UNITED NATIONS

REPORT
OF THE
INTERNATIONAL LAW COMMISSION

Covering the work of its sixth session
3 June—28 July 1954

GENERAL ASSEMBLY

OFFICIAL RECORDS: NINTH SESSION

SUPPLEMENT No. 9 (A/2693)

NEW YORK, 1954

(36 p.)

UNITED NATIONS

REPORT OF THE INTERNATIONAL LAW COMMISSION

COVERING THE WORK OF ITS SIXTH SESSION
3 JUNE – 28 JULY 1954

GENERAL ASSEMBLY

OFFICIAL RECORDS: NINTH SESSION
SUPPLEMENT No. 9 (A/2693)

New York, 1954

TABLE OF CONTENTS

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Chapter I

INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947 and in accordance with the Statute of the Commission annexed thereto, held its sixth session at Unesco House in Paris, France, from 3 June to 28 July 1954. The work of the Commission during the session is related in the present report which is submitted to the General Assembly.

I. Membership and Attendance

2. The Commission consists of the following members:

Name	*Nationality*
Mr. Gilberto Amado	Brazil
Mr. Roberto Córdova	Mexico
Mr. Douglas L. Edmonds	United States of America
Mr. J. P. A. François	Netherlands
Mr. F. V. García-Amador	Cuba
Mr. Shuhsi Hsu	China
Faris Bey el-Khouri	Syria
Mr. S. B. Krylov	Union of Soviet Socialist Republics
Mr. H. Lauterpacht	United Kingdom of Great Britain and Northern Ireland
Mr. Radhabinod Pal	India
Mr. Carlos Salamanca	Bolivia
Mr. A. E. F. Sandström	Sweden
Mr. Georges Scelle	France
Mr. Jean Spiropoulos	Greece
Mr. Jaroslav Zourek	Czechoslovakia

3. The members listed above were elected by the General Assembly at its eighth session, with the exception of Mr. Edmonds who, on 28 June 1954, was elected by the Commission, in conformity with article 11 of its Statute, to fill the vacancy caused by the resignation of Mr. John J. Parker. The term of office of the members is three years from 1 January 1954.

4. All the members of the Commission were present at the sixth session except Mr. S. B. Krylov who for reasons of health was unable to attend. Mr. Spiropoulos attended the meetings from 6 June to 17 July, Mr. Scelle from the beginning of the session to 21 July. Mr. Zourek was present from 21 June and Mr. Edmonds from 5 July, both to the end of the session.

II. Officers

5. At its meeting on 3 June 1954, the Commission elected the following officers:

Chairman: Mr. A. E. F. Sandström;
First Vice-Chairman: Mr. Roberto Córdova;
Second Vice-Chairman: Mr. Radhabinod Pal;
Rapporteur: Mr. J. P. A. François.

6. Mr. Yuen-li Liang, Director of the Division for the Development and Codification of International Law, represented the Secretary-General and acted as Secretary of the Commission.

III. Agenda

7. The Commission adopted an agenda for the sixth session consisting of the following items:

(1) Filling of casual vacancy in the Commission;
(2) Régime of the territorial sea;
(3) Régime of the high seas;
(4) Draft code of offences against the peace and security of mankind;
(5) Nationality including statelessness;
(6) Law of treaties;
(7) Question of codifying the topic "Diplomatic intercourse and immunities";
(8) Request of the General Assembly for the codification of the principles of international law governing State responsibility;
(9) Control and limitation of documentation;
(10) Date and place of the seventh session;
(11) Other business.

8. In the course of the session the Commission held forty-one meetings. It considered the items on the agenda, with the exception of the régime of the high seas (item 3) and the law of treaties (item 6). The sixth report on the régime of the high seas (A/CN.4/79) submitted by Mr. François, special rapporteur as well as the two reports on the law of treaties (A/CN.4/63 and A/CN.4/87) submitted by Mr. Lauterpacht, special rapporteur, were held over for consideration at the next session.

9. The work on the questions dealt with by the Commission is summarized in chapters II to V of the present report.

Chapter II

NATIONALITY INCLUDING STATELESSNESS

PART ONE

Future statelessness

10. At its fifth session in 1953, the International Law Commission proposed a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness which were transmitted to Governments for comments.[1] The Governments of the following fifteen countries replied with detailed comments: Australia, Belgium, Canada, Costa Rica, Denmark, Egypt, Honduras, India, Lebanon, the Netherlands, Norway, Philippines, Sweden, the United Kingdom and the United States of America (A/CN.4/82 and Add. 1 and 8). In addition a number of organizations interested in the question of statelessness submitted comments which were also taken into consideration by the Commission.

11. At its sixth session in 1954, during its 242nd to 245th, 250th, 251st, 271st, 273rd to 276th and 280th meetings, the Commission discussed the observations of Governments and redrafted some of the articles in the light of their comments.

12. The most common observation made by Governments was that some provisions of their legislation conflicted with certain articles of the draft conventions. Since statelessness is, however, attributable precisely to the presence of those provisions in municipal law, the Commission took the view that this was not a decisive objection for, if Governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should be prepared to introduce the necessary amendments in their legislation.

13. For easy comparison, the text of both draft conventions, as now revised, is reproduced below in parallel columns. Passages which vary from the 1953 text are reproduced in italics. Most of the changes originate in suggestions made by Governments and members of the Commission. In addition certain drafting changes were made. The final clauses in articles 12 to 18 did not appear in the drafts of 1953.

14. Several Governments in their comments declared themselves in favour of the reduction convention, while others expressed no preference for either convention or declared that they had no objections to the principles underlying each of the conventions. The Commission was of the opinion that it should, in view of these comments, submit both draft conventions to the General Assembly, which could consider the question whether preference should be given to the draft Convention on the Elimination of Future Statelessness or to the draft Convention on the Reduction of Future statelessness.

15. Article 1, paragraph 2, of the reduction convention, in its revised form, expressed more accurately than did the earlier text the Commission's intention that the person concerned should have the possibility to decide upon his nationality at an age when he will usually be called up for military service in the armed forces of the State of which he proposes to become a national.

16. Article 1, paragraph 3, of the reduction convention was, in several respects, revised. The 1953 draft read as follows:

> "3. If, in consequence of the operation of such conditions as are envisaged in paragraph 2, a 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. The nationality of the father shall prevail over that of the mother."

As the convention cannot make provision for cases where the parent has the nationality of a State not a Party to the convention, a new clause was added expressly stipulating that the person concerned acquires his parent's nationality only "if such parent has the nationality of one of the Parties". The phrase "such Party (*i.e.*, that of which the parent is a national) may make the acquisition of its nationality dependent on the person having been normally resident in its territory" was inserted to take into account an observation of one of the Governments. As the country of birth may, under paragraph 2, require residence as a condition of the acquisition of its nationality, it was considered proper that the parent's country should be free to stipulate an analogous condition.

17. Article 4 of both draft conventions deals with the case of a person not born in the territory of one of the Parties. In this case, it is obvious that article 1 of the elimination convention, and article 1, paragraph 1, of the reduction convention will not be applicable. No substantive change was made in the 1953 text, but it is felt that the new text is both clearer and more accurate. The phrase "if otherwise stateless" was introduced in the light of an observation of one Government because the article is, of course, meant to cover those cases, and only those cases, in which a person, because not born in the territory of a Party, is stateless. If a person, even though born in a State not a Party to the convention, acquires that State's nationality the article will not operate since he is not stateless.

18. Article 7 (old article 6), paragraph 3, of the reduction convention was substantially modified in view of the attitude of a number of Governments which are reluctant to waive the power to deprive a person of nationality if, by some positive act, such as departure or stay abroad, or by some omission such as failure to register, he implicitly displays a lack of attachment to his country. The Commission, keeping in mind that the main and only purpose of the draft convention is to reduce statelessness as much as possible, decided to restrict the possibility of depriving a person of

---

[1] See *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, document A/2456, pages 27 to 29. For the sake of brevity, the two conventions are here referred to as, respectively, the "elimination convention" and the "reduction convention".

nationality on such grounds to the case of a *naturalized* person if he resides in his country of origin for so long that under the law of his adoptive country he may be considered to have severed his connexion with that country.

19. Under article 8 (old article 7) of the elimination convention it is not permissible for a State to deprive a person of his nationality on any grounds whatsoever (whether by way of penalty or otherwise) if he would thereby become stateless.

20. In keeping with the difference in objective between the two draft conventions, the elimination convention allows no exceptions to the rule, but article 8 (old article 7), paragraph 1, of the reduction convention allows two exceptions: firstly, in the circumstances described in article 7, paragraph 3; and, secondly, if in disregard of his Government's direction the person enters or remains in the service of a foreign country. In these cases he may be deprived of his nationality even though he may as a consequence become stateless.

21. Article 8 (old article 7), paragraph 2, of the reduction convention as now redrafted, no longer provides that the deprivation order may only be made by a judicial authority; in view of an observation by one Government, it does not specify what authority is competent to make such an order but provides that an appeal to the courts must be possible.

22. The prohibition against deprivation of nationality on racial, ethnic, religious and political grounds contained in article 8 of the 1953 draft is now reproduced in article 9.

23. In article 11, paragraph 1, of both draft conventions, which corresponds with article 10, paragraph 1, of the 1953 draft, the words "when it deems appropriate" were added to stress that the proposed agency should have authority to decide in what cases its intervention is justified and also what cases may properly be referred to the special tribunal proposed to be established.

24. *Article 11, paragraphs 2 to 4:* The corresponding provision as drafted in 1953 (article 10) contained a paragraph 4 under which disputes between States concerning the interpretation—or application—of the conventions were to be referred either to the International Court of Justice or to the special tribunal mentioned in paragraph 2 of the article. This alternative jurisdiction might conceivably have produced conflicts. Accordingly, the Commission decided to vest jurisdiction concerning such disputes in the special tribunal (article 11, paragraph 2). The Commission considered it necessary, however, to make provision for the adjudication of such disputes by the International Court of Justice in case they should not be referred to the special tribunal (article 11, paragraph 4).

25. The texts of both draft conventions, as adopted[2] by the Commission at its present session, are reproduced below:

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE 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,

DRAFT CONVENTION ON THE REDUCTION OF FUTURE 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,

[2] Mr. Edmonds abstained from voting on the draft conventions, as well as on the part of the report accompanying the drafts, for reasons explained at the Commission's 275th meeting A/CN.4/SR.275). Mr. Zourek declared that he was voting against the draft conventions and the commentary relating to them for reasons of principle which he had given in the course of the discussions at the Commission's fifth session, and which he had summarized during the sixth session at the Commission's 275th meeting.

The Contracting Parties
Hereby agree as follows:

Article 1

A *person* who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory *he* is born,

Article 2

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

Article 3

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

Article 4

If a child is not born in the territory of a State which is a Party to this convention he shall, if otherwise stateless, 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 5

If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality.

Article 6

(previous article 5, paragraph 2)

The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

Article 7

(previous article 6)

1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

The Contracting Parties
Hereby agree as follows:

Article 1

1. A *person* who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory *he* is born.

2. The national law of the Party may make preservation of such nationality dependent on the person being normally resident in its territory until the age of eighteen *years and on the condition that on attaining that age he does not opt for and acquire another nationality.*

3. If, in consequence of the operation of paragraph 2, a person on attaining the age of eighteen *years would become stateless,* he shall acquire the nationality of one of his parents, *if such parent has the nationality of one of the Parties. Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory.* The nationality of the father shall prevail over that of the mother.

Article 2

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

Article 3

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

Article 4

If a child is not born in the territory of a State which is a Party to this convention he shall, if otherwise stateless, acquire the nationality of the Party of which one of *his* parents is a national. *Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory.* The nationality of the father shall prevail over that of the mother.

Article 5

If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality.

Article 6

(previous article 5, paragraph 2)

The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

Article 7

(previous article 6)

1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

2. *A person* who *seeks* naturalization in a foreign country or who *obtains* an expatriation permit for that purpose shall not lose *his* nationality unless *he acquires* the nationality of that foreign country.

3. *A person* shall not lose *his* nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground.

Article 8

(previous article 7)

A Party may not deprive *its* nationals of *their* nationality by way of penalty *or on any other ground* if such deprivation renders them stateless.

Article 9

(previous article 8)

A Party may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

(previous article 9)

1. *Every treaty* providing for *the* transfer of *a territory* shall include provisions for ensuring that, subject to the exercise of the right of option, *the* inhabitants of *that territory* shall not become stateless.

2. In the absence of such provisions, *a State* to which territory is transferred, or which otherwise *acquires* territory, or *a new State* formed on territory previously belonging to another State or States, shall confer *its* nationality upon the inhabitants of such territory unless *they* retain their former nationality by option or otherwise or have or acquire another nationality.

Article 11

(previous article 10)

1. The Parties undertake to establish, within the framework of the United Nations, an agency to act, *when it deems appropriate,* 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 any dispute between them concerning the interpretation or application of this convention and* to decide complaints presented by the agency referred to in paragraph 1 on behalf of *a person* claiming to have been denied nationality in violation of the provisions of the convention.

2. *A person* who *seeks* naturalization in a foreign country or who *obtains* an expatriation permit for that purpose shall not lose *his* nationality unless *he acquires* the nationality of that foreign country.

3. *A natural-born national* shall not lose his nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register, or on any other similar ground. *A naturalized person may lose his nationality on account of residence in his country of origin for the period specified by the law of the Party which granted the naturalization.*

Article 8

(previous article 7)

1. *A Party may* not deprive *its* nationals of *their* nationality by way of penalty *or on any other ground* if such deprivation renders them stateless, except on the ground *mentioned in article 7, paragraph 3, or on the ground* that they voluntarily enter or continue in the service of a foreign country in disregard of an express prohibition of their State.

2. In the *cases* to which paragraph 1 above refers, the deprivation shall be pronounced *in accordance with due process of law which shall provide for recourse to judicial authority.*

Article 9

(previous article 8)

A Party may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

(previous article 9)

1. *Every treaty* providing for *the* transfer of a *territory* shall include provisions for ensuring that, subject to the exercise of the right of option, *the* inhabitants of *that territory* shall not become stateless.

2. In the absence of such provisions, *a State* to which territory is transferred, or which otherwise *acquires* territory, or *a* new *State* formed on territory previously belonging to another State or States, shall confer *its* nationality upon the inhabitants of such territory unless *they* retain their former nationality by option or otherwise or have or acquire another nationality.

Article 11

(previous article 10)

1. The Parties undertake to establish, within the framework of the United Nations, an agency to act, *when it deems appropriate,* 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 any dispute between them concerning the interpretation or application of this convention and* to decide complaints presented by the agency referred to in paragraph 1 on behalf of *a person* claiming to have been denied nationality in violation of the provisions of the convention.

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

4. The Parties agree that any dispute between them concerning the interpretation or application of the convention shall, *if not referred to the tribunal provided for in paragraph 2,* be submitted to the International Court of Justice.

Article 12

1. The present convention, having been approved by the General Assembly, shall until . . . (a year after the approval of the General Assembly) be open for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign is addressed by the General Assembly.

2. The present convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. After . . . (the above date) the present convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 13

1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of the convention pending the enactment of necessary legislation.

2. No other reservations to the present convention shall be admissible.

Article 14

1. The present Convention shall enter into force on the ninetieth day following the date of the deposit of the . . . (*e.g.*, third or sixth) instrument of ratification or accession.

2. For each State ratifying or acceding to the present convention subsequently to the latter date, the convention shall enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State.

Article 15

Any Party to the present convention may denounce it at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the said Party one year after the date of its receipt by the Secretary-General.

Article 16

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 12 of the following particulars:

(*a*) Signatures, ratifications and accessions under article 12;

(*b*) Reservations under article 13;

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

4. The Parties agree that any dispute between them concerning the interpretation or application of the convention shall, *if not referred to the tribunal provided for in paragraph 2,* be submitted to the International Court of Justice.

Article 12

1. The present convention, having been approved by the General Assembly, shall until . . . (a year after the approval of the General Assembly) be open for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign is addressed by the General Assembly.

2. The present convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. After . . . (the above date) the present convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 13

1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of the convention pending the enactment of necessary legislation.

2. No other reservations to the present convention shall be admissible.

Article 14

1. The present Convention shall enter into force on the ninetieth day following the date of the deposit of the . . . (*e.g.*, third or sixth) instrument of ratification or accession.

2. For each State ratifying or acceding to the present convention subsequently to the latter date, the convention shall enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State.

Article 15

Any Party to the present convention may denounce it at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the said Party one year after the date of its receipt by the Secretary-General.

Article 16

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 12 of the following particulars:

(*a*) Signatures, ratifications and accessions under article 12;

(*b*) Reservations under article 13;

(c) The date upon which the present convention enters into force in pursuance of article 14;

(d) Denunciations under article 15.

Article 17

1. The present convention shall be deposited with the Secretariat of the United Nations.

2. A certified copy of the convention shall be transmitted to all Members of the United Nations and to the non-member States referred to in article 12.

Article 18

The present convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

(c) The date upon which the present convention enters into force in pursuance of article 14;

(d) Denunciations under article 15.

Article 17

1. The present convention shall be deposited with the Secretariat of the United Nations.

2. A certified copy of the convention shall be transmitted to all Members of the United Nations and to the non-member States referred to in article 12.

Article 18

The present convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

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 adopted[3] by the Commission are reproduced below with some comments.

Article I

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 II

1. A person possessing the status of "protected person" under article I, 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 III

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.

Article IV

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 V

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 VI

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 VII

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".

[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.

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 to the principles mentioned in sub-paragraph (*a*) above."

The Commission's report to the General Assembly at the latter's fifth session in 1950[4] 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.

49. The Commission considered the draft code at its 266th to 271st, 276th and 280th meetings, and decided to make certain revisions in the previously adopted

[4] See *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, document A/1316.

[5] *Ibid., Sixth Session, Supplement No. 9*, document A/1858.

text. The revised provisions are set forth below with some brief comments. The full text of the draft code as revised by the Commission is reproduced at the end of this chapter. For commentaries on those provisions of the draft code which were not modified by the Commission, see paragraph 59 of the Commission's report on its third session (A/1858).

50. Apart from making certain drafting changes, the Commission decided to modify the previous text of the draft code in the following respects.

Article 1

Offences against the peace and security of mankind, as defined in this code, are crimes under international law, for which the responsible individuals shall be punished.

Comment

The Commission decided to replace the words "shall be punishable" in the previous text by the words "shall be punished" in order to emphasize the obligation to punish the perpetrators of international crimes. Since the question of establishing an international criminal court is under consideration by the General Assembly, the Commission did not specify whether persons accused of crimes under international law should be tried by national courts or by an international tribunal.

In conformity with a decision taken by the Commission at its third session (see the Commission's report on that session, A/1858, paragraph 58 (c)) the article deals only with the criminal responsibility of individuals.

Article 2, paragraph 4

The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

Comment

The text previously adopted by the Commission read as follows:

"The incursion into the territory of a State from the territory of another State by armed bands acting for a political purpose."

The Commission adopted the new text as it was of the opinion that the scope of the article should be widened.

Article 2, paragraph 9

The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character, in order to force its will and thereby obtain advantages of any kind.

Comment

This paragraph is entirely new. Not every kind of political or economic pressure is necessarily a crime according to this paragraph. It applies only to cases where the coercive measures constitute a real intervention in the internal or external affairs of another State.

Article 2, paragraph 11

(previously paragraph 10)

Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

Comment

The text previously adopted by the Commission read as follows:

"Inhuman acts by the authorities of a State or by private individuals against any civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, religious or cultural grounds, when such acts are committed in execution of or in connexion with other offences defined in this article."

This text corresponded in substance to article 6, paragraph (*c*), of the Charter of the International Military Tribunal at Nürnberg. It was, however, wider in scope than the said paragraph in two respects: it prohibited also inhuman acts committed on cultural grounds and, furthermore, it characterized as crimes under international law not only inhuman acts committed in connexion with crimes against peace or war crimes, as defined in that Charter, but also such acts committed in connexion with all other offences defined in article 2 of the draft code.

The Commission decided to enlarge the scope of the paragraph so as to make the punishment of the acts enumerated in the paragraph independent of whether or not they are committed in connexion with other offences defined in the draft code. On the other hand, in order not to characterize any inhuman act committed by a private individual as an international crime, it was found necessary to provide that such an act constitutes an international crime only if committed by the private individual at the instigation or with the toleration of the authorities of a State.

Article 4

The fact that a person charged with an offence defined in this Code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

Comment

The text previously adopted read as follows:

"The fact that a person charged with an offence defined in this Code acted pursuant to order of his Government or of a superior does not relieve him from responsibility, provided a moral choice was in fact possible to him."

Since some Governments had criticized the expression "moral choice", the Commission decided to replace it by the wording of the new text above.

51. In addition, the Commission decided to omit article 5 of the previous text as it felt that, at the present stage, the draft code should simply define certain acts as international crimes and lay down certain

general principles regarding criminal liability under international law. The Commission considered that the question of penalties could more conveniently be dealt with at a later stage, after it had been decided how the code was to become operative.

52. With reference to a suggestion made by one Government, the Commission confirms that the terms of article 2, paragraph 12 (old paragraph 11), should be construed as covering not only the acts referred to in The Hague Conventions of 1907 but also any act which violates the rules and customs of war prevailing at the time of its commission.

53. In their observations on the draft code, several Governments expressed the fear that the application of article 2, paragraph 13 (old paragraph 12), might give rise to difficulties. The Commission, although not overlooking the possibility of such difficulties, decided not to modify the wording of the paragraph as it felt that a court applying the code would overcome such difficulties by means of a reasonable interpretation.

54. The full text of the draft code as adopted[6] by the Commission at its present session is reproduced below:

Article 1

Offences against the peace and security of mankind, as defined in this code, are crimes under international law, for which the responsible individuals shall be punished.

Article 2

The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) The annexation by the authorities of a State of territory belonging to another State, by means of acts contrary to international law.

(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind.

(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, including:

(i) Killing members of the group;

(ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) Imposing measures intended to prevent births within the group;

(v) Forcibly transferring children of the group to another group.

(11) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

(12) Acts in violation of the laws or customs of war.

(13) Acts which constitute:

(i) Conspiracy to commit any of the offences defined in the preceding paragraphs of this article; or

(ii) Direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or

(iii) Complicity in the commission of any of the offences defined in the preceding paragraphs of this article; or

(iv) Attempts to commit any of the offences defined in the preceding paragraphs of this article.

[6] Mr. Edmonds abstained from voting for reasons stated by him at the 276th meeting (A/CN.4/SR.276). Mr. Lauterpacht abstained from voting and, in particular, recorded his dissent from paragraphs 5 and 9 of article 2 and from article 4, for reasons stated at the 271st meeting (A/CN.4/SR.271). Mr. Pal abstained from voting for the reasons stated in the course of the discussions (A/CN.4/SR.276). Mr. Sandström declared that, in voting for the draft code, he wished to enter a reservation in respect of paragraph 9 of article 2 for the reasons stated at the 280th meeting (A/CN.4/SR.280).

Article 3

The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this code.

Article 4

The fact that a person charged with an offence defined in this code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

Chapter IV

REGIME OF THE TERRITORIAL SEA

I. Introduction

55. At its third session in 1951 the International Law Commission decided to initiate work on the topic "régime of territorial waters" which it had selected for codification and to which it had given priority pursuant to a recommendation contained in General Assembly resolution 374 (IV) of 6 December 1949. Mr. J. P. A. François was appointed special rapporteur on this topic.

56. The Commission was greatly assisted by the work done at the Conference for the Codification of International Law held at The Hague in March and April 1930, which had amongst other subjects considered the régime of the territorial sea. Owing to differences of opinion concerning the extent of the territorial sea, it had proved impossible to conclude a convention relating to this question; nevertheless, the reports and preparatory studies of that Conference were a valuable basis on which the Commission has largely relied.

57. At the fourth session of the Commission in 1952, the special rapporteur submitted a "Report on the Régime of the Territorial Sea" (A/CN.4/53) which contained a draft regulation consisting of twenty-three articles, with annotations.

58. The Commission took the special rapporteur's report as the basis of discussion and considered certain aspects of the régime of the territorial sea from its 164th to its 172nd meetings.

59. During its fourth session in 1952, the Commission considered the question of the juridical status of the territorial sea; the breadth of the territorial sea; the question of base lines; and bays. To guide the special rapporteur, it expressed certain preliminary opinions on some of these questions.

60. So far as the question of the delimitation of the territorial sea of two adjacent States is concerned, the Commission decided to ask Governments for particulars concerning their practice and for any observations which they might consider useful. The Commission also decided that the special rapporteur should be free to consult with experts with a view to elucidating certain technical questions.

61. The special rapporteur was asked to submit at the fifth session a further report containing a draft regulation and comments revised in the light of opinions expressed at the fourth session.

62. In compliance with this request, the special rapporteur on 19 February 1953, submitted a "Second Report on the Régime of the Territorial Sea" (A/CN.4/61).

63. The group of experts mentioned above met at The Hague from 14 to 16 April 1953, under the chairmanship of the special rapporteur. Its members were:

Professor L. E. G. Asplund (Geographic Survey Department, Stockholm);

Mr. S. Whittemore Boggs (Special Adviser on Geography, Department of State, Washington, D. C.);

Mr. P. R. V. Couillault (Ingénieur en Chef du Service central hydrographique, Paris);

Commander R. H. Kennedy, O.B.E., R.N. (Retd.), (Hydrographic Department, Admiralty, London), accompanied by Mr. R. C. Shawyer (Administrative Officer, Admiralty, London);

Vice-Admiral A. S. Pinke (Retd.), (Royal Netherlands Navy, The Hague).

The group of experts submitted a report on technical questions. In the light of their comments, the rapporteur amended and supplemented some of his own draft articles; these changes appear in an addendum to the second report on the régime of the territorial sea (A/CN.4/61/Add.1) in which the report of the experts appear as an annex.

64. The Secretary-General's inquiry addressed to Governments concerning their attitude to the delimitation of the territorial sea of two adjacent States elicited a number of replies which are reproduced in documents A/CN.4/71 and Add.1 and 2.

65. Owing to lack of time the Commission was unable to discuss the topics at its fifth session and referred it to the sixth session.

66. At its sixth session the special rapporteur submitted a further revised draft regulation (A/CN.4/77) in which he made certain changes in the light of the observations of the experts. He also took into account the comments received from Governments concerning the delimitation of the territorial sea between adjacent States the coasts of which face each other.

67. At its sixth session, the Commission considered the report at its 252nd to 265th, 271st to 273rd, 277th to 281st meetings. It adopted a number of draft articles, with comments, which are to be submitted to Governments in conformity with the provisions of its Statute.

68. On the question of the breadth of the territorial sea, divergent opinions were expressed during the debates at the various sessions of the Commission. The following suggestions were made:

(1) That a uniform limit (three, four, six or twelve miles) should be adopted;

(2) That the breadth of the territorial sea should be fixed at three miles subject to the right of the coastal State to exercise, up to a distance of twelve miles, the rights which the Commission has recognized as existing in the contiguous zones;

(3) That the breadth of the territorial sea should be three miles, subject to the right of the coastal State to extend this limit to twelve miles, provided that it observes the following conditions:

(i) Freedom of passage through the entire area must be safeguarded;

(ii) The coastal State may not claim exclusive fishing rights for its nationals beyond the distance of three nautical miles from the base line of the territorial sea. Beyond this three-mile limit the coastal State may prescribe regulations governing fisheries in the territorial sea, though the sole object of such regulations must be the protection of the resources of the sea;

(4) That it should be admitted that the breadth of the territorial sea may be fixed by each State at a distance between three to twelve miles;

(5) That a uniform limit should be adopted for all States whose coasts abut on the same sea or for all States in a particular region;

(6) That the limit should vary from State to State in keeping with the special circumstances and historic rights peculiar to each;

(7) That the basis of the breadth of the territorial sea should be the area of sea situated over its continental shelf;

(8) That it should be admitted that the breadth of the territorial sea depends on different factors which vary from case to case, and it should be agreed that each coastal State is entitled to fix the breadth of its own territorial sea in accordance with its needs;

(9) That the breadth of the territorial sea, in so far as not laid down in special conventions, would be fixed by a diplomatic conference convened for this purpose.

69. The Commission realized that each of these solutions would meet with the opposition of some States. However, agreement will be impossible unless States are prepared to make concessions.

70. That being so, the Commission would be greatly assisted in its task if the Governments could state, in their comments on these draft articles, what is their attitude concerning the question of the breadth of the territorial sea and suggest how it could be solved. The Commission hopes that the replies of Governments will enable it to formulate concrete proposals concerning this matter.

71. The Commission felt that, pending the receipt of the replies of the Governments, certain other questions should be held over, including that of bays and groups of islands, for these questions are connected with the question of the breadth of the territorial sea.

72. The text of the provisional articles concerning the régime of the territorial sea, as adopted[7] by the Commission is reproduced below.

[7] Mr. Edmonds abstained from voting upon the articles and the part of the report relating to them for the reasons stated at the 281st meeting (A/CN.4/SR.281). Mr. Lauterpacht, in voting for the articles and the chapter of the report relating to them, dissented from the comment to article 5 (straight base lines) and from article 17 (right of passage) for reasons given in the course of the discussions. Mr. Sandström declared that, in voting for the draft articles, he wished to enter a reservation in respect of the provisions of article 5 for the reasons he had stated at the 281st meeting (A/CN.4/SR.281). Mr. Zourek stated that he voted against the articles and against the commentary accompanying them for the reasons explained in the course of the discussions at the sixth session of the Commission.

II. Provisional articles concerning the Régime of the Territorial Sea

CHAPTER I

GENERAL

Article 1

Juridical status of the territorial sea

1. The sovereignty of a State extends to a belt of sea adjacent to its coast and described as the territorial sea.

2. This sovereignty is exercised subject to the conditions prescribed in these regulations and other rules of international law.

Comment

Paragraph 1 emphasizes the fact that the rights of the coastal State over the territorial sea do not differ in nature from the rights of sovereignty which it exercises over other parts of its territory. There is an essential difference between the régime of the territorial sea and that of the high seas since the latter is based on the principle of free use by all nations. The replies of the Governments in connexion with The Hague Conference of 1930 and the report of the Conference's Committee on the subject confirmed that this view, which is almost unanimously held, is in accordance with existing law. This is also the view underlying some multilateral conventions—such as the Air Navigation Convention of 1919 and the International Civil Aviation Convention of 1944—which treat territorial waters in the same way as other parts of State territory.

The Commission preferred the term "territorial sea" to "territorial waters". It is of the opinion that the term "territorial waters" lends itself to confusion for the reason that it may be used to describe both internal waters only, and internal and territorial waters taken together. For the same reason, the Codification Conference also expressed a preference for the term "territorial sea". Although not universally accepted, this term is becoming more and more prevalent.

Clearly, the coastal State's sovereignty over the territorial sea cannot be exercised otherwise than in conformity with the provisions of international law. The reason why this is expressly mentioned in paragraph 2 is that the Commission wished to convey beyond any possible doubt that, while recognizing the State's sovereignty over the territorial sea, it did not endorse the idea of an unlimited sovereignty which has at times been claimed to be a quality implied in sovereignty.

This draft sets forth the specific limitations imposed by international law on the exercise of sovereignty in the territorial sea. These provisions should not, however, be regarded as exhaustive. Events which occur in the territorial sea and which have a legal import are also governed by the general rules of international law which cannot be codified in this draft as applying to the territorial sea in particular. For this reason, the "other rules of international law" are mentioned in addition to the provisions of this draft.

It may happen that, by reason of some special, geographical or other, relationship between two States, rights in the territorial sea are granted to one of them in excess of the rights recognized in this draft. It is not the intention of the Commission to limit any

more extensive rights of passage or other rights enjoyed by States by virtue of custom or treaty.

Article 2

Juridical status of the air space over the territorial sea and of its bed and subsoil

The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to its bed and subsoil.

Comment

This article reproduces, subject to purely stylistic changes, the provisions of the 1930 regulation. It may be said to form part of positive law. Since the present draft regulations deals exclusively with the territorial sea, the Commission did not consider the conditions in which sovereignty over the air space, sea-bed and subsoil in question is exercised.

CHAPTER II

LIMITS OF THE TERRITORIAL SEA

Article 3

Breadth of the territorial sea

(Postponed)

Article 4

Normal base line

Subject to the provisions of article 5 and to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the low-water line along the coast, as marked on the largest-scale chart available, officially recognized by the coastal State. If no detailed charts of the area have been drawn which show the low-water line, the shore-line (high-water line) shall be used.

Comment

The Commission considered that, according to the international law in force, the extent of the territorial sea is measured, as a general rule, from the low-water line along the coast, but that, in certain cases, it is permissible under international law to employ base lines independent of the low-water mark. This is the Commission's interpretation of the judgment of the International Court of Justice rendered on 10 December 1951 in the Fisheries Case between the United Kingdom and Norway.

The traditional expression "low-water mark" may have different meanings; there is no uniform standard by which States in practice determine this line. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on the largest-scale official charts of the coastal State. The Commission considers that the omission of detailed provisions such as were prepared by the 1930 Conference is hardly likely to induce Governments to shift the low-water lines on their charts unreasonably.

In the absence of detailed charts indicating the low-water line, the only practical solution would seem to be to employ the shore-line (high-water line) as the base line.

Article 5

Straight base lines

1. As an exception, where this is justified for historical reasons or where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the base line may be independent of the low-water mark. In these special cases, the method of straight base lines joining appropriate points on the coast may be employed. The drawing of such base lines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within these lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

2. As a general rule, the maximum permissible length for a straight base line shall be ten miles. Such base lines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight base lines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Base lines shall not be drawn to and from drying rocks and shoals.

3. The coastal State shall give due publicity to the straight base lines drawn by it.

Comment

The International Court of Justice considers that where the coast is deeply indented or cut into, or where it is bordered by an archipelago such as the *skjaergaard* in Norway, the base line becomes independent of the low-water mark and can only be determined by means of a geometric construction. The Court said:

> "In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions. . . ."
>
> "The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters."[8]

The Commission interprets the Court's judgment, which was delivered on the point in question by a majority of 10 votes to 2, as expressing the law in force; accordingly, it took this judgment as the basis in drafting the article. Since, however, it is of the

[8] I.C.J., *Reports*, 1951, pages 129 and 130.

opinion that the rules recommended by the experts who met at The Hague in 1953 add certain desirable particulars to the general method advised by the Court, it has endorsed the experts' recommendations in a slightly modified form.

The Commission considers that these additions represent a progressive development of international law, and that they cannot be regarded as binding until approved by States.

Article 6

Outer limit of the territorial sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the base line equal to the breadth of the territorial sea.

Comment

This is the method of determining the outer limit recommended by the group of experts; it had been in use already before 1930. By means of this method one obtains a line which in the case of deeply indented coasts departs from the line which follows the sinuosity of the coast. It is undeniable that the latter would often be so tortuous as to be unusable for the purpose of shipping.

The line all the points of which are at a distance of T miles from the nearest point on the coast (T being the breadth of the territorial sea) may be obtained by means of a continuous series of arcs of circles drawn with a radius of T miles from all points on the coast line. The outer limit of the territorial sea is formed by the most seaward arcs. In the case of a deeply indented coast, this line although undulating will form less of a zigzag than if it followed all the sinuosities of the coast because circles drawn from those points on the coast where the coast line is most irregular will not usually affect the outer limit of the seaward arcs. In the case of a straight coast, or if the straight base line method is followed, the arcs of circle method produces the same results as the strictly parallel line.

The Commission considers that the arcs of circle method is to be recommended because it is likely to facilitate navigation. In any case, the Commission feels that States should be free to use this method without running the risk of being charged with a violation of international law by reason of the fact that the line does not follow all the sinuosities of the coast.

Article 7

Bays

(Postponed)

Article 8

Ports

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Comment

This article is consistent with the positive law now in force.

The waters of a port up to a line drawn between the outermost installations form part of the inland waters of the coastal State. This draft regulation does not contain provisions relating to the régime of ports for it deals exclusively with the territorial sea. The important question of the régime of ports is to be considered at a later stage in the Commission's work.

Permanent structures erected on the coast and jutting out to sea (such as jetties and protecting walls or dykes) are assimilated to harbour works.

Article 9

Roadsteads

Roadsteads which are used for the loading, unloading and anchoring of vessels and which are situated wholly or partly outside the outer limit of the territorial sea are included in the territorial sea. The coastal State must give due publicity to the limits of such roadsteads.

Comment

Apart from stylistic changes this article reproduces the 1930 text. The Commission considers that roadsteads situated outside the territorial sea should not be treated as inland waters. While appreciating that the coastal State must be able to exercise special supervisory and police rights in the roadsteads, the Commission thought it excessive to treat them as part of inland waters for otherwise the innocent passage of merchantmen through them might conceivably be prohibited.

The fact that these waters are held to be part of the territorial sea constitutes sufficient protection for the rights of the State.

The Commission considers that the article as it now stands reproduces the international law in force.

Article 10

Islands

Every island has its own territorial sea. An island is an area of land surrounded by water which in normal circumstances is permanently above high-water mark.

Comment

This article applies both to islands situated in the high seas and to islands in the territorial sea. In the case of the latter their own territorial sea coincides partly with the territorial sea of the coast. The presence of the island will cause an outward bulge in the outer limit of the territorial sea. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, will be taken into consideration for the purpose of determining the outer limit of the territorial sea.

It is an essential condition that an island, to qualify for that name, must be an area of land which apart from abnormal circumstances is permanently above high-water mark. Accordingly, the following are not considered islands and have no territorial sea:

(i) Elevations which emerge at low tide only. Even if an installation is built on such an elevation and if that installation (*e.g.*, a lighthouse) is permanently above water level, the term island as defined in this article cannot be applied to such an elevation;

(ii) Technical installations built on the sea-bed, such as installations used for the exploitation of the continental shelf. As is evident from the Commission's report on its fifth session (A/2456) it is nevertheless

proposed that a safety zone around such installations should be recognized in view of their great vulnerability. The Commission does not think that a similar measure is required in the case of lighthouses.

Article 11

Groups of islands

(Postponed)

Article 12

Drying rocks and shoals

Drying rocks and shoals which are wholly or partly within the territorial sea may be taken as points of departure for delimiting the territorial sea.

Comment

Drying rocks and shoals situated wholly or partly in the territorial sea are treated in the same way as islands. The limit of the territorial sea will accordingly make allowances for the presence of such drying rocks and will jut out to sea off the coast. Drying rocks and shoals however which are situated outside the territorial sea have no territorial sea of their own.

The Commission considers that the above article expresses the international law in force.

It was said that the terms of article 5 (under which base lines are not drawn to or from drying rocks and shoals) might perhaps not be compatible with article 12. The Commission does not consider them incompatible. The fact that for the purpose of determining the breadth of the territorial sea drying rocks and shoals are assimilated to islands does not imply that such rocks are treated as islands in every respect. If they were, then, so far as the drawing of base lines is concerned, and in particular in the case of shallow waters off the coast, the distance between base lines and the coast might conceivably be far in excess of that intended to be laid down by the method of these base lines.

Article 13

Delimitation of the territorial sea in straits

1. In straits joining two parts of the high seas and separating two or more States, the limits of the territorial sea shall be ascertained in the same manner as on the other parts of the coast.

2. If the breadth of the straits referred to in paragraph 1 is less than the extent of the belt of territorial sea adjacent to the two coasts, the maritime frontier of the States in question shall be determined in conformity with article 15.

3. If the breadth of the straits exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if as a consequence of this delimitation an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.

4. Paragraph 1 and the first sentence of paragraph 3 of this article shall be applicable to straits which join two parts of the high seas and which have only one coastal State in cases in which the breadth of the straits is greater than twice the breadth of that State's territorial sea. If as a consequence of this delimitation an area of sea not more than two miles across is entirely enclosed in the territorial sea, such area may be declared by the coastal State to form part of its territorial sea.

Comment

Within the straits with which this article deals the belts of sea along the coast constitute territorial sea in the same way as on any other part of the coast.

Where the width throughout the straits exceeds the sum of the breadth of the two belts of territorial sea, there is a channel of high sea through the strait. On the other hand, if the width throughout the strait is less than twice the breadth of the two belts of territorial sea, the waters of the strait will be territorial waters. Other cases may arise: at certain places the width of the strait is greater than, while elsewhere it is equal to or less than, the total breadth of the two belts of territorial sea. In these cases portions of the high sea may be surrounded by territorial sea. It was thought that there was no valid reason why these enclosed portions of sea—which may be quite large in area—should not be treated as the high seas. This view is confirmed by the consideration that in such circumstances the stretch of sea between the two coasts might be treated as two straits separated by open sea. If such areas are very small, however, practical reasons justify their assimilation to territorial sea; but it is proposed in the article to confine such exceptions to "enclaves" of sea not more than two nautical miles in width; this distance was chosen by the Commission in reliance on the precedent of the 1930 Conference, though it is not claimed that this is now an existing rule of positive law.

If both shores belong to the same State, the issue of a delimitation of territorial waters can only arise if the strait is more than twice as broad as the territorial sea. In this case the rule set forth in paragraph 1 will apply. The question of enclaves dealt with in paragraph 3 may crop up in this situation too, in which case the enclave (if not more than two miles in breadth) may be treated as territorial sea.

Article 14

Delimitation of the territorial sea at the mouth of a river

(Postponed)

Article 15

Delimitation of the territorial sea of two States the coasts of which are opposite each other

The boundary of the territorial sea between two States the coasts of which are opposite each other at a distance less than twice the breadth of the territorial sea is, in the absence of agreement of those States, or unless another boundary line is justified by special circumstances, the median line every point of which is equidistant from the base lines from which the width of the territorial sea of each country is measured.

Comment

The delimitation of the territorial sea between two States the coasts of which are opposite each other was one of the principal tasks of the group of experts which met at the Commission's request at The Hague

in April 1953. The experts made the following recommendation:

"An international boundary between countries the coasts of which are opposite each other at a distance of less than 2 T miles (T being the breadth of the territorial sea) should as a general rule be the median line, every point of which is equidistant from the base lines of the States concerned. Unless otherwise agreed between the adjacent States, all islands should be taken into consideration in drawing the median line. Likewise, drying rocks and shoals within T miles of only one State should be taken into account, but similar elevations of undetermined sovereignty, that are within T miles of both States, should be disregarded in laying down the median line. There may, however, be special reasons, such as navigation and fishing rights, which may divert the boundary from the median line. The line should be laid down on charts of the largest scale possible, especially if any part of the body of water is narrow and relatively tortuous."

The Commission had considered this proposal in connexion with the delimitation of the continental shelf between two States in cases where the same continental shelf is contiguous to the territory of two or more States. The Commission took the view that the boundary of the continental shelf should be drawn according to the same principles as those to be adopted for the delimitation of the territorial sea. The Commission endorsed the proposals of the experts and took them as the basis of draft article 7, paragraph 1, concerning the continental shelf. It felt, however, that the provision should not be too detailed but should retain a certain latitude. Accordingly, it disregarded certain details mentioned by the experts. (On this question, see paragraph 82 of the Commission's report on its fifth session (A/2456)).

The Commission felt it should follow this precedent in respect of the delimitation of the territorial sea and adopted an article which follows very closely the provisions of draft article 7, paragraph 1, relating to the continental shelf (A/2456, paragraph 62).

The Commission's draft articles relating to the continental shelf contain a general arbitration clause (A/2456, paragraph 62, article 8), which provides that disputes which may arise between States concerning the interpretation or application of the articles in question should be submitted to arbitration at the request of any of the Parties. As mentioned in paragraph 86 of document A/2456, the clause also covers boundary disputes connected with draft article 7 relating to the continental shelf.

It is realized that some provision for arbitration is also needed for the purposes of the application of article 15 above concerning the limits of the territorial sea. Since the Commission has decided to hold over for the time being all provisions relating to the application of the articles relating to the territorial sea, it did not draft an article comparable to draft article 8 concerning the continental shelf.

Article 16

Delimitation of the territorial sea of two adjacent States

The boundary of the territorial sea between two adjacent States is drawn, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, by application of the principle of equidistance from the base lines from which the width of the territorial sea of each of the two countries is measured.

Comment

The situation described in this article may be regulated in various ways.

Firstly, it may be possible to consider extending outwards towards the sea the land frontier up to the outer limit of the territorial sea. This line can only be used if the angle between the land frontier and the coast is a right angle; if the angle is an acute angle it is inapplicable.

Another solution would be to draw a line at right angles to the coast at the intersection of the land frontier and the coast line. This method is open to criticism if the coast line curves in the vicinity of the intersection. In this case the line drawn at right angles might meet the coast at another point.

A third solution would be to adopt as a demarcation line the geographical parallel of the point at which the land boundary meets the coast. However that solution is not applicable in all cases.

A fourth solution might be provided by a line drawn at right angles to the general direction of the coastline. The adoption of this line was recommended by, *inter alia,* the Belgian Government, in reply to the circular letter of the Secretary-General dated 13 November 1952 (A/CN.4/71, pages 4 and 5). The Norwegian Government drew attention to the arbitration award of 23 October 1909, in a dispute between Norway and Sweden, where the statement of reasons contains the following sentence: "The delimitation shall be made by tracing a line perpendicularly to the general direction of the coast" (A/CN.4/71, page 14). The Swedish Government referred to the same decision (A/CN.4/71/Add.1, page 3).

The group of experts was unable to support this last method of drawing the boundary line. It agreed that it was often impracticable to establish any "general direction of the coast" and the result would depend on the "scale of the charts used for the purpose and ... how much coast shall be utilized in attempting to determine any general direction whatever". Consequently, since the method of drawing a line at right angles to the general direction of the coastline is too vague for the purposes of the law, the best solution seems to be the median line which the committee of experts suggested. Such a line should be drawn according to the principle of equidistance from the respective coastlines (see the reply of the French Government, A/CN.4/71/Add.2, pages 2 and 3). Where the coast is straight, a line drawn according to this method will coincide with one drawn at right angles to the coast at the intersection of the land frontier and the coastline. If, however, the coast is curved or irregular, the line takes the contour into account while avoiding the difficulties of the problem of the general direction of the coast.

The Commission had already expressed support for the opinion of the experts in the matter of the delimitation of the continental shelf between two adjacent States (see A/2456, draft article 7, paragraph 2, relating to the continental shelf).

It followed the same method in the matter of the delimitation of the territorial sea. The observation made at the end of the comment on article 15 also applies to this article.

CHAPTER III

RIGHTS OF PASSAGE

Article 17

Meaning of the right of passage

1. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering inland waters, or of proceeding to inland waters, or of making for the high sea from inland waters.

2. Passage is not innocent if a vessel makes use of the territorial sea of a coastal State for the purpose of committing any act prejudicial to the security or public policy of that State or to such other of its interests as the territorial sea is intended to protect.

3. Passage includes stopping and anchoring, but in so far only as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

Comment

This article follows the lines of the regulation proposed by Sub-Committee II of the 1930 Conference, but the Commission considered that "fiscal interests"—a term which according to the 1930 comments should be interpreted very broadly as including all matters relating to customs and to export, import and transit prohibitions—could be included in the more general expression "such other of its interests as the territorial sea is intended to protect". This expression comprises, *inter alia,* questions relating to immigration, customs and health as well as the interests enumerated in article 21.

This chapter applies only in time of peace; rights of passage in time of war are reserved.

No provision in this chapter is meant to affect the rights and obligations of Members of the United Nations under the Charter.

SECTION A: VESSELS OTHER THAN WARSHIPS

Article 18

Rights of innocent passage through the territorial sea

Subject to the provisions of these regulations, vessels of all States shall enjoy the right of innocent passage through the territorial sea.

Comment

This article lays down that the vessels of all States have the right of innocent passage through the territorial sea. It reiterates a principle recognized by international law and confirmed by the 1930 Conference.

The conditions governing the exercise of this right are set forth in the articles which follow. Some members of the Commission argued that, since the coastal State has sovereignty in the territorial sea, it would be more logical to specify the duties of coastal States with respect to innocent passage and not to make those duties appear as exceptions to a right of passage of other States. The Commission preferred to follow the method recommended by the 1930 Conference in order to stress the importance it attaches to the right of passage.

Article 19

Duties of the coastal State

1. The coastal State is bound to use the means at its disposal to ensure respect in the territorial sea for the principle of the freedom of communication and not to allow the said sea to be used for acts contrary to the rights of other States.

2. The coastal State is bound to give due publicity to any dangers to navigation of which it has knowledge.

Comment

This article confirms the principles which were upheld by the International Court of Justice in its judgment of 9 April 1949 in the Corfu Channel case between the United Kingdom and Albania.

Article 20

Right of protection of the coastal State

1. The coastal State may take the necessary steps in the territorial sea to protect itself against any act prejudicial to the security or public policy of that State or to such other of its interests as the territorial sea is intended to protect, and, in the case of vessels proceeding to inland waters, against any breach of the conditions to which the admission of those vessels to those waters is subject.

2. The coastal State may suspend temporarily and in definite areas of its territorial sea the exercise of the right of innocent passage on the ground that that is necessary for the maintenance of public order and security. In this case the coastal State is bound to give due publicity to the suspension.

Comment

In the same way as article 5 drafted by Sub-Committee II of the 1930 Conference, this article gives the coastal State the right to verify, if necessary, the innocent character of the passage and to take the steps necessary to protect itself against any act prejudicial to is security, public order, customs interests, import, export and transit prohibitions, and so forth. In exceptional cases even a temporary suspension of the right of passage is permissible, if compelling reasons connected with public order or general security so require. Although it is arguable that this power was in any case implied in paragraph 1 of the article, the Commission considered it desirable to mention it expressly in paragraph 2 which specifies that only a temporary suspension in definite areas is permissible. The Commission is of the opinion that the article states the international law in force.

Article 21

Duties of foreign vessels during their passage

Foreign vessels exercising the right of passage shall comply with the laws and regulations enacted by the coastal State in conformity with these regulations and other rules of international law and, in particular, as regards:

(*a*) The safety of traffic and the protection of channels and buoys;

(*b*) The protection of the waters of the coastal State against pollution of any kind caused by vessels;

(*c*) The protection of the products of the territorial sea;

(d) The rights of fishing, hunting and analogous rights belonging to the coastal State.

Comment

International law has long recognized the right of the coastal State to enact in the general interest of navigation special regulations applicable to vessels exercising the right of passage through the territorial sea. The principal powers which international law has hitherto recognized as belonging to the coastal State for this purpose are defined in this article.

The corresponding article drafted by Sub-Committee II of the 1930 Conference contained a second paragraph reading:

> "The coastal State may not, however, apply these rules or regulations in such a manner as to discriminate between foreign vessels of different nationalities, nor, save in matters relating to fishing and shooting, between national vessels and foreign vessels."

By omitting this paragraph, the Commission did not mean to imply that it does not contain a general rule valid in international law. Nevertheless, the Commission considers that certain cases may occur in which special rights granted by one State to another specified State may be fully justified by the special relationship between those two States; in the absence of treaty provisions to the contrary, the grant of such rights cannot be invoked by other States as a ground for claiming similar treatment. The Commission prefers, therefore, that this question should continue to be governed by the general rules of law.

Article 22

Charges to be levied upon foreign vessels

1. No charge may be levied upon foreign vessels by reason only of their passage through the territorial sea.

2. Charges may only be levied upon a foreign vessel passing through the territorial sea as payment for specific services rendered to the vessel.

Comment

The object of this article is to exclude any charges in respect of general services to navigation (light or conservancy dues) and to allow payment to be demanded only for special services rendered to the vessel (pilotage, towage, etc.). The article states the international law now in force.

As a general rule these charges are applicable on a footing of equality. For reasons analogous to those given for the omission of a second paragraph from article 21, the Commission did not reproduce the words "these charges shall be levied without discrimination" which occurred in the corresponding article drafted by the 1930 Conference.

Article 23

Arrest on board a foreign vessel

1. A coastal State may not take any steps on board a foreign vessel passing through the territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the vessel during its passage, save only in the following cases:

(a) If the consequences of the crime extend beyond the vessel; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the vessel or by the consul of the country whose flag the vessel flies.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign vessel lying in its territorial sea, or passing through the territorial sea after leaving the inland waters.

3. The local authorities shall in all cases pay due regard to the interests of navigation when making an arrest on board a vessel.

Comment

This article enumerates the case in which the coastal State may stop a foreign vessel passing through its territorial sea for the purpose of arresting persons or conducting an investigation in connexion with a criminal offence committed on board the vessel during that particular passage. In such a case a conflict of interest occurs: on the one hand, there are the interests of shipping which should suffer as little interference as possible; and on the other there are the interests of the coastal State which wishes to enforce its criminal law throughout its territory. Without prejudice to the coastal State's power to hand the offenders over to its tribunals (if it can arrest them), its power to arrest persons on board ships which are merely passing through the territorial sea may only be exercised in the cases expressly enumerated in the article.

The coastal State has no authority to stop a foreign vessel passing through the territorial sea, without entering inland waters, merely because some person happens to be on board who is wanted by the judicial authorities of that State in connexion with some punishable act committed elsewhere than on board the ship. *A fortiori*, a request for extradition addressed to the coastal State by reason of an offence committed abroad cannot be considered as a valid reason for stopping the vessel.

In the case of a vessel lying in the territorial sea, the jurisdiction of the coastal State will be regulated by the State's own municipal law and will necessarily be more extensive than in the case of vessels which are simply passing through the territorial sea along the coast. The same observation applies to vessels which have been in one of the ports or navigable waterways of the coastal State; if, for instance, a vessel anchored in a port, or had contact with the land, or took on passengers, the powers of the coastal State would be greater. The coastal State, however, must always do its utmost to interfere as little as possible with navigation. The inconvenience caused to navigation by the stopping of a large liner outward bound in order to arrest a person alleged to have committed some minor offence on land can scarcely be regarded as of less importance than the interest which the State may have in securing the arrest of the offender. Similarly, the judicial authorities of the coastal State should, as far as possible, refrain from arresting any of the officers or crew of the vessel if their absence would make it impossible for the voyage to continue.

Accordingly, the proposed article does not attempt to solve conflicts of jurisdiction between the coastal

State and the flag State in the matter of criminal law, nor does it in any way prejudice their respective rights. The Commission realizes that it would be desirable to codify the law relating to these matters. It appreciates that it is important to determine what tribunal is competent to deal with any criminal proceedings to which collisions in the territorial sea may give rise. The fact that, in keeping with the example of the 1930 Conference, the Commission nevertheless did not formulate express rules concerning this matter, is to be explained by the consideration that in this very broad field the Commission's task must inevitably be limited. Again, the Commission did not deal with the matter of collisions because, since 1952, a convention relating to the subject has been in existence and this convention has not yet been ratified by a considerable number of States; the convention in question is entitled "International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions or other Incidents of Navigation" and was signed at Brussels on 10 May 1952. The Commission proposes, however, to study this topic later.

Article 24

Arrest of vessels for the purpose of exercising civil jurisdiction

1. A coastal State may not arrest or divert a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the vessel. A coastal State may not levy execution against or arrest the vessel for the purpose of any civil proceedings save only in respect of obligations or liabilities incurred by the vessel itself in the course or for the purpose of its voyage through the waters of the coastal State.

2. The above provisions are without prejudice to the right of the coastal State in accordance with its laws to levy execution against, or to arrest, a foreign vessel in the inland waters of the State or lying in the territorial sea, or passing through the territorial sea after leaving the inland waters of the State, for the purpose of any civil proceedings.

Comment

In this article the Commission adopted a rule analogous to that governing the exercise of criminal jurisdiction. A vessel which is only navigating the territorial sea without touching the inland waters of the coastal State may in no circumstances be stopped for the purpose of exercising civil jurisdiction in relation to any person on board or of levying execution against or arresting the vessel itself, except as a result of events occurring in the waters of the coastal State during the voyage in question, as for example, a collision, salvage, etc., or in respect of obligations incurred for the purpose of the voyage.

The article does not attempt to provide a general solution for conflicts of jurisdiction in private law between the coastal State and the flag State. Questions of this kind will have to be settled in accordance with the general principles of private international law and cannot be dealt with by the Commission at this stage of its work. Hence, questions of competence with regard to liability under civil law for collisions in the territorial sea are not covered by this article. Two conventions materially affecting questions of civil jurisdiction were drawn up at the Brussels Conference referred to in the comment to the previous article, namely, the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision and the International Convention for the Unification of Certain rules relating to the Arrest of Sea-going Ships, both dated 10 May 1952. The sole purpose of the article adopted by the Commission is to prohibit the arrest of a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction, except in certain clearly defined cases.

Article 25

Government vessels operated for commercial purposes

The rules contained in the preceding articles of this chapter shall also apply to Government vessels operated for commercial purposes.

Comment

The Commission followed the rules of the Brussels Convention of 1926 concerning the immunity of State-owned vessels; it considers that these rules follow the preponderant practice of States, and has therefore formulated this article accordingly.

SECTION B: WARSHIPS

Article 26

Passage

1. Save in exceptional circumstances, warships shall have the right of innocent passage through the territorial sea without previous authorization or notification.

2. The coastal State has the right to regulate the conditions of such passage. It may prohibit such passage in the circumstances envisaged in article 20.

3. Submarines shall navigate on the surface.

4. There must be no interference with the passage of warships through straits used for international navigation between two parts of the high seas.

Comment

To state that the coastal State will authorize the innocent passage of foreign warships through its territorial sea is but to recognize the existing practice. The above provision is also in conformity with the practice which, without laying down any strict and absolute rule, leaves to the State the power, in exceptional cases, to prohibit the passage of foreign warships through its territorial sea. Hence the coastal State has the right to regulate the conditions of passage. In this respect the terms of article 20, relating to merchantmen, also apply to warships.

The right of passage does not imply that warships are entitled, without special authorization, to stop or anchor in the territorial sea. The Commission did not consider it necessary to insert an express stipulation to this effect for article 17, paragraph 3, applies equally to warships.

The Commission took the view that passage should be granted to warships without prior authorization or notification. Some members of the Commission held however that, under the international law in force, the passage of foreign warships through the territorial sea was a mere concession and hence subject to the consent of the coastal State.

The right of the coastal State to restrict passage is more limited in the case of passage through straits.

The International Court of Justice in its judgment of 9 April 1949 in the Corfu Channel case says:

"It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace."[9]

In inserting paragraph 4, the Commission relied on that judgment.

Article 27

Non-observance of the regulations

1. Warships shall be bound, when passing through the territorial sea, to respect the laws and regulations of the coastal State.

2. If any warship does not comply with the regulations of the coastal State and disregards any request for compliance which may be brought to its notice, the coastal State may require the warship to leave the territorial sea.

Comment

The terms of paragraph 1 do not mean that the exterritoriality of warships is limited in any way during the passage through the territorial sea. The object of the provision is only to emphasize that while the warship is in the territorial sea of the coastal State the vessel must comply with the laws and regulations of that State concerning navigation, security, health questions, water pollution and the like.

Chapter V

OTHER DECISIONS

I. Codification of the Topic "Diplomatic intercourse and immunities"

73. In pursuance of General Assembly resolution 685 (VII) of 5 December 1952, by which the Assembly requested the Commission to undertake, as soon as it considered it possible, the codification of the topic "Diplomatic intercourse and immunities" and to treat it as a priority topic, the Commission decided to initiate work on this subject. It appointed Mr. A. E. F. Sandström as special rapporteur.

II. Request of the General Assembly for the codification of the principles of international law governing State responsibility

74. The Commission took note of General Assembly resolution 799 (VIII) of 7 December 1953 requesting it to undertake, as soon as it considered it advisable, the codification of the principles of international law governing State responsibility. A memorandum on the question (A/CN.4/80) was submitted by one of the members, Mr. F. V. García-Amador. In view of the Commission's heavy agenda, it was decided not to begin work on the subject for the time being.

III. Control and limitation of documentation

75. The Commission took note of General Assembly resolution 789 (VIII) of 9 December 1953 regarding the control and limitation of the documentation of the United Nations.

IV. Spanish interpretation

76. On the proposal of Mr. Roberto Córdova, the Commission adopted the following resolution:

"The International Law Commission,

"Taking into consideration that the Spanish language, according to resolution 247 (III) adopted by the General Assembly on 7 December 1948, has become a working language of the General Assembly, and

"Taking also into consideration that three of the members of the International Law Commission are nationals of Spanish-speaking countries,

"Resolves to request the Secretary-General of the United Nations to make the necessary arrangements to ensure that, beginning with the forthcoming session of 1955, there will be also simultaneous interpretation from and into Spanish."

V. Co-operation with Inter-American bodies

77. On the proposal of Mr. F. V. García-Amador, the Commission adopted the following resolution:

"The International Law Commission,

"Considering that according to article 26 of its Statute, adopted by resolution 174 (II) of the General Assembly,

" 'The advisability of consultation by the International Law Commission with intergovernmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized,' and

"Considering that the Inter-American Council of Jurists and the Tenth Inter-American Conference have taken steps towards the implementation of the foregoing provision,

"Resolves to ask the Secretary-General to take such steps as he may deem appropriate in order to establish a closer co-operation between the International Law Commission and the Inter-American bodies whose task is the development and codification of international law."

VI. Representation at the General Assembly

78. The Commission decided that it should be represented at the ninth session of the General Assembly by its Chairman, Mr. A. E. F. Sandström, for purposes of consultation.

VII. Date and Place of the Seventh Session of the Commission

79. The Commission decided, after consulting the Secretary-General in accordance with the terms of article 12 of its Statute and receiving the views of the latter, to hold its next session in Geneva, Switzerland, for a period of ten weeks beginning on 20 April 1955.

[9] I.C.J., *Reports*, 1949, page 28.

ANNEX

Comments by Governments on the draft Convention on the Elimination of Future Statelessness and on the draft Convention on the Reduction of Future Statelessness, both prepared by the International Law Commission at the fifth session in 1953[10]

1. Australia

LETTER FROM THE PERMANENT DELEGATION OF AUSTRALIA TO THE UNITED NATIONS

[*Original: English*]
30 June 1954

Article 1. The Australian Nationality and Citizenship Act confers Australian citizenship (and therefore British nationality) at birth upon persons born in Australia, which for this purpose includes all the Territories, other than Trust Territories. The only exceptions to this rule are:

(i) Children born here whose fathers are the diplomatic representatives of other countries. This exception had always existed in the common law of England until the statutory provision was made and it is universally accepted in the international sphere;

(ii) Children born of enemy-alien fathers in enemy-occupied territory. This has had no practical significance in Australia.

Article 2. The Australian Act has no corresponding provision but there would seem to be no serious objection to such provision being made, subject to safeguards, ensuring that we would be able to demand proof that a person claiming to have acquired citizenship under this heading was in fact a foundling.

Article 3. The Act provides that birth on a ship or aircraft shall be equivalent to birth in the country in which the ship or aircraft is registered. This is in effect identical with article 3.

Article 4. A child born outside Australia in wedlock of an Australian father, or out of wedlock to an Australian mother becomes an Australian citizen upon registration of the birth at an Australian Consulate. This meets the objects of article 4.

Article 5. 1. Changes in personal status, such as marriage and the other matters mentioned in article 5, paragraph 1, have not of themselves any effect upon the Australian citizenship of the person concerned.

2. The loss of Australian citizenship by a spouse does not of itself entail loss of citizenship by the other spouse. So far as children are concerned our Act generally observes the principle of article 5, paragraph 2, but the Minister in depriving a person of Australian citizenship has power to direct that that person's children also shall cease to be Australians, whether they have another nationality or not. We have here a conflict of two principles—the desirability of avoiding statelessness and of ensuring that young children should have the same national status as their responsible parent. It is the Australian Government's view that each case of this kind requires individual consideration, and that the Minister should therefore retain the discretionary power which he already has, to direct that the children shall cease to be Australian citizens or remain such, according to circumstances. If such deprivation were to result in the child being stateless this would weigh heavily in favour of the child being allowed to retain Australian citizenship.

Article 6. 1. The only case in which Australian citizenship may be renounced by a person not already having another nationality is that where a person became an Australian citizen involuntarily whilst still a minor, through the naturalization of his or her parents; upon reaching twenty-one years of age such a person may renounce Australian citizenship whether or not he has another nationality. Again there is a conflict of principles—however desirable it may be to avoid statelessness, it is also desirable that anyone who was involuntarily naturalized as a child should not be forced to retain Australian citizenship against his will when he reaches manhood. Again the practical implications are very slight—more so because it is obviously unlikely that anyone would renounce Australian citizenship if he or she had no other nationality and no opportunity of acquiring one. The view of the Australian Government is that the existing law should stand.

2. The Act accords with article 6, paragraph 2.

3. The Act runs counter to article 6, paragraph 3, in that naturalized or registered Australian citizens who remain absent from Australia for over seven years without giving notice of intention to retain Australian citizenship automatically cease to be citizens. The notice is expected to be given annually but the Minister liberally administers a discretionary power to permit notice to be given at such other intervals, during the seven years, as he thinks fit. The Australian Government's view is that it is undesirable in principle that any person who remains absent from Australia for so long, without retaining the very slight interest in Australian citizenship required to give annual notice of intention to retain it, should retain it. It will be a rare case in which the person concerned thus becomes stateless—usually he will be found to have returned to the country of his birth to retire on savings made in Australia, and he will usually still have, or will have taken steps to reacquire, the citizenship of his native country. Experience during and after the last war showed that such people will regain interest in Australian citizenship and British nationality only when war or some other emergency makes it expedient. Embarrassing problems can arise for overseas posts if Australian citizenship is retained indefinitely by such people, and the existing law on the point was introduced as recently as 1949 to eliminate such problems.

[10] See *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, document A/2456.

Article 7. The Act empowers the Minister to deprive any person of Australian citizenship who acquired that status by naturalization or registration and who has been disloyal, became naturalized by fraud, was not of good character when granted naturalization or has been sentenced to imprisonment for twelve months or more within five years after naturalization. This power of deprivation is not limited to persons who have another nationality, and in this respect the Act conflicts with both of the alternative articles. The Australian Government's view is that the power should not be limited as contemplated by the article. It will be observed that deprivation can be effected only in very grave circumstances. In addition the Minister must give the person concerned an opportunity to appeal to a special judicial committee appointed by the Governor General, before making an order of deprivation (except in the case where a court of law imposes a sentence of twelve months imprisonment or longer, within five years after naturalization). It would appear to be out of the question that a person should be able to escape deprivation solely because he has no other nationality in addition to Australian citizenship.

Article 8. Our Act is in accordance with this article.

Article 9. In the event of this article having any application in Australia at some future time, its principles would be observed, as far as can be foreseen.

Article 10. There would be no objection to this article so far as Australia is concerned.

Unless, therefore, article 5, paragraph 2, article 6, paragraphs 1 and 3, and article 7 are altered to give effect to the Australian comments on these articles, the Australian Government, in the event of the conventions being adopted by the General Assembly, could only consider ratifying them if variations can be and are made to the articles mentioned to meet Australian objections.

2. Belgium

LETTER FROM THE MINISTRY FOR FOREIGN AFFAIRS OF BELGIUM

[*Original: French*]
22 February 1954

It appears difficult to accept the principle laid down in article 1 of the drafts whereby a child who would otherwise be stateless acquires at birth the nationality of the State in whose territory he is born.

The Belgian Legislature had adopted this principle in 1909 when it enacted a provision to the effect that a child born in Belgium of parents not possessing a specified nationality was to be a Belgian national. The application of the principle proved disappointing. The attitude of a large number of persons born of parents who had allegedly lost their nationality showed quite clearly, especially during the 1914-1918 War, that such loss of nationality was purely a matter of form.

Moreover, it seems hardly conceivable that a State, by allowing the automatic acquisition of its nationality, should endorse measures—often arbitrary measures—whereby foreign Governments deprive persons of nationality.

It would be more appropriate to offer a child who is within the terms of article 1 the opportunity of *acquiring* the nationality of the country in whose territory he was born, by means of an option subject to certain residence qualifications and to the production of satisfactory evidence of suitability by the applicant.

Article 2 of the two drafts does not call for comments.

There are also no comments on article 3, which lays down expressly the still quite vague principles concerning the territoriality of ships and aircraft.

Article 4 gives rise to certain reservations, for the principle of the *jus sanguinis materni* appears to be highly debatable so far as the nationality of *legitimate* children is concerned.

A child whose father is stateless and whose mother possesses a specified nationality should have the possibility either of acquiring by option the mother's nationality or of following the father's status if the latter voluntarily acquires a nationality.

Article 5, paragraph 1, of the two drafts gives rise to reservations with respect to the nationality of children born out of wedlock who are recognized.

If, for the reasons mentioned in the comments on article 1 of the drafts, the benefit of *jus soli* ought not to be extended to the legitimate child of a stateless person, *a fortiori* a child born out of wedlock who has not been recognized and who *jure soli* possesses a specified nationality should follow the status of the person with respect to whom relationship is duly proved by recognition, even though as a consequence he loses the nationality which he possessed as an unrecognized illegitimate child without acquiring a new one. Here again, the child should have the possibility either of acquiring by option the nationality of his country of birth or of benefiting by the collective effect of the naturalization of the person with respect to whom relationship is proved.

For article 7 of the drafts only the minimum formula is acceptable.

Moreover, in exceptional cases, the Parties should be empowered to deprive their nationals of nationality, subject to the safeguards mentioned, but it should not be stipulated that such nationals must have entered or continued voluntarily in the service of a foreign country *"in disregard of an express prohibition of their State"*.

There are no objections to article 8 except that the term "political grounds" should be more clearly defined, for, if activities designed to overthrow the State or its institutions are involved, such grounds could obviously give rise to proceedings for deprivation of nationality.

Article 10 provides for the establishment of an agency to act on behalf of stateless persons before an arbitral tribunal.

It should be pointed out in connexion with the proposed agency that political refugees, many of whom are in fact, if not in law, stateless, enjoy the protection of the United Nations High Commissioner for Refugees.

Furthermore, the granting of nationality is a matter for the exclusive jurisdiction of the State and cannot depend on decisions by a supra-national tribunal.

Accordingly, the establishment of a new agency within the framework of the United Nations does not appear desirable, especially if it is considered that its function would involve virtual intervention in a matter which, by its very nature, is essentially within the domestic jurisdiction of a State, which is expressly safeguarded by a provision of the United Nations Charter (Article 2, paragraph 7).

3. Canada

NOTE FROM THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS OF CANADA

[*Original: English*]
1 June 1954

Although Canadian legislation contains provision for loss and deprivation of citizenship, which in some instances might result in statelessness, there have been changes in the legislation leading to a reduction in the causes of statelessness, with particular reference to married women and minor children.

Whilst agreeing that the reduction of statelessness is a commendable goal nevertheless it is considered that there exist cases in which deprivation of citizenship is not unwarranted or unjustified. For this reason Canada could not accept article 7 of the draft Convention on the Elimination of Future Statelessness which is considered to be much too broad.

With the exception of articles 4, 6 and 7 the articles of the proposed Convention on the Reduction of Future Statelessness present no problems with regard to contemporary Canadian legislation.

Article 4. The first three articles of the Convention aim at the extension as far as possible of the rule of *jus soli* in the acquisition of nationality. As the Convention, however, would apply in this respect only between the parties to it, article 4 attempts to supplement the coverage of the three preceding articles by attempting to extend the rule of the *jus sanguinis* to persons born in the territory of the States which would not be parties to this Convention. The principle would not present any difficulty, provided it included certain qualifications.

According to Canadian legislation a person born out of Canada acquires the Canadian nationality of his father only if the birth be properly declared to a representative of the Canadian Government. Moreover, the child acquires the Canadian nationality of his mother only if he be born out of wedlock. It is not felt that these qualifications which attach to the *jus sanguinis* in Canadian law would result in the foreign-born children of Canadian citizens becoming stateless. This would occur only if they were born in countries where the *jus soli* would not apply to offspring of foreigners. It is thought that there would be few countries where such would be the law. In any event, statelessness in such countries would result from indifference or negligence on the part of the parents. In this regard it should be noted that in special cases the period of two years within which registration must normally be made, may be extended. In the circumstances, it is considered, that article 4, as drafted, would imply an unnecessary and undue extension of the principle of the *jus sanguinis*.

Article 6. In cases where another nationality has not been acquired, mere renunciation does not carry loss of Canadian citizenship. However, provision exists whereby revocation of citizenship may follow upon renunciation.

Paragraph 3 runs counter to Canadian legislation inasmuch as it opposes loss of nationality on the mere grounds of "departure, stay abroad, failure to register or any other similar ground when statelessness is to ensue". The Canadian Citizenship Act provides for the loss of Canadian nationality by a naturalized citizen in cases of prolonged absence from Canada when substantial connexion has not been maintained. It is not considered that the provisions are unreasonable since they provide for loss of Canadian citizenship only in cases where marked indifference towards such citizenship has been manifested and where presumably the persons involved would be more interested in acquiring another nationality.

Article 7. Paragraph 1 of this article in its present form would not be acceptable to the Canadian Government since Canadian legislation includes other grounds for deprivation of nationality by way of penalty.

The existing Canadian legislation regards the following acts as grounds for revocation of citizenship:

(*a*) Renunciation;
(*b*) Foreign naturalization or allegiance;
(*c*) Prolonged absence;
(*d*) Trade with an enemy;
(*e*) Fraudulent naturalization;
(*f*) Disaffection or disloyalty.

Of these, (*a*) (*b*) (*c*) and (*e*) are not considered to be deprivation by way of penalty. In renunciation and foreign naturalization or allegiance, the person concerned has voluntarily manifested a desire to divest himself of his previous citizenship; in the case of prolonged absence, except in extenuating circumstances for which provision is made, the behaviour of a naturalized citizen implies renunciation; in the case of fraudulent naturalization, revocation does not constitute a penalty, but a mere statement of the fact that naturalization, having been vitiated by fraud is null and void; "trade with an enemy" would fall within the article as presently worded; "disaffection or disloyalty" might or might not. It is not thought that statelessness should be avoided at all costs and the Canadian Government would be reluctant to abandon its right to deprive disloyal, naturalized citizens of their Canadian nationality by way of penalty.

Paragraph 2 of article 7 would raise a further difficulty in that it requires that "the deprivation shall be pronounced by a judicial authority acting in accordance with due process of law". Revocation in Canada follows due process of law but is not pronounced by a judicial authority. It is ordered by the Governor-in-Council as the constitutional authority entrusted with the exercise of royal prerogatives, of which revocation of citizenship is one.

4. Costa Rica

COMMENTS TRANSMITTED BY A LETTER FROM THE PERMANENT DELEGATION OF COSTA RICA TO THE UNITED NATIONS, DATED 26 JANUARY 1954

[*Original: Spanish*]

The background of the subject has been duly examined, and the reports by Mr. Hudson, assisted by Dr. Kerno, studied, together with the well documented report submitted by Dr. Córdova as special rapporteur. In addition, careful thought has been given to the weighty opinion of the Commission, which approved both draft conventions for submission to Governments for their comments, after some members of the Commission had expressed the opinion that the problem of statelessness could only be solved by the adoption of the draft Convention on the Elimination of Future Statelessness, while others felt that the draft Convention on the Reduction of Future Statelessness at present offered the practicable solution of the problem.

Likewise, the Commission's view that it is essential to eliminate or to reduce future statelessness by inter-

national agreement appears very reasonable, as does its opinion that one of the two draft conventions ought eventually to become part of international law. Accordingly, the two draft conventions were transmitted to the Economic and Social Council.

After studying the two draft Conventions—that referring to the "elimination of future statelessness", and that dealing with the "reduction of future statelessness"—this Office considers the latter more suitable, because it contains a better explanation of the ideas underlying the principles set forth in articles 1 and 7 of both drafts.

The recommended Convention contains provisions relating to nationality acquired at birth, presumptions, birth on ships, special conditions in a number of States, renunciation of nationality, penalties; racial, religious and political grounds; transfer of territories, changes in personal status, special agencies and doubtful cases.

The efforts made along the lines described reflect a profoundly humanitarian spirit, are furthering one of the fundamental principles of the Universal Declaration of Human Rights and tend to remove difficulties between States.

The establishment of the proposed special agency to act on behalf of stateless persons, and the establishment of a tribunal, within the framework of the United Nations, to decide upon complaints presented by the said agency are also desirable steps.

The second draft Convention, therefore, forms a sound basis for dealing with the problem, though, of course, when once it becomes operative some of its provisions may require adjustment in the light of experience and of new principles of international law.

5. Denmark

LETTER FROM THE MINISTRY FOR FOREIGN AFFAIRS OF DENMARK

[*Original: English*]
23 April 1954

Article 1 of both draft Conventions. Article 1 of the draft Convention on the Elimination of Future Statelessness and paragraph 1 of article 1 of the draft Convention on the Reduction of Future Statelessness establish the principle of *jus soli* for persons who would otherwise become stateless; this principle is at variance with Danish law on nationality which adheres to the principle of *jus sanguinis* from which only one exception has been made, viz., Act of 27 May 1950, article 1, paragraph 2, which lays down that a legitimate child born in the State of Denmark whose mother is Danish shall acquire Danish nationality by birth if the child's father is stateless or if the child does not by birth acquire the father's nationality.

Provisions similar to those laid down in paragraph 2 of article 1 of the draft Convention on the Reduction of Future Statelessness making the preservation of nationality dependent on certain conditions are not prescribed in connexion with paragraph 2 of article 1 of the Danish Nationality Act; consequently, there are no provisions granting a child the nationality of one of his parents if he loses his nationality, *cf.* paragraph 3 of the draft Convention on the Reduction of Future Statelessness which, incidentally, goes beyond the principle of descent established in Danish law in that it does not distinguish between children born in or out of wedlock.

Article 2 of both draft Conventions. As a foundling acquires the nationality of the State in whose territory it is found, this provision, in conjunction with article 1, is in conformity with the rules laid down in paragraph 2 of article 1 of the Danish Nationality Act.

Article 3 of both draft Conventions. The Danish Nationality Act contains no provisions on birth on ships and aircraft, but birth on a Danish ship or aircraft cannot invariably be expected to involve the same status as birth in Danish territory, as each case will be decided on its own merits. On the other hand, a child born on a foreign ship or aircraft may acquire the same status as children born in Danish territory if, for instance, such ship or aircraft is *en route* between various parts of Denmark.

Article 4 of both draft Conventions. This article, like paragraph 3 of article 1 of the draft Convention on the Reduction of Future Statelessness, lays down a principle of descent which goes beyond Danish law or nationality.

Article 5 of both draft Conventions. The Danish Nationality Act provides that a person shall not normally lose his Danish nationality except in connexion with simultaneous acquisition of a foreign nationality. Similarly, the loss of the nationality of a parent referred to in paragraph 2 of this article does not normally entail the loss of the children's Danish nationality unless they acquire another nationality at the same time. The only exception to this rule is paragraph 2 of article 8 of the Danish Nationality Act, which lays down that if a person loses his or her nationality in pursuance of paragraph 1 of the article (birth and residence abroad until twenty-second year) the children of such person shall also lose their Danish nationality if they acquire it through him or her. Such loss shall become effective even if it renders the children stateless.

Article 6 of both draft Conventions. Paragraphs 1 and 2 of this article are in conformity with the rules laid down by the Danish Nationality Act, article 9 (on renunciation) and article 7 (on loss) of Danish nationality through acquisition of another nationality, but paragraph 3 of the draft Conventions goes beyond Danish law, *cf.* article 8 of the Danish Nationality Act under which a person may lose his Danish nationality even if that renders him stateless.

Article 7 of both Conventions. Danish law on nationality does not contain any rules on deprivation of nationality by way of penalty and is thus in conformity with the principle laid down by this article.

Article 8 of both Conventions. Under Danish law on nationality a person cannot be deprived of his nationality on the grounds referred to in this article; hence, article 8 is in conformity with the principles of law adhered to in Denmark.

Article 9 of both Conventions. The rules embodied in this article are in conformity with the principles to which the State of Denmark has adhered and will probably continue to adhere in such cases.

Article 10 of both Conventions. The Danish authorities have no objection to the provisions of this article.

From the above comments it will be understood that the provisions of the draft Conventions deviate, in essential respects, from the existing Danish legislation on nationality. Hence, the draft Conventions cannot be accepted by the Danish authorities without quite sub-

stantial reservations, unless they are amended considerably in the course of further treatment.

In regard to the question of amending the Danish legislation on nationality with a view to adapting it to conventions based on the two drafts submitted, attention is invited to the fact that the Danish Nationality Act of 27 May 1950 was drafted in collaboration with the other Scandinavian countries. Hence, amendments of that Act would—at least as far as more important amendments are concerned—probably presuppose corresponding and simultaneous amendments of the Norwegian and Swedish nationality laws.

In view of the comparatively recent detailed consideration given to Scandinavian laws on nationality, the Danish authorities feel that far-reaching amendments of these laws are not very likely to be effected in the next few years.

6. Egypt

NOTE FROM THE PERMANENT DELEGATION OF EGYPT TO THE UNITED NATIONS

[*Original: English*]
2 July 1954

1. Article 1 of both draft Conventions. The Egyptian Government does not accept the provisions of article 1 in both draft Conventions. Whereas that article permits a child, who otherwise would be stateless, to acquire at birth the nationality of the State in whose territory it is born, Egyptian Law No. 160 of 1950, stipulates that acquisition of Egyptian nationality is dependent upon normal residence in Egypt until the age of twenty-one, and compliance with other conditions referred to in articles 4 and 5 of that law.

Furthermore, Egypt is suffering from an over-population problem. The increase in population is not at par with the growth of economic resources. The adoption of the principles laid down in article 1 of both draft Conventions would, therefore, aggravate the situation causing a decline in the social and economic standards of living in Egypt.

According to current Egyptian laws, acquisition of Egyptian nationality is limited to cases where economic, cultural or artistic gains accrue therefrom.

The Egyptian Law of 1950, in its article 2, paragraph 4, considers, however, a child born in Egypt of two unknown parents to be Egyptian.

The Egyptian Government considers that the actual provisions of its present law of nationality has thus eliminated one of the most common reasons of statelessness and does not, therefore, deem it necessary to change any of its provisions which were primarily drawn up to safeguard the vital interests of its inhabitants.

2. Article 2 of both draft Conventions. Article 2 of both draft Conventions is in conformity with the principles laid down by article 2 of the Egyptian Law of 1950.

3. Article 3 of both draft Conventions. For reasons similar to those expressed in paragraph 1 above, the provisions of this article are not acceptable to the Egyptian Government.

4. Article 5 of both draft Conventions. Provisions of this article are not in accordance with principles provided by the Egyptian Law on nationality.

5. Article 6 of both draft Conventions. The Egyptian Nationality Law contains similar provisions aiming at eliminating statelessness with the exception of one case—that of a foreign wife who acquires Egyptian nationality by marriage and upon termination of that marriage loses her Egyptian nationality if her residence is normally established abroad.

The *ratio legis* of this exception lies in the desire of the Egyptian Government to prevent cases of fraud. Moreover, it has been observed that such a wife who is not willing to reside in Egypt and establish her normal residency abroad must have considerable interest in doing so and presumably might have regained her nationality of origin.

On the other hand, the married woman does not lose her Egyptian nationality if she normally resides in Egypt after termination of her marriage.

6. Article 7 of both draft Conventions. Whereas article 7 of the draft Convention on the Elimination of Future Statelessness is inconsistent with the Egyptian Law of nationality, article 7 of the draft Convention on the Reduction of Future Statelessness is partly in conformity with its provisions.

The Egyptian Law does not require any judicial pronouncement before nationality is lost although executive decisions in this respect are subject to judicial review by Egyptian Courts.

The Egyptian Government does not approve of any limitation to be imposed upon its right of deprivation of nationality as a punishment because it considers the State the most competent authority to decide on acts which threaten its internal security or its economic and social structure.

7. Article 10 of both draft Conventions. The Egyptian Government may approve the establishment, within the framework of the United Nations, of an agency to act on behalf of stateless persons, but does not approve the establishment of a tribunal to decide upon complaints by individuals claiming to have been denied nationality.

It is the view of the Egyptian Government that granting nationality is a matter for the exclusive jurisdiction of the States within the framework of its own domestic legislation and based upon consideration of its best interest and security. Therefore domestic courts would be the competent organs to supervise the State action in this matter.

The Egyptian Government has no further comments on other articles of both draft Conventions.

Taking into consideration the above-mentioned remarks, the Egyptian Government cannot, therefore, accept the two draft Conventions in their present text; and reserves the right to present further comments, as it deems necessary, when the final draft convention is completed and submitted to the Egyptian Government.

7. Honduras

LETTER FROM THE DEPARTMENT OF FOREIGN AFFAIRS OF HONDURAS

[*Original: Spanish*]
15 January 1954

The Honduran Government accepts without reservation the preambles to the two draft Conventions, which are based on a binding moral principle expressed in the Universal Declaration of Human Rights in the

words: "Everyone has the right to a nationality". The Economic and Social Council recognizes that this right should be effectively guaranteed.

The Honduran Government accepts without reservation article 1 of the draft Convention on the Elimination of Future Statelessness.

In my Government's opinion a new paragraph should be added to article 1 of the draft Convention on the Reduction of Future Statelessness, in order to prevent the statelessness of a person who does not normally reside in the country before attaining the age of eighteen. This paragraph would read as follows:

"4. If the person does not normally reside in the State before attaining the age of eighteen he shall acquire his father's nationality or, failing that, his mother's nationality."

My Government approves article 3 of both draft Conventions providing that birth on a vessel or an aircraft shall be deemed to have taken place within the territory of the State whose flag the vessel flies. It accepts this article in the light of the Commission's decision that the best solution in this case was to adopt the simple test of the flag of the vessel and of the registration of the aircraft, in view of the relative infrequency of birth on vessels or aircraft.

It also approves without reservation article 4 of both draft Conventions.

It has no objections to article 5 of both Conventions. My Government does not object to article 6, paragraphs 1 and 2 of the drafts but objects to paragraph 3 of that article which provides that "persons shall not lose their nationality so as to become stateless on the ground of departure, stay abroad, failure to register or on any other similar ground". My Government is of the opinion that departure, stay abroad, failure to register or any other similar ground should be a ground for loss of nationality, but only in the case of naturalized persons who in this way acquire a new nationality and return to their former country for a certain time or indefinitely, or settle in another State without registering with the appropriate authorities of the State of which they claim to be naturalized citizens after the expiration of a time-limit laid down under the national law. The Honduran Government is in favour of this paragraph being amended accordingly, with the addition of a further paragraph. The new text might read as follows:

". . ., except in the case of naturalized persons who may lose their nationality after being absent from the country for more than five consecutive years if they fail to register abroad or their conduct is such that they deserve to be deprived of their naturalization.

"4. Naturalized persons who lose their nationality in this way shall recover that of their country of origin."

My Government has no comment to make on article 7 of the Convention on the Elimination of Future Statelessness but considers that this article should refer specifically to nationality at birth. The new paragraph 4 added to article 6 would be applied to naturalized persons.

My Government also agrees with article 7 of the Convention on the Reduction of Future Statelessness, but considers in connexion with paragraph 2 that the Government authorities acting in accordance with the law should be entitled to deprive a person of nationality. Such an amendment would mean adding another sentence to paragraph 2.

In accordance with its traditional policy and that of the Republic throughout its history, my Government is able to accept without any modifications article 8 of both drafts. It sincerely believes that other Governments guided by the same democratic principles will accept it wholeheartedly without any reservations limiting its application.

My Government agrees with articles 8 and 9 of the drafts.

My Government approves paragraphs 1, 2 and 4 of article 10. It suggests, however, that in order to achieve the purposes mentioned in those paragraphs the following sentence should be added to paragraph 3:

". . ., and if none of the Contracting Parties request it, the General Assembly shall proceed to set them up."

8. India

NOTE FROM THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

[*Original: English*]
2 April 1954

The Minister for External Affairs . . . has the honour to say that pending enactment of the Citizenship Law of India, it is not possible for the Government of India to offer any useful comments on the draft Conventions in question, since statelessness is a problem which is intimately connected with laws of nationality and citizenship.

9. Lebanon

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF LEBANON

[*Original: French*]
18 May 1954

Article 1 of both drafts is in line with the general principles of Lebanese legislation on nationality and hence does not call for any comment.

Article 2 of both drafts is simply the natural sequence to article 1 and does not call for any comment, except perhaps that it may be desirable to define what is meant in law by the term "child".

Article 3 of both drafts is also in conformity with Lebanese legislation.

Articles 4 and 5, too, are in keeping with Lebanese law which provides that "a person born of a Lebanese father is a Lebanese national", and that "if a Lebanese woman marries an alien she shall lose her nationality on condition that the legislation of the State of which her husband is a national confers his nationality upon her, failing which she shall retain her Lebanese nationality."

Article 6, paragraphs 1 and 2, call for no comment. As regards article 6, paragraph 3, of both drafts, which provides that "Persons shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or any other similar ground", the Lebanese Government would be prepared to adopt it if the "stay abroad"—the cause of the loss of nationality—should exceed the time limit stipulated in the legislation of the contracting State of which the individual concerned is a national.

Article 7 of the draft Convention on the Elimination of Future Statelessness states that "the Parties shall not deprive their nationals of nationality by way of penalty if such deprivation renders them stateless." On the other hand, article 7, paragraph 1, of the draft Convention on the Reduction of Future Statelessness provides that "the Parties shall not deprive their nationals of nationality by way of penalty if such deprivation renders them stateless, except on the ground that they voluntarily enter or continue in the service of a foreign country in disregard of an express prohibition of their State".

The Lebanese Government cannot concur with the terms of the first of these drafts; while it can, on the other hand, agree to those of the second draft, for they are in keeping with its own legislation, it feels bound nevertheless to point out that there is one case in which Lebanese legislation does not require an express prohibition, viz. where a Lebanese national accepts an official appointment in Lebanon in the service of a foreign Government without prior permission.

Moreover, article 7, paragraph 2, of this second draft Convention provides: "In the case to which paragraph 1 above refers, the deprivation shall be pronounced by a judicial authority acting in accordance with due process of law", whereas under Lebanese law an order to deprive a person of Lebanese nationality is made by the Council of Ministers.

Articles 8, 9 and 10, common to both drafts, do not call for any comments.

10. Netherlands

COMMENTS TRANSMITTED BY A LETTER FROM THE PERMANENT DELEGATION OF THE NETHERLANDS TO THE UNITED NATIONS

[*Original: English*]
1 June 1954

General comments

The Netherlands Government, convinced of the necessity of eliminating or drastically reducing statelessness, are of the opinion that both draft conventions on future statelessness as contained in chapter IV of the report of the International Law Commission covering the work of its fifth session form an excellent contribution towards the solution of this problem, which has been pressing for such a long time.

The Netherlands Government, therefore, are in general agreement with the principles and major objectives of the said draft Conventions.

The Netherlands Government would, however, express a preference for the draft Convention on the Reduction of Future Statelessness (hereinafter to be referred to as "second draft") on grounds which will be further explained in their comments on the preamble and the articles of the draft Conventions. Notwithstanding this preference, they have thought it useful to include in their comments a number of suggestions regarding possible amendments of the text of the draft Convention on the Elimination of Future Statelessness (hereinafter to be referred to as "first draft"), in so far as, in their opinion, the wider objectives of this draft make such amendments necessary.

As regards the final sentence of paragraph 121 of the report of the International Law Commission: "In due course and after receiving the comments of Governments, the Commission will consider whether and in what form it should submit to the General Assembly one or more final draft conventions and what course of action it should recommend", the Netherlands Government, though they do not favour the idea of more than one final draft convention being eventually opened for signature—as this procedure would not be conducive to the uniformity of law—do not object to more than one draft convention being submitted to the General Assembly, leaving it to the Assembly to decide which draft will be adopted. They wish to point out, however, that should the General Assembly eventually decide to recommend the first draft for signature and ratification by the Members of the United Nations, it would be difficult for the Netherlands Government to comply with such recommendation, in view of the existing nationality legislation in the Netherlands.

Comments on the preamble and the articles of the two draft Conventions

Preamble. As regards the preamble of the conventions, the Netherlands Government have no remarks to make.

Article 1. The Netherlands Government prefer the text of article 1 of the second draft, for three reasons:

(1) As regards the acquisition of Netherlands nationality, Netherlands legislation, as a rule, is based on the principle of *jus sanguinis.* Though in order to avoid statelessness certain exceptions can be made to the principle of *jus sanguinis,* it should be observed that there may be cases in which the application of article 1 of the first draft would result in the acquisition of Netherlands nationality by persons who—the parents being non-Netherlanders—are born in the Netherlands as a result of purely accidental circumstances and then leave this country after so short a time that there is no link whatever with the Netherlands.

In the opinion of the Netherlands Government, paragraphs 2 and 3 of article 1 of the second draft constitute an adequate guarantee that in the future statelessness will only occur in exceptional cases.

(2) In practice, article 1 of the first draft could induce a State in whose territory stateless children have been born to discriminate in its legislation against these subjects who have been more or less forced upon that State, in so far as they have hardly any link with it. For instance, it could be easily imagined that—as is the case in various countries adhering to the principle of *jus soli*—the right to vote and the right to freedom of assembly and association are withheld from subjects who have no connexion with the State either by residence or by any other links. Thus, though, in its literal sense, the text of article 1 of the first draft protects the stateless person to a greater extent than does the text of article 1 of the second draft, the first may in practice lead to a devaluation of his status. It should be observed in this connexion that it has not been laid down in the draft Conventions which minimum rights a subject must possess.

(3) Acceptance of article 1 of the first draft might induce States not to admit refugees into their territories, which would be undesirable on humanitarian grounds.

In considering their position with regard to this article the Netherlands Government have proceeded on the assumption that article 1 of the second draft should be taken to mean that the person concerned shall pro-

visionally acquire the nationality of the Party in whose territory he is born, which acquisition shall be confirmed as soon as he attains the age of eighteen, the nationality being lost if he shifts his normal residence to another country before reaching that age.

Article 2. In the explanatory comment on this article in the report of the International Law Commission it is pointed out that this provision, especially within the system of the first draft, is not quite conclusive from a purely theoretical point of view. It may be imagined that a foundling, found in the territory of one of the Contracting Parties, is subsequently discovered actually to have been born in the territory of a State which does not recognize the principle of *jus soli,* while the nationality of the parents is not known. In that case, if the latter State is not a party to the convention, the present wording of article 2 might leave room for statelessness, because the child cannot profit by the provision of article 4 of the two draft Conventions.

The Netherlands Government realize that the case referred to above will present itself in very exceptional circumstances only, but in view of the object of the first draft, viz., to eliminate every conceivable possibility of statelessness, they would nevertheless suggest to add to article 2 a second paragraph to be worded in the following terms:

"In the case that, its place of birth being known, it would otherwise be stateless, the foundling shall, for the purpose of article 1, be deemed to have been born in the territory of the Party in which it is found."

Article 3. The Netherlands Government deem it a happy solution to assume, for the purpose of article 1, that in all cases in which birth has taken place on a vessel or on aircraft, it shall be deemed to have taken place within the territory of the State whose flag the vessel flies, respectively of the State where the aircraft is registered.

Article 4. According to the explanatory comment on this article in the report of the International Law Commission, it is the intention that the provision of his article shall extend to children born in no-man's-land or in territories the sovereignty of which is undetermined or divided, therefore, the Netherlands Government are of the opinion that the word "not" in the third line of article 4 should be omitted, it should be placed in the second line after the word "child".

Article 5. For the reasons set forth in their comments on article 7, the Netherlands Government deem it desirable to extend the scope of the provision contained in paragraph 2. In their opinion this could be achieved by inserting this provision as a separate article.

Article 6. The Netherlands Government are in general agreement with the provisions of this article.

Article 7. As regards this article, the Netherlands Government likewise prefer the second draft as the stringent provision that States are not allowed to deprive their nationals of their nationality by way of penalty, if such deprivation renders them stateless, is qualified by providing that an exception can be made in case such nationals voluntarily enter or continue in the service of a foreign country in disregard of an express prohibition of their State. Further the Netherlands Government hold the view that the expression—"by way of penalty" implies an unintended restriction of the article; therefore the Government would suggest to delete these words. This also applies to the second draft, as in many countries—and certainly in the Netherlands—deprivation of nationality on the ground of entering or continuing in the service of a foreign State is not considered a punitive measure but rather the logical result of the fact that the person concerned as evinced a degree of loyalty to a foreign State which is incompatible with his original nationality.

Accordingly Netherlands nationality is lost at the moment the person concerned enters the service of a foreign State without the consent of the competent authorities. At the moment the Netherlands Government are considering a proposal to the effect that when a person enters the service of a foreign State he shall lose his Netherlands nationality only in cases in which this is expressly declared by the Netherlands authorities concerned. In this system the decision whether or not the persons concerned will lose his Netherlands nationality does not depend on juridical factors; it is rather a matter of policy and therefore intervention of a court does not fit in with the proposed system. If this system should be adopted the number of cases of Netherlanders becoming stateless as a result of entering the service of a foreign State would be very small; therefore it is in accordance with the spirit of the proposals of the International Law Commission.

If in the first paragraph of article 7 of the second draft the words "by way of penalty" are deleted, the Netherlands Government recommend that in connexion with the foregoing the second paragraph of article 7 be worded as follows:

"In the case that a person will be deprived of his nationality on the aforementioned ground by way of penalty, the deprivation shall be pronounced by a judicial authority acting in accordance with due process of law."

Moreover the Netherlands Government are of the opinion that deprivation of nationality in virtue of article 7 should not entail loss of nationality by the members of the family of the person concerned. A similar guarantee has been laid down in paragraph 2 of article 5 of the two drafts. Therefore the Netherlands Government deem it desirable to insert paragraph 2 of article 5 as a separate article in the two conventions, so that this provision shall apply not only to loss of nationality as a consequence of change of personal status but to all cases of loss of nationality dealt with in the conventions. This new article could be inserted at the end of the conventions.

As regards the explanatory comment in the report of the International Law Commission on article 7 concerning the legal effects of withdrawal or annulment of naturalization on account of fraud in obtaining it, the Netherlands Government are of the opinion that it is advisable to make full provision for this case in the two conventions.

Article 8. The Netherlands Government entirely concur in the explanation of the International Law Commission to this article.

Article 9. Though the Netherlands Government recognize the existence of a principle of international law according to which the inhabitants of a territory as referred to in this article, as a rule, have the right of option, they share the opinion of the International Law Commission, as expressed in its explanatory comment on this article that the present conventions are not the appropriate place for dealing with this prin-

ciple. They understand from the explanatory comment, however, that the provision concerning the right of option was inserted for the sole purpose of avoiding the impression that, by not inserting this right, the existence thereof was being ignored. For the purpose of reflecting this more clearly in the text of the convention the Netherlands Government would suggest to insert in paragraph 1 after the word "option", the words "as far as recognized under international law". They are of the opinion that in this way it is clearly expressed that in this respect the convention does not add anything to existing international law.

Article 10. In general, the Netherlands Government agree to the provisions of this article concerning the settlement of disputes and complaints which might arise in connexion with the interpretation or application of the convention. They realize that article 10 for the greater part contains only directives which will have to be elaborated after the convention has come into force.

The Netherlands Government entirely concur in the view of the International Law Commission laid down in paragraph 158 of its report, viz., that the fact that the tribunal referred to in paragraph 2 of article 10 should be accessible to individuals acting through an agency does not affect the question to what extent individuals in general can be subject of rights and obligations arising from international law. For the establishment of that tribunal by the convention is exclusively envisaged in view of considerations of a practical nature applying to this special case, viz., that in this case persons are concerned who claim to have been denied nationality in violation of the provisions of the convention and who, consequently, cannot call upon any State to accord them diplomatic protection or any other form of protection based on international law.

Finally, the Netherlands Government wish to note for the sake of good order that in the English text of the final sentence of paragraph 157 of the report of the International Law Commission the word "established" seems to have been omitted before "in accordance with paragraph 2". It is assumed that both in the English and in the French text the object of referring to paragraph 2 of article 10 is to specify the tribunal.

11. Norway

LETTER FROM THE PERMANENT DELEGATION OF NORWAY TO THE UNITED NATIONS

[*Original: English*]
6 April 1954

The Norwegian Government is in agreement with the objectives underlying the drafts prepared by the International Law Commission and would regard their acceptance as multilateral conventions by a large number of States as a great step forward. The system established by the drafts is, however, in various respects not in conformity with Norway's nationality legislation in force at present. The following observations relate to the latter aspect of the matter.

I

Draft Convention on the Elimination of Future Statelessness

Article 1. According to article 1 of the Norwegian Nationality Act a child born in Norwegian territory will in any case acquire Norwegian nationality if the *mother* is Norwegian and the child would otherwise be stateless. Are *both* parents stateless, the child will, however, also become stateless. Consequently the Nationality Act would have to be amended before Norway could adhere to the convention.

Article 3. As a general rule birth on board a Norwegian ship is, according to Norwegian law, assimilated with birth in Norwegian territory as far as acquisition of nationality is concerned. Exceptions may be found, for instance when the birth has taken place while the ship was staying in a foreign port or during the passage of the territorial waters of another country. In such cases it might not be warranted to assimilate the birth with birth in Norwegian territory and it is doubtful whether any circumstances could warrant the adoption of a categorical rule such as the one contained in the draft.

Article 4. According to article 1 of the Norwegian Nationality Act, a child born to a Norwegian unmarried woman will acquire Norwegian nationality regardless of the place of birth. If the child is born to married parents outside Norway and if the father is an alien (or stateless), there is no similar rule even if the mother is Norwegian and the child would otherwise become stateless. The same applies to a child born out of wedlock to a Norwegian father if the mother is not Norwegian. Thus an amendment to the Nationality Act would have to precede Norway's adherence to the convention. In addition it should be noted that, according to the Norwegian conception of right and the system of the Nationality Act, the nationality of the *mother* should prevail in case of a child born out of wedlock. From a Norwegian point of view, therefore, the provision contained in the last sentence of article 4 is not sufficiently flexible.

Article 5. The provision contained in paragraph 2 is not in conformity with our Nationality Act in so far as loss of nationality according to article 8 of the Nationality Act entails loss of nationality by the children even if they thereby become stateless. For the contents of article 8 reference is made to the observations on article 6 paragraph 3 of the draft (see below).

Article 6. The provision contained in paragraph 3 is in conflict with article 8 of the Norwegian Nationality Act, which prescribes that a Norwegian *born in a foreign country* loses his Norwegian nationality when he reaches twenty-two years of age if he has never previously resided in Norway or sojourned in the country under circumstances pointing to solidarity with Norway. Whether the consequence of the loss of nationality is that he will become stateless or not, is an irrelevant factor.

II

Draft Convention on the Reduction of Future Statelessness

Article 1, paragraphs 2 and 3 are not in conformity with the Norwegian Nationality Act which—except in the case mentioned in article 8—does not recognize loss of Norwegian nationality unless the person concerned acquires the nationality of another country. The provision, therefore, would make it necessary to amend the law. As regards the last sentence of paragraph 3, reference is made to the comments made on article 4 of the preceding draft convention (see I).

For comments on articles which both drafts have in common reference is made to the comments to particular articles of the preceding draft (see I).

Provisions in the draft which have not been singled out for comment are considered not to be in conflict with Norwegian legislation. No comments are offered with regard to such provisions.

As will appear from the preceding comments, Norway's position with regard to the question of adherence to the draft will have to be influenced by the possibility of effecting the necessary changes in the Nationality Act. Considering the important humanitarian aspects of the matter and the importance of demonstrating some liberality in the international co-operation aimed at relieving statelessness, the Norwegian Government will not be adverse to the idea of seeking to effect the necessary changes in the law provided there is some prospect of general adherence to one of the draft Conventions on the part of Governments. It should be noted, however, that the Norwegian Nationality Act of 8 December 1950 (No. 3) was the result of Nordic co-operation in the legal field and that the Nationality Acts of Norway, Denmark and Sweden are in the main identical. From the point of view of Nordic uniformity of law it must be considered unfortunate to amend the Norwegian law if similar changes are not made in the Danish and Swedish laws.

12. Philippines

LETTER FROM THE PHILIPPINE MISSION TO THE UNITED NATIONS

[*Original: English*]
25 February 1954

The provisions of the two draft Conventions, the first on the Elimination of Future Statelessness, and the second on the Reduction of Future Statelessness, do not contravene any applicable laws of the Philippines, with the exception of paragraph 1 of article 6 of both drafts, which provides that "Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality". This provision conflicts with section 1 (2) of Commonwealth Act No. 63, as amended by Republic Act No. 106, which prescribes that Philippine citizenship may be lost, among other ways, "by express renunciation of citizenship". Such loss of citizenship on the part of Filipino citizens is not conditioned on the acquisition or possession of another. However, adherence to the rule expressed in the draft Conventions as regards the effect of renunciation of citizenship would not prejudice national interest and would, on the contrary, uphold the policy expressed in the draft Conventions to avoid or reduce statelessness.

An examination of the two draft Conventions shows that they are similarly worded except as regards articles 1 and 7. The additional provisions in article 1 of the second draft (on the reduction of future statelessness) are more in consonance with the principle of citizenship adopted by the Philippine Constitution to abandon the rule of *jus soli* and to emphasize the *jus sanguinis* doctrine. Likewise, the additional provisions in article 7 of the second draft give a Member State sufficient leeway to provide for forfeiture of citizenship on the part of its nationals by way of penalty.

With reference to article 6, paragraph 3 of the draft Conventions, it should be added that section 18 (*b*) of Commonwealth Act No. 473, otherwise known as the Naturalization Law, provides that a certificate of naturalization may be cancelled if the person naturalized shall, within five years next following the issuance of said certificate, return to his native country or to some foreign country and establish his permanent residence there.

Of the two draft Conventions, the Philippine Government believes that the one on the Reduction of Future Statelessness is preferable because it appears as the logical step toward the ultimate goal of eliminating statelessness and, therefore, presents an easier basis for agreement.

13. Sweden

LETTER FROM THE MINISTRY FOR FOREIGN AFFAIRS OF SWEDEN

[*Original: English*]
3 May 1954

The present Swedish Citizenship Act, promulgated on 22 June 1950 and in force as from 1 January 1951, replaced a previous Act of 1924 on the same topic. The new Swedish legislation on citizenship is the result of a close co-operation between Sweden, Denmark and Norway. When comparing the contents of the Swedish Citizenship Act now in force and that of the two draft Conventions in question, the Swedish Government have found that the draft Conventions are substantially incompatible with, and are more far-reaching than, the rules contained in the Swedish Citizenship Act. The Swedish Government, which do not deem it feasible at the present time to consider a modification of the said legislation so recently adopted, cannot thus accept the two draft Conventions in their actual tenor without making such extensive reservations as to render a Swedish adherence thereto purposeless.

14. United Kingdom of Great Britain and Northern Ireland

NOTE VERBALE FROM THE UNITED KINGDOM DELEGATION TO THE UNITED NATIONS

[*Original: English*]
12 March 1954

Her Majesty's Government are in favour not only of the reduction of statelessness but of its elimination so far as they may be possible by international agreement. Their preference as between article 1 of the draft Convention on the Elimination of Future Statelessness and article 1 of the draft Convention on the Reduction of Future Statelessness is for the former, not only on this general ground but because the provision of the former article seems to them simpler and free from the complications which under the alternative article might arise in determining the actual status of individuals—and in particular those under eighteen years of age—coming within its scope.

As regards article 1 of the draft Convention on the Reduction of Future Statelessness, Her Majesty's Government have no objection in principle to the general scheme of the article, but they observe that since the first paragraph of this article would require the admission to a limited extent of the principle of the *jus soli* by countries whose nationality law is not based on that principle, it has been thought right in paragraph 2 of the article to provide in effect that the retention of nationality so acquired may be dependent upon the degree

of connexion which the person concerned has maintained with the country whose nationality is conferred upon him. It seems to Her Majesty's Government that it would be equitable that some similar discretion should be allowed under paragraph 3 to those countries which, as that paragraph stands, are being asked to accept the obligation of applying the *jus sanguinis* without any regard to the degree of the connexion between them and the person concerned.

The same consideration arises as regards article 4 of both draft Conventions.

A further comment which Her Majesty's Government would wish to offer at this stage is in respect of article 10 of both draft Conventions. Her Majesty's Government recognize that the question whether action taken in a particular case by a State Party to a convention on this subject is in accordance with the provisions of the convention will not always, and may not even often, be of interest to another State Party (though they would point out that there will be some cases in which another State, e.g., the State where the person is resident at the time, may have a direct interest in the consequences of such action). They do not think, however, that this consideration would justify the setting up of the elaborate organization suggested under this article and the giving of a right to the individual to set this machinery in motion. They would point out that the issues raised before the suggested tribunal might be far from simple, e.g., the question of the meaning of such terms as "normally resident" in article 1 or "political grounds" in article 8, and they doubt whether it is desirable to institute a tribunal with power to determine such questions in cases which, by reason of the circumstances in which they arise, cannot be submitted to the International Court of Justice, within whose province the authoritative determination of such questions lies.

Her Majesty's Government have no other comments to offer on the other articles of the draft Conventions. They wish, however, to stress the desirability of including a suitable form of territorial application article in the convention, so as to permit the extension of the convention to any or all of the territories for whose international relations Member States are responsible, after due consultation for the purpose of ascertaining the wishes of the Governments of those territories. Her Majesty's Government accordingly propose the insertion of an additional article in the final version of the convention on the following lines:

> "Any State may at the time of its ratification or thereafter declare by notification addressed to the Secretary-General that the present Convention shall extend to all or any of the territories for whose international relations it is responsible."

15. United States of America

NOTE FROM THE UNITED STATES MISSION TO THE UNITED NATIONS

[*Original: English*]
20 April 1954

This Government realizes the hardships resulting to many people from statelessness and the importance for Governments to amend their laws to eliminate or reduce as far as possible the amount of statelessness which results from the operation of such laws. However, there is a question whether such elimination or reduction can best be accomplished through the medium of an international convention, concluded within the framework of the United Nations or through appropriate legislative action of individual Governments taken pursuant to a recommendation of some organ of the United Nations.

So far as this Government is concerned, there are very few instances in its laws in which loss of American nationality results in a person becoming stateless. Where expatriation results from acts committed abroad, the nature of the act will, in some instances, such as naturalization, taking an oath of allegiance, or accepting a position for which nationality in a foreign state is a prerequisite, automatically bring about the acquisition of another nationality. Other acts of expatriation, such as military service and voting, are such as would normally be performed only by persons having also the nationality of the State in which the act was performed. While there are cases where expatriation may result in statelessness, these, for the most part, are cases affecting persons who remain in the United States, such as conviction by United States courts of treason or desertion from military service, and consequently do not create any international problem. In addition, these cases are few in number.

So far as stateless persons admitted to the United States for permanent residence are concerned, they are eligible for naturalization upon compliance with the statutory requirements to the same extent as other aliens. Consequently, the present United States laws do not, to any great extent, add to the number of stateless persons, and do, in fact, aid in the reduction of statelessness by giving to stateless persons the same opportunity for naturalization as is given to other permanently resident aliens.

As of possible usefulness, this Government, although questioning the desirability of dealing with this subject by convention, presents the following discussion of the extent to which the provisions of the conventions conform to existing United States law:

Article 1. Since the United States follows the principle of the *jus soli*, the first article of the first convention is in conformity with existing United States law. The corresponding article of the second convention is concerned with countries following the principle of *jus sanguinis* and is not of particular concern to the United States. It is noted, however, that it does recognize the father as having a superior right over the mother to transmit nationality. This seems at variance with the principle of non-discrimination based on sex which has been recognized and supported by the United States in other organs of the United Nations.

Article 2. Assuming the presumption of birth in the territory in which found to be a rebuttable one, this is in accord with United States legislation.

Article 3. United States law does not recognize birth on a vessel or airplane of United States registry as conferring United States nationality. A provision of this type is open to serious possibilities of abuse.

Article 4. It is noted that the article as drafted would confer dual nationality on children who acquired at birth the nationality of a State which was not a party to the convention. In this respect it would seem to have the effect of increasing dual nationality. It also perpetuates the discrimination referred to in article 1. The effect, so far as the United States is concerned, would seem to be that if it did become a party to the convention, article 1 would apply, and, if it did not, article 4

would be applicable as between the parties. In either event the child would be an American citizen, but in the second contingency, the convention would insure his acquiring a second nationality as well. Moreover, if the parents are nationals of States not parties to the convention, the child might still be stateless. This article would seem to require re-examination.

Article 5. This article appears to present no inconsistency with existing United States nationality legislation. United States law provides for loss of nationality only through the performance of certain voluntary acts. A mere change in personal status is not considered such a voluntary act. Neither does the loss of nationality by one spouse affect the nationality of the other or of their children.

Article 6. The first paragraph of this article is not in accordance with existing United States law, which provides for the loss of nationality by making a formal renunciation of American citizenship before a diplomatic or consular officer. Such loss is in no way dependent upon whether the person renouncing has or acquires another nationality. The second paragraph appears to deal with a situation which does not obtain in the United States and for that reason would not appear to be open to any objection on its part. Since the United States regards expatriation as a natural and inherent right of all people, there is no provision in its law for the issuance of expatriation permits. The third paragraph of this article would be at variance with the long-standing provision in United States laws for the loss of citizenship in certain cases through protracted residence abroad for specified periods.

Article 7. This article, as it appears in either convention, is inconsistent with United States laws, which in several instances provide for deprivation of nationality "by way of penalty", regardless of whether such deprivation renders the individual stateless. As examples, there may be cited treason, desertion and draft evasion. With regard to the second paragraph of article 7 in the draft Convention on the Reduction of Future Statelessness, there is nothing in United States law which requires a judicial pronouncement before nationality is lost, although procedures have been established whereby persons who have been held administratively to have lost nationality may have the administrative determination reviewed by the courts.

Article 8. This probably presents no inconsistency with United States law, although it is not entirely clear what the term "political" is intended to cover. If it is intended to cover offences such as treason or desertion from military service, it would be objectionable from the standpoint of the United States.

Article 9. In connexion with acquisitions of new territory in the past, the United States has invariably made provision for the acquisition of United States nationality by the inhabitants.

Article 10. This article appears objectionable from the viewpoint of the United States. Since this Government considers that the question of determining who are American nationals is one of purely domestic concern, it would not be willing to delegate to an international tribunal the power to over-rule a decision made by it that a particular individual did not have American nationality.