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Summary record of the 218th meeting

Topic:
Nationality including statelessness

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79. Mr. LAUTERPACHT said that if Mr. Scelle and Mr. Yepes really wished to suggest that stateless persons should acquire immediately at birth the nationality of the State in whose territory they were born, then they should make a positive proposal in that sense.

80. Mr. SCELLE said that it was not correct that the sense of Mr. Yepes' amendment was that a stateless person would acquire immediately on birth the nationality of the State in whose territory he was born; other conditions had to be fulfilled in addition. The effect of Mr. Yepes' amendment would be that nationality would be granted provisionally; in that way statelessness would be avoided for a very large number of persons.

81. Mr. AMADO said that Faris Bey el-Khouri's amendment would, if adopted, raise no difficulties in Brazil.

The meeting rose at 1.5 p.m.

218th MEETING

Friday, 17 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.

** The number within brackets corresponds to the article number in the Special Rapporteur'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. 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 REDUCTION OF FUTURE STATELESSNESS (*continued*)

Article I [1] (continued)

1. The CHAIRMAN said that before he opened the morning's discussion Mr. Yepes had a statement to make.

2. Mr. YEPES stated that he intended to circulate a revised version to be substituted for the amendment he had proposed the previous day to article I of the draft Convention on the Reduction of Future Statelessness. The text of his revised version for the complete article read as follows:

> "If, for any reason whatsoever, a person does not acquire any nationality at birth, he shall acquire at birth the nationality of the State in whose territory he was born, provided that, in addition:
>
> "(1) He has resided in the country for a continuous period of at least five years immediately before attaining his majority; or
>
> "(2) Both parents, or the one exercising parental authority, were domiciled in the country at the time of his birth; or
>
> "(3) During the year in which he attains his majority under the law of the country of birth, he opts for the nationality of that State in accordance with its legislation."

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS (*resumed from the 216th meeting*)

Articles 5, 6, 7, 8 and 9

3. The CHAIRMAN said that the Commission would proceed to discuss the text proposed by the Drafting Committee for articles 5, 6, 7, 8 and 9 of the draft Convention on the Elimination of Future Statelessness.

4. Articles 5, 6, 7 and 8 contained all the material that had previously been contained in articles V and VI of the draft prepared by the Special Rapporteur (A/CN.4/64, part I). The Commission had been in general agreement on the substance of the articles but had requested the Drafting Committee to revise the text before it took a final decision on them.

5. There had not, however, been similar agreement on the substance of article VII as drafted by the Special Rapporteur. That article was concerned with the effects of transfer of territories between States. In order to allow the discussion in the Commission to continue, the Drafting Committee had been asked to draw up a revised text of the original article VII to take into

account various points raised by the Commission. That revised draft was the new article 9.

6. The text of articles 5, 6, 7 and 8 proposed by the Drafting Committee was as follows:

"Article 5

"1. If according to the law of a contracting Party a person loses his or her nationality as a consequence of a change in the personal status of that person on account of marriage, termination of marriage, legitimation or adoption, such loss shall be conditional upon acquisition of another nationality.

"2. The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

"Article 6

"1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

"2. Persons who seek naturalization in a foreign country or who obtain an expatriation permit for that purpose shall not lose their nationality unless they acquire the nationality of that foreign country.

"3. Persons shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or any similar reason.

"Article 7

"The Parties shall not deprive their nationals of nationality by way of penalty so as to render them stateless.

"Article 8

"The Parties shall not deprive any person or group of persons of their nationality on racial, ethnical, religious, or political grounds, so as to render them stateless."

7. Thus the new article 5 was very similar to paragraphs 1 and 2 of the old article V. The new article 6 was similar to paragraphs 3 and 4 of the old article V, but contained a new third paragraph, it being considered that a person's absence from his country of nationality was a frequent cause of statelessness which had, however, not been expressly mentioned in the text suggested by the Special Rapporteur. The new article 7 was similar to paragraph 1 of the old article VI. In that case there was a difference of opinion between the Special Rapporteur and other members of the Commission, in that the Special Rapporteur considered that there should be in the convention an absolute prohibition of deprivation of nationality by way of penalty, whereas other members felt that there should only be prohibition of such deprivation as would render the individual stateless. The new article 8 resulted from a suggestion of Mr. Spiropoulos, the deprivation of nationality on racial, ethnical, religious or political grounds being regarded by the Drafting Commitee as an important point.

8. He invited general statements on articles 5 to 8 inclusive.

Article 5 [V, paras. 1-2]

9. Mr. YEPES said that the text of article 5 did not correspond to the Colombian Constitution or the 1933 Montevideo Convention on Nationality.

10. Mr. ALFARO said that the text as contained in document A/CN.4/64 included the word "recognition" in the paragraph which corresponded to paragraph 1 of the new article 5. Since, for example, the recognition of an illegitimate child might affect its nationality status, the word should also appear in the enumeration in that paragraph.

11. Mr. LAUTERPACHT thought that the omission was merely a clerical error as the Drafting Committee had intended "recognition" to be included.

12. The CHAIRMAN said that the word "recognition" would be inserted in the text.

13. Mr. ALFARO mentioned the "emancipation" of minor children as an additional cause of change in their personal status in countries whose law was based on the *Code Napoléon*. Accordingly, either the word "emancipation" should be inserted in paragraph 1 of article 5 after the word "adoption" or alternatively, as had been suggested by the Chairman, a general phrase such as "or any other causes", should be introduced.

14. Mr. CÓRDOVA (Special Rapporteur) agreed that the emancipation of a minor could indirectly affect his nationality status.

15. After a short discussion in which the CHAIRMAN, Mr. CÓRDOVA, Faris Bey el-KHOURI, Mr. LAUTERPACHT and Mr. SANDSTRÖM took part on the exact phraseology to be used in paragraph 1 of article 5 to cover the possibility of changes in personal status for causes additional to those enumerated in the draft, it was proposed that paragraph 1 of article 5 should be amended to read:

"... as a consequence of any change in the personal status of that person such as..."

The amendment was approved by 11 votes to none, with 2 abstentions.

16. Mr. KOZHEVNIKOV said that it should not necessarily be assumed that because nobody spoke on an article there was therefore no opposition to it. He had no objection to the substance of some of the individual articles under discussion, but they were all based on the concept that international law took precedence of municipal law. He thought that the subject of the articles under consideration was essentially a matter that fell within the domestic jurisdiction of States. The articles should therefore be voted on separately.

Paragraph 1 of article 5 as amended was approved by 11 votes to 1, with 1 abstention.

Paragraph 2 of article 5 was approved by 11 votes to 1, with 1 abstention.

17. Mr. YEPES suggested that it should be specified that the word "children" in paragraph 2 referred only to children under age.

18. Mr. SANDSTRÖM explained that the Drafting Committee had not wished to use the word "minors" instead of the word "children" in paragraph 2 of article 5 because it was feared that it might be taken to imply that children of full age might be deprived of their nationality.

19. Mr. YEPES formally proposed the inclusion in paragraph 2 of article 5 of the words "under age" after the word "children".

20. The CHAIRMAN said that the paragraph had already been approved by the Commission and that no amendment was therefore possible. The matter would however be mentioned in the Commission's report. He then put article 5 as a whole to the vote.

Article 5 as a whole was approved by 11 votes to 1, with 1 abstention.

The article as adopted therefore reads as follows:

"Article 5

"1. If according to the law of a contracting Party a person loses his or her nationality as a consequence of any change in the personal status of that person such as on account of marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality.

"2. The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality."

Article 6 [V, paras. 3-4]

21. The CHAIRMAN invited comment on article 6.

22. Mr. YEPES recalled article 13 of the Universal Declaration of Human Rights, paragraph 2 of which read:

"Everyone has the right to leave any country, including his own, and to return to his country."

It seemed to him that the wording of paragraph 2 of article 6 implied the approval of the Commission for the control of expatriation by permit. He therefore proposed the deletion of the phrase "or who obtain an expatriation permit for that purpose".

23. In the next place, he observed that naturalization was a serious matter, imposing, in many countries, considerable responsibilities on the individual naturalized. There were, however, very many people who in fact became naturalized merely in order to obtain the protection of a particular government, and remained consistently outside the territory of the State whose nationality they had acquired. That practice should not be encouraged, and he therefore proposed the inclusion of an additional phrase at the end of paragraph 2 of article 6, to read "and establish their domicile there".

24. Mr. CÓRDOVA said that, whether or not the Commission approved of them, the existence of expatriation permits was a fact and there was no rule of international law against them. He felt that the clause in paragraph 2 of article 6 concerning expatriation permits should not be omitted merely because of article 13 of the Universal Declaration of Human Rights.

25. He felt that Mr. Yepes' second suggestion, if adopted, would mean that the convention would make an established domicile a necessary condition of effective naturalization. That seemed to him to be entirely a matter for the naturalization regulations of the different countries; the Commission had no need to take that point into account and Mr. Yepes' suggestion should therefore not be accepted.

26. Mr. YEPES replied that he had understood that the Convention on the Elimination of Future Statelessness was being drafted in a spirit of perfectionism. It was wrong, even by implication, to legalize the practice of subordinating individuals to the requirements of States in the matter of expatriation permits. Similarly, as regards the requirements of domicile for effective naturalization, the Commission should not appear to approve of the many fictitious naturalizations that were obtained, particularly in Latin America.

27. Mr. LAUTERPACHT agreed with Mr. Córdova as regards both expatriation permits and the requirement of domicile for effective naturalization. On the latter point, he reminded Mr. Yepes that the Commission was dealing with the elimination of statelessness, not with the abuse of naturalization. He hoped that Mr. Yepes would not insist on his amendment. As regards expatriation permits, he recalled that the United States had not ratified the 1930 Hague Convention on certain questions relating to the conflict of nationality laws, because it included a chapter regarding expatriation permits. Nevertheless, expatriation was a fact and the Commission should do its best in the convention to correct any anomalies resulting from it. He hoped, therefore, that in that case also Mr. Yepes would not insist on his amendment.

28. Mr. ALFARO said he had some sympathy with Mr. Yepes as regards expatriation permits. The Commission was, however, dealing with facts, recognition of which did not imply approval. Indeed statelessness itself was a fact which the Commission recognized insofar as it was drafting a convention for its elimination. In his view, therefore, paragraph 2 of article 6 should be left as it had been drafted.

29. Mr. YEPES said he would not insist on his first amendment that the reference to expatriation permits should be omitted. He maintained, however, his second amendment.

Paragraph 1 of article 6 was approved by 11 votes to 1, with 1 abstention.

30. The CHAIRMAN then asked for a vote on Mr. Yepes' remaining amendment, to add at the end of paragraph 2 of article VI the phrase "and establish their domicile there".

The amendment was rejected by 5 votes to 2, with 6 abstentions.

Paragraph 2 of article 6 was approved by 8 votes to 3, with 2 abstentions.

31. The CHAIRMAN asked for comments on paragraph 3 of article 6.

32. Mr. LIANG (Secretary to the Commission) thought that the last four words in the English text reading "or any similar reason" should be changed to "or on any similar ground". No change was needed in the French text.

33. The CHAIRMAN asked whether the phrase "or on any similar ground" included, for example, military service.

34. Mr. CÓRDOVA suggested that paragraph 3 might be worded in such a way that the circumstances enumerated were examples rather than a comprehensive list. A similar change had been made in the drafting of paragraph 1 of article 5.

35. Mr. SANDSTRÖM objected to the phrase "or on any similar ground" because the grounds enumerated were mutually dissimilar. He suggested paragraph 3 might read:

> "Persons shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or fulfil any similar formality."

36. Mr. ALFARO agreed that there was no similarity between the circumstances enumerated, and that the idea of similarity should be eliminated. He thought that the last phrase of paragraph 3 should read "... failure to register or on any other ground".

37. The CHAIRMAN said that Mr. Alfaro's suggestion, if adopted, would be an absolute prohibition of loss of nationality in any circumstances and for any reason; it would include and go beyond the aims of the article.

38. Mr. AMADO suggested accordingly that the last phrase of paragraph 3 might read "... failure to register or to fulfil any other formality".

39. Mr. LIANG (Secretary to the Commission) agreed with the Chairman that if in the last phrase of paragraph 3 the word "similar" were omitted, the article would become too wide in scope. He recalled the Commission's attention to Mr. Córdova's suggestion that the wording of the paragraph might be similar to the wording adopted in paragraph 1 of article 5.

40. Mr. LAUTERPACHT, referring to the final phrase of paragraph 3, agreed with the text as it stood. He felt that the phrase "similar ground" was intended to include anything similar to the other enumerated circumstances: departure, stay abroad, and failure to register.

41. He would, however, like to put the following further point, viz. — that the subject of paragraph 3 was somewhat different from those dealt with in paragraphs 1 and 2 of article 6 and that paragraph 3 might, therefore, better become a new article.

42. Mr. CÓRDOVA, referring to the previous discussion on the effect of an individual's service in a foreign army, said that such service was entirely permissible unless it were to the detriment of the State of which the individual was a national. In his view, the point should be covered by the insertion of an additional phrase in paragraph 3 of article 6.

43. Mr. KOZHEVNIKOV said that paragraph 3 was incomprehensible to him, at any rate in the Russian text. A simple departure or stay abroad was raised as a problem requiring the Commission's formal attention. Yet it had, to his mind, nothing to do with denationalization.

44. Mr. YEPES entirely agreed with Mr. Kozhevnikov. It could not be imagined that the mere leaving of one's home country might be cause for the deprivation of nationality; perhaps the Drafting Committee had intended to refer to permanent residence abroad; but as it stood the paragraph was drafted in too general terms.

45. He asked whether the phrase "or on any similar ground" was intended to cover the case of a national entering the service of a foreign State. For his part, he felt that such a meaning would be stretching the words too far; there was no similarly between that circumstance and, for example, failure to register.

46. Mr. SCELLE agreed with Mr. Lauterpacht that paragraph 3 of article 6 should become a separate article.

47. As to departure and absence abroad, there was the concept in French law of departure without intention to return. He thought that that might be appropriate.

48. Mr. CÓRDOVA agreed that, according to some legal systems, persons leaving their countries without the intention to return might be deprived of nationality, but in others the possibility of deprivation for absence from the home country was worded more widely. The precise grounds for deprivation of nationality were not the Commission's concern. If absence by itself could be a ground for deprivation, that was sufficient.

49. He suggested that the convention should make specific mention of the effect of service for a foreign government, which he felt was a circumstance that could not be included in the general phrase "or on any similar ground".

50. Mr. SANDSTRÖM said that the subject of paragraph 3 of article 6 was a particular case of an individual's breaking the bonds of nationality. It was therefore not something different in kind from the other matters treated in article 6, and the paragraph should therefore not be made into a separate article.

51. Mr. KOZHEVNIKOV still thought that paragraph 3 was badly framed. If he called attention to its lack of clarity, it was because he feared it might lead to misunderstanding.

52. Mr. LAUTERPACHT said that departure or absence abroad was a frequent cause of statelessness. The article should not deal with the details of such departure or absence, and was adequate as it stood. Deprivation of nationality on the grounds of military or other service for a foreign State seemed to him to be akin to a penalty and, as such, more relevant to article 7 than to article 6.

53. Mr. LIANG (Secretary to the Commission) said that the grounds for loss of nationality enumerated in paragraph 3 of article 6 were all based on some national legislation or other. The article merely took account of the existence of certain causes of loss of nationality, and he could see no objection to their enumeration. But the act of departure with the *animus revertendi* was not a cause of deprivation of nationality. Therefore, the use of the word "departure" without qualification seemed unjustified. He suggested that the phrase "on the ground of departure, stay abroad,..." should be amended to read: "on the ground of permanent or prolonged stay abroad...".

54. Mr. ZOUREK considered paragraph 3 of article 6 quite unrealistic. It was necessary for every State to impose some duties on its nationals living abroad, partly in order to be able to ascertain whether, in fact, they wished to remain citizens of the State concerned; rules were made to fit that situation. A person living abroad might break the link of nationality; and in that case if he had no wish to return and fulfilled none of his duties to his home country, the latter would have no further interest in him. If, on the other hand, a person living abroad received all the benefits of nationality and fulfilled no duties towards his home State, the only sanction possible in many cases was deprivation of nationality. Paragraph 3 of article 6, if adopted, would remove the possibility of applying that sanction. The article, to his mind, was totally unbalanced in that its tenor was exclusively in the interests of the individual and disregarded the interests of the national collectivity.

55. As to the details of paragraph 3, he agreed that the text as it stood was lacking in precision. It should certainly refer not simply to departure but rather to departure without authorization, or without the intention to return. He would vote against it.

56. Faris Bey el-KHOURI said that emigration, a very normal occurrence, had not been mentioned. He was referring not so much to permanent emigration but to emigration with the intention to live and work abroad for perhaps a decade or two. Such emigration had never been taken by any State as a ground for depriving any citizen of nationality.

57. In the next place, it seemed to him that article 6 as it stood might be a source of dual nationality. He was sure that he would be told that the Commission was not concerned with dual nationality but only with the elimination of statelessness; but it seemed to him that the Commission should be careful when eliminating one evil not to create another. He would therefore abstain in the vote on article 6.

58. Mr. SANDSTRÖM advised the Commission not to elaborate the conditions under which loss of nationality, on the ground of departure or absence abroad, might take place.

59. Mr. AMADO said the clause was drafted in wide terms, and was perhaps dangerous; it imposed considerable burdens on States and would not be easy for any State to accept. The aims of the article should be borne in mind.

60. He referred to the very large number of immigrants in Brazil who had acquired Brazilian nationality. At one time the Brazilian Government and administration had consisted largely of persons with Portuguese names; now, one found many persons with Polish and other names, indicating a very different origin. Immigrants who had come to Brazil in the past had had the intention of and had succeeded in establishing themselves there, whereas Europeans who migrated to other European countries went purely in order to meet a temporary need for man-power. At the present time, on the other hand, immigrants were coming to Brazil who lacked the spirit of adventure and demanded a standard of life that it was impossible for them to find immediately on arrival. There was, therefore, a tendency for such persons to return to their home countries, and the nationality law had to take account of that situation.

61. Mr. YEPES thought the Commission would be interested to know that Latin American international law had provided for the situation mentioned by Mr. Amado. A conference held in 1906 in Rio de Janeiro had approved a convention establishing the conditions under which persons might lose the nationality they had acquired in their country of immigration. The principle followed was that a permanent loss of connexion with the country of immigration would result in loss of its nationality. Two years' residence in the home country without the *animus revertendi* was regarded as evidence of such a loss of connexions.

62. Mr. ALFARO said he had come to the conclusion that paragraph 3 of article 6 was too vague and went beyond the Commission's intentions. He was sure that there would normally be no loss of nationality on account of temporary absence abroad, but the paragraph as drafted drew no distinction between long and short absences. He suggested that in that respect the article might be redrafted so as to provide that persons should not lose their nationality for failure to comply with formalities in connexion with their temporary residence abroad.

63. Mr. LAUTERPACHT asked Mr. Alfaro if he wanted all permanent residents abroad to lose their nationality and become stateless.

64. Mr. CÓRDOVA said that the Commission's intention was to prevent all deprivation of nationality

due to residence abroad. He agreed with Mr. Lauterpacht that military service in a foreign State, although it usually involved foreign residence, should be considered in article 7, because deprivation of nationality due to it was in the nature of a penalty. He felt that paragraph 3 of article 6 should be left as it was. As drafted, it would, if accepted, be a contribution to international law; any changes would raise difficulties.

65. Mr. LIANG (Secretary to the Commission) said that any detailed description of the means of deprivation of nationality on grounds of residence abroad would make paragraph 3 of article 6 unnecessarily complicated and, in consequence, incomprehensible. The United Nations Secretariat's "Study of Statelessness" (E/1112)[1] had referred to instances of deprivation of nationality on departure abroad without authorization. Similarly, Dr. Kerno's memorandum entitled "National Legislation concerning Grounds for Deprivation of Nationality" (A/CN.4/66) gave instances in which clandestine frontier crossing was a reason for deprivation of nationality, and in which Bolivia, Bulgaria and Haiti were cited as countries which deprived emigrants of their respective nationalities. He could find in the documents no example of deprivation of nationality for simple departure abroad.

66. Mr. CÓRDOVA said that although no case had been quoted of denationalization resulting from simple departure abroad, yet such cases might exist. There was no reason for the Commission to restrict the scope of paragraph 3 of article 6.

67. Mr. LIANG (Secretary to the Commission) said that paragraph 3 as it stood might give the false impression that simple departure and stay abroad were existing causes of statelessness.

68. The CHAIRMAN, closing the discussion, said that there were no formal amendments to article 6 before the Commission, and he would proceed to put the Drafting Committee's text to the vote.

Paragraph 3 of article 6, the last phrase reading "or on any other similar ground", was approved by 7 votes to 2, with 3 abstentions.

Article 6 as a whole was approved by 8 votes to 2, with 2 abstentions.

The text approved therefore read as follows:

"1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

"2. Persons who seek naturalization in a foreign country or who obtain an expatriation permit for that purpose shall not lose their nationality unless they acquire the nationality of that foreign country.

"3. Persons shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground."

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

Article 7 [VI, para. 1]

69. The CHAIRMAN invited comments on the text proposed for article 7.

70. Mr. KOZHEVNIKOV pointed out that the words "so as to render them stateless", in the English text, seemed to imply that States were in the habit of depriving their nationals of nationality in order to render them stateless.

71. Mr. LAUTERPACHT said that the words to which Mr. Kozhevnikov had referred meant "with the result of rendering them stateless" and that he did not think they were open to any other interpretation.

72. The words "by way of penalty", on the other hand, were open to several interpretations. He could accept the text proposed by the Drafting Committee on the understanding that those words covered cases where persons were deprived of their nationality as a result of entering the service or the armed forces of another State, and cases where a nationality acquired by naturalization was withdrawn on the ground that it had been acquired by fraud or that relevant data had been concealed. The point should, however, be made clear in the general report.

73. Mr. SPIROPOULOS suggested that any ambiguity in the English text could be removed by bringing it into line with the French and saying "if such deprivation renders them stateless".

74. Mr. CÓRDOVA agreed. With regard to the term "penalty" it was certain that unless the precise sense in which that term was being used was clearly stated in the accompanying comment, article 7, which was one of the most important in the whole draft, would be open to widely divergent interpretations. In that connexion, he pointed out that the term "penalty" usually meant a sanction imposed by the law of a country for offences defined as such in the law of the country. The Commission was proposing that the term should be used in a broader sense, to cover action taken by the State with regard to acts which were not crimes, as defined in its law, but which it regarded as being directed against it.

75. Addition of the words "so as to render them stateless" or "if such deprivation renders them stateless" would therefore give rise to the situation that in respect of one and the same act, which was not defined by law as an offence, the State would be able to impose the "penalty" of deprivation of nationality in one case, where the author of the act would acquire another nationality, but not in another, where he would be left stateless. The text proposed was therefore contrary to the fundamental principle of equality before the law.

76. Mr. SANDSTRÖM pointed out that the words "so as to render them stateless" also occurred in the English text of article 8. In his view, the English wording was preferable to the French, where the use of a conditional clause gave the impression that if that condition were not fulfilled no objection would arise, an impression which was particularly unfortunate in the case of article 8. He accordingly suggested that the words "*si*

cette privation de nationalité a pour effet de rendre apatride cette personne ou ce groupe de personnes", in that article and "*si cette déchéance le rend apatride*" in article 7 should be brought into line with the English text by saying, for example, "*afin de la (le) rendre apatride*".

77. Mr. SCELLE did not agree that the French text of articles 7 and 8 necessarily gave rise to the impression which Mr. Sandström suggested.

78. He wished to repeat that he could not agree, and he was sure that Kelsen and Oppenheim would not have agreed, that the fact of declaring the acquisition of nationality null and void on the ground that it had been acquired by fraud constituted a penalty; in such a case nationality had never really been acquired at all, any more than a marriage ceremony performed by an unauthorized person could be regarded as valid.

79. In other respects the text proposed by the Drafting Committee was an improvement on that proposed by the Special Rapporteur, which had read simply "no State shall deprive any person of its nationality by way of penalty". The Commission should, however, bear in mind that it would have the following effect: the national of any State who was deprived by it of its nationality without acquiring another would be regarded by the other contracting States as still possessing that nationality. It seemed obvious that in such cases there would be a need for recourse to compulsory arbitration, if the individual's position was to be clarified.

80. Mr. LIANG (Secretary to the Commission) pointed out that it might be difficult to explain precisely what was meant by the term "penalty" in article 7 since the grounds which were referred to in article 6, paragraph 3, as grounds for the deprivation of nationality could be regarded, and in some cases were regarded, as grounds for the deprivation of nationality as a penalty. Rightly or wrongly, the "Study of Statelessness" stated that the following had been ascertained to be grounds for deprivation of nationality as a penalty:

"(*a*) Entry into the service of a foreign government, more particularly enrolment in the armed forces of a foreign country;

"(*b*) Departure abroad without authorization;

"(*c*) Expatriation to evade military obligations;

"(*d*) Disloyal attitude or activities;

"(*e*) Aid furnished to Axis powers during the Second World War;

"(*f*) Naturalization obtained by fraud;

"(*g*) Penal offences committed by a naturalized citizen".[2]

81. With regard to naturalization obtained by fraud, he agreed with Mr. Scelle that the question of deprivation of nationality did not arise in such a case, since the acquisition of the nationality was null and void. He agreed, however, with Mr. Lauterpacht that in other respects the administrative action which a State took consequent upon acts by its nationals which it regarded as directed against its interests should be considered as "penalties"; but the task of defining what was meant by "penalty" in article 7 was complicated by the fact that in that article the word did not mean only legal penalties, yet did not include the "penalties" imposed "by operation of the law", which — in his view rightly — were dealt with separately in article 6, paragraph 3.

82. Mr. SANDSTRÖM recalled that he had previously indicated his opposition to the term "by way of penalty". He would, however, accept it provided it was made clear in the comment that it meant no more than action taken by the State in consequence of an act by an individual which it considered contrary to its interests. He did not think there would be any difficulty in that respect, provided the Commission did not agree with Mr. Scelle that a nationality acquired by fraud was null and void (*nulle de plein droit*). The parallel which Mr. Scelle had drawn was false; if a marriage ceremony was celebrated by an unauthorized person, there was no doubt that it was null and void; a marriage ceremony performed by an authorized person, but on the basis of fraudulent statements by the parties, however, was not null and void but voidable (*annulable*).

83. The CHAIRMAN declared the discussion of article 7 closed and recalled Mr. Spiropoulos' suggestion with regard to the English text. Since that suggestion concerned a point of translation rather than one of drafting, there was no need to vote on it. He therefore put the text proposed by the Drafting Committee for article 7 to the vote.

That text was adopted by 8 votes to 2, with 2 abstentions.

84. The CHAIRMAN, speaking as a member of the Commission, said that he had abstained because, although he could accept the article, he felt it unlikely that he would be able to accept the accompanying comment.

Article 8

85. The Chairman drew attention to the text proposed by the Drafting Committee[3] for article 8.

The text was adopted by 9 votes to 2, with 1 abstention.

86. Mr. KOZHEVNIKOV said he had voted against the text proposed for article 8, despite the fact that some of the provisions were in their general form unexceptionable. He had done so because of the context in which it was placed, that of a convention based on a principle which he found unacceptable.

87. Mr. ZOUREK said he had voted against the text proposed for article 8 not because he was opposed to the idea which it expressed, but because, like article 6,

[2] *Ibid.*, pp. 140-141.

[3] See *supra*, para. 7.

paragraph 3, and article 7, it derived from a one-sided view of nationality which he could not accept.

Article 9 [VII]

88. The CHAIRMAN drew attention to the text which the Drafting Committee proposed for article 9, reading as follows:

"1. Treaties whereby territories are transferred must include the provisions necessary to ensure that inhabitants of the territories affected do not become stateless, while respecting their right of option.

"2. In the absence of such provisions, existing States to which territory is transferred or new States formed on territory previously belonging to another State or States shall confer their nationality upon the inhabitants of such territory unless such persons retain their former nationality by option or otherwise or unless they have or acquire another nationality."

89. Those two paragraphs expressed the two principles which the Commission had agreed should be contained in the article dealing with transfers of territory. The Drafting Committee had also agreed that the question of the right of option should be mentioned in both paragraphs.

90. Mr. LAUTERPACHT pointed out that the other articles which the Commission had adopted were in the form of articles of a convention. He assumed that in its final revision of the text the Drafting Committee would bring article 9 into line with them.

91. The CHAIRMAN, in the absence of further comment, put paragraph 1 to the vote.

Paragraph 1 was adopted by 10 votes to 1, with 1 abstention.

92. Mr. SANDSTRÖM felt that in paragraph 2 some other word should be used than "transferred", which was the term normally used in cases where territories were ceded. Such cases, however, would be less important, for the purpose of paragraph 2, than other cases.

93. Mr. SCELLE agreed. The whole wording of paragraph 2 could be much improved; he saw no reason to refer to "existing" States and would prefer the sentence to be turned round, so as to emphasize the rights of the individual rather than the duties of the State.

94. The CHAIRMAN ascertained that there were no further comments on article 9 and suggested that it might be referred back to the Drafting Committee, which would doubtless take account of Mr. Sandström's observation and of any suggestions it received from Mr. Scelle.

The Chairman's suggestion was adopted.

On the above understanding, article 9 as a whole was adopted by 11 votes to 2.

95. Mr. KOZHEVNIKOV, explaining his vote, said that he fully recognized the value of treaties as a means of regulating relations between States. He had, however, voted against article 9 because it was worded in such a way as to prescribe to States rules on matters falling within their domestic jurisdiction, and was therefore incompatible with the principle of their sovereignty.

Arbitration clause [Article 10]

96. Mr. CÓRDOVA said that, now that the Commission had completed its consideration of the articles of the draft Convention on the Elimination of Future Statelessness, he wished to remind it that at the previous session it had considered the possibility of devising a system of arbitration for the settlement of differences arising out of the convention and had asked him, as Special Rapporteur, to prepare extracts from Mr. Kaeckenbeeck's book, "The International Experiment in Upper Silesia".[4] As he had previously explained, that had been done by Mr. I. Kerno, whose memorandum appeared as document A/CN.4/65. He personally was convinced that unless some means were provided of settling the disputes that were bound to arise, not only with regard to the interpretation of the convention but also with regard to the question whether a given individual was the national of a State or not, the Commission's endeavours in that field would bear little real fruit. Mr. Kaeckenbeeck went so far as to suggest that a special arbitral tribunal should be established for such a purpose and that individuals should have the right of access to it. In his own words, "Neither the individual's right to a nationality nor the rule of law can be assured, in the face of conflicting State policies, without a judicial organ of the kind of the Arbitral Tribunal. ... I am convinced that the experiment of letting individuals take the initiative of claiming and defending their right to a nationality is invaluable." He (Mr. Córdova) believed that the Commission should at least give careful consideration to the valuable experience which had been acquired in Upper Silesia and that it must take the responsibility of accepting or rejecting the idea of setting up a similar tribunal to deal with disputes arising out of the convention. He had made no suggestions in that respect, because he had not felt entitled to do so, having been instructed only to prepare extracts from Mr. Kaeckenbeeck's book.

97. Mr. LAUTERPACHT said that the question which the Special Rapporteur had raised had been bound to arise and that it was as well that it should have arisen before the Commission proceeded further with its work. Disputes were likely to arise out of any convention, particularly out of a convention dealing with questions of nationality. It was normal for the question of the settlement of such disputes to be dealt with in the final articles, along with questions of ratification, revision, entry into force, etc. He understood that it was not the intention that the Commission should draft final clauses for the Convention on the Elimination of Future Statelessness. It might therefore be considered unnecessary for the Commission to deal with the question of arbi-

[4] See *Yearbook of the International Law Commission, 1952*, vol. I, 161st meeting, paras. 11-36.

tration, although he suggested that it would be advisable to insert a sentence in the general report to the effect that the Commission regarded it as of the greatest importance, and indeed as axiomatic, that the convention, like all conventions concluded under United Nations auspices, should contain a provision for the settlement by arbitration of any disputes arising out of it. It was true that the Commission had itself prepared such a clause in the case of the draft articles on the continental shelf, but that was because there was a possibility that those articles would remain articles, and would not be given the form of a convention.

98. The CHAIRMAN, speaking as a member of the Commission, recalled that he and other members of the Commission had been opposed to the inclusion of an article dealing with the settlement of disputes in the draft articles on the continental shelf, on the ground that if the Commission included such an article once, it would have to do so in every case. Their fears were now revealed as justified. He was opposed to the suggestion that the Commission should attempt to draft an article dealing with the settlement of disputes arising out of the Convention on the Elimination of Future Statelessness; he was also opposed, though less strongly, to Mr. Lauterpacht's suggestion.

99. Mr. SCELLE said that Mr. Lauterpacht's suggestion would be of some value, but that he would like the Commission to go further. Mr. Córdova's suggestion was not that the Commission should draft the ordinary arbitration article, but that it should provide for a special international judicial body to settle cases where the Convention gave rise to disputes. The ordinary arbitral procedure was long drawn-out, and he appreciated the misgivings of those who doubted whether the Commission should lay an obligation on States to have recourse to it in the thousands of cases which might arise out of the convention. The same objections did not apply to a special judicial body, and he would therefore be in favour of the Commission's providing accordingly.

100. Mr. YEPES agreed that the Commission should draft provisions for a special tribunal to arbitrate in cases of disputes arising from the convention. Such disputes were bound to arise in a field so controversial as that of nationality. He recalled that he had abstained from voting on the proposal to insert a similar article in the draft articles on the continental shelf, but no parallel existed between the two cases. Public opinion would find it very strange if a convention prepared by international lawyers contained no final clauses, or at the very least no provision for the settlement of disputes.

101. Mr. HSU felt that if a substantial measure of agreement could be reached on special arbitration provisions, they should be inserted in the text; if such agreement could not be achieved but the Commission nevertheless agreed that disputes should be settled by arbitration, the necessary provisions could be drafted at the same time as the other final clauses.

102. Mr. LAUTERPACHT pointed out that it might take considerable time to discuss provisions for a special jurisdictional agency such as that proposed. If the Commission wished to devote time to that matter, however, he would support any text which the Special Rapporteur could submit along the lines he had indicated.

103. Mr. CÓRDOVA said that with the help of Mr. Scelle he would prepare such a text.

104. Mr. KOZHEVNIKOV said he fully subscribed to the principle that States should take steps to settle disputes arising between them by peaceful means. He was, however, utterly opposed to the idea of compulsory arbitration which had raised its head again, despite the fact that it was completely contrary to the basic principles of international law. He could support no text which contained that idea, nor could he support the suggestion that the Commission should advocate it in the report.

105. Mr. ZOUREK felt that the time had not yet come to discuss the final clauses of the convention, among which any article on the settlement of disputes would naturally be placed. As the suggestion had been raised, however, he would merely point out that the United Nations Charter laid an obligation on its Member States to settle their disputes by peaceful means; there were other peaceful ways of settling disputes besides arbitration, and he did not understand why a reference to arbitration should be inserted in all conventions concluded under United Nations auspices, to the exclusion of all other ways of peaceful settlement. In that way recourse to arbitration was made compulsory for the contracting States, and the inclusion of such a provision in the convention at present under consideration would make it unacceptable to very many States. The still more radical proposal for a special international tribunal was also unacceptable; there was no parallel between the present situation and that which had obtained in Upper Silesia, where the whole question had arisen out of a particular treaty settlement.

106. Faris Bey el-KHOURI recalled that the Commission was attempting to eliminate statelessness. For that purpose it was obviously vital that as many States as possible should adhere to the Convention. He feared that if provision were made for compulsory arbitration, many would be deterred. The question of statelessness was of concern only to the individual, and he could not see how thousands of disputes between States could arise from a convention dealing with it.

107. Mr. SCELLE said that Mr. Kaeckenbeeck was well known not only as the former President of the Arbitral Tribunal in Upper Silesia, but also as a great humanitarian and jurist, who was in principle opposed to any further step to "institutionalize" the law which did not correspond to the real interests of States. The step which was proposed was not a radical one, but a modest one; unless it was taken, however, there was no doubt, with all due respect to Faris Bey el-Khouri, that the Convention would give rise to thousands of disputes between States.

108. The CHAIRMAN put to the vote the suggestion that the Special Rapporteur should be asked to prepare a text, with a view to its insertion in the Convention, dealing with the settlement of disputes by arbitration.

The suggestion was adopted by 6 votes to 5, with 2 abstentions.[5]

The meeting rose at 1.5 p.m.

[5] See *infra* 219th meeting, para. 45.

219th MEETING

Monday, 20 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. 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*)

Preamble (resumed from the 216th meeting)

1. The CHAIRMAN said that two matters remained to be dealt with before the Commission completed its work on the draft Convention on the Elimination of Future Statelessness. One was a proposal for an additional article, made jointly by the Special Rapporteur and Mr. Scelle. Since however, the English text had not yet been distributed, he therefore proposed to open the discussion with the other matter, namely, the preamble to the convention. The Special Rapporteur having withdrawn his original text,[1] the Commission had before it only the text prepared jointly by the Special and General Rapporteurs, which read as follows:

"1. *Whereas* the Universal Declaration of Human Rights proclaims that 'everyone has the right to a nationality';

"2. *Whereas* the Economic and Social Council has recognized that the problem of stateless persons demands 'the taking of joint and separate action by Member nations in co-operation with the United Nations to ensure that everyone shall have an effective right to a nationality';

"3. *Whereas* statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man;

"4. *Whereas* statelessness is frequently productive of friction between States;

"5. *Whereas* statelessness is inconsistent with the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law;

"6. *Whereas* the practice of many States has increasingly tended to the progressive elimination of statelessness;

"7. *Whereas* no vital interests of States are opposed to the total elimination of statelessness;

"8. *Whereas* it is desirable, by international agreement, to render legally impossible situations which give rise to statelessness;

"The Contracting Parties

"Hereby agree as follows:"

2. Mr. ALFARO approved the new text in general, but suggested the deletion of the seventh clause, which could be construed in such a manner as to provoke opposition to the convention.

3. Mr. SANDSTRÖM agreed that it might be preferable to drop the seventh clause, though the difficulties might be overcome by redrafting it to read somewhat as follows:

"No vital interests of States requires the upholding of legislation concerning nationality so as to create statelessness."

4. He further suggested that continuity of thought might be better served by re-arranging the clauses in the order: 1, 5, 3, 4, 6, 2, 7.

5. He agreed with a suggestion by Mr. LAUTERPACHT that the order of the clauses might be left to the Drafting Committee.

6. Mr. LAUTERPACHT hoped that clause 7 would stand, its final version to be decided by the Drafting Committee. There was a clear distinction between the vital interests and the important interests of States, and

[1] See *supra*, 216th meeting, para. 70.