

Document:-  
**A/CN.4/SR.249**

**Summary record of the 249th meeting**

Topic:  
**Nationality including statelessness**

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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.

### CONTENTS

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 (continued)	
Article II (continued) . . . . .	35
Article III . . . . .	36
Article IV . . . . .	36
Article V . . . . .	36
Article VI . . . . .	36
Article VII . . . . .	37
Mode of presentation of the articles . . . . .	39

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)<sup>1</sup>

#### Article II (continued)

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

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.

<sup>1</sup> Cf. *supra*, 247th meeting, para. 1, with related footnotes, and 248th meeting, para. 1.

<sup>2</sup> *Vide supra*, 248th meeting, para. 59.

6. Mr. HSU said he was prepared to amend his text by the addition of the phrase: "with the exception of military service, unless the protected person voluntarily asks to perform military service."

7. He said, in reply to Mr. Córdova, that he had made his proposal precisely because, according to Mr. Córdova, international law was not settled on the matter of military service by aliens. If a protected person did not enjoy political rights it would be wrong to make him liable to all the duties to which a national was liable. The Commission's aim was to assist stateless persons and not to impose further obligations on them. If the solution he proposed was considered unfair to States, they might perhaps be relieved of the duty to protect the stateless person outside their territory and an international organization might act as protector abroad.

8. The CHAIRMAN put to the vote the first amendment proposed by Mr. Hsu to the effect that article II, paragraph (ii) as submitted by Mr. Córdova should be replaced by the following: "Have the same obligations as the contracting party can lawfully impose upon aliens according to international law."

*The amendment was rejected by 4 votes to 1, with 6 abstentions.*

9. The CHAIRMAN put to the vote Mr. Hsu's second amendment to paragraph (ii), which would read: "Have the same obligations as nationals of the party, with the exception of military service."

*The amendment was rejected by 6 votes to 1, with 4 abstentions.*

10. The CHAIRMAN put to the vote the Special Rapporteur's draft paragraph (ii): "Have the same obligations as nationals of the party."

*The paragraph was adopted by 5 votes to 2, with 4 abstentions.*

*Paragraph (iii) was adopted unanimously.*

*Article II, as a whole, was adopted unanimously.*

### Article III

11. The CHAIRMAN put to the vote the Special Rapporteur's draft article III, as amended by the latter in the light of comments<sup>3</sup> made by Mr. Lauterpacht: "The status of 'protected person' conferred in accordance with the preceding articles, shall extend to the minor children of the persons concerned and to their wives, upon a declaration to this effect by the latter."

*Article III was adopted unanimously.*

### Article IV

12. Mr. CORDOVA, Special Rapporteur, proposed the

<sup>3</sup> Cf. article III of Mr. Lauterpacht's draft, *supra*, 246th meeting, para. 19.

following wording for article IV: "Children of protected persons shall acquire *ipso facto* the nationality (including political rights) of the protecting party on reaching the age of majority provided that they are resident in the territory of the party."

*Article IV was adopted unanimously.*

### Article V

13. Mr. CORDOVA, Special Rapporteur, proposed the following draft for article V: "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."

*Article V was adopted unanimously.*

### Article VI

14. Mr. CORDOVA, Special Rapporteur, proposed the following wording for article VI: "For the purpose of this convention the term 'stateless person' shall include *de facto* stateless persons. The latter shall, however, acquire the status of 'protected person' and the status of nationals only on the condition that they renounce the ineffective nationality they possess." He did not think it necessary to repeat the arguments he had advanced in support of article VI when introducing his report earlier in the debate.<sup>4</sup>

15. Mr. LAUTERPACHT agreed that it was not desirable to reopen the discussion on the substance of the matter; he pointed out, however, that the term "*de facto* statelessness" had never been clearly defined. To adopt it would mean to impose upon States the duty and to give them the right to decide that a person who was a national of State X was not really a national of that State; it meant that they would, accordingly, be under an obligation to treat that person as a protected person, in other words, a person assimilated in most respects to their own nationals.

16. He said he could support the draft as a whole if it took the form of mere suggestions for submission to Governments, and if article I made the grant of the status of protected person conditional on sufficiently long residence. In any case, he could not accept the text of article VI as drafted; he was in favour of drawing the attention of Governments to the large number of so-called *de facto* stateless persons, and to the desirability of extending to them the protection contemplated in the convention.

17. At the request of Mr. Córdova the CHAIRMAN called for a roll-call vote on draft article VI.

*In favour:* Mr. Córdova, Mr. Hsu, Mr. Salamanca.

<sup>4</sup> *Vide supra*, 246th meeting, paras. 3, 12, 13, 21, 46. For opinions of other members on *de facto* statelessness, see *ibid.*, paras. 14, 18, 34 and 247th meeting, para. 27.

*Against*: Mr. Sandström, Mr. Amado, Mr. Lauterpacht, Mr. François, Mr. Pal.

*Abstentions*: Faris Bey el-Khouri, Mr. García-Amador, Mr. Scelle, Mr. Spiropoulos.

*Article VI was rejected by 5 votes to 3, with 4 abstentions.*

#### Article VII

18. The CHAIRMAN invited the debate on article VII of the Special Rapporteur's revised draft Convention on the Reduction of Present Statelessness:

#### "Article VII

"1. The parties undertake to establish, within the framework of the United Nations, an agency to act on behalf of stateless persons before Governments or before the tribunal referred to in paragraph 2.

"2. The parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide any dispute between them concerning the interpretation or application of this convention and upon complaints presented by the agency referred to in paragraph 1 on behalf of individuals claiming to have been denied nationality in violation of the provisions of the convention.

"3. If, within two years of the entry into force of the convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not been set up by the parties, any of the parties shall have the right to request the General Assembly to set up such agency or tribunal."

19. Mr. CORDOVA, Special Rapporteur, thought it absolutely essential that the agency which was to act on behalf of stateless persons and the special tribunal referred to in article 10 of the two draft conventions on *future* statelessness adopted by the Commission, should also have jurisdiction over the interpretation and application of the convention on the reduction of *present* statelessness and particularly in the matter of the grant of the status of protected person. He realized that some Governments would perhaps not be prepared to accept such a provision, but the Commission should nevertheless press for its inclusion. Moreover, by rejecting the article relating to *de facto* stateless persons, the Commission made article VII more acceptable to Governments.

20. Perhaps, instead of including the text of article VII, the Commission might merely state that the competence of the agency and of the tribunal provided for in the draft conventions on future statelessness would extend to the application of the convention on present statelessness.

21. Mr. LAUTERPACHT said that preferably the Commission, in its report, should simply draw the attention of Governments to the provisions of article 10 of the two draft conventions on future statelessness and

ask them to consider the possibility of extending all or some of the provisions of that article to the subject matter of the draft convention on present statelessness.

22. Mr. CORDOVA, Special Rapporteur, thought the Commission should go much further and make a positive recommendation to the Governments in that sense.

23. Mr. LAUTERPACHT said that, as the Special Rapporteur's draft was intended merely to be transmitted to Governments for study, it should not contain clauses relating to its application. He recalled that the Commission's main object in the matter of present statelessness was to provide some form of practical help to a number of unfortunate human beings; its approach should be very cautious.

24. Mr. SCELLE said that only article VII represented an improvement on the present state of international law. That article should therefore be maintained at all costs.

25. Mr. SPIROPOULOS supported Mr. Lauterpacht.

26. Mr. CORDOVA, Special Rapporteur, pointed out that the Governments would be completely free, when the time came, to accept any part of the draft convention while rejecting another. The Commission should, for its part, offer the practical means of solving the difficulties which might arise in connexion with the application of the convention.

27. Mr. AMADO said he would be prepared to accept article VII, but thought that the words "the parties undertake..." were somewhat too categorical.

28. Mr. PAL said that the difference of opinion between Mr. Lauterpacht and Mr. Córdova related to form rather than to substance. In any case, the whole text discussed by the Commission was just a series of suggestions.

29. Mr. SCELLE pointed out that if the Commission, after including in the two draft conventions concerning future statelessness an article 10 relating to the agency and the special tribunal, did not refer once again to those bodies in the draft convention on present statelessness, such an omission might be interpreted to mean that it was not the Commission's intention that the jurisdiction of the tribunal should extend to present statelessness. If so, the Commission would be going back on its view on a vital issue.

30. Mr. LAUTERPACHT, replying to Mr. Scelle, said that the obligations laid down by the draft convention in present statelessness were much more onerous than those stipulated in the draft conventions on future statelessness. If, for example, a State deprived one of its citizens of his nationality so as to make him stateless, that State would, if the person concerned had resided for the requisite period in its territory, be obliged under the articles just adopted by the Commission, to grant him its nationality or else the status of a protected person which was practically identical with nationality.

31. The CHAIRMAN, replying to a question by Mr. García-Amador, said that the Commission had decided in principle not to submit the text in question in the shape of a draft convention but rather as a series of suggestions.

32. Mr. CORDOVA, Special Rapporteur, said that method had been suggested by Mr. Lauterpacht and himself. No member of the Commission had spoken against the suggested method, but there had been no vote.<sup>5</sup>

33. The CHAIRMAN said that his own opinion on article VII would depend on the form in which the draft as a whole was to be transmitted. If it was only to be a series of suggestions, it was preferable merely to refer to article 10 of the two draft conventions on future statelessness, and to say that a similar article would offer one of the possible solutions to the problem of the application of a convention on present statelessness.

34. Mr. SCELLE said that if the whole draft was no more than a series of suggestions submitted to Governments for their consideration, it was all the more essential to include article VII.

35. Mr. HSU also favoured the inclusion of article VII. Admittedly, a convention on the reduction of present statelessness containing the provisions suggested by the Commission would impose upon Governments heavier obligations than would either of the conventions on future statelessness; but it should not be forgotten that the human beings whom the Commission was trying to help by means of the former convention were in a particularly sad plight.

36. Faris Bey el-KHOURI said it was preferable merely to indicate that the Agency and the Tribunal provided for in article 10 of the draft conventions on future statelessness would deal with the cases coming under the convention which was now being discussed by the Commission. Article VII as proposed by the Special Rapporteur might well give the impression that a different agency and a different tribunal were meant.

37. Mr. FRANÇOIS said that he did not agree with Mr. Pal that there was no appreciable difference of opinion between Mr. Lauterpacht and the Special Rapporteur. If the Commission were to adopt the text proposed by Mr. Córdova, Governments might gather the impression that the provision of a special tribunal having jurisdiction in the matter constituted an essential aspect of a convention on present statelessness. The Commission should inform Governments that it considered it very desirable that the jurisdiction of the special tribunal should extend to existing cases of statelessness. If, however, Governments were reluctant to accept the clause, care had to be taken not to make it impossible for them to accept the rest of the convention.

38. Mr. LAUTERPACHT emphasized the seriousness

of the commitments that would have to be assumed by States which adopted the Special Rapporteur's draft. It had been stated, for example, that there were 20,000 refugees in the Netherlands and 200,000 in France. Should those countries sign the convention they would be bound to grant all of them their nationality or the almost equivalent status of "protected person". Even if the conditions laid down by article I included several years' residence, most of the stateless persons concerned would satisfy that condition as soon as the convention entered into force. On the other hand, he was much impressed by the view that, once States had accepted obligations, it was proper and desirable that they should submit to the measures and safeguards which the convention in question provided for its application and fulfilment. For that reason, he was not prepared to vote against the article in question.

39. Mr. CORDOVA, Special Rapporteur, pointed out that article VII was all the more necessary in the convention because, in the absence of its provisions, the protected persons would have no agency or tribunal competent to defend them against arbitrary action.

40. Mr. PAL pointed out that, contrary to what he had thought at first, Mr. Lauterpacht's criticisms concerned the substance of the whole draft rather than article VII specifically. For his part, he did not share Mr. Lauterpacht's fears and remained in favour of including article VII.

41. It would be for States to decide in the final instance what degree of protection they would grant to stateless persons; the Commission should suggest the best means of doing so.

42. Mr. SCELLE said the draft convention did not contain anything likely to deter or discourage States. He feared, rather, that the attitude of Governments was influencing the Commission.

43. The CHAIRMAN put to the vote article VII, subject to minor drafting changes to be made later.

*Article VII was adopted by 10 votes against none, with 2 abstentions.*

44. Mr. CORDOVA, Special Rapporteur, suggested the insertion of the words "or the status of protected person" after the word "nationality" in article VII, paragraph 2.

*It was so agreed.*

45. Mr. CORDOVA, Special Rapporteur, said that it should be made clear in the final draft that the special agency and the tribunal were to be identical with those referred to in the draft conventions adopted earlier.

46. The CHAIRMAN said that the Drafting Committee would decide whether that point should be expressly mentioned in the report or form the subject of a separate article.

<sup>5</sup> Cf. *supra*, 248th meeting, paras. 4-22.

MODE OF PRESENTATION OF THE ARTICLES <sup>6</sup>

47. The CHAIRMAN asked the Commission to consider the question how the text just adopted was to be presented, whether in the form of a draft convention or of a series of suggestions to be transmitted to Governments and the General Assembly for study.

48. Mr. LAUTERPACHT thought that the text should simply be included in the report to the General Assembly and offered as a basis for discussion, for the question of existing statelessness was beyond the scope of the Commission's competence.

49. Mr. CORDOVA, Special Rapporteur, conceded that statelessness had important political, social, and demographic aspects. Nevertheless, it came within the scope of the Commission's competence. He therefore proposed that the text should be transmitted to governments and, after receiving their comments, the Commission could prepare a draft convention. That procedure was in keeping with the Commission's statute.

50. Mr. HSU suggested that the Commission should follow the same procedure it had followed in the case of the other draft conventions; he did not think that the matter was beyond the jurisdiction of the Commission.

51. Mr. AMADO considered that, in its report, the Commission should put on record both its misgivings and the conclusions which it had reached.

52. Mr. LAUTERPACHT said that, if the document was transmitted to the Governments, the Commission would have to discuss the problem anew when considering their replies. His personal view was that the problem came within the scope of the Economic and Social Council or that of the General Assembly. Nationality was a very general question and so far the Commission had only studied one of its aspects, that of statelessness. It was time that the Commission examined other aspects of the question if it wanted to proceed with the codification of international law.

53. The CHAIRMAN pointed out that a conference would be meeting in the near future to consider extending to stateless persons the benefit of the 1951 Convention relating to the status of refugees.<sup>7</sup>

54. Mr. LIANG, Secretary to the Commission, explained that when the Economic and Social Council requested the Commission to study the question of statelessness, it had made no distinction between existing and future statelessness. That distinction had appeared for the first time in the report prepared for the Commission by the first Special Rapporteur (A/CN.4/50).<sup>8</sup> The Commission was certainly entitled to deal separately with present and future statelessness,

but it was hardly arguable that present statelessness did not come within its terms of reference.

55. Mr. CORDOVA, Special Rapporteur, pointed out that the Commission's object was to promote the progressive development of international law and its codification; for that purpose the Commission should use the various methods possible under its Statute, such as the circulation of questionnaires to Governments, as he proposed for the present case. If, as suggested by Mr. Lauterpacht, the Commission did no more than submit a report to the General Assembly, the latter would no doubt circulate it to Member States or make recommendations, and refer the replies or the provisions adopted back to the Commission.

56. Mr. AMADO recalled that under the Economic and Social Council's resolution the Commission was to proceed with the study of the problem of statelessness as a matter of urgency. It was therefore necessary to find a speedy solution. To circulate questionnaires to Governments under article 17, paragraph 2 (b), of the Statute would merely delay matters. The Commission should apply article 16, which was much more appropriate to the circumstances.

57. Mr. PAL thought that the Commission's Statute did not authorize it to discuss the matter which it was discussing. Only articles 16 and 17 could be cited to support a contrary view. But article 17 was only applicable in cases where proposals or a draft convention were submitted to the Commission, which was not the case. That left only article 16; but that article referred to the progressive development of international law, and he was doubtful if the work on which the Commission was at present engaged could be described as development of international law. In fact, international law as at present in force had not prevented statelessness, and the Commission was not proposing to modify it; it was not even asking States to amend their domestic legislation, but was only suggesting ways and means of remedying a serious situation. Accordingly, he supported the solution suggested by Mr. Lauterpacht.

58. Mr. LAUTERPACHT pointed out that the Economic and Social Council had not expressly instructed the Commission to deal with existing statelessness; even if it had done so, the Commission could have refused to carry out a study which in its opinion exceeded its terms of reference. The present study was not codification of international law, and he even doubted if it could be described as progressive development of international law. It would be an exaggeration to say, as was sometimes done, that all conventions constituted "special" international law. The Commission could, therefore, in reliance on article 23 of its statute, state that it was submitting to the General Assembly a proposal, the adoption of which the latter might recommend to Member States.

59. Mr. FRANÇOIS said that article 23 was in that part of the statute which dealt with the codification of

<sup>6</sup> *Vide supra*, paras. 31-32 and footnote 5.

<sup>7</sup> *Vide supra*, 247th meeting, para. 16.

<sup>8</sup> *Yearbook of the International Law Commission, 1952*, vol. II.

international law; accordingly the Commission could only rely on articles 16 *et seq.*

60. Mr. CORDOVA, Special Rapporteur, reiterated his view that the Commission had always considered existing statelessness as coming within its terms of reference. It was true that, when it had begun the study of nationality including statelessness, it had not stated specifically that its study would be extended to present statelessness. Existing statelessness was, however, of greater consequence than future statelessness, and in all documents relating to the problem the Commission had studied both aspects without ever meeting any objections of a political nature. Moreover, the resolution of the Economic and Social Council spoke of statelessness in general. Though the study of existing statelessness was not perhaps exactly codification of international law, it did nevertheless lead to the formulation of new rules of conduct for States. By submitting the results of its deliberations in the form of a draft convention, the Commission would be contributing to the development of international law. Governments would be free to reject the draft or to abstain from all comment, and the Commission would then be able to consider its study of the problem at an end. As yet, the Commission was not warranted in reaching such a conclusion.

61. Mr. SPIROPOULOS also felt that the study of existing statelessness should not be discontinued. Perhaps the Commission's work relating to that particular question could not be described as development of international law in the strict sense of the term, but it contributed indirectly to its development. If the Commission thought it proper to continue the study of existing statelessness, it was entitled to do so.

62. The CHAIRMAN said that the Commission's statute did not provide for all eventualities; as Mr. Amado had said, it had to be interpreted liberally. The procedure provided for by article 17, paragraph 2, applied in the case of proposals or drafts submitted by organs of the United Nations. It could be extended to the matter under reference for it was the Economic and Social Council which had asked the Commission to study the question.

63. Mr. AMADO recalled that he had had a share in drafting the Commission's statute. Its article 15 specified that the expression "progressive development of international law" was used for convenience; in certain cases codification and development of international law were so inextricably bound up together that there was room for a very liberal interpretation.

64. Mr. SPIROPOULOS, replying to the Chairman, said that the procedure mentioned in article 16, which provided, *inter alia*, for the transmission of drafts to Governments, was the one which the Commission had followed as a general rule for five years; it was satisfactory in the present instance. The problem the Commission was studying did not strictly come within the scope of international law; it was rather concerned

with reconciling the provisions of municipal law relating to a particular question.

65. The CHAIRMAN put to the vote Mr. Lauterpacht's proposal that the report on the Commission's sixth session should contain a passage along the following lines: "The Commission discussed the problem, came to the conclusion that it did not come strictly within its competence, but considered that it might be solved in conformity with [the articles adopted by the Commission]." The report would also state that the Commission considered it had completed its work relating to the particular topic.

*The proposal was rejected by 6 votes to 4, with 2 abstentions.*

66. Mr. LAUTERPACHT inquired whether the Special Rapporteur's proposal implied that the question of existing cases of statelessness would be on the agenda of the next session of the Commission.

67. Mr. CORDOVA, Special Rapporteur, said that would depend on the replies received from governments; in any case, the agenda for the next session had not yet been prepared.

68. Mr. SPIROPOULOS pointed out that if the Special Rapporteur's draft were adopted, the question would necessarily remain in abeyance and would have to be reconsidered the following year.

69. The CHAIRMAN called for a vote on the Special Rapporteur's proposal that the text of the articles adopted should be transmitted to Governments for study.

*The proposal was adopted by 7 votes to 3, with 2 abstentions.*

The meeting rose at 1 p.m.

## 250th MEETING

Friday, 18 June 1954, at 9.45 a.m.

### CONTENTS

	Page
Nationality, including statelessness (item 5 of the agenda) (continued)	
Report on the elimination or reduction of present statelessness (A/CN.4/81) (continued)	
Mode of presentation of the articles (continued)	41
Resumed consideration of the articles (resumed from the 249th meeting)	
Article I . . . . .	41
Article II . . . . .	43
Article III . . . . .	43
Article IV . . . . .	43
Article V . . . . .	43
Article VI . . . . .	43
Article VII . . . . .	43
Consideration of a new article VI . . . . .	43
Appointment of Drafting Committee . . . . .	45