

CONVENTION ON THE REDUCTION OF STATELESSNESS

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The 1954 Convention relating to the Status of Stateless Persons had limited purposes, namely, to define a class of stateless persons, to regulate and improve their status, and to assure to them the widest possible exercise of fundamental rights and freedoms. The reduction and elimination of statelessness, however, required further international cooperation and would need national laws to be harmonised. This was the goal set out by the United Nations Economic and Social Council in resolutions 319 A and B (XI), 11 and 16 August 1950, when it requested the International Law Commission to prepare, “at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness.”

On 26 July 1951, the International Law Commission (hereinafter referred to as “the ILC” or “the Commission”) appointed Manley O. Hudson, a United States lawyer and former judge of the Permanent Court of International Justice, as Special Rapporteur for the study of nationality including statelessness (*Yearbook of the International Law Commission*, 1951, vol. I, pp. 418 ff., paras. 1-12). The then recently established Office of the United Nations High Commissioner for Refugees offered assistance, and Dr. Paul Weis joined the Special Rapporteur at Harvard for some seven weeks in October-November 1951 (*Yearbook of the International Law Commission*, 1952, vol. II, p. 4, para. 5).

The background materials to the work of the ILC included a note prepared by the United Nations Secretariat on the elimination of statelessness (*Yearbook of the International Law Commission*, 1951, vol. II (doc. A/CN.4/47)). This referred back to the earlier work of the Economic and Social Council and the *Ad Hoc* Committee on Statelessness and Related Problems, summarised in the Introduction to the 1954 Convention relating to the Status of Stateless Persons, and to a minority proposal in that forum for a model convention on elimination (E/1618, 17 February 1950, Annex V).

At the ILC’s first substantive meeting in 1952, the Special Rapporteur submitted papers dealing with nationality in general, the nationality of married persons, and statelessness (*Yearbook of the International Law Commission*, 1952, vol. II, (doc. A/CN.4/50)). The first paper, intended to be partly historical and partly analytical, noted the common linkage between nationality and allegiance to a State, and also that the uniformity of nationality laws seemed, “to indicate a consensus of opinion of States that conferment of nationality at birth has to be based on either, on *jus soli* or on *jus sanguinis*, or on a combination of these principles” (*ibid.*, p. 7). Whether the revealed usage went further to the point of obligation was a moot point, however, while in the matter of naturalization – the conferment of nationality after birth – no rules of international law

could be deduced, other than that there should be a personal or territorial link between the State and the individual concerned (*ibid.*, p. 8).

The Special Rapporteur identified statelessness as arising, at birth, because of the inconsistent operation of the principles of *jus soli* and *jus sanguinis*; and later, because of conflicting national laws, voluntary acts of the individual, unilateral acts by the State, and territorial changes. Statelessness was seen as “undesirable” from the perspective of orderly international relations, for every individual should be “attributed to some State”; and it was also undesirable for the individual, because of its “precariousness”. Reducing or eliminating statelessness therefore meant focusing on causes, and these suggested that the answer lay in the adoption of two rules: (1) if no other nationality is acquired at birth, the individual should acquire the nationality of the State in whose territory he or she is born; and (2) loss of nationality after birth should be conditional on the acquisition of another nationality. However, the Special Rapporteur did not consider that States were then prepared to accept these principles. He therefore proposed a number of steps whereby the incidence of statelessness might nevertheless be reduced, although “considerations of a political nature” inclined him to refrain from making concrete proposals. (*Ibid.*, pp. 19-22.)

Initial Discussions in the International Law Commission

Discussions during the first meetings of the Commission confirmed how divisive were the issues. Some ILC members stressed the sovereignty and internal jurisdiction dimensions to nationality, and considered that the State could not be denied the right to deprive of their nationality anyone who had put themselves outside their national community. Other members stressed that, while deprivation should not be imposed as a penalty, nationality was nevertheless a privilege not to be accorded unless there were a real link between individual and State. In the eyes of some, the “mere fact of birth” or “mere habitual residence” in a country before the age of eighteen was not sufficient evidence of such a link. Others agreed, while noting also that approaches to the acquisition of nationality transcended purely legal principles. One member, however, thought that neither the “accident” of birth, nor the “accident” of parental citizenship was intrinsically stronger than the other, and that even nationality acquired by fraud should not be punished by deprivation. (*Yearbook of the International Law Commission, 1952*, vol. I, pp. 100-142, 190-191, 244, 251-252.)

The Commission completed its discussion of the points raised in the Special Rapporteur’s paper, with the votes taken seen as offering guidance in the drafting process. Manley O. Hudson, however, was obliged to resign for health reasons, and on 8 August 1952, the Commission unanimously elected Roberto Córdova of Mexico as Special Rapporteur to succeed him. (*Ibid.*, p. 244, para. 87 and pp. 251-252, para. 15.)

At its fifth session in 1953, on the basis of Roberto Córdova's first report (*Yearbook of the International Law Commission*, 1953, vol. II (doc. A/CN.4/64)), the Commission reviewed two draft conventions, one on the *elimination*, and one on the *reduction* of future statelessness. The old "divides" re-emerged – sovereignty, *jus soli*, *jus sanguinis*, the relationship between international and national law, deprivation of nationality, the settlement of disputes, including the individual's rights in the matter, if any, and the role of the United Nations. The drafts were nevertheless amended and adopted on first reading, and sent to Governments for comment. (*Yearbook of the International Law Commission*, 1953, vol. I, pp. 170-197, 202-280, 321-322, 325-334, 345, 369-370, 377-383.)

At its sixth session in 1954, the Commission reviewed the observations of Governments, many of which simply reiterated their view that the proposed texts were incompatible with existing legislation. The Commission did not consider this decisive: "If Governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should be prepared to introduce the necessary amendments in their legislation" (*Yearbook of the International Law Commission*, 1954, vol. II (doc. A/2693, para. 12)). It redrafted some of the articles, however, adopted final drafts of the two conventions, and submitted them to the General Assembly (*Yearbook of the International Law Commission*, 1954, vol. I, pp. 3-52). The Commission indicated that it would be for the General Assembly to consider which of the two draft conventions it preferred – that on *elimination*, which imposed stricter obligations, or that with the more modest aim of simply *reducing* statelessness (*Yearbook of the International Law Commission*, 1954, vol. II (doc. A/2693, para. 14)). In resolution 896 (IX) of 4 December 1954, the General Assembly expressed its desire that an international conference of plenipotentiaries be convened as soon as at least twenty States had communicated their willingness to participate to the Secretary-General.

Also at the sixth session, the Special Rapporteur introduced two working papers on *present* statelessness, one each on elimination and reduction (*Yearbook of the International Law Commission*, 1953, vol. II (doc. A/CN.4/75)). The Commission discussed an "Alternative Convention on the Reduction of Present Statelessness", noting that the solution lay in the acquisition of nationality by stateless persons, which would normally be that of their country of residence. The Special Rapporteur had also proposed that stateless persons be accorded the special status of "protected person" pending acquisition of nationality, entitling them to civil rights and diplomatic protection. However, while the drafts and commentaries were duly submitted to the General Assembly as part of its final report, the Commission nonetheless acknowledged that there were "great difficulties of a non-legal nature" in the way of accepting articles on the matter, and they might better be seen as "suggestions" to Governments when attempting to solve the problem (*Yearbook of the International Law Commission*, 1954, vol. II (doc. A/CN.4/81 and doc. A/2693 pp. 140-149, para. 36)).

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

The United Nations Conference on the Elimination or Reduction of Future Statelessness met first in Geneva from 24 March to 18 April 1959, and again in New York from 15 to 28 August 1961. The Conference decided to use the draft convention on the reduction of statelessness as the basis for discussion, and focused on provisions aimed at reducing statelessness at birth. Once again, fundamental differences were revealed between States which favoured the principle of *jus soli*, and those which opted for *jus sanguinis*. Whereas endorsement and acceptance of the former would have stopped many instances of original statelessness at source, consensus was missing and the final compromise combined elements of both principles. Equally divisive was the issue of deprivation of nationality, a facility defended by many States as essential to their vital interests (Note by the Secretary-General with Annex containing observations by Governments on deprivation of nationality (A/CONF.9/10, 9 June 1961, Add. 1-3, 5 July 1961)); the lack of agreement necessitated the second session, at which the final text of the Convention on the Reduction of Statelessness was duly adopted. In accordance with article 18, the Convention entered into force on 13 December 1975.

The 1961 Convention on the Reduction of Statelessness

One of the most significant elements in the 1961 Convention is the fact that it imposes *positive* obligations on States to grant nationality in certain circumstances, by contrast with the essentially negative obligations contained in the Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted in the Hague in 1930 (hereinafter referred to as “the 1930 Hague Convention”).

Article 1, for example, obliges a Contracting State to grant its nationality to a person born in its territory who would otherwise be stateless, although the State may attach conditions to the grant, such as age of application, habitual residence, not having been convicted for an offence against national security, or sentenced on any criminal charge to imprisonment for five years. The limiting conditions do not apply, however, in the case of a child born in wedlock in the territory of a Contracting State, where the mother has the nationality of that State; in such cases, the child shall acquire that nationality at birth, if otherwise he or she would be stateless.

The 1961 Convention also attempts to settle a variety of incidental problems, such as the nationality of foundlings (article 2: continuing the principle of *jus soli* already established in the 1930 Hague Convention); and of those born on board ships or aircraft (article 3). It seeks to minimise the possibility of loss of nationality resulting in statelessness on the occasion of change of civil status, including marriage, termination of marriage, legitimation or adoption (articles 5 and 6). In other circumstances, loss of

nationality is to be conditional on the possession or acquisition of another nationality, both where that may otherwise occur by operation of law (article 6), or by reason of the voluntary acts of the individual, such as renunciation (article 7).

In principle, deprivation of nationality resulting in statelessness is now prohibited by article 8, but subject to a variety of exceptions, including, in the case of naturalized individuals, residence abroad for seven years or more, misrepresentation or fraud in acquisition; or, if the Contracting State has made the appropriate declaration at the time of signature, accession or ratification, where the person concerned has been disloyal or otherwise conducted him- or herself in a manner prejudicial to the vital interests of the State. Deprivation of nationality on racial, ethnic, religious or political grounds, however, is prohibited without exception (article 9).

Article 10 expressly provides that every treaty between Contracting States for the transfer of territory is to include provisions designed “to secure that no person shall become stateless as a result of the transfer”, and in the absence of such provisions, a Contracting State acquiring territory shall confer its nationality on such persons as would otherwise become stateless as a result.

Finally, the Conference recommended “that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure*, to enable them to acquire an effective nationality” (United Nations Conference on the Elimination or Reduction of Future Statelessness, Resolution I, United Nations, *Treaty Series*, vol. 989, p. 279).

At one time, the ILC had favoured the idea of both a protecting agency for stateless persons, and a tribunal to decide upon their claims. Neither suggestion found much favour with States, which opted instead for the establishment of a body within the framework of the United Nations, “to which a person claiming the benefit of [the] Convention may apply for the examination of [the] claim and for assistance in presenting it to the appropriate authority” (articles 11 and 20, paragraph 2). On the eve of the entry into force of the 1961 Convention in December 1975, the General Assembly requested the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”) to undertake the functions foreseen in article 11 on a provisional basis (General Assembly resolution 3274 (XXIX) of 10 December 1974 (Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply)). Two years later, the General Assembly asked UNHCR to continue to perform these functions, which it noted were carried out “without any financial implications for the United Nations” (General Assembly resolution 31/36 of 30 November 1976).

Implications and Later Developments

Important as are the principles set out in the 1961 Convention, what finally counts is the practice of States; at 23 August 2011 the 1961 Convention had attracted just thirty-eight ratifications. However, the *content* of this Convention clearly reflects and consolidates basic human rights principles, such as the right to a nationality and the right not to be arbitrarily deprived thereof, which are found in article 15 of the 1948 Universal Declaration of Human Rights, article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, article 24, paragraph 3, of the 1966 International Covenant on Civil and Political Rights, and articles 7 and 8 of the 1989 Convention on the Rights of the Child. (See Report of the Secretary-General “Human rights and arbitrary deprivation of nationality” (A/HRC/13/34, 14 December 2009)).

Article 1 of the Convention has also been taken up in article 20, paragraph 2, of the 1969 American Convention on Human Rights (“Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.”), while the overall approach is clearly continued and developed in more recent international and regional instruments including the 2000 articles on nationality of natural persons in relation to the succession of States (General Assembly resolution 55/153 of 12 December 2000), the 1997 European Convention on Nationality, and the 2006 Council of Europe Convention on the avoidance of statelessness in relation to State succession.

Related Materials

A. Legal Instruments

Convention on Certain Questions relating to the Conflict of Nationality Laws, The Hague, 12 April 1930, League of Nations, *Treaty Series*, vol. 179, p. 89.

Universal Declaration of Human Rights, General Assembly resolution 217 (III), Paris, 10 December 1948.

Convention relating to the Status of Stateless Persons, New York, 28 September 1954, United Nations, *Treaty Series*, vol. 360, p.117.

International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, United Nations, *Treaty Series*, vol. 660, p. 195.

International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407.

American Convention on Human Rights: "Pact of San José, Costa Rica", San José, 22 November 1969, United Nations, *Treaty Series*, vol. 1144, p. 123.

Convention on the Rights of the Child, New York, 20 November 1989, United Nations, *Treaty Series* , vol. 1577, p. 3.

European Convention on Nationality, Strasbourg, 6 November 1997, *European Treaty Series*, No. 166.

Council of Europe Convention on the avoidance of statelessness in relation to State succession, Strasbourg, 19 May 2006, *Council of Europe Treaty Series*, No. 200.

B. Documents

A Study of Statelessness, United Nations, August 1949, Lake Success – New York (E/1112, 1 Feb. 1949; E/1112/Add.1, 19 May 1949).

Report of the *Ad Hoc* Committee on Statelessness and Related Problems, 16 January to 16 February 1950 (E/1618 (E/AC.32/5)).

Economic and Social Council resolutions 319 A and B (XI) of 11 and 16 August 1950 (Refugees and stateless persons).

Elimination of statelessness - Note prepared by the Secretariat (A/CN.4/47, 31 May 1951, reproduced in *Yearbook of the International Law Commission, 1951*, vol. II).

Yearbook of the International Law Commission, 1951, vol. I, Summary records of the third session, 16 May - 27 July 1951.

Yearbook of the International Law Commission, 1952, vol. I, Summary records of the fourth session, 4 June - 8 August 1952.

Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur (A/CN.4/50, and reproduced in *Yearbook of the International Law Commission, 1952*, vol. II).

Yearbook of the International Law Commission, 1953, vol. I, Summary records of the fifth session, 1 June - 14 August 1953.

Report on the Elimination or Reduction of Statelessness by Roberto Córdova, Special Rapporteur (A/CN.4/64, and reproduced in *Yearbook of the International Law Commission, 1953*, vol. II).

Second report on the elimination or reduction of statelessness, by Mr. Roberto Córdova, Special Rapporteur (A/CN.4/75, and reproduced in *Yearbook of the International Law Commission, 1953*, vol. II).

Report of the International Law Commission covering work of its fifth session, 1 June to 14 August 1953 (A/2456, and reproduced in *Yearbook of the International Law Commission, 1953*, vol. II (A/CN.4/76)).

Yearbook of the International Law Commission, 1954, vol. I, Summary records of the sixth session, 3 June - 28 July 1954.

Third report on the elimination or reduction of statelessness by Roberto Córdova, Special Rapporteur (A/CN.4/81, and reproduced in *Yearbook of the International Law Commission, 1954*, vol. II).

Report of the International Law Commission covering the work of its sixth session, 3 June to 28 July 1954 (A/2693, and reproduced in *Yearbook of the International Law Commission, 1954*, vol. II (A/CN.4/88)).

General Assembly resolution 896 (IX) of 4 December 1954 (Elimination or reduction of future statelessness).

Note by the Secretary-General with Annex containing observations by Governments on deprivation of nationality (A/CONF.9/10, 9 June 1961 and Add. 1-3, 5 July 1961).

United Nations Conference on the Elimination or Reduction of Future Statelessness, Resolution I, United Nations, *Treaty Series*, vol. 989, p. 279.

General Assembly resolution 3274 (XXIX) of 10 December 1974 (Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply).

General Assembly resolution 31/36 of 30 November 1976 (Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply).

General Assembly resolution 55/153 of 12 December 2000 (Nationality of natural persons in relation to the succession of States).

Report of the Secretary-General “Human rights and arbitrary deprivation of nationality” (A/HRC/13/34, 14 December 2009).

C. Doctrine

C. Batchelor, “Transforming International Legal Principles into National Law: The Right to a Nationality and the Avoidance of Statelessness”, *Refugee Survey Quarterly*, vol. 25, No. 3, 2006, pp. 8-25.

M. Manly, “The Spirit of Geneva – Traditional and New Actors in the Field of Statelessness”, *Refugee Survey Quarterly*, vol. 26, No. 4, 2007, pp. 255-261.

L. van Waas, *Nationality Matters: Statelessness under International Law*, Intersentia, Mortsel, 2008.

P. Weis, “The United Nations Convention on the Reduction of Statelessness, 1961”, *International and Comparative Law Quarterly*, vol. 11, No. 4, 1962, pp. 1073-1096.

P. Weis, *Nationality and Statelessness in International Law*, Sijthoff and Noordhoff, Leiden, 2nd ed., 1979.

Inter-Parliamentary Union & United Nations High Commissioner for Refugees, *Nationality and Statelessness: A Handbook for Parliamentarians*, IPU, Geneva, 2005.

United Nations High Commissioner for Refugees, *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, UNHCR, Geneva, 2008.