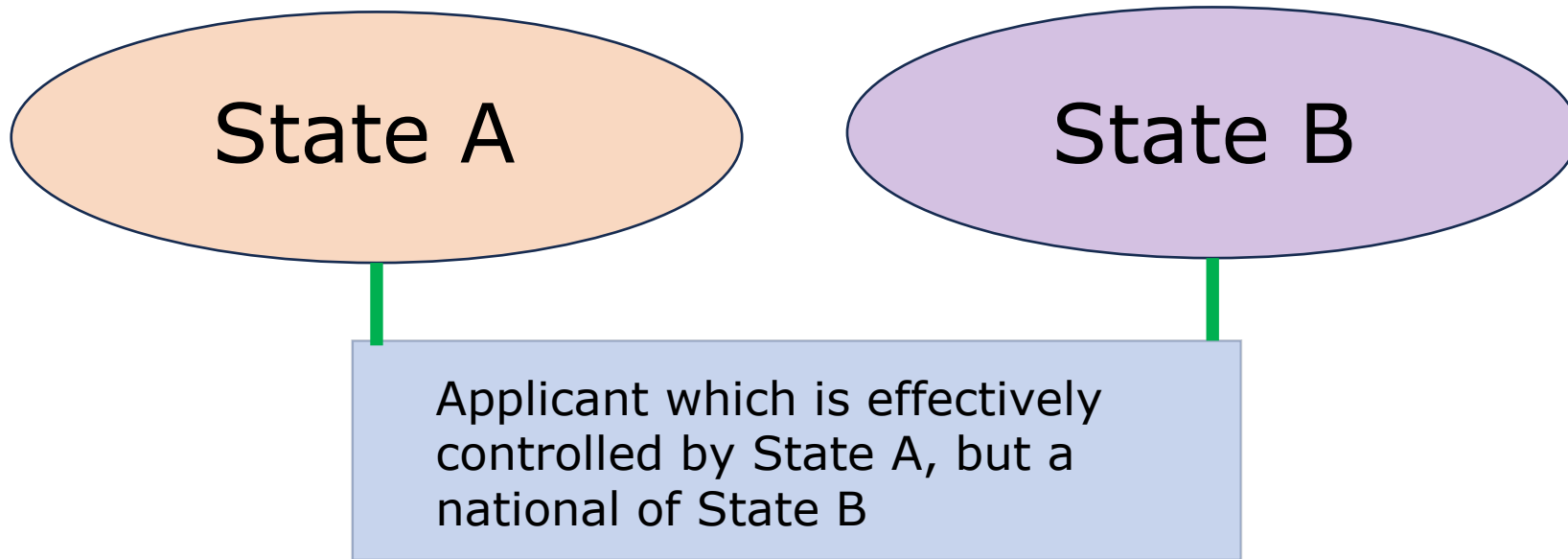


# **Effective Control Working Group**

# Annex III, Article 4(3) UNCLOS - Scenario 1

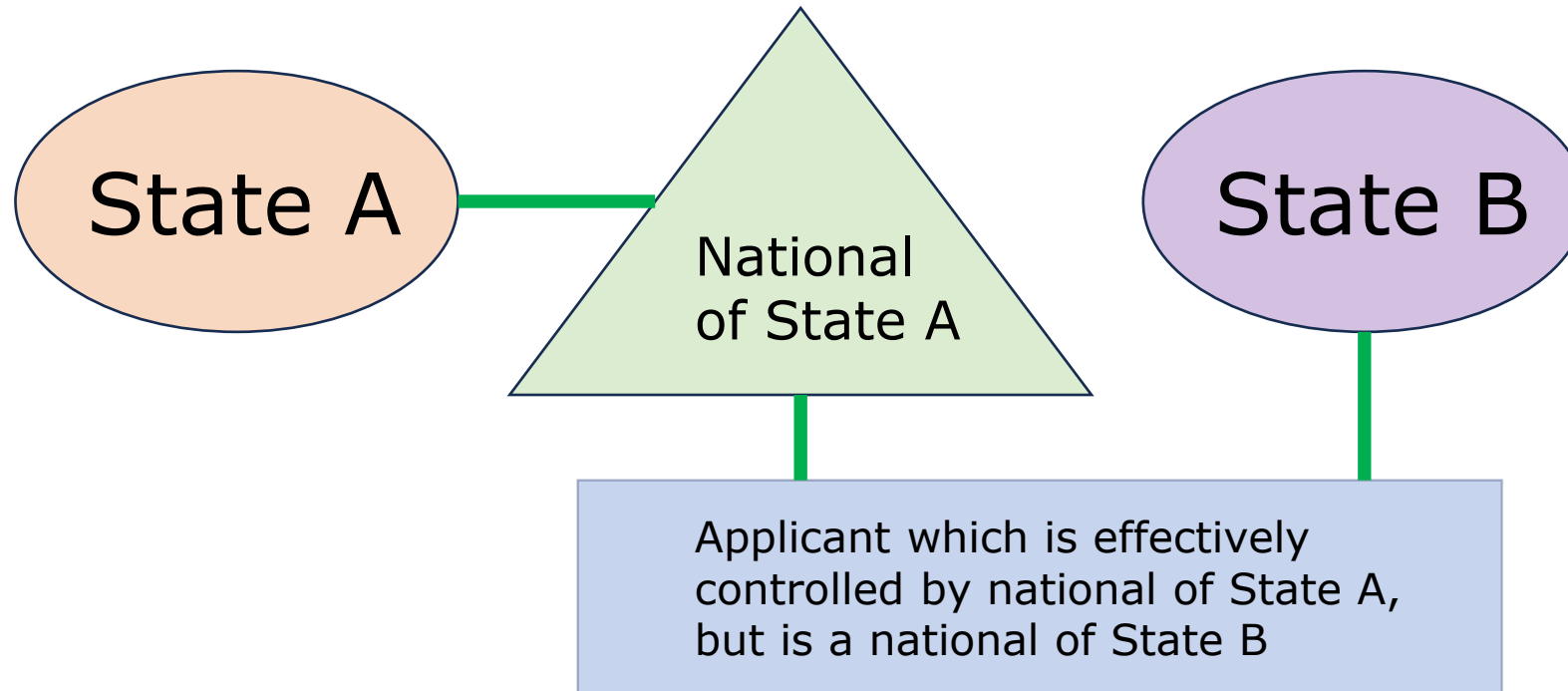
"[...] or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.[...]"



**Note:** This Scenario is referred to in ITLOS Advisory Opinion 2011, para. 77.

## Annex III, Article 4(3) UNCLOS - Scenario 2

"[...] or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application.[...]"



**Note 1:** A national of State A must refer to a natural or legal person.

**Note 2:** A national of State A cannot exercise any regulatory powers. Ergo, "effectively controlled by..." cannot refer to regulatory control.

**Note 3:** This Scenario is referred to in ITLOS Advisory Opinion 2011, para. 77.

## **Article 4(3) Annex III of UNCLOS**

*3. Each applicant shall be sponsored by the State Party of which it is a national unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.*

## **Article 4(4) Annex III of UNCLOS**

*4. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.*

## **Article 139(1) UNCLOS**

*1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.*

*"Effective Control" of an applicant or Contractor by:*

- a State which is not the State of nationality of the applicant or Contractor (the Controlling State); or*
- a national of a State which is not the State of nationality of the applicant or Contractor (the Controlling National),*

*means that the Controlling State or Controlling National has the power to secure that the affairs of the applicant or Contractor are conducted in accordance with the instructions or directions of the Controlling State or Controlling National, applying the relevant Standard.*