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Summary record of the 251st meeting

Topic:
Nationality including statelessness

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

"3. Natural-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 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."

The paragraph as drafted above was approved and article 6 as amended was adopted.

3. Mr. ZOUREK said he opposed article 6 because it was based on an absolutely one-sided conception of nationality.

Article 7 (resumed from the 245th meeting)

Paragraph 1

4. Mr. CÓRDOVA, Special Rapporteur, said that, in their comments, several Governments had expressed the desire to retain the right to deprive their nationals of their nationality in cases of treason or desertion. At its 245th meeting,[1] however, the Commission had provisionally decided not to include in article 7 the clause proposed by him which provided for deprivation of nationality for those two reasons. He still believed that such a clause should be included. The Commission had agreed that a State should be entitled to deprive naturalized nationals of nationality on the ground of their staying too long in their country of origin. Hence it would be illogical not to admit deprivation of nationality on the ground of treason or desertion, at least so far as naturalized persons were concerned, and perhaps even in the case of natural-born nationals.

5. Mr. LAUTERPACHT said the Commission had already decided the substance of the question at its 245th meeting.

6. Mr. CÓRDOVA, Special Rapporteur, said that at that meeting the Commission had not taken a final decision.

7. Faris Bey el-KHOURI said that the Special Rapporteur had agreed not to insert the clause under reference. There was no internationally recognized definition of treason. As for desertion, it could in principle only be committed by nationals.

8. Mr. ZOUREK said that the existing draft of article (A/2456) was unrealistic and should be revised. Sometimes a person severed all links with his country and refused to comply with his obligations as a citizen. Accordingly he proposed that article 7 should be amended so as to provide for deprivation of nationality in cases of treason and desertion.

Mr. Zourek's proposal was rejected, and article 7, paragraph 1, as contained in document A/2456 was approved, by 5 votes to 1, with 7 abstentions.

[1] *Vide supra,* 245th meeting, paras. 54-60.

Paragraph 2

9. Mr. CÓRDOVA, Special Rapporteur, introduced the new draft of article 7, paragraph 2, amended in the light of the comments made by several Governments:

"2. In the case to which paragraph 1 above refers, the deprivation shall be pronounced in accordance with due process of law which will always provide for recourse to a judicial authority."

10. Mr. LAUTERPACHT proposed the addition of the words: "in addition to any other procedure" after the words "will always provide".

11. Mr. CÓRDOVA, Special Rapporteur, said that his draft appeared to him to cover all eventualities.

12. Mr. LAUTERPACHT proposed that it should be left to the Drafting Committee to prepare the final draft of the paragraph in question.

It was so agreed.

Article 8 (resumed from the 245th meeting)

13. Mr. CÓRDOVA, Special Rapporteur, said that the Commission had provisionally decided[2] not to include a provision forbidding States to deprive their nationals of nationality on racial, ethnic, religious or political grounds only in cases where such a measure would result in the person concerned becoming stateless. For that reason, the draft as appearing in document A/2456 had been left unaltered.

14. Mr. ZOUREK agreed with the idea expressed in article 8 but thought it should not be inserted because in view of the other provisions of the convention it was superfluous. In reply to a question by the Chairman he said that if other members did not ask for a formal vote, he would not press for one.

Article 8 (A/2456) was adopted.

Article 9 (resumed from the 244th meeting)[3]

15 Mr. ZOUREK said he approved the adoption of article 9 for the reasons explained at the previous session.

Article 9 (A/2456) was adopted.

Article 10 (resumed from the 245th meeting)

16. Mr. CÓRDOVA, Special Rapporteur, recalled that the Commission had agreed earlier[4] to delete paragraph 4 of the article and to insert in the middle of paragraph 2 of article 10 of both conventions, after the words "to decide", the words "any dispute between them concerning the interpretation or application of this convention". That amendment was intended to broaden the competence of the proposed tribunal.

[2] *Vide supra,* 245th meeting, paras. 61-63.

[3] *Vide supra,* 244th meeting, para. 11.

[4] *Vide supra,* 245 meeting, para. 2.

17. Mr. ZOUREK said that already at the previous session he had expressed doubt as to the possibility of setting up new bodies within the framework of the United Nations. He drew attention to the Belgian Government's comment that the establishment of the tribunal was undesirable.[5] Such provisions did not really relate to conflicts of law in the matter of nationality; in practice they would imply a partial surrender of State sovereignty and would be inconsistent with the fundamental principles of existing international law. He therefore proposed that article 10 should be omitted altogether.

18. Mr. CÓRDOVA, Special Rapporteur, pointed out that the Commission was only preparing draft conventions which the General Assembly and subsequently the States would be free to adopt or reject; it was wrong to speak of inconsistency with international law.

19. The CHAIRMAN put Mr. Zourek's proposal to the vote.

The proposal having been rejected by 11 votes to 1, with 1 abstention, article 10 was adopted as drafted in document A/2456 subject to the amendment referred to by the Special Rapporteur.

Final clauses (resumed from the 245th meeting)

20. The CHAIRMAN invited comment on the final clauses to the two conventions as drafted by the special sub-committee.

21. At the Special Rapporteur's request, Mr. LAUTERPACHT explained a number of points with reference to these drafts. The first article of both drafts read:

"Accession

"This convention, after having been approved by the General Assembly, shall be open to accession by any State in accordance with the requirements of its constitutional law and practice."

22. The article called for two comments. Firstly, the General Assembly's approval was stipulated so that the text could be regarded as established. That would dispense with the necessity of signature or some other formal means of establishing the text. It was not necessary to interpose signature followed by ratification. Secondly, the procedure contemplated for creating the obligations laid down in the convention was accession. Accession, in the generally accepted sense of the term, was equivalent to the ratification of a signed convention. As accession did not in municipal law necessarily require ratification, the Sub-Committee had felt that it would be the simplest method of accepting the obligations provided for in the drafts.

23. Mr. GARCÍA-AMADOR took issue with Mr. Lauterpacht's interpretation of the term "accession". In his opinion, accession, in international law, required ratification. In order to simplify matters the Commission might propose the procedure of acceptance; the latter procedure, which had been virtually unknown before the establishment of the United Nations, was much simpler than ratification and had the same practical effect.

24. Mr. LIANG, Secretary to the Commission, agreed that in United Nations terminology accession not only did not exclude subsequent ratification, but actually required it. The 1946 convention on the privileges and immunities of the United Nations had been opened to accession by Members, subject to ratification.

25. Mr. LAUTERPACHT had no serious objection to the procedure of acceptance, which had indeed once been popular in the United Nations and which required no ratification. Nevertheless, the term had not a generally accepted connotation and appeared to be falling into disuse.

26. Mr. ZOUREK expressed surprise that the Sub-Committee should have considered such an uncommon procedure. It was true that in the past the United Nations had employed it in exceptional cases; the modern tendency, however, was to revert to the traditional practice of signature followed by ratification or, after a certain period, accession to a treaty already in force. That had been the practice followed in the case of the 1948 convention on the prevention and punishment of the crime of genocide and the 1952 convention on the political rights of women.

27. Mr. GARCÍA-AMADOR did not think that the procedure of acceptance was falling into disuse. It was true that in 1948 the Sixth Committee had on one particular occasion not employed it; but at the eighth session of the General Assembly the United Kingdom delegation had submitted a draft protocol in which the term was revived.

28. Mr. LAUTERPACHT thought that both terms might be used: "accession or acceptance".

29. Faris Bey el-KHOURI pointed out that accession should be preceded by the formalities provided for by the constitutional practice of States, which meant that it could only take place after ratification. It would therefore be necessary to say "This convention shall be open to signature..."

30. Mr. PAL failed to see any reason for saying in the proposed final clause, article 10, "after having being approved by the General Assembly". Article 10 was one of the final clauses of a draft convention; when the latter was adopted by States, it became a clause in their convention. It was difficult to see why it should be necessary for States to provide for the approval by the General Assembly. Even assuming that the States would not accept the draft unless and until it was approved by the General Assembly, it would follow that they would wait for such approval before signing the draft. In forwarding the draft to the States, the General Assembly might perhaps assure them of its approval thereof. But it would in no circumstances be necessary or even

[5] See annex to the report of the Commission on the work of its sixth session, *Yearbook of the International Law Commission, 1954*, vol. II.

justified to put the words in question into the convention itself.

31. In answer to Faris Bey el-Khouri and Mr. Zourek, he (Mr. PAL) pointed out again that under the procedure which he proposed the intermediate stage of a signature, which was not binding, would be dispensed with. The procedure had been employed on many occasions and offered definite practical advantages.

32. Mr. LIANG, Secretary to the Commission, pointed out that article 23, paragraph 1(*c*), of the Commission's Statute did not mention "approval". The General Assembly's approval of a report by the Sixth Committee containing a draft convention did not, *ipso facto*, give rise to any obligations on the part of Member States. It was a frequent occurrence in the practice of the United Nations for a draft convention adopted by the General Assembly to be opened for signature and ratification. As Mr. Zourek had mentioned, that had been done in the case of the convention on the prevention and punishment of the crime of genocide. The Commission had to report to the General Assembly and was not entitled to invite Governments to adopt its drafts.

33. Mr. SCELLE said that the General Assembly's approval would indeed lend more weight to the draft conventions and would be calculated to induce Governments to approve, accept or accede to them; he regarded the three terms as synonymous. The question was whether it was the Commission's intention to give the General Assembly broader legislative powers. He considered that the most important part of the first of the draft final clauses was the last phrase: it was indeed essential that States should be legally bound.

34. Mr. CÓRDOVA, Special Rapporteur, said it was important to have the General Assembly's approval; the Commission's members were experts, not government representatives, and although a representative's vote did not commit his Government, the Assembly's approval was yet a useful diplomatic method of transmitting the drafts to Governments.

35. Mr. HSU supported Mr. Lauterpacht and Mr. Córdova in their efforts to simplify the procedure. Still, the General Assembly's approval could not create a convention; the drafts approved would remain drafts, which the Assembly could recommend to Governments for adoption.

36. Mr. AMADO pointed out that multilateral negotiations within the United Nations had merely replaced direct negotiations among States. It would, however, be unthinkable that the General Assembly's approval should be construed to mean that States did not have to express their opinions.

37. Mr. PAL said that, after reading articles XI, XII and XIII of the Convention on the prevention and punishment of the crime of genocide he had been confirmed in his view that the words "having being approved by the General Assembly", with or without the initial word "after", were out of place in the draft conventions and should therefore be dropped from the final clause in question. He therefore proposed that those words be deleted.

38. Mr. LAUTERPACHT did not agree with Mr. Pal. It could not be argued that the General Assembly's approval could give rise to obligations on the part of States, but such an approval had the advantage of establishing a final text and dispensed with the traditional procedure of signature.

39. Mr. LIANG, Secretary to the Commission, said that if the General Assembly adopted the Commission's draft, it would certainly say so in the preamble to the relevant resolution. It was therefore unnecessary to refer to adoption by the Assembly again in the final clauses of the convention itself.

40. With regard to the requirement of signature, he recalled that, in certain cases, the General Assembly had wished to treat a convention as a particularly solemn instrument. That was why, in the case of the convention on the prevention and punishment of the crime of genocide, the Assembly had provided for both signature and ratification. He agreed, however, with Mr. Lauterpacht that signature was only one of several possible procedures.

41. Mr. SCELLE said that the point to be decided was whether the General Assembly was to be asked merely to take note of the Commission's work or else to endorse the draft conventions. The term "approval" was ambiguous.

42. Replying to Mr. Lauterpacht, he pointed out that the question whether the signing of a convention definitively committed the signatory State was governed by the constitutional law of that State. As a rule, signature did not constitute a final commitment.

43. Mr. CÓRDOVA, Special Rapporteur, agreed that the Commission could not submit proposals direct to Governments; according to its Statute, the Commission was absolutely bound to go through the General Assembly. Even if the Assembly were to reject the draft conventions, it would still be possible for Governments to accept them. It would perhaps be unwise to make the very existence of the conventions dependent upon a decision of the General Assembly.

44. Mr. SPIROPOULOS said that the Commission should only deal with substance and not insert any final clauses. The Commission had followed that course in the past, for example, in the case of the draft convention on arbitral procedure. He drew attention to the provisions of article 23, paragraph 1(*c*), and article 16(*j*) of the Commission's Statute.

45. Mr. ZOUREK agreed with Mr. Spiropoulos that it would be premature to insert final clauses.

46. Mr. LAUTERPACHT said that the proposal made by Mr. Spiropoulos and Mr. Zourek was tantamount to the reversal of an earlier decision and would require a two-thirds majority.

47. Mr. SPIROPOULOS explained that he would simply vote against the Sub-Committee's text.

48. The CHAIRMAN then called for a vote on Mr. Pal's amendment to the effect that the words "after having been approved by the General Assembly" should be deleted.

The amendment was rejected by 6 votes to 3, with 4 abstentions.

49. Faris Bey el-KHOURI suggested that the words "open to accession" should be replaced by "open to signature".

The amendment was adopted by 6 votes to 3, with 4 abstentions.

50. The CHAIRMAN said that Mr. Lauterpacht's amendment to the effect that the words "or acceptance" should be inserted accordingly no longer applied.

51. Mr. SPIROPOULOS said that if the Commission wished to make the final clauses applicable in practice, the whole text of those clauses would have to be revised.

52. Mr. ZOUREK proposed that the words "and to ratification" should be inserted after the word "signature".

53. Mr. CÓRDOVA, Special Rapporteur, supported Mr. Zourek's proposal.

54. Faris Bey el-KHOURI said that Article 110 of the Charter might be a suitable precedent for the clause under discussion.

55. The CHAIRMAN put Mr. Zourek's amendment to the vote.

The amendment was adopted by 7 votes to 1, with 3 abstentions.

56. The CHAIRMAN put to the vote the first of the final clauses, as amended.

The draft clause was rejected by 4 votes to 4, with 5 abstentions.

57. Mr. SPIROPOULOS explained his adverse vote, saying that it did not mean that he opposed the procedure of signature and ratification. The General Assembly would be free to transmit the draft conventions to Member States.

58. The CHAIRMAN asked if the Commission wished to discuss the other final clauses.

59. Mr. LAUTERPACHT said that the Commission had decided to include the final clauses because it had considered them essential. Without final clauses, the draft might have a lesser chance of being adopted by the General Assembly. By rejecting the first of the sub-committee's draft final clauses the Commission had merely indicated its intention to redraft it. Hence a new sub-committee should be appointed to redraft the text.

60. Faris Bey el-KHOURI said that the sub-committee should prepare two distinct articles providing separately for signature and ratification of the conventions.

61. Mr. SPIROPOULOS said that the sub-committee should simply reproduce the relevant clauses of the convention on the prevention and punishment of the crime of genocide.

62. The CHAIRMAN proposed that the sub-committee should consist of Mr. François, Mr. Córdova and himself.

It was so agreed.

The meeting rose at 5.55 p.m.

252nd MEETING

Tuesday, 22 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, 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/CN.4/83, A/CN.4/84) (*continued*)

MULTIPLE NATIONALITY

1. The CHAIRMAN invited debate on the Special Rapporteur's report on multiple nationality (A/CN.4/83).[1] He asked what action the Commission proposed to take with regard to it.

2. Mr. CÓRDOVA, Special Rapporteur, said his personal views were set forth in the introduction to his report on multiple nationality. Further information on the subject was contained in the Secretariat's survey of multiple nationality (A/CN.4/84),[1] the former Special

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