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Summary record of the 243rd meeting

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38. Mr. CÓRDOVA, 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. CÓRDOVA, 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. CÓRDOVA, 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. CÓRDOVA, 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. CÓRDOVA, 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. CÓRDOVA, 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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Chairman : Mr. A. E. F. SANDSTRÖM

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. G. Amado, Mr. R. Córdova, 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).

Distribution of provisional summary records

1. In reply to a question asked by Mr. Lauterpacht at the end of the previous meeting, the CHAIRMAN said that the provisional summary records would be accessible to the Commission's members only.

Nationality, including statelessness (item 5 of the agenda (A/2456, A/CN.4/82 and Add.1, 2, 3 and 4) (*continued*)

2. The CHAIRMAN said that on 27 April 1954 the Economic and Social Council had adopted a resolution endorsing the Commission's work concerning statelessness.

Draft Conventions on the Elimination of Future Statelessness and on the Reduction of Future Statelessness (*continued*) [1]

Article 1 (continued)

3. The CHAIRMAN said that the discussion of article 1 would be concluded after the Special Rapporteur had produced a written draft embodying amendments.

Article 2

4. Mr. CÓRDOVA, Special Rapporteur, said the Lebanese Government had suggested that the term "foundling" (enfant trouvé) should be defined more clearly. There was indeed a discrepancy between the French and the English texts for the term "foundling" did not necessarily refer to a child. Since the intention of both conventions was to confer a nationality on a person who was ignorant of his place of birth or even of the identity of his parents, and since that situation required a remedy even if the person concerned happened to be an adult, the term "foundling" might be replaced by the word "person"; the French text could be amended accordingly.

5. Mr. SCELLE proposed that article 2 might be left as it stood, but that a second paragraph should be added to it reading: "The same rule shall apply in the case of a person, wherever resident, whose place of birth is unknown."

6. The CHAIRMAN approved Mr. Scelle's idea, but suggested that it should be mentioned in the commentary instead of forming the subject of a second paragraph.

7. Mr. SCELLE objected that a matter of substance was involved ; the clause should therefore appear in the body of the convention, not in the commentary.

8. After a further exchange of views, the CHAIRMAN put Mr. Scelle's proposal to the vote.

The proposal was rejected by 9 votes to 3.

9. The CHAIRMAN said the Special Rapporteur would prepare a revised draft of article 2.

Article 3

10. Mr. CÓRDOVA, Special Rapporteur, referred to the comments by the Governments of Norway and Denmark ; they did not, he thought, contain any arguments warranting an amendment to article 3.

11. Mr. LAUTERPACHT drew attention to the comments of the United States Government concerning the "serious possibilities of abuse". He hardly thought that the clause could lend itself easily to abuse. There was perhaps an element of exaggeration in the implied suggestion that parents whose children might otherwise become stateless would arrange for a birth to take place on a United States vessel or aircraft in order to enable them to acquire American nationality. That was probably a case in which a country that was otherwise willing to co-operate in the elimination of statelessness might feel inclined to agree to a change in its laws. It would not be necessary for the United States to change its laws generally in respect of birth on an American ship or aircraft ; such change would be required only if the child were otherwise stateless.

12. The CHAIRMAN proposed that article 3 should be left as it stood.

It was so agreed.

Article 4

13. Mr. CÓRDOVA, Special Rapporteur, referred to the Belgian and United States Governments on article 4.

14. The CHAIRMAN suggested that the emphasis of the Belgian comment was on the question of option.

15. Mr. CÓRDOVA, Special Rapporteur, said that according to the United States Government article 4

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[1] *Vide supra,* 242nd meeting, para. 1 and footnotes.

might operate to confer double nationality on a person born in the territory of a State which was not a party to the convention. He suggested that article 4 should be amended to read : " Whenever article 1 does not apply on account of a child having been born in the territory of a State which is not a party to this convention, if otherwise stateless, it shall . . ."

16. Mr. LAUTERPACHT said that double nationality, though perhaps undesirable in some cases, was not a disaster ; it was perhaps not necessary to take undue trouble in order to avoid it. The comments of the United States Government were not really justified, for article 4 was supplementary to article 1.

17. The CHAIRMAN agreed that it was therefore not necessary to add the words " if otherwise stateless " to article 4.

18. Mr. CÓRDOVA, Special Rapporteur, agreed in principle, but pointed out that if something was implicit it was still better to make it explicit. If, therefore, the United States Government was likely to construe article 4 as having the effect of increasing cases of dual nationality, it was desirable to meet the objection by inserting the three words in question.

19. Mr. PAL could not agree. Article 1 applied whenever a child would be otherwise stateless, and article 4 covered the case where article 1 could not apply because a child had been born in the territory of a State which was not a party to the convention, but where all the other conditions of article 1 were fulfilled.

It was decided by 5 votes to 2, with 1 abstention, not to insert the words " if otherwise stateless " in article 4.

20. Mr. CÓRDOVA, Special Rapporteur, drew attention to the United States comment that article 4 discriminated unfairly against women.

21. The CHAIRMAN suggested that the concluding sentence should be amended to read : " The nationality of the father shall prevail over that of the mother, unless the law of the country whose nationality is being acquired provides otherwise."

It was so agreed.

Article 5

22. Mr. CÓRDOVA, Special Rapporteur, referred to the Belgian comments on article 5. The gist of these comments was that an illegitimate child should follow the status of that parent with respect to whom affiliation had been established, even if the child were thereby to become stateless. That was exactly the type of situation the Commission was trying to avoid by means of the draft convention.

23. The CHAIRMAN suggested that article 5 required no amendment.

It was so agreed.

Article 6

24. Mr. CÓRDOVA, Special Rapporteur, said the Government of Honduras suggested that the provisions of article 6, paragraph 3, should only apply to natural-born citizens and that it should be open to a State to deprive of nationality a naturalized person who stayed abroad unduly long. He proposed the following tentative redraft of paragraph 3, which took into account the suggestion made by Honduras :

" Persons who are nationals of a country by birth shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register, or any other similar ground. Naturalized persons may lose their nationality on the foregoing grounds provided that, if they were originally nationals of one of the contracting parties, they shall recover that original nationality."

25. Mr. LAUTERPACHT pointed out that the Honduran Government's proposal for an addition to article 3 was combined with a proposed new paragraph 4 stating : " Naturalized persons who lose their nationality in this way shall recover that of their country of origin." That was a useful provision.

26. Mr. CÓRDOVA, Special Rapporteur, said that such a provision would only apply if both the countries concerned were signatories to the convention.

27. Mr. FRANÇOIS stated that the comments by the Honduran Government deserved careful consideration, because it was a common occurrence for a naturalized person to return to his country of origin. Many States would certainly hesitate to adopt article 6 unless a compromise of the type suggested by the Honduran Government were adopted.

28. Mr. CÓRDOVA, Special Rapporteur, pointed out that the matter of naturalized persons returning to their country of origin had also been raised by the Governments of the Philippines, Norway, Denmark, and the United States. It was certainly desirable to satisfy the wishes of those countries so as to encourage them to sign the conventions.

29. Mr. LAUTERPACHT said that there was some intrinsic merit in the argument that a naturalized person returning to his country of origin for good should not continue to enjoy his adoptive nationality. There were elaborate provisions on that point in the United States immigration legislation.

30. Mr. FRANÇOIS pointed out that the Honduran Government's proposal concerned naturalized persons only.

31. Mr. CÓRDOVA, Special Rapporteur, said the conventions were based on an extension of the *jus soli* rule to countries which normally adhered to the *jus sanguinis* rule. The Commission had to abide by the principle that a person born in a particular country was and remained a national of that country ; but naturalized persons were in a different category.

32. Mr. LIANG, Secretary to the Commission, in reply to an earlier remark by Mr. Lauterpacht, pointed out that prolonged residence abroad did not deprive a natural-born United States citizen of his nationality but only of diplomatic protection, contrary to what might be inferred from the wording of the comments by the United States Government. According to the 1952 Act a natural-born citizen of the United States could not be deprived of his citizenship in peace time. A naturalized citizen of that country might lose his citizenship in consequence of protracted residence abroad.

33. The CHAIRMAN said that under the former Swedish Nationality Act, natural-born Swedish nationals staying for more than ten years away from Sweden had had to make a formal application to retain their Swedish nationality. The legislation had been amended. It seemed to him strange that there should be two categories of nationals of a country, one of them, that of naturalized persons, being alone liable to deprivation of nationality.

34. Mr. LAUTERPACHT said that the Commission had not fully made up its mind on the subject and that it was therefore not wise to give directions to the Special Rapporteur at that stage.

5. Faris Bey el-KHOURI said that the Commission had discussed the subject at length at its fifth session,[2] and its decision had been that under no circumstances should situations be created giving rise to statelessness. It was therefore desirable to leave article 6 as drafted. The Commission could not be expected to conform with the nationality legislation of the several countries; its function was rather to recommend certain principles, to the General Assembly and to the Member States.

36. Mr. AMADO doubted whether any amendment to article 6 was really called for. The comments made by Governments really amounted to statements that their legislation was at variance with the conventions, and it was significant that the Norwegian Government's comments on article 6 ended with the words "whether the consequence of the loss of nationality is that he will become stateless or not, is an irrelevant factor." Clearly, such comments by Governments showed that they were not thinking along the same lines as the Commission. Article 6 fulfilled the purpose which had gathered the Commission together, and it should be adopted as it stood.

37. Mr. HSU agreed with the distinction between natural-born and naturalized persons and felt that it should be reflected in the draft Convention on the Reduction of Statelessness and not in the draft Convention on the Elimination of Statelessness.

38. The CHAIRMAN pointed out that the Norwegian Government, after drawing attention to the divergencies of its legislation from the provisions of the conventions, had nevertheless declared its readiness to consider those conventions and, if necessary, to amend its legislation accordingly.

39. He added that the discussion of article 6 would be resumed after the Special Rapporteur had prepared a fresh draft.

Article 7, paragraph 1

40. Mr. CÓRDOVA, Special Rapporteur, said that the Governments of the United States of America and Honduras had raised important points in connexion with that paragraph. The Government of the United States pointed out that existing federal legislation did not conform entirely to the principle embodied in article 7 of either draft convention, and provided in several cases, such as treason and desertion, for deprivation of nationality "by way of penalty", regardless of whether such deprivation rendered the individual stateless. Treasonable conduct was clearly more hostile to the country of which the person was a national than voluntary service with a foreign country and should therefore be taken into account. Moreover, deprivation of nationality on those grounds could only apply to naturalized persons. The Honduran Government felt that article 7 should refer "specifically to nationality at birth".

41. To cover those points he proposed that some such term as "natural-born" should be introduced before the word "nationals" and the words "except on the ground of treason, desertion or" inserted before the words "that they voluntarily enter..."

42. Mr. SALAMANCA said that the second half of the paragraph beginning with the words "except on the ground that..." might be deleted, as States should be left free to deal with offences by naturalized citizens under municipal law.

43. Mr. LAUTERPACHT said that article 7 was one of the most important in the draft conventions.

44. The British Nationality Act contained provisions for the deprivation of nationality in respect of naturalized persons, but there was no compelling reason to believe that, if there were prospects of the draft Convention on the Elimination of Future Statelessness becoming part of international law, the United Kingdom would necessarily attach decisive importance to maintaining that provision of its law. The instances in which it had been applied were extremely rare. The practical effects of its application were insignificant. The punishment for acts of disloyalty both in time of peace and in time of war was such as, in comparison, to make deprivation of nationality no more than a symbolic act of repudiation of the person concerned. As a rule, after he had served his sentence, he could not be deported, for, in the meantime, he would have lost the nationality of his country of origin.

45. Mr. CÓRDOVA, Special Rapporteur, supported the idea that States should not have recourse to deprivation of nationality as a penalty; most States had considerably more effective means of dealing with such offences as treason. If the Commission agreed to delete the existing

[2] See *Yearbook of the International Law Commission, 1953,* vol. I, 218th meeting, paras. 31-68, and 221st meeting, paras. 49-51.

exception, there should be no need to mention treason and desertion.

46. Mr. HSU said that treason should be distinguished from voluntary service with a foreign country. A traitor was criminally liable under domestic legislation, whereas service with a foreign country affected relationships between States.

47. Mr. LAUTERPACHT proposed, in order to facilitate discussion, that the second half of the paragraph, from the words "except on the ground that..." should be deleted.

48. Mr. FRANÇOIS felt that Mr. Lauterpacht's proposal was inconsistent with the views expressed at the fifth session[8] of the Commission. The exception contained in paragraph 1 was of importance to many States, and the comments received from governments had contained no objection to it. He would oppose any attempt to remove it.

49. Mr. LAUTERPACHT said that the differences between the two draft conventions were minor ones. The exception was itself a minor one and was further restricted by the reference to an express prohibition by the State of the individual concerned. If the exception were retained it would be necessary to mention treason and desertion which were of far greater consequence. Governments in their comments had merely indicated in what way their national legislation differed from the provisions of article 7.

50. Mr. SPIROPOULOS supported the point of view expressed by Mr. François. Voluntary service with a foreign State could in certain cases be profitable to the State of which the person was a national. Article 7 did not compel a State to deprive one of its citizens serving voluntarily with a foreign State of his nationality, but merely gave it the right to do so; it was important to distinguish between deprivation of nationality as a penalty and as an administrative measure. In the case of treason it would be a penalty, while voluntary service with a foreign State would initiate an administrative process. In practice there was little danger of complication as a person serving voluntarily with a foreign State would find it relatively easy to acquire the nationality of that State; however, voluntary service with a foreign State should not *ipso facto* result in loss of nationality. With that point in mind he proposed that in the second phrase of the paragraph the word "and" be substituted for the word "or".

51. Mr. LAUTERPACHT said it was hardly relevant to argue that the draft convention did not compel States to deprive their citizens of nationality in cases of voluntary service with foreign countries, but only empowered them to do so. Surely the whole object of the draft was to prohibit States from taking certain measures. He had proposed the deletion of the exception for reasons of logic, but would defer to the wishes of the majority.

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[8] *Ibid.*, 221st meeting, paras. 58-106 and 222nd meeting, paras. 1-100.

52. Faris Bey el-KHOURI said that those questions had been raised at the Commission's previous session and the article had been adopted as it stood. Every State should be free to apply the exception or not as it thought fit. He would oppose any modification of the paragraph in question.

53. The CHAIRMAN said that under Swedish law a Swedish subject serving voluntarily with a foreign country did not lose his nationality unless he acquired the nationality of that country by virtue of his service. There would consequently be no need to amend Swedish legislation to bring it into line with the draft convention.

54. Conceivably, certain States might wish to deprive their citizens of nationality, but it was important to make a distinction between entering the service of a foreign State and merely rendering services to a foreign State. If the article under consideration was intended to cover voluntary service with foreign States in the broadest sense, the proposal made by Mr. Spiropoulos to substitute "and" for "or" in the second part of the paragraph should not be adopted.

55. Mr. CÓRDOVA, Special Rapporteur, said that loss of nationality as a penalty was quite distinct from loss of nationality by virtue of administrative measure. If the principle was accepted that a stay abroad could by administrative process be assimilated to a renunciation of nationality, voluntary service with a foreign country was an even more blatant case of implied renunciation.

56. In reply to a question from Mr. Pal, the CHAIRMAN confirmed that the question of the adoption of article 7 remained open and that the Special Rapporteur would submit a new draft of paragraph 1.

Article 7, paragraph 2

57. Mr. CÓRDOVA, Special Rapporteur, referred to the comments submitted by the Governments of the United States of America and Lebanon. They had pointed out that according to their legislation the deprivation of nationality was not carried out by judicial authority, but the person concerned was at all times entitled to apply to a judicial authority for a review. He therefore proposed that the phrase in paragraph 2 "by a judicial authority acting in accordance with due process of law" should be replaced by the phrase "in accordance with due process of law, which should always provide for recourse to a judicial authority".

It was so agreed.

Article 8

58. Mr. CÓRDOVA, Special Rapporteur, said that, in view of certain comments made by governments, it might be necessary to clarify the term "political grounds". The United States Government in particular was unable to accept the term if it covered such offences as treason or desertion, while Belgium felt that activities designed to overthrow the State or its institutions were sufficient grounds for deprivation of nationality.

59. Mr. SPIROPOULOS proposed the deletion of the words "or group of persons", for the words "any person" were sufficient. He also feared that if the article were left as it stood, reasons other than those enumerated might be invoked to deprive a person of his nationality. He would not, however, press the point.

60. Mr. CÓRDOVA, Special Rapporteur, said that it was proposed in a letter received from the World Jewish Congress that after the words "of their nationality" the phrase "nor shall they refuse their nationality" should be inserted. The proposal might be acceptable if it were made clear that the person in question would become stateless if nationality were refused.

61. The CHAIRMAN pointed out that the grant of nationality was a discretionary act of an administrative nature, and hence governments could not be under a duty to grant it.

62. Mr. LAUTERPACHT said that the draft conventions did imply certain obligations for States to confer nationality, particularly article 1. However, as the draft conventions were concerned primarily with deprivation of nationality as a cause of statelessness, the proposal of the World Jewish Congress probably fell outside the scope of the convention. It was difficult to conceive how a person could be rendered stateless by a refusal to grant him nationality. For either he was already stateless or he was an alien. In neither case was there any question of rendering him stateless.

63. Mr. CÓRDOVA, Special Rapporteur, agreed that the Commission should deal both with deprivation and grant of nationality.

64. Mr. PAL said that the Commission should deal with such questions, but only in so far as statelessness was a possible consequence.

The meeting rose at 1.15 p.m.

244th MEETING

Thursday, 10 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. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE.

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) (*continued*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS (*continued*)[1]

Article 8 (continued)

1. The CHAIRMAN recalled that, towards the end of its previous meeting, the Commission had been considering a suggestion from the World Jewish Congress for the inclusion in article 8 of the phrase "and shall not refuse their nationality..." [on racial, ethnical, religious or political grounds]. He was not in favour of the suggestion, for a provision of that nature not only restricted the discretionary powers of States in the matter of naturalization, but also exceeded the scope of the draft.

2. Mr. CÓRDOVA, Special Rapporteur, said that there were several reasons in favour of adopting the suggestion, the strongest being the right of a person to express his chosen political views so long as, in doing so, he committed no offence against the law. Although, in fact, most Governments granted or refused their nationality without giving any reasons, it would nonetheless be useful to insert, at the end of the article, the words: "nor shall they refuse it on political grounds". It would be extremely difficult to define the meaning of "political grounds"; some countries, such as the United States, regarded treason not as a political crime but as an ordinary offence.

3. Mr. LAUTERPACHT agreed with the Special Rapporteur that the Commission had to keep always in mind the essential aim of the draft conventions, which was to prevent States from making persons stateless.

4. Mr. SCELLE suggested that the words "political grounds" should be replaced by "political opinions". The latter, according to a generally accepted principle of criminal law, could not constitute an offence. After the proclamation of the Four Freedoms, it would be a most unwarranted retrograde step not to mention the political factor together with the racial, ethnic and religious factors; at times, in the name of security of the State, some quite harmless activities were described as political.

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[1] *Vide supra,* 242nd meeting, para. 1 and footnotes.