

Nationality including Statelessness
Report on Present Statelessness
1954

Text adopted by the International Law Commission at its sixth session, in 1954, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 26ff). The report appears in *Yearbook of the International Law Commission, 1954*, vol. II.



Article 18

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PART TWO

Present statelessness

26. At its fifth session, the Commission requested Mr. Roberto Córdova, the Special Rapporteur, to inquire further into the question of present statelessness and to prepare a report for its sixth session (A/2456, paragraph 123).

27. The relevant report, entitled "Third Report on the Elimination or Reduction of Statelessness" (A/CN.4/81), contains four draft international instruments: a Protocol for the Elimination of Present Statelessness attached to the draft Convention on the Elimination of Future Statelessness, a Protocol for the Reduction of Present Statelessness attached to the draft Convention on the Reduction of Future Statelessness, an Alternative Convention on the Elimination of Present Statelessness and an Alternative Convention on the Reduction of Present Statelessness.

28. The Commission discussed the report at its 246th to 250th, 275th, 276th and 280th meetings.

29. The Commission considered that it was not feasible to suggest measures for the total and immediate elimination of present statelessness. The Special Rapporteur accordingly withdrew the draft Protocol for the Elimination of Present Statelessness and the Alternative Convention for the Elimination of Present Statelessness. The Commission also considered that the solutions offered by the draft Protocol on the Reduction of Present Statelessness, under which the provisions of the draft Convention for the Reduction of Future Statelessness were to be applicable to present statelessness, would not be acceptable. Hence the Special Rapporteur also withdrew this draft Protocol. In the course of the discussion (A/CN.4/SR.246) Mr. Lauterpacht submitted certain proposals for the reduction of present statelessness. The texts actually before the Commission were therefore Mr. Lauterpacht's proposals and the Alternative Convention on the Reduction of Present Statelessness prepared by the Special Rapporteur. It decided to accept the Special Rapporteur's draft as the basis of its discussion.

30. The Special Rapporteur amended his draft in the course of the discussion, to some extent taking into account Mr. Lauterpacht's proposals.

31. In formulating its proposals relating to present statelessness, the Commission considered that present statelessness could only be reduced if stateless persons acquired a nationality which would normally be that of the country of residence. Since, however, the acquisition of nationality is in all countries governed by certain statutory conditions including residence qualifications, the Commission considered that for the purpose of improving the condition of statelessness it

would be desirable that stateless persons should be given the special status of "protected person" in their country of residence prior to the acquisition of a nationality. Stateless persons possessing this status would have all civil rights accorded to nationals with the exception of political rights, and would also be entitled to the diplomatic protection of the Government of the country of residence; the protecting State might impose on them the same obligations as it imposed on nationals.

32. The Commission welcomed the resolution of the Economic and Social Council endorsing the principles underlying the work of the Commission for the elimination or reduction of statelessness (resolution 526 B (XVII)) and also the decision of the Council to convene a conference of plenipotentiaries to review and adopt a protocol relating to the status of stateless persons by which certain provisions of the Convention relating to the Status of Refugees of 28 July 1951 would become applicable to stateless persons (resolution 526 A (XVII)).

33. The Commission considered the question of the relation of its work on present statelessness to the subject of the forthcoming conference of plenipotentiaries. It was of the opinion that, while the object of that conference was the regulation of the status of stateless persons by international agreement, the Commission was itself primarily concerned with the reduction of present statelessness.

34. In considering the problem of present statelessness, the Commission was aware of the fact that stateless persons who are refugees as defined in the Statute of the Office of the United Nations High Commissioner for Refugees receive international protection by the United Nations through the High Commissioner. The suggestions contained in the present report are without prejudice to the question of granting international protection by an international agency, as distinguished from diplomatic protection by States, to stateless persons pending their acquisition of a nationality.

35. The Special Rapporteur also proposed that *de facto* stateless persons should be assimilated to *de jure* stateless persons as regards the right to the status of "protected person" and the right to naturalization, provided that they renounced the ineffective nationality they possessed. This proposal was rejected by the Commission.

36. In view of the great difficulties of a non-legal nature which beset the problem of present statelessness, the Commission considered that the proposals adopted, though worded in the form of articles, should merely be regarded as suggestions which Governments may wish to take into account when attempting a solution of this urgent problem.

37. The suggestions adopted³ by the Commission are reproduced below with some comments.

Article 1

1. A State in whose territory a stateless person is resident shall, on his application, grant him the legal status of "protected person".

2. If a stateless person constitutes a danger to public order or to national security, he may be excluded from the benefit of the provisions of paragraph 1.

Comment

The Commission considers that, for the purpose of reducing statelessness, stateless persons should have an opportunity to acquire an effective nationality; this is provided for in article V. However, it considered that, subject only to the proviso contained in paragraph 2, a stateless person should, pending the acquisition of a nationality, be granted certain rights which for most practical purposes would give him the status of a national.

Article 2

1. A person possessing the status of "protected person" under article 1, paragraph 1, shall be entitled to the rights enjoyed by the nationals of the protecting State with the exception of political rights. He shall also be entitled to the diplomatic protection of the protecting State.

2. The protecting State may impose on him the same obligations as upon its nationals.

Comment

The obligations referred to in paragraph 2 of this article include those of military service.

Article 3

Whenever the status of "protected person" has been granted to a stateless person, his minor children and, on her application, his wife, shall acquire the said status, provided that they are stateless and resident in the territory of the protecting State.

Comment

This suggestion follows the rule in force in many countries concerning the effect of naturalization on the wife and children of a naturalized person.

³ Mr. Edmonds abstained from voting on the suggestions and on the part of the report relating to them, for reasons explained at the Commission's 276th meeting (A/CN.4/SR.276). Mr. François declared that, in voting for the suggestions, he wished to enter a reservation in respect of article V, to which he was opposed for the reasons he had stated during the 276th meeting. Mr. Sandström abstained from voting on the suggestions for reasons stated at the same meeting. Mr. Zourek voted against the suggestions and against the part of the report relating thereto for reasons of principle stated in the course of the discussions and in connexion with the vote taken on the draft conventions for the elimination or reduction of future statelessness, as well as for the reasons explained at the 276th meeting.

Article 4

A child who possesses the status of "protected person", shall, on attaining the age of majority, acquire ipso facto the nationality of the protecting State, provided that he is resident in the territory of that State.

Article 5

States shall grant their nationality to any stateless person who fulfils the conditions which their legislation prescribes for the naturalization of aliens.

Comment

The purpose of article V is that stateless persons who fulfil the statutory conditions governing naturalization, including application and a prescribed period of residence, should be granted nationality as of right. The Commission felt that stateless persons should in this respect receive more favourable treatment than ordinary aliens in the matter of naturalization seeing that the latter, before being naturalized, have nevertheless a nationality, whereas stateless persons have none.

Article 6

A person to whom the status of "protected person" is granted by a State shall not lose the benefit of the said status unless:

(a) He acquires the nationality of that or of another State;

(b) Another State Party hereto grants him the status of "protected person" in conformity with article 1;

(c) He resides abroad for five years without the authorization of the protecting State.

Article 7

There shall apply to any convention concluded on this subject the provisions of the conventions on the elimination and reduction of future statelessness concerning the interpretation and application of their terms, including the provisions for the creation of an agency to act on behalf of persons claiming to have been wrongfully denied nationality.

PART THREE

Other aspects of the subject of nationality

38. At its 252nd meeting, the Commission held a general discussion on the subject of multiple nationality on which the Special Rapporteur had submitted a report (A/CN.4/83) and the Secretariat a memorandum (A/CN.4/84). Different views were expressed on this problem and on the desirability of dealing with it. Several members expressed the opinion that the Commission should content itself with the work it had done so far in the field of nationality.

39. The Commission decided to defer any further consideration of multiple nationality and other questions relating to nationality.

40. The Special Rapporteur expressed before the Commission his appreciation of the valuable assistance rendered by Dr. P. Weis, legal adviser to the Office of the United Nations High Commissioner for Refugees, to him and his predecessor, Mr. M. O. Hudson, in the work on the topic "Nationality, including statelessness".

Chapter III

DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

41. By resolution 177 (II) of 21 November 1947, the General Assembly decided:

"To entrust the formulation of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal to the International Law Commission, the members of which will, in accordance with resolution 174 (II), be elected at the next session of the General Assembly",

and directed the Commission to:

"(a) Formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal, and

"(b) Prepare a draft Code of Offences against the Peace and Security of Mankind, indicating clearly the place to be accorded on the principles mentioned in sub-paragraph (a) above."

The Commission's report to the General Assembly at the latter's fifth session in 1950⁴ contained the formulation of the Nürnberg principles. By resolution 488 (V) of 12 December 1950, the General Assembly asked the Governments of Member States to comment on the formulation, and requested the Commission:

"In preparing the draft Code of Offences against the Peace and Security of Mankind, to take account of the observations made on this formulation by delegations during the fifth session of the General Assembly and of any observations which may be made by Governments."

42. The preparation of a draft Code of Offences against the Peace and Security of Mankind was given preliminary consideration by the Commission at its first session, in 1949, when the Commission appointed Mr. J. Spiropoulos Special Rapporteur on the subject, and invited him to prepare a working paper for submission to the Commission at its second session. The Commission also decided that a questionnaire should be circulated to Governments inquiring what offences, apart from those recognized in the Charter and judgment of the Nürnberg Tribunal, should be included in the draft code.

43. The Special Rapporteur's report to the second session in 1950 (A/CN.4/25) was taken as the basis of discussion. The subject was considered by the Commission at its 54th to 62nd and 72nd meetings. The Commission also took into consideration the replies received from Governments (A/CN.4/19, part II, A/CN.4/19/Add.1 and 2) to its questionnaire. In the light of the debate, a drafting committee prepared a provisional text (A/CN.4/R.6) which was referred, without discussion, to the Special Rapporteur, who was requested to continue his research and to submit a new report to the Commission at its third session in 1951.

44. The Special Rapporteur's report to the third session (A/CN.4/44) contained a revised draft and also a digest of the relevant observations on the Commission's formulation of the Nürnberg principles made by delegations during the fifth session of the General Assembly. The Commission also considered the observations received from Governments (A/CN.4/45 and Corr. 1, and Add.1 and 2) on this formulation. After debating these comments at its 89th to 92nd, 106th to 111th, 129th and 133rd meetings, the Commission adopted a draft Code of Offences against the Peace and Security of Mankind which was submitted to the General Assembly in the Commission's report on its third session.⁵

45. The question of the draft Code was included in the provisional agenda of the sixth session of the General Assembly, but was, by a decision of the Assembly at its 342nd plenary meeting on 13 November 1951, postponed until the seventh session.

46. By a circular letter to the Governments of the Member States, dated 17 December 1951, the Secretary-General drew their attention to the draft Code and invited their comments thereon. Comments were received from fourteen Governments and were reproduced in documents A/2162 and Add.1. The Secretary-General also included the question of the draft Code in the provisional agenda of the seventh session of the General Assembly. The item was, however, by a decision taken by the General Assembly at its 382nd plenary meeting on 17 October 1952, omitted from the final agenda of the seventh session on the understanding that the matter would continue to be considered by the International Law Commission.

47. The Commission again took up the matter at its fifth session in 1953 and decided to request the Special Rapporteur to undertake a further study of the question and to prepare a new report for submission at the sixth session.

48. The Special Rapporteur's report to the sixth session, entitled "Third Report relating to a draft Code of Offences against the Peace and Security of Mankind" (A/CN.4/85), discussed the observations received from Governments and, in the light of those observations, proposed certain changes in the text of the draft Code previously adopted by the Commission. The comments submitted by the Government of Belgium (A/2162/Add.2) were received too late to be discussed in the Special Rapporteur's report but were taken into consideration by the Commission.

⁴ See *Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316)*.

⁵ *Ibid.*, *Sixth Session, Supplement No. 9 (A/1858)*.