Parliamentary **Assembly**
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Draft Protocol on the avoidance of statelessness in relation to state succession

Request for an opinion
from the Committee of Ministers

Letter from the Chairman of the Ministers' Deputies to the President of the Assembly dated 24 June 2005

Dear President,

I have the pleasure to inform you that at their 930th meeting (15 June 2005, item 10.1b), the Ministers' Deputies decided to invite the Parliamentary Assembly to give an opinion on the draft Protocol on the avoidance of statelessness in relation to state succession contained in document CM(2005)78, appendix IV.

I enclose a copy of the draft Protocol and its explanatory report and look forward to receiving the Assembly's opinion at your earliest convenience.

Yours sincerely,

(signed) Joaquim DUARTE
Chairman of the Ministers' Deputies

Mr René van der LINDEN
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DRAFT PROTOCOL ON THE AVOIDANCE OF STATELESSNESS IN RELATION TO STATE SUCCESSION

Preamble

The member States of the Council of Europe and the other States signatory to this Protocol,

Considering that the avoidance of statelessness is one of the main concerns of the international community in the field of nationality;

Noting that State succession remains a major source of cases of statelessness;

Recognising that the European Convention on Nationality (ETS No. 166), opened for signature in Strasbourg on 6 November 1997, contains only general principles and not specific rules on nationality in case of State succession;

Bearing in mind that, with regard to statelessness in relation to State succession, other international instruments either do not have a binding character or do not address some important issues;

Convinced that for the reasons above there is a need for a comprehensive international instrument on State succession and the avoidance of statelessness which should be interpreted and applied, bearing in mind the principles of the European Convention on Nationality;

Taking into account Recommendation No. R (99) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness, as well as the practical experience gained in recent years with regard to State succession and statelessness;

Having regard to other binding international instruments, namely the United Nations Conventions relating to the Status of Stateless Persons and on the Reduction of Statelessness, and the Vienna Conventions on Succession of States in respect of Treaties and on Succession of States in respect of State Property, Archives and Debts;

Having also regard to the draft articles on nationality of natural persons in relation to the succession of States, prepared by the United Nations International Law Commission, contained in the Annex to the United Nations General Assembly Resolution 55/153 of 2001 as well as the Declaration of the European Commission for Democracy through Law (Venice Commission) on the Consequences of State Succession for the Nationality of Natural Persons;

Building upon, but without prejudice to, the general principles established in the international instruments and documents mentioned above, by adding specific rules applicable to the particular situation of statelessness in relation to State succession;

In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, must be respected in order to avoid statelessness,

Have agreed as follows:

ARTICLE 1 – DEFINITIONS

For the purposes of this Protocol:

a. “State succession” means the replacement of one State by another in the responsibility for the international relations of territory;

b. “State concerned” means the predecessor State or the successor State, as the case may be;

c. "Statelessness" means the situation where a person is not considered as a national by any State under the operation of its internal law;

d. "Habitual residence" means a stable factual residence;

e. "Person concerned" means every individual who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession.

ARTICLE 2 – RIGHT TO A NATIONALITY

Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.

ARTICLE 3 – PREVENTION OF STATELESSNESS

The State concerned shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession.

ARTICLE 4 – NON-DISCRIMINATION

When applying this Protocol, States concerned shall not discriminate against any person concerned on any ground.

ARTICLE 5 – RESPONSIBILITY OF THE SUCCESSOR STATE

1. A successor State shall grant its nationality to persons who, at the time of the State succession had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time:

a. they were habitually resident in the territory which has become territory of the successor State, or

b. they were not habitually resident in any State concerned but had an appropriate connection with the successor State.

2. For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes *inter alia:*

a. a legal bond to a territorial unit of a predecessor State which has become territory of the successor State;

b. birth on the territory which has become territory of the successor State;

c. last habitual residence on the territory of the predecessor State which has become territory of the successor State.

ARTICLE 6 – RESPONSIBILITY OF THE PREDECESSOR STATE

A predecessor State shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor State and who would otherwise become stateless as a result of the State succession.

ARTICLE 7 – RESPECT FOR THE EXPRESSED WILL OF THE PERSON CONCERNED

A successor State shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person can acquire the nationality of another State concerned on the basis of an appropriate connection with that State.

ARTICLE 8 – RULES OF PROOF

1. A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements.

2. A successor State shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the State succession and who have or would become stateless as a result of the State succession.

ARTICLE 9 – FACILITATING THE ACQUISITION OF NATIONALITY BY STATELESS PERSONS

A State concerned shall facilitate the acquisition of its nationality by persons lawfully and habitually residing on its territory who, despite Articles 5 and 6, are stateless as a result of the State succession.

ARTICLE 10 – AVOIDING STATELESSNESS AT BIRTH

A State concerned shall grant its nationality at birth to a child born following State succession on its territory to a parent who, at the time of State succession, had the nationality of the predecessor State if that child would otherwise be stateless.

ARTICLE 11 – INFORMATION TO PERSONS CONCERNED

States concerned shall take all necessary steps to ensure that persons concerned have sufficient information about rules and procedures with regard to the acquisition of their nationality.

ARTICLE 12 – SETTLEMENT BY INTERNATIONAL AGREEMENT

States concerned shall endeavour to regulate matters relating to nationality, especially with a view to avoiding statelessness, where appropriate by international agreement.

ARTICLE 13 – INTERNATIONAL CO-OPERATION

1. In order to adopt appropriate measures to avoid statelessness arising from State succession, States concerned shall co-operate among themselves, including by providing information with regard to the operation of their relevant internal law.

2. For the same purpose as that mentioned in paragraph 1, States concerned shall also co-operate:

a. with the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR) and,

b. where appropriate, with other States and international organisations.

ARTICLE 14 - APPLICATION OF THIS PROTOCOL

1. This Protocol applies in respect of a State succession which has occurred after its entry into force.

2. A State concerned may, however, declare by notification addressed to the Secretary General of the Council of Europe at the time of expressing its consent, to be bound by this Protocol, or, at any time thereafter, that it will also apply the provisions of this Protocol to a State succession occurring before the entry into force of this Protocol.

3. If several States concerned make a declaration, as set out in paragraph 2, in respect of the same State succession, this Protocol will apply between the States making such declaration.

ARTICLE 15 – EFFECTS OF THIS PROTOCOL

1. The provisions of this Protocol shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals on the avoidance of statelessness.

2. This Protocol does not prejudice the application of:

a. the European Convention on Nationality, in particular its Chapter VI relating to State succession and nationality;

b. other binding international instruments in so far as such instruments are compatible with this Protocol,

in the relationship between the States Parties bound by these instruments.

ARTICLE 16 – SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or application of this Protocol shall primarily be settled through negotiation.

ARTICLE 17 – SIGNATURE AND ENTRY INTO FORCE

1. This Protocol shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration. Such States may express their consent to be bound by:

a. signature without reservation as to ratification, acceptance or approval; or

b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force, for all States having expressed their consent to be bound by the Protocol, on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Protocol in accordance with the provisions of the preceding paragraph.

3. In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

ARTICLE 18 – ACCESSION

1. After the entry into force of this Protocol, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Protocol**.**

2. In respect of any acceding State, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

ARTICLE 19 - RESERVATIONS

1. No reservations may be made to this Protocol except in respect of the provisions of Article 7, Article 8, paragraph 2 and Article 13, paragraph 2, sub-paragraph b.

2. Any reservation made a State in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.

3. Any State may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

ARTICLE 20 – DENUNCIATION

1. Any State Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

ARTICLE 21 – NOTIFICATIONS

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Protocol of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this Protocol in accordance with Articles 17 or 18 of this Protocol;

d. any reservation and withdrawal of reservations made in pursuance of the provisions of Article 19 of this Protocol;

e. any notification or declaration made under the provisions of Articles 14 and 20 of this Protocol;

f. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at ……, the ……, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to each non-member State having participated in the elaboration of this Protocol and to any State invited to accede to this Protocol.

Explanatory report
to the Protocol on the avoidance of statelessness in relation to state succession

Introduction

1. The avoidance of statelessness is one of the major preoccupations of the international community. In accordance with customary international law States have an obligation, when determining who are their nationals, to avoid cases of statelessness. The rules for the implementation of this obligation are contained in the 1961 United Nations Convention on the Reduction of Statelessness.

2. The avoidance of statelessness is closely linked to the right of the individual to a nationality[1], since the non-fulfilment of this right leads to statelessness. The European Convention on Nationality (hereinafter referred to as "the European Convention") refers in its Article 4 to both these general principles of international law.

3. Experience has shown that in particular in connection with State succession a large number of persons are at risk of losing their nationality without acquiring another nationality and in consequence becoming stateless. Chapter VI of the European Convention on "State succession and nationality" contains some general principles related to nationality which are to be respected by States in the situation of State succession.

4. The Protocol builds upon Chapter VI of the European Convention by developing more detailed rules to be applied by States in the context of State succession with a view to preventing, or at least as far as possible reducing, cases of statelessness arising from such situations. It goes without saying that, in accordance with Article 34 of the Vienna Convention on the Law of Treaties, the Protocol can only create legal obligations for the States which are Parties to it.

5. Despite the close link between the European Convention and the Protocol (see Preamble to the Protocol), which recalls the main principles contained in the European Convention of particular relevance in the context of State succession, it should be stressed that the Protocol is limited in its scope to the avoidance of statelessness as a result of State succession. The Protocol is therefore not intended to set the standards to be applied by States for the attribution of their nationality in this context - such standards are instead to be found in the European Convention's Chapter VI, in particular its Article 18. Thus, the principles and rules laid down in the Protocol do not in any way affect the rights and obligations arising out of the European Convention.

Article 1 – Definitions

6. The Protocol gives "State succession" the same meaning as other international instruments such as the two Vienna Conventions, on Succession of States in Respect of Treaties (1978) and on Succession of States in Respect of State Property, Archives and Debts (1983), as well as the draft Articles on Nationality of Natural Persons in Relation to the Succession of States, prepared by the United Nations International Law Commission in 1999 (ILC draft Articles). These instruments stipulate that they apply only to the effects of State succession occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

7. "State succession" may occur as a result of various types of events such as transfer of territory from one State to another, unification of States, dissolution of a State, and separation of part or parts of the territory. The term is used to describe any replacement of one State by another in respect of the responsibility for international territorial relations. States are**,** however, free to also apply, by way of analogy, the provisions set forth in the Protocol to situations which they do not recognise, on the basis of the given definition, as State succession.

8. The term "State concerned" covers "predecessor State" which refers to the State that has been replaced by another State as a result of State succession as well as "successor State" which refers to the State that has replaced another State as a result of State succession. These definitions of predecessor and successor State originate from the two above-mentioned Vienna Conventions on State succession and they have been repeated in the ILC draft Articles. The term "State concerned" covers a situation where there is

[1] For the purpose of this Protocol the terms "nationality" and "citizenship" should be considered as synonymous.

both a predecessor State and a successor State and where there is more than one of each. However, there will not always necessarily be one or more of each. The predecessor State, or predecessor States, might have disappeared after State succession, in which case the term will only refer to one or more successor States.

9. The definition of “statelessness” is based upon the definition of “a stateless person” given in Article 1 of the 1954 United Nations Convention relating to the Status of Stateless Persons, but with a slight modification in that it adds that by “law” is meant “internal law” which encompasses all the various types of provisions of the national legal system as specified in Article 2.d of the European Convention. The definition in terms of binding legal obligation for the States concerned is thus limited to “*de iure* stateless persons”, although the Final Act of the 1961 United Nations Convention on the Reduction of Statelessness recommends that persons who are “*de facto* stateless” should as far as possible be treated as “*de iure* stateless” to enable them to acquire an effective nationality. The statelessness situation is only relevant for the application of the Protocol if it has occurred or will occur as a result of the State succession in question. The Protocol does not cover persons who were already stateless at the time of State succession, or persons who become stateless later and not as a result of the State succession**.**

10. The reference to "habitual residence" is based on an internationally harmonised concept of the term, as used in the Hague Conventions on Private International Law and in Resolution (72) 1 of the Council of Europe on the standardisation of the legal concepts of "domicile" and of "residence" for the purpose of naturalisation. The term refers to a *de facto* situation and does not imply any legal or formal qualification.

11. The definition of “persons concerned” is based on the one given in the ILC draft Articles and it encompasses all individuals who have already become stateless or who would become stateless as a result of the State succession because they have not acquired or will not acquire the nationality of the successor State and because they have lost or will lose the nationality of the predecessor State.

Article 2 – Right to a nationality

12. The right to a nationality is a fundamental right recognised by Article 15 of the Universal Declaration of Human Rights. This right is one of the basic principles of the European Convention. There is no reason why persons who had the nationality of the predecessor State should suddenly be left without any nationality following State succession. They should therefore be protected by the principles of the rule of law and rules of human rights, namely the principles contained in the European Convention and its Chapter VI relating to State succession and nationality.

Article 3 – Prevention of statelessness

13. The article contains the general principle that States concerned shall take all necessary action to prevent cases of statelessness arising from State succession. The measures to be applied might include the drawing up of international treaties on the prevention of statelessness and the application of this principle in their internal law. Other measures might also be envisaged. The formalities required to give effect to the rules contained in the internal law, for instance the payment of fees and the application of other administrative or judicial procedures, should not prevent a person who will become stateless as a result of State succession from acquiring a nationality.

14. As a general principle in international law, with a limited number of exceptions (such as cases of fraud), loss of nationality shall, wherever provided for in nationality laws, be based on the condition that the person does not thereby become stateless. This obligation is all the more evident in the case of State succession.

15. The principle stated in Article 3 indicates the general framework upon which other, more specific obligations are based. The elimination of statelessness is the outcome to be achieved by application of the set of principles and rules contained in the Protocol, in particular through co-ordinated action of the States concerned by means of settlement by international agreement and international co-operation (see paragraphs 47-55 below).

16. States may if they so wish apply the provisions of the Protocol also to *de facto* stateless persons. This is not a legal obligation but a possibility. State succession may well create situations of *de facto* statelessness where persons do have the nationality of one of the States concerned but are not able to benefit from the protection of that State.

Article 4 – Non-discrimination

17. The principle of non-discrimination, based on Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 12 to the said Convention, has a fundamental role in the avoidance of cases of statelessness in relation to State succession.

18. In line with the relevant international instruments, the present Protocol stresses the absolute inadmissibility of discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 5 – Responsibility of the successor State

Paragraph 1

19. The responsibility of the successor State concerns two groups of persons:

a. those who were habitual residents on its territory at the time of State succession, and
b. those who have an appropriate connection with that State.

The responsibility of the successor State is limited to former nationals of the predecessor State who have or would become stateless as a result of the State succession in question. It therefore does not cover persons who were already stateless in the predecessor State. The right to a nationality of these persons may instead be covered by Article 6, paragragh 4.g of the European Convention.

20. It should be noted that the Protocol does not prescribe any specific way in which States should grant their nationality since this belongs to the domain of the internal law of the States concerned.

Sub-paragraph a

21. The successor State shall apply the criterion of “habitual residence” to persons residing in its territory at the time of the State succession. The principle reflects the *prima facie* presumption under international law that the population of a territory follows the change of sovereignty over that territory in matters of nationality. This obligation is also a logical consequence of the fact that a newly-established successor State needs a population.

22. This criterion of “habitual residence” applies to several situations of State succession. Firstly, it concerns the situation of transfer of territory from one State to another State and that of separation of part or parts of the territory of the predecessor State to/from one or more new States. In these cases the successor State shall grant its nationality to persons who were nationals of the predecessor State and who have their habitual residence in the successor State. Secondly, “habitual residence” relates to the situation of the dissolution of a State, where the predecessor State ceases to exist, and to the one of unification of States, where two or more States unite and so form one successor State. The successor State shall grant its nationality to persons who habitually resided on its territory at the time of State succession and who have lost their nationality as a result of the dissolution of the predecessor State or through unification of States.

Sub-paragraph b

23. The second group of persons to whom the successor State has an obligation to grant its nationality are those who did not reside habitually on the territory of a successor State at the time of State succession. This may be either because, although present on the territory of the successor State, they are not considered to have fulfilled the criterion of “habitual residence” or because at the time of State succession they resided outside the territory of the predecessor State and therefore were not habitually resident on the territory of any of the States concerned. The successor State must grant these persons its nationality if there is an appropriate link connecting the individual with this State.

24. The provision is in particular relevant in situations where the predecessor State has ceased to exist and the persons who possessed its nationality have, therefore, automatically lost it at the moment of the State succession and have become stateless. The provision might also be relevant where the predecessor State continues to exist but has not acceded to the Protocol and has withdrawn a person’s nationality.

Paragraph 2

25 Three examples of “appropriate connection” have been listed in paragraph 2. These cover the vast majority of cases. The list is however not exhaustive and States may go further. They may take into account other factors as well, such as: previous long residence on the territory; descent (by one generation or more) from a person covered by the article; or marriage to a person covered by the article (see “territorial origin” of a person as referred to in Article 18, paragraph 2.d of the European Convention).

26. The example given in Article 5, paragraph 2.a is relevant only in the situation where a legal bond existed between the constituent unit of the predecessor State and the person concerned under the internal law of that State. Such was the case, for example, in federal States (“internal citizenship”). “Legal bond” may also include another kind of legal relationship between a specific part of the territory of a predecessor State (province, region, etc.) and a person concerned.

Article 6 – Responsibility of the predecessor State

27. The responsibility of the predecessor State will only occur in respect of persons who have not acquired the nationality of a successor State. In such cases the predecessor State has an obligation not to withdraw its nationality from persons who are at risk of becoming stateless as a result of the State succession.

28. The article does not distinguish between whether the acquisition of nationality is based on a voluntary act (naturalisation) or has been attributed automatically by the State (*ex lege*). The simple fact that the person has not acquired the nationality of a successor State brings into effect the responsibility of the predecessor State.

29. The rule that, in order to avoid statelessness as a result of State succession, a predecessor State must not withdraw its nationality from persons who have not acquired that of another State corresponds to Article 7, paragraph 3 of the European Convention. However, once the person has acquired the nationality of another State, be it the successor State or a third State, the predecessor State is free to withdraw its nationality, but only in conformity with its obligations under international law.

30. The provision is applicable only in situations where the predecessor State continues to exist after State succession, as is the case after transfer and separation of part or parts of the territory. In cases where the predecessor State has disappeared or is not a State Party to the Protocol, only the previous article concerning the responsibility of the successor State shall apply.

Article 7 – Respect for the expressed will of the person concerned

31. The provision applies exclusively to situations where a person has an appropriate connection with more than one successor State (Article 5, paragraph 1.b); in such cases if the person expresses the will to acquire the nationality of one of these States, this State shall not refuse its nationality to the person on the grounds that he or she may acquire the nationality of another successor State. The article is in particular relevant in cases where different family members might have an appropriate connection with several successor States and where the respect of the expressed will of the person concerned may preserve the family unity.

32. The will of a person to acquire the nationality of a specific State is usually expressed in the act of submitting an application for the acquisition of the nationality of this State. For children who have not yet reached the age of majority, as well as for persons lacking legal capacity, the will may be expressed through their legal representative. Where the child is old enough to be consulted his or her free will should be taken into account in conformity with the principle of the best interests of the child as stipulated in the 1989 United Nations Convention on the Rights of the Child.

Article 8 – Rules of proof

Paragraph 1

33. The provision takes account of the situation where, due to the particular circumstances which might occur in the situation of State succession, it is impossible or very difficult for a person to fulfil the standard requirements of proof to meet the conditions for the acquisition of nationality.

34. It might in some cases be impossible for a person to provide full documentary proof of his or her descent if, for instance, the civil registry archives have been destroyed, or it might be impossible to provide documentary proof of the place of residence in cases where this was not registered. The provision includes the situation where it might objectively be feasible for a person to provide proof but where it would be unreasonable to demand for instance an action by a person which might put his or her life or health in danger.

35. The circumstances which lead to the difficulty in providing proof in order to meet the requirement are not necessarily always linked directly to the event of the State succession. It might be the consequence of an event that occurred before or after the time of the State succession, for instance where under the regime of the predecessor State a registry was destroyed or essential documents were not issued to a certain group of the population.

36. In the cases mentioned above it shall be sufficient to have a high probability of proof or independent testimony that the conditions for the acquisition of the nationality of a successor State are fulfilled.

Paragraph 2

37. The provision is only relevant in the situation of State succession where the predecessor State has disappeared and all persons possessing the nationality of the predecessor State have lost this nationality as an automatic consequence of that State's disappearance. If in such a case the new successor State pursues a policy of preventing and reducing cases of multiple nationality, it might require proof from the person that he or she has not acquired another nationality, or that he or she is stateless. The requirement of proof of not possessing another nationality or proof of being stateless is often impossible for the individual to fulfil since it will necessitate the co-operation of other States. This may be the case in particular for stateless refugees. In cases where there is a risk that the person concerned might become stateless as a result of the State succession, the successor State shall not require proof of the non-acquisition of another nationality or of statelessness before granting its nationality. This rule is based on the predominant view that the prevention of statelessness is of primary concern to the international community while the acceptance or non-acceptance of multiple nationality is a matter for the individual State.

38. Article 8 does not prevent a State that wishes to reduce the number of cases of multiple nationality from co-operating with other States and exchanging information on the acquisition and loss of nationality (see Article 13). The provision on non-recognition of another nationality contained in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, as well as the possibility of automatic loss of nationality in the case of voluntary acquisition of another nationality as provided for in Article 7, paragraph 1.a of the European Convention may serve as a useful means to counter cases of multiple nationality. Finally a State may ask the individual to make a written statement on the non-acquisition of another nationality which will enable the State to annul its granting of nationality in cases where it is later discovered that the person has made a false declaration.

Article 9 – Facilitating the acquisition of nationality by stateless persons

39. The article is intended to fill any gaps after the application of Articles 5 and 6, either as a result of the predecessor State not being a party to the Protocol or because of its disappearance as a result of which all persons who possessed its nationality automatically became stateless. If these persons subsequently fail to fulfil the conditions for the acquisition of nationality of a successor State they will remain stateless. In such cases, it is important that the successor State provide more favourable conditions for the acquisition of its nationality for stateless persons lawfully and habitually resident on its territory. The provision does, however, not affect the discretionary powers of States to grant nationality to such stateless persons.

40. The article also takes account of the situation of dissolution of a State where the time of State succession may not be the same for all successor States, for instance, because of differing attitudes as to the time of the disappearance of the predecessor State. The successor States may also choose to consider a different time than State succession as the decisive criterion for the acquisition of their nationality, for instance residence on their territory at the time of another specific event (e.g. the day of adoption of the Constitution or the entry into force of the nationality law).

41. State succession is often a process which may take place over a lapse of time. During this period persons may change residence from a State before the decisive date for the acquisition of the nationality of this State to residence in another State after the decisive date for the acquisition of the nationality of that State and therefore not fulfil the condition in Article 5.a of habitual residence in either successor State with the risk of remaining stateless.

42. The provision is, however, not intended to apply in cases where a person's change of residence is motivated by purely speculative reasons which typically might occur in situations where the moment of State succession is fixed at a precise date. The Nottebohm case[2] has shown that such speculative change of residence is considered a misuse of nationality laws since it is not based on the existence of a genuine link to the State in question.

Article 10 – Avoiding statelessness at birth

43 In the light of Article 7 of the 1989 United Nations Convention on the Rights of the Child, which in paragraph 1 stipulates that a child shall be registered immediately after birth and has the right*, inter alia,* to acquire a nationality and in paragraph 2 obliges States to ensure the implementation of these rights, in particular where the child would otherwise be stateless, the Protocol pays special attention to preventing children from becoming stateless as a result of State succession. A child shall therefore at birth acquire the nationality of a successor State on the basis of the *ius soli* principle if there is a risk that a child born of a parent who was a former national of the predecessor State at the time of State succession will be stateless. The child's acquisition of the nationality of a successor State is, in this case, not dependent on whether the parent also acquires the nationality of this successor State. The aim of the provision is to avoid children becoming stateless as a result of their parents being stateless.

44. It might not always in practice be possible for the child to be granted the nationality immediately at birth. The provision states, however, the principle that the child has the right to acquire the nationality at birth *ex lege* if he or she fulfils the condition set forth in the article.

Article 11 – Information to persons concerned

45. A State concerned shall take all necessary measures so that persons concerned are informed in time of the rules and procedures concerning the acquisition of its nationality. The habitual promulgation of the law in the official gazette is in most cases not sufficient. States are normally obliged to take additional measures to ensure that the information reaches all persons concerned by the use, for instance, of the media or the Internet, or with the assistance of non-governmental organisations if necessary. It is, however, left to the individual States to determine which measures are the most appropriate as long as the information is disseminated in an open and transparent manner. The person concerned should*, inter alia,* receive information on where to submit an application for the acquisition of nationality and which authority to address for more information.

46. In the light of the previous article it should be stressed that States should provide sufficient information on the right of all children born on their territory to be registered at birth since the absence of birth registration can have significant repercussions for unregistered children including that of statelessness (see the 1989 United Nations Convention on the Rights of the Child).

Article 12 – Settlement by international agreement

47. The article favours solutions on nationality matters agreed between the States concerned in particular with a view to avoiding cases of statelessness arising as a result of State succession.

48. Since the aim of the Protocol is limited to the avoidance of statelessness as a result of State succession, it is not concerned with the question of which nationality would be the most relevant for a person to acquire on the basis of the predominant effective links with a State. The States concerned might, therefore, agree on a more adequate solution in matters of nationality by means of bilateral agreements.

Article 13 – International co-operation

49. The Protocol recognises that co-operation among States is an important means of avoiding cases of statelessness as a result of State succession. The main purpose of such co-operation is the co-ordination of national policies (and, as far as possible, legislation) in this field, on the basis of accepted principles. Indeed, such co-ordination is of fundamental importance as statelessness often results from the differences in the laws of States relating to nationality and from the combined effect of these laws.

[2] Nottebohm case, ICJ Reports, 1955, p. 23.

Paragraph 1

50. Co-operation between the States concerned includes the exchange of information on the operation of their "internal law" which, as specified in Article 2.d of the European Convention, encompasses all the various types of provisions of the national legal system. Exchange of information is in particular important for determining a person's status as stateless.

51. The provision is particularly important in cases where a successor State pursues a policy of single nationality and wishes to ensure before the granting of its nationality that the person concerned does not possess the nationality of another successor State and where this can only be proved through co-operation between two or more States. In this respect reference is also made to the Additional Protocol of the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS No. 96) and the 1964 Convention on the Exchange of Information Concerning Acquisition of Nationality (Convention No. 8 of the International Commission on Civil Status).

Paragraph 2

52. The provision indicates that co-operation shall at least take place with the Council of Europe and with the United Nations High Commissioner for Refugees (UNHCR). Co-operation between these two organisations is already taking place within the framework of a Memorandum of Understanding concluded between the two on joint action in areas of mutual interest.

53. Within the Council of Europe co-operation on matters relating to nationality, including instances of statelessness, takes place within the appropriate intergovernmental body of the Council of Europe (i.e. the Committee of Experts on Nationality (CJ-NA)) by virtue of Article 23 of the European Convention. It is in fact the CJ-NA, with representatives from nearly all European States either as members or observers, that has been responsible for the preparation of the Protocol as a follow-up to its elaboration of the European Convention and the Recommendation on the avoidance and reduction of statelessness adopted by the Committee of Ministers of the Council of Europe in 1999. The CJ-NA has in its work on the preparation of these instruments been assisted by the representatives of other international organisations concerned by nationality and the prevention of statelessness, in particular the UNHCR.

54. In some situations it might be insufficient to limit the co-operation to the Contracting Parties and the member States of the Council of Europe only. In such cases the co-operation should be extended to other States in Europe as well and even States outside Europe.

55. Co-operation may also be extended to other international organisations and may, for instance, include the United Nations Children's Fund where it concerns the avoidance of statelessness of children, the United Nations High Commissioner for Human Rights which in some countries is concerned by this issue, as well as other international organisations which in certain regions have a special mandate in this field. The question of which international organisations to include will depend on the particular situation. States concerned are free to extend this co-operation to non-governmental organisations as well.

Article 14 – Application of this Protocol

Paragraph 1

56. In accordance with the general rule of international law the Protocol applies only to cases of State succession occurring after its entry into force.

Paragraph 2

57. A State Party may, however, wish also to apply the provisions of the Protocol to cases of State succession which occurred before its entry into force. If it makes a declaration to this effect in accordance with the Vienna Convention on the Law of Treaties it thereby creates a unilateral obligation upon itself to apply the provisions of the Protocol retroactively. The State will, however, need to specify for which cases of State succession it will apply the Protocol retroactively. The possibility of applying the Protocol retroactively is in particular relevant for States that were not Parties to the Protocol at the time of State succession. This will be the case, for instance, in the situation of the unification of States where several States merge into one State or where one State has absorbed one or more States.

Paragraph 3

58. If two or more States affected by the same State succession make a declaration regarding the retroactive application of the Protocol, it will have a reciprocal effect on them. This situation will typically occur in the event of the separation of a State into one or more successor States where the predecessor State either continues to exist or is dissolved. To have a reciprocal effect upon two or more States the declarations must relate to a specific case of State succession which involves both or all these States. The scope of the retroactive application of the Protocol will thereby be extended as soon as more States join in by making declarations to this effect, and may eventually apply to the whole territory affected by a specific case of State succession.

Article 15 – Effects of this Protocol

59. Paragraph 1 safeguards those provisions of internal law and binding international instruments which provide additional protection to individuals against statelessness; this Protocol shall not be interpreted so as to restrict such protection. The phrase "more favourable rights" refers to the possibility of putting an individual in a more favourable position than provided for under the Protocol, for example by rules of a State Party concerning the acquisition of its nationality.

60. Paragraph 2 indicates that this Protocol does not replace the European Convention's Chapter VI concerning State succession and nationality in the relationship between the States Parties to these instruments. States may choose and are in fact encouraged to be Parties to both these instruments.

Article 16 – Settlement of disputes

61. In the case of any dispute concerning the interpretation or application of the provisions contained in this Protocol, the States Parties shall attempt to resolve the conflict or problem in the first instance by means of negotiation. This explanatory report shall serve as an aid to the interpretation and application of the Protocol.

Article 17 – Signature and entry into force

62. The Protocol will enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by it.

63. The Protocol is also open to signature by non-member States of the Council of Europe which have participated in its elaboration. These States are Belarus, Canada, the Holy See, Japan and Kyrgyzstan.

Article 18 – Accession

64. Due to the importance of allowing a large number of States to become Parties, in particular where there is a need for co-operation between them, the Protocol is also open to accession by non-member States not listed in the commentary under Article 17, after its entry into force in accordance with the procedure laid down under that article.

Article 19 – Reservations

65. Reservations are not permissible in respect of the Protocol, with a limited number of exceptions. Reservations are admissible with regard to only three provisions, namely Articles 7, 8, paragraph 2 and 13, paragraph 2.b.

66. The object of the Protocol is to establish principles and rules to be respected by the States concerned by State succession on the acquisition and retention of their nationality by persons who had the nationality of the predecessor State at the time of the State succession and who are at risk of becoming stateless as a result of such succession. The purpose of the Protocol is to eliminate, or at least as far as possible to reduce, statelessness arising from State succession. Further guidance is provided by the Preamble to the Protocol.

67. Given that reservations are not generally desirable, States Parties wishing to make reservations should consider withdrawing the reservations in whole or in part as soon as circumstances permit. They are furthermore invited to notify the Secretary General of the Council of Europe of the relevant contents of their internal law or of any other relevant information.

Article 20 – Denunciation

68. This article enables a State which is a Party to the Protocol to denounce it.

Article 21 – Notifications

69. Information concerning steps taken by States in relation to the Protocol will be sent by the Secretary General of the Council of Europe, depositary of the Protocol, to other States in compliance with this article.