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Summary record of the 162nd meeting

Topic:
Nationality including statelessness

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80. Mr. CÓRDOVA said that, if point 13 were retained in addition to the text approved for point 12, cases of dual nationality would necessarily result.

81. Mr. KERNO (Assistant Secretary-General) said that in any event article 13 was now unnecessary, as the Secretary to the Commission had shown.

82. Mr. LAUTERPACHT proposed that point 13 be deleted.

Mr. Lauterpacht's proposal was carried by 10 votes to 2.

83. Mr. HUDSON suggested that in that case the words "born outside its territory" ought to be deleted from the text approved for point 12.

It was so agreed.

The meeting rose at 1.05 p.m.

162nd MEETING

Friday, 11 July 1952, at 9.45 a.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Nationality, including statelessness (item 6 of the agenda) (A/CN.4/50) (*continued*)

SECTION VI OF ANNEX III: STATELESSNESS; POINTS FOR DISCUSSION (*continued*)

Point 14

(a) *paragraph 1*

1. The CHAIRMAN invited comment on the first paragraph of point 14, which read:

"A child born of unknown parents, of stateless parents, or of parents whose nationality is undetermined, shall acquire the nationality of the State in whose territory it is born."

2. Mr. KERNO (Assistant Secretary-General) said that he wished first to point out that, since points 4 to 19 dealt with the reduction of statelessness and point 2 with its elimination, it was unavoidable that there should be some overlapping, as was the case with point 14.

3. Mr. LAUTERPACHT suggested that it was premature to state that the Commission was at present considering merely the reduction of statelessness. The view could be held that the Commission was attempting to eliminate it, though not by the direct method envisaged in point 2. The effect of the rule which the Commission had approved at the previous meeting concerning the acquisition of nationality at birth would in fact be to eliminate cases of statelessness due to the conflict of nationality laws in that respect.

4. Mr. el-KHOURI recalled that the question which formed the subject of the first paragraph of point 14 had already been discussed at length. It was therefore unnecessary for him to repeat the grounds on which he opposed the principle that a child born of stateless parents should acquire the nationality of the State in whose territory it was born.

5. Mr. SPIROPOULOS and Mr. FRANÇOIS pointed out that, instead of "attenuating" the principle stated in rule (i) in point 2, to which various members of the Commission had raised grave objections, point 14 merely repeated it.

6. Mr. LAUTERPACHT did not attach great importance to the first paragraph of point 14, since it would apply to relatively few cases compared with the number to which the approved text of point 12 would apply.

7. Mr. HUDSON suggested that the Chairman ascertain the sense of the meeting with regard to the application of the rule stated in the first paragraph of point 14, first to children born of unknown parents, secondly to children born of stateless parents, and thirdly to children born of parents whose nationality was indeterminate.

8. Mr. AMADO supported the first paragraph as a whole.

9. Mr. YEPES also supported the first paragraph as a whole, since the principle of *jus soli*, on which it was based, provided the sole means of eliminating statelessness.

By 11 votes to none, with 2 abstentions, the rule stated in the first paragraph of point 14 was approved as applicable to children born of unknown parents.

By 7 votes to 5, with 1 abstention, the rule stated in the first paragraph of point 14 was approved as applicable to children born of stateless parents.

10. Mr. SPIROPOULOS explained that he had voted against making the rule applicable to the children of

stateless parents, not because of any lack of sympathy with the problem of reducing statelessness, but because another proposal, the purport of which was identical, had already been discussed at length by the Commission and rejected, and he felt that the Commission should be consistent.

11. Mr. KERNO (Assistant Secretary-General) suggested that further study might show that the application of the rule to the children of stateless parents was not, after all, of such importance, since the case of children only one of whose parents was stateless was covered by the text of point 12, as already approved.

12. With regard to the application of the same rule to children born of parents whose nationality was indeterminate, Mr. LIANG (Secretary to the Commission) suggested that, if what the special rapporteur had had in mind was cases where a child was born of parents who, although stateless, had claimed the nationality of a State, and their claim was still undecided, it was covered by the term "stateless persons". For there was no half-way house, legally speaking, between statelessness and nationality. He admitted that cases might occur of a child being born to parents whose nationality had been the subject of a challenge in a national or international court, and where such challenge was still undecided. In such cases it might be considered necessary to provide specifically for children born of parents whose nationality had not been determined.

13. Mr. LAUTERPACHT said that he understood the purpose of including those words to be that, pending determination of the nationality of its parents where such nationality had been challenged in the courts, a child should acquire the nationality of the State in whose territory it was born.

On that understanding, *by 7 votes to 5, the rule stated in the first paragraph of point 14 was approved as applicable to children born of parents whose nationality was indeterminate.*

The rule stated in the first paragraph of point 14 was approved as a whole by 7 votes to 4 with 1 abstention.

(b) *paragraph 2*

14. The CHAIRMAN invited comments on the first part of the second paragraph of point 14, reading as follows:

> "A foundling shall be presumed to have been born in the territory of the State in which it was found, until the contrary is proved;"

The rule contained in the first part of the second paragraph of point 14 was approved by 11 votes to 1.

15. The CHAIRMAN invited comments on the second part of the second paragraph of point 14, reading as follows:

> "and birth on a national vessel shall be deemed to constitute birth in the national territory."

16. Mr. LAUTERPACHT suggested that the special rapporteur should give consideration to the question whether the rule should be extended to cover births in national aircraft.

17. Mr. FRANÇOIS felt that it might be preferable to leave aircraft aside, since extension of the rule to cover them would raise thorny questions of private international law. He noted also that the special rapporteur had not specified whether the rule applied only to births on the high seas, or whether it applied also to births in territorial waters or in port. In his view, the former course would be preferable, so as to avoid the possibility of conflicts with national laws, and because it might be difficult for the Commission to agree on any rule which went further than stating that birth on a national vessel on the high seas should be deemed to constitute birth in the national territory.

18. Mr. CÓRDOVA supported Mr. François' suggestion.

19. Mr. SPIROPOULOS agreed that if the convention went into too great detail it would give rise to difficulties; for example, under Anglo-Saxon law a ship anchored in territorial waters was assimilated, for almost all purposes, to a ship in port; under other systems of law it was not. In his view, there was no need for the Commission to regulate such details, as it was not the Commission's task to emulate the normal role of the courts.

20. Mr. SANDSTRÖM feared that adoption of a provision such as Mr. François envisaged would not represent any advance on the existing situation, and might be held to imply, *e contrario,* that birth on a national vessel in territorial waters or in port should not constitute birth in the national territory. The fact that a child was born on board a ship sailing in the territorial waters of a country, or anchored in one of its ports, did not constitute a sufficient link between the child and that country to justify the conferment of nationality. In such cases, as well as when the vessel was on the high seas, it seemed reasonable that the child should acquire the nationality of the vessel.

21. Mr. KOZHEVNIKOV said that, although the question was in theory an important one, in practice it would affect only very few cases. The rule contained in the clause under discussion was not essential to the purpose of the draft convention, and he proposed that the special rapporteur be instructed to leave it out of account.

22. Mr. ZOUREK felt that the Commission was not sufficiently well informed about the various complicated questions involved in the matter under discussion for it to give any directive to the special rapporteur. He therefore supported Mr. Kozhevnikov's proposal.

23. Mr. AMADO said that he would support Mr. Kozhevnikov's proposal on practical grounds. If the Commission failed to win the agreement of governments, its efforts would be fruitless.

24. Mr. YEPES and Mr. LAUTERPACHT agreed that the Commission was not sufficiently informed to give the special rapporteur any directives at present, but felt that that was rather a reason for leaving him free to submit, at the next session, a clear draft in the

light both of his further study and of the foregoing discussion.

25. The CHAIRMAN put to the vote Mr. Kozhevnikov's proposal that the Commission should instruct the special rapporteur to omit from the draft which he was to submit at the next session the rule contained in the second part of the second paragraph of point 14.

Mr. Kozhevnikov's proposal was rejected by 7 votes to 3, with 2 abstentions.

26. The CHAIRMAN then put to the vote the proposal made by Mr. Yepes and Mr. Lauterpacht that the Commission should merely request the special rapporteur to submit at the next session a new text prepared in the light of the foregoing discussion and of his further study of the matter.

Mr. Yepes' and Mr. Lauterpacht's proposal was adopted by 8 votes to none, with 4 abstentions.

Point 15

27. The CHAIRMAN invited comments on the rule contained in point 15, which read:

> "If a child acquires no nationality at birth it may subsequently acquire nationality of the State to which it is specifically identified by criteria to be defined in an international convention, e.g., continuous residence within the territory of the State for a prescribed period, perhaps followed by a declaration to be made by the child at a certain age."

28. Mr. LAUTERPACHT said that in view of the provisions already approved by the Commission, it might appear that the rule contained in point 15 was unnecessary. Cases might, however, occur where despite those provisions, a child would acquire no nationality at birth. It might therefore be desirable to include in the convention a provision dealing with such cases. The rule stated in point 15 did not settle such cases; it merely referred to another international convention the vital question of the conditions which were to govern the acquisition of nationality in such cases. Surely those conditions should be stated in the convention which the Commission was to draft.

29. Mr. el-KHOURI pointed out that the rules which the Commission had approved would not of themselves ensure the elimination of statelessness arising at birth, since, for the reasons he had stated at the preceding meeting, the States most concerned would be unable to subscribe to those rules. In those circumstances the rule contained in point 15 should be retained, together with the reference to another international convention to which it might be possible for such States to accede.

30. Mr. CÓRDOVA said that, in order to make sure that the Commission's efforts to reduce statelessness were not blocked at every turn by the perfectly legitimate preoccupations of Mr. el-Khouri concerning stateless refugees, it might be advisable for the Commission to instruct the special rapporteur, in his future studies, to take into account, as a separate element, the practical implications, in certain countries, of adherence to the rules which the Commission had approved.

31. Mr. el-KHOURI supported what he considered to be the very useful and practical proposal made by Mr. Córdova.

32. After further discussion Mr. HSU said he would support Mr. Córdova's proposal because, in his view, the Commission could not avoid taking a stand on the question of refugees.

33. Mr. KOZHEVNIKOV said that the problem of statelessness should not be confused with that of refugees and displaced persons. The Commission must confine itself to the first, which was a well-defined legal concept.

34. Mr. LAUTERPACHT said that the considerations he had in mind would be met if point 15 were redrafted to read:

> "If a child acquires no nationality at birth, it shall subsequently acquire the nationality of the State to which it is specifically identified by criteria to be defined and dealt with by the special rapporteur in his next report."

Mr. Lauterpacht's text was adopted by 10 votes to 1, with 1 abstention.

Points 16 and 17[1]

35. Mr. HUDSON thought that, if the Commission expressed general approval of points 17 and 18, it would be unnecessary for it to deal with point 16.

36. Mr. LAUTERPACHT disagreed with Mr. Hudson on the ground that point 18 dealt with a separate matter of greatest importance, namely, that of deprivation of nationality. Points 16 and 17, on the other hand, dealt with loss of nationality resulting from a change in personal status or in that of the parents, and could therefore be taken together. As the Commission had decided not to consider the Convention on the nationality of married persons, he believed that some mention of marriage as a change in personal status should be made at that point. He would accordingly suggest that points 16 and 17 be combined to read as follows:

> "If the law of the State whose nationality is possessed by a person recognizes that such nationality may be lost as a consequence of a change in the person's personal status or in that of his parents [marriage, legitimation, recognition, adoption], such

[1] Points 16 and 17 read as follows:

"16. If the law of the State whose nationality is possessed by a person recognizes that such nationality may be lost as a consequence of a change in the person's personal status (legalisation, recognition, adoption), such loss shall be conditioned upon the acquisition of the nationality of another State in consequence of the change of personal status."

"17. A minor child shall not lose a State's nationality as a consequence of the loss of that nationality by either of its parents unless it acquires the nationality of another State."

loss shall be conditional upon the acquisition of the nationality of another State."

37. Mr. HUDSON said that he would have no objection to marriage being mentioned as one of the changes in personal status.

38. The CHAIRMAN put to the vote point 16 as drafted in Mr. Hudson's report, with the addition of marriage as one of the changes in personal status.

Point 16, as amended, was approved by 9 votes to 1, with 1 abstention.

Point 17 was approved by 9 votes to 1, with 1 abstention.

39. Mr. LAUTERPACHT said that provision should be made for a contingency covered in Chapter II, Article 7, of The Hague Convention of 1930, namely, loss of nationality occurring through a person not acquiring a new nationality after having obtained an expatriation permit from his own State. It could be left to the special rapporteur to decide how such a provision should be framed on the basis of paragraph 1 of Article 7.

40. Mr. el-KHOURI said that the Arab States of the Middle East region would have no difficulty in accepting such a provision, which conformed with their regulations.

41. Mr. HUDSON said that the matter raised by Mr. Lauterpacht would bring considerable difficulties in its train, since such a provision would seem to imply approval of the practice of certain States of requiring an expatriation permit before granting naturalization. The United States Government would certainly find it difficult to accept such a provision in view of the dispositions of the Law of 1867. It was largely for that reason that the United States of America had not supported the Convention of 1930.

42. Mr. SANDSTRÖM said that such a rule would surely apply only in those countries which required expatriation permits.

43. Mr. HUDSON said that, although he agreed with Mr. Sandström, his argument stood.

44. Mr. ZOUREK observed that such a rule would entail practical difficulties since an expatriation permit required irrevocable administrative action.

45. Mr. LAUTERPACHT could not agree that the inclusion of such a provision which, as Mr. Sandström had argued, would apply only in States which required an expatriation permit would in any way imply approval of the practice of requiring an expatriation permit.

46. He did not think that the practical difficulty mentioned by Mr. Zourek was weighty enough to rule out inclusion of such a rule, since an expatriation permit could always be granted in a conditional form.

Mr. Lauterpacht's proposal was adopted by 8 votes to 3, with 1 abstention.

Point 18[2]

47. The CHAIRMAN suggested that the Commission might approve the principle stated in point 18, and request the special rapporteur to consider the grounds on which deprivation of nationality might be allowed, taking into account those listed on page 140 of the Secretariat's *A Study of Statelessness* (*op. cit.*).

48. Mr. YEPES said that he would strongly oppose such instructions being given to the special rapporteur, since in his view it was inadmissible that States should have the right to deprive a person of his nationality. To apply such a sanction would be contrary to the Universal Declaration of Human Rights.

49. Mr. el-KHOURI considered that evasion of military service should not be penalized by deprivation of nationality.

50. Mr. FRANÇOIS agreed with the Chairman's suggestion, as it would be somewhat arbitrary if the provision were to be confined to the three grounds enumerated by the special rapporteur under point 18. Mr. Hudson should also be requested to consider those reasons for deprivation of nationality when it did not constitute a sanction in the proper sense of the term.

51. He had certain objections to the way in which point 18 had been drafted. For example, alternative (*a*) offered no guarantee whatsoever against abuse, and the first ground for deprivation, namely, "cancellation of naturalization on ground of non-compliance with governing law" went too far. He presumed that what the special rapporteur had in mind was naturalization obtained by fraud, and not any other contravention of the law. He was also unable to understand why the second ground should be applicable only to naturalized persons. Surely there were weighty reasons for its application also to persons who had acquired their nationality at birth.

52. Mr. KERNO (Assistant Secretary-General) observed that the provision under (*a*) in point 18 constituted a procedural guarantee against arbitrary action by States, but would in no way prevent them from depriving persons of nationality on any ground whatsoever. On the other hand, the provision contained in (*b*) would restrict the right of States in that respect, and would accordingly contribute to reducing statelessness.

53. Mr. LAUTERPACHT said that, in examining the question of deprivation of nationality, the Commission

[2] Point 18 read as follows:

"18. No person shall be deprived of the nationality of a State, when such person does not acquire the nationality of another State. (*a*) except on decision in each case by a competent authority acting in accordance with due process of law; or alternatively (*b*) except on the following grounds:

"(i) cancellation of naturalization on ground of non-compliance with governing law;

"(ii) continuous residence of naturalized person abroad (or in the country of his origin);

"(iii) evasion of military service."

should be guided by the consideration that statelessness must be eliminated, and for that reason he agreed with the views expressed by Mr. Yepes, except that he did not admit any exceptions to the principle stated therein. He would accordingly propose that the introduction to point 18 be redrafted to read:

> "No person shall be deprived of the nationality of a State by way of penalty or otherwise when such person does not acquire or already possess the nationality of another State."

54. Members would note that it was recommended in the Secretariat's *A Study of Statelessness* that:

> "Nationality should not be withdrawn from persons who have established their domicile in a foreign country, whatever the length of their absence, unless they have acquired a new nationality."[3]

and that

> "Deprivation of nationality should not be applied as a punishment."[4]

He hoped that those recommendations would be fully considered and accepted.

55. Legislation on deprivation of nationality differed. In France that penalty was only applied when a person possessed another nationality and had been guilty of actions contrary to the interests of the State. In many countries, among which were Denmark and the United Kingdom, the penalty was only applied to naturalized persons, and in that connexion it was interesting to note that the special rapporteur had condemned the distinction made between naturalized persons and persons who had acquired their nationality at birth (A/CN.4/50, V,2,c).

56. He himself, though he admitted that his view might be somewhat pedantic, did not even admit that naturalization by fraud should be punished by deprivation of nationality, in so far as such deprivation resulted in statelessness. There were other penalties which could be imposed in such cases.

57. Disloyalty and treason were frequently punished by deprivation of nationality, but in his view wrongly. A far more serious penalty was imposed in certain countries for that and other offences, by comparison with which deprivation of nationality was petty, unnecessary and not obviously dictated by imperative national interest. The fact that many States dispensed with such penalties suggested that no vital national interest was involved.

58. Mr. Amado had recently questioned the Commission's competence to dictate to States in matters concerning their vital interests. That attitude was perfectly tenable, but as a body of legal experts the Commission was undoubtedly entitled to indicate whether certain legal provisions were so closely linked with the vital interests of States as to permit a derogation from some fundamental principle which the Commission felt should be upheld. In the course of performing its work the Commission was continually pronouncing itself upon such questions, and it should therefore examine with scrupulous care every ground for which States imposed deprivation of nationality, in order to determine whether it was reasonable and was unquestionably justified by considerations of national interest.

59. Mr. HSU agreed with the thesis expounded by Mr. Lauterpacht, as he considered deprivation of nationality to be an unenlightened practice which the Commission should not endorse. States could devise other penalties.

60. Mr. KOZHEVNIKOV considered that there was nothing to prevent the Commission from making recommendations to States as argued by Mr. Lauterpacht, provided it did so within the general framework of international law, which was based on the recognition of the independence of sovereign States. The Commission must not venture outside that framework, and nationality was a question which fell almost entirely within the domestic competence of States. He therefore considered that point 18 should be deleted altogether.

61. Mr. SPIROPOULOS considered that Mr. Lauterpacht's view was too far-reaching. Admittedly, at first sight deprivation of nationality seemed difficult to defend, but it was impossible to ignore the human factor and the nature of things. A State was an association, and as such was entitled to reject one of its members. If a sovereign State had some serious reason, such as the protection of its vital interests, for depriving a person of nationality, nothing would prevent it from doing so. Accordingly, deprivation of nationality was unavoidable, and any draft convention which sought to deprive States of that right would have very little chance of acceptance. It would be useless for the Commission to indulge in the creation of idealistic international instruments which would never be put into effect. On the other hand, it would be possible to set some limit on the right of States to deprive persons of their nationality and that was the matter to which the Commission should address itself.

62. Mr. ZOUREK appreciated the noble motives which underlay the desire to reform radically the existing practice of States, but the question was not as simple as it appeared. The Commission must take into account persons who voluntarily rendered themselves stateless by putting themselves outside their national community. If an individual deliberately broke the link imposing reciprocal duties and responsibilities between himself and the State the latter could not be expected to continue to discharge its obligations towards him.

63. It would be highly inconsistent to apply more stringent measures to naturalized persons, since they had obtained their naturalization only after exhaustive and careful enquiry into their *bona fides*. The accident of birth was surely not a guarantee of loyalty.

64. Again, he was unable to see how a State could proceed against one of its nationals who avoided military service by living abroad, unless by deprivation of nationality.

[3] *A Study of Statelessness, op. cit.*, p. 164.

[4] *Ibid.*

65. In conclusion, the draft convention prepared by the Commission must be based upon rules which would be acceptable to States and conceived in such a way as not to encroach upon matters which exclusively related to a country's domestic jurisdiction.

The meeting rose at 1.5 p.m.

163rd MEETING

Monday, 14 July 1952, at 2.45 p.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Nationality, including statelessness (item 6 of the agenda) (A/CN.4/50) (*continued*)

SECTION VI OF ANNEX III: STATELESSNESS; POINTS FOR DISCUSSION (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of Annex III to the special rapporteur's report on nationality, including statelessness (A/CN.4/50).

Point 18 (continued)

2. Mr. KOZHEVNIKOV said that he had already stated his view that statelessness was a matter which, in the main, fell within purely domestic jurisdiction, a sphere in which no interference was allowed by international law. On the other hand, as he had already indicated, certain acts carried out by States went beyond that framework and assumed a political character.

3. Mr. YEPES proposed that point 18 be replaced by the following text:

"No person shall be deprived of the nationality of a State when such person does not acquire the nationality of another State, except on the following grounds:

"(i) cancellation of naturalization obtained by fraud;

"(ii) continuous residence of naturalized person abroad. For the purposes of this provision, continuous residence abroad shall be understood to mean unauthorised absence for at least two years from the country of adoption."

4. Mr. KERNO (Assistant Secretary-General) observed that Mr. Yepes' text differed from that of point 18 only by specifying a time-limit in sub-paragraph (ii) and by omitting sub-paragraph (iii).

5. Mr. el-KHOURI said he could accept point 18, but proposed that the words "(*a*)" and "or alternatively (*b*) except" be deleted, since clause (*a*) was procedural, and could govern all the grounds enumerated in sub-paragraph (i) to (iii).

6. Mr. CÓRDOVA was not in favour of allowing States to punish individuals by depriving them of their nationality. The inclusion of such a provision in a draft convention would imply approval of the principle.

7. He could not support clause (*a*), which would do nothing to guarantee the individual against arbitrary action by the State. Furthermore, it failed to take into account the case of an individual being deprived of his nationality by automatic operation of the law without any judicial process.

8. Mr. SANDSTRÖM said that if clause (*a*) was designed to cover the case of mass deprivation of nationality, he could not support it. On the other hand, if it was purely procedural there was no reason why it should not be accepted.

9. He doubted whether it was expedient for the Commission to attempt to draft a definite provision on the problem at the present stage, and he therefore proposed that the special rapporteur be requested to consider in detail the grounds on which persons were at present liable to deprivation of nationality, taking into account those listed on pages 140 and 141 of the Secretariat's *A Study of Statelessness* as having been provided in the laws of a number of States. The Commission might thus be furnished with more ample material for consideration at its next session.

10. Mr. CÓRDOVA said that he could support Mr. Sandström's proposal, provided the special rapporteur was requested to insert in the draft convention on the elimination of statelessness a provision to the effect that no person should be deprived of the nationality of a State when such person did not acquire the nationality of another State. That principle might be qualified by providing for certain exceptions in the draft convention, namely, that on the reduction of statelessness.