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Denmark: Memorandum with Draft Convention on the Reduction of Statelessness

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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF
FUTURE STATELESSNESS

Denmark: Memorandum with Draft Convention on the Reduction of Statelessness

Note: At the request of the Danish Government this memorandum with the draft convention was circulated to States invited to the Conference, the English text in August 1955 and the French text in October 1957. Both texts have also been transmitted to the newly admitted Member States. In a note of 21 November 1958 addressed to the Secretary-General of the United Nations, the Danish Government stated that it had no further comments to add to those contained in the memorandum.

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MEMORANDUM

The Royal Danish Government have re-examined the Draft Conventions on Elimination and Reduction, respectively, of Statelessness, as prepared by the United Nations International Law Commission in their revised form and found in the report on the sixth session of the Commission (A/CN.4/88).[1/] During this examination attention has particularly been directed to the question whether it may be expected that countries whose legislation is not already based on the principles contained in the Drafts, will accept these Drafts. Consequently it has been found expedient to consider whether the aim pursued, namely to eliminate statelessness entirely, or, at any rate, reduce the number of cases materially, may be attained by the complex of provisions proposed by the International Law Commission alone, or whether it may be recommended to approach this aim by other means and thereby achieve greater adherence to the convention or conventions.

In the opinion of the Danish Government it would be unrealistic to ignore the sociological and other factors underlying the choice by States between jus soli and jus sanguinis as a fundamental principle of their nationality laws. Just as unrealistic would it be to ignore the changes in attachment between the individual and the State which may occur, particularly during the period from birth and until the individual reaches the age of maturity.

As regards jus soli, which the International Law Commission has adopted as the basis for its Drafts, it may be taken for granted that a great number of countries, including Denmark, will not be able to accept the principle that mere birth in, for instance, Danish territory is sufficient to establish any real attachment to Denmark. It is typical that jus soli is to be found mainly in countries which, by virtue of their geographical location and on account of their immigration laws, are particularly apt to receive such foreign families as, already at their arrival, may be presumed to have the intention of remaining there forever and are regarded beforehand as acceptable for permanent settlement in the immigration country. Particularly as far as a series of overseas countries are concerned, various reasons, including the cost of the journey and the difference in the cost of living, will cause individuals intending a merely temporary stay to bring their families in a limited number of cases only.

1/ Also published in Official Records of the General Assembly, ninth session, Supplement No. 9 (A/2693).

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In other countries, for instance in Denmark, the position is quite different; here there is no previous selection of the aliens who may be expected to be admitted forever, and no advance decisions, often more or less statutory and invariable, are made in this respect. It would be contrary to the prevailing liberal and flexible practice - and thus in the long run detrimental to the stateless - if a scheme was adopted according to which a person who only obtains a residence permit limited as to time or otherwise, normally cannot have his alien status changed or can obtain this change only with great difficulty. It is, therefore, the opinion of the Danish Government that no changes in the nationality legislation can be advocated which may result in a change in the existing system, according to which it is the most common practice that an alien may enter this country with a limited purpose in view without any previous strict examination and decision concerning his suitability for future assimilation; it then depends on the individual circumstances and the conditions prevailing at the time in question whether later on the stay is prolonged and eventually assumes a permanent character.

It should also be kept in view that it is particularly the countries that do not base their legislation on jus soli which, by virtue of their geographical location, are liable to receive from their neighbouring countries without any previous examination whatever of the individual person's suitability for admittance a large influx of refugees - often stateless persons or persons likely to become stateless; these countries thus shoulder beforehand a great burden for the benefit of the group of persons at which the Draft Conventions aim.

In Europe, at any rate, it is not unusual, on account of the relatively short distances and the comparatively low cost of living, that even ordinary aliens are accompanied by their families even during the period when their residence is still of a temporary character. Movements from one country to another are so common that it is impossible to count on any probability that the families, including the children born in a particular country, will remain there. Under such circumstances it is not possible to apply jus soli. With a passing reference only to the possibility that - provided the proposed jus soli rule is adopted - the children of such persons will often possess

different nationalities according to the country in which the parents happened to be at the time of the individual child's birth, the Danish Government must be of the opinion that in such circumstances a nationality based merely on jus soli will, in most cases, be of quite a nominal character.

It must, however, be admitted that just as weighty objections may be raised against jus sanguinis. If, without limitations, the ancestors' nationality is inherited through generations, this may cause just as unreasonable results as those envisaged by the opponents of jus soli. The fact that, at birth or later, a person has acquired the nationality of a particular country does not mean that his descendants too will acquire any real attachment to that country. If the children and later descendants grow up abroad and never themselves acquire any personal attachment to the parents' country, it cannot be expected that this country shall continue to regard them as persons suitable to acquire or retain its nationality. Consequently it must be admitted that a convention based solely on jus sanguinis can likewise not be expected to obtain general favour.

But if none of the principal systems - jus soli or jus sanguinis - may thus expect general approval, the question arises whether, instead of a one-sided stress on one of these traditional systems, the Convention ought not to be based on a combination allowing greater consideration for factors of real attachment.

At the time a child is born nothing can be foreseen about its future. As long as it is an infant, it will, as a predominant rule, share the parents' situation. If the latter have a nationality, it seems, therefore, reasonable that this nationality is extended to the child too. In the comments accompanying the "Draft Act on Acquisition and Loss of Nationality, Prepared by Delegates of Denmark, Norway and Sweden" (Copenhagen 1890) it is stated that "the fact that a person is connected with nationals by strong ties of kinship is, at the moment of birth, the only possible, and generally a sufficient, guarantee that he is, and will feel, attached to the State, and the parents' right to enjoy as nationals the protection of the State and to live in its territory does not acquire full value unless their children are recognized as nationals of the same State".

These considerations, which relate only to the situation in the years of childhood, appear in the main still to apply. The consequence hereof is that as a rule jus sanguinis ought to be taken as the basis where it will provide a solution for the years of childhood. For minor children a nationality different from that of their parents will generally have no intrinsic value, and, as a rule, it will not, therefore, matter to these children whether they are stateless or are nationals of the, often accidental, country in which they were born if in any case they do not share their parents' nationality.

Though Denmark long ago adopted provisions in accordance with these considerations so that a child of Danish parents (i.e. a legitimate child of a Danish father and an illegitimate child of a Danish mother) always, irrespective of the place of birth, acquires Danish nationality at birth, the Danish Government do not expect such a comprehensive provision to be accepted as a general rule. The parents' nationality may already be of such a nominal character that its conveyance to yet another generation may be unacceptable to many States whose adherence to the Convention it would be desirable to obtain.

It appears, therefore, to be necessary to introduce a limitation designed to exclude cases where the previous generation has already acquired its nationality purely on the basis of jus sanguinis and has not renewed the attachment to the parent country through residence therein.

Even if jus sanguinis is thus limited, it must, however, be foreseen that it will not be generally acceptable without a further narrowing. As long as the child is still subject to the parents' authority, the most natural and the most expedient arrangement may supposedly be said to be that it also shares their nationality. But when it comes of age without having itself acquired such an attachment to the parents' country that the natural thing would be for that country to allow the continued preservation of its nationality, the reasonable and necessary course will be to provide facilities for that country to discontinue the nationality. If such facilities are not accorded, it must be feared that the parents' country will not accept a jus sanguinis provision at all. In order to limit the cases of statelessness which may be caused by such a subsequent loss of the nationality acquired at birth, the Convention should contain appropriate provisions.

It is evident that the provisions of the proposed Convention must be regarded as minimum rules which do not preclude a more comprehensive application of jus sanguinis where the individual State is inclined to do so.

From the above it will appear that as a principal measure against original statelessness the Danish Government must advocate the implementation of a system according to which any person, at least during his childhood, shares his parents' nationality if such a nationality exists and is not itself of a nominal character.

This principle proposal does not, however, provide any solution of the cases where the parents themselves are stateless or where the parents' nationality is of such a nominal character that jus sanguinis consequence should not apply. Assuming now that many States will have difficulties in accepting jus soli as their legislative principle, the question will be whether a partial adoption of this principle is more acceptable.

On this subject it must primarily be observed that it appears quite unacceptable that a foreign State should be able to determine unilaterally that a child born of its nationals in, say, Denmark is to have Danish nationality. If pure jus soli is adopted in the cases where the child would otherwise become stateless at birth, this, however, would be the result. The parents' country may fail to adopt or may limit or abolish jus sanguinis. Even if jus sanguinis is adopted in the Convention as proposed in this Memorandum, the parents' native country may omit to accede to the Convention and thereby evade the resulting treaty obligations. It should be obvious that a State which cannot, for other reasons, base its nationality law on jus soli cannot accept that such an attitude on the part of a foreign State should impose upon it an obligation which it does not otherwise undertake.

Against a special rule of jus soli only for children who would otherwise become stateless, it may further be objected that it must be considered unfortunate to introduce in the nationality laws of the individual country different provisions (a) for children of aliens who are nationals of a Contracting State, (b) for children of aliens who are nationals of a non-Contracting State, and (c) for children of stateless persons, so that the provisions to be applied in the

individual case would depend on a negative criterion which it will often be difficult to substantiate. This objection is of particular importance where the automatic acquisition of nationality at birth is concerned; often the question whether a particular person has acquired nationality under the special provisions will not be raised until many years later when it will be difficult, or even impossible, to procure information on the relevant facts.

What has been stated above concerning birth in the territory applies in a still higher degree to the proposed provision in article 2 of both Drafts according to which birth on board a ship or an aircraft is to have the same effect. Such vessels or aircraft will often be travelling between foreign localities, and the State concerned is normally not in a position to determine whether a particular person should have access to such vessels or aircraft. The fact that the parents choose, for example, a Danish vessel for their conveyance between two foreign ports does not appear to substantiate any attachment whatsoever between Denmark and the child born during the voyage.

It seems further that the obligation to introduce jus soli may work against the real interests of the persons concerned. In the first place, the rule proposed may result in a situation where the parents' country, trusting that the children will not become stateless anyhow, omits to introduce or expand jus sanguinis although, as long as the persons concerned are still under age, this would normally be more beneficial than jus soli. In other cases, where after its birth a child becomes attached to a State other than the one in the territory of which it was born, an inducement to naturalize the child may be wanting if it already holds a nationality, however nominal that nationality may be. If an obligation to apply jus soli to the children of certain aliens is imposed on States which normally do not base their law on jus soli, allowance will also have to be made for the risk that a tendency may easily develop to prefer, ceteris paribus, aliens to whose children such an obligation will not apply and who consequently, in this connexion, are considered less burdensome. Such a tendency would, however, compromise the endeavours otherwise being employed to facilitate the travel and emigration of stateless persons as reflected most recently by the Convention on the Status of Stateless Persons signed in New York on 28 September 1954, cf. also the Geneva Convention of 28 July 1951 on the Status of Refugees.

If, having taken note of the objections that may be raised to jus soli and jus sanguinis, respectively, it is attempted to work out a solution, it may presumably be based on the following considerations:

(1) The attachment ot the country of birth which the child born of foreign parents does not possess at the moment of birth, will normally be acquired if the child remains in the said country.

(2) The attachment to the parent's country based upon the child's dependence on its parents will weaken if the child remains abroad.

Consequently it does not appear reasonable to impose any obligation on the parents' country to let the nationality the child has acquired by virtue of jus sanguinis exist any longer than till the age when the child has grown up. Whether the child then becomes stateless or not will depend either on its manifestation in the meantime of such a real attachment to the parents' country that the latter can allow it to retain that country's nationality, or on its acquisition of such a real attachment to another country, particularly the country of birth, that the latter is willing to grant it its nationality. On the other hand it does not appear reasonable to impose any obligations on the country of birth in case a child born of foreign parents becomes resident outside that country's territory before it has grown up.

It must, of course, be a condition for a solution based on these considerations, which comply with the objections both to jus soli and to jus sanguinis, that the country of birth applies the acquisition rule not only to those who were born stateless but also to those who, having reached adult age, lose the nationality acquired by virtue of jus sanguinis. The attachment being the same in both cases, such procedure should be acceptable.

In the cases where, according to the above, the country of birth shall be obliged to grant its nationality, it ought presumably to be given a free hand to decide whether persons fulfilling the conditions shall acquire the nationality automatically or shall opt.

It is admitted that the system here proposed will not reduce or eliminate statelessness to the same extent as the jus soli proposed by the International Law Commission. In view of the fact that the system will probably be able to count on far more followers among non-jus soli countries, its advantages should, however, be obvious. At any rate it appears to the Danish Government to be a more fortunate solution as its final results will be based on elements of real attachment.

A further step towards reduction of statelessness seems to be possible on the basis of regional agreements which may supplement the general provision of the Convention. The conditions in closely related countries will often be so uniform that an assimilation commenced in one of them will be of importance in the other too. In the relations between two such ountries it should, therefore, be sufficient guarantee for complete assimilation that during the first years of its life the child has lived within the combined territory of these countries, whereas the final years of adolescence and training, of course, should be spent in the country whose nationality it wants to acquire. As a consequence hereof it will normally be sufficient that the child has resided in the latter country from, e.g. an age of 10 - 12 years, whereas the birth may have taken place and the first 10 - 12 years of the child's early life may have been spent in another of the closely related countries.

Finally it seems a natural consequence to include in the proposed new Convention the provision contained in article 1 of the Protocol relating to a Certain Case of Statelessness adopted by the Codification Conference at The Hague in 1930. The rule should perhaps be expanded to include also those cases where the father has indeed a nationality but where that nationality is not extended to the child, e.g. because as a non-Contracting State the father's native country does not apply article 1 of the Draft attached as an Annex to this Memorandum. In view of the attachment to the country of birth caused by the fact that the mother is a national of that country there should, in such cases, be fewer objections against allowing the negative attitude the father's country adopts towards jus sanguinis to have the effect proposed. On the other hand, it must be

considered unnecessary to include the provisions of The Hague Protocol as far as a father with an "unknown" nationality is concerned. There does not appear to be sufficient reason to grant the child, immediately at birth, a definite nationality in the country of birth only because the father's nationality is unknown as this matter will often be elucidated during the child's early years.

According to the statements above, the Danish Government must propose that articles 1-4 of the Draft of the International Law Commission be replaced by articles 1-9 of the Annex attached.

The only further comment to be made on articles 1-4 of the Commission's Draft Convention on Reduction of Future Statelessnes is that it is an unacceptable rule that the father's nationality should always - consequently also in the case of children born out of wedlock - predominate over that of the mother.

There are no fundamental objections to articles 5 and 6 and paragraphs 1 and 2 of article 7 of the Drafts, which do not contain anything essentially new compared to the Convention on Certain Questions relating to the Conflict of Nationality Laws of 12 April 1930, adopted by The Hague Conference on the Cofidication of International Law (179 League of Nations Treaty Series, p. 89).

On the other hand the Danish Government must reserve their position for the time being as regards the provision in paragraph 3 of article 7 of the International Law Commission Draft Convention on Reduction of Future Statelessness. It hold good of both this provision and of article 8 of the same Draft that they appear to be based in too high a degree on the rules in force in certain countries, whereas they do not allow corresponding consideration for similar provisions in other legislations.

There is no objection to article 9 and paragraph 1 of article 10 of the Drafts. The proposed rule in paragraph 2 of article 10 does not appear to be justified in so far as it prescribes that also stateless persons resident in a ceded territory shall acquire automatically the nationality of the State to which the territory is ceded. Furthermore, the Contracting States should hardly venture to prescribe rules for States not yet existing, nor on the whole for non-Contracting States.

The Danish Government must reserve their position as regards the special agency proposed in article 11 of the Drafts and the proposed special international tribunal for statelessness problems. It is considered appropriate that, even before the contemplated conference, an opinion should be obtained from the International Court of Justice on whether this Court - or possibly a special chamber formed under Article 26 of the Statute of the Court - will be able to undertake the judicial tasks in question. On the whole it appears desirable that the members of the Conference do not come to any decision concerning the said special tribunal without the International Court of Justice having been consulted.

As regards article 12 of the Drafts it is observed that in case a Convention is adopted by a special Conference, it should of course, be open for signature or accession by all States invited to the Conference. Thus, as far as invited non-member States are concerned, the signature or accession should not be made conditional upon any further decision by the General Assembly of the United Nations. It is, therefore, proposed that the article be drafted in accordance with article 35 of the New York Convention of 28 September 1954, on the Status of Stateless Persons, cf. also article 39 of the Geneva Convention of 28 July 1951 on the Status of Refugees.

Comment must be reserved on article 13 of the Drafts.

There are no objections to the rules contained in articles 14, 15 and 16 of the Drafts.

It appears that article 17 of the Drafts may be omitted as a special article, its contents belonging naturally in the final clause of the Convention, cf. the Conventions mentioned above in the comments on article 12.

Article 18 of the Drafts appears to be superflucus in view of the provision in Article 102 of the Charter of the United Nations, unless the Convention is exclusively signed by States which are not Members of the United Nations. A corresponding provision is moreover not found in the Conventions mentioned in the comments to article 12.

A Draft Convention on the Reduction of Statelessness prepared by the Danish Government with comments thereto is enclosed as an Annex. At the present

juncture there has been no occasion to discuss this Draft with the Governments of Norway and Sweden, and as decisive importance must be attached to the maintenance of the existing agreement between the Scandinavian nationality laws, which among other things particularly aim at preventing statelessness, the Danish Government must, on the whole reserve their position with regard to the problems which will be discussed at the contemplated Conference.

Copenhagen, 28 March 1955.

DRAFT CONVENTION ON THE REDUCTION OF STATELESSNESS

Article 1

1. A legitimate child which would otherwise have been stateless shall acquire at birth the nationality of the Contracting State of which its father is a national, provided that the father is born in that State or has, after acquiring its nationality, had five years' residence in its territory.

2. An illegitimate child which would otherwise have been stateless shall acquire at birth the nationality of the Contracting State of which its mother is a national, provided that the mother is born in that State or has, after acquiring its nationality, had five years' residence in its territory.

Article 2

1. A Contracting State may make the preservation of its nationality, acquired under article 1, beyond the age of 22 years dependent on the person having been resident in its territory.

2. When a person loses his nationality according to this article, the loss of nationality may be extended to those children which have acquired that nationality through him.

3. A Contracting State may not call a person to perform military or any other similar service unless it has been decided that that person will not lose the nationality of that State according to this article.

4. A Contracting State shall give sympathetic consideration to extending the benefit of residence under paragraph 1 of this article to persons who, though they have not been resident in its territory, have been staying there for the purpose of their education or uder such other circumstances which normally indicate attachment to that State.

Article 3

A legitimate child born in the territory of a Contracting State of which its mother is a national shall, if it would otherwise have been stateless, and if article 1 does not apply, acquire at birth the nationality of that State.

Article 4

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered as a national of that State.

Article 5

1. A person who has not, at birth or later, acquired any nationality shall, if he always has been, and still is, resident in the territory of the Contracting State in which he was born, be entitled to acquire the nationality of that State when he has reached the age of not less than eighteen years and not more than twenty-three years.

2. A legitimate child shall be included in its father's acquisition of nationality according to paragraph 1 unless its parents have obtained a legal separation or divorce and the custody of the child has been transferred to its mother.

3. A legitimate child shall be included in its mother's acquisition of nationality according to paragraph 1 if she has obtained a legal separation or divorce and the custody of the child has been transferred to her, or if she is a widow.

4. An illegitimate child shall be included in its mother's acquisition of nationality according to paragraph 1, unless the custody of the child has been transferred to its father who is not a national of the Contracting State concerned.

Article 6

1. A person who under article 2 will lose, or has lost, his nationality shall, if he would otherwise be stateless, and if he always has been, and still is, resident in the territory of the Contracting State in which he was born, be entitled to acquire the nationality of that State when he has reached the age of not less than eighteen years and not more than twenty-three years.

2. Paragraphs 2 to 4 of article 5 apply also when a person acquires the nationality of the Contracting State according to paragraph 1 of this article.

Article 7

1. The provisions of articles 5 and 6 shall not apply to a child born to persons enjoying diplomatic immunities in the country of the child's residence unless such immunities have terminated before the child reached the age of twelve years. They shall not apply to a person who himself enjoys, or within the last two years has enjoyed, diplomatic immunities in the country of residence.

2. In the case of war article 5 shall not apply to a person whose parents are nationals of an enemy State, or when the last nationality of the parents was that of a State with whom the Contracting State is at war, nor shall article 6 apply to a person who is or has been a national of an enemy State.

Article 8

For the purposes of articles 5 and 6, birth on a vessel shall be deemed to have taken place within the territory of the Contracting State whose flag the vessel flies. Birth on an aircraft shall be deemed to have taken place within the territory of the Contracting State where the aircraft is registered.

Article 9

The Contracting States shall give sympathetic consideration to extending the benefits of articles 3, 5, 6 and 8 to persons born in other States with whom they have concluded regional or other agreements with the purpose of assimilating birth or residence in one State to birth or residence in another State.

Article 10

The loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption shall be conditional upon acquisition or possession of another nationality.

Article 11

Without prejudice to article 2, the change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

Article 12

1. Renunciation shall not result in the loss of nationality unless the person renunciating it has or acquires another nationality.

2. A person who seeks naturalization in a foreign country or who obtains an expatriation permit for that purpose shall not lose his nationality unless he acquires the nationality of that foreign country.

Article 13

Without prejudice to article 2, a natural-born national of a Contracting State shall not lose his nationality so as to become stateless on the ground of departure, stay abroad, failure to register, or any other similar ground. The same applies to persons who have acquired nationality in accordance with articles 5 and 6.

Article 14

A Contracting State may not deprive its nationals of their nationality by way of penalty or on any other ground if such deprivation renders them stateless.

Article 15

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnical, religious, or political grounds.

Article 16

1. Every treaty concluded by a Contracting State providing for the transfer of territory shall include provisions for ensuring that the inhabitants of that territory shall not become stateless as a result of such transfer.

2. In the absence of such provisions, a Contracting State to which territory is transferred, or which otherwise acquires territory, shall confer its nationality upon those inhabitants of such territory who until the transfer were nationals of the State to whom the territory previously belonged, unless they retain their former nationality by option or otherwise.

Article 17

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 18

1. The Contracting States 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, international organizations and the tribunal referred to in paragraph 2.

2. The Contracting States 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 and application of this Convention, which cannot be settled by other means, 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 this Convention.

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

4. Until the tribunal referred to in paragraphs 2 and 3 has been established, any dispute between Contracting States relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 19

1. This Convention shall be open for signature until .....
.....

2. It shall be open for signature on behalf of:

(a) Any State Member of the United Nations;

(b) Any other State invited to attend the United Nations Conference on Elimination or Reduction of Future Statelessness;

(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 20

1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of this Convention pending the enactment of necessary legislation.

2. No other reservations to this Convention shall be admissible.

Article 21

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying, or acceding to, the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall come into force on the ninetieth day following the day of deposit by that State of its instrument of ratification or accession.

Article 22

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the day upon which it was received by the Secretary-General.

Article 23

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 24

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 19:

(a) of the establishment of the agency and of the tribunal referred to in article 18;

(b) of signatures, ratifications and accessions in accordance with article 19;

(c) of reservations in accordance with article 20;

(d) of the date on which this Convention will come into force in accordance with article 21;

(e) of denunciations in accordance with article 22;

(f) of requests for revision in accordance with article 23.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at ....., this ..... day of ....., one thousand nine hundred and fifty-..... in a single copy, of which the ..... texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified copies of which shall be delivered, by the Secretary-General of the United Nations, to all Members of the United Nations and to the non-member States referred to in article 19.

COMMENTS

The rules of the Draft Convention impose upon Contracting States a series of obligations to implement at least certain minimum provisions which provide stateless persons with a nationality. They, therefore, do not exclude any Contracting Party from applying more liberal or favourable provisions.

Article 1

The provisions of this article only apply if the child is born in the territory of a State the nationality of which is not acquired by jus soli. A Contracting State may not exclude the acquisition of its nationality by imposing additional conditions. On the other hand, a Contracting State may apply jus sanguinis to a greater extent than provided for, e.g. by waiving the condition of the father (mother) having been resident in its territory or by reducing the period of such residence. It may also apply jus sanguinis for the benefit of a legitimate child whose mother is a national or for the benefit of an illegitimate child whose father is a national, and in these cases, not provided for by the Convention, the State is at liberty to impose its own conditions, e.g. that the father of the illegitimate child has recognized the child in accordance with its own legislation.

Article 2

A Contracting State may allow the child to preserve its nationality without imposing conditions of residence. The preservation of nationality may, on the other hand, not be made dependent on conditions not provided for in the article. Since majority according to many legislations is obtained at the age of twenty-one years, the child should be given one year after it has become responsible for its own affairs to decide whether it desires to establish itself in the home country of the parents and thereby preserve its original nationality.

Until the person has met the qualifications, or obtained permission, to preserve his nationality, the home country should not be allowed to call him to perform military or similar service, since the absence from his country of birth, caused by such service, may endanger his opportunities to acquire the nationality of the latter country according to article 6 and thus expose him to future statelessness.

A Contracting State has, under article 1, no obligation to confer its nationality on the children born abroad to a person who himself is covered by article 1. It may, however, prefer to let these children share the national status of the father (mother) as long as that status remains unchanged. Paragraph 4 provides for that case.

Article 3

This article is, in the main, identical with article 1 of the "Protocol relating to a certain Case of Statelessness", adopted by the Conference for the Codification of International Law at The Hague on 12 April 1930. It has not been found necessary to include the case where the nationality of the father is unknown.

Article 4

This article is, in the main, identical with article 2 of the ILC Draft Conventions. It is, however, worded so as to fit both into jus soli and into jus sanguinis systems.

Article 5

This article does not exclude the application of jus soli. A Contracting State may dispense from the condition of permanent residence. On the other hand, it may not impose other conditions.

The age limit of twenty-three years has been chosen in order to prevent the question of acquisition from being kept in suspense for any considerable period after the age of majority. Contracting States may choose whether they, under article 5, will confer nationality by automatic operation of law or introduce a system of option.

Having in mind the age of the persons concerned it should not be necessary to provide for exceptions on the ground of national security and public order. According to article 31 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons a State will be able in any case to terminate the residence of a stateless person who is considered to be a danger to national security and public order.

Article 6

While article 5 deals with persons who have not, under article 1, by birth acquired a jus sanguinis nationality, article 6 provides for those who, under article 2, will lose or have lost their jus sanguinis nationality. The age limit of twenty-three years has been chosen in order to allow these persons, after having lost, at the age of twenty-two years, their jus sanguinis nationality, a certain period wherein to decide whether they want to remain in the country of birth. Since this decision, however, in many cases can and will be made before the age limit provided for in article 2, it is proposed to allow for the acquisition of the nationality of the country of birth even at an earlier age.

Article 7

It seems justified to provide for exemptions from articles 5 and 6 in so far as persons with diplomatic status and enemy aliens are concerned.

Article 8

Since the obligations of Contracting States to apply jus soli are restricted, under articles 5 and 6, to those persons who have permanent residence in their territory during the entire period from birth to majority, it may be justified to extend the benefits of these articles also to those who are born on a vessel or aircraft.

Article 9

When a child has been born in a country and has passed the first years of life in that country and has, thereupon, at an early age been established in another country which is closely connected with the country of birth, e.g. as far as language, culture, etc. is concerned, the elements of assimilation acquired in the first country will be of importance also in the latter country. In consequence it may be justified to treat the child on the same footing as those children who are born and always have been resident in the latter country.

Article 10

This article is identical with article 5 of the ILC Draft Conventions. It has, however, been considered justified to treat the case where the person already has another nationality in the same way as the case where the person acquires another nationality.

Article 11

This article is identical with article 6 of the ILC Draft Conventions. It will, however, be necessary to include a proviso covering the cases dealt with in the proposed article 2, paragraph 2.

Article 12

This article is identical with article 7, paragraphs 1 and 2, of the ILC Draft Conventions.

Article 13

This article is, in the main, identical with article 7, paragraph 3, first sentence, of the ILC Draft Convention on the Reduction of Future Statelessness. It is, however, proposed to assimilate those who have acquired the nationality of their country of birth by application of articles 5 and 6 to those who have acquired that nationality by operation of pure jus soli. On the other hand, the inclusion of the proposed article 2 necessitates a special proviso.

Since article 13 only applies to natural-born nationals and to persons who have acquired nationality under articles 5 and 6, it is not necessary to include the second sentence of article 7, paragraph 3, of the ILC Draft Convention on the Reduction of Future Statelessness.

Article 14

This article is identical with article 8 of the ILC Draft Convention on the Elimination of Future Statelessness. It is not proposed to single out, as does article 8 of the ILC Draft Convention on the Reduction of Future Statelessness, one special case where the general provision of this article shall not apply.

Article 15

This article is identical with article 9 of the ILC Draft Conventions.

Article 16

This article is, in the main, identical with article 10 of the ILC Draft Conventions. It is, however, considered inappropriate to prescribe duties for new States and to impose upon a Contracting State an obligation to confer its nationality to those inhabitants of an acquired territory who already were stateless before that State acquired the territory.

Article 17

This article is identical with article 35 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Article 18

This article is, in the main, identical with article 11 of the ILC Draft Conventions. International organizations have been included in paragraph 1.

In order to avoid duplication and overlapping it is proposed to restrict the jurisdiction of the International Court of Justice to the period until the special tribunal, provided for by this article, has been established.

Article 19

This article is identical with article 39 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Article 20

This article is identical with article 13 of the ILC Draft Conventions.

Article 21

This article is identical with article 39 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Article 22

This article is identical with article 40 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Article 23

This article is identical with article 41 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Article 24

This article corresponds with article 42 of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.

Final Clause

This clause corresponds with the final clause of the New York Convention of 28 September 1954 relating to the Status of Stateless Persons.
