SUPPLEMENT

TO THE

American Journal of International Law

VOLUME 23

SPECIAL NUMBER

APRIL, 1929

DRAFT CONVENTIONS AND COMMENTS ON NATIONALITY, RESPONSIBILITY OF STATES FOR INJURIES TO ALIENS, AND TERRITORIAL WATERS, PREPARED BY THE RESEARCH IN INTERNATIONAL LAW OF THE HARVARD LAW SCHOOL

PUBLISHED BY

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

Publication Office: THE RUMFORD PRESS Concord, N. H. EDITORIAL AND EXECUTIVE OFFICE: 2 JACKSON PLACE WASHINGTON, D. C.

RESEARCH IN INTERNATIONAL LAW Harvard Law School

NATIONALITY RESPONSIBILITY OF STATES TERRITORIAL WATERS

DRAFTS OF CONVENTIONS

PREPARED IN ANTICIPATION OF THE

FIRST CONFERENCE ON THE

CODIFICATION OF INTERNATIONAL LAW

THE HAGUE, 1930

>9CX

HARVARD LAW SCHOOL CAMBRIDGE, MASSACHUSETTS April 1, 1929 Copyright 1929 Harvard Law School Cambridge, Mass.

RESEARCH IN INTERNATIONAL LAW HARVARD LAW SCHOOL

DIRECTOR

Manley O. Hudson, Cambridge, Mass.

REPORTERS

Nationality

RICHARD W. FLOURNOY, JR.

Responsibility of States

EDWIN M. BORCHARD

Territorial Waters

GEORGE GRAFTON WILSON

EXECUTIVE COMMITTEE

JOSEPH H. BEALE MANLEY O. HUDSON CHARLES CHENEY HYDE ELDON R. JAMES FRANCIS B. SAYRE JAMES BROWN SCOTT

GEORGE W. WICKERSHAM

ADVISORY COMMITTEE

GEORGE W. WICKERSHAM, Chairman New York

CHANDLER P. ANDERSON
Washington

Joseph W. Bingham Stanford University

Edwin M. Borchard Yale Law School

CLEMENT L. BOUVÉ
Washington

PHILIP MARSHALL BROWN Princeton University

CHARLES K. BURDICK
Cornell University

CHARLES C. BURLINGHAM New York

Benjamin N. Cardozo New York Joseph P. Chamberlain Columbia University

J. REUBEN CLARK, JR.

Washington

Frederic R. Coudert New York

WILLIAM C. DENNIS Washington

Edwin D. Dickinson

University of Michigan Charles G. Fenwick

Bryn Mawr College

GEORGE A. FINCH Washington

RICHARD W. FLOURNOY, JR.

Washington

RAYMOND B. FOSDICK New York

iij

HENRY S. FRASER Syracuse

JAMES W. GARNER University of Illinois

GREEN H. HACKWORTH Washington

LEARNED HAND

New York Amos S. Hershey

University of Indiana

FRANK E. HINCKLEY
University of California

CHARLES E. HUGHES New York

CHARLES CHENEY HYDE Columbia University

PHILIP C. JESSUP Columbia University

ARTHUR K. KUHN New York

WILLIAM DRAPER LEWIS
Philadelphia

DAVID HUNTER MILLER

New York Roland S. Morris

University of Pennsylvania

Edwin B. Parker Washington

PITMAN B. POTTER

University of Wisconsin

Jackson H. Ralston Palo Alto, California

JESSE S. REEVES

University of Michigan

ELIHU ROOT

New York

JAMES BROWN SCOTT

Washington
Daniel C. Stanwood

Bowdoin College

ELLERY C. STOWELL

American University THOMAS RAEBURN WHITE

Philadelphia George Grafton Wilson

Harvard University

JOHN M. WOOLSEY New York

LESTER H. WOOLSEY
Washington

QUINCY WRIGHT

University of Chicago

TABLE OF CONTENTS

	PAGE
GENERAL INTRODUCTION	1
Part I. Nationality	
DRAFT OF CONVENTION ON NATIONALITY	
English Text	13
French Translation	17
TEXT WITH COMMENT	
Introductory Comment	21
Article 1. Definitions	22
Article 2. State Power to Confer Nationality	24
Article 3. Nationality at Birth	27
Article 4. Limit on Nationality Jure Sanguinis	30
Article 5. Children of Diplomatic Officials	32
Article 6. Children of Other Officials	33 34
Article 8. Children Born Out of Wedlock	35
Article 9. Nationality Jure Soli	37
Article 10. Dual Nationality	38
Article 11. Military Service by Persons of Dual Nationality	40
Article 12. Termination of Dual Nationality	41
Article 13. Effect of Naturalization	44
Article 14. Limit on Naturalization	51
Article 15. Consent to Naturalization	53
Article 16. Termination of Acquired Nationality	55 58
Article 18. Collective Naturalization	60
Article 19. Nationality of Married Women	69
Article 20. Expulsion of Nationals	77
Article 21. Special Conventions on Nationality	78
Article 22. Settlement of Disputes	78
APPENDIX No. 1-Analysis of Laws of Various Countries	
I. Nationality at Birth	80
II. Naturalization and Expatriation	83
III. Nationality of Married Women.	109
	114
APPENDIX No. 2—"Bustamante Code," February 20, 1928	
APPENDIX No. 3—Field's International Code (1876)	115
APPENDIX No. 4—Resolution of the Institute of International Law (1896)	118
Appendix No. 5—Report of the International Law Association (1924)	119
APPENDIX No. 6—Draft Convention prepared for the League of Nations Committee of Experts for the Progressive Codification of International Law (1926)	121
APPENDIX No. 7-Draft of the Kokusaiho-Gakkwai of Japan (1926)	123
APPENDIX No. 8—Draft of the International Woman's Suffrage Alliance (1923)	124
APPENDIX No. 9—Resolutions of the Institute of International Law (1928)	125
APPENDIX No. 10—Schedule of Points Drawn up by the League of Nations Prepara-	
tory Committee. February 15, 1928.	127

Part II. Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigners

Draft of Conve	ntion on Responsibility of States	PAGE
English text.		133
French transl	lation	136
INTRODUCTORY Co	DMMENT	140
TEXT AND COMME	ENT	
Article 1.]	Definition of responsibility	140
Article 2. l	Responsibility depends on international law	142
Article 3. 1	Injuries by political sub-divisions	145
Article 4.	Duty of states to maintain governmental organization	146
Article 5.	Duty of states to afford means of redress	147
Article 6. 1	Local remedies	
Article 7.	Acts of state officers	157
Article 8. (Contract obligations	167
Article 9. 1	Denial of justice	173
Article 10.	Due diligence	187
Article 11.	Acts of individuals	188
Article 12.	Acts of insurgents	193
Article 13.	Revolutions	195
Article 14.	Acts of other states	196
	Nationality of claims	198
Article 16. I	No responsibility to nationals	200
Article 17.	Calvo clause	202
Article 18.	Settlement of disputes	215
APPENDIX No. 1—	-Conclusions of a subcommittee of the League of Nations Committee	
	the Progressive Codification of International Law	
APPENDIX No. 2-	-Responses of various governments to Questionnaire No. 4 of the	
	ations Committee of Experts for the Progressive Codification of	
	Law	
Appendix No. 3—	-Project of the Institute of International Law, Lausanne, 1927	228
Appendix No. 4—	-Draft Rules prepared by the Kokusaiho-Gakkwai of Japan	231
APPENDIX No. 5-	-Projects of the American Institute of International Law, submitted	
	ational Commission of Jurists at Rio de Janeiro, April, 1927	
Anneum No 6	Project submitted to the Sixth International Conference of	•
	tes, by the International Commission of Jurists, January, 1928	
Appendix No. 7-	-Convention on Status of Aliens adopted by the Sixth Inter-	
national Con	ference of American States, Havana, February 20, 1928	234
Appendix No. 8—	Draft of Professor Karl Strupp, 1927	235
APPENDIX No. 0	-Schedule of Points Drawn up by the League of Nations Prepara-	
	tee, February 15, 1928	

Part III. Territorial Waters

DRAFT OF CONVENTION ON TERRITORIAL WATERS	PAGE
English text	
French translation	24 6
Introductory Comment	249
TEXT AND COMMENT	
Article 1. Territorial waters	249
Article 2. Marginal seas	
Article 3. Inland waters	
Article 4. High sea	
Article 5. Bays	
Article 6. Bays bordered by two or more states	
Article 7. Islands	
Article 8. Straits	
Article 9. Straits bordered by two or more states	
Article 10. Straits connecting high seas	281
Article 11. Assimilation of small areas to marginal sea	287
Article 12. Delimitation by established usage	288
Article 13. Sovereignty over territorial waters	288
Article 14. Innocent passage	
Article 15. Jurisdiction over vessels in innocent passage	
Article 16. Civil jurisdiction	
Article 17. Other jurisdiction in territorial waters	
Article 18. Jurisdiction in ports.	
Article 19. Jurisdiction over vessels of war or other public vessels	
Article 20. High sea adjacent to marginal sea	
Article 21. "Hot pursuit"	
Article 22. Definition of vessel	
Article 23. Settlement of disputes	364
APPENDIX No. 1-Amended Draft Convention communicated to various Gov	ern-
ments by the League of Nations Committee of Experts for the Progressive C	odi-
fication of International Law, with Questionnaire No. 2, January 22, 1926	366
APPENDIX No. 2-Projet de règlement relatif à la Mer Territoriale en temps	
paix. L'Institut de Droit International, 1928	
£,	
Appendix No. 3—Project No. 10 on "National Domain," submitted to	
International Commission of Jurists at Rio de Janeiro, April 1927, by the Am	eri-
can Institute of International Law	370
APPENDIX No. 4-Project No. 12 on "Jurisdiction," submitted to the In	ter-
national Commission of Jurists at Rio de Janeiro, April 1927, by the Ameri	can
Institute of International Law	372
Appendix No. 5-Project No. 18 on "Freedom of Transit," submitted to	
Appendix No. 5—Project No. 16 on Precion of Transit, Submitted to	rue
International Commission of Jurists at Rio de Janeiro, April 1927, by the Am	eri-
can Institute of International Law	
APPENDIX No. 6-Draft Convention on Law of Maritime Jurisdiction in Time	
Peace, International Law Association, 1926	373
APPENDIX No. 7-Drafts prepared by the Kokusaiho-Gakkwai (l'Association	
Droit International du Japon) in conjunction with the Japanese branch of the	
ternational Law Association	
Appendix No. 8—Schedule of Points Drawn up by the League of Nations Prep	
tory Committee, February 15, 1928	378