

CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

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During the 1920s, it was common to draw no distinction between those who were stateless – without a nationality – and those who were refugees; both were covered by the notion of being without the protection of the Government of their country of origin, or without the protection of any other Government by way of “new” nationality.

Nationality problems, including multiple nationality, loss of nationality on marriage, and statelessness apart from the refugee context, were nevertheless a matter of concern to States and to the League of Nations, which promoted a number of measures to reduce the problem; see, for example, the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws, the 1930 Protocol relating to a Certain Case of Statelessness, and a further Special Protocol of the same year.

With the massive population displacements and political re-ordering which followed the Second World War, this bundle of issues was soon again on the international agenda. At its first session in 1946, the United Nations General Assembly decided to refer the refugee question to the Economic and Social Council, “for thorough examination in all its aspects” (General Assembly resolution 8 (I) of 12 February 1946). The Council’s first priority, though, was the post-war refugee problem and the establishment of the International Refugee Organization (Economic and Social Council resolution 18 (III) of 3 October 1946).

Stateless persons were also mentioned incidentally during the first session of the Commission on Human Rights in July 1947. The Drafting Committee on an International Bill of Human Rights had before it article 32 – the precursor to article 15 of the Universal Declaration of Human Rights – submitted by René Cassin. It provided not only for a right to a nationality, but declared also that, “It is the duty of the United Nations and Member States to prevent statelessness as being inconsistent with human rights and the interests of the human community” (Report of the Drafting Committee (E/CN.4/21, 1 July 1947), p. 21).

At its second session in December 1947, attended incidentally by Paul Weis on behalf of the International Refugee Organization, the Commission adopted a resolution expressing its wish that the United Nations give early consideration to the legal status of “persons who do not enjoy the protection of any government” (Report of the Commission on Human Rights on the Second Session (E/600); Report of the Working Party on an International Convention on Human Rights (E/CN.4/56, 11 December 1947)).

The Economic and Social Council duly took note, and in March 1948 it recognized, first, that interim measures to afford protection were called for, to be followed by joint and separate action by States in cooperation with the United Nations, “to ensure that everyone shall have an effective right to a nationality”. The Council requested the Secretary-General to undertake a study of the protection of stateless persons and, among other matters, to recommend to the Council whether a further convention was desirable (Economic and Social Council resolution 116 (VI) D of 1-2 March 1948 (E/777)).

That study was published the following year. In fact, it paid comparatively little attention to non-refugee stateless persons, while nevertheless looking closely at the various categories of the “unprotected”, that is, those who do not benefit from the protection of a State of which they are a national. It proposed to draw a clear distinction between refugees, who might also be stateless *de jure* or *de facto*, and stateless persons who are not refugees, who might be stateless *de jure* or *de facto*. The study was also careful to exclude from its ambit “refugees” who were not stateless, such as internally displaced persons (United Nations, *A Study of Statelessness* (E/1112, 1 February 1949 and Add.1, 19 May 1949)).

What was needed first was to improve the status of “stateless persons”, and secondly, to eliminate statelessness. For “receiving countries”, such persons were an anomaly, possessing “no definite legal status and without protection”. For the stateless themselves, their abnormal position might reduce their “social value”, and destroy “self-confidence”. In the organizing world of the late 1940s, status was required, together with international agreement on freedom of movement, residence and settlement, the exercise of trades or professions, education, relief and social security. Most important of all, the stateless needed protection, and that was best achieved by providing identity documents, consular services and legal status. So, ironically, the better protection of stateless person was to be secured by offering them the *status* of stateless person. At the same time, the phenomenon of “technical”, as opposed to refugee, statelessness, was to be eliminated by appropriate agreement: harmonization of nationality legislation; restrictions on deprivation of nationality as a penalty; better regulation of territorial settlements; and reduction of existing numbers through the facilitation of naturalization.

The Economic and Social Council adopted two resolutions on refugees and statelessness on 6 and 8 August 1949 respectively. Resolution 248 (IX) A looked ahead to such arrangements as might be made on cessation of activities by the International Refugee Organization. Resolution 248 (IX) B took note of the Study of Statelessness and its various recommendations, and decided to appoint an *ad hoc* committee which, taking account of the distinction between displaced persons, refugees and stateless persons, would (a) consider the desirability of “a revised and consolidated convention relating to the international status of refugees and stateless persons”, drafting a text if appropriate; and (b) consider how to eliminate the problem of statelessness, including by way of asking the International Law Commission to take up the matter.

The *Ad Hoc* Committee on Statelessness and Related Problems met twice in New York in 1950. At the very beginning, the French representative isolated two distinct issues in an approach which quickly became the majority view: the status of refugees, on the one hand, and the problems related to the legal status of stateless persons, on the other. A draft convention on the first issue was urgently required, but the elimination of statelessness was basically different: “rather a continuing concern of the world community than an acute situation which required immediate remedial measures”. On this approach, there were two categories of stateless persons: those who were also refugees, and those who were not. Almost all refugees were in need, hence the special urgency of their plight; but the same could not be said for non-refugee stateless persons. The United States representative agreed and pressed for separate treatment; the draft convention should be limited to refugees, and “should not be based upon a confusion between the humanitarian problem of the refugees and the primarily legal problem of stateless persons”. The issue of stateless non-refugees should be kept aside, “especially since there were doubtless stateless persons who were in no need of protection by the United Nations” (*Ad Hoc* Committee on Statelessness and Related Problems, Summary Record of the second meeting (E/AC.32/SR.2, 26 January 1950), paras. 6 to 8, 15 and 18; Summary Record of the third meeting (E/AC.32/SR.3, 26 January 1950), paras. 22 and 28).

Other representatives were less sure, noting the similarities between refugees and stateless persons, the lack of legal protection, and the need for similar entitlements. The British representative also emphasized the necessity to distinguish measures to eliminate statelessness and measures taken to protect existing stateless persons until such time as their position had been regularized (*Ad Hoc* Committee on Statelessness and Related Problems, Summary Record of the second meeting (E/AC.32/SR.2, 26 January 1950), para. 20; Summary Record of the third meeting (E/AC.32/SR.3, 26 January 1950), para. 24).

In the event, the *Ad Hoc* Committee decided to focus upon the refugee, strictly so called, given the sense of urgency which many participants attached to the issue. In its report to the Economic and Social Council, the *Ad Hoc* Committee offered the text of a draft refugee convention, but simply proposed an additional protocol on stateless persons, under which States might agree to extend the application of the refugee convention, *mutatis mutandis*, to stateless persons to whom it did not otherwise apply (see Report of the *Ad hoc* Committee, 16 January to 16 February 1950 (E/1618 (E/AC.32/5)), annex III). Measures to eliminate statelessness received even less attention, being dealt with in a Danish proposal of 10 articles to be used as a basis for drafting a convention on the issue (*ibid.*, annex V).

The Economic and Social Council followed up at its next session and adopted a set of resolutions on 11 and 16 August 1950. Resolution 319 A (XI) included the draft Statute for the Office of the United Nations High Commissioner for Refugees (UNHCR) (later revised and adopted by the General Assembly in resolution 428 (V) of 14 December 1950), while resolution 319 B (XI), sections I and II, addressed the report of the *Ad Hoc* Committee and the draft convention relating to the status of refugees. The Council finalised the preamble of the draft convention and the definition of the term “refugee” and returned the draft convention to the *Ad Hoc* Committee for further review, prior to its being considered by the General Assembly.

Section III of resolution 319 B (XI) specifically dealt with the problem of statelessness. The Council was of the view that reducing the numbers of the stateless and eliminating causes could not be achieved except through cooperation and the adoption of international conventions. It “recommended” that States make provision for the avoidance of statelessness on the occasion of any territorial transfer, and that they “examine sympathetically” naturalization applications by habitually resident stateless persons, if necessary, reviewing also their nationality laws so as to reduce statelessness arising by operation of law. The Council noted with satisfaction that the International Law Commission was to take up the question of nationality, including statelessness, and urged it to draft the instrument or instruments necessary for its elimination.

In December 1950, the General Assembly nevertheless decided to convene a Conference of Plenipotentiaries to complete the draft convention relating to the status of refugees *and* the draft protocol on stateless persons (General Assembly resolution 429(V) of 14 December 1950) (The draft protocol on stateless persons appears in the report of the *Ad Hoc* Committee on Refugees and Stateless Persons, 14 to 25 August 1950 (E/1850 (E/AC.32/8)) annex II; the Committee had been renamed in the interim). Meeting in July 1951 in Geneva, the Conference adopted and opened for signature the Convention relating to the Status of Refugees (hereinafter referred to as “the 1951 Refugee Convention”), but as Part III of the Final Act records, it decided to take no decision on the draft protocol, referring it back to the appropriate organs of the United Nations for more detailed study.

In February 1952, the General Assembly welcomed the conclusion of the 1951 Refugee Convention the previous year, but deferred consideration of the draft protocol on stateless persons for lack of time (General Assembly resolutions 538 (VI) of 2 February 1952 (Assistance to and protection of refugees) and 539 (VI) of 4 February 1952 (Draft Protocol relating to the Status of Stateless Persons)).

At its seventh session later that year, the General Assembly asked the Secretary-General to circulate the draft protocol to States for comments, specifically on which provisions of the 1951 Refugee Convention they would be prepared to apply to stateless persons. The General Assembly also requested the Economic and Social Council to study the comments received and to take such action as seemed useful in order that a text might be opened for signature following the entry into force of the Refugee Convention (General Assembly resolution 629 (VII) of 6 November 1952 (Draft protocol relating to the status of stateless persons)).

Two years later, a United Nations Conference was convened in New York, further to Economic and Social Council resolution 526 A (XVII) of 26 April 1954. Attended by twenty-seven participating States and five States as observers, the Conference adopted the Convention relating to the Status of Stateless Persons (hereinafter referred to as “the 1954 Convention”), an independent convention being preferred to the draft protocol initially proposed by the *Ad Hoc* Committee in 1950. Article 1 defines a stateless person to mean, “a person who is not considered a national by any State under the operation of its law”. This definition was proposed by the United Nations Secretariat in its draft protocol, drawing on the words of Manley O. Hudson, the International Law Commission’s Special Rapporteur, in his first report as Special Rapporteur on “Nationality, including Statelessness” (A/CN.4/50, 21 February 1952, p. 17). Whether the Special Rapporteur intended to define stateless persons as such, as opposed to distinguishing those stateless *de jure* from those stateless *de facto*, is a moot point.

Like the 1951 Refugee Convention, however, the 1954 Convention then “excludes” various categories not considered to deserve or need protection, such as those presently receiving protection or assistance from United Nations agencies other than the Office of the United Nations High Commissioner for Refugees (UNHCR), those enjoying in fact the rights and obligations of citizenship in their country of residence, and war criminals, serious non-political criminals and similar cases.

Others among the unprotected are for the most part beyond the scope of the Convention, save that the Conference recommended that “each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons”.

The 1954 Convention’s definition of its beneficiaries is problematic, particularly insofar as it would seem to require a potential claimant to establish a negative condition – that he or she is not considered a national by any State under its law. Article 1A, paragraph 2, of the 1951 Refugee Convention deals separately with refugees with and refugees without a nationality, and thus covers some categories of stateless refugees. But even if the above-mentioned recommendation is applied liberally, a large number of stateless persons will likely remain outside its scope.

The standards of protection under this treaty parallel in large measure those set down in the 1951 Refugee Convention, although in some respects stateless persons are not as well off as refugees. For example, there is no equivalent guarantee against penalization

for illegal entry, and no monitoring body like UNHCR to which to turn for support in establishing their status or in making their claim for protection (a situation now remedied to some extent under the 1961 Convention on the Reduction of Statelessness).

Similarly, stateless persons are entitled to very limited protection in time of war or other armed conflict; article 44 of the 1949 Fourth Geneva Convention on the Protection of Civilian Persons cites only the case of refugees: the Detaining Power is not to treat as enemy aliens, exclusively on the basis of their nationality, refugees who do not in fact enjoy the protection of any Government. The 1977 Protocol I Additional to the 1949 Geneva Conventions goes scarcely farther, including as protected persons only those who, *before the beginning of hostilities*, were considered as stateless persons or refugees (article 73).

The limited purposes of the 1954 Convention are worth recalling: first, to define a class of stateless persons and secondly, 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, were to require further international cooperation and the coordination and harmonisation of national laws. This was to be the goal set for the International Law Commission and its work towards the 1961 Convention on the Reduction of Statelessness.

Related Material

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.

Protocol relating to a Certain Case of Statelessness, The Hague, 12 April 1930, League of Nations, *Treaty Series*, vol. 179, p. 115.

Special Protocol Concerning Statelessness, The Hague, 12 April 1930, United Nations, *Treaty Series*, vol. 2252, p. 435.

Convention relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, *Treaty Series*, vol. 189, p. 137.

Convention on the Reduction of Statelessness, New York, 30 August 1961, United Nations, *Treaty Series*, vol. 989, p. 175.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, United Nations, *Treaty Series*, vol. 75, p. 287.

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 8 June 1977, United Nations, *Treaty Series*, vol. 1125, p. 3.

B. Documents

General Assembly resolution 8 (I) of 12 February 1946 (Question of Refugees).

Economic and Social Council resolution 18 (III) of 3 October 1946 (Refugees and displaced persons).

Report of the Drafting Committee on an International Bill of Human Rights on its First Session (E/CN.4/21, 1 July 1947).

Report of the Commission on Human Rights on the Second Session, 2 December to 17 December 1947 (E/600).

Report of the Working Party on an International Convention on Human Rights (E/CN.4/56, 11 December 1947).

Economic and Social Council resolution 116 (VI) D of 1-2 March 1948 (Report of the Second Session of the Commission on Human Rights, Stateless persons) (E/777).

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

Economic and Social Council resolutions 248 (IX) A and B of 6 and 8 August 1949 respectively (Study of statelessness) (E/1553).

Ad Hoc Committee on Statelessness and Related Problems, Summary Records of the second and third meetings (E/AC.32/SR.2 and 3, 26 January 1950).

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 (XI) A and B of 11 and 16 August 1950 (Refugees and stateless persons) (E/1849 and Corr.1 and 2).

General Assembly resolution 429 (V) of 14 December 1950 (Draft Convention relating to the Status of Refugees).

Report of the *Ad Hoc* Committee on Refugees and Stateless Persons, 14 to 25 August 1950 (E/1850 (E/AC.32/8)).

General Assembly resolutions 538 (VI) A and B of 2 February 1952 (Assistance to and protection of refugees).

General Assembly resolution 539 (VI) of 4 February 1952 (Draft Protocol relating to the Status of Stateless Persons).

General Assembly resolution 629 (VII) of 6 November 1952 (Draft protocol relating to the status of stateless persons).

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

C. Doctrine

C. A. Batchelor, “Stateless Persons: Some Gaps in International Protection”, *International Journal of Refugee Law*, vol. 7, 1995, pp. 232-259.

C. A. Batchelor, “Statelessness and the Problem of Resolving Nationality Status” *International Journal of Refugee Law*, vol. 10, 1998, pp. 156-182.

M. Manly and van L. Waas, “The value of the human security framework in addressing statelessness”, in: A. Edwards and C. Ferstman, *Human Security and Non-Citizens: Law, Policy and International Affairs*, Cambridge University Press, Cambridge, 2010, pp. 49-81.

N. Robinson, *Convention Relating to the Status of Stateless Persons: Its History and Interpretation*, World Jewish Congress, New York, 1955, reproduced by UNHCR, Geneva, 1997.

L. L. Tang, *Statelessness, Human Rights and Gender: Irregular Workers from Burma in Thailand*, Brill Academic Publishing, Leiden, 2005.

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

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