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Summary record of the 250th meeting

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
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international law; accordingly the Commission could only rely on articles 16 *et seq.*

60. Mr. CÓRDOVA, 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. CÓRDOVA, 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

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS.

Secretariat: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

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)

1. The CHAIRMAN asked the Commission how the draft articles on the reduction of present statelessness adopted by the Commission should be described.

2. Mr. CÓRDOVA, Special Rapporteur, suggested that the draft articles might be submitted as "proposals", as "a basis for discussion by Governments" or as "tentative proposals".

3. Mr. SCELLE preferred the formula: "remarks on the reduction of present statelessness submitted to governments for their consideration".

4. The CHAIRMAN agreed with Mr. François that the best solution would be: "proposals relating to the reduction of present statelessness". If that were agreed the Commission would be in a position to vote on the draft articles as a whole, provided agreement was reached with regard to the reservation made for the word "habitually" in paragraph 1 of article I which read: "The party in whose territory a stateless person habitually resides shall, on his application, grant him the legal status of 'protected person'."

RESUMED CONSIDERATION OF THE ARTICLES (resumed from the 249th meeting)

Article 1[1]

5. Mr. CÓRDOVA, Special Rapporteur, proposed that in paragraph 1 of article I the word "habitually" be deleted and the words: "during a period of two years" inserted after the word: "resides". He had rejected the idea of a three-year period of residence laid down by the 1951 Convention relating to the status of refugees; he thought that the Commission might attempt to go further than the Convention. Mr. Pal and several other members were in favour of granting stateless persons the status of a protected person immediately. The proposal had met with a number of objections and it was in the light of those objections that he had finally suggested a period of two years.

6. Mr. AMADO thought the proposal for two years' residence unrealistic; the period was too short.

7. Mr. SCELLE, on the contrary, found the period of two years too long. What was the point of leaving the stateless person without a legal status for two years? If he had applied for the status of a protected subject, it could be assumed that he intended to remain in the country. He would not oppose a two-year period but was of the opinion that a six-month residence qualification would be ample.

8. Mr. FRANÇOIS suggested that the Commission should adopt the same period as that laid down by the 1951 convention relating to the status of refugees, which was three years.

9. Mr. CÓRDOVA, Special Rapporteur, said that Mr. Lauterpacht, for example, was in favour of fixing the residence period at five years. He (the Special Rapporteur) had proposed the idea of habitual residence in order precisely to avoid compelling the Governments to accept any fixed period; his proposal would leave Governments a certain margin for fixing the period of residence in accordance with their own requirements. Financial assets or property in the country, or marriage to a national of that country, should constitute sufficient evidence of the intention of the stateless person to remain in the country. He preferred to retain the idea of habitual residence, and had merely proposed the two-year period as a compromise solution.

10. Faris Bey el-KHOURI agreed with the Special Rapporteur. The word "habitually" should be retained, and paragraph 1 of article I adopted as it stood.

11. Mr. LAUTERPACHT drew attention to the fact that the status of a protected person was almost identical with that of a naturalized citizen; it differed from it in that it did not confer the right to vote or to sit in parliament. The Special Rapporteur's proposal of a two-year period of residence tended to give persons with the status of a protected person equal rights after two years with naturalized persons, who might have had to wait five or ten years for naturalization. The present proposal appeared to go further than the 1951 convention relating to the status of refugees in that it required Governments to waive, with respect to stateless persons, the conditions stipulated by their naturalization laws.

12. Mr. CÓRDOVA, Special Rapporteur, did not think it right to identify the status of a protected

[1] *Vide supra*, 248th meeting, paras. 1 and 43-58.

person with that of a naturalized citizen. Mr. Lauterpacht was forgetting that an alien applying for naturalization possessed a nationality, while the Commission's task was to eliminate statelessness. He agreed that it was undesirable to grant naturalization immediately, and for that reason had suggested, as a first step, the status of protected person. After two years' residence it would be clear whether the person intended to remain in the country or not.

13. Mr. PAL reminded the Commission that it was dealing with existing cases of statelessness and not with future cases. It would surely be wrong to work on the assumption that persons who were at present stateless had deliberately given up their nationality in the hope of obtaining more favourable terms under a convention which the Commission might or might not bring into being in some remote future.

14. Mr. GARCÍA-AMADOR believed that the essential point to be borne in mind with regard to article I was not the length of the stateless person's residence, but his intention to remain in the country. Residence might well be the result of forced circumstances and therefore to some extent an accident. If the Commission wished to grant a stateless person first the status of a protected person and then nationality, it would be necessary to know that the person applying for the status of protected person was intending to stay in the country. It was illogical to grant that status to a person who wished to reside abroad. He therefore proposed that the following phrase be added to the end of paragraph 1 of article I: "provided that such a person declares his intention of becoming a national of that party in accordance with article V of the Convention". Article V, he recalled, had already been adopted by the Commission without modification.[2]

15. Mr. SCELLE said that if Mr. García-Amador's proposal related merely to a declaration of intention to remain in the country he was prepared to support it, particularly as it might become possible to abolish the suggested two-year period of residence or at least to reduce it. He agreed that the period of residence provided no proof of the stateless person's intention to remain in the country.

16. Mr. PAL thought Mr. García-Amador's proposal would serve no useful purpose. These was nothing to prevent a stateless person who had made a declaration to the effect that he wished to remain in a country from changing his mind. Furthermore, if it was intended to grant him the status of protected person as soon as he applied for it, his application together with the obligations subsequently imposed upon him again made the declaration a useless formality.

17. Faris Bey el-KHOURI said that most stateless persons were anxious to revert to their original nationality; they were not interested in obtaining the nationality of the country in which they resided. It would therefore be wrong to oblige them to make a declaration of intent to reside in the country, particularly as the grant of the status of protected person was a temporary measure. He repeated that States should only be obliged to grant stateless persons the status of protected person; they should be left free to determine the rights and obligations they wished subsequently to grant or impose upon them. If more precise and detailed obligations were imposed upon States, they would meet with considerable opposition.

18. Mr. AMADO thought that if the Commission accepted Mr. García-Amador's proposal, the granting of protection would become the object of a bargain between the State and the stateless person. Protection should be granted as an act of generosity. Mr. García-Amador had said that the reason underlying his proposal was that a number of countries were being used by stateless persons as stepping stones towards other countries. Inasmuch as that proposal introduced into the idea of protection the element of a bargain he would vote against it.

19. The CHAIRMAN said that four proposals had been made regarding paragraph 1 of article I:

(1) That the word "habitually" be retained;

(2) That a residence period of two years be substituted for the idea of habitual residence;

(3) That a residence period of three years be substituted for the idea of habitual residence;

(4) That the phrase: "provided that such person declares his intention of becoming a national of that party in accordance with article V of the Convention" be added at the end of paragraph 1 of article I.

He invited the Commission to vote on each of the amendments in turn.

Proposal 1 was rejected by 3 votes to 2, with 7 abstentions.

Proposal 2 was withdrawn by the Special Rapporteur.

Proposal 3 was rejected by 3 votes to 1, with 8 abstentions.

Proposal 4 was rejected by 5 votes to 1, with 6 abstentions.

20. Mr. SCELLE apologized to Mr. García-Amador for having first supported his proposal and then voted against it, but the arguments advanced by Mr. Amado had compelled him to change his opinion. He felt that the grant of protection should not be the object of a bargain and was also against the proposal of fixing any definite period of residence.

21. He questioned the view expressed by Faris Bey el-Khouri that stateless persons were always anxious to revert to their original nationality; in his opinion a great number of them were most anxious to abandon it.

22. Mr. CÓRDOVA, Special Rapporteur, explained that he had abstained from voting on the grounds that the application of a stateless person for the status of protected person and the duties subsequently imposed on him gave sufficient proof of his intention to remain

[2] *Vide supra*, 249th meeting, para. 13.

in the country. He would then be in a position to qualify for naturalization. He should not, however, be denied the possibility of changing his mind with regard to continued residence in the country.

23. The CHAIRMAN said that all the four proposals having been rejected or withdrawn, paragraph 1 of article I was adopted with two modifications: the word "habitually" was deleted and the word "person" substituted for the word "subject".

24. Mr. LAUTERPACHT inquired if, the word "habitually" having been deleted, the State would be obliged to grant the status of protected person even after one day's residence.

25. Mr. CÓRDOVA, Special Rapporteur, explained that the Commission had already voted on paragraph 1 of article I, which had been adopted in principle; a reservation had merely been made with regard to the word "habitually". Some members had expressed the desire that a definite period of residence should be included and he had proposed two years, a proposal which had since been rejected.

26. The CHAIRMAN agreed with the Special Rapporteur that paragraph 1 of article I had already been adopted in principle and invited the Commission to vote on the text of paragraph 1 of article I.

Paragraph 1 of article I was adopted by 7 votes to 1, with 4 abstentions.

27. The CHAIRMAN said that at a previous meeting[3] the Commission had adopted article I, paragraph 2, without modification.

Article II

28. The CHAIRMAN recalled that article II had been adopted subject to the redrafting of the reference to political rights by the Drafting Committee.[4]

Article III

29. The CHAIRMAN said that article III had been adopted at a previous meeting.[5]

Article IV

30. Mr. CÓRDOVA, Special Rapporteur, proposed that the words "including political rights" should be deleted from article IV, as previously adopted,[6] because certain categories of persons, such as minors, might not enjoy political rights while remaining full nationals.

It was so agreed.

Article V

31. The CHAIRMAN said that article V had been adopted without modification.[7]

Article VI

32. The CHAIRMAN recalled that article VI had been deleted.[8]

Article VII

33. The CHAIRMAN pointed out that article VII had been adopted with the amendment that in the last line of paragraph 2 the words "... or the status of a protected person" should be inserted after the words "... denied nationality".[9]

Consideration of a new article VI

34. Mr. CÓRDOVA, Special Rapporteur, proposed a new article VI which provided that the status of protected person of a contracting party would end if the person concerned acquired the nationality of the host country under article V, or the nationality of some other State, or alternatively obtained the status of protected person elsewhere. The new article could be numbered VI because it came logically after article V which concerned the naturalization of stateless persons. The text would be along the following lines:

"Article VI

"The status of 'protected person' of a party shall not be lost unless:

(*a*) The person concerned acquires the nationality of the party under article V or that of another State; or

(*b*) That person acquires the status of protected person of another party under article 1."

35. The CHAIRMAN inquired whether such an explicit provision was indispensable.

36. Mr. CÓRDOVA, Special Rapporteur, said it had to be made clear that once a stateless person had been granted protection, he could no longer be deprived of it except upon his obtaining full nationality, or again, upon his changing over from the protection of one State to that of another.

37. Mr. FRANÇOIS said that such an article was indeed essential. If the protected person became naturalized elsewhere it was not right that he should retain also the protection of the original host country.

38. Mr. SCELLE said that loss of protection on the acquisition of a nationality, or upon being granted the protection of another State, was probably automatic;

[3] *Vide supra*, 248th meeting, paras. 57 and 58.

[4] *Vide supra*, 248th meeting, para. 104 and 249th meeting, para. 10.

[5] *Vide supra*, 249th meeting, para. 11.

[6] *Ibid.*, para. 12.

[7] *Ibid.*, para. 13.

[8] *Ibid.*, paras. 14-17.

[9] *Ibid.*, paras. 18, 43 and 44.

it was, however, preferable to make the position clear. Besides, it was important to lay down that when a stateless person moved from the territory of one contracting party to that of another, the second host country had to grant him protection in lieu of the first.

39. Mr. AMADO said that, as article I made the grant of the status of protected person conditional upon residence in the host country, it followed that, upon giving up residence in that country, the person concerned could no longer claim protection.

40. Mr. SPIROPOULOS gave the example of a stateless person residing in a country and obtaining that country's protection; the individual in question would then go to another country and settle there permanently. It would follow that he had lost his residence in the original host country. It did not follow, however, that he would have lost the status of protected person of the original host country, because article I did not require continuous residence as a condition of protection. The position therefore was that he would continue to be protected by the original host country while residing in the territory of the other State. The proposed article VI would dispel any doubts on that point.

41. It was naturally open to question whether a stateless person granted protection by a host country should continue to be eligible for the benefit of that protection if he went to live in another country for a very long period—say, ten years—without acquiring the nationality of the second host country or having any intention to do so. Was protection to continue indefinitely in such a case?

42. Finally, he wondered whether provision might not be made for the withdrawal of protection if the protected person did not fulfil his military obligations.

43. Mr. AMADO still believed the new article to be unnecessary. Should the protected person go to another country and apply for naturalization there, or again, request the protection of the new host country, there would be occasion for the scrutiny of his personal documents and he would doubtless have to renounce his earlier protection in order to obtain a new one or the nationality of the country where he finally settled.

44. Mr. SCELLE said that the new article VI was essential in order to deal with the problem of diplomatic protection, which was a delicate political question even where actual nationals were concerned. It was best therefore that an article of the type suggested by Mr. Córdova should be included in the draft in order to define clearly under whose diplomatic protection the formerly stateless person would be at all material times.

45. Mr. HSU wished to know whether prolonged residence abroad would entail loss of protection.

46. The CHAIRMAN said that, as he construed Mr. Córdova's proposal, the answer was in the negative.

47. Mr. CÓRDOVA, Special Rapporteur, said it had been the guiding principle of the Commission that no person should be deprived of his nationality unless he acquired another one. It was necessary to adhere to that principle as closely as possible if statelessness was going to be reduced. A similar principle was imperative in the case of protection; no person should be deprived of the status of a protected person of one country without acquiring the protection of another. Moreover, the grant of protection should in no way prevent the formerly stateless person from travelling; it could not signify enforced residence in the protecting country as though the protected person were a prisoner there.

48. Mr. HSU wondered whether it was fair to expect a country to go on protecting indefinitely a person who had been out of its territory for many years. It should be remembered that the Commission was at the moment discussing the reduction of statelessness and not its elimination and therefore should not ask too much of States.

49. Mr. SALAMANCA said that, as he construed the proposed article VI, a stateless person who had been granted protection by a contracting party would thereupon be able to travel all over the world on a passport issued by the protecting State until he found a country where he decided to get naturalized.

50. Mr. SPIROPOULOS said that it was not necessary to go into excessive detail. The Commission was simply adopting a set of general principles for submission to the General Assembly and to the governments.

51. Mr. CÓRDOVA, Special Rapporteur, said that he had been won over by the arguments in favour of providing for loss of protection in the case of a protected person who stayed too long away from the protecting country. He therefore suggested a new text of article VI:

> "The status of 'protected person' of a Party shall not be lost unless:
>
> (*a*) That person acquires the nationality of the party under article V or that of another State; or
>
> (*b*) Acquires the status of 'protected person' of another party under article I; or
>
> (*c*) Resides abroad for a period of five years without the permission of the protecting party."

He hoped that the new clause (*c*) would satisfy all the members of the Commission.

52. The CHAIRMAN put the Special Rapporteur's draft article VI to the vote.

Article VI was approved by 6 votes to none, with 6 abstentions.

53. The CHAIRMAN put to the vote the entire text of the Convention on the Reduction of Present Statelessness as finally drafted by the Special Rapporteur.

The text of the draft convention was approved by 5 votes to none, with 7 abstentions.

54. Mr. LAUTERPACHT explained his abstention. The proposals just voted by the Commission would, if adopted, amount almost to the complete elimination

of existing statelessness by the naturalization of persons at present stateless or by the grant of a status of protected person which was to all intents and purposes equivalent to that of nationals of the host country, the only difference being their exclusion from political rights.

55. He thought it most unlikely that the proposals just approved by the Commission would be adopted by Governments. By adopting what he regarded as sweeping proposals, the Commission had not rendered any great service to stateless persons. It would have been preferable for the Commission to adopt a less ambitious draft calculated to encounter less opposition and hence serve a more practical purpose.

56. He added, however, that he had abstained from voting, instead of casting an adverse vote, for four main reasons. Firstly, he was in full accord with the general humanitarian aims pursued by the proposed articles. Secondly, those articles gave effect to the legal principles involved in the abolition of statelessness. Thirdly, it was his view that States could accept the principles approved by the Commission without sacrificing any really vital interest—although he had serious doubts as to whether Governments would be prepared to act accordingly. Fourthly, the proposals which the Commission had adopted represented the considered opinion of the majority of its members. So when the time came for the approval of the final report embodying the proposals just approved, he intended to vote for it.

57. Faris Bey el-KHOURI still thought that it should be left to the States themselves to determine the rights and duties that would devolve upon those to whom they were to grant the status of protected person. Unless that were done, the draft convention would not be accepted by any Government. That was why he had abstained.

58. The CHAIRMAN said that he could not fully endorse the sweeping proposals just adopted, and hence had abstained.

59. Mr. GARCÍA-AMADOR shared Mr. Lauterpacht's views: although he had abstained from voting on the draft convention, he would reconsider his position when the Commission's report was put to the vote.

60. Mr. AMADO said he had abstained because the convention was too good to be practicable. It did not seem to him to have any prospects of being translated into reality.

APPOINTMENT OF DRAFTING COMMITTEE

61. The CHAIRMAN said that the Drafting Committee which would prepare the final text would be composed of the Special Rapporteur, Mr. Lauterpacht and Mr. Scelle. Mr. François, in his capacity of General Rapporteur, was an *ex-officio* member of the Drafting Committee.[10]

[10] See also below, para. 76.

DRAFT CONVENTIONS ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS (A/2456, A/CN.4/82 and Add. 1, 2, 3, 4, and 5) (*resumed from the 245h meeting*)

62. The CHAIRMAN announced that the Commission had yet to discuss the comments by the Government of Canada (A/CN.4/82/Add.5).

63. Mr. LAUTERPACHT said that the Commission had not considered separately the comments by each individual country but rather had examined those that appeared relevant to its discussions in connexion with the various articles as the latter were examined one by one. There was no reason to deal in a different manner with the Canadian comments, valuable though they were, which had been received too late to be discussed together with those of other Governments. It was for the Special Rapporteur to consider the Canadian comments and examine whether they warranted any alteration to the texts adopted.

64. The CHAIRMAN said that if there were no remarks on the part of members of the Commission concerning the Canadian comments, the Commission could deal with the outstanding points left over from previous discussions of the conventions for the elimination and reduction of future statelessness.

Article 1 (resumed from the 245th meeting)

65. Mr. CÓRDOVA, Special Rapporteur, said that, in the light of comments made by Governments, he had redrafted article 1, paragraphs 2 and 3, of the draft Convention on the Reduction of Future Statelessness:

> "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.*
>
> "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.* The nationality of the father shall prevail over that of the mother *unless otherwise provided by the law of* the *party.*"

66. Article 1 of the draft Convention on the Elimination of Future Statelessness remained unaltered and consisted of a single paragraph reading:

> "A child who would otherwise be stateless shall acquire at birth the nationality of the party in whose territory it is born."

67. An identical clause formed paragraph 1 of article 1 of the draft Convention on the Reduction of Future Statelessness.

68. The redraft had been discussed in the course of an earlier meeting[11] of the Commission and certain alterations had been informally agreed upon by those members of the Commission who had been present, but in the absence of a quorum no official vote had been taken. It was now necessary to approve formally the texts in question of article 1, paragraphs 2 and 3, of the Convention on Reduction of Future Statelessness reading (as informally agreed upon):

"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 he does not effectively opt for another nationality.*

"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 requirements of residence set forth in paragraph 2 of this article. The nationality of the father shall prevail over that of the mother *unless, in case of a child born out of wedlock, the national legislation of the mother gives to the child her nationality.*"

69. He drew particular attention to the change made in the last sentence of paragraph 3. Mr. François had pointed out that it would have been ambiguous to say that "the nationality of the father shall prevail over that of the mother unless otherwise provided by the law of the party". It was not clear which contracting party the provision referred to, whether it was the State to which the father belonged or that of the mother. The new text made it clear that the provision only applied to a child born out of wedlock and concerned the case in which the national legislation of the mother gave such a child her nationality exclusively. The new text met Mr. François' objection while at the same time allowing for the Scandinavian practice of invariably granting the nationality of the mother to a child born out of wedlock.

70. Mr. PAL said that he was not fully satisfied with the wording of article 1, paragraphs 2 and 3. Paragraph 2 made it possible for a State to make preservation of its nationality dependent on a person being normally resident in its territory until the age of eighteen and further on the condition that on attaining that age the person concerned did not effectively opt for another nationality. Paragraph 3 stated that a person who, owing to the operation of paragraph 2, did not retain at eighteen the nationality of his State of birth, would acquire the nationality of one of his parents. It seemed to him that if the person concerned could effectively opt at eighteen for a nationality other than that of his place of birth, that person would no longer be "otherwise stateless" and the convention did not apply to him. Moreover, if a person had a right to opt for a given nationality, the eventuality provided for in paragraph 3 for granting him the nationality of one of his parents would never arise.

71. Mr. LAUTERPACHT suggested that it might be advisable to subdivide paragraph 2 so as to lay down, firstly, that a State could make the preservation of its nationality dependent upon a person being normally resident in its territory until the age of eighteen; and secondly, that the person concerned was not obliged to accept the nationality of his place of birth if he could effectively opt for another nationality.

72. Mr. CÓRDOVA, Special Rapporteur, said that the aim of article 1 of the Convention on Elimination of Future Statelessness, which corresponded to article 1, paragraph 1, of the Convention on the Reduction of Future Statelessness, was to grant a nationality *jure soli* to all so that no person would remain stateless. However, the Commission had considered the position of a person who had *jure sanguinis* a nationality other than that of his place of birth, and some allowance had been made for that contingency. The result had been the introduction into the Convention on the Reduction of Future Statelessness of paragraphs 2 and 3 of article 1.

73. Mr. LAUTERPACHT gave the example of a child born in State "A": article 1, paragraph 1, made him a national of State "A". While he was still a minor his parents became naturalized in another State "B"; the minor then had a right to opt for the nationality of State "B" and it was therefore necessary to provide for that eventually by means of the final provision of article 1, paragraph 2.

74. Mr. PAL said that the whole convention only applied, as stated in its article 1, to persons who would otherwise be stateless. A person entitled under existing laws to a nationality because his parents had acquired it did not come within the scope of the convention at all.

75. Mr. CÓRDOVA, Special Rapporteur, said that, by the operation of article 1, the nationality of his place of birth was conferred *jure soli* upon a child who was not entitled to any other nationality because he had been born in a *jus sanguinis* country. The case suggested by Mr. Lauterpacht did not seem to him likely to occur in practice; if a child's parents were naturalized, the child would benefit from that naturalization—in which case he was not "otherwise stateless". In the rare instances in which a child of less than eighteen did not benefit from the naturalization of his parents, article 1, paragraph 1, would give him the nationality of his place of birth.

76. The CHAIRMAN said that the point should be referred to the Drafting Committee. He announced that, upon the proposal of Mr. Lauterpacht, Mr. Pal had been co-opted to the Drafting Committee.

77. The CHAIRMAN then called for a vote on article 1 of the two draft conventions.

Article 1 of the draft Convention on the Elimination

[11] *Vide supra*, 245th meeting, paras. 22-41.

of Future Statelessness (A/2456) was adopted unanimously without change.

Article 1, paragraph 1, of the draft Convention on the Reduction of Future Statelessness (A/2456) was adopted unanimously.

Article 1, paragraphs 2 and 3, of the draft Convention on the Reduction of Future Statelessness, as informally agreed upon by the members of the Commission,[12] *were adopted unanimously.*

Articles 2 and 3

(resumed from the 245th meeting)

78. The CHAIRMAN then called for a vote on articles 2 and 3 of the drafts as originally proposed for both conventions (A/2456).

Articles 2 and 3 were adopted without alteration.

Article 4

(resumed from the 243rd meeting)

79. Mr. CÓRDOVA, Special Rapporteur, announced that article 4 of both conventions (A/2456) had been altered so that the last sentence reading "The nationality of the father prevailing over that of the mother" would be supplemented by the phrase "unless, in case of a child born out of wedlock, the national legislation of the mother gives to the child her nationality".

80. The CHAIRMAN called for a vote on article 4.

The text of article 4, as amended, of both conventions was approved.

Article 5

(resumed from the 243rd meeting)

81. The CHAIRMAN then called for a vote on article 5 of both conventions (A/2456).

Article 5 was approved unchanged.

Article 6

(resumed from the 245th meeting)

82. Mr. CÓRDOVA, Special Rapporteur, announced that no changes had been suggested in respect of article 6, paragraphs 1 and 2, of both draft conventions (A/2456).

83. With regard to paragraph 3 of the draft Convention on the Reduction of Future Statelessness, however, a new text had been prepared which, while protecting natural-born citizens from deprivation of nationality on the ground of departure, stay abroad, or failure to register, yet empowered States to withdraw the benefit of their nationality from naturalized persons on the said grounds. The amended text now read:

"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.*"

84. Mr. HSU suggested the term "natural-born nationals" instead of "born nationals", because the former term was in common use.

85. Mr. LAUTERPACHT said, with reference to the first sentence of paragraph 3, that it did not seem reasonable to him to compel a State to continue to recognize as a national even a natural-born person who stayed away from his country of origin for a very long term and even refused to comply with the minor formality of registering at a consulate.

86. With regard to naturalized persons who stayed away from the country of their adoption, it seemed to him that there should be no distinction between a naturalized person returning to his country of origin and his settling permanently in the territory of a third State.

87. Mr. FRANÇOIS stressed the difference between the case of a naturalized person returning to his country of origin and that of one going to another country. If a German who had become a naturalized American returned to Germany, it was reasonable to assume that he still felt a German; but if he went to live in Holland, there appeared to be no reason why he should not continue to be considered as an American. Besides, in practice, experience had shown that the most serious difficulty arising in those cases was the problem of a person returning to his country of origin and claiming there the protection of the country where he had become naturalized.

88. Mr. CÓRDOVA, Special Rapporteur, said that in the draft Convention on the Elimination of Future Statelessness, the Commission had to exclude all possibility of deprivation of nationality on the ground of departure or stay abroad, whether in the case of naturalized persons or of natural-born nationals. But in so far as the Convention on the Reduction of Future Statelessness was concerned, the aim was to limit rather than to abolish altogether cases of statelessness. The comments by Governments had shown that the latter were anxious to reserve the right to deprive naturalized persons of their nationality if they severed their connexion with their country of adoption.

89. Mr. LAUTERPACHT still believed that even with regard to a natural-born national who stayed away from his country of origin for a very long period without even going to the trouble of registering, a State could not be compelled to maintain him in his nationality. He therefore proposed an amendment to article 6, paragraph 3, so that it would read: "3. Persons shall not lose their nationality so as to become stateless on the ground of departure, stay abroad, or any other similar ground, provided that they register or make act signifying their intention to retain their nationality."

90. Mr. CÓRDOVA, Special Rapporteur, said that it

[12] *Vide supra*, para 68.

was quite illogical for the Commission, after refusing to admit that reason justified deprivation of nationality, to go on to accept such a serious consequence for the neglect of the minor formality of registration.

91. Mr. PAL said that, as he construed article 6, paragraph 3, the intention was to place natural-born and naturalized citizens on exactly the same footing except for the possibility of deprivation of nationality in the case of a naturalized person returning to his country of origin. If the suggestion made by Mr. Lauterpacht were adopted, it would be necessary to make the first sentence of article 6, paragraph 3, common to both natural-born and naturalized citizens. The final sentence would only apply to naturalized persons returning to their country of origin.

92. Mr. FRANÇOIS said that in the Netherlands a statutory provision existed for depriving Netherlands nationals of nationality if they stayed away from their country for over ten years without registering. The provision in question had led to much unnecessary hardship and injustice; so much so that recently it was made applicable only to persons of Netherlands origin born outside the kingdom. Persons born in Netherlands territory were no longer under a duty to register every ten years. Even so, the provision had proved unfortunate in its practical effects; many people had been deprived of their nationality through inadvertence, while others, who had no real links with the Netherlands, were extremely careful to register every ten years so as not to lose the benefit of their nationality. He could safely say that the opinion of responsible circles in his country would be in favour of an international convention laying down that nationality should not be lost through prolonged stay abroad.

93. The CHAIRMAN said that a very similar situation had arisen in Sweden. Formerly, Swedish nationals who lived abroad for over ten years without registering at Swedish consulates were deprived of their nationality. In practice, many persons had omitted to satisfy the formality through inadvertence or ignorance and had consequently lost their nationality and had had to apply for its restoration. The provision in question had caused so much hardship that it had finally been repealed.

94. Mr. LAUTERPACHT said he had been impressed by the remarks made by the foregoing speakers on the practical experience of their own countries. The laws of the United Kingdom contained some provision for remedying the situation where the omission to register was due to inadvertence. However, in view of what had been said concerning the purely nominal character of registration he could not insist on his view.

95. The CHAIRMAN then called for a vote on the principle of the revised paragraph 3 of article 6 of the draft Convention on the Reduction of Future Statelessness.

The principle of paragraph 3 was adopted by 8 votes to 1, with 1 abstention.

96. The CHAIRMAN announced that the Drafting Committee would prepare a final draft of article 6 as approved in principle by the Commission.

The meeting rose at 1 p.m.

251st MEETING

Monday, 21 June 1954, at 3 p.m.

CONTENTS

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

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, 4 and 5) (*continued*)

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

1. The CHAIRMAN invited debate on the Drafting Committee's revised articles 6 to 10 of the two draft Conventions on the Elimination of Future Statelessness and on the Reduction of Future Statelessness (A/2456). He recalled that the Commission had not taken a final decision concerning those articles at its 245th meeting.

Article 6 (continued)

2. Mr. CÓRDOVA, Special Rapporteur, said that the members of the Commission had not raised any objection to article 6, paragraph 3, of the draft Convention on the Reduction of Future Statelessness as proposed by him, reading: