

Document:-
A/CN.4/SR.275

Summary record of the 275th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1954 , vol. I

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"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.

2. Mr. HSU did not think that the article proposed by the Sub-Committee was suitable to the convention under discussion. The two-thirds majority rule referred to in paragraph 3 of that proposal did not give sufficient freedom to States. The proposed convention was primarily a recommendation to States. The Commission should try to guide States, without entering too much into the question of how many States were likely to accept its recommendation.

3. The CHAIRMAN agreed with Mr. François. The reservations clause might be referred to in the general report on the current session but should not be the subject of a separate article. The report might mention that the Commission did not wish to decide the question in view of the fact that it was a political problem which was not within its competence.

4. Faris Bey el-KHOURI said that reservations to article 1 were also not admissible. That article, which laid down the *jus soli* rule, was the cornerstone of the whole draft convention.

5. Mr. PAL said that reservation to article 8 should not be admitted for that article was intended to limit the number of cases of deprivation of nationality, one of the chief causes of statelessness.

6. Mr. CORDOVA, Special Rapporteur, said he was now convinced that none of the articles of the draft could be the subject of reservations; he therefore proposed that article 13 of the convention on the reduction of future statelessness should be identical with the corresponding article of the draft convention on the elimination of future statelessness.²

7. The CHAIRMAN proposed that the question of reservations should not be dealt with in any article of the draft convention, but should simply be mentioned in the report.

The Chairman's proposal was rejected by 5 votes to 4, with 1 abstention.

8. The CHAIRMAN put to the vote Mr. Córdova's proposal that article 13 should be identical with the corresponding provision of the convention on the elimination of future statelessness.

The proposal was adopted by 7 votes to 3.

VOTING ON EACH DRAFT CONVENTION AS A WHOLE

9. The CHAIRMAN put the draft convention on the Elimination of Future Statelessness to the vote.

The draft convention on the Elimination of Future Statelessness, composed of the various articles adopted at the previous meeting, was adopted as a whole by 7 votes to 1, with 2 abstentions.

10. The CHAIRMAN put the draft Convention on the Reduction of Future Statelessness to the vote.

The draft Convention on the Reduction of Future Statelessness, composed of the various articles adopted

during the previous meeting and at the current meeting, was adopted as a whole by 6 votes to 1, with 3 abstentions.

11. Faris Bey el-KHOURI said he had abstained from both votes, because States which applied the *jus sanguinis* rule would not accept either of the two draft conventions.

12. Mr. ZOUREK said he had voted against both draft conventions for the following reasons. Firstly, they served no useful purpose, because all States considered nationality questions as matters essentially within their domestic jurisdiction. Secondly, the scope of the drafts was very much wider than the question of conflicts of laws and jurisdiction on nationality. Some of their provisions implied that States would waive powers which were inseparable from sovereignty. Thirdly, the two drafts were based on a one-sided view of the nationality link; their exclusive object was to protect the interests of individuals, and they completely neglected the interests of the national community. The whole emphasis was on the rights of the nationals concerned, while no reference was made to those duties which were the counterpart of their rights. Finally, he could not accept the proposition that *jus sanguinis* States were under a duty to grant their nationality to aliens who did not have sufficient ties with the State in whose territory they had been born. Such a proposal was in direct conflict with the concept which *jus sanguinis* countries had of the ties binding the individual to the State.

13. Mr. EDMONDS said he had abstained because he had not attended the meetings at which the drafts in question had been discussed.

Consideration of the draft report of the Commission covering the work of its sixth session

CHAPTER II: NATIONALITY, INCLUDING STATELESSNESS

PART II: PRESENT STATELESSNESS (A/CN.4/L.48/Add.3)

14. The CHAIRMAN invited the Commission to consider chapter II, part two, of the Commission's draft report, which contained the articles on present statelessness and comments (A/CN.4/L.48/Add.3).³

15. Mr. ZOUREK said he could not take part in the discussion, as he had not been present when the Commission had prepared the draft articles.

³ Mimeographed document only. It was incorporated, with modifications, in the Commission's report on its sixth session as chapter II, part two. See volume II of *Yearbook of the International Law Commission, 1954*. The report on the session was also published separately in *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*. The modifications made in the draft of chapter II, part two, are given in the present summary record and in the summary records of the 276th and 280th meetings.

² *Ibid.*, para. 64.

*Paragraphs 1, 2 and 3 [26, 27, 28] **

16. The CHAIRMAN submitted paragraphs 1, 2 and 3 of chapter II, part two, of the draft report.

Paragraphs 1, 2 and 3 were approved.

Paragraph 4 [29]

17. Mr. LAUTERPACHT proposed that the first sentence of paragraph 4 should be replaced by the following: "The Commission considered that it was not feasible to suggest means for the total and immediate elimination of present statelessness."

The proposal was adopted.

18. The CHAIRMAN put paragraph 4, as amended, to the vote.

Paragraph 5 as amended was adopted.

Paragraph 5 [30]

19. The CHAIRMAN put paragraph 5 to the vote.

Paragraph 5 was approved.

Paragraphs 6 and 7 [32 and 33]

20. Mr. CORDOVA, Special Rapporteur, proposed that paragraphs 6 and 7 should be replaced by the two texts given by him in document A/CN.4/L.49.⁴

21. He stressed that paragraph 6 as he now proposed it began with the words: "The Commission welcomed"

* The numbers within brackets refer to the paragraph numbers in the Commission's report on its sixth session.

⁴ The proposed texts read as follows:

"The Commission welcomed the resolution of the Economic and Social Council endorsing the principles underlying the work of the Commission for the elimination or reduction of statelessness (resolution 526 (XVII) B) and noted the decision of the Council to convene a conference of plenipotentiaries to review and adopt a protocol relating to the status of stateless persons by which certain provisions of the Convention relating to the Status of Refugees of 28 July 1951 would become applicable to stateless persons (resolution 526 (XVII) A)."

"The Commission considered the question of the relation of its work on present statelessness to the subject of the forthcoming conference of plenipotentiaries. It welcomed the decision of the Council to convene a conference in order to improve the legal status of stateless persons by international agreement. It considered, on the other hand, that the task of the Commission was to make suggestions for the reduction of present statelessness, which object could only be achieved if stateless persons acquired a nationality, normally that of the country of residence. When the Commission considered its suggestions relating to the reduction of present statelessness, it was aware of the fact that stateless persons who are refugees as defined in the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) receive international protection by the United Nations through the High Commissioner. The suggestions contained in the report should not be interpreted in the sense that the Commission was opposed to the granting of international protection to stateless persons pending their acquisition of a nationality."

instead of: "The Commission was informed". The purpose was to show the satisfaction felt by the Commission at resolution 526 B (XVII) of the Economic and Social Council.

22. The CHAIRMAN pointed out that the second sentence of paragraph 7, as revised by the Special Rapporteur, referred to the Council's decision to convene a conference of plenipotentiaries; that sentence could be deleted in view of the fact that paragraph 6 as revised by the Special Rapporteur would contain a reference to that decision.

23. Mr. LAUTERPACHT proposed that the last sentence of paragraph 7, as revised by the Special Rapporteur, should be replaced by:

"The suggestions contained in the present report are without prejudice to the question of granting international protection to stateless persons."

24. Mr. CORDOVA, Special Rapporteur, suggested that the sentence proposed by Mr. Lauterpacht should specify: "international protection as distinct from diplomatic protection". The international protection which would be ensured by the United Nations would have a wider scope than the diplomatic protection granted by a State.

25. Mr. LIANG, Secretary to the Commission, pointed out that the diplomatic protection to be extended to stateless persons was mentioned for the first time in paragraph 8 of the draft report; preferably, therefore, the last two sentences of Mr. Córdova's revised paragraph 7 should be transferred to the end of paragraph 8.

26. The CHAIRMAN decided that a drafting committee composed of the Rapporteur, the Special Rapporteur and the Secretary to the Commission would redraft paragraphs 6 and 7.⁵

Paragraph 8 [31]

27. Mr. LAUTERPACHT proposed that the words: "for the purpose of reducing statelessness" should be replaced by: "for the purpose of alleviating the condition of statelessness".

The proposal was adopted.

28. Mr. FRANÇOIS, Rapporteur, proposed that the last two sentences of the paragraph should be replaced by the text of article II.⁶

The proposal was adopted.

29. The CHAIRMAN put the paragraph, as amended, to the vote.

*Paragraph 8 as amended was approved.*⁵

⁵ *Vide infra*, 280th meeting, para. 30.

⁶ *Vide infra*, paras. 41 and 42.

Paragraph 9 [35]

30. Mr. LAUTERPACHT proposed that the words "by the majority of" before "the Commission" should be deleted.

It was so agreed.

31. The CHAIRMAN put the paragraph, as amended, to the vote.

Paragraph 9 was approved as amended.

Paragraph 10 [36]

32. Mr. LAUTERPACHT proposed that the words "this problem" at the end of the paragraph should be altered to read: "this urgent problem".

33. The CHAIRMAN put the paragraph, as amended, to the vote.

It was so agreed.

Paragraph 10 was approved as amended.

Paragraph 11 [37]

34. Mr. LAUTERPACHT proposed that the introductory phrase of this paragraph which contained the Commission's suggestions in the form of articles should be redrafted to read:

"The suggestions adopted by the Commission are reproduced below, with some comments."

The proposal was agreed to.

*Article I**Paragraph 1*

35. Mr. LAUTERPACHT proposed the deletion of the words "Party hereto" after "State" in the paragraph in question and in all the corresponding clauses of the draft.

It was so agreed.

Paragraph 2

36. Mr. LAUTERPACHT proposed that in the English version the words "the established order" should be replaced by the words "the public order".

It was so agreed.

37. Faris Bey el-KHOURI proposed that the words "is likely to constitute", which were too vague and might give rise to abuse, should be replaced by the word "constitutes".

It was so agreed.

38. The CHAIRMAN put article I, as amended, to the vote.

Article I was approved as amended.

Comment to article I

39. Mr. LAUTERPACHT proposed that the second paragraph⁷ of the comment should be replaced by the following text:

"However, it considered, subject only to the proviso contained in paragraph 2, that a stateless person should, pending the acquisition of a nationality, be granted certain rights which, for most practical purposes, give him the status of a national."

The proposal was agreed to.

40. The CHAIRMAN put the comment to article I, as amended, to the vote.

The comment to article I was approved as amended.

Article II

41. Mr. LAUTERPACHT proposed that the article should by a small drafting change be amended to read:

"1. A person possessing the status of 'protected person' under article I, paragraph 1, shall be entitled to the rights to which nationals of the protecting States are entitled, with the exception of political rights. He shall be entitled to the diplomatic protection of the protecting State.

"2. The protecting State may impose upon him the same obligations as it imposes upon its nationals."

The proposal was agreed to.

42. The CHAIRMAN, put article II, as amended, to the vote.

Article II was approved as amended.

Comment to article II

43. Mr. LAUTERPACHT and Mr. SALAMANCA suggested that the comment⁸ could be dispensed with.

44. Mr. CORDOVA, Special Rapporteur, thought it was necessary to state that if the protecting State was entitled to impose military service on the protected person, it was, however, in no way compelled to do so.

⁷ The second paragraph read as follows:

"It [the Commission] decided that, subject only to the proviso contained in paragraph 2, a stateless person should, pending the acquisition of a nationality, be treated as a protected person in the country of residence."

⁸ The comment read:

"The members of the Commission were not agreed whether protected persons should be liable to compulsory military service. The Commission felt that the military service obligations of protected persons should be the same as those of the nationals of the country, though the protecting State remained, naturally, free to determine whether, or to what extent, to treat protected persons in the same way as its nationals for the purpose of such obligations."

45. Mr. FRANÇOIS proposed the following draft :

“The obligations envisaged in paragraph 2 include military service”.

The proposal was agreed to.

Article III

46. Mr. LAUTERPACHT proposed that the words “if she makes a declaration to that effect” should be replaced by the words “on her application”, before “his wife”.

The proposal was agreed to.

47. The CHAIRMAN put article III, as amended, to the vote.

Article III was approved as amended.

Comment to article III

48. The CHAIRMAN submitted the comment to article III.

The comment to article III was approved.

Article IV

49. The CHAIRMAN proposed that the word “(stateless)” before “child” should be deleted.

It was so agreed and article IV was approved as amended.

Comment to article IV⁹

50. Mr. PAL pointed out that the only object of the comment to article IV should be to explain why the Commission had decided to treat a protected child more favourably than the child's parents with regard to the acquisition of nationality. The second sentence failed to mention that the draft convention dealt only with present statelessness.

51. Mr. LAUTERPACHT proposed that the second and third sentences should be replaced by the following text :

“The effect of this provision is not only to reduce statelessness but to prevent it from becoming hereditary. Furthermore, through residence and as a consequence of their status as protected persons, the children would, by the time they attain the age of majority, have formed an attachment to the protecting State.”

The proposal was agreed to.

52. The CHAIRMAN put the comment, as amended, to the vote.

⁹ The comment read :

“As the position of a protected person is largely comparable to that of a national, such a person's children should, on attaining the age of majority, acquire the nationality of the country of residence. In this way statelessness will be reduced and would not be hereditary. Furthermore, through residence and as a consequence of their status as protected persons, the children would by then have formed an attachment to the country concerned.”

*The comment to article IV was approved as amended.*¹⁰

Article V

53. The CHAIRMAN proposed that the introductory words: “Every State Party hereto agrees to grant” should be replaced by the words: “The States shall grant”.

The proposal was agreed to.

54. The CHAIRMAN put article V, as amended, to the vote.

Article V was approved as amended.

The meeting rose at 6.40 p.m.

¹⁰ See, however, below, 276th meeting, paras. 1-2.

276th MEETING

Saturday, 24 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. R. CÓRDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, 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).

Consideration of the draft report of the Commission covering the work of its sixth session (*continued*)

CHAPTER II: NATIONALITY, INCLUDING STATELESSNESS

PART II: PRESENT STATELESSNESS (A/CN.4/L.48/Add.3) (*continued*)

Comment to article IV (resumed from the 275th meeting)¹

1. Mr. PAL thought it necessary to state in the comment to the article the reason for treating stateless

¹ *Vide supra*, 275th meeting, paras. 50-52.