

**United Nations Conference on the Elimination or Reduction of Future
Statelessness**

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Observations by the United Nations High Commissioner for Refugees



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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF
FUTURE STATELESSNESS

OBSERVATIONS BY THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES

Note by the Secretary-General: The United Nations High Commissioner for Refugees, by a letter dated 19 June 1961, transmitted the observations reproduced in the present document.

Observations transmitted by the United Nations
High Commissioner for Refugees

Original text: English

The United Nations High Commissioner for Refugees has the honour to submit the following observations on the draft Convention on the Reduction of Future Statelessness to the Conference on the Elimination or Reduction of Future Statelessness:

1. The draft Convention on the Reduction of Future Statelessness, as adopted by the Conference held in Geneva in March/April 1959, makes the grant of nationality according to Articles 1 and 4 dependent, inter alia, on the fact that the person concerned "would otherwise be stateless". The application of these provisions would, therefore, make it necessary for Contracting States to ascertain whether the person concerned possesses or does not possess the nationality of one or several other States. According to a general principle of law, it is for each State to determine who are its nationals. The finding of the Contracting State concerned on the nationality of the person would not necessarily be identical with the finding of the State or States whose nationality is at issue. It could occur that Contracting State A holds that the person possesses the

nationality of State B, while the authorities of State B hold that he has not the nationality of that country. In this case the person would not be granted the nationality of State A and, not being considered as national by State B, would remain stateless.

2. In order to reduce such conflicts the International Law Commission incorporated the following provisions in Article 11 of its draft Conventions:

"1. The Parties undertake to establish, within the framework of the United Nations, an agency to act, when it deems appropriate, on behalf of stateless persons before Governments or before the tribunal referred to in paragraph 2.

2. The Parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide any dispute between them concerning the interpretation or application of this convention and to decide complaints presented by the agency referred to in paragraph 1 on behalf of a person claiming to have been denied nationality in violation of the provisions of the convention.

3. If, within two years after the entry into force of the convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not been established by the Parties, any of the Parties shall have the right to request the General Assembly to establish such agency or tribunal.

4. The Parties agree that any dispute between them concerning the interpretation or application of the convention shall, if not referred to the tribunal provided for in paragraph 2, be submitted to the International Court of Justice."

(Report of the International Law Commission - Sixth Session -
3 June-28 July 1954.)

3. Article 11 of the draft Convention adopted by the Conference at Geneva provides that Contracting States shall promote the establishment within the framework of the United Nations of a body to which a person claiming the benefit of the Convention could apply for the examination of his claim and for assistance in presenting it to the appropriate authority. No provision is made, on the other hand, for a special tribunal as envisaged in the draft of the International Law Commission. The draft contains a new

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article providing for the settlement of disputes between Contracting States concerning the interpretation or application of the Convention which cannot be settled by other means, by the International Court of Justice at the request of any one of the parties to the dispute.

Both Article 11 and the new Article on the settlement of disputes were adopted at Geneva subject to a right of reservation.

4. The United Nations High Commissioner for Refugees wishes to draw the attention of the Conference to this problem, as the absence of provisions for the settlement of such conflicts as to the nationality of a person may, in his view, reduce the effect of the Convention in reducing statelessness.

5. The term "stateless" is not defined in the draft Convention. There are many persons who, without being de jure stateless, do not possess an effective nationality. They are usually called de facto stateless persons. Both the Convention relating to the Status of Refugees of 28 July 1951 and the Statute of the United Nations High Commissioner for Refugees (Annex to General Assembly resolution 428 (V) of 14 December 1950) define as refugees both persons devoid of nationality who are outside their country of former habitual residence and persons possessing a nationality who are outside the country of their nationality and fulfil the other conditions provided for in these instruments. The Conference of Plenipotentiaries on the Status of Stateless Persons considered the question of the definition of the term "stateless person" at some length. Proposals for a definition including de facto stateless persons were made at the Conference (documents E/CONF.17/L.6, and E/CONF.17/L.21). The Conference finally adopted the following definition in Article 1 of the Convention: "For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law." As to de facto stateless persons, a recommendation was incorporated in the Final Act. (E/CONF.17/5/Rev.1)

6. The Conference on the Elimination or Reduction of Future Statelessness held in Geneva did consider the question of de facto stateless persons

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briefly and on the basis of this discussion a resolution was adopted, reading:

"The Conference recommends that persons who, not enjoying the protection of a government, are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality."

This resolution was adopted by 8 votes to 1, with 20 abstentions (Summary Record No. A/CONF.9/C.1/SR.19 of 14 April 1959, page 10). The United Nations High Commissioner for Refugees considers this to be **an important** problem which may not yet have received full consideration by the States participating in the Conference.

7. The United Nations High Commissioner hopes that persons who are refugees within his mandate and who are de jure or de facto stateless, as well as persons who derive their nationality from such persons, will be enabled to benefit equally from the provisions of the Convention on the Reduction of Future Statelessness. The United Nations High Commissioner for Refugees, therefore, submits this problem to the resumed Conference for its consideration.
