

Document:-  
**A/CN.4/64**

**Nationality, including Statelessness – Report on the Elimination or Reduction of  
Statelessness by Roberto Cordova, Special Rapporteur**

Topic:  
**Nationality including statelessness**

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

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

# NATIONALITY, INCLUDING STATELESSNESS

## DOCUMENT A/CN.4/64

Report on the elimination or reduction of statelessness,  
by Mr. Roberto Córdova, Special Rapporteur

[Original : English/French]  
[30 March 1953]

### TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTION.....	167
PART I: DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS	
reamble .....	170
Article I .....	170
Article II .....	175
Article III .....	176
Article IV .....	177
Article V .....	179
Article VI .....	184
Article VII .....	186
PART II: DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS	
Preamble .....	187
Article I .....	187
Article II .....	190
Article III .....	190
Article IV .....	190
Article V .....	190
Article VI .....	192
Article VII .....	192
Article VIII .....	194
ANNEX: SYNOPTIC CHART OF POSSIBLE SOURCES OF STATELESSNESS .....	195

### Introduction

1. On 8 August 1952 the International Law Commission elected Mr. Roberto Córdova Special Rapporteur on the topic of nationality, including statelessness, to succeed Mr. Manley O. Hudson, who had resigned (183rd meeting, para. 15).

2. The discussions in the Commission made it clear that it did not expect the newly appointed Special Rapporteur to study the general subject of nationality (*ibid.*, paras. 16-19), nor, of course, to report on it at the session of 1953. It was made perfectly clear that his report would cover only the question of statelessness and, on this subject, the Commission approved, on 9 July 1952 the following resolution:

“The Special Rapporteur should be requested to prepare:

“(a) A convention on the lines of paragraph 2 of section VI of annex III to his report [Mr. Hudson’s report, A/CN.4/50];

“(b) One or more conventions containing attenuation of those principles with a view to reducing statelessness.” (160th meeting, paras. 32 and 45.)

3. On the same date the Commission also decided that “the draft conventions should be in the form of articles accompanied by comment” (*ibid.*, paras. 48-50). It should be noted that the Commission did not request, as had been suggested, that the articles be accompanied by “exhaustive comment”. This was a wise decision

for exhaustive comment would have required the inclusion of such a mass of detailed information that it might have made the report unmanageable. Nevertheless, an effort has been made to set forth in this report the main sources of each article, drawn from national legislation as well as from international precedents and international law.

4. Members of the Commission who desire more detailed and exhaustive information on the subjects dealt with in this report will find abundant data in the following documents:

(a) "The Problem of Statelessness" — Consolidated Report by the Secretary-General (E/2230, A/CN.4/56);

(b) *A Study of Statelessness*, prepared by the Department of Social Affairs of the Secretariat of the United Nations;<sup>1</sup>

(c) "Report on Nationality, including Statelessness" by Mr. Manley O. Hudson, Special Rapporteur (A/CN.4/50).

5. Besides these documents, from which the present Special Rapporteur drew liberally, he had the privilege of having before him the studies which were prepared by the Commission's expert on the subject, Mr. Ivan S. Kerno, to whom the Special Rapporteur is specially indebted, and whose contribution will no doubt be very much appreciated by the members of the Commission. In this regard it should be noted that the part entitled "Existing Legislation" of the comment on each article of the two conventions prepared by the Special Rapporteur and included in this report was textually taken from one of Mr. Kerno's drafts.

6. At its fourth session the Commission asked the Special Rapporteur to prepare extracts from Mr. Kaeckenbeeck's book entitled *The International Experiment in Upper Silesia* for the information of the Commission when it reverted to the subject of arbitration as a means of solving conflicts between national laws on nationality resulting in statelessness (161st meeting, paras. 11-36). At the time of the preparation of the present report this special task had already been carried out by Mr. Kerno, and as, in the opinion of the Special Rapporteur, Mr. Kerno's work furnished a suitable basis for the Commission's consideration of the problem, the Special Rapporteur refrained from preparing anything on this subject.

7. In the present report two drafts are proposed for the consideration of the Commission, namely, a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness. The Special Rapporteur did not consider it necessary to prepare more than one convention with regard to the reduction of statelessness, and he thinks that the draft, as submitted, will achieve the aims of the Commission.

8. Both draft conventions are in the form of articles accompanied by comment as comprehensive as it was deemed convenient. They were both based on points 1 to 19 contained in section 6 of annex III to Mr. Hudson's report, as modified by decisions of the

Commission, except for the few instances in which the Special Rapporteur was specifically instructed to make his own studies and propose his own conclusions.

9. The Special Rapporteur understood the task entrusted to him by the Commission in the sense that he should draft articles which would serve to eliminate or to reduce statelessness in the future, without, however, giving rise to double nationality. It is his conviction that it is in the general interest of the international community not only that every person should have a nationality but also that every person should have only one nationality. Therefore, the effort to eliminate or, at least, to reduce the evil of statelessness, should be coupled with an effort to avoid double nationality. Any other interpretation of the terms of reference given to the Special Rapporteur would be inconsistent with the broader aim of the Commission with regard to its future work on nationality in general.

10. Each of the conventions, once accepted by the States, will bind them to confer their nationality according to the terms set forth in the articles therein contained, and to restrict the right to withdraw their nationality in a manner inconsistent with the interest of the community of nations and with that of the individuals concerned.

11. It is believed that the subordination of the rights of the States, in matters of nationality, to international law is in conformity with the present state of development of the juridical relations between the States. The Special Rapporteur strongly believes that international limitations on the right of individual States to legislate in matters of nationality are essential not only for the maintenance of good relations between States, but also for the prevention of hardships and suffering connected with the status of statelessness. The subordination of the rights of the States in this respect to international law is in conformity with the principle which this Commission adopted in article 13 of its draft Declaration on Rights and Duties of States,<sup>2</sup> according to which international law is recognized as having priority over national legislation.

12. In this connexion the Special Rapporteur wishes to draw the attention of the members of the Commission to article 2 of the draft "Law of Nationality" prepared by the Harvard Research in International Law. The article provides, *in fine*: "... under international law, the power of a State to confer its nationality is not unlimited". In the comment pertaining to the article, it is stated: "It may be difficult to precise the limitations which exist in international law upon the power of a State to confer its nationality. Yet it is obvious that some limitations do exist."<sup>3</sup>

13. Article 1 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws,

<sup>2</sup> See "Report of the International Law Commission covering its first session," *Official Records of the General Assembly, Fourth Session, Supplement No. 10 (A/925)*. Also in *Yearbook of the International Law Commission, 1949*.

<sup>3</sup> Harvard Law School, *Research in International Law, Special Supplement to the American Journal of International Law*, vol. 23 (1929), pp. 24 and 26.

<sup>1</sup> United Nations publication, Sales No.: 1949.XIV.2.

prepared by The Hague Conference for the Codification of International Law in 1930, expresses the same idea, that a limitation is imposed by international law upon the right of States to legislate in matters of nationality. The article reads as follows:

"It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality."<sup>4</sup>

14. It follows that international law sets forth the limits of the power of a State to confer its nationality. This power necessarily implies the right to deprive an individual of that nationality; consequently international law may also restrict the authority of the State to deprive a person of its own nationality. There are cases in which international law considers that a certain national legislation is not legal because it comes into conflict with the broader interests of the international community. Such was the case, for instance, with the so-called Delbrück Law, enacted by Germany, under which a German citizen could be nationalized in a foreign country without losing his original German nationality.

15. In the present state of international law, it is not, therefore, unwarranted to affirm that the right of individual States to legislate in matters of nationality is dependent upon and subordinate to the rules of international law on the subject, and that, therefore, these questions of nationality are not, as has been argued, entirely reserved for the exclusive jurisdiction of the individual States themselves.

16. Whereas formerly it was held that sovereignty was absolute, at present it is recognized that there are limitations to which the States must submit by reason of their being members of the international community and in order to make possible an orderly and peaceful society of nations. The Special Rapporteur strongly believes that international limitations on the right of individual States to legislate in matters of nationality is essential not only to maintain good relations between States, but also to save great numbers of persons from the hardships and suffering caused by statelessness.

17. But even if this were not the correct interpretation of the present state of international law with regard to nationality, the International Law Commission, relying on its right and duty to advance international law, should feel justified in proclaiming the principle of the priority of the rules of international law over those of municipal law in this concrete matter of nationality, as it has already done in general terms in article 13 of its draft Declaration of Rights and Duties of States.

18. Therefore, the purpose of the two draft conventions included in this report is precisely to impose upon States the obligation of conferring in the future a nationality on every individual, and to restrict their

right of withdrawing it in a manner inconsistent with the real interest of the community of states and that of the individuals concerned.

19. The Special Rapporteur wishes to state clearly that, in his opinion, the problem of future statelessness can be solved only by the adoption of the draft Convention on the Elimination of Future Statelessness. This instrument is designed to deal completely with the question, leaving no *lacunae* whatsoever. On the other hand, the draft Convention on the Reduction of Future Statelessness, if adopted, would necessarily leave stateless a considerable number of persons. By the adoption of the latter draft, the problem would therefore not be solved at all, and it might arise in the future with a still greater urgency. Consequently, the Special Rapporteur strongly urges the Commission to adopt the draft Convention on the Elimination of Future Statelessness. He wishes to state that he prepared the draft Convention on the Reduction of Future Statelessness not because he thinks that it is convenient to attenuate the principles contained in the draft Convention on the Elimination of Future Statelessness or to leave *lacunae*, but because he felt that it was his duty to do so, in compliance with the specific instructions that the Commission gave him in this respect.

20. Points 4 to 8 contained in section VI of annex III to Mr. Hudson's report (A/CN.4/50) deal with the subject of "Reduction of presently existing statelessness". When this matter was brought up for discussion at the fourth session of the Commission, it was proposed that, because Mr. Hudson had expressed no strong views on the question, the Commission should request him to give further consideration to the possibility of reducing existing cases of statelessness by juridical means. This proposal was rejected. (163rd meeting, paras. 64-79.)

21. Abiding by this decision of the Commission, the Special Rapporteur has abstained from studying this problem but he wishes to emphasize that he has already stated during the discussion, namely, "that even if the Commission could hope for little practical success when dealing with what was primarily a political problem, it would be subjected to much criticism if it did not at least consider the problem of reducing existing cases of statelessness. Resolution 319 B III (XI) of the Economic and Social Council had not, in his view, distinguished between existing cases of statelessness and cases arising in the future" (*ibid.*, para. 65). Therefore the Commission, it seems, should not introduce any differentiation in this respect and it should take up the matter of existing statelessness exactly on the same terms as it has considered future statelessness. A noble and very useful purpose would be served, if the Commission decides to explore the possible solutions for reducing existing cases of statelessness. It seems to the Special Rapporteur that this is a solemn duty of the Commission towards thousands of stateless persons, now living under great hardship and duress, without any protection, and who look up to the United Nations as their last refuge and only hope for the solution of their human problems.

<sup>4</sup> League of Nations publication, V. *Legal*, 1930. V. 14 (document C. 351. M. 145. 1930. V), p. 81.

## Part I

Draft Convention on the Elimination  
of Future Statelessness

## PREAMBLE

"Whereas article 15, paragraph 1, of the Universal Declaration of Human Rights provides that "everyone has the right to a nationality",

"Whereas the Economic and Social Council recognizes in its resolution 116 D (VI) of 1 and 2 March 1948 that the problem of stateless persons demands the taking of joint and separate action by Member nations in co-operation with the United Nation to ensure that everyone shall have an effective right to a nationality,

"Whereas the above instruments are of a declaratory nature and not legally binding on States,

"Whereas the following multilateral conventions that have been signed heretofore are of a limited scope and do not fulfil the aims stated by the above-mentioned instruments,

"1. Convention Establishing the Status of Naturalized Citizens Who again Take up Their Residence in the Country of Their Origin, signed in Rio de Janeiro on 13 August 1906,<sup>5</sup>

"2. Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted at The Hague on 12 April 1930,<sup>6</sup>

"3. Special Protocol relating to a Certain Case of Statelessness, adopted at The Hague on 12 April 1930,<sup>7</sup>

"4. Convention on Nationality, signed at Montevideo on 26 December 1933,<sup>8</sup>

"Whereas even when stateless persons are not legally debarred from the enjoyment of a right, in practice they are often deprived of its exercise, inasmuch as it is dependent on the fulfilment of certain formalities, such as production of documents, intervention of consular or other authorities, with which they are not able to comply, because, being stateless persons, they may not ask the assistance of diplomatic or consular officers of any State, and thus in fact, they are deprived of protection in all its forms,

"Whereas the condition of statelessness and the consequent lack of protection results in great hardships and suffering for the stateless person, which for humanitarian reasons it is imperative to redress,

"Whereas statelessness is an international problem which calls for international solutions,

"Whereas the elimination of the evils of statelessness will result not only in the amelioration of the

<sup>5</sup> See text in United States, *Treaty Series*, No. 575; also in *American Journal of International Law*, vol. 7 (1913) Supplement, pp. 226-228.

<sup>6</sup> See text in *A Study of Statelessness*, *op. cit.*, pp. 172-179.

<sup>7</sup> *Ibid.*, pp. 180-185.

<sup>8</sup> Hudson. *International Legislation*, vol. 6, pp. 593-597.

conditions of stateless persons but also in a great improvement of the juridical and political relations of the States,

"Whereas in the present state of development of international relations, political as well as juridical, States are bound to limit their right to legislate on matters of nationality in such a manner as to avoid injustice to individuals as well as unnecessary conflicts of a political and juridical nature within the community of States, and therefore, all nations should in this matter abide by the principle of the priority of international law over national legislation,

"Now therefore,

"The Contracting Parties

"Hereby agree as hereinafter provided:

## ARTICLE I

*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.*

## Comment

## Section I. Existing legislation \*

A. The following States, in which the rule of *jus soli* predominates, confer their nationality on all persons born within their territory with the common exclusion of children of persons having diplomatic immunity and such other exclusions as are noted below. No provision for the prevention of dual nationality is made unless noted:

ARGENTINA (1869) Art. 1 (1).

AUSTRALIA (1949) Sect. 10 (excludes children of enemy aliens).

BRAZIL (1949) Art. 1 (1).

BOLIVIA (C) Art. 39 (1).

CHILE (C) Art. 5 (1) (excludes child of transients who receives right to opt).

CANADA (1950) Art. 5 (1) (a).

CUBA (C) Art. 12 (1).

DOMINICAN REPUBLIC (C) Art. 8 (2) (excludes child of transients).

HONDURAS (C) Art. 7 (1) (excludes child of transients)

INDIA (C) Art. 5 (a).

IRAN (1934) See E/2164/Add.21.

LIBYA (C) Art. 8 (1).

MEXICO (1934) Art. 1 (1).

NICARAGUA (1950) Art. 18 (1).

\* This part of the comment, in this article and in the following articles, is taken in its entirety from a study (A/CN.4/66) which the Commission's expert, Mr. Ivan S. Kerno, kindly furnished the Special Rapporteur. Mr. Kerno, in turn, based his work mainly on the texts assembled by the Legal Department of the United Nations.

In citing the laws of the different countries, the name of the country is followed by the year of the corresponding nationality law, within parentheses, unless the letter "C" appears instead, meaning that reference is made to the constitution of that State. The number of the article of the law or of the constitution follows immediately.

PAKISTAN (1951) Art. 4 (also gives nationality on *jus sanguinis* principle, art. 5).

PERU (C) Art. 4.

SAAR (1949) Art. 1 (1) (a).

UNION OF SOUTH AFRICA (1949) Art. 3 (1) (excludes child of prohibited immigrants, enemy aliens).

UNITED KINGDOM (1948) Art. 4 (excludes child of enemy alien).

UNITED STATES OF AMERICA (1925) Public Law 414, Section 301.

URUGUAY (C) Art. 65.

B. The following States grant nationality to persons born in the country provided the other requirement(s) noted below are fulfilled:

BURMA (1948) Art. 5 (a) One parent must be a citizen. If father is an alien, child must opt within one year of majority. Art. 12 (3) If father and mother are aliens domiciled in Burma and the child is a permanent resident when reaching majority, it can obtain citizenship.

COSTA RICA (1950) Art. 1 (1) Father or mother a Costa Rican. (2) Alien parents provided child is registered by self or parents to age of 25.

CZECHOSLOVAKIA (1949) Art. 1 (1) Father and mother citizens.<sup>10</sup>

COLOMBIA (C) Art. 8 (1) Father or mother is a native, or parents are aliens domiciled in Colombia.

ECUADOR (C) Art. 9 (1) (I) Father and mother Ecuadorian citizens or aliens domiciled in Ecuador or unknown. (II) One parent is a citizen and the child resides in Ecuador or is registered as an Ecuadorian and, at 18, fails to object. Art. 10, however, provides that anyone born in Ecuador is presumed Ecuadorian by birth.

EL SALVADOR (C) Art. 11 (1) Father or mother a native. (2) A descendant of a child of an alien born in the country.

GUATEMALA (C) Art. 6 (1) Father or mother is a citizen or parents are unknown or their nationality is unknown. (2) Child of alien parents if they are domiciled in Guatemala at birth of child or during child's minority. The child of a transient can opt on majority.

C. The following States, in which the rule of *jus sanguinis* predominates, make the following provision for nationality by birth within the country:

DENMARK<sup>11</sup> (1950) Art. 1. An alien born in Denmark and residing there continuously until 21 can obtain nationality on application before 23. It can be obtained at 18 if the person proves that he is stateless or that he will lose foreign nationality by obtaining Danish nationality.

EGYPT (1950) Art. 4. A child born in Egypt of alien parents and residing there at his majority may receive Egyptian nationality by decision of the Council Ministers, if he knows Arabic, is not a criminal, etc.

FRANCE (1945) Art. 23. (1) A legitimate child, born in France, of a father born in France. (2) An illegitimate child, born in France, provided the parent to whom the child's filiation was first established was born in France. Art. 24. A child is French, but can repudiate French nationality within six months before reaching majority, if (1) A legitimate child, born in France, of a mother born in France, (2) An illegitimate child, born in France, provided the parent to whom the child's second filiation was established was born in France. Art. 44. A child born in France of aliens, obtains nationality on majority if resident in France from sixteen (can decline by declaration — Art. 45).

GREECE (1940) Art. 1. A child born in Greece to a person born in Greece or resident there for five years before the birth of the child can obtain nationality on majority by request. (13 September 1926) Art. 1. One born in Greece, domiciled there, and without other nationality.

HUNGARY (Dec. 1948) Art. 21. This article seems to provide for Hungarian citizenship for all born in Hungary after a census to be taken.

ICELAND (1935) Art. 2. A child of aliens residing in Iceland until 19 obtains Icelandic nationality unless he declares for another nationality and has it.

ITALY (1912) Art. 1 (3) A child born in Italy which does not obtain nationality of parents. Art. 3. A child born of aliens resident for ten years and who: (1) Enters the army or government service, (2) Resides in Italy at twenty-one and, by twenty-two, declares for Italy, (3) Resides in Italy for ten years and does not declare for another nationality.

LEBANON (1925) Art. 1 (2). A child born without other nationality.

NETHERLANDS (1892) Art. 1 (d) An illegitimate child not recognized. Art. 2 (a) Child born to a resident parent who was also born in the Netherlands, if the child has no other nationality.

NORWAY<sup>12</sup> (1950) Art. 3. Same as Denmark.

SWEDEN<sup>12</sup> (1950) Art. 3. Same as Denmark.

TURKEY (1928) Art. 3. Child of aliens, if living in Turkey at majority can obtain Turkish nationality on petition. Art. 4. Child of an alien who was born in Turkey after 1 January 1929 receives Turkish nationality (can opt for nationality of mother or father within six months after reaching majority).

A privileged procedure exists in the following State:

BELGIUM (1932) Arts. 6-9. A child born in Belgium may acquire Belgian nationality by option if habitually resident for one year before opting and in addition,

<sup>10</sup> According to Mr. J. Zourek it should read "Father or mother citizens." See *Yearbook of the International Law Commission, 1953*, 212th meeting, para. 34.

<sup>11</sup> The Nationality Laws of 1950 of Denmark, Norway and Sweden permit, by Art. 10 of each law, the extension by agreements of the *jus soli* principle so that birth and residence to the age of twelve in one country is the equivalent to the same in the other country. Such agreements were concluded by the three countries on 21 December 1950 (effective 1 January 1951).

<sup>12</sup> The Nationality Laws of 1950 of Denmark, Norway and Sweden permit, by art. 10 of each law, the extension by agreements of the *jus soli* principle so that birth and residence to the age of twelve in one country is the equivalent to the same in the other country. Such agreements were concluded by the three countries on 21 December 1950 (effective 1 January 1951).

<sup>13</sup> *Ibid.*

either from the age of 14 to the age of 18 or for 9 years. Option must be made before reaching twenty-two years.

## Section II. *International precedents*

A. The effort to eradicate statelessness is not new, either in the theory or in the practice of international law. International jurists have long been concerned with the solution of this problem, the evils of which were already recognized at the time of Justinian. According to Francisco de Vitoria:

"If children of any Spaniard be born (in the American principalities) and they wish to acquire citizenship, it seems that they cannot be barred either from citizenship, or from the advantages enjoyed by other citizens — I refer to the case where the parents had their domicile there. *The proof of this (principle of nationality) is furnished by the rule of the law of nations, that he is to be called and is a citizen who is born within the State.* (Justinian Code, 7.62.II). . . . whoever is born in any other state is not a citizen of another state. Therefore, if he were not a citizen of the state referred to, he would not be a citizen of any state, to the prejudice of his rights under both natural law and the law of nations."<sup>14</sup>

B. In 1896 the Institute of International Law in its resolutions adopted at Venice regarding conflicts of national laws in the matter of nationality, stated in article 3:

"A child born upon the territory of a State, of an alien father who was himself born there, is clothed with the nationality of that State provided that in the interval between the two births the family to which it belongs has had its principal abode there and unless the child has elected for the nationality of its father in the year of its majority as fixed by the national law of its father or by the law of the territory where it was born.

"In cases of illegitimate births not followed by acknowledgment on the part of the respective parents, the preceding rule also applies by analogy.

"It does not apply to the children of diplomatic agents or of consuls (*missi*) regularly accredited in the country where they are born; these children are deemed to be born in the country of their father."<sup>15</sup>

C. In the report of the Committee on Nationality and Naturalization, adopted by the International Law Association, at Stockholm in 1924, this principle is found.

"(1) Nationality acquired on birth

"(a) *Every child born within the territory of a conforming state shall become a national of that State.* Provided always that in any case in which the father of such child being a national of another State, shall within a specified prescribed period register

such child as a national of the State to which he belongs, such child shall cease to be a national of such conforming State and shall become a national of the State to which its father belongs.

"(b) Every child born within a conforming State which has, pursuant to the proviso contained in subsection (a) become the national of its father's State, who shall within a year after attaining the age of twenty-one years claim to be re-admitted as a national of such conforming State, shall be so-re-admitted without having to comply with any other conditions."<sup>16</sup>

D. The Draft Law of Nationality, prepared in 1929 by the Harvard Research in International Law in order to facilitate the work of the Conference for the Codification of International Law which was to take place the following year, 1930, at The Hague, contains a provision which closely resembles the draft article I as proposed above.

The Harvard article is worded as follows:

"Article 9. A State shall confer its nationality at birth upon a person born within its territory if such person does not acquire *another* nationality at birth."<sup>17</sup>

E. As we shall see, this article, in the opinion of the Special Rapporteur, although very similar to the one proposed in the present draft, is somewhat deficient because of the use of the word "another". The same criticism can be directed against the draft originally proposed by the previous rapporteur, Mr. Manley O. Hudson, in his report discussed by the Commission at its fourth session, in 1952. In order not to repeat the arguments against the use of the word "another", the analysis of the effect of this wording will be made in connexion with the discussion of Mr. Hudson's draft (see below, section IV of this comment).

F. The above-mentioned conference at The Hague in 1930 produced several instruments relating to the question of nationality which include articles referring to the problem of statelessness and to other precedents of the article proposed in this draft.

G. The Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted at The Hague in 1930, contained provisions concerning the nationality of married women, the nationality of children, and the effect of adoption on the nationality of the adopted person. Article 15 is of great historical interest, inasmuch as it is designed to prevent the statelessness of children at birth:

"Article 15. Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality or of unknown nationality, *may* obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."<sup>18</sup>

<sup>14</sup> "De Indis et de Ivre Belli Relectiones," *Relectiones theologicae XII*, Carnegie translation, pp. 153-154.

<sup>15</sup> *Annuaire de l'Institut de droit international*, 1896 (Paris, A. Pedone), p. 131.

<sup>16</sup> International Law Association, *Report of the Thirty-third Conference* (London, Sweet and Maxwell, Ltd., 1925), p. 29.

<sup>17</sup> Harvard Law School, *op. cit.*, p. 14.

<sup>18</sup> League of Nations publication, *V. Legal*, 1930. V. 14 (document C. 351. M. 145. 1930. V), p. 85.

H. Although this text is also similar to article I as proposed above, it should be noted that it contains a purely optional provision, because it states that "... a child . . . *may* obtain the nationality . . .", whereas the text proposed in this report is mandatory, as it provides that "... every person *shall* acquire . . . the nationality . . ." Obviously, this wording represents a further step in the direction of eliminating statelessness.

I. The Protocol relating to a Certain Case of Statelessness, also adopted at The Hague in 1930 is designed to supplement the above-mentioned convention and, in part, attempts to eliminate statelessness at birth in the following case:

"Article I. In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State."<sup>19</sup>

J. This article covers only the situation which arises in a *jus sanguinis* State when only the mother is a national of that State, but does not envisage a situation where neither of the parents is a national of the said State.

K. Consequently, the draft, as proposed by Special Rapporteur, is much wider in scope than the convention or the protocol just referred to, because it is designed to cover *all* cases, whether one or both of the parents are or are not nationals of the State where the child is born.

L. The Convention on Nationality, adopted at Montevideo in 1933, and the Draft Convention on Nationality and Statelessness proposed by the Inter-American Juridical Committee in 1952,<sup>20</sup> contain rules which, although very interesting and of great doctrinal value, particularly the latter, do not cover the problem of complete elimination of statelessness, but only of its reduction; therefore, these proposals shall be dealt with in discussing the pertinent articles of the draft Convention on the Reduction of Statelessness.

### Section III. The problem of statelessness before the organs of the United Nations

A. The General Assembly of the United Nations, in article 15 of its Universal Declaration of Human Rights of 10 December 1948, emphatically stated:

"Everyone has the right to a nationality."

Previously, the Economic and Social Council, during its sixth session (2 February-11 March 1948) had adopted a resolution 116 D (VI) which in effect may now be considered as the implementation of article 15 of the declaration just quoted; it said:

"Recognizing that this problem demands in the first instance the adoption of interim measures to afford protection to stateless persons, and *secondly* 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."*

B. In this same resolution the Economic and Social Council requested the Secretary-General:

"(b) To undertake a study of national legislation and international agreements and conventions relevant to statelessness and to submit recommendations to the Council as to the desirability of concluding a further convention on this subject."

C. The Secretary-General, in compliance with the request that was made in the above-mentioned resolution, in his recommendation to the Economic and Social Council, said that,

"In order to implement this provision [Article 15 of the Universal Declaration of Human Rights] . . . the sources of statelessness must be dried up . . ."

D. And, for this purpose, he stated that two principles should be universally adopted and applied, of which one was formulated as follows:

"1. Every child must receive a nationality at birth."<sup>21</sup>

E. Article 15 of the Universal Declaration of Human Rights as well as the principle suggested by the Secretary-General are not legally binding on States, and, accordingly, persons who are stateless at birth would not have any automatic or effective means of redressing their situation, unless a convention is adopted by a certain number of States, binding them to grant their nationality to those stateless persons who are born within their territory.

### Section IV. The problem of statelessness before the Commission

A. In the report of the previous Special Rapporteur, Mr. Manley O. Hudson, the principle contained in this article was phrased as follows:

"(i) If no *other* nationality is acquired at birth, every person shall acquire at birth the nationality of the State in whose territory he is born. This would extend *pro tanto* the application of the *jus soli* rule in many countries." (A/CN. 4/50, Annex III, Section VI, point 2)

B. This wording is very similar, as we have already had occasion to note, to article 9 of the Harvard Research draft. They both are subject to the same criticism that can be made to the first article proposed by the Commission's expert, Mr. Ivan S. Kernó. In his very learned work,<sup>22</sup> which the present Special Rapporteur had before him in preparing his report, Mr. Kernó suggests the following text for article 1:

"A State shall confer its nationality at birth upon a person born within its territory if such person does not acquire *another* nationality at birth.

"This obligation does not prevent a State from conferring its nationality at birth on persons who do acquire at birth another nationality."

<sup>19</sup> *Ibid.*, p. 105.

<sup>20</sup> Inter-American Juridical Committee, *Report and Draft Convention on Nationality and Status of Stateless Persons* (Pan American Union, Washington, 1952).

<sup>21</sup> *A Study of Statelessness, op. cit.*, p. 170.

<sup>22</sup> Not published as a document.

C. Although it is true that Mr. Hudson, during the discussions in the Commission at its fourth session (159th meeting, para. 9) changed somewhat his own drafting giving as a reason that it was necessary to recast the rule if it were to be included in a convention, the Commission, by ten votes to two with one abstention, approved Mr. Hudson's original text (*ibid.*, para. 42).

D. Since the article proposed in this report is somewhat different from Mr. Hudson's text as well as from the texts proposed in the Harvard draft and by Mr. Kernó, it does not seem idle to point out the reasons why the Special Rapporteur proposes a different wording, although, of course, adopting fully the principle approved by the Commission.

E. At the fourth session, certain doubts regarding Mr. Hudson's text were expressed by some of the members of the Commission. At that time it was said that Mr. Hudson's proposal seemed to give priority to the principle of *jus sanguinis*; and also that it might seem to give room to the possibility of interpreting that principle so as to preclude a *jus soli* State from attributing its nationality to a child born within its territory, if that child had acquired, at birth, the nationality of another country by the application of the *jus sanguinis* principle. The fact remains that the use of the word "another", which seems to refer exclusively to a nationality different from that of the country in whose territory the child is born, gives rise to confusion. The intention of the previous Special Rapporteur to extend with a view to avoiding the *jus soli* principle to those countries in which the strict *jus sanguinis* principle obtains, without, however, precluding the application of the *jus soli* by a country where this principle applies, is not fully understood from the wordings proposed in the Harvard draft or by Mr. Hudson or by Mr. Kernó.

F. In order to fill the need of adapting the draft to the usual language of a convention as well as to bring out, as clearly as possible, the real intention of all these drafts which, as has been said before, is only to extend the application of the *jus soli* principle to countries of strict *jus sanguinis* legislation, the Special Rapporteur has adopted the wording proposed in article I of this draft. It must be said in all truthfulness that in phrasing this article, he had in mind the suggestion of the Chairman of the Commission during the fourth session, Mr. Ricardo J. Alfaro (159th meeting, para. 8):

"Every person born in a State where nationality is not conferred *jure soli* and who does not acquire at birth another nationality *jure sanguinis* shall acquire at birth the nationality of the territory where he is born."

G. For the correct interpretation of article I the following should be noted. If a child is born within the territory of a State where the *jus soli* principle applies, the article does not need to be applied because the child has already a nationality. If a person is born in the territory of a country which applies, the *jus soli* to foreign parents nationals of a country where the *jus sanguinis* obtains, the article would not apply because, in that case, the child would have not only

the nationality of the country where he was born but, at the same time, he would have acquired the nationality of his parents, *jure sanguinis*.

H. With regard to this case of double nationality, it must be said that the draft as proposed by the Special Rapporteur is not subject to the criticism that it produces double nationality. In fact, it seems that it would be an error to propose a draft designed to eliminate statelessness, but which would produce double nationality, another evil just as bad, if not worse, than statelessness. On the other hand, one should keep in mind that the task entrusted to the Special Rapporteur was restricted to the formulation of texts that would eliminate statelessness. The prevention of double nationality would be, no doubt, taken up by the Commission in its work with regard to nationality in general.

I. As stated above, this draft is intended only to eliminate completely statelessness at birth, without, nevertheless, producing double nationality. This is indeed the criticism which the Special Rapporteur thinks might be directed against the second paragraph of article I proposed by Mr. Kernó and quoted above.

J. Continuing the analysis and enumeration of those cases in which the proposed article I is or is not applicable, mention can be made of the case of a child born in a *jus sanguinis* country to parents nationals of that country. It is obvious that the child would have already acquired a nationality *jure sanguinis* and the article would not apply, on the other hand, a child born in a *jus sanguinis* country to parents nationals of a country where the strict *jus soli* principle applies would have been born stateless, and this is precisely one of the cases in which, by extending the *jus soli* principle to a *jus sanguinis* country, article I would be applied. A similar situation would arise in the following hypothesis: a child is born in a *jus sanguinis* country to stateless parents or to parents of unknown nationality, or with one parent stateless. In the latter case it would be necessary to differentiate the legitimate from the illegitimate child (see annex, cases under I (1)).

K. The main objection which has been raised against the principle embodied in article I is based on the assumption that a nationality cannot or should not be conferred upon any person who is not in some way linked to the country whose nationality he acquired. The argument assumes that States are reluctant to attribute their nationality to persons regarding whom there is no positive proof that they are connected with the country, or, in other words, identified with the same by education, residence, or any other link which would guarantee that such a person is sentimentally and truthfully attached to the country. If this were true, there is no doubt that in many cases the principle of *jus soli* would not apply. Countries where this principle obtains are not in fact opposed to attribute their nationality to children born within their territory even by accident or to transient parents; and they continue to attribute their nationality to persons who, having been born within its territory, nevertheless live practically all their lives in a different country. Therefore the objection is not a valid one against the theory that,

in order to avoid statelessness, *jus sanguinis* countries should apply the *jus soli* principle in the cases above referred to.

L. Of course there is always the possibility of qualifying by some additional identification, such as residence, declaration of intention, etc., the application of the principle contained in article I, but then, it would be impossible to achieve complete elimination of future statelessness at birth, which is the exclusive and only purpose of this draft Convention. In the draft Convention on the Reduction of Future Statelessness ~~these~~ qualifications, of course, will not only have to be taken into account but made an essential part of the principles therein stated, since the purpose of this second convention would be precisely, by attenuation of the radical application of the principles, to achieve only the reduction of future statelessness.

M. There is no possibility, in order to avoid statelessness, to suggest the extension of the *jus sanguinis* principle to the *jus soli* countries; because the application of the *jus sanguinis* principle eventually would produce statelessness after some generations, and, if the parents were stateless themselves, the application of this principle would undoubtedly produce stateless children forever.

N. Of course, as proposed, article I would not affect existing cases of statelessness, but at least, if approved, not only by this Commission but by the Members of the United Nations to which it will eventually be submitted, it will eliminate statelessness at birth altogether in the future. Therefore, the article is in keeping with the trends of the time, as expressed in resolution 116 D (VI) adopted by the Economic and Social Council on 1 and 2 March 1948. (See above, section III of this comment.)

O. The Special Rapporteur is fully aware that some States to which this problem of statelessness is of great concern because of the large number of refugees which they have received within their boundaries, might not be inclined to accept the proposed rule as the best solution under the circumstances. Being confronted with the dilemma of taking the radical but inhuman action of mass expulsion of those refugees or accepting at least their descendants already born within their territory as nationals, they might adopt the latter alternative; otherwise, if not decided to revert to mass expulsion, these countries will soon find within their territory an increasing number of persons who are stateless aliens in spite of having already been assimilated by a long residence in the country. At any rate, the States which feel that they are not politically in a position to accept the proposal will always have the possibility of abstaining from signing the convention, or they may make reservations to this article. The likelihood that one or more States will feel bound to object to the rule, even on very good and justified grounds, should not, in the opinion of the Special Rapporteur, deter the Commission from adopting it, especially when there is a probability that a substantial number of States will find it acceptable and thus the proposed rule would, to a great extent, solve the problem of statelessness.

P. In fulfilling its duty, as understood by the Special Rapporteur, that is, to propose to the Members of the

United Nations juridical solutions for the absolute elimination of statelessness, this body of experts should not be concerned with the probability or improbability of acceptance of such solutions by these Members. Its recommendations, even if rejected for political reasons, would always have a great influence on the future of international law as well as on domestic legislation, and will contribute to eliminate a great evil which creates so many problems for the States and imposes so much hardship and suffering on innocent human beings.

## ARTICLE II

*For the purpose of article I, a foundling shall be presumed to have been born on the territory of the Party in which it is found, until the contrary is proved.*

### Comment

#### Section I. Existing legislation

- AUSTRIA (1949) Art. 12
- BELGIUM (1932) Art. 1 (2)
- BULGARIA (1948) Art. 2
- COSTA RICA (1950) Art. 1 (4)
- CZECHOSLOVAKIA (1949) par. I (1)
- DENMARK (1950) Art. 1 (2)
- EGYPT (1950) Art. 2 (4)
- FINLAND (1941) Art. 2
- FRANCE (1945) Art. 22
- GERMANY (1913) Sect. 4
- GUATEMALA (C) Art. 6 (1)
- HUNGARY (Dec. 1948) Art. 21 (if foundling is raised in Hungary).
- ICELAND (1935) Art. 1
- ITALY (1912) Art. 1
- MEXICO (1934) Art. 55
- NETHERLANDS (1892) Art. 2 (b)
- NICARAGUA (1950) Art. 18 (3)
- NORWAY (1950) Art. 1 (3)
- PERU (1951) Art. 4
- ROMANIA (1948) Art. 9
- SAAR (1949) Art. 5 (2)
- SWEDEN (1950) Art. 1 (3)
- SYRIA (1951) Art. 3 (b)
- U.S.A. (1952) Section 301 (a) (sets the age of 21 as limit to proof of contrary).
- URUGUAY (Art. 28 of the Civil Register Act of 11 February 1879).
- YUGOSLAVIA (1946) Art. 6 (sets 14 years as limit to proof of other nationality).

#### Section II. International precedents

A. The Harvard draft, in its article 7, refers to foundlings in the following manner:

“ . . . and it shall be presumed that a foundling was born in the territory of the State in which it is first found.”<sup>23</sup>

<sup>23</sup> Harvard Law School, *op. cit.*, p. 14.

This article, of course, is deficient because, in the first place, it contains a *juris et de jure* presumption that the foundling should be considered as having been born in the territory of the State in which he was found, in other words, this article does not admit evidence against the presumption. Practically all legislations which deal with this problem of foundlings, on the contrary, set up a *juris tantum* presumption as article II of this draft proposes. In the second place, the word "first" seems superfluous.

B. The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, deals with the problem of foundlings in its article 14. Its provisions, in principle, are identical with the text proposed by the Special Rapporteur as article II and which may be considered as a codification of national provisions which refer to this question. The Hague convention is worded as follows:

"Article 14. . . .

"A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found."<sup>24</sup>

### Section III. The question before the Commission

A. The text as proposed by the previous Special Rapporteur, Mr. Hudson, was approved without discussion by the Commission at its fourth session (162nd meeting, para. 14).

B. Without the presumption set up in the proposed article, the case of foundlings would constitute the typical case of statelessness. A foundling being, by definition, without known parents and without a known birthplace, happens to be the best example of a case in which neither of the two existing legal systems which confer nationality at birth, the *jus sanguinis* or *jus soli*, can be applied.

C. Notwithstanding this situation, and perhaps because in the case of a foundling the effect of statelessness on a person is more evident, practically all national legislations contain provisions which, by means of the presumption assimilate the foundlings to those persons which have been born in the territory of the State where they are found. This fact has actually placed foundlings in a better situation than other stateless persons, since practically all legislations extend to them the *jus soli* principle.

D. This article by itself, no doubt, does not eliminate any cause of statelessness: it is enough to think of a foundling which was found in the territory of a strict *jus sanguinis* country. By the presumption alone of his having been born in the territory of such a country, he would not acquire a nationality. Nevertheless, when the article is related to the application of article I of the draft convention, it becomes indispensable in order to eliminate the foundling's stateless condition.

E. What happens when it is shown that the foundling was not born in the territory of the State where he was found? Of course, if evidence has been presented

which makes it possible to ascertain that the foundling was born in some other territory, the application of article I of the proposed convention would also be in order.

### ARTICLE III

*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. If its parent is stateless, it shall be deemed to have been born in the country wherein he was actually born.*

#### Comment

#### Section I. Existing legislation

By the laws of the following countries children born in such a country to persons having diplomatic immunity are specifically excluded from acquiring by birth the nationality of that country (the laws often note that the parents should also be aliens):

ARGENTINA (1869) Art. 1 (1).

BRAZIL (1949) Art. 1 (1) (if one parent is an alien and the other a Brazilian, the child gets a later right to opt Art. 2).

CANADA (1950) Sect. 5 (2).

CHILE (C) Art. 5 (1) (Child gets right to opt).

DOMINICAN REPUBLIC (1949) Art. 8 (2) (excludes the "legitimate sons" of foreign diplomatic representatives).

GUATEMALA (C) Art. 6 (2).

HONDURAS (C) Art. 7 (1).

NICARAGUA (1950) Art. 18 (1).

PAKISTAN (1951) Art. 4 (a).

TURKEY (1928) Art. 4 (apparently omitted from amendment of 1929).

UNION OF SOUTH AFRICA (1949) Art. 3 (2) (a).

UNITED KINGDOM (1948) Art. 4 (a).

U.S.A. (C) (born in the U.S. "and subject to the jurisdiction thereof") (1952) Section 301 (a) (1).

#### Section II. International precedents

A. Article 3 of the relevant resolutions adopted by the Institute of International Law in Venice in 1896 says:

"... children of diplomatic agents or of consuls (*missi*) regularly accredited in the country where they are born; these children are deemed to be born in the country of their father."<sup>25</sup>

Article 2 of the draft convention prepared by the Committee of Experts of the League of Nations is drafted as follows:

"The children of persons who enjoy diplomatic privileges and immunities, of consuls who are members of the regular consular service, and, in general, of all persons who exercise official duties in relation to a foreign Government shall be considered to have

<sup>24</sup> League of Nations publication, *V. Legal*, 1930. V. 14 (document C. 351. M. 145. 1930. V), p. 85.

<sup>25</sup> *Annuaire de l'Institut de droit international*, *op. cit.*, p. 131.

been born in the country of which their father is a national. Nevertheless, they shall have the option of claiming the benefit of the law of the country in which they were born, subject to the conditions laid down by the law of their country of origin."<sup>26</sup>

B. Article 12 of the Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted by The Hague Conference of 1930, refers to this question:

"Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities, in the country where the birth occurs."<sup>27</sup>

C. Of the articles quoted above, the first two establish a presumption with regard to the place of birth of the children born to parents enjoying diplomatic immunity, whereas article 12 of The Hague convention only states the effect of extra-territoriality on the nationality of these children, setting aside the application of the law of the country where the child was actually born. This latter article is not, therefore, in the proper sense, a precedent of the proposed article III of the present draft convention.

### Section III. Discussion

A. Mr. Hudson's report did not refer at all to this question. The Commission on its discussions of last year did not take up this matter either. The Special Rapporteur believes, nevertheless, that it is necessary to state here, as a matter of codification, that the precedents mentioned above refer to diplomatic agents who, by virtue of their functions usually have a definite nationality. Therefore the birth of their children in a foreign country never gives rise to statelessness because they are considered as being born in the territory of the State of which the father is a national. If such country applies the *jus sanguinis* rule child will acquire the nationality of that country *jure sanguinis*. If the country applies the *jus soli* rule the child will acquire its nationality by virtue of the *ius soli*.

B. However, the situation is quite different in the case of a person enjoying diplomatic immunity who is stateless. This situation arises only, as far as the Special Rapporteur knows, in the case of a number of officials, in the United Nations and in other international organizations who are stateless and in whose case the requirement of a nationality is not necessary to obtain the said position. Therefore in the case of their children it would be impossible to follow the usual rule of presuming them to have been born in the territory of the State of which his father is a national because, being stateless, he is not a national of any country. Consequently the Special Rapporteur thinks that it is necessary to introduce a special presumption against the usual one above-mentioned so that the child shall be deemed to have been born in the country wherein he was actually born. Thus it would be possible to apply article I and confer to this child a definite nationality.

<sup>26</sup> League of Nations publication, *V. Legal, 1927. V. 1* (document C. 196. M. 70. 1927. V), p. 27.

<sup>27</sup> *Ibid.*, *V. Legal, 1930. V. 14* (document C. 351. M. 145. 1930. V), p. 83.

## ARTICLE IV

### For the purpose of Article I

1. Birth on a private of State vessel or aircraft on the high seas shall be deemed to constitute, if on a vessel, birth in the territory of the Party whose flag it flies, if on an aircraft, within the territory of the Party where the aircraft is registered.

2. Birth on a private vessel or aircraft occurring in the territorial waters or in a port of one of the Parties, shall be deemed to constitute birth in the territory of the said Party. Birth on a private aircraft over the territory of one of the Parties shall also be ruled by the same principle.

3. Birth on a State vessel or aircraft of one of the Parties, in the territorial waters or in a port of another Party, shall be deemed to constitute birth in the territory of the Party to which the State vessel or aircraft belongs. Birth on a State aircraft over the territory of one of the Parties shall also be ruled by the same principle.

### Comment

#### Section I. Existing legislation

A. The following States confer their nationality by reason of birth on a national vessel or aircraft, wherever the vessel or aircraft was located when the birth occurred:

AUSTRALIA (1949) Art. 3 (a).

BRAZIL (1938) Art. 1 (c) (N.B. This is not found in the latest nationality law).

BURMA<sup>†</sup>(1948) Art. 5 (specifically notes too that birth on a foreign ship in a Burmese port is *not* birth in Burma).

CANADA (1950) Arts. 1 (c) and 5 (1).

MEXICO (1934) Art. 1 (3).

PAKISTAN (1951) Art. 22.

UNION OF SOUTH AFRICA (1949) Art. 1 (2) (a).

UNITED KINGDOM (1948) Art. 35 (5).

B. The following State confers its nationality by reason of birth on a national vessel on the high seas:

ARGENTINA (1869) Art. 1 ("neutral seas"; since the law is of 1869 aircraft is of course not mentioned).

C. The following States include warships explicitly in the article:

ARGENTINA, BRAZIL, MEXICO.

#### Section II. International precedents

A. International legislation and arbitration with regard to this specific point of the attribution of nationality to persons born on board ships are really very meagre. The only clear precedent on the subject seems to be Point IX of the Bases of Discussion (Bases 14 and 14 bis) prepared for The Hague Codification Conference of 1930.<sup>28</sup> Point IX dealt with the three problems which our article III tries to solve:

<sup>28</sup> *Ibid.*, *V. Legal, 1929. V. 1* (document C. 73. M. 38. 1929. V), pp. 75-79.

(a) birth on the high seas, (b) birth within the territorial waters of a foreign country, and (c) birth on a vessel in foreign port. Point IX referred only to birth on board a merchant ship and therefore has nothing to do with birth on a State vessel, since this latter question does not seem to raise any problem whatsoever because of the well accepted principle of extraterritoriality of vessels and aircraft belonging to States.

(a) The general opinion of all those countries which replied to the questionnaire presented to them regarding this point, was manifestly inclined to consider that birth on a merchant vessel on the high seas should be considered as birth on the territory of the State whose flag the ship flies. We find nevertheless some countries which do not accept that birth on their own national merchant vessels constitutes birth in their territory. Among these countries we may mention the United States of America, Denmark, Switzerland and all countries where the system of strict *jus sanguinis* obtains. Switzerland, nevertheless, in an effort to avoid statelessness, admitted in its reply to the questionnaire that birth on one of its ships would mean birth in Swiss territory, if without this presumption, the child would become stateless. In this respect the United States seems to be a very striking exception since, notwithstanding the fact that its legislation is based on the *jus soli* principle, according to the decision of the District Court for the Northern District of California, 13 June 1927, in the case of Lam Mow, 19F. (2d) 951, birth on a United States ship on the high seas does not constitute, by itself, birth on the territory of the United States.

(b) With regard to birth on a merchant ship in foreign territorial waters, there is no unanimity. Judging by the answers to the questionnaire of the League of Nations, the following countries may be cited as accepting that, in such cases, the child should have the nationality of the State in whose territorial waters it was born: United States, Italy and Japan. Some other countries, on the contrary, uphold the theory that all civil acts, including births, occurring on a ship must be controlled by the legislation of the country whose flag the ship flies, even if that ship happens to be navigating in foreign waters. This is the case notably of Great Britain and the Dominions, Germany, Belgium and Norway. There are two instances of countries which did not give a definite answer to this question: France stated that "doctrine is divided as regards birth on board a merchant ship in the territorial waters of a foreign State",<sup>29</sup> and the Netherlands stated that "the question of how far events that occur on board foreign merchant ships passing through territorial waters come within the legal jurisdiction of the coastal State requires to be settled from a general standpoint and not in relation to questions of nationality."<sup>30</sup>

(c) Great Britain, as well as the members of the British Commonwealth, were of the opinion that birth on a merchant vessel, even in foreign ports, should be considered as birth in the country whose flag the ship flies. Belgium seems to make a distinction between

the members of the crew and the passengers, extending to the first the fiction that the birth is deemed to be in the territory of the State whose flag the ship flies. And of course all countries of strict *jus sanguinis* also uphold the theory that children of their own nationals born on their ships, even when these are in foreign ports, are their nationals. Several countries, on the other hand, accept, in this case, the application of the legislation of the coastal State with regard to the nationality of the child born in one of its ports. These countries are: United States, France, Italy, Japan and Sweden.

B. From the foregoing analysis there are some conclusions that may be drawn, among them the following: There is no great divergence of opinion with regard to the nationality of a child born on a merchant ship on the high seas; it should have the nationality of the country whose flag the ship flies.

C. With reference to birth on a ship in foreign territorial waters or in a foreign port, the opinion of the Special Rapporteur is that the Committee of Experts of the League of Nations, in framing basis of discussion No. 14,<sup>31</sup> was not justified in adopting a theory which favours the jurisdiction of the State whose flag the ship flies. It seems to the Special Rapporteur that the answers of the governments did not warrant such a conclusion since they were very evenly divided on this point. For this reason, apparently, the Committee of Experts decided to draw up the alternative basis No. 14 *bis*. This latter basis was drafted on the theory that birth on a merchant ship lying in a foreign port should be subjected to the legislation, with regard to nationality, of the coastal State to which the port belongs. As the Members of the Commission already know, bases 14 and 14 *bis* were not discussed at The Hague Conference of 1930 which considered that the question of birth on board ships was of no practical importance.

D. The question might not have a very great practical importance with regard to the question of nationality in general, but, in respect to the specific problem of statelessness, there is no doubt that the Commission should decide to set up a presumption with regard to these births in order to make it possible to apply the general principle set up in article I of the present draft convention. Otherwise statelessness would result, and the aim of the draft convention would not be fully attained.

E. The question of birth on State vessels was not even taken up in the questionnaire of the League of Nations, undoubtedly because, as has already been pointed out, the extra-territoriality granted to these vessels — and we may extend it to aircraft of this nature — is so universally recognized, in theory as well as in practice, that it suffices to mention it in connexion with the problem of birth and nationality in order to reach the conclusion that birth on this kind of vessel or aircraft is, for all practical and juridical purposes, considered as birth on the territory of the State whose flag the ship flies or, in the case of an aircraft, where it is registered.

<sup>29</sup> *Ibid.*, p. 76.

<sup>30</sup> *Ibid.*, p. 78.

<sup>31</sup> *Ibid.*, p. 79.

F. Mr Hudson had originally proposed the following text:

“... and birth on a national vessel shall be deemed to constitute birth in the national territory.” (A/CN. 4/50, Annex III, Section VI, point 14.)

G. As proposed by Mr. Hudson, the text is too wide in scope to command its acceptance by many governments. As drafted by him, it seems to grant the nationality of the flag of the ship to persons born on it not only on the high seas but also in the territorial waters and in the ports of other States. This rule is not, it seems, in harmony with the general principles of international law which should govern the situation.

H. At the fourth session, there was at least one member of the Commission (Mr. Spiropoulos) who thought that the question should not be taken up by it. He observed that there was no need to regulate such details, nor was the Commission's task to “emulate the normal role of the courts” (162nd meeting, para. 19). The Special Rapporteur is unable to agree with this idea, as he has already stated. As in the case of foundlings, it is absolutely indispensable to have a presumption in cases of births on ships on the high seas, in territorial waters and in ports. Unless a definite presumption is established article I of the proposed convention cannot be applied in these cases and all causes of statelessness will not be eliminated. One should not forget that the application of article I is the only means of avoiding statelessness at birth completely. Therefore the Special Rapporteur feels bound to suggest the three presumptions set forth in the text which he proposes for article IV. Moreover, the decision of the Commission on this point was that the Special Rapporteur should study the question and suggest whatever formula he would think best (*ibid.*, para. 26). Relying on these instructions the Special Rapporteur has tried to find the solution which is most likely to be accepted by the greatest number of States and which, in his opinion, is most in consonance with the general principles of international law.

I. The first presumption refers to birth on the high seas, on board a State or merchant ship or aircraft. As the high seas belong to no particular State, but to all of them jointly, no country may assert exclusive jurisdiction over them, but it has been generally recognized that a country may assert such jurisdiction over its own ships, either State or merchant, when these are navigating on the high seas. This recognition facilitates the acceptance, by a large number of States, of the principle set forth in paragraph 1 of article IV.

J. The question of a sufficient link between the person born on a ship and the country whose flag the ship flies, which also comes up in connexion with this presumption, has already been discussed in dealing with the principle set forth in article I and there is no need to reproduce again the arguments advanced.

K. With regard to birth on a merchant ship navigating in foreign territorial waters or lying in a foreign port, we have seen that national legislations as well as doctrine are divided on this point, but, as far as the Special Rapporteur is concerned, there is no question in his mind that the best juridical solution would be to give exclusive jurisdiction to the coastal State, and,

therefore, to consider birth in these circumstances as birth in the territory of the said coastal State.

L. The Special Rapporteur considers that the question should be solved by the application of the general principles of international law regarding the jurisdiction of States in the air above their territory, in their ports, and in their territorial waters. Obviously, the principle generally accepted is that the State has absolute and exclusive jurisdiction over such spaces of air, earth and water. The Special Rapporteur has also had in mind that the only exception introduced to this accepted rule is the one known as extra-territoriality which applies only to the residence of diplomatic officers, the legation's buildings, and the State vessels or aircraft. Consequently, the inescapable conclusion is that birth occurring in the air above the territory of a State, in the ports and in the territorial waters of such State, must be juridically considered as birth within the territory of the said State. The right of innocent passage in territorial waters, which is also an exception to the general rule of the complete jurisdiction of the coastal State, does not go as far as making it possible to consider that the ship is navigating on the high seas, as the ship is during its passage always subjected to the coastal State's legislation with regard to defence, fiscal, civil and criminal acts.

M. The combined application of the first four articles of the proposed convention would entirely solve the problem of statelessness at birth.

#### ARTICLE V

1. *If the law of the Contracting Party whose nationality is possessed by a person recognizes that such nationality is lost as a consequence of a change in the person's personal status (marriage, termination of marriage, legitimation, recognition, adoption), such loss shall be conditional upon the acquisition of the nationality of another State in consequence of the change of personal status.*

2. *The change or loss of the nationality of a spouse or of a parent shall not entail the loss of such nationality either by the other spouse or by the minor children, unless they acquire another nationality.*

3. *No renunciation of nationality by a person shall be effective unless such person, at the time of the renunciation, acquires another nationality.*

4. *Persons seeking naturalization in a foreign country shall not lose their nationality until they have acquired another.*

#### Comment

##### Section I. Existing legislation

The treatment by States of this question appears as follows:

A. *Effect of marriage (and its dissolution) on the nationality of the spouse:*

1. *No effect:\**

\* According to Mr. Yepes (see summary record of the 213th meeting, para. 103), Colombia should be added to this list.

AUSTRALIA (1949) Art. 18 (1).  
 BULGARIA (1948) Art. 4.  
 BURMA (1948) Art. 10.  
 CANADA (1950) Sect. 10 (3).  
 CUBA (C) Art. 16.  
 ECUADOR (C).  
 HONDURAS (C) Art. 9.  
 MEXICO (18 Dec. 1939) Arts. 2 (II), 4.  
 NICARAGUA (1950) Art. 20.  
 U.S.A.  
 UNION OF SOUTH AFRICA (1949), Art. 12.  
 U.S.S.R. (1938) Art. 5 (since 15 February 1947, it has been forbidden to wed an alien).  
 VENEZUELA (1941) Art. 7.

### 2. *Alien wife receives nationality of husband:*

AUSTRIA (1949) Art. 4.  
 BELGIUM (1932) Art. 4.  
 CHINA (1929) Art. 2 (1) unless she kept own nationality.  
 COSTA RICA (1950) Art. 2: if she loses other nationality.  
 FINLAND (1941) Art. 3.  
 FRANCE (1945) Art. 37.  
 GERMANY (1913) Art. 6.  
 GUATEMALA (C) Art. 8 (4) — if she so chooses.  
 HUNGARY (Dec. 1948) Art. 3.  
 ICELAND (1935) Art. 3.  
 IRAN (1934) See E/2164/Add.21.  
 ITALY (1912) Art. 10.  
 LEBANON (1925) Art. 5.  
 NETHERLANDS (1892) Art. 5.  
 PERU (C) Art. 6.  
 ROMANIA (1948) Art. 13.  
 SAAR (1949) Arts. 1 (1) (d), 8.  
 SYRIA (1951) Art. 9 (only if she is of Arabic origin).  
 TURKEY (1928) Art. 13.

### 3. *Loss of nationality by national wife on marrying alien:*

BELGIUM (1932) Art. 18 (2) (3): only if she gets other nationality (can keep if she so declares).  
 COSTA RICA (1950) Art. 2: only if she gets other nationality.  
 CZECHOSLOVAKIA (1949) Par. 5: only if she gets his nationality.  
 EGYPT (1950) Art. 13: only if she so desires and obtains other nationality.  
 GERMANY (1913) Art. 6 (Cf. Bonn Constitution preventing loss against will).  
 HUNGARY (Dec. 1948) Art. 12.  
 ITALY (1912) Art. 10: if she gets other nationality.  
 LEBANON (1925) Art. 6: only if she gets other nationality.  
 MONACO (1945) Art. 1: only if she desires to acquire husband's nationality and can do so.

NETHERLANDS (1892) Art. 7 (2).  
 SAAR (1949) Art. 12 (5): unless she desires to keep her nationality.  
 SWITZERLAND (1941) Art. 5 (1): unless made stateless.  
 SYRIA (1951) Art. 13: if she gets other nationality.  
 4. *Naturalization of alien spouse speeded and/or recovery of nationality simplified for national who has lost it.*

AUSTRALIA (1949) Art. 18 (1).  
 BELGIUM (31 Dec. 1951); see also (1932) Art. 15.  
 CZECHOSLOVAKIA (1949) Par. 2 (1).  
 EGYPT (50) Art. 9.  
 FRANCE (1945) Art. 64 (4).  
 ISRAEL (1952) Art. 7.  
 LEBANON (1925) Art. 3 (2).  
 MONACO (1911) Art. 10 (2).  
 NETHERLANDS (1892) Art. 7 (2).  
 NICARAGUA (1950) Art. 19 (3).  
 UNION OF SOUTH AFRICA (1949) Art. 10 (6).  
 U.K. (1948) Art. 6 (2).

### B. *Effect of legitimation and recognition*

#### 1. *Legitimated child is treated as if born legitimate:*

AUSTRALIA (1949) Art. 34.  
 BURMA (1948) Art. 5, Expl. III.  
 CANADA (1950) Art. 11 (2) (b).  
 DENMARK (1950) Art. 2.  
 GERMANY (1913) Art. 5.  
 U.K. (1948) Art. 23 (1).

#### 2. *The legitimated child receives the father's nationality:*

AUSTRIA (1949) Art. 3.  
 CHINA (1929) Art. 2 (2) (or nationality of mother if father unknown or has not recognized).  
 COSTA RICA (1950) Art. 7.  
 FINLAND (1941) Art. 3.  
 HUNGARY (1948) Art. 2 (1) (b).  
 ICELAND (1935) Art. 3.  
 ITALY (1913) Art. 2.  
 NORWAY (1950) Art. 2.  
 SAAR (1949) Art. 7.  
 SWEDEN (1950) Art. 2.

#### 3. *The legitimated child receives nationality of parent to whom filiation was first established:*

BELGIUM (1932) Arts. 2, 3.  
 FRANCE (1945) Art. 34.  
 LEBANON (1925) Art. 2.  
 SYRIA (1951) Art. 2.

#### 4. *All such effects involve a potential loss of nationality. The following countries make specific reference to the loss:*

CHINA (1929) Art. 10 (2, 3): loss on recognition by alien.

COSTA RICA (1950) Art. 7: A child losing nationality through recognition can recover it by declaration before age 25.

DENMARK (1950) Art. 2: Nationality is lost only if the child leaves Denmark before age of 18 *and another nationality* is acquired.

FRANCE (1945) Art. 92: loss *unless* has no other nationality.

HUNGARY (1948) Art. 13 (1): loss if father's nationality acquired.

SAAR (1949) Art. 12 (4): loss referred to if father alien.

GERMANY (1913) Art. 5: loss specifically referred to — Cf. Bonn Constitution, Art. 19, however, which prevents loss if person made stateless.

### C. Effect of adoption

#### 1. No effect:

AUSTRIA (1949) Art. 11.

MEXICO (1934) Art. 43.

ROMANIA (1948) Art. 8.

#### 2. No effect but naturalization eased:

CANADA (1950) Art. 11 (2) (1).

U.S.A. (1952) Section 323.

YUGOELAVIA (1946) Art. 9.

#### 3. Person adopted acquires nationality of person who adopts (loss possible):

The BURMESE law of 1948 states in Art. 2 that "child" includes a "legally adopted child".

CHINA (1929) Art. 2 (4): an adopted *son* is given Chinese nationality.

FRANCE (1945) Art. 35: adoption by French male gives French nationality. Adoption by French female however does not give nationality (Art. 36) but the child can claim French nationality at majority if it resides in France (Art. 55).

JAPAN: Law of 1950 provides that an "adopted child" is *not* the equivalent of a "child" (Arts. 5, 6).

SAAR (1949) Art. 7 (Loss — see Art. 12 (4)).

U.K. adoption by citizen gives his nationality to minor (160 Adoption and Child Act, 1950 — see E/2164/Add.5).<sup>22</sup>

### D. Effect of naturalization of parent on nationality of child:

In the following countries, minor children are naturalized when the father (responsible parent) is, with the exceptions noted:

AUSTRIA (1949) Art. 5 (7) — legitimate with father, illegitimate with mother only if the conferment of nationality is expressly extended to that child.

AUSTRALIA (1949) Art. 15 (4, 5) — must make application.

BELGIUM (1932) Art. 5 — can renounce at majority if has other nationality.

BULGARIA (1948) Art. 5 (over 14, must consent).

BURMA (1948) Art. 9 (can opt out by majority plus one year).

CHINA (1929) Art. 8.

COLOMBIA (1888) Art. 17.

COSTA RICA (1950) Art. 4 — if domiciled in — can renounce at 21.

CANADA (1950) Art. 10 (5)

CZECHOSLOVAKIA (1949) Par. 3 (3) mother or father, under 15.

DENMARK (1950).

ECUADOR (C) if under 18.

EGYPT (1950) Art. 8 — unless resides abroad and law there keeps father's old nationality — can opt on majority.

FINLAND (1941) Art. 8 — living there.

FRANCE (1945) Art. 64 — naturalized without conditions.

GERMANY (1913) Art. 16: if noted in certificate.

GREECE (1940) Art. IV — if born abroad, can opt within one month of majority.

HUNGARY (1948) Art. 8 (2).

ICELAND (1935) Arts. 2, 4.

ISRAEL (1952) Art. 8.

ITALY (12) Art. 12 (unless resides abroad and keeps old nationality).

LEBANON (1925) can decline within one year of majority.

MEXICO (18 Dec. 1939) Art. 43 — if resides in, can opt within 1 year of majority.

MONACO (1945) Art. 10 (3) — opt within 1 year of majority.

NETHERLANDS (1892) Art. 6 — can opt out on majority.

NORWAY (1950) Art. 5 — In some cases, authority must agree.

PAKISTAN (1951) Art. 11 (1).

SAAR (1949) Arts. 1 (6) and 11 (2).

SWEDEN (1950) Art. 5.

SYRIA (1915) Art. 8 — can opt within 1 year of majority.

U.S.A. (1952) Section 321 (a).

U.S.S.R. (1948) Art. 6 — if both parents are naturalized.

VENEZUELA (1941) Art. 7 (1).

YUGOSLAVIA (1946) Art. 23 — if both parents, or one of them, and child lives in Yugoslavia and it is requested.

Specifically *not* given: BRAZIL (1949).

### E. In the following countries, loss of nationality by the father (responsible parent) has the indicated effect on the children:

#### 1. No effect:

BULGARIA (1948) Art. 9.

BURMA (1948) Art. 14.

COSTA RICA (1950) Art. 3.

CZECHOSLOVAKIA (1949) Par. 8 (cf. however, Par 6 (2) where, on renunciation by parents, while under 15 may lose nationality with the mother or father).

MEXICO (1939) Art. 3 (IV).

<sup>22</sup> This adoption law is set forth in the reply to a request for information made by the Secretary-General. Many similar provisions may exist in laws other than those dealing with nationality of other nations but a detailed study would be needed to uncover them.

2. Loss of nationality only if other nationality held or obtained:

AUSTRALIA (1949) Art. 23.

AUSTRIA (1949) Arts. 8 (4), 9 (2).

BELGIUM (1932) Art. 18 (4).

CANADA (1950) Sect. 20.

DENMARK (1950) Art. 7.<sup>33</sup>

EGYPT (1950) Art. 12.

FRANCE (1945) Art. 96 (Art. 100: under any circumstances, child can only lose its nationality if mother does so too).

ITALY (1912) Art. 12.

NETHERLANDS (1892) Art. 7 (1).

NORWAY (1950) Art. 7.<sup>33</sup>

SAAR (1949) Art. 18 (3) — It appears however that under Art. 17 (3) a child of a naturalized father may lose nationality if the father *and* mother do.

SWEDEN (1950) Art. 7.<sup>33</sup>

SYRIA (1951) Art. 12 (3).

U.S.A. (1952) Section 340 (e). It appears however that under Section 340 (f) a child may lose its nationality if naturalized through father's naturalization and that was obtained through actual fraud.

COSTA RICA (1950) Art. 7 — expressly provides that a child losing nationality through the act of a parent can, between ages 21 and 25, declare himself Costa Rican if he resides there and is considered a national by birth.

(Recovery of nationality is simplified in many of the above listed countries too, e.g., AUSTRALIA, AUSTRIA (Art. 10), BELGIUM (Article 19), NETHERLANDS, TURKEY)

3. Possible loss regardless of consequence:

GERMANY (1913) Art. 29 — but Cf. Bonn Constitution preventing loss against will.

GREECE (1940) Art. VI (1) (d).

HUNGARY (May 1948) Art. 1 (4). (Dec. 1948) Art. 17 (1) (2).

ICELAND (1935) Art. 6.

ISRAEL (1952) Art. 10 (b) — if both parents renounce nationality. Art. 11 (b) — if naturalized parent loses nationality and child acquired new nationality through him and is domiciled abroad.

POLAND (1951) Arts. 11 (2, 3), 12 (2).

UNION OF SOUTH AFRICA (1949).

SWITZERLAND (1941) Art. 2 (1).

TURKEY (1928) Art. 14.

U.S.S.R. (1938) Art. 6.

YUGOSLAVIA (1946) Arts. 18, 21 (keeps nationality until leaving the territory if no new nationality obtained when parents do).

F. *Effect on gain or loss of nationality of husband or wife*

1. Wife obtains nationality if husband does:

AUSTRIA (1949) Art. 5 (7).

CHINA (1929) Art. 8 — unless own law prevents.

COLOMBIA (1888) Art. 17.

EGYPT (1950) Art. 8 (unless requests keeping of old nationality).

GERMANY (1913) Art. 16 — if noted in certificate.

GREECE (1940) Art. 1.

HUNGARY (Dec. 1948) Art. 8 (1) if she asks for it.

ICELAND (1935) Art. 4.

ITALY (1912) Art. 11.

MEXICO (18 Dec. 1939) Art. 20.

NETHERLANDS (1892) Art. 5.

PAKISTAN (1951) Art. 10.

SAAR (1949) Art. 11 (2).

2. Wife loses or can be deprived of nationality if husband loses or is deprived thereof:

AUSTRIA (1949) Art. 9 (2) (Cf. if she receives other nationality).

FINLAND (1941) Arts. 10, 11: only if she has other nationality.

FRANCE (1945) Arts. 96, 100: only if she has other nationality.

GERMANY (1913) Art. 29 (Cf. Bonn Constitution preventing loss of nationality against will).

GREECE (1940) Art. VI (1) (d) if naturalized.

HUNGARY (May 1948) Art. I (4), also (Dec. 1948) Art. 17 (1) (2).

ICELAND (1935) Art. 6.

ITALY (1912) Art. 11 if she gets his new nationality.

SAAR (1949) Art. 17 (3), Art. 18 (3) (if naturalized and has other nationality).

SWITZERLAND (1941) Art. 2 (1).

YUGOSLAVIA (1946) Art. 18.

No loss noted:

BULGARIA (1948) Art. 9.

COSTA RICA (1950) Art. 3.

CZECHOSLOVAKIA (1949) Par. 8.

MEXICO (18 Dec. 1939) Art. 3 (IV).

## Section II. International precedents

A. The Dudgey Field Code sets forth the following rule:

“ 267. — Expatriation does not change the national character of the person until completed by naturalization, but meantime he is entitled to be protected by the country whose naturalization he is seeking.”<sup>34</sup>

The Institute of International Law, at Venice in 1896, proposed the following:

“ No one can lose his nationality or renounce it unless he shows that he has fulfilled the conditions required to obtain his admission into another State . . . ”<sup>35</sup>

<sup>33</sup> Under Art. 8 of the law of each country, a child born abroad of a citizen born abroad loses nationality at age 22 if never resident, etc., in the country.

<sup>34</sup> Dudley Field, *Outlines of an International Code*, 2nd ed., (New York, 1816).

<sup>35</sup> Institut de droit international, *Tableau Général des Résolutions* (Bâle, 1957), pp. 42-43.

B. The International Law Association expressed the same idea when it stated, at Stockholm in 1924, that:

"... 5. Nationality should only be lost as the effect of the acquisition of another nationality."<sup>36</sup>

C. The Committee of Experts of the League of Nations, in its draft of a convention included the same principle in its article 7, but only with regard to naturalization:

"A release from allegiance (permit of expatriation) shall produce loss of the original nationality only at the moment when naturalization is actually obtained in one of the Contracting States. Such release shall become null and void if the naturalization is not actually granted within a period to be determined."<sup>37</sup>

D. The Draft Rules prepared by the Kokusaiho-Gakkwai (L'Association de Droit International du Japon) in 1926 contained also an interesting rule on this matter:

"Article 8. No one may lose or renounce his nationality without acquiring another."

E. The Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted by The Hague Codification Conference in 1930, also contains provisions which make the loss of nationality by married women and by adopted children conditional on the acquisition of another nationality.

"Article 7. In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality, or unless and until he acquires another nationality . . ."

"Article 8. If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring of the nationality of the husband."

"Article 9. If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality."

"Article 16. If the law of the State whose nationality an illegitimate child possesses, recognizes that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of such State relating to the effect upon nationality of changes in civil status."

"Article 17. If the law of a State recognizes that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality."<sup>38</sup>

<sup>36</sup> International Law Association, *op. cit.*, p. 32.

<sup>37</sup> League of Nations publication, *V. Legal, 1927. V. 1* (document C. 196. M. 70. 1927. V), p. 27.

<sup>38</sup> See text in *A Study of Statelessness, op. cit.*, pp. 173-174.

(League of Nations document C. 351. M. 145. 1930. V., pages 83 and 85).

F. The above-mentioned articles are limited in scope in so far as they refer only to two specific cases (the loss of nationality by married women and by adopted children), whereas the proposed text of paragraph 1 of article V is drafted in such a manner as to cover all possible cases of loss of nationality by change in the person's personal status. (See annex, 1 (2) A, 1 and 3, B and C.)

The Convention on Nationality signed at Montevideo in 1933 provides that:

"Article 6. Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children."<sup>39</sup>

G. With regard to this text, *A Study of Statelessness* correctly points out that:

"As long as the rule set out in article 6 is not universally adopted and as long as some legislations continue officially to deprive a woman married to a foreigner of her nationality, the formula will in certain cases have a purely negative effect by refusing the husband's nationality to the wife and will thus leave her without nationality."<sup>40</sup>

H. The draft prepared by the Harvard Research in International Law also contains a provision the aim of which is to prevent the loss of nationality by married women:

"Article 19. A woman who marries an alien shall, in the absence of a contrary election on her part, retain the nationality which she possessed before marriage, unless she becomes a national of the State of which her husband is a national and establishes or maintains a residence of a permanent character in the territory of that State."<sup>41</sup>

I. This article is also limited in scope and fails to cover the whole field of loss of nationality by the change of personal status.

J. The Inter-American Juridical Committee has also proposed rules on the subject, in its draft Convention on Nationality and Statelessness:

"Article 16. Adoption does not affect the nationality of the person adopted. The law of the country in which the adoption takes place may establish special provisions to facilitate the naturalization of adopted persons, especially in the case of minors."

"Article 18. Neither matrimony nor its dissolution affects the nationality of husband or wife or of their children. If the husband acquires during the marriage a foreign nationality in a country neither signing nor adhering to this convention and its laws impose the change of nationality by marriage, the woman has the right to preserve her original nationality."<sup>42</sup>

<sup>39</sup> See text in Manley O Hudson, *International Legislation*, vol. 6, p. 596.

<sup>40</sup> *A Study of Statelessness, op. cit.*, p. 149.

<sup>41</sup> Harvard Law School, *op. cit.*, p. 16.

<sup>42</sup> Inter-American Juridical Committee, *Report and Draft Convention on Nationality and Status of Stateless Persons* (1952), pp. 17-18.

*Section III. The question before the organs of the United Nations and the Commission*

A. This article may be considered as a corollary to article 15 (1) of the Universal Declaration of Human Rights, and of article I proposed above, both of which aim at securing a nationality for everyone. Consequently, it is obvious that the draft convention should contain a provision to the effect that a nationality, once it is obtained, will not be lost unless some other nationality is acquired.

B. The proposed article V follows closely the recommendations submitted by the Secretary-General to the Economic and Social Council, to the effect that:

“No person throughout his life should lose his nationality until he has acquired a new one.”<sup>43</sup>

C. The four paragraphs of article V avoid statelessness entirely when it might be incurred after birth.

D. Paragraph 1 deals with the change of nationality due to a change in the personal status of the person himself, while in paragraph 2 it is a matter of change of nationality due to the change of somebody else's change of nationality. The Special Rapporteur considers it to be wise to deal with these two situations separately. He therefore did not accept the suggestion made in the Commission at its fourth session (162nd meeting, para. 36) to include in the same rule the change of a “person's personal status” and the change in the “personal status of one of the parents”. The question might be clarified by an example: a person A is legitimated and therefore he changes his own personal status; he should follow the nationality of the father who legitimates him, but, according to the rule, A will not lose his previous nationality if according to the law of his father's country he does not acquire the latter's nationality. Let us suppose now that minor A is an illegitimate son, and he has in turn a child B; A is legitimated by his father, A therefore changes his nationality (under paragraph 1 of proposed article V) because of his change in his personal status, but although the child B does not change his personal status, nevertheless, the change of nationality of his father A affects his own nationality, according to some legislations. This situation is envisaged in paragraph 2 and not in paragraph 1 of article V.

E. There is a question which was not taken up by the Commission but which nevertheless has not only a theoretical value, but also a practical one. Renunciation of a nationality may occur without connexion with any application for another nationality. This situation, which in fact has happened, will produce statelessness. This kind of renunciation is precisely aimed at producing that effect, because a person may wish to become a so-called “citizen of the world”. The Special Rapporteur believes that this practice should not be allowed and therefore suggests the adoption of paragraph 3 of this article.

F. The last consideration relating to this article that seems worthwhile mentioning here is the following: according to the instructions received from the Commis-

sion, the Special Rapporteur should formulate a rule following the principle set forth in Article 7 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.<sup>44</sup> He has done so in suggesting paragraph 4 of the proposed article V. The Special Rapporteur considers that it would be wise to extend this principle of not losing the previous nationality, not only to cases where the permit of expatriation has been granted and the new nationality has not as yet been conferred, but also to cases where naturalization proceedings have been instituted but not yet completed. In this hypothesis, which is very similar to the one dealt with in article 7 of the said Hague convention, the previous nationality should not be lost until the new one is actually acquired.

G. The Special Rapporteur also thought it convenient to retain from article 7 of The Hague convention the idea that this principle should not apply in the case of an individual who, when he receives the expatriation permit or pending naturalization proceedings, already possesses a nationality other than that of the State of which he is a subject. This is the reason why paragraph 4, as suggested, includes the words “until they have acquired *another* (nationality)”.

#### ARTICLE VI

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

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

#### Comment

##### *Section I. Existing legislation*<sup>45</sup>

A. Countries where statelessness cannot occur as a result of withdrawal of the country's nationality:<sup>46</sup> a

(i) *Group I.* Country the nationality of which cannot be withdrawn: URUGUAY.

(ii) *Group II.* Country in which the withdrawal of the country's nationality is subject to the possession or acquisition by the person concerned of a foreign nationality: SWITZERLAND.

In reply to a questionnaire circulated by the Secretary-General, also CEYLON has stated that statelessness does not result from the operation of the country's nationality laws.

B. Countries where statelessness may result in some cases from the withdrawal of the country's nationality.

(i) *Group III.* Countries in which the country's nationality may be withdrawn solely, or generally, from such persons which have acquired it otherwise than at birth:

<sup>44</sup> *Ibid.*, p. 172.

<sup>45</sup> This section is based upon chapter VI of the consolidated report by the Secretary-General entitled “The Problem of Statelessness” (E/2230, A/CN.4/56, p. 203). Mr. Kernó's special paper on the subject was issued as document A/CN.4/66.

<sup>46a</sup> According to Mr. Yepes (see summary record of the 214th meeting, para. 10) Colombia should be added to this list.

<sup>43</sup> *A Study of Statelessness, op. cit.*, p. 170.

(a) In the following countries only persons having acquired the country's nationality otherwise than at birth may have it withdrawn:

1. AUSTRALIA
2. BURMA
3. ECUADOR
4. IRELAND
5. ISRAEL
6. NEW ZEALAND
7. UNITED KINGDOM AND COLONIES

Country in which the country's nationality cannot be lost by a person having acquired it at birth through a unilateral act of the government: DENMARK.

(b) In the following countries in most cases only persons having acquired the country's nationality otherwise than at birth may have their nationality withdrawn; however, in some cases nationality of other classes of nationals may also be withdrawn:

1. FRANCE
2. PAKISTAN
3. SOUTH AFRICA
4. UNITED STATES OF AMERICA

(ii) *Group IV.* Countries in which in certain cases nationality may be withdrawn from all classes of nationals and in other cases form particular classes of nationals only:

1. BELGIUM
2. TURKEY
3. YUGOSLAVIA

Countries in which under certain conditions nationality may be withdrawn from nationals born abroad and not having resided in the country till the age of twenty-two.

1. DENMARK
2. NORWAY
3. SWEDEN

## Section II. International precedents

A. Institute of International Law, Venice, 1896:

"Article 6. No one can lose his nationality or renounce it unless he shows that he has fulfilled the conditions required to obtain his admission into another State. Denationalization can never be imposed as a penalty."<sup>46</sup>

B. The International Law Association in resolutions regarding expatriation, adopted in 1924:

"2. A national should not be deprived, by administrative or judicial order, of his nationality, whether original or acquired."

"5. Nationality should only be lost as the effect of the acquisition of another nationality."<sup>47</sup>

## Section III. The question before the Commission

A. From the outset, the Special Rapporteur feels bound to make a statement. This proposed convention

being aimed at the absolute elimination of future statelessness will have to deal only with those principles, to be accepted by the States, which will attain this object. In other words, the Special Rapporteur, in proposing the articles of this convention is bound to draft them in such a drastic way that they should not allow any possibility of statelessness to subsist once they are applied. Therefore, the principle referring to the State's power to deprive any of its subjects of its nationality, should be a radical prohibition of such a right. Otherwise statelessness would necessarily continue to exist and the object of the convention itself would not be fulfilled.

B. The members of the Commission will have occasion to deal with the attenuation of this principle when discussing the second draft convention, wherein the Special Rapporteur, following the Commission's precise instructions, will try to analyse, as exhaustively as possible, all the grounds on which the deprivation of nationality may be accepted as exception to the general rule which is the only one that can be made a part of this first draft convention.

C. In drafting this article, the Special Rapporteur has found it necessary to express the general rule with reference to two different applications: deprivation as a penalty and deprivation based on any other grounds which may not be considered as penalty. With regard to the first case, he has formulated a rule which is more drastic. The prohibition is absolute: no State shall deprive any person of its nationality, by way of penalty, even if such person, at the time of deprivation, has another nationality. It would be not only unreasonable but in fact impossible to expect a State not to impose a penalty, for the simple reason that the culprit does not have and is not able to acquire another nationality.

D. In all other cases of deprivation the Special Rapporteur has followed the suggestions made by several members of the Commission at its fourth session (163rd meeting, paras. 2 *et seq.*) who would permit deprivation in cases where the person has another nationality or has acquired a new one. Neither in this latter hypothesis nor in the first one would the application of the rule stated in this article result in statelessness.

E. The Commission, of course, will have to decide either in favour or against the rule as stated, that is allowing no exceptions but that of the person having another nationality or acquiring a new one, but the Special Rapporteur feels it his duty to state that if the members of the Commission reject this principle, they might as well reject the whole draft convention because if they leave the possibility of statelessness open in this article of the draft convention, every effort made in the other articles to attain the elimination of statelessness becomes entirely useless. The application of article 1, for instance, although drying up all sources of statelessness at birth, would be utterly insufficient to eliminate statelessness if, on the other hand, the Commission would accept the survival of this inhuman and very absurd situation by rejecting the principle that no State shall deprive a person of its nationality, unless, in so doing, it does not produce statelessness. In other words, the Commission should

<sup>46</sup> *Annuaire de l'Institut de droit international, op. cit.*, p. 131.

<sup>47</sup> *International Law Association, op. cit.*, p. 32.

bear in mind the very important and fundamental fact that we are dealing here with a draft designed to eliminate future statelessness.

F. On the other hand, as it was said in the Commission at its fourth session (163rd meeting, para. 38), nationality cannot be understood only in the sense of a right exercised by the State; to a great extent, nationality is also an obligation imposed upon the States. From the point of view of the individual, nationality is not only a right, but also it partakes of the nature of a duty of the said individual. In that sense the Special Rapporteur is frankly opposed to the theory that assimilates the State to a private association which has the possibility of expelling one of its members.

G. If international order is to be assured, the law of the States has to recognize not only rights of the individual members of the community of nations, but it also has to impose duties upon them. And one of those duties is certainly not to exercise its own rights in a way detrimental to the international community by creating statelessness, especially when the State, in fulfilling its individual aims, has the opportunity to resort to some other action which will not create statelessness. Let us take for instance the case of deprivation of nationality of a person who has served in the armed forces of another State. If this latter State attributes its nationality to foreigners who serve in its armed forces, there would not be the slightest objection to admitting that the State of the previous nationality of such a person can deprive him of the rights and duties which constitute the link between him and the State. In the same example, if the State where the person served in the armed forces does not grant its nationality to him, the State to which this person was originally linked by the bonds of nationality, even if not allowed to deprive him of its nationality, will certainly have some other means of punishing him if his services have been rendered to the detriment of his country. If the services were to the detriment of his own country, certainly the deprivation of nationality would be a very slight penalty.

H. In fact, the national legislations known to the Special Rapporteur never impose the loss of nationality. This so-called penalty has in all of those legislations only a symbolic character because it deprives the culprit of the rights derived from the nationality which he has already abandoned. In this case the deprivation of nationality would only mean his release from his obligations toward the State, which in fact would mean a benefit to the culprit and not a penalty.

#### ARTICLE VII

*1. The State to which a territory is transferred shall confer its nationality on the persons inhabiting the said territory, subject to their option to retain the nationality of the transferring State, if the latter continues to exist.*

*2. If the transferring State continues to exist, no person inhabiting the transferred territory shall lose his nationality as a consequence of the transfer, unless he acquires the nationality of another State.*

#### Comment

##### Section I. Existing legislation

PAKISTAN: "If any territory becomes a part of Pakistan the Governor-General may by order specify the persons who shall be citizens of Pakistan by reason of their connexion with that territory: and those persons shall be citizens of Pakistan from such date and upon such conditions, if any, as may be specified in the order." (See E/2164/Add. 6, annex, p. 7.)

UNITED KINGDOM (1948) Art. 11: "If any territory becomes a part of the United Kingdom and Colonies, his Majesty may by Order in Council specify the persons who shall be citizens of the United Kingdom and Colonies by reason of their connexion with that territory; and those persons shall be citizens of the United Kingdom and Colonies as from a date to be specified in the Order." (see E/2164/Add. 5, Annex 1.)

##### Section II. International precedents

A. The Montevideo Convention on Nationality of 26 December 1933, ratified by ARGENTINA, BRAZIL, COLOMBIA, COSTA RICA, CHILE, EL SALVADOR, HONDURAS, NICARAGUA, PANAMA, U.S.A. provides in its article 4 that in case of the transfer of territory from one signatory to another, the transferred inhabitants will not be considered as nationals of the State to which they are transferred, unless they expressly opt to change their original nationality.<sup>48</sup>

B. The Harvard draft deals with this problem in its article 18, which states:

"(a) When the entire territory of a State is acquired by another State, those persons who were nationals of the first State become nationals of the successor State, unless in accordance with the provisions of its law they decline the nationality of the successor State.

"(b) When a part of the territory of a State is acquired by another State or becomes the territory of a new State, the nationals of the first State who continue their habitual residence in such territory lose the nationality of that State and become nationals of the successor State, in the absence of treaty provisions to the contrary, unless in accordance with the law of the successor State they decline the nationality thereof."<sup>49</sup>

##### Section III. The question before the Commission

A. Mr. Hudson in his excellent draft on this subject stated clearly the rules that should be embodied in the proposed article VII (A/CN. 4/50, annex III, section VI, point 19). The present Special Rapporteur is of opinion that the parties to the convention should be bound not to make contrary arrangements in a treaty providing for transfer of territory, and he is very much against leaving freedom to the States to decide whatever they might deem convenient with regard to the nationality of the inhabitants of the transferred territory, because in that case, statelessness is bound to result from such freedom of the parties.

<sup>48</sup> See Manley O. Hudson, *op. cit.*, pp. 595-596.

<sup>49</sup> Harvard Law School, *op. cit.*, p. 15.

B. With regard to the Harvard draft, it is possible to improve its wording. Its article 18 was not intended specially to avoid statelessness and that is why, no doubt, the authors stated the rule giving to the nationals of the predecessor State who inhabit the ceded territory the right to decline the nationality of the successor State without making it mandatory for the predecessor State to continue granting them its nationality.

C. Paragraph 2, as proposed by Mr. Hudson, endeavours to correct this deficiency by making it mandatory for the transferring State to maintain the nationality of persons inhabiting the transferred territory, unless such persons acquire the nationality of another State.

D. Of course there is no possibility of providing for option by the inhabitants of the transferred territories who were nationals of the predecessor State, when such State ceases to exist. In this case, in order to avoid statelessness paragraph 1 of the article provides that the successor State shall confer its nationality on all nationals of the predecessor State.

E. This article, which is absolutely necessary in order to avoid statelessness in cases of absorption or division of the territory of a State, stands alone in the whole draft because of the fact that it is the only provision exclusively derived from international law and which has nothing to do with the municipal legislations of the States concerned. In other words, this case is a typical one of codification of international law. The principle, universally accepted by doctrine, is that the nationals who are inhabitants of a certain territory which is transferred to another State, change their nationality to become subjects of the successor State. This general rule is qualified by the exception that this change, nevertheless, should be subject to the exercise by the persons referred to above of the right of option for retaining their old nationality, that is, the nationality of the predecessor State.

F. As decided by the Commission at its fourth session (163rd meeting, paras. 56-59) the Special Rapporteur did not concern himself directly with the problem of those nationals of the predecessor State which had left the ceded territory, that is, who are not inhabitants therein and which Mr. Hudson dealt with in paragraph (iii) of point 19 of his draft.

## Part II

### Draft Convention on the Reduction of Future Statelessness

#### PREAMBLE

“Whereas Article 15, paragraph 1, of the Universal Declaration of Human Rights provides that ‘every-one has the right to a nationality’,

“Whereas the Economic and Social Council recognizes in its resolution 116 D (VI) of 1 and 2 March 1948 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’,

“Whereas the above instruments are of a declaratory nature and not legally binding on States,

“Whereas the following multilateral conventions that have been signed heretofore have endeavoured to reduce the number of stateless persons:

“1. Convention Establishing the Status of Naturalized Citizens who again Take up Their Residence in the Country of their Origin, signed in Rio de Janeiro on 13 August 1906,

“2. Convention on Certain Questions relating to the Conflict of Nationality Laws, adopted at The Hague on 12 April 1930,

“3. Protocol relating to a Certain Case of Statelessness, adopted at The Hague on 12 April 1930,

“4. Convention on Nationality, signed at Montevideo on 26 December 1933,

“Whereas even when stateless persons are not legally debarred from the enjoyment of a right, in practice they are often deprived of its exercise, inasmuch as it is dependent on the fulfilment of certain formalities, such as production of documents, intervention of consular or other authorities with which they are not able to comply, because, being stateless persons, they may not ask the assistance of diplomatic or consular officers of any State, and thus in fact, they are deprived of protection in all its forms,

“Whereas the condition of statelessness and the consequent lack of protection results in great hardships and suffering for the stateless person, which for humanitarian reasons it is imperative to redress, and therefore the number of these persons should be reduced as much as possible,

“Whereas statelessness is an international problem which calls for international solutions,

“Whereas the reduction of the number of stateless persons will not only result in the amelioration of the conditions of those who thereby would acquire a nationality but also in a great improvement of the political and juridical relations of the States,

“Whereas in the present state of development of international relations, political as well as juridical, States are bound to limit their right to legislate on matters of nationality in such a manner as to avoid injustice to individuals as well as unnecessary conflict of a political and juridical nature within the community of States, and therefore, all nations should in this matter abide by the principle of the priority of international law over national legislation,

“Now therefore,

“The Contracting Parties

“Hereby agree as hereinafter provided:

#### ARTICLE I

*If a person does not acquire any nationality at birth, either jure soli or jure sanguinis, he shall subsequently acquire the nationality of the State in whose territory he was born, provided that:*

(a) *He continues to reside in such State until the time when he reaches military age; or*

(b) *He opts for the nationality of the State where he was born on reaching military age; or*

(c) *He serves in the armed forces of the State in whose territory he was born.*

#### Comment

#### Section I. Existing legislation

A. In *jus sanguinis* countries, the following identifications are used for children born in the territory as aliens:

*Residence in the country until majority or other extended period:*

BELGIUM (1932) Arts. 6-9 (permits privileged option).

DENMARK (1950) Art. 1.

EGYPT (1950) Art. 4 (of alien parents residing there).

FRANCE (1945) Art. 44.

GREECE (13 Sept. 1926) Art. 1.

ICELAND (1935) Art. 2.

ITALY (1912) Art. 3.

NORWAY (1950) Art. 3.

SWEDEN (1950) Art. 3.

TURKEY (1928) Art. 3.

*Born to someone who was also born there:*

FRANCE (1945) Arts. 23, 24.

NETHERLANDS (1892) Art. 1 (2).

B. For full details regarding the legislation of these countries, see above, in the comment to article I of the draft Convention on the Elimination of Future Statelessness, section Existing Legislation, C.

C. In *jus soli* countries where *jus sanguinis* principles have not been adopted, those apparently acquiring no nationality at birth through being born abroad can acquire nationality by:

*Registration:*

AUSTRALIA (1949).

BURMA (1948) Art. 5 (b).

CANADA (1950) Art. 5 (1) (b).

COSTA RICA (1950).

INDIA (C) Art. 8.

PERU (C) Art. 4.

UNION OF SOUTH AFRICA (1949) Art. 6 (1) (a).

UNITED KINGDOM (1948) Art. 5 (1).

URUGUAY (C) Art. 65.

*Choice:*

ARGENTINA (1869) Art. 1 (2).

*Residence:*

BOLIVIA (C) Arts. 31, 32.

BRAZIL (1949) Art. 1 (II).

CHILE (C) Art. 5 (2).

COLOMBIA (C) Art. 8 (1).

CUBA (C) Art. 12 (2).

PERU (C) Art. 4.

URUGUAY (C) Art. 65.

D. For full details see below, in the comment to article V, the section Existing Legislation, B.

#### Section II. International precedents

A. There are only two drafts which refer to the situation envisaged in this article. Article 3 of the resolutions on the conflict of nationality laws, adopted by the Institute of International Law at Venice in 1896, states:

“Article 3. A child born upon the territory of a State, of an alien father who was himself born there, is clothed with the nationality of that State provided that in the interval between the two births the family to which it belongs has had its principal abode there and unless the child has elected for the nationality of its father in the year of its majority as fixed by the national law of its father or by the law of the territory where it was born.

“In cases of illegitimate births not followed by acknowledgment on the part of the respective parents, the preceding rule also applies by analogy. . .”<sup>50</sup>

B. The International Law Association in 1924 recommended the following provisions:

“(1) Nationality acquired on birth.

“(a) Every child born within the territory of a conforming State shall become a national of that State. Provided always that in any case in which the father of such a child, being a national of another State, shall within a specified prescribed period register such child as a national of the State to which he belongs, such child shall cease to be a national of such conforming State and shall become a national of the State to which its father belongs.

“(b) Every child born within a conforming State which has, pursuant to the proviso contained in sub-section (a) become the national of its father's State, who shall within a year after attaining the age of twenty-one years claim to be re-admitted as a national of such conforming State, shall be so re-admitted without having to comply with any other conditions.”<sup>51</sup>

#### Section III. The Question before the Commission

A. Point 15 of Mr. Hudson's Report (A/CN.4/50, Annex III, Section VI) deals with this question. The Commission at its fourth session decided that this point should be re-drafted to read as follows (162nd meeting, para. 34):

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

B. Thus the Special Rapporteur was instructed to examine the various criteria which might be required to establish the necessary link between the child and the State whose nationality is to be granted to it.

C. Article V, below, will deal with the criterion derived from *jus sanguinis*, that is to say, the link

<sup>50</sup> *Annuaire de l'Institut de droit international, op. cit.*, p. 131.

<sup>51</sup> International Law Association, *op. cit.*, p. 29.

established between the child and the State because of the fact that one of its parents has the nationality of such State.

D. Another criterion would be the place of birth. If this criterion is applied the nationality of a country would be conferred on any person born in its territory, regardless of the nationality of the parents. That is exactly what article I of the draft Convention on the Elimination of Future Statelessness is intended to do in a drastic manner. The present draft convention, however, aims only at the reduction of future statelessness and consequently attenuates the principle established in the draft Convention on the Elimination of Future Statelessness. In the present draft Convention some qualifications are therefore added to the criterion of the place of birth. Of course, such qualifications might be as numerous as the juridical mind can imagine. There is, in fact, no limit to such qualifications, and the Commission will probably deal with several suggestions from its members in this respect and it will eventually select those which it may think proper to include as requirements for the attribution of nationality to persons born in a certain territory. The Special Rapporteur has adopted only three qualifications, or, to use the Commission's expression, means of identification. And even then, he has not thought convenient to require that all of these three qualifications be fulfilled. In his opinion, if a child is born in a certain territory, it would be sufficient for it in order to acquire the nationality of such State, to meet one of the three conditions set forth in sub-paragraph (a), (b) and (c) of article II. These conditions, as far as the Special Rapporteur can see, are the only ones that can be required in order that a stateless person may become a national of the State in whose territory he was born, and they are not arbitrarily chosen. On the contrary, all three are inspired by the idea that the will of the stateless person should be taken into account, together with the very strong link of having been born in the territory of the State whose nationality it acquires after birth.

E. Residence (sub-paragraph (a)), and service in the armed forces (sub-paragraph (c)), in the Special Rapporteur's opinion, are implicit manifestations of the person's will to be linked to the State in whose territory he was born and, of course, option exercised at military age is an express declaration of such a will. Therefore these three qualifications arise from the fundamental idea that the will of a stateless person should be taken as a decisive criterion for imposing or granting the nationality of the State where he was born.

F. It is obvious that it is not necessary to require the fulfillment of all of the three conditions since, in order to know the will of the stateless person, it is only necessary that he fulfills one of them.

G. On the other hand, it seems that the criterion laid down in sub-paragraph (a) could be adopted, as was correctly pointed out by the previous Special Rapporteur, in so far as the majority of national legislations require that an alien must reside in the territorial State for a certain number of years before qualifying for naturalization. If this criterion is to be adopted, the question immediately arises as to the

number of years that should be fixed. Such a number could be fixed arbitrarily, say 5 to 7 years, but if that were done, situations might arise in which the stateless person would be placed in a position of privilege with regard to nationals. The particular case which the present Special Rapporteur has in mind is the possibility that the stateless person might elude military service on the ground that, on reaching military age, he could not be enrolled in the armed forces because of his status as an alien. This situation would be unfair to nationals, and the stateless person would not be discharging his military duties towards the State which later on would be granting him its nationality, upon fulfilling the prescribed period of five or seven years of residence. The problem is therefore solved by the rule that the length of residence should be from a person's birth until he reaches military age. In this way he becomes a national at a time when he is expected to fulfill one of the main obligations, if not the main obligation, of a national toward his country.

H. Sub-paragraph (b) of article I would make possible for a person who was born in a certain country, but has been forced by circumstances to leave it, to become a national of such country if he expresses his wish in this sense at the time when he will be expected to join the armed forces, thus placing himself on the same footing as nationals of the said country.

I. Lastly, sub-paragraph (c) of article I envisages a third alternative when a person, having been born in the territory of a certain State, nevertheless has not been residing there nor has he, for different reasons, expressly opted for its nationality. The Special Rapporteur considers that if such a person during his lifetime, either in peace or war joins the armed forces of such State, he undoubtedly in so doing expresses his determination to consider that country as his own. He should therefore be granted the nationality of the country in whose territory he was born and in whose armed forces he is serving. In this connexion the Special Rapporteur had in mind a similar provision in the naturalization legislation of the United States, whereby an alien who served honourably for three years in the armed forces during World Wars I and II, and who at the time of his enlistment was a legal resident, is entitled to privileged naturalization, in that the usual seven-year residence is not required of him.

J. The principle of the supremacy of the individual will is certainly one of the basic and fundamental principles of international law relating to questions of nationality acquired after birth. This principle universally recognizes that persons who have a nationality and who want to change it for another one by means of naturalization proceedings are not required to have the link of being born in the territory of the State whose nationality they seek. Consequently, by imposing upon stateless persons the requirement of birth in the territory of such State, we are, in fact, more severe with regard to them than with regard to aliens in general. Therefore it is expected that the proposed rule should not meet any strong opposition from States.

K. The Special Rapporteur feels that some comments should be made here with regard to the draft proposed by the Commission's expert, Mr. Ivan S. Kerno, in

article 2 of his draft Convention for the Reduction of Future Statelessness. His suggestion is the following:

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

"2. Pending determination of the nationality of its parents where such nationality had been challenged in the courts, a child should acquire the nationality of the State in whose territory it was born."

This drafting follows, more or less, Point 14 of Mr. Hudson's draft (A/CN. 4/50, annex III, section VI):

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

L. The Special Rapporteur believes that neither of these two texts, Mr. Kernó's or Mr. Hudson's, should be introduced in the draft Convention on the Reduction of Future Statelessness. The principle embodied in both drafts is already contained in article I of the draft, that is, the principle that attributes nationality *jure soli* when no other nationality would be acquired otherwise.

#### ARTICLE II

*For the purpose of Article I, a foundling shall be presumed to have been born in the territory of the Party in which it is found, until the contrary is proved.*

##### Comment

The presumption contained in the above article is necessary, in the case of foundlings, for the application of article I, which is based on the principle of *jus soli*. For further comment, see above, article II of the draft Convention on the Elimination of Future Statelessness.

#### ARTICLE III

*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 its parent is a national. If its parent is stateless, it shall be deemed to have been born in the country wherein it was actually born.*

##### Comment

The presumption contained in the above article is necessary, in the cases which it envisages, for the application of article I which is based on the principle of *jus soli*. For further comment, see article III of the draft Convention on the Elimination of Future Statelessness.

#### ARTICLE IV

*For the purpose of Article I:*

1. *Birth on a private or State vessel or aircraft on the high seas shall be deemed to constitute, if on a vessel, birth in the territory of the Party whose flag it flies, if on an aircraft, birth in the territory of the Party where the aircraft is registered.*

2. *Birth on a private vessel or aircraft occurring in the territorial waters or in a port of one of the Parties shall be deemed to constitute birth in the territory of the said Party. Birth on a private aircraft over the territory of one of the Parties shall also be ruled by the same principle.*

3. *Birth on a State vessel or aircraft of one of the Parties, in the territorial waters or in a port of another Party, shall be deemed to constitute birth in the territory of the Party to which the State vessel or aircraft belongs. Birth in a State aircraft over the territory of one of the Parties shall also be ruled by the same principle.*

##### Comment

The presumption contained in the above article is necessary, in the cases therein referred to, for the application of article I which is based in the principle of *jus soli*. For further comment, see article IV of the draft Convention on the Elimination of Future Statelessness.

#### ARTICLE V

*If a child does not acquire at birth any nationality, either jure soli or jure sanguinis, it will acquire the nationality of one of its parents. In this case the nationality of the father shall prevail over that of the mother.*

##### Comment

##### Section I. Existing legislation <sup>52</sup>

A. In the following countries, nationality is based solely or predominantly on the *jus sanguinis* so that children wherever born receive nationality on conditions as noted:

1. A legitimate child obtains its father's nationality and an illegitimate child receives its mother's nationality (child of "unknown father" is treated as illegitimate child):

AUSTRIA (1949) Art. 3.

BELGIUM (1932) Art. 1 (1 & 2) (follows mother *only* by legal filiation).

CHINA (1929) Art. 1 (1 & 2) (all children of Chinese father).

DENMARK (1950) Art. 1 (1) (1 & 3).

EGYPT (1950) Arts. 2 and 3 (all children of Egyptian father. An illegitimate child follows its Egyptian mother if born in Egypt. If born abroad, it must opt for Egypt within 1 year after reaching majority).

FINLAND (1941) Art. 1.

FRANCE (1945) Art. 17 (illegitimate child obtains nationality if parent to whom filiation is first established is French). Art. 19 (French but can repudiate

<sup>52</sup> This part of the comment, in this article and the following articles, is taken in its entirety from the study (A/CN. 4/66) that the Commissions' expert, Mr. Ivan S. Kernó, kindly furnished the Special Rapporteur. Mr. Kernó, in turn, based his work mainly on the texts assembled by the Legal Department of the United Nations.

In citing the laws of the different countries, the name of each country is followed by the year of the corresponding nationality law, within parentheses, unless the letter C appears instead, meaning that reference is made to the constitution of that State. The number of the article of the law of the constitution follows immediately.

within 6 months before majority if born outside France and (1) legitimate child of French mother and alien father or (2) illegitimate child when parent to whom filiation is established in second place is French and the other an alien. (Art. 28: if filiation to both parents is established by some act or judgement filiation to father is considered to be established first).

GERMANY (1913).

HUNGARY (Dec. 1948) (all children of Hungarian father; illegitimate when *recognized* by mother).

ITALY (1912) Art. 1 (all children of Italian father).

JAPAN (1950) Art. 2 (all children of Japanese father).

NETHERLANDS (1892) (follows mother only if recognized).

NORWAY (1950) Art. 1.

SWEDEN (1950) Art. 1.

2. Any child of either national parent obtains nationality:

ISRAEL (1952) Art. 4.

PHILIPPINES (C) Art. IV (if mother a citizen, child must elect on majority).

ROMANIA (1948) Art. 6: both parents are "or become" Romanian. Art. 7: one parent and child asks for Romanian nationality within one month after majority.

TURKEY (1928) Art. 1.

3. A child obtains nationality if both parents have it:

BULGARIA (1948) Art. 1 (obtains also nationality if only one parent has it and child is born in Bulgaria or if abroad and child does not obtain foreign nationality).

POLAND (1951) Art. 6 (also if one is national and the other unknown).

YUGOSLAVIA (1946) Art. 4 (or if one is national and specialized conditions are met — Sects. 2-4).

4. A child apparently only follows the father:

LEBANON (1925) Art. 1.

SYRIA (1951) Art. 1 (a).

B. The following States in which the *jus soli* predominates grant nationality to a child born outside the territory to nationals only on the conditions noted (where the parents are on government business, nationality is invariably granted):

AUSTRALIA (1949) father (or mother of illegitimate) a national and birth duly registered.

ARGENTINA (1869) Art. 1 (2) either parent and child chooses Argentine nationality.

BRAZIL (1949) Art. 1 (II) either parent comes to reside in Brazil (must opt within 4 years of majority).

BOLIVIA (C) Arts. 31 and 32: either parent (includes emigré for political reasons) and residence acquired in Bolivia.

CANADA (1950) Art. 5 (1) (b) father (or mother of illegitimate) and birth duly registered — by one year after majority, person must assert Canadian citizenship or renounce other.

CHILE (C) Art. 5 (2) either parent, on acquiring residence.

CUBA (C) Art. 12 (2) either parent and become inhabitant.

DOMINICAN REPUBLIC (C) Art. 8 (3) either parent, and no foreign nationality acquired or option made.

ECUADOR (C) Art. 9 either parent and parents exiled or temporarily absent or one parent is in Ecuador at the time of birth and the child at 18 fails to object.

EL SALVADOR (C) Art. 11 (2) father (or mother of illegitimate) and child not naturalized abroad.

GUATEMALA (C) Art. 6 (3) father or mother native born, on establishing domicile, or at once if no foreign nationality acquired or right of choice given.

HONDURAS (C) Art. 7 (2) either parent, from time of residence, or at once if it is given by the law of the place of birth or a right to choose is given.

INDIA (C) Art. 8 — It appears that the child of a parent or grandparent who was born in India has a right to nationality on the registration of the birth.

MEXICO (1934) Art. 1 (II) both parents, or Mexican father and alien wife or Mexican mother and unknown father.

NICARAGUA (1950) Art. 18 (2) either parent and, by law of place of birth, child has Nicaraguan citizenship or right to choose it and does so.

PAKISTAN (1951) Art. 5 — father a citizen (is by descent only, child must be registered).

PERU (C) Art. 4 — either parent and child registered abroad or living in Peru.

SAAR (1949) Art. 1 — father (or mother of illegitimate) and such parent a citizen by birth, naturalization or registration.

UNION OF SOUTH AFRICA (1949) Art. 6 (1) (a) father (or mother of illegitimate) and birth duly registered.

UNITED KINGDOM (1948) Art. 5 (1) father (or mother of illegitimate) and, if parent a citizen by descent only, (a) born in Mandate or (b) birth registered or (c) on government business, etc. or (d) born in Dominion and not a citizen thereof.

U.S.A. (1925) Sec. 301, born outside: (a) (3) both parents citizens, one of whom has had U.S. residence; (4) one parent citizen who has previously been in U.S. one year, other parent a U.S. national; (5) born in outlying possession, one parent a citizen who has been in U.S. at least one year; (7) one parent an alien, other a citizen who has been in U.S. at least ten years.

URUGUAY (C) Art. 65 — either parent, by fact of residence or on being inscribed on the civic register.

C. Other States having relevant provisions:

BURMA (1948) Art. 5 (b) father a citizen and birth registered. If other parent an alien child must declare by age of 22. If born outside and parent resumes residence, child can obtain certificate of citizenship while a minor (art. 12).

COLOMBIA (C) Art. 8 (1) either parent, child *legitimate* on taking up domicile.

COSTA RICA (1950) either parent a natural born citizen and child registered as Costa Rican by self or parents to age 25.

CZECHOSLOVAKIA (1949) Par. 1 (2) both parents, or, if only one is national, nationality is given if within one year the parents obtain consent of the national committee.

### Section II. International precedents

This article seems to be entirely new in international legislation. The Special Rapporteur has been unable to find any really pertinent precedent. Of course there are many with regard to the acquisition of nationality *jure sanguinis* but the imposition on a State of the obligation to give its nationality *jure sanguinis* to a child has never been suggested before. In that sense the article, as proposed, is an innovation in international law.

### Section III. The question before the Commission

A. This article, in a sense, is the opposite to article I of the draft Convention on the Elimination of Future Statelessness. In article I of that draft convention, it is proposed to extend the *jus soli* principle to *jus sanguinis* countries. As we have seen, the said article I together with articles II, III and IV of the same draft convention, eliminate every possibility of statelessness at birth (cf. below, annex I (1)). Article V of the draft Convention on the Reduction of Future Statelessness only remedies the cases of statelessness included below, in the annex, 1 (1) A I and 2. Therefore the application of the four first articles of the draft Convention on the Elimination of Future Statelessness will entirely eliminate statelessness at birth in the future, while article V of the draft Convention on the Reduction of Future Statelessness, although eliminating statelessness at birth in a great number of cases, does not eliminate it altogether. If both parents are stateless, for instance, or unknown, or of unknown nationality, this article cannot be applied, and statelessness of the child would necessarily result. Therefore the article aims only at reducing the number of stateless persons.

B. The Special Rapporteur has endeavoured to present a draft that would meet the various objections raised by the members of the Commission when this new principle was discussed in connexion with point 12 of Mr. Hudson's report (A/CN. 4/50, annex III, section VI). The discussion of this point may be found in (A/CN. 4/SR. 161, paras. 37-75). An effort has been made to eliminate the possibility of double nationality in applying this article, by providing that the child shall acquire "the nationality of one of its parents", and that "in this case the nationality of the father shall prevail over that of the mother". The members of the Commission will remember that the wording proposed by the previous rapporteur, during the discussion of this problem, left room for some doubt as to which nationality, that of the father or that of the mother, should be given to the child. The wording was:

"A State must confer its nationality on a child . . . if one of the parents of the child possesses that State's nationality . . ."

C. The Special Rapporteur does not feel that his proposed draft is in contradiction to article I of the Convention on Nationality of Women, signed at Montevideo on 26 December 1933, which provides, in its article I,

"There shall be no distinction based on sex, as regards nationality, in their legislation or in their practice."<sup>63</sup>

<sup>63</sup> Manley O. Hudson, *op. cit.*, p. 591.

D. In order to avoid the evil of double nationality it is necessary to decide that the child will have only one nationality and that this nationality should be that of one of his parents, but it is also necessary to determine, in case the parents have different nationalities, which one of the two should prevail. In deciding this point, the Special Rapporteur has been guided by the juridical tradition with regard to the priority of the father's nationality.

### ARTICLE VI

1. *If the law of the Contracting Party whose nationality is possessed by a person recognizes that such nationality is lost as a consequence of a change in the person's personal status (marriage, termination of marriage, legitimation, recognition, adoption), such loss shall be conditional upon the acquisition of the nationality of another State in consequence of the change of personal status.*

2. *The change or loss of the nationality of a spouse or of a parent shall not entail the loss of such nationality either by the other spouse or by the minor children, unless they acquire another nationality.*

3. *No renunciation of nationality by a person shall be effective, unless such person, at the time of the renunciation, acquires another nationality.*

4. *Persons seeking naturalization in a foreign country shall not lose their nationality until they have acquired another.*

### Comment

The above test is identical with article V of the draft Convention on the Elimination of Future Statelessness. The Special Rapporteur does not think it possible to attenuate the principles contained in this article because any attenuations would, in fact, destroy the whole purpose of the article. For further comment, see article V of the draft Convention on the Elimination of Future Statelessness.

### ARTICLE VII

1. *No State shall deprive any person of its nationality by way of penalty, except on the following grounds:*

(a) *Entry into the service of the government of an enemy State, or enrollment in the armed forces of such State;*

(b) *Expatriation to evade military obligations;*

(c) *If naturalized:*

(i) *When naturalization was obtained by fraud;*

(ii) *When the naturalized person has resided in the country of his origin during five years or more.*

2. *In the cases to which paragraph 1 above refers, the deprivation should be decided in each case only by a judicial authority acting in accordance with due process of law.*

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

*Comment*

*Section I. Existing legislation*

See document A/CN. 4/66 on National Legislation concerning grounds for Deprivation of Nationality, prepared by the Commission's expert, Mr. Ivan S. Kerno.

*Section II. International precedents*

For this part of the comment, see the comments made under article VI of the draft Convention on the Elimination of Future Statelessness.

*Section III. The question before the Commission*

A. Keeping in mind that the object of the draft Convention on the Reduction of Future Statelessness is to introduce some attenuations of the application of the principles which inspire the articles of the draft Convention on the Elimination of Future Statelessness, the Special Rapporteur has tried to present to the Commission some of the possible cases in which the deprivation of nationality by way of penalty might be allowed. In doing so, he has been guided by the instructions given by the Commission (163rd meeting, paras. 9 and 43), namely, to follow the enumeration set forth in pages 140 and 141 of the Secretariat's *Study of Statelessness*.<sup>54</sup> In the following an effort is made to analyse the different grounds for deprivation of nationality therein listed of which the Special Rapporteur has retained only two. In drafting the article, nevertheless, it was necessary to take into account the suggestion made by Mr. Hudson in point 18 of his report (A/CN. 4/50, Annex III, Section VI) with regard to the case of the naturalized citizen who leaves his adopted country to reside in his country of origin.

B. The Secretariat's study mentions as the first ground "entry into the service of a foreign government, more particularly enrolment in the armed forces of a foreign country".

C. The Special Rapporteur feels that he cannot admit such a ground when stated in such absolute terms. At present, the relations between States are getting more complex. As a result, their interdependence is becoming closer and, consequently, quite frequently nationals of one State are called to render certain services to another State, which often take the form of advisory or technical assistance. He believes that it is the duty of this Commission not to put any obstacles in the way of this development which promises to be so fruitful. If the rendering of such services were to be admitted by it as a ground for deprivation of nationality, the Commission would not only be hindering a healthy progress in international relations, but its decision would also be out of keeping with the trends of the time.

D. As regards deprivation of nationality because of enrolment in the armed forces of a foreign country, the Special Rapporteur believes that such a restriction is becoming outmoded, for the same reasons as stated above. In World War II it happened that, in many instances, the nationals of allied countries enlisted

voluntarily in the army of another allied State, to fight against the common enemy. It should be noted, also, that there is at least one instance known to the Special Rapporteur where a country (the United States) has enacted a law making it compulsory for aliens to enrol in its armed services (Cf. Public Law 51 — 82 Congress. "Amendments to the Universal Military Training Act," 19 June 1951). It would be unfair, in the opinion of the Special Rapporteur, to deprive individuals of their nationality under such conditions, as they merely comply with the laws of the State in which they have established their residence. In addition, such deprivation of nationality would increase enormously the number of stateless persons in the countries which would legislate to that effect, and the Commission would be far from achieving the end in view, which is the reduction of statelessness.

E. Furthermore the Commission should be mindful of the possible existence of an international army in accordance with the articles of the Charter of the United Nations and, of course, it should not permit any possible provision in the laws of the States which would make it unlawful for their nationals to serve in the armed forces of such an international army. The experiment in Korea where the United Nations Organization is fighting against the aggressor, according to the terms of the Charter, may be a possible illustration of the definite trend towards the creation of a supra-national army which, in the opinion of the Special Rapporteur, is the essence of collective security. It is therefore, in his opinion, inadequate to consider as ground for possible deprivation of nationality the fact that a person may enroll in an international army or in that of a friendly State. Of course, it is pertinent to recognize the right of a State to deprive a national of its nationality, if, in time of war, he serves in the army of the enemy. In this connexion, the Commission might wish to consider the case of a person who takes up arms against his own country in compliance with a decision of the United Nations which has decided that such country is an aggressor State.

F. The Secretariat's *Study of Statelessness* further mentions departure abroad as another ground for deprivation of nationality. The Special Rapporteur notes that in the Secretariat's study only two countries are listed as having adopted legislation to this effect (Bulgaria, 1948; Romania, 1948), but to these two countries, Bolivia should be added, according to Mr. Kerno's above-mentioned paper on the deprivation of nationality. This restriction is clearly contrary to the Universal Declaration of Human Rights<sup>55</sup> which states in Article 13 (2) that "everyone has the right to leave any country, including his own, and to return to his country". The declaration does not make any qualification as to the exercise of this right of the individual, either national or foreigner, nor does it set any time-limit to the individual's sojourn abroad. In view of this provision, the Special Rapporteur feels compelled to reject departure abroad as a ground for deprivation of nationality.

G. The Secretariat's study next refers to expatriation to evade military obligations. Although, in general, the Special Rapporteur does not favour

<sup>54</sup> United Nations publication, Sales No.: 1949. XIV. 2.

<sup>55</sup> United Nations publication, Sales No.: 1949. I. 3.

deprivation of nationality on any grounds, he recognizes that something can be said in favour of this one. The individual who leaves his country to evade military obligations not only fails to fulfill one of his most important obligations towards the State, but also places himself in a position where, usually, he is out of the reach of the said State which, therefore, cannot apply to him any other sanction but to deprive him of his nationality. In this respect the Commission might wish to take into account the fact that most of the States do not grant extradition of foreigners who are accused of political crimes and that there is a possibility that States requested to extradite evaders of military service would consider such a violation to be of a political nature. Expatriation under these circumstances may be deemed to constitute a voluntary break of the link between the individual and the State.

H. The situation is quite different when no such expatriation occurs and where there is merely an evasion of military obligations. The State can then apply other sanctions such as imprisonment, deprivation of citizenship, etc., without depriving the evader of his nationality, thus unnecessarily causing statelessness.

I. Another ground for deprivation of nationality, listed in the Secretariat's study, is disloyal attitude or activities. In the opinion of the Special Rapporteur, such crimes should be punished by the penal legislation of States and they should not be considered as a suitable basis for deprivation of nationality because, if the rule were adopted, it could be used by the party in power to persecute its political opponents, as experience has well shown. The acceptance of this ground would greatly increase the number of stateless persons, which would be contrary to the aims of the Commission.

J. The next ground mentioned is aid furnished to the Axis Powers during the second World War. As in the case of disloyal attitude, this matter should be dealt with by the penal legislation of the States and the Commission should not list it as one of the possible grounds for deprivation of nationality in the future. This ground refers to a particular case which already belongs to the past.

K. Another ground listed is naturalization obtained by fraud. The Special Rapporteur is of the opinion that in this case there has been no naturalization at all and that, consequently, it could hardly be said that deprivation of nationality takes place when it is ascertained that a fraud has been committed and therefore the naturalization procedure is declared, by a judicial authority, null and void. Nevertheless, for the sake of clearness and in order to avoid any doubt as to whether there has been naturalization or not and whether there is a subsequent deprivation of nationality, he is willing to include this ground among those which the Commission could perhaps accept.

L. The last ground listed in the Secretariat's study is penal offences committed by a naturalized citizen. For the same reasons as stated above regarding disloyal attitude, The Special Rapporteur is of the opinion that this ground should be a matter of concern to the penal legislation of States and not to this Commission. Otherwise, the number of stateless persons would

increase, and there is no need for such an event as naturalized citizens could and should be placed on the same footing as citizens by birth with regard to the application of the criminal law of the State.

M. As already mentioned, the analysis would be incomplete if reference were not made to the grounds mentioned in point 18 of Mr. Hudson's report (A/CN.4/50, Annex III, Section VI), clause (a) of point 18 provides that no person shall be deprived of the nationality of a State "except on decision in each case by a competent authority acting in accordance with due process of law". In order to prevent abuse the additional requisite should be included that a *judicial* authority should be the only one to decide upon such deprivation and its intervention should be made indispensable in all cases enumerated in the proposed article VII.

N. Sub-paragraph (i) of Mr. Hudson's point 18, which refers to cancellation of naturalization on the ground of non-compliance with governing law, has already been dealt with above.

O. Sub-paragraph (ii) of point 18, continuous residence of naturalized persons abroad or in the country of origin, could be accepted, in the latter case. Residence in the country of origin could be deemed to constitute a voluntary break by the naturalized person of the link with his adopted country, and as a resumption of the ties with his former country. Such residence could be fixed arbitrarily at five years. The Commission, or, eventually, the General Assembly, will decide on the length of the time of such residence.

P. On the other hand, residence abroad in any country except the country of origin does not necessarily mean that the naturalized person wishes to break the links with his adopted country. It may be motivated by perfectly legitimate reasons and, consequently, that ground could be discarded for the sake of not increasing possible cases of statelessness.

Q. The subject-matter of sub-paragraph (iii) of point 18, evasion of military service, has already been dealt with above.

#### ARTICLE VIII

1. *The State to which a territory is transferred shall confer its nationality on the persons inhabiting the said territory, subject to their option to retain the nationality of the transferring State, if the latter continues to exist.*

2. *If the transferring State continues to exist, no person inhabiting the transferred territory shall lose his nationality as a consequence of the transfer, unless he acquires the nationality of another State.*

#### Comment

The text of the above article is identical with article VII of the draft Convention on the Elimination of Future Statelessness. The Special Rapporteur has not deemed it advisable to introduce any attenuations of the principles therein contained, for the reason that it is one of the few instances where the proposed text represents the codification of widely accepted rules of international law. Furthermore, if attenuations were to be introduced, they would result in a very great number of stateless persons, perhaps millions, when future territorial changes are made by States. For further comments, see article VII of the draft Convention on the Elimination of Future Statelessness.

## Annex

## Synoptic chart of possible sources of Statelessness

(Compiled from materials contained in "A Study of Statelessness")

- |   |  |  |
|---|--|--|
|   | A. Children born abroad.   | 1. In <i>jus sanguinis</i> country of parents of strict <i>jus soli</i> country.<br>2. In <i>jus sanguinis</i> country from a second or third generation of parents nationals of a <i>jus sanguinis</i> country. |
|   | B. Child born in a <i>jus sanguinis</i> country with one parent  | 1. Legitimate (Stateless if father stateless).<br>2. Illegitimate (Stateless if mother stateless).   |
| (1) Statelessness at birth.                             | C. Born in <i>jus sanguinis</i> country of stateless father and mother or without known nationality.   |  |
|   | D. Born in <i>jus sanguinis</i> country of unknown parents.  |  |
|   | E. Foundlings.   |  |
|   | F. Born on ship or aircraft.   | 1. In high seas.<br>2. In territorial sea.<br>3. In foreign port.<br>4. In air above foreign territory.  |
|   | G. Born from stateless parents with diplomatic immunity.   |  |
| I. Inadequacy and Conflict of National Legislations.    | A. Effect of marriage on the nationality of women.   | 1. Effect of marriage itself.<br>2. Husband's change of nationality.<br>3. Dissolution of marriage:<br>(a) Widow of national;<br>(b) Invalid or fictitious marriage;<br>(c) Divorce.                             |
|   | B. Legitimation of illegitimate child.   |  |
|   | C. Adoption.   |  |
|   | D. Voluntary Renunciation.   |  |
|   | E. Change of nationality of the spouse or of a parent.   |  |
|   | F. Naturalization of the spouse or of a parent.  |  |
| (a) As a penalty  | (a) Residence abroad of nationalized citizens.<br>(b) Service in foreign government or armed forces.<br>(c) Departure abroad.<br>(d) Evasion of military duties by expatriation or otherwise.<br>(e) Disloyal attitude or activities.<br>(f) Aid to enemies.<br>(g) Naturalization by fraud.<br>(h) Penal offense of naturalized citizens. |  |
| II. Deprivation of nationality                          | (b) based on: racial, religious, political grounds   | Only if the State of origin deprives of its nationality; otherwise there is not a <i>de jure</i> . statelessness, but only <i>de facto</i> .   |
| III. Inadequacy of treaties on territorial settlements. |  |  |