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Summary record of the 221st meeting

Topic:
Nationality including statelessness

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convention, so long as they failed to distinguish between stateless individuals and stateless masses.

79. Mr. LIANG (Secretary to the Commission) suggested that the aim of the constitutional provisions to which Mr. Alfaro had referred was to prevent a person who would acquire another nationality *jure sanguinis* from acquiring Panamanian nationality as well, by the mere fact of his having been born in that country. The Commission's aim was different; it was to confer a nationality on persons who would otherwise have no nationality at all. In his view, therefore, the argument that the text proposed by Mr. François would place persons who would otherwise be stateless in a privileged position failed to take into account the general aim of the Convention.

80. The CHAIRMAN said that he would vote in favour of Mr. Alfaro's amendment on the understanding that the various drafting points which had been raised with regard to it would be referred to the Drafting Committee.

On that understanding, *the amendment proposed by Mr. Alfaro to paragraph 2 of Mr. François' proposal was adopted by 5 votes to 2, with 5 abstentions.*

Paragraph 1 of Mr. François' proposal was adopted by 7 votes to 1, with 4 abstentions.

Paragraph 2, as amended, was adopted by 7 votes to 1, with 4 abstentions.

Mr. Francois' proposal as a whole was adopted, as amended, by 7 votes to 1, with 4 abstentions. Subject to any drafting changes made by the Drafting Committee, the text read as follows:

"1. 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.

"2. The national law of the Party may make preservation of such nationality conditional on the person's being normally resident in its territory until the age of 18 and provide that to retain nationality he must comply with such other conditions as are required from all persons born in the Party's territory."

Article II [2]

81. The CHAIRMAN then drew attention to article II, which, in the text proposed by the Special Rapporteur (A/CN.4/64), read as follows:

"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."

He recalled that, in considering an identical provision in the draft Convention on the Elimination of Future Statelessness, the Commission had deleted the words "until the contrary is proved", and inserted the words "whose place of birth is unknown" after the word "foundling".

82. Mr. LAUTERPACHT felt that for the sake of uniformity the same changes should be made in the text of article II of the draft Convention on the Reduction of Future Statelessness.

83. Mr. YEPES and Mr. SCELLE felt that the words "until the contrary is proved" should be retained, since it was a violation of judicial practice to withhold a nationality from anyone who could prove that he had a right to it.

84. Mr. ZOUREK said that he need merely repeat what he had said during the discussion on the draft Convention on the Elimination of Future Statelessness, namely, that the deletion of the words "until the contrary is proved" was illogical and wholly inappropriate, particularly in view of the fact that the Commission had decided to place no age limit on foundlings. It was by no means exceptional for the origin of a foundling to be subsequently cleared up; it had happened tens of thousands of times during and immediately after the second World War.

85. Mr. LIANG (Secretary to the Commission) pointed out that the effect of the words "whose place of birth is unknown" was, at least, very similar to the effect of the words "until the contrary is proved". If the foundling's place of birth became known, article II would cease to apply.

Further discussion of article II was adjourned until the next meeting.

The meeting rose at 1 p.m.

221st MEETING

Wednesday, 22 July 1953, at 9.30 a.m.

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

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. 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 II [2] (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article II of the draft Convention on the Reduction of Future Statelessness. He had consulted the provisional summary record of the meeting at which the Commission had discussed the corresponding article of the draft Convention on the Elimination of Future Statelessness.[1] It appeared that Mr. Córdova had then proposed deletion of the words "until the contrary is proved" on the grounds that that convention was designed to bring about the complete elimination of statelessness. After a lengthy discussion, Mr. Córdova's proposal had been adopted by 7 votes to 6, with 1 abstention. Faris Bey el-Khouri had, however, suggested the addition of the words "whose place of birth is unknown" in order to obviate the objections to which Mr. Córdova's proposal had given rise.

2. There was therefore, as the Secretary had said at the previous meeting, a close connexion between the two phrases. Faris Bey el-Khouri's suggestion had been adopted by 10 votes to none, with 4 abstentions, and the article in its amended form had been adopted by 9 votes to 3, with 2 abstentions. In view of the large majority by which the article had been adopted in its amended form, he saw no reason why there should be any serious objections to the same texts being inserted in the draft convention at present under consideration.

3. Mr. KOZHEVNIKOV said that there was no doubt that the draft Convention on the Reduction of Future Statelessness was very close in substance to the draft Convention on the Elimination of Future Statelessness. His attitude to both was therefore much the same; both were based on the — to him unacceptable — principle that international law should have precedence over the sovereignty of States. The draft convention at present under consideration was not, however, intended to be a supplement to the other; it was intended to be an independent convention, and there was no reason why a question which had been decided one way in one convention should not be decided differently in the other. Even though the Commission had deleted the words "until the contrary is proved" from article 2 in the first draft convention, he was in favour of their retention in the second.

4. Mr. YEPES agreed that those words should be retained, for the reasons which had been given during the discussion on article 2 of the draft Convention on the Elimination of Future Statelessness. The fact that an error had been committed was no reason for repeating it.

5. Mr. SANDSTRÖM said that in principle he agreed with Mr. Kozhevnikov that there was no reason why the wording of one convention should necessarily conform to that of the other. In the present instance, however, he saw no reason why the wording which had been adopted for the first draft convention should not be used for the second, since in practice there was no difference between that wording and the wording proposed in the Special Rapporteur's report.

6. Faris Bey el-KHOURI said that although it was, of course, true that the two conventions were not identical in all respects, they were identical in so far as concerned what they proposed with regard to foundlings.

7. The CHAIRMAN agreed that the same wording must be used in both, since otherwise it would be assumed that two different things were meant. If the Commission wished to adopt a different wording from that which it had already adopted for article 2 of the draft Convention on the Elimination of Future Statelessness, the Drafting Committee should bring that article into line.

8. Mr. ALFARO said that in his view the situation did not require that the article should rest on a *juris et de jure* presumption instead of on a *juris tantum* presumption. The circumstances surrounding a foundling's birth might at any time be clarified, and if they were, and the foundling was discovered to have the right to a nationality other than that of the State in which he had been found, there was no reason to deprive him of the former. He therefore favoured the retention of the words "until the contrary is proved".

9. Mr. SCELLE agreed that those words should be retained.

10. Mr. LAUTERPACHT suggested that all difficulties would be removed if the text were amended to read:

> "For the purpose of article I a foundling, so long as the place of his birth is unknown, shall be presumed to have been born in the territory of the Party in which he is found."

11. The CHAIRMAN said that he had interpreted the words which, at the suggestion of Faris Bey el-Khouri, had been added to article 2 in the first draft convention as meaning "so long as the place of his birth is unknown", but that he had no objection to making the point explicit, in the way suggested by Mr. Lauterpacht.

12. Mr. YEPES said that he could accept Mr. Lauterpacht's suggestion.

[1] See *supra*, 213th meeting, paras. 31-75.

Mr. Lauterpacht's suggestion was adopted by 10 votes to none, with 3 abstentions.

13. The CHAIRMAN said that the Drafting Committee would doubtless bear in mind the desirability of making the same change in article 2 of the draft Convention on the Elimination of Future Statelessness.

Article III

14. He then drew attention to article III, relating to children born to persons enjoying diplomatic immunity, and recalled that the corresponding article had been deleted from the draft Convention on the Elimination of Future Statelessness.[2] Should it not also be deleted from the draft Convention on the Reduction of Future Statelessness?

It was so agreed.

Article IV [3]

15. The CHAIRMAN then drew attention to article IV, dealing with births on vessels or aircraft, and recalled that for the corresponding article in the draft Convention on the Elimination of Future Statelessness the Commission had adopted the following text:

> "For the purposes of article I, birth on a vessel shall be deemed to have taken place within the territory of the state whose flag the vessel flies. Birth in an aircraft shall be considered to have taken place within the territory of the state where the aircraft is registered."[3]

16. Mr. CÓRDOVA (Special Rapporteur) said that he still preferred the text contained in his report to that which the Commission had adopted, but that since it had adopted it for one convention, it was logical to adopt it for the other.

It was agreed by 9 votes to none, with 4 abstentions, to use for article IV the same wording as had been adopted for article 4 of the draft Convention on the Elimination of Future Statelessness.

Article V [4]

17. The CHAIRMAN then drew attention to article V as proposed by the Special Rapporteur, which read as follows:

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

18. Mr. CÓRDOVA said that article V was designed to cover cases where a child born in a *jus sanguinis* country to nationals of a *jus soli* country did not fulfil the conditions laid down in article I. It would not, however, cover cases where the parents were stateless or unknown, and its effect would therefore be the reduction, not the elimination, of statelessness so arising. In view of the changes which had been made in article I, the wording of article V would need some amendment.

19. The purpose of the second sentence was to avoid cases of dual nationality.

20. Mr. SCELLE said that in the French version, at least, the second sentence could only mean that the child should choose the nationality of its father in preference to that of its mother.

21. Mr. LAUTERPACHT suggested that, in view of the changes which had been made in article I, article V should be amended to read:

> "If in consequence of the operation of the conditions provided in article I a person does not retain the nationality of the State of birth, he shall acquire the nationality of one of his parents. In the latter case, the nationality of the father shall prevail over that of the mother."

22. The CHAIRMAN pointed out that the text proposed in the Special Rapporteur's report served another purpose than that which he had mentioned. It would ensure that a nationality was conferred upon a child born in a *jus sanguinis* country which was not a Party to the convention, provided that one of its parents was the national of a State which was a party to the convention. Assuming that the Netherlands signed the convention, Netherlands nationality would, for example, under the terms of article V, be conferred on a child born in Germany to a stateless father and a Netherlands mother even if Germany was not a party to the Convention.

23. Mr. CÓRDOVA agreed that the text proposed in his report would have that effect too.

24. Mr. LAUTERPACHT said that the question which the Chairman had raised was one which must be dealt with separately. The text which he (Mr. Lauterpacht) had proposed to cover cases where the provisions laid down in article I were not fulfilled should therefore form an additional article, and the text of article V, as contained in the Special Rapporteur's report, should be retained, though possibly with some drafting amendments.

25. Mr. CÓRDOVA felt that the same text could cover both types of case. If the text began "If a child does not, under the provisions of article I, acquire at birth any nationality...", the words "under the provisions of article I" could mean in the one case "because he does not comply with the conditions provided in paragraph 2 of article I", and in the other "because, being born in the territory of a State which is not a party to the Convention, he falls outside the scope of article I".

26. Mr. LIANG (Secretary to the Commission) said that if the Commission wished to insert in the draft Convention on the Reduction of Future Statelessness a provision covering persons born in a State which was

[2] *Ibid.*, para. 85a.

[3] *Ibid.*, para. 95.

not a Party to the convention, but who had a parent who was the national of a State which was a Party to the convention, it seemed that it should *a fortiori* include the same provision in the draft Convention on the Elimination of Future Statelessness.

26a. Mr. CÓRDOVA agreed.

27. Mr. SANDSTRÖM also agreed, but observed that the point raised by the Chairman emphasized the fact that the success of the Commission's endeavours to reduce or eliminate statelessness would depend less on the wording of the Conventions than on the number of States that acceded to them.

28. He suggested that, in order to make quite clear the point which the Chairman had in mind, the words "provided the State of which such parent is a national is a Party to the Convention" be inserted after the words "it shall acquire the nationality of one of its parents".

29. The CHAIRMAN thought that that went without saying.

30. Mr. YEPES pointed out that the text proposed in the Special Rapporteur's report failed to distinguish between legitimate and illegitimate children. In the case of the latter, account should be taken of the parent to whom filiation was first established. He therefore proposed the addition of the following sentence, based on article 17 of the French law of 1945:

"An illegitimate child shall acquire the nationality of the parent to whom filiation is first established."

31. Mr. KOZHEVNIKOV said that, if Mr. Yepes' proposal were adopted, it would only strengthen his opposition to article V, since Soviet law recognized no distinction between legitimate and illegitimate children.

32. Mr. YEPES said that, no matter what the law of individual countries might say, such a distinction existed in fact.

33. Mr. CÓRDOVA did not understand Mr. Yepes' proposal, since it was necessarily the mother to whom filiation was first established.

34. Mr. SCELLE agreed, but said that he would have to vote for Mr. Yepes' proposal, since it appeared to be based on the law of his (Mr. Scelle's) country.

35. Mr. ALFARO felt that it was unnecessary, for the purposes of the convention, to make such fine distinctions, particularly if they were abhorrent to the legal systems of certain countries. The case of illegitimate children would be covered, and the possibility of dual nationality excluded, if the second part of the article were amended to read simply "it shall acquire the nationality of its father and, in default thereof, the nationality of its mother".

36. The CHAIRMAN said that he would first put to the vote the amendment proposed by Mr. Yepes to the text contained in the Special Rapporteur's report.

Mr. Yepes' amendment was rejected by 7 votes to 2, with 4 abstentions.

37. Mr. ALFARO pointed out that, as it stood, the Special Rapporteur's text, if taken in conjunction with article I, seemed to imply that there were two different rules for the one situation. In one case it was stated, "If a child does not acquire at birth any nationality, either *jure soli* or *jure sanguinis*, it shall acquire the nationality of one of its parents"; in the other it was stated, "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".

38. Mr. CÓRDOVA agreed that some reference to article I would have to be inserted in the text of article V.

39. Mr. LAUTERPACHT suggested that the Commission should first vote on the additional article which he had proposed.

The additional article proposed by Mr. Lauterpacht was adopted by 5 votes to 3, with 5 abstentions.

40. Mr. YEPES explained that he had voted against that article because he thought it gave *jus sanguinis* an unjustified preponderance over *jus soli*.

41. The CHAIRMAN then put to the vote the text of article V proposed by the Special Rapporteur.

That text was adopted by 6 votes to 4 with 3 abstentions.

42. Mr. SCELLE said that he had abstained from voting because the French text, at least, made no sense. He hoped that it would be carefully scrutinized by the Drafting Committee.

43. Mr. ALFARO said that he had voted against the text just adopted because it made no sense in English either. The Commission had apparently decided that it was unnecessary to refer in the text to the circumstances in which the article would apply. He hoped that such a reference would at least be made in the report.

44. Mr. CÓRDOVA proposed that the text just adopted be also inserted in the draft Convention on the Elimination of Future Statelessness, since, as the Secretary had said, that seemed only logical.

45. Mr. LAUTERPACHT suggested that a decision on that question be deferred until the Commission had had an opportunity of viewing both conventions as a whole.

It was so agreed.

Article VI [5 and 6]

46. The CHAIRMAN invited comments on article VI, which read as follows:

"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."

47. He pointed out that paragraphs 1 and 2 were slightly different from article 5 in the draft Convention on the Elimination of Future Statelessness in the form in which it had been adopted by the Commission.

48. Mr. CÓRDOVA said that the article under discussion was identical with article 5 of the draft Convention on the Elimination of Future Statelessness as he had originally drafted it. The Commission had decided to divide article 5 of that convention into two articles; he asked whether the article under discussion should in consequence be divided similarly, and suggested that the text of the article or articles to be adopted by the Commission in the draft Convention on the Reduction of Future Statelessness should follow that of articles 5 and 6 of the Convention on the Elimination of Future Statelessness in the form in which they had been adopted.

49. The CHAIRMAN recalled that, in the course of its discussions on the draft Convention for the Elimination of Future Statelessness, the Commission had added a third paragraph to article 6, reading:

"3. Persons shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register, or on any other similar ground."[4]

50. The article under discussion contained no equivalent paragraph. He wondered whether such a provision was appropriate to the draft Convention on the Reduction of Future Statelessness.

51. Mr. LAUTERPACHT said that the article under discussion, like articles 5 and 6 of the draft Convention on the Elimination of Future Statelessness, contained no drastic innovations. They reproduced almost literally the text of the Convention on Certain Questions relating to the Conflict of Nationality Laws agreed at The Hague in 1930.[5]

It was agreed, by 8 votes to 1 with 4 abstentions, that paragraphs 1 and 2 of article VI of the draft Convention on the Reduction of Future Statelessness should be identical with article 5 of the draft Convention on the Elimination of Future Statelessness as adopted by the Commission at its 218th meeting.

It was also agreed, by 8 votes to 2 with 3 abstentions, that paragraphs 3 and 4 of article VI of the draft Convention on the Reduction of Future Statelessness should be identical in text with paragraphs 1 and 2 of article 6 of the draft Convention on the Elimination of Future Statelessness as adopted by the Commission at its 218th meeting.

It was further agreed, by 6 votes to 2 with 5 abstentions, that another paragraph should be added to article VI of the draft Convention on the Reduction of Future Statelessness identical with paragraph 3 of article 6 of the draft Convention on the Elimination of Future Statelessness as adopted by the Commission at its 218th meeting.

52. The CHAIRMAN said that it would be left to the Drafting Committee to decide whether article VI of the draft Convention on the Reduction of Future Statelessness should be divided into two, following the precedent of the draft Convention on the Elimination of Future Statelessness.

53. Mr. YEPES raised a question of principle. If article VI of the draft Convention on the Reduction of Future Statelessness was to be identical with articles 5 and 6 of the draft Convention on the Elimination of Future Statelessness, was there any point in having two separate conventions?

54. The CHAIRMAN said there were many differences between the two conventions. Article VII of the draft Convention on the Reduction of Future Statelessness was one example.

55. Mr. YEPES questioned the utility of incorporating identical articles in each of the two draft conventions.

56. Mr. SCELLE said that in his view Mr. Yepes' point should be taken when the texts of the two conventions had been completed; it might then indeed seem unnecessary to have two conventions.

57. Mr. YEPES explained that his abstention from the three previous votes reflected the doubts he had just expressed.

Article VII [7]

58. The CHAIRMAN invited discussion of article VII of the Convention on the Reduction of Future Statelessness. It read:

"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 enrolment in the armed forces of such State;

"(*b*) Expatriation to avoid 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.

[4] See *supra*, 218th meeting, para. 68.

[5] See text in *Laws concerning nationality* (United Nations publication, Sales No.: 1954.V.1), p. 567.

"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."

59. Mr. CÓRDOVA said that in preparing his draft he had followed as closely as possible the instructions given to him by the Commission. He called attention in paragraph 1 (*a*) to the use of the phrase "enemy State". Service with a foreign government, as such, did not violate any principles of international comity; indeed, it was frequently advantageous for individuals to serve foreign governments, and that might even be the case with service in armed forces other than those of an individual's own State — a United Nations army, for example.

60. In paragraph 1 (*b*), he had had in mind the distinction between evasion of military obligations and expatriation to avoid them; evasion without expatriation could be punished by the State affected.

61. With regard to paragraph 1 (*c*) i, he recalled that Mr. Scelle had pointed out that naturalization obtained by fraud was null and void, he therefore proposed that that provision be deleted. Paragraph 1 (*c*) (ii) should be retained, however, as it seemed to him that a person's residence in his country of origin demonstrated his willingness and desire to be linked with that country.

62. He asked the Commission to note his suggestion in paragraph 2 that deprivation of nationality should not be automatic. In his view, the individual should be entitled to the protection of judicial procedure. Paragraphs 1 and 2 were the exceptions to the general rule, stated in paragraph 3, that a person should not be denationalized unless he acquired another nationality.

63. Mr. YEPES pointed out that the article under discussion covered a number of different questions; he suggested that it should be discussed paragraph by paragraph. Furthermore, it was in contradiction with article 7 of the draft Convention on the Elimination of Future Statelessness under which a person might not be denationalized by way of penalty so as to render him stateless.

64. The CHAIRMAN said that there was no contradiction between the two conventions. The differences between them were deliberate and resulted from their different objectives. The Convention on the Reduction of Future Statelessness would involve States in obligations of smaller scope than those consequent upon acceptance of the Convention on the Elimination of Future Statelessness.

65. He invited the Commission to start by discussing article VII in general and then to consider it point by point.

66. Mr. ALFARO thought that, generally speaking, the text took a reasonable view of the circumstances in which denationalization was regarded as justified.

67. Mr. LAUTERPACHT, on a drafting point, said that paragraph 1 (*c*) gave the impression, which was obviously not intended, that a naturalized person could not be denationalized in the circumstances described in paragraphs 1 (*a*) and 1 (*b*).

68. Mr. KOZHEVNIKOV said that, quite apart from general considerations concerning the draft convention as a whole, he felt that article VII was not complete as it stood, since it limited unduly the circumstances in which deprivation of nationality might take place. Furthermore, under paragraph 2, there was undue limitation of the authority which might decide on denationalization in each case. In many countries, denationalization was the concern not only of the judicial authorities; for example, in the Soviet Union the Praesidium of the Supreme Council was also competent in those matters. Again, he could not understand the object of paragraph 3, which seemed to him to override paragraphs 1 and 2, and he asked the Special Rapporteur to explain that point.

69. Mr. CÓRDOVA explained that the object of the article was to avoid denationalization. In the draft Convention on the Elimination of Future Statelessness, the somewhat drastic rule had been laid down that the State could not make anyone stateless unless he acquired another nationality. But certain States might not be able to accept so absolute a principle, and consequently, the Convention on the Reduction of Future Statelessness included certain exceptions, which had, however, been kept as few as possible.

70. It was, of course, open to the Commission to recommend that States might deprive persons of their nationality whenever and however they thought fit. Such a recommendation would, however, neither eliminate nor reduce statelessness.

71. The CHAIRMAN recalled that during the discussion on the draft Convention on the Elimination of Future Statelessness, the Commission had wished to draw a distinction between deprivation of nationality as a penalty and deprivation of nationality on other grounds. He wondered whether the same course should be followed in the Convention on the Reduction of Future Statelessness.

72. Mr. SANDSTRÖM, referring to paragraph 1 (*a*), suggested that there were other actions besides that of entry into the service of the government of an enemy State that were equally detrimental to the State of which the person concerned was a national; he instanced spying and treason. He felt that the Convention might be more acceptable if the article under discussion included some mention of such other actions.

73. Mr. ZOUREK, referring also to paragraph 1 (*a*), suggested the replacement of the word "enemy" by the word "foreign". The word "enemy", taken in its technical sense, would have no application except in wartime. As for Mr. Córdova's mention of a United Nations army, such a force as at present understood would consist of national contingents; there was no

need, therefore, to legislate for membership of such a force.

74. Secondly, State practice in the matter of denationalization was wider than what would be permitted under the text proposed for article VII. In addition to entry into the service of the government of an enemy State or enrolment in its armed forces, there were equally grave or even graver activities, some of which had been instanced by Mr. Sandström, and which were normally causes of denationalization. Some of those causes were mentioned in the Secretariat's "Study of Statelessness".[6]

75. Thirdly, there were many States in which questions of nationality were within the competence of the administrative authorities. He doubted whether it was wise to restrict decisions in cases of denationalization to the exclusive competence of the judicial authorities.

76. Fourthly, he considered that paragraph 3 was in contradiction with paragraphs 1 and 2.

77. Mr. SCELLE disapproved in general the phrase "enemy state" in paragraph 1 (*a*); on the one hand, it was only truly applicable in wartime and, on the other, if the terms of the United Nations Charter were followed, it was possible that only an aggressor might technically be classified as an enemy. Secondly, he thought that high treason, spying and similar actions detrimental to the State should be mentioned in paragraph 1, along with entry into the services of the government of an enemy state and enrolment in its armed forces. He entirely agreed, however, with paragraph 2.

78. The CHAIRMAN said that the equivalent article in the Convention on the Elimination of Future Statelessness was article 7, according to which States should "not deprive their nationals of nationality by way of penalty if such deprivation renders them stateless". He suggested that the first clause of paragraph 1 of the article under discussion should accordingly read:

> "No state shall deprive any person of his nationality by way of penalty if he would thus become stateless except on the following grounds:"

The Chairman's text was adopted by 9 votes to 2, with 2 abstentions.

79. The CHAIRMAN then invited comment on sub-paragraph (*a*).

80. Mr. SCELLE thought that the text should contain the idea that service with the government of a foreign state, if with the permission of the individual's own government, should not result in denationalization. He instanced the case of Professor N. Politis, professor of international law at Paris, who had become Greek Minister; no one had dreamed of denationalizing him.

81. Mr. AMADO said that during the first World War many Brazilians had jointed the French Army; there was no thought of their denationalization either, although in that case they had all had permission for acting as they had done.

82. Mr. YEPES thought the text would be inacceptable if the word "enemy" were deleted; there were many persons serving foreign States — for example under the United States Point-4 Programme — in whose case denationalization would be entirely inappropriate.

83. The CHAIRMAN suggested that if the word "enemy" were deleted from the sub-paragraph, the Commission should include either the notion that foreign service was allowed subject to the previous permission of the individual's government — as was the case in Brazil and the Netherlands — or the notion — which followed French practice — that denationalization was appropriate if a person serving a foreign State continued to do so when requested to desist. He considered that only voluntary enrolment in a foreign army should lead to denationalization.

84. Mr. LAUTERPACHT suggested the following text for the sub-paragraph:

> "(*a*) Voluntary entry or continuance in the service of an enemy state or enrolment in the armed forces of such state;
>
> "(*b*) Treason;",

the rest of paragraph 1 remaining as it stood. He considered that civilian service for a non-enemy State should be permitted, but could not immediately see how account could be taken of the point raised by Mr. Scelle except by mentioning it in the general report.

85. The CHAIRMAN reminded the Commission that many States deprived their nationals of nationality for the simple fact of service in the government of a foreign State without permission, and for the simple fact of continuance in that service after being asked to desist. He wondered how far the Commission should follow that practice.

86. Mr. LAUTERPACHT thought it depended on how far the Commission considered the practice to be reasonable. In his view, the precedent of such practice was not, by itself, of governing importance for the Commission, for there would be no justification for the convention if the Commission were to do no more than codify existing practice.

87. Mr. AMADO said that the Commission's concern was to ensure acceptance of the Convention on the Reduction of Future Statelessness by as many States as possible. It was possible that some States, faced with the necessity of making constitutional amendments to ensure conformity with the Convention, might sign with reservations on article VII; Brazil, he expected, would be in that position.

88. Mr. CÓRDOVA said that almost all constitutions were concerned with nationality and the deprivation of nationality; governments would have to consider how far the rules enunciated in the convention required constitutional revision.

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

89. As to the sub-paragraph under discussion, he suggested a text reading:

"(*a*) Entry to the detriment of the State into the service of the government of a foreign State, or enrolment in the armed forces of such State;".

Such a text would make for greater flexibility, in that each State would be in a position to judge what was detrimental to its interests.

90. Faris Bey el-KHOURI was against the idea that deprivation of nationality was an appropriate principal penalty; in the circumstances the Commission was discussing, it might perhaps be a complementary penalty. For instance, the principal penalty for treason was capital punishment; denationalization was superfluous. He favoured both Mr. Lauterpacht's proposal and the inclusion in the sub-paragraph of the idea that continuance in the service of a foreign State in the face of a prohibition by the individual's own government might be considered a sound reason for denationalization.

91. Mr. ALFARO thought that normal entry into the service of a foreign government should be permitted. He suggested the following wording for the sub-paragraph:

"(*a*) Entry into the governmental or military service of a foreign country against the interests or to the detriment of the State of which a person is a national;".

92. Mr. SCELLE doubted whether the Commission should adopt a formula along the lines of those suggested by Mr. Córdova and Mr. Alfaro; it would be extremely difficult to evaluate the acts of each individual. He would prefer a sub-paragraph reading:

"(*a*) Service of a foreign government against the wish of his own government;".

93. It was impossible to retain the word "enemy". Taken literally, it was inapplicable except in wartime. Yet everyone recalled that different countries had their "hereditary enemies"; England and Germany had at one time been the "hereditary enemies" of France. In addition, what was the situation during the "cold war"? To his mind, the word "enemy" had no meaning in modern international law, particularly when the notion of collective security was taken into account.

94. Mr. YEPES said that the disadvantage of Mr. Alfaro's suggestion was that it contained a subjective element, namely, the notion of detriment to a State, objective evaluation of which was impossible. It would be preferable for the sub-paragraph to read:

"(*a*) Entry into the service of the government of a foreign State, or enrolment in its armed forces, contrary to the laws of his State of origin;".

95. If those laws involved denationalization in the case of foreign service without permission, or if they permitted denationalization only when foreign service was persisted in after formal prohibition, they would be equally in conformity with the terms of the convention.

96. Mr. HSU supported Mr. Lauterpacht's proposal. He did not support Mr. Córdova because it seemed to him that the conception of the State's interests was too vague. He could see nothing wrong with the use of the word "enemy".

97. Mr. SANDSTRÖM supported Mr. Scelle, and agreed that a formula along the lines suggested by Mr. Córdova and Mr. Alfaro was too vague; the declared wish of a State was a better basis for judgment than either its interests or its detriment, both of which involved subjective evaluation. Those members of the Commission who objected to the use of the word "enemy" could also support Mr. Scelle's formula which, so far as he recollected, was not far removed from Mr. Lauterpacht's proposal.

98. Mr. SPIROPOULOS protested against the futility of the present discussion; he was not suggesting that there should be no discussion, but it was essential for members to have precise texts in front of them.

99. Mr. LAUTERPACHT thought the discussion should continue until greater clarity had been achieved. His proposal had been tentative. Nevertheless, the conception of detriment to a State seemed subjective, and the formula proposed by Mr. Scelle, containing the phrase "... against the wish of his own government", was lacking in precision. He would prefer the phrase "... without the permission of his own government"; this was a clear rule that would not be too burdensome, for it was reasonable to expect a person to take the trouble to find out whether or not his government would give him permission to serve a foreign government. He doubted the usefulness of Mr. Yepes' suggestion for the inclusion of the phrase "... contrary to the laws of his state of origin", since the aim of the convention was to limit, where necessary, the application of existing laws. He would therefore support Mr. Scelle's proposal if it were re-worded as he had suggested.

100. Mr. SANDSTRÖM supposed that Mr. Scelle had had in mind not so much the general as the expressed wishes of the government concerned.

Mr. SCELLE replied in the affirmative.

101. Mr. AMADO suggested the sub-paragraph might read:

"(*a*) Entry into the service of the government of a foreign state or enrolment in its armed forces without the permission of the government of the State whose nationality he has;".

102. Mr. SANDSTRÖM pointed out that such phraseology was even wider than that previously suggested, as the limitation to detrimental services was omitted.

103. Faris Bey el-KHOURI approved Mr. Scelle's formula, though he regarded it as essential that what was intended should be the expressed wish of the government concerned. There seemed to him to be no need for a person to ask the permission of his government before entering the service of a foreign State; there might be long administrative delay in granting

permission; informing the government of his intention to serve a foreign government ought to be enough. On the other hand, if his government then expressed its wish that he should withdraw from foreign service, and he disobeyed, there seemed to be a good ground for denationalization.

104. Mr. ALFARO said that it seemed to him that his own views, together with those of Mr. Córdova, Faris Bey el-Khouri, Mr. Lauterpacht and Mr. Yepes, all derived from the following principles; first, that there was no harm in entering the service of a foreign government if that act was not to the detriment of one's own government; and secondly, that the person so serving should desist if the government of his own State was opposed to such service. Service of a potential enemy might well be detrimental to the individual's own State, but to demand that the individual must seek permission of his own government in each case was going too far. He therefore suggested that the sub-paragraph might read:

"(*a*) Entry into and continuance in the service of a foreign state against the expressed will of the government of his own state;".

105. Mr. SPIROPOULOS agreed that it was quite impracticable to demand that, in order to avoid being denationalized, all nationals working abroad should seek the permission of the government of their country of nationality. There were very many Greeks in the United States, for example, many of whom retained their Greek nationality, working in all spheres of life; it was unthinkable that they should all have to approach the Greek Government for permission to continue in that position. Denationalization, to his mind, was a penalty to be applied in exceptional cases for action prejudicial to the State of origin. He therefore approved Mr. Alfaro's proposal and hoped that the matter could be disposed of by a vote on a definite text.

106. The CHAIRMAN asked members of the Commission to submit their amendments in writing to the Secretary.

The meeting rose at 1.5 p.m.

222nd MEETING

Thursday, 23 July 1953, at 9.30 a.m.

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

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. 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 VII [7] (continued)

Sub-paragraph 1 (a)

1. The CHAIRMAN invited the Commission to continue its discussion on article VII of the draft Convention on the Reduction of Future Statelessness. It had before it two amendments to sub-paragraph 1 (*a*). The first, in the name of Mr. Alfaro, read:

"(*a*) Voluntary entry into and continuance in the service of a foreign State against the expressed will or the interests of the State."

There was a possible discrepancy between the English and French texts of that amendment.[1] The French text made it clear that both entry into and continuance in the service of a foreign State had to be voluntary in order to bring the case within the scope of the amendment; in the English text, entry had to be voluntary, but it appeared that continuance need not be. He asked Mr. Alfaro to explain what his intention had been.

2. The second amendment before the Commission was in the name of Mr. Yepes, and read:

"(*a*) Entry into or remaining in the service of the government of a foreign State contrary to the laws of his country of origin."

3. Mr. ALFARO said that he had intended the word "voluntary" to qualify both the entry into and the continuance in the service of a foreign State; some members of the Commission had felt that obligatory continuance in such service should not be penalized.

4. The phrase "expressed will" was intended to refer to specific requests to the individual concerned to desist from the foreign service entered into; it was not intended to refer merely to a general law. The phrase "against... the interests of the State" was intended to cover entry into or continuance in the service of a foreign

[1] The French text read as follows: "a) *S'il est entré et demeure volontairement au service d'un Etat étranger, contrairement à la volonté formelle ou à l'intérêt de l'Etat*".