

The Draft was prepared by Harvard Professors, Louis B. Sohn and R. R. Baxter, with the help of a distinguished Advisory Committee of eminent professors and outstanding lawyers of international law. The Committee consisted of the following persons: William W. Bishop, University of Michigan, Professor Herbert W. Briggs, Cornell University; Arthur B. Dean, Esq., The New York Bar; Professor Roger D. Fisher, Harvard Law School; Alwyn V. Freeman, Esq., Deputy Representative of the International Atomic Energy Agency, United Nations; Charles M. Spofford, Esq. of the New York Bar; I. N. B. Stokes, Esq., of the New York Bar; Professor Quincy Wright, Emeritus, University of Chicago; the late Professor Clyde Bagleton of New York University served on the Committee until his death; Professor Jessup was a Member of this Committee until he became appointed to the International Court of Justice.

Article 23 of the Draft Convention on Espousal of Claims and Continuing Nationality contains the following Paragraph 6:

"A state has the right to present or maintain a claim on behalf of a person only while that person is a national of that state."

"A state shall not be precluded from presenting a claim on behalf of a person by reason of the fact that that person became a national of that state subsequent to the injury."

PRACTICE IN FOREIGN CLAIMS SETTLEMENT

Examples of foreign treaties and legislation recognizing claims of "late nationals" are:

A. (1) The agreements between Belgium, Luxembourg, and Czechoslovakia, September 1952. (2) Agreement between Norway and Czechoslovakia, June 9, 1954. (3) Agreement between Yugoslavia and Greece, June 18, 1959. (4) Agreement between Denmark and Yugoslavia, July 13, 1959.

B. The British Foreign Compensation Orders-in-Council: (1) Concerning nationalization claims in Czechoslovakia; (2) Concerning debt claims of Yugoslavia.

C. The decree No. 61-971 of August 29, 1961, of the Government of France; dealing with claims for Nazi victims.

All these agreements and statutes allow claims of all naturalized citizens, regardless of former citizenship status at the date of loss, provided the claimants are citizens on the date of signature of agreements or of the enactment of legislation respectively, and it was noted by the United States War Claims Commission in the report to the Congress on World War II War Claims, House Document No. 67, 83rd Congress, 1st Session:

D. "in the war damage compensation laws of Australia, Austria, Belgium, Canada, Denmark, France, Malaya, Malta, the Netherlands, Norway, Switzerland, Thailand, United Kingdom, nationality is immaterial in determining eligibility of claimants."

E. Other countries might be added to such agreements as between Sweden and Japan, Egypt and England, and others.

F. Moreover, international law as reflected even in the practice of the United States-Japanese compensation Property Commission, which implemented the Allied Powers Treaty Law, provides that "junior" citizens claims were to be filed: "through the State to which he (the "new" citizen) belongs within 18 months from coming into force of the Peace Treaty."

Already in 1953, the Report of the War Claims Commission stated on the restrictive rule:

"This rule apparently underwent a considerable modification in the peace treaties concluded after World War II. Thus, in the treaties with Italy, the Balkan countries, and with Finland, eligibility was predicated upon the claimant being a United Nations national on the date of the armistice and on the effective date of the treaty relative to the country in question. In the Allied Powers Compensation law provided for by the treaty with Japan, the corresponding rule is that the claimant had to be a national of one of the signatory powers at the outbreak of the war and on the effective date of the treaty.

It is unexplained why the State Department even as late as August 1961, was unaware of the profound changes in the trend of international law, theory and practice (as shown above) admitting only a "single" agreement, (that with Czechoslovakia, Belgium and Luxembourg) and failed to inform Congress that the trend in international law and Foreign Claims Settlement practice of our time shows that claims of "new" citizens naturalized subsequent of injury are not precluded by international law and practice to be presented to a foreign state and therefore that the "junior citizens" have valid claims under international law.