Document:-
A/CN.4/SR.212

Summary record of the 212th meeting

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
1953 , vol. I

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.

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) (*continued*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS (*continued*)

Article I [1]

1. The CHAIRMAN invited members to continue discussion of article 1 of the draft Convention on the Elimination of Future Statelessness (A/CN.4/64, Part I), and drew attention to Mr. Sandström's amendment, which read as follows:

> "Every child born, who otherwise would become stateless, shall acquire at birth the nationality of the Party in whose territory he is born." [1]

2. Speaking as a member of the Commission and as a representative of a country which applied the principle of *jus sanguinis,* he wished to express his serious objections to article I, which would have the effect of linking nationality to the sole fact of birth in a territory. The doctrine of *jus sanguinis* meant that birth in a territory was not enough to create between the State and the individual the relationship which was necessary for, and in keeping with, the juridical concept of a nation. He must straightway emphasize that his objections were not political, but juridical. The text of article I was based on a concept of a nation which the *jus sanguinis* countries could not accept. Any person who took the same attitude would have considerable difficulty with regard to the treatment of and the voting upon articles so conceived. No possible objection could be entertained to the negotiation of a convention between *jus soli* countries for the purpose of applying that principle among themselves. Indeed, he would not vote against such a convention, on the understanding that those who held the opinions which he had just expressed did not consider such a convention to offer a satisfactory solution, since it would never be accepted by *jus sanguinis* countries. It followed therefrom that if the Commission accepted such a convention, a second convention would prove necessary.

3. Mr. LAUTERPACHT said that before answering Mr. François, he wished to raise two points concerning Mr. Sandström's amendment.

4. In the first place, the proposal was fully acceptable. It disposed of certain doubts which arose from the Special Rapporteur's text, and it was shorter and commendable in that it immediately introduced the main issue, namely, the avoidance of statelessness. For that reason, it was particularly welcome.

5. His second observation was perhaps somewhat pedantic. It was at least theoretically possible that, even with the proposed formulation, cases of statelessness might occur. There existed territories, such as trust territories and condominiums, which were not incontrovertibly under the sovereignty of a single State; again, the status of leased areas granted in perpetuity was controversial. As examples, he would mention, of the first, the condominium of the United Kingdom and France over the New Hebrides, and of the second, the Panama Canal Zone. There were other cases, which he would describe as "exotic"; birth on an installation in the high seas, or on an uninhabited island, or on a raft on the sea. The Commission might therefore consider it advisable either to add a paragraph to the article, or to include a reference in the comment to the effect that in such cases a child should acquire the nationality of one of the parents.

6. Turning to Mr. François' statement that article I was not acceptable, and never would be, to his country, which applied the *jus sanguinis* principle, and that consequently a second convention might be necessary, he would draw attention to the fact that the article was not intended fundamentally to affect the *jus sanguinis* system. The latter would be maintained subject to numerically few exceptions — cases where a child was born and did not acquire the nationality of his parents' country in virtue of *jus sanguinis.* He would have thought that in the Netherlands not more than 10 to 20 persons were born each year who would come under the article. In any case, the Netherlands had already made exceptions to the rule. If the convention were generally accepted, the number of stateless persons and children born to persons who were stateless would decrease. It was as well to keep a sense of proportion concerning the numbers involved, and he must once more emphasize that the question of making *jus soli* generally applicable did not arise.

7. A sense of proportion should also be kept in regard to legal theory. He did not know what exactly the Chairman meant by the statement that the issue was related to the whole juridical concept of a nation. Those were high-sounding words, but in point of fact in something like 85 to 95 per cent of States the juridical concept of a nation was very elastic, *jus soli* being in practice combined with *jus sanguinis.* He felt that Mr. François had been somewhat extreme in his statement, and too pessimistic in affirming that the Netherlands would never accept article I. At the time of the Hague Codification Conference in 1930, many governments had declared that other States would not alter their position with regard to the nationality of married women — a matter which they considered bound up with the very basis of their law of nationality. But various changes had been made since then without affecting the juridical concept of a nation on fundamental notions of its jurisprudence.

[1] See *supra,* 211th meeting, para. 77.

8. The CHAIRMAN, speaking as a member of the Commission, wished first to defend himself against the charge of exaggeration. Since the second world war, the number of stateless persons in the Netherlands had risen to 73,000; the general birth-rate was 23 per thousand. It was clear from those figures that Mr. Lauterpacht's estimate of 10 to 20 stateless persons born each year did not tally with the facts. He could not agree that the principle of *jus sanguinis* was of limited importance and that the difference between it and *jus soli* was limited in its effects. The principle expressed in article I and Mr. Sandström's amendment thereto would not apply to stateless persons alone, but to any child whose nationality might be dissimulated by its parents, who would be able to claim that since they had no nationality their offspring must be granted nationality *jure soli*. The burden of proof in respect of the possible nationality of the parents would fall on the State, and would involve it in considerable difficulties.

9. Mr. ALFARO said that he would be prepared to accept either formula, since both would implement article 15 of the Universal Declaration of Human Rights and fulfil the request addressed to the Commission by the Economic and Social Council. On the whole, he preferred Mr. Córdova's text, although certain doubts had been expressed thereon. The matter was surely very simple; a child was born in the territory of State 'A' (say, the Netherlands), which did not confer nationality *jure soli*. The parents of that child had the nationality of State 'B', which did not recognize nationality *jure sanguinis*. In such a case, the child could acquire nationality neither *jure sanguinis* nor *jure soli*, and it was there that it proposed to apply the solution *jure soli*, which was the easiest and the most humane, and had been recognized by jurists ever since the days of Francisco de Vitoria. Mr. Sandström's formula would have the same effect, but he would draw attention to the fact that the word "born" was missing from the French text. In any event, the amendment needed re-drafting, and he would suggest that the word "State" be used instead of the word "Party". Perhaps a more satisfactory wording would be the following: "Every child who at birth would have become stateless, shall acquire at birth... etc."

10. Mr. LIANG (Secretary to the Commission) felt that the import of Mr. Sandström's amendment might be regarded as wider than that of the Special Rapporteur's text. If Mr. Lauterpacht's premise that article I was the key article were conceded, the wider interpretation might be preferable.

11. There was one point to which he would draw attention in connexion with the first clause of the amendment. It must be made perfectly clear that the text referred to statelessness at the moment of birth, and not at any other time when the child might become stateless. He would therefore suggest the following wording: "Every child, who otherwise would be stateless at birth..." A child might become stateless during its infancy through the operation of the law of the State, and it should be made clear that the article was not intended to cover that contingency.

12. Another point which should be considered was the effect of the provision on municipal law — an issue to which Mr. François had already referred. The draft convention was clearly intended to constitute, by means of a convention, international legislation — to use Mr. Hudson's expression — involving changes in domestic law. Once the convention was accepted, it would acquire the force of law in the States parties to it, and would, to that extent, affect the application of domestic law.

13. Faris Bey el-KHOURI said that he represented a group of States in the Middle East, all of which applied the principle of *jus sanguinis*. He did not know to what extent those States would be prepared to assume the obligation to change their domestic legislation. He confessed that he entertained doubts about their readiness to do so. If the provision was only to apply to a few rare cases, States might envisage the solution, but they could hardly accept the imposition of such a rule in respect of hundreds of thousands of persons. In his statement at the previous meeting, he had referred to the growth of the refugee problem and had quoted several examples.[2] He would therefore only add that in certain States in the Middle East, the influx of refugees was so great that their number now exceeded that of the indigenous population. In the Hashemite Kingdom of Jordan, for instance, there were 20 or 30 per cent more refugees than there were nationals of the kingdom. The figures were equally significant for Lebanon and for Syria. Furthermore, it should be borne in mind that those refugees came from different countries and belonged to different races — they came from Yugoslavia, Albania, the Caucasus, and from the countries of eastern and western Europe. Many of them dared not return to their conutries of origin, by which they had been rejected.

14. He would reiterate that the problem of refugees should be referred to in the Commission's report in order that the attention of the General Assembly might be drawn to it. The necessity for so doing was the greater since the problem was having a detrimental influence on the maintenance of peace. He was unable to subscribe to the texts proposed by the Special Rapporteur and Mr. Sandström, since they would make the acceptance of the principles mandatory.

15. Mr. KOZHEVNIKOV said that the discussion clearly showed the great difficulties of the problem. The general comments made by Mr. François and Faris Bey el-Khouri deserved the closest attention. The Commission was attempting to draft a general convention which would necessitate serious legislative changes, and possibly even constitutional changes. It would not be realistic to rely on an easy acceptance by States. As he had stated at the previous meeting,[3] his impression was that the question related to the domestic jurisdiction of States.

---

[2] *Ibid.*, paras. 37-40.
[3] *Ibid.*, para. 27-29.

16. He would take the opportunity, in that connexion, to answer the suggestions made at the preceding meeting by Mr. Córdova[4] to the effect that he was a partisan of absolute sovereignty. That was not so, and he must deny the charge. That notion was alien to the Soviet concept of law which, as was well known, was based on the recognition that collaboration between States was desirable and necessary, even if their economic and social systems differed. The Soviet Union was consistently in favour of such collaboration.

17. He (Mr. Kozhevnikov) was opposed to the imposition of rules on States and the prejudgement of issues. The provisions of the draft convention sought to impose rules and as such were contrary to the principles of sovereignty. Agreement between *jus sanguinis* and *jus soli* countries was possible on the basis of mutual understanding.

18. As to Mr. Sandström's amendment, he would ask for an explanation of the precise meaning of the word "otherwise". What actual cases would be covered by it? Indeed, he could see no advantage in Mr. Sandström's amendment as compared with the original text proposed by the Special Rapporteur.

19. Mr. PAL said that the principle expressed in both texts was acceptable to him. The question of nationality involved both the claims of a State and its obligations. If a State could claim a child as being its national, it must also accept the obligations to recognize it as its national. In the light of present international circumstances, stress should be laid on the obligations of States in that respect. The question was not how to find a general solution for the conflict between *jus sanguinis* and *jus soli*. What article I sought to do was to solve a case of statelessness by providing that nationality should be acquired *jure soli* in the case of children who did not acquire nationality *jure sanguinis*. He would add in passing that the existing freedom of movement between countries made it possible to concede that the mother's presence in the country of the child's birth would be legitimate.

20. On the whole, he preferred Mr. Sandström's formula, but felt that it would be preferable to substitute the word "State" for the word "Party".

21. Mr. SANDSTRÖM, replying to Mr. Kozhevnikov, said that he interpreted the word "otherwise" as referring to the moment of birth. It was perhaps the verb "become" that was confusing, and it might be preferable to substitute the verb "be", so that the first clause would read: "Every child born, who otherwise would be stateless..."

22. He would like to make clear that the Commission should look at his amendment in the light of his general statement at the previous meeting.[5] The fact that he had submitted an amendment in no way implied that his government would be prepared to accept the convention. Sweden had amended its nationality laws in 1950, bringing them nearer the principle expressed by the Special Rapporteur in the draft convention on the reduction of future statelessness. In fact, he had submitted his amendment without any reference to the possibility of wide acceptance by States or to political considerations. But he must point out that he had advocated that the Commission offer States the alternative of the second convention.

23. Mr. YEPES said that he was in favour of the elimination of future statelessness, and that it was in the light of that attitude that he wished to make the following comments. The draft referred *passim* to contracting States. It had been set out in the form of a convention, but he doubted the wisdom of that procedure since a convention involved acceptance and ratification. He concurred with Mr. Kozhevnikov that difficulties would arise. He was more in favour of drafting a series of principles for submission to the General Assembly or to the Economic and Social Council, either of which could draft a convention on the basis thus provided.

24. Turning to the text of article I, he wondered whether it would be possible to impose upon *jus soli* States the obligation to grant, without any other formalities, nationality to a child born in their territory. So absolute a rule could hardly be imposed. As the Special Rapporteur had shown in his report (A/CN.4/64, Part I, comment to article 1, B), even *jus soli* countries made the acquisition of nationality by birth in their territories conditional. That, for instance, was so in the case of Colombia. The fact of birth in the territory was not the sole criterion. The place of birth was a matter of chance, and nationality could hardly be left to chance. Indeed, so much importance attached to the ties of nationality that in many countries persons were excluded from the highest functions of the State unless they fulfilled certain conditions which reinforced the link between them and the community. Even if a person had acquired nationality *jure soli*, there were such factors as attitude of mind to be taken into account. Did article I limit the competence of States to impose such conditions? If so, he would hesitate to vote in favour of it.

25. The final clause of article I needed some elucidation. Would it prevent a State from imposing its nationality on a person? He interpreted the article as meaning that children born in a country would be nationals of that country as from birth unless they acquired another nationality. But if they did acquire another nationality, would the State wherein they were born be able to decide whether they were or were not its nationals?

26. His vote would depend on the answers given to those questions.

27. Mr. HSU said he was prepared to accept either text, subject to certain essential drafting changes. The arguments of those who opposed the principle had not convinced him, since they were mostly concerned with whether the article would or would not be acceptable to States. Its juridical soundness had not been contested.

[4] See *supra*, 211th meeting, para. 48.
[5] *Ibid.*, paras. 25-26.

After all, the Commission had been requested by the Economic and Social Council to draft a convention, and it was its duty to do its best. How could the Commission really find out whether governments would object? Whenever international law was embodied in conventional form, the acceptance of States was reluctant, despite the fact that very often they acted on the principles. That was the natural consequence of the conservatism of States. The instruments drawn up by the Hague Codification Conference did not differ from existing practice, but had secured very few ratifications. The fact that States hesitated to accept conventions did not mean that the latter were useless. The influence exerted by the Hague Codification Conference had been very great.

28. Last but not least, article I was ultimately designed for the future. It might be that it would prove impossible to eradicate statelessness at the present time, but by adopting a sound juridical principle the Commission might do good service to the future.

29. Mr. AMADO also wished to stress that the draft convention was intended to eliminate future statelessness. That was the whole point. He had been surprised to hear Mr. Lauterpacht introduce notions which he (Mr. Lauterpacht) himself had described as somewhat pedantic. Such considerations were irrelevant for those who were anxious to lend positive and constructive assistance. Like Mr. Sandström and Mr. François, he (Mr. Amado) was anxious to do so, and was therefore putting his national point of view aside. To seek absolute perfection was not realistic, and therefore not to be commended.

30. He noted in passing that the Special Rapporteur seemed very much concerned about dual nationality. He could not himself see that it mattered very much. How much better for an individual to have two nationalities than to be stateless! He did not understand how Mr. Yepes, who had expressed such an earnest desire to secure the elimination of statelessness and had advocated that the Commission start with article VI, holding it to be of fundamental importance, could now ask whether it was expedient for the Commission to undertake the drafting of a convention. If members really wanted to serve the cause, they should study the texts not only with attention but with love, and love was a precise and steadfast thing. For his part, he would do his very best to get Brazil to go as far as it possibly could in the direction of implementing article I. That article was simple and, in that simplicity, suited to times of tension. He did not wish to imply that he failed to appreciate the point of view of the Soviet Union or of the Arab States, but why should those who seemed to favour the principle hamper the work?

31. He would vote in favour of article I. As for article VI, difficulties would certainly arise with regard to it since, to mention only one aspect, it was hardly possible to deny States the right to protect themselves against traitors.

32. Mr. ZOUREK said that at first glance the two texts proposed for article I seemed attractive in their clarity and capable of offering a solution, but a closer analysis showed that they would in certain cases create purely artificial relationships between the individual and the State. As was made clear in the Special Rapporteur's comments on existing legislation, even *jus soli* countries did not apply the principle in its integrity. Chile, the Dominican Republic and Honduras imposed certain conditions by excluding the children of transients (A/CN.4/64, Part I, comment to article 1, section I, A). Let it be supposed that a child was born in a *jus soli* country — that principle being applied in its integrity — and thereby acquired the nationality of that country, without any further requirements whatsoever. The child might leave the territory and grow up in entirely different surroundings, having nothing in common with the country of its birth. The child's parents might then die and the child be left distitute but still able to claim the right of admission. Clearly such an extension of *jus soli* was wholly unacceptable to the *jus sanguinis* countries. The Special Rapporteur had dealt with that objection in his report (A/CN.4/64, Part I, comment to article I, section IV, K). His (the Special Rapporteur's) answer, which read as follows, was not convincing:

> "Countries where this principle obtains are not in fact opposed to attribute their nationality to children born within their territory even by accident or to transient parents; and they continue to attribute their nationality to persons who, having been born within its territory, nevertheless live practically all their lives in a different country. Therefore the objection is not a valid one against the theory that, in order to avoid statelessness, *jus sanguinis* countries should apply the *jus soli* principle in the case above referred to."

33. He must reiterate that the principle could not be accepted because of the economic and social conditions which influenced the conception of nationality in *jus sanguinis* countries. He did not consider that Mr. Lauterpacht's argument about the small number of cases that would be affected by article I was valid. A State with a definite conception of national links would find it difficult to admit a different system. For those reasons the article was not satisfactory. In a number of cases it would make nationality a matter of chance. The formula would therefore not be acceptable to the majority of States and the Commission should keep that point in mind if it wished to establish rules of international law.

34. Finally, he would draw attention to an error in the report. The Czechoslovak requirements for the granting of nationality to persons born in the country were quoted as "father and mother citizens". The text should read "father *or* mother citizens".

35. Mr. CÓRDOVA, on a point of order, said that he understood that the Commission had decided to discuss first the draft convention on the elimination of future statelessness, and then the draft convention on the reduction of future statelessness; although it was in order, therefore, to criticize the former on the grounds that it would not result in the complete elimination of future statelessness it did not seem to him to be in order, at the present stage, to argue that with regard to

such or such a category the reduction of future statelessness was all that could be aimed at.

36. The CHAIRMAN replied that what the Commission had in fact decided was to leave in abeyance the question whether to consider the second draft convention until the Commission had completed its consideration of the first. It therefore seemed to him to be quite in order, during discussion of the first draft convention, to argue that the principle to which it sought to give expression could not be fully adhered to in such or such a case. If it thought that that would facilitate its work, the Commission was of course at liberty to decide that it would in any case discuss the second draft convention; and if it did so, it could limit discussion on the first in the way which the Special Rapporteur had suggested.

37. Mr. CÓRDOVA said that he would not press the matter further, since it was clear that members wished, in their statements, to range beyond the limits he had suggested.

38. Mr. ALFARO pointed out that the Commission was considering a great, dramatic, human problem, which was clearly stated in the Economic and Social Council's resolution 319 B III (XI), of 11 August 1950, in which that body, after pointing out "that statelessness entails serious problems both for individuals and for States, and that it is necessary both to reduce the number of stateless persons and to eliminate the causes of statelessness" and "that these different aims cannot be achieved except through the co-operation of each State and by the adoption of international conventions", had noted with satisfaction "that the International Law Commission intends to initiate as soon as possible work on the subject of nationality, including statelessness", and had urged the Commission to "prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness". The emphasis was on the term "elimination".

39. Some members appeared to harbour doubts whether the Commission had necessarily to prepare a draft convention; the terms of the resolution he had quoted surely left no room for doubt about that, or about the fact that the convention was a convention for the elimination of statelessness. Ratification of the convention would naturally entail some sacrifice on the part of States, but such sacrifice was, in most cases, not so great as it might seem. Nearly all countries applying the rule of *jus soli* gave their nationality, *jure sanguinis*, to children born to their nationals abroad. So far as statelessness at birth was concerned, therefore, the Commission's main concern was with the children born to stateless persons in countries applying *jus sanguinis*, and no solution of that problem, other than along the lines proposed by Mr. Córdova and Mr. Sandström, had ever been suggested. For some countries, such as the Hashemite Kingdom of Jordan, the sacrifice which the adoption of some such provision entailed might be too great in present circumstances; it was clearly unreasonable to expect any State to jeopardize its very existence by accepting as nationals large numbers of persons who were not bound to it by any tie whatsoever. Such countries would be unable to accept the convention, at any rate without reservations. Exceptional cases of that kind, however, were no reason for jettisoning the principle. The Commission had to all intents and purposes abandoned hope of eliminating existing cases of statelessness, but the scourge of statelessness must not be allowed to continue indefinitely; it would continue indefinitely, however, however, unless some such provision as that proposed by Mr. Córdova or by Mr. Sandström was adopted.

40. Deprivation of nationality was an entirely separate matter, which did not affect article I. He could vote for that article either in the form proposed by Mr. Córdova or in that proposed by Mr. Sandström.

41. Mr. LAUTERPACHT said that the discussion, in which members doubted the likelihood of their governments accepting legislative changes, had taken a turn which made him wonder whether the Commission was not wasting its time in discussing further either the draft Convention on the Elimination of Future Statelessness or the draft Convention on the Reduction of Future Statelessness. As he had already pointed out, the differences between the two were small, and the main objection raised to the former — that it would require changes in domestic legislation that States would be unable to accept — applied equally to the latter. That objection had been expressed by a large number of members, perhaps by the majority, of the Commission. Mr. Kozhevnikov's views had at least the merit of being clear. He was opposed to any convention on statelessness, which he said would be contrary to the principle of the sovereignty of States. He (Mr. Lauterpacht) did not understand Mr. Kozhevnikov's argument that such a convention would be "imposed" on States, since they would of course be free to adhere to it or not. Nor did he understand why Mr. Kozhevnikov should be concerned to improve the wording of an article to the substance of which he was irrevocably opposed; such an attitude was contradictory.

42. Faris Bey el-Khouri, from the point of view of his country, saw insurmountable obstacles to adoption of the legislative changes which a convention would entail. That country, however, was in a very special situation with regard to the whole problem. Its difficulties, and those of other countries in a similar position, might be met by a reservation, essentially temporary in nature, that the article did not apply in cases where there had been a large influx of stateless refugees.

43. What had particularly contributed to his present doubts, however, was the attitude of Mr. François and Mr. Sandström. The latter had said, if he had understood him correctly, that his amendment to article I was merely designed to assist the Commission in drafting, and that it did not imply his support for the principle contained in that article; from what Mr. Sandström had said, moreover, it seemed that in his view it was unlikely that the Swedish Government would accept the draft convention under consideration. The question of the likelihood of the convention's acceptance by States,

however, was a secondary one, since the Commission was concerned only with the intrinsic reasonableness of the text; and while not inclined to support the text proposed for article I, neither Mr. Sandström nor Mr. François had given any grounds for doubting its intrinsic reasonableness.

44. Mr. François had not replied to his remarks on the question of the relevance of supposedly fundamental jurisprudential notions, but had stated that the number of persons to whom the Netherlands would be obliged to grant Dutch nationality each year under the proposed article would be nearer a thousand than twenty. Even if it were, he (Mr. Lauterpacht) did not understand what the Netherlands would gain by refusing nationality to those persons, unless it wished to remain free to expel them at any time. So long as they remained in the Netherlands it was surely to the advantage of the country that they should not be in an anomalous position. It might be argued that if they went abroad, the Netherlands Government was at present under no obligation to extend to them its diplomatic protection, but would be if they were Dutch nationals. It was well known, however, that in practice States retained full freedom of action in that respect and were under no international obligation to grant diplomatic protection to their nationals abroad. If a claim for protection were not meritorious, it could be treated accordingly. If it were a case of real injustice and oppression, an enlightened government would not avoid its duty of intercession in reliance upon the statelessness of the person concerned. It had also been argued that such persons might return to the country when elections were being held and influence the voting; but that could be prevented by means other than refusal of nationality.

45. He had developed his argument at some length in order to show that there were no adequate grounds for doubting what he had called the "intrinsic reasonableness", as distinguished from the likelihood of its acceptance by governments, of the proposed convention. Until those members of the Commission who did not hold extreme views on the matter came to regard it from that point of view — that of the intrinsic reasonableness of the proposed convention — he doubted whether there was any purpose in continuing the discussion of the individual articles. Once the basic point of principle was decided, but not till then, the Commission could profitably turn to the task of making each article of the first draft convention as watertight as possible, and ensuring that it covered cases which the Special Rapporteur might have overlooked.

46. Mr. CÓRDOVA said that he had raised his point of order because the discussion had appeared to be developing in a way which would lead to the rejection of the draft Convention on the Elimination of Future Statelessness, a convention which the Commission had been specifically urged by the Economic and Social Council to prepare. The only reason he intervened again was to make clear that in his view both conventions should be submitted to the Council. The Commission could explain that, in addition to the draft Convention on the Elimination of Future Statelessness, suitably amended to cover the few categories he had overlooked, it had prepared a draft Convention on the Reduction of Future Statelessness which those States which were at present unable to accept the former convention might be willing to accept as a first step. Some States, it seemed, would be unable to accept either convention, but that was no reason for not taking a step which would lead to the total elimination of future statelessness in some countries and to its substantial reduction in others.

47. There remained the problem of the unwillingness of *jus sanguinis* States to grant their nationality to stateless refugees on their territory. Failing mass expulsion, the States in which such refugees now were had no option but to keep them, and he agreed with Mr. Lauterpacht that it was surely to those States' own interest to endeavour to absorb them and their children and make of them nationals in every sense of the word. In a few countries that might be impossible, in present circumstances, but the position of those countries could be met by adding to article I a rider to the effect that it did not apply to countries which had suffered from a mass influx of refugees, in so far as the grant of nationality to children born to those refugees was concerned.

48. It had been suggested that some persons claiming a certain nationality for their children under article I might fraudulently conceal the fact that they possessed a nationality which would be acquired also by the children. That was, of course, true, but it was not a problem of international law, but a criminal problem, quite outside the scope of any convention on statelessness.

49. Members from countries which applied *jus sanguinis* also opposed his proposal on the grounds that the mere fact of an individual's having been born in a country formed an insufficient link between him and it. But did the fact of having been born of parents possessing the nationality of a given country form any stronger link? In both cases everything depended on what happened subsequently.

50. He preferred his own text to that proposed by Mr. Sandström. There were only two ways of acquiring nationality at birth, *jure soli* and *jure sanguinis*, and he did not see why that should not be stated bluntly. The term "otherwise" was unnecessarily vague.

51. Mr. Amado had described as excessive his concern with the problem of dual nationality. He was convinced, however, that dual nationality was as great an evil as statelessness. For not only could it result in the individual's falling between two stools and being deprived of effective protection; it could also result in friction between States.

52. He hoped that, when voting on article I, members would consider only its appropriateness for the purpose for which it was intended, namely, that of eliminating statelessness at birth. If it were rejected on any other grounds than its inadequacy for that purpose, such rejection would be tantamount to rejection of the whole

of the first draft convention, and the abandonment of any hope of eliminating future statelessness altogether.

53. Mr. KOZHEVNIKOV said that he had not intended to speak again, but as Mr. Lauterpacht had declared his inability to understand his argument, and had appeared to detect some contradiction in his attitude, he felt it his duty to make his views quite clear and to demonstrate that his attitude was not contradictory.

54. He could not accept the basic legal concept behind the draft Convention on the Elimination of Future Statelessness, namely: that of the supremacy of international law over national legislation. Such a concept was completely at variance with the fundamental principle of the sovereignty of States. He did not, of course, suggest that such sovereignty was absolute, but he was irrevocably opposed to its being whittled down under the cloak of the "supremacy" of international law. Mr. Lauterpacht had argued that there was no question of imposing the convention on States, but, as he had already pointed out, the text proposed for the preamble stated clearly that "All nations should in this matter abide by the principle of the priority of international law over national legislation".

55. With regard to the suggestion that there was some contradiction between his fundamental objections to the text and his action in submitting drafting amendments to it he need only point out that the fact that he was opposed to the draft convention as a whole did not mean that he would necessarily have to speak against every article in it.

56. Mr. SANDSTRÖM said that Mr. Lauterpacht had also apparently misunderstood what he had said. He had not said that the Swedish Government would be unlikely to accept the draft convention, but only that the fact that he had submitted an amendment did not imply that it would be prepared to do so. The Commission had been urged by the Economic and Social Council to prepare a draft convention or conventions for the elimination of statelessness. It would be for the Council to decide, in the light of political and other considerations, the fate of the draft produced by the Commission, whose members were elected as individual experts in international law and should be guided solely by considerations of international law. The fate of the convention or conventions which the Commission submitted to the Council would, in his view, depend less on the form in which they were drafted than on the way in which they were introduced.

57. The CHAIRMAN, speaking as a member of the Commission, said that he wished to make it quite clear that he fully recognized that progress often called for legislative change. Neither he nor his country would resist progress on those grounds. His objection to the article under consideration was that the elimination of statelessness was not the only, or even the most important, consideration which the International Law Commission had to bear in mind; it had to ensure that its proposals for the elimination of statelessness would not result in violation of certain fundamental rights of the State. The article proposed by Mr. Córdova was contrary to a basic principle of law to which the Netherlands attached great importance, namely, that there should be a link between countries and the individuals to whom they granted their nationality. For a small country like his own, it was of the utmost importance that the essential characteristics of the nation should be preserved intact, and it was for that reason that the Netherlands naturalization laws were so strict. It would be exceedingly difficult for it to agree to grant Dutch nationality to persons who happened to be born on its territory but were bound to it by no other ties. It was true, as Mr. Lauterpacht had said, that while they were on its territory the Netherlands Government had in any case to look after such persons, but they did not take part in national life. Mr. Lauterpacht had also suggested that if they went abroad the Netherlands Government would be at liberty to refuse them its diplomatic protection, but surely one of the main purposes of the proposed convention was that such persons should have an assurance of diplomatic protection when they travelled. There was a further point; if they were Dutch nationals, the Netherlands Government would be obliged to re-admit such persons to the country, even if they had no means of subsistence, and there was therefore the danger that the State might incur the additional burden of having to support large numbers of persons who were in no way bound to it, merely because they happened to have been born on its territory.

58. The fact that, for legal reasons, he did not see how a country which applied the principle of *jus sanguinis* could accept article I did not mean that he would vote against that article; other members in the same position as himself had already expressed their intention of voting for it, though he himself would probably abstain. The Special Rapporteur had already agreed that, even if the draft Convention on the Elimination of Future Statelessness were adopted, the draft Convention on the Reduction of Future Statelessness would have to be discussed, in order to meet the needs of those countries which could not accept the former.

59. Mr. YEPES said that he had listened carefully to the remarks of Mr. Córdova and Mr. Lauterpacht, but that nothing they had said removed the difficulties which the article would create for *jus soli* countries, like his own and the majority of the Latin-American countries. To obviate those difficulties he proposed the addition of a new paragraph reading as follows:

> "This provision shall not exclude the right of the State to establish special conditions to enable a person born within its territory to be regarded as a national by right of birth."

60. Replying to a question by the CHAIRMAN, Mr. YEPES explained that Colombian law distinguished between nationality acquired "by right of birth", and nationality acquired by other means. To acquire nationality by right of birth it was not sufficient to be born in Colombia; either one of the parents must be a native or, if both parents were aliens, they must be

domiciled in the country. Only Colombian nationals by right of birth enjoyed certain political rights, such as, for example, the right to stand for the Presidency.

61. Mr. CÓRDOVA felt that the amendment proposed by Mr. Yepes was incompatible with the purpose of the draft convention under consideration, which was designed to eliminate statelessness entirely. The appropriate time to discuss it would be in connexion with article I of the draft Convention on the Reduction of Future Statelessness.

62. Mr. LAUTERPACHT said that if Mr. Yepes agreed that adoption of his amendment might result in some statelessness, he shared the views expressed by the Special Rapporteur.

63. Mr. YEPES said that if his amendment were not adopted as an amendment to article I of the draft convention at present under consideration, he would move it as an amendment to article I of the second draft convention.

64. Mr. AMADO said that he could accept article I in the form proposed by Mr. Córdova, for the legal considerations which he had already put forward. His attitude was not affected by considerations of whether or not the article was compatible with his country's constitution. Mr. Yepes' amendment lay outside the scope of article I, and he could not support it.

65. The CHAIRMAN asked whether Mr. Yepes did not agree that, by opening the door to a distinction between one type of national and another, and not defining the rights which the latter should enjoy, the Commission would be in danger of reducing the acquisition of nationality to a matter of little importance. It had so far been the Commission's aim to place persons who would otherwise be stateless on the same footing as those enjoying all the rights conferred by the nationality which they acquired.

66. Mr. YEPES pointed out that in Colombia the only difference between the two types of nationality was that one did not confer certain political rights reserved to citizens by birth.

67. Mr. SPIROPOULOS pointed out that the texts proposed by Mr. Córdova and Mr. Sandström referred only to the acquisition of nationality, not to the rights which that nationality carried with it. Mr. Yepes' amendment was therefore unnecessary, for, even without it, a State could, if it wished, deprive certain categories of its nationals of certain of their rights.

Further discussion of article I was postponed.

The meeting rose at 1.5 p.m.

213th MEETING

Friday, 10 July 1953, at 9.30 a.m.

CONTENTS

* 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. Georges SCELLE, 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) (*continued*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS (*continued*)

Article I [1] (continued)

1. The CHAIRMAN observed that at its preceding meeting the Commission had held a thorough discussion of article I of the draft Convention on the Elimination of Future Statelessness. He would accordingly suggest that the Commission should proceed to the vote as soon as possible and that after the vote had been taken, members should explain their position, since attitudes were widely divergent. Such explanations would be of help to the General Rapporteur.

2. Amendments had been submitted to article I by Mr. Sandström and Mr. Yepes, whose respective texts read as follows:

(Mr. Sandström)

"Every child born who otherwise would become stateless, shall acquire at birth the nationality of the Party in whose territory he is born".