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30/11/21

The Foreign Policy Committee,
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Dear Sir/ Madam,

I am writing to you as representative of one of 3 states who signed the Convention on the Status of Stateless Persons in 1954 but who did not participate in the formulation of the Protocol amendment of 1961.

Enclosed is a report of the work of British judge Gerald Fitzmaurice on the nature of humanitarian treaties. In it he alleges that in his view an amendment to a multilateral treaty taken without the agreement of the original framer parties is void. That would put your 3 states in the box seat as far as concerns the way stateless law is now conducted by states around the world.

As you may know, a frequent position today is that stateless applicants can't get citizenship documentation, while applicants protesting government illegal action and persecution apply for refugee status. This posture ignores the category of renunciation stateless application, which is entirely defined and regulated in the 1954 Convention. The Protocol stresses the virtue of eliminating statelessness, and as a consequence it appears a majority of states today are conspiring to close the perceived window/loophole of renunciation by relying on the amendment and passing national laws denying and refusing renunciation in conjunction with application for statelessness, effectively.

This posture is something of an ironic position designed to satirise the potential renunciant. However, since the Protocol has been passed and is largely observed, the question appears to be one of how in fact renunciant applicants for stateless status can effect the legislation still existent in the Convention text. From a wider perspective, the question seems to be what are the consequences of states' current position, and is the effective 'criminalization' of renunciation some kind of *coup d'etat* against the individual by states and what can be done about it? No doubt all three states have current positions aligned with the majority of states, but as three with historical associations suggesting original skepticism of the Protocol's possible effect, you may be in a position to express some kind of rider of dissent or word of caution as to this worldwide trend. While Fitzmaurice' recommendations as to voiding unassented treaties was not accepted as part of the *Vienna Convention on the Law of Treaties* and might have no legal effect, you are in a unique position to express any kind of objection to the trend that still exists in your countries from your historical legacy. In this respect, I note all three have strong or unusual legal traditions suggesting a racial consciousness more attuned to the practice, meaning and effect of legal traditions.

If you would care to comment on your country's position on this question, please reply to the above P.O. Box address. You probably know the U.N. still support renunciation applications even when the country of former citizenship refuses to approve the renunciation. However getting the documentation and status is the proof of the pudding, and inevitably this involves applications to particular countries. Effectively many tend only to back up this current line of ironic interpretation, and it appears another solution is necessary, possibly if not this one then a return to customary law or a move forward to a treaty not forged by states who in fact deny the rights such treaties are intended to protect, but by private citizens determined to forge a worldwide protection against the ability of states to enforce compliance to regimes the individual is able to perceive have violated norms of behaviour in some way and are in fact violating the large majority of citizens' rights by this specious argument in favour of this one ½ a right in the Declaration, which is any case a right not a law or compulsion. The current approach actually attempts to 'criminalise' becoming stateless, it cannot legislate the right to its own citizenship, the concept appears sound because of the word 'statelessness' in the Protocol but the logic is actually quite flawed and bogus, its own citizenship is the kernel of the stateless case and is what is refused by the individual who possesses the right, not the state.

Before you go ahead into the deep blue yonder therefore, it might behoove to consider whether in fact any attempt by states to stymy the right of expatriation, based on genuine perception of illegal or negligent behaviour by states, is not a misconceived and ill-founded exercise leading to an abuse of the asylum seeking process and frivolous use of border passage processes to waste such seekers' time and mislead them as to the result that can be achieved.

These treaties are not there for the benefit of states, they are there for the benefit of individuals who are victims of state abuse of various kinds. The 1954 Convention was conceived and formulated by states including your own living in the shadow of a six-year war to deflect the power of rampant state power run amok. The parts reflecting renunciation applications, Article 1(1) and the Final Act III Recommendation, took up much of the formulation conference time and are conceived to reflect the subtle, continuous and unsupportable denigration of people who have the title 'citizen' in name but not in practice or fact, as much as it is to those denied citizenship on unjust grounds. Individuals are not chattels of states but there is fair evidence to suggest that is the result engendered by the Protocol amendment and the refusal to allow voluntary stateless status it legislates or effects. The former Convention understood that the stateless state might be preferable to living in a country where significant abuses were occurring. The Convention does not involve states in dispensation of their own citizenship as a matter of necessity.

Despite the unfortunate events of 20 years ago, is it not time to reflect on where the current climate of statism is leading us, and to speak out about a right that was understood to be important in 1954 but seven years later was already part of a considerable return to state power among Western countries and against individual rights of asylum. These states do not have inherent and unchanging jurisdiction, they are impermanent creations erected on the back of a population of free and indigenous individuals. Every inch of dry land on the planet is now in the territory of one or other of these states, excepting Antarctica. There should be two methods for evading the jurisdiction of erring states, not just the one refugee mechanism entirely arbitered by states themselves. The conference that created the Convention ensured there was sufficient protection to avoid abuse of the treaty by non-

genuine applicants, the objection voiced by Belgium. There is no reason the renunciation route should not still be a viable method of asylum since the Protocol's passing, it is a loophole being grasped upon by states to drum up support for its suppression.

To sum up the points supporting continued existence in practice of the renunciation stateless category:

1/Failure to ensure swift and possible expatriation is tending to result in the state emerging as a new feudal sovereign, the citizen effectively a chattel of the state;

2/ Renunciation was an important part of the agenda in the original conference forging stateless law, the current trend and Protocol tend to completely reverse that stress, appearing to deny and reverse some of the post-war reasons for formulating the treaty. Approval of renunciation statelessness is clear in the Convention Recommendation and arguably the 1 (1) definition, an 'amendment' can amend it cannot reverse, valid legal arguments should centre on mutual obligations versus the nature of humanitarian law, not the meaning of the word stateless and compelling nationality right, which are ironic and deliberate reversals of the law's intentions;

3/ States 'enforcing' one half of a right in the Universal Declaration is not how rights are supposed to work; rights except for those of prisoners of war can be waived and are the person's not the state's, a renunciee is prepared to accept lesser conditions to achieve his purpose, states do not often accept rights arguments except where nations choose to enshrine them in national law;

4/ State structures are exerting a draconian control over the usable environment of the earth's surface; access to sustainable environmental resources is denied and attitudes encouraging respect for the environment of the earth are not the basis of perception of world-being is the cause of its degradation and the current exploitative world system and climate crisis; state structures are impermanent not eternal or self-existence-creating-proving;

5/ While it may be that states are generally the arbiters of who can get citizenship of a country, it does not follow that it should entirely decide who gets to renounce citizenship.

6/ Humanitarian multilateral treaty law is a somewhat different category from other treaties, amendments tending to limit individual options in favour of states' convenience should rightly be treated with suspicion, states do not regulate these matters at least as far as a Convention has its own jurisdiction, there is good evidence to suggest the Protocol amendment may have voided the original and is in consequence itself void at law in your state's provenance,

yours etc.,

P. David J. Cooke

Title|Next

I. WTO obligations are bilateral obligations

A. Background of the distinction between bilateral and multilateral obligations

The distinction between bilateral (reciprocal) and multilateral (integral) obligations cannot, in so many words, be found in any codified rule of international law. Nonetheless, it has major consequences and is reflected in a number of norms on the law of treaties and state responsibility.

2. *The ILC Reports on the Law of Treaties by Sir Gerald Fitzmaurice*

Fitzmaurice refined the distinction between treaties referred to in the previous section and re-phrased it as one between "reciprocal" or "concessionary" obligations, on the one hand, and "integral" obligations, on the other. Multilateral treaties of the "reciprocating type" are those "providing for a mutual interchange of benefits between the parties, with rights and obligations for each involving specific treatment at the hands of and towards each of the others individually".[6] Whereas multilateral treaties of the "integral type" are those "where the force of the obligation is self-existent, absolute and inherent for each party".[7] In other words, "integral obligations" are those "towards all the world rather than towards particular parties"[8] and "do not lend themselves to differential application, but must be applied integrally".[9]

The standard example given by Fitzmaurice of a treaty of the reciprocating type was the 1961 Vienna Convention on Diplomatic Relations; that of the integral type, the 1948 Genocide Convention.

Fitzmaurice attached two important legal consequences to this distinction, one in the field of termination/suspension of treaties, the other in the field of conflict between treaties. Treaties of the reciprocating type could, in Fitzmaurice's view, be suspended or terminated as a result of fundamental breach.[10] Moreover, later treaties conflicting with previous ones of the reciprocal type were, in his view, *not* null and void (instead, priority rules applied).[11] Integral treaties, in contrast, could, under Fitzmaurice's draft, *not* be terminated or suspended by the other parties as a result of breach ("the juridical force of the obligation is inherent, and not dependent on a corresponding performance by the other parties to the treaty").[12] In addition, any subsequent treaty concluded *inter se* by the parties to such integral treaty which "conflicts directly in a material particular with the earlier [integral] treaty will, to the extent of the conflict, be null and void".[13]

A. The Vienna Convention on the Law of Treaties

Fitzmaurice's distinction between reciprocal, integral and interdependent treaties was not maintained in the Vienna Convention as it was finally concluded. Nonetheless, it left its traces in not less than six different provisions. The Convention deals with termination/suspension as a result of "material breach" in its Art. 60 and deal with earlier treaties in its Arts. 30, 41, 53, 58 and 64.

Fitzmaurice wanted to see in respect of interdependent treaties (e.g., disarmament treaties).[20] Thirdly and thirdly, the reference in Arts. 53 and 64 to "peremptory norms", conflict with which invalidates other treaties, is reminiscent of Fitzmaurice proposal to invalidate treaties in conflict with *any* treaty of an integral or interdependent nature. However, Arts. 53 and 64 do not cover *all* conflicts with integral treaties, only conflicts with integral treaties of a particular type, namely those of *jus cogens*. Fifthly and sixthly, Arts. 41 and 58 recalls Fitzmaurice proposal to invalidate *inter se* agreements in conflict with integral or interdependent treaties, when it allows (though not invalidates) *inter se* modifications to a multilateral treaty that "affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations" or relates to "a provision. [...] from which is incompatible with the effective execution of the object and purpose of the treaty as a whole" (Art. 41(1)(b)(ii) and (iii)). Art. 58 provides for similar rules in respect of the *inter se* suspension of [illegible]