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Nationality Including Statelessness - Third Report on the Elimination or Reduction of Statelessness by Mr. Roberto Cordova, Special Rapporteur

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Nationality including statelessness

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NATIONALITY, INCLUDING STATELESSNESS

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Third report on the elimination or reduction of statelessness by Roberto Córdova, Special Rapporteur

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INTRODUCTION

1. The members of the International Law Commission will recall that, during the fifth session of the Commission, in 1953, it was not possible to consider the Special Rapporteur's second report on the elimination or reduction of statelessness (A/CN.4/75) [1], dealing with present statelessness. In order to avoid unnecessary repetition, the present report does not reproduce the reasons and considerations contained in the second report. References are only made to those instances in which the drafts contained in the present report differ from the previous texts or when additional comments appear to be useful. Therefore, the Special Rapporteur hopes that the members of the Commission will kindly refer to the second report (A/CN.4/75) which has been taken as a basis for the present one.

2. The first report on the elimination or reduction of statelessness (A/CN.4/64) [2] submitted by the present Special Rapporteur was devoted to the elimination or reduction of statelessness in the future, and the Commission has already, on the basis of that report, formulated two draft conventions (A/2456, chapter IV) [3].

3. It should be remembered that, as the Special Rapporteur already pointed out in his first report, many countries are confronted with the dilemma of either taking the radical and inhuman action of mass expulsion of thousands of stateless refugees or accepting them as nationals; otherwise these countries would have within their territory an increasing number of persons who are stateless aliens although they may have been assimilated in the course of a long residence in the country.

4. The Special Rapporteur is happy to note that the problem, as stated above, was considered sufficiently important by the members of the Commission to request him to study the question of present statelessness and report his findings. This request was the basis of his above-mentioned second report.

5. As stated above, the Commission was unable to consider the second report during its fifth session, which in the opinion of the Special Rapporteur was fortunate, because he was thereby given time to review the whole subject and to revise and correct his previous draft which had been prepared under very pressing circumstances. This work of revision was carried out in the light of the opinions, observations and comments on the two drafts included in his second report, which several members of the Commission were kind enough to submit in writing to the Special Rapporteur. In this connexion he wishes to express his gratitude to the members of the Commission who so efficiently contributed to his work.

6. As the Special Rapporteur has had the occasion to state in paragraph 8 of his second report, the problem of existing statelessness has so many "grave political, social and even racial aspects" that it should be treated with the utmost care; many countries are indeed confronted with serious difficulties on account of this matter, due to the great number of stateless refugees who now reside within their boundaries.

7. The task of finding juridical solutions for this important problem is much more difficult than to formulate legal rules to prevent statelessness in the future. The reason is obvious. All nations would certainly be more inclined to modify their legislations to avoid cases of statelessness in the future than to change the said legislations with a view to absorbing these great masses of aliens who, in many cases, have not as yet been assimilated by the country where they now live.

8. In the second report, a draft Protocol on the Elimination of Present Statelessness and a draft Convention on certain measures for the Reduction of Present Statelessness were suggested as basis for the deliberations of the Commission. It was intended that the provisions relating to the total elimination of present statelessness would be included in a protocol to be annexed to the draft Convention on the Elimination of Future Statelessness prepared by the Commission at its fifth session (A/2456, chapter IV) [4].

9. A protocol was suggested because all the articles relating to the elimination of present statelessness followed very closely the articles of the draft Convention on the Elimination of Future Statelessness as approved by the Commission. It is true that the close relation between the two texts made the protocol, as worded in annex I to the second report, appear somewhat unimaginative and mechanical, giving the impression of useless repetition as was stated by a member of the Commission. Therefore, when the Special Rapporteur had the opportunity of devoting more time to the study of this protocol he had this criticism in mind and arrived at a simpler and shorter text, which for all intents and purposes, has the same scope (part I of this report).

10. The objection made by another member of this Commission to the effect that the Protocol on the Elimination of Present Statelessness would apply to persons who, up to its signature, were considered as aliens by the laws of the interested countries is, of course, necessarily true. By definition the Convention would imply that these parties change their present legislation.

11. The protocol deals with three different categories of stateless persons: those who were born in the territory of one of the parties to the protocol before the coming into force of the Convention on the Elimination of Future Statelessness (article 1); those who were born in the territory of a State not a party to the protocol (article 2) and, finally, those who, not having been born in the territory of any of the parties nor having parents possessing the nationality of any of the parties, nevertheless reside in the territory of one of the parties (article 5).

12. In this connexion it is appropriate to point out that a change of legislation would have to be effected by countries strictly applying *jus sanguinis* in the case of the first category of stateless persons dealt with in article 1 of the protocol. The countries strictly applying *jus soli* would have to change their legislation in the case of article 2 of the protocol; that is to say when the stateless person was born in the territory of

[1] Included in *Yearbook of the International Law Commission, 1953*, vol. II.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

a State not a party to the convention nor to the protocol but one of whose parents is a national of such party. Of course, strict *jus soli* countries, parties to the protocol, will have to change their legislation in this case in order to confer their nationality *jure sanguinis* upon such a stateless person. That is exactly the situation covered by article 4 of both draft conventions already approved by the Commission. Therefore, there appears to be nothing new in the situation just described. The very purpose of the proposed instruments is to eliminate or to reduce statelessness, future or present, and they presume in fact the willingness of all parties to make the necessary changes in their own legislation, in order to obtain either the elimination or the reduction of statelessness, present or future.

13. Another argument which has been advanced against the principle adopted by the protocol with regard to presently stateless persons is that in most cases the protocol would be applicable to adult persons having no link whatsoever with the State conferring its nationality and that, no matter how undesirable the stateless person might be, he would nevertheless have to be accepted as a national by the State. This objection is valid; but, unless States are willing to run the risk of accepting a certain number of undesirable stateless persons as their nationals, the purpose of the protocol, the eradication of statelessness, would not be attained. On the other hand, all States are bound to refrain from depriving any of their nationals of their nationality, even if they are criminals or otherwise highly undesirable. Moreover, if the stateless person is undesirable or a criminal, the State will always be able to keep him in confinement. The solution suggested might therefore appear acceptable, especially in view of the fact that the State will have to keep the undesirable or criminal stateless person on its territory whether he remains stateless or becomes a national. In fact States will never be able to deport such a person to any other country. Reference will again be made to this matter when dealing with the alternative protocol based on the ideas of Mr. Lauterpacht and Faris Bey el-Khouri.

14. It has been further argued that, while the draft conventions already approved by the Commission apply to children who, because they grow up in the country whose nationality they receive, will acquire the necessary affinity with that country, the texts now submitted would grant the nationality of a party to adults not possessing the necessary link with the country concerned. This may be so, but, if it is really desired to eliminate present statelessness for the reasons indicated in paragraph 3 above, this drawback will necessarily have to be accepted.

15. It has been suggested that attempts should be made to have stateless persons repatriated or else established in countries where they may find employment and be naturalized as citizens. Mr. Weis, of the Office of the High Commissioner for Refugees, was of the opinion (letter of 29 December 1953) that, as it must be assumed that present statelessness cannot be completely eliminated or even reduced to any great extent, it was most important to provide protection for stateless persons and to improve their legal status.

16. Although he fully agrees that it is necessary to provide for the protection of stateless persons and to improve their status and that this is a foremost humanitarian endeavour, the Special Rapporteur believes that such action does not fall within the terms of reference of the Commission nor within the scope of his assignment as he was requested to study only the means of eliminating or reducing present statelessness. This is strictly a legal problem while the protection of stateless persons and the improvement of their condition is mainly a social and political task falling within the competence of other organs of the United Nations.

17. Furthermore, it should be pointed out that the United Nations has already given its attention to this matter, and that the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons on 28 July 1951 adopted a Convention relating to the Status of Refugees [5], which fully covers the subject as far as stateless "refugees" are concerned. A draft protocol circulated to Member States which proposes to extend some of the provisions of the Convention to stateless persons not covered by it, is an additional step in the same direction.

18. The Special Rapporteur, therefore, sees no need to take up this problem, and he believes that any action by the Commission in this respect would unnecessarily duplicate work already undertaken by other organs of the United Nations. It must be said, nevertheless, that the juridical solution of the problem of statelessness, in so far as it endeavours to bestow a nationality on a stateless person, must of necessity involve a certain amount of protection, since it would imply the acquisition of the right of residence, the right of work and similar rights.

19. With regard to the opinion that present statelessness cannot be completely eliminated or even reduced to any great extent, the Special Rapporteur believes that the present international situation warrants the hope that substantial results may be achieved in this field.

20. The Special Rapporteur is not concerned with the extent of the effort that States might be willing to make with a view to eliminating or reducing present statelessness. That is their own political responsibility which bears no relation to that of the Commission nor, of course, to that of the Special Rapporteur who has been called upon to suggest possible juridical means of solving the problem. On the other hand, it should be noted that the mere fact that States have shown their interest in, and preoccupation with, this most pressing problem and that the United Nations has been working, through its different organs, on its solution, constitutes in itself not only a hope but a great stimulus for any effort aimed in this direction. At its coming session the Commission will have before it four different and possible solutions of the question of present statelessness and the Special Rapporteur expresses the wish that the Commission will eventually adopt them, even if they do not constitute a magic formula capable of completely suppressing this deep-rooted evil. Cancer may not be cured altogether but certainly that is not an excuse for not attempting to bring at least some relief to millions of persons who suffer from its terrible consequences and pains.

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[5] *Final Act and Convention relating to the Status of Refugees* (United Nations publications, Sales No.: 1951.IV.4).

21. The Special Rapporteur has given much consideration to the possibility of conferring on stateless persons a kind of "international nationality", as suggested by Mr. Scelle in a letter dated 23 November 1952, to which he appended a very learned study of the matter. This study was transmitted to the Special Rapporteur by its author before its publication in the "Friedenswarte" [6].

22. The idea is very original and interesting. From the theoretical point of view, there should not be any objection against conferring an international nationality on individuals in order to enable them to enjoy the full benefits of national and international law. Thus the individual would be linked to the international community which, at this stage of the development of international relations, is represented by the United Nations. In order to grant to individuals, within the framework of national legislation, all the rights which the law entitles them to enjoy as nationals, they are not required to be part of any juridical person whatsoever. Similarly, in the case of international law one might think quite logically that it is not necessary for the same individual to be a national of a certain State in order to enjoy the same rights as those persons who belong, in virtue of the link of nationality, to that State. Nevertheless, although from the theoretical point of view the thesis is unassailable, in practice the stateless persons to whom the United Nations might confer their "international nationality" will find themselves in every country in an inferior situation as compared to nationals.

23. One should bear in mind that the United Nations Organization is not a super-State; it has no population or territory of its own over which it may exercise jurisdiction. The populations and the territories of the different States parties to the San Francisco Charter remain under the control and sovereignty of those countries; they have not become the population and the territory of the United Nations Organization. This alone will suffice to leave the stateless persons possessing the "international nationality" in the position of aliens in each and every country, even in those signatories of the Charter who might be willing to grant them hospitality, however generous it might be.

24. There is no doubt that the so-called "international nationality" would meet some of the needs of stateless persons when abroad, but there is no doubt also that this concept would fail to solve the not less important problem of the *capitis diminutio* suffered by stateless persons in the territories where they have to reside. This "international nationality" does not give them full juridical protection as compared to that granted by the State to its own nationals.

25. It must furthermore be borne in mind that the link of nationality implies obligations of the individual towards the State and if, by definition, this "international national" has not the nationality of the State of residence, it follows that, in case of international conflicts involving that State he would be considered as a "citizen of the world" and therefore be placed in a privileged position as compared to nationals. The latter would have the duty to defend their country, while the "international citizen" would not be expected to risk his life or, at least, he might, because of his peculiar position, be able to avoid submitting himself to the same privations as nationals.

26. It is true that, in this hypothesis, one might think that the obligation of serving in the armed forces of the United Nations could be imposed upon the stateless persons. If so, their duty could be heavier than that of the nationals of the various States Members of the Organization; they would always be called upon to serve everywhere in the world where the United Nations might be compelled to send its collective army. In this case, statelessness would become a profession rather than a juridical status.

27. At the present stage of the political and juridical organization of the world, it is not feasible to grant to stateless persons, in relation to the United Nations, rights similar to those bestowed by the various States upon their nationals.

28. It would also be difficult to organize the coexistence of the two nationalities: international nationality and the nationality of the State. For that purpose, it would be necessary to create an International Federation of States, which necessarily would require the establishment of a federal nationality, that is, a universal nationality for the peoples of all States. It is regrettable that this beautiful dream is still far from reality, but some day, the Special Rapporteur warmly hopes, it will achieve the complete solution of the problem of statelessness and of many other perhaps still more important problems for the wellbeing of mankind.

29. Mr. Lauterpacht, in his letter of 17 September 1953, suggested conferring, subject to certain qualifications, the nationality of a State upon such stateless persons as had resided within its territory for a period of ten years. He said:

> "In general I find that perhaps you might consider also the alternative approach which I suggested in Geneva, namely, that States should undertake to confer their nationality upon stateless persons who have had their habitual residence in their territories for a period of ten years provided that such persons or their guardians in case of children) apply for nationality and provided that they fulfil certain conditions not destructive of the purpose of the Convention. Any such Convention would have the merit of simplicity and would embrace most cases of statelessness."

Mr. Lauterpacht's proposal is clearly designed to reduce statelessness, and not to eliminate it altogether, because, in his proposal, the conferment of nationality will only take place subject to certain qualifications. Nevertheless, it opened an entirely new approach to the matter, and the Special Rapporteur was very much impressed by it.

30. Upon the request of the Special Rapporteur, Faris Bey el-Khouri sent a letter dated 2 December 1953, containing a proposal which in the Special Rapporteur's opinion is also really constructive. Therefore, he communicated Faris Bey el-Khouri's suggestion to the other members of the Commission some of whom accepted it warmly. The gist of the proposal is expressed in his letter as follows:

> "The Party in whose territory a stateless person resides shall grant to that person a certificate of registration denoting him as 'protected subject' or

[6] See *Die Friedenswarte*, vol. 52 (1954), p. 142.

'protected citizen'. Such certificate will enable him to enjoy the protection of the State pending the final settlement of his case."

31. This formula needs of course some analysis and elaboration. In the first place, it does not state what would be the obligations of the "protected subject" or "protected citizen", although in the mind of its author it certainly comprehends some rights and obligations, since he refers to the enjoyment by that "protected subject" or "protected citizen" of the protection of the State of residence. Therefore, an attempt should be made to determine the scope of such rights and duties.

32. Secondly, the formula speaks of "protected citizen". The Special Rapporteur thinks that nationality does not, by itself, include the status of citizenship. A citizen is a national who enjoys political rights; but there are many nationals who are not citizens in the sense that they do not enjoy political rights. That is the case with minors in all countries and, in some of them, with women, the mentally incapacitated and convicted criminals.

33. There is another idea contained in the formula which also needs some consideration; that of "the final settlement of the case" of the stateless person. A temporary solution which fails to indicate any procedure or means of settling definitely the situation of the stateless person is, the Special Rapporteur thinks, entirely in contradiction with the purpose of the work entrusted to him by the Commission, and it only postpones the ultimate solution of the problem. Therefore the "temporary nationality" to which Faris Bey el-Khouri refers must be rejected in the opinion of the Special Rapporteur, and replaced by a new form of nationality: a permanent nationality without the rights of citizenship, that is, without political rights, but making no differentiation whatsoever between the nationals of the State of residence and the stateless persons who thus become, to a limited extent, but in a definite way, nationals of that State.

34. The Special Rapporteur, taking as basis the fundamental concepts of Mr. Lauterpacht and Faris Bey el-Khouri, proceeded to draft an Alternative Convention on the Elimination of Present Statelessness (Part III) and also based on the same principles, an Alternative Convention on the Reduction of Present Statelessness (Part IV).

35. He must now refer to a point which he believes to be of the greatest importance, but a very delicate one. Some members might think that the problem of *de facto* statelessness does not fall within the Commission's terms of reference and that, therefore, the Special Rapporteur oversteps his instructions in dealing with this most cruel and inhuman situation. They might think that *de facto* statelessness is not a juridical problem since the persons concerned have not been deprived of their nationality and therefore are not, *stricto sensu* and juridically speaking, stateless. To a certain extent, of course, this contention is valid; but, on the other hand, a right which cannot be exercised is not a positive one, and the Special Rapporteur submits that what human beings are entitled to possess is a positve, an effective, right of nationality.

36. As construed by the Economic and Social Council, this must be the correct meaning of article 15 of the Universal Declaration of Human Rights which states that: "Everyone has the right to a nationality". Indeed in its resolution 116 D (VI) of 1 and 2 March 1948, the Council, referring to stateless persons, not only to juridically stateless persons, but, in general, including all those who cannot enjoy the rights flowing from nationality, very definitely says that such a problem 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". It is obvious that *de facto* stateless persons do not have such an effective right to a nationality. Their nationality is utterly ineffective. Therefore, very modestly, but with profound conviction, the Special Rapporteur thinks that the terms of reference of this Commission also include the establishment of juridical means permitting to grant to *de facto* stateless persons an "effective" right to a nationality.

37. *De facto* statelessness is, of curse, a *de facto* situation, but the Commission is bound and is also entitled to propose juridical solutions for a *de facto* situation especially as the Universal Declaration of Human Rights, according to the correct interpretation given by the Economic and Social Council, aims at ensuring that every human being has the effective enjoyment of the rights of nationality. It is true that the *de facto* stateless person has a potential nationality but it is not less true that this juridical nationality is an ineffective nationality. It seems to the Special Rapporteur that the most important aspect of this problem of statelessness is not the technical question of nationality only, but the real situation. The juridical solution consists in bestowing upon each individual an effective nationality and the Special Rapporteur has accordingly framed article 4 of the Alternative Convention on Elimination of Present Statelessness. Needless to say that the Commission is not only obliged to deal with juridical statelessness, but is also under the solemn obligation to provide juridical solutions for the situation of thousands of human beings who are in a much worse position than those who only are *de jure* stateless. The Commission should face the fact and propose a legal remedy for acts of States which plunge so many persons in a desperate plight demanding an energetic legal solution such as the one proposed in article 4. The members of the Commission should bear in mind that *de facto* statelessness is much worse than *de jure* statelessness not only quantitatively but also qualitatively, because not only is it true that *de facto* stateless persons constitue by far the largest number of stateless individuals but it is also a fact that their condition is worse than that of the *de jure* stateless. They are not only deprived of the rights which derive from nationality but the mere fact that they are not technically deprived of nationality itself renders them incapable of obtaining a legal remedy under the proposed statute for stateless persons unless the Commission has the courage to face the problem and provides the said legal remedy. The present situations is that *de facto* stateless persons, having a nominal and ineffective nationality, are liable to be and are in fact persecuted and punished by their governments, for political or racial motives only.

38. It seems to the Special Rapporteur that exhaustive comments on each and every article of the two

protocols which form part of this report, are not called for. In the first place the members of the Commission will recall that the two protocols are both based on the principles already examined and adopted by the Commission in its two drafts on the elimination and the reduction of future statelessness. In this paper an effort has been made to apply those same principles, and the precedents in national and international legislation are also the same. Therefore, the legal background of both will be found in the corresponding comments made by the Special Rapporteur in his first report (A/CN.4/64) [7].

39. With regard to the alternative conventions, the reason for the lack of numerous precedents, either national or international, is obvious. Even if not presenting an entirely new idea, nevertheless, in so far as these conventions do not intend to solve the problem by the conferment of full citizenship upon the stateless person, but of a limited or restricted nationality, they are based on an innovation, a relatively new idea, which has not yet been fully explored. That is why the suggestions made in the alternative conventions (Parts III and IV) are put forward by the Special Rapporteur tentatively, as bases of discussion only, although he himself is in favour of a solution along these lines.

PART I. PROTOCOL TO THE "CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS", FOR THE ELIMINATION OF PRESENT STATELESSNESS

Preamble

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

Whereas **there exists a large number of persons afflicted by the evils of statelessness;**

Whereas, **if the elimination of future statelessness will prevent the suffering of many persons who, otherwise, might eventually find themselves in such an undesirable situation, the elimination of present statelessness will bring relief and justice to thousands of stateless persons who in the present generation are submitted to such hardships and sufferings,**

The **Contracting Parties**

Hereby **agree as follows:**

Article 1

The Parties shall confer their nationality upon persons who would otherwise be stateless, if they were born in their territory before the coming into force of the Convention on the Elimination of Future Statelessness.

Comment

(1) The above article aims at covering all cases of persons who would remain stateless after the coming into force of the Convention on the Elimination of Future statelessness. Article 1 of that convention which has already been approved by the Commission [8] does not apply to persons who were born in the territory of one of the parties before its coming into force; therefore, article 1 of the protocol is intended to apply to all such stateless persons.

(2) The proposed draft of article 1 of the protocol is parallel to article 1 of the convention. It will be noted that in comparison with the previous draft in A/CN.4/75 [9] it tries to avoid the confusion that might arise from the fact that the previous draft referred to "stateless persons" and also included the condition that such a person should not have acquired a nationality at birth. Obviously, if they were stateless persons they had not acquired any nationality at birth.

(3) It should be kept in mind that this article does not refer to persons who, having been born in the territory of one of the parties to the convention and having acquired the nationality of that party either *jure soli* or *jure sanguinis*, lost this nationality before the coming into force of the convention. Cases of this type are covered by article 3 of the protocol. Article 1 refers only to persons, born in the territory of one of the parties, who did not acquire any nationality at birth, that is, persons born before the coming into force of the convention in a strict *jus sanguinis* country to parents of a strict *jus soli* country or to stateless or unknown parents.

(4) Article 1 of the protocol is based exactly on the same principle as article 1 of the convention, i.e., the extension to *jus sanguinis* countries of the juridical principle of the *jus soli*.

Article 2

The legal presumptions set forth in articles 2 and 3 and the provisions of article 4, of the said Convention, shall apply also with regard to article 1 of this Protocol.

Comment

(1) The need for these legal presumptions and provisions here is obvious for the same reason which motivated their inclusion in the conventions for the elimination and reduction of future statelessness. Consequently there is no point in elaborating this matter. In passing, however, the Special Rapporteur wishes to call the attention of the Commission to what he believes to be a mistake in the wording of article 4 of the Convention on the Elimination of Future Statelessness as approved by the Commission. As worded this article might confer double nationality upon a person who is born in the territory of a State which is not a party to the convention but who, nevertheless, acquires at birth, *jure soli*, the nationality of that State. In order to avoid such an undesirable consequence, the original article should have been worded as follows:

"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 Convention, it shall acquire the nationality of the Party of which

[7] See *supra*, footnote 1.

[8] See para. 2 of the present report.

[9] See para. 1 of the present report.

one of its parents is a national, *if it would otherwise be stateless*. The nationality of the father shall prevail over that of the mother."

(2) The Commission will have to decide whether, having still on its agenda the whole subject of nationality including statelessness, it thinks it appropriate to introduce the necessary modifications to this article and also to article 1, paragraph 3, of the Convention on the Reduction of Future Statelessness. This paragraph also needs to be redrafted, because, as now worded, it mistakenly imposes the nationality of one of the parents on the stateless person when this person, upon attaining the age of eighteen, does not retain the nationality of the State of birth, even in the case when the parents have the nationality of a country which is not a party to the convention. The text of this paragraph should be kept in line with the wording of article 4, and say "... the nationality of the Party of which one of its parents is a national" (See below, comment to paragraph 3 of article 1 of the Protocol on the Reduction of Present Statelessness).

Article 3

The Parties shall reinstate into their nationality all persons who have, before the coming into force of the above-mentioned Convention, lost their nationality, thereby becoming stateless, as a consequence of:

(i) Change in their personal status, such as marriage, termination of marriage, legitimation, recognition or adoption;

(ii) Change or loss of the nationality of a spouse or of a parent.

(iii) Renunciation;

(iv) Application for naturalization in a foreign country, or obtention of an expatriation permit for that purpose;

(v) Departure, stay abroad, failure to register or any similar ground;

(vi) Deprivation of nationality by way of penalty; or on racial, ethnical, religious or political grounds. The stateless person will in this case have the right to opt for application of article 5.

Comment

(1) For the sake of simplicity, the above article embodies the provisions of articles 5, 6, 7 and 8 of the draft protocol included in document A/CN.4/75 [10]. The proposed text is parallel to the provisions of articles 5, 6, 7 and 8 of the Convention on the Elimination of Future Statelessness [11]. It covers the various causes of statelessness set forth in *A Study of Statelessness*, E/1112 and Add.1, pp. 136-142 [12].

(2) It will be observed that this article imposes on States a heavy duty: that of reinstating into their nationality persons who previously were subjects or citizens and who, for some reason or other, have lost their nationality or have been deprived of it. In the opinion of the Special Rapporteur, this is one of the means to eliminate present statelessness in a large number of cases. This solution might perhaps appear more difficult to implement than a request to the States of residence to grant their nationality to persons presumably not yet sufficiently assimilated. However, if the members of the international community really wish to co-operate in the elimination of present statelessness, they should be prepared to agree also to this course of action and be willing to reinstate these stateless persons as their nationals. This should not be too difficult for States to do, because these stateless persons are, generally speaking and with the exception of the cases of deprivation referred to in sub-paragraph (vi), entirely akin to the rest of the population. Their ties with the fatherland may still be very strong because they may have lost their nationality only for some technical reason.

(3) This solution has admittedly, in the case referred to in sub-paragraph (vi), a different implication from the point of view of the State and from that of the stateless persons themselves. It is suggested here only for the sake of unity of the solution of the problem. In order to minimize the difficulty it has been suggested that these stateless persons be granted the right of option between their old nationality and that of the State of their residence.

Article 4

The Parties 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 upon the inhabitants of such territory who, due to the change of sovereignty over that territory, are stateless at the time of the coming into force of this Protocol.

Comment

(1) It will be noted that, in drafting this revised text, reference to the right of option is omitted, whereas in the corresponding article of the Convention on the Elimination of Future Statelessness as well as in article 9 of the previous draft included in document A/CN.4/75 [13], it is specifically stated that such a right should be recognized. The explanation of this omission is quite simple: As this protocol refers to present statelessness, it is obvious that persons who are stateless on account of a change of sovereignty, find themselves in that situation for the reason that no such option was granted to them when the transfer of territory took place, or, in case they were given this right, because they failed to avail themselves of it in due time and, therefore, they no longer enjoy it. There is no point in mentioning the right of option, as it was very properly done in the Convention which is intended to deal with the future, because by establishing their residence in the territory they have in fact opted in favour of remaining subject to the jurisdiction of the successor State.

(2) Dr. Weis suggested that the scope of this article

[10] *Ibid.*
[11] See para. 2 of the present report.
[12] United Nations publications, Sales No.: 1949.XIV.2.
[13] See para. 1 of the present report.

be extended to all stateless persons inhabiting the territory regardless of the cause of their statelessness. He also pointed out that past laws and treaties, for instance the minorities treaty with Poland [14], provided in fact that all persons born in or domiciled in the territory and who were not nationals of another State should acquire the nationality of the new State.

(3) The Special Rapporteur, however, thought it appropriate to restrict the scope of the article so that it will be applicable only to those inhabitants who are stateless due to the change of sovereignty, the cases of other stateless persons, who were in that situation prior to the transfer or before the coming into force of this protocol, being covered by articles 1 and 3. If either of these two articles is applied to them, they will certainly acquire a nationality, and if, in addition, article 4 were also to be applied to them, they most likely would acquire another nationality; thus they would have a double nationality, a legal situation which the Commission should endeavour to prevent.

(4) The members of the Commission will be aware of the difference between articles 1 and 4 of this Protocol. Article 1 makes reference, with regard to the application of its provisions, to the date on which the Convention on the Elimination of Future Statelessness will come into force, while article 4 does not refer to that convention and makes application of its provisions dependent on the time of the coming into force of the protocol itself. There is a very obvious reason why article 1 refers to the convention while article 4 takes the protocol as the starting point for the implementation of its provisions. The convention will, as soon as it comes into force, eliminate all cases of statelessness arising in the future either at birth or for any other cause, but all other cases of statelessness already existing at such time, even if derived from similar sources, will not be affected by the provisions of article 1 of the convention. Therefore, the protocol, aiming at the elimination of present statelessness must apply to all stateless persons who were born stateless or who otherwise lost their nationality on some of the grounds referred to in the convention, before its coming into force.

(5) Article 4 of the protocol, which corresponds to article 9 of the convention, deals with an entirely different aspect of the problem. The latter refers to possible occurrence of statelessness in the future due also to future changes of sovereignty over a territory, while article 4 of the protocol applies to cases of statelessness which have arisen from changes of sovereignty over territories which have already taken place. In other words, article 4 of the protocol must be made applicable to cases of statelessness existing precisely at the time of its coming into force and originating from changes of sovereignty over territories having already taken place at that time.

Article 5

When no nationality is acquired by the application of the foregoing articles, each Party shall confer its nationality upon *de jure* and *de facto* stateless persons residing in its territory, provided further that the latter renounce the ineffective nationality they possess.

Comment

(1) This is indeed what might be called—and in fact it has been so called in Mr. Lauterpacht's aforementioned letter in so far as *de jure* statelessness is concerned—a residual article which intends to make the protocol, with regard to States parties to it, an airtight instrument aimed at the total elimination of statelessness, whether *de jure* or *de facto*. It will be difficult to discover a case of *de jure* statelessness which would not be covered by the preceding articles, but, nevertheless, one might think of some hypothesis, even a remote one, which will not come under the provisions already set forth. For instance, one might envisage the case of a stateless person, resident in the territory of a party but not born there (article 1 would not apply), whose parents were not nationals of any of the parties or were stateless themselves (article 2 of the protocol and article 4 of the convention would not apply), and, finally, who had neither been deprived of his nationality nor lost it (article 3 would not apply).

(2) The special importance, the unique and vast scope of this article, as well as the ideas on which it is based with regard to *de facto* statelessness, have already been explained in the introduction to this report.

Article 6

The provisions of article 10 of the Convention shall apply with regard to this Protocol.

Comment

The usefulness of an agency to act on behalf of stateless persons and of a tribunal competent to act on complaints, as well as that of submitting any disputes arising from the convention or the protocol to the International Court of Justice or to the tribunal, have already been recognized by the Commission. There is therefore no need for additional comments on this point.

PART II. PROTOCOL TO THE "CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS", FOR THE REDUCTION OF PRESENT STATELESSNESS

Preamble

Whereas **the Convention on the Reduction of Future Statelessness does not apply to existing statelessness;**

Whereas **there exists a large number of persons afflicted by the evils of statelessness;**

Whereas **if the reduction of future statelessness will prevent the suffering of many persons who, otherwise, might eventually find themselves in such an undesirable situation, the reduction of present statelessness will bring relief and justice to thou-**

[14] Treaty between the Allied and Associated Powers and Poland (Protection of Minorities). Signed at Versailles, June 28, 1919; Hudson, *International Legislation*, vol. I, p. 283.

sands of stateless persons who in the present generation are submitted to such hardships and sufferings,

The **Contracting Parties**

Hereby **agree as follows:**

Article 1

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

2. The nationality laws of the Parties may make conferment of such nationality dependent on:

(i) The person being normally resident in the territory concerned for a period which shall not exceed that required for naturalization;

(ii) Application by the person concerned;

(iii) Compliance by the person concerned with such other conditions as are required with regard to acquisition of nationality from all persons born in the Party's territory.

3. If, in consequence of the operation of such conditions as are envisaged in paragraph 2, a person does not acquire the nationality of the State of birth, he shall acquire the nationality of the Party of which one of his parents is a national. The nationality of the father shall prevail over that of the mother.

Comment

(1) Article 1 of this protocol, as suggested above, is parallel to the corresponding article of the Convention already approved by the Commission on the Reduction of Future Statelessness [15]. Changes had of course to be made for the purpose of reducing present statelessness.

(2) In the first place, paragraph 1 refers to persons who are already born and provides that the party shall confer its nationality upon them whereas the provisions of the convention as approved are aimed only at persons who will be born in the future. Except for this difference in timing the principle embodied in both texts is the same, i.e., the extension of the *jus soli* to *jus sanguinis* countries.

(3) Paragraph 2 corresponds roughly to article 1, paragraph 2, of the Convention on the Reduction of Future Statelessness; however, a small change in presentation was made and it was also provided that the conferment of nationality may be made dependent on the submission of an application by the person concerned. This condition was added at the suggestion of two distinguished members of the Commission, who were of the opinion that the possibility of option should be left open to the stateless person (Judge Sandström's letter of 19 October 1953, Mr. Pal's letter of 22 December 1953), for there might be cases, particularly with regard to those contemplated in article 3, where the stateless person himself might not wish to become a national of the State in question.

(4) Paragraph 3 is almost identical with the corresponding paragraph of the Convention on the Reduction of Future Statelessness; the age limit however had necessarily to be omitted, since the stateless person to whom this provision would be applicable might either be a minor or have already attained majority. In essence, this paragraph serves the same purpose as does article 1, paragraph 2, of annex II to the second report (A/CN.4/75) [16], the meaning of which some of the members thought might be clarified; this is indeed so.

(5) As has already been mentioned (comment on article 2 of the Protocol for the Elimination of Present Statelessness), paragraph 3 of article 1 of the draft Convention on the Reduction of Future Statelessness approved by the Commission mistakingly provides that when the stateless person, "on attaining the age of eighteen, does not retain the nationality of the State of birth, he shall acquire the nationality of one of his parents". Even in the case when one of his parents has the nationality of a country which is not a party to the convention? Of course not. The parties to this convention have no right to grant to a stateless person the nationality of a State which is not a party to the convention. With regard to this point, paragraph 3 of article 1 of the draft convention should have been drafted in the way its article 4 was worded and should have said: "he (the stateless person who does not retain the nationality of the State of birth on attaining the age of 18) shall acquire the nationality of the Party of which one of his parents is a national". This, of course, is the only correct expression of the Commission's intention.

(6) When drafting article 1, the Special Rapporteur bore in mind the suggestions made by Mr. Pal to the effect that some of the articles of the proposed draft in annex II to the second report (A/CN.4/75) be combined in order to obtain a greater coherence. In passing, it should be pointed out that the same procedure was followed with regard to articles 6, 7 and 8.

(7) In the Convention on the Reduction of Future Statelessness the general principle of the extension of the *jus soli* to *jus sanguinis* countries was qualified in order to ensure some link between the stateless person and the country in which he was born. In the same manner it was deemed necessary to introduce the same qualifications into the present protocol in addition to requiring an application of the persons concerned. The three conditions mentioned in paragraph 2 may be required simultaneously by the national legislation or independently one of the other.

(8) Sub-paragraph (i) of paragraph 2 had to be somewhat modified with regard to the text originally proposed in the second report (A/CN.4/75, annex II, article 1, paragraph 2). This modification had to be introduced in order to reconcile the provisions of this sub-paragraph with the one embodied in article 5. The latter article, which corresponds to article 10 of the previous draft contained in annex II to the second report, recommends sympathetic consideration by the parties of the applications for naturalization submitted by stateless persons who have had their habitual residence in the territory concerned. Paragraph 2 of article 1 of annex II to the second report required, besides birth of the stateless person concerned in the territory, a normal or habitual residence for a period

[15] See para. 2 of the present report.

[16] See para. 1 of the present report.

beginning at birth and extending to the time of submission of the application. Obviously, this condition might involve, in fact, a habitual residence much longer than the period of fifteen years contemplated in article 10 of the previous draft. In other words, according to the old text of article 1, a stateless person who, at the time of filing his application, was 40 years old must, in order to acquire the nationality of the party, have been an habitual resident of the country for a period of 40 years, besides having been born in the territory. This is, of course, in absolute contradiction to the requirement of a 15 years' residence as proposed in former article 10.

Article 2

The legal presumptions set forth in articles 2 and 3, and the provisions of article 4, of the said Convention, shall apply also with regard to article 1 of this Protocol.

Comment

The text of the above article is identical with that of article 2 of the Protocol on the Elimination of Present Statelessness.

Article 3

1. The Parties shall reinstate into their nationality all persons who have, before the coming into force of the Convention on the Reduction of Future Statelessness, lost the nationality of the said Parties, thereby becoming stateless, as a consequence of:

(i) Change in their personal status, such as marriage, termination of marriage, legitimation, recognition or adoption;

(ii) Change or loss of the nationality of a spouse or of a parent;

(iii) Renunciation;

(iv) Application for naturalization in a foreign country, or obtention of an expatriation permit for that purpose;

(v) Departure, stay abroad, failure to register or any other similar ground;

(vi) Deprivation of nationality by way of penalty, or on racial, ethnical, religious or political grounds.

2. The national laws of the Parties may make reinstatement into nationality dependent on:

(i) Application by the person concerned;

(ii) Residence in its territory at the time of the filing of such application.

Comment

(1) Paragraph 1 of article 3, is similar to article 3 of the draft Protocol on the Elimination of Present Statelessness; therefore, the comments relating thereto also apply in the present case. The only difference is that the right of option now appears in paragraph 2, sub-paragraph (i). Paragraph 1 embodies articles 6, 7 and 8 of Annex to the second report (A/CN.4/75) [17].

(2) The qualifications introduced in paragraph 2 are quite logical, for a certain freedom of choice should be left to the individual concerned and, at the same time, some link between him and the reinstating State ought to exist. Residence is, doubtlessly, a strong and sufficient link.

Article 4

The Parties 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 upon the inhabitants of such territory who, due to the change of sovereignty over that territory, are stateless at the time of the coming into force of this Protocol.

Comment

The above text is identical with article 4 of the Protocol on the Elimination of Present Statelessness and the relevant comments apply also in this case.

Article 5

The Parties shall examine sympathetically applications for naturalization submitted by persons who are stateless, either *de jure* or *de facto,* and who habitually resident in their territory.

Comment

There is, of course, a great difference between the wording of article 5 of the Protocol on the Elimination of Present Statelessness and the text proposed here which merely aims at reducing present statelessness. In the first case, a so-called "residual article" was needed in order to fill whatever *lacunae* might exist in the preceding articles of the said protocol. The purpose was to cover all cases of stateless persons who would not receive a nationality by application of articles 1-4 of the protocol. But since, by definition, the present protocol is not aimed at the total elimination of present statelessness, there is no need to impose on States the rather heavy burden of conferring their nationality upon all stateless persons resident within their boundaries. Nevertheless, it seems appropriate to transform into a legal obligation the recommendation of the Economic and Social Council in favour of stateless persons, contained in resolution 319 B III (XI) of 16 August 1950 which "invites States to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory". The Economic and Social Council was of course aware of the fact that its recommendation implied a certain discrimination in favour of stateless persons, but it was perfectly justified in taking such action, because all other foreigners, as has already been pointed out, have a nationality and are not, therefore, deprived of the protection of a State.

[17] *Ibid.*

Article 6

The provisions of Article 10 of the Convention shall apply with regard to this Protocol.

Comment

The comments referring to article 6 of the Protocol on the Elimination of Present Statelessness apply also in this case.

PART III. ALTERNATIVE CONVENTION ON THE ELIMINATION 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 has increasingly tended to the progressive elimination of statelessness,**

Whereas **it is imperative, by international agreement, to eliminate the evils of statelessness,**

Whereas **there exists a large number of persons afflicted by statelessness;**

The **Contracting Parties**

Hereby **agree as follows:**

Article 1

The Party in whose territory a stateless person actually lives shall grant to that person the legal status of "protected national" and shall issue to him a certificate of registration qualifying him as such.

Comment

(1) Article 1 of the Protocol on the Elimination of Present Statelessness is designed to eradicate entirely this evil by granting the nationality of the parties to those persons who otherwise would be stateless, provided they were born in their territory before the coming into force of the Convention on the Elimination of Future Statelessness. In addition, article 3 of the same protocol proposes that the parties reinstate into their nationality all persons who, for some reason or other, have lost their nationality, thereby becoming stateless. The two articles cover the field entirely and present statelessness would completely disappear through acceptance of the protocol by all States.

(2) However, as doubts might arise as to the likelihood of such acceptance, since this would mean a return to the past and, in many cases, the repudiation by States of what they had legally done according to their own legislation, a step which some States, for political or economic reasons, would not care to take; and since also in many instances the individuals concerned would not be willing to adopt again the nationality of a State which had rejected them, the subject has been approached under an entirely new angle, namely, that instead of looking towards the past, the present situation is recognized and regulated and even taken as a basis for the complete solution of the problem.

(3) A determined attempt should be made to find a more practical solution and, for this reason, it is proposed to eliminate present statelessness entirely by granting to stateless persons the status of "protected nationals" of the recipient State.

(4) They would eventually be assimilated and they would thus be able to avail themselves of the opportunities which the legislation of such State would afford to them to become naturalized citizens (article 2, (iii), below) enjoying political rights on the same footing as other naturalized citizens.

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.

Comment

(1) The purpose of this article is twofold: (*a*) to grant to protected subjects the same rights and privileges and to place them under the same obligations as nationals, and (*b*) to safeguard the protecting State from an undue influence from aliens who, in many cases, may not be assimilated. It is to be expected that States will not find it too difficult to grant such rights and privileges which, for the most part, are enumerated in the Convention relating to the Status of Refugees adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva in July, 1951 [18]. As pointed out above, such protected persons would eventually qualify for naturalization in many instances and, should they make use of this

[18] *Final Act and Convention relating to the Status of Refugees,* (United Nations publications, Sales No.: 1951.IV.4).

privilege, the time might come when their condition as protected subjects would disappear; they would thus become citizens in the broadest sense and enjoy equal political rights with other naturalized foreigners in conformity with the relevant legislation.

(2) It will be observed that article 1 of the present draft Convention and article 5 of the Protocol on the Elimination of Present Statelessness are both based on the same principle: that of residence. The fact that these two articles are similar may make it difficult to understand at first sight why the Special Rapporteur has based an entire convention on a principle which already appears in one of the articles of the aforesaid protocol. There is, however, a fundamental difference which he wishes to stress. As pointed out, article 5 of the protocol is merely residual; its provisions will apply only where the preceding articles fail to cover certain exceptional categories of statelessness. It may therefore be assumed that the State of residence will not raise serious objections to conferring its full nationality, including the rights of citizenship, upon stateless persons falling within these exceptional categories. The situation is, on the other hand, entirely different when it is intended to confer, by application of the criterion of residence (see article 4 of the present draft Convention), the nationality of a State upon thousands of either *de jure* or *de facto* stateless persons. In this case the State will be asked to accept as nationals such a large number of perhaps insufficiently assimilated aliens as to raise well-founded doubts with regard to the advisability of granting them full rights of citizenship enabling them to exercise an undue influence on its public affairs. Consequently, while accepting the criterion of residence for the conferment of nationality, it was considered advisable to qualify the newly acquired nationality by providing that the so-called "protected nationals" will not be able to exercise political rights.

(3) Faris Bey el-Khouri mentioned that the practice of recognizing the existence of "protected subjects" has been adopted in the United Kingdom and in other countries. The Special Rapporteur has not been able to obtain the relevant legislative enactments. It is to be hoped that in due course these texts may be examined by the Commission since they will certainly constitute an adequate precedent for the status accorded to stateless persons by the provisions of the present Convention.

(4) In the answers received by the Special Rapporteur to his request for opinions regarding this problem, there was, as already mentioned, a manifest tendency to suggest that he should make an effort towards protecting the stateless persons rather than granting them a definite nationality and, as also already pointed out, the suggestion to protect stateless persons as well as refugees in general does not fall by itself within the Commission's terms of reference nor, of course, within those of the Special Rapporteur; but it should be noted that by regulating from the juridical point of view the situation of persons who are stateless, either *de jure* or *de facto*, the desired protection will automatically be accorded. By the first two protocols for the elimination and reduction of present statelessness (Parts I and II above) the parties would grant to stateless persons all the rights, including the political rights, enjoyed by their own nationals.

(5) The system proposed in the alternative conventions, while at first denying the *de jure* or *de facto* stateless persons' political rights, would nevertheless completely protect them, since these persons would enjoy on the same basis as nationals of the country concerned, those rights which they as stateless individuals had been almost completely missing. That is to say that they would enjoy the right of travelling abroad, the right of being protected by the country granting them the certificate of registration, property rights, the right to work, to trade, to exercise a liberal profession, the right of educating their children under the same conditions as nationals and, if necessary, of obtaining relief, the right to all the social security benefits, the right of appearing before the courts as plaintiffs or defendants, the right of being exempted from expulsion and *refoulement* because of alienage. In other words they would be entirely and completely protected within the State of residence.

(6) As regards protection abroad, there are several examples of such protection accorded by a State to citizens of another State. For instance, under article 104 of the Treaty of Versailles, Poland undertook the diplomatic protection of the citizens of the Free City of Danzig. The League of Nations, acting through a State or through its own officials, undertook the diplomatic protection of the inhabitants of the Saar Basin. It is to be noted that in both cases the protection was granted by virtue of an international agreement. Although nationality is the regular means by which individuals derive benefits from the Law of Nations, the above-mentioned cases might well be considered as proper precedents for the proposed text of article 1.

(7) It is also very important to mention the numerous international agreements concluded within the framework of the League of Nations whereby, under its auspices, the protection of Russian, Armenian, German and Austrian refugees was undertaken, granting them the rights of sojourn, of residence and of obtaining travel documents ("Nansen passports") and defining their legal status, labour conditions, welfare and relief, education, taxation, etc. (*A Study of Statelessness,* E/1112 and E/1112/Add.1, pp. 75-122).[19]

(8) Finally, it should be pointed out that the United Nations has given special attention to the protection of refugees and stateless persons and has sponsored the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (see para. 1 of this comment), which embodies and improves the provisions of the above-mentioned instruments adopted under the auspices of the League of Nations. A draft protocol which has already been circulated to Member States proposes to extend to stateless persons some of the provisions of the above convention which aim at improving their status.

Article 3

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

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[19] United Nations publications, Sales No.: 1949.XIV.2.

Comment

The proposal to grant full rights of citizenship to descendants of protected nationals when they reach the age of majority is based on the consideration that, by that time, they will be sufficiently assimilated and that, therefore, it will not be necessary to require compliance with the ordinary rules of naturalization in order to accord full political rights. On the other hand, such compliance is, of course, expected of adults who, therefore, will have to prove that they have resided in the State for the length of time prescribed in general for aliens seeking to become citizens.

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.

Comment

(1) The special importance and the unique and vast scope of this article, as well as the main ideas on which it is based, have already been partly explained in the introduction to this report.

(2) There are hundreds of thousands of individuals who, on political, economic or racial grounds, had to leave their country of origin of which they were nationals and which in turn, quite frequently, is unwilling to accept them again or to accord them the minimum protection to which they are entitled as human beings. These *de facto* stateless persons have sought refuge in foreign countries and have established there a residence which they perhaps intended to be temporary, or to which the local authorities may have refused a permanent character, but which may have become, in fact, permanent or, at best, indefinite. The recipient countries accepted them for humanitarian reasons and, faced with the dilemma of an inhuman *refoulement* or expulsion to another country (which is not always possible), have resigned themselves to allowing them to stay, postponing *sine die* the final settlement of the problem but always maintaining the threat of some drastic action concerning them.

(3) If the legislation of the recipient countries happens to be based on the *jus soli* principle, the problem will ultimately be solved by the mere passage of time. The stateless persons will eventually die and their children will acquire the nationality of such countries by operation of the law. The situation is quite different in the case where the recipient country follows the *jus sanguinis* principle. In this case, the stateless person and his descendants may forever remain in this condition.

(4) In both these cases resumed action should be taken because, in the first instance, at least one complete generation would have to pass before the problem is solved and, in the second one, it might never be solved unless the Convention on the Elimination of Future Statelessness is adopted by the States concerned.

(5) The most practical and just solution would be the one suggested in this article, namely, to extend to *de facto* stateless persons the juridical remedies which have been proposed for *de jure* stateless persons, e.g. the granting of the restricted nationality envisaged in articles 1 and 2 of this Convention.

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.

Comment

The need for the adoption of the provisions embodied in article 10 of the Convention on the Elimination of Future Statelessness has already been recognized by the Commission and, therefore, no additional comments on this matter are called for.

PART IV. ALTERNATIVE CONVENTION ON 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 has increasingly tended to the progressive elimination of statelessness,**

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

Whereas **there exists a large number of persons afflicted by statelessness,**

The **Contracting Parties**

Hereby **agree as follows:**

Article 1

1. The Party in whose territory a stateless person habitually resides shall grant to that person the legal status of "protected 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.

Comment

(1) Paragraph 1 of the above article is almost identical to article 1 of the Alternative Convention on the Elimination of Present Statelessness (Part III of this report), the only difference being that that convention referred to actual, physical presence while article 1 of the present draft convention requires the stateless person to maintain an "habitual residence" in the State concerned.

(2) Paragraph 2 formulates two of the several exceptions which might be established with regard to the application of the general rule contained in paragraph 1. The members of the Commission are surely aware that these exceptions might vary *ad infinitum,* according to the different criteria which might be applied by different countries. The Special Rapporteur selected those which appeared to him to be the most reasonable ones and which, in his opinion, were more likely to secure a wide acceptance than the maximum restrictions on the implementation of paragraph 1 which might be introduced by national legislations. He wishes to point out the tentative nature of the exceptions which he proposes; he will welcome any constructive suggestions that may be made.

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.

Comment

The above article is identical with article 2 of the Alternative Convention on the Elimination of Present Statelessness. The Special Rapporteur did not deem it convenient to introduce any qualifications or restrictions with regard to the enjoyment of the rights granted to protected subjects, because he fears that, if this were done, the said rights might be curtailed and thus would not be consonant with the minimum standard recommended by the Universal Declaration of Human Rights. Therefore, he urges the Commission to consider this text with all the sympathy which its prospective beneficiaries deserve as human beings who as such are equal in every respect to nationals.

Article 3

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

Comment

The text of the above article is identical with article 3 of the Alternative Convention on the Elimination of Present Statelessness.

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.

Comment

The above text is identical with article 4 of the Alternative Convention on the Elimination of Present Statelessness. The Special Rapporteur did not consider it appropriate to include any qualifications restricting the rights of the *de facto* stateless persons, because they constitute by far the great majority of stateless persons and are in even greater need of the help and assistance than *de jure* stateless persons. It would not be in accordance with the humanitarian feelings which guide the Special Rapporteur to restrict in an appreciable manner or otherwise the number or the substance of the rights from which they would benefit under this Convention.

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.

Comment

This text is identical to that of article 5 of the Alternative Convention on the Elimination of Present Statelessness.

ANNEX I

PROTOCOL TO THE "CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS", FOR THE ELIMINATION OF PRESENT STATELESSNESS

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

Whereas there exists a large number of persons afflicted by the evils of statelessness;

Whereas, if the elimination of future statelessness will prevent the suffering of many persons who, otherwise, might eventually find themselves in such an undesirable situation, the elimination of present statelessness will bring relief and justice to thousands of stateless persons who in the present generation are submitted to such hardships and sufferings,

The Contracting Parties

Hereby agree as follows:

Article 1

The Parties shall confer their nationality upon persons who would otherwise be stateless, if they were born in their territory before the coming into force of the Convention on the Elimination of Future Statelessness.

Article 2

The legal presumptions set forth in articles 2 and 3 and the provisions of article 4, of the said Convention, shall apply also with regard to article 1 of this Protocol.

Article 3

The Parties shall reinstate into their nationality all persons who have, before the coming into force of the above-mentioned Convention, lost their nationality, thereby becoming stateless, as a consequence of:

(i) Change in their personal status, such as marriage, termination of marriage, legitimation, recognition or adoption;

(ii) Change or loss of the nationality of a spouse or of a parent;

(iii) Renunciation;

PROTOCOL TO THE "CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS" FOR THE REDUCTION OF PRESENT STATELESSNESS

Whereas the Convention on the Reduction of Future Statelessness does not apply to existing statelessness;

Whereas there exists a large number of persons afflicted by the evils of statelessness;

Whereas if the reduction of future statelessness will prevent the suffering of many persons who, otherwise, might eventually find themselves in such an undesirable situation, the reduction of present statelessness will bring relief and justice to thousands of stateless persons who in the present generation are submitted to such hardships and sufferings,

The Contracting Parties

Hereby agree as follows:

Article 1

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

2. The nationality laws of the Parties may make conferment of such nationality dependent on:

(i) The person being normally resident in the territory concerned for a period which shall not exceed that required for naturalization;

(ii) Application by the person concerned;

(iii) Compliance by the person concerned with such other conditions as are required with regard to acquisition of nationality from all persons born in the Party's territory.

3. If, in consequence of the operation of such conditions as are envisaged in paragraph 2, a person does not acquire the nationality of the State of birth, he shall acquire the nationality of the Party of which one of his parents is a national. The nationality of the father shall prevail over that of the mother.

Article 2

The legal presumptions set forth in articles 2 and 3 and the provisions of article 4, of the said Convention, shall apply also with regard to article 1 of this Protocol.

Article 3

1. The Parties shall reinstate into their nationality all persons who have, before the coming into force of the Convention on the Reduction of Future Statelessness, lost the nationality of the said Parties, thereby becoming stateless, as a consequence of:

(i) Change in their personal status, such as marriage, termination of marriage, legitimation, recognition or adoption;

(ii) Change or loss of the nationality of a spouse or of a parent;

(iii) Renunciation;

(iv) Application for naturalization in a foreign country, or obtention of an expatriation permit for that purpose;

(v) Departure, stay abroad, failure to register or any similar ground;

(vi) Deprivation of nationality by way of penalty; or on racial, ethnical, religious or political grounds. The stateless persons will in this case have the right to opt for application of article 5.

Article 4

The Parties 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 upon the inhabitants of such territory who, due to the change of sovereignty over that territory, are stateless at the time of the coming into force of this Protocol.

Article 5

When no nationality is acquired by the application of the foregoing articles, each Party shall confer its nationality upon *de jure* and *de facto* stateless persons residing in its territory, provided further that the latter renounce the ineffective nationality they possess.

Article 6

The provisions of article 10 of the Convention shall apply with regard to this Protocol.

(iv) Application for naturalization in a foreign country, or obtention of an expatriation permit for that purpose;

(v) Departure, stay abroad, failure to register or any other similar ground;

(vi) Deprivation of nationality by way of penalty, or on racial, ethnical, religious or political grounds.

2. The national laws of the Parties may make reinstatement into nationality dependent on;

(i) Application by the person concerned;

(ii) Residence in its territory at the time of the filing of such application.

Article 4

The Parties 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 upon the inhabitants of such territory who, due to the change of sovereignty over that territory, are stateless at the time of the coming into force of this Protocol.

Article 5

The Parties shall examine sympathetically applications for naturalization submitted by persons who are stateless, either *de jure* or *de facto*, and who are habitually resident in their territory.

Article 6

The provisions of article 10 of the Convention shall apply with regard to this Protocol.

ANNEX II

Alternative Convention on the Elimination of Present Statelessness

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 has increasingly tended to the progressive elimination of statelessness,

Whereas it is imperative, by international agreement, to eliminate the evils of statelessness,

Whereas there exists a large number of persons afflicted by statelessness,

The Contracting Parties

Hereby agree as follows:

Article 1

The Party in whose territory a stateless person actually lives shall grant to that person the legal status of "protected na-

Alternative Convention on the Reduction of Present Statelessness

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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 has increasingly tended to the progressive elimination of statelessness,

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

Whereas there exists a large number of persons afflicted by statelessness,

The Contracting Parties

Hereby agree as follows:

Article 1

1. The Party in whose territory a stateless person habitually resides shall grant to that person the legal status of "protected

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.

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.

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Report on multiple nationality by Roberto Córdova, Special Rapporteur

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