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Summary record of the 242nd meeting

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the session as he would probably have to leave before the end. The study of items 2 and 3 (régime of the territorial sea and régime of the high seas) was already well advanced, and item 4 (draft code of offences against the peace and security of mankind) might be left till later. He suggested that item 6 should be discussed immediately on two days a week and items 2, 3 and 5 (nationality, including statelessness) on the other days.

25. Mr. CORDOVA said that items which had been left over from previous sessions should be disposed of so that the General Assembly might take up those questions. The last three weeks of the sixth session might be devoted exclusively to the study of item 6.

26. Mr. LAUTERPACHT said that the parallel study of two questions would be unpractical as a dispersal of effort was hardly conducive to concentration. He proposed that items 2 and 3, or one of them, should be dealt with during the first two weeks of the session; item 5 during the following week; item 4 might be disposed of in two or three days; the last three weeks of the session, apart from the last week during which the general report would be discussed, could, as suggested by Mr. Córdova, be reserved for the study of the law of treaties. The report on the law of treaties was of a detailed character and contained a great deal of the information required. That being so, three weeks would be sufficient for completing the study of the first part of the report. He was anxious to proceed with the study of that question as four years would be needed to dispose of it.

27. Mr. PAL agreed with the timetable proposed by Mr. Lauterpacht, but doubted if it would be possible to dispose of item 4 in two or three days.

28. Mr. FRANÇOIS said that it would be equally difficult to dispose of items 2 and 3 in two weeks, particularly as he, who was the Special Rapporteur for these subjects, would have to be absent for some of the time at the beginning of the session.

29. Mr. CORDOVA proposed that after item 1 (filling of casual vacancy in the Commission) the Commission consider item 5 (nationality, including statelessness), in connexion with which he had prepared two reports (A/CN.4/81 and A/CN.4/83).⁶

30. The CHAIRMAN said he would prefer the order of agenda items to be as flexible as possible for the time being, the necessary modifications to be made as and when the need arose.

The meeting rose at 4.30 p.m.

242nd MEETING

Tuesday, 8 June 1954, at 9.30 a.m.

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Chairman : Mr. A. E. F. SANDSTRÖM

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. G. AMADO, Mr. R. CORDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS.

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/2456, A/CN.4/82 and Add.1, 2, 3 and 4)

DRAFT CONVENTIONS ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS

General debate

1. The CHAIRMAN invited Mr. Córdova, Special Rapporteur on the topic of nationality, including statelessness, to analyse briefly the comments submitted by Member States (A/CN.4/82 and Add.1, 2, 3 and 4)¹ on the two draft Conventions on the Elimination of Future Statelessness and the Reduction of Future Statelessness (A/2456) prepared by the Commission.²

2. Mr. CORDOVA, Special Rapporteur, said that on the whole the eleven³ replies received from Member States were encouraging. The United Kingdom and Norway both appeared willing to amend their domestic legislation along the lines suggested by the Commission. Norway, Sweden and Denmark were in a rather special position because the Scandinavian countries had enacted concor-

¹ See "Report of the International Law Commission covering the work of its sixth session", *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*, annex. Also in *Yearbook of the International Law Commission, 1954*, vol. II.

² The two draft conventions are included in "Report of the International Law Commission covering the work of its fifth session", *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)*, chapter IV. Also in *Yearbook of the International Law Commission, 1953*, vol. II.

³ In the course of the session, four more replies were received. See annex referred to in footnote 1.

⁶ See texts in *Yearbook of the International Law Commission, 1954*, vol. II.

dant nationality legislation and hence could not amend it except by mutual agreement. The United States of America, on the other hand, while sympathizing with the Commission's aims felt that the adoption of the draft conventions would encounter numerous difficulties.

3. Mr. LAUTERPACHT said that the comments by Governments were not discouraging. He hoped, however, that governments would not be content with stating that some of the provisions of the drafts in question were unacceptable because inconsistent with their municipal law. It was of the essence of the Commission's work to formulate rules, by way of codification or development, the adoption of which involved changes in the legislation of various States. The mere fact that a draft convention necessitated legislative changes was not relevant unless the changes were of a fundamental nature. What had to be considered was the relative importance of the convention and of the legislative changes.

4. With regard to the United States of America, he said that its Government's comments indicated that in only very few cases did its legislation result in statelessness. Accordingly, there was reason for hoping that the United States legislation might be amended in such a way that its operations would be modified in cases in which it did result in statelessness.

5. Mr. CORDOVA, Special Rapporteur, noted with regret that certain Governments merely pointed to the incompatibility of the draft articles with their municipal law, without showing any willingness to amend the latter. That was particularly true of article 10, which was, incidentally, not indispensable.

6. Faris Bey el-KHOURI said that each Government, when proposing the ratification of the conventions to its legislature, could at the same time introduce a bill to amend its municipal legislation so as to bring it into line with the provisions of the convention in question. This method would be in accordance with the principle of the supremacy of international over municipal law.

7. The CHAIRMAN, speaking as a member of the Commission, pointed out that, in Sweden, it was customary to amend municipal legislation prior to ratifying international conventions of that type.

8. Referring to the comments by Governments, he thought it was premature to express an opinion; the practical importance of the comments varied according to whether the legislation of the particular country was the cause of a large number of cases of statelessness or not. Moreover, in view of the solidarity of the Scandinavian countries in the matter of nationality, the importance of Norway's conciliatory attitude was to some extent impaired by the reservations formulated by Sweden and Denmark.

9. Mr. CORDOVA, Special Rapporteur, thought that the Scandinavian countries, which had brought their respective nationality legislations into line, should be all the more ready to take a further step forward by accepting the Commission's proposals. The final paragraph of the Norwegian Government's comments showed that that

country did not consider it impossible to amend its municipal legislation in certain respects. The Commission ought also, for its part, to be prepared to make certain concessions, especially with regard to article 10, which had met with general hostility.

10. Mr. SCALLE said he could not share the Special Rapporteur's optimism concerning the comments by Governments. The reservations expressed were numerous and, besides, were by no means in conformity *inter se*.

11. Mr. SPIROPOULOS said that the work accomplished by the Commission in the matter of statelessness, at the request of the Economic and Social Council, was not so much a matter of codifying international law, but rather of unifying the municipal law of the various States. The Commission should consider the suggestions made by Governments, and endeavour to make allowance for them as far as possible.

12. The CHAIRMAN asked the Commission to commence the study of the two drafts, article by article, in the light of the relevant comments by Governments.

13. Mr. LAUTERPACHT suggested that the Special Rapporteur should prepare, in the light of the comments by Governments, draft amendments relating to each article for consideration by the Commission.

14. Mr. CORDOVA, Special Rapporteur, agreed to the suggestion.

Article 1

15. Mr. CORDOVA, Special Rapporteur, felt that the objections raised by the Belgian Government concerning article 1 were partly based on a misunderstanding. The Commission's draft did not relate to the case of adults deprived of their nationality of origin by their governments, but rather the question of acquisition of nationality by birth. The object was to reconcile the conflict of laws between *jus soli* countries and *jus sanguinis* countries. Possibly, however, in deference to the Belgian argument, the conditions of residence and connexion with the country of birth, mentioned by the Belgian Government, might be added to the conditions governing the attribution of nationality according to the Commission's draft.

Mr. Pal, Vice-Chairman, took the chair.

16. The CHAIRMAN said that the Belgian proposal was tantamount to deleting completely article 1. The suggestions made by the other Governments should be discussed first.

Mr. Sandström resumed the chair.

17. Mr. CORDOVA, Special Rapporteur, expressed the fear that, in practice, the Belgian suggestion might result in preventing many stateless persons from acquiring a nationality.

18. Mr. FRANÇOIS considered that the main question was whether residence had to continue beyond the age of eighteen years; for his part, he did not think that was a necessary condition.

19. Mr. SPIROPOULOS pointed out that the Commission's draft went really much further than the Belgian Government's comment ; the Commission should reject the Belgian suggestions.
20. Mr. FRANÇOIS said an important question of principle was involved. The Commission's object was that everybody should have a nationality so that there would be fewer cases of statelessness. Belgium, on the other hand, was trying to protect the freedom of choice of individuals and their right to remain stateless if they preferred. The Commission had to decide the point.
21. Mr. LAUTERPACHT felt that the Belgian proposal ran counter to the principle of article 1, which, firstly, laid an obligation upon a State to confer its nationality and, secondly, gave individuals the right to acquire it.
22. Mr. AMADO said it was preferable to adhere to the existing text of article 1, which was the cornerstone of both conventions.
23. Mr. SCALLE entirely shared the opinion of Mr. Lauterpacht and Mr. Amado. The Belgian proposal was absolutely contrary to the principle of automatic acquisition of nationality which was becoming a rule of positive law. The Commission could not entertain the Belgian proposal.
24. Mr. CORDOVA, Special Rapporteur, said that perhaps article 1, paragraph 2 of the draft Convention on the Reduction of Future Statelessness might be supplemented by a clause relating to option.
25. Mr. FRANÇOIS could not agree to that interpretation of paragraph 2 which only mentioned the conditions imposed upon "all persons born in the party's territory". A State did not require all persons born in its territory to opt for its nationality.
26. Mr. CORDOVA, Special Rapporteur, pointed out that, according to Mexican law, all children born in Mexico of Mexican parents automatically acquired Mexican nationality, whereas children born in Mexico of foreign parents only acquired that nationality if they opted for it. Perhaps the last phrase of paragraph 2 should be drafted more explicitly.
27. The CHAIRMAN pointed out that in the existing draft of paragraph 2, the crucial words were "preservation" and "to retain nationality", whereas Belgium was placing the emphasis on the exercise of an option which was subject to certain conditions of residence.
28. Mr. HSU said that, in some cases, an option might usefully supplement the conditions governing the acquisition of nationality.
29. Faris Bey el-KHOURI said that according to the Belgian proposal the acquisition of a nationality would in effect become a right, in conformity with the Universal Declaration of Human Rights, whereas article 1 of the draft seemed to regard it as a duty which might be imposed upon the person. The Commission should therefore settle that important question of substance.
30. Mr. CORDOVA, Special Rapporteur, said that, in order to eliminate statelessness, every individual should be required to have a nationality. The elements of the Belgian suggestion were already embodied in the terms of paragraph 2 and, if the Commission felt that the Belgian suggestion should be rejected, it would have to revise that paragraph.
31. Mr. PAL said that at its fifth session the Commission had debated whether nationality was to be regarded primarily as a right or as a duty and had decided to put the emphasis on the "human right to a nationality". He had serious doubts whether the Commission's approach was the one best calculated to translate that human right into a political reality. As the draft convention now stood, stateless persons had no choice or option in the matter of the acquisition of a nationality : instead of receiving assistance in obtaining their "human right", all they were getting through the draft Convention was a nationality forced upon them — a nationality determined by the accident of birth.
32. The draft was also open to criticism in respect of the obligations it placed upon States. A State would be asked to grant rights to a stateless person from whom it could not expect an unswerving and sincere allegiance — the spontaneous outcome of a disposition to prefer the nation to all other human groups. Such an allegiance was an essential political trait of the state system, and was implied by the term "nationality". The factors underlying allegiance were numerous and, if States were going to be compelled to accept certain persons as nationals, the circumstances surrounding their cases should at least be such as to justify placing the States under such an obligation. If the discussion on the subject was not closed, he would ask the Commission to make some allowance for the factors underlying allegiance.
33. Mr. LAUTERPACHT acknowledged the weight of the opinions expressed by Mr. Hsu and Faris Bey el-Khoury, and suggested that, in deference to them, the following words should be added at the end of paragraph 2 : "and make a formal declaration to that effect."
34. Mr. SCALLE said that paragraph 2 should be redrafted along those lines, so as to preserve not only the right of individuals to repudiate their nationality but also the right of a State not to accept as nationals persons whom it might consider undesirable. He did not, however, think that the Belgian proposal should be accepted.
35. The CHAIRMAN agreed that the concluding words of paragraph 2, as drafted, were liable to misinterpretation ; it would, however, be undesirable to make the retention of nationality dependent upon an option the exercise of which would, in practice, be neglected by most persons, who might then become stateless.
36. Mr. HSU hoped nevertheless that the right of persons to change their nationality in certain circumstances would be expressly recognized.
37. Mr. AMADO recalled that he had not been in favour of including the final passage of paragraph 2 ; he still thought that it could be deleted.

38. Mr. CORDOVA, Special Rapporteur, suggested that the concluding words of paragraph 2 should be replaced by the following text: "and provide that, on attaining this age he must express his willingness to retain such nationality."

39. Mr. FRANÇOIS, summing up the discussion, said that three solutions were possible: (1) option; (2) the possibility of repudiation in all cases; (3) repudiation possible only if the person did not thereby become stateless. In his opinion, the Commission should adopt the second solution.

40. Mr. CORDOVA, Special Rapporteur, recalled that the Government of the United Kingdom had proposed, in its comments, that paragraph 3 should allow the countries which were being asked by the existing draft to bind themselves to apply the *jus sanguinis*, some similar discretion as under paragraph 2 namely, that nationality thus acquired should be dependent on the degree of connexion which the person concerned had maintained with the country whose nationality was conferred upon him. He saw no difficulty in amending paragraph 3 in accordance with the proposal of the Government of the United Kingdom.

It was so agreed.

41. Mr. LAUTERPACHT said that in two cases the United Kingdom did not apply *jus soli*: in the case of children born to diplomatic agents, and in the case of children born in enemy-occupied British territory to parents who were nationals of the occupying power. The latter case was a potential cause of statelessness. He doubted whether, assuming that the United Kingdom were otherwise in favour of the principle of the total elimination of statelessness, it would be disposed to oppose the Convention on account of that peculiarity of English law.

42. Mr. CORDOVA, Special Rapporteur, said that the Norwegian Government had pointed out, in its comments, that the last phrase of paragraph 3 was inconsistent with Norwegian municipal law, which gave precedence to the nationality of the mother in the case of a child born out of wedlock. Norwegian law was therefore at variance with the principle, accepted by the Commission, that the nationality of the father prevailed.

43. The CHAIRMAN said that the Norwegian comments referred to a general principle which was applied in all the Scandinavian countries. The Commission should endeavour to make allowances for such peculiarities.

44. Mr. CORDOVA, Special Rapporteur, proposed that at the end of paragraph 3 some such words as "unless the law of this State provides to the contrary" should be added.

Is was so agreed.

45. Mr. CORDOVA, Special Rapporteur, said that in a letter addressed directly to the members of the Commission, the World Jewish Congress had proposed that paragraph 3 should be supplemented by the following

provision: "If both parents are stateless, the person concerned shall acquire the nationality of the Party in whose territory he resided permanently, provided he has reached the age of eighteen and has resided in that territory for at least three years."

46. Mr. FRANÇOIS said that the conditions of residence till the age of eighteen years had been accepted by the Commission because such a condition implied a certain guarantee of assimilation. Accordingly, he did not consider the proposal of the World Jewish Congress acceptable.

47. Mr. LAUTERPACHT and Mr. PAL noted that the draft under consideration did not provide for the case where both parents were stateless; that was a weakness.

48. The CHAIRMAN pointed out that a draft dealing only with the reduction of statelessness could not provide for all cases.

49. Mr. CORDOVA, Special Rapporteur, said that the proposal of the Lebanese Government to the effect that article 2 should contain a more precise definition of the term "foundling", rightly drew attention to the position of adults whose place of birth was unknown.

50. Mr. LAUTERPACHT said that the Commission had never attempted to define the term "foundling". He doubted whether it was desirable to make any such attempt for what was in essence an exceptional case.

51. Mr. FRANÇOIS pointed out that in the practice of individual countries the interpretation of that term had never given rise to any difficulties.

52. The CHAIRMAN thought that in effect a comparison of the French and English versions precluded any misinterpretation.

Communication regarding observers

53. Mr. LIANG, Secretary to the Commission, informed the Commission that the Secretary-General of the United Nations had received a letter from the Japanese Government stating that it proposed to send two observers to the Commission's meetings.

The meeting rose at 1.15 p.m.

243rd MEETING

Wednesday, 9 June 1954, at 9.30 a.m.

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