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Summary record of the 245th meeting

Topic:
Nationality including statelessness

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

CONTENTS

Chairman: Mr. A. E. F. SANDSTRÖM

Present:

Members: Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, 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 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. CÓRDOVA, 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. CÓRDOVA, 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 session [2] 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.

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

[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.

Final clauses

9. Mr. LAUTERPACHT referred to the proposal of the Government of the United Kingdom in its comments on the draft conventions for the insertion of an additional article in the final version of the convention, extending its application to territories for the international relations of which a given State was responsible. It was for the Commission to decide if it wished to draw up the final clauses of the convention or leave that task to the General Assembly. Preferably, the United Kingdom proposal should not be considered at the present stage, though he did not wish to imply that he did not attach great importance to the question of final clauses as such.

10. Mr. CÓRDOVA, Special Rapporteur, said that there was a proposal, which appeared to have the support of the Government of the United States of America,[3] that the results of the Commission's work should be drafted in the form of a recommendation. He was in favour of submitting the Commission's work in the form of a draft convention as being more likely to lead to effective international action. The Commission should therefore assume responsibility for drafting the final clauses and submit to the General Assembly a document which would be complete. He agreed that it might not be easy to draft the final clauses and proposed that a drafting sub-committee should be set up for that purpose.

11. Mr. LIANG, Secretary to the Commission, said that the model final clauses worked out by the Legal Department of the United Nations Secretariat had only a formal character. If it was necessary to attach final clauses to a convention, they should have a bearing on the substance of the convention. He recalled that when the Sixth Committee had considered the draft convention on arbitral procedure, it had regretted the absence of final clauses. The Commission should formulate its own final clauses in the light of the *Handbook on Final Clauses* prepared by the Legal Department.

12. The CHAIRMAN invited the Commission to agree to draft the final clauses to the draft conventions and proposed that a special sub-committee, composed of himself, the Special Rapporteur and Mr. Lauterpacht be set up for that purpose.

It was so agreed.

Article 10 (resumed from para. 8)

13. Mr. GARCÍA-AMADOR inquired, in view of the provisions of article 10, paragraph 2, what exactly would be the result of a decision by the tribunal, and to what extent a decision rendered by it would be binding. A decision by the tribunal did not of itself restore nationality; that would require an administrative act on the part of the State concerned.

14. Mr. CÓRDOVA, Special Rapporteur, said that a decision of the tribunal should not only be binding on the State with regard to which a claim had been made, but should be of a declaratory nature and consequently binding on all governments.

15. Mr. LAUTERPACHT thought that the question whether the decision of the tribunal restored nationality or bound the State in question to restore it was an interesting point of jurisprudence, but one which should not be discussed at that stage; nor was it desirable to discuss the Special Rapporteur's view that a decision taken by the tribunal in a given case should be binding on all other States in similar cases.

16. Mr. SCELLE supported Mr. Lauterpacht's view. A decision by the tribunal was purely declaratory and did not operate to confer nationality. If it was intended to give the decision of the tribunal absolute value and make it binding on all the signatories of the convention, it would be necessary to include a clause containing an express stipulation to that effect.

17. The CHAIRMAN said that two ways of interpreting the tribunal's competence had been suggested: either that the tribunal's decision in a given case would remain valid for all similar cases, or that it would be binding only on the parties involved, unless otherwise provided for.

18. Faris Bey el-KHOURI said the proposed tribunal was comparable to a court of justice. Courts were not empowered to make general rulings, but could only give judgement on specific cases. If the tribunal's decision was to be binding *erga omnes*, an express provision to that effect would have to be inserted.

19. Mr. CÓRDOVA, Special Rapporteur, felt that the General Assembly would expect the Commission to discuss the problem. He would like to see a phrase inserted to the effect that a decision rendered by the tribunal in any particular case should be binding on all the signatories of the convention.

20. Mr. LAUTERPACHT did not think the proposal introduced by the Special Rapporteur necessary. If in the future another party to the convention had occasion to question the tribunal's decision, the case would again be referred to the tribunal, which would in all probability merely confirm its decision. There was no need to add a specific provision along the lines suggested.

21. The CHAIRMAN said that the Special Rapporteur was willing to withdraw his proposal and hence the discussion on that point was at an end. He regretted that he was unable to put the matter to the vote as in the absence of a number of the members the Commission lacked the necessary quorum. Accordingly, discussion would be purely exploratory and the Commission could not take a decision.

Article 1 (resumed from the 243rd meeting)

22. Mr. LAUTERPACHT requested that in the Special Rapporteur's amended draft of paragraph 2 of

[3] Cf. the first paragraph of the United States comments on the draft conventions, in *Yearbook of the International Law Commission, 1954*, vol. II.

article 1 [4] the phrase "... and provided that, on attaining that age, the person does not opt for the nationality he would have acquired at birth, had paragraph 1 of this article not been applied" be replaced by the phrase "and provided that, on attaining that age he may opt for another nationality", or "unless on attaining that age he does not opt for another nationality". The passage was not intelligible as it stood.

23. Mr. LIANG, Secretary to the Commission, suggested that the most satisfactory wording might be obtained by inserting after the word "eighteen" the phrase "... and on condition that he does not opt for another nationality".

24. Mr. CÓRDOVA, Special Rapporteur, said that in article 1 the Commission had attempted to reconcile the two recognized ways of acquiring nationality, *jus soli* and *jus sanguinis*. The Commission wished to extend *jus soli* to *jus sanguinis* countries, but to make it acceptable to the latter it was thought desirable to introduce the concept of option.

25. Mr. LAUTERPACHT suggested that paragraph 2 of article 1 might be subdivided so as to contain two provisions: one authorizing States to make the granting of their nationality subject to a residence qualification; and another acknowledging the right of the individual to exercise an option.

26. Mr. CÓRDOVA, Special Rapporteur, said that provision would then be made to read "the national law of the Party may make preservation of such nationality dependent on the person being normally resident in its territory until the age of eighteen. On attaining that age, that person may opt..."

27. The CHAIRMAN said that perhaps the text might read: "until the age of eighteen without exercising, on reaching that age, an option for another nationality".

28. Mr. CÓRDOVA, Special Rapporteur, said that the Commission was not at that stage concerned with the person who acquired a nationality by naturalization.

29. Mr. HSU said it had to be made clear that the exception only concerned persons who not only opted for a nationality, but also actually acquired that nationality.

30. Mr. LAUTERPACHT pointed out that according to article 1, paragraph 1, the convention applied to persons "who would otherwise be stateless". If a person was eligible for a nationality other than that of his place of birth, he was not "otherwise stateless".

31. Mr. HSU asked if the Commission was not to acknowledge the right of a person to refuse the nationality of his place of birth even if it meant his remaining stateless.

32. The CHAIRMAN proposed that the text should read: "until the age of eighteen without, on attaining that age, opting for and acquiring another nationality".

33. Mr. CÓRDOVA, Special Rapporteur, said that article 6 clearly laid down that "renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality". The central purpose of the convention was to extend the *jus soli* rule, and that meant imposing a nationality on certain persons. He felt there was not room in the convention for voluntary statelessness.

34. Mr. HSU suggested that article 6 might be amended.

35. Mr. LAUTERPACHT felt that the case of a person wanting to remain stateless was not of great practical importance and that the Commission should proceed with its discussion.

36. The CHAIRMAN *said that the final version of article 1, paragraph 2, would be prepared by the Drafting Committee.*

37. Mr. CÓRDOVA, Special Rapporteur, said that one of the proposed amendments to article 1, paragraph 3, specified that a person should acquire the nationality of one of his parents provided that such parent had the nationality of one of the Parties. The convention could clearly only confer the nationality of one of the States which were parties to it and not that of a State that was not a signatory. Another amendment took into account the United Kingdom suggestion that the residence qualification provided for in paragraph 2 should be continued in paragraph 3 as well.[5]

38. He also discussed a revised draft of the second sentence of article 1, paragraph 3, reading: "The nationality of the father shall prevail over that of the mother unless, in the case of a child born out of wedlock, the child is under the care of the mother, and, according to her national legislation, a child born out of wedlock follows the mother's nationality". That provision had been introduced in order to allow for the fact that in the Scandinavian countries, in cases of children born out of wedlock, the nationality of the mother always prevailed.

39. The CHAIRMAN pointed out that the condition that the child should be under the mother's care was based on the reasoning that, where the mother had custody, the child should not have a nationality different from hers.

40. Mr. CÓRDOVA, Special Rapporteur, said that was an unnecessary complication of the text; besides, the laws of the Scandinavian countries did not expressly

[4] The amended draft read as follows:

"2. The national law of the party may make preservation of such nationality dependent on the person being normally resident in its territory until the age of eighteen, and provided that, on attaining that age, the person does not opt for the nationality he would have acquired at birth, had paragraph 1 of this article not been applied."

[5] With these amendments, the first sentence of paragraph 3 would read:

"3. If, in consequence of the operation of such conditions as are envisaged in paragraph 2, a person on attaining the age of eighteen does not retain the nationality of the State of birth, he shall acquire the nationality of one of his parents, if such parent has the nationality of one of the parties and provided further that the person complies with the requirement of residence set forth in paragraph 2 of this article."

stipulate that the child should be in the mother's care.

41. The CHAIRMAN thought that, in the light of the discussion, the text of the additional phrase might read: "unless, in the case of a child born out of wedlock, the national legislation of the mother gives the child her nationality".

It was so agreed.

Article 2 (resumed from the 243rd meeting)

42. Mr. CÓRDOVA, Special Rapporteur, read the additional paragraph suggested for article 2: "An adult whose place of birth is unknown shall also be presumed to have been born in the territory of the party where he was first resident."

43. Mr. LAUTERPACHT said that such a provision would be extremely difficult to apply in the case of a child taken by his parents from one country to another during infancy, and spending excessive periods of time in those countries. It was not quite clear how the words "was first resident" were to be construed in such cases. He suggested hat the proposed additional paragraph should be dropped altogether.

44. Mr. HSU said that the reason for the redraft was that the term "foundling", which ordinarily referred to a child, might be taken by the uninitiated to mean a child only. It was advisable to specify that the provisions of article 2 applied to adults as well.

45. The CHAIRMAN said that there appeared to be a misunderstanding. The French text did not exclude adults: an adult who had been an *enfant trouvé* in childhood would be entitled to the benefit of the provisions of article 2. He therefore suggested the adoption of article 2 without amendment.

Article 6, paragraph 3
(resumed from the 243rd meeting)

46. Mr. LAUTERPACHT referred to the redraft of article 6, paragraph 3: "Born nationals shall not lose their nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground. Naturalized nationals may lose their nationality on the ground of staying in their country of origin for the length of time prescribed by the law of the Party which granted their naturalization." He had doubts as to the desirability of incorporating into the convention, in that respect, the distinction between two kinds of citizens. With regard to naturalized persons, assuming that the principle adopted by the Special Rapporteur was accepted, it was difficult to see why importance should be attached to prolonged residence in the country of origin only.

47. The CHAIRMAN agreed with Mr. Lauterpacht.

48. Mr. CÓRDOVA, Special Rapporteur, said he, too, agreed with Mr. Lauterpacht. Nevertheless, one object of the provision under discussion was to enable certain contracting parties to maintain in their domestic legislation an already existing distinction between natural-born and naturalized citizens. It was clear that a State which was a party to the convention would never be obliged to discriminate against naturalized persons if it was incompatible with the principles of its municipal legislation to do so.

49. Mr. LAUTERPACHT said that, if it specified that natural-born nationals should not lose their nationality on the ground of departure or stay abroad, the draft convention would probably be unacceptable to the United States inasmuch as the legislation of that country provided for the deprivation of nationality for natural-born Americans who stayed abroad in time of war. There was no reason to discourage the acceptance of the convention by provisions such as were being proposed.

50. Mr. CÓRDOVA, Special Rapporteur, said that the Commission would probably have to consider a provision for the suspension of all or most of the provisions of the convention in case of war.

51. Mr. LAUTERPACHT pointed out that it was undesirable to restrict loss of nationality to the case of naturalized persons who returned to their country of origin. The relevant provisions of United States legislation provided for the deprivation of American citizenship of naturalized Americans who stayed abroad for an excessively long time, the only difference between the person returning to his country of origin and that going to another country being that the period of absence specified was different.

52. Mr. CÓRDOVA, Special Rapporteur, agreed to the deletion of the words "country of origin".

53. The CHAIRMAN said that, as two of the members present at the beginning of the meeting had been obliged to leave since, there were less than seven members present, so that no actual vote could be taken; technically, there was one vacant seat and hence the quorum for voting was seven. There were, however, sufficient members present for purposes of discussion, and he suggested that they should in any case carry on with the drafting of the articles which could be approved at the next meeting when there would be the necessary quorum of seven.

Article 7 (resumed from the 243rd meeting)

54. Mr. CÓRDOVA, Special Rapporteur, submitted his redraft of article 7, paragraph 1: "The parties shall not deprive their nationals of nationality by way of penalty, if such deprivation renders them stateless, except on the ground of treason, desertion or that they voluntarily enter or continue in the service of a foreign country in disregard of an express prohibition of their State."

55. Mr. LAUTERPACHT pointed out that in the United Kingdom, treason was not considered a ground for the deprivation of nationality. If the traitor was in the country, he was liable to the death penalty and it

would be pointless to provide for deprivation of nationality as well. On the other hand, if the traitor was abroad, to deprive him of nationality was of somewhat nominal advantage.

56. Mr. HSU felt that there was no necessity for introducing the concepts of treason and desertion into the relevant provision.

57. Mr. CÓRDOVA, Special Rapporteur, stressed that the convention on the reduction of statelessness was an attempt to secure the co-operation of States which would not be prepared to accede to the convention on elimination of statelessness. It was an effort to diminish the evil of statelessness. Admittedly, it was desirable to eradicate the evil altogether, but that would probably be impracticable in the case of some countries which had strong views on certain issues and might refuse to sign a convention on elimination of statelessness. Accordingly, the convention on the reduction of statelessness was taking the wishes of those countries into account, and he hoped that they would accede to it.

58. The CHAIRMAN said he fully agreed with that policy.

59. Faris Bey el-KHOURI said that the terms used in the amendment required definition. It would be necessary to determine whether "desertion" was concerned with wartime cases or was intended to cover also desertion from the armed forces in peacetime. With regard to treason, it was unfortunately all too common for a revolutionary régime to regard as traitors all persons who did not agree with it. It would be most undesirable if it were suggested that such a régime could deprive all its political opponents of their nationality.

60. Mr. CÓRDOVA, Special Rapporteur, said that the redraft of article 7, paragraph 2, had been settled at a previous session,[6] and there was no need to discuss it further. The final text would read: "In the case to which paragraph 1 above refers, the deprivation shall be pronounced in accordance with due process of law which will always provide for recourse to a judicial authority."

Article 8 (resumed from the 244th meeting)

61. The CHAIRMAN read the proposed redraft of article 8: "The parties shall not deprive any person of his nationality, so as to render him stateless, on racial, ethnical, religious or political grounds."

62. Mr. LAUTERPACHT pointed out that the Commission had already voted against the addition of the words: "so as to render him stateless."

63. The CHAIRMAN confirmed Mr. Lauterpacht's observation.[7]

The meeting rose at 1.15 p.m.

[6] *Vide supra*, 243rd meeting, para. 57.

[7] *Vide supra*, 244th meeting, para. 10.

246th MEETING

Monday, 14 June 1954, at 3 p.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, 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) (*continued*)

REPORT ON THE ELIMINATION OR REDUCTION OF PRESENT STATELESSNESS (A/CN.4/81)

GENERAL DEBATE AND BEGINNING OF DISCUSSION OF THE DRAFT CONVENTION ON THE REDUCTION OF PRESENT STATELESSNESS

1. The CHAIRMAN said that at its previous meeting the Commission had failed to obtain a quorum for voting and hoped that every effort would be made by members to be present at meetings. He proposed that the Commission consider the Special Rapporteur's third report on the elimination or reduction of statelessness, containing proposals regarding the elimination or reduction of *present* statelessness (A/CN.4/81).[1]

2. Mr. CÓRDOVA, Special Rapporteur, recalled that his first report on the elimination or reduction of statelessness (A/CN.4/64)[2] had contained a recommendation that the Commission should discuss the problem of present statelessness which was of capital importance both to the United Nations and to individual Governments. At its fifth session, the Commission had been unable to consider his second report on the elimination or reduction of statelessness (A/CN.4/75),[3] and he had therefore taken it as a basis for the report he was submitting to the Commission at its current session. The latter report contained, as Part I, a "Protocol to

[1] Reproduced in *Yearbook of the International Law Commission, 1954*, vol. II.

[2] See *Yearbook of the International Law Commission, 1953*, vol. II.

[3] *Ibid.*