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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.

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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.

Rapporteur's report (A/CN.4/50)[2] and in the *Study of Statelessness.*[3]

3. Mr. FRANÇOIS paid a tribute to the Special Rapporteur for his painstaking research. The report was a valuable document to which, however, he wished to make certain reservations.

4. It should be borne in mind with regard to the system proposed by the Special Rapporteur that the attribution of a nationality to a stateless person was a very different matter from that of depriving of a nationality a person possessing two or more nationalities; in the latter case it would be necessary to determine the nationality of which he should be deprived. The Special Rapporteur suggested that that person should lose the nationality acquired *jure sanguinis,* but countries applying that rule would certainly object. If *jus soli* were sacrificed there would be equal opposition among the countries recognizing the rule of *jus soli.* That problem was inadequately covered in the report.

5. The Special Rapporteur's system would also fail to prevent a conflict between the nationality of a child and the nationality of its parents, which would raise considerable difficulties in private international law. In the case of a child born in a *jus soli* country to parents who were nationals of a *jus sanguinis* country, the child would until the age of eighteen have a different nationality from that of its parents. In the case of persons who changed their residence frequently, from one country to another, each of their children might acquire a different nationality.

6. It would be preferable, instead of withdrawing one nationality, to take measures to prevent a person acquiring more than one nationality. The Commission should, for the time being, merely attempt to find solutions for such subsidiary but in practice much more important problems as that of military service and diplomatic protection of persons having two or more nationalities.

7. Mr. ZOUREK thought the report submitted by the Special Rapporteur a valuable document, particularly in its reference to military service and diplomatic protection. Multiple nationality could easily give rise to serious disputes between States, quite apart from involving the persons concerned in difficult situations. If it was agreed that multiple nationality was an evil, there was, however, profound disagreement as to the means of remedying it. The Special Rapporteur believed that multiple nationality could be eliminated by means of an agreement among *jus sanguinis* countries not to apply their legislation to persons born in *jus soli* countries. That solution might be satisfactory in theory, but in practice no country applying *jus sanguinis* would be prepared to accept it, and vice versa. It should be recognized that both systems existed, and if one were abolished in favour of the other, States would be unlikely to accept the solution proposed. Besides, the two systems were the product of a long historical evolution and the different States had chosen one of them in keeping with their particular needs and their conceptions of nationality. The law relating to nationality was a matter essentially within the domestic jurisdiction of States. The Commission should merely endeavour to solve conflicts of law in the matter of nationality in so far as they related to such practical questions as military service and diplomatic protection. The 1930 Codification Conference at The Hague had drawn up a Protocol relating to military obligations in certain cases of double nationality. The Commission might attempt to define diplomatic protection; to go beyond that would be useless.

8. Mr. SPIROPOULOS agreed with Mr. François and Mr. Zourek. Countries applying *jus sanguinis* would certainly not accept the system proposed by the Special Rapporteur. It was inconceivable that the Greek Government, for instance, should consider Greeks born abroad as aliens.

9. He did not attach as much importance to the problem of diplomatic protection as some other members of the Commission. It was mainly invoked when a crime had been committed, which in practice did not happen often. Military service, on the other hand, was a very difficult problem which the Commission should study on the basis of the provisions of The Hague Protocol of 1930, or in any other way that commended itself to it.

10. Mr. LAUTERPACHT commended the Special Rapporteur for his reports on statelessness and multiple nationality; the Secretariat's analysis was also valuable, though he felt that it anticipated some of the views contained in the report of the Special Rapporteur who regarded double nationality as an unmitigated evil.

11. Dual or multiple nationality was not necessarily an evil, even if it entailed certain disadvantages. It would, indeed, be necessary to complete the work initiated by The Hague Codification Conference in 1930 and to solve such problems as that of military service, the multiplicity of diplomatic protection, the possibility for a person to renounce one nationality and the right of the person with dual nationality to be treated as a national of one State only. The 1930 Hague Conference had formulated solutions for those problems and certain courts in the United States of America had made some enlightened decisions during the war on problems connected with military service.

12. Undoubtedly, the multiplicity of diplomatic protection created a problem. That was not necessarily an evil —apart from the necessity of regulating cases where the individual concerned invoked the protection of one State against the other. After all, diplomatic protection was invoked and granted, in principle, only in cases of actual or alleged violation of international law in relation to the person concerned. If there was a violation of international law, there was nothing shocking in the notion that more than one State should have the opportunity of challenging it. The effect of recent conventions was to treat diplomatic protection as something independent of

[2] In *Yearbook of the International Law Commission, 1952,* vol. II.

[3] United Nations publication, Sales No. 1949.XIV.2.

nationality. Thus, whenever in various humanitarian conventions or those relating to refugees, or to the protection of minorities, or the population of Trust Territories, the contracting parties had the right to invoke the jurisdiction of the International Court of Justice, such jurisdiction was not dependent upon any compliance with the rule of nationality claims—a rule which in any case was not as rigid as some imagined. Generally, the recent legislation of some States by no means rejected double nationality. Under the British Nationality Act, 1948, naturalization abroad did not automatically cause the loss of British nationality.

13. Whereas it was most important for every person to have at least one nationality, it was quite conceivable that a person could owe allegiance to more than one State. Dual or multiple nationality would give rise to serious problems only in war time and in the matter of military service. But the Commission ought not to formulate the law on the subject by reference to the abnormal condition of war, although, following The Hague Protocol of 1930, some safeguards might be adopted with regard to military service and otherwise. Generally, although under existing international law the possession of nationality was essential, it did not follow that nationality was a quality so absolute, mystical and undivided as to make the possession of one nationality only an obvious rule of law. Actually, many persons who had several nationalities were usually reluctant to renounce any one of them. He therefore proposed that the Commission should not attempt to eliminate or to reduce cases of dual or multiple nationality, but should concentrate on improving and completing the provisions adopted by the 1930 Hague Conference on that subject.

14. Mr. LIANG, Secretary to the Commission, pointed out that the Secretariat's survey had been prepared primarily for the use of the Special Rapporteur. In its present version it embodied the main principles of the latter's report on multiple nationality, and it was at the Special Rapporteur's request that the document had been made available to the Commission.

15. The authors of the survey had not pleaded for a drastic solution of the problem. It had always been his own opinion that any study of the problem of nationality would be incomplete if restricted to statelessness. In order to deal with it in a practical way the Commission should study the legal problems arising from multiple nationality.

16. International law laid down a number of rules with regard to the diplomatic protection of persons with dual nationality. Disputes frequently arose in that connexion, as well as in connexion with persons enjoying multiple nationality residing in a third State. If it were true that there had recently been a tendency to retain multiple nationality, as suggested by Mr. Lauterpacht, such a tendency might to a certain extent be explained by a desire to safeguard the independence of married women. Also if certain States had specified that no automatic renunciation of nationality should be presumed in the case of naturalization, that could be explained by a wish to preserve the person's freedom of will. Those were considerations which the Commission should take into account.

17. Mr. PAL associated himself with the tribute paid to the Special Rapporteur and to the Secretariat for their invaluable work. He felt it was wrong to put statelessness and multiple nationality on the same footing. Stateless persons were in a tragic situation, whereas multiple nationals were in an entirely different position. The Commission realized that stateless persons suffered unnecessary hardship, and it was also profoundly dissatisfied with the existing international arrangements for such persons. Yet it was only contemplating a minimum concession, which it thought sovereign States might perhaps make in their own interest, to alleviate the unfortunate situation.

18. Multiple nationality only gave rise to really serious difficulty in war time, and it was not the Commission's function to help nations to prepare for war. Multiple nationality was the almost unavoidable result of modern freedom of movement coupled with the rigidity of the several systems of nationality legislation. Perhaps the best solution would be to encourage States to facilitate freedom of movement still further by enabling persons to carry with them their own law relating to nationality. A national of a *jus soli* or of a *jus sanguinis* country would carry the particular law with him wherever he went, and his children would acquire a nationality *jure soli* or *jure sanguinis* as the case might be.

19. Mr. HSU complimented the Special Rapporteur on his report. He had been particularly impressed by the drastic solutions it proposed, although he feared that the Special Rapporteur had perhaps gone a little too far. He was simplifying international relations instead of merely making them more humane. His proposals with regard to dual nationality were, in his opinion, too bold.

20. Mr. SALAMANCA appreciated the objections raised by Mr. François, Mr. Lauterpacht and Mr. Spiropoulos, but was on the whole in agreement with the views expressed by the Special Rapporteur. If there were certain advantages to the possession of multiple nationality, it was nevertheless a fundamental principle that an individual should be entitled to one nationality only. He drew attention to the case of immigrants from *jus soli* countries with a surplus population settling in *jus sanguinis* countries. They became naturalized, frequently prospered in those countries and enjoyed all the privileges the host country could confer, while retaining their original nationality. If no agreement were reached to remedy that situation, it might attain serious proportions; *jus soli* countries would be still more reluctant to admit persons from *jus sanguinis* countries and might even enact discriminatory legislation against them.

21. Faris Bey el-KHOURI said that a person should be entitled to one nationality only; dual nationality should be avoided at all costs. In practice dual nationality frequently led to abuses. He recalled the case of the gypsies who were anxious to acquire as many nationalities as possible so as to enjoy the rights and privileges of as many countries as possible. If a person had a right

to two nationalities *jus sanguinis* should prevail over *jus soli*, as the blood connexion was in practice stronger than that acquired through residence. The Commission should accept the principle that no nationality should be granted to a person already possessing one unless he was prepared to renounce his original nationality. If those three principles were adopted it would be possible to revert to the principle of a single nationality with allegiance to one State.

22. Mr. AMADO did not share the opinion of Faris Bey el-Khouri who had said that *jus sanguinis* should prevail over *jus soli*. The Syrians who had immigrated into Brazil were only too anxious to remain Brazilians. Europeans who emigrated to other countries carried their nationality in their blood, but the countries of the new world were interested primarily in their future, not in their past nationality. Immigrants should not be allowed to bring with them their own nationality laws. He felt that the question should be approached with great care.

23. The CHAIRMAN was unable to agree with certain of the general views expressed by Mr. François and Mr. Lauterpacht. Statelessness on the one hand, and dual and multiple nationality on the other, called for an entirely different approach. He failed to see any good reason for encouraging multiple nationality and pointed out that more recent legislation, as in the Scandinavian countries, tended to avoid dual and multiple nationality. The problem of the nationality of immigrants from countries with a surplus population should in most cases solve itself through the process of assimilation. It might be appropriate to study also certain problems other than multiple nationality, but he did not wish to make any precise recommendation at that point.

24. Mr. CÓRDOVA, Special Rapporteur, regretted that he had not known the views of the Commission on the problem of multiple nationality at the time of preparing the report. He made no claims for his effort, and had merely called it a basis for discussion.

25. His approach had not been fully understood by the Commission. He was well aware of the practical difficulties arising in connexion with dual nationality and appreciated the work done by the Secretariat in recalling former attempts to solve the problem at The Hague and at Montevideo.

26. There were in practice fewer cases of multiple nationality than there were of statelessness, but the former was nevertheless a serious matter. If statelessness was a tragic human problem it did not give rise to disputes between States, whereas dual or multiple nationality might.

27. He agreed with Mr. Salamanca that emigration countries frequently wished to retain their rights of protection over their emigrants, particularly when the latter possessed assets abroad.

28. Statelessness did not give rise to any problems with regard to extradition or deportation. He had compared the problems arising in cases of statelessness on the one hand, dual or multiple nationality on the other, and had come to the conclusion that in both cases the main causes were identical: (1) birth; (2) deprivation of nationality; and (3) a change of status by the individual concerned. If, in the case of statelessness, it had been possible to make *jus soli* prevail over *jus sanguinis*, while at the same time giving the child the possibility of reverting to the nationality of its parents at the age of eighteen, he believed that the same principle might well provide a solution to the problem of multiple nationality.

29. The CHAIRMAN said that precedence of *jus soli* over *jus sanguinis* had been adopted with regard to the reduction of statelessness because a period of residence had been taken as a basis; the same basis might possibly be adopted to solve the problem of multiple nationality.

30. He asked the members of the Commission if they considered that the subject of nationality including statelessness would be exhausted with the topics dealt with by the Special Rapporteur or if they wished to include under that heading the study of other questions relating to nationality.

31. Mr. CÓRDOVA, Special Rapporteur, recalled that the Commission had selected nationality as a main topic for codification. It had taken up the study of dual nationality at the suggestion of the Economic and Social Council. He thought the Commission should continue its work of codification.

32. Mr. SALAMANCA inquired how the Commission proposed to deal with the problem of multiple nationality, and whether, in particular, it should report on the question to the Sixth Committee of the General Assembly.

33. Mr. LAUTERPACHT said that the Commission should follow a systematic plan of study. If it wished to discuss the whole topic of nationality it would have to study, in addition to statelessness and multiple nationality, such other questions as:

(1) The problem of the various types of nationality, with special reference to such customs as the peculiar citizenship status granted to aliens by some Latin American and other countries, and also to the status of protected persons falling short of nationality;

(2) General principles of nationality legislation; that would involve a study of the regulations contained in The 1930 Hague Convention on certain questions relating to conflicts of nationality laws;

(3) The recognition of nationality granted by another State;

(4) The right of States to confer their nationality on persons of their choice, with special reference to cases of persons not resident in the territory of the State granting them nationality.

34. Mr. SPIROPOULOS proposed that the Commission should be satisfied with the work done so far and should not undertake the task of codifying the whole topic of nationality.

35. Mr. SCELLE said that the Commission should be content with the work it had done, or rather with what it had not done. The question of nationality had been discussed since 1930 and the prospect of general agreement on it was remote. The Commission had only eight or ten weeks every year in which to deal with the questions referred to it. It was obvious that if a full discussion of nationality problems were to be undertaken, the Commission would have virtually no time to do anything else. He considered that the Commission should concentrate on questions in which tangible results appeared possible.

36. The CHAIRMAN said that the Commission had been requested to study the nationality of married women.

37. Mr. SCELLE said that the Commission should not attempt to study either multiple nationality or the nationality of married women.

38. Mr. AMADO agreed. When a subject was so controversial that concrete results could not be expected, is was best not to devote any time to it.

39. Mr. CÓRDOVA, Special Rapporteur, said that at the Economic and Social Council's forthcoming session a draft convention on the nationality of married women would be considered.

40. Mr. LIANG, Secretary to the Commission, said that the draft convention referred to by Mr. Córdova concerned the nationality of married persons. The Commission on the Status of Women had requested that a suitable draft convention should be prepared. Mr. Hudson had drafted a set of rules (A/CN.4/50, Annex II, *in fine*) [4] but the International Law Commission had not accepted that draft because it had not previously discussed the question of nationality of married persons.[5] Some delegations on the Commission on the Status of Women wanted the International Law Commission to study the matter, whereas other delegations wanted the Economic and Social Council to examine the draft convention without reference to the International Law Commission. It would be very difficult for the International Law Commission to devote sufficient time and attention to the draft convention which had been considered by the Economic and Social Council for several years. Perhaps the best course for the Commission to adopt was to state in its report that, in view of the advanced stage reached in the study of the nationality of married women by the competent Commission of the Economic and Social Council,[6] it had decided not to study either that question or the problem of multiple nationality.

41. Mr. CÓRDOVA, Special Rapporteur, said that in his report on multiple nationality (A/CN.4/83, paragraph 21) [7] he had given his reasons for not dealing with the nationality of married persons.

42. The Commission could not deal with the codification of the whole of international law because of the limited time and means at its disposal. It could only deal with such problems of international law as happened from time to time to become urgent or significant.

43. Mr. LAUTERPACHT said that two distinct views could be adopted concerning the Commission's work. One view was that the Commission should, among other things, also study particular subjects which happened to be of topical importance or of immediate urgency. The other view was that the Commission should undertake the codification of international law as a whole and aim at a complete codification of every subject. The latter might not be possible in view of the existing constitution and resources of the Commission. That being so, there was some advantage in leaving aside, for the time being, other aspects of nationality.

44. Mr. SCELLE said that the Commission had a number of items on its agenda and that the time at its disposal was limited. It should concentrate on topics with respect to which it could reasonably expect States to surrender some of their prerogatives. The topics of the territorial sea, the high seas, the law of treaties and international criminal law offered the Commission ample scope for useful work. The Commission should not discuss questions concerning which Governments would not be prepared to make any concessions. The topic of nationality as a whole would probably not be ripe for discussion by the Commission for many years, and he proposed that further consideration of the topic should be deferred indefinitely.

45. Mr. ZOUREK agreed that the study of nationality should be dropped for the Commission's work was hardly likely to lead to any practical results. The only nationality problem in which practical measures were at all advanced was that of the nationality of married persons which was being dealt with by the competent Commission of the Economic and Social Council of the United Nations.

46. He did not agree with Mr. Scelle that the development of international law implied the progressive surrender by States of their sovereign prerogatives. States could never waive their sovereign power, and in some questions international rules were even quite inadmissible.

47. Mr. AMADO said that nationality should remain on the Commission's agenda. If at some later date the Commission found itself in a position to suggest practical solutions for certain nationality problems, a number of which were mentioned in the Secretariat's survey (A/CN.4/84),[8] then it could revert to the study of those problems.

48. Mr. SPIROPOULOS agreed that the Commission

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

[5] See *Yearbook of the International Law Commission, 1952*, vol. II, pp. 100-103, 106.

[6] Cf. resolution 502 (XVI) adopted by the Council on 23 July 1953, in *Official Records of the Economic and Social Council, Sixteenth Session, Resolutions, Supplement No. 1.*

[7] *Vide supra*, para. 1.

[8] *Vide supra*, para. 2.

should discontinue its study of nationality, having dealt with statelessness which it had been asked to study as an urgent matter by the Economic and Social Council. It was true that the Commission's work would be fragmentary so long as it had not dealt with the whole question of nationality; but it was clear that it would be impossible to reconcile the two great systems of nationality legislation based respectively on *jus sanguinis* and *jus soli.* The 1930 Hague Convention on certain questions relating to the conflict of nationality laws had been ratified by a very few States. As Mr. Amado had said, the conflict between the two systems could only be solved by history; the problems created by that conflict were mitigated by the fact that persons belonging to *jus sanguinis* countries who migrated to *jus soli* countries did not in practice retain any links with their mother country beyond the second or third generation.

49. He added that all the work done on nationality problems was outside the scope of codification of international law. It was rather a legislative process concerned with bringing into line the rules of the various internal nationality laws. By contrast, the topics of the territorial sea, State responsibility under international law and diplomatic immunity came within the scope of the codification of international law and their study appeared more likely to yield fruitful results.

50. Mr. AMADO said that the Commission's work should be theoretical; he regretted that it should have been induced to study nationality problems that were not quite in keeping with the theoretical approach which he regarded as characteristic of its work.

51. Mr. HSU said it would perhaps be wise to await the world's reaction to the Commission's work on problems of statelessness before proceeding to study any further questions concerning nationality.

52. Faris Bey el-KHOURI said the question of multiple nationality should remain on the Commission's agenda because it was liable to cause friction between States.

53. The CHAIRMAN gathered that Mr. Scelle was proposing that the Commission should for the time being defer any further consideration of multiple nationality and of all other questions relating to nationality, with the exception of those concerning the elimination and reduction of statelessness. He put the proposal to the vote.

The proposal was adopted by 9 votes to none, with 4 abstentions.

Régime of the territorial sea (item 2 of the agenda) (A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71 and Add. 1 and 2, A/CN.4/77)

54. Mr. FRANÇOIS, Special Rapporteur, said that the Commission had begun its work on the territorial sea in 1952 when he had submitted his first report (A/CN.4/53)[9] of which the Commission had only discussed articles 1 to 6 and 13.[10] He had subsequently submitted a second report (A/CN.4/61 and Add. 1)[11] in the light of the comments made by members on those seven articles. Since then a committee of experts had met at The Hague and prepared a report on certain technical questions concerning the territorial sea (annex to A/CN.4/61/Add. 1). Certain observations had also been received from governments concerning the delimitation of the territorial sea of adjacent States and of States situated opposite each other (A/CN.4/71 and Add. 1 and 2).[11] He was now submitting his third report (A/CN.4/77).[12] Clauses which were common to the second and third reports had not been reproduced in the third, and hence both documents had to be read together. He suggested that the articles should be discussed one by one forthwith.

CHAPTER I: GENERAL PROVISIONS

Article 1: Meaning of the term " territorial sea " (A/CN.4/61)[13]

55. Mr. FRANÇOIS, Special Rapporteur, recalled that at an earlier session[14] the Commission had decided to adopt the expression "territorial sea" instead of the somewhat ambiguous term "territorial waters".

56. Mr. CÓRDOVA said it was necessary to mention, for the sake of clarity, that the "belt of sea" referred to in article 1 was adjacent to the land territory of the State concerned.

57. Mr. FRANÇOIS, Special Rapporteur, suggested the adjectives "adjacent" or "contiguous".

58. Mr. SCELLE said that the word "contiguous" should not be employed: it might lead to confusion because of its use in connexion with the term "contiguous zone".

59. Mr. AMADO noted that the articles the Commission was discussing were described (A/CN.4/61) as "revised draft regulation". He inquired whether the term "regulation" had been used at The Hague Codification Conference in 1930.

60. Mr. LAUTERPACHT said that Mr. Córdova's point might be covered by a revised text of article 1 reading:

> "The territory of the State includes a belt of sea adjacent to its coast and described as the territorial sea."

[9] In *Yearbook of the International Law Commission, 1952,* vol. II.

[10] See *ibid.,* vol. I, pp. 142-190, 249.

[11] In *Yearbook of the International Law Commission, 1953,* vol. II.

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

[13] Article 1 read as follows:

"The territory of a State includes a belt of sea described as the territorial sea."

[14] See *Yearbook of the International Law Commission, 1952,* vol. I, p. 150.

61. Mr. AMADO said he was not certain that alteration was really necessary. He would like the Commission to examine the articles drawn up in 1930 by The Hague Codification Conference before deciding the issue.

62. The CHAIRMAN then called for a vote on Mr. Lauterpacht's amendment.

The amendment was adopted by 7 votes to none, with 5 abstentions.

63. Mr. AMADO said that the decision just adopted would complicate the Commission's discussion of the contiguous zone.

64. Mr. ZOUREK said that at an earlier session it had been decided to adopt the term "territorial sea" provisionally (A/2456, para. 85).[15] In several languages, the term used was "territorial waters" or an equivalent expression rather than "territorial sea"; the 1930 Hague Conference on the codification of international law had preferred the latter term, and yet the other appeared in the relevant General Assembly resolution. He personally preferred the term "territorial waters" because it emphasized their appurtenance to the territory of a State, rather than the term "territorial sea" which placed the emphasis on the fact that the waters concerned were part of the sea. He accordingly proposed that the term "territorial sea" should be replaced by "territorial waters".

65. Mr. FRANÇOIS said that in the report of the Second Committee of the 1930 Conference at The Hague[16] it had been stated that there were sound reasons for preferring the term "territorial sea" to "territorial waters", which might lead to confusion. He saw no reason to adopt a different view.

66. Mr. SCELLE said that the term "territorial sea" was in clear contrast with the term "high seas".

67. Faris Bey el-KHOURI preferred the term "territorial waters" which could be translated into Arabic more easily.

68. The CHAIRMAN said that at a previous session the Commission had decided in favour of the term "territorial sea".

69. Mr. ZOUREK said that no final decision had been taken. Since 1930, ideas on the subject had evolved, as shown by the fact that the much more recent resolution of the General Assembly referred to "territorial waters". The arguments used in the 1930 report were not convincing, because "inland waters" had been clearly defined and no confusion was possible for jurists.

70. Mr. SPIROPOULOS said that the choice between the two terms had been discussed three times already by the Commission and there was no necessity to reopen the question.

71. Mr. LAUTERPACHT said that the term "territorial sea" emphasized the fact that the waters in question were part of the sea, and as such subject to a peculiar régime which had in many respects differed from the law applicable to the land territory of States. From the point of view of respect for the freedom of the seas the term "territorial sea" was the better one.

72. The CHAIRMAN called for a vote on Mr. Zourek's proposal to replace the term "territorial sea" by "territorial waters".

The proposal was rejected by 11 votes to 2.

73. Mr. CÓRDOVA inquired whether a decision would be taken at that stage on the title "draft regulation".

74. Mr. FRANÇOIS, Special Rapporteur, said that the term "this regulation" was used in article 2. When the Commission came to discuss that article it could usefully discuss the suitability of the term in question.

75. The CHAIRMAN then called for a vote on article 1 as amended.

Article 1 as amended was approved by 9 votes to none, with 4 abstentions.

The meeting rose at 1 p.m.

253rd MEETING

Wednesday, 23 June 1954, at 9.45 a.m.

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Chairman: Mr. R. CÓRDOVA

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, 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).

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[15] In *Yearbook of the International Law Commission, 1953*, vol. II.

[16] *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee (League of Nations publication, V. Legal, 1930.V.16), p. 213.