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Summary record of the 222nd meeting

Topic:
Nationality including statelessness

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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*".

State that was not technically an enemy State. To serve a potential enemy might well be reprehensible; and if a person served a foreign State clandestinely, his service being unknown to the government of the State whose nationality he possessed, he could hardly be said to be acting against the will of the latter. He (Mr. Alfaro) thought it necessary for a State to be able to take action against such a person who had acted against its interests, even though it might not have expressed its will in the matter.

5. Mr. KOZHEVNIKOV said that he and other members of the Commission considered the original version of article VII to be obscure, but he could not agree that the amendments before the Commission improved it. He noted that the Chairman had questioned the precise meaning of the English text, and he (Mr. Kozhevnikov) found it difficult to understand either what was meant by the phrase "expressed will ... of the State", or who was to determine what were "the interests of the State", or even what State was referred to. He presumed that the text intended to refer to the State of which the person concerned was a national, but that was not self-evident. He thought, too, that it was tautological to mention both the expressed will and the interests of the State.

6. Mr. Yepes' amendment, too, required clarification. For example, the country of origin of the person concerned would not necessarily be that of his nationality

7. In his view, the preparation of an international convention along the lines the Commission was following was doomed to failure, for the questions with which the Commission was concerning itself fell within the competence of States. The Commission's attempts to anticipate every possible contingency gave rise to unending discussion and frequently caused a deadlock. The results of its work would be negligible.

8. Mr. HSU thought that the amendments before the Commission admirably met the wishes of members. He suggested that Mr. Alfaro's amendment might be improved if the conjunctions "and" and "or" were interchanged, so that it read "voluntary entry into or continuance in the service of a foreign State against the expressed will and the interests of the State". The expressed will of a State would not necessarily be identical with its interests.

9. Mr. SANDSTRÖM agreed with Mr. Hsu that Mr. Alfaro's amendment would be improved if entry into and continuance in the service of a foreign State were made alternative, as in Mr. Yepes' amendment. But as the concept of the "interests of the State" was indefinite, there was no need to mention more than its "expressed will". He agreed with Mr. Kozhevnikov that it was necessary to make clear which State was meant.

10. Mr. Yepes had constructed his amendment on the limited basis of "the laws of his country of origin"; but he (Mr. Sandström) considered that the will of the State was frequently expressed by means other than legislation.

11. For those reasons he suggested that sub-paragraph 1 (*a*) might be amended to read as follows:

> "(*a*) Voluntary entry into or continuance in the service of a foreign State against the expressed will of the State of which he is a national."

12. Faris Bey el-KHOURI considered Mr. Alfaro's amendment to be most appropriate, particularly as it contained a number of suggestions — of which he approved — made previously by Mr. Lauterpacht. Nevertheless, the expression of the will of a State would normally comprehend a determination of its interests, which would otherwise be open to discussion and misunderstanding; the phrase "or the interests" should therefore be deleted as superfluous. He entirely agreed that both the entry into and the continuance in the service of a foreign State should be voluntary if resulting denationalization was to be equitable.

13. The effect of Mr. Yepes' amendment, depending as it did on "the laws of his country of origin", would be that the draft convention would provide sanctions for unauthorized foreign service in addition to the penalties laid down by municipal law. He would disapprove of that result.

14. He would therefore support Mr. Alfaro's amendment provided the reference to the interests of the State were deleted.

15. He entirely agreed with the aims of paragraph 2 of article VII. Deprivation of nationality should be determined by juridical procedures which would allow the individual some opportunity of defence.

16. Mr. YEPES thought that his own amendment was preferable to that of Mr. Alfaro, in which he found the subjective elements particularly objectionable. What, for example, was the expressed will of the State, and who was to formulate it? What were the interests of the State, and who was to determine them? By contrast, everyone knew what the law was; to his mind, it included not only legislative acts *stricto sensu* but also administrative measures. He agreed, however, that his amendment would be made clearer if the words "of his country of origin" were replaced by the words "of the State whose nationality he claims".

17. He understood that Mr. Scelle intended to propose another amendment in which the prohibition of the State was to be the determining criterion. He (Mr. Yepes) would accept any such amendment and withdraw his own in favour of it.

18. Mr. LAUTERPACHT supported both Mr. Alfaro's amendment and his grounds for moving it. He (Mr. Lauterpacht) had previously drafted a very similar amendment; his slight departures from Mr. Alfaro's wording might to some extent meet the misgivings expressed by Mr. Kozhevnikov and Mr. Sandström. He could not, however, agree with Faris Bey el-Khouri that it was enough to refer only to the expressed will of the State, for a government could not prohibit an act of which it was ignorant. He noted that Faris Bey el-Khouri had given a complete answer to Mr. Yepes'

question concerning who would determine what was detrimental to the interests of the State: he entirely agreed that that task should be the responsibility of the judicial authority.

19. The text he suggested for sub-paragraph 1 (*a*) read as follows:

> "(*a*) if that person voluntarily enters or continues in the service of a foreign country in disregard of an express prohibition or to the grave prejudice of the interests of his State."

20. Mr. SCELLE said that it seemed to him that determination of the detrimental effects of any service with a foreign state was a governmental responsibility. The sub-paragraph might therefore read somewhat as follows:

> "(*a*) Voluntary entry into or remaining in the service of a foreign State in spite of the prohibition of his own government."

21. He had, however, been reconsidering the whole matter. A sub-paragraph along the lines suggested by several members of the Commission would enable a government acting against the United Nations Charter to denationalize one of its subjects who was aiding a foreign government acting in defence of the Charter. He questioned whether such a possibility was in harmony with the new principles of international law, for it could only be of assistance to governments acting contrary to the Charter and the new principles enunciated therein. It might well be in keeping with the principles of sovereignty that governments should be permitted so to act, but for his part he believed that international law should have precedence over the sovereignty of States. He was, therefore, hesitant about the very principle of the sub-paragraph, and did not wish to submit a formal amendment.

22. Mr. SANDSTRÖM withdrew his objection to the inclusion of a phrase mentioning the interests of the State. He felt, however, that those interests should be qualified by the word "manifest".

23. Mr. ALFARO believed that Mr. Lauterpacht's observations, which accurately interpreted his own thoughts concerning his amendment, would dispel any doubts that might remain in the minds of members of the Commission about the necessity of amending the original draft. He therefore withdrew his own amendment in favour of Mr. Lauterpacht's.

24. Several speakers had expressed the view that the "interests of the State" was an indefinite concept. Mr. Scelle, in particular, had thought that mention of the "expressed will of the State" or of "the prohibition of his own government" would cover the contingencies that the Commission had in mind. He (Mr. Alfaro) still maintained that such phrases would be inadequate to bring within the scope of the sub-paragraph actions of which a government did not and could not know. Suppose relations between two governments to be strained; a national of one State clandestinely entering the service of the other and acting against the manifest interests of his own State would not be acting in the face of any specific prohibition or the expressed will of the latter; it would, however, be entirely just for him to be deprived of his nationality when his action was discovered. The State itself, through the intermediary of its judicial system, would be able to decide what activities were detrimental to its interests.

25. As for Mr. Yepes' amendment, he felt that the Commission should take into account the possibility that an individual might innocently, through ignorance or forgetfulness, fail to comply with a purely formal regulation requiring him to obtain the permission of his own government before entering the service of another for some scientific, educational or other completely innocuous purpose. It was surely not intended that in such circumstances the person involved should be liable to denationalization.

26. Mr. CÓRDOVA (Special Rapporteur) agreed with Mr. Alfaro that mention of both the expressed will and the interests of the State should stand in the sub-paragraph. Mr. Lauterpacht's amendment was in substance identical with Mr. Alfaro's.

27. It seemed that Mr. Scelle was afraid that Mr. Alfaro's amendment might be prejudicial to individuals serving in a United Nations force. The amendment, however, mentioned only service with a foreign State, and therefore was not concerned with service with the United Nations.

28. Mr. LAUTERPACHT accepted Mr. Sandström's suggestion that the phrase "manifest detriment" be substituted for the phrase "grave prejudice" in his amendment.

29. Mr. SCELLE was concerned not only with the effect of the sub-paragraph on service with foreign States in present circumstances, but also with that of other foreign service in the future. The implication of the sub-paragraph and of the amendments thereto was that a State preparing to act in a manner contrary to the Charter of the United Nations would be able to threaten with denationalization any of its nationals, serving either with a foreign State or in an international organization, whom it suspected to be acting contrary to its aggressive intentions.

30. Faris Bey el-Khouri had said that judicial procedures ought to be obligatory in cases of deprivation of nationality, and with that he was in agreement; but it was evident that a national tribunal would condemn a person who acted in the way he had just suggested. Therefore, in his view an international tribunal was essential. A State must not be allowed to exercise dictatorial powers over individuals contrary to the new principles of international law.

31. Mr. HSU thought that a State should be required to give a reasoned explanation of its expressed will. He agreed with those members of the Commission who thought that the reference to the interests of the State had a place, particularly since the Commission seemed to have decided to discard the qualification of "enemy"

State. The convention might not unduly limit the powers of States. On the other hand, in the present transitional stage in international affairs, peace was often equated with war and friends with enemies. If too much power were left to a State, it might denationalize its nationals because of activities which were in conflict with interests of the State of which the perpetrator might even have been ignorant.

32. Mr. AMADO said that, in spite of the time that the Commission had spent on the sub-paragraph under discussion, he could not yet see a draft that would command unanimous approval. He could understand the text suggested by Mr. Lauterpacht to the extend that it would authorize the denationalization of a person who had acted in disregard of an expressed prohibition. It would, however, be quite unrealistic to attempt to determine what action a State might be permitted to take in defence of its own interests. The Commission should not be unduly idealistic but should bear in mind day-to-day realities. It was impossible to legislate for the susceptibilities of States or to anticipate their interests. He was therefore unable to accept the final phrase, concerning the manifest detriment of the interests of the State, in Mr. Lauterpacht's amendment.

33. Mr. KOZHEVNIKOV said that he agreed with the outstanding statement just made by Mr. Amado. The Commission should not endorse the nebulous formula suggested by Mr. Lauterpacht, for no obligation could be imposed on the State.

34. Even the Special Rapporteur's original draft, in his view, went too far, but now the Commission was going much farther. Where would it stop? International organizations, which were not even subjects of international law, were being brought into the discussion; and the Commission had been told that an international tribunal should be set up. Nevertheless, the Commission should not lose sight of the true meaning of sovereignty, and should remember that all questions of nationality were within the domestic jurisdiction of States.

35. Mr. SPIROPOULOS agreed with the opinion expressed by Mr. Amado and Mr. Kozhevnikov. It was quite unpractical for the Commission to consider regulating the domestic legislation of States as to deprivation of nationality by way of sanction. The Commission's objective was the reduction of statelessness, but the discussion had developed not so much into a consideration of that subject, as into a consideration of the relationship between a State and its nationals, and the right of a government to withdraw nationality. The suggestions so far made had no relevance to the facts either of life or of law. If a State wished to withdraw its nationality from an individual, it could not be prevented by the international community from so doing. The right to withdraw nationality was an existing right similar to the right of a community to exclude a member: a State, under the Charter of the United Nations, could be expelled from the United Nations, just as a student could be expelled from a university. It was therefore manifestly absurd for the Commission to conclude that a State could not expel a national. The interests of the State were paramount in that respect; such criminals as might be denationalized deserved no consideration.

36. Mr. AMADO, supported by Faris Bey el-KHOURI, proposed the deletion from Mr. Lauterpacht's amendment of the phrase " or to the manifest detriment of the interests ".

37. Mr. ALFARO said that the proposal just made clarified the discussion and that the Commission should vote on it.

38. The CHAIRMAN asked Mr. Yepes whether he would withdraw his amendment.

39. Mr. YEPES said that the discussion had shown him that the Commission had been following the wrong course. If a State had no other sanction against action detrimental to its interests, he would agree that deprivation of nationality might be an appropriate penalty; but as there were other possibilities open to States, he concluded that the whole idea of article VII was baseless. He therefore returned to his original position, namely, that a State should not be permitted to deprive anyone of its nationality by way of penalty. Nevertheless, since he had proposed it, his amendment should be put to the vote.

Mr. Amado's proposal that the phrase " or to the manifest detriment of the interests " be deleted from Mr. Lauterpacht's text was adopted by 5 votes to 4, with 4 abstentions.

Mr. Lauterpacht's text for sub-paragraph 1 (a), as amended, was adopted by 8 votes to 2, with 2 abstentions.

40. Mr. LAUTERPACHT explained his vote. As one who hoped to see statelessness eliminated, he welcomed the amendment proposed by Mr. Amado (despite the fact that it would tend to make the draft Convention less acceptable to governments), because it deprived a State of the right to denationalize a person on the ground that he had acted against its interests. Nevertheless, in his view the amendment adopted was unreasonable and he had therefore abstained from voting.

41. Mr. CÓRDOVA said that any proposal tending to eliminate statelessness would have his support. Nevertheless, in adopting Mr. Amado's amendment, the Commission had left States without the legal possibility of denationalizing traitors, whose actions were clearly against the interests of the States of which they were nationals but were *ex hypothesi* not known to the authorities at the time when their prohibition might have been in point.

42. Mr. KOZHEVNIKOV said that he had voted against Mr. Lauterpacht's proposal because, in his view, all issues pertaining to nationality fell within the domestic jurisdiction of the State.

43. Faris Bey el-KHOURI said that he had voted in favour of Mr. Amado's amendment because its acceptance would bring the whole article nearer to his

view that deprivation of nationality should not be used as a sanction. He considered that nationality was a natural right of the individual; every State had in its penal code measures adequate to deal with activities detrimental to it.

44. Mr. AMADO failed to understand Mr. Córdova and Mr. Lauterpacht. As a sincere man of good will and good faith, he could not see how his amendment had taken away from States the right to denationalize persons acting contrary to their interests.

45. Mr. YEPES said that he had abstained from the vote because, in his conception of human rights, no State had the right to deprive one of its citizens of nationality acquired by birth; the more so as States possessed other sanctions adequate to deal with those of their citizens who acted contrary to the national interest.

46. Mr. ZOUREK believed that a State had the right to withdraw its nationality from a person who entered into or continued in the service of a foreign State in disregard of an expressed prohibition by his own State. Nevertheless, in view of the general concepts on which article VII was based, and because the deprivation of nationality in the circumstances under consideration in his view fell within the domestic jurisdiction of States, he had voted against Mr. Lauterpacht's proposal.

47. Mr. HSU said that he had regarded the phrase "or to the manifest detriment of the interests of his State" as so broad as to justify its elimination. He was, however, not opposed to treason being regarded as a just cause for the withdrawal of nationality.

48. Mr. ALFARO pointed out that article VII, as approved by the Commission, would not permit a State to withdraw its nationality from a traitor.

Sub-paragraph 1 (b)

49. The CHAIRMAN invited comments on sub-paragraph 1 (*b*).

50. Mr. YEPES asked what was meant by "expatriation", which was not an unequivocal term. In any case it was not a legal term and needed clarifying.

51. Mr. CÓRDOVA said that by "expatriation" he meant no more than departure abroad.

52. Mr. LIANG (Secretary to the Commission) said that, in ordinary parlance, "expatriation" might well mean no more than departure abroad; but it also had a precise legal meaning, namely, transferring allegiance to another country, as used in the comments of the United States Government on the bases for discussion prepared for the Codification Conference at The Hague in 1930.

53. The CHAIRMAN asked whether it would not be logical, if one deprived persons of their nationality if they went abroad with the intention of military obligations, to do the same if, with the same intention, they failed to return from abroad.

54. Mr. SCELLE said that in French the word "*insoumis*" was used to cover all cases of evasion of military obligations, whether by flight abroad or by concealment within the country.

55. Replying to a question by Mr. SANDSTRÖM, he said that the term "*insoumis*" did not cover conscientious objectors.

56. Mr. CÓRDOVA pointed out that in cases where the person did not leave the country, there was no need for his State to deprive him of its nationality, since it had other ways of punishing him. In cases where he went abroad, or failed to return from abroad, with the intention of evading military obligations, it had usually no possibility of punishing him other than by depriving him of his nationality, since most countries did not regard the evasion of military obligations as an extraditable offence.

57. The CHAIRMAN pointed out that it was always difficult to prove intent. It might therefore be better if the text were worded: "Evasion of military obligations by absence abroad".

58. Faris Bey el-KHOURI pointed out that all States prescribed certain penalties for the evasion of military obligations, but that by no means all of them provided for deprivation of nationality in such cases. It was surely none of the Commission's business to make existing laws more severe.

59. Mr. SCELLE agreed.

60. Mr. LIANG (Secretary to the Commission) said that the most recent relevant United States law, the McCarran Act of 1952, referred to "departure from the United States or remaining outside in wartime".

61. Mr. ALFARO said that, in his experience as well as etymologically, the word "expatriation" could mean only "absence from one's country". It therefore seemed to cover all the cases which the Commission had in mind. The language of the McCarran Act was more specific, but added nothing.

62. He drew Faris Bey el-Khouri's attention to the fact that article VII did not mean that States should deprive persons of their nationality for the reason stated, but only that they could if they so desired.

63. Mr. YEPES said that he would vote against sub-paragraph 1 (*b*), which would not only lead to an increase in statelessness, but would also have the effect of legalizing the position of persons who went or remained abroad to evade their military obligations and thus depriving the State of the means of punishing them, if they later came within its jurisdiction.

64. Mr. CÓRDOVA said that as he was in favour of the principle that no one should be deprived of his nationality by way of penalty, he was quite prepared to vote against sub-paragraph 1 (*b*), as he was equally prepared to vote against the paragraph as a whole. The only reason why he had inserted it was that, in accordance with his instructions, he had been seeking an attenuation of that principle. The text he proposed could in no case lead to an increase in statelessness,

since, as Mr. Alfaro had pointed out, it did no more than imply that States which already deprived persons of their nationality for going or remaining abroad in order to evade military obligations would be free to continue to do so.

65. Mr. SANDSTRÖM agreed, but felt that the desirability of inserting such a clause in the draft convention depended in large measure on the number of States whose laws provided for the deprivation of nationality on that ground.

66. Mr. CÓRDOVA drew attention to the memorandum prepared by Mr. Kerno entitled: "National Legislation concerning Grounds for Deprivation of Nationality" (A/CN.4/66), from which it appeared that the only countries whose laws contained such a provision were France (for naturalized persons only), Germany, Poland and Turkey.

67. Since so few States had such a provision in their laws, and since paragraph 1 (*a*), in the form in which it had been adopted, already gave States a fairly wide safeguard, he saw no reason why sub-paragraph 1 (*b*) should not be deleted.

68. Mr. HSU agreed, and said that he would accordingly vote against sub-paragraph 1 (*b*).

69. Mr. ZOUREK pointed out that the deletion of paragraph 1 (*b*) would deprive the contracting States of all possibility of punishing such of their nationals as, in order to evade their military obligations, remained abroad or fled abroad. He reminded the Commission that such flight was often clandestine.

70. Faris Bey el-KHOURI said that he could not accept the view that sub-paragraph 1 (*b*) would not bring about an increase in statelessness. For, if the Commission adopted it, it would be giving its legal sanction to a practice which was at present followed by only a few States, and would thereby encourage other States to adopt that practice in turn. He therefore proposed that the sub-paragraph be deleted.

Faris Bey el-Khouri's proposal was adopted by 9 votes to 2, with 2 abstentions.

71. Mr. CÓRDOVA said that he had voted in favour of the deletion of sub-paragraph 1 (*b*) despite the fact that he had proposed it in his report, because, as he had already said, he was altogether opposed to deprivation of nationality by way of penalty.

72. Mr. ALFARO said that his previous remarks had concerned only the drafting of the sub-paragraph; he considered that the wording proposed by the Special Rapporteur expressed what he (the Special Rapporteur) had had in mind. He (Mr. Alfaro) had voted against the sub-paragraph, because it seemed illogical to allow States to deprive persons of nationality for evasion of military obligations, when, under the terms of sub-paragraph 1 (*a*), in the form in which it had been adopted, they were not allowed to deprive them of nationality for treason.

73. Mr. AMADO did not agree that sub-paragraph 1 (*a*), in the form in which it had been adopted, ruled out treason as a ground for the deprivation of nationality.

Sub-paragraph 1 (c)

74. The CHAIRMAN invited comments on sub-paragraph 1 (*c*), and recalled that Mr. Córdova had already proposed, at the previous meeting, that item (i), "When naturalization was obtained by fraud", should be deleted, since naturalization obtained by fraud was null and void and the question of deprivation therefore could not arise.

75. Mr. YEPES maintained that those words must be deleted, since their retention would give rise to statelessness. Under the laws of certain countries a person who was naturalized could automatically lose his previous nationality even if the naturalization had been obtained by fraud. Unless the words were deleted it would mean that the possible causes of statelessness were being artificially increased.

76. Mr. SANDSTRÖM recalled that during the discussion on the draft Convention on the Elimination of Future Statelessness, he had argued that naturalization obtained by fraud was not null and void but voidable, and that the loss of a nationality so obtained did constitute deprivation by way of penalty.

77. Mr. CÓRDOVA recalled that the other members of the Commission had not accepted Mr. Sandström's views, but had agreed that naturalization obtained by fraud was null and void.

78. Mr. SCELLE agreed that the words in question should be deleted. Cases where naturalization was believed to have been obtained by fraud would be referred to a judicial tribunal, which would either find that the naturalization had been obtained by fraud and that the acquisition of nationality was therefore null and void, or that the naturalization had not been obtained by fraud, and that the acquisition of nationality was therefore valid.

It was agreed that item (i), "When naturalization was obtained by fraud", should be deleted.

79. With reference to item (ii), Mr. ALFARO suggested that, for the sake of clarity, the words "during five years or more" should be replaced by "during five consecutive years or more", if that was what the Special Rapporteur meant.

80. Mr. CÓRDOVA accepted the amendment suggested by Mr. Alfaro.

81. Mr. SANDSTRÖM felt that it would again be interesting to know how many States at present had a similar provision in their existing laws.

82. Mr. CÓRDOVA said that it appeared from Mr. Kerno's memorandum (A/CN.4/66) that the laws of the following States provided for the loss of nationality by a naturalized national who resided abroad for a specific period: Australia, Burma, Canada, Costa

Rica, Cuba, Greece, Guatemala, Ireland, Israel, Mexico, New Zealand, Nicaragua, Pakistan, Turkey, United Kingdom, Union of South Africa, United States of America and Yugoslavia.

83. Mr. YEPES added that the Convention establishing the Status of Naturalized Citizens who again take up their Residence in the Country of their Origin, signed by the Third Pan-American Conference at Rio de Janeiro on 13 August 1906, provided that a naturalized person who again took up his residence in his native country without the intention of returning to the country in which he had been naturalized should be considered as having reassumed his original nationality and as having renounced the nationality acquired by naturalization; and that the intention not to return should be presumed to exist, subject to evidence to the contrary, when the person in question had so resided in his native country for more than two years.

84. Neither that text nor the text proposed by the Special Rapporteur, however, covered cases where naturalization was obtained in bad faith. For example, the nationals of Latin-American countries enjoyed certain privileges within each other's territory and within the territory of the United States of America; it was not uncommon for persons from overseas to obtain naturalization in Latin-American countries, solely for the purpose of seeking employment in, for example, the United States of America, employment which they would have been unable to obtain as nationals of their country of origin. He therefore proposed that the words "in the country of his origin" be replaced by the word "abroad".

85. Faris Bey el-KHOURI said that he did not see why a person should lose the nationality he had acquired by naturalization, merely because he resided abroad for five consecutive years or more. It might be physically impossible for him to reside in the country whose nationality he had acquired, for reasons quite beyond his will; such cases had frequently occurred during the second World War, and they might well occur again.

86. Mr. SANDSTRÖM said that he, too, was quite opposed to creating two classes of nationals, one who could stay abroad for five consecutive years and one who could not.

87. Mr. ZOUREK, too, was opposed to what was unjustifiable discrimination against naturalized persons. Whatever the motives for which a person had obtained naturalization, once he had obtained it he should be on the same footing as nationals by birth.

88. Mr. YEPES said that he would not press his proposal if the principle of item (ii) were rejected.

89. The CHAIRMAN said that he would accordingly first put to the vote the question whether a provision should be retained to the effect that naturalized persons who had resided during five consecutive years or more in the country of their origin (or abroad) could be deprived of their nationality.

That question was decided in the negative by 10 votes to 1, with 2 abstentions.

90. The CHAIRMAN asked whether it was proposed that a new sub-paragraph be inserted to cover cases of treason.

91. In the absence of any such proposal, he drew attention to paragraph 2.

Paragraph 2

92. Mr. CÓRDOVA pointed out that the draft Convention on the Elimination of Future Statelessness contained no parallel provision, since, under that convention, no one could be deprived of his nationality by way of penalty. Even though the number of grounds on which a person could be deprived of his nationality by way of penalty under the present draft convention had been reduced to one, he still considered it desirable to provide that such deprivation should be decided only by a judicial authority acting in accordance with due process of law.

93. Mr. ALFARO and Faris Bey el-KHOURI agreed.

94. Mr. SANDSTRÖM said that he would merely observe that now that the present convention provided for only one ground on which a person could be deprived of his nationality by way of penalty, its effect would be very similar to that of the draft Convention on the Elimination of Future Statelessness.

95. The CHAIRMAN pointed out that the differences between the two conventions might be greater in the case of other articles. The relation between them would emerge more clearly when they could both be viewed as a whole.

96. He then put paragraph 2 to the vote.

Paragraph 2 was adopted by 11 votes to 2.

Paragraph 3

97. The CHAIRMAN recalled that it had already been suggested that paragraph 3 could be deleted, in view of the addition to paragraph 1 of the words "if such deprivation renders them stateless".

98. Mr. CÓRDOVA agreed that paragraph 3 could be deleted, but recalled that in the draft Convention on the Elimination of Future Statelessness the Commission had adopted an additional article (article 8) reading:

> "The Parties shall not deprive any person or group of persons of their nationality on racial, ethnical, religious or political grounds if such deprivation renders them stateless."[2]

99. He proposed that the same text be inserted in the draft Convention on the Reduction of Future Statelessness.

100. Mr. ZOUREK asked the Chairman to put to the vote first the suggestion that paragraph 3 of article VII

[2] See *supra*, 218th meeting, paras. 6 and 85.

should be deleted, since he was in favour of that suggestion, whether the addition proposed by the Special Rapporteur was made or not.

It was agreed by 12 votes to none, with 1 abstention, that paragraph 3 should be deleted.

Article VII, as amended, was adopted by 5 votes to 4 with 4 abstentions. The text read as follows:

"1. The Parties shall not deprive their nationals of nationality by way of penalty, if such deprivation renders them stateless, except on the ground that they voluntarily enter or continue in the service of a foreign country in disregard of an express prohibition of their State.

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

Additional article

101. The CHAIRMAN then invited comments on Mr. Córdova's proposal to insert an additional article identical to article 8 of the draft Convention on the Elimination of Future Statelessness.[3]

102. Mr. YEPES pointed out that that text could be interpreted as meaning that the Parties could deprive persons or groups of persons of their nationality on racial, ethnical, religious or political grounds if such deprivation did not render them stateless. It was therefore conducive to cultural genocide, and he would be obliged to vote against it. It was sufficient to interpret it *a contrario sensu* to realize that, as at present drafted, the article presented grave dangers which ought to be eliminated.

103. Mr. CÓRDOVA observed that the same objection had been made during the discussion of the draft Convention on the Elimination of Future Statelessness, but that it had been pointed out that the Convention was solely concerned with the question of statelessness. He understood, however, that it would be stated in the comment that the article should not of course be interpreted in the way in which Mr. Yepes had pointed out that it could be interpreted.

104. Mr. KOZHEVNIKOV recalled that he had already stated his views on the text under consideration during the discussion of the draft Convention on the Elimination of Future Statelessness.[4] Quite apart from the fact that it was contrary to the sovereignty of States, it was, as had been pointed out, open to misinterpretation. He had voted against it before, and he would vote against it again.

105. Mr. SCELLE said that the basic purpose of the two conventions was to prevent individual hardship and suffering. The fact that an individual who lost his own nationality thereupon acquired another did not necessarily obviate the hardship and suffering entailed.

106. The CHAIRMAN pointed out that it would be incomprehensible if the Commission, which had retained the phrase "if such deprivation renders them stateless" in the first convention, deleted that phrase when inserting the article in the second convention.

107. Mr. ZOUREK recalled that he had already explained his opposition to the article during the discussion on the draft Convention on the Elimination of Future Statelessness. He was in favour of its omission from the draft Convention on the Reduction of Future Statelessness, and if it was felt essential that the texts of the two conventions should be the same in this respect, he for one would have no objection to the deletion of the article from the first.

108. Mr. SANDSTRÖM recalled that he had said during the discussion of the first draft convention that he found the text objectionable by its implications. He did not find it any less objectionable now. He proposed that the words "if such deprivation renders them stateless" be deleted, and that the same change be made in the draft Convention on the Elimination of Future Statelessness.

109. Mr. ALFARO supported Mr. Sandström's proposal. Existing international law, as witnessed by the Convention on Genocide and the Commission's own Draft Code of Offences against the Peace and Security of Mankind, was tending towards the complete prohibition of all forms of persecution on racial, ethnical, religious or political grounds. It would therefore be fully appropriate and in accordance with that trend for the Commission to state unconditionally that the parties to the convention should not deprive any person or group of persons of their nationality on such grounds. Moreover, in the vast majority of cases where persons were so deprived, they did not acquire another nationality and statelessness was thus created.

110. Mr. LAUTERPACHT said that it was not the Commission's present purpose to prevent persecution or the deprivation of nationality in general, but only such persecution and such deprivation of nationality as would result in statelessness. The text could of course be twisted to bear the interpretation which Mr. Yepes had said it could bear, and if it was really thought necessary, he would have no objection to its being clearly stated in the report that that was not an interpretation which the Commission could accept; he would prefer that course to the adoption of Mr. Sandström's proposal, which would give rise to a juridical inelegancy.

111. Mr. SCELLE supported Mr. Sandström's proposal. He did not agree that it was inappropriate, since, as had been stated, statelessness was caused in the great majority of cases where persons were deprived of their nationality on racial, ethnical, religious or political grounds.

Mr. Sandström's proposal was adopted by 7 votes to 1, with 5 abstentions.

[3] *Ibid.*

[4] *Ibid.*, para. 86.

The additional article proposed by the Special Rapporteur was adopted as amended by 8 votes to 2, with 3 abstentions.

The meeting rose at 1.5 p.m.

223rd MEETING

Friday, 24 July 1953, at 9.30 a.m.

CONTENTS

* 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 VIII [9]

1. The CHAIRMAN invited the Commission to continue its consideration of the draft Convention on the Reduction of Future Statelessness, beginning with article VIII.

2. Mr. CÓRDOVA (Special Rapporteur) proposed that article VIII be replaced by the text which the Commission had adopted for the corresponding article (article 9) of the draft Convention on the Elimination of Future Statelessness. That text read as follows:

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

"2. In the absence of such provisions, States to which territory is transferred, or new States formed on territory previously belonging to another State or States, shall confer their nationality upon the inhabitants of such territory unless such persons retain their former nationality by option or otherwise or unless they have or acquire another nationality".[1]

3. Mr. YEPES supported Mr. Córdova's proposal as being the only logical course the Commission could follow.

Mr. Córdova's proposal was adopted by 9 votes to 2.

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS (*resumed from the 220th meeting*)

Article on the interpretation and implementation of the Conventions [Article 10]

4. The CHAIRMAN recalled that at the 219th meeting the Commission had considered a joint proposal by the Special Rapporteur and Mr. Scelle for an article dealing with the settlement by arbitration of disputes arising out of the draft Convention on the Elimination of Future Statelessness.[2] Some members had felt that it was undesirable to make provision for compulsory arbitration at all; others had been favourable to the idea in principle, but had pointed out that the joint proposal did not cover the case of disputes between a State and an individual. Mr. Hsu had subsequently submitted a proposal to the effect that an additional article, reading:

"A Commission under the auspices of the United Nations shall be established to act on behalf of stateless persons in cases of dispute contemplated in the preceding article",

be inserted after the joint proposal of the Special Rapporteur and Mr. Scelle, the latter proposal to be brought into line with it. The Special Rapporteur hal also submitted a revised proposal, reading as follows:

"The parties agree to the creation of an arbitral tribunal with jurisdiction to decide all controversial questions with regard to the interpretation of the terms of this Convention and to the determination of the nationality of individuals envisaged in its articles.

"Access to such tribunal will be open to the States parties to the Convention as well as to individuals whom the wrongful application of its provisions, or of those of the national legislations of such States, might render stateless".

5. Mr. HSU said that he had no objections to the new text proposed by the Special Rapporteur; the purpose of his own proposal had been to meet the objections which had been raised to the individual's having access

[1] See *supra*, 218th meeting, paras. 88-94.

[2] See *supra*, 219th meeting, paras. 45-63.