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Summary record of the 217th meeting

Topic:
Nationality including statelessness

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Bey el-Khouri's and secondly, the principle contained in the text proposed by Mr. Córdova and the amendment proposed by Mr. Lauterpacht.

Nationality of married women
(resumed from the 215th meeting)

68. The CHAIRMAN recalled that at the previous meeting the Commission had agreed to defer decision on the letter which the Chairman of the Commission on the Status of Women had sent to the Special Rapporteur. He felt it was useful that the Commission's attention should have been drawn to an alternative method of eliminating statelessness arising as a consequence of change in marital status, but considered that adoption of that method would entail a highly unusual and unacceptable procedure. It was proposed that reference should be made in the draft conventions on the elimination and reduction of future statelessness to another convention which had not yet been signed, and to achieve the purpose which the Commission on the Status of Women had in mind it would be necessary that that latter convention be ratified by *all* States. An additional article would therefore have to be inserted in the draft conventions on the elimination and reduction of future statelessness, regulating the position during the transitional period. He submitted that it was impossible to legislate in that way, but suggested that the wishes of the Commission on the Status of Women could be met to some extent by referring, in the comment, to the efforts which were at present being made by that Commission to eliminate statelessness as a consequence of change in marital status by means other than those which the International Law Commission envisaged, and by pointing out that, if those efforts were successful, two alternative ways of eliminating such statelessness would exist.

The Chairman's suggestion was adopted.

Preamble

69. The CHAIRMAN invited the Commission to consider the preamble to the draft convention on the elimination of future statelessness, recalling that it had previously decided to defer consideration of it until it had completed consideration of the various articles.

70. Mr. CÓRDOVA said that he wished to withdraw the text proposed for the preamble in document A/CN.4/64 in favour of the following, which was based mainly on suggestions by Mr. Lauterpacht:

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

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

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

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

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

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

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

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

"*The Contracting Parties*

"*Hereby agree as follows*:"

71. Mr. AMADO and Mr. KOZHEVNIKOV requested that consideration of the preamble be deferred to enable members of the Commission to consider the new text presented by the Special Rapporteur.

72. Mr. SANDSTRÖM proposed that consideration of the preamble be deferred until the Commission had considered the draft Convention on the Reduction of Future Statelessness, since he could not vote for the draft Convention on the Elimination of Future Statelessness except on the understanding that it represented an ideal.

73. Mr. LAUTERPACHT and Mr. CÓRDOVA saw no need for deferring consideration of the preamble to the first draft convention until the Commission had considered the second, since the same considerations did not all apply to the preambles to the two conventions.

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

The meeting rose at 1 p.m.

217th MEETING

Thursday, 16 July 1953, at 9.30 a.m.

CONTENTS

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

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

Present:

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

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*continued*)

1. The CHAIRMAN announced that the Drafting Committee had prepared revised texts of articles V, VI, VII, VIII and IX of the draft Convention on the Elimination of Future Statelessness. Since those texts had only just been received, he suggested that consideration of them should be deferred till the following day, together with further consideration of the preamble to the Convention, which, he recalled, it had been agreed to postpone until consideration of the articles had been completed.

It was so agreed.

DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS

Article I [1]

2. The CHAIRMAN drew attention to the draft Convention on the Reduction of Future Statelessness, article I of which read as follows:

> "If a person does not acquire any nationality at birth, either *jure soli* or *jure sanquinis,* 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."

That text did not appear to be applicable to women, who could fulfil none of the conditions which had to be fulfilled before the grant of nationality.

3. Mr. CÓRDOVA (Special Rapporteur) agreed that the text would have to be modified to cover women.

4. He recalled that he had been instructed by the Commission to examine the various criteria which might be required to establish the necessary link between the child who acquired no nationality at birth and the State whose nationality it was proposed it should receive. As he pointed out in his comment, the number of such criteria was infinite. Since the aim of the convention was the reduction of statelessness, he had selected only three criteria, one of which would be sufficient in each individual case. All three were based on the principle that the determining factor in such cases should be the individual's will, and in particular his will as regards one of the most important forms of service which could be rendered to the State, namely military service. If, on reaching military age, a stateless person opted for the nationality of the State where he was born, he was thereby expressly declaring his willingness to perform military service for that State, and it seemed perfectly reasonable that he should receive its nationality. Similarly, a person born stateless who continued to reside in the State where he was born during the most formative years of his life until the time when he reached military age could also be regarded as having a sufficiently strong link with it. Finally, service in the armed forces of a State was generally recognized to constitute a link of the same type; thus, during the second World War, the United States of America had enacted legislation under which all stateless persons serving in the United States armed forces could claim United States nationality.

5. The CHAIRMAN pointed out that it would be simple to cover the case of women by replacing the words "until the time when he reaches military age" by some such words as "for as long as the laws of such State shall require".

6. Mr. YEPES suggested that the same idea could be conveyed more simply by saying "until he reaches majority". He asked, however, what was meant by the word "reside", which in Colombia at any rate would require personal and continuous presence.

7. Mr. CÓRDOVA said that it was certainly not his intention to refuse nationality to stateless persons who had travelled abroad, provided they continued to be domiciled in the State where they were born.

8. Mr. ALFARO said that the text proposed by the Special Rapporteur invaded the province of municipal legislation and might not be applicable to individual States. Some States, for example, had no armed forces. He proposed, first, that the word "subsequently" should be deleted, and, secondly, that the three provisos proposed by the Special Rapporteur should be replaced by a more general clause, reading as follows:

> "On attaining majority he complies or has complied with any such conditions as are required to retain nationality by the law of the State in whose territory the birth took place."

9. Mr. SANDSTRÖM asked whether the Special Rapporteur did not agree that a stateless person should have the right to refuse the nationality of the State where he was born even if he continued to reside there until he had reached a certain age or even if he served in its armed forces. He also wondered whether the Special Rapporteur was not attaching excessive importance to the factor of the individual's will in placing an obligation on the State to grant its nationality to a stateless person born on its territory when he reached military age, subject only to his opting for that nationality. He did

not think it was legitimate to place that obligation on the State with regard, for example, to persons who went abroad.

10. Mr. CÓRDOVA said that in his view it was undesirable to give people a nationality and then to deprive them of it if certain conditions were not fulfilled; that would be creating statelessness, not reducing it. It was infinitely preferable to wait until such time as there was a definite link between such persons and the State and then to give them nationality unconditionally.

11. He did not agree with Mr. Sandström that there was any need to provide for the right of option in cases where a person resided in the State where he was born until he reached a certain age or where he served in its armed forces. With regard to the former case, he need only point out that an individual who acquired his nationality *jure soli* had no such right of option. With regard to the latter, he thought that the fact that a person enlisted in a State's armed forces was sufficient proof in itself that he chose to assert or confirm the link between that State and himself. Conversely, a person who, on reaching military age, opted for the nationality of the State where he had been born, thereby expressly declared his willingness to serve in its armed forces and should receive its nationality, even if he was no longer living in its territory.

12. Mr. LAUTERPACHT agreed that the text proposed by the Special Rapporteur placed undue emphasis on military age and military service. All reference to military age, and possibly to military service, should be omitted, and the Chairman's point that the present text did not cover women would then be met. Mr. Yepes' objection to the word "reside" could be met by referring to "habitual residence". It would also be necessary to make clear that the article did not apply in cases where another nationality had been acquired since birth. He also suggested that it was not asking too much of any person who desired to acquire a certain nationality that he should perform the formality of making a declaration to that effect. He agreed with Mr. Sandström that sub-paragraph (*b*), as proposed by the Special Rapporteur, placed an unreasonable obligation on States. He agreed with Mr. Alfaro that the whole article "invaded the province of municipal legislation". He did not, however, regard that objection as decisive. The Commission was at present engaged not in a task of codifying the municipal law of States, but of formulating a rule of international law. That, if it meant anything at all, would require, in many cases, changes in the municipal law of States.

13. Mr. LIANG (Secretary to the Commission) pointed out that the Commission must decide whether, for the purposes of article I, nationality should be acquired at birth subject to the fulfilment of certain subsequent conditions, or whether it should not be acquired until those conditions had been fulfilled.

14. He noted that the three conditions mentioned by the Special Rapporteur had been taken from the resolutions adopted by the Institute of International Law at Venice in 1896 and the report adopted by the International Law Association in 1924. Although those texts had been intended to resolve cases of dual nationality, they were relevant to the question of what constituted a sufficient link between the individual and the State whose nationality he was to receive, and the Special Rapporteur's proposals in that respect seemed perfectly acceptable, except insofar as they seemed to confer undue importance on the question of military age. There might, however, be other conditions which should be fulfilled before the grant of nationality; Mr. Lauterpacht had already pointed out that the person concerned should not have acquired another nationality, nor, it might be thought, should he have held public office in another State.

15. Mr. SCELLE said he could not accept Mr. Córdova's view that a convention designed to reduce statelessness should keep people without the protection of a nationality during the very years when they might stand most in need of it. In his view it was essential that nationality should be granted from birth.

16. He agreed that the Special Rapporteur had placed undue emphasis on military age and military service.

17. Mr. CÓRDOVA said that, speaking personally, he was in complete agreement with Mr. Scelle. If, however, article I were recast along the lines favoured by Mr. Scelle it would be indistinguishable from article I of the draft Convention on the Elimination of Future Statelessness. As Special Rapporteur he had been instructed to prepare, in addition to that convention, a convention designed to reduce statelessness without necessarily eliminating it altogether. For that purpose he considered it preferable to provide that nationality should not be acquired until the link between the State and the individual was evident, instead of conferring it at birth with the possibility of its being forfeited later. The text which he proposed would represent a considerable improvement on the present situation. It would certainly never result in creating statelessness, as would a text prepared on the alternative lines proposed.

18. Mr. SCELLE said that he did not see how a text which provided for the acquisition of nationality at birth but made its retention, once majority was attained, subject to certain conditions could "create" cases of statelessness; surely, no one would reject the nationality of the State where he was born if he had no prospect of acquiring another. He had opposed the draft Convention on the Elimination of Future Statelessness because it was too categorical and too sweeping. The text proposed by the Special Rapporteur for article I of the convention at present under consideration, however, was even worse; it would, in effect, increase the number of stateless.

19. Mr. ALFARO said he had gladly subscribed to the principles underlying the draft Convention on the Elimination of Future Statelessness but realized that many States would be unable to accept so radical a text. It was for that reason that the Commission was also drafting a convention which would be acceptable to a

larger number of States but would have the effect of reducing statelessness as much as possible. He agreed with Mr. Scelle that it was preferable to allow an individual to repudiate, by the act of his own free will, the nationality he had acquired under the convention rather than keep him without nationality during the years when he needed its protection most. Persons who did not acquire any nationality at birth, either *jure soli* or *jure sanguinis*, should automatically acquire the nationality of the State where they were born and should retain such nationality until they came of age; then, depending on whether they had identified themselves with the State whose nationality they possessed or with another, they should be free to confirm or renounce that nationality under the same conditions as the other nationals of that State. The Commission was primarily concerned with statelessness resulting not from the free choice of individuals, but from conflicting nationality laws.

20. Mr. SANDSTRÖM pointed out that the aim of the convention — and, in his view, the only realistic aim — was to reduce statelessness as much as possible. Its provisions might well be based on those of recent laws enacted by States which were making a serious attempt to achieve the same aim. For example, in 1950 the Scandinavian countries had enacted a new law on nationality,[1] and he wished to propose that article I be replaced by the following text, which was based on that new law:

> "If a person does not acquire any nationality at birth, he shall, when attaining the age of majority, have the right to acquire, by option, the nationality of the State in whose territory he was born, provided that since his birth he has had his habitual residence in that State."

21. Mr. YEPES said that the purpose of the article under discussion must be to achieve the greatest possible reduction in the number of cases of statelessness arising as a result of failure to acquire nationality at birth, either *jure soli* or *jure sanguinis*. The text proposed by the Special Rapporteur went too far in one respect and not far enough in another. He therefore proposed, first, the deletion of the word "subsequently", and secondly, the replacement of sub-paragraphs (*a*), (*b*) and (*c*) by the following text:

> "1. He has resided in the country for a continuous period of at least five years before attaining his majority; or
>
> "2. His parents were domiciled in the country at the time of his birth; or
>
> "3. On attaining his majority under the law of the country of birth, he opts for the nationality of that State in accordance with its legislation."

His proposal would make the residence qualifications for stateless persons the same as those normally required of persons seeking naturalization and not more severe, as would be the case with the text proposed by the Special Rapporteur. The provision that nationality should be granted to a stateless person whose parents had been domiciled in the country at the time of his birth was taken from Colombian law.

22. Mr. PAL appreciated the merits of the Special Rapporteur's text, which appeared to be based on the principle that a child, which was dependent on its parents, should share their condition. He was, however, inclined to agree with Mr. Alfaro that it would be preferable to delete the word "subsequently" and thus give the child a nationality from birth, while leaving him free to renounce that nationality, if he wished, on attaining majority.

23. His only comment on the text proposed by Mr. Alfaro was that it seemed desirable to distinguish between cases where the parents were habitual residents and cases where they were only casual visitors.

24. Mr. HSU did not think there was any fundamental disagreement within the Commission. The text proposed by the Special Rapporteur might not necessarily lead to an increase in statelessness, but it would not substantially reduce it; even the Special Rapporteur himself, however, did not favour that text, but preferred article I of the draft Convention on the Elimination of Future Statelessness. Mr. Alfaro's proposal was also a proposal for the "elimination" of statelessness, provided that word was not interpreted too strictly; and in his (Mr. Hsu's) view, it should not be interpreted too strictly, if the purpose of eliminating statelessness was borne in mind, for there was no need for the Commission to concern itself with cases where an individual who was entitled to a nationality refused or renounced it. Along the same lines Faris Bey el-Khouri had pointed out at the previous meeting that it was a much more serious matter to impose a nationality on an adult than on a child. If that view were adopted, Mr. Alfaro's proposal was all that was required, and the Commission could consider submitting a single convention instead of two.

25. Mr. LAUTERPACHT proposed that article I be worded as follows:

> "Whenever a person does not acquire any nationality at birth he shall, on attaining majority, acquire on application the nationality of the State in whose territory he is born provided that he has no other nationality and he has resided habitually in that State since birth or has resided permanently in that State for seven years immediately preceding his application."

He was aware that that text would leave such a person stateless until he attained his majority. It was designed, however, to meet the needs of those States which felt they could not accept the draft Convention on the Elimination of Future Statelessness; if any of them was prepared to confer nationality on such a person at birth, there was no reason why it should not accept the more radical convention.

[1] See *Laws concerning nationality* (United Nations publication, Sales No.: 1954.V.1), pp. 121, 352 and 439.

26. Mr. Sandström had referred to the efforts which were being made by a number of States to reduce statelessness arising at birth; those efforts related particularly to cases such as were dealt with in the Special Rapporteur's article V. Mr. Córdova, however, had not dealt with the case of children born of stateless parents who had been born in the State where he was born — in that connexion he had in mind legislation enacted by the Netherlands — or had resided there for a considerable period. He therefore proposed that an additional article be inserted after article I, reading as follows:

"If a person born of stateless parents does not acquire any nationality at birth he shall acquire the nationality of the State where he is born if:

"(*a*) His stateless father or mother was born in that State, or

"(*b*) His stateless father or mother has resided in that State for ten years."

27. Mr. YEPES remarked that the latter point was covered by sub-paragraph 2 of his amendment, although he made the criterion domicile instead of ten years' residence.

28. Mr. LAUTERPACHT said that he would have no objection to domicile being taken as the criterion.

29. Mr. CÓRDOVA said the Commission had reached the point at which, in its desire to retain the right of option, it seemed willing to sanction statelessness. The Commission's point of view at the previous session had been perfectly clear, that "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."[2] If the aim was the reduction, and not the elimination of statelessness, that approach seemed perfectly sound, whereas that proposed by Mr. Alfaro would actually lead to an increase in the numbers of stateless.

30. Mr. ALFARO observed that, not only in the text which he proposed but also in that proposed by the Special Rapporteur, the individual could, on attaining majority, refuse the nationality of the State where he was born; in that respect, therefore, the one was not more likely to give rise to statelessness than the other. The difference between them was that Mr. Córdova's proposal would keep large numbers of people stateless for twenty-one years.

31. Mr. SANDSTRÖM pointed out that the right of option was, properly speaking, a concession granted to individuals born in *jus sanguinis* countries. In *jus soli* countries the question did not arise.

32. The text proposed by Mr. Lauterpacht for article I was unnecessarily complicated; on the other hand, his proposal for an additional article was of great interest, although that article, and the Special Rapporteur's article V, should logically precede article I since they dealt with the acquisition of a nationality at birth.

33. The CHAIRMAN said that the Convention on the Elimination of Future Statelessness would impose heavy obligations on the parties to it and might therefore be unacceptable to many States. The Special Rapporteur had accordingly been asked to prepare a second convention, to be entitled "Convention on Reduction of Future Statelessness", acceptance of which would involve States in less onerous obligations. The Commission was now discussing the second convention; yet in the course of their discussion members of the Commission were tending to make the provisions of the second convention such that in the result the two conventions would be substantially alike.

34. The object of article I was to reduce the likelihood of a child being stateless. Countries applying the principle of *jus sanguinis* were unlikely to accept a convention which applied the *jus soli* in the case of otherwise stateless children. Article I had been proposed in an effort to overcome that difficulty, but the amendments put forward were such that few countries applying *jus sanguinis* would be willing to accept a convention containing them; indeed, there was no reason to suppose that a State which found unacceptable the principles applied in article I of the first convention would take any different view of article I of the second if those amendments were adopted. The purpose of the second convention was, surely, to take the matter of nationality law a step forward while keeping within the limits of likely acceptability. If that were so, the Commission should not seek to insert in the second convention obligations which many States would find it difficult to accept; in particular, a rigid article ensuring children the certainty of nationality at birth would be firmly opposed.

35. Mr. SCELLE said the Convention on Elimination of Future Statelessness was one in which concessions to expediency were not in point. It was, as it were, an expression of revealed truth and reminded him of the Ten Commandments. To that extent it was illusory and unreal because States would be unwilling to adopt it. It was for that reason that the Commission had embarked on the drafting of the Convention on Reduction of Future Statelessness.

36. In article I, it had been felt necessary to ensure the existence of a link between the individual and the State; that link in the case of States applying *jus sanquinis* was primarily long residence. The Special Rapporteur's presentation of the matter was, however, somewhat unreal. The time object was not so much to prevent statelessness as to ensure that statelessness would not have consequences detrimental to the interests of the individual concerned; if an individual wished to remain stateless there was no reason to prevent him from doing so. Yet article I as drafted envisaged the withdrawal or the non-acquisition of nationality as a consequence of acts of the individual rather than of the State.

37. The requirement in article I that a stateless person

[2] *Yearbook of the International Law Commission, 1952*, vol. I, 162nd meeting, para. 34.

might acquire the nationality of the State in whose territory he was born provided he served in its armed forces should not be worded as if it were a condition precedent to the acquisition of such nationality. On the contrary, military service was a normal obligation on the nationals of any State; that an ex-stateless person should perform military service meant only that he was in the same situation of conformity to the law as all other nationals.

38. Mr. YEPES said that the Chairman's remarks concerning the possible uselessness of the Convention on Elimination of Future Statelessness were a grave warning on which the Commission should reflect; for if that convention were useless it should not be submitted for consideration by the General Assembly. The Commission was likely to be severely criticized if it submitted such a convention against the weighty advice to which its members had just listened.

39. Mr. SPIROPOULOS said that, to the best of his recollection, the request for the preparation of a Convention on the Elimination of Statelessness had come from the Economic and Social Council. He supposed therefore that the Commission would submit the text to the Economic and Social Council; it would be unwise to present the text to a body which had not asked for it.

40. The CHAIRMAN said he thought that the text would be submitted direct to the General Assembly.

41. Mr. LIANG (Secretary to the Commission) said it was clear from the Commission's terms of reference that the final draft of the convention would be submitted to the General Assembly; the Commission was not, according to its constitution, merely a body of advisers to the Economic and Social Council.

42. Mr. SPIROPOULOS said that, if the final text was to be submitted to the General Assembly, then a preliminary text ought to be submitted previously to governments. That would, however, be a lengthy procedure. In any event, he disagreed with Mr. Yepes that the Commission should not submit a draft convention to the General Assembly merely because it was thought that it might be useless. The Economic and Social Council had asked for a draft convention designed to eliminate statelessness; the consideration that some or even a number of governments might be expected not to accept the convention was irrelevant.

43. The CHAIRMAN said that further discussion of the procedural point should be deferred. He would ask the Secretariat to study the matter.

44. Mr. KOZHEVNIKOV said that, throughout the discussion on article I of the Convention on the Reduction of Future Statelessness, the Commission had been faced with the relationship between that convention and the Convention on the Elimination of Future Statelessness. He wondered whether the Commission was acting correctly in discussing the Convention on the Reduction of Future Statelessness before putting the first convention in final form. He suggested that it would be clearer, quicker and more logical to dispose of the Convention on Elimination of Future Statelessness first. Once that was done, the Commission might be able to decide whether there was any need for a second convention; or it might come to the conclusion that it would be possible to combine the two conventions. At first sight, therefore, it would seem that discussion on the draft Convention on Reduction of Future Statelessness should be postponed.

45. The CHAIRMAN said that Mr. Kozhevnikov was logically correct. But at the opening of the meeting, the Commission had not yet received the text of the articles of the draft Convention on Elimination of Future Statelessness prepared by the Drafting Committee. He had thought, therefore, that it would save time if they began by discussing the draft Convention on Reduction of Future Statelessness. He hoped that Mr. Kozhevnikov would be satisfied if the Commission reverted to the draft Convention on Elimination of Future Statelessness the following day, but continued its discussion of article I of the Draft Convention on Reduction of Future Statelessness for the remainder of the present meeting.

46. Faris Bey el-KHOURI said that the effect of Mr. Sandström's amendment would be that a person born stateless would remain stateless until he achieved his majority. It was therefore very similar to the amendment proposed by Mr. Lauterpacht. He (Faris Bey el-Khouri) accordingly proposed a further text to read:

> "If a person does not acquire any nationality at birth he shall acquire at birth the nationality of the State in whose territory he was born and he remains a national of that State unless he opts, within one year after attaining majority, for another nationality which he may have acquired, or unless he is revoked by the government of the State on the grounds of failing to comply with/fulfil the requirements of/its municipal laws for retaining nationality."

47. The CHAIRMAN, speaking in his personal capacity, said that it seemed to him that Faris Bey el-Khouri was proceeding on a false assumption. The object of the convention under discussion was not the elimination but the reduction of future statelessness.

48. Mr. SANDSTRÖM said that there was only a slight difference of drafting between his amendment and Mr. Lauterpacht's. In the event of a vote being taken, he would withdraw his amendment.

49. Mr. ALFARO was prepared to withdraw his amendment in favour of Mr. Yepes'.

50. Mr. AMADO's first impression of the amendments under consideration was that he approved the omission of the word "subsequently"; a stateless person should acquire immediately on birth the nationality of the State in whose territory he was born. For that reason he favoured the amendments proposed by Mr. Alfaro, Mr. Lauterpacht and Mr. Sandström. Indeed, they were conceived along the same lines as existing Brazilian law. He pointed out further that there was no substantial difference between Mr. Lauterpacht's and Mr. Sand-

ström's amendment. He disagreed with Mr. Yepes' amendment.

51. Mr. LAUTERPACHT said there was only one small difference of substance between his amendment and that proposed by Mr. Sandström: his (Mr. Lauterpacht's) amendment contained the phrase "provided that he has no other nationality". It seemed to him more convenient therefore to treat Mr. Sandström's amendment as the only one before the Commission.

52. Mr. CÓRDOVA said that the amendments proposed by Mr. Lauterpacht and Mr. Sandström included only one condition, habitual residence, compliance with which would ensure that a stateless person could acquire the nationality of the State in whose territory he was born. He wondered whether additional conditions might not be inserted.

53. Mr. LAUTERPACHT said that the condition mentioned in his amendment was intended to be a minimum. The fact that other conditions were not specifically mentioned was not intended to imply that States might not establish any other conditions they considered desirable; such a condition might for example be military service.

54. Mr. YEPES said the proposal in his amendment to omit the word "subsequently" from article I, ensuring thereby the immediate acquisition of a nationality on birth, was supported by Mr. Alfaro, Mr. Amado, Mr. Scelle and others. He suggested that the Commission should first agree on the deletion of that word from article I and discuss the remainder of the article later.

55. Mr. KOZHEVNIKOV, referring to the texts proposed by Mr. Lauterpacht and Mr. Sandström, asked whether it was their intention that the State should be compelled, on the conditions mentioned therein, to confer its nationality on stateless persons, or only to give stateless persons the right of application.

56. He also asked what sort of residence was in the minds of Mr. Lauterpacht and Mr. Sandström when they referred to "habitual residence". Did they mean domicile or something less?; was it to be permanent and constant residence or not?

57. Mr. SANDSTRÖM said that his amendment was intended to confer on a stateless person the right to become a national of the State in whose territory he was born. The State would be under an obligation to confer its nationality on him at his request. The difference in Anglo-Saxon law between domicile and residence had been much discussed. He hoped that the use of the phrase "habitual residence" in his amendment would not provide an occasion for further discussion and that the Commission would neglect such fine points of interpretation for the time being.

58. Mr. AMADO agreed with those members who felt that the words "subsequently" should be omitted. He was in favour of an amendment along the lines of those submitted by Mr. Lauterpacht and Mr. Sandström.

59. Mr. LAUTERPACHT said he put the same interpretation as Mr. Sandström on his amendment.

60. Mr. YEPES again suggested that the Commission should vote for the deletion or retention of the word "subsequently" in article I.

61. The matter of "habitual residence" should be handled cautiously, for if the phrase implied domicile there would be difficulty in the case of minors who lived in a country other than that in which their parents lived. Furthermore, there was a distinction, normally made in Colombian law, between material or *de facto* residence and legal residence.

62. Mr. ZOUREK contrasted Mr. Yepes' amendment on the one hand with the amendments of Mr. Lauterpacht and Mr. Sandström on the other. The former was inspired by the concept that the nationality of the State in whose territory a child was born should be conferred on the child if he did not acquire another nationality; it might be conferred at birth or later on specific conditions. Mr. Yepes' amendment was thus prompted by the *jus soli*.

63. But the difficulties with which the Commission was faced arose primarily in States applying the *jus sanguinis*, and it was evident therefore that in drafting the text care must be taken to see that it would be acceptable to those States. The amendments of Mr. Lauterpacht and Mr. Sandström were inspired by principles that appeared to be fair and consequently acceptable. They laboured, however, under the disadvantage that they left the initiative in the hands of the individual and did not require him to prove the solidity of his link with the State, which was, however, as it were, the trustee of the interests of the national collectivity. Comparing that procedure with procedures leading to naturalization, he pointed out that when States naturalized individual applicants they demanded compliance with certain conditions which would ensure that a successful applicant was likely to become a good citizen, whereas in the amendments it was proposed that States should depend on a mere formality — the place of birth and the fact of residence. He felt bound to draw attention to that difficulty, as it was likely to make an otherwise just article unacceptable to many States.

64. Mr. KOZHEVNIKOV again drew attention to the mandatory nature of the amendments proposed by Mr. Lauterpacht and Mr. Sandström. In the latter it was stated that a person should "have the right to acquire, by option, ...", while the former said that a person should "acquire on application ...". It seemed therefore that in substance both texts had an imperative sense, namely, first, that option was a right of the individual, and secondly, that the individual's wishes should be automatically accepted. He asked whether the Commission was expected to vote on a text bearing that imperative sense or whether the text, particularly of Mr. Lauterpacht's amendment, meant that the only right conferred on a stateless person was that of making application.

65. Mr. LIANG (Secretary to the Commission) read out a further amendment which resulted from an agreed combination of the amendments proposed by Mr. Lauterpacht and Mr. Sandström:

> "If a person has not acquired any nationality at birth or subsequently, he shall, after having attained the age of majority, have the right to acquire, by option, the nationality of the State in whose territory he was born, provided that since his birth he has had his habitual residence in that State."

66. Mr. YEPES had serious objections to that combined text. Referring to the clause reading "... he shall, after having attained the age of majority...", he observed that the exact time when the person would be able to exercise the right of option was left unspecified. Further, the age of majority was itself variable and therefore an unsatisfactory criterion.

67. Mr. KOZHEVNIKOV repeated that it was still not clear to him whether persons were to have the right to acquire a nationality by option or whether they were merely to have the right to apply.

68. Mr. LAUTERPACHT said that according to the combined amendment the individual would have the right to demand nationality and the State would be under the obligation to grant it.

69. It would be difficult to give a precise definition of the term "habitual residence" to which objections had been raised. It was however a customary term in various legal systems and had been interpreted by international tribunals. He supposed that the courts of the different States applying the convention would interpret the term "habitual residence" in accordance with their national law.

70. The combined amendment required a person to have had his habitual residence, between his birth and his attainment of the age of majority, in a particular State if he were to acquire the nationality of that State. That went further than the terms of Mr. Yepes' amendment, according to which a person would be entitled to take the nationality of the country in which he had been born after five years' residence in it. He felt that five years' residence was too short for the purpose which the Commission had in mind; but if Mr. Yepes were prepared, supposing the Commission had adopted the combined amendment, then to propose that ten years' residence should be regarded as evidence of habitual residence for the purposes of article I, he (Mr. Lauterpacht) would be prepared to support that proposal.

71. Mr. YEPES said he accepted ten years rather than five years as the period of required residence before a person born in a country might acquire its nationality. His previous objection to the combined draft however still stood. At what time "after having attained the age of majority" would a person be entitled to acquire the nationality of his country of birth?

72. Mr. LAUTERPACHT replied that he would be entitled to acquire that nationality at any time after attaining the age of majority.

73. Mr. SANDSTRÖM agreed with Mr. Lauterpacht. He only wished to add that, in his view, an individual who had resided for thirty years in his country of birth had an even greater right to acquire its nationality than a person who had resided for a shorter period.

74. Mr. YEPES could accept the joint amendment of Mr. Lauterpacht and Mr. Sandström only if his proposal for the deletion of the word "subsequently" from article I were adopted. He urged that the Commission should immediately take a vote on the deletion or retention of that word; that was a basic issue. He did not accept the joint amendment *in toto* as it left vague the time at which a person would have the right to acquire the nationality of the State in whose territory he was born. To leave that point uncertain was incorrect from every point of view.

75. Mr. CÓRDOVA pointed out that it was not the sense of the joint amendment that nationality should be acquired by a stateless person at birth, coupled with conditions for its subsequent retention. The amendment in fact provided for an actual residence of perhaps twenty or twenty-five years — the period between birth and the age of majority — before the right to nationality was acquired. That was in contrast to Mr. Yepes' amendment according to which residence for five years — subsequently altered in the course of the discussion to ten years — would be long enough to confer a right to the nationality of the State concerned. The requirement of naturalization laws was normally only five years' residence. There was now a suggestion that ten years' residence would be required of stateless persons before they could acquire such nationality; and Mr. Lauterpacht and Mr. Sandström went even further in their amendment. In his view, however, the Commission should treat the stateless persons more generously than normal aliens applying for naturalization.

76. Mr. LAUTERPACHT said that the difference between stateless persons and normal aliens was that the convention proposed to give stateless persons the right to acquire nationality, not merely the right to apply for it.

77. Mr. SCELLE said that the Commission appeared to be playing a complicated game of hide and seek. Mr. Alfaro and Mr. Yepes had suggested, with some support, the deletion of the word "subsequently" in article I in order that a stateless person might have at any rate a temporary nationality from birth. The discussion had taken the form of a conjuring trick and something quite different had now appeared, namely, support for a proposal that stateless persons could only acquire the nationality of the State in which they were born, after varying periods of residence.

78. Mr. YEPES pointed out that he had not withdrawn his amendment providing for the acquisition of nationality at birth, and said that if the purpose was to achieve a real decrease in the number of stateless persons, the Commission should be willing to omit the word "subsequently".

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

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

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

The meeting rose at 1.5 p.m.

218th MEETING

Friday, 17 July 1953, at 9.30 a.m.

CONTENTS

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

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

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

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

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*continued*)

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

Article I [1] (continued)

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

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

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

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

Articles 5, 6, 7, 8 and 9

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

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

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