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Summary record of the 213th meeting

Topic:
Nationality including statelessness

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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.

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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. 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".

(Mr. Yepes)

"This provision shall not preclude the State from enacting special conditions to ensure that a person born within its territory can be regarded as a national by right of birth".

3. Mr. Yepes' text was farther removed from the Special Rapporteur's, and would therefore be put to the vote first.

4. Mr. SANDSTRÖM felt it undesirable to place on record differences of opinion by taking votes on different texts. He would therefore suggest that the vote be taken on the Special Rapporteur's text, it being left to the Drafting Committee to take the amendments and drafting suggestions into consideration. That was how he would like his own amendment to be dealt with. The Commission would therefore have to vote only on the Special Rapporteur's text (A/CN.4/64) and on Mr. Yepes' proposed addition thereto.

5. Mr. YEPES wished to clarify the position concerning his amendment. In a number of Latin-American countries, such as Colombia, Venezuela and others, the sole fact of birth in the territory was not enough for the acquisition of nationality. Colombia, for instance, required that one of the parents should be Colombian, or that, in the case of aliens, both parents should be domiciled in the country. The constitutions of a number of other Latin-American countries contained practically identical provisions. Persons who did not fulfil the conditions imposed were precluded from exercising certain political rights or discharging the highest functions in the State.

6. Such provisions did not have the effect of making categories of citizens any more than did the withholding of the right to vote from minors. The conditions imposed were based on a profound sense of conservatism and the philosophical concept of nationality.

7. Article I was wholly at variance with the constitutions of a number of Latin-American States, and if adopted as drafted by the Special Rapporteur would give rise to very serious difficulties. The mere fact of birth could not serve as the sole criterion for acquiring a nationality, since there must be a genuine relationship between the individual and the nation. Present-day facilities for movement must be taken into account, and some precautions taken in order to ensure the unity and continuity of the community.

8. He was perfectly ready to concede that article I was progressive, and would even withdraw his amendment if the Commission requested him to do so, provided his right to insert it in the second draft convention on the reduction of future statelessness was respected.

9. The CHAIRMAN pointed out that the Commission had no right to request the withdrawal of any amendment or proposal. All it could do was to vote against it.

10. Mr. CÓRDOVA (Special Rapporteur) felt that Mr. Spiropoulos' comment at the previous meeting had put the whole question into proper perspective.[1] According to Mr. Yepes' argument a *jus soli* country would confer nationality but withhold certain political rights. Thus, for instance, a woman would have the nationality of, say Colombia, but would not be able to become President of the Republic. That was an entirely different matter, and he therefore considered Mr. Yepes' amendment to be irrelevant.

11. Mr. AMADO held that Mr. Yepes' amendment covered cases in which a person could acquire full nationality after a certain period of time. In Brazil, a child born of Brazilian parents, but outside Brazil, could choose his nationality. In the United States of America, a foreigner by birth could become a senator, and he could cite cases of persons who had taken up their domicile in that country only recently but were now government servants.

12. He, too, considered that Mr. Yepes' amendment was irrelevant to the special problem with which the Commission was seeking to deal through Article I. It did not really matter whether an individual had less than full citizenship (*une nationalité mitigée*). He would urge Mr. Yepes not to press his amendment, since the second draft convention would include a list of qualifications.

13. Mr. ZOUREK presumed that the purpose of Mr. Yepes' amendment was to allow States to enact certain conditions, according to which the mere fact of birth on their territory would not be sufficient for acquiring their nationality.

14. Mr. YEPES wished to give the following example with special reference to the remarks made by Mr. Amado and Mr. Córdova. A person born in Colombia or Venezuela would have no nationality through the sole fact of his birth unless he was a child of nationals or unless his parents, being foreign, were domiciled in the country. Article I, on the contrary, postulated that the sole fact of birth sufficed to give full nationality.

15. The CHAIRMAN asked Mr. Yepes whether, if his amendment were adopted, a stateless person born in Colombia of non-Colombian parents would possess Colombian nationality.

16. Mr. YEPES replied that, unless the parents were domiciled in Colombia, he would not.

17. Mr. ALFARO considered that the use of the verb "to ensure" in Mr. Yepes' amendment would give rise to misinterpretation, since it suggested that the aim of the State should be to enact special conditions to enable persons to be regarded as its national by right of birth, and not to exclude them from the enjoyment of full nationality. Actually, Mr. Yepes had in mind restrictions rather than facilities, the idea being that the status of nationality would be subject to a State's relevant laws and regulations. Such legislation could cover a great many aspects of life — the right to vote, the exercise of the liberal professions and so on.

18. He would suggest that the amendment be so modified as clearly to convey Mr. Yepes' point, or that,

[1] See *supra*, 212th meeting, para. 67.

alternatively, it be withdrawn. An explanation of Mr. Yepes' point of view should be included in the report.

19. Mr. SPIROPOULOS said that Mr. Yepes' amendment raised very delicate issues. It might be interpreted as meaning that the State was entitled to declare that a person was its national but had no rights. Such an interpretation would of course constitute an abuse, but it was conceivable and should be guarded against.

20. Mr. YEPES wished once more to emphasize that his difficulty with article I was that it laid down that nationality could be acquired through the sole fact of birth. He was convinced that acceptance of such a principle would lead to very serious difficulties. There was no other course open to him but to abstain from the vote on the article.

21. Mr. LIANG (Secretary to the Commission) pointed out that the French and English texts of Mr. Yepes' amendment did not really tally, since the English text used the word "ensure" which was not to be found in the French text. Mr. Yepes' difficulty was a real one, since surely it was the purpose of article I to render impossible the application of conditional *jus soli*. On the other hand, there was clearly a difference between the acquisition of nationality and conditions imposed on the enjoyment thereof. The latter aspect of the problem had no immediate bearing on article I, and he would presume that it must obviously be left for regulation by municipal law.

22. Mr. LAUTERPACHT recalled that at the previous meeting he had raised the question of territories which were not under the exclusive sovereignty of one State.[2] Since the problem was limited, he did not think that it was necessary to refer to it in the body of the text. It would, however, in his view, be appropriate to include some reference to it in the report.

22a. The CHAIRMAN declared the discussion on article I closed, and put Mr. Yepes' amendment to the vote.

Mr. Yepes' amendment was rejected by 7 votes to 3 with 3 abstentions.

23. Faris Bey el-KHOURI explained that he had voted in favour of Mr. Yepes' amendment, because adoption of the Special Rapporteur's text in its original form or as amended by Mr. Sandström would deprive a State of the right to make such regulations as it saw fit, and the acquisition of nationality through the sole fact of birth would imply the right of the acquirer to exercise all rights in the State concerned. In his view, article I could not be interpreted in any other way.

24. Mr. ALFARO said that he had abstained from voting because, although he agreed with Mr. Yepes' ideas, the amendment was badly drafted and in any case its purpose was covered by article I. As the national of a State, an individual was subject to that State's laws in respect of his rights and obligations.

25. Mr. KOZHEVNIKOV said that he had abstained from voting because his views were based on the principle that citizenship was a matter which fell within the domestic jurisdiction of States.

26. Mr. YEPES said that he stood by the explanation given by Faris Bey el-Khouri.

27. Mr. AMADO said that he had voted in favour of the amendment, States being competent, in his opinion, to enact special conditions.

28. The CHAIRMAN invited members to vote on article I as drafted by the Special Rapporteur (A/CN.4/64), which read:

> "If no nationality is acquired at birth, either *jure sanguinis* or *jure soli*, every person shall acquire at birth the nationality of the Party in whose territory he is born."

Article I was adopted by 7 votes to 2, with 5 abstentions.

29. Mr. YEPES explained that he had abstained from voting on article I because in his view it forbade a State from laying down special conditions for granting nationality by birth to a person born on its territory.

30. The CHAIRMAN invited members to examine article II.

Article II [2]

31. Mr. CÓRDOVA said that no particular difficulties arose with regard to article II, since all legislations admitted the presumption of a foundling. The only point to be stressed was that article II implied that, until the contrary was proved, a foundling was presumed to have been born in the territory in which it was found. Proof of the contrary meant proof that the foundling had been born in another unidentifiable territory, with the result that he would have no nationality.

32. Mr. PAL said that he was in agreement with the principle expressed in article II, but drew attention to the fact that the final clause "until the contrary is proved" might be interpreted negatively. He considered that the proof should be positive, namely, that the foundling was born in the territory of another State.

33. Mr. CÓRDOVA pointed out that if it could not be established where the foundling was born, article I would not apply.

34. Mr. AMADO considered that the words "shall be presumed" set up a *juris tantum* presumption, with the result that the words "until the contrary is proved" were redundant.

35. Mr. CÓRDOVA accordingly suggested that the words "until the contrary is proved" should be deleted. The article would then rest on the *juris et de jure* presumption.

36. The CHAIRMAN asked up to what age a person could be considered to be a foundling.

[2] *Ibid.*, para. 5.

37. Mr. CÓRDOVA replied that once a foundling always a foundling.

38. Mr. LAUTERPACHT thought that, since article II dealt with cases which were on the whole infrequent, the Special Rapporteur's text might be accepted without further ado.

39. Mr. AMADO said that the best answer to the Chairman's question was that provided by Oscar Wilde in "*The Importance of Being Earnest*".

40. Answering Mr. YEPES and Mr. SCELLE, who had asked whether it was intended to eliminate the *juris tantum* presumption, the CHAIRMAN pointed out that Mr. Córdova had himself proposed the deletion of the words "until the contrary is proved".

41. Mr. SANDSTRÖM drew attention to the fact that article II opened with the words "For the purpose of article I", which disposed of the question of age.

42. Mr. ZOUREK suggested that the difficulty might be turned by adding the words "in infancy". As a consequence of the war there were numerous cases of older children whose parentage could not be established.

43. He noted that article II was founded on the assumption of birth, and related to article I. Would it not be simpler to base article II on the assumption of nationality, without referring to article I?

44. Faris Bey el-KHOURI said that the place of birth would either be known or unknown. He thought, therefore, that the most satisfactory solution would be to insert the words "whose place of birth is unknown" after the word "foundling".

45. Mr. CÓRDOVA maintained that the text of article II as drafted exactly met Faris Bey el-Khouri's point.

46. Mr. YEPES was opposed to the deletion of the clause "until the contrary is proved".

47. Mr. SCELLE agreed with Mr. Zourek that there was no need to relate article II to article I. He was accordingly in favour of the deletion of the words "For the purpose of article I".

48. Mr. LAUTERPACHT drew attention to the fact that, since articles II, III, and IV were ancillary to article I, Mr. Scelle's proposal would destroy the structure of the draft convention.

49. Mr. SCELLE agreed. He could see no reason why the elimination of statelessness should be made wholly a question of *jus soli*.

50. Mr. LIANG (Secretary to the Commission) thought that from the point of view of future reference it would be better not to have several articles each of which began with the same words, namely: "For the purpose of article I". It was more than likely that the articles would be examined independently of one another, and it would be less confusing if the opening words were not identical.

51. He wondered whether Mr. Scelle's and Mr. Zourek's point would not be met if the formula for the acquisition of nationality were stated *passim*. The article would then read:

> "A foundling shall be presumed to have been born in the territory of the Party in which it is found *and shall acquire the nationality of that country*."

52. Articles 3 and 4 could follow the same model.

53. Mr. LAUTERPACHT thought that that point could appropriately be settled by the Drafting Committee, since it was difficult for the Commission to appreciate forthwith all the possible repercussions of the proposed changes.

54. Mr. CÓRDOVA felt obliged to remind the Commission yet again that the purpose of the draft Convention was the elimination of statelessness. He had included the possibility of contrary proof, but he agreed with Mr. Pal that the purpose of the convention would best be met by applying the criterion that the foundling acquired the nationality of the territory in which it was found.

55. Mr. LIANG (Secretary to the Commission) did not think that the Drafting Committee should assume all the responsibilities with which Mr. Lauterpacht wished to entrust it. So long as article I had not been given its final form, the texts of the succeeding articles must perforce remain provisional.

56. Furthermore, in his experience, the greater the number of questions referred to the Drafting Committee, the greater the likelihood of its proposals giving rise to long and involved discussions in the Commission. He must urge the Commission itself to take decisions on all substantive issues.

57. The CHAIRMAN stated that the Commission naturally must and would decide all matters of substance, leaving questions of form and language to the Drafting Committee.

58. Mr. PAL mentioned in passing that if the Commission felt that the words "For the purpose of article I" should be deleted *passim*, it might be convenient to bring articles I, II and III together in one article. He himself was opposed to the deletion for the reason that article II determined the place of birth; it followed that a foundling would be granted the nationality of the place of birth only in accordance with article I.

59. As for the words: "until the contrary is proved" Faris Bey el-Khouri's suggestion concerning the use of the words "whose place of birth in unknown" would eliminate the difficulties.

60. With the Chairman's permission, he would revert for a moment to article I. If the Special Rapporteur proposed to include comments on that article, some reference should be made therein to article 2 of the Universal Declaration of Human Rights, which laid down that everyone was entitled to all the rights and

freedoms set forth in the Declaration without discrimination of any kind.

61. Mr. SCELLE asked what Mr. Zourek meant by the expression "in infancy".

62. Mr. ZOUREK said that that was a question of appreciation that would have to be settled by the administrations concerned.

63. Mr. CÓRDOVA drew attention to the fact that the French text used the words *enfant trouvé*. Whether a person was or was not a foundling was an issue of fact, and his age was immaterial. National legislation did not normally refer to age in relation to foundlings.

64. The CHAIRMAN invited the Commission to vote on Mr. Zourek's proposal that the words "in infancy" be inserted in the text.

Mr. Zourek's proposal was rejected by 6 votes to 3, with 5 abstentions.

65. Mr. SCELLE asked the Commission to consider the following hypothetical case: A Russian-speaking child of five years of age was found wandering in Paraguay. It was entirely inadmissible that he should be granted Paraguayan nationality. The individual's characteristics must be taken into account.

66. Mr. AMADO, speaking in explanation of his vote, drew attention to the crucial importance of the words "For the purpose of article I", which really governed article II.

67. The CHAIRMAN asked the Commission to vote on Mr. Córdova's proposal that the words "until the contrary is proved" be deleted from article II.

Mr. Córdova's proposal was adopted by 7 votes to 6, with 1 abstention.

68. Mr. SCELLE expressed his whole-hearted disapproval of the Commission's decision. Once it was definitely proved that a foundling did not belong to the country where he was found, it was inconceivable that its nationality should be inflicted upon him.

69. Mr. ZOUREK said that as a result of the second World War thousands of children had had, so to speak, the temporary status of foundlings. In a great many cases, their nationality and parentage had in due course been satisfactorily identified. But under article II all those children would have acquired the nationality of the territory in which they had been found.

70. Mr. KOZHEVNIKOV also held that the Commission had taken a wrong decision.

71. Mr. LAUTERPACHT said that he wished, not to explain his vote, but to raise the question of the way in which the right to explain one's vote should be exercised. In his opinion, explanations of votes should be used not as a means of re-opening the discussion, but only to explain the speaker's attitude, in order to guard against the possibility of its being misunderstood.

72. Mr. KOZHEVNIKOV felt that members of the Commission had full rights to explain their votes, since their reasons for voting for or against any proposal might differ widely.

73. Mr. CÓRDOVA, explaining his vote, said that he had voted as he had because the draft convention under consideration was, by definition, a convention for the elimination of future statelessness.

74. Mr. YEPES said that he had voted against the proposal because he regarded it as quite inadmissible, anti-juridical and inhuman to prevent anyone from proving that he had been born in a particular country, and at the same time to seek to impose on him a nationality he did not want, by a presumption *juris et de jure*.

75. The CHAIRMAN then put to the vote Faris Bey el-Khouri's proposal that the words "whose place of birth is unknown" be inserted after the word "foundling".

Faris Bey el-Khouri's suggestion was adopted by 10 votes to none, with 4 abstentions.

Article II, as amended, was adopted by 9 votes to 3, with 2 abstentions.

The text adopted read as follows:

"For the purpose of article I, a foundling whose place of birth is unknown shall be presumed to have been born in the territory of the Party in which it is found."

Article III

76. The CHAIRMAN then drew attention to article III, dealing with children born to a person enjoying diplomatic immunity.

77. Mr. CÓRDOVA said that article III contained two separate provisions. The first, reading "For the purpose of article I, a child born to a person enjoying diplomatic immunity shall be deemed to have been born in the territory of the State of which his parent is a national", merely reaffirmed an accepted rule of international law. The second, reading "If its parent is stateless, it shall be deemed to have been born in the country wherein he was actually born", had been added by him to cover the case of international officials who were stateless.

78. Mr. LAUTERPACHT said that the proposed text raised a number of questions. In the first place, he wondered what precisely was meant by "a child born to a person enjoying diplomatic immunity"; did that phrase cover a child whose mother enjoyed diplomatic immunity, but not the father? Secondly, it was not clear to what extent the phrase "enjoying diplomatic immunity" covered diplomats' families and staff; moreover, although Mr. Córdova had referred to international officials, the United Nations Charter, unlike the Charter of the League of Nations, did not confer diplomatic immunities on its staff, but only such immunities as they

needed for the fulfilment of their functions. The position was, he thought, the same in the case of the specialized agencies and other international organizations. Thirdly, the phrase "the State of which his parent is a national" was vague, although he presumed that the parent referred to was the one enjoying diplomatic immunity.

79. The whole article dealt with an exceptional case, and he wondered whether it was really necessary to include the second sentence, dealing with an exceptional case within that exceptional case, in the body of the text itself.

80. Mr. PAL asked whether the text which the Special Rapporteur proposed did not rest on the assumption, which was not necessarily correct, that a diplomat could not possess the nationality of a State other than that in whose service he was. He also wondered whether it was legitimate to oblige a State to confer its nationality on a child born to stateless persons in the diplomatic service of another State, even if it was not born on territory over which it exercised jurisdiction but in territory enjoying extra-territorial status. It seemed to him that in both cases the State in whose diplomatic service the person was employed should be responsible for granting its nationality to any children born to him.

81. The CHAIRMAN pointed out that the second sentence was intended to cover international officials, with regard to whom the question of diplomatic service did not arise.

82. Mr. CÓRDOVA said that he had not overlooked the possibility of a person's being employed in the diplomatic service of a State other than that of which he was a national, but that he had felt it preferable to follow the general rule that in the absence of any nationality acquired *jure soli*, the child should acquire the nationality of the father.

83. Mr. ALFARO had grave doubts about the wisdom of the text proposed. Many countries, including his own, had no special provisions under which children born to their diplomats abroad were deemed to have been born in their territory, and, conversely, children born to foreign diplomats accredited to them were deemed to have been born elsewhere. The first sentence would therefore be leading the Commission on to very dangerous ground, and the second was unnecessary, since the question would not arise in the case of *jus soli* countries, and in the case of *jus sanguinis* countries article I would apply regardless of whether or not the parents enjoyed diplomatic immunity.

84. Mr. SPIROPOULOS felt that the first sentence of article III, which laid down what nationality should be acquired in cases where there might be doubt, also had no place in a convention the sole aim of which was the elimination of statelessness. Articles I and II together covered all possible cases of statelessness arising at birth.

85. Mr. SANDSTRÖM and Mr. LAUTERPACHT agreed.

85a. Mr. CÓRDOVA accordingly suggested that article III be deleted.

It was agreed that article III should be deleted.

Article IV [3]

86. The CHAIRMAN drew attention to article IV, dealing with births on vessels or in aircraft.

87. Mr. LAUTERPACHT said that the text proposed by the Special Rapporteur was unnecessarily complicated for what was, after all, an exceptional case. Article IV was not intended to apply to all persons born on vessels or in aircraft, but only to those who would otherwise be stateless. The Special Rapporteur had applied a principle which would not be acceptable to many States, possibly the majority; his proposal was that the nationality of children born on vessels and in aircraft, unless otherwise determined, should be determined by which State exercised jurisdiction over the vessel or aircraft at the time of birth. Theoretically, it might be true that States enjoyed the right of jurisdiction over vessels in their territorial waters or ports and over aircraft flying over their territory, but, as a matter of convenience, most States did not in practice exercise that right. Moreover, in the case of vessels, and even more so in that of aircraft, it would often be difficult to decide with certainty whether or not a birth occurred inside a State's territorial waters or over its territory. The distinction which Mr. Córdova drew between State vessels and aircraft and private vessels and aircraft was also, in his view, an unnecessary refinement. He therefore wished to propose that the article be amended to read as follows:

> "For the purposes of article I, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth in an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered."

88. Mr. AMADO pointed out that Mr. Lauterpacht's proposal would make it possible for people to ensure that their children became nationals of any State they wished merely by arranging to take a trip in a vessel flying the flag of that State at the time of their birth. Its adoption would give rise to serious anomalies in practice.

89. Mr. SANDSTRÖM much preferred the text proposed by Mr. Lauterpacht to that proposed by Mr. Córdova, under which the nationality acquired would depend solely on chance and, as Mr. Lauterpacht had pointed out, might often be open to serious doubt.

90. Mr. HSU also supported Mr. Lauterpacht's proposal, which was simpler than Mr. Córdova's and would serve the same purpose.

91. Mr. CÓRDOVA agreed that, so far as the elimination of statelessness was concerned, there was no difference between the two proposals; in other respects, however, there was an important difference and the Commission must choose between them.

92. In his view, it was necessary to preserve the distinctions he had made. As he had pointed out in the

comment, the only clear precedent on the subject appeared to be point IX of the Bases for Discussion prepared for The Hague Codification Conference of 1930.[3] Point IX referred only to births on board merchant ships, since it was generally agreed that births on State vessels should be considered as births in the territory of the State whose flag the vessel flew. It had been the general opinion of all those countries which had replied to the questionnaire submitted to them on that occasion that births on a merchant vessel on the high seas should be treated in the same way. So far, he and Mr. Lauterpacht were also in agreement.

93. With regard to births on a merchant ship in foreign territorial waters, however, there had been no unanimity. The United States of America, Italy and Japan, for example, had accepted the view that in such cases the child should have the nationality of the State in whose territorial waters it was born. Other countries, however, such as Great Britain and the Dominions, Germany, Belgium and Norway, had argued that all civil acts, including births, occurring on a ship must be controlled by the legislation of the country whose flag the ship flew, even if that ship happened to be navigating in foreign waters. Belgium had appeared to make a distinction between the members of the crew— children born to whom, in its view, should be nationals of the State whose flag the ship flew — and passengers, where the determining factor would be the State in whose territorial waters the birth occurred. The distinctions which he had made, therefore, had been made before, and he still preferred his text to that proposed by Mr. Lauterpacht.

94. Mr. PAL was inclined to favour the simpler text proposed by Mr. Lauterpacht, since the whole article was governed by the words "For the purposes of article I". The article would not apply in cases where a child would acquire nationality under the existing law of one of the States concerned; nor was its purpose to settle cases where there might be doubt as to which of two nationalities it should acquire.

95. Mr. LIANG (Secretary to the Commission) suggested that neither of the two proposals before the Commission could give rise to cases of dual nationality. Cases of dual nationality could, of course, arise from births on vessels or in aircraft, but were invariably due to conflicts between the laws of the various States concerned. As had been pointed out, both proposals began with the words "For the purposes of article I", and article I only applied in cases where no nationality would be otherwise acquired. To take an example, if a Chinese woman travelling in an aircraft registered in Switzerland gave birth to a child while over United States territory, then, provided that the child did not receive either Chinese, Swiss or United States nationality under those countries' existing laws, it would receive Swiss nationality under Mr. Lauterpacht's proposal, or United States nationality under Mr. Córdova's. If it did receive one or more of those nationalities under existing laws, the provisions of the convention would not apply.

The text proposed by Mr. Lauterpacht was adopted by 6 votes to 3, with 5 abstentions.

Article V [5]

96. The CHAIRMAN drew attention to article V, dealing with cases of loss of nationality as a result of change in personal status, renunciation of nationality and application for naturalization in a foreign country.

97. Mr. CÓRDOVA felt that the only paragraph of his draft (A/CN.4/64) which called for any explanation was paragraph 3, the purpose of which was to provide against cases where persons renounced their nationality and proclaimed themselves, for example, citizens of the world.

98. Mr. LAUTERPACHT said that, although the text proposed by the Special Rapporteur covered a number of contingencies which, in the 1930 Hague Convention, had been dealt with in separate articles, it appeared to cover the whole ground very thoroughly, with two possible exceptions, one of them of great importance. Persons often lost their nationality as a result of prolonged residence abroad, particularly if they failed to comply with certain formalities, such as registering with their consular authorities. Such cases would not be covered by the text proposed for article V, and although it might be argued that they were covered by paragraph 2 of article VI, which read, "No State shall deprive any person of its nationality on any other grounds unless such a person, at the time of deprivation, acquires the nationality of another State", deprivation usually implied a deliberate act by the State. To avoid any doubt on the point, which, as he had said, was an important one, he felt that it should be provided for in the text, and he would in due course submit an appropriate amendment.

99. The other type of case which he had in mind was that in which a person lost his nationality as a result of applying for an expatriation permit and then, for some reason or another, failing to move to another country and acquire its nationality. It was possible that such cases would be covered by the text proposed for paragraph 4 of article V, but again he felt that the point should be made clear. It would be remembered that in the 1930 Hague Convention, separate provision had been made for such cases.

100. Mr. CÓRDOVA thought that there could be no doubt that the first type of case referred to by Mr. Lauterpacht was covered by article VI, paragraph 1, which read: "No State shall deprive any person of its nationality by way of penalty", since loss of nationality incurred in that way was certainly a penalty, even if imposed automatically. He also felt that the second type of case referred to by Mr. Lauterpacht was covered by article V, since no one applied for an expatriation permit unless he intended to seek naturalization in a foreign country.

[3] See League of Nations publication, *V.Legal, 1929.V.* (document C.73.M.38.1929.V), p. 75.

101. Both points, however, could, if desired, be made explicit in the comment.

102. Mr. LAUTERPACHT still considered it advisable to make the first point explicit in the text itself, as it was arguable, and had been argued at the previous session, that loss of nationality incurred in that way was not a penalty. Article VI, in its present form, was of such importance, however, that it should stand by itself, and he would therefore submit a proposal for a new article dealing with loss of nationality as a result of prolonged residence abroad.

103. Mr. YEPES said that he had no objections to the text proposed for article V, but merely wished to point out that in the comment, Colombia should be added to the list of countries where marriage or its dissolution had no effect on the nationality of the spouse.

104. Mr. ALFARO said that he would vote for article V, but considered that the Drafting Committee should give particularly careful consideration to it, especially to paragraph 1, where the word "provides" would be more appropriate than the word "recognizes" and where the list of reasons for changes in personal status was incomplete, and should be deleted.

On the understanding that the Drafting Committee would pay particular attention to it and that a reference to the second type of case referred to by Mr. Lauterpacht would be inserted in the comment, article V was adopted by 8 votes to 1 with 5 abstentions.[4]

The meeting rose at 1 p.m.

[4] See *infra* 215th meeting, paras. 42-73.

214th MEETING

Monday, 13 July 1953, at 2.45 p.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. 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 VI [7]

1. The CHAIRMAN invited the Commission to continue its consideration of the draft Convention on the Elimination of Future Statelessness with article VI.

2. Mr. CÓRDOVA (Special Rapporteur) said that he had felt it necessary to distinguish between deprivation of nationality by way of penalty and deprivation on other grounds, as he did not believe that States should be able to apply deprivation of nationality as a sanction, even if the individual concerned acquired another nationality at the same time. The text which he proposed, therefore, stated categorically that no State should deprive any person of his nationality by way of penalty; he was convinced that only by means of such a categorical prohibition could the possibility of statelessness arising in that way be excluded.

3. If the aim was not the elimination, but the reduction of statelessness, the prohibition could, of course, be qualified.

4. Mr. ALFARO pointed out that a person might not be deprived of his nationality until some time after he had acquired the nationality of another State. He suggested, therefore, the addition of the words "or has acquired" after the word "acquires" in paragraph 2.

5. The CHAIRMAN, speaking as a member of the Commission, recalled that Mr. Yepes had rightly said that article VI was one of the most important in the whole draft.[1] Unfortunately, it was also one of those which raised the most serious objections in the minds of members, who, like himself, came from *jus sanguinis* countries, where importance was attached to the link which bound the individual to the State of which he was a national. Depending on the interpretation of the word "penalty", such States might be able to accept paragraph 1, but in that case they would be unable to accept paragraph 2. A person who entered the service, or more especially the armed forces, of another State, particularly if it was an enemy State, proved by his actions that he attached no value to his nationality and that the bond by which he should be linked to the State of which he was a national no longer existed.

6. During the second World War, for example, many thousands of Netherlands subjects had enlisted in the enemy's armed forces. Netherlands law provided for

[1] See *supra*, 211th meeting, para. 30.