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Summary record of the 244th meeting

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
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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. CORDOVA, 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. CORDOVA, 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. CORDOVA, 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. CORDOVA, 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.

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

5. Mr. GARCIA-AMADOR feared that, in view of the diversity of legitimate political opinions, the application of such a criterion might ultimately give States the right to deprive certain persons of their nationality on account of political activities which it was as legitimate to carry on as it was to have political opinions.

6. Mr. SALAMANCA said that, since it appeared impossible to define the term "political grounds" accurately it might perhaps be best not to alter the original draft of article 8.

7. Mr. PAL was of the same opinion; each State could punish political activities which contravened its domestic legislation; the only purpose of the conventions being to ensure that such penalties did not involve deprivation of nationality.

8. The CHAIRMAN said that he too could think of a wide range of activities that might be described as political; demographic questions might, for example, be considered political. Not wishing to restrict the political scope of the draft conventions, he was in favour of maintaining the original text.

9. Faris Bey el-KHOURI said that it was not the Commission's functions to define the expression "political grounds" which was in fact very differently construed in different States; he nevertheless supported the Special Rapporteur's proposal that refusal of nationality should be mentioned in article 8.

10. The CHAIRMAN called for a vote on the amendment proposed by Mr. Córdova and supported by Faris Bey el-Khoury, as well as on the amendment proposed by Mr. Scelle.

There were 5 votes in favour and 5 against each amendment. The votes being equally divided the amendments were not approved and article 8 was adopted in the following form:

"The parties shall not deprive any person or group of persons of their nationality on racial, ethnical, religious or political grounds."

Article 9

11. The CHAIRMAN noted that no amendments to article 9 had been proposed by Governments.

Article 10

12. Mr. CORDOVA, Special Rapporteur, said that notwithstanding the objections expressed in the Belgian comments it was certainly essential to establish a special agency to ensure the application of the conventions.

13. He recalled that, in preparing draft provisions relating to a special tribunal, the Commission had taken good care not to encroach upon matters essentially within the domestic jurisdiction of States; the objections raised by the Government of the United Kingdom and those of the United States therefore seemed to him groundless.

14. Mr. LAUTERPACHT agreed with the Special Rapporteur. Possibly the objections of the United Kingdom did not stem from any reluctance to assist in making the convention as effective as possible but from the apprehension of an undue multiplication of international agencies. He noted, however, that with reference to article 10, the Government of the United Kingdom had pointed out that the International Court of Justice might usefully act as an appellate jurisdiction. The proposed tribunal might make an award having wide repercussions and affecting very large numbers of persons. That being so some provision for appeal might not be out of place.

15. Mr. CORDOVA, Special Rapporteur, pointed out that the conventions and the future agency were concerned with stateless persons who did not come under the jurisdiction of the Court, and that in the existing drafts no appeal from the decisions of the special tribunal had been provided for.

16. Mr. LIANG, Secretary to the Commission, explained that paragraph 4 offered the choice between two different procedures in disputes between States, whereas paragraph 2 provided for a tribunal concerned exclusively with individuals.

17. Mr. LAUTERPACHT inquired what would happen if a dispute between a State and an individual were brought before the International Court of Justice.

18. Mr. FRANÇOIS pointed out that the International Court of Justice had no jurisdiction in conflicts between States and individuals.

19. Mr. SALAMANCA pointed out that the possibility of the same case coming before two different judicial bodies simultaneously was remote; if the contingency arose it would be covered by the generally established rule of *litis pendentia*.

20. Mr. PAL pointed out, in reply to Mr. Salamanca, that the legislation of every country contained provisions concerning *litis pendentes* and the respective authority of the various courts. The system provided for so far by the Commission did not contain any such provision. The phrase which the Special Rapporteur proposed to be added at the end of paragraph 4 would not solve the problem which would arise if the tribunal and the International Court of Justice were simultaneously asked to deal with the same case. The convention should perhaps state that in such a case the International Court had sole jurisdiction.

21. Faris Bey el-KHOURI considered it preferable that all actions should be brought before the special tribunal in the first instance, with the possibility of an appeal from its decisions to the International Court of Justice.

22. The CHAIRMAN thought that the Commission, in view of the objections raised by certain States, including the United States of America, which was an important country of immigration, should perhaps reconsider the whole question of the establishment of a special tribunal. The objection of these countries might jeopardize the ratification of the conventions as a whole.

23. With regard to the division of jurisdiction as between the International Court of Justice and the special tribunal, he said it was not possible to provide for appeals from the one to the other. The jurisdiction of the two bodies was quite distinct. If the International Court of Justice were to be asked to give a ruling on a point of law arising from a case the substance of which had been submitted to the special tribunal, the latter would, in theory, have to suspend giving its decision pending the judgement of the International Court.

24. Mr. FRANÇOIS said that the object of paragraph 4 was to prevent States parties to the convention from claiming that a dispute between two States fell within domestic jurisdiction. That paragraph did not, however, provide for the case of a stateless person who did not enjoy the protection of any State; furthermore, if the Commission wished to give States the right of action before the special tribunal, paragraph 2 would have to be amended.

25. Any appeal from one jurisdiction to another was impossible, as the statute of the Court did not empower it to deal with a dispute between a State and the agency referred to in paragraph 1.

26. Mr. LAUTERPACHT remarked, in reply to the Chairman, that the first nine articles of the draft conventions were much more drastic and more novel than article 10, the purpose of which was merely to ensure respect of the convention. If a State accepted the first nine articles and rejected the tenth its attitude might justifiably lend itself to criticism. Moreover, private persons would only have access to the tribunal through the agency referred to in paragraph 1, which sifted their claims. He was in favour of the principle, agreed to by the Commission after lengthy discussion at its fifth session,² of establishing a special tribunal.

27. The CHAIRMAN said that in those matters, feelings carried at least as much weight as logic. Many States would be reluctant to entrust to an international tribunal cases which at the moment fell within their own jurisdiction.

28. Mr. LAUTERPACHT inquired what solution the Commission would adopt if it dropped the idea of a special tribunal. Would there be no body competent to deal with disputes arising out of the application of the convention?

29. The CHAIRMAN said that he did not contemplate the disappearance of the agency provided for under paragraph 1, which would be able to defend the interests of stateless persons before national authorities. Furthermore, the International Court might undertake to interpret the conventions in accordance with its own statute.

² See *Yearbook of the International Law Commission, 1953*, vol. I, 218th meeting, paras. 96-108; 219th meeting, paras. 45-64; 220th meeting, paras. 1-22; 223rd meeting, paras. 4-79; 224th meeting, paras. 1-52; 231st meeting, paras. 84-96; and 232nd meeting, paras. 45-87.

30. Mr. CORDOVA, Special Rapporteur, hoped that the Commission would uphold the principle of setting up the tribunal.

31. It would be difficult to accept Mr. Lauterpacht's proposal that the parties should be empowered to appeal to the International Court against decisions of the tribunal, as the Court was not empowered to determine disputes between States and the agency to be set up under paragraph 1. Preferably, it should be provided that a decision by either body was final.

32. Mr. SCALLE remarked that there was nothing to prevent the tribunal and the Court from giving conflicting decisions. Under Article 36, paragraph 2, of the Court's Statute a State party to that instrument could not be prevented from referring directly to the Court a decision of the tribunal which it deemed contrary to its interests. It might be possible to overcome that difficulty by replacing the special tribunal by a special division of the Court.

33. Mr. CORDOVA, Special Rapporteur, thought that a State might request the Court to interpret the convention, but that the Court would be unable under its statute to apply the provisions of the convention for the purpose of settling disputes between a private person and a State.

34. Mr. SCALLE said that it was impossible to make a clear distinction between the application of the convention and its interpretation. It might well happen that another State, party to the statute of the Court but not to the convention, considered its interests prejudiced by a decision of the tribunal regarding the nationality of a person, and raised the matter before the Court which would undoubtedly consider itself competent.

35. Mr. LAUTERPACHT said that article 10 as it stood implied dual jurisdiction, without any logical reason. It would be better to specify that only the tribunal was competent.

36. Mr. CORDOVA, Special Rapporteur, replying to Mr. Scelle, remarked that if on the one hand a State was not a party to the convention, it could not be considered by the Court as concerned in the settlement of a dispute arising out of the application of the convention. There would not be a "legal dispute" within the meaning of Article 36, paragraph 2, of the statute of the Court. On the other hand, States parties to the convention could clearly by that convention waive the right to apply to the International Court of Justice in a particular case, for States were free at any time to restrict by treaty the scope of a previous treaty. The best solution of the problem might be to delete paragraph 4 altogether.

37. Mr. LAUTERPACHT agreed with Mr. François that, if the Commission wished to give States the right to apply to the tribunal, paragraph 2 would have to be amended. If the Commission decided to delete paragraph 4 altogether, it would no longer need to concern itself with the possible function of the International Court in that respect.

38. Mr. PAL felt that any interested third State should have the possibility of applying to the tribunal.

39. The CHAIRMAN invited the Special Rapporteur to redraft article 10 in the light of the views expressed by the members of the Commission.

The meeting rose at 12.55 p.m.

245th MEETING

Friday, 11 June 1954, at 9.30 a.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Present:

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

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

DRAFT CONVENTIONS ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS (*continued*)¹

Article 10 (*continued*)

1. The CHAIRMAN noted the absence of several members of the Commission and invited those present to conclude discussion of article 10 of the draft convention.

2. Mr. CORDOVA, Special Rapporteur, said that the Commission had agreed to delete paragraph 4. It had also agreed to give jurisdiction exclusively to the proposed tribunal. To cover that point he proposed that the phrase "any dispute between them concerning the interpretation or application of the convention" should be inserted in paragraph 2 before the words "upon complaints presented . . ."

It was so agreed.

3. Mr. CORDOVA, Special Rapporteur, said that the World Jewish Congress had pointed out in its letter that there already existed an organization within the framework of the United Nations which could assume the functions of the agency referred to in paragraph 1, namely, the Office of the High Commissioner for Refugees, and that it would consequently be undesirable to set up a new agency which would only duplicate the work already being done by the existing body. He agreed that the view of the World Jewish Congress was of interest from the point of view of the budget of the United Nations.

4. The CHAIRMAN said that the proposed tribunal was intended to have quasi-judicial functions, while those of the High Commissioner for Refugees were essentially different and strictly defined by the General Assembly. Furthermore the mandate of the High Commissioner for Refugees was prolonged on an *ad hoc* basis, so that it would be necessary, if it were decided to invest the Office of the High Commissioner for Refugees with the functions referred to in paragraph 1, to add "as long as it exists".

5. Mr. LAUTERPACHT pointed out that the High Commissioner for Refugees had no competence to deal with stateless persons who were not at the same time refugees.

6. Mr. CORDOVA, Special Rapporteur, said the proposal of the World Jewish Congress was not acceptable. If the mandate of the proposed agency was very different from that of the High Commissioner for Refugees, it would be difficult for the United Nations to finance it as it was not likely that all Member States would be parties to the convention.

7. Mr. LAUTERPACHT said that paragraph 161 of the Commission's report covering the work of its fifth session² should allay the fears of the Special Rapporteur.

8. Mr. SCELLE said it was regrettable that millions of *de jure* and *de facto* stateless refugees were deprived of protection. The High Commissioner for Refugees disposed of practically no financial resources. Article 10 reflected an attempt to set up an effective organ, and it was his belief that the United Nations should accept its responsibility and finance it. Article 10 contained important provisions and should, in his opinion, be considered in conjunction with paragraph 161 of the Commission's report on its fifth session.

² Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456); also in Yearbook of the International Law Commission, 1953, vol. II.

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