

Document:-
A/CN.4/75

**Nationality Including Statelessness – Second Report on the Elimination or Reduction
of Statelessness by Mr. Roberto Cordova, Special Rapporteur**

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
1953 , vol. II

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

DOCUMENT A/CN. 4/75

Second report on the elimination or reduction of statelessness,
by Mr. Roberto Cordova, Special Rapporteur[Original : English]
[8 August 1953]

TABLE OF CONTENTS

Second Report on the Elimination or Reduction of Statelessness	196
Annex I	
Protocol on the Elimination of Present Statelessness	197
Annex II	
Convention on Certain Measures for the Reduction of Present Statelessness	198

**Second report on the elimination
or reduction of statelessness**

1. At last year's session the Commission decided that the newly appointed Special Rapporteur should not attempt to draft a report on existing statelessness. In his report, which has been discussed in the present session, the Special Rapporteur therefore confined himself to the problem of elimination and reduction of future cases of statelessness. Nevertheless, due to the great importance he attaches to the question of existing statelessness, he felt compelled to express his belief that the Commission should devote consideration also to existing statelessness (A/CN. 4/54, para. 21).

2. On 28 July 1953 he again verbally drew the attention of the Commission to the pressing need that it should not overlook such a great problem as that of the thousands of legally stateless persons who are suffering from serious disabilities owing to their lack of nationality. On that date the Special Rapporteur was requested by the Commission to study the elimination or reduction of existing statelessness and to submit a report for discussion at the present session, time permitting (225th meeting, para. 75). In accordance with this request, the Special Rapporteur submits the present report.

3. The Special Rapporteur wishes to draw the attention of the Commission to the fact that the problem of present statelessness has been examined in the "Study of Statelessness" by the Secretary-General (E/1112 and E/1112/Add. 1),¹ particularly on pages 163-171. At pages 167 and 168, remedies for reducing the number of existing cases of statelessness, and the means of applying these remedies, are discussed, and at page 171, the recommendations submitted by the Secretary-General to the Economic and Social Council for the reduction of the number of existing cases of statelessness may be found.

4. The report by Mr. M. Hudson on "Nationality including Statelessness" (A/CN. 4/50), contains references to present statelessness, at pages 35-42, and the action by the United Nations for reducing present statelessness and at page 60 contains points for discussion on the reduction of presently existing statelessness.

5. The Economic and Social Council requested the Secretary-General, by resolution 352 (XII), "to address another communication to Governments inviting them to submit their observations (on the recommendations contained in resolution 319 B III (XI) and 352 (XII)) at the latest by 1 November 1951, and to include in their replies not only an analysis of legal and administrative texts and regulations, but of the practical application of those laws and regulations", and asked the Secretary-General "to transmit a consolidated report on the basis of these replies to the Council and to the International Law Commission".

6. The Secretary-General prepared this consolidated report under the title "The Problem of Statelessness" (A/CN. 4/56). The report contains in part I an analysis of the replies received from Governments, and in part II a summary of the information contained in the replies from Governments.

7. With the help of Dr. P. Weis, Legal Adviser, Office of the United Nations High Commissioner for Refugees, on whose special knowledge the Special Rapporteur, and Professor Hudson, the previous Special Rapporteur, have relied extensively, two working papers have been prepared, one for the elimination of existing statelessness and one for its reduction. The first problem is dealt with in the annexed draft Protocol on the Elimination of Present Statelessness. This draft follows as much as possible the articles of the draft Convention on the Elimination of Future Statelessness which has been approved by the Commission, making them applicable to present cases of statelessness.

8. In order to deal with the second problem, the reduction of present statelessness, the Special Rapporteur examined the recommendations of the Secretary-General for the reduction of the number of existing cases of statelessness, and the replies received from Governments to the communication of the Secretary-General, which are indicative of the attitude of the Governments concerned to the problem of the elimination or reduction of present statelessness. The Special Rapporteur felt that due to the grave political, social and even racial aspects of the problem with which many countries are confronted on account of the great masses of stateless refugees which they have within their boundaries, the effort to find possible juridical means to reduce existing statelessness should

¹ United Nations publication, Sales No. 1949. XIV. 2.

be specially careful and realistic. For these reasons the draft Convention on Certain Measures for the Reduction of Present Statelessness does not follow completely the articles of the draft Convention for the Reduction of Future Statelessness, which has also been approved by the Commission. It is obvious that countries would be in a better position to accept even a change of legislation in order to avoid cases of statelessness in the future, rather than to change their legislation in order to absorb as their nationals great masses of foreigners which, in many cases, are not as yet identified with the country where they live and enjoy hospitality. With these ideas in mind the draft Convention on Certain Measures for the Reduction of Present Statelessness has been prepared. Its provisions are not necessarily cumulative. States might select those which they wish to adopt and exclude others. Judging from past experience one may hope that States which would not become parties to the convention, or would not adopt it in its entirety, would be influenced in their legislative policy by the principles embodied in the draft.

9. The Special Rapporteur takes the view that the general machinery of judicial settlement of disputes, which has been approved by the Commission to become a part of the two Conventions already adopted, for the elimination as well as for the reduction of future statelessness, should also be made a part of the Protocol for the Elimination of Existing Statelessness and the Convention on Measures to Reduce Existing Statelessness. Nevertheless he has not drafted the corresponding article because he felt that existing statelessness being a living and very delicate problem, the Commission should give special consideration to the applicability of the principles of compulsory judicial settlement of disputes to this question to which many countries are susceptible.

10. The Special Rapporteur is of the opinion that an agency established within the framework of the United Nations as envisaged in article 10, paragraph 1, of the draft convention prepared by the Commission would be of particular importance and usefulness in all efforts for the elimination or reduction of present statelessness.

11. The Special Rapporteur is mindful of the practical impossibility for the Commission, at this stage of its work, to devote the necessary attention and time to discussion of the many legal aspects of the protocol and the convention, which he tentatively presents to the consideration of its members as a basis for them to think over such a very important question. He is of the opinion that this subject should be held in abeyance until the next session of the Commission when, if the Commission so desires, the Special Rapporteur would have been able to make a more thorough and deep study of the question. At that time, he would be able to present, in accordance with the instructions of the Commission, a paper which could, if the Commission so wished, include a revised text of both Protocol and Convention as a basis for discussion by the Commission.

Annex I

Protocol on the elimination of present statelessness

Whereas the Convention on the Elimination of Future Statelessness does not apply to existing statelessness,

Whereas there exists a grave problem of present statelessness affecting a great number of persons,

Whereas it is desirable to eliminate as far as possible present statelessness,

The Contracting Parties

Hereby agree as follows:

Article 1

The Parties shall confer their nationality on stateless persons born in their territory before the coming into force of the Convention on the Elimination of Future Statelessness, if such persons did not acquire a nationality at birth.

Article 2

For the purpose of article 1, a foundling, so long as its place of birth is unknown, shall be presumed to have been born in the territory of the Party in which it is found.

Article 3

For the purpose of article 1, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth on an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered.

Article 4

Whenever article 1 does not apply on account of a child having been born in the territory of a State which is not a Party to this Protocol, it shall acquire the nationality of the Party of which one of its parents is a national. The nationality of the father shall prevail over that of the mother.

Article 5

The Parties shall reinstate into their nationality a stateless person if that person has, before the coming into force of the Convention, lost the nationality of the Party concerned, thereby becoming stateless;

(1) As a consequence of any change in his personal status, such as marriage, termination of marriage, legitimation, recognition, or adoption;

(2) As a consequence of loss of its nationality by the person's spouse or parent.

Article 6

The Parties shall reinstate into their nationality stateless persons who, before the coming into force of the Convention, lost the nationality of the Party concerned, thereby becoming stateless;

(1) By renunciation;

(2) By seeking naturalization in a foreign country or by obtaining an expatriation permit;

(3) On the ground of departure, stay abroad, failure to register or any similar ground.

Article 7

The Parties shall reinstate into their nationality stateless persons who, before the coming into force of the Convention, were deprived of the nationality of the Party concerned by way of penalty, thereby becoming stateless.

Article 8

The Parties shall reinstate into their nationality stateless persons or any group of stateless persons, who, before the coming into force of the Convention, were deprived of the nationality of the Party concerned on racial, ethnical, religious or political ground, thereby becoming stateless.

Article 9

The Parties from which or to which territory has been transferred or which otherwise have acquired territory, or new States formed on territory previously belonging to another State or States, shall confer their nationality on the inhabitants of such territory who are stateless at the time of the coming into force of the Convention, in consequence of the change of sovereignty over that territory, on the option of the person concerned for the nationality of either of the Parties.

Annex II

**Convention on certain measures
for the reduction of present statelessness**

Preamble

Whereas the Universal Declaration of Human Rights proclaims that "everyone has the right to a nationality";

Whereas the Economic and Social Council has recognized that the problem of stateless persons demands "the taking of joint and separate action by Member nations in co-operation with the United Nations to ensure that everyone shall have an effective right to a nationality";

Whereas statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man;

Whereas statelessness is frequently productive of friction between States;

Whereas statelessness is inconsistent with the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law;

Whereas the practice of many States increasingly tends to the progressive elimination of statelessness;

Whereas it is desirable to reduce present statelessness by international agreement so far as its total elimination is not possible;

The Contracting Parties

Hereby agree as follows:

Article 1

1. The Parties shall confer their nationality on persons who are stateless at the time of the coming into force of this Convention, if they were born in their territory.

2. The nationality law of the Party may make conferment of such nationality dependent on an application of the person concerned and/or on the person having been normally resident in its territory until the coming into force of this Convention and provide that to acquire its nationality he must comply with such other conditions as are required from all persons born in the Party's territory.

Article 2

1. The Parties shall confer their nationality on persons who are stateless at the time of the coming into force of this Convention if one of the parents of the person was a national at the time of the person's birth. The nationality of the father shall prevail over that of the mother.

2. The nationality law of the Party may make conferment of such nationality dependent on application by the person concerned and/or on the person having been normally resident in its territory until the time of the coming into force of this Convention, and provide that to obtain its nationality he must comply with such other conditions as are required from foreigners seeking to acquire the nationality of the Party by naturalization.

Article 3

The Parties shall confer their nationality on persons who are stateless at the time of the coming into force of this Convention if one of the parents was born in the territory of the Party concerned. The nationality of the Party in whose territory the father was born shall prevail over that of the Party in whose territory the mother was born.

Article 4

For the purpose of articles 1 and 3, a foundling, as long as its place of birth is unknown, shall be presumed to have been born in the territory of the Party in which it is found.

Article 5

For the purpose of articles 1 and 3, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth on an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered.

Article 6

The Parties shall reinstate into their nationality a person who is stateless at the time of the coming into force of this Convention if that person has lost the nationality of the Party concerned, thereby becoming stateless:

1. As a consequence of any change in his personal status, such as marriage, termination of marriage, legitimation, recognition or adoption.

2. As a consequence of loss of its nationality by the person's spouse or parent.

The national law of the Party may make reinstatement into nationality dependent on an application of the person concerned and/or on the person being resident in its territory at the time of the coming into force of this Convention.

Article 7

1. The Parties shall reinstate into their nationality persons who are stateless at the time of the coming into force of the Convention and who have lost the nationality of the Party concerned, thereby becoming stateless;

(1) By renunciation;

(2) By seeking naturalization in a foreign country or by obtaining an expatriation permit;

(3) On the ground of departure, stay abroad, failure to register or any similar ground.

2. The national law of the Party may make reinstatement into nationality dependent on an application of the person concerned and/or on the person being resident in its territory at the time of the coming into force of this Convention.

Article 8

1. The Parties shall reinstate into their nationality persons who are stateless at the time of the coming into force of this Convention, who were deprived of the nationality of the Party concerned, thereby becoming stateless. This provision need not be applied where such deprivation was effected by way of penalty.

2. The national law of the Party may make reinstatement into its nationality dependent on an application of the person concerned and/or on the person being resident in the territory of the Party at the time of the coming into force of this Convention.

Article 9

The Parties from which or to which territory has been transferred or which otherwise have acquired territory, or new States formed on territory previously belonging to another State or States, shall confer their nationality on the inhabitants of such territory who are stateless at the time of the coming into force of this Convention, in consequence of the change of sovereignty over that territory, on the option of the person concerned for the nationality of either of the Parties.

Article 10

The Parties shall confer their nationality upon stateless persons who have had their habitual residence in their territory for a period which shall not be more than 15 years. The national law of the Party may provide for a shorter period.

The national law of the Party may make conferment of such nationality dependent on an application of the person concerned, and provide that to obtain nationality, he must comply with such other conditions as are required from foreigners seeking to acquire the nationality of the Party by naturalization.