

Session of Warsaw – 1965

**The National Character of an International Claim
Presented by a State for
Injury Suffered by an Individual**

(First Commission, Rapporteur : Mr Herbert W. Briggs)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering it opportune to formulate with precision the rules regarding the national character of claims as developed from the practice of States and from international jurisprudence ;

Reserving the study of proposals which might improve the protection of individuals whether by diplomatic protection or by other methods and in particular by any special procedures established by an international organization ;

Reserving more especially for later examination the case where the nationality of the injured individual has changed as a consequence of territorial modifications of the State of which he was a national or by modifications of his personal statute ;

Adopts the following rules as applicable in the absence of contrary provisions agreed upon by the Parties :

First Article

a) An international claim brought by a State for injury suffered by an individual may be rejected by the State to which it is presented unless it possessed the national character of the claimant State both at the date of its presentation and at the date of the injury. Before a court (*jurisdiction*) seised of such a claim, absence of such national character is a ground for inadmissibility.

b) An international claim presented by a new State for injury suffered by one of its nationals prior to the attainment of independence by that State, may not be rejected or declared inadmissible in application of the preceding paragraph merely on the ground that the national was previously a national of the former State.

Article 2

When the beneficiary of an international claim is a person other than the individual originally injured, the claim may be rejected by the State to which it is presented and is inadmissible before the court seised of it unless it possessed the national character of the claimant State both at the date of injury and at the date of its presentation.

Article 3

a) An international claim presented in respect of an injury suffered by an individual possesses the national character of a State when the individual is a national of that State or a person which that State is entitled under international law to assimilate to its own nationals for purposes of diplomatic protection.

b) By date of injury is meant the date of the loss or detriment suffered by the individual.

c) By date of presentation is meant, in case of a claim presented through diplomatic channels, the date of the formal presentation of the claim by a State and, in case of resort to an international court (*jurisdiction*), the date of filing of the claim before it.

Article 4

a) An international claim presented by a State for injury suffered by an individual who possesses at the same time the nationalities of both claimant and respondent States may be rejected by the latter and is inadmissible before the court (*jurisdiction*) seised of the claim.

b) An international claim presented by a State for injury suffered by an individual who, in addition to possessing the nationality of the claimant State, also possesses the nationality of a State other than the respondent State may be rejected by the latter and is inadmissible before the court (*jurisdiction*) seised of the claim unless it can be established that the interested person possesses a closer (*prépondérant*) link of attachment with the claimant State.

c) An international claim presented by a State for injury suffered by an individual may be rejected by the respondent State or declared inadmissible when, in the particular circumstances of the case, it appears that naturalization has been conferred on that individual in the absence of any link of attachment.

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(10 September 1965)