): The transfer of territory concerned only approximately 60 German citizens. They were not automatically granted Belgian citizenship.

c) All persons living in the ceded territory could within two years elect Belgian citizenship with the effect that they then lost their German citizenship. Even those persons not choosing to become Belgian citizens could remain in the area and could keep land they owned.

ad 4.: Arice 3 of the above-metioned treaty grants the option to the German citizens living in the territory.

ad 5.: See answer 3 c.) above: since all persons opting for Belgian citizenship automatically lost their German citizenship, no problem of double citizenhip arose.

ad 6.: N/A.

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[68] Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich Belgien über eine Berichtigung der deutsch-belgischen Grenze und andere Beziehungen zwischen den beiden Ländern betreffende Fragen vom 24.9.1956, Bundesgesetzblatt 1958 II, p. 262.

[69] Moniteur Belge of August 23, 1958. See also the explication given by the Belgian Ministry of Justice, Moniteur Belge of August 25/26, 1958.

6. Transfer of territory: German-Dutch Treaty on Certain Border Corrections[70]

ad 1.: In 1949 the Allied Powers had placed certain small parts of German territory under Dutch authority. In 1960 all questions inolved were settled between Germany and the Kingdom of the Netherlands, which included certains questions of citizenship.

ad 2. - 6.: The citizenship was governed by the above-mentioned treaty and a Dutch regulation as to the details of the exercise of the right of option[71]. The whole settlement completely follows the pattern of the German-Belgian settlement of 1956[72], reference to which is therefore made.

7. Unification of states: absorption of the GDR by the Federal Republic of Germany in 1990

ad 1.: Under Art. 23 of the Basic Law for the Federal Republic of Germany and in accordance with Art. 1 of the Unification Treaty, the GDR became part of the Federal Republic of Germany on October 3, 1990. While the GDR ceased to exist as an entity under international law, the legal identity of the Federal Republic of Germany as a subject of international law remained untouched.

ad 2. - 6.: As already mentioned above, all 'citizens of the GDR' as previously understood by the GDR had always been considered by the FRG to be simultaniously German citizens. Thus no issue of state succession in regard of citizenship arose.

Treaties concluded by the former GDR in regard of matters of citizenship (e.g. treaties on the avoidance of double citizenship) were considered to have automatically lapsed on

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[70] Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über den Verlauf der gemeinsamen Landgrenze etc., Bundesgesetzblatt 1963 II, p. 458.

[71] See Staatsblad von het Koninkrijk der Nederlanden 1963, No. 372.

[72] See above No.5.

October 3, 1990, which was confirmed in exchanges of notes with the respective other parties.

Question 7: Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same citizenship as other inhabitants of that territory irrespective of his or her ethnic origin? If not, do you consider that such a person should at least be accorded the status of permanent resident?

Yes, I do consider that no distinction should be drawn on the basis of ethnicity. It remains doubtful, however, whether such a rule can be considered as forming already part of contemporary customary law.

As far as treaty law is concerned, one has, in particular, to take into consideration Art. 1 para. 3 of the Convention on the Elimination of all Forms of Racial Discrimination, which stipulates, that nothing in the convention may be interpreted as affecting in any way the legal provisions of States parties concerning citizenship, citizenship or naturalization, provided that such provisions do not discriminate against any particular citizenship.

Question 8: Are the authorities in your country of the view that the choice of criteria for according citizenship is within the exclusive competence and discretionary power of the State or do they recognise that the matter is circumscribed by rules of international law ? In the latter case, which rules ?

Yes, it is generally recognized that the competence of the Federal Republic of Germany to regulate questions of citizenship is limited by rules of international law, i.e. by both treaty obligations entered into by the Federal Republic of Germany and by rules of customary international law.

The Federal Republic of Germany is however not party to any treaty, limiting the freedom of states to regulate citizenship in situations of state succession with the sole exception of Art. 10 of the United Nations Convention on the Reduction of Statelessness.

Apart from treaty obligations, one has to also take into consideration that - under Art. 25 of the German Basic Law, - the general rules of international law form part of the internal legal order of the Federal Republic of Germany. It is however more than doubtful, whether there is a general rule of customary law, which prescribes the automatic acquisition of the citizenship of the successor state in situation of state succession. Both the majority of German writers and German courts have acknowledged that no such rule exists[73]. According to German doctrine[74] and certain court decisions[75], however, the successor state has the right to grant citizenship at least to those persons who continue to be domiciled in the area under consideration. But it is already doubtful again whether this competence embraces persons, who - while having a genuine link with the territory, which is the subject of state succession - do not actually live there at the time, the succession takes place.
As already mentioned above, in the case of the 1990 incorporation of the GDR into the Federal Republic of Germany, the question was of no relevance whatsoever, since all 'citizens of the GDR' had prior to reunification always been considered German citizens by the Federal Republic of Germany.

Question 9: To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting citizenship ?
German citizenship law generally applies the principle of *jus sanguinis*. Therefore, the sole fact of birth on the territory of the Federal Republic of Germany, some minor exceptions notwithstanding[76], does neither mean that the person concerned

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[73] See Bundesverfassungsgericht 4, 322 et seq. (327 et seq.); Hailbronner/ Renner, p. 54 with further detailed references.

[74] Hailbronner/ Renner, ibid. with further references.

[75] See Kammergericht Berlin, ZaöRV 1968, p. 108-109.

[76] These exceptions concern e.g. children born in Germany of unknown parents and stateless persons born in Germany.

automatically acquires German citizenship nor that the person enjoys an individual right to be granted that status. Nevertheless, certain groups of aliens, who have spent a longer space of time in Germany, under Art. 85 - 87 of the German Aliens Law ('Ausländergesetz') have a right to be naturalized, provided, however, that they - at least as a matter of principle - renounce their citizenship of origin. The groups concerned are

(i) - aliens who are between 16 and 23 years of age, have lived for at least 8 years in Germany, have gone through at least six years of German schooling and who have not been convicted of a criminal offense.

(ii) - aliens who have spent at least 15 years in Germany, have not been convicted of a criminal offense, and as a matter of principle are not dependant on social welfare.

Question 10: To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of citizenship can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

Under German law, there are no specific rules dealing with the effects of a granting or withdrawal of German citizenship in different legal orders, since this is considered as falling within the sphere of competences of the respective other state. In Germany, there are no general rules providing for solutions as to the problems referred to in the question. In particular there are no such rules dealing with those or similar issue in instances of state succession.

More generally, when granting German citizenship by way of naturalization upon request by the person concerned, the effects of such granting in the legal order of the former country of citizenship is not taken into consideration. This is even more true so, since - as a matter of principle - it is requested that the applicant previously renounces his or her other citizenship.

Under German law, the loss of German citizenship occurs

- (i) if the individual renounces his or her German citizenship and if he or she either has received the promise by a foreign state to be naturalized (§ 18 RuSTAG) or where the person has several nationalities (§ 26 RuSTAG)
- (ii) where a German national neither domiciled in Germany nor permanently living there volountarily acquires a foreign citizenship (§ 25 RuSTAG).

Here again no reference whatsoever can be found as to the effects of such a loss in the other legal order the individual is subject to.

Réponse de la Grèce au questionnaire de la Commission de Venise concernant les incidences de la succession d'états sur la nationalité

1

Au long de son histoire, la Grèce a connu six cas de succession d'états :

1.1 En 1830, fondation de l'Etat hellénique. Type de succession : séparation pour former un nouvel Etat. Etat prédécesseur : Empire ottoman.

1.2. En 1864, union des Iles ioniennes à la Grèce. Type de succession : union d'états. Etat prédécesseur : Etats - Unis des Iles ioniennes qui se trouvaient sous la protection de la Grande Bretagne.

1.3. En 1881, incorporation de la Thessalie et d' une partie de l' Epire à la Grèce. Type de succession : annexion. Etat prédécesseur : Empire ottoman .

1.4. En 1913, incorporation de la Macédoine, de l'Epire et des îles de l'Egée du nord - y compris Samos - et de la Crète à la Grèce . Type de succession : annexion et union pour Samos et la Crète qui bénéficiaient d'un Statut d'indépendance avancée . Etat prédécesseur : Empire ottoman et Etats samien et crétois.

1.5. En 1919 et en 1923,incorporation de la Thrace occidentale à la Grèce. Type de succession : annexion. Etat prédécesseur : Bulgarie.

1.6. En 1947, incorporation du Dodécanèse à la Grèce.Type de succesion: annexion . Etat prédécesseur : Italie.

En dehors des cas de succession 1.2 et 1.3 qui ont été pacifiques, toutes les autres successions se sont faites par la force des armes .

2

a

2.1. Dans le cas de la création de l'Etat hellénique, la question de la nationalité a été réglée par le Protocole n° 1 de Londres du 3 février 1830 entre la Russie, la France et la Grande Bretagne (article 6). Cette disposition a été par la suite précisée et complétée par d'autres dispositions conventionnelles.

2.2. Le traité de Londres du 29 mars 1864 entre la France, la Grande Bretagne et la Russie d'une part et la Grèce de l'autre, sur l'union des Iles ioniennes à la Grèce, ne règle pas, du moins expressément, la question de la nationalité des habitants de ces îles .

2.3. Pour le cas de succession visé au point 1.1.3 : voir la Convention du 2 juillet 1881 entre la Grèce et la Turquie, relative à la rectification des frontières entre les deux Etats.

2.4. Pour le cas de succession visé au point 1.1.4, voir le Traité de paix entre la Grèce et la Turquie, signé à Athènes le 14 novembre 1913.

2.5. Pour le cas de succession visé au point 1.1.5, voir le Traité de paix avec la Bulgarie, signé à Neuilly-sur-Seine le 27 novembre 1919, ainsi que le Traité concernant la Thrace, signé à Sèvres le 10 août 1920 et maintenu en vigueur par le Protocole n° XVI du Traité de paix de Lausanne du 24 juillet 1923.

2.6. Pour le cas de succession visé au point 1.1.6, voir le Traité de paix entre les Puissances alliées et l'Italie du 10 février 1947 .

b, c, d

2.7. Si le Traité international a été la règle fondamentale régissant la nationalité des personnes en cas de succession d'états, le droit interne n'en a pas moins joué un rôle important, essentiellement complémentaire.

2.8. Ainsi, pour la création de l'Etat grec (point 1.1.1), il convient de citer les premières dispositions relatives à la nationalité hellénique qui étaient

contenues dans les Actes constitutionnels d'Epidaure de 1822, d'Astros de 1823 et de Trézène de 1827.

2.9. Dans le cas de l'union des Iles ioniennes à la Grèce (point 1.1.2), la loi interne (RN du 20 janvier 1866) a joué exceptionnellement un rôle plus important que celui du Traité, rôle qui a été par la suite complété par la jurisprudence des tribunaux. Ceci est dû essentiellement au fait que dans ce cas, des questions d'option de nationalité ne se sont pas posées étant donné que l'Etat ionien, en s'unissant avec la Grèce, a disparu et que tous ses ressortissants ont acquis ipso facto la nationalité hellénique.

2.10.Dans les cas 1.1.3, 1.1.4, 1.1.5 et 1.1.6 le droit interne a joué un rôle non négligeable, essentiellement pour l'application des dispositions conventionnelles. A titre d'exemple, je citerai la loi n° 517 du 3 janvier 1948 sur la nationalité des habitants du Dodécanèse et de ceux qui en sont originaires, amendée par la suite par d'autres dispositions législatives.

2.11.Enfin, il convient de signaler, qu' à la suite de changements territoriaux et parallèlement aux traités de succession, les Etats intéressés (prédécesseur et successeur) ont, dans certains cas décidé, par traités internationaux, d'autoriser ou d'imposer le transfert des minorités d'un Etat à l'autre. Un exemple du premier cas (transfert facultatif) est donné par la Convention entre la Grèce et la Bulgarie de Neuilly-sur-Seine du 27 novembre 1919 sur l'émigration volontaire réciproque. Un exemple du second cas (transfert obligatoire) est donné par la Convention de Lausanne du 30 janvier 1923 entre la Grèce et la Turquie sur l' échange des populations, qui a été complétée par un autre accord entre les mêmes parties, signé à Ankara le 10 juin 1930. Il est à relever que ces deux derniers accords sur l'échange obligatoire de populations étaient supervisés par un organe arbitral international, qui était une commission mixte comprenant également des membres neutres, dont les décisions en ce qui concerne l'interprétation ou l' application des accords étaient obligatoires.

3

a

3.1. Oui, l'acquisition de la nationalité hellénique a été, dans tous les cas de succession cités dans la réponse n°1, automatique, massive et presque sans exceptions, pour tous les habitants du nouveau territoire.

b

3.2. Toutefois, l'article 44 al.2 du Traité de paix de 1919 avec la Bulgarie prévoyait que les ressortissants bulgares qui avaient été établis "après le 1er janvier 1913 " sur les territoires cédés à la Grèce ne pouvaient pas acquérir ipso facto la nationalité hellénique comme les autres, mais qu'ils avaient besoin à cette fin de l'autorisation de l'Etat hellénique. De même, le Traité de paix avec l'Italie de 1947 prévoyait que seuls les ressortissants italiens qui habitaient le Dodécanèse le 10 juin 1940 et leurs enfants nés après cette date acquéraient d'office la nationalité hellénique (art. 19, par.1) .

3.3. Lors de la création de l'Etat grec, la question de la nationalité a dépendu, en réalité, du droit d'émigration qu' a accordé l'article 6 du Protocole de Londres de 1830. C'est ainsi que les Musulmans qui ont choisi de rester en Grèce ont acquis définitivement la nationalité hellénique, alors que les Musulmans qui ont émigré ont conservé la nationalité ottomane .

3.4. En ce qui concerne les autres cas de succession, bien que les dispositions soient souvent formulées de façon générale, le droit d'option est en réalité toujours accordé à des personnes qui sont liées à l'Etat prédécesseur par des liens ethniques, religieux ou linguistiques . Ainsi, en 1881 et en 1913, le droit d'option a été accordé à tous ceux qui ont voulu conserver la nationalité ottomane. En 1919 -1923, aux ressortissants bulgares établis dans les territoires cédés à la Grèce. En 1947, aux personnes habitant le Dodécanèse, dont la langue habituelle était la langue italienne.

3.5. Il est à signaler que le droit d'option en faveur de la nationalité hellénique a été reconnu par le Protocole n° 1 annexé à la Convention de Paix gréco-turque de 1913, aux personnes originaires des territoires cédés à la Grèce, mais qui habitaient en dehors de ces territoires et en dehors de l'Etat ottoman.

3.6. Le droit d'option qui devait être exercé dans un délai de 1 à 3 ans à partir de la mise en vigueur du traité international qui le prévoyait a été attribué aux personnes ayant atteint l'âge de 18 ans. Ce droit était exercé par déclaration individuelle devant les autorités helléniques compétentes. A l'étranger, ce droit était exercé devant les autorités consulaires de la Grèce. En général, l'option du mari entraînait celle de sa femme ainsi que celle de ses enfants mineurs de moins de 18 ans.

3.7. La conséquence primordiale de l'exercice du droit d'option consistait en la perte de la nationalité de l'Etat successeur - de la Grèce en l'occurrence - qui avait été acquise d'office par la succession et l'acquisition, selon les cas, des nationalités ottomane, bulgare ou italienne. Une autre conséquence majeure de l'exercice de ce droit était l'obligation pour l'optant de transférer son domicile hors du territoire grec, dans un délai, en règle générale, de un an à partir de la date de l' option. Pendant le délai qui leur était imparti pour exercer le droit d'option, les personnes concernées n'étaient pas soumises au service ou à d'autres charges militaires. Par ailleurs, lorsque, après l'exercice du droit d'option, elles quittaient le territoire, elles bénéficiaient d'une exemption douanière pour leurs biens meubles. Pour les immeubles, les solutions variaient. Tantôt , on exigeait , avant le départ, la liquidation de tous les biens immeubles, tantôt, dans les cas les plus récents, les optants pouvaient conserver leur fortune immobilière dans l' Etat successeur qu'ils étaient tenus de quitter.

4

a, b, c, d

4.1. Lors de la création de l'Etat hellénique, le critère du jus soli a été appliqué, combiné avec celui de la religion : "Est Grec tout autochtone habitant le territoire grec qui est chrétien " . Cette solution a été consacrée par les premiers actes constitutionnels déjà cités.

4.2. Dans la pratique subséquente, le critère du jus soli est de loin dominant, sinon exclusif. En effet, dans tous les cas de succession qu' a connus la Grèce, ce sont les personnes qui habitent ou sont établies dans les nouveaux territoires et, dans quelques cas, qui sont originaires de ces territoires qui acquièrent ispo facto la nationalité de l'Etat successeur, c'est à dire celle de l'Etat hellénique.

4.3. Le critère tiré du jus sanguinis est appliqué à titre complémentaire, en même temps que le critère du jus soli, dans certains cas plus ou moins exceptionnels. Par exemple, les personnes d'origine grecque qui sont orthodoxes (nous trouvons ici encore l'élément religieux) et de nationalité italienne, et qui sont elles-mêmes ou leurs ascendants nés dans le Dodécanèse, deviennent ipso facto grecques s' ils habitent sur le territoire hellénique (en dehors du Dodécanèse), ou peuvent être naturalisés grecs s' ils habitent à l'étranger (voir arts. 3 et 4 de la loi 517/1948 relative à la nationalité de Dodécanèsiens). Le critère du jus sanguinis s'applique également en règle générale dans le cas de l'exercice du droit d'option en faveur de la nationalité de l'Etat prédécesseur par le père de famille, auquel cas ses enfants mineurs, non mariés, agés de moins de 18 ans, acquièrent également ipso facto la nationlité du père (voir, par exemple,. art.19 par.2 du Traité de paix avec l' Italie de 1947).

5

Oui, la double nationalité a été en réalité rendue impossible, du fait que l'acquisition de la nationalité de l'Etat successeur était toujours accompagnée de la perte de la nationalité de l' Etat prédécesseur .

Par contre, les traités cités dans la réponse à la question n° 1, n'ont prévu aucune mesure pour lutter contre le phénomène des apatrides.

6

La question de la nationalité des personnes morales n'a été ni réglée ni même envisagée par les rédacteurs des textes internationaux cités dans la réponse à la question n° 1.

7

Oui, en principe, à condition toutefois que la succession d' Etats soit licite sur le plan du droit international. Les deux Conventions de Vienne sur la succession d'Etats de 1978 et de 1983 disposent dans les mêmes termes que : "La présente Convention s'applique uniquement aux effets d'une succession d'Etats se produisant conformément au droit international, et plus particulièrement aux principes du droit international incorporés dans la Charte des Nations Unies" (arts. 6 et 3, respectivement). De son côté, la Déclaration de l'Assemblée Générale des Nations Unies relative aux principes du droit international touchant les relations amicales et la coopération entre les Etats, conformément à la Charte des Nations Unies (Résolution 2625 de 1970) dispose que : ".....Nulle acquisition territoriale obtenue par la menace ou l' emploi de la force ne sera reconnue comme légale ". D'autre part, la résolution de l'Assemblée Générale n° 3314 de 1974 contenant la définition de l'agression dispose " qu'aucune acquisition territoriale ni aucun avantage spécial résultant d'une agression ne sont licites ni ne seront reconnus comme tels " .

8

La question de l'acquisition de la nationalité hellénique relève de la compétence exclusive de l' Etat. La Constitution hellénique de 1975 dispose que " Sont des ressortissants hellènes ceux qui remplissent les conditions prévues par la loi.... ". Cependant, l'art.28, par.1er de la même

Constitution consacre la suprématie des traités internationaux législativement approuvés, ainsi que des règles de droit international généralement acceptées, sur les lois internes, tant antérieures que postérieures. Par conséquent, la compétence exclusive ci-dessus mentionnée peut être limitée par des dispositions conventionnelles acceptées légalement par la Gèce, ainsi que par des coutumes internationales.

9

La notion de l'effectivité joue surtout dans le cas où une personne a deux ou plusieurs nationalités. Le code de nationalité hellénique ne consacre pas, du moins explicitement, cette notion, bien que toute loi interne sur la nationalité est censée reposer sur ce principe. En effet, le lien de nationalité qui unit une personne à un Etat doit toujours être effectif.

En ce qui concerne le lien avec le territoire, il convient de mentionner que la loi grecque accorde, en vertu du principe du jus soli, la nationalité hellénique à l'enfant né en Grèce qui n'a pas acquis, à la naissance, une autre nationalité. Pour la naturalisation des étrangers, une condition préalable de résidence sur le territoire hellénique est exigée, laquelle varie selon les cas (5 ou 10 ans).

10

Il n'existe pas en Grèce de législation spécifique se rapportant aux droits acquis, en cas d'acquisition ou de perte de la nationalité. Toutefois, il ne semble pas que le changement de nationalité ait un effet quelconque sur les droits privés de caractère économique.

Les incidences de la succession d'Etats sur la nationalité

(Hongrie)

1.

Dans son histoire relativement récente, la Hongrie a connu plusieurs cas de succession d'Etats. Dans ces cas, il s'agissait de différents types de succession:

Après la première guerre mondiale c'était le traité de paix de Trianon - un accord international, signé le 4 juin 1920 - qui a défini les conditions de paix pour la Hongrie. Ce traité a déclaré formellement que l'ancienne Monarchie Austro-Hongroise avait cessé d'exister et il a désigné les nouvelles frontières de cette région. Ce traité de paix a enlevé à la Hongrie les deux tiers de sa territoire et presque les deux tiers de sa population.

L'idée fondamentale des traités élaborés par la Conférence de la Paix était le principe du droit des peuples à disposer d'eux-mêmes. C'est suivant ce principe qu'on a voulu partager les territoires de l'ex-monarchie entre six nouveau états nationaux. Dans le tracé des frontières l'application conséquente de ce principe était a priori impossible étant donné que pour la plupart des cas, il s'agissait des territoires éthniquement mixtes ou les différentes minorités vivaient ensemble depuis des siècles.
Mais en plus, la Conférence de la Paix a commis des fautes graves aussi, en attachant des territoires éthniquement tout à fait homogènes (qui étaient habités exclusivement par les Hongrois) à des pays étrangers.

La population de la Hongrie a été partagée entre cinq différents états:
- on a annexé à la Tchéco-Slovaquie 1.066.000 de Hongrois,
- on a placé sous la domination de la Roumanie 1.664.000 de Hongrois,
- on a incorporé 565.000 de Hongrois dans l'Etat serbe-croate-slovène
- on a annexé à l'Autriche 25.000 de Hongrois

La Hongrie qui a été frappée le plus gravement par le traité de paix, n'avait gardé qu'un tiers (7,6 millions) de

La Hongrie qui a été frappée le plus gravement par le traité de paix, n'avait gardé qu'un tiers (7,6 millions) de sa population d'avant-guerre, et dans les états successeurs de la Monarchie Austro-Hongroise il y avait 3,3 millions de Hongrois.

La proportion des nationalités dans la Hongrie d'avant-guerre (non compris la Croatie) représentait 45,5 % et celle des Hongrois 54,5 %. Après 1920, les nationalités ont été presque toutes séparées de notre pays, la Hongrie est devenue un pays presque absolument national, car elle avait 92,1 % de Hongrois, contre seulement 7,9 % de nationalités, dont la plupart étaient allemandes, qui vivaient disséminées dans le pays.

Le traité de Trianon ne contient pas un seul article qui mette comme condition nécessaire à des déplacements si grands, une acceptation plébiscitaire des habitants interessés.

La délégation hongroise à la Conférence de la Paix a demandé, à plusieurs reprises, l'application du principe du droit des peuples de disposer d'eux-mêmes. La Hongrie a estimé que ce sont les habitants des territoires en litiges qui doivent décider à qui ils veulent appartenir et quelle nationalité ils veulent acquérir.

La Conférence a rejeté la proposition de la délégation hongroise, on a détaché de la Hongrie les deux tiers de ses habitants sans plébiscite.

Quant aux types de succession:

La Hongrie a perdu la Transylvanie et les territoires s'y ajoutants (Partium), par la voie de cession. La Hongrie a été obligée de renoncer formellement à ces territoires (Article 45. du Traité de Paix de Trianon).

C'est la même chose pour la Haute Hongrie, attachée à la Tchéco-Slovaquie (Article 49.), pour la partie de l'Ouest de la Hongrie, attachée à l'Autriche (Article 71.), pour Fiume (Article 53.), pour la partie du Sud de la Hongrie, attachée à l'Etat serbe-croate-slovène.

Une seule exception: c'est la Croatie-Slavonie que la Hongrie a perdue par suite d'une résolution parlemantaire, prise le 29 octobre 1918, dans ce cas il s'agissait alors de séparation pour former un nouvel état.

Le traité de Trianon a été inséré à la loi No. XXXIII. de l'année 1921, le 26 juillet 1921.

C'est la troisième partie du traité qui contient les dispositions politiques. Son titre No. VI. (Articles 54-60.) contient les dispositions sur la protection des minorités.

Les dispositions concernant la nationalité des habitants des territoires qui ont passé sous la souveraineté des états successeurs se trouvent sous le titre No. VII. du traité (Articles 61-66):

"Clauses concernant la nationalité

Article 61.

Toute personne ayant l'indigénat (pertinenza) sur un territoire faisant antérieurement partie des territoires de l'ancienne monarchie austro-hongroise acquerra de plein droit et à l'exclusion de la nationalité hongroise, la nationalité de l'Etat exerçant la souveraineté sur ledit territoire.

Article 62.

Nonobstant la disposition de l'article 61, les personnes qui ont obtenu l'indigénat postérieurement au 1er janvier 1910 dans un territoire transféré à l'Etat serbe-croite-slovène ou à l'Etat tchéco-slovaque en vertu du présent Traité, n'acquerront la nationalité serbe-croite-slovène ou tchéco-slovaque qu'à la condition d'en obtenir l'autorisation de l'Etat serbe-croate-slovène ou de l'Etat tchéco-slovaque, selon les cas.

Si l'autorisation visée à l'alinéa précédent n'est pas demandée ou est refusée, les intéressés acquerront de plein droit la nationalité de l'Etat exerçant la souveraineté sur le territoire, dans lequel ils avaient précédemment leur indigénat.

Article 63.

Les personnes âgées de plus de 18 ans, perdant leur nationalité hongroise et acquérant de plein droit une nouvelle nationalité en vertu de l'article 61, auront la faculté, pendant une période d'un an à dater de la mise en vigeur du présent Traité, d'opter pour la nationalité de l'Etat dans lequel elles avaient leur indigénat avant d'acquérir leur indigénat dans le territoire transféré.

L'option du mari entrainera celle de la femme et l'option des parents entrainera celle de leurs enfants âgés de moins de 18 ans.

Les personnes ayant exercé le droit d'option ci-dessus prévu devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté.

Elles seront libres de conserver les biens immobiliers qu'elles possèdent sur le territoire de l'autre Etat ou elles auraient eu leur domicile antérieurement à leur option.

Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé, de ce fait, aucun droit ou taxe soit de sortie, soit d'entrée.

Article 64.

Les personnes qui ont l'indigénat dans un territoire faisant partie de l'ancienne monarchie autro-hongroise et qui y diffèrent, par la race et la langue, de la majorité de la population, pourront, dans le délai de six mois à dater de la mise en viguer du présent Traité, opter pour l'Autriche, la Hongrie, l'Italie, la Pologne, la Roumanie, l'Etat serbe-croate-slovène ou l'Etat tchéco-slovaque, selon que la majorité de la population y sera composée de personnes parlant la même langue et ayant la même race qu'elles. Les dispositions de l'article 63, concernant l'exercice du droit d'option, seront applicables à l'exercice du droit reconnu par le présent article.

Article 65.

Les Hautes Parties Contractantes s'engagent à n'apporter aucune entrave à l'exercice du droit d'option prévu par le présent Traité ou par les Traités conclus entre les Puissances alliées et associées et l'Allemagne, l'Autriche ou la Russie ou entre lesdites Puissances alliées et associées elles-mêmes, et permettant aux intéressés d'acquérir toute autre nationalité qui leur serait ouverte.

Article 66.

Les femmes mariées suivront la condition de leurs maris et les enfants âgés de moins de 18 ans suivront la condition de leurs parents pour tout ce qui concerne l'application des dispositions de la présente Section."

C'était alors un accord international qui a réglé cette question. D'après ces dispositions, l'acquisition de la nationalité de l'état successeur a été automatique (ipso facto).

Tous ceux qui ont perdu leur nationalité hongroise, avaient le droit d'opter pour la nationalité. (C'était alors une possibilité de regagner la nationalité hongroise). Dans un délai d'un an ils devaient faire une déclaration individuelle concernant leur choix.

Les personnes qui ont opté pour la nationalité hongroise, devaient quitter le territoire du pays successeur et s'établir en Hongrie dans un délai de 12 mois.

L'octroi automatique de la nationalité de l'état successeur a été basé sur le ius soli. La possibilité d'opter pour la nationalité originale (la possibilité de la

regagner) est basée sur le ius sanguinis ce qui est d'ailleurs le principe en vigueur dans le droit constitutionnel hongrois. Alors, les solutions adoptées par le traité de Trianon ont été basées sur les deux critères à la fois.

Il y avait un seul cas ou le gouvernement hongrois a réussi à obtenir l'application du plébiscite sur un territoire à annexer. C'était la ville de Sopron: le 14 décembre 1921 les habitants de la ville ont choisi l'appartenance à la Hongrie.

2.

Les suivants cas de successions d'états ont eu lieu juste avant et pendant la deuxième guerre mondiale. Entre 1938 et 1941, la Hongrie a réussi quatre fois à recouvrer des territoires perdus à Trianon:

Pour la première fois en automne de 1938, quand à la base du pacte à quatre - signé le 29 septembre 1938, à Munich par l'Angleterre, la France, l'Allemagne et l'Italie - par voie de la sentence de l'arbitrage de Vienne, prise par l'Allemagne et l'Italie, la Hongrie a repris la possession du territoire du sud de la Haute Hongrie, habité en majorité prépondérante par la population hongroise.
La "première décision de Vienne", prise le 2 novembre 1938, à la base du principe éthnique, a été insérée à la loi No. XXXIV. de l'année 1938 par le parlement hongrois.

Pour la deuxième fois, en printemps de 1939, la Hongrie a annexé le territoire de la Ruthénie, habitée en majorité prépondérante par une population ruthène, par une action militaire indépendante, se référant au titre historique.

Pour la troisième fois, la deuxième sentence de l'arbitrage de Vienne, prise le 30 aout 1940 a rattaché la partie du nord de la Transylvanie (habitée par une population mélangée) et la Terre des Székely (habitée exclusivement par une population hongroise) à la Hongrie.

Pour la quatrième fois, au printemps de 1941, la Hongrie a réoccupé - en coopération avec les troupes allemandes - la partie du sud du pays, détachée de la Hongrie.

La première sentence de l'arbitrage de Vienne ne contenait pas de dispositions concernant la nationalité, elle a confié le règlement de la nationalité et de l'option à un accord bilatéral entre la Tchéco-Slovaquie et la Hongrie.

Cet accord bilatéral a été conclu à Budapest, le 18 février 1939 et inséré en Hongrie dans la loi No. VI. de l'année 1939 sur l'unification des territoires retournés.

La même loi dispose également de la nationalité des habitants de la Ruthénie réannexée. L'article No.5. de cette loi dit:

Toutes les personnes qui étaient des ressortissants hongrois jusqu'à l'entrée en vigueur du traité de Trianon et qui ont perdu leur nationalité hongroise et sont devenus automatiquement ressortissants tchéco-slovaques d'après le traité de Trianon et qui avaient - au minimum depuis dix ans - un indigénat sur les territoires retournés, réacquièrent automatiquement la nationalité hongroise avec effet à partir du 15 mars 1939.

La nationalité réacquise d'un homme s'étend à sa femme et à ses enfents âgés de moins de 24 ans. L'enfant né hors du mariage suit la nationalité de sa mère.

La réacquisition automatique de la nationalité hongroise ne s'étend pas aux personnes, qui ont acquis leur nationalité tchéco-slovaque par voie d'option.

La deuxième sentence de l'arbitrage de Vienne (le 30 aout 1940) contenait des dispositions détaillées sur la nationalité et le droit d'option. Cette sentence a été insérée à la loi No. XXVI. de l'année 1940. Son article No.4. dispose comme suit:

Tous les ressortissants roumains qui avaient - au moment de la prise de décision - un indigénat sur les territoires de la partie du nord de la Transylvanie ou sur la Terre des Székely, rattachées à la Hongrie, acquièrent automatiquement la nationalité hongroise. L'acquisition de la nationalité d'un homme s'étend à sa femme et à ses enfants âgés de moins de 24 ans. L'enfant né hors du mariage suit la nationalité de sa mère.

Les ressortissants roumains de nationalité hongroise, habitants des territoires qui ont été cédés en 1921 et qui restent sous la souveraineté de la Roumanie, ont la possibilité d'opter dans un délai de six mois pour la nationalité hongroise, mais dans ce cas ils doivent quitter la Roumanie dans un délai d'un an.

La sentence de l'arbitrage de Vienne assure la possibilité d'opter pour la nationalité roumaine, comme suit:

Les habitants des territoires rattachés à la Hongrie ont le droit d'opter dans un délai de six mois pour la nationalité roumaine, mais dans ce cas ils doivent quitter la Hongrie dans un délai d'un an.

La question de la nationalité des habitants des territoires de la partie du sud de la Hongrie réannexés a été réglée de la même manière que dans les trois cas mentionnés, avec une seule exception:

Le ministre de l'intérieur avait le droit de déchoir de la nationalité hongroise - avec effet rétroactif au 11 avril 1941 - les personnes qui ont gravement blessé les intérêts de la nation hongroise par leurs actes d'hostilité, pendant les 20 années du détachement (voir la loi No. XX. de l'année 1941).

Pendant la deuxième guerre mondiale, on pouvait observer une tendence fortement nationaliste dans les pays d'Europe Centrale.

Par exemple en 1944, le gouvernement émigré tchéco-slovaque à Londres a envisagé d'évacuer toute la population hongroise de la Slovaquie. Pour ce projet, il ne pouvait pas obtenir le consentement des grandes puissances. Mais la formation d'un pays "national", sans minorités éthniques, est restée une ambition du gouvernement tchéco-slovaque.

Le 2 aout 1945 un décret du président de la République Tchéco-Slovaque a déchu de leur nationalité tchéco-slovaque toutes les personnes appartenantes aux éthniques allemande et hongroise.

Après la deuxième guerre mondiale, le 27 février 1946 la Tchéco-Slovaquie et la Hongrie ont conclu un accord d'échange de population. Cet accord a été inséré en Hongrie à la loi No. XV. de l'année 1946.

Selon ses dispositions, toutes les personnes appartenantes à l'éthnique tchèque ou slovaque, habitants en Hongrie, avaient la possibilité de transmigrer volontairement en Tchéco-Slovaquie. Ils devaient faire une déclaration individuelle. Avec le fait de la transmigration (ipso facto) ils ont perdu leur nationalité hongroise et sont devenus ressortissants tchéco-slovaques.

En échange, la Tchéco-Slovaquie avait le droit de désigner - en même nombre - les personnes appartenantes à l'éthnique hongroise (déchues de leur nationalité) qui étaient forcées de transmigrer en Hongrie. Avec le fait de la transmigration ils ont acquis la nationalité hongroise.

Jusqu' en avril 1948, en somme 73.000 de Slovaques ont quitté volontairement la Hongrie, et 74.000 de Hongrois ont été évacués de la Tchéco-Slovaquie.

En juin 1946 un décret de l'intérieur a ordonné en Tchéco-Slovaquie la "reslovaquisation" de la population hongroise. Les Hongrois qui se déclaraient Slovaques, ont réacquis la nationalité tchéco-slovaque. Ceux qui se déclaraient Hongrois, étaient menacés d'être expulsés. Au cours de cette campagne 400.000 Hongrois se disaient Slovaques.

Au cours de l'année 1946, la Hongrie a évacué 186.000 personnes de l'éthnique allemande. Les personnes évacuées ont perdu ipso facto leur nationalité hongroise. Ceux qui ont été désignés par le gouvernement hongrois à quitter le pays, ont perdu leur nationalité hongroise même s'ils ont refusé de s'éloigner et sont restés en Hongrie.

En Roumanie il n'y avait pas d'évacuation officielle après la guerre. Quand-même, il y avaient 150.000 allemands qui ont quitté la Roumanie. Et il y avaient à-peu-près 210.000 de Hongrois qui sont venus de la Roumanie et de la Yougoslavie s'établir en Hongrie.

Après la deuxième guerre mondiale, la Hongrie a signé le traité de paix de Paris le 10 février 1947 et l'a inséré à la loi No. XVIII. de l'année 1947.

Le traité de paix a restitué les frontières désignées à Trianon en 1920 de la Hongrie. Il ne contenait pas de dispositions de la nationalité des habitants des territoires détachés de nouveau de la Hongrie. Il a confié le règlement de cette question à la législation interne des pays successeurs.

Comme on peut voir, les différentes dispositions des traités de paix, des accords bilatéraux et des lois internes ont créé une situation très compliquée et même confuse.

La question de la nationalité a été arrangée en 1947 en Roumanie et en 1948 en Tchéco-Slovaquie et en Hongrie par les lois internes.

En conséquence de la loi roumaine sur la nationalité, acceptée en mai 1947, 200.000 de Hongrois ont réacquis la nationalité roumaine.

D'après la loi tchéco-slovaque, acceptée en octobre 1948, les minorités hongroises habitantes en Slovaquie ont réacquis leur nationalité tchéco-slovaque.

En Hongrie c'était la loi No. LX. de l'année 1948, entrée en vigueur le 1er février 1949 qui a réglé la question de la nationalité.

3.

Quant à la question de la double nationalité, après la première guerre mondiale la possibilité de la double nationalité était ouverte.

A l'époque socialiste, la Hongrie a conclus des accords bilatéraux avec les pays socialistes, pour éviter la double nationalité: avec l'URSS en 1958 et 1963, avec la Bulgarie en 1959, avec la Tchécoslovaquie en 1960, avec la Pologne en 1961, avec la RDA en 1969, avec la Mongolie en 1977 et avec la Roumanie en 1979.

Les pays socialistes ont aspiré à la liquidation entière de la double nationalité. Ils ont conclus des accords d'assistance judiciaire bilatéraux, ou les états concernés, un à un, ont cessé entre eux la double nationalité déjà existante et se sont respectivement accordés sur les conditions de la prévention de la double nationalité.

Les personnes de double nationalité pouvaient choisir seulement une de leurs nationalités, et elles devaient faire une déclaration sur leur choix, dans un délai d'un an de l'entrée en vigueur de l'accord.

Dans le cas ou une personne de double nationalité n'a pas fait de déclaration, ce fait devait être interprété comme si la personne en question avait choisi la nationalité de l'état sur le territoire duquel elle avait eu son domicile permanent au jour de l'expiration du délai de la déclaration.

La nationalité double se constituante par la naissance pouvait être maintenue jusqu'à l'âge d'un an de l'enfant. Avant atteindre cet âge, les parents devaient faire une déclaration en écrit sur leur choix de nationalité.

Dans les accords bilatéraux la Hongrie s'est engagée de n'accorder la nationalité hongroise aux solliciteurs qu'après la déclaration des autorités compétentes selon la nationalité originale des solliciteurs.

Parmis ces accords bilatéraux, les accords conclus avec la Bulgarie et la Roumanie ne sont plus en vigueur. (Les lois No. VII. et VIII. de l'année 1992 les ont abrogés.)

4.

Concernant la sixième question du questionnaire:

Les personnes morales qui se situaient sur les territoires cédés, ont changé aussi leur nationalité. Cette question était l'objet du règlement interne des pays successeurs.

5.
Concernant la septième question du questionnaire:

Une personne à la conduite civique irréprochable qui réside depuis un laps de temps sur le territoire cédé, doit avoir la possibilité d'acquérir la nationalité des autres habitants ou bien de garder sa nationalité originale, selon son choix libre.

6.
Concernant la huitième question:

La Hongrie est d'avis que les critères de l'attribution de la nationalité relève en premier lieu de la compétence de l'Etat. Elle reconnait quand-même quelques aspects internationaux, comme par exemples les accords bilatéraux qui peuvent limiter la liberté de l'état.

7.
Concernant la neuvième question:

Selon les dispositions de notre loi sur la nationalité (la loi No. LV. de 1993, entrée en vigeur le 1er octobre 1993), la nationalité hongroise peut être acquise par naissance ou par naturalisation. A leur demande, les ressortissants étrangers peuvent être naturalisés - parmi plusieurs préconditions nécessaires - à condition qu'ils aient résidé pendant 8 ans continuellement en Hongrie.

Il y a un traitement de faveur pour ceux qui

- vivent dans un mariage légal avec un ressortissant hongrois depuis au minimum 3 ans,
- ont un enfant mineur ressortissant hongrois,
- sont adoptés par un ressortissant hongrois,
- sont reconnus comme réfugiés par les authorités hongroises

Ces personnes peuvent être naturalisées après avoir eu une résidence continuelle de 3 ans.

Un ressortissant étranger qui se déclare d'être de l'étnique hongroise et qui a un ascendant hongrois, peut être naturalisé hongrois après avoir eu un an de résidence continuelle en Hongrie.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

QUESTIONAIRE ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY

1. In your country's recent or relatively recent history (for example, since the first World War), has there been one or more cases of State succession and , if so, what type or types of succession occured (annexation, union of States, separation so as to form a new State)?

Following the War of Independence the Irish Free State was created out of the United Kingdom of Great Britain and Ireland on the 6th December 1921. The Irish Free State was renamed Ireland in 1937 and the description (but not the name) of the state was declared to be that of the Republic of Ireland in 1948.

2. In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor State governed:

a) by an international agreement, whether bilateral or multilateral?

No.

b) by the internal law of the successor State?

Yes. While the expressions nationality and citizenship are often used interchangeably Irish law does not govern nationality matters. Irish law is solely concerned with the grant or loss of Irish citizenship. The Irish Free State adopted a constitution in 1922. Article 3 of the constitution provided:

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State (Saorstat Eireann) at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of

the jurisdiction of the Irish Free State (Saorstat Eireann) for not less than seven years, is a citizen of the Irish Free State (Saorstat Eireann) and shall within the limits of the jurisdiction of the Irish Free State (Saorstat Eireann) enjoy the privileges and be subject to the obligations of such citizenship: Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship of the Irish Free State (Saorstat Eireann) shall be determined by law."

c) jointly by both of these procedures?

No.

d) in another manner (pursuant to a decision of an international organisation or to an international judgement or to decisions of domestic courts, etc.?

No.

3. Which solutions were adopted in these cases:

a) was the acquisition of the nationality of the successor State automatically (ipso facto) conferred upon all inhabitants of the new territory or only upon certain categories of such inhabitants?

The right to citizenship of the Irish Free State was not massively conferred but the restrictions imposed were so limited that the grant of citizenship was open to almost all the inhabitants of the island of Ireland including Northern Ireland.

The effect of Article 3 of the 1922 Constitution was to confer citizenship on persons of whatever nationality or citizenship who on the 6th December 1922 were either (1) domiciled "in the area of the jurisdiction of the Irish Free State" and were themselves born in Ireland or were born of a parent born in Ireland or (2) continuously resident within the area and had been so resident for at least seven years. The area of jurisdiction of the Irish Free State on the

6th December, 1922 comprehended the whole island of Ireland. The Anglo - Irish Treaty provided that the Irish Free State should comprise the whole island of Ireland unless Northern Ireland were to elect to remain part of the United Kingdom, which proved to be the case. Article 3 was so interpreted to confer citizenship on any person who on the 6th December 1922 was ordinarily resident for seven years in either Northern Ireland or the Irish Free State and on anyone of Irish birth or parentage domiciled on that date anywhere in Ireland.

It is important to note that persons born in Ireland who were not domiciled in Ireland on the relevant date did not acquire citizenship.

The 1922 Constitution purported only to provide as to the citizenship of persons alive on the 6th December, 1922. The scheme of citizenship laid down in Article 3 was supplemented by the Irish Nationality and Citizenship Act, 1935 which applied to persons born on or after the 6 December,1922. The Article provided that every person born in the Irish Free State (as distinct from the whole of Ireland) on or after December 6, 1922 should be a natural born citizen. At the same time under the 1935 Act the practical position of non - citizen British subjects in the Irish Free State was assimilated to that of citizens.

The change of the name of the Irish Free State to Ireland and other changes which were made by the Constitution of 1937(the present constitution) did not affect the law of Irish citizenship in any way.

The current law is contained in the Irish Nationality and Citizenship Act, 1956 which extends the right to Irish citizenship (automatically in Ireland and by declaration in Northern Ireland) to the vast majority of persons living in any part of Ireland. Citizenship is also made available to certain persons not born in Ireland but who are of Irish descent.

This means that British subjects born in Northern Ireland have the right to acquire Irish citizenship.

b) In the event that nationality was automatically or massively conferred by the successor state, were there nonetheless cases of exclusion of certain categories of groups or persons? If so, which categories?

Persons born in Ireland who did not fulfil the seven year domicile qualification were not entitled to Irish citizenship. In view of the numbers of persons who had emigrated from Ireland this would be a large group. Once a person fulfilled one or other of the conditions laid down in Article 3 of the Constitution of the Irish Free State citizenship was automatically conferred, unless it was disclaimed, regardless of his nationality or original citizenship.

c) Was the right to choose one's nationality recognised in respect of all inhabitants of the new territory or only in respect of certain categories among them? In the latter case, what were the categories and by what legal procedure was the choice exercised (for example individual choice, referendum)? Similarly, what were the consequences for persons who did not elect for nationality of the successor State?

See the answer to 3b) above. Under Article 3 of the Constitution of the Irish Free State any person affected by the article who was also a citizen of another state was permitted to elect not to accept citizenship of the Irish Free State. As almost all the inhabitants of Ireland were British subjects on the 6th December 1922 it was open to almost everyone to decline Irish citizenship. British subjects enjoyed almost all the legal rights of Irish citizens. It would appear that stateless persons would become citizens of the Free State if they fulfilled the residency qualification but could not, it appears, elect to refuse Irish citizenship.

4. Upon what criteria were the solutions adopted in the above cases:

a) jus sanguinis (origin)
b) jus soli (domicile or residence)
c) both of these criteria;
d) resort to other criteria?

c).

5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?

Article 3 of the Constitution of the Irish Free State did not attempt to limit double nationality: in fact it is often said the citizens of the Irish Free State remained British subjects until the British Nationality Act of 1948. Such status would not be incompatible with Article 3 of the constitution. Article 3 did not create stateless persons who were not stateless persons before the enactment of the 1922 constitution.

6. How was the question of the nationality of legal persons regulated?

Irish law does not regulate the nationality of artificial legal persons. A company is an Irish company if it is incorporated within the state (this excludes companies registered in Northern Ireland).

7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethic origin? If not, do you consider that such a person should at least be accorded the status of permanent resident?

It is impossible to answer this question on a purely theoretical basis. I can only point out that experience of Ireland in conferring citizenship in 1922. Irish citizenship was open to almost every person living in Ireland on the 6th December, 1922 regardless of their nationality or racial origin. Each country should determine its own citizenship or residence laws by reference to its own internal law and to the the generally recognised principles of international law or by international agreement with another state(s).

The number of persons who may claim a prospective citizenship is a very important factor in any citizenship equation. It may be that a certain person has well earned the right to the citizenship of a particular country. However he may be

one of many equally meritorious candidates who may in fact form a distinct society within the state. The admission of a large group of new citizens could have a far reaching effect on every aspect of public life while a smaller group would be more easily woven into the national fabric.

8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognise that the matter is circumscribed by rules of international law? In the latter case, which rules?

Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other states. (Article 29.3 of the Constitution of Ireland). Attempts to erect "generally accepted principles of international law" into domestic constitutional criteria have been unsuccessful to date. While it is not clearly established by the courts whether and to what extent principles of international law (in so far as there are any accepted international laws in relation to citizenship) would take precedence over Irish domestic law, it may be accepted that Ireland would adhere to unequivocal and agreed international principles.

9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality?

See Section 15 of the Irish Nationality and Citizenship Act, 1956 which is self explanatory.

10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

Before the 6th December, 1922 the vast bulk of the inhabitants of the island of Ireland were British subjects. After 6 December, 1922 the vast bulk of those inhabitants were entitled to Irish citizenship. Some persons after that date regarded themselves as both British subjects and Irish citizens. Under the 1935 Irish

Nationality and Citizenship Act. the practical position of non-citizen British subjects was assimilated to that of Irish citizens.

The loss of Irish citizenship does not affect the citizenship of the spouse and children.

The reader is referred to a useful discussion on the development of Irish Citizenship contained in *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland by Clive Parry, (London ,Stevens & Sons Ltd.)*

QUESTIONNAIRE ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY - ITALY,

1) Since the end of the first World War Italy has been interested by several cases of State succession.

Some of them were cases of annexation and regarded a) the territories of the late austrian-hungarian Monarchy which Austria renounced in favour of Italy when it signed the Treaty of Saint Germain-en-Laye, September 10th 1919 (Provinces of Trento, Bolzano, Trieste, Gorizia and Pola (Pula)); b) the town of Fiume (Rijeka) on the basis of the Treaty of Rapallo, November 12th 1920, and the Convention of Santa Margherita, October 23rd 1922; and c) the Province of Lubiana (Ljubljana) (r.d.l. May 3rd 1941 n.291).

The cases of separation principally interested d) the territories which were given to Yugoslavia (the Provinces of Pola (Pula) and Fiume (Rjieka) and part of the Provinces of Trieste and Gorizia) and e) those which were ceded to France according to the Treaty of Paris, February 10th 1947 (territories in the areas of Piccolo San Bernardo, Moncenisio, Tabor-Chaberton and the Valleys of Tinea, Vesubie and Roja). f) Moreover, according to the Treaty of Paris, the territories should have been separated from Italy which were destined to the Free Territory of Trieste.

2) The Treaty of Saint Germain-en-Laye provided for the attribution of the nationality to the pertinents (les personnes qui jouissaient du droit d'indigénat) to the territories of the late austrian-hungarian Monarchy (articles 70-72) but it was executed in the internal italian order by the law September 26th 1920, n.1322. The problem of the nationality of the inhabitants of the town of Fiume (Rijeka) was settled with the Convention agreed by Italy and Yugoslavia in Nettuno, July 20th 1925, which was executed by the royal decree August 21st 1928, n.2175. The royal decree-law May 3rd, n. 291, concerning the creation of the Province of Lubiana (Ljubljna), does not expressly refer to the problem of the natio-

nality of the population of that town.

Art. 19 of the Treaty of Paris provided for the nationality of the italian citizens who resided in the territories which were ceded to Yugoslavia and France. The provisions of this article were executed in the internal italian order by decree legislative C.P.S. November 28th 1947, n. 1430, and by decree-law april 21st 1948, n.571.

The provisions of the Treaty of Paris concerning the Free Territory of Trieste were never implemented.

2. a) The pertinents of the territories of the late austrian-hungarian Monarchy at the end of the war acquired ipso facto the italian nationality on the basis of art. 70 of the Treaty of Saint Germain-en-Laye. But a right of option of the italian nationality was given also to the people,
-who were pertinent but were not born in the concerned territories and
-who were pertinent since the beginning of the first World War or ratione officii (art. 71),
-who or whose parents had been pertinent in the past time and
-who had served in the Italian Army during the war (art. 72).
But all the people who were more than 18 years old and were allowed to acquire the italian nationality ipso iure had the right of option of the previous nationality. If they had exercised this right within one year, they had to transfer their residence in the State preferred without being deprived of their real estate properties.

b) Also the inhabitants of Fiume (Rijeka) acquired the italian nationality ipso facto. The mentioned provisions were completed by decree-law December 2nd 1928, n. 2698, which provided for the acquisition of the italian citizenship by the foreigners who were able to speak italian and had resided in Fiume (Rijeka) during the last five years. Also in this case they who were eighteen, were given the right of option of the previous nationality, if they spoke the language of the population of the preferred State and shared the race of the majority of that population. Special rules were provided for

the people who were of hungarian origin.

c) The problem of the nationality of the population of Lubiana (Ljubljana) was never settled, notwithstanding the adoption of a draft of royal decree by the government providing for the acquisition of the nationality by the yugoslavian citizens who were born - as well as their parents - in the Province of Lubiana (Ljubljana), even if they resided in other Provinces of the Kingdom of Italy.

d) The italian citizens of the territories acquired by Yugoslavia became ipso iure yugoslavian citizens but the yugoslavian State had to recognize them the right of option of the italian nationality if they were eighteen and used the italian language. The option exercised by the father affected also the children who were not eighteen. Within one year after the option the people who had exercised the option had to transfer their residence in Italy.

Moreover the right of option of the yugoslavian nationality was given to the italian citizens who were eighteen, resided in Italy but used one of the yugoslavian languages (serbian, croat or slovenian).

e) The rules mentioned in the first part of paragraph 2) d) applied also to the italian citizens of the territories which were ceded to France. But a right of option of the french nationality was not recognized to italian citizens who resided in Italy and used the french language.

f) Art. 3 of the Treaty of Osimo settled the problem of the nationality of the people who resided in the territories of the Free Territory of Trieste when these territories were assigned to Italy and Yugoslavia. The relevant provisions of the italian and yugoslavian law, were applied to the people who were italian citizens and resided in the territories at the beginning of the war and to their children who were born after the beginning of the war. They were allowed to transfer their residence in Italy or Yugoslavia according to their own choice.

4. a) In the provisions of the Treaty of Saint Germain-en-Laye the

criterion of the pertinence to the concerned territories was adopted in favour of the people who had resided in the territories concerned since the beginning of the war. But the people who were pertinents but were not born there were given the right of option: they did not acquire the italian nationality ipso facto. The same treatment was provided for in favour of the people who had been pertinents or whose parents had been pertinents. Other criteria were adopted to recognize a right of option of the italian nationality to the people who had been pertinents either ratione officii or after the beginnig of the war or had served in the Italian Army. A right of option was recognized to the people

- who were eighteen and wanted to acquire the nationality of the State to which were pertinent before the Treaty, and
-who were pertinent of the austrian-hungarian Monarchy e did not share the race and the language of the majority pf the population of the State whose nationality should have acquired on the basis of the Traaty.

b) The pertinents to the territory of Fiume (Rijeka) who either resided there at the end of the war or had resided there, acquired the italian nationality. If the element of the residence was missing, the last residence of the parents of the people concerned was relevant. The recognition of the right of option was provided for in favour of the inhabitants of the territory who were eighteen and spoke the language of the State preferred. The position of the children was connected to that of their parents and the wifes depended on the position of the husbands. The people who had become pertinents after January 1st 1910 or had been pertinents ratione officii did not acquire the italian nationality immediately (royal decree August 21st 1928, n. 2175). A later act (royal decree December 2nd, n. 2698) provided for the acquisition of the italian nationality by foreigners who had resided for five years and had adopted the italian language, but left the decision to the italian administrative authorities.

d) and e) On the basis of the Treaty of Paris the italian citi-

zens acquired the nationality of Yugoslavia or France if they resided in the territories concerned at the beginning of the war, and the same treatment was reserved to their children who were born after that date. The relevant elements with regard to the relations wuth the Yugoslavia and in view of the recognition of the mentioned right of option were the residence in the territories concerned, the age (18 years) and the use of the italian or of one of the yugoslavian languages. The option exercised by the father (or by the mother, if the father was not living) affected the children who were not eighteen. And the option of the husband did not affect the wife.

f) The criterion of residence was adopted by the Treaty of Osimo to provide for the application of the italian or yugoslavian law to the people who either resided in the territories concerned at June 10th 1941 or were children of people who resided there at that date. The wills both of the husband and of the wife were separately relevant. The position of the children was ruled by the internal civil law provisions of the State concerned.

5. a) The acquisition of the italian nationality by the citizens of the late austrian-hungarian Monarchy implied the exclusion of the continuity of the austrian nationality. But, according to the law August 21st 1939, n. 1241, implementing the international agreement between Italy and Germany in the same year, the people of german origin and language of the Province of Bolzano who had acquired the italian nationality on the basis of the Treaty of Saint Germain-en-Laye, were allowed to give up the italian nationality to get the german nationality: they lost the italian nationality when the german nationality had been given to them. The measure interested ipso jure their wife and children. After the second World War those who had not trasnsferred their residence to Germany and gave up their option, were allowed to get back the italian nationality ex tunc. The italian nationality was regained ex nunc by those who had transferred their residence to Germany and gave up the option. In both

the cases wifes did not regain ipso jure the italian nationality if they had exercised the option of the german nationality personally.

b) Measures were not adopted to avoid double nationality and statelessness in the case of the inhabitants of Fiume (Rijeka). Probably the principles of the Treaty of Saint Germain-en-Laye had to be applied to them.

d) and e) The Treaty of Paris provided for the dismissing of the italian nationality at the moment of the acquisition of the yugoslavian or french nationality.

f) This principle covers the problem of the nationality of the inhabitants of the territories of the Free Territory of Trieste.

6. a) Art. 75 of the Treaty of Saint Germain-en-Laye stated that the legal persons existing in the territories acquired by Italy had to be recognized as italian legal persons on the basis of a decision of the italian administrative or judicial authorities.

b) Legal persons in Fiume (Rijeka) had to be treated as italian legal persons if registered by the authorities of Fiume. The provisions of the international conventions concerning industrial and commercial enterprises applied in this field.

d) and e) Special measures concerning the legal persons were not adopted by the Treaty of Paris. This could imply reference to the rules of the international conventions.

7. If the question regards the italian order now in force, my guess is that the principle of equality (art.3 of the italian Constitution) has to be complied with. It applies to the foreigners also. According to art. 22 of the italian Constitution nobody can be deprived of his own nationality because of political reasons.

8. The italian Constitution does not deal with this problem directly. In any case relevant are the provisions of art.10 of that act according to which the italian legal order conforms to the rules of the international law generally recognized and the legal condition

of the foreigners in Italy is ruled by the law in conformity with the rules of the international law and the international treaties.

9. On the basis of art. 1 of the law February 5th 1992, n. 91, the jus soli applies to people who were born in Italy when they parents either are unknown or don't have nationality. The people are allowed to acquire the italian nationality who either are foreigners or don't have nationality if one of their parents was italian citizen by birth, and have resided in Italy for two years. They have to declare their will of acquiring the italian nationality when they come of age. Also a foreigner who was born and resided in Italy, is allowed to acquire the italian nationality by will when he comes of age. Art. 9 of the same act provides for the concession of the italian nationality in some cases where the residence in Italy is relevant.

10. My guess is that the mentioned art. 22 of the italian Constitution gives us evidence of the concern of the italian legal order in this field. But also art. 3 of the same document can be relevant as far as the principle of equlity is concerned. The royal decree-law January 20th 1944, n. 25, gave back ipso iure the italian nationality to the Jews who had been deprived of it on the basis of the royal decree-law September 7th 1938, n. 1381, and of the royal decree-law November 17th 1938, n. 1728, whose effects were, therefore, declared null and void.

Reply to the Questionnaire on the Consequences of State succession on Citizenship

ITO (JAPAN)

1. No

2-6. N.A.

7. I consider that such a person should be accorded the status of permanent resident, but not the nationality unless other conditions for naturalization are met.

8. By article 10 of the Constitution, the choice of criteria for according nationality is vested in the Diet (the national parliament). Nevertheless, it is generally understood that the discretion of the Diet is not without limit. The Diet, in determining the criteria, must respect human rights principles enshrined in the Constitution, as well as established laws of nations. Otherwise, such a criteria can be declared unconstitutional.

9. The Nationality Law says, in principle, that one must reside in the territory of Japan for not less than five consecutive years in order to be accorded nationality.

10. The Nationality Law provides that one must abandon his former nationality in order to be accorded Japanese nationality. Likewise, when a Japanese national acquires another nationality, he must abandon his Japanese nationality.

Reply by Kyrgyzstan

KYRGYZSTAN

SUBJECT: STUDY OF THE CONSEQUENCES OF STATE SUCCESSION ON CITIZENSHIP

1. Until 1917 Kyrgyzstan was within the Russian Empire and citizens of Kyrgyzstan were subjects of the Russian Empire.

After the Great October Revolution of 1917 all former subjects of the Russian Empire residing within the Russian Soviet Republic were automatically recognized as citizens of Russia until they withdrew from citizenship in the procedure set up by the laws of the new Revolutionary Russian Soviet Power. Until 1936 Kyrgyzstan was officially on the rights of an autonomous republic within the Russian Soviet Federation and its citizens were citizens of the Russian Soviet Federation thereof.

In 1936 with the adoption of a new Constitution of the USSR on December 5, 1936, Kyrgyzstan was recognized as an independent sovereign Soviet Socialist Republic. Due to this Kyrgyzstan as well as other union Republics had its formal citizenship within citizenship of the USSR. Art.21 of the Constitution of the USSR specifies that "uniform union citizenship shall be established for citizens of the USSR. Each citizen of the Union Republic shall be citizen of the USSR." The principle of uniform citizenship for all sixteen republics which constitute the Union of Soviet Socialist Republics including the Kyrgyz Republic, was taken in the Law on Citizenship of the USSR of 1938 and the Constitution of the Kyrgyz Republic of 1937.

The principle of uniform citizenship was then consolidates in the new and the last Constitution of the USSR of - The Constitution of 1977. Art.33 in Section "Government and Individual reads: "Uniform union citizenship is established in the USSR. Each citizen of the Union republic shall be citizen of the USSR." Uniform union citizenship was registered in the norms of a corresponding article of the Constitution of the Kyrgyz SSR, which was adopted in 1978. Thus, Part I, Art.31 of the Constitution of the Kyrgyz SSR of 1978 established that "in accordance with the uniform union citizenship established in the USSR each citizen of the Kyrgyz SSR shall be citizen of the USSR." According to this article of the Constitution of the Kyrgyz SSR citizens of other union republics enjoyed equal right in the territory of the Kyrgyz SSR as citizens of the Kyrgyz Republic. Thus, it is obvious that in Kyrgyzstan during the period when it was the USSR (as in other union republics- members of the USSR) citizenship of the Kyrgyz Republic outside the USSR did not exist in its pure form, also the existence of citizenship of the union republic was recognized and established in all legal documents and the Constitution including the Constitution of the USSR of 1924, 1936, 1977. In reality the fact that the existence of citizenship of the Kyrgyz SSR was recognized and established

had no legal meaning, because it was just formal recognition within the uniform union state, e.i citizenship of the USSR.

Thus until the collapse of the USSR a uniform union citizenship was a direct result of creation any functioning of the Soviet Union State, the effect of political and legal unification of citizens of all union republics including the Kyrgyz Soviet Republic.

2. After the collapse of the USSR and due to acquisition of true state sovereignty in the Kyrgyz Republic in 1993 the Law on citizenship of the Kyrgyz Republic was adopted.

According to Art.1 of this Law citizens of the Kyrgyz Republic are persons who were citizens of the Kyrgyz Republic on the date of adoption of the Declaration of independence on State sovereignty of the Kyrgyz Republic (December 15, 1993) and did not make a statement about their belonging to citizenship of other states.

3. According to Art.4 of the Law on Citizenship of the Kyrgyz Republic citizenship of the Kyrgyz Republic is equal for all citizens irrespective of the grounds for its acquisition. Nationality of other states is not recognized for persons who are citizens of the Kyrgyz Republic.

Thus, according to Art.1 of the Law on Citizenship of the Kyrgyz Republic citizenship of the Kyrgyz Republic is acquired automatically for all citizens of Kyrgyzstan due to their residence if they prove that they are on citizens of any other country. Besides, citizenship is acquired by birth if one of the child's parents is a citizens of the Kyrgyz Republic irrespective of their place of residence.

4. In the Kyrgyz Republic such criteria as origin, residence and some other factors are applied when deciding citizenship.

5. According to Art.5 of the Law on Citizenship of the Kyrgyz Republic double nationality (e.i. being a citizen of the Kyrgyz Republic and any other foreign state) is not recognized.

7. While answering this question we shall notice that in our opinion it is in the interest of each state that persons of untainted civic record could have a preferential right in acquiring citizenship of any other state. It should be underlined that this rule should be taken into account from our point of view not only because of state succession but in all other cases. Moreover such rule should extend on all persons irrespective of their ethnic origin. Thus, Point 2 of Art.22 of the current Law of the Kyrgyz Republic envisages facilitated conditions for the acquisition of citizenship of the Kyrgyz Republic for persons having special services to the Kyrgyz

Republic.

8. Art.21 of the Law on Citizenship of the Kyrgyz Republic specifies in detail conditions for the acquisition of citizenship of the Kyrgyz Republic. Foreign citizens and stateless persons may be granted citizenship of the Kyrgyz Republic if the following conditions are observed:

1) withdrawal from foreign citizenship;

2) permanent residence in the territory of the Kyrgyz Republic during at least 5 years;

3) knowledged of the official language within the limits set up by legislation;

4) availability of legal livelihood.

The above mentioned conditions for according nationality of the Kyrgyz Republic do not [illegible]

1) persons of Kyrgyz origin residing outside the Kyrgyz Republic;

2) persons having special serviced to the Kyrgyz Republic;

3) on restoration of citizenship of the Kyrgyz Republic;

4) persons married to citizens of the Kyrgyz Republic;

5) persons born in the Kyrgyz Republic.

According to Art. 22 of the Law on Citizenship of the Kyrgyz Republic foreign and stateless persons are denied citizenship of the Kyrgyz Republic if:

1) they were sentenced to imprisonment for serious crimes or are under investigation at the time of consideration of the application for citizenship;

2) stir up ethical and racial hostility and propagandize war;

3) perform activity against the interests of the Kyrgyz Republic, call upon violent overthrow or adoption of the government order, make damage to national security, protection of order, health and moral of the population;

4) involved in terrorism.

9. We have already answered this question. Besides the above mentioned cases, that is after the Kyrgyz Republic acquired

its sovereignty, citizenship was determined by the permanent place of residence. Besides, the territorial principle in its pure form is applicable when determining citizenship of children, present in the territory of the Kyrgyz Republic with parents unknown.

10. According to legislation of the Kyrgyz Republic citizenship of other countries is not acknowledges, e.i. double nationality is not allowed. Persons who are citizens of the Kyrgyz Republic will automatically loose their citizenship in the following cases:

1) as a result of entry on military and intelligence service of a foreign country without a permission of competent authorities of the Kyrgyz Republic;

2) in case the person (citizen of the Kyrgyz Republic) permanently reside in the territory of a foreign country and has not been registered at the Consular without any good reason during the period of three years.

According to the resent existing Law on Citizenship of the Kyrgyz Republic no a citizen may be deprived his citizenship by governmental authorities no he/she may be deny his/her right to change citizenship. Thus the latest legislation denied the forced disfranchisement of citizenship which existed until the collapse of the USSR

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

Answers on the Questionnaire on the competences of state succession for nationality.

1. On November 18, 1918 the Latvian People's Council for the first time proclaimed the national independence of Latvia. Further on February 15, 1922 the Constituent Assembly at its meeting passed the Constitution of the Republic of Latvia whose first article determines: "Latvia shall be an independent democratic Republic".

On June 16, 1940, the Soviet government presented to the government of the Republic of Latvia an ultimatium that demanded establishing pro-Soviet regime and admit more Soviet troops throughout Latvia. On June 17, 1940 Latvia was occupied by the Red Army troops. The newly elected People's Parliament (Saeima) on July 21, 1940, disregarding the Consitution of 1922, proclaimed the establishment of Soviet power in Latvia and carried a decision to join the USSR, the Latvian SSR was created.

On May 4. 1990, the name of the Republic of Latvia was renewed, and the Declaration on the Renewal of the Independence of the Republic of Latvia was adopted.

Further on August 21, 1991, the Supreme Council of the Republic of Latvia taking into consideration the above mentioned Declaration adopted on May 4, 1990 and the results of the All-Latvia Advisory Vote held on March 3, 1991, and the fact that on August 19, 1991, as a consequence of the USSR coup, the constitutional structures of USSR state power and USSR government have ceased to exist, and Article 9 of the Declaration "On the Renewal of the Independence of the Republic of Latvia" adopted on May 4, 1990, on the restoration of the Republic of Latvia independent statehood by way of negotiations cannot be implomented, resolves: to declare Latvia as an independent, democratic republic, in which the sovereign power of the Latvian state belongs to the people of Latvia and its sovereign state status is determined by the Republic of Latvia's Constitution of February 15, 1922.

According with above mentioned Latvia has never admit and recognize the Soviet power in the Republic of Latvia and the Union with the Soviet Socialist Republics. Therefore we can only speak about independent Latvia after August 21, 1991 as the State successor of independent Latvia before June17, 1940.

2. By the internal law of the successor State
For example, October 15, 1991 Republic of Latvia Supreme Council Resolution "On the Renewal of Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalization",
October 28, 1992 Resolution "On the Conditions for the Recognition of Republic of Latvia Citizens' Rights to Persons Who Resided within Latvia before August 1, 1914, and Their Descendants",
July 22, 1994 Law on Citizenship.

3. Article 2 of the Law on Citizenship determines: "Citizens of Latvia are:

1) persons who were citizens of Latvia on June 17, 1940 and their descendants who have registered according to the procedures established by law, except persons who have become citizens (subjects) of another state after May 4, 1990;

2) persons who have obtained the citizenship of Latvia through naturalization or another manner according to the procedures established by law;

3) children found within the territory of Latvia whose parents are not known;

4) children with no parents who live in an orphanage or boarding school in Latvia;

5) children both of whose parents were citizens of Latvia on the day of birth of such children, regardless of the place of birth of such children".

And the article 10 of the same law determines: "A person can be granted the citizenship of Latvia through naturalization upon his/her request".

Speaking about the cases of exclusion of certain categories of groups might be mentioned the article 11 of the law on Citizenship: "The citizenship of Latvia shall not be granted to persons who:

1) through the use of anti-constitutional methods have turned against Republic of Latvia's independence, its democratic parliamentary state system or the existing state authority in Latvia, if such has been established by a court decree;

2) after May 4, 1990, have propagated fascist, chauvinist, national-socialist, communist or other totalitarian ideas or have stirred up ethnic or racial hated or discord, if such has been established by a court decree;

3) are officials of institutions of a foreign state authority, foreign state administrative body or foreign state law enforcement body;

4) serve in the armed forces, internal forces, security service or the police (militia) of a foreign state;

5) after June 17, 1940, have chosen the Republic of Latvia as their place of residence directly after demobilization from the USSR (Russian) Armed Forces or USSR (Russian) Interior Armed Forces and who, on the day of their conscription or enlistment, were not permanently residing in Latvia. This restriction shall not apply to persons listed in Article 13 - Paragraph 1, Subparagraphs 1, 6 and 7 and Article 13 - Paragraph 5 of this Law;

6) have been employees, informants, agents or have been in charge of conspiratory premises of the former USSR (LSSR) KGB or other foreign security service, intelligence service or other special service, if such a fact has been established according to the procedures established by law;

7) have been convicted in Latvia or another state to imprisonment for a term exceeding one year for an intentional crime which was considered as a crime in Latvia at the moment this Law comes into force; or

8) after January 13, 1991, have acted against the Republic of Latvia through participation in the CPSU (LCP), Working Peoples' International Front of the Latvian SSR, United Council of Labour Collectives, Organization of War and Labour Veterans, or the All-Latvia Salvation Committee and its regional committees.

(2) If criminal proceedings have been initiated against a person who has submitted an application for naturalization, then his/her application shall not be reviewed before a final court decree has been issued".

4. See No.1 (Law on Citizenship, Article 2).

5. Article 9 of Law on Citizenship determines:

"(1) The granting of Latvia citizenship to a person shall not lead to dual citizenship.

(2) If a citizen of Latvia simultaneously can be considered a citizen (subject) of a foreign country in accordance with the laws of

that country, then the citizen shall be considered solely a citizen of Latvia in his/her legal relations with the Republic of Latvia".

However there is also a specific reference in transitional provisions of the Law on Citizenship and it is:
"Citizens of Latvia and their descendants who, during the period from June 17, 1940 until May 4, 1990, in order to escape the terror of the USSR and German occupational regime, have left Latvia as refugees, have been deported or due to the aforementioned reasons have not been able to return to Latvia, and who have become naturalized during this time in a foreign state shall retain their right to register in the Residents' Registry as Latvia citizens, and after the registration shall enjoy the full scope of citizens' rights and fulfill citizens' obligations, if registered by July 1, 1995. If these persons register after July 1, 1995, they must renounce the citizenship of the foreign state".

6. See the appendix No.1 (Law on Citizenship, articles 12, 13 and 14).

7. It seems most acceptable that these persons have the status of permanent resident.

8. Obviously the first case, because of the specific situation with number of foreign persons and stateless persons in Latvia.

9. See the appendix No.1 (Law on Citizenship, articles 12, 13 and 14).

10. According with the Law on Citizenship, the rights and obligations of Latvia citizens are equal regardless of the manner in which citizenship was obtained. If there is a case of renunciation of citizenship or deprivation of the citizenship certainly the subject of this case loses some of rights and duties which are guaranted only for citizens.
There is also ready for the third reading in parliament (Saeima) the draft "Law on the Status of those Former USSR Citizens Who are not Citizens of Latvia or any other State" (see the appendix No.2).

Réponse du Liechtenstein

Liechtenstein

Réponses au Questionnaire sur les incidences de la succession d'etats sur la nationalité

question 1:

Le Comté de Vaduz qui prit naissance en 1342 et la Seigneurie de Schellenberg (Moyen Age) furent réunis et transformés en 1719 au rang de principauté (Liechtenstein) du Saint Empire romain germanique. Le Liechtenstein devint,. à la fin de cet Empire en 1806, un Etat indépendant. Dans cette qualité d'Etat souverain le Liechtenstein fut membre de la Confédération du Rhin (1806 - 1813) et de la Confédération germanique (1815 - 1866), mais il n'a jamais dans son histoire, depuis 1806, connu un cas de succession d'Etats.

questions 2 - 6:

Ne se posent pas.

question 7:

J'hésite à formuler des suggestions.

question 8:

L'affaire Nottebohm était une affaire du Liechtenstein contre le Guatemala devant la Cour Internationale de Justice. L'arrêt de cette Cour, rendu en 1955, déclarait irrecevable la requête du Liechtenstein contre le Guatemala. Selon la Cour, le Guatemala qui avait confisqué les biens de M. Nottebohm avait, sous l'angle du droit international, le droit à ne pas reconnaître la nationalité liechtensteinoise pour motif de manque d'effectivité d'un lien entre M. Nottebohm, naturalisé au Liechtenstein en 1939, et ce dernier pays.

En effet, la loi liechtensteinoise concernant l'acquisition et la perte de la nationalité avait permis d'acquérir, dans des circonstances exceptionnelles, la nationalité liechtensteinoise sans avoir eu domicile préalable au Liechtenstein. Ainsi, M. Nottebohm avait acquis en 1939 la nationalité liechtensteinoise et avait renoncé à celle de l'Allemagne. Depuis l'arrêt de la Cour Internationale susmentionnée (1955) il existe une sorte de scission entre le domaine de l'état de régler la nationalité de ses ressortisants et la reconnaissance internationale de protection diplomatique.

question 9:

En 1960 le législateur liechtensteinois a tenu compte de l'arrêt Nottebohm et a éliminé la possibilité (exceptionnelle) d'acquérir la nationalité sans avoir eu domicile préalable au Liechtenstein. Aujourd'hui la législation du Liechtenstein se présente sommairement comme suit (voir Loi concernant l'acquisition et la perte de la nationalité [liechtensteinoise] du 2 novembre 1960 [LGBl. 1960/ 23] avec de différents amendements jusqu'à 1995):

a) ius sanguinis pour l'enfant d'un père liechtensteinois (irrespectif son domicile au Liechtenstein ou à l'étranger). Ius sanguinis de la mère pour un enfant né hors mariage (§ 4 de la Loi). En cas d'adoption l'enfant acquiert la nationalité du père adoptif.

   S'il s'agit d'un enfant de nationalité entrangère d'une mère liechtensteinoise (normalement en cas de mariage d'une ressortissante liechtensteinoise avec un époux de nationalité étrangère) l'enfant peut acquérir la nationalité liechtensteinoise après 15 ans de domicile, si l'enfant renonce à sa nationalité étrangère (§ 5a de la Loi).

   Un projet de loi prévoit l'octroi automatique à tout enfant d'une mère de nationalité liechtensteinoise, comme c'est déjà le cas pour un enfant d'un père liechtensteinois (égalité).

b) En cas de mariage d'un ressortissant liechtensteinois avec une femme de nationalité étrangère la nationalité liechtensteinoise est accordée à l'épouse dans le cas ou elle possède son domicile (depuis un certain temps) au Liechtenstein et renonce en même temps à sa nationalité étrangère (§ 5 de la Loi).

   Un projet de loi prévoit d'accorder les mêmes droits aux époux étrangers mariés avec une ressortissante liechtensteinoise (égalité).

c) En cas normal il suffit, pour l'acquisition de la nationalité liechtensteinoise, d'avoir eu domicile au Liechtenstein d'au moins 5 ans; mais il faut l'admission préalable par une commune (référendum), ce qui est une exigence assez élevée.

question 10:

Reply by Lithuania to the questionnaire on the consequences of State succession for nationality

1. In your country's recent or relatively recent history (for example, since the first World War), has there been one or more cases of State succession and, if so, what type or types of succession occurred (annexation, union of States, separation so as to form a new State)?

1. After World War I and the dissolution of the tsarist Rússian Empire, on 16 February 1918 the State Council of Lithuania proclaimed the Act on the Restoration of the Independent State of Lithuania. On 9 January 1919 Temporary Law on Lithuanian citizenship was adopted. By this Law the acquisition of the citizenship was automatically conferred upon all permanent inhabitants and their descendants on the territory of Lihuania. But these rules were not applied to persons who served as officials in the former Russian Empire.

From 15 June 1940 to 11 March 1990 Lithuania was occupied, annexed and incorporated into another state - the USSR. The last case of succession of the Republic of Lithuania occurred in 1990 when freely elected the Supreme Council of the Republic of Lithuania by 11 March 1990 Act restored the independent State of Lithuania. On the same day was confirmed the Provisional Basic Law of the Republic of Lithuania.

2. In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor State governed:

a) by an international agreement, whether bilateral or multilateral?
b) by the internal law of the successor State?
c) jointly by both these procedures?
d) in another manner (pursuant to a decision of an international organisation, or to an international judgment, or to decisions of domestic courts, etc.)?[1]

2. The citizenship of the inhabitants of the territory which passed under the sovereignty of Lithuania, was governed by the internal law of Lithuania. There were Article 13 of "The Provisional Basic Law of the

Republic of Lithuania" which declared: „The attributes of Lihuanian citizenship, conditions and procedures for receiving and losing it shall be defined by the Law on Lithuanian Citizenship" and "Law on Citizenship" adopted in 1989. Now these questions in Lithuania are regulated by:

1) Articles 12 and 13 of the Constitution of the Republic of Lithuania (1992);

2) Law on Citizenship (5 December 1991);

3) Law on legal status of foreigners (4 September 1991).

3. Which solutions were adopted in these cases:

a) was the acquisition of the nationality of the successor State automatically (ipso facto) conferred upon all inhabitants of the new territory or only upon certain categories of such inhabitants?

b) In the event that nationality was automatically or massively conferred by the successor State, were there nonetheless cases of exclusion of certain categories of groups or persons? If so, which categories?

c) Was the right to choose one's nationality recognised in respect of all inhabitants of the new territory or only in respect of certain categories among them? In the latter case, what were the categories, and by what legal procedure was the choice exercised (for example, individual choice, referendum)? Similarly, what were the consequences for persons who did not elect for nationality of the successor State?

3. The right to choose the citizenship was recognised for all inhabitants of Lithuania during two years following the entry into force of Law on Citizenship. But for certain categories of inhabitants there were provided some procedural peculiarities. First, it was declared that the citizens of Lithuania shall be the persons who were citizens of the Republic of Lithuania, children and grandchildren of such persons, as well as other persons who were permanent residents on the current territory of Lithuania prior to 15 July 1940, and their children and grandchildren who now are or have been permanent residents on the territory of Lithuania. The second group of the possibl citizens of Lithuania shall be persons who have a permanent place of residence in Lithuania provided they were born on the territory of Lithuania, or have provided evidence that at least one of their parents or grandparents was born on said territory. But they must prove that they are not citizens of another state.

The third group of possible citizens of Lithuania are other persons

who, up to and including the date of entry into force of this Law, have been permanent residents on the territory of the Republic of Lithuania and have here a permanent place of employment or another constant legal source of support; such persons shall freely choose their citizenship during two years following the entry into force of this Law.

Persons, who are 18 years of age and over, and who within two years from the date of entry into force of this Law have not applied for the issuance of a passport for a citizen of Lithuania, shall be considered as having not accepted the citizenship of Lithuania. All of them are treated as foreigners, and later the Law on legal status of foreigners has been applied to them.

The Law on Citizenship (1989) has provided the folloving ways of acquiring citizenship:

(1) by birth;

(2) by accepting the citizenship of Lithuania (by naturalization);

(3) by voicing one's option or on other grounds, as provided by international treaties with Lithuania;

(4) other grounds provided by this Law.

In Article 15 there are determined the conditions for obtaining citizenship by naturalization: "A person, upon his or her request, may be granted citizenship of Lithuania, provided he or she agrees to take the oath to the Republic of Lithuania and meets the following conditions of citizenship:

(1) know the Lithuanian language;

(2) for the last ten years has had a permanent place of residence on the territory of Lithuania;

(3) has a permanent place of employment or a constant legal source of support; and

(4) knows the basic provisions of the Constitution of Lithuania.

Citizenship of Lithuania shall not be granted to:

(1) persons who have committed crimes against humanity or acts of genocide;

(2) persons who have been sentenced to imprisonment for a serious and deliberate crime; and

(3) persons who are alcoholics or drug addicts."

4. Upon what criteria were the solutions adopted in the above cases:

a) jus sanguinis (origin);
b) jus soli (domicile or residence);
c) both of these criteria;
d) resort to other criteria?

4. As it has been mentioned (in the answer to Question 3), the criteria *jus sanguinis* and *jus soli* wereapplyed. A supplementary answer is in Articles 10 and 34 of the Law on Citizenship (1989):

"Article 10. Ways of Acquiring Citizenship of Lithuania

Citizenship of Lithuania shall be acquired:

(1) by birth;

(2) by accepting the citizenship of Lithuania (by naturalization);

(3) by voicing one's option or on other grounds, as provided by international treaties with Lithuania; and

(4) on other grounds provided by this Law"

"Article 34. Application of International Agreements on Questions of Citizenship

If an international agreement to which Lithuania is a party prescribes rules other than those established by this Law, the provisions of the international agreement shall prevail."

5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?

5. Measures to limit the cases of double citizenship were provided for in the Provisional Basic Law and the Law on Citizenship. Article 13 (second part) of the Provisional Basic Law determnines: "As a rule, a citizen of Lithuania may not be concurrently a citizen of another state".

According to paragraph 2 of Article 1 of the Law on Citizenship claimants to Lithuanian citizenship have to prove that they are not citizens of another state. In Article 7 of the above mentioned Law was established that a person possessing the citizenship of another state may be granted citizenship of Lithuania only by way of exception by the Presidium of the Supreme Council of Lithuania.

6. How was the question of the nationality of legal persons regulated?

6. The question of the nationality of legal persons is not regulated in laws on citizenship. General principles of organization of legal entities are provided for in the Civil Code of the Republic of Lithuania.

7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin? If not, do you consider that such a person should at least be accorded the status of permanent resident?

7. A person of an untainted civic record, who has resided for a significant period on a territory of the State succession should be afforded the right to obtain citizenship of this State on the legal conditions prescribed by the law. In Lithuania this way of acquiring citizenship is called naturalization. Its conditions are provided for in Article 15 of the Law on Citizenship (see answer to Question 3).

8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognise that that the matter is circumscribed by rules of international law? In the latter case, which rules?

8. The choice of criteria for acquiring citizenship belongs to the competence of the State - perhaps every State has its own internal laws regulating questions of nationality. But many questions of the citizenship are regulated in a similar manner in many countries, thus they became like international rules. Moreover, these internal laws should respect the international Conventions for the Protection of Human Rights and Fundamental Freedoms. As it has been mentioned above, in the Law on Citizenship is established that if an international agreement to which Lithuania is a party prescribes rules other than those established by this Law, the provisions of the international agreement shall prevail.

9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality?

9. The criteria of an effective link between a person and the territory of Lithuania is one of the most significant conditions for granting the citizenship of Lithuania (see answer to Questions 3 and 4).

10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

10. According to the Law on Citizenship, on the territory of Lithuania, foreign nationals and persons without citizenship must respect and observe the Constitution and laws of Lithuania. Rules applicable to foreigners shall be applied to foreign nationals and persons without citizenship residing or sojourning on the territory of Lithuania, and such persons shall be guaranteed all rights and freedoms established by law, including the right to apply to the courts and other state bodies for the protection of the said rights (Article 9).

Réponse du Luxembourg

ad 1. Lors du Congrès de Vienne (1815) le Grand-Duché de Luxembourg a été donné au Roi des Pays-Bas, Guillaume 1er, en tant que possession personnelle. Le régime juridique à l'époque est donc celui de l'union personnelle. Le Roi des Pays-Bas est en même temps Grand-Duc de Luxembourg. Pour le reste il y a séparation politique et administrative entre les deux Etats.

- Par le traité de Londres de 1839 le Luxembourg subit un partage: le Grand-Duché de Luxembourg qui restera la propriété personnelle du Grand-Duc et deviendra un état indépendant avec la ville de Luxembourg comme capitale et le Luxembourg belge qui formera une province du Royaume de Belgique.

- Suite à l'invasion des troupes allemandes le 2 août 1914 le Luxembourg vit sous un régime d'occupation, mais le Gouvernement allemand ne touche pas à ses institutions. Tous les rouages de l'Etat (Gouvernement, Parlement, tribunaux et administrations) subsistent et fonctionnent sous la surveillance de l'occupant. Ce n'est qu'après la retraite allemande en 1918 que certains courants annexionnistes vers la Belgique ou la France se manifestent. En fin de compte et à la suite d'un référendum sur une union économique avec la Belgique ou la France, la majorité des Luxembourgeois préfèrent le maintien de l'indépendance.

- Lors de la 2e guerre mondiale l'occupant a entrepris en automne 1940 une série d'ordonnances procédant à la destruction de l'Etat luxembourgeois: les partis politiques sont dissous, la Chambre des députés et le Conseil d'Etat sont supprimés. Ces ordonnances entendent imposer la mise au pas (Gleichschaltung), le Luxembourg ne devant rester qu'une partie (du Gau Moselland) de l'Allemagne. Le Luxembourg était ainsi passé dès le 29 juillet 1940 sous administration allemande directe.

ad 2. En 1914 il n'a pas été apporté de changements aux institutions de l'Etat luxembourgeois. La question de la nationalité des Luxembourgeois n'a pas été affectée par l'occupation allemande.

En 1940 des efforts d'assimilation forcée du Luxembourg sont entrepris par l'occupant nazi. L'occupant introduit la législation allemande et implicitement l'occupant considère la nationalité luxembourgeoise comme abolie et remplacée par la nationalité allemande. C'est d'ailleurs lors d'un recensement de la population en 1941 que l'occupant pose la question de la nationalité en précisant dans les notes explicatives que l'appartenance à une tribu (luxembourgeoise) n'aurait rien à voir avec la nationalité.

Les Luxembourgeois n'ont cependant jamais accepté la nationalité allemande et s'apprêtaient à répondre lors du référendum à la question de la nationalité par "luxembourgeoise" avant que le référendum ne fut annulé en dernière minute.

ad 3. La question ne se posait que sous le régime d'occupation nazi lors de la 2e guerre mondiale (1940-1945).

a) L'acquisition de la nationalité allemande était considérée par l'occupant comme automatique pour tous les habitants du territoire du Grand-Duché qui avaient auparavant la nationalité luxembourgeoise.

b) Des cas d'exclusion existaient, notamment pour les Juifs alors que la législation allemande contre les Juifs étaient en vigueur au Luxembourg. Par ailleurs les habitants du Grand-Duché ayant une autre nationalité que la nationalité luxembourgeoise gardaient leur nationalité d'origine.

c) Le droit d'option n'existait pas réellement. L'occupant voulait simplement obtenir par voie de référendum une profession de foi en faveur de l'Allemagne. Ce référendum n'était cependant organisé qu'en octobre 1941, soit une année après l'entrée en vigueur de la législation allemande. Comme il a été précisé sub 2. les questions du référendum étaient formulées de telle sorte qu'il n'y avait en fait pas de choix.

ad 4. Les solutions adoptées ont joué tant sur le critère du jus sanguinis que sur celui du jus soli.

ad 5. Des mesures spéciales pour éviter des cas de double nationalité ou d'apatride n'ont pas été prises. Par le fait que la nationalité luxembourgeoise n'a pas été reconnue comme telle par l'occupant nazi, le problème de la double nationalité allemande-luxembourgeoise ne se posait pas.

En ce qui concerne les autres conflits de nationalités, l'occupant acceptait expressément la double nationalité. Les deux nationalités étaient d'ailleurs à indiquer sur la fiche de renseignement du recensement de la population d'octobre 1941. Pour régler certains effets du conflit de nationalité l'on se référait aux solutions retenues à la Convention de La Haye du 12 avril 1930 concernant certaines questions relatives aux conflits des lois sur la nationalité.

ad 6. Il n'existait pas de législation spéciale pour régler la question de la nationalité des personnes morales. Cela étant, l'on continuait à appliquer le principe établi par la loi luxembourgeoise du 10 août 1915 sur les sociétés commerciales selon laquelle toute société dont le principal établissement était au Luxembourg était soumise à la loi luxembourgeoise, celle-ci étant simplement remplacée par la loi allemande.

ad 7. Oui. C'est d'ailleurs la solution retenue par la loi luxembourgeoise du 11 décembre 1986 sur la nationalité luxembourgeoise. Selon cette loi, peut obtenir la nationalité luxembourgeoise par voie de naturalisation celui qui a atteint l'âge de 18 ans et qui a résidé dans le Grand-Duché pendant 10 ans à condition que pendant les cinq dernières années cette résidence n'ait pas subi d'interruption.

L'acquisition de la nationalité luxembourgeoise ne se fait pas automatiquement. Aussi la naturalisation sera refusée à l'étranger qui ne justifie pas d'une assimilation suffisante, qui ne prouve pas avoir perdu sa nationalité d'origine et qui a fait l'objet de condamnations pénales d'une certaine gravité,soit dans son pays d'origine soit au Luxembourg.

ad 8. Les autorités luxembourgeoises admettent que le choix des critères d'attribution de la nationalité soient fixés par des règles de droit international. Il faudra toutefois que le Luxembourg ait accepté ces règles de droit international moyennant adhésion aux conventions qui les contiennent.

Le Luxembourg a ainsi notamment adhéré à la Convention du 26 février 1957 sur la nationalité de la femme mariée, à la Convention du 6 mai 1963 sur la réduction des cas de pluralité de nationalités, sur les obligations militaires en cas de pluralité de nationalités ainsi qu'au Protocole additionnel à cette Convention signé à Strasbourg le 24 novembre 1977.

Le droit positif luxembourgeois relatif à la nationalité applique d'ailleurs expressément les critères d'attribution de nationalité généralement contenus dans les principes généraux du droit international, le jus soli et le jus sanguinis.

Les *modalités pratiques* de l'attribution de la nationalité luxembourgeoise sont toutefois exclusivement régies par la loi luxembourgeoise sur la nationalité.

ad 9. L'effectivité du lieu de rattachement est pris en compte dans les différents critères qui doivent être remplis par le requérant à la nationalité luxembourgeoise par voie de naturalisation ou par voie d'option.

Pour l'option, soit l'un des auteurs doit avoir ou avoir eu la nationalité luxembourgeoise, soit l'enfant doit avoir été né dans le pays.

Pour la naturalisation c'est le critère de résidence sur le territoire luxembourgeois pendant un certain temps (10 ans, dans certains cas 5 ans) qui est déterminant pour obtenir la nationalité luxembourgeoise.

ad 10. L'octroi de la nationalité luxembourgeoise entraîne évidemment les droits liés à la nationalité (accès à certaines fonctions publiques et militaires, droit de vote actif et passif aux élections législatives ou sous certianes réserves aux élections communales, la protection diplomatique luxembourgeoise). Il est par ailleurs à noter que certaines garanties constitutionnelles (droit de réunion, d'association, d'égalité devant la loi ....) sont selon la Constitution réservées aux Luxembourgeois. Il est toutefois de principe et jamais contesté que ces droits élémentaires garantis par ailleurs par des conventions internationales sont indistinctement appliqués à tout habitant du Grand-Duché.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW.

QUESTIONNAIRE ON THE COMPETENCES OF STATE SUCCESSION FOR NATIONALITY.

MALTA.

1. The Malta Independence Act 1964, is what legally gave independence to Malta, and was enacted by the Queen on the 31st July, 1964. The Malta Independence Order 1964, was the instrument which actually incoporated the Independence Constitution, and was made by the Queen on the 2nd September, 1964. Both came into operation on the 21st September 1964, whereby Malta acquired independence thereby constituting the transfer of sovereignty.

Prior to such a date Malta had a degree of autonomy and had enjoyed intermittently a limited form of self - government. During this period Maltese nationals were considered to be British subjects in possession of a British passport. Following independence, the new state of Malta came into being and the status of Maltese citizenship was introduced.

2. The nationality of the inhabitants of Malta was specifically dealt with by the Independence Constitution.

3. Maltese citizenship was in principle conferred

upon all inhabitants with the eception of certain categories indicated below.

It was conferred *ipso facto* upon certain categories:-

(i) Persons who prior to the 21st September, 1964 (the appointed day) were born in Malta and who were at the time citizens of the United Kingdom and Colonies, and one of whose parents was born in Malta [1].

(ii) Persons born outside Malta and being a citizen of the United Kingdom and Colonies, whose father became a citizen of Malta on the appointed day, also became citizens of Malta (citizenship by descent) [2].

It should be noted that persons adopted by Maltese citizens were also granted Maltese citizenship. Such a right was revoked with effect from 1st January 1977. However, Constitutional amendments in 1989 provided that persons adopted after the 1st August, 1989 by Maltese citizens, acquired Maltese citizenship on condition that on the effective date of his/her adoption the adoptee was not ten years old (Artucke 31[3][b] of the Constitution). Where such a condition was not satisfied, an application is to be submitted in terms of the Maltese Citizenship Act (Act XXX of 1965) whereby the adoptee would seek naturalization [3].

Other categories of inhabitants were afforded the right to apply for registration as Maltese citizens:-

(i) Persons who were born in Malta prior to the 21st September, 1964 and were citizens of the United Kingdom and Colonies, but who did not have one of their parents born in Malta, could be registered as a Maltese citizen upon submitting an application within two years from the 21st September, 1964. Persons under the age of eighteen could not personally submit such an application, which application had to be made by persons having authority according to law over such individuals.

(ii) Persons who were naturalized in Malta as British subjects (i.e. citizens of the United Kingdom and Colonies) under the British Nationality Act, 1948, were given the right to apply within two years from the appointed day for registration as Maltese citizens (Article 25 of the Constitution).

(iii) Persons who prior to the 21st September, 1964 were:-

(a) citizens of the Commonwealth or citizens of the Republic of Ireland; and

(b) Descended in the male line from a person born in Malta;

could apply for Maltese citizenship subject to the condition that they had been ordinarily resident in

Malta for the previous five (5) years. An application for Maltese citizenship under these circumstances was to be submitted within two (2) years from the 21st September, 1964 [4].

It is interesting to note that the Constitution also made provision for married women who did not themselves satisfy the above-mentioned conditions [5].

4. The solutions were based upon *jus sanguinis* and *jus soli*.

5. The issue concerning dual citizenship was regulated by Section 28 of the Constitution as subsequently amended. According to the relevant provision, the concept of dual citizenship was at the time extraneous to Maltese law. Thus, a person who on the 21st September, 1964 acquired Maltese citizenship (example:- born outside Malta, citizen of the United Kingdom and Colonies and whose father became on the appointed day a citizen of Malta), ceased to be a Maltese citizen unless he renounced within two years (subsequently amended to three years in terms of Act XXXVII of 1966) from the appointed day, the citizenship of that other country [6]. Similarly, if a married woman acquired Maltese citizenship by registration, and immediately after the day on which she becomes a citizen of Malta aslo

a citizen of some other country, she would cease to be a citizen of Malta on the expiration of six (6) months from acquiring citizenship, unless she renounced to her citizenship of that other country.

However, following a Constitutional amendment introduced in 1989, an exception was made whereby Maltese emigrants may retain both their Maltese citizenship, as well as the citizenship of their adoptive country, provided that the laws of that country recognize such a possibility. Otherwise, the emigrant will cease to be a citizen of Malta as soon as he/she acquires the citizenship of the adoptive country [7].

Furthermore, the Maltese Citizenship Act (Act XXX of 1965) made provision for the granting of Maltese citizenship to all those persons who were always stateless and who were born in Malta, or whose father was by virtue of descent a citizen of Malta at the time of their birth (Section 3[6]).

6. The matter concerning the nationality of legal persons was not regulated in any specific manner. However, it is interesting to note that at the time the concept of limited liability companies had only been recently introduced in terms of the Commercial Partnerships Ordinance (Ordinance X of 1962).

Distinction is however made between limited liability companies with a shareholding exclusively

held by Maltese citizens and other companies in which a foreign shareholding is held. In the latter case investment is not automatic but subject to certain restricitions and conditions.

7. I do not see any reason why persons of untainted civic record who have resided for a significant period on a territory the subject of State succession, should not have the opportunity to be naturalized as citizens of that State, subject to certain conditions. For example, that such applicant gives proof that he has renounced to any other citizenship he/she may possess. The fact that such an individual would have resided in the territory concerned for a specified period, would give rise to an effective link between such person and territory.

This is in principle possible under existing legislation in Malta (*see infra.*). It is recognized that in this regard the State could restrict applications on the basis of economic and social considerations. However, the Maltese Constitution protects any form of discrimination on the grounds of race, place of origin, sex, colour or creed (Article 44).

8. Whilst adhering to rules of international law where applicable, it is recognized under

international law that most of the rules as to nationality are the sole concern of municipal law. It has long been conceded that it is the prerogative of each State to determine for itself, and according to its own constitution and laws what classes of persons shall be entitled to its citizenship. Obviously, the measures adopted by the local authorities are to be consistent with international Conventions, international custom, and the principles of law generally recognized with regard to nationality. For example the marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of the husband.

9. In terms of the current Maltese law, persons born in Malta do not automatically acquire Maltese citizenship unless at the time of birth either parent is a citizen of Malta, or was born in Malta, emigrated and is now the citizen of another country. Persons born outside Malta also have a right to Maltese citizenship if at the date of such person's birth his father or mother is a Maltese citizen, themselves born in Malta or who acquired Maltese citizenship by virtue of registration or naturalization.

According to the Maltese Citizenship Act (Section 3[1]), a person who is not a Maltese

citizen or who is stateless may be naturalized as a Maltese citizen upon submitting the relevant application if he/she satisfies the following conditions:-

'(a) that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and

(b) that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years; and

(c) that he has an adequate knowledge of the Maltese or the English language; and

(d) that he is of good character; and

(e) that he would be a suitable citizen of Malta'.

It is also pertinent to note that Section 3(4) of the above-mentioned law, envisages naturalization as a Maltese citizen of persons who can prove descent from a person born in Malta and who are citizens of a country the access to which is, in their case, restricted. The conditions to be satisfied in such an eventuality are that:-

(i) Applicant is a citizen of a country other than the country in which he resides; and

(ii) His access to the country of which he is a citizen is restricted; and

(iii) Applicant must prove descent from a person born in Malta.

Where citizenship is accorded on the basis of descent, the element of residence in Malta is

irrelevant.

10. Maltese law does not directly deal with consequences for the rights of persons acquired under the rules and regulations to which a person was formerly subject, upon the granting or withdrawal of citizenship.

Local law deals with the deprivation of Maltese citizenship vis-a-vis persons who have been registered or naturalized as such, where it appears for example that the registration or certificate of naturalization was obtained by means of, *'fraud, false representation or the concealment of any material fact'* (Section 9[1] of the Maltese Citizenship Act - 1965). Other reasons for deprivation of Maltese citizenship are specified by law, and dependant on an assessment made by the relevant authorities as to whether such deprivation is not conducive to the public good [8].

Apart from those instances where citizenship is *ipso facto* granted by law, naturalization depends on the exercise of administrative discretion, in the exercise of which consideration is given to the effects that the grant or withdrawal of citizenship would have on the particular individual.

REPONSES AUX QUESTIONS

DU QUESTIONNAIRE DE LA COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

1. Pour répondre à cette question, il faut faire une courte excursion historique.

Au XIVème siècle, on a créé sur le territoire des ancêtres des roumains les geto-dacs, l'Etat de la Moldova. En 1775, l'Empire de Habsbourg s'est emparé de force de la partie du nord de l'Etat de la Moldova, la Boucovina. Suite à la guerre russo-turque entre les années 1806-1812, et des longues négociations diplomatiques, par le traité de paix de Bucarest (1812), la Russie démembre l'Etat de la Moldova, en annexant le territoire entre le Prout et le Dniestr et en lui attribuant artificiellement le nom de la Bessarabie.

Comme résultat de l'écroulement de l'Empire Russe et de l'Empire Austro-Hongrois, en 1917, la Bessarabie et la Boucovina gagnent leur droit à l'autodétermination. Le 2 décembre 1917, on a créé la République Démocratique Moldave. Le 27 mars 1918, le Conseil de l'Etat (le Parlement) a décidé par vote l'union de la Bessarabie avec la Roumanie.

L'engagement de l'Union Soviétique, à la veille de la deuxième guerre mondiale, dans des transactions étroites et réciproquement avantageuses avec l'Allemagne Hitlérienne a eu comme résultat l'accord mutuel de partager les sphères d'influence en Europe. Le point n° 3 du Protocole additionnel secret au Traité soviéto-allemand de non-agression, signé le 23 août 1939, relevait l'intérêt de l'Union Soviétique vis-à-vis de la Bessarabie.

Le 28 juin 1940, l'URSS a occupé par force armée la Bessarabie et la Boucovina de Nord. Le 2 août 1940, la République Soviétique Socialiste Moldave a été créée. En même temps, arbitrairement, la Boucovina de Nord et les départements Hotin, Ismail, Cetatea Albă ont passé sous la juridiction de la R.S.S. Ukrainienne.

La fin des années 80 s'est caractérisée par la renaissance du mouvement démocratique de libération nationale de la population de la République de Moldova. Le 23 juin 1990, le Parlement a adopté la Déclaration de la Souveraineté de la République de Moldova, et le 27 août 1991, la déclaration de l'indépendance de la République de la Moldova.

Donc, la République de Moldova est apparue, en tant qu'Etat souverain et indépendant dans les frontières actuelles, comme résultat du mouvement de libération nationale et du démembrement de l'Empire Soviétique. C'est bien le cas de la Séparation Légitime et pas arbitraire dans le but de la création d'un nouvel Etat.

2. Le problème de la citoyenneté des habitants du territoire de la République de Moldova a été reflété dans la Loi concernant la citoyenneté de la République de Moldova du 5 juin 1991 avec les modifications ultérieures du 26.05.1993, 8.06.93, 10.11.94. Le problème a été solutionné, en effet, par le droit interne de l'Etat en conformité avec les normes et les principes reconnus unanimement du droit international.

3. La citoyenneté de la République de Moldova a été pratiquement attribuée automatiquement à tous les habitants. Dans le but d'argumenter ce qui a été dit ci-dessus, nous allons nous rapporter à l'article 2 de la Loi concernant la citoyenneté de la République de Moldova. Conformément à l'article 2 de la Loi sus-dite, les citoyens de la République de Moldova sont:

- les personnes qui, avant le 28 juin 1940 ont habité sur le territoire de la Bessarabie, du Nord de la Boucovina, de la région Herta et la R.A.S.S.M. également que leurs descendants, si à la date de l'adoption de la Loi concernant la citoyenneté, elles étaient domiciliées sur le territoire de la République de Moldova;

- les personnes qui sont nées sur le territoire de la République de Moldova, ou dans le cas ou au moins un des parents, grand-parents, est né sur le territoire sus-dit et s'ils ne sont pas les citoyens d'un autre Etat;

- les personnes mariées avant le 23 juin 1990 avec les citoyens de la République de Moldova ou avec les descendants de ceux-ci et les personnes qui sont revenues dans le pays à l'appel du Président de la République de Moldova, ou à l'appel du Gouvernement de la République;

- d'autres personnes qui jusqu'au moment de l'adoption de la Déclaration de la Souveraineté de la République de Moldova, y compris la date de son adoption, le 23 juin 1990, ont vécu en permanence sur le territoire de la République de Moldova ayant une place permanente de travail ou autre source d'existence. Ces personnes devaient résoudre elles-mêmes le problème de la citoyenneté pendant une année.

Les propos exposés ci-dessus nous permettent de faire la conclusion que chaque habitant de notre pays a joui du droit d'être considéré citoyen. Plus que cela: "personne ne peut être privé arbitrairement de citoyenneté et non plus du droit de changer la citoyenneté" (voir le 2ème alinéa de l'art. 17 de la Constitution).

Quant aux conséquences juridiques pour les personnes qui n'ont pas opté pour la citoyenneté de la République de Moldova, il faut mentionner le fait que leur statut juridique est réglementé par la législation de l'Etat.

Conformément à l'alinéa (1) de l'art. 19 de la Constitution, "les citoyens étrangers et les apatrides ont les mêmes droits et les mêmes devoirs que les citoyens de la République de Moldova, sauf les exceptions prévues par la Loi". La Constitution de la République de Moldova impose le fait que dans la formation du statut juridique des apatrides, il faut se baser sur les standards internationaux respectifs. Cela en résulte des prévisions qui font partie de l'art. 4 de la Constitution. L'article susnommé prévoit:

> "(1) Les dispositions constitutionnelles concernant les droits et les libertés de l'homme sont interprétées et appliquées en concordance avec la Déclaration Universelle des Droits de l'Homme, également avec les pactes et les autres accords dont la République de Moldova est partie.
>
> (2) S'il existe des discordances entre les pactes et les traités concernant les droits fondamentaux de l'homme dont la République de Moldova est partie et ses Lois intérieures, ce sont les réglementations internationales qui ont la priorité".

4. L'analyse des prévisions que l'art. 2 de la Loi concernant la citoyenneté de la République de Moldova comporte (la réponse à la question précédente on la trouve dans les prévisions) nous permet de considérer qu'afin de solutionner le problème en cause, on a pris comme base les critères les plus divers possibles: l'origine, la résidence, la permanence, la présence d'une source d'existence, le rapatriement, l'accord sur la demande, etc.

5. Le point de départ dans la réglementation du problème de la citoyenneté était que les citoyens de la République de Moldova, en principe, ne peuvent pas être en même temps des citoyens d'un autre Etat. Il faut mentionner qu'il ne s'agit pas d'une restriction absolue. Tant la Constitution (voir l'alinéa (1) art. 18), que la Loi concernant la citoyenneté de la République de Moldova (voir l'art. 6) comportent la prévision conformément à laquelle "le citoyen de la République de Moldova ne peut être citoyen d'un autre Etat "que dans les cas prévus par les accords internationaux dont la République de Moldova est partie". Par conséquent, la législation admet des cas, ou un citoyen de la République de Moldova peut être en même temps citoyen d'un autre Etat.

Mais pour cela, il serait nécessaire de signer un accord entre la République de Moldova avec d'autres Etats, un accord qui comporterait des pareilles révisions. Pour le moment, la République de Moldova n'a signé un tel accord avec aucun Etat.

6. La Constitution de la République de Moldova proclame bien dans le 1er article le principe fondamental conformément auquel "la République de Moldova est un Etat de droit, démocratique, ou la dignité de l'homme, ses droits et ses libertés, le libre développement de la personnalité humaine, la vérité et le pluralisme politique constituent des valeurs suprêmes et sont garanties" (voir l'alinéa (3) de l'art. nommé).

L'art. 10 de la Constitution souligne le fait que:

(1) "L'Etat a comme fondement l'unité du peuple de la République de Moldova. La République de Moldova est la Patrie commune et indivisible de tous ses citoyens.

(2) L'Etat reconnaît et garantit le droit de tous les citoyens à la conservation, au développement et à l'expression de leur identité ethnique, culturelle, linguistique et religieuse".

En développant la thèse sus-dite, l'art. 16 de la Constitution proclame le fait que "tous les citoyens de la République de Moldova sont égaux devant la Loi et devant les autorités publiques, sans distinction de race, de nationalité, d'origine ethnique, langue, religion, sexe, opinion, appartenance politique, fortune ou d'ordre social" (voir l'alinéa (2) de l'art. indiqué).

Les mesures de protection prises par l'Etat dans ce but doivent correspondre aux principes d'égalité et de non-discrimination. Autrement dit, les mesures de protection vis-à-vis des personnes, vis-à-vis des associations des personnes d'autre origine ethnique ne peuvent pas dépasser la frontière d'égalité et de non-discrimination à l'égard des autres citoyens de la République de Moldova, puisque celles-ci pourraient constituer, de la sorte, des privilèges. La législation de la République de Moldova prévoit, par exemple, à l'égard des personnes d'autre origine ethnique, le droit:

- de la libre utilisation de leur langue maternelle tant dans le cadre particulier, que public;

- de la création et du maintien de leurs propres institutions, organisations ou associations d'éducation, culturelles et religieuses;

- du respect de la propre religion;

- de la stabilisation et du maintien, sans obstacles, des contacts ente elles, dans leur pays, ainsi qu'à l'étranger, avec les citoyens d'autres Etats qui ont en commun une origine ethnique ou nationale, un patrimoine culturel;

- de la diffusion et de l'échange des informations dans leur langue maternelle et l'accès à ces informations etc.

7. A toute personne qui prouve par son comportement et par son attitude l'attachement vis-à-vis de l'Etat et du peuple de la République de Moldova, on peut accorder, sur sa demande, la citoyenneté de la République de Moldova. La Loi concernant la citoyenneté de la République de Moldova établit les conditions à la présence desquelles on peut accorder la citoyenneté de la République de Moldova aux citoyens étrangers et aux personnes sans citoyenneté (voir l'art. 15 de la Loi). De la sorte, la Loi établit qu'on peut accorder la citoyenneté de la République de Moldova sur leur demande aux personnes qui ont déjà accomplis l'âge de 16 ans et

qui:

- malgré le fait qu'ils ne soient pas nés sur ce territoire, y domicilient en permanence au moins les dernières 10 années, ou dans le cas s'il est marié avec un citoyen de la République de Moldova au moins 3 ans;

- dispose des moyens légaux d'existence sur le territoire de la République de Moldova;

- connaît la langue officielle dans la mesure suffisante afin de se débrouiller dans la vie sociale de la République;

- connaît les bases de la Constitution de la République de Moldova;

- prouve par son comportement et par son attitude l'attachement vis-à-vis de l'Etat et du peuple de la République de Moldova;

- renonce à la citoyenneté de l'autre Etat.

La personne à laquelle on accorde la citoyenneté de la République de Moldova prête un serment vis-à-vis de la République de Moldova.

8. L'intégration dans le processus européen général, l'inscription parmi les Etats modernes sur le plan mondial a également une dimension humaine. Les droits de l'homme sont devenu une sorte de test, une épreuve pour un Etat quelconque afin qu'il soit considéré vraiment démocratique. Il n'y a aucun doute que le problème de la citoyenneté s'encadre dans l'ensemble des problèmes concernant les droits de l'homme.

La Constitution de la République de Moldova par l'article 4, dont le contenu a été exposé dans la réponse à la 3ème question, établit un principe extrêmement actuel, qui affirme dans une vision moderne la corrélation entre le droit international et le droit interne : la priorité des réglementations internationales. Une pareille priorité ne se répercute que sur les réglementations concernant les droits de l'homme et n'est pas applicable pour d'autres domaines.

En tenant compte de ce qu'on vient de dire ci-dessus, nous mentionnons le fait que dans le but de résoudre le problème de la citoyenneté de la République de Moldova, on s'est basé sur les standards internationaux.

Au plus, le contenu de l'article 4 de la Constitution de la République de Moldova met un impôt non seulement sur les réglementation internationales, mais aussi sur la disponibilité de notre Etat d'être réceptif, dans l'avenir, aux changement des standards internationaux en la matière.

9. Le lien entre une personne et le territoire de l'Etat est une des considérations pour accorder la citoyenneté de la République de Moldova. Ce critère est mis en évidence dans les articles 2 et 15 de la Loi sur la citoyenneté de la République de Moldova (voir paragraphe 3 ci-dessus).

10. Le contenu de la législation concernant la citoyenneté de la République de Moldova, l'avènement des principes de la priorité des réglementations internationales au niveau constitutionnel du domaine des droits de l'homme nous permettent de constater la tendance de notre Etat de ne pas être seulement un donateur, mais premièrement un protecteur de l'homme, de ses droits et de ses libertés. Du point de vue pratique, le cas de refus de la part de l'Etat d'accorder la citoyenneté aux personnes qui avant l'adoption de la Déclaration de la Souveraineté de la République de Moldova ont vécu en permanence sur le territoire de notre Etat, ont eu également une place permanente de travail ou une autre source légale d'existence, est exclu. D'autant plus que, le droit d'être citoyen de la République de Moldova s'est reflété sur un nombre considérable de personnes. On peut voir cela en suivant le contenu de l'art. 2 de la Loi concernant la Citoyenneté de la République de Moldova. Pour le moment, n'ont acquis la citoyenneté de la République de Moldova que les personnes, qui n'ont pas voulu l'acquérir. Evidemment, le fait d'influencer d'une manière ou d'une autre ces personnes est exclu. Elles jouissent de tous les droits et les libertés, ont les mêmes devoirs, excepté les droits et les devoirs qui, conformément aux standards internationaux, ne peuvent être reflétés que sur les citoyens de l'Etat.

The Netherlands and the Consequences of State Succession for Nationality

Replies to the Questionnaire
of the European Commission
for Democracy through Law

Question 1

In the Netherlands' more recent history, i.e. since the 'Belgian secession' (Belgium proclaimed its independance in 1830, recognized by the Netherlands in the London Treaties of 1839), the following cases of change of sovereignty over inhabited territory have to be mentioned:

(1) 1949: Post-war rectifications of the eastern boundary (= "annexation")

On the strength of an agreement signed on 22 March 1949 between the Allied authorities (U.S., U.K. and France), Belgium, Luxembourg and the Netherlands, some parcels of German territory were provisionally ceded to the Netherlands.

(2) 1949: Indonesian independence (= "separation")

By virtue of an agreement achieved at the so-called Round Table Conference, transfer of sovereignty by the Netherlands to Indonesia (the former colony of the Netherlands Indies, exclusive of Western New Guinea) took place at 27 December 1949. It is to be remarked that according to the Indonesian view the relevant date is 17 August 1945, the date of its unilateral proclamation of independence.

(3) 1960: Rectification of the Netherlands-German boundary (= "cessions")

The cessions of German territory mentioned supra sub (1) were for the greater part undone by the definitive Frontier Treaty of 8 April 1960 between the Netherlands and the Federal Republic of Germany, and some other small parcels of German territory were ceded instead.

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* Most of the data incorporated in the present paper are derived from Ko Swan Sik "The Netherlands and the Law concerning Nationality", in International Law in the Netherlands, Vol.III (1980),

(4) 1962: Western New Guinea (="separation")

The cession of this territory (the remaining part of the former colony of the Netherlands Indies), renamed West Irian (later Irian Jaya), went through two stages. By virtue of the Netherlands-Indonesian Agreement of 15 August 1962 the Netherlands transferred administrative authority (the word 'sovereignty' was studiously avoided in the Agreement) from 1 October 1962 to the United Nations Temporary Executive Authority (UNTEA) until 1 May 1963, at which date UNTEA transferred administration to Indonesia.

(5) 1975: Independence of Surinam (= "separation")

There has not been a formal 'transfer of sovereignty' to this former part of the Kingdom of the Netherlands, but an agreed coincidence of two unilateral acts, both on 25 November 1975: Surinam established its independence and the Netherlands recognised this fact.

Question 2

(1) No regulation.

(2) Netherlands-Indonesian Agreement on the Assignment of Nationals, signed on 2 November 1949, entered into force on 27 December 1949. The Agreement overruled the 1946 Indonesian Nationality Act in so far as Dutch nationals were concerned.

(3) The Netherlands-German Frontier Treaty of 8 April 1960, implemented by the Netherlands Act of 22 May 1963.

(4) Netherlands Act of 14 September 1962, repealing the 1910 Act on the Status of Netherlands Subject other than Nederlander.

(5) Netherlands-Surinam Nationality Agreement, 25 November 1975.

Questions 3 and 4

(2) The main principles of the Agreement on the Assignment of Nationals were:
- Dutch subjects of ethnic Indonesian stock, as a rule, became Indonesian citizens without a right of repudiation or option. Special regimes were however introduced, by way of exception, in favour of some categories of persons who lacked some basic connection with Indonesia;
- Nederlanders having some attachment to the seceding territory could opt for Indonesian nationality;
- Dutch subjects of non-Indonesian (non-indigenous) stock became, as a rule, Indonesian citizens with a right to repudiate and to opt for Netherlands nationality.

(3) The 1960 Frontier Treaty granted the German inhabitants a right to opt for Netherlands nationality within two years.

(4) The Netherlands unilateraly withdrew Netherlands nationality by abolishing the 1910 Act, which was up to then applicable solely to Western New Guinea. (The 1910 Act, distinguishing between

"Nederlanders" and Netherlands Subjects, originally had been applicable to all Dutch colonies.)

(5) The Nationality Agreement, broadly speaking, distinguishes between:
- Netherlands nationals born in Surinam and resident there at the relevant time (i.e., 25 November 1975). They are alloted Surinamese nationality;
- Netherlands nationals not born in Surinam but resident there at the relevant time. They are also alloted Surinamese nationality, but only if they have some (well defined) additional link with Surinam;
- Netherlands nationals born in Surinam but not resident there at the relevant time remain Netherlands nationals with a right to opt for Surinamese nationality before 1 January 1986, while they may also acquire Surinamese nationality as of right by having established residence in Surinam for a period of two years.

Question 5

All the agreements mentioned above were calculated to avoid double nationality as well as cases of statelessness.

Question 7

As appears from the answers on the questions 3 and 4, the ethnic origin of persons has sometimes been a factor in the assignment of nationals.

Reply by Norway

1) In 1905, Norway was separated from the union with Sweden (which had lasted since 1814).

2) The nationality of the inhabitants was governed by the internal law of Norway, which dated back to 1896. The Act was amended in 1906, as a consequense of the new legal situation.

3) The amendmends carried out in 1906 did not affect the right to acquire Norwegian citizenship; they all related to the rights which could be exercised by Swedes not possessing Norwegian citizenship. (Until 1905, Swedes enjoyed some kind of positive discrimination compared to other non-citizens.)

4) The right to citizenship was based on a combination of jus sanguinis and jus soli.

5) Norwegian citizenship could not be granted to a person who did not discontinue his former citizenship.

6) I am unable to trace the answer to this question.

7) The answer to this question depends primarily on the rights to be exercised by citizens versus non-citizens. Having said this, I am of the opinion that residence for a "significant" period ought to lead to citizenship.

8) I am not aware of any explicit points of view expressed on this general issue.

9) The basic link is residence on the territory, it is considered as an element both when granting citizenship upon application and when discontinuing citizenship (e.g. relating to a person born by Norwegian parents residing permanently abroad).

10) This is not an issue during peace-time according to the present legislation. During war-time, a person who is a citizen of the enemy state, may not be granted Norwegian citizenship.

QUESTIONNAIRE ON THE COMPETENCES OF STATE SUCCESSION FOR NATIONALITY

Ad.1

I. After World War I

After a long period of division Poland was restored as a sovereign state with the end of World War I; and was recognized *de jure* by the Allied Powers in January - February 1919; the territory of the new state consisted of territories of the former occupying states, i.e. the Russian Empire, Austria-Hungary and Germany.

In accordance with Art. 91 of the Treaty of Peace with Austria signed in Saint-Germain-en-Laye on September 11, 1919, Austria renounced in favour of the principal Allied Powers all rights and territories which formerly belonged to the former Austria-Hungary and which were now outside Austria's boarders described in this treaty.

In accordance with Art.27(7), Art.28 and Art.87 of the Treaty of Peace with Germany signed in Versailles on June 28, 1919, Germany ceded in favour of Poland territories of the province of Poznań and West Prussia. Because the territories which were subject to cession belonged before the division of Poland to Poland and now only returned to it, it may be said that it was a retrocession.

In accordance with Art. II of the Treaty of Peace between Poland and the Soviet Republics of Russia signed in Riga on March 18, 1921, parties to the treaty in accordance with the principle of self-determination of nations recognized the independence of Ukraine and Byelorussia and declared that the eastern boarder of Poland should run along a line described in the treaty.

Polish boarders were established in the following international agreements:

- with Germany - Treaty of Peace with Germany signed on June 28, 1919, and in the Decisions of the conference of ambassadors of the Allied Powers taken after plebiscites in East and West Prussia and in Upper Silesia;

- with Czechoslovakia - Decision of the conference of ambassadors of July 28, 1920 referring to the Duchy of Cieszyn;

- with Romania - acceptation of the conference of ambassadors of the Allied Powers of March 15, 1923;

- with the Soviet Republics of Russia the Treaty of Peace signed in Riga, on March 18, 1921;

the boarder with Lithuania was established in the following manner:

Poland took over Vilnius in a military offensive (Oct. 9, 1920) and proclaimed the independence of Central Lithuania (Oct. 12, 1920); on November 29, 1921 the council of the League of Nations established a demarcation line between Central Lithuania and Kowno Lithuania; on March 3, 1922 Central Lithuania was incorporated into Poland on the basis of the acts passed by the parliaments of Central Lithuania (Feb. 20, 1922) and Poland (Feb. 24, 1922), the act of incorporation was confirmed by a decision of the conference of ambassadors of the Allied Powers of March 14, 1923.

To conclude, after World War I Poland, a newly restored state acquired territories by succession except for a strip of Vilnius region which was annexed.

II. After World War II

The Potsdam Agreement contained provisions regarding the Polish western boarder. Under this agreement territories east of the Oder River and the western Neisse River were placed under Polish administration and the matter of final determination of the boarder was postponed to a peace treaty with Germany. The Potsdam Agreement is the basis for the recognition of the Polish western boarder.

In view of the theory of international law it is difficult to define the kind of succession of the Polish state in respect of these territories - certainly it was not cession, since the German state was not a part to the Potsdam Agreement, and so Germany was not a cedent in the understanding of international law.[1]

The Declaration of Yalta in regard to Poland of 1945 anticipated that the Polish eastern boarder should run along the Curzon line and that Poland should acquire substantial accession of territory in the north and in the west.

In accordance with these declarations, Polish eastern boarder was

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[1] Cf. K. Skubiszewski, *Zachodnia granica Polski*, Gdańsk 1975.

established in the agreements with the USSR signed on August 16, 1945 and February 15, 1951.

Ad. 2

I.

After World War I the issues of acquisition and loss of Polish nationality were regulated:

a) under the following multilateral and bilateral international agreements:

- Treaty of Peace with Germany, signed in Versailles on June 28, 1919 (Versailles Peace Treaty), ratified by Poland on January 10, 1920;
- Treaty of Peace with Austria, signed in Saint-Germain-en-Laye on September 10, 1919, ratified by Poland on 22 August, 1994;
- Treaty between the Principal Allied and Associated Powers and Poland signed on June 28, 1919, which formes an Annex no. 3 to the Versailles Peace Treaty (Minorities Treaty) ratified by Poland on January 10, 1920;
- Treaty of Peace between Poland and the Soviet Republics of Russia, signed in Riga on March 18, 1921 (Riga Treaty), ratified by Poland on April 30, 1921;
- German-Polish Convention, signed in Geneva on May 15, 1922 concerning Upper Silesia;
- Convention between Poland and Germany on the nationality and the right of option, signed in Vienna on August 30, 1924, ratified by Poland on January 31, 1925;
- Agreement between Poland and Czechoslovakia concerning legal and financial matters, signed in Warsaw on April 23, 1925;
- Convention between Austria, Hungary, Italy, Poland, Romania, the Serb-Croat-Slovene State and Czechoslovakia concerning nationality, signed in Rome on April 6, 1922 (Roma Convention), ratified by Poland on June 10, 1929.

b) under Polish law:

- act of January 20, 1920 on nationality of the Polish State;
- act of March 26, 1922 on regulation of the right of nationals of the former Austrian Empire or the former Hungarian Kingdom to choose Polish nationality and their right to choose foreign nationality if they posses Polish nationality;
- act of March 31, 1938 on depriving of Polish nationality.

II.

After World War II, regulation of Polish nationality, unlike after World War I, was provided mainly in internal law, and especially in:

- act of April 28, 1946 on Polish citizenship of persons of Polish nationality[2] residing on the Regained Territories;[3]
- decree of September 13, 1946 on exclusion from Polish society of persons of German nationality;[4]
- act of January 8, 1951 on Polish nationality;
- act of February 15, 1962 on Polish nationality.

Mention should be also made of repatriation agreements, and especially of the agreement between the Provisional Government of National Unity of the Polish Republic and the Government of the USSR concerning the change of the Soviet citizenship of persons of Polish and Jewish nationality[5] residing in the USSR and on their evacuation to Poland, signed in Moscow on July 6, 1945 and ratified by Poland on December 4, 1945.

Ad.3

I. After World War I

a) and b)

In accordance with Art. 3 of the Minorities Treaty Poland undertook to recognize as Polish nationals *ipso facto* and without any formalities persons of German, Austrian, Hungarian or Russian nationality who at the moment of coming of the treaty into force[6] were permanently residing (had domicile) on the territory recognized, or to be recognized, as a part of Poland. Art. 4 of this Treaty stipulated that Polish nationality *ipso facto* was granted to persons of German, Austrian, Hungarian or Russian nationality who were born on the identified territory of the parents habitually resident there, even if they were not residing

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[2] "nationality" not in the sense of legal status.

[3] The term 'Regained Territories" refers to the territories acceded to Poland after World War II.

[4] see 2.

[5] see 2.

[6] that is on January 10, 1920.

there at the moment of coming of the treaty into force.

These general provisions were made more specific in bilateral agreements.

In the case of German nationals, Art. 91 of the Treaty of Peace with Germany provided that German nationals having domicile on the territories transferred to Poland acquired *ipso facto* Polish nationality and lost German nationality; these broad provisions of the Versailles Peace Treaty were supplemented with two conventions:

- German-Polish Convention signed in Geneva on May 15, 1922 concerning Upper Silesia;
- Convention between Poland and Germany on the nationality and right of option signed in Vienna on August 30, 1924.

It was extremely important for Poland to establish the meaning of the term "domicile" (permanent residence). In accordance with the executive regulation of July 13, 1920 specifying in more detail the provision of Art.91 of the Versailles Peace Treaty "domicile" was entitling to acquisition of Polish nationality only when it lasted without breaks from before January 2, 1908[7] till January 10, 1920 (i.e. until the date of coming in force of the treaty). Similarly the duration of "domicile" in the cited above Vienna Convention was established; German nationals who did not have "domicile" in the territory of Poland in the period from January 2, 1908 till January 10, 1920 did not acquire Polish nationality *ipso facto*; they could acquire it only by a special permission of the Polish authorities; i.e. a decision on conferment of the nationality issued on the basis of Art. 8 of the act of 1920.

The second convention concluded by Poland and Germany was referring to the plebiscite areas of Upper Silesia signed in Geneva on May 15, 1922. In accordance with its Art. 25 German nationals who at the moment of the transfer of the territory had domiciles in the Polish part of the plebiscite area acquired *ipso facto* Polish nationality and lost German nationality. The required period of domicile was also determined from January 2, 1908 till June 15, 1922 that is until the date of coming in force of the convention.

In the case of Austrian and Hungarian nationals, in accordance with Art. 70 of the Treaty of Peace with Austria, every person who had *indigenat (pertineza)* on the territory, which was formerly a constitutive part of the Austria-Hungary, acquired *ipso facto* the nationality of the state which took over the territory and at the same time lost Austrian nationality. As the criteria for conferment of nationality the treaty established *indigenat* that is the right

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[7] This is a date of entering in force of a Prussian act on expropriation of land from Poles.

of community affiliation, indicating public legal relation of an individual with a given community, and not only his factual residence, even lasting, in a given territory.
Treaty of Peace with Austria was ratified by Poland only on August 22, 1924, when on the basis of Art.2(1) of the act of 1920 Poland already generally recognized Austrian and Hungarian nationals applying in the process the criterion of *indigenat*.

Finally, the Roma Convention of April 6, 1922 stipulated the principle that the ways of acquiring and losing of nationality are regulated by law of each state.

In the case of nationals of the former Russian Empire, in accordance with Art.2(1)(a) and (d) of the act of 1920 to acquire nationality it was necessary that they settled in the Polish territory but it was the entry of their names in the appropriate registers of permanent residents which was crucial and not the actual residence.

To conclude, in general all persons permanently residing in the territories recognized as Polish territories acquired, in accordance with Art. 3 of the Minorities Treaty, Polish nationality; the term "permanently residing" was accorded different interpretation in bilateral agreements and in internal law and it was also treated differently in regard to different territories.

In accordance with Art. 4 of the Minorities Treaty the fact of being born in the territories of the former occupying states which became territories of Poland after World War I was a second criterion for conferment of Polish nationality *ipso facto*; although the treaty accorded it an equal status with the criterion of domicile its scope was seriously limited in the agreements concluded with the former occupying states, in respect of the nationals of the former Russian Empire - it was almost completely eliminated.

Acquisition of Polish nationality on the basis of Art. 4 of the treaty was seriously limited in the agreements between Poland and Germany, i.e. in the cited above conventions signed in Geneva [Art.26(1)] and in Vienna (Art. 7).

In respect of the nationals of the former Russian Empire application of Art.4 of the Minorities Treaty was limited by Art.VI of the Riga Treaty.

Article 4 was applied in full only in respect of nationals of former Austria-Hungary.

c)

Article 3 of the Minorities Treaty provided for the right of option for persons of more than eighteen years of age, and imposed on them the obligation to establish residence in the chosen state.

Article 80 of the Peace Treaty with Austria also provided for the right of option.

Article VI of the Riga Treaty specified which persons had the right of option and could choose either Russian or Ukrainian nationality.

II. After World War II

a, b, and c)

In the Regained Territories, transferred to Poland under the Potsdam Agreements, nationality was regulated in accordance with the act of April 28, 1946 on Polish citizenship of persons of Polish nationality[8] residing on the Regained Territories. The question of the nationality of German population residing in these territories was ignored since on the basis of provisions of Art. XIII of the Potsdam Agreement of August 2, 1945 German population was subject to transfer to Germany. In accordance with the act of April 28, 1946 every person acquired Polish nationality ipso facto, if:

- the person had domicile in the Regained Territories before January 1, 1945;
- proved to have Polish nationality[9] before a special organ;
- made a declaration of allegiance to Polish Nation and State

Similarly the matter of citizenship of persons of Polish nationality[10] residing in the former Free City of Danzig was solved.

The boarder changes in the east left many people who had Polish nationality before September 17, 1939 outside the Polish boarders after 1945; to allow those people to evacuate to Poland a range of repatriation agreements, *inter alia*, with Ukrainian, Byelorussian and Lithuanian Soviet Socialist Republics was concluded. The agreements provided for repatriation to Poland of persons of Polish

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[8] see 2.

[9] see 2.

[10] see 2.

and Jewish nationality[11] who before September 17, 1939 had Polish citizenship.

All persons of Polish or Jewish nationality[12] who until September 17, 1939 had Polish citizenship and were evacuated to Poland on the basis of the repatriation agreements were treated as Polish nationals. The repatriation agreements provided for the right of option for members of their families.

Ad. 4

I.

After World War I in accordance with Art. 3 and 4 of the Minorities Treaty two criteria were decisive for the conferment of nationality - "domicile" and "birth" - in a certain time, in a certain territory. Both of these criteria have character of *ius soli*.
As it was mentioned above, Poland, in accordance with bilateral agreements and internal law, limited application of the criterion of "birth in a certain time, in a certain territory".

The criterion of "domicile in a certain time, in a certain territory" was formulated in bilateral agreements and internal law in different ways and in reference to different areas had different scope.

II.

After World War II in respect of the so-called Regained Territories the decisive were the criterion of Polish nationality[13] (*ius sanguinis*) and the criterion of domicile in these territories before January 1, 1945 (*ius soli*). Additionally a declaration of allegiance to Polish Nation and State was required.

Ad. 5

Article 70 of the Treaty of Peace with Austria determining the principles for acquisition of the nationality of the state to which a territory of the former Austria-Hungary was transferred, deprived at the same time of the Austrian nationality. Article 91 of the Versailles Peace Treaty deprived persons who acquired other

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[11] see 2.

[12] see 2.

[13] see 2.

nationality of German nationality.

Article 6 of the Minorities Treaty provided that Polish nationality is conferred *ipso facto* on persons who were born in the territory of Poland, as long as these persons did not have the right to nationality of other state.
Act of 1920 on nationality of Polish State contained similar provision in Art. 2(2), according to this provision from the date of entering in force of this act every person who was born in the territory of Polish state acquired Polish nationality as long as he or she did not have the right to nationality of other state.

The legislation presently in force (the act of February 15, 1962 on Polish nationality) establishes the principle of single nationality according to which Polish national cannot be at the same time recognized as a national of other state (Art. 2), acquisition of nationality of other state results in loss of Polish nationality [Art. 13(1)]

Ad.6

Public law does not regulate this question; private law contains an act on international private law of November 12, 1985 in accordance with which nationality of legal persons is regulated by the appropriate internal law.

Ad.7

In principle yes, however this problem should be considered in the context of a concrete situation of a given country.

Ad. 8

Poland is a part to two multilateral international conventions referring to nationality:

- Convention on Certain Questions Relating to the Conflict of Nationality Laws and its Protocol Relating to Cases of Statelessness both signed in the Hague on April 12, 1930, and ratified by Poland in 1934.
- Convention on the Nationality of Married Women of February 20, 1957, ratified by Poland on May 20, 1957.

However the criteria for acquisition and loss of Polish nationality are determined in Polish internal law - at the moment in the act of February 15, 1962 on Polish nationality. This act was passed in the times when the conception of the discretionary power of state in determination of the scope of civil rights, including the content of the criteria for acquisition of nationality, was a rule in Poland.

Ad. 9

In accordance with Polish law, an alien or a stateless person may acquire Polish nationality if he or she resides in Poland for at least 5 years (Art. 8(1) and Art. 9 of the act of Feb. 15, 1962)

Ad. 10

Polish legislation does not take account of such situations.

LA REPONSE CONCERNANT LA ROUMANIE AU QUESTIONNAIRE SUR LES INCIDENCES DE LA SUCCESSION D'ETATS SUR LA NATIONALITE

ROUMANIE

QUESTION NO.1

REPONSE

La Roumanie a connu depuis la première guerre mondiale des cas de succession d'Etats sur certaines parties du territoire comme suite à des modifications territoriales - réunions à la Roumanie ou cessions aux pays voisins.

I. A LA FIN DE LA PREMIERE GUERRE MONDIALE

Le 8 janvier 1918, dans un message adressé au Congrès des Etats-Unis, le président Wilson a formulé ses fameux "quatorze points". Le point 10 promettait aux peuples de la Double monarchie austro-hongroise "la plus grande latitude de développement autonome".

Les dirigeants des Roumains de vieilles terres roumaines qui à l'époque ne faisaient pas partie de l'Etat roumain, ont adopté pleinement le sens de ces principes généreux, qui devaient être appliqués pour construire une monde plus juste et plus démocratique.

Le 5 novembre 1918, un message du président Wilson faisait savoir aux Roumains qu'il "sympathisait avec l'idée de l'unité nationale des Roumains actuellement dispersés".

- Le 27 mars 1918, le Parlement de la Bessarabie a voté l'union de cette vieille province roumaine à la Roumanie. La Bessarabie avait une superficie de 44.422 km^2 et une population de 2.631.000 habitants, dont 1.685.000 Roumains (64,0%), 287.000 Juifs (10,2%), 254.000 Ukrainiens (9,7%), 147.000 Bulgares (5,6%), 79.000 Allemands (3,0%), 75.000 Russes (2,8%), 59.000 Cosaques (2,2%), 67.000 (2,5%), autres.

- Le Traité de Paix entre les Puissances Alliées et Associées et l'Autriche, signé à Saint-Germain-en-Laye le 10 septembre 1919 a reconnu au plan juridique internationale l'union de la Bucovine, vieille province roumaine, à la Roumanie. L'union a été décidée par

le Congrès général de la Bucovine, réunit le 28 novembre 1918, qui a voté l'union sans conditions de la Bucovine, dans ses anciennes frontières, à la Roumanie.

- Le Traité de Paix entre les Puissances Alliées et Associées et la Bulgarie, signé à Neuilly-sur-Seine le 27 novembre 1919 a réétabli l'appartenance de la Dobroudja de Sud (7.412 km^2) à la Roumanie telle qu'elle était au 1-er août 1914.

- Le Traité de Paix entre les Puissances Alliées et Associées et la Hongrie, signé le 4 juin 1920 à Trianon, a consacré au plan juridique international l'union de la Transilvanie, vieille terre des Roumains, à la Roumanie. Ce Traité a été ratifié par le Parlement hongrois en novembre 1921.

L'union de la Transilvanie à la Roumanie, manifestation de la soif de liberté des Roumains et de la mise en application du principe des nationalités a été décidée par les Roumains de Transilvanie, qui y ont toujours été majoritaires, le 1-er Décembre 1918, à Alba-Iulia (au centre de la Transilvanie) dans une Grande Assemblée Nationale, à caractère plébiscitaire: 1.228 délégués élus avec pleins pouvoirs et une foule de plus de 100.000 Roumains venus de tous les coins de la Transilvanie. A la Décision d'Alba-Iulia ont adhéré les Saxons (Medias, le 8 janvier 1919) les Souabes (Timisoara, le 10 août 1919) et les Juifs. C'est ainsi que plus de 70% de la population transilvaine s'est prononcée pour l'union de la Transilvanie à la Roumanie.

La reconnaissance internationale de l'Union de la Transilvanie à la Roumanie, décidée le 1-er Décembre 1918, à Alba-Iulia, a eu lieu par le Traité de paix de Trianon qui a tracé une frontière délimitant assez exactement le territoire ethnique roumain. La population totale de la Transilvanie s'élevait, après l'Union de 1-er Décembre 1918, à 5.545.475 habitants: Roumains-3.207.438 (57,8%), Hongrois-1.352.753 (24,4%), Allemands-543.767 (9,8%), Juifs-178.333 (3,2%), autres-263.184 (4,7%). Cependant, un nombre important des Roumains ont resté de l'autre partie de la frontière, en Hongrie, ainsi que dans l'Etat serbe-croate-slovène.

L'union de la Transilvanie a achevé l'édification de l'Etat national unitaire roumain.

II. L'ANNEE 1940

Le Pacte Ribbentrop-Molotov (23 août 1939) et la chute de la France accompagnée par la retraite de Dunkerque ont mis la Roumanie dans une situation d'isolement totale, avec des conséquences dramatiques pour certains parties de son territoire:

- Les Notes ultimatives du Gouvernement soviétique du 26 juin et du 28 juin 1940 ont obligé le Gouvernement roumain à céder à l'U.R.S.S. deux vieilles provinces roumaines: la Bessarabie et le Nord de la Bucovine ayant au total une superficie de 50.422 km^2 et une population de 3.748.013 habitants, comme suit: la Bessarabie avec une superficie de 44.422 km^2 et 3.173.209 habitants (Roumains 63,2%) et le Nord de la Bucovine ayant une superficie de 5.713 km^2 et 597.220 habitants (en majorité Roumains-41,1%). Outre les territoires indiqués dans les Notes ultimatives la Russie s'est emparée également de la contrée de Hertza ayant une superficie de 3.040 km^2 et une population de 35.000 habitants (tous Roumains).

- Le soi-disant "Arbitrage de Vienne" du 30 août 1940 donné par l'Allemagne nazie et l'Italie fasciste a attribué à la Hongrie la partie Nord-Ouest de la Roumanie, pratiquement toute la moitié Nord de la Transilvanie.

C'était un cas typique de "Diktat", parce que la Roumanie n'a pas demandé l'arbitrage et parce qu'il a obligé la Roumanie à céder de vieille terre roumaine peuplée en majorité par des Roumains. La Roumanie avait à choisir entre une destruction totale et la signature d'un "arbitrage" imposé par la force.

Le Diktat de Vienne du 30 août 1940 a attribué à la Hongrie pratiquement toute la moitié Nord de la Transilvanie avec une superficie de 43.492 km^2 et une population de 2.387.778 habitants (récensement de 1930), dont 1.171.457 Roumains (49,1%), 912.098 Hongrois (38,2%), 68.679 Allemands (2,9%), 138.917 Juifs (5,9%), 24.100 Ukrainiens (1,o%), 18.527 Tchécoslovaques (0,8%), 46.038 Tziganes (1,9%), 7.952 habitants de nationalités diverses (0,03%). La population roumaine y était donc en majorité .

Dans la partie de Transilvanie laissée à la Roumanie, le total de la population était de 3.162.426 habitants, dont 2.036.346 Roumains (64,4%), 475.588 Allemands (15,0%), 442.584 Hongrois (14,0%), 62.118 Tziganes (2,0%), 39.936 Juifs (1,3%), 28.559 Tchécoslovaques (0,9%), 5.507 Ukrainiens (0,2%) et 71.986 de nationalités diverses (2,2%).

Ces chifres mettent en évidence que les Roumains constituaient la majorité de la population dans chacune des deux moitiés de la Transilvanie.

Une autre constatations qui s'impose est que, bien que les Hongrois ne représentaient que 24,4% de la population de la province, la Hongrie a obtenu 41% du territoire et 42,6% de la population.

- Par le Traité entre la Roumanie et la Bulgarie, signé à Craiova (Roumanie) le 7 septembre 1940, la Dobroudja de Sud a été cédée à la Bulgarie qui a également demandé,

dans la foulée du Diktat de Vienne du 30 août 1940, une partie du territoire roumaine. La Dobroudja de Sud avait une superficie de 7.412 km^2 et une population de 407.352 habitants.

III. A LA FIN DE LA DEUXIEME GUERRE MONDIALE

- Le Traité de Paix avec la Roumanie signé à Paris, le 10 février 1947 entre les "Puissances Alliées et Associées", d'une part et la Roumanie, d'autre part, a annulé expressément le "Diktat" de Vienne du 30 août 1940, en restituant la moitié Nord de la Transilvanie à la Roumanie. L'article 2 du Traité dispose que "Les décisions de la Sentence de Vienne du 30 août 1940 sont déclarées nulles et non avenues. La frontière entre la Roumanie et la Hongrie est rétablie (...) telle qu'elle était au 1-er janvier 1938".

C'était le seul territoire roumain revenu à la Roumanie parmi ceux dont la Roumanie a été obligée de les céder en 1940.

L'article 1-er du Traité de Paix avec la Roumanie du 10 février 1947 prévoit que "les frontières de la Roumanie (...) demeurent telles qu'elles étaient au 1-er janvier 1941, à l'exception de la frontière roumano-hongroise qui est définie à l'article 2 (...).

"La frontière sovieto-roumaine est ainsi fixée conformément aux dispositions de l'accord sovieto-roumain du 28 juin 1940. (...)"

QUESTION NO.2

REPONSE

Dans ces cas la question de la nationalité des habitants du territoire qui a passé sous la souveraineté de la Roumanie (l'Etat successeur) a été reglée:

- A la fin de la Première Guerre Mondiale, par des traités internationaux multilatéraux ainsi que par le droit interne roumain.

- Pendant la Deuxième Guerre Mondiale:

  - En 1940 pour des territoires que l'Etat roumain a été obligé à céder: par une sentence internationale (du soi-disant "Arbitrage de Vienne" du 30 août 1940) et par un traité international bilatéral.

  - A la fin de la Deuxième Guerre Mondiale par un traité international multilatéral, ainsi que par le droit interne roumain.

QUESTION NO.3

REPONSE

Solutions suivies:

Question no.3.a)

Réponse

L'acquisition de la nationalité de l'Etat successeur a été automatique (ipso facto) pour tous les habitants du territoire transféré:

I. A LA FIN DE LA PREMIERE GUERRE MONDIALE

- Le Traité de Paix entre les Puissances Alliées et Associées et l'Autriche signé à Saint-Germain-en Laye le 10 septembre 1919.

Article 7o. Toute personne ayant l'indigénat (pertinenza) sur un territoire faisant antérieurement partie des territoires de l'ancienne monarchie austro-hongroise acquerra de plein droit et à l'exclusion de la nationalité autrichienne, la nationalité de l'Etat exerçant la souveraineté sur ledit territoire.

- Le Traité de Paix entre les Puissances Alliées et Associées et la Hongrie du 4 juin 1920 (Trianon).

Article 61. Toute personne ayant l'indigénat (pertinenza) sur un territoire faisant antérieurement partie des territoires de l'ancienne monarchie austro-hongroise acquerra de plein droit et à l'exclusion de la nationalité hongroise, la nationalité de l'Etat excerçant la souveraineté sur ledit territoire.

- Le Traité entre les Principales Puissances Alliées et Associées et la Roumanie, signé à Paris, le 9 décembre 1919.

Article 3, premier alinéa. Sous réserve des Traités ci-dessous mentionnés, la Roumanie reconnaît comme ressortissants roumains, de plein droit et sans aucune formalité, toute personne domiciliée, à la date de la mise en vigueur du présent Traité, sur tout territoire faisant partie de la Roumanie, y compris les territoires à elles transférés par les Traités de paix avec l'Autriche et avec la Hongrie, ou les territoires qui pourront lui être ultérieurement transférés, à moins qu'à cette date ladite personne puisse se prévaloir d'une nationalité autre que la nationalité autrichienne ou hongroise.

Article 4, premier alinéa. La Roumanie reconnaît comme ressortissants roumains, de plein droit et sans aucune formalité, les personnes de nationalité autrichienne ou hongroise qui sont nées sur les territoires qui sont transférés à la Roumanie par les Traités de paix avec l'Autriche et la Hongrie, ou qui pourront lui être ultérieurement transférés, de parents y étant domiciliés, encore qu'à la date de la mise en vigueur du présent Traité elles n'y soient pas elles-mêmes domiciliées.

- La Loi roumaine du 24 février 1924 concernant l'acquisition et la perte de la nationalité roumaine a prévu, en concordance avec les principes consacrés par les traités de paix de 1919 et 1920, que l'octroi de la nationalité roumaine se produisait "ipso facto", à l'exception des habitants qui ont opté pour une autre nationalité (annexe no.1).

Article 56. Ils sont et ils restent citoyens roumains sans être obligés à remplir aucune formalité, les habitants indiqués ci-dessous qui jusqu'à la promulgation de la présente loi, n'ont pas opté pour une autre nationalité:

1. Tous les habitants de Bucovine, Transilvanie, Banat, Crisana, Satu Mare et Maramures qui avaient l'indigénat (pertinenza) au 1-er Décembre 1918.

2. Les habitants de Bessarabie qui à la date du 9 avril 1918 avaient le domicile administratif conformément aux lois en vigueur en Bessarabie.

3. Les habitants du vieux royaume qui ont acquis la nationalité roumaine dans les conditions des decrets-lois ratifiés par l'article 133 de la Constitution.

4. Les habitants des départements Caliacra et Durostor (n.n. Dobroudja de Sud) auxquels on a été reconnue la nationalité roumaine par des décisions définitives des commissions prévues à l'article 6 de la Loi du 1-er avril 1914 et dans l'article 10 et suivants de la Loi de 26 juillet 1921 sur l'organisation de la Nouvelle Dobroudja.

5. Les personnes originaires de Bucovine, Transilvanie, Banat, Satu-Mare, Crisana et Maramures, domiciliées à la date de l'union au vieux royaume, parce qu'elles avaient l'indigénat (pertinenza) dans une des communes des territoires mentionnés.

6. Les personnes qui à la date de l'union, bien qu'elles n'étaient pas domiciliées dans une des communes de Bucovine, Bessarabie, Transilvanie, Banat, Crisana, Satu-Mare et Maramures, étaient pourtant nées dans celles communes de parents domiciliés là-bas.

7. Les Roumains d'origine de territoires de l'ancien Empire Russe et de ces attribués aux Etats Serbe-Croate-Sloven, Tchécoslovaquie, Pologne, Italie, Autriche et Hongrie, qui ont

optés pour la nationalité roumaine devant les autorités locaux de ces Etats ou devant n'importe quelle autorité roumaine.

8. Les habitants des communes qui à la fixation ou à la rectification des frontières passent de sous la souveraineté d'un autre Etat sous la souveraineté de l'Etat roumain, étant donné qu'ils remplissent les conditions requises pour les catégories des habitants de sous points 1 et 2.

Article 59. Les enfants nés en Bessarabie, Bucovine, Transilvanie, Banat, Satu-Mare, Crisana et Maramures, qui à la date de l'union (à la Roumanie) n'ont pu se prévaloir d'une autre nationalité, acquerant la nationalité roumaine.

II. L'ANNEE 1940 ET PENDANT LA DEUXIEME GUERRE MONDIALE

- La Sentence du soi-disant "Arbitrage de Vienne" du 30 août 1940:

Point 3. Tous les ressortissants roumains qui avaient leur domicile sur le territoire qui devait être cédé par la Roumanie (à la Hongrie) acqueraient sans autres formalités la nationalité hongroise.

- Le Traité entre la Roumanie et la Bulgarie, signé à Craiova (Roumanie) le 7 septembre 1940 ne prévoyait pas que l'acquisition de la nationalité de l'Etat succeseur bulgar était automatique (ipso facto) pour tous les habitants du nouveau territoire bulgare - la Dobroudja de Sud (voir la réponse à la question no.3 b).

- Le Décret-Loi roumain du 4 septembre 1941 réglementant la citoyenneté des habitants de Bessarabie et de Bucovine de Nord (annexe no.2).

Comme suite à la libération des vieilles terres roumaines - la Bessarabie et la Bucovine de Nord - de sous l'occupation soviétique datant du 28 juin 1940 (effet du Pacte Ribbentrop-Molotov) par le Décret-Loi roumain du 4 septembre 1941 réglementant la citoyenneté des habitants de Bessarabie et de Bucovine de Nord on a été prévu à l'article 1-er, qu'ils ont été et qu'ils sont Roumains:

a). Tous les habitants de territoires libérés qui conformément aux lois en vigueur le 28 juin 1940 bénéficiaient de la nationalité roumaine.

b). Les enfants nés le 28 juin 1940 ou après cette date sur les territoires libérés à la condition que le père ou dans le cas d'un enfant illégitime la mère, ont été et ils sont citoyens roumains, conforme aux prévisions de la lettre a).

c) Les enfants nés le 28 juin 1940 ou après cette date sur les territoires libérés de père et mère inconnus. Les enfants trouvés sur les territoires libérés sont présumés en étant nés sur ces territoires.

L'article 5 du Décret-Loi prévoyait que la situation des habitants de Bessarabie et Bucovine de Nord, qui accomplissaient les conditions prévues par la Loi du 24 février 1924 sur l'acquisition et la perte de la nationalité roumaine ainsi que celles des articles 1 et 2 du Décret-Loi, serra constater d'office par les autorités administratives.

III. A LA FIN DE LA DEUXIEME GUERRE MONDIALE

- La Loi roumaine no.261 du 2 avril 1945 pour la réglementation de la citoyenneté des habitants d'Ardéal (Transilvanie) de Nord (annexe no.3).

Par cette loi, adoptée après la libération de l'Ardéal (Transilvanie) de Nord de sous l'occupation hongroise on a statué qu'ils sont et qu'ils restent citoyens roumains:

a) Les habitants d'Ardéal de Nord qui conformément aux lois en vigueur le 30 août 1940 bénéficiaient de la citoyenneté roumaine.

b) Les enfants nés le 30 août 1940 ou après cette date sur le territoire de l'Ardéal de Nord à la condition que le père ou dans le cas d'un enfant illégitime la mère, ont été et ils sont citoyens roumains conformément aux dispositions de la lettre a).

c) Les enfants nés le 30 août 1940 ou après cette date sur le territoire de l'Ardéal de Nord de père et de mère inconnus ainsi que les enfants trouvés sur le territoire de la Transilvanie de Nord sont considérés nés sur ce territoire.

- Le Réglement roumain no.12 pour la réglementation de la citoyenneté des habitants d'Ardéal (Transilvanie) de Nord (cédée à la Hongrie suite au Diktat de Vienne du 30 août 1940) approuvé par le Décret no.2492 du 11 août 1945 (annexe no.4).

Article 1. Sont et restent citoyens roumains:

a) Les habitants des territoires libérés de la Transilvanie de Nord qui avaient la citoyenneté roumaine à la date du 30 août 1940.

b) Les enfants nés le 30 août 1940 ou après cette date sur les territoires libérés à condition que le père ou dans le cas d'un enfant illégitime la mère sont citoyens roumains conformément aux dispositions de la lettre a).

c) Les enfants nés le 30 août 1940 ou après cette date sur les territoires libérés de père et de mère inconnus. Les enfants trouvés sur ces territoires sont considérés nés sur le territoire de la Transilvanie de Nord.

- La Loi roumaine no.162 du 30 mai 1947 pour la réglementation de la citoyenneté de certaines catégories d'habitants, adoptée après la signature du Traité de Paix avec la Roumanie à Paris, le 10 février 1947 (annexe no.5).

Article 1. Sont citoyens roumains, même s'ils n'ont pas accompli les formalités demandées par les lois roumaines, tous ceux qui à la date du 26 septembre 1920 étaient domiciliés sur le territoire soumis à la juridiction de l'Etat Roumain, ou ceux qui sont nés avant cette date sur ce territoire ainsi que ceux qui sont nés de parents qui à l'époque avaient le domicile sur ce territoire.

Les déclarations de renonciation à la citoyenneté roumaine données par des Juifs du 15 décembre 1937 au 1-er mars 1938 et du 28 juin 1940 au 23 août 1944, au départ ou dans le but de quitter le pays sont considérées comme nules.

Article 4. Ceux qui ont eu le droit à la citoyenneté roumaine, conformément à la loi, leurs femmes et leurs descendants ainsi que les épouses de ces derniers qui n'ont pas accompli les formalités demandées par les lois antérieures ou dont les demandes avaient été rejetées pouvaient demander au tribunal la constatation de sa qualité de citoyen roumain dans un délai d'un an de la publication de la présente loi.

Question no.3.b)

Réponse

Dans le cas où la nationalité a été octroyée automatiquement par l'Etat successeur il n'y pas eu des cas d'exclusion pour certaines catégories ou groupes de personnes dans le Traité de Paix entre les Puissances Alliées et Associées et l'Autriche, signé à Saint-Germain-en-Laye le 10 septembre 1919, dans le Traité de Paix entre les Puissances Alliées et Associées et la Hongrie signé le 4 juin 1920 à Trianon, le Traité entre les Principales Puissances Alliées et Associées et la Roumanie, signé à Paris, le 9 décembre 1919, dans la Loi roumaine de 24 février 1924 concernant l'acquisition et la perte de la nationalité roumaine, la Sentence du soi-disant "Arbitrage de Vienne" du 30 août 1940.

Toutefois, il y a eu des cas d'exclusion pour certaines catégories ou groupes de personnes concernant l'acquisition automatique de la nationalité de l'Etat successeur dans:

- Le Traité entre la Roumanie et la Bulgarie, signé à Craiova (Roumanie) le 7 septembre 1940:

Article III. Les Hautes Parties Contractantes sont d'accord pour procédéer dans un délai de trois mois à partir de l'échange des instruments de ratification du présent Traité, à l'échange obligatoire entre les ressortissants roumains d'origine ethnique bulgare des départements de Tulcea et de Constantza (ce dernier dans sa délimitation antérieure au 14 juin 1925) et les ressortissants roumains d'origine ethnique roumaine des départements de Durostar et de Caliacra.

Annexe C. Accord concernant l'échange de populations roumaine et bulgare.

Article II. Les personnes quittant la Roumanie, respectivement la Bulgarie, en vertu du présent Accord, perdront de plein droit leur qualité de citoyen roumain ou bulgare au moment de leur départ du territoire des deux royaumes.

- Le Décret-Loi roumain du 4 septembre 1941 réglementant la citoyenneté des habitants de Bessarabie et de Bucovine de Nord.

Article 2. Ont perdu la nationalité roumaine:

a) Les habitants qui ont demandé après le 28 juin 1940 l'autorisation de se retourner dans les territoires envahis.

b) Ceux qui entre temps ont acquis une autre nationalité que celle de l'U.R.S.S.

c) Les habitants de territoires libérés, à l'exception des Roumains de sang, qui ont quitté les territoires envahis, avant qu'ils soient réoccupés par les armées roumaines.

Article 3. La nationalité roumaine sera retirée à tout ressortissant roumain, qui pendant l'évacuation de la Bessarabie ou de la Bucovine de Nord ou bien après cette date a comis dans ce territoire des actes d'hostilité contre l'armée ou la population roumaines ou qui a porté préjudice par ses actes aux intérêts roumains ou a manifesté en public des sentiments hostiles à la nation ou au pays.

La nationalité roumaine sera retirée par décision du Ministère de la Justice, fondé sur la constatation du juge de paix du lieu de domicile du citoyen (...).

- La Loi roumaine no.261 du 2 avril 1945 pour la réglementation de la citoyenneté des habitants d'Ardéal (Transilvanie) de Nord.

Article 2. Ne bénéficient pas de la citoyenneté roumaine:

a) Les habitants d'Ardéal de Nord, qui du 30 août 1940 jusqu'à la date de l'entrée en vigueur de la loi ont opté pour une citoyenneté étrangère.

b) Les habitants d'Ardéal de Nord qui sont entrés volontairement au service militaire d'un Etat avec lequel la Roumanie se trouvait dans l'état de guerre ou ceux qui se sont joints à une organisation militaire ou paramilitaire étrangères.

- Le Réglement roumain no.12 pour la réglementation de la citoyenneté des habitants d'Ardéal (Transilvanie) de Nord (cédée à la Hongrie suite au Diktat de Vienne du 30 août 1940), approuvé par le Décret no.2.492 du 11 août 1945.

Article 4. Ont perdu de droit la citoyenneté roumaine:

a) Ceux qui se trouvaient dans une des situations prévues par l'article 40 de la Loi no.33 du 19 janvier 1939 pour l'acquisition ou la perte de la nationalité roumaine et notamment:

- celui qui est entré, sans autorisation préalable du gouvernement roumain dans n'importe quel service d'un autre Etat;

- celui qui, sans autorisation préalable du gouvernement roumain, est entré au service militaire aux étrangers ou s'est joint à une corporation militaire étrangère;

- celui qui s'est soumis à une protection étrangère pour n'importe quelle période et qui que ce soit le fait dont y résulte.

b) La femme qui a eu la citoyenneté roumaine le 30 août 1940 et qui par l'effet du mariage a obtenu une autre citoyenneté que celle hongroise;

c) Les habitants des territoires libérés qui juqu'au 4 avril 1945, la date de la Loi no.261, ont opté pour une citoyenneté étrangère, autre que celle hongroise;

d) Les habitants d'Ardéal de Nord qui sont entrés volontairement au service militaire d'un Etat avec lequel la Roumanie se trouvait en état de guerre après le 23 août 1944 ou se sont intégrés volontairement dans une corporation militaire ou paramilitaire de ces Etats;

e) Ceux qui sont partis volontairement pendant le retrait des armées ennemies du territoire de la Transilvanie de Nord en se solidarisant.

- La Loi roumaine no.162 du 30 mai 1947 pour la réglementation de la citoyenneté de certains catégories d'habitants, adoptée après la signature du Traité de Paix avec la Roumanie, signé à Paris, le 10 février 1947.

Article l. (....). Sont exceptées (ne sont pas des citoyens roumains):

a) Les personnes qui avaient obtenu légalement la citoyenneté étrangère.

b) Les personnes qui ont eu la citoyenneté roumaine mais y ont renoncé expressément.

Article 2. Sont considérés qu'ont renoncé à la citoyenneté roumaine ceux qui:

a) ont habité avant le 30 août 1940 pendant 10 ans continuellement à l'étranger sans passeport valable, à l'exception de ceux qui ont absenté du pays dans l'intérêt de service ou dont les visas ou passeports les ont été réfusés pour des raisons raciales ou pour leur attitude antifasciste;

b) sont entrés en tant que volontaires au servics d'un Etat étranger qui a lutté contre les Nations Unies ou ont fait partie d'une formation militaire ou paramilitaire appartenant à un tel Etat.

Question no.3 c)

Réponse:

Le droit d'option de la nationalité a été reconnu à tous les habitants du territoire transféré ayant la nationalité de l'Etat qui a cédé ledit territoire:

I. A LA FIN DE LA PREMIERE GUERRE MONDIALE

- Le Traité de Paix entre les Puissances Alliées et Associées et l'Autriche signé à Saint-Germain-en-Laye, le 10 septembre 1919:

Article 78. Les personnes agées de plus de 18 ans, perdant la nationalité autrichienne et acquérant de plein droit une nouvelle nationalité en vertu de l'article 70 auront la faculté, pendant une période d'un an à dater de la mise en vigueur du présent Traité, d'opter pour la nationalité de l'Etat dans lequel elles avaient leur indigénat avant d'acquérir leur indigénat dans le territoire transféré.

L'option du mari entraînera celle de la femme et l'option des parents entraînera celle de leurs enfants âgés de moins de 18 ans.

Les personnes ayant exercé le droit d'option prévu ci-dessus devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté.

Elles seront libres de conserver les biens immobiliers qu'elles possédent sur le territoire de l'autre Etat où elles auraient eu leur domicile antérieurement à leur option.

Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé, de ce fait, aucun droit ou taxe soit de sortie, soit d'entrée.

- Le Traité de Paix entre les Puissances Alliées et Associées et la Hongrie du 4 juin 1920 (Trianon).

Article 63. Les personnes âgées de plus de 18 ans, perdant leur nationalité hongroise et acquérant de plein droit une nouvelle nationalité en vertu de l'article 61, auront la faculté,

pendant une période d'un an à dater de la mise en vigueur du présent Traité, d'opter pour la nationalité de l'Etat dans lequel elles avaient leur indigénat avant d'acquérir leur indigénat dans le territoire transféré.

L'option du mari entraînera celle de la femme et l'option des parents entraînera celle de leurs enfants âgés de moins de 18 ans.

Les personnes ayant exercé le droit d'option ci-dessus prévu devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté.

Elles seront libres de conserver les biens immobiliers qu'elles possèdent sur le territoire de l'autre Etat où elles auraient eu leur domicile antérieurement à leur option.

Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé, de ce fait, aucun droit ou taxe soit de sortie, soit d'entrée.

- Le Traité entre les Principales Puissances Alliées et Associées et la Roumanie, signé à Paris, le 9 décembre 1919:

Article 3, deuxième alinéat. Toutefois, les ressortissants autrichiens ou hongrois, âgés de plus de dix-huit ans, auront la faculté, dans les conditions prévues par lesdits Traités, d'opter pour toute autre nationalité qui leur serait ouverte. L'option du mari entraînera celle de la femme et l'option des parents entraînera celle de leurs enfants âgés de moins de dix-huit ans.

Les personnes ayant excercé le droit d'option ci-dessus prévu, devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté. Elles seront libres de conserver les biens immobiliers qu'elles possèdent sur le territoire roumain. Elles pourront emporter leurs biens meubles de toute nature. Il ne le sera imposé de ce chef aucun droit de sortie.

Article 4. La Roumanie reconnaît comme ressortissants roumains, de plein droit et sans aucune formalité, les personnes de nationalité autrichienne ou hongroise qui sont nées sur les territoires qui sont transférés à la Roumanie par les Traités de paix avec l'Autriche et la Hongrie, ou qui pourront lui être ultérieurement transférés, de parents y étant domiciliés, encore qu'à la date de la mise en vigueur du présent Traité elles n'y soient pas elles-mêmes domiciliées.

Toutefois, dans les deux ans qui suivront la mise en vigueur du présent Traité, ces personnes pourront déclarer devant les autorités roumaines compétentes dans le pays de leur résidence, qu'elles renoncent à la nationalité roumaine et elles cesseront alors d'être

considérées comme ressortissants roumains. A cet égard, la déclaration du mari sera réputée valoir pour la femme et celle des parents sera réputée valoir pour les enfants âgés de moins de dix-huit ans.

II. L'ANNEE 1940 ET PENDANT LA DEUXIEME GUERRE MONDIALE

- La Sentence du soi-disant "Arbitrage de Vienne" de 30 août 1940.

Point 3. Tous les ressortissants roumains qui avaient leur domicile sur le territoire qui devrait être cédé par la Roumanie acquerront sans autres formalités la nationalité hongroise. Ils auront le droit d'opter pour la nationalité roumaine dans un délai de 6 (six) mois. Les personnes qui vont user de ce droit d'option devront quitter le territoire hongrois dans un délai ultérieur d'un an et seront reçues en Roumanie. Elles pourront emporter librement avec elles leur fortune mobiliaire. Elles pourront également liquider, avant leur émigration, leur fortune immobilière et emporter librement avec elles les sommes obtenues. Dans le cas où cette liquidation ne serrai possible, ces personnes devraient être dédommagées par la Hongrie.

La Hongrie est obligée à solutionner, d'une manière bienveillante et généreuse, toutes les questiones inhérantes au transfert des optants.

Point 4. Les ressortissants roumains d'origine ethnique hongroise, domiciliés dans le territoire cédé en 1919 par la Hongrie à la Roumanie et qui continueront à faire partie de l'Etat Roumain, auront le droit d'opter pour la nationalité hongroise dans un délai de six mois. Les normes prévues au point 3 seront appliquées aux personnes qui vont user de ce droit d'option.

- Le Traité entre la Roumanie et la Bulgarie, signé à Craiova (Roumanie) le 7 septembre 1940.

Article III. (...). En ce qui concerne les ressortissants roumains d'origine ethnique bulgare et les ressortissants bulgares d'origine ethnique roumaine des autres régions de la Roumanie et de la Bulgarie, l'immigration dans leur pays d'affinité ethnique reste facultative, dans un délai d'un an à partir de l'échange des instruments de ratification du présent Traité.

Toutefois il est entendu que le Gouvernement Roumain pourra décréter l'émigration obligatoire en Bulgarie d'un nombre de ressortissants roumains d'origine ethnique bulgare égal à celui des ressortissants bulgares d'origine ethnique roumaine, qui auraient exercé leur faculté d'émigrer conformément à l'alinéa précédent , - le Gouvernement Bulgare s'engageant à recevoir sur son territoire les dits ressortissants roumains d'origine ethnique bulgare.

Réciproquement, le Gouvernement Bulgare pourra décréter l'émigration obligatoire en Roumanie d'un nombre de ressortissants bulgares d'origine ethnique roumaine égal à celui des ressortissants roumains d'origine ethnique bulgare qui auraient exercé leur faculté d'émigrer conformément à l'alinéa deux du présent article, - le Gouvernement Roumain s'engageant à les recevoir sur son territoire.

Annexe C. Accord concernant l'échange de populations roumaine et bulgare

Article II. Les personnes quittant la Roumanie, respectivement la Bulgarie, en vertu du présent Accord, perdront de plein droit leur qualité de citoyen roumain ou bulgare au moment de leur départ du territoire des deux royaumes.

Article IV. Les propriétés immobilières rurales appartenant aux ressortissants roumains d'origine ethnique bulgare qui seront obligés de quitter le territoire roumain, seront considérées comme biens abandonnés et deviendront en vertu du présent Accord et dès l'échange des instruments de ratification, la propriété de l'Etat Roumain.

Les propriétés immobilières rurales appartenant aux Roumains obligés de quitter en vertu du présent Accord les territoires transférés à la Bulgarie, deviennent la propriété de l'Etat Bulgare, dans les conditions prévues dans l'alinéa précédent.

Les Hautes Parties Contractantes conviennent que les personnes soumises aux dispositions du présent Accord, conservent la possession des dites propriétés, jusqu'à leur départ définitif, qui devra être effectué jusqu'à l'expiration du délai prévu à l'art.I-er du présent Accord, au plus tard.

En cas d'échange facultatif des populations prévu par l'alinéa 2 de l'article 1-er du présent Accord, les propriétés rurales délaissées par les ressortissants roumains et bulgares, deviendront la propriété des Etats respectifs, au moment de leur départ définitif du territoire de chacune des Hautes Parties Contractantes.

La propriété immobilière urbaine appartenant aux populations faisant l'objet du présent Accord, reste la propriété privée de leurs actuels propriétaires et dès lors, soumise aux lois du pays où elle est située.

Article V. L'Etat Roumain prend à sa charge le dédommagement des Roumains délaissant leurs biens ruraux situés dans les territoires transférés à la Bulgarie.

L'Etat Bulgare dédommagera les sujets roumains d'origine bulgare délaissant leurs biens ruraux situés dans les départements de Constantza et de Tulcea.

Article VI. Les personnes faisant l'objet du présent échange conservent la propriété de tous leurs biens meubles corporels et incorporels.

Ces personnes seront libres d'emporter avec elles ou de faire transporter leurs biens meubles de toute nature, bétail, inventaire agricole, etc., sans qu'il leur soit imposé de ce chef aucun droit ou restriction, soit de sortie, soit d'entrée. L'exportation de l'or et des monnaies, en pièces métalliques ou en papier, sera réglée de commun accord entre les deux Banques d'Emission.

Les autorités des deux Hautes Parties Contractantes faciliteront le transport des personnes formant l'objet de l'échange de populations et de leurs biens meubles.

Article VII. Il ne pourra être apporté aucun obstacle, pour quelle que cause que ce soit, au départ d'une personne appartenant aux populations à échanger.

QUESTION NO.4

REPONSE

Les solutions adoptées dans les cas d'acquisition de la nationalité de l'Etat successeur ont été basées principalement sur le jus soli (domicile ou résidence), mais dans certains cas on a été pris en considération également le critère "jus sanguinis".

QUESTION NO.5

REPONSE

I. A LA FIN DE LA PREMIERE GUERRE MONDIALE

Les Traités de paix signés en 1919 et 1920 ont exclu par leurs dispositions réglant la question de la nationalité les possibilités de créer des cas de double nationalité ou d'apatridie.

Dans ce sens, il faut renvoyer aux articles déjà evoqué des Traités de Paix de Saint-Germain-en-Laye avec l'Autriche (art.70) et de Trianon avec la Hongrie (art.61), qui dans une formulation pareille stipulent que toute personne ayant l'indigénat (pertinenza) sur un territoire faisant antérieurement partie des territoires de l'ancienne monarchie austro-hongroise acquerra de plein droit et à l'exclusion de la nationalité autrichienne ou respectivement hongroise la nationalité de l'Etat exerçant la souveraineté sur ledit territoire - l'Etat Roumain.

On retrouve la même solution dans le Traité avec la Roumanie signé à Paris, le 9 décembre 1919:

Article 3, premier alinéa. Sous reserve des Traités ci-dessous mentionnés, la Roumanie reconnaît comme ressortissants roumains, de plein droit et sans aucune formalité toute personne domiciliée, à la date de la mise en vigueur du présent Traité, sur tout territoire faisant partie de la Roumanie, y compris les territoires à elle transférés par les Traités de paix avec l'Autriche et avec la Hongrie ou les territoires qui pourront lui être ultérieurement transférés, a moins qu'à cette date ladite personne puisse se prévaloir d'une nationalité autre que la nationalité autrichienne ou hongroise.

Article 4, premier alinéa. La Roumanie reconnaît comme ressortissants roumains, de plein droit et sans aucune formalité, les personnes de nationalité autrichienne ou hongroise qui sont nées sur les territoires qui sont transférés à la Roumanie par les Traités de paix avec l'Autriche et la Hongrie, ou qui pourront lui être ultérieurement transférés, de parents y étant domiciliés, encore qu'à la date de la mise en vigueur du présent Traité elles n'y soient pas elles-mêmes domiciliées.

En outre, le même Traité de Paris avec la Roumanie prévoit:

Article 6. La nationalité roumaine sera acquise de plein droit par le seul fait de la naissance sur le territoire roumain à toute personne ne pouvant se prévaloir d'une autre nationalité de naissance.

- La Loi roumaine du 24 février 1924 concernant l'acquisition et la perte de la nationalité roumaine

Article 60. Sont considérées qu'ont perdu de droit la nationalité roumaine les personnes de catégories prevues à l'article 56, dans le cas où elles ont opté pour une autre nationalité avant la date de la promulgation de la présente loi.

II. L'ANNEE 1940 ET PENDANT LA DEUXIEME GUERRE MONDIALE

La même constatation-exclusion des possibilités de double nationalité ou d'apatridie - pour:

- La Sentence du soit-disant "Arbitrage de Vienne" du 30 août 1940 a exclu par ses prévisions les possibilités de créer des cas de double nationalité ou d'apatridie (point 3).

- Le Traité entre la Roumanie et la Bulgarie signé à Craiova (Roumanie) le 7 septembre 1940 (article III et Annexe C - Accord concernant l'échange de populations roumaine et bulgare - article II).

Les cas d'exclusion pour certaines catégories de personnes du bénéfice de la citoyenneté roumaine ont été prevus par les lois roumaines (voir la réponse à la question no. 3 b), ci-dessus) à titre de sanction pour attitude hostile envers l'Etat Roumain ou par rapport aux intérêts roumains. Il est possible que dans certains de ces cas ont été créées des situations d'apatridie.

QUESTION NO.6

REPONSE

Dans les actes normatifs roumains mentionnés n'ont pas été prévues des normes concernant la nationalité des personnes juridiques (morales).

QUESTION NO.7

REPONSE

Oui. Conformément à la Loi no.21 du 1-er mars 1991 sur la citoyenneté roumaine, le citoyen étranger ou la personne sans citoyenneté peut recevoir la citoyenneté roumaine uniquement sur demande et avec l'accomplissement des certaines conditions prévues par la loi (annexe no.6).

Le statut de résident permanent peut être octroyé aux citoyens étrangers sur la base de la Loi no.25/1969, encore en vigueur. La Loi prévoit la possibilité et les conditions dans lesquelles un citoyen étranger peut établir son domicile ou sa résidence en Roumanie pour une période plus grande que 120 jours.

QUESTION NO.8

REPONSE

En conformité avec la Loi no.21/1991 sur la citoyenneté roumaine les critères d'attribution de la citoyenneté roumaine sont clairement établis par la loi. Le Gouvernement roumain qui a la compétence d'approuver l'octroi de la citoyenneté a des pouvoirs discrétionnaires, en ayant le droit d'apprécier s'il sera le cas d'octroyer ou pas la citoyenneté roumaine. Ces pouvoirs découlent des prévisions du premier alinéa de l'article 9 de la Loi no.21/1991; "La citoyenneté roumaine peut être accordée, sur demande" (...).

QUESTION NO.9

REPONSE

Le critère de l'effectivité du lien qui unit une personne au territoire d'un Etat est prévu par la loi parmi d'autres, mais il n'est pas absolu. Il est possible une réduction des délais requis pour le domicile sur le territoire de l'Etat Roumain.

QUESTION NO.10

REPONSE

La Loi no.21/1991 permet l'octroi de la citoyenneté roumaine sur demande, sans obliger la personne respective de rennoncer à la citoyenneté qu'elle avait antérieurement.

Quant à la retrait de la citoyenneté roumaine la loi ne comporte pas des prévisions concernant les droits acquis par une personne sous l'empire de la réglementation à laquelle elle était soumise antérieurement.

Réponse de la Russie

LES INCIDENCES DE LA SUCCESSION D'ETATS SUR LA NATIONALITÉ

(La Russie : les réponses aux questions)

1. La décomposition de l'Etat de Russie qui a existé jusqu'au 7 novembre (25 octobre) 1917 s'est accompagnée de la formation du nouvel Etat de Russie qui a pris le nom officiel de la République socialiste fédérative soviétique de Russie (la RSFSR).

En 1922 la RSFSR, l'Ukraine, la Biélorussie et les Républiques de la Transcaucasie (l'azerbaïdjan, l'Arménie, la Géorgie) unie au sein d'une Fédération, la RSFST, ont formé un nouvel Etat fédéral: l'Union des Républiques socialistes soviétiques. En définitive l'URSS a compris 15 républiques fédérées qui ont été considérées formellement comme souveraines, possédant le droit de sortie de l'URSS.

En 1991, après la décomposition définitive de l'URSS la RSFSR (la Fédération de Russie) est devenue un Etat indépendant autonome et en même temps un successeur en droits de l'URSS.

2. La nationalité dans la RSFSR durant la période de son existence, celle de 1917 à 1922, a été déterminée essentiellement par sa législation intérieure.

En URSS la nationalité -fédérale et républicaine - a été réglementée surtout par la législation fédérale intérieure car seulement la nationalité de l'URSS (l'unique nationalité soviétique) avait une importance réelle. En outre, l'URSS a conclu des traités (des conventions) bilatéraux avec plusieurs Etats de l'Europe de l'Est, visant à prévenir l'apparition de la double nationalité.

Actuellement les questions de la nationalité dans la Fédération de Russie sont réglementées essentiellement par sa législation intérieure. La Loi du 28 novembre 1991 "Sur la nationalité de la

Fédération de Russie"[1] est le principal texte législatif réglementant les rapports de la nationalité.La loi du 17 juin 1993 et la loi fédérale du 18 janvier 1995 y ont apporté plusieurs modifications et adjonctions.[2]

Le premier paragraphe de l'article 49 de la Loi sur la nationalité de la Fédération de Russie stipule que dès l'entrée en vigueur de la présente Loi sur le territoire de la Fédération de Russie cesse l'effet des dispositions des textes normatifs de l'URSS qui sont contraires à la présente Loi de la Fédération de Russie.

Conformément au paragraphe 2 de l'article 12 de la Loi sur la nationalité de la Fédération de Russie,pour déterminer l'appartenance à la nationalité de la Fédération de Russie on applique "les textes législatifs de la Fédération de Russie et des républiques en son sein,les traités internationaux de la Fédération de Russie,

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1 Vedomosti du Congrès des députés du peuple de la Fédération de Russie et du Soviet Supreme de la Fédération de Russie.1922,No.6, Article 243.

2 Vedomosti du Congrès des députés du peuple de la Fédération de Russie et du Soviet Supreme de la Fédération de Russie.1993.No 29. Article 1112;Rossijskaia Gazeta du 9 février 1995.

A voir aussi: Le Règlement sur les modalités de l'examen des questions de la nationalité de la Fédération de Russie,approuvé par le Décret du Président de la Fédération de Russie du IO avril 1992 No 386 dans la version du Décret du Président de la Fédération de Russie du 27 décembre 1993 No 2299 (Védomosti du Congrès des députés du peuple de la Fédération de Russie et du Soviet Suprême de la Fédération de Russie,1992,No.17,Art.952;le Recueil des textes juridiques du Président et du Gouvernement de la Fédération de Russie,1994,No.4,Art.302); le Décret du Président de la Fédération de Russie du 24 octobre 1994 "Sur certaines questions de l'application de la Loi de la Fédération de Russie "Sur la nationalité de la Fédération de Russie" (Recueil de la législation de la Fédération de Russie.1994.N. 27.Art.2854).

de l'ancienne URSS ou de l'Etat de Russie ayant existé jusqu'au 7 novembre(25 octobre) 1917,qui ont été en vigueur au moment de l'avènement des circ@nstances auxquelles est liée l'appartenance de la personne à la nationalité de la Fédération de Russie".

Conformément à l'article 9 de la Loi sur la nationalité de la Fédération de Russie,pour résoudre les questions de la nationalité on appliquera,outre la présente Loi,aussi les traités internationaux de la Fédération de Russie réglementant ces questions. Si le traité international de la Fédération de Russie fixe les règles autres que celles contenues dans la présente Loi,on appliquera les règles de ce traité.

Conformément au paragraphe 2 de l'article 49 de la Loi sur la nationalité de la Fédération de Russie,"les traités internationaux de l'ancienne URSS sur les questions de la nationalité s'appliqueront sur le territoire de la Fédération de Russie".

3.En liaison avec la définition de la nationalité de la Fédération de Russie en tant qu'Etat successeur en droits la Loi sur la nationalité de la Fédération de Russie a introduit comme critère de l'acquisition de la nationalité sa reconnaissance.Conformément au premier paragraphe de l'article 13 de la Loi,ont été reconnus comme citoyens de la Fédération de Russie tous les citoyens de l'ancienne URSS se trouvant en résidence permanente sur le territoire de la Fédération de Russie le jour de l'entrée en vigueur de la présente Loi,si au cours d'un an après cette date ils n'ont pas déclaré qu'ils ne veulent pas avoir la nationalité de la Fédération de Russie.

L'alinéa 2 de l'arrêté du Soviet Suprême de la Fédération de Russie du 17 juin 1993 "Sur la mise en vigueur de la Loi de la Fédération de Russie "Sur les modifications et adjonctions à porter

dans la Loi de la Fédération de Russie "Sur la nationalité de la Fédération de Russie" a établi que les citoyens de l'ancienne URSS en résidence permanente sur le territoire de la Fédération de Russie et ayant provisoirement quitté le territoire de la Fédération de Russie avant le 6 février 1992 à cause des rapports professionnels, de service,des études,du traitement médical et des affaires privées et ayant rentrés en Russie après l'entrée en vigueur de la Loi, seront reconnus citoyens de la Fédération de Russie conformément au premier paragraphe de l'article 13 de la Loi,soit automatiquement si au cours d'un an ils n'ont pas déclaré qu'ils ne veulent pas avoir la nationalité de la Russie.

L'alinéa 3 du même Arrêté du Soviet Suprême de la Fédération de Russie du 17 juin 1993 l'effet du premier paragraphe de l'article 13 de la Loi sur la nationalité de la Fédération de Russie a été étendu aux militaires(officiers,enseignes,enseignes de vaisseaux de deuxième classe,militaires du service de rengagement des Forces Armées de la Fédération de Russie,des ministères et des départements de la Fédération de Russie possédant des troupes et des formations militaires; militaires suivant les cours d'enseignement dans les écoles militaires),ayant prêté le serment de fidélité à l'ancienne Union Soviétique ou à la Fédération de Russie,se trouvant au service dans les unités militaires se trouvant sous la juridiction de la Fédération de Russie sur le territoire d'autres Etats,y compris dans l'effectif des Forces Armées Unifiées de la Communauté des Etats Indépendants,ainsi qu'aux militaires venus sur le territoire de la Fédération de Russie pour passer leur service après l'entrée en vigueur de la Loi.Ainsi,les catégories de militaires sus-mentionnées ont été automatiquement reconnus citoyens de la Fédération de Russie si,au cours d'un an, ils n'ont pas déclaré qu'ils ne veulent

pas avoir la nationalité de la Fédération de Russie.

Le Décret du Président de la Fédération de Russie du 24 octobre 1994 a établi que "conformément au premier paragraphe de l'article 13 de la Loi de la Fédération de Russie "Sur la nationalité de la Fédération de Russie" seront considérés comme citoyens de la Fédération de Russie les anciens citoyens de la RSFSR revenus pour la résidence en Russie avant l'entrée en vigueur de la Loi de la Fédération de Russie "Sur la nationalité de la Fédération de Russie"(du 6 février 1992) ,n'ayant pas de confirmation de l'acquisition de la nationalité de la Fédération de Russie à la suite de la reconnaissance et continuant à résider sur le territoire de la Russie sur les fondements réguliers.La régularisation des papiers sur l'appartenance à la nationalité de la Fédération de Russie est effectuée en cas de l'expression de leur volonté personnelle".

En outre,la Loi sur la nationalité de la Fédération de Russie du 28 novembre 1991 (alinéa "g" de l'article 18) prévoyait que sous forme d'<u>enregistrement</u> (les modalités plus faciles que l'octroi de la nationalité) la nationalité de la Fédération de Russie pouvaient acquérir les citoyens de l'URSS en résidence permanente sur le territoire des autres républiques qui directement faisaient partie de l'ancienne URSS vers le premier septembre 1991,s'ils ne sont pas citoyens de ces républiques et déclarent,au cours de trois ans depuis l'entrée en vigueur de la présente Loi,qu'ils veulent acquérir la nationalité de la Fédération de Russie.

Dans la Loi de la Fédération de Russie du 17 juin 1993 l'alinéa "g" de l'article 18 de la Loi sur la nationalité de la Fédération de Russie a été exposé dans la version suivante:"les citoyens de l'ancienne URSS résidant sur les territoires des Etats compris dans l'ancienne URSS,ainsi que ceux qui sont venus pour s'établir

sur le territoire de la Fédération de Russie après le 6 février 1992,si,au cours de trois ans depuis l'entrée en vigueur de la présente loi,ils déclarent qu'ils veulent acquérir la nationalité de la Fédération de Russie.La Loi fédérale du 6 février 1995 a prolongé jusqu'au 31 décembre 2000 la date limite pour la proclamation de la volonté des catégories de personnes sus-mentionnées d'acquérir la nationalité de la Fédération de Russie.

4. L'analyse de la législation de Russie sur la nationalité atteste que les critères de l'acquisition de la nationalité de la Russie en tant qu'Etat successeur sont basés avant tout sur l'existance de la nationalité de l'URSS et sur le désir personnel de l'individu d'avoir la nationalité de la Fédération de Russie.En outre,en fonction du lieu de résidence on fixe soit une procédure automatique de la reconnaissance de la nationalité de Russie,soit une procédure facilitée de l'acquisition de la nationalité de Russie sous forme de son enregistrement.

La Loi sur la nationalité de la Fédération de Russie élimine la discrimination pratiquée à l'époque soviétique, en fonction des caractères de classes et des tendances politiques,à cause de laquelle des citoyens de Russie ont perdu la nationalité de la Russie. Conformément au paragraphe 2 de l'article 13 de cette Loi les personnes nées le 30 décembre 1922 et plus tard et ayant perdu la nationalité de l'ancienne URSS,sont considérées comme les citoyens de la Fédération de Russie par naissance si elles sont nées sur le territoire de la Fédération de Russie ou si l'un des parents au moins a été citoyen de l'URSS au moment de la naissance de l'enfant et se trouvait en résidence permanente sur le territoire de la Fédération de Russie (à la date de la naissance).

Le paragraphe "e" de l'article 18 de la Loi sur la nationalité de la Fédération de Russie,relative essentiellement aux émigrés et

leurs descendants,a prévu que sous forme d'enregistrement la nationalité de la Fédération de Russie est acquise par des citoyens étrangers et des apatrides quel que soit leur lieu de résidence, s'ils avaient eux mêmes ou au moins l'un de leurs parents directs acsendants la nationalité (la citoyenneté) par naissance et s'ils déclarent,au cours d'un an après l'entrée en vigueur de la présente Loi,qu'ils veulent acquérir la nationalité de la Fédération de Russie.

Conformément au paragraphe 2 de l'article 20 de la Loi sur la nationalité de la Fédération de Russie sont considérés réintegrés dans la nationalité de la Fédération de Russie les anciens citoyens de la Fédération de Russie privés de leur nationalité sans une libre expression de leur volonté sur la base du Décrêt secret du Présidium du Soviet Suprême de l'URSS du 17 février 1967 No 818, qui a perdu sa force et qui prévoyaient une perte automatique de la nationalité de l'URSS par les personnes ayant émigrées en Israel, ou bien sur la base d'autres décrêts du Présidium du Soviet Suprême de l'URSS,généralement,en ce qui concerne des dissidents.

Le Décret du Président de la Fédération de Russie du 24 octobre 1994 stipule:"Conformément au deuxième paragraphe de l'article de la Loi de la Fédération de Russie "Sur la nationalité de la Fédération de Russie" seron réintégrés dans la nationalité de la Fédération de Russie les anciens citoyens de la RSFSR partis hors la Russie avant le 6 février 1992,ayant perdu la nationalité sans leur libre expression de la volonté et revenus pour la résidence permanente en Russie après le 6 février 1992.Ainsi a été élargi encore davantage le cercle de personnes qui sont considérées comme réintégrées dans la nationalité russe,ayant perdu antérieurement la nationalité russe sans une libre expression de leur volonté.

5. La loi sur la nationalité de la Fédération de Russie contient des dispositions visant à réduire l'apatridie des personnes.

Les dispositions de l'article 1 de cette Loi ont une importance de principe:selon elles,chaque individu a le droit à la nationalité et personne dans la Fédération de Russie ne peut être privé de sa nationalité.L'article 4 de la Loi stipule que la résidence du citoyen de la Fédération de Russie en déhors du territoire de la Fédération de Russie ne met pas un terme à sa nationalité.L'article 7 souligne expressément que "la Fédération de Russie encourage l'acquisition de la nationalité de la Russie par les apatrides et n'empêche pas l'acquisition par eux d'une autre nationalité".

L'article 16 de la Loi sur la nationalité de la Fédération de Russie stipule que "l'enfant se trouvant sur le territoire de la Russie et dont les parents sont inconnus,est le citoyen de la Fédération de Russie",et l'article 17 de cette Loi dans sa nouvelle version prévoit que "l'enfant né sur le territoire de la Fédération de Russie chez les parents citoyens d'autres Etats,est le citoyen de la Fédération de Russie si ces Etats ne lui accordent pas leur nationalité",et "l'enfant né sur le territoire de la Fédération de Russie chez les apatrides est le citoyen de la Fédération de Russie".

Les dispositions de la Loi sur la nationalité de la Fédération de Russie (articles 25-29) sur la nationalité des enfants en cas de changement de la nationalité des parents tiennent compte des intérêts de l'enfant et visent à ce que l'enfant ne perde pas la nationalité de la Fédération de Russie ou bien ne devienne pas apatride.

Conformément à l'alinéa "d" de l'article 18 de la Loi sur la nationalité de la Fédération de Russie,sous forme d'enregistrement la nationalité de la Fédération de Russie pouvaient acquérir les apatrides qui le jour de l'entrée en vigueur de la présente Loi

ont été en résidence permanente sur le territoire de la Fédération de Russie ou d'autres républiques qui faisaient directement partie de l'ancienne URSS vers le premier septembre 1991,si au cours d'un an après l'entrée en vigueur de la présente Loi ils ont exprimé leur désir d'acquérir la nationalité de la Fédération de Russie (à voir aussi l'alinéa "e" de cet article,cité plus haut).

Selon le premier paragraphe de l'article 62 de la Constitution de la Fédération de Russie,un citoyen de la Fédération de Russie peut avoir la nationalité d'un Etat étranger (la double nationalité) conformément à la loi fédérale ou au traité international de la Fédération de Russie.

L'article 3 de la Loi sur la nationalité de la Fédération de Russie réglemente les questions de la double nationalité.Le premier paragraphe de cet article dans sa nouvelle cersion établit une règle générale selon laquelle"l'appartenance à la nationalité d'un autre Etat n'est pas reconnue à la personne ayant la nationalité de la Fédération de Russie si le contraire n'est pas prévu par le traité international de la Fédération de Russie".

Le citoyen de la Fédération de Russie,selon le paragraphe 2 de l'article 3 de la Loi,peut obtenir sur sa demande l'autorisation d'avoir simultanément la nationalité d'un autre Etat avec lequel il existe un traité correspondant de la Fédération de Russie.

6. Le terme "la nationalité des personnes morales" n'est pas employé dans la législation de la Russie.Il s'agit,vraisemblablement, de l'appartenance étatique de la personne morale.

7. La personne "à la conduite civique irréprochable" qui réside longuement(en permanence) sur le territoire de l'Etat successeur doit avoir le même droit à la nationalité que les autres habitants de cet Etat quelle que soit leur origine ethnique.Il est vrai que la notion de "la conduite civique irréprochable" pourrait donner lieu à des interprétations arbitraires.Il devrait s'agir en tout cas des personnes purgeant leur peine sous forme de la privation

de liberté pour la commission des infractions de droit commun, des personnes agissant pour un changement par violence du régime constitutionnel de l'Etat successeur;des personnes membres des partis et d'autres organisations dont l'activité est incompatible avec les principes constitutionnels de l'Etat successeur.Ce sont les circonstances qui,selon le paragraphe 4 de l'article 19 de la Loi sur la nationalité de la Fédération de Russie,sont la raison pour rejeter les demandes des personnes sur leur adoption à la nationalité de la Fédération de Russie.

8. Il ne fait aucun doute que le choix des critères d'attribution et du retrait de la nationalité relèvent de la compétence exclusive de l'Etat.Mais il est aussi hors de doute qu'un tel choix ne devrait pas être contraire aux principes et aux règles universellement reconnus du droit international,aux traités internationaux de l'Etat successeur.Notamment,l'octroi de la nationalité ne devrait pas être conditionné par l'origine,la position sociale de la personne,son appartenance raciale et nationale,le sex,l'instruction,la langue, l'attitude envers la religion,les opinions politiques et autres. Ces interdictions ont été fixées dans la Loi sur la nationalité de la Fédération de Russie.(à voir,par exemple,le premier paragraphe de l'article 19).

9.En vertu du paragraphe 2 de l'article 19 de la Loi sur la nationalité de la Fédération de Russie,la condition ordinaire de l'accession à la nationalité de la Fédération de Russie c'est la résidence permanente sur le territoire de la Fédération de Russie: pour les citoyens étrangers et les apatrides -pendant cinq ans au total ou trois ans de suite immédiatement avant le dépôt de la demande;pour les réfugiés reconnus en tant que tels par la Loi ou le traité de la Fédération de Russie les délais sont réduits de

moitié.La période de résidence sur le territoire de la Fédération de Russie est considérée comme ininterrompue si la personne a quitté le territoire de la Fédération de Russie pour les études ou le traitement pour trois mois au plus.

Conformément au paragraphe 3 de cet article dans la nouvelle version de la Loi sur la nationalité de la Fédération de Russie, l'accession à la nationalité de la Fédération de Russie est facilitée par l'obtention du droit à la réduction des délais mentionnés de résidence sur le territoire de la Fédération de Russie et même à leur suppression,par les circonstances suivantes:le statut de citoyen de l'ancienne URSS dans le passé; le statut de citoyen de Russie par naissance de la personne dans le passé ou bien le même statut d'un de ses parents directement ascendant;l'adoption d'un enfant qui est citoyen de la Fédération de Russie;l'existance de hautes réalisations dans le domaine de la science,la technique et la culture ainsi que la possession d'une profession ou d'une qualification représentant un intérêt pour la Fédération de Russie; l'existence des mérites devant les peuples unifiés dans la Fédération de Russie,dans la renaissance de la Fédération de Russie,dans la réalisation des idéaux et des valeurs universelles humaines,l'obtention de l'asile sur le territoire de la Fédération de Russie.

10. Les personnes ayant renoncé à la nationalité de Russie en faveur d'une autre nationalité qu'elles ont possédée ou obtenue, accèdent au statut de citoyens étrangers.Les personnes ayant abandonné la nationalité de Russie,qui n'ont pas possédé et obtenu une autre nationalité,ont le statut d'apatrides.Le statut des citoyens étrangers et des apatrides dans la Fédération de Russie est déterminé compte tenu des principes et des normes universellement reconnus du droit international,de la Constitution de la Fédération de Russie et des lois fédérales.

Conformément au paragraphe 3 de l'article 62 de la Constitution de la Fédération de Russie,les étrangers et les apatrides bénéficient dans la Fédération de Russie des droits et sont tenus aux obligations à égalité avec les citoyens de la Fédération de Russie,à l'exception des cas établis par la loi fédérale ou le traité international de la Fédération de Russie.[1] Et conformément au paragraphe 1 de l'article 17 de la Constitution de la Fédération de Russie,dans la Fédération de Russie sont reconnus et garantis les droits et libertés de l'homme et du citoyen comformément aux principes et normes du droit international universellement reconnus et en conformité avec la présente Constitution.

En vertu du paragraphe 2 de l'article 62 de la Constitution de la Fédération de Russie,la possession par un citoyen de la Fédération de Russie de la citoyenneté d'un Etat étranger ne réduit pas ses droits et libertés et ne l'exonère pas des obligations découlant de la citoyenneté russe,si la loi fédérale ou le traité international de la Fédération de Russie n'en ont disposé autrement.

Conformément au paragraphe 3 de l'article 3 de la Loi sur la nationalité de la Fédération de Russie,les citoyens de la Fédération de Russie possédant aussi une autre nationalité,ne peuvent pas être pour cette raison réduits en droits,chercher à échapper à accomplir leurs devoirs ou dégagés de la responsabilité,découlant de la nationalité de la Fédération de Russie.

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1 L'effet de la Loi de l'URSS du 24 juin 1981 "Sur le statut juridique des citoyens étrangers en URSS" s'étend aux citoyens étrangers et aux apatrides dans la Fédération de Russie en matière de leurs droits,libertés et devoirs (Vedomósti du Soviet Suprême de l'URSS. 1981.No 26.Art.836).Cette Loi exerce son effet sur le territoire

de la Fédération de Russie sur la base de l'arrêt du Soviet Suprême de la RSFSR du 12 décembre 1991 "Sur la ratification de l'Accord sur la constitution de la Communauté des Etats Indépendants"(Védomosti du Congrès des députés du peuple de la RSFSR et du Soviet Suprême de la RSFSR.1991.No 51.Art.1798).

Moscou,le 21 février 1995

SUPPLEMENT

à l'étude des conséquences des cas de la succession juridique d'Etats pour la nationalité, présenté par la Russie

L'insertion de l'Ukraine occidentale et de la Biélorussie occidentale dans l'URSS

L'Ukraine occidentale et la Biélorussie occidentale sont entrées en URSS conformément à la Loi de l'URSS du premier novembre 1939 "Sur l'insertion de l'Ukraine occidentale dans l'Union des Républiques Socialistes Soviétiques avec sa réunification avec la République Socialiste Soviétique d'Ukraine"[1] et à la Loi de l'URSS du 2 novembre 1939 "Sur l'insertion de la Biélorussie occidentale dans l'Union des Républiques Socialistes Soviétiques avec sa réunification avec la République Socialiste Soviétique de Biélorussie".[2]

Le décrêt du Présidium du Soviet Suprême de l'URSS du 29 novembre 1939 "Sur l'acquisition de la nationalité de l'URSS par les habitants des régions occidentales des Républiques Socialistes Soviétiques d'Ukraine et de Biélorussie"[3] a reconnu comme citoyens de l'URSS les anciens citoyens polonais qui se trouvaient sur le territoire des régions occidentales de la RSS d'Ukraine et de la RSS de Biélorussie au moment de l'entrée de ces régions en URSS (1-2 novembre 1939); les personnes arrivées en URSS en vertu de l'accord entre le Gouvernement de l'URSS et le Gouvernement de l'Allemagne du 16 novembre 1939[4] ainsi qu'en liaison avec la cession de la ville et de la région de Vilno par l'URSS à la Lituanie en vertu du traité du 10 octobre 1939.[5]

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1 Védomosti du Sovier Suprême de l'URSS.1939.No.36.

2 Item.

3 Non publié.

4 N'a pas été publié dans les publications officielles.

5 Védomosti du Soviet Suprême de l'URSS.1939.No.37.

Les anciens citoyens polonais, habitants des régions occidentales de l'Ukraine et de la Biélorussie, qui ne se trouvaient pas vers les 1er et 2 novembre 1939 sur le territoire de ces régions et n'avaient pas la nationalité soviétique, ont acquis la nationalité de l'URSS d'après le mode fixé par la Loi de l'URSS du 19 août 1938 "Sur la nationalité de l'Union des Républiques Socialistes Soviétiques"[1] en déposant leurs demandes au Présidium du Soviet Suprême de l'URSS ou au Présidium du Soviet Suprême de la république fédérée sur le territoire de laquelle ils ont été établis."

Les questions de la nationalité des citoyens de la Biélorussie occidentale et de l'Ukraine occidentale ont été résolues notamment par l'Accord entre le Gouvernement de l'URSS et le Gouvernement Provisoire Polonais de l'unité nationale du 6 juillet 1945 sur le droit à l'abandon de la nationalité soviétique par les personnes d'origine polonaise et juive séjournant en URSS et sur leur évacuation en Pologne et sur le droit à l'abandon de la nationalité polonaise par les personnes d'origine russe, ukrainienne, biélorusse, russine et lituanienne séjournant sur le territoire de la Pologne, et sur leur évacuation en URSS".[2]

Le décrêt du Présidium du Soviet Suprême de l'URSS du 30 juillet 1945 "Sur le mode d)acquisition de la nationalité de l'URSS par les habitants des régions occidentales des Républiques Socialistes Soviétiques d'Ukraine et de Biélorussie, se trouvant à l'étranger "[3] a étendu le mode d'acquisition de la nationalité soviétique fixé par le Décrêt du Présidium du Soviet Suprême de l'URSS du 7 septembre 1940 aux habitants des régions occidentales des Ré-

1 Védomosti du Soviet Suprême de l'URSS. 1938. No. 11.

2 Communiqué publié dans le journal "Izvestias des Soviets des députés des travailleurs de l'URSS". 1945. 7 juillet. No. 158.

3 N'a pas été publié dans les publications officielles.

publiques Socialistes Soviétiques d'Ukraine et de Biélorussie parmi les anciens citoyens polonais.

La nationalité de la RSS de Lituanie, de la RSS de Lettonie et de la RSS d'Estonie

Le décrêt du Présidium du Soviet Suprême de l'URSS du 7 septembre 1940 "Sur le mode d'acquisition de la nationalité de l'URSS par les citoyens des Républiques Socialistes Soviétiques de Lituanie, de Lettonie et d'Estonie"[1] a établi que dès la date d'admission de ces républiques en URSS les citoyens de la Lituanie, de la Lettonie et de l'Estonie sont devenus les citoyens de l'URSS.

Si les citoyens de la RSS de Lituanie, de la RSS de Lettonie et de la RSS d'Estonie se trouvaient à la date de la promulgation du Décrêt en dehors de l'URSS et n'étaient pas privés de la nationalité de ces républiques, ils devaient se faire enregistrer au plus tard le premier novembre 1940 comme citoyens soviétiques dans les représentations diplomatiques ou dans les consulats de l'URSS en se présentant personnellement ou en envoyant une demande spéciale par la poste

Les apatrides qui appartenaient aux minorités nationales et ne pouvaient pas acquérir, avant l'instauration du pouvoir soviétique dans ces républiques, la nationalité lituanienne, lettonne et estonienne, allaient maintenant acquérir la nationalité de l'URSS au même titre que les citoyens de ces républiques suivant le mode prévu par le Décrêt.

Les autres apatrides en résidence permanente sur le territoire des RSS de Lituanie, de Lettonie et d'Estonie, qui ont été antérieurement privés de la nationalité soviétique, ainsi que ceux qui ne

1 Vedomisti du Soviet Suprême de l'URSS. 1940. No. 31.

se sont pas faits enregistrer comme citoyens soviétiques à la date fixée,ont acquis la nationalité de l'URSS suivant le mode commun conformément à la Loi de l'URSS du 19 août 1938 sur la nationalité de l'URSS.

Sur la base du Décrêt du Présidium du Soviet Suprême de l'URSS du 7 septembre 1940 on a adopté le Décrêt du Présidium du Soviet Suprême de la RSS de Lituanie du 30 décembre 1940 "Sur l'acquisition de la nationalité de la RSS de Lituanie" [1] stipulant que toutes les personnes qui au premier septembre 1939 ont été établis sur le territoire de la RSS de Lituanie sans considérer si ces personnes avaient alors la nationalité lituanienne ou non,sont les citoyens de la RSS de Lituanie dès la date de son admission en URSS.

Le trasfert à l'URSS de la ville de Klaipeda(Memel) et de la Prusse de l'Est

La décision sur le transfert à l'Union Soviétique de la ville de Königsberg et de la région lui attenante(de la Prusse de l'Est) a été adoptée à la Conférence de Berlin de trois puissances qui a duré du 17 juillet au 2 août 1945.La proposition à ce sujet a été faite par l'Union Soviétique,et les Etats-Unis et la Grande-Bretagne,l'ayant acceptée,se sont engagés à l'appuyer lors du prochain réglement de paix.

Le Décrêt du Présidium du Soviet Suprême de l'URSS du 16 décembre 1947 "Sur le mode d'acquisition de la nationalité de l'URSS par les personnes d'origine lituanienne,les habitants originaires de la ville de Klaipeda,des districts de Klaipeda,de Chilouté et de Pagueguiaye de la RSS de Lituanie" [2] a stipulé que

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1 Vedomosti du Soviet Suprême de la RSS de Lituanie.1941.No I(3).

2 Vedomosti du Soviet Suprême de l'URSS.1948.No. 1.

de telles personnes qui avaient à la date du 22 mars 1939 la nationalité lituanienne, de même que leurs enfants, ont été reconnus comme citoyens de l'URSS dès le 28 janvier 1945 (les dates susmentionnées correspondaient aux dates de l'occupation des régions sus-indiquées par l'Allemagne fasciste et de leur libération par l'Armée Soviétique).

Il a été fait obligation aux citoyens de nationalité, aux habitants originaires de la ville de Klaipeda et des districts susmentionnés qui se trouvaient à la date du 28 janvier 1945 en dehors de l'URSS, de se faire enregistrer comme citoyens soviétiques dans les ambassades, les consulats ou dans les organismes correspondants de l'URSS avant le premier juin 1948 en se présentant personnelement ou en envoyant une demande spéciale par la poste (plus tard ce délai a été prolongé jusqu'au premier janvier 1949).

Les autres personnes en résidence permanente à Klaipeda et sur les territoires attenants sus-mentionnés, pouvaient acquérir la nationalité suivant le mode commun conformément à l'article 3 de la Loi de l'URSS du 19 août 1938 sur la nationalité de l'URSS, soit en présentant des sollicitations au Présidium du Soviet Suprême de l'URSS ou au Présidium du Soviet Suprême de la RSS de Lituanie.

Sur les questions de l'acquisition de la nationalité de l'URSS par les habitants originaires des territoires sus-indiqués d'origine allemande on a adopté l'arrêté du Présidium du Soviet Suprême de l'URSS du 25 juin 1954 "Sur la nationalité des personnes d'origine allemande, habitants originaires de la ville, de Klaipeda et des anciens districts de Klaipeda, Chilouté et Pagueguiaye de la RSS de Lituanie séjournant sur le territoire de l'URSS",[1] dans le-

1 N'a pas été publié dans les publications officielles.

quel il a été recommandé au Présidium du Soviet Suprême de la RSS de Lituanie d'examiner les sollicitations de ces personnes sur la nationalité individuellement conformément à la Loi de l'URSS du 19 août 1938 sur la nationalité de l'URSS.

Quant aux personnes civiles allemandes constituant la population de Königsberg et de la Prusse de l'Est, leur déplacement dans les limites des frontières d'après-guerre de l'Allemagne a été pratiqué apparemment sur la base de la disposition générale établie par l'article 3 de l'Accord entre les gouvernements de l'URSS, de Grande-Bretagne, du Royaume-Uni et des Etats-Unis et le Gouvernement provisoire de la République Francaise sur certaines exigences supplémentaires envers l'Allemagne du 25 juillet 1945. Conformément à l'article sus-mentionné il a été fait obligation aux autorités allemandes de donner des instructions nécessaires et de prendre des mesures nécessaires en vue de recevoir et d'entretenir en Allemagne toutes les personnes civiles allemandes qui ont séjourné sur tous les territoires se trouvant hors des frontières allemandes qui ont existé à la date du 31 décembre 1937, ainsi que dans n'importe quelles régions situées à l'intérieur de ces frontières ou au sujet de l'évacuation desquelles des ordres des représentants des alliés auraient pu être édictés.

L'insertion en URSS de la région de Petsamo(Petchenga)

La région de Petsamo(Petchenga) a été rendue par la Finlande à l'Union Soviétique conformément à l'Accord sur l'armistice du 19 septembre 1944 (article 70) et cet angagement a été confirmé par le Traité de paix du 10 février 1947(article 2).[1]

1 Le journal "Izvéstias du Soviet des députés des travailleurs". 1947. 20 février, No.43.

Jadis, sur la base des traités de paix du 14 octobre 1920 et du 12 mar mars 1940 cette région a été cédée par la Finlande à l'Union Soviétique.

La question de la nationalité de la population de cette région n'a pas été résolue par les accords sus-mentionnés. En ce qui concerne l'Union Soviétique, la réponse à cette question a été probablement contenue dans la Loi de l'URSS du 19 août 1938 sur la nationalité de l'URSS qui a été en vigueur à l'époque. Le paragraphe "a" de l'article 2 de cette Loi considérait comme citoyens de l'Union Soviétique tous ceux qui ont été à la date du 7 novembre 1917 les ressortissants de l l'ancien empire de Russie et n'ont pas perdu la nationalité soviétique.

Conformément à la disposition de l'article 2 du Traité de paix la Finlande a "restitué de bon gré" la région de Petsamo, c'est pourquoi on peut supposer qu'en ce qui concerne la population qui y a séjourné il s'agissait de la continuation de la nationalité soviétique antérieurement interrompue.

Parmi les sources accessibles on n'a pas pu découvrir quelques autres textes de droit interne ou textes internationaux régulant la nationalité de la population de la région de Petsamo (Petchenga).

QUESTIONNAIRE

ON THE

COMPETENCES OF STATE SUCCESSION FOR NATIONALITY

1. In your country's recent or relatively recent history /for example, since the first World War/, has there been one or more cases of State succession and, if so, what type or types of succession occured /annexation, union of States, separation so as to form a new State/ ?

The last case of succession of the Slovak Republic occured in consequence of extinction of the Czech and Slovak Federal Republic on 1.1.1993. The Constitutional Act of the Federal Assembly of the ČSFR Nr. 542/1992 Collection of codes on the extinction of the ČSFR became the legal basis for the extinction of the Czech and Slovak Federal Republic. There is in Art.1 Section 1 quoted as follows:"After expiration of the date of 31-st December 1992 the Czech and Slovak Federal Republic becomes extinct." In accordance with the Section 2 of the same Article: "The successiv states of the Czech and Slovak Federal Republic are the Czech Republic and the Slovak Republic." The Constitutional Act Nr. 542/1992 Collection of codes solves even before the extinction of the ČSFR the question of extinction of federal authorities /Art.3/, the transition of legislativ power of federal authorities to authorities of republics /Art.4/, the transition of executive power to republic governments /Art.5/, the transition of judicial power to republic courts /Art.6/, so as the authority to adopt certain acts or to sign international treaties by republic authorities /Art.7 and 8/. The Constitutional Act on the extinction of the Czech and Slovak Federal Republic does not solve the question of the citizenship of former ČSFR, neither the question of the "citizenship" of

legal entities of former ČSFR and it contains also no authorization for other republic authorities regarding the solution of this question.

2. In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor State governed :

   a/ by an internal agreement, wheter bilateral or multilateral ?
   b/ by the internal law of the successor State ?
   c/ jointly by both these procedures ?
   d/ in another manner /pursuant to a dicision of an international organisation, or to an international judgment, or to decisions of domestic courts, etc./ ?

2.b/ In the case of the Slovak Republic as of one of the successor States of former ČSFR, the question of the citizenship was regulated by the National Council of the Slovak Republic law Nr.40/1993 Collection of codes on the citizenship of the Slovak Republic. The requirement of new legal regulation of the citizenship resulted from the Art. 5 of the Constitution of the Slovak Republic /460/1992 Coll. of codes/, where it is quoted as follows:

1/ The acquirement and the loss of the citizenship of the Slovak Republic is regulated by the law.
2/ It is not possible to withdraw somebody's citizenship against his /her/ will.

As the Explanatory report to the law Nr. 40/1993 Collection of codes on the citizenship of the Slovak Republic quotes: " The special legal regulation of the citizenship is a consequence of unsuccessful debates about the mutual solution of questions of the citizenship in form of treaties of Slovak Republic and Czech Republic, when it did not succeed to reach agreement, because their conceptions about the solution of the citizenship of each

republic differed in basic principles. Therefore, in accordance with the treaty of the government of the Slovak Republic with the government of the Czech Republic, each of both republics solves this problem separate by legal regulation of own."

3. Which solutions were adopted in these cases:

a/ was the acquisition of the nationality of the successor State automatically /ipso facto/ conferred upon all inhabitants of the new territory or only upon certain categories of such inhabitants ?

3.a/ The basic standpoint to the question of the citizenship of the Slovak Republic was the respect of Constitutional norm of the Art.5 Constitution of the Slovak Republic, as follows:

/2/ It is not possible to withdraw somebody´s citizenship against his /her/ will.

It is necessary to remember in connection with this, that already in the time of Czechoslovak Federation /1968-1992/ there was by legal regulations established the double citizenship: the citizenship of the ČSFR and the citizenship of the Slovak /Czech/ Republic. Pursuant to the Act of the Federal Assembly of ČSFR Nr. 165/1968 Coll. of codes on the principles of acquirement and loss of the citizenship of the Slovak Socialist Republic, there were categories of "federal" citizenship of the ČSFR and at the same time alsothese of the citizenship of the Slovak Republic. That is the reason why in the moment of extinction of ČSFR, it is on 31-st December 1992 <u>there existed citizens of Slovak Republic.</u> They have been those of them, they filfiled the requirements of the National Council law Nr.206/1968 Coll. of codes on the acquirement and loss of the citizenship of the Slovak Republik.

Pursuant to this legal regulation every czechoslovak citizen older than 15 years born in the territory of the Slovak Republic became to the date of 1-st January 1969 citizen of the Slovak Republic. When ho /she/ was born abroad, he /she/ acquired the

citizenship of the Slovak Republic on condition, that he /she/ was reported to a permanent stay in the territory of this republic. Persons, they acquired the citizenship on this way and also those of them, they became citizens later pursuant to other enactment of quoted legal regulation /for example children by birth followed the citizenship of their parents, citizenship acquired by grant, choice, marriage, etc./.

Another group of citizens of the Slovak Republic existing to 31-st December 1992 was that one, which originated through the application of the law Nr. 88/1990 Coll.of codes. This law changes and amends the regulations about the acquirement and loss of the czechoslovak citizenship. It was the question of those citizens of the ČSFR, they were deprived of their citizenship against their will /as a sanction/. Since 28-th March 1990 these citizens were deemed persons dismissed from the citizenship alliance of ČSFR and till the date of 31-st December 1993 they could announce by letter, that they want to remain czechoslovak citizens. It was necessary to deliver this announcement to the Ministry of Interior of that republic, where they had their last permanent residence. If their last permanent residence was in the territory of the Slovak Republic and the Ministry of Interior got such an announcement, also these citizens were deemed citizens of the Slovak Republic.

The National Council of the Slovak Republic law Nr. 40/1993 does not establish towards this way "originated" groups of citizens of the Slovak Republic no further /and special/ criteria for acquirement of the citizenship of the Slovak Republic, but keeps the continuum of citizenship of the Slovak Republic by establishing his § 2, which determines the citizenship of the Slovak Republic to persons : " they have been to the date of 31-st December 1992 citizens of the Slovak Republic pursuant to the law of the Slovak National Council Nr. 206/1968 Coll. of codes on the acquirement and loss of the citizenship of the Slovak Socialist Republic in wording of the law Nr. 88/1990 Coll. of codes, which changes and amends the regulations on the acquisition and loss of the Czechoslovak citizenship." These

citizens are deemed citizens of the Slovak Republic also pursunat to the National Council of the Slovak Republic law Nr. 40/1993 Coll. of codes on the citizenship of the Slovak Republik. If it is the question of citizens of the Slovak Republic /parents/, their citizenship originated by determination pursuant to § 2 of the National Council of the Slovak Republic law Nr. 38/1993 Coll. of codes, so pursuant to § 4 Section 1 of this law: "also their minor children acquire their citizenship, if only one of the parents is alive, the child acquires his /her/citizenship. The law Nr. 38/1993 Coll. of codes "ex lege" by establishment of his § 2 determines the citizenship of the Slovak Republic to by this way determined groups of citizens of the Slovak Republic /when they have acquired the citizenship of the Slovak Republic during the existence of the Czechoslovak Federation and on condition, that they have had this citizenship to the date of 31-st December 1992/. This determination is refered pursuant to § 4 Section 1 also to minor children of citizens of the Slovak Republic. Therefore the law Nr. 38/1993 Coll. of codes does not withdraw any person's citizenship of the Slovak Republic, if this person has had it to the date of the 31-st December 1992.

3.b/ In the event that nationality was automatically or massively conferred by the successor State, were there nonetheless cases of exclusion of certain categories of groups or persons ? If so, which categories ?

The National Council of the Slovak Republic law Nr. 38/1993 Coll. of codes does not determine even a next category, or a group of persons, which is excluded from the possibility to acquire the citizenship of the Slovak Republic.

3.c/ Was the right to choose one's nationality recognized in respect of all inhabitants of the new territory or only in respect of certain categories among them ? In the latter case, what where the categories, and by what legal procedure was the choice exercised /for example, individual choice, referendum/? Similarly, what were the consequences for persons who did not elect for nationality of the successor State ?

The right to choose the citizenship of the Slovak Republic is recognised by the National Council of the Slovak Republic law Nr. 40/1993 Coll. of codes in its § 3 Section 1 in respect of persons: "they have been to the date of 31-st December 1992 citizens of the Czech and Slovak Federativ Republic but they are not citizens of the Slovak Republic pursuant to § 2." It is the question of the citizens of the Czech Republic, they could choose the citizenship of the Slovak Republic by individual option in term untill 31-st December 1993 /§ 3 Section 2/. The purpose of this establishment is in the Explanatory report explained in the way, that it is taken into consideration:"... the tradition of the common State for many years." The signification /meaning/ of § 3 of the National Council law Nr. 38/1993 Coll. of codes is that in connection with the origin of the independent Slovak Republik it grants a legal possibility also citizens of former ČSFR, they have not been citizens of the Slovak Republic to the date of the 31-st December 1992, to acquire the slovak citizenship by individual option in term until 31-st December 1993. Manifestation of the will to opt for citizenship of the Slovak Republic is a written declaration submitted either to a district office of Slovak Republic or abroad at a diplomatic representation or consular office of the Slovak Republic, depending on the place of residence of the applicant /§ 3 Section 2/. In the case of those citizens of ČSFR they at the same time are parents, their citizenship acquired by option is followed also by their minor children /§ 4 Section 1/. In the mentioned - 4 Section 2 to 5 are solved also the cases of the so called mixed

czecho-slovak matrimonies, fosterage of the child to one of parents for upbringing, etc. It is necessary to supplement, that the National Council law Nr. 40/1993 coll. of codes does not enable any other group of persons /except former citizens of ČSFR/ to acquire the citizenship of the Slovak Republic by individual option and this not even in connection with the origin of the independent Slovak Republik. In the case, that the former citizens of the ČSFR did not choose the citizenship of the Slovak Republic until 31-st December 1993, since 1-st January 1994 they become aliens in the territory of the Slovak Republic and their legal regime is regulated by the law Nr. 123/1992 coll. of codes on the residence of aliens. It is necessary to mention, that the enactments of the § 2 to 4 of the National Council law Nr. 40/1993 Coll. of codes are the sole enactments, they solve the origin of the citizenship of the Slovak Republic in connection with the origin of the independent Slovak Republic. The further enactments of the National Council of the Slovak Republic law Nr. 40/1993 Coll. of codes /§§ 5-20/ have no direct connection to the origin of the independent Slovak Republic and they regulate the "standard" ways of origin and extinction of the citizens Coll. of codeship of
the Slovak Republik.

4. Upon what criteria were the solutions adopted in the above cases:

   a/ jus sanguinis /origin/
   b/ jus soli /domicile or residence/
   c/ both of these criteria
   d/ resort to other criteria ?

Regarding the criteria, pursuant to them the citizenship of the Slovak Republic as of the State of successor is based, it was already mentioned /in the answer to the question 3.a/ of this questionnaire/, that the slovak legislator did not determine any

new and special conditions for the acquisition of the citizenship different from those, they were "sufficient" for acquisition of the citizenship of the Slovak Republic in ČSFR until 31-st December 1992.

Therefore pursuant to the National Council law Nr. 40/1993 Coll. of codes a person fulfiling the conditions of the Slovak National Council law Nr. 206/1968 Coll. of codes on the acquisition and loss of the citizenship of the Slovak Socialist Republic. Pursuant to belonging enactments of this law, citizen of the Slovak Republik may be a person /child/

1/ born in the territory of the Slovak Republik and to the date of 1-st January 1969 having the citizenship of the Czechoslovak Socialist Republik /§ 2 Section 1/ - application of the principle ius soli

2/ having permanent residence in the territory of the Slovak Republic to the date of 1-st January 1969, if person born abroad - application of the principle permanent residence

3/ choosing the citizenship of the Slovak Socialist Republik and until 1-st January 1969 being a citizen of the Czechoslovak Socialist Republik but not a citizen of the Slovak Socialist Republik. A term for the choice of the Slovak citizenship was accordance with § 4 Section 2 of the law Nr. 206/1968 Coll. of codes determined until 31-st December 1969. It is the question of acquisition of the citizenship by individual option.

4/ born after 1-st January by parents, citizens of the Slovak Socialist Republic /§ 8 Section 1 of the law/. Application of the principle ius sanguinis.

5/ born in the territory of the Slovak Republic, on condition that one of parents has been a citizen of the Slovak Socialist Republic and one of them a citizen of the Czech Socialist Republic /§ 8 Section 2/. Application of the principle ius soli.

6/ born by parents, of whom one has been a citizen of the Slovak Socialist Republic and the second one a foreign citizen /§ 8 Section 4/. Application of the principle ius sanguinis.

7/ found in the territory of the Slovak Republik, unless a

citizenship other than that of the Slovak Republic can be documented /§ 8 Section 5/. Modification of the principle ius soli.

8/ who married a citizen of the Slovak Republik by fulfiling additional conditions of § 9 of the Slovak National Council law Nr. 206/1968 Coll. of codes. Application of other criteria for acquisition of the citizenship.

9/ who as alien has been permanently residing in the territory of the Slovak Republik for at least 5 years without interruption and has fulfiled also additional conditions required by § 10 of the law Nr. 206/1968 Coll. of codes. Application of the principle - permanent residence.

A person fulfiling some of these criteria became a citizen of the Slovak Socialist Republic already in time of the existence of the Czechoslovak Federation and pursuant to the National Council law Nr. 40/1993 Coll. of codes he /she/ had this citizenship also after origin of the Slovak Republik on 1-st January 1993. The Slovak National Council law Nr. 206/1968 Coll. of codes did not determine uniform criteria on acquisition of the slovak citizenship. There was possible to acquire it /depending on certain groups of persons/ pursuant to one of the following criteria:

a/ criterion ius sanguinis
b/ criterion ius soli
c/ criterion of permanent or long-lasting residence
d/ other criterion.

5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness ? What were these measures ?

Regarding the measures /possible measures/ for prohibition or elimination of <u>double citizenship</u> it is necessary to mention the following :

a/ Regarding the citizens of the Slovak Republic, they acquired

the citizenship by determination pursuant to § 2 National Council of the Slovak Republic law Nr. 40/1993 Coll. of codes, the condition for the acquirement of it was not the release from the citizenship alliance of other State /in case of persons, them it could concern/. Their citizenship was determined regardless to the fact whether the slovak citizen is /was/ in the same time in a citizenship alliance of other state/s/. In connection with the acquisition of citizenship of the Slovak Republic pursuant to the § 2 National Council of the Slovak Republik law Nr. 40/1993 Coll. of codes there were therefore adopted no legislative or other measures, they may eliminate the double citizenship /regarding these citizens/.

b/ Regarding the former citizens of ČSFR and Czech Republic they acquired the citizenship of the Slovak Republik by individual option in the legal term /§ 3 Section 1 and 2/, the condition for their acquirement of the citizenship of the Slovak Republic was the submission of a declaration.. The legislator does not require as the condition of acquirement of the slovak citizenship the citizen´s release from the citizenship alliance of the Czech Republic. There were neither in case of persons, they acquired the citizenship of the Slovak Republic by individual option, accepted no legislativ or other measures, they would eliminate the possible origin of double citizenship. As to the measures eliminating the statelessness there is possible to quote the following:

a/ The citizenship was granted "ex lege" to all citizens of the Slovak Republic they acquired the citizenship by determination pursuant to § 2 of the National Council of the Slovak Republic law Nr. 38/1993 Coll. of codes and this way the state of statelessness is eliminated. It means, that every person, who to the date of 31-st December 1992 had been a citizen of the Slovak Republic acquired this citizenship also pursuant to the law Nr. 40/1993 Coll. of codes and did not remain /could not remain/ without citizenship of the Slovak Republik.

b/ Citizens of former ČSFR they had the possibility to acquire the citizenship of the Slovak Republik by optional declaration

until the date of 31-st December 1993 and did not use this possibility, they are considered since 1-st January 1994 in the territory of the Slovak Republik as aliens. Therefore the fact. that they did not use the legal possibility to acquire the citizenship of the Slovak Republic by individual option, does not cause also in their case the state of statelessness.

6. **How was the question of the nationality of legal persons regulated ?**

Regarding the citizenship of legal persons, it was already mentioned, that the Constitutional Act Nr. 542/1992 does not solve the question of citizenship neither of natural persons nor legal entities. The question of citizenship of legal entities is not solved even in the National Council law Nr. 40/1993 Coll. of codes. The citizenship of legal entities in former ČSFR was solved /and in the same way is solved also in the Slovak Republic/ in the Commercial Code Nr. 513/1991 Coll. of codes /it entered into force on 1-st January 1992. There is quoted in enactments of his § 21 Section 2 the following : "We understand by czechoslovak legal entity for purposes of this law a legal entity with the seat in the territory of the Czech and Slovak Federativ Republic." Evidence about the seat of a legal entity is the registration in the commercial register pursuant to § 28 Section 1 letter a/ of Commercial code. Therefore legal entities with the seat in the territory of ČSFR acquired until the date of 31-st December 1992 /regardless if in the territory of the Czech or of the Slovak Republic by registration into the commercial register a federal "czechoslovak citizenship", what authorized them to enterprise in the whole territory of the ČSFR. The czechoslovak citizenship of legal entities lasted also until a certain period after origin of the Czech and Slovak Republic as of two independent States. Differently from the citizenship of natural persons the legal entities had therefore still the "czechoslovak citizenship" , pursuant to it they could enterprise

in the whole territory of former ČSFR. It was necessary to adapt this state to changed conditions of existence of two independent States. By a treaty of the Slovak Republic and Czech Republic from the 29.th October 1993 /came into effect on 3.12.1993/ about the temporary authorization of natural persons and legal entities to enterprise after the date of 31-st December 1993 in the territory of another republic is determined, that the legal entities having their seat in the territory of the Slovak Republic can act in the territory of the Czech Republic only until the date of 31-st June 1994. After this date they can enterprise in the Czech Republic only on condition that they have required the registration into the commercial register in the territory of the Czech Republic. The same process is valid also for legal entities of the Czech Republic acting in the territory of the Slovak Republic. Because of this measure the legal entities with the seat in the territory of the Slovak Republic are since 1-st January 1994 authorized to enterprise only in the territory of the Slovak Republic. If they want to enterprise also in the Czech Republic, they must win a seat also in the territory of this republic by registration into commercial register of the Czech Republic.

7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State succession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin ? If not, do you consider that such a person should at least be accorded the status of permanent resident ?

As quoted in the answer to the question 3.c/ of this questionnaire the citizenship of Slovak Republic was determined to persons pursuant to § 2 of National Council law Nr.40/1993 Coll. of codes or it was admited to persons, they in form of individual option chosed the citizenship of the Slovak Republic pursuant to § 3 of the law on the citizenship of the Slovak

Republic. These persons acquired /could aquire/ the citizenship irrespective to their ethnic origin and on condition of fulfilment the legal conditions for its acquisition. As already mentioned, no other person /or group of persons/ except of slovak citizens of ČSFR without slovak citizenship, could acquire the citizenship in connection with /as a consequence/ the origin of the Slovak Republik. For all other persons, they want to acquire the slovak citizenship after the date of 1-st of January 1993, there are valid identic legal conditions for its acquisition, so as quoted for example in § 7 Acquisition of citizenship pursuant to the residence on the territory of the Slovak Republic and fulfilment of further conditions /§ 7 Section 1 letter a/, matrimony with the citizen of the Slovak Republic /§ 7 Section 3 letter a/, etc. In such cases the citizenship may be accorded to the applicant, when there are fulfiled the legal conditions and this irrespective to his /her/ ethnic origin.

8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognise that the matter is circumscribed by rules of international law ? In the latter case, which rules ?

As already mentioned, the question of the citizenship of the Slovak Republic is regulated by internal law Nr. 40/1993 Coll. of codes and this law is pursuant to Exlanatory report the manifestation of: "The principle of sovereignty of the Slovak Republic within the State, as so as in the relation to foreign countries in questions of determination of acquisition and extinction of the citizenship of the Slovak Republic and their legal regulations." But the quoted principle does not mean, that the only one legal principle on acquisition and extinction of the citizenship of the Slovak Republic is exclusive the internal love and his principles. The next of principles, which is respected by the law Nr. 40/1993 Coll.of codes is that one, which about is the

Explanatory report and this is: "The principle of respecting international treaties of fundamental human rights and freedoms, by them the Slovak Republic is bounded." The slovak legislator does not insist on the obligatory application of the law Nr. 40/1993 Coll. of codes by the solution of questions of citizenship of the Slovak Republic, but he takes into consideration also the belonging/appertaining/ international regulation of the questions of the citizenship. His relation to it is expressed by an special enactment of § 17 of the law Nr. 40/1993 Coll. of codes as follows :"If some questions of the citizenship in the international treaty , which is binding for the Slovak Republic, are regulated different as in the mentioned law, in such case the regulation of international treaty is valid".

§ 17 of the law Nr. 40/1993 Coll. of codes contains a preferential clause about the prior application of the international treaty regulating "some questions of the citizenship" on the assumption that they are regulated "different" as those in the law on the acquisition of the citizenship of the Slovak Republic. Although /as mentioned/ the questions of origin and extinction of citizenship of the Slovak Republic are regulated by the internal law, the legislator <u>does not insist</u> on this /and solely this/ legal base. He takes into consideration also a possible development in the international law and the regulation of these questions in the future and does not exclude even a possible assertion of the international treaty instead of the internal law.It is not possible to foresee the development in this field and therefore the legislator determines, that the international treaty will be applicated in the case, when its regulations of the question of the citizenship "will differ" from those of the law Nr. 40/1993 Coll. of codes.

9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purposes of granting nationality ?

The criteria of an effective link between a person and the territory of the Slovak Republic as one of conditions for granting the citizenship of the Slovak Republic are comprehended in the framework of individual enactments of the law Nr. 40/1993 Coll. of codes as follows:

a/ § 2 of the law - criterion of the citizenship of the Slovak Republic pursuant to previous regulations

b/ § 3 of the law - citizenship of former ČSFR combined with the execution of the right of individual option

c/ § 5 of the law - birth of a child by parents, of whom at least one is a citizen of the Slovak Republic /§ 5 Section 1 letter a/

Application of the criterion ius sanguinis

- birth in the territory of the Slovak Republic by parents who are stateless persons /§ 5 Section 1 letter b/.

Application of the criterion ius soli.

- birth in the territory of the Slovak Republic by parents who have other citizenship than that of the Slovak Republic but the child does not acquire their citizenship by birth /§ 5 Section 1 letter c/. Application of the criterion ius soli.
- birth in the territory of the Slovak Republic and acquisition of the citizenship of the Slovak Republic unless foreign citizenship of the child can be documented / § 5 Section 2 letter a/.

Application of the criterion ius soli.

- founds of children in the territory of the Slovak Republic in case of unknown parents, unless acquisition of citizenship other

than that of the Slovak Republic can be documented /§ 5 Section 2 letter b/.
Modification of the criterion ius soli.

- adoption of a child, who is not slovak citizen, by foster parents of whom at least one is a citizen of the Slovak Republik / § 6/. Application of other criteria.
- the time of alien's residence in the territory of the Slovak Republic at least 5 years / § 7 Section 1 letter a /.
Application of the criterion of long-dated residence.
- entering into matrimony with a citizen of the Slovak Republik /§ 7 Section 3 letter a/. Application of other criterion..
- Reasons meriting special consideration. /If it is a person, who have gained recognition for significant economic, scientific, cultural or technical contributions to the benefit of the Slovak Republic/.
/ § 7 Section 3 letter b/.
Application of other criterion.

10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject ?

Regarding the grant of citizenship of the Slovak Republic and its influence /consequence/ on the rights of persons acquired under the legal regulations of the former state, it is possible to quote the following.

- Citizens of the Slovak Republic, they acquired their citizenship of the Slovak Republic by determination pursuant to

§ 2 of law Nr. 40/1993 Coll. of codes keep in full range the rights acquired under former legal regulation. With other words, the origin of the citizenship by determination has neither legal nor real consequence for other rights of citizens of the Slovak Republic acquired during existence of ČSFR.

- Citizens of ČSFR, they acquired the citizenship of the Slovak Republik by individual option pursuant to § 3 of the National Council of the Slovak Republic law Nr. 40/1993 Coll. of codes keep in the same way and in full range the rights acquired under former regulation. The origin of the citizenship by individual option has neither legal nor real consequence for other rights acquired pursuant to former legal regulation.
- The legal regime of aliens , event. their rights acquired during the existence of ČSFR, did not change after origin of the independent Slovak Republic in no respect. There is in the Art. 52 Section 2 of the Constitution of the Slovak Republic /the Constitution came into effect on 1-st October 1992/ quoted the folowing:

"Aliens shall enjoy the fundamental rights and freedoms guaranteed by this Constitution, unless expressly designated only for the citizens of the Slovak Republic."

Regarding the deprivation of the citizenship of the Slovak Republic and its influence /consequence/ on person's rights acquired under the legal regulation of the former State, it is possible to quote the following. As already mentioned in the answer to the question 3a/ of this questionnaire, the basic standpoint to the question of the citizenship of originated Slovak Republik was the respect of the constitutional norm comprehended in the Art. 5 Section 2 of the Constitution guaranteing, that no person shall be deprived of citizenship against his or her will. In connection with the origin of the Slovak Republik the citizenship was determined only to slovak citizens, they acquisited it already in the time of federation /§ 2 of the law/ and there was given a legal possibility to acquisit the slovak citizenship also to other than slovak citizens /§ 3/. Therefore the origin of the Slovak Republik has no consequences in form of deprivement of the slovak citizenship of some persons or goups of persons. Therefore, as consequence of the origin of the Slovak Republik, there have been no persons, or groups of persons deprived of slovak citizenship. Because of this, it is not possible to register no consequence of this institution on the rights acquired formerly.

Reply by Slovenia

ANSWERS TO THE QUESTIONNAIRE

on the consequences of State succession for nationality

1. The Republic of Slovenia became a sovereign and independent State by decision of the Assembly of the Republic of Slovenia of 25.6.1991, on the basis of a plebiscite held on 32.12.1990. The Republic of Slovenia thus separated from the former State, the Socialist Federative Republic of Yugoslavia, on 25.6.1991.

2. Citizenship of the Republic of Slovenia is governed by the Law on Citizenship of the Republic of Slovenia, on the basis of article 13 of the Constitutional Law for Implementing the Charter on the Sovereignty and Independence of the Republic of Slovenia, thus on the internal regulations of the Republic of Slovenia.

3. Basically, two forms of obtaining citizenship of the Republic of Slovenia were determined:

a) all those who held citizenship both of the Republic of Slovenia and of SFRY obtained citizenship automatically - under regulations which had applied in former SFRY;

b) citizens of other republics of SFRY had the right to choose citizenship of the Republic of Slovenia, if on the day of the plebiscite on the sovereignty and independence of the Republic of Slovenia (23.12.1990) they had permanent residence in the Republic of Slovenia and were actually therein residing.

4. Both basic solutions were adopted on the basis of citizenship, determined in regulations applicable in the former State of SFRY, and on the principle of jus soli (domicile).

5. The Law on citizenship of the Republic of Slovenia does not prohibit dual citizenship, though it tries to limit it, mainly in the following ways: In obtaining citizenship by naturalisation, those applying for citizenship of the Republic of Slovenia must prove that they have given up their citizenship of a foreign State, or that they will give it up when they obtain Slovene citizenship. A citizen who also has foreign citizenship may also be released from citizenship at his own request, or it be taken away. Citizens of the Republic of Slovenia may have their citizenship removed if they also have foreign citizenship, and are living abroad, and their behaviour damage the interests of the Republic of Slovenia.

The regulation of citizenship of the Republic of Slovenia was planned such that the independence of the country did not create persons without citizenship; that was in principle achieved also by respecting the regulation applicable in the former SFRY. In the Law on Citizenship of the Republic of Slovenia, giving up or taking away citizenship is regulated such that it can only apply to those who have or prove that they will have, foreign citizenship.

Nevertheless, the possibility of dual citizenship exists, according to unverified estimates, of a large number of persons who applied for and obtained Slovene citizenship as citizens of other republics of former SFRY, but who did not lose citizenship of other republics. Equally, there exists the possibility, though only exceptionally, of persons without citizenship, persons from other republics who did not apply for or abtain Slovene citizenship, and later lost citizenship of the other republic. However, even in those cases, it is possible to obtain citizenship by naturalisation. It will only be possible to settle this finally when conditions on the territory of former Yugoslavia have been consolidated, either by bilateral agreements between the new States, or on the basis of the study of the regulations of these States and adapting these new internal regulations.

6. In principle domestic legal persons are taken to be those with their seat in the Republic of Slovenia.

7. Ethnic (national) affiliation may not be a condition for obtaining citizenship. The Law on Citizenship of the Republic of Slovenia also does not define such a condition, although it offers some more favourable conditions for obtaining citizenship for persons of Slovene descent.

8. The Law on Citizenship of the Republic of Slovenia only allows a decision on the basis of limited discretionary rights in the case of obtaining citizenship by naturalisation, limited in the sense that a State organ may reject an application for obtaining citizenship if this is not in accordance with the national interest. However, this law is planned such that it respects the principles of international law, above all in prohibiting discrimination in granting or removing citizenship, the principle of non-arbitrary decision-making, the principle of legal protection, even in cases when the State organ decides on the discretionary principle (court judgement on whether the discretionary decision was adopted in accordance with the intention of the law) and the principle that the decision of a State organ may not cause a person to remain without citizenship.

The Constitutional Court of the Republic of Slovenia has also intervened in the regulation of citizenship with a number of decisions. Among other matters, it annulled the provisions of article 28 of the Law on Citizenship of the Republic of Slovenia, which allowed an administrative organ to reject an application for citizenship without citing the reasons for their decision. It found that such a provision violated the right to legal redress determined in article 25 of the Constitution of the Republic of Slovenia (decision no. U-I-98/91 of 10.12.1992, Official Gazette RS, no. 61/92, collection of decisions of resolutions of the Constitutional Court I, no. 101). Similarly, it annulled articles 13a. and 41 of the Law on Citizenship of the Republic of Slovenia, because they empowered an administrative organ to decide at its own discretion, and it was not clear from the Law the purpose of such authority; it found that such a legal provision violated the principle of legality in the working of the state administration, defined in article 120 of the Constitution of the Republic of Slovenia, as well as article 25 of the Constitution of the Republic of Slovenia, which guarantees the right to legal redress (decision no. U-I-69/92 of 10.12.1992, Official Gazette RS,

no. 61/92, collection of decisions of resolutions of the Constitutional Court I, no. 102).

9. The link between a person and a territory is respected in the Law on Citizenship of the Republic of Slovenia, primarily with following:

a) persons with citizenship of other republics constituting the former SFRY who had permanent residence and actually resided in the Republic of Slovenia had the right to obtain Slovene citizenship on the basis of their own decision;

b) persons who are born or found in Slovenia obtain Slovene citizenship if the father and mother are unknown, if their citizenship is unknown or if they are without citizenship;

c) persons who have actually resided in Slovenia for ten years, unbroken for the last five years, may obtain Slovene citizenship if they fulfil other legally regulated conditions (naturalisation).

10. The Constitutional Law for Implementing the Charter on the Sovereignty and Independence of the Republic of Slovenia also determined the following at the time of the country becoming independent:

a) it guaranteed to military and civilian personnel serving in the Yugoslav army, social and other rights obtained prior to independence according to the regulations of the former SFRY;

b) it guaranteed physical persons who did not have Slovene citizenship, and legal persons with a seat in the Republic of Slovenia, property rights and other material rights to fixed assets to the extent that they were in receipt of these rights according to regulations current until then;

c) it guaranteed war veteran rights, defined by the regulations of the former SFRY which had applied until then;

d) it guaranteed to citizens of other republics who did not had permanent residence, and who actually lived in Slovenia, the same rights as Slovene citizens to decide in favour of Slovene citizenship, except the right to purchase real estate.

Reply by The Former Yugoslav Republic of Macedonia

1. *Dissolution of the Former Socialist Federal Republic of Yugoslavia / independence of the Republic of Macedonia (1991)/*

2. *Law on Citizenship of the Republic of Macedonia /"Official Gazette of the Republic of Macedonia" no. 67/92/*

3. *a) automatically for all persons holding citizenship both of the Republic of Macedonia and the SFRY*
   b) upon application for citizens of other Republics of the Former SFRY having had permanent residence in the Republic of Macedonia at the date of submition of the application for citizenship of the Republic of Macedonia(upon the criteria enumerated in the point 5 of the questionaire)
   c) -

4. *For citizens of other Republics of the Former SFRY having had permanent residence in the Republic of Macedonia at the time of submition of the application following criteria were necessary:*

   - permanent personal income
   - age of 18 years;
   - at least 15 years og legal residence in the Republic of Macedonia prior to the submition of the application for citizenship.

5. There were no measures taken to prohibit or limit cases of double nationality of citizens of the Republic of Macedonia and of citizens of other succesor states of the Former SFRY living at the teritory of the Republic of Macedonia.

- Statelessness -

6. By please of incorporation and seat

7. Yes.

8. Under the article 118 of the Constitution of the Republic of Macedonia international agreements (bilateral or multilateral) ratified by the Macedonian Assembly are directly aplicable on the teritory of the Republic of Macedonia and have precedence over Macedonians laws;(as yet):

a. 1966, UN International Convention on the Elimination of all Forms of Racial Discrimination;

b. 1979, UN Convention on the Elimination of all Forms of Discrimination against Woman;

c. 1966, UN International Convention on Civil and Political Rights;

d. 1989, UN Convention on the Rights of the Child;

e. 1957, UN Convention on the Nationality of Maried Woman;

f. 1954, UN Convention relating to the Status of Stateless Persons;

g. 1951, UN Convention relating to the Status of Refugees;

h. 1967, UN Protocol relating to the Status of Refugees;

i. 1930, Protocol relatilng to a Certain Cases of Statelessness (The Hague);

j. 1948, Universal Declaration of Human Rights

9. For granting citizenship: to certain extent; inter alia: to have had permanent residence in the Republic of Macedonia for at least 15 years prior to application; to have knowledge of the Macedonian language, etc;

- For withdrowal of citizenship: the loss of the effective link between a citizen of the Republic of Macedonia and its territory is no ground for loss of citizenship.

10. Persons who have not acquired nationality of the Republic of Macedonia have retained the rights acquired under former laws and regulations and have the same rights and obligations as the citizens of the Republic of Macedonia, except for:

- political rights;
- military obligation;
- employment in the public service;
- using a national passport.

Reply by Turkey

ANSWER TO THE QUESTIONNAIRE ON THE COMPETENCES OF STATE SUCCESSION FOR NATIONALITY (TURKEY)

1. The only relatively recent example of state succession in the history of the Turkish Republic is the annexation of the province of Hatay (previously known as the sandjak of Alexandretta) in 1939.

2. In this case, the issue of nationality was governed by the international treaty between Turkey and France signed in 1939 and ratified by the Turkish National Assembly by the law numbered 3658.

3. Under Article 2 of the treaty, Turkish citizenship was automatically conferred upon all inhabitants of the said territory. No categories or persons were excluded. Those who were above the age of 18 were entitled to choose Syrian or Lebanese nationality within a period of six months. This right was to be exercised by presenting a declaration to the local administrative authorities.

4. The criterion used was jus soli.

5. The automatic acquisition of Turkish citizenship did not give rise to the problems of double nationality or statelessness.

6. Not regulated in the treaty.

7. Yes. If this is not deemed possible for certain extraordinary reasons, the persons concerned should at least be accorded the status of permanent resident.

8. While it is generally agreed that the choice of criteria is within the exclusive competence of the state, care is taken to maintain consistency between domestic and international law. In particular, in the preparation of the 1964 Turkish law on nationality the following principles derived from international documents have been taken into account: (a) Every person has a right to nationality; (b) Every person should have a single nationality; (c) Nationality should not be imposed upon anybody against his or her will.

9. Under the Turkish law on nationality, nationality can be acquired on the basis of jus soli, in addition to jus sanguinis, upon birth. In naturalization, a five-year residence condition is required in addition to other requirements.

10. The grant of Turkish nationality has no impact on the rights of persons acquired under the rules to which they were formerly subject.

The loss of Turkish citizenship can take place in three ways: (a) withdrawal of naturalization. In this case, the Council of Ministers may order the expulsion of the person concerned and the liquidation of his property in Turkey. (b) The loss of nationality as a result of "activities incompatible with allegiance to the fatherland." This has no consequences regarding his or her rights. (c) Expulsion from Turkish nationality as a result of activities against the security of the state. This entails expulsion from the territory and the liquidation of property rights. It has no effects on the nationality of the spouse and children.

Under the Constitution (Art. 66) decisions regarding the loss of citizenship cannot be left outside the scope of judicial review.

Reply by Ukraine

QUESTIONNAIRE

ON THE

CONSEQUENCES OF STATE SUCCESSION

FOR NATIONALITY

UKRAINE

1. In your country's recent or relatively recent history (for example, since the first World War), has there been one or more cases of State succession and if so, what types of succession occurred (annexation, union of States, separation so as to form a new State)?

There have been a number of cases of state succession in Ukraine's recent history. The most significant events are briefly outlined below.

At the beginning of World War I, Central and Eastern Ukraine were part of the Russian Empire; Western Ukraine was part of the Austro-Hungarian Empire.

The Russian Empire collapsed after the outbreak of the Russian revolution. On September 3, 1917, the first independent government of Ukraine, the *Tsentrailna Rada* (Central Rada) was proclaimed in Kyiv. *Preshiy Universal* (the First Universal), the first constitutional document of modern Ukraine, was adopted by the by the *Tsentrailna Rada* on August 9, 1917. After the Bolshevik Coup in Russian in October, 1917, the *Tsentrailna Rada* proclaimed the Ukrainian National Republic as a confederate partner of the Russian Republic. By the beginning of 1918 when it was understood that the Communist regime had consolidated power in Russian and that confederate relations were not possible, the *Tsentrailna Rada* proclaimed the independence of the Ukrainian National Republic on January 22, 1918. On April 29, the Constitution of Independent UNR (Statute of Rights and Freedoms of the Citizens of the UNR) was adopted. The Rada government lasted for only a very brief period.

Civil war broke out in Russia following the Bolshevik coup. The war quickly spread to Ukraine and the UNR engaged in battles with the Bolshevik army in the North and East, and the White Army in Southern Ukraine. In an attempt to strengthen its influence in Ukraine, on December 25, 1917, the Bolsheviks established the first Ukrainian Socialist Soviet Republic whose capital was based in Kharkiv, then under control of the Red Army. The first Bolshevik government in Ukraine was also of short duration. During the civil war period, four successive Bolshevik governments were established in Ukraine.

The next stage in the creation of the independent Ukrainian state

was the collapse of the Austro-Hungarian Empire and the creation of the Western Ukrainian National Republic.

On January 22, 1919, a historic event took place in Kyiv. On that date the UNR and WUNR united to form one independent Ukrainian state. The state was short lived. External aggression, internal conflict and the total exhaustion of the population led to the collapse of the Ukrainian state. By November 1920, Ukraine was under the total control of Communist Russia and became one of the first nations to become a constituent part of the Soviet Union.

A new independent Ukrainian state was created as the Soviet Union weakened, then collapsed. The first step was taken by the *Verkhovna Rada* (the Supreme Rada) of the Ukrainian Soviet Socialist Republic on July 16, 1990 with the adoption of the Declaration on State Sovereignty of Ukraine. Following the coup in Moscow in August, 1991, the *Verkhovna Rada* recognized that the constitutional structures of the USSR ceased to exist and adopted the Act of Proclamation of the Independence of Ukraine on the 19th of August, 1991. The Act of Independence of Ukraine was overwhelming supported by Ukrainian citizens in a national referendum held on December 1, 1991.

2. In such case or cases, was the nationality of the inhabitants of the territory which passed under the sovereignty of the successor State governed:

a. by an international agreement, whether bilateral or multilateral?
b. by the internal law of the successor State?
c. jointly by both of these procedures?
d. in another manner (pursuant to a decision of an international organisation, or to an international judgement, or to decisions of domestic courts, etc)?

In the most recent instance of state secession, that of 1991, the issue was determined by the internal law of Ukraine, the successor State. The relevant legislation is:

July 16, 1990. The Declaration on State Sovereignty of Ukraine.

October 8, 1991. The Law of Ukraine "On the Citizenship of Ukraine."

3. Which solutions were adopted in these cases?

a. was the acquisition of the nationality of the successor State automatically (ipso facto) conferred upon all the inhabitants of the new territory or only upon certain categories of such inhabitants?

b. **In the event that nationality was automatically or massively conferred by the successor State, were there nonetheless cases of exclusion of certain categories of groups or persons? Is so, which categories?**

c. **Was the right to choose one's nationality recognized in respect of all inhabitants of the new territory or only in respect of certain categories among them? In the latter case, what were the categories, and by what legal procedure was the choice exercised (for example, individual choice, referendum)? Similarly, what were the consequences for persons who did not elect for nationality of the successor State?**

Article 2 of the Law of Ukraine "On the Citizenship of Ukraine" declares that citizens of Ukraine are:

1. individuals who resided in Ukraine at the moment that this law came into effect regardless of their origin, social and property status, racial and national affiliation, sex, education, language, politics, religions convictions, and nature and character of occupation, who are not citizens of another state and who do not have an objection to become a citizen of Ukraine.

2. individuals who work pursuant to an assignment of the state or serve or study outside Ukraine but were born in Ukraine or can prove their permanent place of residence is in Ukraine, who are not citizens of another state and who have expressed their will to become citizens of Ukraine not later than two years after this law came into effect.

3. individuals who acquire citizenship in accordance with the law.

Article 17 of the law is titled "Acquiring Citizenship of Ukraine". It lists the following necessary conditions for the granting of Ukrainian citizenship:

1. the rejection of former citizenship;
2. permanent residence on the territory of Ukraine for the preceding five years;
3. reasonable knowledge of the Ukrainian language;
4. having a legal source of income (existence);
5. willingness to recognize and act in accordance with the Constitution of Ukraine.

The requirements mentioned above may only be waived in exceptional cases involving specific individuals who perform significant services for their homeland and whose citizenship is approved by the President of Ukraine.

Article 17 also defines the categories of individuals who are excluded from Ukrainian citizenship. They are:

1. individuals who have committed crimes against mankind or who have committed violence against the national sovereignty of Ukraine;

2. individuals who were jailed for the commission of grave criminal offenses.

Therefore the answer to the specific questions outlined above is as follows:

a. The acquisition of Ukrainian citizenship was massively conferred upon the inhabitants of Ukraine.

b. The following persons were excluded from citizenship:

1. citizens of another state,
2. individuals who objected to Ukrainian citizenship,
3. individuals who committed crimes against mankind or violence against the national sovereignty of Ukraine,
4. individuals who were jailed for the commission or grave criminal offenses.

c. All inhabitants of Ukraine, with the exception of individuals listed in 1, 3 and 4 above, were given the option to chose Ukrainian citizenship.

4. Upon what criteria were the solutions adopted in the above cases?

Article 12 of the Law of Ukraine "On Citizenship of Ukraine" is titled "Grounds for Citizenship of Ukraine". It states the following:

Citizenship of Ukraine can be acquired:

1. by birth;
2. by origin;
3. through the acquisition of citizenship;
4. through the restoration of citizenship;
5. by other grounds stipulated by this Law;
6. by grounds stipulated by International Treaties acceded to or ratified by Ukraine.

5. In regulating the question of nationality, were measures taken to prohibit or limit cases of double nationality or to avoid cases of statelessness? What were these measures?

A number of measures were taken to limit cases of double citizenship. They are regulated by the following articles in the

Law on Citizenship of Ukraine.

Article 1 of the law states:

> There is a single citizenship in Ukraine. Dual citizenship is possible on the basis of bilateral agreements between states.

Article 10 states:

> An individual who is a citizen of Ukraine cannot be a citizen of another foreign country.

Please also refer to Article 2 cited earlier which denies Ukrainian citizenship to Ukrainian residents who are citizens of another state.

A minor exception is provided by article 17 that provides that citizenship may be granted to citizens of another state in exceptional cases.

The law also deals with the issue of statelessness. Article 11 states:

> Individuals who reside in Ukraine who are not its citizens or who cannot prove that they are citizens of a foreign state are considered to individuals without citizenship.

6. How was the question of the nationality of legal persons regulated?

There is no provision governing the 'nationality of legal person' in Ukrainian legislation.

7. Do you consider that a person of untainted civic record who has resided for a significant period on a territory the subject of State secession should be accorded the same nationality as other inhabitants of that territory irrespective of his or her ethnic origin? If not, do you consider that such a person should at least be accorded the status of a permanent resident?

Article 2 of the Law of Ukraine "On Citizenship of Ukraine" provides the answer to this question. The main provisions of Article 2 have been given in the answer to Question 3.

The law clearly provides that citizenship is granted to residents of Ukraine without regard to a number of characteristics including the question of ethnic origin.

Further, persons who do not qualify for immediate citizenship status, may apply for citizenship if they are residents of Ukraine for five years and are not guilty of serious offenses.

8. Are the authorities in your country of the view that the choice of criteria for according nationality is within the exclusive competence and discretionary power of the State or do they recognize that the matter is circumscribed by rules of international law? In the latter case, which rules?

Ukrainian law very clearly indicates that Ukraine is circumscribed by international law. Article 4 of the Law of Ukraine "On Citizenship of Ukraine" states:

> "If international treaties, signed by Ukraine, contain other regulations than those that are contained in the Law, the norms in the international treaties are to be used".

9. To what extent is the criterion of an effective link between a person and a territory taken into consideration in your country for the purpose of granting nationality?

This matter is governed by several Articles of the Law of Ukraine "On Citizenship of Ukraine".

In addition to the provisions of Article 12 of the Law outlined in respect of the answer to Question 4, the issue is also regulated by Articles 13, 14, 15 and 16 which state the following:

> * a child whose parents are citizens of Ukraine is a citizen of Ukraine by birth regardless of his/her place of birth;
>
> * when only one parent of a child is a Ukrainian citizen at the moment a child is born, the child is a Ukrainian citizen:
>
> 1. if the child was born on the territory of Ukraine;
> 2. if the child is born outside Ukraine, but one of the parents at that time is a permanent resident of Ukraine.
>
> * a child which is born on the territory of Ukraine to parents who are without citizenship becomes a citizen of Ukraine;
>
> * a child who lives on the territory of Ukraine whose parents are unknown is a citizen of Ukraine.

10. To what extent does the applicable legislation in your country take account of the fact that the grant or withdrawal of nationality can have consequences for the rights of persons acquired under the rules and regulations to which they were formerly subject?

The Law of Ukraine "Citizenship of Ukraine", clearly states that the right to citizenship is an inalienable right of an individual. No one can be deprived of citizenship or of the right to change his/her citizenship.

In addition, see Article 3 of the law. It states:

> "Foreign citizens in Ukraine are entitled to the same rights and freedoms and have the same duties as the citizens of Ukraine unless otherwise stipulated by the Constitution of Ukraine, this Law and other legislative acts of Ukraine. Foreign citizens in Ukraine are equal before the law without distinction on account of their origin, social and property status, race and nationality, sex, language, religion, occupation and other circumstances."