

## **DRAFT DECLARATION ON THE CONSEQUENCES OF STATE SUCCESSION FOR THE NATIONALITY OF NATURAL PERSONS**

### **Draft finalised on 30 August 1996 in Geneva on the basis of the draft declaration submitted by Mr Constantin ECONOMIDES (CDL-NAT(96)3)**

The European Commission for Democracy through Law (Venice Commission),

recognising that in cases of State succession, the interests not only of States but also of individuals must be taken into account;

being committed to the principles of democracy, the rule of law and the protection of human rights;

having particular regard to State practice in the matter;

has adopted the following declaration:

#### I.

1. The expression "State succession" refers to the replacement of one State by another in its responsibility for the international relations of territory. It comprises, in particular, annexation, union, dissolution and separation.
2. Questions relating to nationality fall to the jurisdiction of States within the limits laid down by international law.
3. In the event of State succession, the conditions for the acquisition and loss of nationality shall be provided for by law. Any deprivation, withdrawal or refusal to confer nationality shall be subject to an effective remedy.
4. In the event of State succession, the States involved may, by agreement, settle the question of nationality. They shall respect the human rights of the persons concerned, as guaranteed by international instruments.

#### II.

5. The States concerned shall respect the principle that everyone has the right to a nationality.
6. They shall do their utmost to avoid creating cases of statelessness.
7. They shall refrain, as far as possible, from conferring their nationality against the will of the persons concerned.

#### III.

8. In all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory.

Such nationality shall be granted without any discrimination on the basis of ethnic origin, colour, religion, language or political opinions.

Those persons to whom this nationality has been granted shall enjoy perfect equality of treatment with the other nationals of the successor State.

9. It is desirable that successor States grant their nationality, on an individual basis, to applicants belonging to the following two categories:
  - a. persons originating from the transferred territory, who are nationals of the predecessor State but resident outside the territory at the time of succession;
  - b. permanent residents of the transferred territory who, at the time of succession, hold the nationality of a third State.

#### IV.

10. The successor State shall grant its nationality:
  - a. to permanent residents of the transferred territory who become stateless at the time of the transfer;
  - b. to persons originating from the transferred territory, resident outside that territory, who become stateless at the time of the transfer.
11. It is desirable that the successor State grant its nationality:
  - a. to permanent residents of the transferred territory who are stateless at the time of the transfer;
  - b. to persons originating from the transferred territory but resident outside that territory who are stateless at the time of the transfer.
12. The predecessor State shall not withdraw its nationality from its own nationals who have been unable to acquire the nationality of the successor State on the basis of the provision laid down under no. 8.

#### V.

- 13.a In all cases of State succession, when the predecessor State continues to exist, the successor State(s) shall grant the right of option in favour of the nationality of the predecessor State.
- b. When two or more States succeed to a predecessor State which ceases to exist, each of the successor States shall grant the right of option in favour of the nationality of the other successor States.

14. The successor States may make the exercise of the right of option conditional on the existence of effective links, in particular ethnic, linguistic or religious, with the predecessor State and, in the case envisaged under number 13.*b*, also on the condition that the persons previously had the citizenship of a subdivision of the predecessor State.

16. The right of option should be exercised by all adults within a reasonable time from the date of succession.

17. The exercise of the right to choose the nationality of the predecessor State, or of one of the successor States, shall have no prejudicial consequences for those making that choice, in particular with regard to their right to residence in the successor State and their moveable or immoveable property located therein.