

J. Int'l L. 85, Winter

Martinez, Lucy., 2002, *Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems*, 34 Rutgers L. J. 1, Fall

Morris, Madeline., 2005, *International Law, and Sovereignty: Reevaluating the Rules of the Game in a New Century: The Politics of Prosecution*, 5 Chi. J. Int'l L. 405, Winter

Proulx, Vincent-Joel., 2004, *Rethinking the Jurisdiction of the International Criminal Court in the Post-September 11th Era, Should Acts of Terrorism Qualify As Crimes Against Humanity?*, 19 Am.U. Int'l L. Rev. 1009

Trahan, Jennifer., 2002, *Trying a Bin Laden and Others: Evaluating the Options for Terrorists Trials*, 24 Hous.J. Int'l L 475, Spring



European Agreement on Transfer of Responsibility for Refugees¹

Background

The Agreement aims to secure the adoption of standard rules to determine which State is to assume the responsibility for a refugee, in particular in connection with the issue of travel documents. The Agreement lies down the conditions in which responsibility for issuing a travel document is transferred from one Party to another when a refugee changes his/her place of residence.²

In the Council of Europe, the preparation, of the European Agreement on Transfer of Responsibility for Refugees was started with Recommendation 775, which adopted by the Consultative Assembly on 27 January 1976 on the proposal of its Committee on Population and Refugees. In that text the Assembly, recommended the Committee of Ministers to instruct the committee of governmental experts to prepare an agreement on the transfer of responsibility. Reference is made in the preamble of the Recommendation to the fact that the question of transfer of responsibility, especially with regard to the issuing of travel documents, frequently creates difficulties when refugees move from one country to another; the main reason is the provisions of Article 28 of the Geneva Convention of 28 July 1951 relating to the status of refugees, and of paragraphs 6 and 11 of the Schedule thereto, admit of different interpretations.³

Paragraphs 6 and 11 of the Schedule to the 1951 Convention relating to the status of refugees deal with the responsibility of States for the issuing of travel documents. Paragraph 6.1 stipulates: "The renewal or extension of

¹Full text of the Agreement can be accessed in <<http://conventions.coe.int/Treaty/en/Treaties/Html/107.htm>>.

²<<http://conventions.coe.int/Treaty/en/Summaries/Html/107.htm>>.

³<<http://conventions.coe.int/Treaty/en/Reports/Html/107.htm>>.

the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.” Paragraph 11 reads: “When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of Article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.” Assembly Document 3703 explains, refugees sometimes find themselves in a difficult situation because those paragraphs do not state clearly what the terms “has established lawful residence”, “reside lawfully”, and “has lawfully taken up residence” mean, and the interpretation of these terms in the Schedule varies from one European country to another. The result is sometimes, it is difficult to determine which State is responsible for issuing or renewing a given refugee’s travel documents.⁴

In the preamble of the Recommendation the Assembly also drew attention to the importance of the European Agreement of 20 April 1959 on the abolition of visas for refugees, the aim of which is to facilitate travel for refugees residing in the territory of Contracting Parties. This agreement is in force between 14 Council of Europe member States.⁵

After examining Assembly Recommendation 775 and other recommendations concerning refugees, in 1977 the Committee of Ministers of the Council of Europe decided, to establish an ad hoc Committee on Legal Aspects of Territorial Asylum and Refugees with instructions to consider these recommendations and report back on the possibility and advisability of the Council of Europe preparing a convention or other legal instrument on the matter. After studying the Recommendation 775, the ad hoc committee gives the opinion regarding practical problems confronting refugees who wished to settle in a country other than the one which issued them with their travel documents could be solved by means of a legal instrument. Acting on the ad hoc committee’s opinion, the Committee of Ministers made pro-

⁴ Ibid.

⁵ Belgium, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Sweden, Switzerland and United Kingdom. Moreover, the Agreement has been signed, but not ratified, by Cyprus and Portugal. For the declarations and reservations reference should be made to the collection European Conventions and Agreements (Strasbourg, 1971).

vision, in the organization’s 1978 Work Program, for the drafting of an agreement on the transfer of responsibility for refugees who move lawfully from one Council of Europe member State to another. The ad hoc Committee on Legal Aspects of Territorial Asylum and Refugees was instructed to prepare the draft. Once finalized, the draft was forwarded to the Committee of Ministers, who adopted the text of the agreement and decided to open it for signature by Council of Europe member States on the occasion of the 67th Session of the Committee of Ministers on 16 October 1980.⁶

Concept

The Agreement consists with 17 Articles. Article 1 provides definitions used in the Agreement. Article 2 until Article 8 stipulates the content of the Agreement. Article 9 until Article 17 governs provisions concerning entry into force of the Agreement, declaration, reservation, signature, ratification, accession, denunciation, and dispute settlement mechanism.

Main Features

The main features established in this Agreement are:

1. Definitions provides in Article 1. “Refugee” is defined as a person to whom the Convention relating to the status of refugee of 1951 or of 1967 applies. “Travel Document” is defined as travel document issued by virtue of the Conventions mentioned before. “First State” is defined a State, party to this Agreement, which has issued such travel document. “Second State” is defined as another State, party to this Agreement, in which a refugee, holder of a travel document issued by the first State, is present.
2. Responsibility could be transferred on the expiry of a period of 2 years of actual and continuous stay in the second State with the agreement of the authorities, or if the second State has permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document. The period of 2 years shall start from the date of admission of the refugee to the territory of the second State, or from the date on which he presents himself to the authorities of the

⁶ See Supra note 3.

- second State. (Article 2 par.1). Responsibility shall also be transferred if readmission of the refugee to the first State can no longer be requested under Article 4. (Article 2 par.3).
3. For the calculation of the period in paragraph above, stays authorized for the purpose of studies, training or medical care shall not be taken into account; period of imprisonment of the refugee imposed because of a criminal conviction shall not be taken into account; periods during which the refugee is waiting for a pending appeal against a decision of refusal of residence or of removal from the territory shall only be taken into account if the decision on the appeal is favorable to the refugee; periods in which the refugee leaves on a temporary basis for not more than 3 consecutive months or, on more than one occasion, for not more than six months in total, shall be taken into account, such absences not being deemed to interrupt or suspend the stay. (Article 2 par.2).
 4. The travel document shall be extended or renewed by the first State until the date of transfer of responsibility (Article 3 par.1). The refugee shall not be required to leave the second State to obtain the extension or renewal of his travel document and may for this purpose apply to diplomatic missions or consular posts of the first State. (Article 3 par.2).
 5. The refugee shall be readmitted to the first State at any time, even after the expiry of the travel document as long as transfer of responsibility has not occur in accordance with Article 2 par.1 and 2. Readmission shall occur on the simple request of the second State, on condition that the request is made during the six months following the expiry of the travel document. (Article 4 par.1). Exclusion is if the authorities do not know the whereabouts of the refugee and for this reason are not able to make the request of the first State during 6 months following the expiry of the travel document, that request must be made within the 6 months following the time when the whereabouts of the refugee become known to the second State, but no later than two years the expiry of the travel document. (Article 4 par.2).
 6. From the date of transfer of responsibility, the responsibility of the first State to extend the travel document shall cease and the second State shall be responsible for issuing a new travel document to the refugee. The second State shall inform the first State about the transfer of responsibility. (Article 5).
 7. After the transfer of responsibility, in the interest of family reunification and for humanitarian reasons, the second State shall facilitate the admission to its territory of the refugee's spouse and minor or dependant children. (Article 6).
 8. The competent authorities of the Parties may communicate directly with each other as regards the application of this Agreement. These authorities shall be specified by each State, when expressing its consent to be bound by the Agreement, by means of a notification addressed to the Secretary General of the Council of Europe. (Article 7).
 9. Nothing in this Agreement shall impair any rights and benefits which have been or which may be granted to refugees independently of this Agreement. (Article 8 par.1). None of the provisions of this Agreement shall be interpreted as preventing a Party from extending the benefits of this Agreement to persons who do not fulfill the conditions laid down. (Article 8 par.2). The provisions of bilateral agreements concluded between Parties relating to the transfer of responsibility for the issuing of Convention travel documents or to the readmission of refugee in the absence of such a transfer shall cease to be applicable from the date of entry into force of this Agreement between those Parties. Rights and benefits acquired or in the course of being acquired by refugees under such agreements shall not be affected (Article 8 par.3).
 10. This Agreement shall be open for signature by the member States of Council of Europe. (Article 9 par.1). Instrument of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe (Article 9 par.2).
 11. After the entry into force of this Agreement, Committee of Ministers of Council of Europe may invite any State not a member of the Council which is a party to the Convention relating to the status of Refugee 1951 or Protocol relating to the status of refugee 1967, to accede to the Agreement. The decision to invite shall be taken by the majority provided for by Article 20.d of the Statute and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee (Article 11 par.1). In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe (Article 11 par.2).
 12. Any State may specify the territory of territories to which this Agreement

shall apply (Article 12 par.1). Any State may, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Agreement to any other territory (Article 12 par.2). Any declaration made, may be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General (Article 12 par.3).

13. Without prejudice to the provisions of Article 12, this Agreement shall apply to each Party subject to same limitations and reservations applicable to its obligations under the Convention relating to the status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the status of refugees of 31 January 1967 (Article 13).
14. Any State may declare that it avails itself of one or both of the reservations provided for in the Annex to this Agreement. No other reservations may be made (Article 14 par.1). Any contracting State which has made a reservation under the preceding paragraph may withdraw it by means of a notification addressed to the Secretary General of the Council of Europe (Article 12 par.2). A party which has made a reservation may not claim the application of that provision by any other Party; it may, if its reservation is partial or conditional, claim the application of that provision insofar as it has itself accepted it (Article 14 par.3)
15. Denouncement made shall be notified to the Secretary General of the Council of Europe (Article 16 par.1). Denouncement shall become effective on the first day of the month following the expiration of a period of six month after the date of receipt of the notification by the Secretary General (Article 16 par.2). Rights and benefits acquired or in the course of being acquired by refugees under this Agreement shall not be affected in the event of the Agreement being denounced (Article 16 par.3).
16. Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Agreement of any signature; the deposit of any instrument of ratification, acceptance, approval or accession; any date of entry into force of this Agreement; any other act, notification or communication relating to this Agreement (Article 17).

Dispute Resolution

Difficulties with regard to the interpretation and application of this Agreement shall be settled by direct consultation between the competent administrative authorities and, if the needs arise, through diplomatic channels (Article 15 par.1). Any dispute between Parties concerning the interpretation or application of this Agreement which it has not been possible to settle by negotiation or other means shall, at the request of any party to the dispute, be referred to arbitration. Each party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other party by the President of the European Court of Human Rights. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

Related Regulations

Regulations related to this Agreement are The 1951 Convention relating to the status of refugees and Protocol 1967 relating to the status of refugees.

Entry into Force

This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which two member States of the Council of Europe have expressed their consent to be bound by this Agreement. (Article 10 par.1). The Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of signature or of the deposit of the instrument or ratification, acceptance or approval (Article 10 par.2). The date of entry into force of this Agreement is December 1st, 1980 with ratifications from Belgium, Denmark, Germany, Greece, Norway, Portugal, Sweden, The Former Yugoslav Republic of Macedonia, and United Kingdom.⁷

⁷ <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=107&CM=1&DF=&CL=ENG>>.

Annex

Under paragraph 1 of Article 14 of this Agreement, any State may declare:

1. That insofar it is concerned, transfer of responsibility under the provisions of paragraph 1 of Article 2 shall not occur for the reason that it has authorized the refugee to stay in its territory for a period exceeding the validity of the travel document solely for the purposes of studies or training.
2. That it will not accept a request for readmission presented on the basis of the provisions of paragraph 2 of Article 4.

(Ni Putu Anggraeni)

Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession⁸

Background⁹

Europe has a history of producing and repressing stateless people. The separation of the Soviet Union, Yugoslavia and Czechoslovakia has caused enormous difficulties for people who were regarded by the new governments as belonging somewhere else - even if they had resided in their current location for many years. For instance, large numbers of residents, including children, remain non-citizens in Latvia and Estonia. Several thousand persons, among of them many Roma, who had not sought or obtained Slovenian citizenship soon after its independence, became victims of a decision in 1992 to erase non-Slovenian residents from the Register of Permanent Residents. Many of them had moved to Slovenia from other parts of Yugoslavia before the dissolution of the federation.

As well as in other states there are Roma without citizenship or basic identity documents. Those who have moved from the former Yugoslav Federation to other parts of Europe – for instance Italy - often lack of personal documents and therefore they live in uncertainty. They are de facto stateless. Their newborn children are frequently not registered and risk losing their right to apply one day for citizenship as they cannot prove legal residence in the country.

In Greece, a Nationality Code caused the de-nationalization of a large number of members of the Muslim minority in Thrace. Many of them are Turkish origin. This particular provision in the Code was withdrawn in 1998 but the change did not apply retroactively which meant that Muslims who had lost their citizenship did not get it back but had to start a naturalization process as if they were newcomers.

⁸ <<http://conventions.coe.int/Treaty/EN/Treaties/Html/200.htm>>.

A case which must be brought to a positive solution is the fate of the Meskhetians who were deported 1944 from Georgia by Stalin to other parts of the Soviet Union. Some of them wished to be able to return to Georgia and many of them who now are in Krasnodar Krai in Russia are stateless. There are hopes that the Georgian authorities will now ensure the follow through of their decision to ensure the possible return of this minority.

The Council of Europe has adopted two highly relevant treaties to guide a rights-based approach, especially for the problems which have followed the state dissolutions and successions since 1989. One is the 1997 Convention on Nationality and the other is the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.

Concept

The 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession is rooted in the notion that the avoidance of statelessness is one of the main concerns of the international community in the field of nationality. The Convention obliges the successor state to grant nationality to persons who would become stateless as a result of the succession if they habitually resided or had an appropriate connection with the successor state. The predecessor state also shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor state and who would otherwise become stateless. Similar to the International Law Commission Articles, this European Convention underscores respect for the wishes of those affected and stresses that states must take all necessary steps to ensure that persons concerned have sufficient information on rules and procedures regarding the acquisition of their nationality.¹⁰

Despite the close link between the European Convention on Nationality and the present Convention, which recalls the main principles contained in the European Convention on Nationality of particular relevance in the

context of State succession, it should be pointed out that the Convention has limited scope in the avoidance of statelessness as a result of State succession. The Convention is therefore not intended to set standards to be applied by States for the attribution of their nationality in this context – such standards are instead to be found in Chapter VI of the European Convention on Nationality, in particular its Article 18. Thus, the principles and rules laid down in the Convention do not affect rights and obligations arising out of the European Convention on Nationality.¹¹

General Principles

The General Principles comprised in the provisions of this Convention are:

1. The Principle on the right to a Nationality of the Successor State to every person who had the nationality of Predecessor State and has become stateless at the time of the State succession;
2. The Principle on the prevention of statelessness that States concerned shall take all necessary action to prevent cases of statelessness arising from State succession;
3. The principle of non-discrimination in law and practice;
4. The *ius soli* principle, that aims to prevent cases which a child born of a parent who was a former national of the predecessor State at the time of State succession will be stateless.

Main Features

The Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession is made of 22 Articles. The main features of this Convention, *inter alia*:

1. Definitions (Article 1)

This Convention provides the definitions of terms, such as

 - a. “State Succession”, means the replacement of one State by another in the responsibility for the international relations of territory;

⁹ Thomas Hammarberg, No one should have to be stateless in today's Europe, <<http://www.unhcr.org/refworld/category.POLICY,COECHR,,48abd54e5,0.html>> (last time visit, March 17 2010).

¹⁰ Katherine Southwick, Ethiopia-Eritrea: Statelessness And State Succession, <<http://www.fmreview.org/textOnlyContent/FMR/32/Southwick.doc>> (last time visit, March 18, 2010)

¹¹ <<http://conventions.coe.int/Treaty/en/Reports/Html/200.htm>>.

- b. "State Concerned", means the predecessor State or the Successor State, as the case may be;
- c. "Statelessness", means the situation where a person is not considered as a national by any State under the operation of its internal law;
- d. "Habitual Residence", means a stable factual residence;
- e. "Person concerned", means every individual who, at the time of State Succession, had the nationality of the predecessor State and become stateless as a result of the State succession.

2. Right to a nationality (Article 2)

This article emphasizes every individual has the right to nationality of the Successor State at the time of State succession. The persons who had the nationality of the Predecessor State should not suddenly be left without any nationality following State succession.

3. Prevention of statelessness (Article 3)

The article contains the general principle that States concerned shall take all appropriate measures to prevent cases of statelessness arising from State succession. The measures to be applied might include the drawing up of international treaties on the prevention of statelessness and the application of this principle in their internal law. Other measures might also be envisaged. The formalities required giving effect to the rules contained in the internal law, for instance the payment of fees and the application of other administrative or judicial procedures should not prevent a person who will become stateless as a result of State succession from acquiring a nationality.¹²

4. Non-discrimination (Article 4)

As indicated in this Article, when applying this Convention, States concerned shall not discriminate against any person concerned on any ground such as sex, race, color, language, religion, political or other opinion, na-

¹² Ibid.

tional or social origin, association with a national minority, property, birth or other status.

5. Responsibility of the successor State (Article 5)

A Successor State shall grant its nationality to persons who, at the time of State succession, had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time:

- a. Those who were habitual residents on its territory at the time of State succession, and;
- b. Those who were not habitual resident but have an appropriate connection with that State.

The responsibility of the Successor State is limited to former nationals of the Predecessor State who have or would become stateless as a result of the State succession in question. It therefore does not cover persons who were already stateless in the Predecessor State. The right to a nationality of these persons may instead be covered by Article 6, paragraph 4.g of the European Convention on Nationality.¹³

The appropriate connection mentioned in this Article paragraph 1 subparagraph b of this Convention is explained in paragraph 2 of the Article. it includes inter alia:

- a. A legal bond to a territorial unit of a predecessor State which has become territory of the successor State
- b. Birth on the territory which has become territory of the successor State
- c. Last habitual residence on the territory of the Predecessor State which has become territory of the Successor State.

6. Responsibility of the predecessor State (Article 6)

This Article stipulates the Predecessor State shall not withdraw its nationality from its nationals who have not acquired the nationality of a suc-

¹³ Ibid.

cessor State and who would otherwise become stateless as a result of the State succession. The provision is applicable only in situations where the Predecessor State continues to exist after State succession, as is the case after transfer and separation of part or parts of the territory. In cases where the Predecessor State has disappeared or is not a State Party to the Convention, only the previous article concerning the responsibility of the Successor State shall apply.¹⁴

7. Respect for the expressed will of the person concerned (Article 7)

According to this Article, the Successor State shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person can acquire the nationality of another State concerned on the basis of an appropriate connection with that State.

The provision applies exclusively to situations where a person has an appropriate connection with more than one successor State; in such cases if the person expresses the will to acquire the nationality of one of these States, this State shall not refuse its nationality to the person on the grounds that he or she may acquire the nationality of another successor State. The article is in particular relevant in cases where different family members might have an appropriate connection with several successor States and where the respect of the expressed will of the person concerned may preserve the family unity.¹⁵

8. Rules of Proof (Article 8)

Article 8 Paragraph 1 states A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements. The provision takes account of the situation where, due to the particular circumstances which might occur in the situation of State succession, it is impossible or very difficult for a person to fulfill the

¹⁴ Ibid.

¹⁵ Ibid.

standard requirements of proof to meet the conditions for the acquisition of nationality.

Paragraph 2 of this Article regulates A successor State shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the State succession and who have or would become stateless as a result of the State succession. The provision is only relevant in the situation of State succession where the Predecessor State has disappeared and all persons possessing the nationality of the Predecessor State have lost this nationality as an automatic consequence of that State's disappearance.¹⁶

9. Facilitating the Acquisition of nationality by stateless persons (Article 9)

The article is intended to fill any gaps after the application of Articles 5 and 6, either as a result of the Predecessor State not being a party to the Convention or because of its disappearance as a result of which all persons who possessed its nationality automatically became stateless. If these persons subsequently fail to fulfill the conditions for the acquisition of nationality of a successor State they will remain stateless. In such cases, it is important that the Successor State provide more favorable conditions for the acquisition of its nationality for stateless persons lawfully and habitually resident on its territory. The provision does, however, not affect the discretionary powers of States to grant nationality to such stateless persons.¹⁷

10. Avoiding statelessness at birth (Article 10)

Based on this Article, A State concerned shall grant its nationality at birth to a child born following State succession on its territory to a parent who, at the time of State succession, had the nationality of the Predecessor State if that child would otherwise be stateless. A child shall therefore at birth acquire the nationality of a Successor State on the basis of the *ius soli* principle if there is a risk that a child born of a parent who was a former national of the Predecessor State at the time of State succession will be

¹⁶ Ibid.

¹⁷ Ibid.

stateless. The child's acquisition of the nationality of a successor State is, in this case, not dependent on whether the parent also acquires the nationality of this Successor State. The aim of the provision is to avoid children becoming stateless as a result of their parents being stateless.¹⁸

11. Information to persons concerned (Article 11)

This article stressed a State concerned shall take all necessary measures so that persons concerned are informed in time of the rules and procedures concerning the acquisition of its nationality. States are normally obliged to take additional measures to ensure that the information reaches all persons concerned by the use, for instance, of the media or the Internet, or with the assistance of non-governmental organizations if necessary. It is, however, left to the individual States to determine which measures are the most appropriate as long as the information is disseminated in an open and transparent manner. The person concerned should, *inter alia*, receive information on where to submit an application for the acquisition of nationality and which authority to address for more information.¹⁹

12. Procedural guarantees (Article 12)

Article 12 of this Convention governs the State concerned shall ensure that in the framework of the procedures relating to nationality:

- a. The relevant applications be processed within a reasonable time;
- b. The relevant decisions contain reasons in writing and be open to an administrative or judicial review in conformity with its internal law;
- c. The fees be reasonable and not an obstacle for applicants.

13. Settlement by international agreement (Article 13)

The article favors solutions on nationality matters agreed between the States concerned in particular with a view to avoiding cases of statelessness arising as a result of State succession.

¹⁸ Ibid.

¹⁹ Ibid.

14. International co-operation (Article 14)

The Convention recognizes that co-operation among States is an important means of avoiding stateless cases as a result of State succession and providing information with regard to the operation of their relevant international law. The main purpose of such co-operation is the co-ordination of national policies in this field, on the basis of accepted principles. Indeed, such co-ordination is of fundamental importance as statelessness often results from the differences in the laws of States relating to nationality and from the combined effect of these laws.²⁰

In the paragraph 2 of this Article, it indicates co-operation shall also cooperate with the Council of Europe and with the United Nations High Commissioner for Refugees (UNHCR). State concerned shall also cooperate, where appropriate, with other States and international organizations.

15. Application of this Convention (Article 15)

As indicated by Article 15, This Convention only applies in respect of a State succession which has occurred after its entry into force. However, A State concerned may declare by notification addressed to Secretary General of the Council of Europe at the time of expressing its consent to be bound by this Convention, or, at any time thereafter, that it will also apply to a State Succession occurring before the entry into force of this Convention. if several States concerned make a declaration, as set out in paragraph 2, in respect of the same State succession, this Convention will apply between the States making such declaration.

16. Effect of this Convention (Article 16)

Article 16 regulates the provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favorable rights are or would be accorded to individuals on the avoidance of statelessness. This Convention Shall also not prejudice the application of

²⁰ Ibid.

the European Convention on Nationality, in particular its Chapter VI, and other binding international instruments in so far as such instruments are compatible with this Convention, in the relationship between the States Parties bound by these instruments.

17. Accession, Reservation, Denunciation, and Notifications (Article 19-22)

Due to the importance of allowing a large number of States to become Parties, The Convention is open for accession to any non-member State of the Council of Europe (Article 19). Reservations are not permissible in respect of the Convention, with a limited number of exceptions. Reservations are admissible with regard to only the following provisions – Article 7, Article 8 paragraph 2, Article 12 and Article 14 paragraph 2.b (Article 20).

As stipulated in Article 21, any State Party may denounce this Convention by means of a notification addressed to Secretary General of the Council of Europe. Compliant with notifications matter, Information concerning steps taken by States in relation to the Convention will be sent by the Secretary General of the Council of Europe, depositary of the Convention, to other States in compliance with article 22.

Dispute Settlement

The Settlement of any dispute concerning the interpretation or application of this Convention, in accordance with Article 17 of this Convention, shall primarily be done through negotiation.

Entry into Force

The Convention was opened for signature in Strasbourg on 19 May 2006 and entered into force on 01 May 2009. The provisions of signature and entry into force are regulated in Article 18 of this Convention.

²¹ Ibid.

²² The text of the Declaration can be accessed in <<http://www.asylumlaw.org/docs/international/Asylum1967.PDF>>.

²³ Taken from <http://untreaty.un.org/ilc/summaries/6_2.htm>.

Related Regulation

The present Convention builds upon Chapter VI “Procedures relating to Nationality” of the European Convention on Nationality by developing more detailed rules to be applied by States in the context of State succession with a view to preventing, or at least as far as possible reducing, cases of statelessness arising from such situations.²¹ Other Related regulations of this convention are:

1. The 1954 United Nations Convention relating to the Status of Stateless Persons
2. The Convention for the Protection of Human Rights and Fundamental Freedoms
3. Additional Protocol of the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS No. 96)
4. The 1964 Convention on the Exchange of Information Concerning Acquisition of Nationality (Convention No. 8 of the International Commission on Civil Status).
5. The 1989 United Nations Convention on the Rights of the Child.

(Jeska Daslita)

United Nations Declaration on Territorial Asylum²²

Background²³

The issue regarding “the right of asylum” was included in the provisional list for codification drawn up by the International Law Commission (ILC) in 1949. At the Commission first session, in 1949, during the discussion of the draft Declaration on Rights and Duties of States, a proposal was submitted to be included in the draft Declaration an article relating to the right of asylum. It was finally decided not to include such an article.²⁴ Resolution No.1400 (XIV) on 21 November 1959, the General Assembly requested the Commission to undertake the codification of the principles and rules of international law relates to the right of asylum. The Commission then, at its twelfth session in 1960, took note of the General Assembly resolution and decided to defer further consideration of this question to a future session.²⁵ At its fourteenth session (1962) the Commission decided the topic in its program, but without setting any date for the start of consideration.²⁶

Meanwhile, the United Nations Commission on Human Rights, had also been considering a draft declaration on the right of asylum since 1957. The Commission completed the draft in 1960,²⁷ and that draft was transmitted to the General Assembly by the Economic and Social Council in its resolution 772 E (XXX) of 25 July 1960. The General Assembly then, in resolution 2312 (XXII) of 14 December 1967 (E, E, S, R, C, A), adopted the Declaration on Territorial Asylum, in consideration of the work to be undertaken by the Commission in accordance with resolution 1400 (XIV).

The first session of the United Nations Conference on Territorial Asylum, convened by the Secretary-General in consultation with the United Nations High Commissioner for Refugees, was held from 10 January to 4 February 1977, pursuant to General Assembly resolution 3456 (XXX) of 9 December 1975 (E, E, S, R, C, A), to consider and adopt a convention on territorial asylum.

²⁴ See Yearbook of the International Law Commission, 1949, Report to the General Assembly, par. 23.

²⁵ See Yearbook of the International Law Commission, 1960, vol. II, document A/4425>.

Articles were provisionally adopted on the granting of asylum, on definition of categories of persons to whom the convention should apply, on non-refoulement, and on the activities of refugees in the country of asylum. However, the Conference was unable to agree upon a convention in the time allocated. It is recommended that the General Assembly, at its 32nd session, should consider the question of convening at an appropriate time a further session of the Conference.²⁸

As regards the question of diplomatic asylum, the issue was discussed by the 6th Committee at the 30th session at the General Assembly but the debate was inconclusive. With its resolution 3497 (XXX) of 15 December 1975 (E, E, S, R, C, A), the General Assembly decided to give further consideration to the question at a future session. At its 29th session, in 1977, the Commission concluded that the topic did not appear at that time to require active consideration by the Commission in the near future.²⁹ The Commission further discussed the topic in the context of other items on its program at various sessions. In the end, it turned up as a Declaration on Territorial Asylum.

Concept

The declaration is consists of 4 articles which stipulates principles for States to follow in their practices relates to territorial asylum. The purposes if this declaration are to maintain international peace and security, to develop friendly relation among all nations and to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

General Principles

The general principles of this declaration lies on article 13 and 14 of the Universal Declaration of Human Rights 1948:

1. Everyone has the right to seek and to enjoy in other asylum from persecution (Article 14 par.1).
2. The right might not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes

and principles of the United Nations (Article 14 par.2).

3. Everyone has the right to leave any country, including his own, and to return to his country (Article 13 par.2).

Main Features

The features stipulated in this Declaration are:

1. Asylum could be granted by a State, in its exercise of sovereignty, to persons entitled in Article 14 of Universal Declaration of Human Rights, including persons struggling against colonialism. The decision shall be respected by all other States. (Article 1 par.1). The evaluation to grant asylum shall rest within the certain State. (Article 1 par.3).
2. The exclusion of Article 1 par. 1 is the right of asylum shall not be granted to persons whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes. (Article 1 par.2).
3. The situation in Article 1 par.1 is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern of the international community (Article 2 par.1). Where it is difficult for a State to grant or continuing to grant asylum, measures may be taken to lighten the burden on that State. (Article 2 par.2).
4. No person referred to in Article 1 par.1 shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or contemporary return to any State where he may be subjected to persecution (Article 3 par.1). Exception may be made only to the foregoing principles for overriding reasons of national security or in order to safeguard the population as in the case of a mass influx of persons (Article 3 par.2). Should a state decide in any case that the exception to the principle would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State (Article 3 par.3).
5. States granting asylum should not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations. (Article 4).

Related Regulation

The related regulations to this Declaration are the United Nations Charter and Universal Declaration of Human Rights.

Entry into Force

The Declaration was adopted with the General Assembly of the United Nations on 14 December 1967 (Resolution 2312 (XXII)).

(Ni Putu Anggraeni)