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Nationality Including Statelessness - Report on Multiple Nationality by Mr. Roberto Cordova Special Rapporteur

Topic:
Nationality including statelessness

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tional" and shall issue to him a certificate of registration qualifying him as such.

Article 2

The protected nationals mentioned in article 1 shall:

(i) Enjoy all the rights and privileges to which nationals of the protecting Parties are entitled, with the exception of political rights;

(ii) Enjoy the fullest protection of such Parties under national and international law;

(iii) Enjoy the right of naturalization as accorded to aliens, subject to the same conditions as required of them;

(iv) Be under the same obligations towards the protecting Parties as their nationals.

Article 3

Descendants of protected nationals shall obtain full citizenship, including political rights, on reaching the age of majority.

Article 4

The *de facto* stateless persons actually living in the territory of one of the Parties shall have the same rights as those granted to *de jure* stateless persons in this Convention, provided that they renounce the ineffective nationality which they possess.

Article 5

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

2. The Parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide upon complaints presented by the agency referred to in paragraph 1 on behalf of individuals claiming to have been denied nationality in violation of the provisions of the Convention.

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

4. The Parties agree that any dispute between them concerning the interpretation or application of the Convention shall be submitted to the International Court of Justice or to the tribunal referred to in paragraph 2.

national" and shall issue to him a certificate of registration qualifying him as such.

2. The national legislation of the Party may exclude from the application of paragraph 1 only those stateless persons who are undesirable or whose admission as protected subjects might constitute a threat to the internal or external security of the Party.

Article 2

The protected subjects mentioned in article 1 shall:

(i) Enjoy all the rights and privileges to which nationals of the protecting Parties are entitled, with the exception of political rights;

(ii) Enjoy the fullest protection of such Parties under national and international law;

(iii) Enjoy the right of naturalization as accorded to aliens, subject to the same conditions as required of them;

(iv) Be under the same obligations towards the protecting Parties as their nationals.

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Report on multiple nationality by Roberto Córdova, Special Rapporteur

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INTRODUCTION

1. The Special Rapporteur wishes to begin this report by expressing his profound appreciation, which no doubt is shared by all the members of this Commission, for Judge Manley O. Hudson's contribution towards the accomplishment of its task. It seems also appropriate to pay tribute to Judge Hudson for his lifelong devotion to the study of international law and for the efficiency and usefulness of his teachings which are so exceptionally beneficial to students of the law of nations all over the world.

2. As Special Rapporteur Judge Manley O. Hudson presented to the Commission a Report on Nationality including Statelessness (A/CN.4/50) [1] which included three annexes, the first one being an introductory statement, partly historical and partly analytical, on the subject of "Nationality in General". The excellent analysis of the subject, his logical arrangement of the study and the wealth of information supplied by him in the paper, give to the reader a very clear idea of the problem which confronts the Commission. Therefore, the present Special Rapporteur considers that Judge Hudson's paper is an essential basis for the Commission's discussions and should be referred to in the Commission's future work on this question.

3. The Special Rapporteur had before him the paper entitled "Survey of the problem of multiple nationality" (A/CN.4/84), prepared by the Secretariat of the United Nations. It is also a fundamental document giving abundant additional information on the matter. He expresses the hope that it will be made available in due time to the members of the Commission, as he considers the present paper merely a continuation of the work already done. [2]

4. The subject having already been fully explored as regards its background, its implications and the problems involved, the task of the Special Rapporteur is a relatively simple one, namely that of presenting to the Commission a working paper containing bases of discussion on multiple nationality. He did not think it convenient to prepare a draft convention containing articles, because, as the topic has not yet been studied by the Commission, he has been unable to ascertain the opinions of the members and, therefore, he lacks the guidance which is essential for such a work.

5. The Special Rapporteur has already had the opportunity to state in his first report on the elimination or reduction of statelessness that in the general interest of the international community every person should have a nationality, but only one nationality, and that every effort should be made to avoid double or multiple nationality (A/CN.4/64, para. 9). [3] Although he is well aware that matters concerning nationality are generally considered as falling within the *domaine réservé* of the States and that, therefore, States have the sovereign right to legislate on nationality as they deem it most advantageous to their particular interests, he strongly believes that this right is not unlimited but subordinated to international law. The reason on which this belief is founded was expounded at length in paragraphs 11 to 17 of his first report and, therefore,

[1] See *Yearbook of the International Law Commission, 1952*, vol. II, p. 3.

[2] A/CN.4/84 is included in the present volume.

[3] See *Yearbook of the International Law Commission, 1953*, vol. II.

he begs the Commission to refer to it, as he does not wish to repeat without necessity the arguments previously presented.

6. Multiple nationality is a constant source of friction between States. It is not a mere theoretical technicality. On the contrary, it gives rise to problems of importance to States as well as to individuals. Among these problems, the question of military service is perhaps the most important one. A man, on reaching a certain age, is required under the legislation of most States to render military service for a length of time. If such a person has two or more nationalities, he will be expected to serve simultaneously in two or more different States, which is both physically impossible and unfair. As he is unable to comply with his obligation towards one of the countries of which he is a national, he will be considered by that country as a deserter and will be subject to prosecution and punishment. It is self-evident that this situation calls for remedial action.

7. Another source of friction caused by multiple nationality is the fact that, at times, States grant diplomatic protection to their nationals in case of illegal acts committed to their detriment by another State. In connexion with this protection serious questions have arisen in the past such as: which State should be the protecting State in case of double nationality? Can such protection be provided by one State against another State which also claims the person concerned as its national? It is not the intention of the Special Rapporteur to supply an answer to these and many other problems that might arise, nor is he expected to do so particularly in view of the fact that some of them have already been solved by arbitral decisions. He merely wishes to emphasize the practical implications of the problem of double nationality.

8. The main source of double nationality is, as in the case of statelessness, the conflict of the principles by virtue of which nationality is acquired at birth. If *jus soli* were exclusively applied in every State of the world, double nationality would never occur. Similarly, if *jus sanguinis* were the only rule applied, a child would not acquire any other nationality than that of his parents, the nationality of the father prevailing. However since both principles co-exist in the world, a child born in a *jus soli* country to *jus sanguinis* parents, acquires a double nationality and becomes the victim of a conflict of laws, unless there is a convention between the two States concerned solving the conflict (which is precisely the object of the efforts of the Commission).

9. Both the above-mentioned principles command the respect of jurists and statesmen. They are indeed equally valid, from the legal point of view, as a basis for conferring nationality, and it is not the desire of the Special Rapporteur to extol the merits or to point out the disadvantages of one of them in comparison with the other. There is of course no practical possibility of asking Governments to renounce definitely one or the other of the two systems.

10. In former days, the main obstacle to the elimination of double nationality, especially in European countries, was the fact that none of the States concerned wanted to release a national from his allegiance and thereby lose a potential soldier. The reluctance of States to free nationals from their obligations connected with military service has been a particular source of friction between them. The so-called Bancroft treaties, concluded between the United States and some European countries, were aimed precisely at solving this kind of difficulty, as was article 1 of the Inter-American Convention on Nationality signed at Montevideo in 1933 and article 1 of the Protocol relating to Military Obligations in certain Cases of Double Nationality adopted at the 1930 Conference for the codification of international law. As stated, the proportion of cases of double nationality in comparison with the total population is relatively small. Furthermore, the problem of military forces and of the relative strength of the countries concerned is, at present, decreasing in importance, because of the ever stronger trend toward unification and the avoidance of national rivalries, as evidenced by the United Nations and more specifically by the proposed unification of the armies of some European countries which in the past were the main contestants in almost every war.

11. Therefore, the hope that States will be willing to undertake, by international conventions, the obligation to refrain from the application of their nationality laws in those few cases where double nationality may arise, is not unwarranted, for it will solve a vexing problem without seriously impairing the military strength of any country. The consequences of such a solution, that is to say, the loss of a few soldiers, are no longer of great importance, whereas it is still just as important for the individuals concerned to be released from their military obligations towards one of the States of which they are nationals, in order not to be subject to military service in two or more States.

12. As regards double nationality arising from the operation of the law in the case of marriage, adoption, legitimation and naturalization, the problem is of still lesser political importance for the States concerned and, therefore, it might be easier to solve.

13. The Special Rapporteur will not go into details regarding the efforts that have so far been made to suppress double nationality. He merely wishes to point out that there are precedents of action taken by States and by international conferences, and that the question has also been the subject of careful consideration by private organizations. The paper presented by Judge Hudson and the memorandum prepared by the Secretariat give a very able historical account of such efforts and there is no need to duplicate the *exposés* contained therein.

14. In the opinion of the Special Rapporteur, the only possible solution of the problem of multiple nationality consists in depriving an individual possessing several nationalities of all his nationalities but one and consequently to sever his ties of allegiance to all but one of the States concerned. This method is the opposite of the one followed by the Commission in the case of statelessness. In the conventions already approved by the Commission, it was decided to confer only one nationality upon those persons who had none, and care was taken to avoid double nationality. This was a clear indication of the Commission's concern with the problem of double nationality and of its awareness of the evils resulting from it.

15. There is not merely a similarity between the

problem of statelessness and that of multiple nationality; but unquestionably there is a perfect identity as far as the sources of both situations are concerned. Both statelessness and multiple nationality arise from conflicts between laws of nationality and from acts of governments or individuals. In fact, statelessness and multiple nationality at birth, as it has already been pointed out, arise from the conflict between the same two principles, *jus soli* and *jus sanguinis,* and, after birth, either from acts of Governments depriving or conferring nationality, or from acts of the individuals themselves, such as marriage, adoption, or other change in their personal status. Statelessness, future and present, has already been dealt with by the Commission, and it now has to take up multiple nationality in order to propose juridical solutions for its elimination or at least for its reduction.

16. If the causes of multiple nationality are practically the same, *mutatis mutandis,* as those of statelessness, the logical and the easiest method to deal with the former problem would be to solve it in the same manner in which the Commission has solved that of statelessness. To tackle the latter problem, the Commission distinguished between future and present statelessness, applying in each of these categories two different solutions: that of total elimination and that of partial reduction. The question of multiple nationality may also be treated along the same lines. By drying up the sources of multiple nationality completely, one could eliminate it entirely in the future and, on the other hand, by introducing certain qualifications to the principles adopted with a view to total elimination, one could be satisfied with reducing future multiple nationality. The same procedure might be followed with regard to present multiple nationality.

17. In dealing with present multiple nationality, the Special Rapporteur arrived at the conclusion that it would be more practical to follow the principle of "effective nationality" based on residence, instead of that of the extension of *jus soli,* as was done in the case of future statelessness. Doubtlessly, there is a closer link between the State and a person habitually residing in it than between a person born in such a State but no longer residing there and having established his permanent residence elsewhere. In this case the tie is rather tenuous. In this sense, there is a close parallelism between the bases proposed in Part III of this report ("effective nationality") and the suggestions made by the Special Rapporteur in the alternative conventions for elimination or reduction of present statelessness (A/CN.4/81, annex II) [4] which are both based on the principle of actual residence, as suggested by Mr. Lauterpacht and Faris Bey el-Khouri in letters of 17 September and 2 December 1953, respectively, to the Special Rapporteur.

18. In this connexion, the members of the Commission will find herein as Parts I and II drafts based on general principles corresponding to those governing the already adopted conventions on statelessness, that is, the extension of *jus soli.* The said principles have however been adapted in view of their application to the problem of multiple nationality.

19. Parts III and IV, which deal with present multiple nationality, are based on an entirely different concept, that of the "effective nationality" which, in the opinion of the Special Rapporteur, is closer to reality and perhaps more acceptable to States. Although strictly speaking and from the point of view of logic, it is possible to draft conventions simultaneously embodying the solution of both problems, that of statelessness and that of multiple nationality, since both, as has been said, spring from the same sources, the Special Rapporteur has not attempted to do so. In deciding against the formulation of a convention or conventions dealing simultaneously with statelessness and multiple nationality, he assumed that Governments in general would prefer to deal separately with the two questions so as to be able to accept for example the solutions proposed for statelessness without being forced at the same time either to make reservations or not to sign at all with regard to multiple nationality or vice versa. A definite effort has been made nevertheless to draft the conventions on statelessness and those on multiple nationality in such a manner as to create a co-ordinated whole.

20. During its fifth session, the Commission invited the Special Rapporteur to study, besides the problem of present statelessness, "other aspects of the topic of nationality and to make in this respect such proposals to the Commission as he might deem appropriate" (Report of the International Law Commission covering the work of its fith session, A/2456, para. 166). [5] The Economic and Social Council had, on the other hand, asked the International Law Commission, in its resolution 304 D (XI) "to undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women", and the Commission had declared, at its second session, "its willingness to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'nationality, including statelessness' " (Report of the International Law Commission covering the work of its second session, A/1316, paras. 19-20). [6]

21. Therefore, the Special Rapporteur feels that he should explain in a few words his reasons for including in his present work only the subject of multiple nationality, while excluding other aspects of the problem as a whole, especially that of the nationality of married persons. These reasons are as follows. In the first place, the time allowed to the Special Rapporteur was insufficient to deal with the three subjects: present statelessness, multiple nationality and the nationality of married persons; in the second place, he thinks that multiple nationality should be dealt with immediately after the study of statelessness. On the other hand, the question of the nationality of married persons, which calls for a different approach, may be properly taken care of in a separate study. There exists, of course, a certain inter-relation between the three problems; statelessness, multiple nationality, and nationality of married persons, and in dealing with the first two prob-

[4] A/CN.4/81 in included in the present volume.

[5] In *Yearbook of the International Law Commission, 1953,* vol. II.

[6] In *Yearbook of the International Law Commission, 1950,* vol. II, pp. 366-367.

lems, care was taken to include provisions with regard to marriage and dissolution of marriage, with a view to preventing such changes in the personal status from producing statelessness or multiple nationality. It has also been considered premature to deal with the last of the three aspects of nationality since, according to resolution 504 B (XVI) of the Economic and Social Council, the Secretary-General has been asked to circulate among Governments for their comments the text of a draft Convention on the Nationality of Married Persons, which the Commission on the Status of Women will consider at its eighth session. [7] Moreover, the exclusion of this question from the present study was motivated by the fact that the Commission may, if it so desires, discuss this matter on the basis of the draft convention prepared by Mr. Hudson (A/CN.4/50, annex II, para. 7) [8] as well as on the above-mentioned draft prepared by the Commission on the Status of Women. Mr. Hudson's draft follows very closely the terms proposed by the Commission on the Status of Women and is, it is believed, a suitable basis for the Commission's work on this aspect of the problem of nationality. The proposal of the Commission on the Status of Women produces neither statelessness nor multiple nationality.

22. Due consideration was given to the question of the nationality of children of diplomatic agents. However, the Special Rapporteur did not think it necessary to include special provisions regarding this matter in the bases of discussion which he submits in this report, in view of the fact that there is general agreement among authors dealing with international law, as well as a general practice of States, to the effect that *jus soli* is not applied to children born abroad to diplomatic agents on official mission. Moreover, the problem has also been considered by international tribunals, which reached the same conclusion. Therefore, there is no need to give further consideration to this question, particularly in view of the fact that in the first Report on the Elimination or Reduction of Statelessness a provision to this effect was included (A/CN.4/64, Part I, Article III), [9] but the Commission omitted it on the assumption, it seems, that the draft conventions were not intended to codify the principles already accepted by States and embodied in international law, but rather to solve the existing problems which called for new rules (Report of the International Law Commission covering the work of its fifth session, A/2456, paras. 115-162). [10]

23. The same situation exists in relation to the imposition of nationality on aliens who have children born in the country or who acquire real property there. This imposition would in most instances cause double nationality, with the exception, of course of the case of a stateless person and, therefore, it seems that a provision forbidding this practice should logically have been incorporated in the bases for discussion; nevertheless, since decisions of international tribunals state the unlawfulness of such practices and since the object of the draft conventions is to provide juridical means and procedures to deal with existing conflicts of law not already solved, the Special Rapporteur has abstained from introducing any proposal regarding this question. The Commission, nevertheless, will eventually decide if it thinks it proper to include a specific provision envisaging this situation in furtherance of its duty to codify this aspect of the law of nationality.

24. An explanation should also be given with regard to the lack of any reference in the bases of discussion to the diplomatic protection of nationals abroad in cases of multiple nationality and to any other situation similar to that resulting from the obligation of nationals to serve in the army of their own country or countries. This omission is intentional on the part of the Special Rapporteur in spite of his being aware of the fact that in most cases all instruments or drafts which have been suggested or prepared in relation to the problem of multiple nationality either by governments or by private organizations have included provisions concerning these questions. The Special Rapporteur believes, nevertheless, that such provisions have no place in a draft designed only to eliminate or reduce multiple nationality. He thinks that the obligations and rights derived from nationality should be dealt with separately from the problem of the elimination or reduction of multiple nationality. Technically these questions, although related to nationality, are completely different in nature. The rights derived from nationality are, from the point of view of the State, those of requiring the services, whether military or otherwise, of its nationals, the collection of taxes, etc. and the obligations are those of protecting its nationals abroad, and, when they reside in the national territory, of providing them with elementary education, courts of justice, sanitation, etc. The problem of avoiding multiple nationality evidently does not include the enumeration of the rights and duties either of the State towards its nationals or of the nationals towards the State.

PART I. BASES OF DISCUSSION CONCERNING THE ELIMINATION OF FUTURE MULTIPLE NATIONALITY

Basis 1

The Parties shall abstain from conferring their nationality upon persons not born in their territory who would otherwise have multiple nationality. (See article 1 of the draft Convention on the Elimination of Future Statelessness, A/2456, para. 162). [11]

Comment

(1) This article, *a contrario sensu*, gives predominance to the *jus soli* principle in the sense that it requires the *jus sanguinis* country to abstain from applying its nationality laws in cases where the person concerned was not born in their territory and had already acquired the nationality of the country of birth by virtue of the

[7] *Official Records of the Economic and Social Council, Sixteenth Session, Resolutions, Supplement No. 1* (E/2508), p. 13.

[8] See *Yearbook of the International Law Commission, 1952*, vol. II, p. 13.

[9] In *Yearbook of the International Law Commission, 1953*, vol. II.

[10] *Ibid.*

[11] *Ibid.*

jus soli principle. In other words, if the person acquiring multiple nationality was born in the territory of a *jus soli* country party to the Convention or in the territory of a State not party to the Convention applying the *jus soli* principle, the rule stated in Basis 1 would prevail and the individual concerned would only acquire the nationality of the country of his birth.

(2) The members of the Commission will remember that, in dealing with the elimination of future statelessness, the Commission drafted an article (article 4 of that draft convention) which is concerned with the case of birth in the territory of a State not party to the convention, a situation automatically settled by article 1 above simultaneously with birth in the territory of one of the parties. The only case in which double nationality could occur is that of a person born in the territory of a *jus soli* country of parents belonging to a country which applies the *jus sanguinis* principle, provided both countries are not parties to the convention.

Basis 2

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. (See article 3 of the Convention on the Elimination of Future Statelessness, A/2456, para. 162).

Basis 3

1. If the law of a Party entails acquisition 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, such acquisition shall be conditional upon loss of another nationality, if any.

2. The change or acquisition of the nationality of a spouse or of a parent shall not entail the acquisition of nationality by the other spouse or by the children unless they lose their previous nationality or nationalities, if any. (See article 5 of the Convention on the Elimination of Future Statelessness, A/2456, para. 162).

Basis 4

Naturalization shall result in loss of the previous nationality, if any, of the person who is naturalized. (See article 6 of the Convention on the Elimination of Future Statelessness, A/2456, para. 162).

Basis 5

1. Treaties providing for transfer of territories shall include provisions for ensuring that, subject to the exercise of the right of option, inhabitants of these territories, nationals of the former State, shall not acquire multiple nationality.

2. In the absence of such provisions, States from which territory is transferred, shall withdraw their nationality from the inhabitants of such territory if otherwise multiple nationality would arise. (See article 9 of the Convention on the Elimination of Future Statelessness, A/2456, para. 162).

Basis 6

On reaching the age of eighteen, a person shall have the right of option for one of the nationalities that he would have acquired had the present Convention not been applied, provided he loses the nationality acquired by its application. (This basis is entirely new. See comments on Basis 4 of Part III of the present report).

Basis 7

1. The Parties undertake to establish, within the framework of the United Nations, an agency to act on behalf of persons having multiple nationality before governments or before the tribunal referred to in paragraph 2.

2. The Parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide upon complaints presented by the agency referred to in paragraph 1 on behalf of individuals claiming to have two or more nationalities in violation of the provisions of the Convention.

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

4. The Parties agree that any dispute between them concerning the interpretation or application of the Convention shall be submitted to the International Court of Justice or to the tribunal referred to in paragraph 2. (See article 10 of the Convention on the Elimination of Future Statelessness, A/2456, para. 162).

PART II. BASES OF DISCUSSION CONCERNING THE REDUCTION OF FUTURE MULTIPLE NATIONALITY

Basis 1

1. The Parties shall abstain from conferring their nationality to persons not born in their territory who would otherwise have multiple nationality.

2. The Party which, in accordance with the provisions of paragraph 1, abstained from conferring its nationality upon a child, may confer its nationality upon it provided the child establishes its residence in the territory of the State concerned before reaching the age of eighteen.

Basis 2

Identical with Basis 2 of Part I.

Basis 3

Identical with Basis 3 of Part I.

Basis 4

Identical with Basis 4 of Part I.

Basis 5

Identical with Basis 5 of Part I.

Basis 6

Identical with Basis 6 of Part I.

Basis 7

Identical with Basis 7 of Part I.

PART III. BASES OF DISCUSSION CONCERNING THE ELIMINATION OF PRESENT MULTIPLE NATIONALITY

Basis 1

All persons are entitled to possess one nationality, but one nationality only.

Comment

This basis is a statement of the principle constituting the central theme of this report. Useless to say, the principle is not intended to appear as drafted in a convention. It is only included here as the fundamental introduction to all other provisions which eventually might appear in a convention. If, as it has been pointed out in paragraphs 6-8 of this report, double nationality is an evil and a constant source of friction between States and quite often a hardship to the individuals themselves, it is obvious that the logical remedy would be the suppression of multiple nationality by providing that in cases of multiple nationality only one of them will prevail, the individual being deprived of all others.

Precedents

The concept that persons should have one, but only one nationality is not new and a good deal of thought has been given to it.

(*a*) In the "Outlines of an International Code" by David Dudley Field, [12] there is a paragraph which states:

> "248. Every person has a national character. *No person is a member of two nations at the same time,* but any nation may extend to a member of another nation, with his consent, the rights and duties of its own members, within its own jurisdiction, in addition to his own national character." (Emphasis added)

[12] Field, *Outlines of an International Code* (1876), pp. 129-140.

The general principle of a single nationality is clearly expressed in the above quotation, although, at the same time, a concession is made to double nationality. It is difficult to understand the need for such a concession.

(*b*) The Institute of International Law adopted a resolution in Venise, in 1896, [13] declaring that:

> "*L'enfant légitime suit la nationalité dont son père était revêtu* au jour de la naissance ou au jour où le père est mort." (Emphasis added)

In the above text the adoption of the *jus sanguinis* principle as the only source of nationality has the result that children can have at birth only one nationality, the non-recognition of *jus soli* preventing double nationality.

(*c*) The International Law Association, in the Report of the Committee on Nationality and Naturalization adopted in Stockholm in 1924, also refers to the problem in the following terms: [14]

> "(*a*) *Every child born within the territory of a conforming State shall become a national of that State.* Provided always that in any case in which the father of such child, being a national of another State, shall within a specified prescribed period register such child as a national of the State to which he belongs, such child shall cease to be a national of such conforming State and shall become a national of the State to which its father belongs." (Emphasis added)

The above text is interesting, because it clearly adopts the principle of a single nationality, rejecting uncompromisingly the possibility of double nationality. The fact that *jus soli* is considered as the original source of nationality, and *jus sanguinis* as the prevailing one in cases of the parents' option is irrelevant for the purposes of this report.

(*d*) In the draft of a convention communicated to various Governments by the League of Nations Committee of Experts, in 1926, the following provision is made: [15]

> "Article 5. A person possessing two nationalities may be regarded as its national by each of the States whose nationality he has."

In the opinion of the Special Rapporteur, the above text is an unfortunate one, because it accepts a situation in which a person may simultaneously possess two nationalities. The said text had a decisive influence on the Conference of 1930 for the codification of international law, as will be seen later.

(*e*) The draft rules prepared by the Kokusaiho-Gakkwai, in 1926, proposed that: [16]

> "Article 1. *Every person should possess one and only one nationality.* (Emphasis added)

[13] *Institut de Droit international, Tableau général des résolutions 1873-1956,* p. 42.

[14] *International Law Association, Report of the 33rd Conference, 1924,* pp. 28-32.

[15] *Conference for the Codification of International Law, Bases of Discussion,* vol. I: Nationality. Annex.

[16] *International Law Association, Report of the 34th Conference, 1926,* pp. 380-381.

"Article 4. A legitimate child acquires the nationality of the State to which its father belongs at the date of its birth.

. . . . . .

"Article 5. Notwithstanding the provisions of the foregoing article the nationality of a child which was acquired by the fact of its birth in the territory of a particular State, shall be recognized by all States.

"A person who has acquired the nationality of the territory of his birth under the preceding paragraph, may elect to assume the nationality of his father or of his mother within a fixed term after attaining his majority..."

The Association of International Law of Japan evidently favours the principle of a single nationality, but, at the same time, permits the renunciation of the nationality acquired *jure soli* if at the age of majority, the individual concerned opts for the nationality of his parents, that is to say, he may acquire his nationality *jure sanguinis*.

(*f*) The Harvard Draft on the Law of Nationality states with regard to this matter that: [17]

"Article 10. A person may have the nationality at birth of two or more States, of one or more States *jure soli* and of one or more States *jure sanguinis*."

The Harvard Draft accepts the existence of double and even multiple nationality as a matter of fact, and the comment on the article adds that this situation "will continue to exist unless all States will agree to adopt a single rule for nationality at birth". [18] The fact that the Harvard Draft was merely codifying what it considered to be existing international law explains why this article merely states the prevailing situation. The Harvard Draft did not intend to solve the problem, but only to state it, while the Commission, given its duty to advance international law, should attempt to draft rules which would avoid multiple nationality.

It is indeed very encouraging to note that a body with such a reputation in the juridical field as possessed by the Harvard Law School already in 1929 contemplated the possibility of an agreement between States aiming at the elimination of multiple nationality, which is precisely the object of the present report.

(*g*) The Conference for the codification of international law held at The Hague in 1930, unfortunately followed the recommendation of the League of Nations Committee of Experts, and adopted in the Convention on Certain Questions Relating to the Conflict of Nationality Laws, a provision recognizing the existence of double nationality. [19]

Article 3. Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

The Conference, recognizing the existence of multiple nationality, did nothing to correct this undesirable situation and, therefore, it is now up to the International Law Commission to take a decision on the matter, as proposed by the Special Rapporteur, in the sense that "persons will be entitled to one and only one nationality".

Basis 2

If, by application of the nationality laws of the Parties, a person has two or more nationalities, such person shall be deprived of all but the effective nationality that he possesses, as hereinafter defined, and his allegiance to all other States shall be deemed to have been severed.

Comment

In Basis 1 it is proposed that persons will be entitled to one and only one nationality. It follows that the next step must be to decide which nationality must prevail in cases of multiple nationality. The only reasonable and practical answer is: the "effective nationality" that such person possesses. The idea of "effective nationality" is not a new one, and, therefore, the adoption of this solution does not present insuperable difficulties.

Precedents

(*a*) The Permanent Court of Arbitration, in a judgment dated 3 May 1912, applied this principle in the Canevaro case between Italy and Peru. [20] The Court stated, *inter alia,* that by virtue of article 34 of the Peruvian Constitution, Canevaro was a Peruvian national by birth since he was born in that country, that he was furthermore Italian in accordance with article 4 of the Italian Civil Code, his father being of that nationality; but that Canevaro had on various occasions acted as a Peruvian national, for instance by being a candidate for election to the Senate, and more particularly by obtaining permission from the Government and Congress of Peru to exercise the functions of Consul General of the Netherlands. The Court, on these grounds, came to the conclusion that the Peruvian Government was entitled to consider Canevaro as a Peruvian national and to deny that he was an Italian claimant. (See also Makarof, *Allgemeine Lehren des Staatsangehörigkeitsrechts,* p. 296, footnote 56).

(*b*) More recently, a judgment by the Franco-German Arbitral Tribunal, of 10 July 1926, declared that it could not adopt the system of the *lex fori* applied by national courts, but had to follow the general principles of international private law, and the principle of the *nationalité active* was considered by the Tribunal as an adequate basis for the solution of the conflict of laws under consideration. (*Ibid.*, p. 217, footnote 67).

(c) The criterion of "effective nationality" was explored at the 1930 Conference for the codification of international law. Although the Conference did not suppress double nationality and the question of applying the rule of "effective nationality" did not arise in the conventions that were adopted, nevertheless in article 5 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws as well as in article 1 of

[17] *Research in International Law, Harvard Law School, Nationality, Responsibility of States, Territorial Waters, Drafts of Conventions* (Cambridge, 1929), p. 14.

[18] *Ibid.*, p. 38.

[19] *Acts of the Conference for the Codification of International Law,* Vol. I, Annex 5.

[20] James Brown Scott, *The Hague Court Reports* (New York, 1916), pp. 284-296.

the Protocol Relating to Military Obligations in Certain Cases of Double Nationality, the concept of "effective nationality" seems to have been taken into account when reference is made to the "habitual residence" as a determining factor in the application of the said articles.

(*d*) Article 3 of the statute of the International Court of Justice provides that, for the purposes of membership in the Court, the criterion to be applied in case of double nationality is that of the exercise of civil and political rights. Therefore, without stating it expressly, it clearly accepts the principle of the "effective nationality" which should prevail. Consequently, it is very interesting to quote the said provision:

> "Article 3 (2). A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights."

(*e*) The Statute of the International Law Commission contains also a provision very similar in its wording and identical in its scope to the one quoted above:

> "Article 2 (3). In case of dual nationality a candidate shall be deemed to be a national of the State in which he ordinarily exercises civil and political rights."

(*f*) The Secretariat of the United Nations refers to this question in its very learned and exhaustive "Survey of the Problem of Multiple Nationality" (A/CN.4/84, in particular paras. 365 and 366), [21] which it was kind enough to prepare for the use of the Special Rapporteur, who gladly takes again this opportunity to express his deep appreciation for this invaluable contribution to his work.

Basis 3

To determine the effective nationality account will be taken of the following circumstances, either jointly or separately:

(a) Residence in the territory of one of the States of which the individual concerned is a national;

(b) In case of residence in the territory of a State of which he is not a national, whether or not this State is a party, the previous and habitual residence in the territory of one of the States of which he is a national;

(c) If the criteria mentioned in the above subparagraphs do not apply, any other circumstances showing a closer link de facto to one of the States of which he is a national, such as:

(i) Military service;

(ii) Exercise of civil and political rights or of political office;

(iii) Language;

(iv) His previous request of diplomatic protection from such State;

(v) Ownership of immovable property.

[21] Included in the present volume.

Precedents

(*a*) The link of residence is considered as a determining factor of nationality by the draft rules prepared by the Kokusaiho-Gakkwai in 1926: [22]

> "Article 5. A person who has acquired the nationality of the territory of his birth under the preceding paragraph, may elect to assume the nationality of his father or of his mother within a fixed term after attaining his majority, *provided that he has acquired domicile in the latter country* before making such election." (Emphasis added)

(*b*) The draft convention communicated to various Governments by the League of Nations Committee of Experts in 1926, [23] also makes reference to the factor of residence:

> "Article 5. A person possessing two nationalities may be regarded as its national by each of the States whose nationality he has. In relation to third States, *his nationality is to be determined by the law in force at his place of domicile if he is domiciled in one of his two countries.*" (Emphasis added)

(*c*) Article 10 of the Bustamante Code, adopted by the Sixth Inter-American Conference held in Havana in 1928, states that, [24] in the case of individuals possessing by origin several of the nationalities of the Contracting Parties, if the question is raised in a State which is not interested in it,

> "... the law of that of the nationalities *in issue in which the person concerned has his domicile shall be applied.*" (Emphasis added)

(*d*) The Draft Convention on Nationality prepared under the auspices of the Harvard Law School in 1929 attaches also a decisive importance to the habitual residence of the person concerned, and it states that. [25]

> "Article 12. A person who has at birth nationality of two or more States shall, upon his attaining the age of twenty-three years, *retain the nationality only of that one of those States in the territory of which he then has his habitual residence*; if at that time his habitual residence is in the territory of a State of which he is not a national, *such person shall retain the nationality of that one of those States of which he is a national within the territory of which he last had his habitual residence.*" (Emphasis added)

(*e*) The Convention on Certain Questions Relating to the Conflict of Nationality Laws adopted at The Hague in 1930, provides that: [26]

> "Article 5. Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognize exclu-

[22] See *supra*, footnote 16.
[23] See *supra*, footnote 15.
[24] James Brown Scott, *The International Conferences of American States 1889-1928* (New York, 1931), p. 328.
[25] *Research in International Law, Harvard Law School, Nationality etc.*, Cambridge, 1929, p. 14.
[26] See *supra*, footnote 19.

sively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected."

It is very interesting to observe that in the above article reference is made, for the first time, to other "circumstances" showing in fact a closer connexion with one of the countries of which he is a national.

(*f*) It will be remembered that the judgment of the Permanent Court of Arbitration in its decision in the Canevaro case, to which reference has been made above, [27] stated that such circumstances (exercise of political rights and request of permission to hold an office) played a decisive role in the determination of Canevaro's nationality.

(*g*) Returning to The Hague Conference, it will be observed that article 1 of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality [28] has a wording similar to that of article 5 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws, and recognizes the importance of habitual residence and that of a close connexion with a State.

"Article 1. A person possessing two or more nationalities *who habitually resides in one of the countries* whose nationality he possesses, *and who is in fact most closely connected with that country,* shall be exempt from all military obligations in the other country or countries." (Emphasis added)

(*h*) Reference has already been made above [29] to the provisions of the Statute of the International Court of Justice and of the Statute of the International Law Commission which consider the exercise of civil and political rights as a suitable criterion for determining the effective nationality in cases of double nationality.

Basis 4

1. On reaching the age of eighteen every person shall have the right to opt for one of the nationalities of which he was deprived by the application of the rule contained in Basis 2. In such case he will be deprived of the nationality which he acquired by virtue of these rules. His decision is final.

2. If the person fails to opt for one of the nationalities concerned, within a period of one year after reaching the age of eighteen, his nationality will continue to be his effective nationality as determined in accordance with the rules contained in Bases 2 and 3.

Comment

(1) Basis 4 deals with the option for one of the nationalities and the consequent renunciation of all other to which a person might have been entitled in the absence of the rule embodied in Basis 2.

(2) Although Bases 1 and 2 definitely state that a person may have one and only one nationality, i.e. the "effective nationality", which is to be determined as provided in Basis 3, nevertheless the Special Rapporteur has deemed it appropriate to recognize the right of option by the individual concerned when he reaches the age of eighteen. Sometimes it may happen that a person having one nationality in accordance with Basis 2 would have personal reasons for desiring to be considered as a national of the country whose nationality he has lost by the operation of that Basis. The Special Rapporteur sees no objection to granting the right of option in this case to such a person at the age when he may be called upon to fulfil the most characteristic obligation based on nationality, namely that of military service. The age of eighteen is considered to be more suitable than that of twenty-one or any other age, in view of the fact that in many countries this is also the military age and military service is of course the best possible means of expressing the individual's preference for a country.

(3) Although Bases 1 and 2 provide that a person shall have one and only one nationality and that this will be the "effective nationality", the other nationalities should not be entirely disregarded as potential ones, despite the fact that as a rule the "effective nationality" will prevail. These other nationalities remain latent or dormant and entirely ineffective until the individual himself, implicitly or expressly, opts for one of his potential nationalities, either the effective or the potential one; once this right has been exercised, he will be deemed to have renounced all others.

Precedents

(*a*) The right of option was widely recognized in the peace treaties and minorities treaties that were concluded after the end of the First World War, as well as in bilateral and multilateral agreements concluded before the war, such as the Bancroft treaties to which reference is made in paragraph 10 of the introduction to the present report.

(*b*) The draft rules prepared by the Kokusaiho-Gakkwai in 1926 provide in article 5 (which has been quoted above) [30] for the right of option by persons who acquire double nationality at birth.

Basis 5

The State for whose nationality a person has opted in pursuance of the provisions of Basis 4, will communicate this fact to the other State or States concerned, which will take action to implement the severance of allegiance following from the exercise of this option.

Comment

This exchange of information is convenient, and it is particularly useful to the State whose nationality has been forfeited, in order that it may make the necessary annotations in its registers, especially in the recruiting

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[27] See *supra*, footnote 20.

[28] *Acts of the Conference for the Codification of International Law*, vol. I, Annex 6.

[29] See *supra*, Basis 2, precedents.

[30] See *supra*, Basis 1, precedents.

lists. Thus the person concerned will never be considered as a deserter by the State whose nationality he no longer possesses; he will therefore always be exempt of prosecution and conviction by these States on grounds of desertion.

Basis 6

Identical with Basis 7 of Part I.

PART IV. BASES OF DISCUSSION CONCERNING THE REDUCTION OF PRESENT MULTIPLE NATIONALITY

Basis 1

If, by application of the nationality laws of the Parties, a person has two or more nationalities, such person shall be deprived of all but the effective nationality that he possesses, as hereinafter defined, and his allegiance to all other States shall be deemed to have been severed.

Basis 2

To determine the effective nationality account will be taken of the following circumstances, either jointly or separately:

(a) Residence in the territory of one of the States of which the individual concerned is a national, for a period of not less than fifteen years;

(b) Knowledge of the language of the State of residence;

(c) Ownership of immovable property in the State of residence.

Comment

It will be noted that Basis 2, in requiring the simultaneous fulfilment of some of the requirements enumerated in Basis 3 of Part III, make the application of the principle expressed in Basis 1, which is identical with Basis 2 of Part III, much more difficult. Basis 2 will therefore facilitate reduction of multiple nationality but would not be conducive to its total elimination.

Basis 3

1. On reaching the age of eighteen every person shall have the right to opt for one of the nationalities of which he was deprived by application of the rules contained in Basis 1. In such case he will be deprived of the nationality which he acquired by virtue of these rules. His decision is final.

2. If the person fails to opt for one of the nationalities concerned within a period of one year after reaching the age of eighteen, his nationality will continue to be his effective nationality as determined in accordance with the rules contained in Bases 1 and 2.

Basis 4

The State for whose nationality a person has opted in pursuance of the provisions of Basis 3, will communicate this fact to the other State or States concerned, which will take action to implement the severance of allegiance following from the exercise of this option.

Basis 5

Identical with Basis 7 of Part I.

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