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Summary record of the 211th meeting

Topic:
Nationality including statelessness

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"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources."

79. After further discussion, Mr. LAUTERPACHT suggested that reconsideration of article 2 of part I be taken at a further meeting.[8]

Mr. Lauterpacht's suggestion was adopted.

[8] See *infra* 215th meeting.

211th MEETING

Wednesday, 8 July 1953, at 9.30 a.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: 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 5 of the agenda) (A/CN.4/64)

1. The CHAIRMAN drew attention to Mr. Córdova's "Report on the Elimination or Reduction of Statelessness" (A/CN.4/64) and asked whether it was the Commission's wish to hold a general exchange of views, during which each member might speak once, before proceeding to examine article by article the two draft conventions proposed.

2. Mr. YEPES felt that a general exchange of views was unnecessary, in view of the lengthy discussions on the subject that had taken place at the fourth session.

3. Mr. AMADO did not agree. A general exchange of views would provide the best introduction to the subject.

4. Mr. LAUTERPACHT thought a general exchange of views was necessary, in order to enable the Commission to decide whether it wished to concentrate on the draft Convention on the Elimination of Future Statelessness or on the draft Convention on the Reduction of Future Statelessness, or whether it wished to discuss both drafts.

It was agreed to hold a general exchange of views, during which each member could speak once, after the Special Rapporteur had introduced his report.

5. Mr. CÓRDOVA (Special Rapporteur) said that he sincerely regretted the fact that it was to him that it fell to present the report on the elimination or reduction of statelessness, instead of to his eminent predecessor, Judge Manley O. Hudson, to whose scholarly work on the subject of nationality and statelessness he would begin by paying tribute. When it appointed him in Mr. Hudson's place, the Commission had made it clear that his report was expected to cover only one aspect of the general problem of nationality, namely, the question of statelessness; it had also agreed that he should leave existing cases of statelessness, for example, those resulting from refugee movements occasioned by the second World War, out of account.[1] It had instructed him to prepare two conventions — one for the elimination of future statelessness and one for its reduction, and had agreed that the draft convention should be in the form of articles, accompanied by comments. In the report which he now had the honour of submitting (A/CN.4/64) he had endeavoured faithfully to follow the Commission's instructions.

6. For the substance of his report he had drawn on the relevant resolutions adopted by the Institute of International Law at Venice in 1896, on the report of the Committee on Nationality and Naturalization, adopted by the International Law Association at Stockholm in 1924, on the Draft Law of Nationality prepared by the Harvard Research in preparation for the 1930 Hague Codification Conference, on the Convention on Certain Questions Relating to the Conflict of Nationality Laws and the Protocol Relating to a Certain Case of Statelessness adopted by that Conference, and on the Convention on Nationality, signed at Montevideo in 1933, and the Draft Convention on Nationality and Statelessness prepared by the Inter-American Juridical Committee in 1952. He had also been greatly assisted by the documentary material assembled by the Secretariat in its two reports, "The Problem of Statelessness" (E/2230) and "A Study of Statelessness",[2] as well as by the "Report on Nationality including Statelessness" (A/CN.4/50) prepared by Mr. Hudson.

7. In addition, he had had before him the memoranda (A/CN.4/66 and A/CN.4/67) prepared by Mr. I. S. Kerno, whom the Commission had appointed as expert on the subject of nationality including statelessness. The Commission had also requested him to prepare extracts from Mr. G. Kaeckenbeeck's book "The Inter-

[1] See *Yearbook of the International Law Commission, 1952*, vol. I, 163rd meeting, para. 79.

[2] United Nations publication, Sales No.: 1949.XIV.2.

national Experiment in Upper Silesia", but when he had found that Mr. Kerno already had that work in hand, he had left it to him, and Mr. Kerno's paper on the subject had been reproduced as document A/CN.4/65.

8. As the problem of statelessness was only one aspect of the general problem of nationality, it had seemed to him that the articles he drafted should avoid creating cases of double nationality, which was no less undesirable than statelessness. Both of the draft conventions he had prepared were based on the thesis that international law did not permit States to enact or to retain laws which would create cases of statelessness. He realized that that thesis might still be considered arguable, but he himself was convinced of it. He would frankly warn the Commission, however, that any undue insistence on the principle of national sovereignty would render a solution along the lines he proposed unfeasible. The Commission must decide which draft convention it wished to discuss first. In his view, its work would be facilitated if it considered first the draft convention which was governed by the principle that future statelessness must be entirely eliminated, and only turned its attention to the second if and when it appeared necessary to attenuate that principle with regard to certain categories.

9. Finally, he drew attention to the synoptic chart of possible sources of statelessness annexed to his report. That chart was wholly compiled from materials contained in "A Study of Statelessness". He believed that it was comprehensive, and he also believed that the first draft convention which he proposed would eliminate all future cases of statelessness arising from all those sources.

10. Existing cases of statelessness, resulting from past wars, were, however, more numerous than all which were likely to arise in future. He therefore urged the Commission to reconsider its decision to leave existing cases of statelessness out of occount. Many thousands of innocent people all over the world had lost their nationality as the result of events for which they were not responsible, and were looking to the United Nations for help. The United Nations and its various organs were under a moral obligation to give them all the assistance they could.

11. The CHAIRMAN thanked Mr. Córdova for his clear and able introduction to the subject and for his valuable report and invited members to take part in the general exchange of views.

12. Mr. LAUTERPACHT wished first to pay a tribute to the report presented by the Special Rapporteur. Within the limits which Mr. Córdova had set himself, his report was the most exhaustive and valuable treatment of the subject of statelessness which had so far appeared; it was distinguished not only by its scholarly qualities, but by its humanity and courage, which must eventually prove useful to the Commission as a whole.

13. Although it might appear superfluous, he would recall four points which should never be forgotten in connexion with statelessness. First, statelessness was an evil, and was generally recognized as such. It involved hardship and inhumanity offensive to human dignity. It was often unnecessary, petty and vindictive. Secondly, statelessness was contrary to the structure of international law as at present constituted. Nationality at present afforded the only link beween the individual and international law, and only by possession of a nationality could the individual enjoy benefits which international law was designed to confer upon him. Thirdly, statelessness was not demanded by any vital interest of any State, or by any fundamental concept of any system of law. For no one ground for the deprivation of nationality was universally admitted, and in most States the apparently contradictory principles of *jus soli* and *jus sanguinis* had been combined without any detriment to the prevailing system of law. Lastly, as could be seen from the replies reproduced in the report entitled "The Problem of Statelessness" (E/2230), the reduction or elimination of statelessness had increasingly become part of the deliberate and conscious policies of States. The General Assembly, the Economic and Social Council and the other competent organs of the United Nations had also adopted resolutions to the same end. To that extent, but only to that extent, it was true that the proposals presented by the Special Rapporteur were in the nature of codification, and the Special Rapporteur had perhaps somewhat exaggerated the progress which had been made in the existing law.

14. Although the Special Rapporteur, acting in strict accordance with his instructions, had prepared two draft conventions, one for the elimination and the other for the reduction of statelessness, he had clearly and courageously shown his preference for the first. Possibly the present draft of the first draft convention did not eliminate all future cases of statelessness. That applied to the case of persons who were not permanent inhabitants of a territory which was transferred from one State to another. There were also other, somewhat exotic, examples such as births on installations connected with the continental shelf, or in territories under a condominium, or in *terra nullius*. Those exceptions apart, however, he agreed that the first draft convention, for the elimination of future statelessness, would cover all cases.

15. In substance, the second draft convention, for the reduction of statelessness, differed from the first but little. In that draft the Special Rapporteur had provided for the deprivation of nationality for certain reasons, although, surprisingly, he had not included among them disloyalty and high treason. He proposed, however, that any child which acquired no nationality at birth either *jure soli* or *jure sanguinis* should acquire the nationality of one of its parents. That proposal was of the greatest interest, since it overcame objections which certain members of the Commission had raised to the corresponding text previously proposed.

16. The Commission might indeed consider that even the second draft convention proposed by the Special Rapporteur was unlikely to prove generally acceptable to

States. Any convention which really contributed to a solution of the problem, however, would necessarily, to however small an extent, conflict with the existing laws of States and further restrict their freedom of action. He hoped, therefore, that the Commission would not pay too much attention to the argument that the texts proposed conflicted with existing national laws, and that it would not neglect the opportunity presented of restoring order in a sphere which at present was in a state of chaos. However timid the Commission's proposals, experience showed that years would elapse before they were ratified. It would be prudent, therefore, to be bold. If the Commission presented a text designed to eliminate future statelessness, there was some chance that it would be ratified, with no greater delay than any text designed merely to reduce future statelessness, by those States, such as the United Kingdom, under whose existing laws statelessness was already virtually abolished. Such a convention, signed and ratified by a few States, could then serve as a goal towards which the others might strive, in the full assurance that it was in no way inimical to their interests.

17. In any case it was for the Commission, even if it adopted alternative drafts, to express its preference for a definite course. The General Assembly could not decide the basic question of legal principle. That responsibility lay with the Commission, and with it alone.

18. Mr. HSU also paid tribute to the Special Rapporteur for having shown the courage of his convictions. The International Law Commission had been established for the purpose of codifying and developing international law, not as a research institute concerned solely with the study of positive law.

19. He agreed that the Commission should reconsider its decision to leave out of account the cases of statelessness existing as a result of the refugee movements caused by the first and second world wars, since it was those cases which had riveted public attention on the problem of statelessness.

20. He suggested that, in view of the continued importance of the principle of *jus sanguinis,* cases of double nationality were perhaps, at present, a necessary evil, even though it was to be hoped that it would prove possible to eliminate them in the future.

21. On the assumption that the Special Rapporteur's introduction to the two draft conventions would be included in the Commission's report on the subject, further consideration should, in his view, be given to paragraph 17, since he did not quite see the relevance of the reference to the "principle of the priority of the rules of international law over those of municipal law".

22. Mr. ALFARO also congratulated the Special Rapporteur on his report. The draft Convention on the Elimination of Future Statelessness was inspired by motives of humanity and justice, and the main lines of the solutions proposed in it had a sound basis in international law. Altogether that convention formed an excellent basis for the Commission's discussions, although he had objections to certain of its provisions. He agreed with Mr. Lauterpacht that the Commission should present the General Assembly with a single text. That text should be aimed at the elimination of statelessness, even if, with regard to certain categories, it was found necessary to seek only its reduction.

23. The CHAIRMAN said that he was by no means sure that the Commission should submit only one text to the General Assembly. It might, for example, be found that opinion in the Commission was divided on a number of fundamental provisions; in that case, he thought it would be wise to prepare two conventions, one for those States which were ready to eliminate statelessness altogether, and another for States which, though they could not go so far, were willing to take some more modest steps towards that end. If the course advocated by Mr. Lauterpacht were adopted, he feared that there would be a considerable risk of no progress at all being made.

24. Mr. PAL said that he could add little to what had already been said by Mr. Córdova and Mr. Lauterpacht. He would only point out that the right of nationality was a basic human right, and that every case of statelessness was proof that that right had been violated. He appreciated the point of the Chairman's remarks, but considered that the International Law Commission had a clear duty to press for the total elimination of statelessness; if it tolerated any cases at all, it would be conniving at the violation of a basic human right. It could not compromise on the question, and the attitude of the political bodies to which its recommendations would be referred was not its concern.

25. Mr. SANDSTRÖM joined his tributes to those already paid to the Special Rapporteur, with the main lines of whose report he could agree. He had also listened with the greatest interest to Mr. Lauterpacht's remarks, and he suggested that, where relevant, they might well be included in the commentary.

26. With regard to the procedure which the Commission should follow, he found himself in agreement with the Chairman, although he personally felt that the best way of promoting progress might not be by means of a convention at all but by the establishment of some such machinery as already existed in the field of refugees, in the shape of the High Commissioner's Office, for direct negotiation with the governments concerned.

27. Mr. KOZHEVNIKOV said that the Special Rapporteur's report undoubtedly represented the fruits of a considerable amount of work. It contained in some instances useful factual data and certain general considerations, on the basis of which Mr. Córdova had prepared certain texts.

28. There was no disagreement about the fact that the purpose of international law was to regulate relations between States, which were independent and sovereign entities. The rights of the individual lay outside the

direct scope of international law, and it was only by virtue of the legal bond which existed between the individual and the State that his rights could be protected. Statelessness was of course an evil. It seemed to some people that the blame for it lay with States. In his view it was impossible to generalize in that connexion; in a number of cases it was the individual who, by severing the bond which had tied him to his country of origin, deprived himself of the benefits which would be conferred on him by the existence of normal relations between him and the State.

29. He had been frankly astonished by the texts proposed by the Special Rapporteur. In some other matters, Mr. Córdova had shown himself to be aware of the paramount need for upholding the principle of the sovereignty of States, but he now seemed to be turning his back on that principle, notably in the preamble to both Conventions, where he asserted that, as concerned the nationality of persons, "all nations should in this matter abide by the principle of priority of international law over national legislation". The idea that international law should have priority over the sovereign rights of States was quite unacceptable. It sought to make of international law something standing above States, whereas, as he had already pointed out, the whole purpose of that law was to govern relations between them. He was resolved to resist an idea which would make nonsense of international law, and in doing so he was confident that he would enjoy the support of the vast majority of democratically-minded people throughout the world.

30. Mr. YEPES associated himself with the congratulations which had been addressed to the Special Rapporteur on the courageous and scientific report he had produced. He found himself in agreement with nearly all that was said in that report. In his view, the key article, which should be placed first, was article VI of the draft Convention on the Elimination of Future Statelessness, which read as follows:

"1. No State shall deprive any person of its nationality by way of penalty.

"2. No State shall deprive any person of its nationality on any other ground unless such a person, at the time of deprivation, acquires the nationality of another State."

31. If that article was not accepted, the effect of the remainder of that draft convention would be vitiated, and he therefore suggested that it should be discussed first.

32. In their discussions of the whole problem of statelessness, members of the Commission should constantly bear in mind the text which had been adopted by the General Assembly as article 15 of the Universal Declaration on Human Rights,[3] namely:

"1. Everyone has the right to a nationality.

"2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

33. The International Law Commission could not accept the thesis of the unlimited sovereignty of States, since the whole of its work rested on the principle that States were subject to international law. International law had no meaning if the principle of unlimited State sovereignty was accepted. If it were admitted that international law was limited by the absolute sovereignty of States, then the international law which they were trying to codify would be a mere fiction. It must not be forgotten that since the Judgement of the Nürnberg Tribunal on war criminals and the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, the individual, that was, the human person, had become a subject of international law.

34. Mr. AMADO said that one could speak for hours on a subject so serious, so painful and so moving. He was glad that, despite the emotional content of the problem of statenessness, the Special Rapporteur had confined himself to studying the principles and investigating the issues objectively and conscientiously. It was not for the Commission to go into those aspects of personal tragedy which lent poignancy to the problem. He was the happier to be able to pay that tribute, since the Special Rapporteur came from a country that was a neighbour of his own.

35. The Commission's duty was to meet the Economic and Social Council's request to prepare the necessary draft international convention or conventions for the elimination of statelessness (Council resolution 319 B III (XI) of 11 August 1950). The Commission had the choice of two approaches: it might seek to devise solutions which would prove acceptable to the Economic and Social Council and governments, or it might dare to formulate principles which would be a landmark in international law. Which method of approach would best help genuinely to solve the problem? A number of States would have constitutional difficulty in accepting principles. From that point of view, one of the merits of Mr. Córdova's report was that he had submitted a practical draft which expressed the maximum that could be done. It was essential that in studying the problem members should act impersonally, and dissociate themselves from their national points of view. There he must pay tribute to Mr. Pal, whose words had shown that there was unity in the world and that hope could be entertained for the future. Mr. Córdova, who was a ceaseless champion of sovereignty, had done his duty to himself and to the various cultures of the Latin-American Continent, by showing the way. Concessions must inevitably be made. Mr. Córdova, like Mr. Scelle, perhaps accentuated too much the supremacy of international law; Mr. Kozhevnikov had already expressed another standpoint.

36. Mr. Lauterpacht wanted the Commission to think in terms of conventions in which principles of law would be expressed. Mr. Sandström had argued that the Com-

[3] United Nations publication, Sales No.: 1949.I.3.

mission should inform the Economic and Social Council that the problem must be dealt with on political lines, and that all that the Commission could do was to formulate existing law. He agreed with Mr. Sandström and the Chairman that the Commission could best serve the cause by proposing a convention which would be complete, juridically sound, and at the same time acceptable. The slow evolution of social thought was a factor which must perforce be taken into account — as must also the constitutional difficulties of States which were entities that had been moulded by historical forces. It would be unfortunate to do disservice to the cause by proposing unacceptable solutions.

37. Faris Bey el-KHOURI said that there was no conflict on the necessity of eliminating future statelessness. Article 15 of the Universal Declaration of Human Rights laid down that each individual had the right to a nationality. That principle, which had been accepted by all States Members of the United Nations, must be examined in conjunction with article VI of the draft Convention on the Elimination of Statelessness (A/CN.4/64), which laid down that no State should deprive any person of its nationality by way of penalty, and article 1, which stated the general rule. If the principle of *jus soli* were generally accepted, statelessness would in future be eliminated. But if States declined to accept the principle, how would the solution be found? The report was silent on that point.

38. Nor did the report seem to refer to the nationality of children born of stateless persons. It could be deduced from the two draft conventions included in the report that such persons would acquire the nationality of the country of their birth.

39. He was surprised that the Special Rapporteur should have neglected to consider how statelessness originated; it could do so in a number of ways. An individual might discard his nationality, destroying all documentary proof thereof; no reference was made to that possibility in the report. He might be expelled from his country and deprived of his nationality; that possibility was covered by article 6. He might also come to one country from another country where the concept of nationality as such did not exist. And last, but not least, he might take part in the general exodus of a people from its country of origin. With regard to the last case, he would draw attention to the millions of Armenians who had been expelled from Turkey after the first world war, having been refused Turkish nationality. Syria was sheltering 200,000 such persons. What was to be done with them? On the basis of *jus soli,* the children of those people would become Syrians, but the parents remained stateless. The Special Rapporteur had failed to go into that issue. Today, there was hardly any need to refer to the million Arabs expelled from Palestine, except to emphasize that the importance of that problem was still growing, despite all the resolutions and recommendations of the General Assembly. The partition of Korea had created statelessness in yet another region of the world. Should the Commission make recommendations concerning those homeless, stateless and destitute groups? How far could the Commission go in attacking a problem which was political, and as such outside its competence? He believed that at the least a reference should be made to it in the report.

40. Despite certain omissions, the report would serve as a basis for the Commission's work; the articles of the two draft conventions should be examined *seriatim.*

41. Mr. ZOUREK wished to define his ideas on certain aspects of a report which had been well and thoroughly prepared. Statelessness was an evil in international relations; it was an evil alike for individuals and for national administrations which were called upon to solve individual cases. It was generally postulated that statelessness was due to action by governments. That could be so; statelessness did sometimes arise from gaps in domestic legislation. But it should not be forgotten that individuals very often brought statelessness upon themselves. It was therefore essential for the Commission first to clarify its ideas in order to prepare a solid basis on which to work.

42. Certain members seemed to suggest that a general law existed in regard to nationality. Actually, apart from several conventions binding the parties, which had been referred to in the report, no general rule on nationality existed in international law. Unless the Commission started from that premise, it would lose itself in a cloud of illusions. The Universal Declaration of Human Rights was, as the report and the preamble to the first draft convention rightly pointed out, simply a programme for the future. It was not a rule.

43. Furthermore, where lay the cure and by what means should it be undertaken? He was convinced that the solution lay in measures taken by governments within the framework of their domestic legislation. In that connexion, he would refer to the recent law enacted in Czechoslovakia on 24 April 1953 (law No. 34), whereby persons of German origin domiciled in Czechoslovakia were given back the Czech nationality of which they had been deprived during the Hitler régime, the law being also applicable to wives and minor children domiciled in the country.

44. Turning to the draft Convention on the Elimination of Future Statelessness, he noted the view that the Special Rapporteur had sought to impose the principle of *jus soli* to countries which applied that of *jus sanguinis.* In such cases the tie of nationality would become purely fortuitous. The tie was far stronger under the principle of *jus sanguinis.* Consequently, he did not consider that the application of the principle of *jus soli* pure and simple was acceptable.

45. Reference had already been made to article VI. There the Special Rapporteur enunciated principles which had been rejected by a large majority of the Commission at the fourth session. In his view, the article was based on an erroneous conception of nationality. Nationality imposed duties on the individual as a citizen. If an individual cut himself off from a community of

his own free will — by committing high treason, for instance, or by disloyal action — could his State be denied the right to deprive him of his nationality? The practice of governments described in the Secretariat's memorandum, "National Legislation concerning Grounds for Deprivation of Nationality" (A/CN.4/66), clearly showed that it would be vain to propose such a principle. It would not be accepted.

46. Such were his preliminary observations. He reserved the right to speak later on each separate article.

47. Mr. SPIROPOULOS congratulated Mr. Córdova on his work, and said that his own ideas had already been expressed by other members. He need not therefore delay the Commission by repeating them.

48. Mr. CÓRDOVA thanked the Commission for its appreciation of his work. He would first tell Mr. Kozhevnikov that the report was not really inconsistent with his (Mr. Córdova's) attitude to the sovereign rights of States. He admitted that he was inclined to recognize on behalf of the individual State the rights admitted in international law. In other words, he defended the rights of States against the imposition of other rights, but always *within* the framework of international law. Thus, with regard to the doctrine of the territorial sea he did not go so far as to maintain that the coastal State could take unilateral decisions concerning its territorial sea. For him, the priority of international law was the fundamental premise. International law must prevail against the will of States; indeed, if States possessed unlimited sovereignty, there would be no international law. His attitude was not inconsistent.

49. Mr. Hsu and Faris Bey el-Khouri had referred to the absence from the report of any reference to existing statelessness. He was the first to deplore an omission which was due to the Commission's own decision. At the 163rd meeting (fourth session) Mr. Lauterpacht had proposed that the Commission request the Special Rapporteur to give further consideration to the possibility of reducing existing cases of statelessness by juridical means. That proposal had been rejected by 5 votes to 4 with 3 abstentions.[4] In his report (A/CN.4/64, para. 21) he had quoted his own words during the discussion, namely, "...even if the Commission could hope for a little practical success when dealing with what was primarily a political problem, it would be subjected to much criticism if it did not a least consider the problem of reducing existing cases of statelessness..."; and thereto he had added the following comment: "A noble and very useful purpose would be served, if the Commission decides to explore the possible solutions for reducing existing cases of statelessness. It seems to the Special Rapporteur that this is a solemn duty of the Commission towards thousands of stateless persons, now living under great hardship and duress, without any protection, and who look up to the United Nations as their last refuge and only hope for the solution of their human problems." He was perfectly willing that the Commission should reverse its decision, but if the problem of existing statelessness was to be tackled, he would like to know in good time what the Commission expected of him.

50. Further, a distinction must be drawn between statelessness which was juridical and statelessness which was not. A political exile whose country of origin had not deprived him of his nationality was not juridically stateless, although *de facto* he could derive no benefit from having a nationality. But a refugee who had been expelled from his country and forcibly deprived of his nationality was juridically stateless.

51. Faris Bey el-KHOURI, intervening, asked how Mr. Córdova defined persons who wished to go back to their country and were not accepted by it.

52. Mr. CÓRDOVA replied that those persons had a nationality and were therefore not juridically stateless. Certainly, for practical purposes, their nationality was of no use to them, but that was not the point.

53. Continuing, he said that there were two possible solutions: it could be proposed that a State which deprived any person of its nationality should restore it; or, alternatively, that a State wherein a refugee was domiciled was under the obligation to grant him its nationality. The latter was a sound solution in that refugees having been accepted as such by the country of asylum and being willing to remain, their children would be brought up there. States could not fail to be concerned with the problem. On the one hand, refugees could not be sent back to their country of origin; on the other, they should not remain as a living and expanding group of foreigners within a community. Rapid assimilation was undoubtedly the best thing.

54. Faris Bey el-KHOURI asked why States should accept intruders.

55. Mr. CÓRDOVA replied that he was attempting to feel his way towards a juridical solution.

56. Some members had spoken of the fact that the report included two conventions, one on the elimination of future statelessness, and one on the reduction of future statelessness. Mr. Sandström had suggested that the Commission recommend to the Economic and Social Council that it advocate that the countries concerned make the appropriate changes in their domestic legislation. That proposal was practical and relevant to existing circumstances, but would not contribute to the elimination of the problem in future. He was inclined to share Mr. Lauterpacht's view that there should be only one convention, and, moreover, one which would serve to eradicate the problem entirely. Indeed, the Commission was in the position of a doctor with two medicines, one of which would effect a complete cure whereas the other would only serve as a palliative. The Commission should have the courage to propose the complete cure, telling States that it was for them to choose whether to take the prescription, whether not to take it, or whether to take it in their own way.

[4] See *Yearbook of the International Law Commission, 1952*, vol. I, 163rd meeting, para. 79.

57. There was yet another point, which had been raised by Mr. Yepes. If the Commission first took up the draft convention on the elimination of future statelessness, he was not sure that Mr. Yepes' suggestion that article VI should be examined first was wholly wise. That article dealt with deprivation of nationality, and he felt that the preceding articles would perhaps have greater effect in eliminating statelessness. He would be inclined to follow the order suggested by Mr. Hudson in his report (A/CN.4/50), namely: statelessness arising from conflict of laws; statelessness arising from deprivation of nationality; finally, statelessness arising out of treaties on transfers of territory. Obviously the Commission must first decide upon its method of work. He would suggest that the first step was to decide on the definition of the concepts of "inhabitant" and "domicile".

58. The CHAIRMAN said that the illuminating discussion had exactly fulfilled the purposes for which it had been held, namely, that of finding the correct approach to the work. Any other comments which members wished to make could be made in relation to the individual articles.

59. Clearly members were divided as to whether there should be one or two conventions. He would therefore suggest that a start be made with the first convention — that on elimination of future statelessness. The results would show whether it would be opportune to consider the second convention or whether the first was so good as to be capable of standing alone.

60. The Special Rapporteur had raised the point of the possible study of existing cases of statelessness. His feeling was that that issue also should be settled after an examination of the juridical question as to how the future increase of statelessness could be prevented.

61. If there were no objections, he would close the general discussion and invite members to begin their examination of the first convention after first deciding whether the logical order of the articles should be followed or whether, in accordance with Mr. Yepes' suggestion, they should begin with article VI.

It was so agreed.

62. Mr. YEPES felt obliged to press his proposal, because in his view, article VI was the focal point of the whole draft, and raised an issue of principle which affected all other issues. The Special Rapporteur's comment on that article put the matter perfectly and he could do not better than quote it:

> "...the Special Rapporteur feels it his duty to state that if the members of the Commission reject this principle, they might as well reject the whole draft convention because if they leave the possibility of statelessness open in this article of the draft convention, every effort made in the other articles to attain the elimination of statelessness becomes entirely useless. The application of article I, for instance, although drying up all sources of statelessness at birth would be utterly insufficient to eliminate statelessness if, on the other hand, the Commission would accept the survival of this unhuman and very absurd situation by rejecting the principle that no State shall deprive a person of its nationality, unless, in so doing, it does not produce statelessness. In other words, the Commission should bear in mind the very important and fundamental fact that we are dealing here with a draft designed to eliminate future statelessness." (A/CN.4/64, comment to article VI, section III, E)

63. Mr. Zourek's argument that States had the right to deprive individuals of nationality for such offences as high treason was superficially impressive but was in reality founded on a confusion of the concepts of citizenship and nationality. States could apply very efficacious sanctions to punish traitors without depriving them of their nationality and thereby creating problems for other States. They could, for example, deprive them of all political rights, a practice followed by a number of Latin American States.

64. The CHAIRMAN, intervening, requested Mr. Yepes to confine his remarks to the point at issue.

65. Mr. YEPES said that his remarks were intended to prove the need for taking article VI first. The State was sufficiently armed against traitors, whom it could deprive of their rights of citizenship without depriving them of their nationality.

66. Mr. SANDSTRÖM held that there was no valid reason for changing the order of the articles, a question which was in any case of secondary importance and could be suitably examined by the Drafting Committee.

67. The CHAIRMAN invited the members to vote on Mr. Yepes' proposal that article VI of the draft Convention on the Elimination of Future Statelessness be examined first.

Mr. Yepes' proposal was rejected by 7 votes to 1, with 5 abstentions.

68. Mr. AMADO, speaking in explanation of his vote, said that he had abstained because Mr. Córdova had suggested that the second convention was in the nature of a palliative. He noted, however, that article VI of that convention envisaged the problem of deprivation in a manner which might well prove acceptable to states. It was better than a palliative. Further, he would draw attention to paragraph 3 of article VII of the second Convention which opened with the words "No State shall deprive any person of its nationality on any other ground..." He considered that that article also might well be acceptable. Indeed, he appreciated the motives which had inspired Mr. Yepes' proposal, but felt that on the whole it was preferable to start at the beginning.

69. Mr. KOZHEVNIKOV hoped that it was not too late for him to remind the Commission that it should define its attitude to the preamble of the draft Convention on the Elimination of Future Statelessness.

70. The CHAIRMAN said that, in accordance with the usual procedure, the preamble would be examined after the body of the text. He called upon Mr. Córdova

to introduce the discussion on article I of the draft Convention on the Elimination of Future Statelessness.

Draft Convention on the Elimination of Future Statelessness

Article I [1]

71. Mr. CÓRDOVA said that article I was the most important article in the two draft conventions. It was wider in scope than the articles rejected by the Commission at its fourth session. In drafting it, he had followed the main line adopted by Mr. Hudson in his report (A/CN.4/50). The main cause of statelessness resided in the conflict of law, and all methods of resolving that conflict had been directed towards extending the principle of *jus soli* to countries which applied the doctrine of *jus sanguinis*. The converse did not offer a permanent solution. Article I was in harmony with decisions taken by other United Nations organs, namely, with article 15 of the Universal Declaration of Human Rights, and with the Economic and Social Council's resolution requesting the Secretary-General to undertake studies for the purpose of making the Universal Declaration of Human Rights effective. The Secretary-General had decided that article 15 of the Universal Declaration could best be implemented by eradicating statelessness. That, indeed, was the purpose of the present draft convention and of his own work.

72. Article I covered a number of cases described in the synoptic chart of possible sources of statelessness annexed to the report. Indeed, the whole problem was somewhat intangible unless related to practical examples.

73. Thus, article I applied to cases of children born abroad in (1) a *jus sanguinis* country of parents of a strict *jus soli* country; and (2) a *jus sanguinis* country from a second or third generation of parents nationals of a *jus sanguinis* country.

74. It also applied in the case of children born in a *jus sanguinis* country with one parent stateless, whether legitimate (stateless if father stateless) or illegitimate (stateless if mother stateless), and to foundlings, who were the perfect examples of statelessness. It should be noted that according to article II a foundling should be presumed to have been born in the territory of the Party in which it was found. He would not pursue his analysis further, but would draw attention to the fact that he had been obliged to use wording different from that of Mr. Hudson [5] and from that proposed by the draft "Law of Nationality" prepared by the Harvard Research in International Law.[6] He had, as a matter of fact, been guided by Mr. Alfaro's formula.[7] He had deleted the words "if no *other* nationality is acquired at birth" from Mr. Hudson's wording, because it gave priority to the *jus sanguinis* principle. Moreover, the wording warranted the interpretation that the country of birth might be deprived of the right to impose its nationality. That was obviously not the intention.

75. Mr. AMADO drew attention to the unsatisfactory form of the article in the French text: "*s'il n'acquiert* pas". The verb "*acquérir*" was wrong. A child *was*; it acquired nothing. What mattered was the fact of birth.

76. The CHAIRMAN suggested that the words "soit *jure soli*" be deleted as superfluous.

77. Mr. SANDSTRÖM said that he entirely agreed with the idea which the Special Rapporteur had sought to express in article I, but feared that the drafting was defective. It was very difficult to find a really satisfactory formula to express that clear and simple notion. He would try and put it thus: "Every child born, who otherwise would become stateless, shall acquire at birth the nationality of the Party in whose territory he is born".

78. The CHAIRMAN said that Mr. Sandström's amendment would be distributed.

[5] "(i) If no *other* nationality is acquired at birth, every person shall acquire at birth the nationality of the State in whose territory he is born. This would extend *pro tanto* the applicaiton of the *jus soli* rule in many countries." (A/CN.4/50, Annex III, Section VI, point 2). Also quoted in A/CN.4/64, Part I, comment to article I, section III, A.

[6] "Article 9. — A State shall confer its nationality at birth upon a person born within its territory if such person does not acquire another nationality at birth." (*American Journal of International Law*, Vol. 23 (1929), Special Supplement, p. 14) Also quoted in A/CN.4/64, Part I, comment to article I, section II, D.

[7] "Every person born in a State where nationality is not conferred *jure soli* and who does not acquire at birth another nationality *jure sanguinis* shall acquire at birth the nationality of the territory where he is born." (A/CN.4/64, comment to article I, section III, F)

The meeting rose at 1 p.m.

212th MEETING

Thursday, 9 July 1953, at 9.30 a.m.

CONTENTS

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris

* The number within brackets corresponds to the article number in the Commission's report.