

Document:-
A/CN.4/SR.248

Summary record of the 248th meeting

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
1954 , vol. I

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50. Mr. LAUTERPACHT explained that, as he construed his draft, it implied an obligation for the host State to confer the status of "protected subject" under article II upon those stateless persons to whom it had not granted its nationality under article I of his draft.

The meeting rose at 1 p.m.

248th MEETING

Wednesday, 16 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) (*continued*)

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

REVISED DRAFT OF CONVENTION ON THE REDUCTION OF PRESENT STATELESSNESS

Article I

1. The CHAIRMAN invited the Commission to discuss a revised draft of article I of the alternative Convention on the Reduction of Present Statelessness¹ prepared by the Special Rapporteur :

"1. The party in whose territory a stateless person habitually resides shall, on his application, grant him the legal status of 'protected subject'.

"2. The national law of the party may exclude from the application of paragraph 1 stateless persons

who constitute a danger to public order or national security."

2. At a previous meeting, Mr. Lauterpacht had submitted an amended draft² of article I which he had proposed to modify still further.

3. Mr. LAUTERPACHT proposed that article I should read :

"The parties agree to confer their nationality upon stateless persons who have been resident within their territory for a minimum period which their law prescribes as a condition of naturalization and provided that such persons fulfil the other conditions which the law lays down for acquisition of nationality by naturalization."

4. He also wished to make a general remark concerning the character of the Commission's work on the articles under discussion; he believed that the Commission should pursue the study of the articles, but not that it should do so in terms of drafting a convention. The work in which it was engaged was neither codification nor progressive development of international law. It was not the Commission's business to draft conventions. He believed that it would be acting in keeping with its terms of reference if it submitted two or three articles to the General Assembly and left it to the Assembly to take what action it deemed advisable.

5. Mr. CORDOVA, Special Rapporteur, agreed with Mr. Lauterpacht and said that he had not intended that the articles in question should be drafted in the form of a convention. The question under consideration required more detailed study and he therefore proposed that, before being submitted to the General Assembly and the Economic and Social Council, the text of the articles should be circulated to Governments, who should be invited to comment thereon.

6. Mr. LAUTERPACHT thought that as soon as the Commission reached final conclusions on the articles it should consider its work relating to the particular topic completed and not spend any more time on it. The General Assembly and the Economic and Social Council would be free to request the Governments to give their views if they so desired.

7. The CHAIRMAN agreed that there was no need for the Commission to wait for an endorsement of its views; it should proceed with its work as a drafting committee.

8. Mr. CORDOVA, Special Rapporteur, pointed out that a diplomatic conference on the status of stateless persons was to meet at Geneva in September and that there was consequently no time to submit the articles to the General Assembly or the Economic and Social Council. If the question was placed on the agenda of the Economic and Social Council, Governments would have insufficient time to study it before the September conference. Governments should also be given the

¹ Cf. *supra*, 247th meeting, para. 1 and related footnotes.

² *Vide supra*, 247th meeting, para. 48.

possibility of asking the Commission to pursue its work along present lines.

9. Mr. LIANG, Secretary to the Commission, said that the Council was to meet at the end of June and that it would probably be difficult to add an item to its agenda at such short notice.

10. Mr. HSU wondered if it would be proper to submit the results of the Commission's work direct to the diplomatic conference for information.

11. Mr. CORDOVA, Special Rapporteur, said that if the articles were drafted in the form of a convention, there would be a possibility of suggesting alternative drafts. If, on the other hand, the Commission favoured the proposal made by Mr. Lauterpacht, it would give itself greater freedom of work.

12. Mr. SPIROPOULOS said it was important to decide what form the articles should take. The Commission could draft them in the form of a convention or in the form of a recommendation. The only difference between the two would be that a convention would require, in addition, a preamble and final clauses. He would be equally prepared to accept either of the two solutions.

13. Mr. CORDOVA, Special Rapporteur, said that a question of responsibility was involved. If the articles were embodied in a convention the Commission would bear the responsibility for the final document. If on the other hand a vaguer form of presentation was adopted, and the Commission merely said that the question had been studied, its responsibility would be less. In that case Governments would commend the Commission for undertaking the work and at the same time approve its cautious approach.

14. Mr. FRANÇOIS inquired if it was in accordance with the Statute of the Commission to draft proposals which did not actually involve codification or the progressive development of international law.

15. Mr. LIANG, Secretary to the Commission, said that it would not be proper for the Commission to submit its proposals to the diplomatic conference through the Secretary-General, because, as he had pointed out before, the treatment of stateless persons did not come strictly within the Commission's scope.

16. Mr. Lauterpacht's proposal that the Commission should merely draft suggestions was not sufficiently clear. The proposals made by the Commission could be considered as contributing to the development of international law; inasmuch as it would be too late for the proposals to be considered by the Economic and Social Council in June, he was inclined to support Mr. Hsu's suggestion.

17. Mr. LAUTERPACHT felt that the question was being unnecessarily complicated. The Commission's work on present statelessness was not strictly either codification or development of international law and he proposed that it should merely be said in the general report covering its sixth session that the item had been

considered; that the drafting of the convention was neither codification nor development of international law; and that the Commission had formulated articles which would be submitted to the General Assembly or the Economic and Social Council for suitable action. There was nothing in the Commission's statute to prevent it from adopting that course.

18. Mr. HSU did not think it was possible to maintain that the work of the Commission fell in between codification and development of international law. Recommendations made by the Commission, in whatever form they were presented, were necessarily a contribution to the development of international law.

19. Mr. CORDOVA, Special Rapporteur, said that if the text of the articles was included in the general report there would be no problem; if, however, the Commission required action to be taken, it would be necessary to communicate the proposal to Governments.

20. Mr. LAUTERPACHT disagreed with the Special Rapporteur and suggested that the issue should be put to the vote.

21. Mr. CORDOVA, Special Rapporteur, said that the General Assembly might consult the Governments and refer the proposals back to the Commission for further study. In that case the proposals should contain some such phrase as: "for any action considered necessary by the General Assembly".

22. Mr. LAUTERPACHT agreed with the Special Rapporteur.

23. The CHAIRMAN invited the Commission to take as a basis for discussion a revised draft of the alternative convention on the reduction of present statelessness as prepared by the Special Rapporteur. Mr. Lauterpacht had proposed a new draft of article I in which he had substituted a "minimum period" of residence for his original proposal of "a period of ten years or more".³

24. Mr. CORDOVA, Special Rapporteur, said that the draft of article I as proposed by Mr. Lauterpacht was already covered by article V of his (the Special Rapporteur's) revised draft, which read:

"The parties shall confer their nationality upon stateless persons provided that they fulfil the conditions which are provided by law for the acquisition of nationality by aliens by way of naturalization."

He therefore took it that Mr. Lauterpacht wished article V of the Special Rapporteur's revised draft to be renumbered article I.

25. The essential difference between the two approaches was that in Mr. Lauterpacht's opinion a stateless person should be granted "protected status" only if he failed to qualify for naturalization, while in his (Mr. Córdova's) opinion a stateless person should

³ *Vide supra*, paras. 1 and 3.

be granted "protected status" until a nationality was conferred on him.

26. He hoped that Mr. Lauterpacht's draft of article I was not intended to replace article I, but article V of his revised draft.

27. Mr. SPIROPOULOS agreed with the Special Rapporteur that stateless persons should enjoy "protected status" until they obtained a nationality; it was more logical than to grant them the "protected status" once they had been refused a nationality.

28. Mr. LAUTERPACHT proposed that his draft of article I should be substituted for the Special Rapporteur's draft of article I. He did not wish to be repetitive, but if the Commission's aim was the elimination of statelessness, it was only logical that it should concern itself first with nationality, and secondly with "protected status".

29. The CHAIRMAN thought that it would be easier to establish the order of the articles once agreement had been reached as to their content.

30. Mr. GARCÍA-AMADOR pointed out that inasmuch as Mr. Lauterpacht's draft article II as proposed at a previous meeting⁴ also contained amendments to the Special Rapporteur's draft article I it would be desirable to discuss paragraphs 1 and 2 of the Special Rapporteur's draft article I simultaneously.

31. Mr. CORDOVA, Special Rapporteur, said that Mr. Lauterpacht's draft article II dealt with the question of restricted nationality which was covered by paragraphs 1 and 2 of his own draft. The ideas contained in the two drafts coincided, as he had based his own idea of restricted nationality on proposals originally made by Mr. Lauterpacht and Faris Bey el-Khouri. The difficulty was one of presentation. His provision concerning stateless persons who constituted a danger to public order or national security was, he thought, justified, in that it reduced to some extent the burden which the Commission wished to impose upon States. The grant of nationality was dealt with in article V of his revised draft.

32. Mr. LAUTERPACHT proposed that paragraph 1 of article I of the Special Rapporteur's revised draft be preceded by the phrase: "Unless nationality is conferred in conformity with article V".

33. Since "protected status" differed little in practice from that of full nationality, it was perfectly proper that a stateless person should wait before nationality was granted him.

34. Mr. SCALLE said the position of a stateless person might be more favourable than that of an ordinary alien with regard to the acquisition of nationality. He agreed with the Special Rapporteur that it was more logical to grant first "protected status" and then nationality, and suggested that agreement might be more likely if the order of the articles in the Special Rapporteur's revised draft were modified.

35. Mr. AMADO was on the whole inclined to agree with Mr. Lauterpacht's proposal, but if the Commission decided to retain the order of the Special Rapporteur's draft, article V should be allowed to stand.

36. Mr. SPIROPOULOS thought there was no real difference between the views expressed by the Special Rapporteur and Mr. Lauterpacht. He proposed that the phrase: "As long as a stateless person does not acquire a nationality under article V" should be inserted at the beginning of article I, paragraph 1.

37. Mr. LAUTERPACHT said that the proposal made by Mr. Spiropoulos tended to give a stateless person protected status almost immediately. He was unable to agree with that suggestion.

38. Mr. CORDOVA, Special Rapporteur, said that Mr. Lauterpacht, if he had understood him correctly, expected a State to confer nationality subject to the fulfilment by the applicant of certain statutory conditions, but had added that if the State did not wish to confer nationality on the person, it could confer "protected status". In that case the person would never get a nationality.

39. Faris Bey el-KHOURI felt that the country of residence of a stateless person should immediately grant the person concerned "protected status", which the person would retain until his case was settled either by normal naturalization procedure, by a decision of the United Nations, or in conformity with conventions drafted by the Commission. If that principle was agreed, only the question of drafting the relevant clauses remained, which could be referred to a drafting sub-committee.

40. The CHAIRMAN regretted that Mr. Lauterpacht had withdrawn his proposals as they contained a number of valuable suggestions.

41. Mr. SCALLE thought that a stateless person was entitled to immediate protection and should not be left without protection pending the fulfilment of the statutory conditions prescribed by the host country.

42. Mr. LAUTERPACHT preferred the text of his own amendments, and would vote against the view put forward by the Special Rapporteur, for a State should not be expected to grant all the rights of citizenship to a stateless applicant immediately.

43. The CHAIRMAN put to the vote paragraph 1 of article I of the revised draft of the convention on the reduction of present statelessness as proposed by the Special Rapporteur.

Paragraph 1 of article I was approved in principle by 7 votes to 4, with 1 abstention.

44. Mr. CORDOVA, Special Rapporteur, said that, by limiting the granting of the status of "protected subject" to those stateless persons "habitually" resident in the territory of a contracting party, the convention excluded stateless persons who were only temporarily in the country. That provision met in some

⁴ *Vide supra*, 246th meeting, para. 19.

measure the criticism of those who felt a certain residence qualification necessary. Furthermore he was prepared to consider any practical suggestion for clarifying the provision by saying, for example, "resident for one year".

45. Mr. GARCÍA-AMADOR suggested that a further condition should be stipulated for the grant of the status of "protected subject" to stateless persons: they must have applied for naturalization in the country of residence. It should be remembered that certain stateless persons were only accidentally, as it were, resident in the host countries; their intention was to proceed later to some other country and ultimately to settle there. In his own country, Cuba, there were quite a number of stateless persons merely waiting for immigration visas to the United States. It was not fair to ask Cuba to give stateless persons a status which was in some respects better than that of Cubans—in that it implied the full rights of nationals without all the corresponding duties—when it was clear that the persons in question had no intention of settling permanently in Cuba.

46. Mr. CORDOVA, Special Rapporteur, said that a similar problem had arisen in his own country, Mexico. However, he did not think that many stateless persons could enter the United States because they were generally not eligible for immigration visas. Besides, it was not possible to prevent persons residing in Mexico or Cuba from going to the United States if they were able and willing to do so. Whether the persons concerned had been originally nationals of an European country or stateless, the situation was exactly the same.

47. Mr. PAL said that, having voted for the principle that stateless persons should be granted the status of "protected subjects" on application, the Commission should not qualify that right by making it conditional upon their applying for actual naturalization. He would further suggest that the term "habitually" should be deleted. A stateless person was in a totally different position from a foreign resident, in that he could not return to his country of origin. A stateless person's place of residence was always an accidental one. Besides, the term "habitually resident" was currently employed in connexion with such matters as the acquisition of domicile and to use it in article I suggested that the grant of the status of "protected subject" to stateless persons was dependent upon certain qualifications implied by the usual connotation of the term in municipal law.

48. Mr. CORDOVA, Special Rapporteur, agreed with Mr. Pal; he therefore altered his draft of article I, paragraph 1, by deleting the adverb "habitually".

49. Mr. GARCÍA-AMADOR said that he would not press for an amendment along the lines he had suggested because he felt there was not enough support for the idea that stateless persons should be required to apply for naturalization in order to benefit from protection pending a decision on their application.

50. Mr. HSU said that the term "protected subject" had a generally accepted connotation. It had perhaps certain implications inconsistent with the idea that the members of the Commission had in mind. He would suggest the more neutral term "protected person".

51. Mr. CORDOVA, Special Rapporteur, said that what he had in mind was a status to all intents equivalent to that of a national except in the matter of political rights. The stateless person would be given a legal connexion with his host country without becoming an actual citizen.

52. The CHAIRMAN asked Mr. Scelle whether the French term *un protégé* would correspond to "protected person".

53. Mr. SCELLE said that the term *un protégé* aptly described the situation, for a person benefiting from the provisions of article I would not be *un citoyen* or *un national* of his host country. It would be quite in order to say in French *une personne protégée*, but he preferred the shorter and more generally accepted term *un protégé*.

54. The CHAIRMAN said that he took it that the Commission approved article I, paragraph 1, subject to the substitution of the term "protected person" for the term "protected subject".

It was so agreed.

55. Mr. SCELLE suggested that article I, paragraph 2, of the revised draft should be deleted altogether. To say that "the national law of the party may exclude from the application of paragraph 1 stateless persons who constitute a danger to public order or national security" was to remind Governments that they could act arbitrarily against certain individuals.

56. Mr. CORDOVA, Special Rapporteur, said that the purpose of article I, paragraph 2, was to reassure States becoming parties to the convention that they were under no obligation to grant protection to persons they might consider dangerous to their internal or external security. A country could not expel a stateless person for he had nowhere to go; but it would be asking too much of a country that it should grant its protection to a person whom it considered a "security risk".

57. The CHAIRMAN put to the vote the proposal that paragraph 2 should be deleted from article I.

The proposal was not adopted, 3 votes being cast in favour, and 3 against with 6 abstentions.

58. The CHAIRMAN said that accordingly article I, paragraph 2, would stand as drafted in the revised version submitted by the Special Rapporteur.

Article II

59. Mr. CORDOVA, Special Rapporteur, introduced the redraft of article II:

"The protected persons mentioned in article I shall:

- (i) Enjoy the rights to which nationals of the party concerned are entitled, with the exception of political rights;
 - (ii) Have the same obligations as nationals of the party;
 - (iii) Enjoy the diplomatic protection of the party according to international law."
60. Mr. FRANÇOIS asked what was implied by the somewhat vague term "political rights".
61. Mr. CORDOVA, Special Rapporteur, said that without having to venture very far into the field of constitutional law, he could say that the right to vote and eligibility for public office were political rights and that perhaps access to the civil service might also be considered as such.
62. The CHAIRMAN asked Mr. Scelle what the French term "*droits politiques*" implied.
63. Mr. SCELLE said that "*droits politiques*" comprised the right to vote and eligibility to public office but not necessarily access to the civil service.
64. Mr. AMADO said it was a serious question whether a protected person should be allowed to enter the liberal professions.
65. The CHAIRMAN said that in Swedish legal terminology there was an adjective derived from the noun "citizen" which was used in lieu of "political" when qualifying "rights" in similar contexts.
66. Mr. CORDOVA, Special Rapporteur, said that the only way to make the meaning completely clear would be to enumerate all the so-called political rights. Such a course was open to two objections: firstly, it made the text unduly cumbersome, and secondly, such an enumeration could never be exhaustive. Perhaps the difficulty could be solved by saying that the protected persons would enjoy "civil rights" and leave it to each country to define what rights were covered by the term.
67. Mr. AMADO said it seemed to him that, upon being granted the status of a protected person, a stateless person would acquire more rights in the host country than an ordinary foreign resident who had settled there with a valid permit.
68. Mr. SPIROPOULOS said that if in a country foreigners generally were barred from certain rights—like that of practising law—then a protected person would also be debarred therefrom because he was still an alien.
69. Mr. SCELLE agreed that a protected person, not being a national or a citizen of the country protecting him, could not engage in activities which were closed to aliens under municipal law.
70. The CHAIRMAN said the discussion raised the important practical issue whether a stateless person would be required to obtain a permit in order to work as was required of aliens in most countries.
71. Mr. CORDOVA, Special Rapporteur, said it was clear that stateless persons should have all those rights which were indispensable to life, including not only the right to own property but also the right to work. In certain countries aliens were only allowed to work on the basis of reciprocity; in other countries, yet other conditions were stipulated. But the essential difference between a stateless person and an ordinary alien was that the latter, if not satisfied with the treatment he received, could always return to his own country. It was therefore justifiable to treat a stateless person better than an ordinary alien in some respects.
72. With regard to access to the civil service, it should be remembered that a Government was not obliged to appoint any particular person—whether a citizen or not—to a vacancy. Hence there was really no need to go very deeply into the question; if a Government wished to appoint a stateless person to a chair in a university, for example, it was free to do so, just as it was free to reject the application of any particular candidate, whether that candidate had been granted the status of protected person or not.
73. The CHAIRMAN asked Mr. Lauterpacht whether in English legal terminology "civil rights" had a very precise meaning.
74. Mr. LAUTERPACHT said that "civil rights" was probably as indefinite a term as "political rights".
75. Faris Bey el-KHOURI said he did not approve of the draft submitted for article II. He felt that paragraphs (i) and (ii) could conveniently be replaced by a provision along the following lines: "The State in whose territory a stateless person resides shall determine the rights and the duties devolving upon him on the granting of protection according to the merits of each case." A State might wish to restrict the right of the persons concerned in connexion with the practice of certain professions. Again, for reasons of security, that State might wish to restrict their freedom to reside in certain areas of the country.
76. Mr. SPIROPOULOS said that although "political rights" was a difficult term to define, it was nonetheless the only one that could be used in the context.
77. Mr. LIANG, Secretary to the Commission, said that the term "civic rights" existed and might prove useful because it included such privileges as access to legal and medical professions. He did not possess full documentation on the point, but felt that the term might prove a good substitute for "political rights".
78. Mr. SCELLE said that *droits civiques* were those attaching to the status of citizen. That was clear from the etymology of the term, which was derived from the Latin *civis*, meaning a citizen. Hence civic rights would be similar to political rights.
79. The CHAIRMAN said that the tentatively suggested text for the beginning of article II was:
- "The protected persons mentioned in article I shall:

“(i) Enjoy the rights to which nationals of the party concerned are entitled, with the exception of civic rights.”

80. Mr. CORDOVA, Special Rapporteur, said that there was some analogy between the status of protected persons suggested by the convention and the position of women in those countries where they had not yet received political rights.

81. Mr. SCALLE said that in many countries where women had no vote they had access to the medical, legal and other professions; in some countries they had no vote and yet were not denied access to the legal profession. There was too much diversity in the matter for the analogy to serve as a basis for the definition of the term “political rights”.

82. The CHAIRMAN said that in Sweden admission to the medical profession was considered an administrative and not a political question. With regard to the legal profession, although he was not absolutely certain of the point, he believed that foreigners were not allowed to practise law in Sweden.

83. He added that, the issues involved having been elucidated, the matter of drafting a text of article II (i) might be left to the Drafting Committee.⁵

It was so agreed.

84. Mr. FRANÇOIS said that if the proposed text of article II (ii) were adopted, it would apparently lead to the stateless persons being placed in a worse condition than before; they were going to be compelled to serve in the armed forces of their host country as soon as they applied for the status of protected persons, whereas, under present conditions, they were under no such obligation.

85. Mr. CORDOVA, Special Rapporteur, said that no State would be obliged to impose military service on those stateless persons to whom it granted the status of protected persons. All that the draft convention did was recognize the right of a State to impose such duties if it saw fit to do so. For his part, as he had said before, he was in favour of imposing the duty of military service on foreign residents. There was a tendency—which might even amount to a new principle of international law—to impose that duty upon them. That had been done in the United States and in Mexico. The only alternative left to a foreigner not wishing to perform military service was to leave the country.

86. Mr. SPIROPOULOS said that the expulsion of an alien for refusal to serve would probably be inconsistent with existing obligations under establishment treaties. In any case, to require an alien to do military service seemed to him a violation of general international law.

87. The CHAIRMAN said that as he understood the United States legislation it did not require all aliens to

serve in the American armed forces but only those who had entered the country under an immigration visa.

88. Mr. LAUTERPACHT said he wished to correct the impression created by his earlier references to the legislation of the United States. He had never said that under international law a State was entitled to draft foreigners into its armed forces; on the contrary, he considered that the tendency in some countries to do so was contrary to international law. Under the law of the United States, an alien drafted into the armed forces could refuse to serve and if so ceased to be eligible for naturalization as a United States citizen. It had been reported that, considering the measure in question as an indirect threat of expulsion against Frenchmen living in the United States, the French National Assembly had adopted a resolution to the effect that foreigners residing in France for more than one year should serve in the French armed forces.

89. The CHAIRMAN construed article II (ii) as meaning that States were empowered but not bound to impose military service on protected persons.

90. Mr. CORDOVA, Special Rapporteur, said that whatever might be the objections to the conscription of aliens, such objections would not apply to a protected person, formerly stateless, who had no obligations—military or otherwise—towards any country other than that in which he resided.

91. Mr. HSU said that the provision that protected persons should have the same obligations as nationals should specifically except military service. He saw no justification for imposing such service. Any tendency to impose military service on foreigners seemed to him unjustifiable, and should not be endorsed by the Commission. He felt that the matter required more careful consideration.

92. Mr. AMADO inquired what had been agreed in the matter of political rights.

93. The CHAIRMAN said that an agreement in principle had been reached but that details had been left to the Drafting Committee.⁶

94. Mr. AMADO said that from his experience in Brazil as a Deputy and a Senator, he knew that one of the main problems was that of allowing stateless persons to practise the liberal professions. Any suggestion to allow foreigners to practise as doctors or lawyers invariably encountered such determined opposition on the part of the professional associations, that unless the proposed convention made some allowance for that professional hostility, its chances of being ratified were very slender. The best that could be done was to acknowledge only those rights which were essential to a stateless person's livelihood.

95. The CHAIRMAN said that the Commission should now discuss the proposal made by Faris Bey el-Khoury that the rights to be granted to the protected persons

⁵ Regarding the appointment of the Drafting Committee, see below, 250th meeting.

⁶ *Vide supra*, para. 83.

should be determined by the States granting them protection.

96. Mr. CORDOVA, Special Rapporteur, said that raised a very important issue. The Economic and Social Council had already dealt with the matter and the diplomatic conference to be held in September 1954 would probably give to stateless persons at least some of the rights recognized to refugees under the 1951 Convention relating to the status of refugees.⁷ Clearly, the Commission should treat those as minimum rights and perhaps go one step further and assimilate protected persons, formerly stateless, to foreign residents having the right to work, with the possible exception of the practice of certain liberal professions for which special qualifications were necessary. He would further suggest that protected persons should be granted those rights which were recognized by international conventions as well as those given by municipal law.

97. Faris Bey el-KHOURI said that the Commission should not impose on Governments duties which the latter would not be prepared to accept. It was essential to give the stateless persons protection, so that they could, for example, travel abroad with a passport issued by the protecting country; but to grant them the right to enter business or the professions was far too sweeping. Many States would object to such a provision and reject the proposed convention altogether. Moreover, each State had its own problem, so that it was not possible to place all States under the same obligations. Some countries in the Middle East conceded to refugees and stateless persons the right to work, while others only gave them identity cards and residence permits allowing them to live in their territory. If too much was asked of States, they would simply not accept the Commission's suggestions. It was therefore preferable to leave it to the individual States to determine, on the merits of each case, what rights they would grant to the persons taken under their protection.

98. Mr. LAUTERPACHT said that perhaps the Special Rapporteur would comment on Faris Bey el-Khouris proposal.

99. Mr. CORDOVA, Special Rapporteur, said that, for his part, he thought that all rights other than political rights should be granted to the protected persons; still, the relevant text might perhaps be redrafted so as to meet, in some measure, Faris Bey el-Khouris wishes.

100. Mr. LAUTERPACHT said that, to stipulate, in effect, that States should grant to protected persons the rights which they were prepared to concede amounted to a nominal statement.

101. Faris Bey el-KHOURI said that he could make his meaning clear by pointing to the example of British protected persons. They were distinct from British protected subjects whose status was a general one for all persons coming from a particular British protectorate.

British protected persons were non-British subjects who had been personally granted British protection and the British Government determined what the status of protected person implied in each particular case.

102. The CHAIRMAN said Faris Bey el-Khouris should put his suggestion in writing before it was discussed further.

103. Faris Bey el-KHOURI said it would hardly serve any useful purpose to state his proposal in precise terms for there did not seem to be enough support for it. He would only ask that the various articles and paragraphs should be put to the vote one by one.

104. The CHAIRMAN called for a vote on the principle of article II (i).

By 5 votes to none, with 7 abstentions, it was decided to approve the principle of article II (i).

105. Mr. HSU proposed that article II (ii) should be amended so as to state that protected persons would "have the same obligations as nationals of the party with the exception of military service".

106. Mr. CORDOVA, Special Rapporteur, suggested a compromise solution; a protected person should be bound by all the obligations to be prescribed by the municipal law of the State concerned, provided that they did not exceed those binding on nationals.

107. Mr. HSU said that the clause should be held over to the following meeting so that members could think it over.

108. Mr. SCELLE said that it was not wise to suggest that protected persons should be treated on a par with nationals. In law, a State could impose forced labour on its nationals, deport them to desolate regions or to distant islands, put them in concentration camps or otherwise ill-treat them without any other States having virtually any right to object, unless they decided to intervene, which was difficult under the Charter. If it was the Commission's intention to give a form of protection to persons who were at present stateless, it was imperative to give them a status which represented an improvement on the treatment of their nationals by certain States.

109. The CHAIRMAN said that it was highly improbable that a State indulging in such arbitrary measures would ever sign the convention, so that the problem was unlikely to arise in practice. The question before the Commission was that of drafting provisions to embody the principles agreed upon.

110. Mr. SCELLE said that it was essential to forbid States from committing arbitrary actions.

111. Mr. CORDOVA, Special Rapporteur, said that he did not think it was practicable or even desirable to give a protected person a better status than that of a national of the State granting him protection.

112. Mr. SCELLE said that the discussion showed how necessary it was to give stateless persons an inter-

⁷ Cf. *supra*, 247th meeting, para. 16.

national status rather than a purely national one. A purely national status would be entirely dependent on the discretion of States and it was hardly necessary to draft an international convention to provide for something which a State could do anyway.

113. He did not suggest that protected persons should have all the rights of nationals as he quite understood the objections that might be raised if they were allowed to enter the liberal professions.

114. He believed that the international sovereignty of States was an erroneous notion. But internally the principle of sovereignty remained unchallenged. The only mitigation of the absolute internal power of States was that afforded by humanitarian intervention, as exemplified by United States' protests against pogroms. To assimilate protected persons to nationals of the countries granting them protection would exclude the possibility of such humanitarian intervention in cases where States contravened the Universal Declaration of Human Rights.

The meeting rose at 1 p.m.

249th MEETING

Thursday, 17 June 1954, at 9.45 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) (continued)

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

REVISED DRAFT OF CONVENTION ON THE REDUC- TION OF PRESENT STATELESSNESS (continued)¹

Article II (continued)

1. The CHAIRMAN invited further debate on the redraft of article II, paragraph (ii), proposed by the Special Rapporteur.²

2. Mr. HSU proposed that paragraph (ii) should read : "Have the same obligations as the contracting party can lawfully impose upon aliens according to international law."

3. He was in favour of protected persons retaining the status of aliens. The Commission should bear in mind that those persons did not always fulfil the conditions required for naturalization. In such cases they should not be required to perform military service, other aliens not being required to do so either. If a protected person stayed for a long time in the country which had granted him protection he might properly be liable to military service, but under the Special Rapporteur's draft of article II, paragraph (ii), a person who had only just arrived from abroad might be required to take part immediately in a war waged by the host country against his country of origin.

4. Mr. CORDOVA, Special Rapporteur, said Mr. Hsu's text was too vague, for it was very debatable whether a government was entitled under international law to require aliens to perform military service.

5. Secondly, persons enjoying the status of protected persons could not be treated in the same way as aliens ; a protected person had all the rights of a national, including diplomatic protection, the only exception being political rights. The status of a protected person also differed from that of an alien in that the former did not possess another nationality. Furthermore, if a country was prepared to grant him its protection, it appeared reasonable to expect him in return to serve in that country's forces. He agreed, however, with Mr. García-Amador and Mr. Pal in thinking that it would be too much to expect of Governments to ask them to grant their nationality to stateless persons who did not have sufficiently strong connexions with the country concerned. He therefore proposed a new draft of article I which would restrict its application to stateless persons able to show, by prolonged residence and a formal application to the Government, that they had established sufficiently close ties with the host country. At the time of making the application, the stateless person would also expressly accept the obligation to serve in the protecting country's armed forces.

¹ Cf. *supra*, 247th meeting, para. 1, with related footnotes, and 248th meeting, para. 1.

² *Vide supra*, 248th meeting, para. 59.