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Summary record of the 274th meeting

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breadth of the territorial sea proposed by members of the Commission, and that Governments should be asked to comment.

The proposal was adopted by 11 votes to none, with 2 abstentions.

Nationality, including statelessness (item 5 of the agenda)
(A/2456) (resumed from the 271st meeting)

REDRAFT BY DRAFTING COMMITTEE OF THE DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS¹¹

52. The CHAIRMAN invited the Commission to consider the draft Conventions on the Elimination of Future Statelessness and on the Reduction of Future Statelessness, as redrafted by the Drafting Committee.

Preamble

53. Mr. CORDOVA, Special Rapporteur, pointed out that the Drafting Committee had adopted for both drafts the same preambles as those adopted by the Commission in 1953 (A/2456).

Article 1

54. Mr. CORDOVA, Special Rapporteur, said that in the first article of the draft Convention on the Elimination of Future Statelessness, which was identical with article 1, paragraph 1, of the Convention on the Reduction of Future Statelessness, the Drafting Committee had replaced the word "child" by the word "person".¹²

55. The CHAIRMAN put this amendment to the vote.

The amendment was approved by the Commission.

The meeting rose at 1.10 p.m.

¹¹ See paragraph 162 of the Commission's report on its fifth session, *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)*. Also in *Yearbook of the International Law Commission, 1953*, vol. II.

¹² *Vide infra*, 274th meeting, para. 8.

274th MEETING

Friday, 23 July 1954, at 9.45 a.m.

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Chairman : Mr. A. E. F. SANDSTRÖM

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. G. AMADO, Mr. R. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, 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).

Time and place of the seventh session

1. Mr. LIANG, Secretary of the Commission, informed the Commission that a reply had been received from the United Nations Headquarters in New York concerning the Commission's preliminary decision to hold its seventh session in Geneva.¹ The Secretary-General, for budgetary and other reasons, favoured the Commission's seventh session being held in New York for a period of eight, and not ten, weeks, as suggested by the Commission. If, however, the Commission confirmed its preliminary decision in favour of Geneva it was suggested that the seventh session open on 2 May 1955, and last eight weeks so as to avoid overlapping with the Economic and Social Council and its functional commissions.

2. The CHAIRMAN thought the Commission should maintain its decision to meet in Geneva, but in view

¹ *Vide supra*, 256th meeting, para. 2.

of the considerations put forward, should agree to reduce the duration of the session from ten to eight weeks, whilst stressing the inconveniences involved. The Commission might wish to give him a mandate to endeavour, during the General Assembly, to obtain a modification of the clause in its statute, which laid down New York as the Commission's headquarters; that would make it possible to regularize the holding of meetings in Geneva.

3. Mr. LAUTERPACHT agreed with the Chairman's proposal but thought that he should also be granted authority to have the date of the next session altered. If the Commission were to meet in April or May, several of its members who were active professors would be unable to attend. He proposed to mention that aspect of the question to the Government of the United Kingdom, and felt that if the General Assembly consented to alter the opening date of the session, the Chairman should be empowered to agree in the name of the Commission.

4. Mr. FRANÇOIS pointed out that the next session should not be allowed to conflict with the meetings of the Academy of International Law at The Hague in August, at any rate not with the second part of those meetings. The session would accordingly have to close by 1 August.

5. Mr. AMADO said the Commission might be compelled to agree to a session of eight instead of ten weeks, but it should not accept *a priori* the principle of the duration of its sessions being reduced.

6. The CHAIRMAN gathered that the Commission gave him authority at the General Assembly to press for the transfer of the main meeting place of the Commission from New York to Geneva; he would also transmit the Commission's wish that its seventh session should last ten or eleven weeks beginning after May and taking place mainly in June and July. If compelled to accept a session of eight weeks he would stress the difficulties such a decision involved for the Commission.

Nationality, including statelessness (item 5 of the agenda)
(A/2456) (continued)

REDRAFT BY THE DRAFTING COMMITTEE OF THE DRAFT CONVENTIONS ON THE ELIMINATION OF FUTURE STATELESSNESS AND ON THE REDUCTION OF FUTURE STATELESSNESS (continued)

7. The CHAIRMAN invited the Commission to continue the consideration of the draft Conventions on the Elimination and the Reduction of Future Statelessness as redrafted by the Drafting Committee.

Article 1 (continued)

8. The CHAIRMAN submitted article 1 of the elimination convention (article 1, paragraph 1, of the reduction convention), drafted as follows:

"A person who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory he is resident."

Article 1 of the elimination convention and article 1, paragraph 1 of the reduction convention, as thus drafted, were adopted by 8 votes to none, with 3 abstentions.

9. The CHAIRMAN submitted article 1, paragraph 2, of the reduction convention, as redrafted:

"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 years and on the further condition that on attaining that age he does not effectively opt for another nationality."

It had not been the intention of the Drafting Committee to add any subsidiary condition for the preservation of nationality by the person in question. Accordingly, he proposed that in the last phrase of the paragraph the word "further" should be deleted. He also proposed that the word "effectively" should be deleted, and that the words "and acquire" should be inserted after the words "opt for". The latter addition was in conformity with article 6, paragraph 1, of the Commission's original (1953) draft² which laid down that renunciation should not result in loss of nationality unless the person renouncing it had or acquired another nationality.

10. Mr. CORDOVA, Special Rapporteur, pointed out that the proposed change was also in conformity with the spirit of article 6, paragraph 2.

11. The CHAIRMAN put to the vote the proposal that the word "further" in the last phrase of article 1, paragraph 2, of the reduction convention, as redrafted, should be deleted.

The proposal was adopted by 6 votes to 1, with 2 abstentions.

12. The CHAIRMAN put to the vote the proposal that in the last phrase of article 1, paragraph 2, of the reduction convention, as redrafted, the word "effectively" should be deleted and the words: "and acquire" inserted after the words: "opt for".

The proposal was adopted by 10 votes to none, with 1 abstention.

13. Mr. ZOUREK said that he had not attended the meetings at which those draft articles had been considered; he maintained, however, the attitude he had outlined at the Commission's fifth session.

14. Mr. CORDOVA, Special Rapporteur, said with regard to article 1, paragraph 3, of the reduction

² The Commission's original (1953) draft is reproduced in paragraph 162 of the report of the Commission on its fifth session, *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)*. Also in *Yearbook of the International Law Commission, 1953*, vol. II. Article 6 corresponds to article 7 of the Drafting Committee's redraft; *vide infra*, para. 33.

convention, that in the Commission's original (1953) draft³ the first part of the paragraph had referred to all the conditions envisaged in paragraph 2. That had been a mistake since only non-compliance with the condition of residence would make the person stateless, and the introductory phrase of the paragraph had accordingly been modified.

15. He recalled that the insertion of the phrase: "if such parent has the nationality of one of the parties," and the addition of the sentence: "Such party make the acquisition of its nationality dependent on the person having been normally resident in its territory," had been decided by the Commission itself.⁴

16. The last sentence of the paragraph dealt with the possibility of granting priority to the nationality of the mother in the case of a child being born out of wedlock.

17. Article 1, paragraph 3, of the reduction convention, as redrafted by the Drafting Committee, therefore read:

"If in consequence of the operation of paragraph 2, a person on attaining the age of eighteen years would become stateless, he shall acquire the nationality of one of his parents, if such parent has the nationality of one of the Parties. Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory. The nationality of the father shall prevail over that of the mother unless in the case of a child born out of wedlock, the national legislation of the mother grants her nationality to the child."

18. The CHAIRMAN put to the vote article 1, paragraph 3, of the reduction convention, with the exception of the last sentence beginning with the words: "The nationality of the father..."

Article 1, paragraph 3, of the reduction convention, as put to the vote by the Chairman, was adopted by 8 votes to none, with 3 abstentions.

19. The CHAIRMAN pointed out that in the last sentence of the paragraph the word: "legislation" should be altered to read: "law". On the other hand, inasmuch as the last sentence raised the question of dual nationality, the Drafting Committee had contemplated avoiding that aspect of the problem and omitting the last part of the paragraph beginning with the words: "unless, in the case of a child..." The final sentence of the paragraph would then be identical with the last sentence of article 1, paragraph 3, of the original (1953) draft convention.⁵ He proposed that the last sentence of the paragraph should read: "The nationality of the father shall prevail over that of the mother", and that the words "unless... to the child" should be omitted.

³ *Ibid.*

⁴ *Vide supra*, 250th meeting, paras. 65-77.

⁵ *Vide supra*, footnote 2.

The proposal that the passage "unless... to the child" should be deleted, was adopted by 9 votes to none, with 2 abstentions.

20. The CHAIRMAN put to the vote article 1, paragraph 3, as modified.

Article 1, paragraph 3, of the reduction convention, as redrafted by the Drafting Committee and further modified by the Commission, was adopted by 10 votes to none, with 2 abstentions.

Article 2

21. The CHAIRMAN pointed out that the Drafting Committee had merely altered the words: "its" and "it" to "his" and "he". He put the article to the vote in its modified form:

"For the purpose of article 1, a foundling, so long as his place of birth is unknown, shall be presumed to have been born of the territory of the Party in which he is found."

Article 2 of both conventions, as modified, was adopted unanimously.

Article 3

22. The CHAIRMAN put article 3, which was identical with article 3 of the 1951 draft, to the vote.⁶

Article 3 of both conventions was adopted unanimously.

Article 4

23. Mr. CORDOVA, Special Rapporteur, said the Drafting Committee⁷ had altered the introductory sentence of the article and inserted the phrase "if he would otherwise be stateless", as the Commission should not impose on the person the nationality of one of his parents unless he became stateless.

24. The CHAIRMAN recalled that article 1, paragraph 3, of the reduction convention also covered the question of a person who acquired the nationality of one of his parents, and in that article the Commission had included a residence qualification. He suggested that a similar qualification should be included in article 4.

⁶ Article 3 read:

"For the purpose of article 1, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth on an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered."

⁷ Article 4, as drafted by the Drafting Committee, read in both conventions:

"If a child is not born in the territory of a State which is a Party to this convention, he shall, if he would otherwise be stateless, acquire the nationality of the Party of which one of his parents is a national. The nationality of the father shall prevail over that of the mother unless, in the case of a child born out of wedlock, the national legislation of the mother grants her nationality to the child."

25. Furthermore, the last part of the article, which was identical with the last phrase of article 1, paragraph 3, of the reduction convention, should be modified in accordance with the Commission's previous decision and the last part of the paragraph beginning with the words: "unless, in the case of a child..." deleted.

26. Mr. LAUTERPACHT proposed the shorter form "if otherwise stateless" for the longer phrase inserted by the Drafting Committee.

27. The CHAIRMAN put to the vote Mr. Lauterpacht's proposal that the words: "if otherwise stateless", should be inserted in the first phrase of article 4 of both conventions.

The proposal was adopted by 10 votes to none, with 1 abstention.

28. The CHAIRMAN put to the vote the proposal that the following residence clause should be inserted in the draft convention on the reduction of future statelessness: "Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory."

The proposal was adopted by 11 votes to none, with 1 abstention.

29. The CHAIRMAN put to the vote the proposal that the last part of article 4 of both conventions, beginning with the words: "unless, in the case of a child..." should be deleted.

The proposal was adopted by 10 votes to none, with 2 abstentions.

30. The CHAIRMAN read out the text of article 4 of the reduction convention as amended:

"If a child is not born in the territory of a State which is a Party to this convention, he shall, if otherwise stateless, acquire the nationality of the Party of which one of his parents is a national. Such Party may make the acquisition of its nationality dependent on the person having been normally resident in its territory. The nationality of the father shall prevail over that of the mother."

This text was agreed to.

Article 5 (article 5, paragraph 1, of the 1953 draft)

31. The CHAIRMAN put to the vote article 5 of both conventions, which was identical with paragraph 1 of article 5 of the 1953 draft.⁸

Article 5 of both conventions consisting of paragraph 1 only of the original draft article 5 was adopted.

⁸ Article 5 as submitted by the Drafting Committee read in both conventions:

"If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality."

Article 6 (article 5, paragraph 2, of the 1953 draft)

32. The CHAIRMAN said article 6 as submitted by the Drafting Committee was now identical with article 5, paragraph 2 of the original draft of both conventions.⁹ He put article 6 to the vote.

Article 6 of both conventions as submitted by the Drafting Committee was adopted.

Article 7 (article 6 of the 1953 draft)

33. The CHAIRMAN said the minor alterations of style in paragraph 2 had been made; otherwise, paragraphs 1 and 2 of the article were identical with paragraphs 1 and 2 of the original (1953) draft of article 6. Paragraph 3, on the other hand, had been revised as far as the reduction convention was concerned.

34. He put the Drafting Committee's text of article 7, paragraph 1, for both conventions to the vote.¹⁰

Article 7, paragraph 1, of both conventions was adopted.

35. The CHAIRMAN submitted the Drafting Committee's article 7, paragraph 2, for both conventions, reading as follows:

"2. A person who seeks naturalization in a foreign country or who obtains an expatriation permit for that purpose shall not lose his nationality unless he acquires the nationality of that foreign country."

Article 7, paragraph 2, of both conventions was adopted.

36. The CHAIRMAN submitted the Drafting Committee's article 7, paragraph 3:

Convention on Elimination of Future Statelessness

3. A person shall not lose his nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground.

Convention on Reduction of Future Statelessness

3. A natural-born national shall not lose his nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register, or on any other similar ground. A naturalized person may lose his nationality on account of residence in his country of origin for the period specified by the law of the Party which granted the naturalization.

⁹ Article 6, of both conventions, as submitted by the Drafting Committee read:

"The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality."

¹⁰ Article 7, paragraph 1, as submitted by the Drafting Committee, read:

"1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality."

Article 7, paragraph 3, of each convention as given above was adopted.

Article 8 (article 7 of the 1953 draft)¹¹ of the draft Convention on the Elimination of Future Statelessness

37. Mr. CORDOVA, Special Rapporteur, submitted to the Commission, on behalf of the Drafting Committee, a draft article 8 which resulted from the merging into one single article of the provisions previously contained in articles 7 and 8. The proposed draft article read:

“A party may not deprive its nationals of their nationality on any ground if such deprivation renders them stateless.”

38. Clearly, it was no longer necessary to maintain article 8 of the 1953 draft, which prohibited the deprivation of nationality on racial, ethnic, religious or political grounds, once it was forbidden to deprive persons of their nationality on any grounds whatsoever. The original article 8 was useful, because the 1953 version of article 7 (corresponding to the present article 8) only referred to deprivation of nationality by way of penalty.

39. Mr. LAUTERPACHT said that the change was a major one, of which he did not approve. Even with an article 8 couched in such general terms as suggested, it was still very desirable that it should be followed by another article or paragraph on the following lines:

“In particular, a Party may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”

Such a provision, although logically not indispensable, would stress the sentiment of condemnation of such practices.

40. Mr. FRANÇOIS said that the Netherlands Government, in its comments,¹² had pointed out that the original article 7 stating that a country should not deprive its nationals of nationality “by way of penalty” had the presumably unintended effect of allowing deprivation so long as it was not a penalty. A Government might deprive persons of nationality by administrative measures and justify that action by stating that the measure in question was not a penalty.

41. Mr. CORDOVA, Special Rapporteur, said that the criticism in question could be adequately met by amending article 8 (previous article 7) to read: “by way of penalty or on any other ground”.

42. Mr. FRANÇOIS agreed that the Special Rapporteur’s wording would meet the objection of the Netherlands Government.

43. Mr. CORDOVA, Special Rapporteur, proposed that the Commission adopt two separate articles corresponding to articles 7 and 8 of the 1953 draft, with

¹¹ *Vide supra*, footnote 2.

¹² See annex to the Commission’s report on its sixth session, *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*. Also in *Yearbook of the International Law Commission, 1954*, vol. II.

the addition of the words “or on any other ground” which he had proposed.

44. Faris Bey el-KHOURI said that he still considered that the prohibition of deprivation of nationality for racial, ethnic, religious or political reasons should only apply to cases in which the person concerned would become stateless.

45. The CHAIRMAN put to the vote article 8 as amended to read:

“A Party may not deprive its nationals of nationality by way of penalty or on any other ground if such deprivation renders them stateless.”

Article 8 of the elimination convention was adopted as amended by 8 votes to none, with 4 abstentions.

Article 8 (article 7 of the 1953 draft)¹³ of the draft Convention on the Reduction of Future Statelessness

46. The CHAIRMAN submitted the Drafting Committee’s draft article 8, paragraph 1:

“1. A Party may not deprive any person of his nationality by way of penalty or on any other ground if such deprivation renders him stateless, except on the ground mentioned in article 7, paragraph 3, or on the ground that he voluntarily enters or continues in the service of a foreign country in disregard of an express prohibition of his State.”

Article 8, paragraph 1, of the reduction convention was adopted by 10 votes to 1, with 1 abstention.

47. The CHAIRMAN submitted article 8, paragraph 2 which had been amended by the Drafting Committee, to read:

“2. In the cases 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 judicial authority.”

48. Mr. LAUTERPACHT proposed that the last phrase should read: “... which shall provide...”

It was so agreed.

Article 8, paragraph 2 of the reduction convention, as amended, was adopted by 8 votes to none, with 4 abstentions.

Article 9 (article 8 of the 1953 draft)¹³

49. The CHAIRMAN announced that there was no need for a vote on article 9 of the two conventions, as the text¹⁴ was simply the one voted at the fifth session, in 1953 and adopted by the Commission at the current session without change.¹⁵

¹³ *Vide supra*, footnote 2.

¹⁴ The text of article 9 (identical with article 8 of the 1953 draft) read:

“The Parties shall not deprive any person or group of persons of their nationality on racial, ethnical, religious or political grounds.”

¹⁵ *Vide supra*, 244th meeting, para. 10.

*Article 10 (article 9 of the 1953 draft)*¹⁶

50. Mr. CORDOVA, Special Rapporteur, said that minor drafting changes had been made by the Drafting Committee to article 10 of both conventions which now read:

Convention on the Elimination of Future Statelessness

1. Every treaty providing for the transfer of a territory shall include provisions for ensuring that, subject to the exercise of the right of option, the inhabitants of that territory shall not become stateless.

2. In the absence of such provisions, a State to which territory is transferred, or which otherwise acquires territory, or a new State formed on territory previously belonging to another State or States, shall confer its nationality upon the inhabitants of such territory unless they retain their former nationality by option or otherwise or have or acquire another nationality.

Convention on the Reduction of Future Statelessness

1. Every treaty providing for the transfer of a territory shall include provisions for ensuring that, subject to the exercise of the right of option the inhabitants of that territory shall not become stateless.

2. In the absence of such provisions, a State to which territory is transferred, or which otherwise acquires territory, or a new State formed on territory previously belonging to another State or States, shall confer its nationality upon the inhabitants of such territory unless they retain former nationality by option or otherwise or have or acquire another nationality.

Article 10 of each convention was adopted without discussion.

*Article 11 (article 10 of the 1953 draft)*¹⁶

51. The CHAIRMAN submitted the text of article 11, paragraph 1, of both conventions, as drafted by the Drafting Committee to read as follows:

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

52. Mr. LAUTERPACHT proposed that the words: "in appropriate cases" should be replaced by "when it deems appropriate".

It was so agreed.

53. The CHAIRMAN put paragraph 1, as amended, to the vote.

Article 11, paragraph 1, of both conventions, was adopted as amended.

54. Mr. CORDOVA, Special Rapporteur, said that paragraph 2 had been amended so as to allow for the fact that the Commission had decided¹⁷ to delete paragraph 4 of the original 1953 article which referred to the jurisdiction of the International Court of Justice in respect of disputes concerning the interpretation or

application of the convention and to vest jurisdiction in the special tribunal.

55. Mr. SALAMANCA proposed that paragraph 4 be restored.

56. Mr. LAUTERPACHT proposed that paragraph 4 to be restored in the article should read as follows:

"The parties agree that any disputes between them concerning the interpretation or application of the Convention shall, if not referred to the tribunal provided for in paragraph 2 above, be submitted to the International Court of Justice."

57. The wording he thus proposed would not only provide for the jurisdiction of the International Court until such time as the special tribunal was created; it would also apply after such a tribunal was set up. For the Parties to the future convention might legitimately desire to submit to the International Court, rather than to the special tribunal, a dispute which they deemed particularly important.

58. The CHAIRMAN said that the proposal to restore paragraph 4 implied the reconsideration of a decision already taken by the Commission. It was therefore necessary for the Commission to take a two-thirds majority vote on the question whether it should reconsider its decision regarding article 11 (previous article 10), paragraph 4.

By 8 votes to none, with 2 abstentions, the Commission decided to reconsider its decision on paragraph 4.

Article 11, paragraph 4, of both conventions, as proposed by Mr. Lauterpacht was adopted by 10 votes to 1, with 2 abstentions.

59. The CHAIRMAN then submitted to the Commission paragraph 2 as drafted by the Drafting Committee, reading:

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

Article 11, paragraph 2, of both conventions, as thus drafted, was adopted by 9 votes to 1, with 2 abstentions.

60. The CHAIRMAN then submitted to the Commission paragraph 3, as redrafted by the Drafting Committee.

"3. If within two years after the entry in force of the Convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not been established by the Parties, any of the Parties shall have the right to request the General Assembly to establish such agency or tribunal."

Article 11, paragraph 3, of both conventions, as thus drafted, was adopted.

¹⁶ *Vide supra*, footnote 2.

¹⁷ *Vide supra*, 245th meeting, para. 2.

FINAL CLAUSES OF THE DRAFT CONVENTIONS
(resumed from the 271st meeting)¹⁸

61. The CHAIRMAN said that the final clauses which the competent Sub-Committee had drafted and the Commission had considered at its 271st meeting would have to be renumbered to follow article 11, the last of the substantive articles.

Article 12 (signature, ratification, accession)

62. The CHAIRMAN put to the vote article 12, on signature, ratification and accession, reading as follows:

"1. The present Convention, having been approved by the General Assembly, shall until... (a year after the approval of the General Assembly) be open for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign is addressed by the General Assembly.

"2. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. After... (the above date) the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations."

Article 12 of both conventions was adopted.

Article 14 (entry into force)

63. The CHAIRMAN submitted to the Commission article 14, as follows:

"The present Convention shall enter into force on the ninetieth day following the date of the deposit of the (e.g., third or sixth) instrument of ratification or accession.

"2. For each State ratifying or acceding to the present Convention subsequently to the latter date, the Convention shall enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State."

Article 14 of both conventions was adopted.

Article 13 (reservations) of the draft Convention on the Elimination of Future Statelessness

64. The CHAIRMAN submitted to the Commission the Sub-Committee's draft article 13 reading as follows:

"1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of the Convention pending the enactment of necessary legislation.

"2. No other reservations to the present Convention shall be admissible."

Article 13 of the draft Convention on the Elimination of Future Statelessness was adopted.

Article 13 (reservations) of the draft Convention on the Reduction of Future Statelessness

65. The CHAIRMAN submitted to the Commission the Sub-Committee's draft article 13 reading:

"1. Any State acceding to this Convention may attach reservations to any of its articles, with the exception of articles 9 and 11, to the extent to which and on the ground that any law in force in its territory is in conflict with the article or articles to which reservation is made.

"2. The Secretary-General shall notify reservations received by him to all States which have by the date of such notification deposited an instrument of accession with or without reservation.

"3. A reservation shall be deemed to be accepted if not less than two-thirds of the States notified in accordance with paragraph 2 of this article accept or do not object to it within a period of three months following the date of notification.

"4. If an instrument of accession accompanied by a reservation to articles 9 or 11 is deposited by any State, the Secretary-General shall invite such State to withdraw the reservation. Unless and until the reservation is withdrawn, the instrument of accession shall be without effect.

"5. Any State making a reservation in accordance with this article may withdraw that reservation either in whole or in part at any time after its acceptance, by a notice addressed to the Secretary-General; a copy of such notice shall be circulated by the Secretary-General to all States parties thereto."

66. Mr. LAUTERPACHT proposed the adoption of the Sub-Committee's draft. He said that that draft gave States reasonable liberty regarding the putting into force of the convention. Quite justifiably, the latitude given to States on the question of reservations was greater in the case of the convention on reduction of statelessness than was the case for the convention on elimination of statelessness.

67. It was proposed that no reservations should be permitted in respect of two provisions of the Convention: article 9, which forbade discrimination on racial, political, etc. grounds, and article 11, which provided for the establishment of the special agency and tribunal. In connexion with the other articles of the convention, however, it was proposed to allow reservations, provided no objections were raised to a reservation by more than one-third of the States acceding to the Convention.

68. Mr. CORDOVA, Special Rapporteur, said that he had doubts concerning paragraph 3. He proposed a draft along the lines of article 42 of the 1951 Convention relating to the Status of Refugees:

¹⁸ *Vide supra*, 271st meeting, paras. 28-44.

"1. Any State acceding to this Convention may make reservations to its articles, other than articles 9 and 11.

"2. Any State making a reservation under paragraph 1 may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations."

69. Mr. LAUTERPACHT said that the Commission was faced with a choice between two courses. It could either adopt a provision such as that suggested by the Sub-Committee, or else it could give States a much wider latitude of making reservations. If the latter course were adopted, it would encourage States to accede to the convention, deriving moral prestige by that action, while not undertaking any real obligations. The convention could thus be reserved out of existence.

70. Mr. CORDOVA, Special Rapporteur, said that the General Assembly could decide on the system of reservations which it would adopt.

71. Mr. ZOUREK said that there was no reason to exclude article 11 from the scope of reservations by States acceding to the convention. The right to attach reservations to any of the articles of the convention when acceding to it was an inherent right derived from the principle of the sovereignty of States. The sovereign right of States to make reservations was all the more important when dealing with a convention, the draft of which was to be adopted by the General Assembly by a majority vote. He would refer to the advisory opinion of the International Court of Justice on the subject of reservations to the Genocide Convention.¹⁹ The procedure by majority vote facilitated the conclusion of conventions but it made reservations all the more justifiable on the part of States. The Advisory Opinion of the International Court concerning reservations to the Genocide Convention, as well as the flexible system of reservations in practice within the Organization of American States, both militated against the draft presented by the sub-committee which Mr. Lauterpacht was advocating.

72. He requested that, in accordance with the established practice, there should be a footnote to the effect that he had voted against the two draft conventions on the elimination or reduction of future statelessness, as also against the commentary on the drafts, for reasons of principle which he had explained during the discussions at the fifth session and had briefly reiterated when the vote was taken at the present session.

The meeting rose at 1 p.m.

¹⁹ *I.C.J. Reports 1951*, p. 15.

275th MEETING

Friday, 23 July 1954, at 4 p.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. R. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, 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) (*continued*)

FINAL CLAUSES OF THE DRAFT CONVENTIONS (*continued*)

Article 13 (reservations) of the draft Convention on the Reduction of Future Statelessness (*continued*)

1. Mr. FRANÇOIS said he did not approve of either the Sub-Committee's or Mr. Córdova's drafts for article 13, proposed during the 274th meeting.¹ If States were permitted to formulate reservations to any article which was incompatible with the law in force in their territories, no State would be prepared to amend its municipal legislation. Moreover, acceptances accompanied by weighty reservations might entail serious consequences, both with regard to the right of contracting States to pass judgement on the reservations of other States and from the point of view of the entry into force of the convention and hence of the establishment of the agency and the tribunal. It would appear, therefore, that the Commission would be unable to deal with the reservations clause to be inserted in the draft convention so long as it had not considered the whole question of reservations to treaties, in connexion with its study of the law of treaties.

¹ *Vide supra*, 274th meeting, paras. 65 and 68.