LN. V. 6

LEAGUE OF NATIONS

ACTS

OF THE

CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW

Held at The Hague from March 13th to April 12th, 1930

MEETINGS OF THE COMMITTEES

Vol. II

MINUTES OF THE FIRST COMMITTEE

NATIONALITY

GENEVA, 1930

PUBLICATIONS OF THE LEAGUE OF NATIONS

Conference for the Codification of International Law.

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Series of League of Nations Publications

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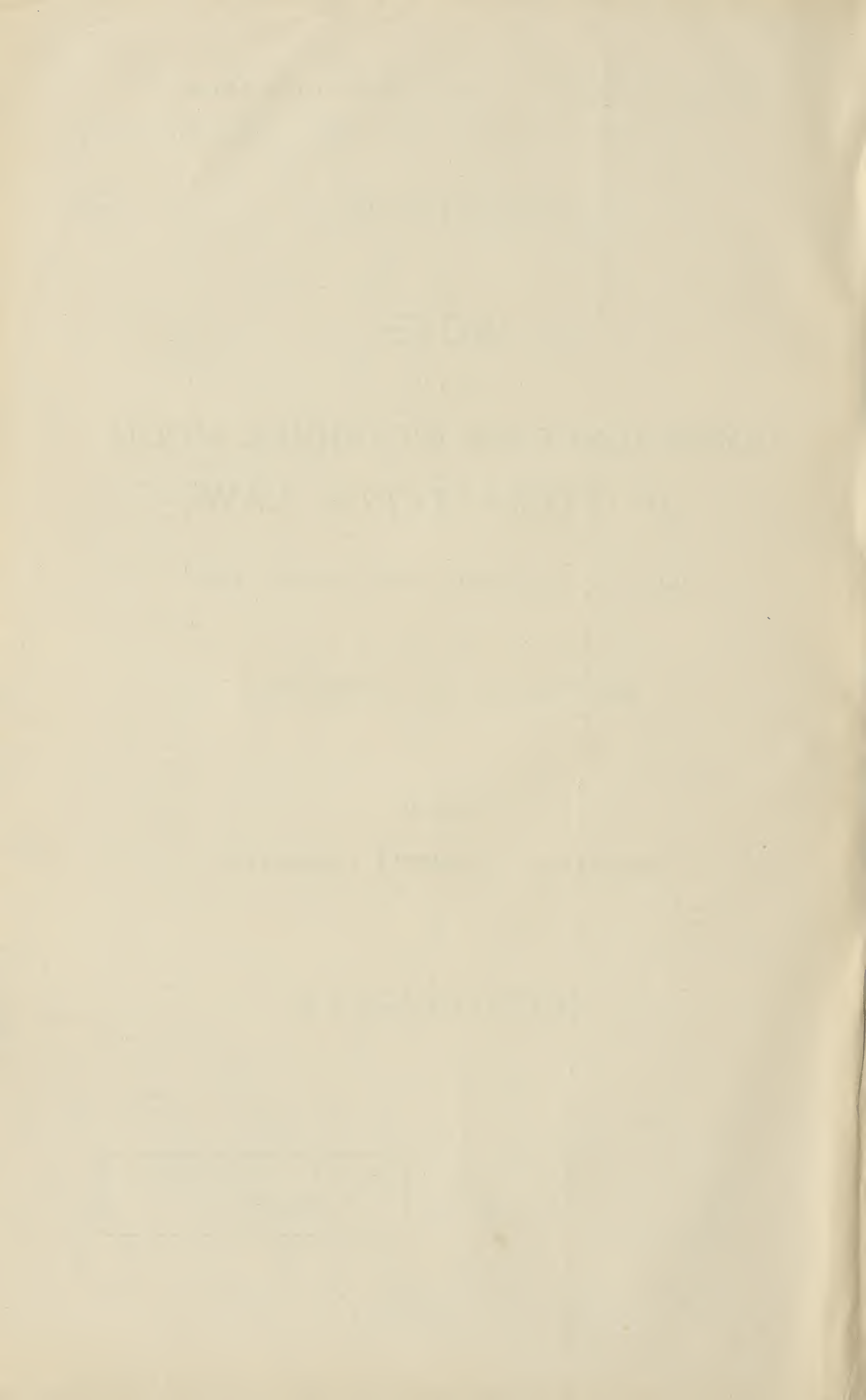

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Vice-Chairman : His Excellency M. CHAO-CHU WU (China).
Rapporteur : His Excellency Dr. J. Gustavo GUERRERO (Salvador).

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Expert :

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Substitute :

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Dr. Václav Joachim (Chief of Section in the Ministry of the Interior, Privat-docent of Public Law, Assistant Director of the Free School of Political Sciences at Prague).

Experts :

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Dr. Vladimir Matějka (First Secretary of the Legation to Her Majesty the Queen of the Netherlands).

Dr. Bohumil Kučera (Secretary of the Legation to Her Majesty the Queen of the Netherlands, Privat-docent of Private and Public International Law).

[1] This list contains only the names of members of delegations who were espressly notified to the Secretariat as having been appointed to attend the meetings of the Committee.

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M. Hugo Hergel (Secretary of the Legation to Her Majesty the Queen of the Netherlands).

Secretary :

M. Schau (Assistant Chief of Department at the Ministry of the Interior).

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ESTONIA

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Substitute :

M. Alexandre Varma (Mag. Jur., Director of Administrative Questions at the Ministry for Foreign Affairs).

FINLAND

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M. Kaarlo Kaira (Barrister-at-Law).

Substitute :

Dr. Onni Talas (Professor at the University of Helsinki, former Minister of Justice, Member of Parliament).

Expert :

M. Bruno Kivikoski (Consul-General at The Hague).

FRANCE

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Expert :

M. Dreyfus (Assistant-Director at the Ministry of Justice).

GERMANY

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Frau Dr. M. E. Lüders (Member of the Reichstag).

Dr. Nöldeke (Counsellor of Legation).

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Delegate :

Mr. O. F. Dowson, O.B.E. (Assistant Legal Adviser to the Home Office).

Substitutes :

Mr. G. S. King, M.C. (Treasury Solicitor's Department).

Miss Ivy Williams, D.C.L., LL.D.

GREECE

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M. Megalos A. Caloyanni (Former Counsellor at the High Court of Appeal of Egypt, former Judge *ad hoc* at the Permanent Court of International Justice).

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M. G. Koustas (Secretary at the Ministry for Foreign Affairs).

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M. Denis de Kovács (Departmental Counsellor at the Ministry of the Interior).

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INDIA

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Expert :

Mr. W. D. Croft (Principal, India Office, London).

IRISH FREE STATE

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Professor Giulio Diena (Royal University of Pavia).

Substitute :

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Staff Colonel Camillo Rossi (Military Attaché at Berlin).

Don Carlo Cao (Barrister-at-Law, Colonial Director).

Marquis Dr. Luigi Mischi (Colonial Director).

Commendatore Dr. Michele Giuliano (Counsellor at the Court of Appeal).

Commendatore Manlio Molfese (Head of Department of Civil Aviation and Air Traffic).

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Delegate :

His Excellency Dr. Harukazu Nagaoka (Ambassador to the President of the German Reich).

Experts :

M. S. Tachi (Professor at the Imperial University of Tokio, Member of the Imperial Academy, Associate of the Institute of International Law).

M. S. Matsumoto (Secretary of Embassy).

LATVIA

Delegate :

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Substitute :

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Substitutes :

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Secretary :

M. N. van Hasselt.

NICARAGUA

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NORWAY

Delegate :

M. Edwin Alten (Member of the Supreme Court).

Expert :

M. L. J. H. Jorstad (Chief of Division at the Ministry for Foreign Affairs).

PERSIA

Delegate :

His Excellency M. A. Khan Sépahbody (Permanent Delegate accredited to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council).

POLAND

Delegate :

M. Szymon Rundstein (Doctor of Law, Legal Adviser at the Ministry for Foreign Affairs).

PORTUGAL

Delegate :

Dr. José Caeiro da Matta (Rector of the University of Lisbon, Professor at the Coimbra and Lisbon Faculties of Law, Vice-President of the Higher Council of Public Education).

Substitute :

Dr. Antonio de Faria (Secretary of Legation at the League of Nations Office in the Ministry for Foreign Affairs).

ROUMANIA

Delegate :

M. Démètre Negulesco (Professor of International Law at the University of Bucharest, Deputy Judge at the Permanent Court of International Justice, Associate of the Institute of International Law).

SALVADOR

Delegate :

His Excellency Dr. J. Gustavo Guerrero (Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic, Permanent Delegate accredited to the League of Nations).

SPAIN

Delegate :

M. Juan Gomez Montejo (Head of Department, Legal Adviser of the Ministry of Justice).

SWEDEN

Delegate :

M. Knut Karl Folke Malmar (Director of the Legal Division at the Ministry for Foreign Affairs).

SWITZERLAND

Delegate :

M. Victor Merz (Federal Judge).

Substitute :

M. A. de Reding-Biberegg (Assistant at the Federal Department for Justice and Police).

TURKEY

Delegate :

His Excellency Nousret Bey (President of the "Conseil d'Etat").

SOUTH AFRICA (UNION OF)

Delegate :

Mr. C. W. H. Lansdown, K.C., B.A., LL.B. (Senior Law Adviser to the Government of the Union of South Africa, Ex-Attorney-General of the Province of the Cape of Good Hope).

UNITED STATES OF AMERICA

Delegate :

Mr. Richard W. Flournoy, Jr. (Assistant-Solicitor, Department of State).

Substitutes :

Mr. Theodore G. Risley (Solicitor, Department of Labour).

Mrs. Ruth B. Shipley (Chief of the Passport Division, Department of State).

Expert :

Miss Emma Wold (Legislative Secretary of the National Women's Party).

URUGUAY

Delegate :

His Excellency Dr. Enrique Buero (Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians and to Her Majesty the Queen of the Netherlands).

YUGOSLAVIA (KINGDOM OF)

Delegates :

His Excellency M. Bochko Christitch (Envoy Extraordinary and Minister Plenipotentiary to Her Majesty the Queen of the Netherlands).

Dr. Ivan V. Soubbotitch (Chief of Section in the Ministry for Foreign Affairs).

Substitute :

Dr. Slavko Stoikovitch (Attaché at the Reparations Commission).

Expert :

Mme. Anna Godyevatz (Graduate-in-Law).

And as Observers :

UNION OF SOVIET SOCIALIST REPUBLICS

His Excellency M. Dmitri Kourski (Ambassador to His Majesty the King of Italy).

M. Vladimir Egoriew (Legal Adviser at the "People's Commissariat" for Foreign Affairs).

First Committee : NATIONALITY

FIRST MEETING

Monday, March 17th, 1930, at 10 a.m.

Chairman : M. POLITIS.

1. OPENING OF THE SESSION.

The Chairman :

Translation : Ladies and Gentlemen, — In opening this first meeting, I wish once again to thank you most sincerely for the honour you have done me in appointing me Chairman of this Committee, and to assure you once more that I shall observe the greatest impartiality, and will devote my every energy to the task of bringing the work of this Committee to a successful conclusion.

Our mission is, indeed, a very delicate one — we have to see whether we can reach a general agreement on a number of questions relating to nationality. Much time and care have been devoted to the preparation of this Conference ; it has been held in order that these questions might form the subject of an international Convention.

The delicacy of our task lies in the fact that nationality, from whatever standpoint it be viewed, is, by nature, essentially a political problem. It is a matter that comes within the exclusive jurisdiction of each State, since, under international law, States are at liberty to settle nationality questions in the manner they consider to be most consonant with their own security and development.

Experience, however, shows that a State which adheres too closely to this rule and insists upon settling its nationality problems without a single thought for the sovereign legislation of other States may, in point of fact, be ill serving its own interests. There is every reason why States should make mutual concessions by means of agreements regulating at least some of the conflicts which arise in practice owing to the diversity of their laws. Such agreements are highly desirable, not merely for the avoidance of diplomatic disputes, but for the elimination of doubt in personal relations between the respective nationals of the various States.

It is as much in the interest of Governments as in the interest of individuals that nationality should be freely accepted and not imposed, and that each person should possess one definite nationality and one only. Such a situation would greatly tend to eliminate cases of dual nationality and statelessness. A fairly large number of agreements of this kind have already been concluded, either in the form of bilateral treaties or, in some cases, plurilateral Conventions. In addition, all the more recent legislation would appear to have these aims in view. A sort of customary law is in process of formation. There are now certain definite currents of opinion with regard to certain questions which, so it seems, might quite well be settled by international agreement without provoking any political storms.

Our task will be to endeavour to gather together, in one general agreement, the various points on which it seems that the hoped-for agreement can now be attained. This Committee, to an even greater extent than the other two Committees of the Conference, will have to work most carefully along the lines of codification indicated in the resolution adopted by the Assembly of the League of Nations on September 27th, 1927. Such codification must not confine itself to the recording of existing rules ; it must also endeavour to adapt these rules, as far as possible, to the present conditions of international life.

If, in this Committee, we merely ask ourselves what the existing rules are in the matter of nationality, our work will be practically useless, for in this matter there are scarcely any generally accepted rules of international law. If, therefore, we are to attain any useful results, we must take into careful account the customary law now crystallising and the currents of opinion to which I have just referred.

The preparatory work of the Conference has been followed in legal circles with the greatest interest. Speculation has been rife as to our Conference's chances of success in each of the three main items of its programme, and it is generally held that in this matter of nationality we have the least likelihood of success : the difficulties in the way of general agreement would seem to be enormous, in view of the essentially political character of the question.

I hope these pessimistic prognostics will prove groundless, and that we shall overcome every obstacle, however formidable, by a sincere effort of good will, and it is my duty to call upon you to make this effort. Personally, I am sure we shall succeed and that our difficulties will be decreased after a free discussion of the subject, which will throw much light on the needs of international life, and will prove that each country must, in its own interests, bring its laws into line with those needs.

Possibly, we shall only be able to agree on a limited number of points. Even such a result will constitute very great progress, since we shall not merely have begun the work of codification, we shall have opened up the pathway towards vaster realisations and greater progress in the future.

2. TELEGRAM OF GOOD WISHES FROM M. ZALESKI, ACTING PRESIDENT OF THE COUNCIL OF THE LEAGUE OF NATIONS.

The Chairman :

Translation : I have now to communicate to you the telegrams which have been exchanged between the Acting President of the Council of the League of Nations and the President of the Conference for the Codification of International Law. M. Zaleski's telegram, dated March 15th, 1930, reads as follows :

> " I beg you to accept my best wishes for the success of the work of the Conference, which I am sure will help to strengthen in all nations the sense of the great value of the international ties created by law and the sentiment of human solidarity. — Zaleski."

M. Heemskerk, President of the Conference, has sent the following reply :

> " I am sure I am expressing the unanimous feeling of the Conference for the Codification of International Law when I thank your Excellency for your good wishes for the success of the Conference. — Heemskerk, *President.* "

3. ELECTION OF A VICE-CHAIRMAN.

M. Negulesco (Roumania) :

Translation : I propose that we elect as Vice-Chairman His Excellency M. Chao-Chu Wu, Envoy Extraordinary and Minister Plenipotentiary at Washington, former Chinese Minister for Foreign Affairs.

(M. Negulesco's proposal was supported by the delegations of the following countries : Brazil, Chile, Cuba, France, Great Britain, Greece, Italy, Japan, Portugal, Salvador and United States of America.)

The Chairman :

Translation : M. Negulesco's proposal is supported by a large number of delegations. According to the rules of procedure, however, I am obliged to put it to the vote.

A vote being taken by a show of hands, M. Chao-Chu Wu *was elected unanimously.*

M. Wu (China) :

I thank you very much for the honour you have paid me. With our learned and able Chairman, M. Politis, on the one hand, and the efficient Secretary on the other, I believe that my task will be comparatively light. Such as it is, you may be assured that I will do my best to perform it and to justify the confidence which you have shown in me.

4. ELECTION OF THE RAPPORTEUR OF THE COMMITTEE :

The Chairman :

Translation : We must appoint the Rapporteur of our Committee now, so that he can have leisure to prepare the delicate and important work which will be entrusted to him.

M. Buero (Uruguay) :

Translation : I propose that we entrust M. Guerrero, first delegate of Salvador, with the delicate task of Rapporteur. It would be quite superfluous here to refer to the distinguished qualities of M. Guerrero or to the particularly effective share he took in the work of the Preparatory Committee for our Conference. For these reasons I consider that the appointment of M. Guerrero would be particularly fortunate. He would give our Committee a faithful rendering of the progress of our work.

(M. Buero's proposal was supported by the delegations of the following countries : Brazil, Chile, China, Czechoslovakia, France, Great Britain, Greece, Irish Free State, Italy, Japan, Mexico, Netherlands, Poland, Portugal, Roumania and the United States of America.)

The Chairman :

Translation : I put to the vote M. Buero's proposal that M. Guerrero be appointed Rapporteur. This proposal is supported by a large number of delegations.

M. Buero's proposal was adopted unanimously.

M. Guerrero (Salvador) :

Translation : May I most sincerely thank my friend M. Buero and all the members of the Committee for the honour which has just been conferred on me? The task which has been entrusted to me is a very difficult one, as I fully realise. I hope, however, that, with the collaboration of all the members of the Committee, I shall be able to prepare a report which will meet your wishes.

5. APPOINTMENT OF A DRAFTING COMMITTEE.

The Chairman :

Translation : I would propose that we proceed to appoint a Drafting Committee,

consisting of three members. This Committee, with the assistance of the Rapporteur, will prepare texts embodying the fundamental decisions taken by the Committee after the discussion of each of the Bases submitted to us for consideration.

I would suggest for this Committee the following three members :

M. Charles Schwagula, delegate of Austria ;
Mr. Dowson, delegate of Great Britain ;
M. de Navailles, delegate of France.

If there is no objection, I shall take it that the Committee accepts this proposal.

The proposal was adopted.

6. QUESTION OF HOLDING A GENERAL DISCUSSION.

The Chairman :

Translation : We have now to take a decision on a question of principle, namely — whether there should be a general discussion before we begin to examine each Basis of Discussion.

I beg to suggest that such a discussion would be useless, because we have before us a carefully prepared document marking out the limits of our work and because such a discussion would merely be a duplication of the general observations which each delegate may wish to make in connection with the various Bases of Discussion. This, however, is a matter for the Committee to decide.

The Committee decided that there should be no general discussion.

7. PUBLICITY OF THE MEETINGS.

The Chairman :

Translation : We have to settle a second preliminary question — namely, that of the publicity of our meetings. As you know, according to the Rules of Procedure adopted by the Conference and in conformity with the general rules of the League of Nations, it has been decided that the meetings of the Committee will not ordinarily be public, and that a change in this method should only be allowed as an exception, following on a special decision of the Committee.

We will begin, therefore, with private meetings and, if at any moment the suggestion is put forward that we should hold a public meeting, that suggestion will be examined by the Committee.

May I, however, suggest that it would be better not to make an exception to the general rule, or to make as few exceptions as possible, for this would detract from the freedom and frankness of our discussions. It is highly desirable that we should be fully enlightened with regard to the very delicate questions we have to examine, and certain delegations might feel some hesitation in conveying the opinion of their Governments if they were not quite sure that all due discretion would be observed.

It was decided that, failing any decision to the contrary, the meetings should be held in private.

8. ORDER OF DISCUSSION.

The Chairman :

Translation : These matters having been disposed of, I propose the following order for our discussions.

We will begin by examining the individual Bases of Discussion in the order in which they appear in the convenient document which the Secretariat has prepared (Annex 1). With one exception, the order is the same as in the Preparatory Documents (document C.73. M.38. 1929.V) which have been circulated to you. It is quite understood that, should the Committee consider it advisable to change that order, it will be quite free to do so. After the discussion of each Basis, the Committee will have to decide whether it wishes to adopt all or part of the Basis. The decision will then be referred to the Drafting Committee, which will endeavour to embody it in the text of the Convention.

When the Committee has concluded its examination of all the Bases of Discussion, it will have laid before it the draft Convention prepared, in the meantime, by the Drafting Committee. It will then have to discuss this draft and decide on its various clauses and on such amendments as may be proposed.

Lastly, the final stage of our work will be the examination and adoption in detail of the report which our Rapporteur will have to submit to the Conference on behalf of the Committee.

The Bureau of the Conference has already reserved its right to consider, at the proper time, what character should be attributed to the reports of the Committees, and more particularly whether the commentaries embodied in those reports are or are not to have binding force.

It is quite understood that, if at any stage of our discussions, either when examining the Bases of Discussion or the text prepared by the Drafting Committee, it is felt that particular points should be referred to one or more sub-committees, the Committee will decide the point either on the motion of the Bureau or at the request of a delegation.

M. da Matta (Portugal) :

Translation : May I first present my respects to you and to all our colleagues on the Committee, and briefly raise a previous question.

The Preparatory Committee for the Conference on the Codification of International Law has laid down fifteen Bases of Discussion, which have been reproduced almost unaltered in the new Bases which we have just received. The subject-matter with which we have to deal was finally settled by that Committee.

It might, however, be more expedient, in the interest of the results we hope to achieve, to begin by discussing which Bases it would be easier — or, at least, less difficult — to accept, leaving the more serious and delicate problems until later. I think that such a method would also be more logical.

We could first discuss the Bases concerning the acquisition of nationality (for instance, Bases Nos. 10 to 21, 7, 8 and 9), and later those concerning loss of nationality : first, the rules for the avoidance of conflicts, and then the rules for their settlement.

Certain Bases would appear to be badly classified; for instance, in the chapter " General Principles ", Basis No. 2, concerning loss of nationality, is not directly connected with the codification of nationality rules, but rather with the consequences of the withdrawal of nationality.

If, as we all sincerely hope, we succeed in concluding a Convention, I am sure that the order of the subjects dealt with in that Convention will not be the same as that of the Bases of Discussion, and it would be better to begin immediately in the order which will be that of the future Convention.

The Chairman :

Translation : I have not clearly understood the order in which the delegate for Portugal proposes that the Bases be discussed.

M. da Matta (Portugal) :

Translation : The order that I propose would be as follows : First, the Bases of Discussion concerning acquisition of nationality (Bases Nos. 10, 11, 12 and 13) ; then the section concerning children born on merchant ships (Bases Nos. 14 and 14*bis*) ; thirdly, Bases Nos. 16, 17, 18 and 19, which deal with the nationality of married women ; fourthly, Bases Nos. 20, 20*bis* and 21, relating to legitimation and adoption ; fifthly, Bases Nos. 7, 8 and 9, which refer to the effect of the naturalisation of the parents on the nationality of children under age ; sixthly, the part concerning loss of nationality by voluntary acquisition of a foreign nationality — *i.e.*, Bases Nos. 6 and 6*bis*; and, lastly, Bases Nos. 3, 4 and 5, concerning double nationality.

M. Alvarez (Chile) :

Translation : In order to facilitate our work, we should first agree on the best possible classification of all questions affecting nationality which we desire to regulate.

I think that the classification might be on the following lines : (1) Acquisition of nationality, Bases Nos. 1, 10, 11, 12, 13, 14 and 14*bis* ; (2) dual nationality and option, Bases Nos. 3, 4 and 15 ; (3) acquisition and loss of nationality by naturalisation, Bases Nos. 6 and 6*bis* ; (4) acquisition and loss of nationality by change of civil status — which may be subdivided into *(a)* naturalisation of parents and children under age (Bases Nos. 7, 8 and 9) ; *(b)* effect of legitimation and adoption (Bases Nos. 20, 20*bis* and 21) ; *(c)* effect of marriage on nationality of women (Bases Nos. 16, 17, 18 and 19) ; (5) recovery of nationality (Basis No. 2) ; (6) conflict of nationalities (Basis No. 5).

Having settled the order in which we are to discuss these Bases, we shall have to take account of the various amendments which will be submitted and shall then have to proceed to draft in the form of articles the Bases adopted.

Lastly, we shall have to deal with certain questions which arise in connection with codification ; by which I mean, not only the questions dealt with in Rules 20 to 25 of the Draft Rules of Procedure, but also certain points which I shall raise at the appropriate time.

In this connection, we must remember that more than one of these questions may, from the standpoint of nationality, have to be settled in a manner different from the solution reached from the standpoint of territorial waters and the responsibility of States.

I therefore propose that we appoint a subcommittee to study the question of the order of the Bases of Discussion and the other questions to which I have just referred. The appointment of such a sub-committee would facilitate our task and largely contribute to the success of our work.

M. Diena (Italy) :

Translation : I quite appreciate the object of the proposal moved by the delegates for Portugal and Chile. I honestly believe, however, that their proposals will not simplify our work but rather complicate it.

We have all studied the text of the proposed Bases of Discussion communicated to us by the Bureau. We have arranged our ideas with a view to the discussion of that text. I fear that, if we completely transform the order of the discussion, our task will be greatly complicated.

I think, therefore, that we should not accept these proposals. I am even sorry to say that I cannot support M. Alvarez's suggestion to appoint a sub-committee. We have already decided to appoint a Drafting Committee, which undoubtedly enjoys our entire confidence. Should that Committee, when it comes to prepare the final text of the Convention, find it desirable to change the order of the articles, it will do so. But, for the moment, there is no need to delay our work.

Lastly, I suggest that we should begin the discussion on the basis of the proposals made by the Bureau. They are sufficiently logical to furnish us with a satisfactory groundwork for our discussions.

M. Caloyanni (Greece) :

Translation : I desire to pay a tribute to the work carried out by the Preparatory Committee. I think that the order in which it has arranged the Bases of Discussion provides us with a very useful guide. The proposals which have just been made may be of value later — for instance, at the end of our work ; but I entirely agree with the Italian delegate's

views. From a practical standpoint, it is better that we should continue to work on the suggested Bases of Discussion in the order in which they are submitted. The form in which the Bases of Discussion are proposed show how much care the Preparatory Committee took to group all kindred questions together as far as possible. As the Italian delegate very aptly remarked, we have arranged our ideas in view of a discussion based on that text. If we now change the order of the Bases of Discussion, we shall have to arrange our ideas all over again. It is not merely a matter of personal convenience; the whole work of the Committee very largely depends on this point.

When we have considered all these questions in the order in which they are submitted, we may perhaps be able to give satisfaction to the delegates of Chile and Portugal. We shall, however, only be able to do so when we ourselves have co-ordinated, as clearly as is desirable, all the questions which we are going to discuss, taking into account all the amendments which may be moved. We shall then be able to take a decision based on a full knowledge of the situation.

M. de Navailles (France):

Translation: I think that we might take the questions in the order in which they have been arranged by the Preparatory Committee. It is difficult, at the present juncture, to decide what is the best place for any one article. Indeed, as our discussion proceeds, we shall probably see a certain connection between various articles, which is not now apparent. As the delegate for Greece has just observed, towards the end of our work we shall be in a position to make a classification of this kind. We shall by then be in a position to bring our work as near perfection as possible.

I think, moreover, that this question of order is a secondary one. The really essential points are the provisions that we are going to adopt. It would be better to begin by the main body of our work, and later we will endeavour to perfect it.

Mr. Lansdown (South Africa):

Whilst I greatly appreciate the desire of the first two speakers to facilitate our discussion, I strongly support the attitude of the delegates of Italy and Greece, and I think it would be the simplest and the best course to adhere to the order set out in the Committee's report.

There is considerable reason for maintaining that order, but I would just like to suggest that, if any delegate feels strongly that the consideration of any particular Basis should be deferred pending the decision regarding another one, he should make a special proposal to that effect and let the Committee decide then whether it will defer the consideration of the Basis in question until a decision has been taken on the other Bases.

M. Rundstein (Poland):

Translation: The order of the Bases of Discussion may not be quite logical, but nothing in this world is perfect. I cannot help thinking that this is not the proper time to undertake a revision; such a course would complicate our task, instead of simplifying it. When the discussion has been terminated, it will be time to undertake this work of classification. I therefore support the observations of the delegates for Italy and Greece.

Mourad Sid Ahmed Bey (Egypt):

Translation: I am of opinion that the question of classification does not arise at the present moment. Our essential task is to agree on points of substance. The Drafting Committee is specially qualified to put the articles in the final order which would appear to be most desirable.

M. Wu (China):

I agree with the delegates for Portugal and Chile that certain improvements can be made in the order of procedure; but, at the same time, I think that the important thing is to get on with the discussion of the substance of the question for which we are here. If the arrangement proposed by the Preparatory Committee is considered to be defective, we already have two new proposals — one by the Portuguese delegate and the other by the Chilian delegate. These, although in substance very much the same, contain differences. Similarly, I suppose that other delegates who want to make an improvement in the present arrangement can make other proposals to vary the arrangement of the items, so that we shall have an innumerable number of what mathematicians call permutations and combinations.

I think the proposal made by the delegate for South Africa is the best compromise — namely, to follow in our discussion the arrangement proposed by the Committee; and then, if any delegate should desire at any particular point to defer a Basis of Discussion, let him make a definite and concrete proposal to that effect. The Committee would decide on each proposal so offered.

M. da Matta (Portugal):

Translation: The fundamental idea of my proposal was, in point of fact, to discover the best means for increasing the utility of our work. Though I maintain my point of view, I willingly accept the suggestion of the Greek delegate — that we should reserve the final determination of the order of the Bases until we have discussed them.

M. Alvarez (Chile):

Translation: I will reply very briefly to the observations which have been made concerning my proposal.

I do not quite see how the Committee's work will be in any way hampered by the

fact that it decides to examine the order of the Bases. On the contrary, I think that, if we agreed forthwith on a carefully considered plan of action, such action could only facilitate our work—indeed, that is the only object we could have in view.

I accept the suggestion that it would be better to hold over this discussion until the end, since everyone seems to be agreed on this course. I think, nevertheless, that it would have been preferable to establish the order of the Bases immediately, for it will be difficult, after we have discussed them in their present order, for us to alter that order. The object of my proposal was to avoid all the regrouping which will probably be found necessary later on. I do not, however, insist. My main point is that the order of the Bases will have to be changed either before or after their discussion.

The Chairman :

Translation : I think that the situation is now perfectly clear. I am very glad to note that the Portuguese and Chilian delegates agree to withdraw their proposals, in view of the observations which have been made. I am sure that their conciliatory spirit is a happy augury for the success of our work.

I take it, consequently, thaty ou agree that we examine the Bases of Discussion in the order indicated in document Conf. C.D.I. (Committee : Nationality/1), (See Annex I) subject to the two following observations :

The order in which we discuss the Bases now will not affect their final order. The Drafting Committee will have to decide their logical sequence in the Convention. The Drafting Committee will take the final decision on this point.

The second observation is that made by the South African and Chinese delegates — namely, that, if in the course of the discussion any delegation considers that some point brought under discussion ought to be deferred, or that another point should be discussed first, that delegation will be entitled to put forward a proposal to that effect. The Committee itself will then decide for or against the proposal.

Before we discuss the Bases, I think it will be useful to draw your attention to two points. The first is set out in the second report of the Committee of Five. In many cases, the Bases of Discussion suggest certain rules with which the various States would undertake to bring their legislation into line. I think that in each case of this kind we should, after considering the Basis and before referring that Basis to the Drafting Committee for decision, carefully establish whether the undertaking would have immediate and full effect or would only apply to future legislation, without affecting existing laws. As the Committee of Five also says, however, in so far as the decisions at which we arrive involve a change in existing laws regarding the acquisition or loss of nationality, we shall have to state clearly that these changes only apply to the future, and will not affect the various individual situations created prior to their adoption.

The second point is merely to remind you of the recommendation which has already been made by the Conference concerning amendments. Certain delegations have been good enough to take this recommendation to heart, and have submitted to the Secretariat the texts of the amendments or suggestions they propose to put forward in respect of all or some of the Bases of Discussion. I wish to thank these delegations, and would, at the same time, earnestly beg all other delegations who have proposals to make to follow this example.

For the sake of speed and clearness and the success of our work, it is important that amendments and suggestions with regard to the various Bases should be handed in sufficiently early to allow of their being typed, translated and distributed not later than the day before that on which the Basis in question will be discussed. Naturally, this recommendation only applies as far as amendments to Bases of Discussion are concerned. I shall venture to remind you of this point later in connection with any amendments which may be put forward to the texts prepared by the Drafting Committee. These amendments cannot be produced until the delegations have had time to examine the Committee's texts; but when these texts come up for discussion we must have all the amendments before us as well — at any rate, all the more important amendments, since, of course, mere drafting changes may be submitted at the last moment as the texts are discussed.

As a final recommendation, may I ask that, in the forthcoming discussion, the observations which delegates may feel called upon to make should be as brief as possible ? We must not lose sight of the fact that our work is essentially technical in character, that we are all experts in international law and that, consequently, we do not, in order to make our meaning clear, need to make long speeches or enter into lengthy explanations. The general rules of procedure to which our own rules refer provide for the possibility of limiting the length of speeches, by special decisions. I am sure it will not be necessary to apply this rule. We are aware of our responsibilities and are anxious to fulfil our mission as expeditiously as possible.

I trust you will pardon me these observations ; they were doubtless unnecessary, but I thought I ought to emphasise the fact that difficult work like ours cannot be brought to a successful conclusion unless we make up our minds to follow strict methods and submit to rigorous discipline.

9. MINUTES OF THE MEETINGS.

M. Kosters (Netherlands):

Translation: Before we enter into the substance of our work, I wish to ask a question. Rule 11 of our Rules of Procedure lays down that the Minutes of the meetings of the Committee shall, as a rule, be concise. In view of the technical nature of our discussions, I think it might be well to have a full report of the speeches delivered here. This is necessary, because acoustic conditions are rather bad and we have considerable difficulty in hearing and understanding what our colleagues say. Another reason is that some delegations consist of only one delegate, who naturally cannot be present simultaneously in two or three Committees. Moreover, I think it would be useful to have fairly complete records in order that we may take up the thread of the discussion if we have been obliged to be absent. I would therefore propose that the Secretariat should be asked to provide us with Minutes which will be as complete as possible.

M. Kosters' proposal was adopted.

10. GENERAL PRINCIPLES: BASIS OF DISCUSSION No. 1.

The Chairman:

Translation: We can now begin to discuss the Bases themselves. We will begin with Basis No. 1 (Annex I).

We will utilise the time still at our disposal this morning, although we shall not be able to follow strictly the method I have indicated. Several amendments and suggestions in connection with Basis No. 1 have already been deposited, but there has not been time to have them typed, translated and distributed. That will be done this afternoon. Notwithstanding this, I think we might commence our discussion of the Basis No. 1. I will, therefore, call upon M. Nagaoka.

M. Nagaoka (Japan):

Translation: In principle, questions of nationality are matters which come within the sovereign jurisdiction of each State. That is an accepted fact nowadays. If, however, States were to exercise this right absolutely, complications would arise that would seriously endanger international peace. The right, therefore, must be confined within certain limits, with a view to diminishing conflict and strengthening international solidarity. That is the essential aim we have in view.

Each country, taking into account the present state of its population or any other circumstances peculiar to itself, will be free to facilitate the acquisition or loss of nationality. But such freedom must be confined within reasonable limits, in order to eliminate as far as possible cases of statelessness and double nationality. This Conference will, we hope, draw up a definite Convention embodying an international agreement on this subject — an agreement which is indispensable to world peace.

That, however, should not be the last resting-place of our ideal. If, for instance, it were possible in every country to do away — as far as the acquisition or loss of nationality is concerned — with all provisions that tend to discriminate between various races and religions that would certainly strengthen international goodwill. When I say this, of course, I am fully aware that our work is only a first step, and that all we can do at this Conference is to regulate the conflict of laws and eliminate cases of statelessness and double nationality.

For several years now, the Japanese Government has been devoting special attention to questions of nationality with a view to reaching a rational solution. It has promulgated Law No. 66 of 1899, which has been twice amended — by Law No. 27 of 1916 and by Law No. 19 of 1924. The fundamental principle of Japanese law is that of the *jus sanguinis.* With a view, however, to avoiding the disadvantages of statelessness, Japanese law takes the place of birth into account, to a certain extent, in the determination of nationality, particularly when the parents of the child are unknown, or have no nationality, or no known nationality. It has also promulgated a number of provisions to strengthen the rule that a person should not possess two nationalities simultaneously: that he should be the national of only one State, and should enjoy political rights in one State only.

This body of rules concerning the acquisition or loss of Japanese nationality clearly shows that Japanese legislators have all along been careful to conform to the principles which, I think, it is the object of this Conference to confirm. If, in this Conference, the various States of the world find that they can, by agreement, eliminate the conflict of laws on this subject, I beg to state here and now that my Government will be prepared to introduce into its nationality law such changes as may be deemed necessary. We have been entrusted with an important and difficult mission in the cause of order and peace. Given mutual goodwill and comprehension, I am sure that we shall be able to discover satisfactory solutions acceptable to all.

M. Kosters (Netherlands):

Translation: Basis No. 1 lays down that questions as to nationality are within the sovereign authority of each State, but it is understood that each State must take into account certain generally recognised principles which are thereinafter enunciated.

I wish to raise the following point: Is it desirable to lay down these two principles formally in the proposed Conventions? I think not. There is no need to state expressly in an international Convention that the question of nationality is within the sovereign authority of each State. The nationals of a State, together with its territory, constitute the State itself. It is therefore obvious that the State must be free to make rules for the acquisition

and loss of its nationality. Custom accords this right to every State, provided the State makes proper use of it, since it is also a principle of customary law that rights may not be abused.

These are self-evident principles which need not be enunciated in an international Convention, because they are universally recognised. What would be really helpful — though I think it would not be possible — would be to indicate clearly what cases constitute an abuse of this right and in what cases the State is no longer free to decide in accordance with its own inclination. I refer to the doubtful cases which call for solution and which the Basis leaves entirely unsolved.

Is collective naturalisation permissible, apart from the transfer of territory? Is naturalisation based on residence at the time or simply continuous residence for a certain length of time permissible? These are points which should be solved, but the Basis throws no light on the subject. It merely enunciates, vaguely and indefinitely, the present state of international law. For instance, reference is made, in connection with the acquisition or loss of nationality, to the principle "transfer of territory". Does this mean place of birth or place of domicile? Are persons entitled to refuse the new nationality and, if so, to what extent and under what conditions? None of these questions are even touched upon.

Further, I would draw your attention to a particular point which is of interest to the Netherlands. With regard to the loss of nationality, the Basis says: ". . . *de facto* attachment to another country accompanied by failure to comply with provisions governing the retention of the nationality". The law of the Netherlands Indies lays down that persons who are not natives lose Netherlands nationality when they omit to register themselves at the Consulate after merely residing for three months in a foreign country. In this case, it is rather failure to register than attachment to another country which involves the loss of nationality. If this text is maintained, the Netherlands must reserve all its rights with regard to its colonies.

There is yet another point to which I must draw attention : questions as to the acquisition or loss by an individual of a particular nationality. These questions are to be decided in accordance with the law of the State whose nationality is claimed or disputed. These seem to me to be general instructions given both to national authorities and to international tribunals. Are these instructions correct in every respect, and would they be of great use to the persons concerned?

There are one or two final observations I have to make. Is not the rule too general? It refers to all questions relating to the acquisition or loss of nationality. All these questions are to be decided in accordance with the law of the State whose nationality is claimed. Suppose a question of proof arises in the national courts. In many countries — and I believe in all Anglo-Saxon countries — the principle applied in respect of evidence in court is that of the *lex fori*. The rule contained in this Basis would make it impossible for national courts to apply, in matters of evidence regarding nationality, the law of those courts — in other words, the *lex fori*. It would be impossible to agree to that.

Let us now take the case of a dispute coming within the jurisdiction of an international tribunal. In general, no special rule is applied in respect of proof. The principle of freedom is followed; the method adopted is that the judge can found his decision on whatever basis he deems most equitable. There, again, the rule contained in the Basis would not be satisfactory.

But, apart from all question of proof, it must be seen that the rule laid down is not of great utility. Very frequently, national courts will not take into account the claims of individuals concerning their nationality, so that they will not apply the law of the State whose nationality is claimed. These courts will apply their own law in dealing with nationality questions and will do so in most cases as of right. They will, above all, endeavour to ascertain whether the individual is a national of the State, and for that they need only refer to the *lex fori*.

Nor is the rule laid down in this Basis of great utility in international tribunals; since, after these tribunals have noted that the claims of the two parties are equally well founded, the person in question being entitled to the nationality of both, the difficulties of the international judges will begin. What is the international tribunal to do under such circumstances? Should it, following the scientific method of private international law, consider all the facts and all the circumstances of the case and the various ties which unite the individual to each country, finally according precedence to the law of the State that seems to have the best claim?

Or should the tribunal argue thus: At international law there is no precedence of one nationality over another; consequently, the States in question possess absolutely equal rights? Failing rules of international law in support of the request, the Court is bound to declare that it has no jurisdiction in the matter, so that the present *de facto* situation will remain unchanged.

These are very serious difficulties for which the Basis provides no solution. The rule to the effect that the law applicable is that of the State whose nationality is claimed is of no use at all.

For these reasons, I conclude that it would be preferable not to insert the provisions of the first Basis in the Convention we intend to conclude. I am not, however, making a proposal; I am simply expressing an opinion for the consideration of the Committee.

The continuation of the discussion was adjourned to the next meeting.

The Committee rose at 12.30 p.m.

SECOND MEETING

Tuesday, March 18th, 1930, at 10 a.m.

Chairman : M. POLITIS.

11. GENERAL PRINCIPLES : BASIS OF DISCUSSION No. 1 (Continuation).

M. da Matta (Portugal) :

Translation : Yesterday, the delegate for the Netherlands expressed the view that it was neither necessary nor desirable to insert the provisions of Basis No. 1 in the future Convention. I regret that I am unable to endorse his opinion. I think, on the contrary, that, at this stage in the codification of international law, it is highly desirable to lay down the principle that questions of nationality are within the sovereign authority of each State. The general framework of the rules for the whole future Convention ought to be established forthwith. That is the first step. The principles ought to be enunciated clearly and without ambiguity.

In the draft amendment I had the honour to submit, I proposed that the first paragraph of Basis No. 1 should be worded as follows :

> " Questions as to its nationality are *as a principle* within the sovereign authority of each State."

Failing any provision to the contrary in a special treaty, States should be entirely free to regulate the acquisition, loss and recovery of nationality. We may take it, I think, that in this connection there are two general legal principles by which States should be guided : the principle that every State is free to adopt any laws it likes regarding the acquisition of its nationality, and the principle of the absolute imperativeness of these laws. These laws are political ones and, as such, they have the force of public international law.

But the undoubted right of a State to legislate in the matter of nationality is not unlimited. Every State must respect certain rules deriving not from the *comitas gentium* — a non-juridical criterion based solely on dictates of policy — but on legal principles which constitute at the present time the real rules of international law.

In order, therefore, to express this idea of limitation, which is a consequence of the obligations of each State towards other States, I have proposed that we should add to this Basis the words " as a principle ". Since we are not dealing with an absolute rule and the time has come for making mutual concessions, I think this amendment is necessary. As a matter of fact, Bases Nos. 2, 4 and 5 confirm this limitation. These Bases, indeed, affirm the sovereignty of States, but also quite definitely limit that authority.

M. Diena (Italy) :

Translation : Since the opening of this Conference, there have been various expressions of thanks and admiration addressed to the lawyers who prepared these Bases of Discussion. I fully concur ; but it would be unjust if we failed to mention their predecessors, including M. Rundstein, author of the admirable report which formed the basis of all subsequent work. I am sure that the whole Committee will wish to express its gratitude to him.

I do not remember the exact words used by our Chairman concerning the brevity of our speeches, but I think his general idea was that, whatever our private tastes in Latin literature, we should all take Tacitus rather than Cicero as our model. I will therefore submit very briefly the following considerations regarding Basis No. 1.

I note with great satisfaction that I am in agreement this morning with the Portuguese delegate, who has submitted a draft amendment to the first paragraph of Basis No. 1. I think this paragraph should be amplified in order to make it quite clear that existing international Conventions should, if applicable, be taken into account.

I would crave your pardon for stating what must seem to be a self-evident truth, but we must remember that, in this very room in which we have been privileged to meet, the Permanent Court of International Justice, in a case which created no little stir and to which the parties were two great European nations, gave a decision very similar to the amendment proposed to the first paragraph of Basis No. 1. In the light of paragraph 8 of Article 15 of the League Covenant, the question is obviously an important one which ought not to be overlooked. Everyone will realise the importance of the proposed addition.

The second sentence of Basis of Discussion No. 1 reads :

> " Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed."

I do not think that the wording of this phrase is very satisfactory. Are disputes always so simple? Will there always be only one nationality claimed or disputed? I do not think so. The rules we adopt will obviously be as applicable in the domain of public law as in that of private law, and, when once the Convention has come into force in the contracting States in conformity with their municipal law, it must be applied by the administrative authorities as well as by the judicial authorities.

To illustrate my point, I will take a case in the domain of private law. Supposing a dispute arises in connection with an inheritance. It is in the interest of some of the heirs to maintain that the deceased possessed some given nationality while the interests of others lead them to assert that the deceased was the national of another State. In these circumstances, would the rule "that the law of the State whose nationality is claimed or disputed" must be applied be adequate? Clearly not, because there would be two nationalities in question.

If we maintain the above provision we might be adopting a rule which would perhaps be contradictory to those contained in Bases Nos. 3 and 5. This could only complicate matters, cause difficulty and lead to results absolutely opposed to the ideal of simplification we have in view. In these circumstances, the Italian delegation proposes purely and simply the omission of the sentence in question. If my proposal is adopted, the Drafting Committee will note this decision in preparing its final text.

The Italian delegation is able to accept the last sentence of the first paragraph of Basis of Discussion No. 1 — namely: "These principles are, more particularly . . ." We are entirely in favour of the qualification "more particularly", since it shows that the principles enacted are not limitative, but are given as examples. This is tantamount to saying that there exist other means of acquiring and losing nationality. Consequently, the Italian delegation has no reason to oppose the adoption of this text, seeing that it is not limitative and leaves the door open for the adoption of solutions other than those mentioned.

M. Kosters has criticised this standpoint. I cannot share his views. It has been said of certain constitutions which have lasted for centuries that they have endured more by reason of their defects than of their qualities, for the defects (in particular, lack of precision) have endowed them with greater elasticity. I think the same may be said of the text now before us.

I therefore strongly urge the Committee to add to the first sentence the words: "apart from the rules resulting from conventions", or some similar phrase to be selected by the Drafting Committee; and to omit the sentence:

"Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed."

M. Wu (China):

As regards the Basis of Discussion with which we are dealing this morning, there are two points to which, on behalf of the Chinese delegation, I should like to call the attention of the Committee. These two points do not constitute what I might call an amendment to this Basis of Discussion, yet they are relevant to it.

Basis of Discussion No. 1 starts with the proposal that nationality laws are within the sovereignty of each State. As regards that statement, there can be no dispute. At the same time, it is suggested that this sovereignty is not unlimited; at least, it is said, very diplomatically, that each State "must nevertheless take account of certain principles generally recognised."

I should like, in the first place, to say, on behalf of the Chinese delegation, that we believe it is extremely desirable that, in those cases, where the nationality legislation of the different countries still embodies provisions which are discriminatory as regards certain nationalities, races or religions, those provisions should be removed as soon as possible. They have, in the past, been fruitful causes of conflict between races and nations, and, for the future peace and comity of nations, it is very desirable that they should be suppressed.

The second point is this: certain nationalities, especially the nationalities with whose citizens we have to do in China, have gone to the other extreme, in that their nationalisation laws are extremely simple and easy, with the result that it has become a matter of extreme concern to the Chinese Government that certain Chinese nationals have taken advantage of these easy nationalisation laws to become foreign nationals. Of course, if a Chinese national wishes to become a foreign national, there is a very simple procedure by which he may be denationalised according to our laws.

The case, however, is complicated by the fact of the existence of extra-territorial privileges enjoyed by certain nationals in China to-day: privileges which, we trust, will be withdrawn soon. As long, however, as they have existed, it has been a temptation for certain unscrupulous Chinese to become the nationals of foreign countries in order to obtain the cloak and cover of these extra-territorial privileges.

These two points are brought forward to-day, not as a resolution, but as desiderata on behalf of the Chinese delegation.

Mr. Dowson (Great Britain):

In submitting certain observations on behalf of the British delegation, my desire is to

make clear the essential objects, as we understand them, of Basis No. 1. I cannot help feeling that there has been some misconception as to those objects on the part of those who originally drew up this Basis.

Let me refer for one moment to the question originally addressed by the Preparatory Committee to the Governments under Point 1 (see "Brown Book", document C.73.M.38. 1929.V, page 13). It will be seen that it is assumed in the first place that questions of nationality are, in principle, matters within the sovereign authority of each State, and, secondly, that, in principle, a State must recognise the right of every other State to enact such legislation as the latter considers proper with regard to the acquisition and loss of its nationality.

In the second paragraph it is asked whether there are any limits to the application of these two principles. I wish to emphasise these words: Is there no limit to the right of the State to legislate in this matter? Is a State bound in every case to recognise the effect of the law of the other State? It seems to me that this was the real point which the learned jurists who prepared this Basis had in mind, and in framing it they were, I think, endeavouring to sum up the views, or the majority of the views, expressed by the Governments on those questions.

The answers given by some of the Governments suggest that, in their view, there can be no limitation to the sovereign power of the State to legislate in matters of nationality. The replies made by other Governments suggest that some limitation is desirable, and that an agreement should be reached as to the extent of such limitation. Other Governments, again, suggest that limitations already exist by virtue of international law. Having regard to these different views, it seems to my delegation to be highly desirable, before we enter into details, that the principles which underlie the Basis should be plainly stated, and should be examined in order to see whether a general agreement can be reached.

I would enunciate these principles in the following way: first, to declare that, in principle, every State is free to determine for itself, and by its own law, who are its nationals; secondly, to indicate the extent to which every State is, under international law, bound to recognise the nationality law of other States.

In the original text of the Basis, some limitation to this obligation is suggested, though, I must confess, not very clearly. As the Chinese delegate has said, it is stated rather diplomatically. It is stated in the sentenee which reads:

> "The legislation of each State must nevertheless take account of the principles generally recognised by States."

As I construe that sentence, it means that States are under an obligation to recognise nationality laws which do not involve any material departure from recognised principles. In this way, the Basis further suggests that States are not bound to recognise legislation which does depart materially from those principles. The object of specifying certain recognised principles in this Basis is thus to provide a criterion by which the propriety of legislation may be judged.

It has, however, been intimated to me in several quarters since I came to this Conference that the acceptance of this Basis as drafted, or indeed of any text in substantially the same terms, would imply an obligation on all States to include in their municipal law all the recognised principles, including a provision, for example, under which nationality may be acquired or lost by marriage, in certain circumstances. That is a controversial and difficult question which we shall have to discuss later.

It would be most unfortunate if the impression grew up that, in discussing this Basis, we were in any way expressing any opinion whatever on the merits of the principle that marriage shall affect the nationality of a woman. That point will come later. Since I came to this Conference, a number of people have said to me that the reference in this Basis to marriage with a national is most unfortunate, as it seems to suggest that it is not only proper for a State to have such a law, but that it must have such a law. My desire at the moment is entirely to remove that misconception. I, personally, am quite clear that no such intention underlies the Basis, and if there is any such idea the text certainly ought to be amended in such a way as to remove the misapprehension.

For this reason, the British delegation has put forward the amended text for the first paragraph which you have before you and which reads as follows:

> "Each State may determine by its law what persons are its nationals, and recognition must be accorded by other States to the law of any State as to the acquisition or loss of its nationality, provided that such law does not involve any material, departure from generally recognised principles."

I venture to suggest that, if that text were adopted, there could be no possible ground for suggesting that it implies any obligation of the kind I have just suggested. All that it does imply is that, if the nationality law of any State includes such a provision, every other State is bound to afford it recognition. There is, of course, the complementary implication that, if the nationality law of any State contains a provision which materially

departs from the principles set out in the Basis, whatever those principles may ultimately be decided to be, other States are under no obligation to recognise such a law.

I suggest, therefore, that we should make up our minds as to the true scope of the Basis before we embark on any further discussion, and that Basis No. 1 should be redrafted on the lines of the British amendment.

I would add the suggestion, if I may, that, if what I have said as to the principles underlying the Basis meets with general approval, it may be desirable to set up a small sub-committee to consider what principles are to be included in the list of those which are generally recognised as being in existence.

M. de Berczelly (Hungary) :

Translation : Yesterday we decided not to begin a general discussion, but to consider the general problems as they arose in the course of our examination of the Bases of Discussion.

In examining Basis No. 1, I notice that the general question already arises whether we are preparing the text of a Convention or the text of a declaration. I therefore ask our Chairman whether it would not be desirable to decide this question of principle immediately (since the point must be settled sooner or later) ; or does he think that we should not yet deal with this subject ? In the latter case, I will merely offer observations with regard to the text of Basis No. 1.

The Chairman :

Translation : I would request all speakers merely to explain their views with regard to Basis No. 1. If, however, they are obliged in so doing to touch lightly upon the other Bases, that is a case in which due discretion must be exercised.

M. de Berczelly (Hungary) :

Translation : I think we should first of all decide whether we are going to submit a declaration or a Convention. If it is our desire to draw up a Convention, many points can be considered outside the Bases of Discussion. The question I raise affects, to a certain extent, all the Bases.

I quite agree with our Chairman that, at this Conference, it should not be possible for any State or group of States to prevent the great majority of States represented here from signing a diplomatic instrument embodying the points on which the majority are agreed. In my opinion, unanimity, however desirable, is not indispensable for the signature and subsequent ratification by the States which accept it, a diplomatic instrument of practical value. We are bound to adopt this view if we wish to make progress and obtain practical results, but the second question arises : What instrument are we to sign ? A multilateral — that is to say, a collective — Convention, or a declaration in which a number of States recognise certain rules of international law as constituting existing law ?

The possibility of such a declaration is based on the idea that we have assumed the task of codifying already existing international law, and that, therefore, we must make a distinction between an instrument embodying the results of such work and an instrument embodying contractual agreements as between a group of States. But, in my opinion, there are two considerations that militate against this argument.

The first is that the result of our work will certainly not be the mere codification of generally recognised rules of international law. We will also have to choose between different solutions that very possibly are admitted to an equal extent, or we may have to create new rules for cases which are fairly frequent, but which are not yet settled by existing international law. Moreover, it would, in many cases, be very difficult to arrive at an exact delimitation between existing international law and newly created international law.

The second consideration militating against the form of a declaration is this : not all existing States are represented at this Conference, and we even have in view the possibility, if necessary, of registering the results admitted by the great majority of States, though the majority cannot impose its opinions on other States which take a different view.

For these reasons, I think that we should not contemplate the signature of any declaration, or have in view any other outcome than the conclusion of a multilateral Convention.

I think it is surely an exaggeration to suggest that, by inserting in the Convention rules on international law that are already recognised, we might be weakening those rules. Any such danger, however, could certainly be avoided by careful wording. International law has, to a great extent, been formed by Conventions, and we should be carrying out the work of codification if we succeeded in persuading the greatest possible number of States to agree to a Convention settling the greatest possible number of problems arising in regard to nationality. I am therefore in favour of a collective Convention and am of opinion that we should examine the various Bases of Discussion from this point of view.

As an argument in favour of the proposal which the Hungarian delegation submitted in connection with Basis of Discussion No. 1, I would remind the Committee that the laws of a great number of States admit the acquisition and loss of nationality by legitimation. If, therefore, in Basis No. 1 as at present proposed, an illustrative list is given of the principles generally recognised by States in this connection, it would be proper, we think, to add in the second paragraph, after the words "parents' nationality", the words "or in case of legitimation, the nationality of the father",

and in the third paragraph, after the words "voluntary acquisition of a foreign nationality", the following words: "Acquisition of a foreign nationality by legitimation."

The Chairman:

Translation: I would most earnestly beg all delegations to be as concise as possible in giving their explanations. An hour has already elapsed and only five delegates have spoken, while eleven more have yet to address the Committee. If we proceed at this rate, we shall require not several weeks, but several months, to complete our task, and that would mean the failure of the Conference.

I would also request each speaker to endeavour to adhere strictly to the point under consideration. I refrained from interrupting the Hungarian delegate, but if such digressions occur again, I shall be obliged to do so. The question whether the decision, if any be reached, will be taken in connection with this or that Basis, or assume this or that form, is a matter which it is useless to discuss at present. At the plenary meeting it was suggested that the Bureau should reserve the right to consider this point. The Bureau will make suggestions to the Committee when the proper time comes.

M. Alvarez (Chile):

Translation: The Chilean delegation accepts the principle contained in Basis No. 1, provided some other wording can be found. Several delegations, in particular the Italian delegation, have put forward some very sound observations which should be taken into account in the final drafting of this Basis.

I should like to draw attention to another point. The first paragraph of the Basis contains the following words:

> "The legislation of each State must nevertheless take account of the principles generally recognised by States. These principles are, more particularly. . ."

As regards the acquisition of nationality, one principle mentioned is marriage with a national, and, as regards the loss of nationality, marriage with a foreigner. It cannot, however, be said that marriage is a generally recognised principle for the acquisition or loss of nationality.

Under the law of several American countries — in particular, according to the Constitution of my country — marriage does not cause the acquisition or loss of nationality. A Chilian woman who marries a Frenchman, for instance, does not lose her Chilian nationality, although under French law she is deemed to have acquired French nationality. Here, then, we have a case of double nationality. Again, if a Chilian marries a Frenchwoman, the latter does not acquire Chilian nationality, although according to French law she loses her French nationality; under these circumstances she becomes stateless.

To-day, I merely put forward this simple reservation. To-morrow I shall have the honour to submit amendments to the effect that nationality should be completely independent of a person's civil status. Thus, if an individual acquires nationality by birth he should maintain that nationality whatever changes occur in his civil status. Naturally, this provision would not preclude the voluntary change of nationality.

I quite expect that this point of view will be sharply contested and will call forth many objections. I, nevertheless, do believe that this is the rule which corresponds most closely to the new conditions and requirements of international life.

I have heard with great pleasure the proposal made by the British delegate to appoint a Sub-Committee to consider all the draft amendments. That is exactly the suggestion I myself made yesterday in this connection.

The Chairman:

Translation: The British delegation merely proposes that we should appoint a Sub-Committee to decide what general principles emerge from the various amendments.

M. Alvarez (Chile):

Translation: I would have you note that yesterday I suggested the appointment of a Sub-Committee.

M. Merz (Switzerland):

Translation: I venture to support the suggestion of the delegate for the Netherlands that we should omit Basis of Discussion No. 1 from the text of the future Act, which cannot be anything else than a Convention. If it is our aim to establish a body of international rules, we can hardly take as our starting-point the idea that law derives solely from the will of States and that States are free to mould that law according to their interests. There exists, over and above the interests of each individual State, a community of interests and a wider conception of law which, from the point of view of international relations, calls for rules deriving from loftier sources; the very *natura rerum*, pure reason, the absolute need for co-operation — without, of course, losing sight of the interests of private persons.

This conception was expounded with great skill in the opening speech delivered at the Lausanne session of the Institut de Droit international by its President, Mr. James Brown Scott.

It seems to me, therefore, rather paradoxical to insert at the beginning of an international body of rules on nationality, the statement that States are free, in their sovereign right, to lay down rules governing the acquisition or loss of nationality.

With regard to the second part of Basis No. 1, I do not think it would be desirable to enumerate the various methods, of acquiring or losing nationality, which are generally admitted internationally, particularly as the list would not, in the proposed text, be limitative. Moreover, the idea is not to state positively what methods of acquiring or losing

nationality are admitted, but rather to restrict the freedom of States in this domain to a certain extent — an intention which materialises in the following Bases of Discussion.

I therefore think it would be preferable not to insert Basis of Discussion No. 1 in the text of the Convention. I note that M. Rundstein's admirable report does not contain any provisions similar to Basis No. 1.

We should at any rate prefer Basis No. 1 to be drafted in accordance with the proposal of the British delegation, as explained to-day by the delegate for Great Britain, or else in conformity with the Belgian amendment.

M. da Matta (Portugal) :

Translation : I should like to amplify the observations I submitted at the beginning of the meeting. I am glad to note that the delegate for Italy has supported my proposal. I think that the addition of the words "as a principle" to the first paragraph of this Basis of Discussion would be desirable.

The considerations submitted by the British delegate would seem to refer solely to points of form, since the ideas he put forward are implicitly contained in the Basis of Discussion.

I will ask you to allow me to submit certain other amendments. In so doing I will most readily conform to our Chairman's excellent suggestion and be as brief as possible.

I have proposed the following amendment concerning the recovery of nationality :

> "Any question as to the acquisition, loss *or recovery* by an individual of a particular nationality. . ."

I think it is now an established principle that a woman married to a foreigner may, after the dissolution of marriage, and at her request, be allowed to resume her former nationality. This is the principle underlying Basis No. 19 as regards the recovery of nationality. The Bases would thus be better balanced.

I also propose that we should omit the phrase : "On application by or on behalf of the person concerned". I think that instead of a limitative definition it would be better to employ a general formula. If mention is made of a request for naturalisation why not insist on other details such as domicile within the territory of the State where naturalisation is being requested ? Could we, for instance, admit the naturalisation, even on the application of the persons concerned, of foreigners residing in their own country ? Are we, moreover, to regard as a definitely acquired principle the request for naturalisation made not by the person concerned, but on his behalf, as provided in this Basis ? Portuguese law, for instance, does not allow this. The practice of the Portuguese courts is very firmly established on this point. I wonder whether it was really the authors' intention to exclude *automatic naturalisation*, which is the rule in Brazil and Venezuela.

For all these reasons, I do not regard the formula adopted in this Basis as satisfactory.

I would venture to propose yet another amendment, namely, to add the words : "in due form" to the phrase regarding the voluntary acquisition of a foreign nationality. The sentence would then read : "Voluntary acquisition *in due form* of a foreign nationality". Could we admit the principle of the validity of the voluntary acquisition of a foreign nationality in the case of fraudulent naturalisation, as when an individual changes his nationality, but fraudulently retains his former nationality, in order to be able to claim either nationality, as may suit him best ? Could we admit the principle of the validity of the voluntary acquisition of a foreign nationality, if the person concerned were not entitled to change his nationality — as, for instance, in the case of compulsory military service — or if the person concerned is under disability — under some laws, for instance, the husband's consent must be obtained for the naturalisation of a married woman ? These are the reasons which have led me to propose this amendment.

Basis No. 1 in its last paragraph, regards as a case of the loss of nationality "*de facto* attachment to another country accompanied by failure to comply with provisions governing the retention of the nationality". Such *de facto* attachment seems to be insufficient to justify loss of nationality. Loss of nationality should never be inflicted by a State on one of its nationals as a sort of punishment nor should it be used to get rid of an undesirable individual. At the most, this principle should only apply when the person concerned can lay claim to another nationality. Denationalisation as a penalty should only be admitted when the person in question possesses another nationality. In any event, I do not see how we can accept the wording of this paragraph ; in many cases it would be difficult to prove such attachment, and most laws do not include any provisions for the retention of nationality.

M. de Navailles (France) :

Translation : The French delegation desires to state that it will consider the Bases submitted to us from the standpoint of a draft Convention and not from that of a declaration. Customary international law is what it is. Doctrine should endeavour to ascertain it, and the courts to define it in the cases submitted to them. Slowly but surely international law is taking shape ; but it is still evolving, and the main sources from which it derives are international Conventions.

The French delegation is also desirous of making as few changes as possible in the draft submitted to us, because it considers that draft to have been very carefully prepared and because it wishes to achieve a result as soon as possible.

I do not, for the present, propose to defend the amendment, which my delegation has submitted in connection with Basis No. 1, nor the various drafting changes it would like to see made. We have received a large number of amendments to this first provision. Some completely remodel the Basis while others even propose that it should be omitted.

In these circumstances, I feel that I might be wasting the Committee's time if I proposed alterations to a text which perhaps will disappear. What methods should we follow in the organisation of our work ? I think we may trust our Chairman to indicate the best course.

It has been said that it would perhaps be desirable to refer proposals of a general nature, particularly the amendments proposed to Basis No. 1, to a Sub-Committee. I am rather disposed to agree with this proposal, and wonder whether it would not be better, in order to avoid setting up a number of Sub-Committees, to content ourselves with the Committee appointed yesterday — the Drafting Committee — which might perhaps, I will not say put forward proposals for amendments, but endeavour to co-ordinate the various proposals, bring together those which are similar, and submit to us a text that can usefully be discussed.

M. Nagaoka (Japan) :

Translation : Reference has been made to the proposal of the Japanese delegation to the effect that paragraphs 2 and 3 should be omitted. If the Committee now proceeds to consider whether these two paragraphs should be omitted or not, the discussion will be shortened.

The Chairman :

Translation : I think it would be rather premature at the present time to take a decision regarding the omission or maintenance of paragraphs 2 and 3, because there have been various proposals to omit the whole Basis. I think that the Committee will not be able to form a considered opinion until it has heard the other speakers.

We can then take a general decision as to whether the Basis of Discussion should be maintained. If so, the next question will be the maintenance of paragraphs 2 and 3. That will be a second general question. If these paragraphs are maintained we can consider the British proposal to the effect that the general principles to which this provision refers should be defined more precisely. That is the moment at which the Committee will have to make up its mind as to the desirability of appointing a special Sub-Committee.

That, I think, should be the logical order of our debate. If the Committee agrees to this, the discussion will now continue.

M. Joachim (Czechoslovakia) :

Translation : I have the honour to submit two observations on behalf of the Czechoslovak delegation. They refer to the Belgian proposal, Section A (see Annex II, page 278).

The first observation concerns the question of the voluntary acquisition of a foreign nationality. A reservation should be made with regard to military obligations and the restrictions resulting therefrom.

The second observation is concerned with the question of renunciation. It would be desirable to provide that loss of the former nationality should be simultaneous with the acquisition of the new nationality. On this point, I venture to refer to our Preparatory Document (C.73.M.38.1929.V) pages 206 and 207.

Mourad Sid Ahmed Bey (Egypt) :

Translation : The Egyptian delegation proposes to amend paragraph 1 of Basis of Discussion No. 1 by inserting therein the following sentence :

> " The freedom of each State to legislate can only be limited by general or particular Conventions on the subject of nationality. "

Just now, the Italian delegate said that we should add to Basis of Discussion No. 1 " limitation of the right by treaties ". He added that this seemed to be a self-evident truth, but that it was nevertheless desirable to state this truth in the text. I entirely agree with him. I think that we should not only state that this freedom must be limited by general or particular Conventions, but specify that these Conventions must be Conventions on nationality. The reason for this is as follows :

Egypt is a country subject to the regime of capitulations. When, in 1926, Egypt promulgated a nationality law (which is mainly based on the *jus sanguinis* and only to a very slight extent on the *jus soli*, in that it attributes Egyptian nationality to foreigners born in Egypt), there were protests on the part of several capitulation States. The latter claimed that, in view of the capitulations, Egypt was not free to transform foreigners into Egyptians on the strength of the *jus soli.* These protests led to negotiations and an agreement was finally reached. The Convention, however, might usefully state that such freedom should be limited by general or particular Conventions dealing with nationality.

I wish to make a second observation, also in connection with the first paragraph of the Basis of Discussion. The Italian delegate has pointed out that the expression " claimed or disputed " might give rise to misunderstanding, I fully concur with him on this point. Egypt is notoriously a country of conflicts of nationality. It often happens that nationality is claimed

and disputed at the same time. Let me quote an instance. If a Greek dies in Egypt, there are under Greek law certain heirs who come forward at the reading of the will to claim the succession. Under Egyptian law, however, these Greeks are not the heirs. What law will apply ? Nationality is in this case being claimed by some heirs and disputed by others simultaneously. Consequently, the expression " claimed or disputed " must be further defined. I cannot yet make any definite proposal, but submit this point for your consideration.

Finally, I would state that I share the French delegation's views, since the amendments in connection with Basis of Discussion No. 1 are numerous. Should the Committee decide that, as regards this Basis of Discussion, the principle should be set out in an article, a Sub-Committee ought to examine all the amendments proposed, co-ordinate them and submit a new draft to the Committee.

Mr. Flournoy (United States of America) :

I have prepared a short memorandum which states very briefly the position of the delegation which I represent. We think that, in general, the rule stated in Basis No. 1 is correct, and it is very desirable to have a general rule as regards the limitation imposed by international law upon the right to deal with nationality.

We think that the second sentence of the first paragraph is, to all intents and purposes, a duplication of the first, and, therefore, might very well be omitted. We think also that the second and third paragraphs should be omitted. In my view, the discussion which has developed this morning shows clearly the reason why it is desirable not to include these examples. In the first place, it is not entirely clear from the phraseology of the Basis whether these are mere examples, or whether they are intended to be complete categories or rules. If the first be true, and they are merely examples, the Basis, itself should make that very clear. We think as I have already said, that it would be preferable to omit these examples, not only for the reason which I have just stated, but also because of the uncertainty as to the meaning of several of them, and the fact that some of them relate to subjects which are controversial.

Several speakers have called attention to the uncertainty as to the meaning of some of these examples ; I might mention one other case in the third paragraph : loss of nationality resulting from the voluntary acquisition of a foreign nationality. The question which arises in my mind is whether that relates only to the individual who applies for the nationality of a foreign country for himself, or whether it is also applicable to his children, who may be naturalised through his naturalisation. I merely mention this as one example of the questions which may arise.

It seems to me that these various examples naturally fall under the succeeding Bases, and will have to be discussed when those Bases are taken. For the reasons mentioned I suggest that these last two paragraphs of Basis No. 1 should be omitted entirely.

M. Caloyanni (Greece) :

Translation : I do not propose really to discuss the question of the Basis. In my opinion, it contains many excellent things ; to omit it would not help us much.

I admit that some of its provisions require further definition, while some of the principles are not very clear — and some are not stated at all. There remains, therefore, something to be done in this direction. But, personally, I quite agree with the idea expressed by the British and French delegations, namely, that the first Basis is a suggestion to the effect that we should agree on the true principles we can all admit ; and that secondly, we should study the amendments as a whole. I think that these proposals would satisfy everybody and, for my part, I shall support the British suggestion to appoint a Sub-Committee and the suggestion to submit the amendments to that Sub-Committee.

I think that each amendment contains something of practical value. If, in our discussion, we pull this Basis to pieces, we shall achieve nothing. On the contrary, the work will advance more rapidly if we secure some measure of unification, that is to say in grouping the various amendments, however mutually contradictory they may seem to be, and in referring them to a Sub-Committee. We are raising extremely serious questions. To take only the example given by the Egyptian delegation — that example contains a whole world for thought.

If we consider the proposal made by several delegations to omit this Basis, we shall be altering the entire aspect of the problem. There is something special about the atmosphere of this question, as the declarations of the French and Hungarian delegations show. Is it to be a Convention or a declaration ? The Chairman has told us that this is a question to be settled by the Bureau later ; the question is, nevertheless, in our minds, and the sooner we appoint a Sub-Committee, as suggested by the British delegation, the quicker our work will progress.

M. Rundstein (Poland) :

Translation : May I first of all thank Professor Diena, Vice-Chairman of the Committee of Experts for the Codification of International Law, for his very kind reference to myself in connection with the Committee's preli-

minary draft ? I must point out, however, that the preliminary draft was a collective undertaking prepared by the Committee. I do not, therefore, think that affiliation proceedings in connection with the preliminary draft would meet with any success.

As regards Basis No. 1, I agree with the observations submitted yesterday and to-day by the Netherlands and Swiss delegations respectively. I wonder whether it would really be desirable to mention, in the future Convention, the general principles set out in connection with Basis of Discussion No. 1 ? Could we possibly, by a conventional rule, settle the controversial point of theory, namely, do questions of nationality fall within the exclusive domain of municipal law ? If this assertion is too absolute, we shall be obliged at the same time to recognise that jurisdiction in this matter is not unlimited, since every jurisdiction invariably connotes a certain degree of limitation.

But it would be difficult to prove in the abstract what were the limits of this jurisdiction and, if such limits were finally traced, what rules of international law they should embrace.

Could we, however, admit the opposite theory, namely, that international law is a super-law, to which territorial laws on nationality are supplementary and subordinate ?

But are there really any principles which are generally recognised by all States ? Is it a noncontested fact that the law of each State should take these alleged principles into account ? At the very most, we might say that there are certain very pronounced tendencies favourable to widening the domain of international law in this sphere. Our Conference, indeed, furnishes the best proof of these tendencies. When tracing these limits and setting the boundary stones, we must take care not to be too daring in our decisions.

I venture to remind you of the extreme caution displayed by the Institut de Droit International which, when analysing the problems of nationality, did not deem it advisable to mention in the Preamble to its resolution the tendency to accord increasing jurisdiction to international law in this matter.

Since the object of the future Convention is to decide certain conflicts in the matter of nationality — without claiming to settle every point — it may attain its aim if it takes into account the political obstacles that will inevitably have to be overcome in settling such conflicts.

The best way to provoke conflicts is to try to settle questions of principle. It would, therefore, be preferable to abandon theoretical discussion and examine particular points. Such points in themselves will doubtless be of very little importance, but they will constitute the first stage in our work. When once this first stage has been completed, I have no doubt that the continuation of codification will be simplified.

I, therefore, think it would be advisable to omit the theses set out in Basis of Discussion No. 1. Any list of the generally recognised principles as given in this Basis is bound to be theory, pure and simple. Similarly, the very foundations of some of these principles might be carried into question. When it is said, for instance, that naturalisation on application by or on behalf of the person concerned may be regarded as a method of acquiring nationality, it seems to be forgotten that the scope of this principle is not generally recognised. Naturalisation under the law of State A may produce collective results when it applies to the minor members of the family. The law of State B, however, of which the naturalised person was previously a national by admitting that foreign naturalisation only affects the individual, refuses to admit that these effects may also be extended to the minor members of the family. That is a typical conflict between individual and collective naturalisation, a conflict which is well known in international practice. Would the general principle formulated in Basis No. 1 be such as to produce a final settlement of this conflict ?

Similarly, it is said in Basis No. 1 that the legislation in each State must take account of the principles generally recognised by States. But, by maintaining in favour of each State of which the person of double nationality is a national, the right of exclusive jurisdiction in its territorial legislation, is not Basis No. 3 in flagrant contradiction with the alleged generally recognised principles ?

In the present state of the law on nationality which has not yet definitely crystallised, we may note the existence of two main factors which might possibly have to be taken into account ; firstly, the existence of the jurisdiction of the various States deriving from their sovereignty : this means the concurrent existence of two independent spheres of action. Secondly, the need for these independent spheres of jurisdiction to respect each other. In pure theory, these two principles seem to be contradictory, because the notion of respect implies the necessity of the delimitation of jurisdiction. This contradiction does not, however, exist in practice if the delimitation is made by means of a Convention, and that is what we propose.

For these reasons, I regard Basis No. 1 as useless. It might perhaps be advisable to reproduce the thesis set out therein in the Preamble of the future Convention. Naturally a satisfactory formula must be found which will properly express the ideas contained in this Basis. I do not make any definite and concrete proposal, but I think it would be sufficient to say in the Preamble :

> " The High Contracting Parties, considering that the methods of acquiring and losing nationality are governed by the legislation of each State, and noting that it would be desirable that States should take into account the principle of mutually

respecting each others' jurisdiction in this domain; in view however of the fact that the divergency of laws may lead to conflicts, the appropriate solution of which might be obtained by means of agreements referring to the settlement of such conflicts. . . "

Incidentally I venture to propose the adjournment of the discussion of Basis No. 1 until the discussion on the following Bases is finally closed. When we are in agreement as regards the details, we can deal with the general ideas. In our practical work, the method of induction will be appropriate and productive.

The Chairman:

Translation: I think that the Committee is now fully acquainted with the various shades of opinion. I would very earnestly beg the next four speakers to be as brief as possible, because it is indispensable that we should reach a decision on this Basis this morning in order that we may know what still remains to be done.

M. Cristitch (Yugoslavia):

Translation: With regard to the preliminary question, whether a text embodying the principle set out in Basis No. 1 should be inserted in the Convention, the Yugoslav delegation is in favour of its insertion.

The Yugoslav delegation thinks that it would be advisable to insert a wording to the effect that, in principle, the question who are the nationals of any given State should be decided by the law of that State. This principle should appear at the beginning of the Convention; it is, moreover, in conformity with existing international law and has been confirmed by the decisions of the Permanent Court.

When this preliminary question has been settled affirmatively, we can discuss possible limitations thereto; I refer to the second part of paragraph 1 and paragraphs 2 and 3 of Basis No. 1.

M. Negulesco (Roumania):

Translation: It is a recognised principle, in the present state of international law, that the question of nationality falls within the exclusive jurisdiction of the State, but the rights of the State in the matter of nationality are not unlimited. Each State must take into account the principles generally admitted by the community of nations.

The limitation provided in Basis No. 1, however, is itself subject to limitation; the question of nationality which, in principle, falls within the exclusive jurisdiction of the State, may, under a Convention, cease to be an internal question and become a question of international law. The Court of International Justice has proclaimed this principle in its Opinion No. 4. It would be desirable to mention this at the end of the Basis.

I am of opinion that the words " Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed " should be omitted. The object of this sentence is to determine the law applicable, but it refers merely to one isolated case, that in which a single nationality is claimed or disputed. As the example given by M. Diena proves, two nationalities may be claimed or disputed simultaneously. What law should then apply? We must draw a distinction in this case. Every contracting State must apply its own law when one of the laws in conflict is its own.

On the contrary, if the conflict occurs in a third State, preference must be given to the law of the State in which the person concerned is habitually resident. If there be no such residence, the provisions of the law the application of which the person concerned is entitled to claim must prevail. These last two cases are settled in Basis No. 5. The words " Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed " might be omitted from this Basis and formed into a separate article. Three other articles would aim at defining the law which should apply in cases of conflict. The last two articles would be brought into line with Basis No. 5.

For the present, the Roumanian delegation is in favour of Basis No. 1 with the modifications proposed by the Italian delegation. It feels bound to state, however, that if the Committee finally decides to omit Basis No. 1, it will support M. Rundstein's proposal to the effect that the contents of this Basis should become a Preamble. But, in this case, the words: " Any question as to the acquisition or loss by an individual of particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed; should be formed into a separate article, followed by other articles, as I have suggested, for the determination of the law which is to be applicable in the case of nationality conflicts.

M. Buero (Uruguay):

Translation: I was very struck by the comments of the first delegate for Switzerland on Basis No. 1 of the general principles. I agree with him that there is certainly something paradoxical in stating at the very outset of an international Convention, the object of which is to standardise as far as possible the laws of the various countries, that nationality questions are within the sovereign authority of each State. That perhaps is merely a question of drafting. Obviously we do not, in the present state of international law, particularly in the matter of nationality — seek to impose a uniform legislation.

It comes to my mind that, even in the Covenant of the League of Nations, there are certain nationality questions which have been reserved as falling within the exclusive jurisdiction of the various States. The article

in question is, if I remember rightly, Article 15. It is obvious that we cannot obtain a uniform law. M. Rundstein's report is perfectly clear on this point. We must be content to solve the conflicts caused by the existence, at the present time, of various bodies of law.

I have consequently proposed an amendment as regards the drafting, which takes into account the observations submitted by the delegates for Italy and the British Empire. The Basis of Discussion might, I think, be drafted as follows:

> "While noting that nationality questions come within the sovereign jurisdiction of States, it is highly desirable that the legislation of each country should take into account the generally recognised principles in the matter of the acquisition or loss by an individual of a particular nationality."

With some such wording we might meet the various views which have been expressed at this Conference; we would eliminate the second and third paragraphs, which are merely descriptive, and would take into account the Swiss delegate's proposal concerning the present drafting of the first part of Basis of Discussion No. 1.

M. Piip (Estonia):

Everyone is agreed that questions of nationality are within the sovereign authority of each State. There is no reason why we should not confirm this general principle in our Convention. I am therefore opposed to the omission of this Basis.

It might perhaps be desirable to discover a shorter formula for Basis No. 1 on the lines suggested by the British delegation. I think that the best way to save time and reach an agreement would be to accept the French delegate's proposal, and invite the Drafting Committee to consider all the draft amendments, and if possible submit a draft article for the Convention. I strongly support this proposal.

The Chairman:

Translation: We can now close this discussion. It has been a long one. Since yesterday you have heard twenty-one delegates speak on Basis No. 1. It was necessary to clear the air. There have been various currents of opinion which I ask you to allow me to summarise in a few words.

The first proposal is that Basis No. 1 should be entirely omitted, not on account of any radical objection to it, but because it is thought to be unnecessary, particularly in the form of a provision in a Convention.

In connection with this there is a very interesting proposal to the effect that if the Basis is omitted as an Article of the Convention, the essential part of it should be included in the Preamble.

Other delegates have suggested that the Basis should be maintained with various changes, some slight and some far-reaching.

The first change proposed by M. Diena and supported by other speakers is that the second sentence should be omitted. As a corollary, M. Negulesco proposes that the second sentence should be omitted and should be converted into a special article.

Finally, there is a third proposal to the effect that paragraphs 2 and 3 of the text before you should be made more definite. That is the essence of the British proposal, in which the very interesting suggestion is made that the Basis as at present drafted does not indicate the real point of the question submitted to the Governments, namely, that the use a State makes of its legislative autonomy should be respected by other States.

This is the point at which we have now arrived. In order that we may be able, with a full knowledge of the facts, to decide whether a Sub-Committee will be necessary and what its powers and duties will be, the Committee must first of all take a decision on the questions of principle I have just enumerated. The first question is whether the Committee is in favour of retaining or omitting the Basis as a main provision.

The Committee decided, by nineteen votes to sixteen, to retain Basis No. 1 as a main provision.

The Chairman:

Translation: Now that the first question has been settled, we will pass to the second, which is M. Diena's proposal that the second sentence should be omitted.

By twenty votes to fifteen, the Committee decided to retain this sentence.

The Chairman:

Translation: In view of the result of the vote, M. Negulesco's proposal has lost its purpose.

We now come to the third question, whether the list of principles set out in paragraphs 2 and 3 should be amplified, as suggested by the British delegation. I think it is unnecessary to consult the Committee on this point, since the number of amendments received clearly shows that the Committee desires to modify the present text. The only question is to know what alterations to make. The British delegation, supported by other delegations, proposes that the question shall be referred to a Sub-Committee for examination.

M. Nagaoka (Japan):

Translation: There may have been some misconception. It is possible that many delegates wished to have these principles embodied in the Preamble. I therefore ask that the Committee should vote on the question whether these paragraphs should be transferred to the Preamble or maintained in the Basis.

The Chairman:

Translation: I did not think there could be any misunderstanding on this point. When I summarised the first question I told the Committee it would have to decide first regarding

the maintenance or omission of the Basis as it stands in principle ; I added that if the Committee decided to omit the Basis as it stands, the Committee would then have to decide whether the essence of the omitted provision was to be embodied in the Preamble. By nineteen votes to sixteen Committee has already decided to retain the Basis.

Does M. Nagaoka desire a further vote ?

M. Nagaoka (Japan) :

Translation : Yes, because there may be other delegates who would like the principle to be embodied in the Preamble.

The Chairman :

Translation : As I am very anxious that our discussions should be as clear as possible, and although it is most unusual in any committees or assemblies to vote again when once the vote has been taken, in order that there may not be the slightest misunderstanding I will submit the question once more to the Committee and will define the position.

The Committee is asked to give an opinion whether it wishes to retain or omit Basis No. 1 as it stands. If it decides to omit it, a second question will arise, namely, whether it nevertheless wishes to retain the essence of this Basis and insert the same in the Preamble to the Convention, so that those who would prefer to see the contents of Basis No. 1 inserted in the Preamble to the Convention should vote against the retention of Basis No. 1.

M. Diena (Italy) :

Translation :

If I vote " Yes ", shall I be voting in favour of the maintenance of Basis No. 1 ?

The Chairman :

Translation : Yes.

M. de Navailles (France) :

Translation : Two points have been laid before the Committee and the vote has been taken. I think it would be rather an irregular proceeding to go back on these votes. The object of the first vote was to decide whether the principle of Basis No. 1 should be retained or omitted. By nineteen votes to sixteen, it was decided that it should be retained. That means that we do not wish its contents to be transferred to the Preamble ; it is maintained as it stands, *i.e.*, as a Basis, or article, of a future Convention and there is no reason why we should go back on our decision. Consequently, there is no reason to vote on the question whether this provision should be converted into part of the Preamble.

Secondly, we have voted on the second sentence of the first paragraph. It was decided, by twenty votes to fifteen, that the principle of this provision should be maintained. The question whether this provision should be transferred to another article or maintained in the present one can be settled later.

The Chairman :

Translation : I have already pointed this out. It is usual, it is a general rule — and a necessary one for the maintenance of discipline in the discussions of any assembly — that votes, when once taken, should be regarded as binding and final. As, however, we are at the beginning of our work, and as it has been stated that there may have been some misunderstanding when the question was put, I wished to settle this point. In future, before a question is put to the vote, I shall endeavour to make sure that all delegates have clearly understood. It is for this reason and as an act of courtesy towards the Japanese delegation, that I would request you, as an exception, to be good enough to vote a second time.

By twenty-four votes to thirteen, the Committee decided to retain Basis No. 1 as it stood.

The Chairman :

Translation : The result of this second vote is to strengthen the Committee's former decision.

M. Diena (Italy) :

Translation : Mr. Chairman — You have not asked the Committee whether it decides that the subject-matter of this first Basis should be included in the Preamble.

The Chairman :

Translation : I really thought I had made my meaning sufficiently plain. I said that the Committee had to decide two points : (1) whether the Committee desired to retain or omit Basis No. 1 as it stood ; (2) if the Committee decided to omit the Basis as it stood, then — and then only — would it be necessary to ascertain whether the essence of this Basis should be retained in the Preamble. As the Committee has decided for the second time to retain Basis No. 1 as it stands, the second question does not arise.

M. Nagaoka (Japan) :

Translation : I thank the Chairman for having kindly asked the Committee to vote a second time. The Japanese delegation now asks that as Basis No. 1 is retained, paragraphs 2 and 3 of the same should be omitted.

The Chairman :

Translation : You have heard the proposal of the Japanese delegation. In order to avoid any misunderstanding, let me make it clear that the Japanese delegation wishes to retain the first paragraph of Basis No. 1, eliminating paragraphs 2 and 3. In this case, I think that the Japanese delegation, when it says that " each State should take into account the principles generally recognised by States ", means that these principles are not those contained in the present paragraphs 2 and 3, but those set out in the following Bases.

M. Nagaoka (Japan) :

Translation : Yes, we might say " . . . recognised by States and set out in the following articles ". The Japanese delegation thinks that paragraphs 2 and 3 are unnecessary.

The Chairman :

Translation : An almost identical proposal has been made by the delegation of the United States of America, which also favours the omission of paragraphs 2 and 3. The only difference between the United States and Japanese proposals is that, whereas the latter regards the Bases that follow as general principles limiting the legislative autonomy of States, the United States delegation merely says that each State should take into account the principles generally recognised by States with regard to the acquisition and loss of nationality — and nothing more.

The essential point for the Committee at present is to decide whether paragraphs 2 and 3 are to be retained or omitted. The question how the last sentence of paragraph 1 will be drafted, or whether the United States or Japanese version is to be adopted, is a matter which I think might be considered by the Sub-Committee we are about to appoint. This question will be submitted to you later.

M. de Navailles (France) :

Translation : We cannot vote on the omission or maintenance of these two paragraphs, because we have not discussed the reasons on which a decision can be based one way or the other. If this question were put to the vote, I personally should abstain from voting because I am not sufficiently clear on the point. Before we vote I should like each of us to explain why he asks for the omission or maintenance of these two paragraphs.

The Chairman :

Translation : I am sorry to note that due attention has not been paid to the speeches of previous speakers. Several delegates who spoke against the maintenance of paragraphs 2 and 3 were careful to explain the reasons for their attitude. Whereas certain delegates have put forward very clear arguments as to the convenience of such a decision, M. Rundstein gave us some fundamental reasons which I though were very impressive.

Under these circumstances, I do not think it necessary to reopen the discussion on this point. Surely the Committee has now before it sufficient material to decide whether—from the point of view of principle, and not as a question of drafting — it wishes these two paragraphs to be retained or omitted.

I am going to ask the Committee now whether it thinks it can take a decision. Is M. de Navailles still opposed to such a course ?

M. de Navailles (France) :

Translation : I am still opposed to the course you suggest. It is quite true that arguments have been submitted, but it was said, at the beginning of the meeting, that, in view of the number of amendments, discussion would be difficult. It was then proposed, in order to facilitate our discussion, that all the amendments should be co-ordinated and a Sub-Committee appointed for this purpose or to submit suggestions on which we could take a final decision.

If we now take a vote on essential questions of principle, we shall be going counter to our previous agreement to the effect that, for the present at least, the whole question should be submitted to a Sub-Committee. Only when this Sub-Committee has fulfilled its mission, can we vote with full knowledge of the facts. If we decide to omit these two paragraphs at the present juncture, we have no assurance that they will be included elsewhere and their elimination might be final. It is an essential, fundamental question.

The Chairman :

Translation : It is my duty to apply the Rules of Procedure. A proposal to omit these paragraphs has been put forward ; I am bound to take a vote. I shall therefore ask the Committee whether it is of opinion that the vote on this question — whether paragraphs 2 and 3 shall be retained or omitted — should be adjourned.

I ask those delegates who wish to vote as to whether paragraphs 2 and 3 should be retained or omitted to raise their hands.

By twenty-one votes to nine, the Committee decided to vote immediately.

The Chairman :

Translation : I now ask you to vote on the basic point. Does the Committee desire to retain or omit paragraphs 2 and 3 ?

The Committee decided, by eighteen votes to seventeen, to omit paragraphs 2 and 3.

The Chairman :

Translation : Now that the decisions on principle have been taken, I will propose in order to carry out the suggestion which has been made, that you should entrust to the Drafting Committee, with the assistance of the Rapporteur and the Bureau, acting as a Sub-Committee, the task of discovering a wording for this Basis, in conformity with the decisions reached.

I hope that this will be done to-day ; in that case it will be submitted to you to-morrow morning when you can take a final decision. The text will then be sent to the Drafting Committee for the latter to decide how it can best be embodied in the Convention.

The Committee rose at 1.10 p.m.

THIRD MEETING

Wednesday, March 19th, 1930, at 10 a.m.

Chairman : M. POLITIS.

12. GENERAL PRINCIPLES : BASIS OF DISCUSSION No. 1 : NEW TEXT PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman :

Translation : You have had circulated to you the following new text of Basis No. 1, which has been prepared by the Drafting Committee with the assistance of the Rapporteur and the Bureau :

"It will be for each State to determine under its own law who are its nationals. This freedom to legislate shall be recognised by the other States, provided that the use made thereof is not at variance with international Conventions or with the principles generally recognised in the matter.

"Any question as to the acquisition or loss by an individual of a particular nationality and any question relating to the recovery by an individual of a particular nationality are to be decided in accordance with the law of the State whose nationality is claimed or disputed."

I should like to know whether there are any comments on this text, or whether the Committee is prepared to regard it as accepted and send it back to the Drafting Committee, so that, with this text and the other Bases that will be adopted, it may gradually draw up the text of the draft Convention.

M. Diena (Italy) :

Translation : I fully appreciate the great difficulties with which the Drafting Committee has been faced in drawing up this new text. I think, however, that the text is not likely to give satisfaction, and that, if we discuss it, we shall reopen yesterday's long debate. I will, therefore, make a practical proposal : in order to avoid any absolute contradiction between this Basis and the decisions we may take as regards Bases Nos. 3 and 5, I suggest that we postpone the discussion and approval of this new text until we have taken a decision on Bases Nos. 3 and 5.

The Chairman :

Translation : It is often wise to adjourn the discussion when the text under review is closely bound up with other questions. On the present Basis, however — and I hope M. Diena will consider this point carefully — we had a very long discussion yesterday. The Committee decided to maintain the first paragraph of the original text, the duty of the Drafting Committee being to see how far this first paragraph of the original text should be modified or completed as a result of the various amendments submitted, and explained, to the Committee.

I think that the text of the new draft takes very largely into account the amendments submitted by the delegations of Great Britain, the United States, Egypt and Portugal. The only question which I think we should examine now is whether this new wording takes sufficient account of the various opinions expressed yesterday. If that is so, surely the Committee might accept the new text.

Furthermore, our present decisions are not final. If, later, when we have examined the other Bases, it seems that there is any reason to alter the previously accepted texts, we can always return to them. It would, however, be a pity if, after devoting a meeting of three hours to the discussion of the first text and instructing a special body of this Committee to work out a new text, we were to adjourn the consideration of that text and launch forth on a new discussion.

Would M. Diena accept that point of view ?

M. Diena (Italy) :

Translation : I am sorry to say that I cannot. I am obliged to press my point of view. I will leave on one side Bases Nos. 3 and 5, and confine myself to examining the text we have before us. I find that there is a definite contradiction between the first and second paragraphs.

The first says that each State shall determine under its own law who are its nationals, and the second that all questions connected with the acquisition or loss of a particular nationality shall be decided in accordance with the law of the State whose nationality is claimed or disputed.

The result of this is that, under the second paragraph, a result may be obtained which is diametrically opposed to the first sentence of this text.

May I take an example ? The delegate for France is one of those who have supported the opinion which I oppose ; I will therefore illustrate my point by comparing the French and Italian laws on this subject. A person is born in France of an Italian father, himself born in France. Under the first paragraph, France has the right to regard this person as a French citizen according to French law and he is liable for military service in France. He

denies that he is a Frenchman and claims Italian nationality. This is a case where a nationality is claimed. Under this text, therefore, it must be admitted that he has the right to claim that he is an Italian according to Italian law. There is, then, a genuine contradiction.

The Chairman :

Translation : There is a certain misunderstanding as to this question of the conflict of laws in the case of dual nationality. M. Diena referred to the matter yesterday. The question as to which law should prevail will have to be examined under quite different circumstances. In one case, the point is raised before the authorities of one of the countries which claim the individual in question as one of their nationals. In such case there can be no doubt ; the law of those authorities applies.

In the special case which M. Diena has first quoted, the solution is perfectly clear. The person who is regarded as a French citizen in France is regarded as an Italian national in Italy. He is in France and he is claimed by the French military authorities for French military service. French military law will apply and he will be obliged to perform his military service in France. It does not matter what his nationality in Italy is. That is, unfortunately, one of the results of dual nationality.

The other case is that of dual nationality coming up before the authorities of a third country. This point has been foreseen : Basis No. 5 deals with that contingency. We shall discuss the question later.

Mourad Sid Ahmed Bey (Egypt) :

Translation : I regret to say that this time I cannot agree with the delegate for Italy. Not only do I consider that there is no contradiction between paragraphs 1 and 2, but, on the contrary, I am of opinion that the latter is the necessary consequence of the first.

In paragraph 1 we assert that States are free ; in paragraph 2 we say : " Any question relating to the recovery by an individual of a particular nationality shall be decided in accordance with the law of the State whose nationality is claimed or disputed. " The second paragraph is merely the corollary of the first. As our Chairman has very aptly remarked, the question of the conflict of laws does not arise in this Basis ; it is dealt with in Bases Nos. 3 and 5. When we come to consider the conflict of laws, we shall be able to take account of the Italian delegate's observation.

Furthermore, I consider that this Basis, as submitted to us, should be accepted as a compromise. It can always be touched up later, should that be found necessary.

M. da Matta (Portugal) :

Translation : I should like to propose a slight amendment to the paragraph which says :

> " Any question connected with the acquisition or loss by an individual of a particular nationality and any question connected with the recovery by an individual of a particular nationality . . . "

To avoid the repetition of " a particular nationality ", I suggest that we say :

> " Any question as to the acquisition, loss or recovery by an individual of a particular nationality should be decided . . . "

The Chairman :

Translation : All these difficulties arise out of the requirements of the French language. Yesterday you suggested " *la réacquisition d'une nationalité* ", but we cannot use that phrase in French. It is also impossible to say " *la récupération d'une nationalité* ". The French technical term is " *la réintégration* ". We are obliged to make two sentences of it, because we cannot say " *la réintégration d'une nationalité* ", but " *la réintégration dans une nationalité* ".

M. da Matta (Portugal) :

Translation : I suggest the word " *recouvrement* ".

The Chairman :

Translation : That term is not used in connection with nationality, but only for a debt. Moreover, this is merely a question of wording ; we agree on the meaning.

The question which arises is the following : Does the Committee agree to accept this text in principle, it being understood that, if, as a result of the examination of Bases Nos. 3 and 5 or any other Bases, it is thought that this text should be revised, the Committee will be quite free to take it up again at the request of any delegation for the purposes of re-examination ?

M. Alvarez (Chile) :

Translation : I have a comment to make on paragraph 1. It is said that " this freedom to legislate shall be recognised by the other States provided that ", and later come the words " the principles generally recognised in the matter ". We do not say what these principles are. In the original text of Basis No. 1, reference was made to " the principles generally recognised "; but these principles were indicated, whereas, in the new text, they are no longer enumerated. In paragraph 2 of the draft before us, which reproduces almost word for word the contents of paragraph 3 of the first Basis, these principles would appear to be in some way different from the principles generally recognised. The draft as it now stands, therefore, does not in any way suggest what is meant by the generally recognised principles which may limit the freedom of States. In my opinion, the phrase is too vague, and it should be explained in one way or another. I cannot accept it as it stands.

M. Guerrero (Salvador), Rapporteur :

Translation : The explanation requested by M. Alvarez is the following :

The Drafting Committee merely carried out the instructions given to it by the Committee during yesterday morning's meeting. Our Chairman definitely and clearly raised the question whether, in this Basis, we should specify the general principles to which reference was made, or whether it would be better not to specify them. Certain delegations thought that the classification ought to be complete, and, since that was not possible, it would be better to say nothing at all. That is why the text is before us in its present form.

M. Kosters (Netherlands) :

Translation : May I make a suggestion with regard to the Italian delegate's proposal ?

The first and second paragraphs refer to somewhat different matters. The first lays down the rights and obligations of States ; the second would appear to refer to what the organs of the State, judges, administration and so on should do and decide. I think that these two subjects are quite distinct. Perhaps it would be better to divide the Basis into two, and to begin by discussing the first paragraph and then the second, so that we can vote on them separately.

The Chairman :

Translation : If I rightly understand the proposal which has just been made, it is that we should decide at once on the fate of paragraph 1 and keep paragraph 2 for discussion later.

M. Standaert (Belgium) :

Translation : I agree with M. Kosters' observations. I wonder, however, whether it would not be better to adjourn the whole discussion till to-morrow. We have not yet read the verbatim record of yesterday's meeting. It is true that we all attended that meeting, but the acoustics of this room are very bad, and certain of our colleagues speak with an accent to which we are not accustomed. It is often very difficult to understand exactly what they say. It is most desirable that we should have an opportunity to read over the speeches quietly, away from the turmoil of the Committee room. I do not ask for an indefinite adjournment, but think it would be desirable simply to postpone the discussion of this text until to-morrow.

M. Nagaoka (Japan) :

Translation : I beg to second the proposal made by the Belgian delegate. The texts prepared in pursuance of the decision we took yesterday were only circulated a few minutes before this meeting. According to the rule laid down for this Conference, all amendments must be circulated twenty-four hours before they are discussed. The discussion should therefore be postponed for twenty-four hours.

The Chairman :

Translation : I should like to raise a question of principle. The twenty-four-hour rule only applies to new amendments and proposals. That is not the case here. You have before you a text which is the result of yesterday's long debate. It in no way affects the decisions of substance which were reached at the previous meeting. So much for the principle.

There is also a question of advisability in practice. Certain delegations are asking that the examination, either of both paragraphs or of the second paragraph, of this text be postponed. This question of practical advisability is of the very greatest importance, because, obviously, if we are not all agreed on accepting a text, even in principle, it will be better to postpone the discussion, in order to obtain unanimity.

M. da Matta (Portugal) :

Translation : I do not wish to press my proposal, and I apologise for the little remark I am going to make. I merely want to say that the word "*recouvrement*" is used in Basis of Discussion No. 19. I have also found this term in the work of Professor Valery in his Commentary on the French Law of 1927.

The Chairman :

Translation : I really cannot open a discussion on this point. There are two Frenchmen in the Committee, who should presumably know their own language better than we do. In Basis No. 19 the word used is "*recouvrer*" not "*recouvrement*". In French, there is doubtless a different shade of meaning.

M. da Matta (Portugal) :

Translation : But I have found the word "*recouvrement*" in Professor Valery's Commentary.

The Chairman :

Translation : Several delegations have proposed that we postpone the examination of the new draft of Basis No. 1, either until to-morrow or until, as suggested by M. Diena, we have examined Bases Nos. 3 and 5. If the Committee accepts this proposal, I take it we can proceed to examine the following Bases.

This proposal was adopted.

13. GENERAL PRINCIPLES : BASIS OF DISCUSSION No. 2.

The Chairman :

Translation : We reserve our right to resume the discussion of Basis No. 1 later, and can now begin to discuss Basis No. 2. From the amendments that have been circulated to you, it appears that there are several proposals submitted by the German, Egyptian, United States and French delegations (Annex II).

I will summarise these amendments. The one which goes farthest, the most radical of all, is that of the French delegation — namely, that Basis No. 2 should simply be deleted.

The German amendment and that of the United States are merely to the effect that

we should delete the words "after entering a foreign country".

Lastly, the amendment of the Egyptian delegation is that we should add the following clause at the end of the text: "unless his nationality has been forfeited at law".

M. Diena (Italy):

Translation: May I add that the Italian delegation seconds the proposal of the French delegation?

The Chairman:

Translation: I think the best method would be to begin by discussing the most radical proposal — namely, that Basis No. 2 should be deleted.

M. Standaert (Belgium):

Translation: I suggest that the delegates who propose that this Basis should be deleted or amended should first give the reasons for their attitude before we enter on the discussion.

M. Schwagula (Austria):

Translation: I am in favour of maintaining Basis No. 2 and I will explain my position later.

M. Kosters (Netherlands):

Translation: I am happy to say that, so far as the mother country is concerned, our delegation is prepared to accept this Basis of Discussion as drawn up by the Committee of Jurists. I should like, however, to draw attention to two special points:

(1) I understand that this Basis refers to all loss of nationality, irrespective of the question of punishment, forfeiture, or any other means by which nationality is lost. I should not be inclined to admit any exception in this respect.

(2) This Basis would not be acceptable to the Netherlands without the words "after entering a foreign country", or with any general stipulation to the effect that States whose national a stateless person previously was must remain bound to admit that person. I cannot therefore agree to such proposals — for example, those of the German and United States delegations. My country is not prepared to receive, at the request of the country of residence, individuals born and living abroad who, on birth, acquired Netherlands nationality but lost it through not observing the rules laid down for maintaining that nationality. These individuals are not covered by the Basis, since they have not lost their nationality "after entering a foreign country".

So far as the Netherlands colonies are concerned, the Netherlands Government must reserve all its rights. The legal situation as regards the colonies is quite different from that in the mother country, so that another line of action must be followed. This, however, is a point which will be discussed later when the Italian delegation's proposal is on the agenda.

M. de Navailles (France):

Translation: Cases of a French national losing French nationality without acquiring another are extremely rare. Therefore, the French delegation, from that point of view and from that point of view alone, has no objection in principle to maintaining Basis No. 2. Why, then, has the French delegation asked that this Basis be deleted? Primarily because this is not a question of nationality, but of police regulations. We are only called on to settle questions of nationality.

Furthermore, such a provision has the serious disadvantage of infringing rights of sovereignty. It is possible that a Frenchman having, under exceptional circumstances, lost French nationality without acquiring another, might act in such a way as to make his continued residence in French territory undesirable. In such a case, as the individual is no longer a French national, the French Government can, by an exercise of its sovereign rights, issue an order of expulsion against him. If this Basis of Discussion is maintained, it will curtail the right that all States exercise to expel an undesirable alien from their territory.

I have been informed that exceptional circumstances exist in certain countries. I am not acquainted with them. As the French delegation desires to discuss this problem in the widest possible spirit of conciliation before it takes up a definite standpoint, I should be glad to hear something about these exceptional circumstances.

M. Diena (Italy):

Translation: In support of my proposal to delete Basis No. 2, I shall merely read a text which is not my own, and which appears on page 21 of document C.73.M.38.1929.V:

> "This point does not fall directly within the scope of a codification of the rules governing nationality, but relates rather to the consequences of the deprivation of nationality which has befallen the particular person."

These observations were made by the very authors of this Basis. The five jurists on the Committee themselves admitted that this question did not come within the scope of the codification of nationality law. There is, therefore, no reason to maintain this Basis. A tabulation of all the consequences which the status of a national might involve in certain countries would necessitate an examination of the most diverse questions — such as expulsion, extradition, private international law, civil procedure, and others. I therefore urge that Basis No. 2 be deleted.

The Chairman:

Translation: Several speakers have asked to explain their views, either with regard to modifications in the text, or with regard to a new text, if this Basis is deleted. It is essential, however, before we go any further, that we should hear the views of those who, like the French and Italian delegations, are in favour of deleting this Basis, or, like the Belgian and Austrian delegation, are in favour of maintaining it.

I will therefore call first upon those who are prepared to state their views as to the maintenance or deletion of Basis No. 2.

M. Schwagula (Austria) :

Translation : Austria is quite prepared to accept the provisions set out in this Basis which are calculated at least to limit the unfortunate consequences of statelessness. If the principle laid down in this Basis is adopted, at any rate persons who once possessed a nationality would be able, if necessary, to find a safe and permanent refuge in their former country, instead of being sent from place to place as undesired persons and perhaps also as undesirables. Administrative action in this matter becomes particularly necessary when these persons, by reason of sickness or poverty, have to be supported by the State which affords them asylum.

Measures to end this state of affairs would serve the interests both of the individual in question and of the State of residence.

As regards the changes proposed in the text, I am sorry that I cannot accept the amendment of the Egyptian delegation to the effect that the readmission of a person who has become stateless should be limited to cases in which loss of nationality was not due to forfeiture or denationalisation.

Such a restriction would be altogether incompatible with the spirit and object of this Basis of Discussion. On the contrary, loss of nationality inflicted on individuals as a penalty is exactly what should be dealt with by such a clause.

It seems unjust that the State of residence, which often has had neither reason nor means to verify the nationality of individuals, should assume the unfortunate consequences of a measure of this nature, which is frequently dictated by political considerations.

On the other hand, I agree that we should omit the words " after entering a foreign country ", as proposed by the delegations of Germany and the United States of America, since that would still further increase the number of persons with regard to whom the State of residence would be able to make use of the suggested expedient.

M. Standaert (Belgium) :

Translation : I entirely agree with what has just been said by my Austrian colleague, who has cut the ground from under my feet by saying almost exactly what I was about to say myself.

I should like, however, to point out that this question is connected with nationality. The fact of being without nationality is surely a question of nationality, since it is impossible to live outside human society. Every man must have a country. It is because of these unfortunate cases that we urge the maintenance of this provision. Only too often, persons who emigrate to other countries are not the cream of the population, or at any rate are not persons of means ; they are mainly labourers who leave the country in search of a livelihood. As a result of economic conditions, these persons may become unemployed ; or they may fall sick, and find it difficult to earn a living. They then have to be supported by the State in which they happen to be.

I think, therefore, that it is only humane that we should agree that the country whose nationals such persons have been, where they have lived and whose human capital they represent, should take them back.

I entirely agree with the amendments moved by the delegations of the United States of America and Germany.

M. Wu (China) :

The Chinese delegation desires to support the Basis in general as it stands, subject to amendments, which are not amendments of principle. What generally occurs is a contest of nations claiming a desirable individual as a national. We now have cases of an individual who is perhaps generally considered undesirable, whether for hygienic, economic, or other reasons. It seems to me that, on the same principle on which we allow a nationality claim, we should allow a refuge for these unfortunate persons ; and what more natural and logical asylum for him is there than in that country which used to claim him as its national ?

So far as China is concerned, the matter is of comparatively little importance, at present at any rate. There is, in that country, quite a large number of foreigners to whom we might, perhaps, apply this rule, if adopted; but, for reasons of humanity, we could not very well do so. I refer to those individuals who used to claim Russia as their country. There are other countries also which are in the same position as ourselves.

What I wish principally to emphasise is this : that, for practical purposes, the Basis is not of much importance to us ; nevertheless, I think that, logically, we should adopt it very much as it stands.

The Chairman :

Translation : The observer for the Union of Soviet Socialist Republics has asked to be allowed to make some observations. If the Committee agrees, I will call on him to speak.

M. Kourski (Union of Soviet Socialist Republics) :

Translation : The question of nationality, as the Chairman has said, is essentially a political one, and Basis No. 2, in particular, is exclusively political.

The question of the admission of persons who have lost their nationality lies outside the scope of the system of rules for the definition of nationality. Laws on this subject have been promulgated, not only in the Union, but also in various other countries. These laws can only be considered in the light of the special political circumstances to which they owe their existence. They are incompatible with the principle laid down in the text of Basis No. 2. In any case, it is impossible to regard this Basis as a general rule capable of being included in any form in the texts which may result from the discussions of the Conference.

My Government, whose legislation contains provisions regarding denationalisation which are contrary to the solution contemplated in Basis No. 2, cannot accept it and proposes that it be deleted altogether.

M. da Matta (Portugal) :

Translation : I consider the provisions laid down in this Basis to be unacceptable. The State of which the person in question was formerly a national is obliged to receive him. That, however, is not a question of nationality, since the individual does not recover his nationality. Under Article 22 of the Portuguese Civil Code, an individual who, without permission from the Government, accepts a pension or a decoration from a foreign Government loses his status as a Portuguese citizen.

If a Portuguese accepts, without permission, a decoration from the French Government and goes to live in France, the Portuguese State is bound, if the French Government so requests, to readmit him. On returning to Portugal, the denationalised Portuguese does not recover his nationality, but nevertheless enjoys the protection of the law. He has a personal status, and finds himself in a position more advantageous than before, since, not only does he enjoy the protection provided by Portuguese law, but, being no longer a national of the country, he evades obligations, often very burdensome, to which nationals are liable. Nevertheless, no other State is obliged by the law of nations to receive him into its territory. Should each State entrench itself behind its rights, the former country, in the last resort, is obliged to keep him. What, then, is the use of having denationalised him ?

A solution in harmony with the principles would be to allow denationalisation as a punishment only when the person already possesses another nationality. The Portuguese delegation asks that this draft provision be deleted.

M. Rundstein (Poland) :

Translation : I agree with the proposal of the French and Italian delegations.

The rule in itself is a useful one. The Polish delegation would attach great importance to a solution of this problem by means of bilateral Conventions. Its solution, however, falls rather within the sphere of Conventions on establishment and treatment of foreigners, or of those connected with public relief.

I would further point out that our Bases of Discussion do not deal with all the aspects of the problems of statelessness, but only with some of them.

Furthermore, statelessness, which is a very complicated and thorny problem, has long been under consideration by the League of Nations. I do not think it possible to find a solution, even a partial one, for a question so complicated as this in a Convention on the codification of nationality rules.

M. Soubbotitch (Yugoslavia) :

Translation : I quite agree with the proposal that this Basis should be omitted. In my opinion, the substance of this Basis is not a question of nationality. Here, indeed, we have no conflict of nationality at all, nor even a question of nationality in any other form. The question of nationality means the question of what nationality a person is to possess. There is no reference to the subject in this Basis.

I agree with the delegate for Poland that the question is rather that of admitting a foreigner to the national territory, because the stateless person, having lost his nationality, is a foreigner so far as the country is concerned. It is, therefore, a question concerning the admission of foreigners. For this reason, I do not think that such a clause is in its place in a Convention on nationality.

M. Alvarez (Chile) :

Translation : This is not, strictly speaking, a question of nationality, but rather one of international control. As a provision of that kind, the text is wholly inacceptable. How is it possible to allow a distant country (for instance, in our case, a country in Europe or Asia) to turn to a country in America and say : " You are compelled to receive this person who was formerly your national in spite of the fact that under your law he has lost his nationality " ? Why should such a step be taken ? Besides, there are many other questions to be settled in connection with this subject — for example, which country ought to pay travelling expenses, and so on.

I think that these reasons alone are sufficient to warrant the deletion of this Basis ; otherwise, we would have to amplify it to such an extent that it would really fall altogether outside the scope of this Conference.

M. Merz (Switzerland) :

Translation : I agree with the views expressed by the delegations of the Netherlands, Austria and Belgium.

I think the question of statelessness is one of the most important from the practical point of view. We should endeavour to define, at least partly, the legal position of stateless persons.

At the present time, persons without nationality are in an uncertain and frequently very difficult position. States themselves are often embarrassed by this situation.

Let us first endeavour to lay down certain rules to prevent the creation of new categories of stateless persons. I refer to Bases of Discussion Nos. 12 and 13. Of course, we shall not succeed inpreventing statelessness altogether. At present, particularly in Europe, there are persons without nationality who have lost their nationality by reason of absence from their country or by expatriation. It would, perhaps, be premature to attempt to establish any general status for persons without nationality, a sort of restricted nationality with limited characteristics. We might, however, consider the possibility of certain practical regulations concerning the situation of these persons.

Basis of Discussion No. 2, therefore, seems to me to be one of these practical regulations which we might accept, all the more since it corresponds to our constitutional principle — namely, that the Swiss citizen cannot be deprived of his right of citizenship against his own will.

If it is not found possible to accept this thesis, I wonder whether we could not arrive at an agreement to the effect that the State which has declared one of its nationals deprived of his nationality should be obliged, if the former national becomes indigent, either to take him back or to provide for his maintenance. The case of the stateless person without means should, indeed, be considered in the first place. There are humanitarian reasons for intervening in such cases. So far as concerns the motive for such action, I do not think it just that the country of residence should bear the financial consequences of a measure taken by the State whose nationality the foreigner formerly possessed.

In order to make the situation of stateless persons less difficult and less precarious, we might also consider the possibility of laying down that the State in which the person without nationality is resident should, or might, afford him a certain degree of protection which would be recognised by other States.

These are mere suggestions, put forward with a view to the settlement of the hardest cases, or, at least, for the laying down of certain rules. I am, therefore, in favour of maintaining this Basis. As far as the text is concerned, I do not desire to state any final opinion. I think that the texts proposed by the German and United States delegations are better than that of the Committee of Jurists.

The objection has been raised that this question is quite unconnected with nationality rules. Statelessness, however, is certainly the consequence and result of the inadequacy or non-concordance of nationality laws. There certainly exists at least an indirect relationship.

If it is said that this question of stateless persons, or the manner in which they should be treated, is of a political character, I would ask whether questions connected with nationality itself have not each their political aspect. If we base our action on an argument of that kind, we might just as well cease to discuss any possibility of an arrangement concerning the acquisition and loss of nationality.

In principle, therefore, I am in favour of maintaining Basis No. 2, though the actual wording might perhaps be improved. I am inclined to think that, eventually, we might succeed in agreeing on one or two rules with a view to attenuating the most conspicuous consequences of statelessness.

The Chairman :

Translation : We will continue this discussion, but, first, may I make one general observation ? Sixteen delegates have already spoken on this question : the two points of view are beginning to be quite clear. May I ask the six speakers who are still down to speak on this subject not to repeat the same arguments too often, and to express their views as briefly as possible ?

M. Kaloyannis (Greece) :

Translation : I quite agree with the Chairman that the arguments for and against this Basis have already been very clearly set out. I merely wich to point out that the intention of Basis No. 2 is to lay down rules to cover an unfortunate contingency — statelessness. That consideration should take precedence over all others, particularly in an international Conference.

For various reasons which we are not called upon to examine here, a person may become stateless. Does that mean that there is no longer any place for him on the earth ? If I dwell on this point, it is merely to emphasise once more the observation of the Chinese delegate that this is a question of humanity. Whatever be the formula adopted for the Basis, whatever be the text at which we arrive, I would ask the Committee not to forget the case of stateless persons. We must declare that, when a man has lost his nationality and has not been able to acquire another, he naturally applies to the country whose nationality he has lost. If the country whose nationality he has lost will not accept him, why should the country in which he is resident tolerate him ?

The point calls for settlement. I am very happy to hear the French delegation say that we must come to an agreement on this matter. I am sure that, in all the views which have been expressed before the Committee, the principle of humanity has not been forgotten. I need hardly add that I am in favour of this Basis.

Mr. Dowson (Great Britain) :

In supporting this basis, I desire to associate myself with the delegates for Belgium, Switzerland and Greece, who have spoken in favour of this motion, and to express my entire agreement with their views and reasons for supporting it. For that reason, I shall, as the Chairman has requested, be very brief.

It seems to me that this is an opportunity for removing the difficulties, inconveniences and sources of friction which, in actual practice, arise internationally in the conduct of States towards one another. We have here an admirable opportunity of adjusting the difficulties, and I think my Government would be very sorry to see the opportunity missed, because it believes that much of the difficulty which arises, particularly in regard to deportation, would be removed if States could agree upon something on the lines suggested in this Basis.

In an ideal world, everyone would acquire a nationality at first and retain that nationality until acquiring another; but, unfortunately, this is not an ideal world. Nationality laws

are not perfect, and there are difficulties and differences which arise and which it is the object of this Conference, amongst other things, to endeavour, as far as possible, to remove.

The question of deportation is a practical one, and, whilst I fully appreciate the logieal reasons urged by the French delegate in favour of excluding this Basis on the ground that it has nothing to do with nationality, I would reply to him, as I think other delegates have done, that this is a matter which arises out of nationality and, consequently, is a proper one for this Conference to consider.

My delegation would support this Basis either as it stands or, if it is not possible to accept it as it stands, with the omission of the words "after entering a foreign country". We should prefer, however, to adopt the original text of the Basis.

M. Hering (Germany):

Translation: It would be desirable to arrive at a general settlement calculated to contribute to the practical solution of a problem which is of very real importance from the point of view of humanity and nationality. In the absence of any rule on this subject, the country which at present offers its hospitality to persons without nationality assumes responsibility for the maintenance of a number of stateless persons who have become indigent — a situation which is quite unfair.

Basis No. 2 would provide a more equitable solution.

As regards the words "after entering a foreign country", we suppose they refer to the words "if a person loses his nationality". Consequently, the State would not (according to the text of our Basis) be obliged to receive its former national if the loss of nationality occurred before he had entered a foreign country and resided there. It seems to me that the difficulties of the country of residence would be exactly the same. It does not matter whether the loss of nationality took place before or after the person entered the country. That is why we propose to delete this text.

M. de Viana Kelsch (Brazil):

Translation: I entirely agree with the views expressed by the Swiss delegate.

M. Malmar (Sweden):

Translation: These questions are extremely delicate; there are reasons both for and against the maintenance of this clause. I will not put forward any legal arguments, but I desire to draw the Committee's attention to the fact that there are also humanitarian reasons in favour of the deletion of this clause.

I will take as an example the case of a person who has lived all his life in a foreign country and who has, so to speak, given all his energy to that country. This person is quite assimilated to the population of the country, and it would be an injustice to him when he is no longer able to work to send him back to his country of origin where he has never lived and where he would be in the same position as in a foreign country.

It would be better to settle these questions by bilateral Conventions and delete this Basis.

M. Standaert (Belgium):

Translation: I desire to say a few words more on certain objections which have not been adequately refuted.

The first objection was based on police regulations. This is not a proper objection, because police regulations do not constitute a real obstacle. Expulsion is not a rule, but an exception, and you cannot derive a general rule from an exception.

I would make the same reply as regards forfeiture of nationality. If that were admitted to be the general rule, it would be useless to discuss the other rules concerning acquisition, since the general rule would be denationalisation! But, as a matter of fact, it is another exception, and, as I say, we cannot derive a general rule from an exception.

As for the objection connected with expenditure, put forward by M. Alvarez, almost all existing Conventions on repatriation accept the principle that the expenses are borne by the State requesting repatriation. That should allay any apprehensions which certain delegates may have felt with regard to a request for mass repatriation.

Since the League of Nations has expressed the desire that we should arrive at a general rule and, furthermore, that we should encourage separate agreements, I desire to state that my country is quite ready, should this general rule not be adopted, to conclude bilateral or multilateral agreements based on Basis No. 2.

Apart from the humanitarian aspect, we must consider the point of view of sentiment. I take the liberty of raising this point, because I have a certain experience in the matter, Belgium being, to some extent, a land of refuge for many people. I have been able to see how persons who have lost their nationality by denationalisation have still a longing for their own country.

The decree of expulsion or denationalisation does not kill the nationality in their hearts, for it is a very deep-lying sentiment. Even if the external legal form disappears, the essence remains. Nationality means ancestral memories and upbringing; it means, in many cases, the first impressions of childhood. All this cannot be eliminated by denationalisation or expulsion.

I think, therefore, that this problem is at the very root of the question of nationality, and I ask that we maintain Basis No. 2.

M. Negulesco (Roumania):

Translation: The Roumanian delegation quite agrees with the proposal made by the Italian and French delegations.

M. Diena (Italy):

Translation: We have been convened here to settle questions of nationality and not

international police questions. We are not even called upon to consider the treatment of foreigners. A Conference in Paris recently dealt with that question, and did not obtain any very striking results. We must not step into that Conference's shoes.

The delegate for Belgium says that we must reduce the number of stateless persons as far as possible. I quite agree. But I must point out that, if we adopt Basis No. 2, the number of stateless persons will not be diminished by a single unit. Even if the State of origin is obliged to receive the stateless person, that person will still be a foreigner as far as that State is concerned. And, moreover, can we deprive that State of its right of expulsion ? That would be infringing its sovereign rights. Otherwise, if the stateless person commits a crime, the State will not be able to rid itself of him, although, in the eyes of that State, he has become a foreigner.

The conclusion of bilateral Conventions between States which feel that they can do this would be all to the good, but we could not adopt such a rule in a general Convention. That is why the Italian delegation is opposed to this Basis.

Lastly, the five jurists of the League of Nations who proposed this Basis themselves admitted that it was outside the sphere of nationality questions. We must not be more royalist than the King.

The Chairman :

Translation : I think the Committee now knows enough about this question of principle. You have heard twenty-three speeches. Unfortunately, the Committee has shown that it is almost equally divided into two camps. As many delegates have spoken in favour of maintaining Basis No. 2 as those who recommend its omission.

The question will arise whether the Committee desires to take a formal decision on this matter. But, before coming to this, I would wish, in summarising our discussions, to draw attention to the two essential ideas which appear to result from our debate.

Firstly, a large number of delegations are of opinion that the subjects dealt with in Basis No. 2 have a more definitely political character than any other question of nationality, and that, in certain fields, this question even transcends the sphere of nationality and becomes a question of international police. This appears to be regarded by certain delegations as so serious a factor that there is no hope of their altering their views.

Secondly, all have shown humanitarian feelings for the unfortunate people who, as a result of divergent laws, are deprived of nationality and thus become universal outcasts. I think this Committee is unanimous in desiring to restrict the number of stateless persons as far as possible. Should the Committee decide not to maintain Basis No. 2, I think that, as has already been proposed by the Danish delegation, it might retain in some form, if only as a recommendation, the idea that States should endeavour, by their legislation, to obviate cases of statelessness.

Lastly, there is an idea which is supplementary to the two I have just mentioned. Many delegations desire to see bilateral Conventions concluded on the special question dealt with in Basis No. 2. Let us take these ideas, which result from the discussion, in order finally to establish the position taken up by the Committee.

First comes the main question : Are we to retain or to delete this Basis ? The discussion shows that the Committee is very much divided, but that if we took a vote there would be a slight majority for retaining it. May I point out that this would be a mere manifestation which could not have any practical results in view of the number of objections that have been raised to the maintenance of this text ? Nevertheless, if anyone asks for a formal vote, I will comply with his request.

M. Standaert (Belgium) :

Translation : I ask that we should take two votes : the first as to whether we should maintain Basis No. 2. or not, and the second as to whether we should make a recomendation on the lines of Basis No. 2. It would be a platonic recommendation with a view to inducing countries to adopt such a clause in their legislation, and would advise the conclusion of bilateral agreements.

M. de Navailles (France) :

Translation : The French delegation would prefer that no vote should be taken on this question yet. If the Committee remembers, I explained why we asked for the deletion of Basis No. 2. I also said, however, that, after hearing the explanations given by the delegates in favour of keeping this Basis, we would consider whether it would not be possible to agree to a modified text.

The French delegation desires to avoid an international Convention infringing, for the first time, a sovereign right of States which has never been disputed. Indeed, it would be the first time that a text ever declared a State obliged to receive into its territory an individual expelled by itself. I do not think we can go as far as that.

We are told, however, that this is primarily a humanitarian measure. Individuals who have once possessed a particular nationality should not be left in a state of poverty to become a burden to foreign States. On this point, the French delegation quite agrees.

We only desire one thing ; that the text should be amended in such a way that (1) it safeguards the sovereign rights of States and (2) gives full weight to this humanitarian

standpoint which the French delegation is the first to acclaim.

M. Guerrero (Salvador), Rapporteur :

Translation : I am opposed to a majority vote, particularly in the codification of international law. If we examine the various currents of opinion closely, it will be seen that the question is not so very serious after all. The best solution would be to refer this question to the Drafting Committee. We might add to the Drafting Committee those delegates who have expressed views contrary to the standpoint adopted by the Drafting Committee — for instance, the delegate for Belgium. The Drafting Committee might bring us tomorrow a text taking account of these two points of view.

M. Diena (Italy) :

Translation : I agree to that proposal.

M. Kaloyannis (Greece) :

Translation : The Chairman, as usual, has summarised the situation very clearly. He has advised the adoption of bilateral Conventions to settle the question of statelessness.

For the moment, I must make certain reservations in this respect. I would suggest, though this is perhaps not altogether relevant to the question before us, that public opinion should be prepared with regard to this problem of statelessness. Ought not the question to be referred, as a recommendation, to the League of Nations in order that the League may take special steps to deal with the problem ?

A new Committee might be set up.

I quite agree that this question might be referred to the Drafting Committee ; but I suggest, even before the matter is decided, that we might refer the whole question back to the League of Nations, because the fate of stateless persons evokes our deepest sympathy. I hope, however, that the Drafting Committee, after the statements which have been made by the French delegation, will evolve a text that will satisfy everybody. We are divided on the question of law, but we are all agreed on the question of sentiment. Our two basic ideas are that every person is entitled to a nationality and that such nationality can only be withdrawn under circumstances which I will not discuss at the present juncture.

The Chairman :

Translation : I think the Rapporteur's proposal is a very simple one. M. de Navailles has given us a very useful indication. Working on these lines, the Drafting Committee might submit to us a text which, though safeguarding the freedom of each State in this connection, would afford a practical and humane solution for this serious case of unfortunate, indigent, stateless persons. Provision might also be made in this text for the possibility of concluding bilateral Conventions. If there is no objection, I shall take it that the Committee agrees.

M. Merz (Switzerland) :

Translation : I agree with the Chairman that we should refer the Basis to the Drafting Committee and should not vote to-day for the retention or omission of the Basis.

I would add that, personally, I see no objection to making a recommendation to the Council of the League of Nations to the effect that this question of statelessness should be studied as a whole. In reality, Basis No. 2 can only solve part of the general question of statelessness. I think that a far more comprehensive solution is necessary ; a sort of international status should be established, as I have already pointed out. We cannot do this, but I do strongly urge the Committee in any case to recommend that this question should be dealt with by an International Committee to be convened by the League of Nations.

The Chairman :

Translation : There are two quite distinct questions. Basis No. 2 refers to a special question. A very simple proposal has been made to refer this special question to the Drafting Committee in order that the Committee may, on the lines suggested by M. de Navailles, submit a text that would satisfy both those delegations which are in favour of retaining the Basis and those who are unwilling to accept it as at present drafted.

The second question is of a very much more general nature. It concerns the settlement of the problem of statelessness. We all agree that it is highly desirable that States should, either in their legislation or by means of international agreements, endeavour to circumscribe as far as possible the number of cases of statelessness.

A few moments ago, I suggested that you should consider the proposal of the Danish delegation and decide whether in some form or other it would not be desirable to explain that, as this question cannot be dealt with by the Committee at present, it should be examined subsequently. As reference has been made to the work of the League of Nations, I personally do not see any reason why the recommendation made by this Conference should not express a hope that the League of Nations will give practical effect to the recommendation.

M. Matter (France) :

Translation : The French delegation entirely agrees with the very prudent observations of our Chairman. His observations refer to two points. He has proposed that this text should be handed over for examination to a Sub-Committee. I need hardly say that the French delegation agrees, since M. de Navailles was the first to propose this solution.

It must be obvious to all that the second point referred to by the Chairman is a very important one. Our Chairman's comments are excellent. We cannot ourselves take a decision. Certain limits have been set to

the subjects we are entitled to discuss. These subjects are sufficiently numerous and complicated to occupy all our time.

But it may happen that, while passing under review the various questions of nationality, we may come upon other points which appeal to our sense of law as much as to our feelings. We may refer to the situation of stateless persons — a difficult and sometimes piteous situation, as one of the delegates has pointed out. We may respectfully, but with the prestige afforded by our qualifications and special mission, request the League of Nations, our common mandatory, to take the matter up.

These are the Chairman's two proposals, which the French delegation supports unreservedly, wholeheartedly and with every hope of success.

The Chairman :

Translation : I shall ask the Committee to be good enough to entrust to the Drafting Committee the following two-fold mission : (1) to endeavour to draw up a compromise on the basis indicated by M. de Navailles, in the hope that, by means of this compromise and for the special case of Basis No. 2, we may attain unanimity ; (2) to endeavour to draft a recommendation relating to the general settlement of the difficult question of statelessness, making particular mention of the work done by the League of Nations.

The above proposals were adopted.

14. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 3.

The Chairman :

Translation : In connection with Basis No. 3, we have a series of amendments proposed by the Hungarian, Finnish and Polish delegations and the delegation of the United States of America (Annex II). The latter delegation has not merely submitted an amendment ; it has put forward a new proposal relating to this Basis.

Mr. Flournoy (United States of America) :

The position of the United States with regard to the naturalised citizen will be discussed later; but I will say, at this point, that for many years we have held that naturalisation causes a complete change in the national character of a person. We do not admit that a person who has left his country and established himself permanently in another country, and has acquired the nationality of the latter under its laws, can still properly be regarded as a national of the first country. We therefore consider it important to qualify this statement in Basis No. 3 by the addition of the words " acquired at birth " after the word " nationality ".

The Chairman :

Translation : Before calling upon the other speakers, I should like to ask the United States delegate whether he does not think that the first new Basis of Discussion proposed by his delegation (document 18*(a)*) might be joined up with Basis No. 3 and be discussed at the same time as that basis.

Mr. Flournoy (United States of America) :

I think that would be desirable.

May I add a word as to Basis No. 3 ? I am in some difficulty as to the meaning and object of this Basis, particularly as to the meaning of the word " considered ". According to the meaning ordinarily attached to that word, it means the same thing as " deemed ", and, in that case, Basis No. 3 does not seem to say very much. If a person has the nationality of State A, he can only have it under the law of State A, and therefore he must necessarily be deemed by State A to be its national.

If, on the other hand, the word " considered " has a more extensive meaning and is equivalent to " treated " or " dealt with ", then the result would be different. My delegation has construed it as having the latter meaning — that is to say, " a person having two nationalities may be dealt with as its national ". Otherwise, as I have said, there does not seem to be any appreciable result from this Basis. I should like to have, if possible, some information as to its exact meaning.

M. de Berczelly (Hungary) :

Translation : The Hungarian delegation is entirely in agreement with the contents of Basis of Discussion No. 3, because the idea set out in this Basis is quite in harmony with the general principles of the Convention.

We have ventured to submit a proposal to amend this Basis of Discussion and we think that this amendment is a very natural one, since, not only questions of double nationality, but also of treble and quadruple nationality may arise.

We are therefore of opinion that it would be desirable to say in Basis No. 3 : " A person having two or more nationalities . . . "

M. Buero (Uruguay) :

Translation : I wonder whether this Basis of Discussion No. 3 does not overlap with Basis No. 1, which we have already adopted. We have admitted that each State is free to determine under its legislation who are its nationals, and we are now considering the case of persons possessing two nationalities who may be regarded by each of two States as its national. This seems to me to be a sort of pleonasm, the dangerous nature of which is increased by the fact that we may not all be in agreement with regard to Basis No. 3.

Our own constitutional law lays down quite categorically that a foreigner who acquires Uruguayan nationality is not thereby deemed

to lose his nationality of origin. This is a provision which may seem to you curious, but which nevertheless exists in Uruguay.

If you maintain this Basis, modifying it in the manner proposed by the United States delegation, I should be unable to agree to it. The wording proposed by the United States would limit the scope of the general principle we admitted when discussing Basis No. 1. I think it would be better simply to omit this Basis, since its general principle is already contained in Basis No. 1.

M. de Navailles (France) :

Translation : I wish first of all to state that I agree with the Hungarian delegation's proposal. There is no reason why our text should be limited to two nationalities, since it is true that a person may possess more than two nationalities.

Secondly, I must reply to a question raised by the delegate of the United States — namely, whether the word " considered " is equivalent to " dealt with ". I think we may reply in the affirmative and say that " may be considered " is equivalent to " may be dealt with ".

The delegation of the United States has proposed that the scope of this provision should be limited. It has stated that, when a national of the United States has obtained naturalisation abroad, the United States of America takes no further interest in him, no longer regards him as its national, and that, consequently, the provision in Basis No. 3 is of no interest to it. The word " may " meets the standpoint of the United States delegation, since, in view of that word, each of the States of which a person possesses the nationality is entitled to treat that person as its national or not.

In this case, I am absolutely in favour of maintaining the present text, because, from the French point of view, if we adopted the modification proposed by the delegate for the United States, we should produce this result — persons who are French because they have been naturalised French could no longer be treated by us as French nationals. We cannot admit this, because, as soon as we grant naturalisation to a foreigner, we regard him as a Frenchman ; the text must therefore be sufficiently elastic to allow us to continue to do so.

I think that the delegate of the United States might agree not to insist on this limitation. If the text remains as it is, the position of his Government would not be changed, and our right to regard as French citizens persons whom we have naturalised would not be affected.

M. Kaira (Finland) :

Translation : Instead of discussing proposals concerning cases of dual nationality in connection with Basis No. 3, which relates only to the disadvantages resulting from this anomaly, it would be better to discuss them in connection with Basis No. 6, which also contains a similar provision, though more limited in scope.

Mr. Dowson (Great Britain) :

On behalf of the British delegation, I should like to associate myself with the speech just made by the delegate for France. I am in entire agreement with what he said. It seems to me that Basis No. 3 establishes a principle. In a group of Bases dealing with double nationality it is essential that we should understand what is the principle governing a person possessing two or more nationalities. I entirely agree with the French delegate that this Basis should stand as it is, subject to the addition of the words " or more " after " two nationalities ".

Mr. Flournoy (United States of America) :

I merely wish to say again that the meaning of this Basis is not entirely clear. It seems to me that the Basis should be referred to the Drafting Committee, so that its meaning may be made absolutely clear. I do not see how we can vote for or against this proposal until we know more definitely what it means.

M. Hergel (Denmark) :

Translation : I venture to propose the following addition to Basis No. 3, as paragraph 2 of that Basis :

> " A person possessing the nationality of two or more States may not be required to fulfil obligations of military service or other national service in one of these States when he habitually resides in the territory of another of these States."

M. Diena (Italy) :

Translation : I willingly agree to the proposal to say " several nationalities ". I think that this Basis of Discussion is a most unobjectionable one, and, indeed, I hope that everybody will be able to accept it, for I think it meets everybody's wishes. It is very simple. It refers to cases in which an individual possesses several nationalities, and lays down that each State whose nationality he possesses may regard him as its national. It is not obliged to regard the person as possessing two or three nationalities. If, for instance, the person is Italian by birth or by naturalisation and at the same time a citizen of the United States, according to this Basis he may in America be treated as an American, and in Italy as an Italian. That is all. As you see, therefore, everyone can accept this provision.

The Chairman :

Translation : M. de Navailles has asked the delegation of the United States whether it would not withdraw its proposal for the addition, after the words " two or more nationalities ", of the words " acquired by birth ". I would ask the delegate of the United States whether he maintains his amendment or agrees to drop it.

Mr. Flournoy (United States of America) :

If this Basis is applicable to a naturalised person as well as to persons who acquire two or more nationalities at birth, we cannot

agree to it. We understand that the condition of having two or more nationalities must arise under the conflicting laws of various countries, and it is possible for persons to have three or even four nationalities at birth; but I am quite sure that we could not agree to this proposal without the words "acquired at birth".

If the word "considered" means something more than "deemed"—if it means "treated as a national"—it immediately brings in the very important question of the status of naturalised citizens. I have already explained the position of the United States with regard to the status of naturalised citizens.

M. de Berczelly (Hungary):

Translation: I am in favour of maintaining the text as it stands and accept the explanations furnished by the Italian delegate. I suggest, however, in order to end this little discussion and satisfy the United States delegation, that we should insert the word "*traité*" in the French text instead of "*considéré*". This is merely a proposal to render the text clearer and thus bring about agreement.

Mr. Dowson (Great Britain):

There is one suggestion that might be made to assist the delegate for the Unied States. The substitution of the word "claimed" for the word "considered" might get over the difficulty. The Basis would then read: "A person having two or more nationalities may be claimed as its national by each of the States whose nationality he possesses". This would emphasise the permissive character of the principle so far as the State is concerned whose nationality the person possesses.

Mr. Flournoy (United States of America):

I do not agree to the word "claimed", as it seems to me to be subject to two meanings. Used in one sense it might mean the right to claim and, in another, merely the putting forth of a claim. If we adopt this word, we should still be left in uncertainty. I am still of the opinion that this text should be reconsidered by the Drafting Committee in order to make perfectly clear what it does mean. We should then be in a position to vote upon it.

Mr. Dowson (Great Britain):

I should like to suggest that we take an opportunity in the Drafting Committee of consulting the United States delegation with a view to obtaining the right phraseology to meet its views. By this means, we should avoid continuing the present discussion, which is, possibly, not very useful.

The Chairman:

Translation: The Committee will certainly agree to accept this suggestion and ask the United States delegate to consult the Drafting Committee in order to discover a text to which everyone can agree. It is understood that this afternoon the Drafting Committee will meet for a few minutes to come to an understanding with the delegate for the United States, and to-morrow morning will submit to us a text to which the United States delegation and the Drafting Committee both agree. We will then continue the discussion — and I hope it will be brief — on Basis No. 3.

The Committee rose at 12.45 p.m.

FOURTH MEETING

Thursday, March 20th, 1930, at 10 a.m.

Chairman: M. POLITIS.

15. DOUBLE NATIONALITY: BASIS OF DISCUSSION No. 3 (Continuation).

The Chairman:

Translation: With regard to Basis No. 3, you instructed the Drafting Committee to endeavour, in agreement with the delegation of the United States of America, to discover a form of words which would harmonise the various opinions expressed at yesterday's meeting. The Committee has come to an agreement with the United States delegation, the result of which is a new text for Basis No. 3, which reads as follows:

> "A person having two or more nationalities may be considered as its national by each of the States whose nationality he possesses, subject to any restrictions contained in this Convention."

As you will notice, it takes into account the amendment submitted by the Hungarian delegation and the amendments sent in by other delegations to the effect that the text should

not confine itself to the case of two nationalities, but should also apply to instances in which several nationalities are in conflict. Moreover, this text takes account of the opinion of the United States delegation, which, in view of the final addition : " subject to any restrictions contained in this Convention ", no longer insists on the specification of the source of the nationalities in conflict. The Basis therefore is worded, not as proposed yesterday: " two or more nationalities acquired at birth ", but simply : " two or more nationalities ".

Does any delegate wish to speak in connection with this new draft of Basis No. 3 ?

Mourad Sid Ahmed Bey (Egypt) :

Translation : My observation does not refer to the drafting of the text. As a matter of fact, on reflection, I wonder whether the text was really necessary. It contains a rule which is a result of the rule laid down in Basis No. 1, to the effect that States are free to legislate as they wish. If we decide that the text is unnecessary, we need not consider the drafting.

The Chairman :

Translation : The Egyptian delegate's observation is perfectly correct — this text is not indispensable. Even without it, the inference would certainly be drawn from the decision taken in connection with Basis No. 1. Several delegates, however, held that, even if the text is not indispensable, it is nevertheless useful, because it defines the meaning of Basis No. 1 in the case of double nationality.

Moreover, I would observe that, at the present stage of our work, we are discussing ideas rather than texts. When our work on the Bases has been finished and the Drafting Committee has laid a definite text before us, we shall be able to make a selection, or even eliminate certain texts as unnecessary. For the present, it is better to have a surplus rather than a deficiency.

M. Merz (Switzerland) :

Translation : I should have preferred the omission of Basis No. 3, for reasons similar to those I have given in connection with Basis No. 1. But I do not insist, particularly after reading the new text submitted to us.

On the other hand, I think it would be wise and prudent to refrain from voting on the retention of this Basis No. 3 until we have terminated our discussion on the points connected with double nationality. If we do not reach an agreement regarding the limitation we propose to discuss, it would be a pity if the only final result of the discussion were the inclusion in the Convention of a principle which, in point of fact, we want to limit to a certain extent.

In short, I should prefer no vote to be taken for the present on Basis No. 3, and that we should only vote after the discussion on the provisions concerning double nationality.

M. Hergel (Denmark) :

Basis No. 3, in the version which has been put before us this morning, is a mere formality, as has been already pointed out by the delegate for Egypt. I handed in yesterday a proposal, with the French text, for the amendment of Basis No. 3 with a view to attempting to make it somewhat more positive and in order that it might touch on a point where the conflict really occurs in the question of double nationality.

Our proposal was to add a second paragraph to the original text, and I would like to read it :

> " A person who possesses the nationality of two or more States may not be required to perform his military service, or other national service, in one State when he is habitually resident as the national of another State."

I suppose that it is most natural to deal with this question now, although I realise that, as Basis No. 3 is at present drafted, the proposal will have to be made into a separate article.

Those delegates who are engaged in the practical administration of their respective countries will agree, I think, that the matter is one of practical importance which it would be useful to deal with on this occasion. The question of military service was often raised in the great war, and enlarged, as the amendment is, to include other national services. The rule, if adopted, should make it possible to avoid several conflicts which are rather delicate in nature in times of peace also. I beg to add that the wording of this proposal is taken from a draft rule suggested by a Committee which has been meeting at the Harvard University of the United States.

The Chairman :

Translation : The Danish amendment is of great importance. I wonder whether its proper place would not be in connection with Basis No. 15. As you may have noticed in the Preparatory Documents before you, this question has been dealt with by the Preparatory Committee. In connection with Basis of Discussion No. 15, at the bottom of page 87 of Document C.73.M.38.1929.V, it is said :

> " Mention should be made of the fact that some replies have referred to the inconveniences which arise from enforcing military service obligations upon persons of double nationality before they have reached the age at which they have an option between the two nationalities."

If the Danish delegate sees no objection, I propose that we adjourn the discussion of this amendment until we come to consider Basis No. 15.

M. Hergel (Denmark) :

I was prepared to deal with this question under Basis No. 3, or perhaps Basis No. 4. However, I am quite ready to accept the Chairman's suggestion.

Mr. Flournoy (United States of America) :

It seems to me that it would perhaps be preferable to make this a separate Basis following Basis No. 4, since it does not relate to the termination of nationality. Basis No. 15 applies to the termination of nationality, but the present text relates to obligations while the double or plural nationality still exists. It is for this reason that I have made my proposal.

I think the matter is quite important from a practical point of view, and I will speak on that aspect of it later.

The Chairman :

Translation : What I meant was this. I think it would be more logical to examine this amendment, which falls outside the scope of the Bases, but nevertheless raises a really practical and important question at the end of the chapter on double nationality. If you will examine the document before you, you will see that double nationality is dealt with in Bases Nos. 3, 4, 5 and 15. My proposal was that we should consider the question of military service, not exactly after Basis No. 15, but at the end of the chapter. If, however, the Committee considers that it would be better to discuss this point sooner, I shall naturally raise no objection.

Mourad Sid Ahmed Bey (Egypt) :

Translation : The delegate of the United States of America asks that the amendment proposed by the delegate for Denmark should be placed after Basis No. 15, and our Chairman proposes that it should be examined at the end of the chapter. This question has already been settled, since it has been decided that the classification and final order of the articles will be considered after we have reached an agreement on the basic points.

The Chairman :

Translation : We will consider the question of military service later. I proposed that it should come after Basis of Discussion No. 15 ; but, if any delegation suggests, in the course of the discussion, that it should be examined at an earlier period, the Committee itself must decide. For the present, it would be better to waste no time on this purely formal point.

Coming back, therefore, to the basic question — the new text of Basis No. 3 — you have heard the views of two delegations, the former being of opinion that this text is not indispensable, and the latter holding that it would be better to adjourn consideration until we have ascertained that there will be no restrictions in the following provisions.

I beg to remind you that the decisions you reach at the present juncture are of a provisional nature and may be reconsidered later. The best method would be to note points of agreement, even provisional agreement, and go on to the following Bases.

If you agree, we will regard this Basis No. 3, new text, as provisionally adopted. Is there any objection ?

Basis No. 3 was provisionally adopted.

16. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 4.

The Chairman :

Translation : With regard to Basis No. 4 (Annex I), several amendments have been deposited — by the United States of America, Finnish and Polish delegations (Annex II). In addition, the Yugoslav delegation proposes to add a new text in connection with No. 4*bis*. As several delegates wish to speak on this point, we will begin the discussion immediately.

M. Wu (China) :

On behalf of the Chinese delegation, I have to move the complete elimination of this Basis, including the alternative. I think that the primary consideration in the minds of the experts who drafted the Basis, as well as in the minds of the Governments who replied or made comments on it, was probably a case which was entirely different from that which I have to present to you now. In other words, their primary consideration was that of single individuals : isolated cases of persons with double nationality, and the question whether one of those States which claimed him as its national might afford protection to him as against the other State.

The case that I have to present to you this morning is entirely different. It is not merely that of individuals, but of groups of individuals, communities, or masses of such people with double nationality. These groups, communities or masses live a life entirely different from the natives of the place in which they are residing. They speak a language which is entirely different ; they still speak their mother tongue. In many cases they do not know, even from generation to generation, the language of the natives. They have a culture, they have a civilisation, entirely different from that of their environment. They retain, even from generation to generation, ties, the strongest ties, with their relatives, with their families in their mother country. That is the state of affairs which I would ask you to consider this morning.

One of the delegates (I forget now whom) yesterday made the remark that nationality is really a matter of ancestral ties. With that statement I entirely agree. Nationality is not merely a matter of law, it is not a matter of accident, it is not a matter of technicality ; it is a matter of the heart.

These people, these communities of Chinese, regard themselves as Chinese, from generation to generation. The Chinese Government, according to its law of nationality, regards them as Chinese. And, if I may say so, even the local Government of the territory where they live implicitly recognises that they are Chinese, because certain laws and regulations are made with special application to them. In such circumstances the Chinese Government does not feel able to relinquish the diplomatic protection of those of its nationals who are

resident abroad, even though that residence may be what is called "habitual" in the draft before us.

It may be said that such a claim of diplomatic protection is a violation of the sovereignty of the territorial Government. I do not think that is necessarily so; and the analogy to which I would draw your attention is to be found in the many cases we have had in recent years of minorities who have been protected by international agreements. Of course, I do not say that the analogy is identical in all respects; but, in essentials, the condition of those minorities who are protected and the case which I have presented to you just now are very much the same, if not identical.

The only two differences that I can see are these: first, the members of these minorities have only one nationality — the nationality of the territory in which they are residing. In the case which I have presented to you, we have a case of double nationality. The second difference is this: whereas in the case of these minorities there is only a substantial number of these people — in other words, a substantial minority among the population in the case under discussion — these Chinese communities not only represent a substantial minority of the native population, but, in some instances, they even form a majority, a great majority: two, three, four, and even five times the number of the natives. So this is not merely a matter of the protection of minorities, it is very often the protection of majorities.

The Chinese Government considers this to be a very important point, and you will not blame us when I tell you that we have perhaps eight or nine million of such people with double nationality. Therefore, in justice to these eight or nine million people, I move that Basis of Discussion No. 4 should be omitted altogether.

M. Kosters (Netherlands):

Translation: With regard to this Basis, the Netherlands delegation will merely make a very brief statement. It is prepared to accept the alternative Basis which, as regards diplomatic protection, accords precedence to the State of habitual residence, if the case is one of relations between the two countries of which the person is a national. We prefer that nationality which is coupled with the important element of habitual residence. In most cases, therefore, the State whose nationality the person in question has obtained by naturalisation will have precedence over the State of origin or birth.

In this connection, I venture to remind the Committee of the proposal concerning the first Basis—namely, that the use made of the freedom to legislate in this matter may not be in contradiction with the generally recognised principles. In order to avoid a situation which seems to it to be in contradiction with these principles, my Government is not prepared to recognise the bestowal of a foreign nationality based solely on the fact that an individual is habitually resident in the territory of the foreign State or has acquired immovable property, country estates or mines, etc., therein. When a Netherlands subject has obtained foreign nationality solely on such grounds, we do not recognise that person as possessing double nationality. Consequently, we do not think that the Basis applies to this or similar situations.

M. Kaira (Finland):

Translation: The Finnish delegation is quite prepared to accept the principle set out in Basis of Discussion No. 4.

There is, however, one point on which we have some misgivings: there may be some doubt as to whether a person who may need diplomatic protection is rightly a national of another State or whether he is wrongly claimed as such. Cases may arise in which the State has granted its nationality to an individual in a manner and under circumstances which may properly be regarded as being contradictory to the provisions of international law. The same situation arises when the State is of opinion that the person concerned cannot truly be regarded as a national of another State, that person's naturalisation having taken place on the basis of a false interpretation of the latter's law. Consequently, cases do arise in which a State should be entitled to exercise diplomatic protection in respect of the person situated in the circumstances described.

Similarly, the State must reserve the right to intervene when a person having plural nationality is treated by the other State in a manner incompatible with the rights of man and citizens as recognised by civilised nations, particularly when the unjust treatment is the result of the person's double nationality.

The Finnish delegation therefore proposes for Basis No. 4 the following formula:

> "A State may not afford diplomatic protection to one of its nationals against a State whose nationality suchpers on also, *and rightly*, possesses, unless the person in question is treated by the other State in a manner incompatible with the rights of man and of the citizen as recognised by civilised nations."

The Finnish delegation desires to emphasise the fact that the right to diplomatic protection here accorded to the State may become illusory if the State is not at the same time allowed to consult an impartial tribunal as to whether its action is justified — the tribunal's decision being binding. This implies that it should be possible to submit to an impartial tribunal differences between States parties to the Convention concerning the interpretation or application of the latter's provisions.

M. Rundstein (Poland):

Translation: The amendment submitted by the Polish delegation is only a subsidiary one;

if the Basis is accepted according to the intentions of the Preparatory Committee, the Polish delegation will withdraw its amendment. If, however, some other turn is given to the text, I shall maintain it.

In principle, the Polish delegation accepts Basis No. 4, subject, of course, to various minor alterations, but it is not in favour of the alternative sentence : "if he is habitually resident in the latter State". Personally, I think we might connect Basis No. 4 with the second paragraph of Basis No. 1, which has not yet been finally drafted. If, however, a State is free to legislate with respect to nationality, that freedom must be limited when there is a conflict of laws or contradiction between international Conventions, or even between general principles. In these circumstances, it might be laid down in Basis No. 4 that a State can afford diplomatic protection only when the attribution of nationality is not in conflict with international Conventions or generally accepted principles.

My delegation therefore proposes the addition to Basis No. 4 of the words : "if he has been naturalised without obtaining the expatriation permit required by the relevant legislation".

I do not know whether I should say anything regarding the proposal of the Yugoslav delegation, in view of the fact that the latter delegation has not yet explained its reasons. Nevertheless, I venture to suggest that this question may lie outside our terms of reference. The question of the nationality of claims is a matter for the Third Committee. Among the Bases of Discussion submitted to the latter Committee, we find one worded as follows :

> "A State may not claim a pecuniary indemnity in respect of damage suffered by a private person unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided."

This question is therefore one for the Third Committee.

Mr. Flournoy (United States of America) :

The Chinese delegate has brought out very clearly the conflict between the claims of two systems, that is to say, the system known as *jus sanguinis* and the system known as *jus soli*. He has advocated with some eloquence the former, which naturally is favoured principally by the older countries, the countries of emigration.

There is, however, another side to this question — namely, the side taken by the newer countries, the countries of immigration. If, in these new countries, including the country which I represent, the descendants for indefinite generations should maintain allegiance to the country from which their ancestors came, the countries in question could never develop a nationality of their own. Their population would be composed of a sort of crazy quilt of nationalities and various groups maintaining their allegiance to the country from which their ancestors came.

In a decision taken some years ago, in the case of Wong Kim Ark, the Supreme Court held that a person born in the United States of Chinese parents had the nationality of the United States with all the rights and privileges which accompany it, including the right to enter the United States as a citizen thereof. I do not want to go too far in this discussion, but merely to bring out the point that the conflict of these two claims, these two divergent principles upon which nationality at birth is based, is a difficulty which we shall encounter all through this subject, and it is our task to attempt to strike a happy medium if that can be done.

There is one other point. It seems to me that this Basis relates to the status and rights of individuals rather than the status and rights of groups. When a question relating to national groups in a country is introduced, a political problem is raised which involves the question of the rights of minorities, a matter which is usually settled by special treaties. I do not think that this point is involved in this particular Basis, which, it seems to me, relates to individuals rather than groups. Our delegation has suggested the elimination of this whole Basis, not because it objects to the principle, but simply because we think it could be included more appropriately in a Convention concerning the responsibility of States.

M. Standaert (Belgium) :

Translation : I would like to define the manner in which we regard the present Basis of Discussion. From the Belgian point of view, we consider that the bond of nationality is, in principle, at its very source a contractual bond. From this, it follows that a Belgian national who at the same time possesses a second nationality does not thereby forfeit his right to Belgian protection, so long as it is not proved that he has agreed to the second nationality in some way — for instance, by the fact of his habitual residence in the State to which he owes his second nationality. I must add, however, that we must suppose this to be his intention if, in the second State, he acts to all intents and purposes as if he were a national of that State.

As no person can, to all intents and purposes, possess two nationalities simultaneously — in the same way that he cannot have two mothers — when the Belgian national who also possesses the second nationality lives in the country from which he received that nationality and behaves as if he were a national of that country, I consider that the Belgian Government would not be bound to grant this Belgian diplomatic protection.

Mr. Dowson (Great Britain) :

I desire, on behalf of my Government, to support this Basis as it stands, without the

additional words, "if he is habitually resident therein". I regret that I cannot accede to the view expressed by the delegate for China, in regard to the principle which he enunciated, though I fully appreciate the reasons which induced him to take that view.

The practice as stated in this Basis, without the additional words, is entirely in accordance with the principles and practice followed by the Government of the United Kingdom for a great number of years, and I submit that, for reasons which I should like very briefly to state to the Committee, it is a sound, simple, general rule which it would be very advantageous to adopt in any Convention which may result from this Conference.

Let us consider for a moment what it is that this Basis covers. It deals with protection in the case of dual nationality — protection against the other State of which the person concerned is a national. Now, protection may be of two kinds. It may consist of assistance afforded by the Consul of one of the two States; such protection would not involve any claim against the Government of the other State, but would only arise, as contemplated by this Basis, in the territory of the other State. This Basis would lay down the principle that such protection cannot be given against the other States of which the person concerned is a national. Consequently, a consular authority would not insist, in the face of objection by the State in which the person was and whose nationality he possessed, on offering protection against the will of that State.

The other kind of protection which seems to be covered by this Basis is a claim by one State against the other where the person in respect of whom the claim is made possesses the nationality of both States. It has been suggested that that is a matter which falls within the scope of the Committee dealing with the responsibility of States. I agree that, to a certain extent, that is so, but I understand that it is proposed that no principle will be laid down in that Committee dealing with this particular aspect of the problem. That Committee, as has already been mentioned this morning, will deal with the question of the State which can prefer a claim in respect of persons against another State, and the principle suggested there is that it can only prefer a claim on behalf of a person who is its national.

Here we have the question whether a State can answer a claim by another State in the case of dual nationality, on the ground that the person in respect of whom the compensation for injury is claimed is one of its nationals. Consequently, the question is whether or not there is a good defence and that, as I have said, is in accordance with the practice that has been followed for a great number of years.

It is perfectly true that the question of habitual residence has, in the claims which have been argued before arbitral tribunals, been regarded as one of the factors to be taken into consideration, but it is really an irrelevant factor. The real point is whether or not the person in respect of whom the claim is made is a national of the State which is alleged to be responsible for the injury. I therefore support this principle as being a clear and simple rule which it would be to the advantage of States to adopt.

As regards the question whether the additional words, "if he is habitually resident therein", should be added, I should not be able to support the Basis with the addition of those words; because, in the opinion of my Government, they would give rise to confusion. Consequently, I hope that the Committee, in considering this question, will look at it from the point of view that it is desirable to have a perfectly simple rule which will deal with such cases as I have suggested.

M. Negulesco (Roumania):

Translation: Basis of Discussion No. 4 proclaims the principle that a State may not intervene diplomatically against another State in respect of an individual possessing simultaneously the nationality of both States.

The Roumanian delegation cannot agree to this principle. There are cases in which intervention is justifiable. Let us take the case of a Roumanian woman married to a foreigner. She has, by declaration, kept her Roumanian nationality and has become a foreigner according to the national law of her husband. Let us suppose, moreover, that husband and wife are habitually resident in Roumania. I do not see why the Roumanian authorities should not be entitled to afford diplomatic protection to the wife when the latter, in her husband's country, is in difficulties with the local authorities.

Such intervention is not merely justified in equity; it is in keeping with the principles proclaimed in the Bases of Discussion.

The authors were well advised to substitute the notion of residence for that of domicile and to endow the notion of residence with such importance that a third State must, in conformity with Basis No. 5, accord precedence to the nationality of the State in which the individual is resident. In Basis No. 15, also, it is laid down that a person possessing double nationality may, with the authorisation of the Government concerned, renounce one of his nationalities, and the text adds:

> "The authorisation may not be refused if the person has his habitual residence abroad."

I do not see why, in the present case, no preference has been accorded to the State in which the individual habitually resides.

For these reasons, I think that a person who is simultaneously a national of States A and B

may invoke the diplomatic protection of State A against State B, provided and as long as he is habitually resident in State A.

This formula embodies by implication the alternative to Basis No. 4.

For these reasons, I submit an amendment to Basis of Discussion No. 4, worded as follows :

"A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses, *unless and provided the person is habitually resident in the former State.*"

M. Diena (Italy) :

Translation : The Italian delegation is prepared to accept Basis No. 4 provided the Committee agrees to the alternative formula drafted by the Committee of Five itself.

I think that this system, if adopted, may allay the misgivings expressed by the delegate of the United States of America and felt in general by all countries of immigration.

Suppose an Italian emigrates to the United States. He acquires American nationality there, while retaining his Italian nationality. If he resided in the United States, Italy could not, under this provision, exercise her right to protect that person. This case, therefore, need cause us no anxiety.

The delegate for Great Britain has pointed out that, in accordance with the practice of the Home Office, protection is generally not afforded to individuals who are at the same time nationals of another State as against that State. This is merely an optional right which every State may forego ; it is not an obligation.

I would also venture to offer a few observations regarding the proposal put forward by the Roumanian delegate. I regret that I cannot accept his suggestion. The right of diplomatic protection would be excessively restricted if we accepted such a provision. It would be necessary for the person concerned to be resident in the territory of the State that is to afford protection. That would be an excessive requirement. Every country has nationals resident abroad. They would be deprived of their right to afford protection, simply because the persons concerned were not resident in their territory. That there should be no further right of protection as against a State in which the individual is resident, I agree. But if an Italian is resident, for instance, in France and at the same time possesses Argentine nationality, should Italy forfeit the right to protect that person because he is resident in France ? That would be intolerable.

Under these circumstances, I will accept the text as submitted, with the alternative.

I would offer one last observation with regard to the argument advanced by M. Rundstein regarding this Committee's competence. It is true that the Committee on the Responsibility of States will also deal with the question of the nationality of individuals regarding whom responsibility may perhaps be incurred. But we are at the present time dealing with a very general question, while the question to be considered by the Committee on Responsibility is only one quite special point. It is we who possess the general competence; the Committee on the Responsibility of States in this case is only competent indirectly.

In any case, a Drafting Committee will deal with the general drafting of all the texts put forward by the different Committees. If there is any mutual incompatibility between our own resolutions and some others adopted by the Committee on the Responsibility of States, the Drafting Committee will take the necessary steps to bring the texts into line.

The Chairman :

Translation : May I refer to one point regarding which there seems to be some confusion ? After explaining his views with regard to the Basis itself, M. Diena submitted an observation with regard to M. Rundstein's remarks. The latter, after speaking on the subject of the Basis, added a word with regard to the Yugoslav amendment, which was to the effect that we should state in this Basis that a person possessing double nationality could not plead one of his nationalities for the purpose of bringing an action against the other country before an international tribunal. That is quite a different matter. M. Rundstein argued that this was a question of lack of competence. I think that, in order to keep the two questions apart, it would be better to discuss Basis No. 4 as it stands. We can consider the Yugoslav proposal later on. That proposal raises a subsidiary idea — namely, the exclusion of judicial remedy, based on the nationality of one country, against another country.

M. Diena (Italy) :

Translation : The delegate for Great Britain has also pointed out that this question comes within the competence of the Committee on Responsibility.

Mr. Dowson (Great Britain) :

There is one observation I should like to make in regard to the speech which has just been made by the delegate for Italy. He said that the Government of the United Kingdom had "renounced" the right of protection in regard to persons possessing two nationalities, one of which was British. I only desire to explain that I did not use the expression "renounce". There is no question of my Government renouncing any right which it possesses. I was merely pointing out that, in regard to the practice which it has followed, where a claim is made in the case of persons possessing two nationalities, one of which is British, against the other State of which he is a nationality, my Government recognises the principle that the other State may, as it were, adopt the defence that the person concerned is a national of that State. In regard to protection in the

territory of the other State, I desire to emphasise the words in the Basis: "a State may not afford diplomatic protection to one of its nationals against a State" — that is to say, if that State objects, the right to give diplomatic protection cannot be insisted upon.

I only desire to point that out in order to distinguish between that case and the suggestion which I thought might be contained in the speech made by the delegate for Italy — that there was some kind of formal renunciation of an existing and declared right in international law. I only wish to remove that misapprehension.

M. Malmar (Sweden):

Translation: If I understand the Polish proposal aright, two cases are possible. A person naturalised in a foreign country may automatically lose his nationality of origin. In that case, the Polish proposal is no longer applicable. But it may also happen that a person naturalised in a foreign country does not automatically lose his former nationality unless he has obtained an expatriation permit.

If he has obtained this expatriation permit he no longer has a double nationality; so that, in this case also, the Polish delegation's restriction does not apply.

As far as I can see, the only case of dual nationality is that of a person who has been naturalised in a foreign country and has not obtained an expatriation permit. This is the case referred to in the Polish delegation's proposal. But I wonder whether it is really a case of restriction. I think it is only so in the case of a person who has possessed double nationality from birth.

M. Christitch (Yugoslavia):

Translation: I should like it to be made quite clear in our discussions that these rules do not apply to the case of an individual who is not resident in the State.

M. Diena (Italy):

Translation: I agree.

M. Suarez (Mexico):

The Mexican delegation is in favour of the adoption of Basis of Discussion No. 4, as it represents an outstanding principle of international law. On the contrary, it is altogether opposed to the amendment proposed by the Preparatory Committee, and I am obliged to state that my country will never subscribe to an international undertaking by which the principle which is contained in Basis No. 4 is in any way restricted.

Moreover, I think that the amendment in question is a flagrant contradiction of what we have already approved in Basis No. 3. Basis No. 3 states: "A person having two nationalities may be considered as its national by each of the two States whose nationality he possesses", and this applies whether the person resides within or without its territory.

I do not see how a nation or State could permit a foreign country to protect one of its nationals. The right to protection is a consequence of, or only arises when, international law is violated, and I do not see how a nation could in any way violate an international principle and therefore give rise to a right of protection against one of its nationals. I think, therefore, that Basis No. 4 as it stands is acceptable, but we cannot accept the amendment, because it would be a flagrant contradiction of Basis No. 3 and a restriction to that principle.

M. Schwagula (Austria):

Translation: In view of the statements made by the delegates for Italy and Mexico, I will merely say that Austria accepts the principle as it stands in the Basis of Discussion itself, but not the alternative suggested either by the Committee of Jurists or by the Roumanian delegation.

I would add one consideration of a practical nature. The object of our Conference is to eliminate double nationality and its consequences as far as possible. We should not, therefore, encourage persons possessing double nationality to retain the possibility, not only of appealing to one of the countries of which they are nationals to protect they against another country of which they are also nationals, but almost of changing at will their habitual residence and consequently the diplomatic protection to which they may appeal.

Mr. Hearne (Irish Free State):

At this late stage of the discussion, it is incumbent upon me to be very brief, because I think most of the ground has been covered by the speakers who have preceded me.

If, however, I might advert to the extremely able speech made by the Chinese delegate at the beginning of this meeting, I should like to say that the nationals of the Irish Free State are in precisely the same position *vis-à-vis* other countries, in so far as the Irish Free State is a great emigrating country, as are the nationals of such countries as China. But the Government of the Irish Free State, when considering this Basis No. 4, saw that it contained a very clear cut and very definite principle.

I agree with the delegate for China that nationality is not a matter of statutes and is not a matter of law; it is largely a matter, as he said, of the allegiance of the heart. It is necessary, however, to take into account the actual conditions existing in the world. My country is one of the younger States of Europe, but it is one of the oldest nations in the world. Our people emigrate to other countries and we are unwilling to break, as it were, the national bonds between the home country and — shall we say? — the fairy godmother of the United States of America.

When one of our nationals acquires another nationality we will do our best, so far as we

can, to prevent him from losing his own. When a second nationality is acquired, however, we feel it is a fair, just and equitable principle that the State whose nationality that particular person originally had and has never lost should not be in a position to make another State, say the country of adoption whose nationality that person has acquired, a defendant State in any of the critical situations that might arise.

I agree entirely with the Austrian delegate when he said that a definite and clear-cut principle, such as was adverted to by the British and Mexican delegates, is set down in this Basis of Discussion. It is difficult to eat into a principle of that sort without destroying it. It is a good working rule. It has been practised by States for a long period, and we who come to deal with problems of nationality for the first time, and who are about to enact legislation regarding it, have come to the conclusion that our legislation and our attitude on the whole question of nationality should enshrine a principle of that kind, which is, on the face of it, fair, and for which no alternative has been proposed that we could accept. The alternative suggested by the Preparatory Committee is, I think, not good, because residence in the country of adoption is — shall we call it? — the normal course, but nevertheless has nothing to do with the principle that the acquisition of the second nationality is what constitutes the rule.

Mr. Lansdown (South Africa) :

In Basis No. 1, the Drafting Committee has put forward, in terms which I hope will commend themselves to the acceptance of this Committee, the principle that the freedom to legislate — that is to say, the freedom of a State to determine who are its nationals — " shall be recognised by the other States, provided that the use made thereof is not at variance with international Conventions or with the principles generally recognised in the matter ". That is to say, we are starting off here with the fundamental principle that nationality, to be recognised, must be rightly and justly granted or imposed. Another fundamental principle proposed by the Drafting Committee, and which will, I think, be accepted by this Committee, is the principle of sovereignty.

Those two are fundamental principles upon which we are working, the principle of sovereignty and the fundamental principle that nationality, to be granted, shall be based upon a proper system which is recognised by the nations. That principle of sovereignty must be maintained. I think the subject calls for the greatest consideration from most of us in relation to the matter so eloquently explained this morning by the delegate for China, who spoke in impressive terms of the large masses of Chinese resident in other countries and of the necessity, from their point of view, of China being allowed to afford these masses diplomatic protection.

South Africa is a young nation, and we speak rather from the point of view of a country of immigration than a country of emigration, and our point of view is that, if those bodies of men desire the corresponding rights and privileges of the State within whose jurisdiction they have decided to embody themselves, they must be prepared to submit to the governance of that State.

I agree with the remark made by the delegate for Belgium this morning to the effect that the matter is largely one of contract. The point often, I think, arises — and probably the chief cause of complaint will arise — in connection with the juxtaposition of a body of Eastern with a body of Western civilisation. In such a case, there are two systems of civilisation in one country ; each has its own culture, its own traditions, its own history, its own habits ; and it may be very necessary, in the interests of each, that there should be some line of demarcation between them. This demarcation will very often provide a subject for complaint; but we cannot, in those circumstances, recognise the right of another country to step in and claim a diplomatic protection against this result.

In practice, the comity of nations will often dictate that one nation shall consider and accept certain representations made by another in respect of certain of the latter's nationals who are resident in the other State, and whose nationality those persons also possess ; but that is a very different thing from diplomatic protection, and from what the delegate for the Irish Free State called making the country of residence a defendant State.

In view of this position, the South African delegation accepts Basis No. 4 as it stands, and we think that, when a person enjoys double nationality, each of the States concerned is entitled to regard its own nationality as dominant in its own territory and in all questions which may arise between that State and the person concerned. Much might be said on this matter, but the hour is late, and I do not wish to take up the time of the Committee; but, briefly, for these reasons, I support Basis No. 4 as it stands, and the argument put forward by the British delegate.

M. da Matta (Portugal) :

Translation : I had proposed an amendment to Basis No. 4, and this amendment has just been distributed to you, but I withdraw it (Annex II).

I entirely agree with the amendments submitted by the Roumanian delegation and with the arguments put forward by M. Negulesco.

M. Diena has said that the principle embodied in M. Negulesco's amendment is too absolute. The example given by the Italian delegate of an Italian who is born an Argentinian and resides in France — an example which

would seem to be conclusive — really concerns Basis No. 5, for the case is one of a person residing in a third State, a contingency not referred to in M. Negulesco's proposal.

M. Alten (Norway):

Translation: At first, I was doubtful whether Basis No. 4 should be accepted with or without the alternative proposed by the Preparatory Committee. I now think it would be preferable to accept it without the addition.

In cases of double nationality, the nationality of the country in which the person is also resident should, generally speaking, be regarded as the effective nationality. It should therefore take precedence in a third State. The question, however, assumes quite a different aspect in the case of diplomatic intervention against the State of which the person is also a national. In this case, I do not think that any State could be expected to acquiesce in such intervention. I agree with the delegate for Mexico that any such intervention would be in conflict with the principle laid down in Basis No. 3.

M. Rundstein (Poland):

Translation: I owe a word of explanation to the Swedish delegate.

I said that the Polish amendment was a subsidiary one — that is to say, that Basis No. 4 applied to every change of nationality, and all cases in which double nationality arises: by naturalisation, marriage, change of civil status, acknowledgment and legitimation.

If this Basis is not accepted, I proposed that we should consider the very characteristic case in which there is a flagrant conflict of nationality — a foreign State naturalising a person who has no expatriation permit. This is in perfect agreement with Basis No. 6, which provides for the issue of such a permit. I therefore suggest that, if Basis No. 4 is not accepted in its present form, we must consider the case of naturalisation without an expatriation permit.

M. Nagaoka (Japan):

Translation: The Japanese delegation agrees with the proposal put forward by the United States delegate, and would prefer to see this Basis deleted, the matter being left to bilateral Conventions between the States concerned. In a spirit of conciliation, however, we will accept this Basis with the alternative. Without the alternative, Japan could not accept it.

The Chairman:

Translation: I think the Committee must now be in a position to form an opinion, so that we can close the discussion. May I summarise the various arguments?

With regard to Basis No. 4 there is a proposal put forward by the Chinese delegation that this Basis should be omitted for fundamental reasons. There is a similar proposal by the United States delegation, based on expediency, or rather the non-competence of this Committee. All the other speakers have been in favour, in principle, of accepting this Basis, some with the alternative and others without. It will be for the Committee to decide.

In addition to these main currents of opinion, there is a number of reservations either with regard to the regularity of the procedure by which the second nationality is acquired, or exceptions to be allowed on humanitarian grounds, or the special case referred to in the Roumanian proposal. I think the best way would be for us first of all to take a decision regarding the retention or omission of the Basis.

M. Diena (Italy):

Translation: Certain delegations — including, I think, the Japanese delegation — are ready to adopt Basis No. 4 with the alternative, or to vote against it if the alternative is not allowed. I therefore ask that the vote should be taken, in the first place, on the Basis plus the alternative.

The Chairman:

Translation: As Chairman, I am entitled — indeed bound — to put the question in as clear a manner as possible. We have before us certain very definite proposals to omit the Basis. If the Committee agrees to omit this Basis, no other question will arise. If the Committee is in favour of retaining the Basis, we shall have to decide whether it is to be retained with or without the alternative. We may vote, first on the principle, then on the alternative, and, finally, on the Basis as a whole; so that the delegates who only accept the Basis with the alternative will be able to vote against the Basis as a whole.

M. Wu (China):

This method of voting will, I think, make it somewhat difficult for delegations like the Italian and the Japanese, because they have already stated their point of view — that, if their amendment is not adopted, they will vote for suppression. If the Committee is to vote first on the question whether the Basis should be maintained or not, and it votes for maintenance, it will have decided the question already, and this will be an iron-bound decision. If, therefore, later on, these delegations cannot get what they want in the way of amendment, they will not be able to get the second thing they want — namely, suppression. I suggest that the best way of voting is to put the Basis with the various amendments to the vote first, and, finally and last of all, the question of suppression.

Mr. Flournoy (United States of America):

I wish very briefly to explain that the United States delegation, in voting for the suppression of this Basis, would do so solely on the understanding that an article covering the same subject would be included in another

Convention. If it is decided, as I gather it will probably be, that no such rule is to be included in another Convention, then we are perfectly willing to have the rule, whatever it may be, in this Convention.

I have said that we did not object to this Basis in principle. I should have added that we are in favour of this rule with the alternative text, because it seems to take into account the realities of the situation which arises in the case of double nationality. Again, as regards double nationality, we have in mind double nationality acquired at birth rather than the status of a person who has obtained naturalisation.

The Chairman :

Translation : We will apply the text of the Rules of Procedure of the Assembly, Article 18, paragraph 6, of which lays down :

> " If an amendment striking out part of a proposal is moved, the Assembly shall first vote on whether the words in question shall stand part of the proposal. "

Consequently, in conformity with this text, I invite the Committee to decide on Basis No. 4, then on the alternative, and, finally, on the whole Basis with the alternative. Those who only wish to vote for Basis No. 4 with the alternative may, in the first case, abstain, and then vote at the end.

M. Wu (China) :

I am sorry to have to differ from the Chairman in a matter of interpretation. The article to which the Chairman has drawn our attention, I think, so far from supporting his interpretation, rather supports my contention. The wording is clear :

" If an amendment striking out part of a proposal is moved, the Assembly shall first vote on whether the words in question shall stand part of the proposal."

That means the amendment itself, and not the whole Basis.

The Chairman :

Translation : There is a misunderstanding. The delegate for China is reading the translation of the Rules, while I am reading the French text, which very clearly lays down :

" *Si un amendement est suppressif, on met aux voix le maintien de la disposition qu'il a pour but de supprimer.*"

According to the Rules, then, it is my duty to put the provision to the vote first of all. Then, if the Committee decides not to retain it, I must take a vote on the amendment.

M. Buero (Uruguay) :

Translation : In view of the discrepancy between the French and English texts of the Rules, we might take a vote, as is usual at our conferences, on the amendment furthest from the proposal.

M. Wu (China) :

It is not for me to say whether the English is a translation of the French text, or whether the French is a translation of the English text. That is a question which affects not merely this Committee ; it is a question of considerable importance to the League of Nations itself.

Leaving that matter on one side, the point is that we recognise that there is a discrepancy between the English and the French texts of the Rules, and I believe that such discrepancies are to be found, not merely in the Rules of Procedure, but even in more important documents of the League of Nations. That being so, I think that the best course would be — and I make a formal proposal to this effect — that the Chairman should consult the Committee itself, and that the Committee should vote in the logical order in which a vote should be take on the various questions.

The Chairman :

Translation : I propose that the Committee vote in the following order : first, on the original text of Basis No. 4 ; then on the alternative, and, finally, on the whole text, with the alternative. Thus, those who only wish to accept the text with the alternative may refrain from voting when the first vote is taken and then, on the second vote, they can vote for or against, as they prefer.

Does the Committee agree to this course ?

M. Alten (Norway) :

Translation : I think the easiest way would be to vote first of all on Basis No. 4 with the alternative. If it is rejected, we can vote on Basis No. 4 without the alternative. If that is also rejected, the Basis will be omitted without any need to take a further vote.

The Chairman :

Translation : Does the Committee agree to M. Alten's proposal that we should vote first of all on Basis No. 4 with the alternative ?

The proposal was adopted.

The Chairman :

Translation : I now put to the vote Basis No. 4, including the alternative.

Basis No. 4, with the alternative, was rejected by twenty-three votes to ten.

The Chairman :

Translation : I take it, therefore, that the majority of the Committee accepts Basis No. 4 without the alternative.

According to the rules — although I think it unnecessary — I am obliged to ask you to vote on the proposal to omit Basis No. 4.

By twenty-seven votes to nine the Committee rejected the proposal to omit this Basis.

The Chairman :

Translation : We have now to consider, unless they are withdrawn, a number of amendments — those of the Finnish, Polish and Roumanian delegations.

I am informed that the Polish delegation withdraws its amendment.

The first Finnish proposal is to add to the text the words " and rightly ". The second proposal of the Finnish delegation is to add at the end of the text :

" Unless the person in question is treated by the other State in a manner incompatible with the rights of man and of citizens as recognised by civilised States."

I will first ask the Committee to give its opinion with regard to the addition of the words " and rightly ".

The proposal was rejected.

The Chairman :

Translation : I will now ask the Committee to take a decision with regard to the second Finnish amendment.

The proposal was rejected.

The Chairman :

Translation : As the Roumanian amendment has been withdrawn, the decision of the majority to retain Basis No. 4 without the alternative holds.

We have only to consider the Yugoslav delegation's amendment, if it is maintained.

M. Soubbotitch (Yugoslavia) :

Translation : We maintain our proposal.

The Chairman :

Translation : If the Committee agrees, we might adjourn the meeting, and examine the Yugoslav amendment at the beginning of to-morrow's meeting, before we go on to Basis No. 5.

The Belgian delegate asks to address the Committee on a point of order.

M. Standaert (Belgium) :

Translation : I venture to make the following suggestion, which might facilitate the work of our Committee. As there are amendments to almost all the Bases, I would ask the Chairman to be good enough to submit the Bases and amendments alike to the Drafting Committee. In many respects, the Drafting Committee has very real, and by no means honorary, duties to fulfil. Thus, the Drafting Committee may examine the Bases jointly with the authors of the amendments, and endeavour to reach a compromise. In the Committee, we should then have before us only one text, which would reduce our difficulties to a minimum. As a result, our task would be greatly simplified.

M. Guerrero (Salvador) :

Translation : I do not think we can possibly accept our Belgian colleague's suggestion. The Drafting Committee is too small to be able to take a decision without hearing the views of the whole Committee regarding the proposed amendments.

The Chairman :

Translation : I think the wisest course would be to ask the authors of amendments to try to come to an agreement among themselves, particularly when the texts they propose are somewhat similar.

This, of course, is just a recommendation which, I hope, will be acted upon.

The Committee rose at 12.50 p.m.

FIFTH MEETING

Friday, March 21st, 1930, at 10 a.m.

Chairman : M. POLITIS.

17. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 4 (Continuation).

The Chairman :

Translation : Before we come to discuss Basis No. 5, I would remind you that we decided yesterday to consider the Yugoslav amendment to the effect that a new paragraph should be added to Basis No. 4, which has already been examined. I think it would be desirable if the Yugoslav delegate would kindly give a few explanations.

M. Soubbotitch (Yugoslavia) :

Translation : The Yugoslav amendment is that we should add a second paragraph to Basis No. 4. The text we proposed to you yesterday has been slightly modified as a result of amendments proposed yesterday by the Hungarian delegate. I therefore venture to give you the text as it now reads :

" Similarly, a person possessing two or more nationalities may not plead that he is a national of one State, in order to bring a personal action through an international tribunal or commission in respect of another State of which he is also a national. "

We have made provision here for more than two nationalities. The tendency of our proposal

is to amplify the idea embodied in Basis No. 4, as adopted yesterday. We thus hope to see, in the form of a text, a logical consequence, or, if you prefer it, the complement of the principle enunciated in Basis No. 4.

There is a very definite tendency in modern international law to grant to nationals, together with, and in addition to, diplomatic protection, more immediate protection in the form of direct recourse against a foreign State before international tribunals. We refer to the existence of certain mixed commissions and tribunals.

Thus, in modern international law, nationality entails, not only the right to diplomatic protection afforded by the mother country against a foreign State, but also, to an ever-increasing extent, legal protection before international tribunals specially constituted for the purpose.

If, however, in cases of double nationality, we refuse (as we have done) the right to diplomatic protection, I think it would be logical, and indeed the obvious course, to eliminate protection in the form of direct recourse — that is to say, if a person is at the same time a national of two countries, he must, of course, be able to count on the diplomatic protection of one of these countries; but he should not be able to bring a direct action before international tribunals and commissions against the other country of which he is also a national.

Consequently, a person possessing dual nationality should not be able to claim either the diplomatic protection of one of these States or a right of direct action, confined to the nationals of that State, before international judicial bodies against the other State.

The case I mention has at present, in practice, only a limited field of application. The Yugoslav delegation has felt bound, however, to draw the Committee's attention to this point.

I must make one observation with regard to the non-competence of the Committee. It has been said that our Committee is not competent to discuss this point, because the matter will also be discussed by the Committee on Responsibility. For our part, we cannot agree with this view. Our opinion is that we have come together to discuss the whole problem of nationality. The fact that another Committee of the Conference is also dealing with a point connected with nationality should not prevent us from examining that same point to-day.

I also find support in the actual text of the Bases of Discussion prepared by the Committee of Jurists. I refer to the second Committee on Territorial Waters, which is called upon to consider the status of vessels, crews and even passengers on vessels in territorial waters. That does not, however, prevent our own Bases of Discussion from containing a series of articles regarding birth on a foreign vessel in territorial waters. I therefore think we are undoubtedly entitled to study the question. If we arrive at a result different from that reached by the Third Committee, our Chairman and the Bureau will take the necessary steps.

At a private meeting I attended with some of my colleagues, it was said that our amendment would be more appropriate as an amendment to Basis No. 5, because Basis No. 4 concerns the question of nationality relations between two States, while Basis No. 5 deals with the case of dual nationality as it affects a third State. I was told that mixed commissions constituted a sort of third instance.

We, however, think that the question should be considered here, because, on going to the root of the matter, it will be seen that Basis No. 4 and our amendment deal with practically the same subject — that is to say, the protection of a national against a second State. Basis No. 4, however, refers to diplomatic protection, whereas our amendment refers to protection in a court of law.

The Chairman:

Translation: There will be certain slight drafting alterations to make, because it is not very accurate to say that a personal action is brought " through " a tribunal — it is brought " before " a tribunal; similarly, the wording should be " against another State " and not " in respect of another State ".

M. Matter (France):

Translation: Another slight improvement is required. Our colleague intends to refer only to actions before an international tribunal or an international commission; he does not intend to deprive a national of his right of action in the Courts of his own country. The French word " *internationale* ", however, is in the feminine, so that the French text might be taken to mean an international commission, but not an international tribunal. The adjective might be put in the masculine in the French text in order to make it refer to both nouns. It might, perhaps, be less elegant, but more precise to repeat the words and say "*tribunal international ou commission internationale* ".

The Chairman:

Translation: In order that the Committee may appreciate the value of this amendment, I wish to point out the very close relationship existing between this proposal and the idea you accepted yesterday — namely, that, in cases of dual nationality, one of the States concerned may not afford diplomatic protection to the person in question against the other State. The relationship is very close, because, up to the present, legal action has only been brought through the agency of a Government; in other words, the State takes legal action on behalf of one of its nationals. This case, however, refers to an individual bringing an action direct against a foreign State — that is to say, personal

action before an international tribunal against another State of which the individual is also a national.

M. Rundstein (Poland) :

Translation : The proposal submitted to us is, in principle, very sound. It would be desirable to discover some wording which would exclude all possibility of conflict in respect of nationality. Nevertheless, I do not think we can insert this text in our Convention, in so far as it refers to Conventions already concluded on this subject — that is to say, Conventions admitting the individual action of a private person. Our future Convention will not in any way influence such agreements, because it will not be retrospective. Any States concluding Conventions of this kind in the future, Conventions which allow individual action by a private person, may insert a special clause specifying that, in cases of dual nationality, the request shall not be entertained.

If we accept this clause proposed by the Yugoslav delegation, I think we ought to make it quite clear that the clause will not apply when the point in dispute is itself a question of nationality. In such circumstances, if a question concerning nationality is submitted to an arbitral tribunal, and if a private person brings an individual action, the exception provided for in the Yugoslav amendment cannot be claimed. I draw the Committee's attention to the fact that there exist Conventions which allow of arbitration in the case of conflicts of nationality. Individual action is not yet admitted in these Conventions ; but if, in the future, Conventions were concluded allowing individual action in the case of nationality disputes, the exception provided for by the Yugoslav delegation might apply.

The Chairman :

Translation : Does not M. Rundstein think it might be possible, in order to meet the various views expressed, to insert a short sentence in this proposal, so as to obtain the following text : " Similarly, a person possessing two or more nationalities which are not disputed . . . "?

M. Rundstein (Poland) :

Translation : I agree.

M. Soubbotitch (Yugoslavia) :

Translation : I wish to reply to the Polish delegate.

The Polish delegation has raised two points. It says that, even if we adopt this text, we cannot thereby propose to modify already existing Conventions. That is quite correct. I should even go further myself, and say that States will hereafter still be perfectly free to conclude Conventions — if they wish, or find it necessary to do so — restricting the scope of this text. If any States desire to constitute a mixed commission, to which persons possessing two nationalities can apply, they are free to do so ; our text does not deprive them of this right. Moreover, in all the provisions of the Convention we are elaborating, we allow that two or more States may, if they so desire, modify, restrict or amplify these provisions in their reciprocal relations.

The question of dual nationality, if that is the point at stake, might arise in two forms — either as a previous question or as a material issue. In the first case, the tribunal will have to consider the matter, and, if it finds that the person possesses two nationalities, will declare that it has no jurisdiction. In the second case — that is, if the point in dispute is the existence of dual nationality — I would refer you to what I said at the beginning. If the States have appointed this tribunal to decide cases of dual nationality, it will have jurisdiction ; otherwise, it will not.

The Chairman :

Translation : I do not think we need probe this question any further. The various standpoints seem to have been made quite clear.

I would propose that you should admit the Yugoslav amendment in principle, and leave the Drafting Committee to take into account the discussion between the Polish and Yugoslav delegations, in order that the text should be so drafted as to avoid the difficulties to which attention has been drawn. If no objection is raised, I will consider this proposal adopted.

M. Matter (France) :

Translation : It has been pointed out to me that the Drafting Committee ought to reach an agreement on this subject with the corresponding body of the Third Committee, for many of the points to be considered are common to the two Committees.

Mr. Dowson (Great Britain) :

The same idea occurred to me. It seems extremely desirable that this should be done, in order to avoid all duplication.

The Chairman :

Translation : It is understood, then, that the Drafting Committee will take this discussion into account, with a view to modifying the Yugoslav amendment, not only as regards its form (in the sense indicated by M. Matter), but also to make it quite clear that it does not affect former Conventions or any future Conventions which may differ from its stipulations, in order that the special case of disputes regarding nationality need not be excluded by the wording of the text. Similarly, our Drafting Committee will get into touch with the Drafting Committee of the Third Committee, with a view to avoiding all duplication.

18. DOUBLE NATIONALITY: BASIS OF DISCUSSION No. 5.

The Chairman:

Translation: There are eleven amendments to this Basis, presented by the delegations of the following countries: Belgium, Denmark, France, Great Britain and Northern Ireland, Japan, Netherlands, Norway, Poland, Portugal, United States of America and Yugoslavia (Annex II).

In order to facilitate the discussion, I would state that I have just been informed that the United States delegation no longer insists on the words "acquired at birth", to be found in the first and second lines of its amendment; this makes the situation much clearer.

On examining, as I have done, the whole of these amendments, and comparing them with the text of Basis No. 5, it will be seen that two essential questions arise, regarding which the Committee will have to take a decision. The first is this: When this question of dual nationality arises in a third State, should a distinction be drawn according as to whether the personal status is involved, or other points only; or need no such distinction be drawn? Certain delegations suggest that no distinction need be drawn, and that a single rule should be laid down to decide what is the nationality of the individual who owes simultaneous allegiance to several States when he happens to be in a third State.

The second question is this: Whatever decision is reached with regard to the distinction I have mentioned, it would presumably be advisable to define the criterion by which the nationality of the person concerned may be determined in a third State. Should this criterion be the date of the last nationality acquired? Should the person be allowed to choose? Should it be his effective nationality? For all these possible solutions, various texts have been put forward by a number of delegations — for instance, Belgium would like to indicate the conditions under which a choice of nationality may be made; the Yugoslav delegation, I have been informed verbally, would like to see "principal residence" instead of "habitual residence", on the ground that the adjective "principal" will be more likely to avoid difficulties in practice.

M. Diena (Italy):

Translation: The Italian delegation has not submitted any written amendment in connection with Basis No. 5. It is prepared to accept this Basis as drafted by the Committee of Five, provided section *(b)* is omitted: "For all other purposes, the person concerned is entitled to choose which nationality is to prevail . . ."

The Chairman:

Translation: We take note of this declaration.

Several other delegates have asked to speak. I repeat that I think it essential that the Committee should hear all opinions on the main questions I have indicated, and should thus be in a position to take a decision on the radical proposal made by the Netherlands delegation to the effect that section *(a)* of Basis No. 5 should be omitted, the second section being referred to a sub-committee.

M. Alten (Norway):

Translation: In support of the Norwegian proposal (Annex II), I need only make two observations.

The first refers to the rule laid down in section *(a)*, where we propose to omit the words: "As regards the application of a person's national law to determine questions of his personal status".

This rule seems to have been formulated on the supposition that personal status is determined by nationality. There are, however, as you know, a number of countries in which personal status is, in principle, determined by domicile, the *de facto* domicile or the habitual residence. The authors of this Basis did not intend, I am sure, to undermine the principles of the private international law of the contracting States. This is simply a slight defect in drafting. What the authors wished to say, I believe, is that the rule laid down should apply in so far as personal status is determined by nationality. I think the rule is quite acceptable, subject to this restriction.

My second observation refers to the rule laid down in section *(b)*. I do not think that the solution proposed is a very happy one. Let me quote an example to illustrate my point. A person, the son of Norwegian parents, happens to be born in British territory — a passenger boat, for instance. This person has never had any other connection with Great Britain. He is brought up in Norway. From birth he possesses two nationalities, but his real and effective nationality is undoubtedly Norwegian. In these circumstances, I do not think it could be right that a third State should be bound to regard and treat him as a British subject simply as a result of his own choice. The solution seems to me to be quite an arbitrary one. I think it would be better to apply the rule laid down in section *(a)* to all the juridical consequences of nationality that may come up for consideration in a third State. I therefore propose that the rule laid down in section *(a)* should be extended and section *(b)* omitted.

I would add, however, that, if the Committee decided not to deal in this Convention with the rules governing personal status, I shall not propose any further text, because the question is of hardly any practical importance to us.

M. Kosters (Netherlands):

Translation: The Netherlands delegation has proposed that Basis No. 5 *(a)* should be deleted. Its reasons are as follows:

Some of the States represented at this Conference take the national law as the law governing personal status. Other States make personal status depend on the law of domicile.

I propose to refer more particularly to the States which apply national law. Among these States several — and some of the most important — are parties to the Hague Conventions on private international law. These Conventions, of course, do not yet contain any provisions regarding dual nationality. Two years ago, however, the last Hague Conference on private international law adopted rules on this subject, which refer to very important points in connection with the personal status of persons of dual nationality — namely, marriage, the mutual rights and obligations of husband and wife, divorce and judicial separation, guardianship and deprivation of civil rights. In all probability these rules will shortly come into force. I hope they will. I also hope that our Convention will come into force.

What, then, will be the relationship between these two sets of rules, the contents of which are not quite identical? It may be said that, in the case of States which are parties to the two sets of rules, the later Convention supplants the former, so that indolence wins the day. In that case Talleyrand's maxim would apply: "*Surtout pas de zèle*". But it may also happen that the conclusion of one of the Conventions will prevent the conclusion of the other. In any case, whatever happens, it is not desirable that, on the one hand, The Hague alone, and, on the other, Geneva and The Hague together, should deal with the same subjects. Moreover, if the question arises as to which of the two sets of rules is to be preferred, I think, if you will excuse my saying so, that, at the present time, the Conference on private law would be accorded preference.

First of all, and this is a very important point, the Conventions on private law form a framework which is more appropriate to the regulation of the personal status of persons of dual nationality. These Conventions regulate, in the first place, the personal status of the nationals of the contracting States, then the personal status of persons having two nationalities, and, finally, that of stateless persons. All these rules constitute one whole. They possess a harmony which, I think, is lacking in our Basis No. 5.

Furthermore, the work of the Conference on private law offers more detailed and carefully graded rules, such as are required by the subject.

The Basis says:

"As regards personal status, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality which appears from the circumstances of the case to be the person's effective nationality."

The Conference on private international law also puts forward the consideration of habitual residence, in the absence of which it applies the national law of the person's place of residence; but, at the same time, it enters into certain necessary details which are not to be found in this text.

In the case of marriage, the Convention on private law lays down the following rule. If the person possessing two nationalities does not reside in either of the States of which he is a national, it will be sufficient if his right to contract marriage is recognised by one of these national laws, if the provision *in favorem matrimonii* is such as to merit due consideration.

With regard to the guardianship of minors, there is, again, a rule laying down that, if a minor possessing two nationalities is not resident in either of the States of which he is a national, his State of residence may apply, for the appointment of guardians, to either of the States of which the minor possesses the nationality.

Rules are also laid down for the case in which guardianship is organised in more than one of the national States.

"In the absence of any residence in one of the national States, the guardianship first organised shall be recognised by States of which the person is not a national."

Similar rules are laid down in regard to persons under disability.

I think these considerations prove that this branch of private international law cannot be regulated by a single and general rule like the one set out in Basis No. 5. The problem of personal status is too complicated; for that, each part of this far-reaching question had to be considered separately and studied in detail. Otherwise, the rules we propose to establish cannot possibly give satisfaction.

I would add one remark concerning States which, in the matter of personal status, follow the law of domicile. How would the law stand in these countries?

The personal status of these States' own nationals and that of stateless persons would still be governed by the law of domicile; but, in the case of persons of dual nationality, and therefore of nationals possessing another nationality, quite another criterion would be adopted — either the law which is the person's national law and is also the law of the place of his habitual residence, or else the most effective law. This is not a well-balanced system, and I should very much like to know what the British and Danish delegations will have to say on the subject. Those countries apply the law of domicile, and have proposed amendments to this Basis.

From what I have said, it is obvious that I cannot agree to amendments which, by increasing the vagueness of the text and avoiding any distinction between private and public law, propose to regulate in the Convention the question of personal status.

May I add a few remarks on Basis No. 5 *(b)*? The Netherlands delegation has proposed that this Basis should be referred to the Drafting Committee for study. After examining the numerous amendments which have been submitted in connection with it, I have not altered my opinion.

The situation dealt with is that of in relation to third States persons of dual nationality.

The Basis allows a person possessing dual nationality to choose between his two nationalities. Most of the amendments submitted propose to follow another criterion: the law of the country of habitual residence, or, failing that, the most effective national law, or the law of the country in which the person was last habitually resident; or even the law of the country whose nationality is claimed by the person concerned, either when he is in the third State or before he enters the third State; or, finally, the nationality which, for all practical purposes, has always seemed to be his.

Although I find in all this, and particularly in the last of these amendments, many attractive ideas, I think that, at the present time, neither the Basis nor the systems suggested in the amendments could give me complete satisfaction. That is why our delegation proposes that this question should be studied with particular care. We think that, in this connection, so many cases and situations arise that it is very difficult to lay down any general rule. Very many cases may be bound up with questions of public policy, the vital interest of the third State, or considerations of pure justice; in other cases, no such complications may arise.

I will quote a few examples, taking, in the first place, two instances that might occur in time of war. War breaks out between two States. One of these States is about to deport the nationals of the enemy State. Several of the latter, however, possess double nationality; they are, at the same time, nationals of the enemy State and nationals of a neutral State. Which should be taken into account — the interests of the individual, the interests of the deporting State, or other circumstances, if any?

Moreover, I think that the interests of the third State are also involved. In a naval war, one of the combatant States seizes an enemy merchant vessel. In this vessel is discovered merchandise belonging to a person possessing both enemy and neutral nationality. Which interests should take precedence? I think that the interests of the State that has taken the prize could not be neglected.

Here are a few cases that might occur in time of peace. Take the case of a State which does not allow immigration or naturalisation of the nationals of all States. Being afraid of the influx of certain races, it permits neither the immigration nor the naturalisation of persons belonging to these races. Then comes a person belonging to one of these races, who possesses another nationality also. I think that, in such case, very different interests will come into play; those of the third State could not be entirely disregarded.

I will quote yet another case, in which circumstances of a different order might arise. Some country applies to a State for the extradition of one of these persons as suspected, or even as having already been convicted of, an offence or crime. But the individual in question possesses two nationalities. He is also the national of a country under the laws of which the act complained of does not constitute a criminal offence. What should the State applied to do? What is to be the relationship between the treaties in force and the general Convention we are about to prepare?

Should the cases I have quoted be dealt with in the same manner when it is a question — for instance — of ordinary diplomatic protection to be afforded to a person having dual nationality against a third State, and when it is a question of advantages to be accorded to the nationals of the most favoured nation? Personally, I think we have here another series of cases which have to be dealt with in a different manner.

What is the situation with regard to taxes to be paid by persons possessing two nationalities, when the question of international claims arises, the responsibility of a third State towards persons possessing dual nationality, etc.?

Perhaps I am exaggerating the difficulties, but I do assure you that the path seems to me to be a thorny one. I do not think the question has reached a sufficient stage of development to allow its regulation in an international Convention until it has been very carefully considered by the Drafting Committee. The number of the amendments put forward and their very variety surely prove that such preliminary study is extremely necessary. The Netherlands delegation therefore proposes that Basis No. 5 *(b)* should be referred to a sub-committee for study.

M. Nagaoka (Japan):

Translation: I have asked to speak in order to explain the Japanese delegation's amendment (Annex II).

Japanese law provides two different solutions for the case in which a third State has to decide the preference to be accorded to one of two nationalities possessed by the same person:

(1) When the dual nationality is the result of a fact other than birth, the person possessing two foreign nationalities is subject to the law of the country whose nationality he acquired last (Article 27 of the Law of June 15th, 1898, known as the "Horei");

(2) For conflicts arising in the case of dual nationality of origin no express solution is provided.

M. Rundstein, in his admirable report to the Committee of Experts for the Progressive Codification of International Law, has quoted the provision in our law and has endeavoured to complete it. We readily admit that his efforts are of great value: his solution of this very complex question seems to us to be the most reasonable one.

The amendment of the Japanese delegation is merely the last sentence of paragraph 1 and paragraph 2 of Article 5 of the Preliminary Draft Convention which follows his report. We have simply used the term "habitual residence" instead of "domicile" with a view to avoiding the difficulties which

might be caused by employing a term to which a very different meaning is given in different countries.

The Japanese delegation is of opinion that the distinction drawn in this Basis of Discussion is rather artificial and that it would be better to adopt one single criterion in order to simplify the problem. In addition, the principle laid down in the Basis of Discussion to the effect that the person concerned may himself choose his nationality might lead to abuses.

For this reason, we prefer as objective a criterion as possible and suggest the following text:

"Within a third State, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality of the State in which he was last habitually resident."

I venture to add that the Japanese proposal is similar to that put forward by the Polish delegation; consequently, if the Committee adopted the Polish amendment, the Japanese delegation would agree.

M. Gomez Montejo (Spain):

Translation: I beg to state, on behalf of Spain, that I entirely agree with the amendment proposed by the French delegation to the effect that, in a third State, a person possessing two nationalities should be regarded as possessing the nationality which has effectively been his in everyday life — *i.e.*, that of the country in which he has either voluntarily carried out his military obligations, or in which he has claimed and obtained public office or fulfilled his duties as a citizen.

I add that this last sentence should also apply to women, when the latter are admitted to public office.

M. Wu (China):

The Committee has before it the text of the Chinese amendment, which is very simple (Annex II). It proposes one solution for all questions relating to the nationality of persons having double nationality and residing in a third State. Many proposals have been made for the solution of this difficulty, both in the amendments which are now before the Committee, in the laws which already exist in the various countries, and in the answers which have been returned by the various Governments.

It is impossible to deal with all these, but I should like, with your permission, to deal very briefly with a few of the most advocated solutions. One is that of domicile. Domicile, as you know, is a question of law. Sometimes it is one of fact, and at other times it is one of fiction; but at all times it is a question which is extremely difficult to decide, and extremely perplexing, especially to the person most concerned. That, it seems to me, would not be a good solution.

Another solution is the law most resembling that of the State which has to determine the question. If I may say so, that is more or less a lazy man's solution; it is easiest for the Court which seeks to apply the law, but it does not take into consideration the preferences or sentiments of the person most concerned, who, after all, is the person of whom we have to take account.

There is, again, the solution of habitual residence. I recognise a certain merit in this solution, in that it tries to give effect to the choice which has been made by the person concerned. The objection to it is, however, that an arbitrary standard is adopted, and not the choice freely expressed by him. We presume that, because he has made a certain State the place of his habitual residence, the law of that State is to be applied to him. That is not, as you know, necessarily so. He may choose the State in question merely as the best place, shall we say, to make money, or he may choose it as the best place for his health. He does not necessarily desire the application of the law of that State, of which he may know little or nothing.

Another solution is that of the nationality last acquired. As has been stated by the Japanese delegate — the representative of a country which has made most of this solution — it is not a solution when double nationality exists at birth.

Another solution is that of military service. That is, at best, only half a solution. So far as I know, no military service has at the present moment — and I trust it will never happen in the future — been imposed upon women.

We are therefore left with the only solution which seems to me feasible, and that is the free choice of the person concerned. This solution of choice is not only the result of the elimination of the other solutions, but it is also, if I may say so, the common denominator of all the other solutions; because habitual choice, habitual residence or the nationality last acquired, etc., all contain more or less the idea underlying the choice of the person concerned. Instead of adopting, however, what I might call a presumptive choice, instead of setting up arbitrary rules to decide what the person's choice should be, why not let him have his free choice, his declared choice?

The only objection that has been made to this proposal is that it may give rise to fraud. I am afraid I cannot follow that. The person who makes the choice is limited, after all, to two laws — the laws of the two nations which claim him as a national. It is the only time that he has the right to make a choice; he was unable to choose when the two nationalities were imposed upon him, particularly if it was at birth, so why not let him, in applying the law to matters which concern him most — personal status and otherwise —

have his free choice then ? That is the reason why the Chinese delegation advocates such a solution, and proposes the following text :

> " Within a third State : as regards the application of a person's national law to determine questions of his personal status, and for all purposes, the person concerned is entitled to choose which nationality is to prevail. Such choice, once made, is final. "

Apart from the reason of logic which I have tried to put before you, I think this solution has also the merit of simplicity. The person concerned really knows what he is in for, as it were, before he makes his choice.

M. de Navailles (France) :

Translation : The delegate for the Netherlands has raised a very important question. He has asked whether it would not be preferable to omit from Basis No. 5 all reference to personal status, because, he says, this question has already been settled by the Hague Conventions on private law. If so, the Committee would only have to deal with cases of nationality in which the question of personal status does not arise — for instance, in the matter of police and administrative procedure.

It would be difficult to omit only one part of the Basis. The question is whether we ought to omit the whole Basis or retain it ; for, if we omit only a part, the result might be that a person might claim one nationality from the point of view of his personal status, and another as far as the police were concerned. I hardly think that such a situation would be tolerated.

I wonder whether it is possible to leave the choice to the person possessing dual nationality. Such a course would involve serious drawbacks, because, according to the person's varying interests, he might claim one nationality in one country and another nationality in another. He might even claim both nationalities in one single country. It is useless to say that the choice would be final. How could it be proved that a person had made a final choice ? Supposing a foreigner, possessing both Swiss and Italian nationality, appears at the present time in a French court and says. " For the purposes of the present case I choose to be Swiss ". The court will decide according to Swiss law. But two years later the same individual might quite well appear as an Italian before another French court, the court being totally unaware of the fact that two years previously he had elected to be of Swiss nationality.

There exists one way of choosing nationality, and that is to apply for naturalisation. We must, nevertheless, discover some rule for deciding which of two or more nationalities is to prevail. Various amendments have put forward certain suggestions regarding the factors which should be taken with consideration — for instance, domicile or effective residence. We do not think that any of these are enough in themselves. They are all of assistance in reaching a conclusion, but each one, taken separately, is inadequate.

The truth is that all possible factors must be taken into account simultaneously in deciding whether an individual desires to possess one nationality rather than another.

The French delegation is therefore in favour of including in Basis No. 5 the principle that an individual must be supposed to possess the nationality to which he really adheres in his everyday life. When a person has accomplished his military service or has accepted public office in a given country, it must be recognised that he has, of his own free will, adopted that country's nationality. It is reasonable to say that a person has the nationality of the country in which he has assumed duties or derived benefits (from public office, for instance). When forming his conclusion, the judge must take into consideration the person's entire mode of life. The various factors to be considered simultaneously are residence, the interests possessed in the given country, military obligations and the acceptance of public office.

The amendment of the delegation of the United States of America suggests that the person concerned should be treated as a national of that State whose nationality he has claimed on entering a third State. That is also a very important factor. When a person comes to France he is obliged to make a declaration in order to obtain an indentity card. He is asked what his nationality is. If he says that he is Italian, for instance, his declaration is accepted ; and if he is indeed Italian (though Swiss as well), the fact that he stated his nationality to be Italian on entering France will be an important factor in deciding whether he is effectively Italian or Swiss. But it is, after all, only one circumstance, and the judge must be allowed to review all the circumstances in taking his decision. I think it would be enough to say that a person having two nationalities must be regarded as possessing that which he has always effectively used in his daily life.

By adopting this rule, however, should we not find ourselves in contradiction with the provisions of the Hague Conventions on private law ? Would that be an insuperable obstacle to its adoption ? It may, of course, be replied that we are codifying nationality questions in public law, and not in private law. We should not, however, be satisfied with that reply. If the provision we are now discussing is adopted, the rules laid down therein will obviously have some influence on already existing Conventions on private law. That, however, should not be an absolute bar to its adoption.

The Chairman :

Translation : Does M. de Navailles in his explanations propose that the distinction drawn in the present Basis should be omitted, and that there should be one single rule for all cases ?

M. de Navailles (France) :

Translation : Yes, Mr. Chairman.

M. da Matta (Portugal) :

Translation : I shall endeavour to justify the amendment I have the honour to submit and which reads as follows :

> " Within a third state : if a person is habitually resident in one of the States of which he is a national, preference must be given to the nationality of his State of residence ; if he has no habitual residence in any of the countries to which he belongs, he is entitled to choose which nationality is to prevail ; such choice, once made, is final. "

I cannot agree with the proposal of the Netherlands delegate to omit this Basis of Discussion. On the contrary, I think it is absolutely necessary to establish clearly in the future Convention the criterion or criteria by which conflicts of laws on nationality may be solved in the cases dealt with in the Basis, concerning which the opinions of experts and the decisions of the courts differ so widely.

With regard to the first question raised by the Chairman, there are no decisive reasons on which to base the textual distinction between the application of the national law in the matter of personal status and the law which is to prevail for all other purposes. I do not see how we can accept the two-fold criteria indicated in the Basis of Discussion. I cannot, therefore, agree to this Basis.

With regard to the determination of nationality, the Basis considers three criteria which have already been noted — effective nationality as revealed by habitual residence ; the nationality which, according to the circumstances, appears to be the effective nationality ; and, finally, the choice of the person concerned.

It would be hard to deny that preference should be given to the nationality of the State in which the person concerned has his habitual residence — that is to say, the nationality criterion, plus habitual residence.

Failing this, I think that the criterion for the determination of nationality according to circumstances of fact, which are often difficult to establish, is unsatisfactory. We must try to discover an objective criterion independent of all arbitral decisions.

Nor can I accept the system suggested by several countries — Japan, for instance — and adopted in M. Rundstein's admirable report, which decrees that, failing habitual residence, the law should take into consideration the nationality of the State in which the person was last habitually resident. I cannot subscribe to this view. Though each State may be free to enact what laws it likes regarding the attribution of its own nationality, the situation is rather different for the court of a third State, in whose eyes the attributive law of one State is as valid as that of the other. Such a court cannot, in strict law, say that one nationality has been more legitimately acquired than another.

For all these reasons, I think that, in the absence of habitual residence, we should allow the person to choose. This is the object of the amendment I have submitted.

M. Rundstein (Poland) :

Translation : We support the proposal submitted by the Netherlands delegation. The definition proposed for Basis No. 5 cannot be accepted. We do not think it necessary to vary the criteria. That there should be one set of rules for the application of the national law in the matter of personal status and another set for all other consequences of nationality is an artificial distinction.

The principle that the individual may choose can only lead to difficulties and create doubt. Therefore, we cannot accept this text in its present form, particularly as we may also be confronted with other difficulties owing to the fact that these questions have been dealt with by the Hague Conference on private law. In addition, we think that certain States, on account of the provisions of their Civil Code, could not accept this text in its present form, and we greatly fear the legal consequences that might follow on such freedom of choice.

Consequently, we support the Netherlands proposal that Basis 5 *(a)* should be omitted and that Basis 5 *(b)* should be referred to the Drafting Committee for alteration.

M. Malmar (Sweden) :

Translation : I agree with M. Kosters' observations concerning the difficulty of solving the problem of personal status in one single text. This problem is a very complex one ; we discussed the matter at considerable length at the last Conference on private international law, which achieved a number of valuable results. I do not think that this question is within the domain of the present Conference. It would be better for us not to deal with it.

On the other hand, I cannot agree with the proposals of the Polish and Netherlands delegations to omit Basis No. 5. We can achieve a result in connection with this Basis by accepting the Norwegian delegation's proposal if we add the words : " for all purposes other than that of deciding the question of personal status ", after the phrase : " in a third State ". The Basis would then read as follows :

> " Within a third State, for all purposes other than that of deciding the question of personal status, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality which appears, from the circumstances of the case, to be that person's effective nationality. "

The Chairman :

Translation : Do I understand, M. Malmar, that you are in agreement with the Netherlands and Polish delegations as regards the omission of section *(a)* ?

M. Malmar (Sweden) :

Translation : Yes, Mr. Chairman.

Mr. Dowson (Great Britain) :

The amendment which stands in the name of the British delegation begins in very much the same sense as the amendment which has just been referred to by the delegate for Sweden. I will read our amendment in order to remind the members of the Committee what it is :

> " Within a third State, for all purposes other than that of determining the question of personal status, the person concerned is entitled to choose which nationality is to prevail so long as he remains in that third State. "

The question of the exclusion of section *(a)* of Basis No. 5 has been much discussed this morning, and I do not desire to take up the time of the Committee in dealing with that point at any length. I do, however, desire to say that the British delegation is extremely anxious that section *(a)* should be omitted, for reasons which have been given and, in particular, because questions of private international law are really wholly distinct from those which are dealt with under section *(b)*, which are questions of administration, or, at any rate, very largely so.

The whole subject of private international law, as has already been stated, was dealt with by the Hague Conference of 1928, and I cannot see that there is any justification for this Conference to embark upon that question. The question of private international law is one for the courts ; it is not really international law, in any true sense, at all ; it is a system of rules by which each court is to decide on those questions which come before it — that is to say, what law is to apply for the purpose of determining questions of personal status. I think, therefore, that the objection which was taken by the delegate for France (his suggestion was, I think, that it was undesirable to have two different criteria for establishing the same thing) does not really apply.

So far as the courts are concerned, this question of habitual residence was settled by the principles established by the Hague Conference of 1928, and the problem can be settled in the ordinary way by the courts, on the facts of each case. As regards the criterion to be applied by the administrative authorities of a State, however, very different considerations apply. In that case, it is necessary to have something which is certain, which is easy to determine, which does not involve difficulties in ascertaining and proving facts to establish, for example, the State with which the person of dual nationality is most actively concerned, or what is his effective nationality.

Difficulties would also arise if the administrative authorities of the State had to ascertain whether a person was or was not, in fact, habitually resident in one of the two States of which he is a national. Again, there is the further difficulty that, in the case of a person of dual nationality whose position has to be determined by the administrative authorities of the third State, in most cases the person concerned will be resident in the third State, and not habitually resident in either of the two States the nationality of which he possesses.

Consequently, I think that, whatever test is applied, it should be one which is certain, easy of proof, and altogether distinct from the subject-matter of section *(a)*, which I suggest should be entirely omitted.

There is one further point I want to mention, — namely, the applications of the test. I will then pass on to what the test shall be. Assuming that some test is laid down for the guidance of the administrative authorities of the third State, its application will, I think, be a good deal wider than has been suggested by any of the speakers this morning. It will apply, for example, in a case where the third State has entered into commercial treaties with both of the States whose nationality the person concerned possesses. This is a possible source, and has been in the past a possible source, of embarrassment where a person of dual nationality is resident in a State.

The principle underlying this criterion, whatever we may decide it shall be, is that the person concerned shall be bound to the particular nationality which the rules will settle. It is very undesirable, in principle, that he should be entitled to take advantage, for example, of the privileges and benefits conferred upon him by the commercial treaties of the two States in the instance which I have suggested.

Then, again, there is the possibility that the test might be applied in regard to a case where the person concerned has been injured by the authorities of the third State in some way which might give rise in international law to a claim by one of the two States of which he is a national against that third State. It seems to me that it would be very convenient if the criterion we are seeking were to determine such matters as that. It would result in the settlement of a very embarrassing problem — that of deciding which State was entitled to prefer, on behalf of its national, a claim in respect of an injury suffered. Further, there is the question of the application of regulations relating to foreigners in the third State.

All these questions are of practical importance, and it is therefore very desirable that, in principle, a definite rule should be laid down. What should that rule be ? My delegation has suggested in its amendment the criterion of choice. I have already indicated some reasons why that principle should be adopted. I think that, if it were adopted in the particular way I am going to suggest, some of the objections to it will be lessened.

The choice should be made by the individual in some formal manner laid down by the municipal law of the third State, and, once made, is final so long as he remains resident in that third State. I can see no practical difficulty in applying such a remedy. Each State can determine in exactly what manner the formal choice is to be effected. It may be a declaration; it may be registration. The choice, therefore, having been made formally, is established, and there is no necessity for any further proof.

I have listened with the very greatest interest to the other suggestions and modifications proposed in regard to the criterion to be established, and I am prepared to support the motion of the delegate for the Netherlands, who suggested that, owing to the difficulty of settling this point, it would be desirable to refer it to a sub-committee for consideration.

Mr. Flournoy (United States of America):

Our delegation supports the recommendations already made — namely, that the first part of this Basis, section *(a)*, should be deleted, that we should settle that question this morning, and that the second part, because of the very complicated nature of the problem, should be referred to a sub-committee.

The suggestion made by our delegation, I may say, is a tentative rather than a final recommendation. The question as to how and when a choice of nationality should be made requires very careful study, and we should be glad to hear the views of the other delegations. We have, indeed, heard them already this morning to a considerable extent.

It seems to me that one thing is rather clear — namely, that, if the rule of voluntary choice is to be accepted, it should not mean the choice of the individual at the time when a particular question arises; it should be the choice which he has already made. Whether that choice should be finally proved by habitual residence requires careful consideration.

I think there is much to be said in favour of the rule of habitual residence which is included in the formula suggested by the Japanese, Portuguese and Norwegian delegations. I find one defect in the suggestion of the Japanese delegation, for I am not sure that the words "in the absence of such habitual residence, to the nationality of the State in which he was last habitually resident" would be altogether satisfactory. Cases might arise where the individual has not had habitual residence in either of the two States of which he is a national. That difficulty seems to be met by the formula put forward by the Norwegian delegation.

In considering this question, it will be very important to take into account the nature of the cases in which it may be most frequently involved; and it seems to me that these are cases of international claims in which an individual, for example, having two nationalities, brings a claim against the third State, and cases of deportation. There may be other cases also; but it seems to me that those I have indicated are the most important. As regards deportation, there is certainly much to be said for the rule of habitual residence as indicating the choice of nationality; the matter of claims, perhaps, is not so clear.

For the reasons mentioned, I second the proposal to have the question referred to a sub-committee.

The Chairman:

Translation: Many delegations have proposed that the question, at any rate as far as section *(b)* is concerned, should be referred to a sub-committee. I should be glad if, in order to economise time, the Committee could take a decision immediately. If we are to hear the seven delegates who still wish to speak (and others perhaps also), these speeches will take up part of to-morrow's meeting. All this expenditure of energy will be useless if, finally, we decide to refer the matter to a sub-committee. I therefore propose to ask the Committee whether it desires to continue the discussion on Basis No. 5 or thinks that it would be preferable to take a decision now with regard to section *(a)*, which many delegations wish to omit, and with regard to section *(b)*, which many delegations propose to refer to a sub-committee.

M. Diena (Italy):

Translation: At the beginning of the meeting I proposed that section *(b)* should be omitted. If we appoint a sub-committee to consider this question and propose a new text, such a procedure would mean that the Committee accepts this section. I therefore propose that, if the Drafting Committee is to deal with the matter, it shall consider the whole of Basis No. 5. It is even possible that that Committee may propose the adoption of certain rules regarding the first part of Basis No. 5, with various modifications, without thereby affecting the second part.

M. Standaert (Belgium):

Translation: I agree with M. Kosters' proposal to omit section *(a)*. At the same time, M. Kosters recognises that the Hague Convention on Private Law is not universal. There is no reason why we should not take a decision on all points connected with nationality, though we may add "subject to the provisions of existing Conventions". If the 1928 Convention embodies certain agreements, the Convention will, in any case, be binding, in the matter we now have under consideration, on all States parties to that Convention.

M. Alvarez (Chile):

Translation: I propose that we appoint immediately a sub-committee to consider section *(b)*, and that then, if necessary, we refer

section *(a)* to this sub-committee under the same conditions. We ought not, however, to take any immediate decision regarding suppression.

The Chairman :

Translation : The question is whether the Committee desires to continue the discussion or prefers to refer to a sub-committee the whole or part of the contents of the Basis.

M. Hergel (Denmark) :

The Danish delegation wishes to support the proposal of the delegate for Chile — that the sub-committee should only discuss section *(b)* of Basis No. 5.

The Chairman :

Translation : If this proposal is accepted, we shall have to continue the discussion of section *(a)* to-morrow. In that case, the present discussion will be useless.

We have to decide whether the Committee desires to continue the discussion of section *(b)*. If not, we will appoint a sub-committee and will fix its terms of reference.

The Committee decided not to continue the discussion and to appoint a sub-committee.

The Chairman :

Translation : If the Committee decides not to accord full powers to the sub-committee, it will have to take a decision regarding the omission of section *(b)*. In my view, the most practical solution would be not to limit the sub-committee's powers.

This was decided.

The Chairman :

Translation : The sub-committee might consist of the Drafting Committee assisted by the Rapporteur and the Bureau. It would perhaps also be well to add two representatives of the extreme opinions which have been expressed — namely, the delegate for the Netherlands and the delegate for Italy.

M. Diena (Italy) :

Translation : I accept this proposal, but ask that M. Rundstein also be appointed a member of the sub-committee, since he has proposed a synthesis.

The Chairman :

Translation : In principle, we can hardly call upon the delegate for Poland to serve, because he is radically in agreement with M. Kosters, the Netherlands delegate. Naturally, however, we should be very grateful to M. Rundstein if he would help us.

This sub-committee will submit a text as soon as it is able, and to-morrow we will begin the discussion on Basis No. 15.

M. Diena (Italy) :

Translation : Basis No. 15 is closely bound up with Basis No. 5. I propose therefore that we should discuss Basis No. 6 to-morrow.

The Chairman :

Translation : If the Committtee agrees, we will commence our examination of Basis No. 6 to-morrow.

This proposal was adopted.

The Committee rose at 12.40 p.m.

SIXTH MEETING

Saturday, March 22nd, 1930, at 10 a.m.

Chairman : M. POLITIS.

19. LOSS OF NATIONALITY RESULTING FROM VOLUNTARY ACQUISITION OF A FOREIGN NATIONALITY : DISCUSSION ON BASIS No. 6.

The Chairman :

Translation : Various amendments and suggestions have been submitted in connection with Basis No. 6. There are nine amendments (proposed by the delegations of the following countries : Chile, Egypt, France, Germany, India, Portugal, South Africa, United States of America, Yugoslavia), and two proposals, one by the Finnish delegation and the other by the Swedish delegation, both referring to the same point and practically identical (Annex II).

The discussion is open on Basis No. 6.

M. Kaira (Finland) :

Translation : I have a few words to say on a point of procedure, which will certainly assist us in our work.

The Swedish and Finnish delegations have endeavoured to discover a common basis in connection with their proposals for decreasing the number of cases of plural nationality, and have agreed upon a new formula which we shall submit for discussion as a joint proposal emanating from the two delegations.

Accordingly, I request the Chairman not to submit the original Finnish proposal for discussion.

As the new proposal was sent in very late last night, it has not yet been distributed (Annex II, page 284). The suggestions made therein are similar to those contained in one part of the United States amendment to Basis No. 15, having nothing in common with Basis No. 6. Under these circumstances, the best procedure would be to consider our new proposal in connection with Basis No. 15, or immediately thereafter, as a new Basis of Discussion.

M. Malmar (Sweden) :

Translation : I agree with the Finnish delegate's proposal.

The Chairman :

Translation : The Committee will, I am sure, comply with the wishes of the Swedish and Finnish delegations.

M. Alvarez (Chile) :

Translation : In view of the present conditions of international life, certain tendencies have become manifest, including a readiness to allow a person, as far as possible, to choose his own nationality. This tendency is of great importance for all countries, particularly those in the western hemisphere, which are, for the most part, countries of immigration. The Chilian delegation has proposed that the Conference should take this tendency into account.

According to existing principles, the law of each State, and that law alone, determines who are its nationals. Consequently, as has been very often pointed out, a person can have several nationalities. But what we must clearly establish is that every person, when he reaches a certain age, should be able to choose his final nationality in order to become the national of the country to which he feels the greatest attachment. As the Chilian delegation has pointed out in its statements, such feelings are of the highest importance in nationality questions.

Hitherto, a person has been able to choose in two ways — either by opting for a given nationality when he possesses more than one, or by securing naturalisation in a country other than that of which he is a national.

I shall not refer to the first method, but only to the second. Naturalisation should not be subject to the fulfilment of any conditions other than those laid down by the country of which the person desires to become a national. We should therefore remove all obstacles raised by the country of origin to the free choice of nationality by its nationals. The only restriction to be made — and it is an obvious one — is that the person should not make his choice when he is called upon to carry out, or while he is carrying out, some duty as a citizen — for instance, his military service.

I am fully aware that many States will, rather than accept our proposal, still adhere to the principles laid down in Basis No. 6, or even to the restrictive provisions of their own law, particularly when this matter is regulated by their Constitution, if the law cannot be altered except by special procedure specified therein.

In spite of this, I have thought it desirable, on behalf of the Chilian delegation, to submit the following text :

> " A national of a State who has become naturalised in a foreign country in accordance with the law of that country thereby loses his previous nationality."

This proposal is, moreover, in conformity with the law of certain countries, particularly of Latin-American countries.

The Chilian delegation, however, in a spirit of conciliation, would readily agree to add to its proposal a second paragraph, worded as follows:

> " States may, however, in special Conventions, settle the conditions for the naturalisation of their respective nationals."

Mr. Flournoy (United States of America) :

M. Alvarez has already said a good deal of what I intended to say, and said it better than I could say it, so I shall endeavour to avoid repeating all the points brought out in his statement.

It seems to me important to bear in mind the fact that the codification which we are undertaking is progressive in character and should conform, as far as possible, to the actual conditions of modern life and the relations between States. One of the objects of this codification is also to eliminate, so far as possible, double nationality and its consequences.

The proposal of the United States delegation is very similar to that put forward by M. Alvarez. It differs only in this respect — that it refers specifically to the naturalisation of children through the naturalisation of their parents as well as to the naturalisation of persons upon their own application. Perhaps the formula proposed by M. Alvarez was intended to include both classes, but I am not sure of that.

The United States delegation has included in its proposal the condition that it is applicable only to persons naturalised at a time when they are residing in the naturalising State. Otherwise, the two proposals are practically the same. The important point is the fact that, under our proposal, naturalisation is not made subject to the obtaining of the express permission of the country of origin.

The question of the status and rights of naturalised citizens is necessarily of the utmost importance to our country and to all the newer countries of the world, since our population is composed so largely of naturalised citizens or their descendants. As I have already stated on a previous occasion, if the nationality and the allegiance of such persons is limited or divided, we can have no true body of citizenship.

We consider that naturalisation means a complete change in the national character of the individual. The matter was of such

importance to the United States that our Congress took special note of it in the year 1868, and on July 27th of that year it adopted a joint resolution based upon the hypothesis that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness".

This declaration was in harmony with an opinion rendered by Attorney-General Black on July 8th, 1859, in which he said:

> "The moment a foreigner becomes naturalised, his allegiance to his native country is severed for ever. He experiences a new political birth. A broad and impassable line separates him from his native country. He is no more responsible for anything he may say or do, or omit to say or do, after assuming his new character, than if he had been born in the United States. Should he return to his native country, he returns as an American citizen and in no other character. In order to entitle his original Government to punish him for an offence, this must have been committed while he was a subject and owed allegiance to that Government. It must have been of such a character that he might have been tried and punished for it at the moment of his departure."

This statement still expresses the position of the United States with regard to the effect of naturalisation. I may say, however, that the statement that "a broad and impassable line separates him from his native country" refers rather to his legal status and rights than to his personal feelings. It is only natural that a naturalised citizen should have some feelings of affection for the country in which he was born and in which he still may have many ties. It is not expected that naturalisation should have the effect of destroying such feelings, and it is not at all necessary that it should. but his true allegiance after naturalisation is to the country which he has chosen to make his own. If he is not prepared to make such a change, he should not undertake to be naturalised.

We realise the difficulties inherent to this matter of naturalisation, and particularly the question of the claims of the country of origin with reference to military and other national services. We do not expect that naturalisation should have the effect of wiping out liability for prior offences. If an individual has transgressed the law of his country of origin, he remains subject to punishment for such transgression. This principle has been embodied in a number of treaties between the United States and other countries. The first of these were the Bancroft treaties concluded in 1868 with the several German States. They were followed very shortly by treaties with Austria-Hungary, with Great Britain, Denmark, Norway and Sweden, and, subsequently, with certain Latin-American countries and, still later, with certain other countries of Europe. Several of these treaties include specific provisions concerning liability for punishment for offences committed prior to the acquisition of the new nationality, and, if it is deemed necessary, I have no doubt that our delegation will be glad to consider the question of the addition to our Convention of some provision specifically relating to that subject.

The point, however, which we wish to make is that the change of nationality itself is something separate and distinct, that the individual should be given the right to change his nationality, and that the question of possible liability to punishment for offences against the country of origin should be regarded as another matter. The United States delegation therefore proposes the following amended text of Basis No. 6:

> "A person who, in the country where he resides, acquires the nationality of such country, either upon his own application or through naturalisation of a parent in accordance with the provisions of Basis No. 7, thereby loses his former nationality."

Mourad Sid Ahmed Bey (Egypt):

Translation: According to the provisions of Egyptian law on nationality, and apart from the exceptions provided for in that law, an Egyptian cannot acquire foreign nationality until he has obtained permission from the Egyptian Government. Such permission is granted in the form of a decree. An Egyptian who has acquired foreign nationality without the permission of his Government continues to be regarded in every respect as an Egyptian. We have been obliged to admit this rule, which I am the first to allow is a superannuated one, since it counteracts to a certain extent the principle of individual freedom.

I should add that Egypt, in her present political situation, is subject to capitulations. As a result, an Egyptian might, in order to enjoy certain fiscal, jurisdictional and other immunities, change his nationality while still residing in Egyptian territory. We are therefore obliged to employ a superannuated method to combat the capitulations, which are even more superannuated.

We are prepared to agree to this Basis of Discussion in so far as the national in question does not belong to a capitulation State. In the contrary case, we cannot accept it.

The amendment I have submitted is replaced by the present statement.

M. Merz (Switzerland):

Translation: Under present Swiss law, Swiss nationality is not lost by the acquisition of foreign civil status, unless the Swiss citizen, on the ground of his having acquired a new citizenship, expressly requests to be freed from his former allegiance. This is a question of sentiment, the intimate bond referred to so eloquently a few days ago by the delegate for Belgium — love for the Fatherland, attachment to one's early community (in our case the commune or the canton), to which the person

can return to spend the last days of his life. This is the sentiment which lies at the root of the Swiss citizen's well-known longing for his country, which I myself already feel after eight days spent at this international Conference.

We are unable, therefore, under present circumstances, to vote in favour of the principle laid down in the first sentence of Basis No. 6. But, as the new Federal Law on Nationality, at present under consideration, may possibly — I might almost say, will very probably — follow the lines of the idea embodied in the first sentence of Basis No. 6, we will not vote against the proposal, but will merely abstain. On the other hand, we have no objection to the second sentence of Basis No. 6.

Mr. Hearne (Irish Free State) :

Although the delegation of the Irish Free State has not proposed any amendment of Basis No. 6, I nevertheless ask to be allowed to make some observations upon it.

In the observations made by the Yugoslav delegation, the law in Yugoslavia was mentioned, and it was stated that Yugoslav nationality is not lost automatically upon the acquisition of another foreign nationality. While a law of that kind inevitably creates, and results in, dual nationality, with its consequent problems and possibilities of international friction, of which dual nationality is so fruitful a source, it nevertheless contains what appears to us to be a sound principle — namely, that an act of release from allegiance to the country of origin should be an indispensable legal precedent to the loss of the nationality of that country.

A citizen should not, we think, have the right freely to dispose of his loyalty to his country and of the legal obligations incident thereto. A person owes and does not own allegiance, and allegiance to his country of origin should not cease automatically by his acquisition of a new nationality. That, I understand, from the observations of the Swiss delegate, is the position in Switzerland as well.

I am aware that this principle is not quite in accordance with the practice of the States in the post-war organisation of the world; but I consider that the principle which is inserted in Basis No. 6 is inconsistent with the remainder of that basis; it is certainly inconsistent with the first Basis of our proposed Convention. Basis No. 6 says: "In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality"; and the remainder of the Basis proceeds to make it clear that nothing of the kind is the case as a matter of fact. It says: "Legislation of a State" — which, in nationality law, under Basis No. 1 of this proposed Convention, is to be paramount — "may nevertheless make such loss of its nationality conditional upon the fulfilment of particular legal requirements"; and, upon failure to comply with the legal requirements, it says that "the State's legislation may make the loss of its nationality conditional upon the grant of an authorisation".

We think that the granting of an authorisation is the fundamental thing, and that, in this Basis, the problem is being attacked in the wrong way. The principle should not be that a person who acquires a new nationality automatically loses his own; the principle should be that the granting of the authorisation should come first.

The delegate for the United States referred to the report of the United States Commission of 1865. He said that, in that report, it was laid down that a man had an inherent natural right to change his nationality. True, he has an inherent right to acquire another nationality; but that this fact should, as a principle of international law, result automatically in the loss of his former nationality is something which, I think, the report of the United States Commission did not go so far as to say.

Having regard, therefore, to the fact that the principle which we contend is the true principle is safeguarded in the latter part of this Basis of Discussion, we should be prepared to accept the Basis of Discussion as a whole, subject to an amendment in the first sentence. Instead of saying: "In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality", we would prefer to say: "a person who, on his own application, acquires a foreign nationality may, subject to the rules contained in this article, lose his former nationality".

This would safeguard the principle which is set out so clearly in the remainder of the Basis.

M. da Matta (Portugal) :

Translation: It would perhaps be preferable to limit Basis No. 6 to its first sentence. The provisions contained in the second sentence need not be regarded as indispensable in view of the words "in principle" placed at the beginning of the Basis.

If, however, the Committee decides to maintain the second sentence, I would venture to propose two amendments.

First, I would suggest that the expression "of service" coming after the word "obligations" be omitted. Instead of "obligations of service towards the State", I propose "obligations towards the State". True, in most cases the obligations in question will be obligations of service (as, for instance, in the case of military service or service in some official capacity). Cases may, however, arise in which the obligation towards the State is not one of service — for instance, when the person is being proceeded against under criminal law, or (a possibly inacceptable, but nevertheless legislatively existent, instance) when the person owes taxes to the Treasury.

I have also proposed the omission of the final sentence in the Basis: "In the case of persons not satisfying these requirements, the State's legislation may make the loss of its nationality conditional upon the grant

of an authorisation ". Since, in certain countries—in Portugal, for instance—expatriation permits are unknown, it would be preferable to say : " Nationality is lost as a result of the voluntary acquisition of foreign nationality abroad ".

Denationalisation thus occurs automatically—in fact, Portuguese nationality is lost the moment a new nationality is acquired. This is in order to avoid double nationality.

M. Diena (Italy) :

Translation : The idea underlying the text submitted by the Committee of Five is, I think, this : In principle, the circumstance that a person has, by a voluntary act, acquired a certain nationality may involve the loss of his previous nationality. From a purely theoretical point of view, I am personally willing to subscribe to this idea ; but we have to deal with realities, particularly here, and the Committee of Five itself showed that it intended to be practical.

In the first paragraph, beginning with the words, " In principle ", there are other provisions in which it is laid down that the legislation of the State may make loss of its nationality conditional upon certain legal requirements. Each of us fully realises that nationality laws do not seek merely to regulate the legal status of individuals, but are also undoubtedly of a political nature. If each delegation simply explains what the law is in his own country, we shall achieve nothing. We must, therefore, discover a formula which will take into account the tenets of each body of law, a comprehensive formula which, I think, the formula of the Committee of Five cannot claim to be, since it is too restricted and appears to lay down altogether formal conditions which nevertheless do not amount to a simplification.

I would venture to propose several amendments which are not merely questions of form but may affect the essence of the Basis.

I propose that we should adopt the first sentence :

> " In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality."

In the second sentence, after the word " regarding ", I suggest that we should add the words " for instance ".

Finally, I think the words, " in the case of persons not satisfying these requirements ", might be omitted.

This proposal might meet the views already expressed by various delegations.

Mr. Lansdown (South Africa) :

I am in general agreement with the principle of Basis No. 6, and there is little I could add to the discussion on the merits of the case. I feel, however, that the language is somewhat too inelastic and the few remarks I have to make will be rather in the nature of suggestions to the Drafting Committee.

In the first place, the Basis reads : " The legislation of a State may nevertheless make such loss of its nationality conditional upon " certain circumstances. Now, the word " legislation " connotes the idea of the written law, whereas in many countries, including my own, some of these conditions are dictated not by the written, but by the unwritten, law ; Instead, therefore, of the word " legislation " we should use the word " law ".

Secondly, I have some objection to the precise statement of conditions under which nationality may be permitted to be withdrawn. In this case, I find myself in agreement, to a certain extent, with the remarks of the Portuguese delegate, and the delegate for Italy. It is possible that what I have to say might meet the position of the delegate for the Irish Free State.

The precise conditions set out are insufficient because, in the first place, they permit of a relinquishment of nationality in cases where the laws of some countries do not permit such a relinquishment — for instance, in many legal systems a national is not permitted to abandon his allegiance on acquiring another nationality in a State with which his country is at enmity. That is not permitted in my nation's system of law, nor I think in most systems. Under this precise statement of conditions, however, such a relinquishment would be permitted, there being, in the cases I contemplate, no obligation of service, but merely an obligation of loyalty.

Again, as pointed out by the delegate for Portugal, certain taxation and other obligations may be due by a subject to his State this is a matter which is not embraced in this precise statement of conditions.

It seems to me, therefore, that the statement should be made more elastic, and, if this were done, it might cover some of the objections which have been raised this morning. I would, therefore, suggest that the second sentence of the Basis should be replaced by these words, or words to this effect :

> ". . . but the law of a State may make such loss conditional upon the fulfilment of specific requirements as to the legal capacity of the person concerned, his place of residence, his due regard to his obligations of loyalty, service or otherwise, and similar circumstances."

This text would make the phrase sufficiently elastic, and, I think, meet several of the objections which have been raised this morning, the force of which I, for one, appreciated.

I should like also to make a remark in regard to Basis No. 6*bis*. The learned jurists of the Preparatory Committee, in their observations on page 44 of document C.73.M.38.1929.V for which we are greatly indebted to them, suggest that Basis No. 6*bis* is only an alternative, and should be considered only in the event of Basis No. 6 being rejected. I venture, with all respect, to disagree with that view and to suggest that Basis No. 6*bis* is not a mere

alternative to Basis No. 6, but is a definite contribution to the problem of statelessness. If Basis No. 6*bis* were adopted, it would discourage a withdrawal of nationality unless the individual is in possession of another nationality; and, in this way, statelessness might, in the circumstances, be prevented. Of course, if dual nationality is possessed, there would be no difficulty about the withdrawal.

The language of Basis No. 6*bis* is, however, not quite adequate to meet the case of dual nationality, and it does not, as I think it should, seem to contemplate that circumstance. Basis No. 6*bis* should cover, not only the case where another nationality is to be acquired, but it should also be applicable to the case where a second nationality is already possessed. My suggestion to the Drafting Committee therefore would be that Basis No. 6*bis* should be modified to read:

> "A release from allegiance (expatriation permit) does not entail loss of nationality unless a foreign nationality is acquired or possessed."

Such a text would cover the case of possession of dual nationality, and, with that alteration, it seems to me that Basis No. 6*bis* would be a valuable contribution to the problem under consideration.

M. Giannini (Italy):

Translation: This question is not yet being discussed.

The Chairman:

Translation: Certainly Basis No. 6*bis* is not yet being discussed; but, as the South African delegate sees a connection between the two Bases, he has preferred to express his opinion now. I did not think it necessary to interrupt him. But it is understood (and I would request the other speakers kindly to note this) that, unless they also perceive a very close connection between these two Bases, they must limit their observations to Basis No. 6.

M. Christitch (Yugoslavia):

Translation: The Yugoslav delegation wishes to submit one or two reservations with regard to Basis No. 6.

Yugoslav law lays down as one of the requirements for the loss of nationality that an expatriation permit must be obtained. Nationalisation abroad is not enough to cause the loss of Yugoslav nationality; there must be an expatriation permit as well. This permit can only be delivered if the petitioner proves that he has acquired, or is about to acquire, foreign nationality. In principle, the permit cannot be refused except in certain definite cases defined by law — namely, when the person concerned has not accomplished his military service or paid his taxes, or if criminal proceedings are pending against him, or if he is actually in service as an official of the State, or, finally, if the change of nationality is intended to circumvent the law. The expatriation permit to be obtained under the above conditions is still, in Yugoslav law, one of the essential conditions for the loss of nationality.

Consequently, in conformity with the instructions of its Government, the Yugoslav delegation cannot abandon this system, which, in practice, has given excellent results; particularly as the certificate of release from allegiance does not, in Yugoslav law, in view of the conditions under which it is issued, in any way limit the individual's freedom to change his nationality, but is an excellent method of securing certainty in the status of the individual and protecting the persons interested against fraudulent changes of nationality.

The Yugoslav delegation could not, therefore, accept Basis No. 6. It is, however, prepared, with certain minor changes, to adopt Basis No. 6*bis*.

M. Rundstein (Poland):

Translation: The Polish delegation accepts Basis No. 6, with the interpretation proposed by the Italian delegation, subject to two amendments.

In the first place, it would be desirable to take into consideration the German delegation's amendment to the effect that we should insert, in the first sentence, after the words "in principle", the phrase: "and, in the absence of any agreement to the contrary, between the two States concerned". I accept this amendment, subject to the reservation that the word "two" be omitted, because it is quite possible that a plurilateral Convention on nationality may be concluded. I need only quote as examples the Convention of Rio de Janeiro and the Rome Convention, which are both plurilateral.

Secondly, I think we ought to adopt the very excellent amendment proposed by the Portuguese delegation to the effect that the words "of service" should be omitted after the word "obligations".

I do not know if I can express any opinion on Basis No. 6*bis*. Nevertheless, I may point out that the text is not really an alternative, but an addition. In other words, if we accept Basis No. 6, we must accept Basis No. 6*bis*. I will not at this juncture give my reasons for this opinion, but reserve the right to revert to this point when we come to discuss Basis No. 6*bis*. I would merely wish to emphasise the fact that the Polish delegation has proposed an amendment to Basis No. 6*bis*, the text of which was unfortunately omitted in the summary of amendments prepared by the Secretariat. When we come to discuss the question whether Basis No. 6*bis* is an alternative to or a logical prolongation of Basis No. 6, I shall support the latter point of view.

M. Malmar (Sweden):

Translation: The Swedish delegation feels that the Chilian delegation's proposal has much to be said in its favour. We are bound, however, to make a reservation as regards

persons who have their habitual residence in their country of origin. I do not think such persons can possibly be allowed to avoid their obligations towards their country of origin so long as they reside therein. The Swedish delegation agrees with the proposal of the United States delegation.

M. Buero (Uruguay) :

Translation : Basis No. 6 deals with the case of double nationality arising as a result of a voluntary act on the part of an individual. It is evident that, like all our Conventions, this Basis tends to diminish cases of double nationality and to lay down rules governing these particular cases.

I am inclined to agree with the Swiss delegate when he says that the general principle in his country is that Swiss nationality is not lost by the mere fact of acquiring another nationality. There is a similar clause in our own law. I refer to the law of February 2nd, 1928, which expressly lays down in Article 1 that the adoption of Uruguayan nationality by law — *i.e.*, Uruguayan naturalisation — does not involve the loss of the nationality of origin. This is a principle which is directly at variance with that embodied in the Basis under discussion. The latter is founded on quite a different opinion — namely, that, in principle, a person who, on his own application, acquires a foreign nationality, thereby loses his former nationality. Uruguayan law is, therefore, to a certain extent, in harmony with the provisions of the laws of those countries which, like Switzerland, consider that the fact that one of their nationals acquires another citizenship does not make him lose his nationality of origin.

Uruguay is not in exactly the same position as the United States, although both countries are countries of immigration. The United States of America is able to limit immigration, since the country is sufficiently populous ; so much so, indeed, that it is obliged to limit immigration by subordinating entry into the territory to certain conditions. In Uruguay, on the contrary, we have to attract foreigners by all possible means, as our population is not yet very considerable. It is in order to facilitate the incorporation of persons coming from other countries that we do not call upon them to relinquish their nationality of origin. In so doing, we take into account certain considerations of sentiment. Some persons might be prevented from seeking naturalisation owing to their fear of being regarded by other persons in the country from which they come as a variety of traitors who no longer wish to be bound to the land of their forefathers.

Under these circumstances, it is very difficult for me to agree to a Basis which relies on an entirely different principle. If certain countries make the loss of nationality subject to certain conditions (which are indicated in Basis No. 6), I do not mind, provided they accept — as laid down in Basis No. 4, which has already been discussed — that naturalisation, as practised in Uruguay, cannot in any way be brought under discussion. This is of interest to us from the point of view of the reservation contained in Basis No. 4. concerning diplomatic claims. We have no interest in limiting or defining the conditions which must be fulfilled by the individual if he is to lose his nationality of origin, according to the law of such countries as possess legislation on this point.

In my view, it would be preferable, if the Committee desires to accept the principle of this clause, to give it another tenor, not drafting it as a general rule, but stating, for instance : " In States in which the voluntary acquisition of a foreign nationality by one of their nationals involves for the latter the loss of his nationality of origin, the law may make such loss conditional upon fulfilment of certain requirements ", and then continue the text in conformity with the Italian and Polish amendments, which I am also prepared to accept.

M. Negulesco (Roumania) :

Translation : The provisions of Article 36 of the Roumanian Law of 1924 provide that naturalisation abroad entails, *ipso facto*, the loss of Roumanian nationality. According to Roumanian law, therefore, the loss of Roumanian nationality coincides absolutely with the acquisition of a new nationality by naturalisation.

Roumanian law does not require the fulfilment of any condition for the loss of nationality as a result of naturalisation abroad ; nor does it provide for any expatriation permit on the issue of which the loss of nationality is made to depend.

The Roumanian delegation would like to see embodied in a provision of the Convention the principle which is incorporated in Roumanian law and is found in the first part of Basis No. 6.

As regards the restrictions set out in the second part of Basis No. 6, we are rather inclined to ask for their omission, in conformity with the proposal put forward, in the first instance, by the Portuguese delegation. But, in a spirit of conciliation, the Italian and Portuguese delegations and our own have agreed to propose a formula which is accepted by our three delegations and which meets the views expressed by several other delegations.

After the word " regarding ", the words " for instance " should be added ; and the words " of service ", together with the words " in the case of persons not satisfying these requirements ", should be omitted.

M. Caloyanni (Greece) :

Translation : I do not wish to take sides in a controversy which divides countries of immigration from countries of emigration. Since 1914, we have had a law according to which a person cannot change his nationality without obtaining permission.

In a spirit of conciliation such as that which has inspired other delegations, I declare that I accept the last text proposed by M. Diena and M. Negulesco.

M. Kosters (Netherlands) :

Translation : May I make one brief observation in explanation of the scope of Basis No. 6 ? The terms employed in this Basis are quite general. The question is one of the acquisition and loss of nationality and of the legal capacity of the naturalised person, without any exception. Nevertheless, the Netherlands delegation supposes that this Basis does not refer to the situation of married women. It does not deal with the legal capacity of a married woman to obtain naturalisation independently of her husband.

This question must be reserved until we can examine Basis No. 16 *et sqq.* True, there is no mention there either of the legal capacity of the married woman ; but I think that it is in connection with these Bases, and not with Basis No. 6, that the point will have to be considered.

The Chairman :

Translation : It is quite understood that the question of married women will be deferred until we come to examine Bases Nos. 16 to 19. Even when this point arises incidentally, it will be better to defer consideration of the matter, in order that we may examine the whole position of the married woman in connection with Bases Nos. 16 to 19.

M. Soubbotitch (Yugoslavia) :

Translation : The Yugoslav delegation has already declared that it cannot accept Basis No. 6 in its present form. Since that time, an amendment has been put forward by the Italian delegation which takes fully into account the standpoint of the Yugoslav delegation. The latter is able to agree with M. Diena's proposal, to modify the second part of Basis No. 6 as follows :

> " The legislation of a State may, nevertheless, make such loss conditional upon the fulfilment of particular legal requirements regarding, for instance, the legal capacity of the person naturalised, his place of residence or his obligations towards the State. It may also make the loss of its nationality conditional upon the grant of an authorisation."

M. Alten (Norway) :

Translation : In order to avoid prolonging the discussion, I would simply say that I adhere to the proposal of the United States of America, because that proposal is better calculated than the proposal of the Committee of Experts to prevent cases of double nationality.

M. Nagaoka (Japan) :

Translation : I entirely agree with the amendment submitted by my colleague M. Diena, which has been supported by other delegations. I accept the formula he has just submitted.

M. de Navailles (France) :

Translation : The French delegation is in rather a difficult position. It stands between two directly opposed theses : the thesis of those who desire that, in every case, naturalisation should cause the loss of the nationality of origin and the thesis of those who place great restrictions on this principle, since they do not admit loss of nationality without authorisation.

In French law, such authorisation is sometimes necessary, but only in a very few cases. Had there not been these few exceptions in our law, we would have been very glad to support the thesis of those who desire that there shall be no double nationality, and that the naturalised person shall lose his nationality of origin.

But, though we may wish to improve the law, our main mission is to codify it, and consequently to lay down what exists. We all realise that, if we tried to go too far, we would not achieve any result at all. I therefore think that we must endeavour to lay down the principle as set out at the beginning of Basis No. 6, and also accept the modifications thereto contained in the various laws. I therefore entirely agree with M. Diena's proposal.

M. Schwagula (Austria) :

Translation : Austrian law is based on the general principle that Austrian nationality is lost by the acquisition of foreign nationality. Similarly, Austrian law has taken precautions to avoid the conflict which might occur when a foreigner desires to obtain Austrian nationality.

Austria, therefore, could adhere to the formula laid down in the Basis of Discussion we have just examined. I see no objection at all to the amendments submitted this morning by M. Diena and by other delegates.

I simply wish to make one small observation which has occurred to me in connection with the proposal of the delegation for the United States of America. Our law lays down that Austrian nationality cannot, in principle, be granted to persons who have not been resident in Austrian territory for a fairly long period — in point of fact, four years. Nevertheless, provision is made for the rather rare cases in which naturalisation can be accorded without previous residence in the federal territory.

That is why I cannot accept a solution which would deprive Austria of her freedom in this respect.

I repeat that our legislation has already laid down the principle that, if a person wishes to lose Austrian nationality, there are no restrictions except the obligations of military service, which are of very slight importance in Austria, since such service is not compulsory.

M. Piip (Estonia) :

The Estonian delegation regrets that it cannot adhere to this Basis without reservations. As in several other emigration countries, our Constitution provides that no citizen of the Estonian Republic can be at one and the same time a citizen of another

State, and that, for expatriation, a special permit is necessary. We quite understand that this rule implies the germ of double nationality, which is, indeed, the greatest evil of present international life, and the elimination of which is one of our principal tasks.

We fully appreciate the value of more liberal provisions, as brought forward by the delegates of Chile and the United States of America; and, on the other hand, we see that Basis of Discussion No. 4 provides some means of lessening the perils of free expatriation. Nevertheless, I cannot say that our legislation is in favour of changing, for the time being, this rule, which exists in our law of 1922. I think, therefore, that the amendment proposed by the delegate for Italy contains the necessary compromise and reserves to other States the right to keep their law in existence. I am, therefore, in favour of the Italian amendment.

M. Martensen-Larsen (Denmark):

The Danish legislation enables me to vote in favour of the United States amendment, and the Danish delegation views with sympathy the tendency which is expressed in that amendment.

Mr. Dowson (Great Britain):

So much has been said this morning with regard to this Basis that I will be as brief as possible.

My delegation supports the first sentence of this Basis and, indeed, the Basis as it stands, since it is clear that it would be impossible, without some qualification, to obtain general agreement for the clear principle that naturalisation in a foreign State automatically involves the loss of nationality. We hope, however, that it may be possible, when this Basis is finally drafted, to cut down to a minimum the conditions referred to in the second sentence. I do not suggest that the minimum should be greater than is indicated in the Basis as it stands; but that Basis, when being drafted, should not have inserted in it more restrictions and more conditions than it at present contains.

There is, however, one point that I would like to mention and which I think has not been touched upon this morning. I refer to the practice in regard to the granting of certificates of naturalisation in cases where the person whom it is proposed to naturalise belongs to a State under whose law some such conditions as those enumerated in this Basis must be fulfilled before the loss of its nationality can be effected upon naturalisation abroad.

It has been the practice of my Government for some years past to endeavour, so far as possible (in the case of any application for naturalisation by a national of any such country), to satisfy itself, before granting a certificate of naturalisation, that the applicant for naturalisation is in a position to fulfil the conditions necessary to effect the loss of the foreign country's nationality. That is an admitted contribution to the problem of preventing the creation of dual nationality, and I suggest that it might be very useful to insert somewhere in any Convention which results from this Conference, either in a Protocol or possibly as an addition to the present Basis, some such declaration as the following:

"It is highly desirable that each State should, so far as practicable, refrain from conferring its nationality by process of naturalisation unless and until it is satisfied that the individual concerned has fulfilled, or is in a position to fulfil, the conditions necessary to cause the loss of his nationality."

M. Gomez Montejo (Spain):

Translation: I do not know whether in this discussion we have touched upon the question of the exact concordance between the loss of one nationality and the acquisition of another, but I wonder if we might not say:

"A person who acquires a foreign nationality thereby *immediately* loses his former nationality."

In Spain, Spanish nationality is only lost after the new nationality has been entered in the Spanish registers of civil status.

M. de Berczelly (Hungary):

Translation: The Hungarian delegation entirely approves the proposal of the Italian delegation and that of the British delegation, which seems to us the most effective means of avoiding double nationality.

Sir Basanta Mullick (India):

I shall not detain the Committee long with the amendments submitted by my delegation and which is as follows:

Add to Basis No. 6 the following words:

"A State which has conferred its nationality on a person by process of naturalisation shall not, so long as that person habitually resides on its territory, withdraw from the person the rights and privileges incidental to the enjoyment of its nationality save upon grounds based upon personal misconduct on the part of the person."

It does not concern the question of immigration or a State's power to fix the composition of its own population, nor the question of the persons whom a State shall be free to admit as nationals of its country.

I support the principle of the loss of a nationality upon the acquisition of another nationality; but I desire, further, to provide that a naturalisation order once made in favour of a person should not be revoked suddenly and arbitrarily to that person's disadvantage and without any fault on his part.

The nationality laws of most countries contain provisions according to which

nationality, after having been obtained by naturalisation, can be lost for reasons such as fraud in obtaining the order of naturalisation, disloyalty, long absence and the like. These are all reasons which might, I think, be included in the general category of sins of omission and commission committed by the grantee. But, when a person is innocent of any such misdeed and has faithfully discharged his duties to his adopted country, it is surely a denial of elementary justice that he should be subjected to suffering and loss through no fault of his own. If he had a nationality before and has lost that nationality by taking the oath of allegiance to the naturalising State, then he becomes stateless, a condition which it is the avowed object of this Committee to avoid.

If the nationality law of the country of his adoption prohibits the holding of immovable property, he runs a risk, when he is naturalised, of suddenly being ruined. If it prohibits an alien from holding Government office and he has, by long and approved conduct, attained to that distinction, he is suddenly subjected to unmerited degradation. If, finally, he has married a national of the country of his adoption and has children, the revocation of the order of naturalisation probably breaks up his home and inflicts much domestic unhappiness.

It may be said that the revocation of an order of naturalisation is part of the prerogative of sovereignty, and that nothing should be done to limit or restrict its exercise. My reply to that is that we are met here to remedy individual grievances and hardships and to take such action as will promote peace and comity between the nations of the world. Only the other day this principle was recognised by this Committee, and Basis No. 2 was referred to the Drafting Committee in order that some method might be found for relieving the hardships of those who are made stateless by the order of the States of their birth.

To remedy individual grievances is surely one of the duties of this Committee, even if it entails to some degree an interference with the general rights of sovereignty. Further, my amendment is one that will appeal to a committee of jurists such as this, for it is based on the principle of *res judicata*.

As the laws of most civilised countries provide that strict proof shall be given of the eligibility of the candidate before naturalisation is granted, surely it ought not to be a very great concession for a State to agree that, when the competent authority set up by itself has, after due enquiry, established facts as to the eligibility of the applicant and has granted naturalisation, that order shall not be revoked or withdrawn to the prejudice of the individual unless fresh facts have come into existence which justify such a revocation — in other words, that the principle of *res judicata* shall, by international agreement, apply.

I hope my colleagues will not think that I am unnecessarily taking up the time of the Committee by discussing a hypothetical case which may never occur. I speak only because I know that a considerable number of cases have occurred where, not only individuals, but groups of individuals have lost the rights and privileges of naturalisation in spite of long and unimpeachable conduct towards the country of their adoption, and their cases have caused much concern to my country and have been the subject of international controversy.

I might add that, if it seems to some members of the Committee that the words of my amendment "A State which has conferred its nationality", and the words "so long as that person habitually resides on its territory", are unduly restrictive and do not go far enough, I should be quite content if the matter were referred either to the Drafting Committee or to a sub-committee in order that the point might be further considered and a suitable formula found.

Mr. Flournoy (United States of America) :

This subject is one of such great importance that I sincerely hope it will not be necessary to take a vote to-day — that is, before we have had an opportunity to give mature consideration to the various arguments and proposals put forward at this meeting. I think it would be a great mistake to take a vote upon the subject now. I am quite sure, however, that, if it is necessary to take a vote, the delegation of the United States would be obliged to vote against the proposal contained in Basis No. 6 as it now stands, and also against the amendment suggested by the Italian delegation. The tendency of some of the remarks made to-day seems to indicate the reversion to a theory which is regarded in the United States as antiquated and not in accordance with modern tendencies. We fully realise the practical nature of this problem, and it is hardly worth while to discuss the general principles involved in the question whether, after all, an individual is made for the good of the State, or whether the State is made for the good of the individual.

It is not necessary to call attention further to the different situations of countries of immigration and countries of emigration. As regards the practical aspect of the question, I do not think it is at all clear that the countries of emigration gain anything by an attempt to retain the indefinite allegiance of their nationals through restrictive legislation. After all, emigration will continue; men will leave their countries and go to other countries and make their homes and establish their families there; and this will not be prevented by any rule to the effect that naturalisation will not change the original

allegiance, or the original nationality, of the persons concerned without the express consent of the country of origin.

It is necessary to take into account the actual conditions of modern life. It seems to me that the effect of such a restrictive rule would merely be to cause constant irritation arising from conflicting claims upon the allegiance of individuals. We fully admit, as suggested by the Irish delegate, that allegiance is owed and is not owned; and, so long as a person remains the national of a country, he of course owes allegiance to that country. But the question is whether a man should not be at liberty, as a general rule, to change his nationality when it is necessary for his own good.

As I have said before, we in the United States could not possibly agree to any Convention which would require the naturalising State to decline to grant naturalisation to an individual until that individual has obtained the express consent of the country from which he came.

I doubt the desirability of continuing this argument; but I do hope it will not be found necessary to take a vote upon this very important question to-day.

The Chairman:

Translation: We can now regard the discussion as closed. It has been very interesting. Twenty-seven delegates have spoken and all that could be said on the subject has been said.

As you are aware, the Committee is divided into two groups. On the one hand, many delegations have stated that they are in favour of the Basis, either directly or indirectly, or with a more elastic text as indicated by M. Diena. Other delegations would prefer to give Basis No. 6 an entirely different meaning by making it a binding principle of international law that the nationality of origin is lost as a result of naturalisation abroad.

Were we to endeavour to reach a decision at present, the result would be that which I have outlined. We have, however, a proposal by the United States of America to adjourn the vote. Courtesy bids us accept this motion, but it is my duty to state that adjournment cannot imply that the discussion will be reopened, for there can be no doubt that a fresh discussion would lead to practically the same result and would, therefore, only be a waste of time. If we adjourn the vote, delegates will be able to exchange views and see whether it will not be possible, while confirming the tendency approved by the vast majority of delegations, to take into account, to a certain extent, the other tendencies which have been manifested and which are two in number.

One of these tendencies might be met by a recommendation to the effect that a State should henceforth not grant naturalisation to a foreigner until it has made sure that the foreigner is on the right side of the law in his country of origin; the other, the more radical demand, is that put forward by the United States delegation. Perhaps it would be possible to state somewhere, in the Preamble to the Convention or in the report, that, although this system is regarded as the ideal one, the present necessities of international relations preclude the attainment of a majority sufficient to warrant its inclusion, but that it is desirable to mention the system in the hope that it will eventually be accepted at some future date.

If the Committee agrees to this general suggestion, I think we may close the discussion to-day and defer our decision on the principle of Basis No. 6 until Monday morning.

M. Merz (Switzerland):

Translation: I have already stated that the principle contained in Basis No. 6 will possibly, and even very probably, be recognised in the new law which has been prepared in Switzerland. But it may possibly be necessary in this future law to attenuate the principle of the loss of nationality as a result of the acquisition of a new nationality, and to provide, for instance, that a Swiss citizen naturalised abroad may retain his former nationality subject to certain conditions and with the consent of the authorities of his country of origin.

I wish to make a reservation in these terms.

The Chairman:

Translation: I wish to obtain the Committee's opinion on the programme I have suggested — namely, that we should take a vote on Basis No. 6 on Monday morning and then consider the amendment proposed by the Indian delegation to the effect that a new paragraph should be added on the lines suggested by that delegation.

M. Soubbotitch (Yugoslavia):

Translation: Will the voting on Basis No. 6 include also voting on the amendments?

The Chairman:

Translation: On Monday morning we shall take the vote on Basis No. 6, together with the amendments. Then will come the vote or, more correctly speaking, the expression of opinion on the recommendation suggested by the British delegation. Finally, if possible, the Committee will be asked to give an opinion on a recommendation like the one I have suggested, which is intended more particularly to meet the United States standpoint.

Sir Basanta Mullick (India):

I only wish to ask whether the subject of my amendment will be open to discussion on Monday or whether the debate is closed.

The Chairman:

Translation: The debate is not closed; indeed, there is still one other speaker on the list.

M. Alvarez (Chile) :

Translation : I would like to point out that the idea of making a recommendation is already contained in the Chilian proposal (Annex II).

The Chairman :

Translation : On Monday morning, then, we will first of all vote on Basis No. 6 ; after that, we will discuss the amendments of the Indian delegation and will then consider Basis No. 6*bis*.

May I make one suggestion before closing the meeting? In order to expedite our work, now that practically all the amendments to the various Bases are known, delegations should endeavour, in the course of private conversations, to come to some agreement with a view to reducing the number of these amendments, summarising them and, if possible, consolidating them into a series of joint proposals. In addition, we must try to avoid an avanlanche of rhetoric in connection with every Basis. The speeches are very interesting in themselves, but, unfortunately, they take up a great deal of our time. Consequently, I do most earnestly beg the various delegations to try in future to express their opinion in as succinct a manner as possible. When certain arguments which they approve have already been advanced, I hope they will not repeat them, but merely state that they do or do not agree with such and such a statement.

I must apologise, but it is my duty to bring these matters to your notice.

The meeting rose at 12.45 p.m.

SEVENTH MEETING

Monday, March 24th, 1930, at 10 a.m.

Chairman : M. CHAO-CHU WU.

The Chairman :

In the unavoidable absence of our Chairman, M. Politis, it is my duty to act, for a few days, as the Chairman of this Committee. I ask of you the same measure of co-operation as you have been good enough to extend to M. Politis.

20. LOSS OF NATIONALITY RESULTING FROM VOLUNTARY ACQUISITION OF A FOREIGN NATIONALITY : BASIS OF DISCUSSION No. 6 (Continuation).

The Chairman :

At our meeting last Saturday, the Chairman proposed, and his proposal was apparently accepted by the Committee, that the debate on Basis of Discussion No. 6 should be closed, and that a vote should be taken on it the first thing this morning. At the same time, it was suggested that certain delegations should meet and try to agree on some formula which would be satisfactory, if possible, to everyone. I understand that such a meeting did not take place. Under those circumstances, I will ask the various delegations to make known their desires in regard to Basis of Discussion No. 6, particularly as I understand that certain of them hold rather strong views on the subject.

M. Diena (Italy) :

Translation : Last Saturday, I proposed certain amendments to Basis No. 6. I was very happy to note that they were approved, if not by all, at least by very many delegations. Perhaps it would be well to put them to the vote.

Mr. Dowson (Great Britain) :

I should like to point out that the substance of the amendment to which the delegate for Italy has just referred has not yet been fully discussed by the Committee, and no written text has been presented to us, so that we might have an opportunity of carefully considering the suggestions put forward. I feel, therefore, that the Committee ought to have an opportunity this morning to discuss the effect of the words proposed.

I might remind the Committee of the changes which the delegate for Italy has suggested. If I state them wrongly, he will no doubt correct me. As I understand the position, he is willing that the statement of principle at the beginning of the Basis — namely, the words, " In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality " shall stand as an expression of principle, but only on condition that the words which follow shall be altered to read, " The legislation of a State may nevertheless make such loss of its nationality conditional upon the fulfilment of particular legal requirements ", and then comes the alteration suggested : " Regarding such matters as, *inter alia*, the legal capacity of the person naturalised, his place of residence, his obligations towards the State ".

He proposes that, in the last sentence, the words "in the case of persons not satisfying these requirements" should be omitted altogether.

I think that these suggestions rather alter the character of the basis. While they widen the particular legal requirements which a State may impose, as a condition of the loss of its nationality, upon the naturalisation of one of its nationals, the amendments also propose that it should not be necessary, in order to give a State the right to make loss of nationality depend upon the grant of an authorisation, that those requirements should be met.

The Basis as it stands is satisfactory to my delegation, because, although we would have very much preferred to see the principle adopted in its entirety, without qualification, we recognise that a number of States cannot accept, and have not in their legislation in the past accepted the full principle.

Taking into account the limits of these qualifications as stated in this Basis, the latter is acceptable to my Government as stating, defining and limiting the matters in respect of which such legal requirements may be imposed by the legislation of a State. If the words "in the case of persons not satisfying these requirements" are omitted, as suggested by the Italian delegate, the rest of the sentence will stand as a separate proposal — namely, "the State's legislation may make the loss of its nationality conditional upon the grant of an authorisation". As a result, any State will, as I understand it, be absolutely free to make the loss of its nationality, on the naturalisation of one of its nationals, conditional, without qualification, upon the grant of an authorisation.

It appears to me to be very undesirable that the recognition of the right of a State to do such a thing should be incorporated in an international agreement such as we propose at this Conference, thereby recognising that such a right exists as a matter of international law. I could not, therefore, on behalf of my delegation, agree to the Basis in the amended form proposed by the Italian delegate, and I hope the matter will be very carefully considered before this Committee decides to adopt the amendment suggested.

I am not sure that it would not be better, rather than to accept the Basis as thus amended, to drop it altogether, and possibly incorporate the principle in the form of a general declaration affirming the desirability of establishing the principle that a person who, on his own application, acquires a foreign nationality thereby loses his former nationality. I hope that there will be some further discussion of this question, because it appears to me that the effect of the amendments which have been suggested has not been fully appreciated.

M. Diena (Italy):

Translation: I regret to have to contradict the delegate for Great Britain, but I assure him that we did indeed discuss the essential principle of Basis No. 6 at Saturday's meeting. That was why our Chairman declared the discussion closed and deferred the vote until this morning. I must, therefore, insist that the vote be taken and that the discussion should not be reopened.

The Chairman:

Mr. Miller, first delegate of the United States of America, has a statement to make.

Mr. Miller (United States of America):

On behalf of the delegation of the United States of America, I desire to make the following statement and request that it be entered *in extenso* in the Minutes of the meeting.

For a century past, it has been the policy of my country that the right of expatriation is an inherent and natural right of all persons. It is true that allegiance is a duty, but it is not a chain that holds a person in bondage and that he carries with him to a new life in a new land. It is a duty and an obligation that a freeman casts off when he voluntarily assumes allegiance to the country of his new home, and takes over the duties and the rights of a national there. When he accepts the new tie, the old one is loosed and gone.

This principle is not a small matter. It is not a question of language, or of formulæ, or of phrases. It is a principle of the rights of man and of the liberty of the human race. We stand on it and we shall continue to do so. Under our laws of naturalisation, the individual who receives the honour and the dignity of citizenship in the United States of America is obliged by the most solemn oath not only to support the Constitution of the United States, but also, by a like solemn oath, to renounce, and forever, all allegiance that he owes to any foreign State, prince or sovereign. The statute in the matter, which dates from 1795, reads:

> "That he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State or sovereignty whatever, and particularly, by name, the prince, potentate, State, or sovereignty whereof he was before a citizen or subject."

We regard that oath and its result, taken as it is after the conditions of residence and other qualifications which are prescribed in our laws, as a finality and we shall always so regard it.

It was not a new thing, but rather a recognition and a noble statement of the policy of the United States that our Congress, the supreme legislative power of my country, passed, in 1868, a Resolution which, for two generations, has been and continues to be the law of the United States of America. I wish to read it:

> "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness; and,

"Whereas, in the recognition of this principle, this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and,

"Whereas it is claimed that such American citizens, with their descendants, are subjects of foreign States, owing allegiance to the Governments thereof; and,

"Whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed:

"Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic,

"All naturalised citizens of the United States, while in foreign countries, are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens."

My Government stands on that declaration of policy. My Government equally and fully recognises the right of American citizens, if they so desire, to deprive themselves of American nationality by taking an oath of allegiance in another country, for the Citizenship Act of the United States reads:

"That any American citizen shall be deemed to have expatriated himself when he has been naturalised in any foreign State in conformity with its laws, or when he has taken an oath of allegiance to any foreign State."

It would be farthest from my thought here, in this international gathering, to say anything which might in any sense be construed as an attempt to dictate to others. I am speaking for my country and for my country alone. Our path is clear and fixed and certain, and it is not to be altered.

Accordingly, I declare in the name of my Government, and in the most formal manner that the delegates of the United States of America cannot and will not sign any Convention in which there is any clause whatever which could be construed to qualify or limit this declared policy of the United States of America, regarding the right of expatriation.

The Chairman:

The Italian delegate has raised a point of order. At the beginning of the meeting I myself stated that the decision of this Committee had been that the debate on this question should be closed and that the first thing we should do this morning would be to take a vote. At the same time, I stated, and on referring to the Minutes of the last meeting, I find I am confirmed in my statement that it was then understood that certain conversations should take place between the delegates holding what might be called extreme views, in order to see whether something could be arranged to meet the desires of all. It was because I had been given to understand that it had not been possible to find a solution that I asked the Committee this morning to express its views on the question whether we should vote at once or not.

There are two more speakers on the list, and I should like to ask them to confine their remarks to the point of order, or to any declaration that they may have to make before the vote is taken, and that their remarks should not refer again to the question of principle.

M. Alvarez (Chile):

Translation: At the end of the last meeting a decision was, I think reached — indirectly, if not directly — to appoint a sub-committee which would submit a formula on which we could vote. It will be remembered that Saturday's discussion turned on two points. Certain delegations expressed a desire that we should confine ourselves to the first sentence of Basis No. 6: "In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality". They were opposed to the addition of other conditions. That is precisely the essence of the Chilian delegation's proposal. I am happy to note that I am in agreement with certain American delegations, including that of the United States of America.

I think, therefore, we might first of all vote on this first sentence and not on the Basis as a whole.

If no agreement is reached we would then have to vote on the second sentence, beginning with the words: "The legislation of a State . . ."

There would then be the British delegation's proposal. If I understand that proposal aright, it is to the effect that no vote should be taken on Basis No. 6, but that a recommendation should be put forward with regard to the first sentence of this Basis. I am quite prepared to accept this solution if the Committee comes to the conclusion that it is the best one.

The Chairman:

In answer to M. Alvarez, I have to say that on consulting the Minutes I find that nothing was said about the appointment of a sub-committee. What was said was that conversations should take place between the delegations holding what might be called extreme views, in order to see if a compromise could be reached. It was on account of the failure of those conversations that the question was raised this morning.

M. Giannini (Italy):

Translation: I have to make a two-fold statement of a general nature.

I wish to draw the Committee's attention to the fact that we have first of all to endeavour to ascertain whether there are any principles of international law which are universally recognised. After having heard all the delegations, can we assert that such exist? I say "No"; and I think you all agree. You have

heard our colleague Mr. Miller, who observed that, as far as the United States of America is concerned, the principle in question practically forms part of the Constitution. His country is very particular that American protection should not be touched.

The laws of other countries however, are based on entirely different principles. There is no reason why these countries should reject their principles in order to adopt those upheld by the United States of America, or *vice versa*. Under these circumstances what method should be adopted ? We must make sure whether there is any possibility of establishing one single rule of international law. That can be done only if we discover a principle which will reconcile the most radically different laws. This was the object the Italian delegation had in view when it submitted its amendments concerning Basis of Discussion No. 6.

I think that all we can do is to endeavour to bring the two tendencies a little closer together. But the question also affects the domain of national policy ; it is not merely a juridical question. This is a fact which must be stated quite clearly. If we do not show some measure of conciliation, it will be very difficult for us to reach any agreement.

Conciliation, however, can only be brought about by very elastic formulæ, which would take this problem one step further, but would not amount to saying : "My way is the best and only way, therefore everybody must follow me", since others might say the same and the Conference would obtain no results — which, I think you will agree, would be rather unfortunate.

I earnestly beg you, therefore, to seek out a mid-way principle in order that we may secure, at any rate, some result. This, as my colleague M. Diena has very clearly explained, is the object of the amendments submitted by the Italian delegation.

M. Guerrero (Salvador) :

Translation : I have asked to speak, not in order to take up any definite attitude, but to remind the Committee that on Saturday a private meeting was mentioned at which the delegates who had expressed the most divergent views were to endeavour to come to an agreement and submit a compromise.

M. Giannini has referred to the spirit of conciliation which is necessary if the Committee is to secure a text that can be accepted by all.

As Rapporteur, I propose that we should appoint an official sub-committee and not a private one, which might consist of three or four delegates only, representing the most divergent opinions. At to-morrow's meeting this sub-committee might perhaps submit a text to which we could all agree.

The Chairman :

We have heard the views expressed, not only this morning by the various delegations, but also those expressed on Saturday last and you will have seen that they are fairly wide apart. As the Italian delegate M. Giannini, and our Rapporteur, M. Guerrero, have suggested, we should try, if possible, to arrive at some compromise and at some formula which will be satisfactory to all, otherwise it will be more or less a confession of failure on the part of the Committee.

It seems to me that the suggestion which has just been made by our Rapporteur is a very good one, that we should appoint a sub-committee, instead of having the somewhat indefinite conversations that were agreed upon at our last meeting, and let that sub-committee try to find a way out of this difficulty. If there is no opposition to that suggestion I will take it as adopted.

The proposal was adopted.

The Chairman :

This Sub-Committee had probably better consist of the Drafting Committee, together with the members of the Bureau and the Rapporteur, and may I suggest also the addition of the United States and Italian delegates, Mr. Flournoy and M. Diena. As two other delegations also — namely, the South African and Chilian delegations — have made suggestions for a solution, although they do not hold what might be called the extreme views of some other delegations, may I suggest that they also should be represented on the Sub-Committee ? If there is no opposition I shall consider the proposal adopted.

The proposal of the Chairman was adopted.

The Chairman :

At the close of the meeting on Saturday, it was stated that, although the debate on Basis No. 6 was closed, yet the debate on the Indian amendment to Basis No. 6 was still open. That being the case, I call on the delegate for South Africa to speak.

Mr. Lansdown (South Africa) :

As the Chairman has indicated, when the meeting closed on Saturday, I was about to offer a few brief observations on the proposal made by the delegate for India, namely, that once naturalisation has been granted by a nation to one of its residents, it should not be withdrawn while the person concerned remains a resident of that State, save on grounds of personal misconduct.

I think the Committee must have been impressed by the clear manner in which this proposal was submitted to us, and I myself, speaking as the South African delegate, am disposed to think that this proposal would be a contribution to the solution of the problem of statelessness in a certain direction, because the delegate for India, I think, contemplates the case where, on the withdrawal of naturalisation that has been granted, the person concerned would become stateless. If, therefore, in the brief remarks that I have to make, I offer a few suggestions as to the draft proposed by my friend, the delegate

for India, I hope he will not consider that as indicating opposition to his proposal; on the contrary, it seems to me that, subject to certain qualifications, the proposal is one which might be favourably considered by the Committee.

It seems to me that there are three directions in which this proposal must be supplemented in order that it might properly fulfil the idea the delegate for India has in mind. Firstly, the proposal should not apply where there is consent on the part of the person concerned. A situation might possibly arise in which the person concerned desires to be freed from his nationality; in such a case, the hands of the Government should not be tied, whereas they would be tied under the proposal made by the delegate for India, because its terms are quite imperative.

There is also a second direction in which I think the action of a State should not be trammelled — namely, when dual nationality is possessed by the person concerned. Speaking generally, we want, in this Committee, to discourage any state of affairs which will make for the retention of dual nationality, and we do not want to fetter States in that connection.

The delegate for India will remember that the British nationality law contains a definite provision that, in cases where a British subject possesses, at the same time, the nationality of a State with which His Majesty the King is at war, if he chooses to retain that enemy nationality his British nationality may be withdrawn. I do not think the delegate for India desires to interfere at all with that position. So that is a second case in respect of which there should be some qualification: the case of dual nationality.

There is a third position which it seems to me should be contemplated in this Indian amendment and for which provision is not made — namely, the case of what I might call "consequential nationality". Under many systems, nationality is or may be acquired by a woman upon the naturalisation of her husband, or by minor children upon the naturalisation of one or other, or both, of the parents. If, in a case of that sort, nationality is, for some reason, withdrawn from the husband — or from the parent, as the case may be — the withdrawal should ordinarily entail, as a consequence, the withdrawal of that nationality from the wife or from the children — as the case may be. That is a consequential case for which I think provision should be made in this amendment.

I have, therefore, to ask the delegate for India to be good enough to consider the redraft of his proposal which I have submitted, and which reads:

"A State which has conferred its nationality on a person by process of naturalisation shall not, so long as that person habitually resides on its territory, withdraw its nationality without the consent of such person, save upon grounds of personal misconduct or duality of nationality, or, in the case of a wife or minor child who was naturalised as a consequence of the naturalisation of the husband or parent, the withdrawal of the nationality from the latter."

Amended thus, it seems to me that the proposal made by the delegate for India might be commended to the favourable consideration of this Committee.

Mourad Sid Ahmed Bey (Egypt):

Translation: With regard to the Indian amendment concerning forfeiture of nationality, I will read you Article 10 of the Decree-Law No. 19, of 1929, on Egyptian nationality:

"A person who has acquired Egyptian nationality in accordance with the provisions of the three previous articles may be declared, by a decree stating the reasons, to have forfeited his Egyptian nationality in one or other of the following cases:

"(1) If he acquired an Egyptian nationality on the basis of untrue statements or by fraudulent means;

"(2) If he has been sentenced in Egypt on a charge of crime or to not less than two years' imprisonment;

"(3) If he has committed an act calculated to endanger the safety of the State at home or abroad, or the established form of Government or social order in Egypt.

"(4) If in speech, writing, or by other means of publication, he propagates subversive ideas contrary to the fundamental principles of the Constitution.

"Forfeiture may not, however, be pronounced if the nationality has been acquired more than five years previously."

A naturalised person cannot be placed entirely and immediately on the same footing as a national. It is absolutely necessary to admit some sort of intermediate period, and it was thought that five years was sufficient.

I have no objection to raise to the amendment of the delegate for India, but I should like a slight addition to be made. The amendment contains this sentence: ". . . save upon grounds based upon personal misconduct on the part of the person". What authority is to establish record of the offence? Should it be the judicial or some other authority? In Egypt, the authority which must establish record of the offence referred to in Article 10 — which I have just read — is the supreme authority of the executive power, and it does so by promulgating a Decree. The reasons must be stated in this Decree, and public discussion is carefully avoided.

If definite details of this kind are added to the Indian amendment, I am prepared to agree to it without reserve.

M. Alvarez (Chile):

Translation: I see that we are now talking of the withdrawal of naturalisation. The Chilian delegation has submitted a proposal

on this subject. I ask whether this question should be discussed now or at the place indicated — namely, as an alternative to Basis No. 6 *bis*.

The Chairman :

At the last meeting it was expressly reserved that the Indian amendment should be discussed this morning, apart from No. 6 *bis*. That is why we are continuing this discussion. Personally, I think that the decision was correct, because I believe the idea is that there is a distinction between the subject of the Indian amendment and release from allegiance, which is the subject of Basis No. 6 *bis*.

M. Alvarez (Chile) :

Translation : That is precisely why I should like to know whether the Chilian amendment, which has been proposed in place of Basis No. 6 *bis* (the omission of which I urge), ought to be discussed with Basis No. 6 or now. I do not mind which.

The Chairman :

Do I understand that you want your amendment to Basis No. 6 *bis* to be discussed now, together with the Indian amendment ? In other words, that we do not now consider it to be an amendment to Basis No. 6 *bis*.

M. Alvarez (Chile) :

Translation : I asked some time ago that Basis No. 6 *bis* should be omitted, but I see that it is very closely bound up with Basis No. 6.

M. Diena (Italy) :

Translation : That is something quite different.

M. Alvarez (Chile) :

Translation : No ; the Chilian proposal is that, instead of Basis No. 6 *bis*, an article worded as follows should be inserted :

"Naturalisation is lost through its withdrawal by the country which has granted it."

M. Diena (Italy) :

Translation : Since it had been decided to defer consideration of Basis No. 6, any amendment to this Basis should also be held over until we have the new text. I think that we might go on now to discuss Basis No. 6 *bis*.

M. Caloyanni (Greece).

The proposal made by the delegate for Italy seems to me to stand to reason to a certain extent. So long as Basis No. 6 is under consideration by a special Sub-Committee, I think that any further discussion here should be postponed ; otherwise I am afraid that, when the new text comes back to us, another discussion will be opened, and this might hamper the progress which we all desire.

On the other hand, there is Basis No. 6 *bis*, and I do not know how far — or, rather, I ask myself how far — can the discussion of Basis No. 6 *bis* be disconnected from that of Basis No. 6. In view of the first part of the observations which I have just submitted, I would ask the Committee whether Basis No. 6 *bis* itself should not be postponed until we have the text of Basis No. 6 prepared by the special Sub-Committee. The Chairman told us a few moments ago that the Sub-Committee is sitting to-night to discuss that matter so as to be able to produce the text to-morrow. I propose, therefore, that this whole question should be postponed, until we have received the text of Basis No. 6 prepared by the Sub-Committee.

Mourad Sid Ahmed Bey (Egypt) :

Translation : At a first glance, the Indian proposal may seem to be sound, but I do not think it will bear the test of careful scrutiny. In reality this amendment is not intimately connected with Basis No. 6. Whatever decision the Committee may take with regard to Basis No. 6 will not in any way alter the discussion of the amendment.

The Chairman :

Before calling upon the next delegate who wants to speak, may I make an observation ? It has been proposed that the Indian amendment should be postponed for the present owing to the situation as regards Basis No. 6, and there is a further proposal that Basis No. 6 *bis* should also be postponed for the same reason. I, personally, think that the postponement of Basis No. 6 *bis* is reasonable, on account of its close connection with Basis No. 6, though the Indian amendment, it seems to me, has less connection than Basis No. 6 *bis* with Basis No. 6. An examination of the text of the Indian amendment would seem to make that clear. Owing, however, to the fact that amendments to the Indian amendment have been submitted by the Egyptian and the South African delegations and to the fact that these two suggested amendments have not been printed and distributed to the members of the Committee, I would suggest that we postpone the discussion of Basis of No. 6 *bis* until the Sub-Committee has reported on Basis No. 6, and that, at the same time, we should postpone the Indian amendment — not on account of its connection with Basis No. 6, but because of the various amendments to it. I suggest that the Indian, Egyptian and South African delegates should get together and see if they can draw up a text that would be satisfactory to them all and present it to the Committee.

Sir Basanta Mullick (India) :

I only wish to ask whether there are any other amendments, or other points of view to be suggested, so that the Sub-Committee which the Chairman has proposed to set up might consider those views also.

M. Nagaoka (Japan) :

Translation : I agree with the delegate for Egypt and the Chairman of the Committee that this addition proposed by the Indian delegation is quite separate from Basis No. 6. Consequently, we can continue this discussion.

The reasons advanced by the Indian delegation in support of its proposal are very interesting ; it would be very desirable for this rule to be contained in the draft Convention, with a view to reducing cases of statelessness as far as possible. If, therefore, the Committee thinks the addition suggested by the Indian delegation should be accepted as a Basis, we shall have to refer the proposal itself to the Drafting Committee and leave it to decide the details, for instance, the exceptions which should be mentioned.

M. Alvarez (Chile) :

Translation : I said a short while ago that there was a very close connection between the provisions of Basis No. 6 and those of Basis No. 6 *bis.* I added that, in my opinion, we ought to discuss Basis No. 6 *bis* only when we had before us the final text of Basis No. 6. At the same time, I think that Basis No. 6 *bis* ought to be replaced by the Chilian amendment.

The Chairman :

I think that is a very reasonable solution. May I suggest that we confine our discussion now to the question of order : Whether we are going to discuss Basis No. 6 *bis* and the Indian amendment or not.

M. Rundstein (Poland) :

Translation : I ask to speak on a point of order. As Basis No. 6 *bis* is closely bound up with Basis No. 6, and as certain delegations have suggested amendments to Basis No. 6 *bis*, these delegations should explain their reasons to us before we decide to adjourn the discussion on Basis No. 6. I think that the Sub-Committee would then be in a position to consider the amendments in connection with Basis No. 6 *bis.*

The Chairman :

I will now take the sense of the Committee in regard to the suggestion which I made, and also the suggestions which have been made by other delegations. In regard to the Indian amendment and in regard to Basis No. 6 *bis*, it is suggested that the discussion of Basis No. 6 *bis* should be postponed, because no decision has been taken on Basis No. 6, and because of the close connection between Bases Nos. 6 and 6 *bis.*

The second suggestion is that the discussion of the Indian amendment should also be postponed, not so much on account of its connection with Basis No. 6 as because there have been other amendments proposed to it which have not been printed and circulated.

The proposals of the Chairman was adopted.

The Chairman :

Delegations are requested to consider the Indian amendment, and to send whatever amendments they may have to the Indian delegate, so that he, together with the Egyptian and South African delegates, may find some formula for submission to the Committee.

21. EFFECT OF NATURALISATION OF PARENTS ON NATIONALITY OF MINORS : BASIS OF DISCUSSION No. 7.

The Chairman :

The discussion on Basis No. 7 is open (Annex I).

M. Kosters (Netherlands) :

Translation : I did not know that we should begin discussing Basis No. 7 this morning. I have prepared an amendment, but it has not yet been possible to circulate it. The question is so simple that I think I may say a few words with regard to my proposal without waiting for the distribution of the text.

The Netherlands delegation proposes to insert in Basis No. 7, instead of the words " children who are minors and not married ", the expression : " children who are minors according to the law of the previous country and who are not married " ; and, in Bases Nos. 8 and 9, to replace the words " children who are minors and not married " by the expression : " children referred to in Basis No. 7 ". The reference would no longer be to minor children, but merely to children who are minors according to the law of their previous fatherland.

I shall now give the reasons for our amendment.

These Bases, as at present worded, raise the question as to the exact meaning of " children who are minors ". Does it mean children who are minors according to the law of their former fatherland, or minors according to the law of their new fatherland ? One is tempted to say that, in the case of the acquisition of a new nationality, the reference is to children who are minors according to the law of their new fatherland. On the contrary, in the case of loss of nationality, the reference would be to children who are minors according to the law of their former fatherland.

Such an interpretation of the Bases would be in perfect harmony with the provisions of several national laws now in force. For instance, the Netherlands law refers, in the case of acquisition of nationality, to persons who are of age according to the law of the new fatherland, and in case of loss of nationality, to persons who are of age according to the law of the former fatherland. If so, Bases 7 and 9, which refer to the acquisition of nationality, apply to children who are minors according to the law of the new fatherland ; Basis No. 8, which refers to loss of nationality, applies to children who are minors according to the law of their

former fatherland. Consequently, the future Convention would probably produce results which we all desire to avoid as far as possible — namely, double nationality and statelessness.

Owing to the interplay of national laws, which determine differently the age of majority, it might happen that a child who was of age in his former fatherland, would maintain his former nationality, according to Basis No. 8, while obtaining nationality in the new fatherland, according to Basis No. 7, he being a minor in the new fatherland. It might also happen that a child, being a minor in the previous fatherland, lost the nationality of that country without obtaining nationality in the new country, he being regarded as of age in that country.

There is also another difficulty which, in my opinion, is an equally serious one. I refer to the case in which a child is of age according to the law of his former country and a minor in the new country. Regrettable consequences would follow if these Bases were interpreted as suggested above. A child who was previously of age and was perfectly free to dispose of his own nationality might, owing to the fact that he obtained his father's new nationality, become a minor in the second country! This would be absolutely contrary to the generally recognised rules of private international law, to the theory of acquired rights and even to common sense.

I think we must take account of these unpleasant possibilities. Accordingly, the Netherlands delegation proposes that Bases 7, 8 and 9 should only apply to children who are minors according to the law of their previous country and should not apply to children who are already of age according to that law.

M. Alvarez (Chile):

Translation: The Chilian delegation proposes that Basis No. 7 should be combined with Basis No. 8 so as to give the following wording:

> "Naturalisation of the parents does not cause children who are minors, whatever their age, to lose their previous nationality on that account" (Annex II).

The Chilian delegation feels, as it explained in the reasons for its amendments, that, in the matter of nationality rules, account must be taken of certain international tendencies, particularly the idea that nationality should not depend on civil status — that is to say, that civil status should not be a cause of discrimination as regards the acquisition or loss of nationality. Hitherto, only one aspect of this tendency has been emphasised — namely, that the nationality of the married woman should not be inseparable from that of her husband. This tendency, however, goes still further; it should be applied not only to the case of married women, but to other cases of civil status: legitimation, adoption, the question whether persons are of age, or under age, etc.

Hence, in the cases of naturalisation mentioned in this Basis, naturalisation should only affect the personal status of the naturalised person, and should have no influence on the nationality of the wife or of the children. The nationality of a minor child should not therefore be affected by the naturalisation of its father. If, later on, the child desires to possess the same nationality as the father, it can acquire its father's nationality in the same way as he did, by manifesting that desire and seeking naturalisation.

If you think that the proposal of the Chilian delegation is too radical, I will willingly agree to the amendment put forward by the delegation of the United States of America, which is nearest to our own.

M. Diena (Italy):

Translation: In accordance with M. Politis' recommendations last Saturday, I will explain very briefly the reasons for our amendment.

Under several bodies of law, certain minor children may be emancipated even if they are not married. In referring, therefore, to minors who are not married, we ignore several cases which ought to be taken into consideration.

In order to supply this omission, the Italian delegation proposes to add, after the words "minors and not married", the words: "or not emancipated". In other words, emancipation may, according to the law of some countries, result from marriage; but there can quite well be emancipated minors who are not married.

With regard to the remarks of the Netherlands delegate, I would say that the provision is fairly clear. There can be no doubt that the text refers to minors regarded as such by the law to which they were subject before naturalisation. There might be minors for whom naturalisation would entail no consequences. The delegate for the Netherlands can doubtless, if he thinks it necessary, give us some additional explanations.

In the sentence reading: "any exceptions to this rule at present contained in the law of each State", I propose to omit the words "at present", which might lead to incorrect interpretation. It might be thought that this expression had been inserted to make it impossible for a State party to the Convention to modify its law. That was certainly never the intention of the authors of the draft; it would therefore be desirable to alter this ambiguous expression.

M. de Navailles (France):

Translation: We are again face to face with a difficulty that confronts us at every meeting. On Saturday, in connection with Basis No. 6, I said that we all tended to put forward the claims of our own laws. Obviously, if we do not make any concessions, we shall achieve nothing at all.

As regards the subject matter of Basis No. 7, two different systems are applied throughout the world. According to one system, the naturalisation of the father entails the naturalisation of the minor children; the other system does not admit this consequence.

The French delegation has submitted an addition, the aim of which is to exclude from collective naturalisation, first, a minor child who, having accomplished his military service in the country of which he is a national at the time of the naturalisation of his parents, has thus shown that he did not desire to lose his nationality of origin; and secondly, a minor child who has been deported from the country to which the father desires to attach his allegiance and who, consequently, is not fit to acquire the nationality granted to the parents.

The text the French delegation proposes to add to Basis No. 7 reads as follows:

> "This principle is not applicable to minors who may be serving, or may have served, in the armies of their country of origin, or against whom an expulsion order has been issued, the effects of which have not been suspended."

I should like to see this amendment adopted, because it is in keeping with French law, but the French delegation will not take up an uncompromising attitude, and does not make its acceptance of Basis No. 7 conditional upon the adoption of this amendment.

M. Alten (Norway):

Translation: The Norwegian proposal contains two amendments to the text of the Basis submitted by the Committee of Experts and reads as follows:

> "Naturalisation of parents involves that of their children who are minors and not married, but each country may limit the application of this rule to minors who have not reached a specified age and may make other exceptions to this rule."

In the first place, it allows the contracting States the option of restricting the application of the rule laid down in the Basis to minors who have not reached a specified age. This text takes into account countries which have no general rule such as that laid down in the Basis itself. In Norway, for example, — as indeed almost everywhere — the age of majority is twenty-one years. The naturalisation of the parents, however, does not involve that of children who are minors unless they have not reached the age of eighteen. I do not, however, propose that this age-limit should be fixed in the Convention, nor do I accept the term proposed by the Italian delegation, "minors who are emancipated", because that idea is foreign to the law both of our own and of a number of other countries. It would be better if the Convention allowed the contracting States themselves the option of fixing the age-limit for minors whose nationality changes through the naturalisation of their parents.

In the second place, I agree with the Italian delegate's further suggestion to omit the words "at present", in order not to bind States as regards their future legislation.

I have closely examined the proposals of the United States and Chilian delegates. These proposals make the rule wholly dependent upon the law of each country. I am not in favour of them, because they are tantamount to the complete omission of the Basis.

Lastly, I come to the question raised by the Netherlands delegate. This question relates to international private law and does not, in my opinion, come within the scope of our Convention. Moreover, there is no difficulty except for countries where the personal status is determined by nationality. In Norway, where the principle of domicile obtains, there is no difficulty. The Norwegian law applies if the person concerned is habitually resident in Norway at that time when his parents are naturalised. In the Netherlands, on the other hand, the age of majority is determined by the law of the State to which the person concerned previously belonged. I think the whole matter might be set aside on the assumption that the question as to what law determines the age of majority is governed by the principles of international private law obtaining in the State where application is made for naturalisation.

M. Martensen-Larsen (Denmark):

In order to comply with the suggestions made by our Chairman last Saturday that we should try to avoid prolonging the discussions with amendments as much as possible, I have to state that the Danish delegation withdraws its proposal to amend Basis No.7, and I beg to say that I am quite in agreement with the remarks of the Norwegian delegate.

M. de Berczelly (Hungary):

Translation: I think we all agree that it cannot be the aim of the delegations present in this Committee to insist on the adoption of the principles contained in their own law. It would be desirable to discover a compromise to which all delegations could subscribe.

Having this aim in view, I would like to make two observations with regard to Basis of Discussion No. 7. The first is that the naturalisation of the parents is mentioned first. In certain countries, the naturalisation of a woman who has illegitimate children does not involve the naturalisation of these children. We will consider later the question of the naturalisation of married women. For the present I wonder whether, in Basis of Discussion No. 7, we could not say "naturalisation of the father" instead of "naturalisation of the parents".

My second observation refers to the words: "that of the children who are minors and not married". In certain States, the criterion is not whether the minor is married, but whether the minor is still under the paternal power. I should like the Committee to study this point and see whether, instead of "children who are minors and not married", we could not say "children still under the paternal power"; unless the Committee accepts the formula proposed by the Egyptian delegate that the words "not married" should be omitted. In neither case would the diversity of laws any longer constitute a difficulty.

Nousret Bey (Turkey) :

Translation : In most laws the age of marriage does not coincide with the attainment of majority. Only in the Swiss Civil Code and our own Civil Code do persons become of age as soon as they marry. In matters of nationality, general capacity is always required, but not matrimonial capacity. According to the legislation of most countries, a person may be married, and even emancipated, and still be a minor from the point of view of general capacity. We should not therefore refer to minors who are not married.

M. da Matta (Portugal) :

Translation : I quite agree with the proposed amendment and the reasons set out by M. Diena, but I think it would be useful to add to the expression, " children who are minors and not married ", the words : " either legitimate or legitimated and illegitimate children, when the parent nationalised is that with regard to whom filiation was first established. "

Mr. Flournoy (United States of America) :

I wish to explain the proposed change in Basis No. 7 which my delegation has submitted.

The text we propose reads as follows :

> " Naturalisation of a parent having lawful custody of an unmarried child may, if the local law so provides, involve that of such child who, while a minor, resides in or comes to reside in the country of naturalisation. "

We think this text is more in accord with the other Articles of the proposed Convention, and particularly with Basis No. 1 — namely, the general rule that the acquisition of the nationality of the State depends upon the domestic law of that State, rather than upon international law.

The Basis as drafted by the Preparatory Committee assumes that, as a rule of international law, children who are minors shall be naturalised through the naturalisation of their parents, and leaves it to the legislation of the various States to provide otherwise if they see fit. We think that, in this case, the cart is placed before the horse, and that it is necessary to start with the premise that the naturalisation of a parent naturalises the child if the law of the particular State so provides and not otherwise. As regards the age of minority, we have assumed that it would depend upon the law of the naturalising State.

There is one other point that I wish to mention — namely, the fact that, according to the rule proposed by the United States delegation, the children shall be naturalised through the naturalisation of their parents only if they are residing in the naturalising State. There may be some question whether or not such a rule exists in international law, but we think it a desirable rule and that it should not be possible for one State to naturalise children whilst they still have their residence in the country of origin or some other State.

Mourad Sid Ahmed Bey (Egypt) :

Translation : Basis No. 7 lays down that the naturalisation of parents shall involve that of their minor, unmarried children. Does that mean that the destiny of married children from the point of view of naturalisation will be left to the discretion of each State or not ? I mean, will a State be free to lay down that married children may be naturalised at the same time as the father, or does the text mean that such a proceeding would not be allowed ? I should like an explanation on this point, in order to decide whether I shall maintain or abandon my amendment.

The Chairman :

I do not know whether there is any member of the Drafting Committee here who could give an explanation on that point.

Apparently none of the Drafting Committee is here and therefore there is nobody who could give an authoritative interpretation. So everyone has to put his own interpretation upon it.

Mourad Sid Ahmed Bey (Egypt):

Translation : If it was the Drafting Committee's intention to leave the States free to extend the rule laid down for non-married children, I withdraw my amendment. If not, I maintain it.

It is indeed true that marriage is not everywhere and always a cause of emancipation. It is not, for instance, in Egypt; we believe in the unity of the family and the exercise of power by parents as long as the child is a minor. It does not matter whether the child is married or not. That is why it is important for us that the words " not married " should be omitted.

From another point of view, and in order to harmonise the different currents of opinion which have manifested themselves in this Committee, could we not follow the example of Egyptian law and say that minor children, whether married or not, shall acquire the nationality of their naturalised parents, it being understood that the children are entitled, on attaining their majority, to opt for their country of origin ? Some delegates are of opinion that the infant should not be affected by the naturalisation of the father. Others hold a contrary opinion. The system of option should harmonise these two conflicting viewpoints.

M. Caloyanni (Greece) :

It has already been said that it is a principle here that, in order to come to an agreement, we must try to codify and not to secure the adoption of the principles embodied in our own countries' laws. Therefore, as we have already been reminded, we must come to some arrangement.

As regards Basis No. 7, I should like to support the Italian delegation's suggestion to strike out the words " at present ".

As regards the amendment presented by the French delegation (which, in fact, is not an

amendment) we may be able at some time to give expression to it in some other way. The deletion of the words "at present" means that each country is free to introduce in future into its legislation what it considers to be an important matter for itself.

I do not want to enter into a discussion of any other suggestions made by the delegations. I think that the only proper way of dealing with the matter is, as the Hungarian delegate suggested, to put all these views before the Drafting Committee. Doubtless, whatever the Drafting Committee does will be in the way of conciliation and later on, we shall have a further opportunity for discussion when the new draft text is put before us.

M. Merz (Switzerland):

Translation: I agree with the Italian proposal to omit the words "at present"; and "law" should also, we think, be taken to include the practice followed by the administrative authorities. It is very desirable to determine the law which is to govern the question of minority, and we are in favour of inserting a provision like that proposed by the Norwegian delegation to the effect that the question of minority should be settled according to the law of the State of naturalisation. We are also inclined to support the suggestion of the French delegation, which might be expressed in rather more general terms and thus be made to include, for instance, the United States amendment concerning the minor child's place of residence.

Mr. Dowson (Great Britain):

May I for one moment deal with the point raised by the delegate for Egypt with regard to the words "not married". As a member of the Drafting Committee, perhaps I may make the suggestion that any position which, under Egyptian law, makes the presence of those words inconvenient would be overcome by the later words of the Basis which provide that this shall not affect any exceptions to this rule at present contained in the law of each State. Consequently, if the law of Egypt contains a provision under which marriage isn ot regarded as the emancipation of the woman, it may be that the later words of this Basis cover that case, and save the position so far as the Egyptian law on this point is concerned.

I have only one other word to add, and that is with regard to the proposal that the words "at present" should be cut out. It seems to me that this proposal rather goes to the root of the Basis. As I understand it, the Basis reserves all existing laws but declares that States will recognise the rule as stated in the first sentence of the Basis in so far as their future legislation is concerned. If the words "at present" are deleted, the first sentence, so far as I can see, becomes merely a pious declaration, full allowance being given for all existing exceptions and, in addition, all exceptions which States in their law may hereafter desire to make. It seems to me that this proposal reduces considerably the scope of the Basis. I should therefore be very much inclined to suggest that the words "at present" should be retained.

M. Malmar (Sweden):

Translation: The rule proposed by the Netherlands delegation seems to me to be very logical, and I do not see why it should not be adopted. But I see the difficulties which this rule might involve for countries that determine personal status according to domicile. I think, in consequence, that it would be preferable to leave this question open.

The delegate for Portugal proposes that a child born out of wedlock should follow the nationality of the parent who was first legally recognised as such. That rule would be acceptable for countries whose laws contain some provision of this kind. But it could not be accepted by countries whose law lays down that children born out of wedlock take the nationality of the mother. For these reasons, I propose that the question be left open.

M. Rundstein (Poland):

Translation: I cannot agree with the proposal of the Netherlands delegation because, if we introduced any definition of minority founded on private international law, we might find ourselves in serious difficulties. If the naturalisation of a minor took place in a country which accepts the principle of *renvoi*, and if, for instance, a foreign minor domiciled in Poland wished to become naturalised there, the question whether he was a minor or not would have to be determined according to the foreign law: but if the foreign law, in conformity with the principle of domicile, referred back to Polish law and Polish law admitted such *renvoi*, it would be necessary, for the determination of the question of minority, to apply Polish law — that is to say, the law subsequent to naturalisation.

M. Hering (Germany):

Translation: The German delegation accepts Basis No. 7 in principle. It is of opinion that the words "at present" should be maintained, for the reasons explained by the British delegate. With regard to the observations of the Netherlands delegate, I propose we leave the Drafting Committee to find a solution.

M. Alten (Norway):

Translation: I am grateful to the Swiss delegate for supporting my proposal, but I am afraid there has been a misunderstanding. M. Merz said that he agreed with me that the question of minority should be determined by the law of the country of naturalisation, but that is not quite my proposal. What I propose is that minority should be determined by the principle of private international law obtaining in the State in which naturalisation is granted.

The consequences are as follows : If, in that State, personal status depends on domicile, the question of minority is determined by the law of the child's country of domicile at the time when the parents are naturalised. If, on the other hand, personal status is based on nationality, the determined law is that of the country whose nationality the child already possesses. Lastly, if the law thus applicable refers back to the law of the naturalising State, the question of minority depends on whether that State accepts the *renvoi* or not.

M. Kosters (Netherlands) :

Translation : I think it is really indispensable to define this question of minority beyond all doubt. I think the various delegates who have spoken on this subject have not all interpreted in precisely the same manner the meaning to be attributed to the word " minor ". In a national law, as in a convention, the meaning of the terms must be clearly defined.

In the law of the Netherlands, the word " minority " is obviously interpreted according to Netherlands law. In this Committee, we have three possible interpretations. First, M. Diena's ; that the word " minority " should be interpreted according to the law of the country of which the person concerned was previously a national. The Norwegian delegate says that the word should be interpreted according to the law of the country of naturalisation. A third interpretation is that, in the case of acquisition of nationality, the law of the new country should be followed, whereas, in the case of the loss of nationality, the law to be followed is that of the country of origin.

We must choose between these three interpretations. Then another question arises. Suppose we choose the law of the country of origin : we must decide what the law is in that country and what are the rules of strictly national law and private international law in force there. This is a question of the interpretation of national law. In any case, we must decide what country's law is to apply.

The Chairman :

Having heard no less than twenty speakers I think we now may summarise the opinions that have been expressed. I think that it may be said that there is no radical opposition to the principle of this Basis of Discussion — namely, that the naturalisation of parents involves the naturalisation of their children under certain conditions. Probably, the most extreme opinion was that expressed by the delegate of Chile, but apparently he does not necessarily adhere to that opinion. The only question is under what conditions these children should be naturalised together with their parents. That being the case, I think that that very convenient body, the Drafting Committee, would be the most suitable to decide on a formula which would be acceptable to all the delegations and which would meet all the points which have been raised.

I understand that the delegate for Denmark wishes to speak on a point of order.

M. Martensen-Larsen (Denmark) :

The Danish delegation is in the same position as the Norwegian delegation, inasmuch as our country applies the principle of domicile, and it is for that reason that I have supported the Norwegian proposal to amend Basis No. 7. I would suggest that the Norwegian delegate should be added to the Drafting Committee in order to assist, perhaps, in finding a formula which will suit the countries applying the principle of domicile.

The Chairman :

The delegate for Germany wishes to speak on a point of order.

M. Hering (Germany) :

I think it would be desirable to refer Basis No. 7 to the Drafting Committee. Before we do so, I propose that the Committee should decide by a vote whether the words " at present " shall be deleted or retained.

Mr. Flournoy (United States of America) :

I support the suggestion of the delegate for Denmark, that the Norwegian delegate be added to the Drafting Committee.

The Chairman :

The German delegation has asked that a vote should be taken on the deletion or retention of the words " at present ". This signifies that we accept, in principle Basis of Discussion No. 7, but that we want to know whether the exceptions to this rule should cover only the exceptions contained in the law of each State as it exists at present or not. The suppression of those two words " at present " was proposed by the Italian delegation, and I ask those who are in favour of suppression to raise their hands.

The Committee has voted in favour of the suppression of the words " at present ".

M. Diena (Italy) :

Translation : In a spirit of conciliation and in order to satisfy everybody, even those delegations which hold that the question of minority should be determined by domicile and others who would have it determined by nationality, I would propose the expression : " not married or under eighteen years of age ".

The Chairman :

The proposal of the Italian delegation will be referred to the Drafting Committee.

It is understood that the Norwegian delegate will be added to the Drafting Committee.

The Committee rose at 1.15 p.m.

EIGHTH MEETING

Tuesday, March 25th, 1930, at 10 a.m.

Chairman: M. CHAO-CHU WU.

22. LOSS OF NATIONALITY RESULTING FROM VOLUNTARY ACQUISITION OF A FOREIGN NATIONALITY: BASIS OF DISCUSSION No. 6 (Continuation).

The Chairman:

You will recall that yesterday we asked the Drafting Committee, with the addition of other delegates, to see whether some formula or some solution could be found for Basis of Discussion No. 6 which would reconcile the extremely conflicting views of the various delegations.

The Sub-Committee met yesterday afternoon and it found that it was impossible by an article in the Convention to offer such a solution, and so, as a result, the only thing the members of the Committee could do was to agree to disagree. At the suggestion of the Italian delegate, the Drafting Committee proposes that Basis No. 6 shall be omitted. It was, however, able to agree, on the suggestion of the British delegate, that a recommendation should be incorporated, not in the Convention itself, but in the Final Act.

That recommendation reads as follows:

> "It is desirable that States should recognise the principle that a person, on becoming naturalised at his own request in a foreign country, loses his former nationality."

This proposal is now before the Committee and I invite your comments on it.

Mr. Flournoy (United States of America):

I wish to make a very brief statement. We regret it was impossible to reach an agreement upon the subject covered by Basis No. 6, and my delegation will support the proposal before us.

I note in the draft that the words "at his own request" have been inserted, a term which seems to exclude children naturalised through their parents. We consider that children naturalised through their parents have the same status as the parents. I think it would be desirable to have this recommendation worded in such a way as to make that clear. I do not think that the declaration in itself should be construed to mean that children naturalised through the naturalisation of their parents retain their original nationality. This seems to me to leave the children out, and I should prefer to have the recommendation cover both points, if that could be done. I may add that the draft as I received it yesterday afternoon did not include the words "at his own request". I noted those words for the first time when reading the text distributed to me this morning.

The Chairman:

May I say that the delegate for the United States of America is under a misapprehension and that the words "at his own request" appeared in the amended draft?

In regard to the point whether these words might be omitted from the text, may I point out that the omission of these words would involve the question of the naturalisation of children through the naturalisation of their parents, as has been observed by the United States delegate?

As this point is dealt with in Basis of Discussion No. 7, which, you will remember, has been accepted in principle by this Committee, it seems to me to be preferable, even from the American point of view, that the matter should continue to be dealt with in that Basis. The text before us is merely a recommendation, whereas Basis of Discussion No. 7 will be a binding article of the Convention itself. I trust that the United States delegate will find this a satisfactory solution of the point he has raised.

Mr. Flournoy (United States of America):

I think we can accept the text as it stands. I merely wish to make it clear that we do not interpret it as meaning that a child naturalised through the naturalisation of the parent is not fully naturalised or that he still retains his original allegiance.

M. Diena (Italy):

Translation: I can only repeat our Chairman's very logical observations. The question of children lies outside the scope of Basis No. 6. I hope that the delegation of the United States of America will declare itself satisfied if the Minutes make it clear beyond all doubt that neither Basis No. 6, which has been deleted, nor the proposed recommendation in any way apply to the nationality of children.

M. da Matta (Portugal):

Translation: I do not share the Drafting Committee's opinion as regards the omission of Basis No. 6. Nor do I accept the British

delegation's proposal to insert a recommendation in the Final Act of the Conference. If we cannot succeed in approving an absolutely innocuous Basis, I do not see how we are going to approve anything of any use at all.

I therefore propose that the Drafting Committee's text with regard to the inclusion of Basis No. 6 shall be put to the vote.

M. Rundstein (Poland) :

Translation : I quite agree with the Portuguese delegate's suggestion. If we refuse to aceept Basis No. 6, which is essential for all countries that do not admit absolute freedom in the matter of expatriation, we shall have to shoulder the consequences of our act. For instance, if Basis No. 6 is not adopted, the Polish delegation will be unable to agree to Bases Nos. 8, 15, 20, 20*bis*, and 21.

Mourad Sid Ahmed Bey (Egypt) :

Translation : In order to harmonise the views of our Chairman with those of the delegation of the United States of America, the text suggested by the British delegation might be modified as follows :

> " It is desirable that States should recognise the principle that the acquisition of a foreign nationality involves the loss of a previous nationality."

This would avoid all reference to the individual and his children ; it is also more comprehensive and more objective.

The Chairman :

It is now proposed that the Drafting Committee's proposal should be put to the vote. I would like to say that the members of that Sub-Committee did everyting that they could to find some possible common ground for agreement, and it is as much a matter of regret to the Sub-Committee as to many of the members here, that we did not succeed. I feel that, as we did not succeed in the Sub-Committee, it is hardly likely that we shall be able to do so in full Committee, the more so as this Basis has already been fully discussed.

I think, then, that we should now put to the vote the question whether Basis of Discussion No. 6 should be suppressed or not. I propose to take a vote first for the suppression of Basis of Discussion No. 6. If that is carried, we will then vote on the recommendation as proposed by the Drafting Committee. If that is rejected, a vote will be taken on the formula, or amendment, suggested by the Egyptian delegate.

M. Diena (Italy) :

Translation : I hope that the Drafting Committee's suggestions will be accepted, for I myself took part in its work and have made efforts to bring about an agreement.

If, by any chance, Basis No. 6 is not omitted, we shall have to examine the amendments I proposed at the last meeting, which were approved by several delegations.

M. Soubbotitch (Yugoslavia) :

Translation : As the Sub-Committee has been unable to reach an agreement on Basis No. 6, the Yugoslav delegation feels that the Committee itself will hardly be any more likely to do so. In view of the great importance of this question for every State, we think that a majority vote will not provide a solution. The Yugoslav delegation has clearly expressed its views, to which it still strongly adheres. In spite of its respect for the Committee and its desire to collaborate in the common task, the Yugoslav delegation would find it well-nigh impossible to abandon the existing principles of Yugoslav law.

For these reasons it cordially supports the Drafting Committee's proposal to the effect that, as matters now stand, we should merely make a recommendation.

The Chairman :

In reply to the delegate for Italy, I should like to say that this proposal for suppression is, of course, not satisfactory to everybody ; but it is the best that we could do under the circumstances.

If the Basis of Discussion is retained, that is, if the proposal to suppress the Basis is voted down, the delegate for Italy, and other delegates also, will naturally have the right to bring forward their amendments, and we should then have to resume the debate which we have had before; this would be very interesting, of course, but would, I am afraid, again lead us into a blind alley.

That being the case, and in order to meet the feeling of many delegates — that they do not necessarily like the proposal for suppression, but that it is the best we can do under the circumstances — may I, with your permission, change slightly the order of voting which I proposed just now ? Instead of voting first on the proposal for suppression and then on the recommendation, shall we not vote on the proposal of the Drafting Committee as a whole : namely, the proposal for suppression and the recommendation together ? If there is no objection to such a procedure I will take it as adopted.

M. Nagaoka (Japan) :

Translation : I am in favour of maintaining Basis No. 6 with the amendment proposed by the Italian delegation, but, after hearing the reasons which led the Drafting Committee to propose its omission, I can no longer insist on the maintenance of the text and, in these circumstances, the Japanese delegation will refrain from voting.

M. de Navailles (France) :

Translation : It was because we were confronted with very great difficulties that the Drafting Committee proposed a recommendation in place of Basis No. 6. The Drafting Committee agreed to the form of a recommendation mainly in order to meet the wishes

of the United States of America. The United States delegate, therefore, ought not to vote against this recommendation if the matter is put to the vote.

If, however, I have rightly understood him, the United States delegate says that he cannot vote for the recommendation as at present worded, because it contains the words "at his own request". The Egyptian delegate has proposed that these words should simply be omitted. I do not know whether this solution would meet the views of certain delegations.

I think we should gain the support of the United States delegation and the approval of other delegations if we drafted the recommendation in a slightly different way, as follows:

> "It is desirable that States should recognise the principle that a person who acquires a foreign nationality by naturalisation thereby loses his previous nationality."

Mourad Sid Ahmed Bey (Egypt):

Translation: The delegate of the United States of America has just told me that he could accept the proposed recommendation if it were worded as follows, in accordance with my amendment:

> "It is desirable that States should recognise that the acquisition of a foreign nationality by naturalisation involves the loss of the previous nationality."

This proposal is almost identical with M. de Navailles's proposal, since I have omitted the word "person" and now merely refer to the acquisition of a foreign nationality.

The Chairman:

As there have been various amendments made in the wording of the recommendation itself, and as the Committee has not yet taken a decision on the question whether Basis of Discussion No. 6 is to be suppressed or not, I think that we should first vote on that point: that is to say, whether the recommendation of the Drafting Committee, as a whole, is to be accepted or not. It is to be understood, of course, that the acceptance of the proposal is only in principle and does not preclude any amendment such as has been proposed by M. de Navailles and the Egyptian delegate.

The delegate of Yugoslavia wishes to speak on a point of order.

M. Soubbotitch (Yugoslavia):

Translation: We require to know first of all whether the decision to be reached by the Committee with regard to Basis No. 6 is to take the form of a recommendation, or of a Basis. We should therefore first take a vote as to whether our decision is to be regarded as the text of a Basis, or of a recommendation.

M. Diena (Italy):

Translation: In the Drafting Committee we adopted this text solely as a recommendation. We must, therefore, first take a decision on Basis No. 6 and then, if the Basis is deleted, vote on the recommendation, since the recommendation is based on the supposition that Basis No. 6 will be omitted; otherwise it would have no *raison d'être*.

M. Piip (Estonia):

Translation: I agree with the Chairman's proposal that we should vote on the whole of the proposal made by the Drafting Committee, for if we voted first on the question of the omission of the Basis, a number of delegations might, not being sure that the recommendation would be adopted, vote in favour of maintaining Basis No. 6. If we vote on the whole proposal we shall know that, if Basis No. 6 is not maintained, the recommendation will, nevertheless, hold good. Although Estonia has a system of expatriation permits, my delegation agrees to the proposal of the Drafting Committee.

Mr. Flournoy (United States of America):

I only wish to say that I think it is much better to vote for the two questions at one time as suggested. The matter was referred to the Sub-Committee for a solution to be found and the document before us is the result of the work of the Sub-Committee and of the Drafting Committee. I think a vote ought to be taken on the recommendation proposed by the Drafting Committee. I want to make it clear, again, that I am prepared to vote for the proposal just as it stands. I would prefer to have it made clearer, but I do not want to insist on that point. We may consider possible amendments later, after the vote has been taken.

M. Diena (Italy):

Translation: With a view to conciliation, the Italian delegation agrees with the proposal of the delegate of the United States of America that we should vote on the whole document.

Mr. Lansdown (South Africa):

I think, the method suggested by the Chairman should be adopted, because it is the simplest. If the whole recommendation of the Drafting Committee is passed, Basis No. 6 naturally falls to the ground. If the suggestion of the Drafting Committee is adopted in principle we could then consider whether any particular amendments to the recommendation should be put to the meeting.

The Chairman:

Does the delegate of Yugoslavia still maintain his objection to the procedure proposed?

M. Soubbotitch (Yugoslavia):

Translation: I have no objection to the procedure proposed by our Chairman.

The Chairman:

We will now vote on the adoption, in principle, of the proposals of the Drafting

Committee. The vote will be taken by a show of hands.

The proposals of the Drafting Committee were adopted by twenty-six votes to eight.

The Chairman :

We can now consider the amendments to the draft recommendation.

M. de Navailles (France) :

Translation : The last proposal with regard to the drafting put forward by the Egyptian delegate is intrinsically the same as my own. I am therefore prepared to agree to the Egyptian delegate's text.

M. Diena (Italy) :

Translation : The Italian delegation agrees with this proposed amendment, which it suggests should be put to the vote.

Mr. Flournoy (United States of America) :

We are also in favour of the Egyptian amendment. From the study which I have made in recent years of the nationality laws of various countries, it appears to me that there is general agreement on the rule that the naturalisation of the head of a family naturalises his children : that is based, I suppose, upon the principle of maintaining the unity of the family. I am unable to see why there should be any difference between the effect of the naturalisation of the parent and that of the naturalisation of the child acquired through the naturalisation of the parent. I therefore support the proposal of the Egyptian delegate.

Mr. Dowson (Great Britain) :

May I say, as one who took some part in the deliberations of the Drafting Committee, that I also see no objection whatever to the amendment proposed by the Egyptian delegate.

The Chairman :

As all the speakers have supported the Egyptian amendment I will now read the text of that amendment and put it to the vote. The text is as follows :

> " It is desirable that States should recognise that the acquisition of a foreign nationality by naturalisation involves the loss of the previous nationality. "

Will those who are in favour of the Egyptian amendment raise their hands ?

The Egyptian delegation's amendment was adopted by twenty-seven votes.

23. LOSS OF NATIONALITY RESULTING FROM VOLUNTARY ACQUISITION OF A FOREIGN NATIONALITY : BASIS OF DISCUSSION No. 6*bis*.

The Chairman :

You will remember that yesterday we postponed the discussion of Basis No. 6*bis* on account of its intimate connection with Basis No. 6. The discussion of Basis No. 6*bis* is now in order.

Four amendments to this Basis have been proposed — by the delegations of Chile, Poland, South Africa and the United States of America.

As regards the amendment proposed by the Chilian delegation—which says : "Naturalisation is lost through its withdrawal by the country which granted it "— it seems to me that it has not a very intimate connection with Basis No. 6*bis*, as it deals rather with the withdrawal of naturalisation. It seems to have a closer connection with the amendment proposed by the Indian delegation to Basis No. 6. At any rate, whether it is so connected with that amendment, or whether it should be discussed separately, it would, I think, add to the relevancy of the discussion if the Chilian delegation would consent to withdraw its amendment to Basis No. 6*bis*. That does not, of course, preclude its introduction as a subject of discussion somewhere else.

M. Alvarez (Chile) :

Translation : The Chilian delegation has proposed that Basis No. 6*bis* should be deleted, and that we should insert in place thereof the amendment the Chairman has read to the Committee.

At yesterday's meeting I stated that the Chilian delegation did not mind when its amendment was discussed, provided it was discussed sooner or later. In these circumstances, I willingly accede to our Chairman's suggestion.

M. Rundstein (Poland) :

Translation : The Polish delegation has proposed to add to Basis No. 6*bis* the following sentence :

> " A release from allegiance (expatriation permit) becomes invalid on the expiry of a time-limit to be determined by the State authorising expatriation. "

According to the observations of the Preparatory Committee (Vol. I, page 44), Basis No. 6*bis* is only regarded as an alternative.

If Basis No. 6 is not accepted, Basis No. 6*bis* should be maintained with a view to reaching a more limited agreement, which will subordinate the loss of nationality due to release from allegiance to the acquisition of a new nationality.

We should take into account the simultaneity of the loss of the previous nationality and the acquisition of the new nationality. We must eliminate all uncertainty as to the moment at which the change of nationality occurs. It should also be pointed out that the issue of expatriation permits, as required by the law of certain countries, does not in itself involve loss of nationality. It takes legal effect only as soon as the new nationality is acquired.

We therefore deem it advisable to maintain Basis No. 6*bis* and we propose to add to it a new sentence :

"A release from allegiance (expatriation permit) becomes invalid on the expiry of a time-limit to be determined by the State authorising expatriation."

According to the laws of the countries which provide for expatriation permits, release from allegiance only becomes effective when the new nationality is acquired.

A permit of this kind could not, however, remain valid for an indefinite period. The position of a person holding such a permit is rather uncertain. At law he is still the national of the State which has given him permission to acquire foreign nationality: but he is also a candidate for naturalisation in the other country.

A hybrid situation like this cannot be prolonged *ad infinitum*. It would, therefore, be desirable to lay down a rule with regard to the duration of the validity of the permit and the possibility of its lapsing.

We must remember that many States require persons seeking naturalisation to produce a certificate of release from allegiance. The process of naturalisation is in many cases a long one. The Polish delegation, therefore, ventures to suggest, as an additional proposal, that an international agreement should be reached with regard to the time-limit for the validity of these certificates. We think that a period of two years should be sufficient, with the possibility of prolongation under certain exceptional circumstances. If international provision is made for the duration of the certificate, we shall avoid the danger of certain malpractices. The fixing by international agreement of a time-limit for validity would avoid the possibility of fraud.

Mr. Lansdown (South Africa):

The South African Delegation has proposed the following amendment to Basis No. 6*bis*:

"A release from allegiance (expatriation permit) does not entail loss of nationality unless a foreign nationality is acquired or possessed."

The purpose of my suggestion is to broaden somewhat the basis of operation of this particular article. I was permitted by the Chairman on Saturday, in my remarks on Basis No. 6, to explain my position in regard to this Basis No. 6*bis*. I did so then, so that my remarks now will be very brief.

It was said by the learned jurists to whom we are indebted for our Preparatory Documents that No. 6*bis* was an alternative to be considered only if Basis No. 6 were rejected. I ventured on Saturday to differ from that view, and I gave the reasons for my position. At any rate, it is not necessary to go into that now, because Basis No. 6 has practically disappeared and is now only a recommendation.

The idea of my amendment is this: I think Basis No. 6*bis* is a contribution to the solution of the problem of statelessness, but I think it should be extended so as to cover the case where dual nationality is possessed. Where dual nationality is possessed there need be no hesitation about withdrawing the nationality of the country from which the subject is expatriated. There is no reason then for any delay.

Mr. Flournoy (United States of America):

I shall be obliged to vote against this Basis because it appears to our delegation that it is really part and parcel of Basis No. 6 and involves a recognition of the rule that it is necessary to obtain a permit in order to change one's nationality.

Mourad Sid Ahmed Bey (Egypt):

Translation: We are making rules which will be binding on States. Now, on examining Basis No. 6*bis*, I see that it will not be binding on any State. How will this rule work in practice? Suppose, for instance, that a person requests Egypt to issue an expatriation permit. Egypt issues the permit. The person in question goes to France and asks to be naturalised. France agrees. Which State is bound by this rule? Neither. It is quite a platonic rule which binds nobody. I think that this Basis should therefore be worded as follows:

"A release from allegiance to the country of origin should not be accorded until a foreign nationality has been acquired."

Thus the State which issues the expatriation permit undertakes only to issue it when the foreign nationality has been acquired.

M. da Matta (Portugal):

Translation: I agree with the Polish delegate's proposal and suggest that the phrase in brackets be omitted. I think it would be sufficient to use the technical term: "release from allegiance".

M. Merz (Switzerland):

Translation: We agree to Basis No. 6*bis*, but wonder whether it might not be advisable to add to the present text, that the State whose nationality a person has acquired on the strength of an expatriation permit, must inform the competent authorities of the original country of the fact that he has acquired a new nationality. It would also be desirable to determine, at the same time, exactly when the naturalised person is to be deemed to have lost his former citizenship.

M. Soubbotitch (Yugoslavia):

Translation: I refrained from speaking some time ago, because the amendment which we proposed, and which will be submitted to you, contains practically the same idea as that set out in the South African delegation's amendment.

In order to avoid a multiplication of amendments, the Yugoslav delegation agrees unreservedly with the South African amendment. Our delegation takes that amendment to be rather in the nature of a provision for the avoidance of statelessness, than for the avoidance of dual nationality.

The case referred to in this provision is, we think, the following. Some countries grant an expatriation permit, irrespective of whether the person has or has not acquired foreign nationality. If the person has obtained an expatriation permit or release from allegiance without acquiring another nationality, he has ceased to be the national of one State and has not become the national of another. The object of our South African colleague's amendment is to prevent this situation by stating that the expatriation permit will only be valid when the individual has acquired another nationality. If this is how the amendment is to be interpreted, we agree with it.

I cannot understand the object of the Polish delegation's amendment. Does it mean that the State which grants an expatriation permit may decide that this permit should only be valid if the person has, within a certain time-limit, acquired another nationality? If so, I think the point merits discussion. If, however, the Polish amendment means that the person must have transferred his domicile outside the country, then it should be worded differently. But I confess that I do not quite understand the amendment as it is now drafted. We should be glad if the Polish delegate would give us some further explanations before the vote is taken.

M. Diena (Italy) :

Translation : The Italian delegation agrees, if not with the arguments, at any rate with the conclusion of the delegation of the United States of America, to the effect that this Basis should be omitted.

M. de Navailles (France) :

Translation : We shall not be able to draw up a complete Convention on nationality. Any hopes we may have had in that direction at the outset are now fading away. In these circumstances, I think the Committee should limit its action to dealing with the most essential parts of its mission, namely, the prevention of dual nationality and statelessness ; and the object of Basis No. 6*bis* is precisely to avoid statelessness as far as possible. The amendment of the South African delegation strengthens the provisions of this Basis. The French delegation is therefore wholeheartedly in favour of that amendment.

Mr. Dowson (Great Britain) :

If Basis No. 6 had not disappeared, that is to say, if the principle embodied in the first sentence of that Basis had been accepted by the Committee, I should have warmly supported the view which has just been presented by the delegate for France. It is undoubtedly very desirable that cases of statelessness should be avoided, and Basis No. 6*bis* as a complementary to Basis No. 6 would have been some contribution towards the problem of statelessness.

Standing by itself, however, it appears to me that Basis No. 6*bis* is open to objection on the grounds suggested by the delegate for the United States of America. I very much regret, therefore, that I do not feel able to support it. Consequently, if Basis No. 6*bis* is accepted I shall have to consider certain points in connection with it. I do not desire to mention those points at the moment, since it appears to me to be quite unnecessary to consider the precise terms of this Basis until we have decided, in principle, whether it should be accepted or not.

M. Piip (Estonia) :

Translation : The law of my country contains no special provisions on this subject. I agree with the French delegation that we should reach a decision. If, however, there is found to be some difficulty in embodying this point in the Convention, I propose that, in the case of Basis No. 6*bis*, we should follow the same course as was adopted in connection with Basis No. 6. Let us refer it to a sub-committee.

M. Schwagula (Austria) :

Translation : Austrian law does not provide for expatriation permits. Austrian nationality is lost on the acquisition of a foreign nationality. On the contrary, our law prescribes that if a foreigner wishes to obtain Austrian nationality he must have ceased to be the national of another State and must have been released from his former allegiance.

Generally speaking, this question is not of great importance to us. I am sorry, however, that I cannot agree with my British colleague's views. The fact that Basis No. 6 has not been accepted is all the more reason why the alternative proposal of the Preparatory Committee should be adopted with a view to avoiding cases of statelessness and dual nationality. I accept Basis No. 6*bis*, with the amendment submitted by the delegate for South Africa.

M. Hering (Germany) :

Translation : Under German law, any person may apply for release from allegiance. This request may only be refused in special, and very rare, circumstances. Release from allegiance becomes effective directly the document has been handed over to the interested party. German law does not subordinate release from allegiance to the acquisition of another foreign nationality. Consequently, numerous cases of statelessness may occur.

In order to help forward the solution of the problem of statelessness, we are prepared to accept the principle contained in Basis No. 6*bis* and also the amendment of the South African delegation. The acceptance of this principle will mean, of course, that existing German law will have to be modified.

M. Buero (Uruguay) :

Translation : I entirely agree with the proposal of the delegation of the United States of America to the effect that Basis No. 6*bis* should simply be omitted, and I do so on logical grounds. If Basis No. 6*bis* lays down

that release from allegiance only causes loss of nationality at a certain moment, it may be argued *a contrario* from this Basis that the loss of nationality of origin is dependent on release from allegiance — a principle which we rejected when we refused to accept Basis No. 6 as an article of the Convention.

Since Basis No. 6 has been omitted, I think it would be logical to omit Basis No. 6*bis*, also I do not regard as sufficiently convincing the argument put forward in favour of its retention namely, that cases of dual nationality and statelessness must be avoided. Nor does the subjection of loss of nationality to the granting of a permit of allegiance give a sufficiently rigid line of demarcation.

M. Soubbotitch (Yugoslavia) :

Translation : I wish to reply to the Uruguayan delegate.

My observation only really affects the drafting of Basis No. 6*bis* and not its essence. We might meet the views of the Uruguayan delegate by adopting another phraseology. We might say, for instance :

> "If a State admits that an expatriation permit causes the loss of its nationality, an expatriation permit shall not cause such loss. . . "

I believe that the Uruguayan delegate is entirely in agreement with the intention of this clause.

M. Giannini (Italy) :

Translation : Basis No. 6*bis* merits greater attention than would seem to be the case at first sight.

Italian citizenship is a privilege, an absolute privilege. From this point of view I think I can agree with the statement made yesterday by the delegate of the United States of America. Now, I wonder whether anybody, after he has requested and obtained his permit of expatriation with a view to acquiring another nationality, and has then been refused another nationality (or has himself refused it for reasons of personal convenience), can hope to be allowed to remain a national of his former country. Personnally, I think not. I myself would say to that person : "You have refused the privilege of being an Italian citizen ; the retention or loss of such privilege cannot be a mere matter of individual caprice ".

This is a case of political morals. It will be said of course : "But in this way you will multiply cases of statelessness ". Let us be frank. Do nationality laws give much thought to double nationality or statelessness ? At the present time, is the question whether they should be nationals of one State or another left entirely to the choice of individuals ? As everybody knows, there are persons at the present time who possess a whole pocketful of passports of various nationalities which they employ as occasion demands. We therefore call for the deletion of this Basis of Discussion on grounds of political morality.

M. Joachim (Czechoslovakia) :

Translation : The Czechoslovak delegation agrees with the Yugoslav delegation both as to the essence and form of the proposed amendment.

M. Matter (France) :

Translation : For the first time since the beginning of this Conference, I find myself unable to agree with M. Giannini. I do not see what objections he can raise to Basis No. 6*bis*. I thought it was understood at the outset that the need to combat dual nationality and statelessness was one of the essential points of our programme. If we refer to our Preparatory Documents, which contain so many essential comments and constitute a truly monumental work on nationality, we always come back to this two-fold basic consideration : a person should possess only one nationality ; but he should possess some nationality or other. That is, to a certain extent, the leitmotif of all the arguments put forward here.

We are now considering Basis No. 6*bis*, the definite aim of which is to avoid cases of statelessness. Is this Basis so closely connected with the previous one (Basis 6) that the latter's elimination, or relegation to the status of a recommendation, must necessarily involve the elimination of Basis No. 6*bis ?* I do not think so. On the contrary, and I might almost say *a fortiori*, the very fact of the non-adoption of Basis No. 6 should be an argument in favour of adopting Basis No. 6*bis*. The latter affords a guarantee against the serious drawback to which reference has often been made, namely, absence of nationality or, to employ an old French expression which is now becoming archaic, the "*sans-patrie* ". That is why the French delegation entirely agrees with the very logical arguments put forward by the German, Czechoslovak and Yugoslav delegations. The South African amendment might be slightly modified as suggested by our Yugoslav colleague. This amendment appears to be in keeping with the aims of the Conference and I do not see how it can inconvenience anyone. In the most friendly spirit, therefore, I would beg the opponents of Basis No 6*bis*, to reflect before expressing a categorical *non possumus*, and to agree to some amendment or other in regard to the essence of the Basis.

M. Guerrero (Salvador), Rapporteur :

Translation : It is not usual for the Rapporteur to take sides in a controversy, but I feel I must explain to you the way in which the Committee of Legal Experts for the Codification of International Law looked at the problem of nationality.

That Committee realised that the question was essentially a political one. It never for one moment thought that those framing a Convention on nationality would merely note existing divergencies between the laws

of different countries or lay down the general principle of the sovereignty of States in the matter of legislation regarding nationality. It thought, above all, that the great advantage of codification would be to avoid, or at any rate, minimise, conflicts. It thought that the Conference should endeavour to eliminate cases of dual nationality and statelessness. That is why I beg to point out that, if we do not make an effort to eliminate the difficulties caused by dual nationality and statelessness as far as possible, our Conference will achieve practically nothing.

I feel bound to point this out, because I am very well acquainted with the spirit in which the Committee of Legal Experts worked in preparing these questions for your consideration.

M. Alvarez (Chile) :

Translation : The Chilian delegation asked a few days ago for the deletion of Basis No. 6*bis*, because it felt that this Basis was very closely identified with Basis No. 6.

The Chilian delegation is of opinion that a person should not be required to obtain an expatriation permit in order to become naturalised. It did not accept that part of Basis No. 6 which stipulated in favour of an expatriation permit.

The delegates for Germany and France, however, have since then submitted new arguments which I frankly admit had not occurred to me ; in certain cases persons ask for an expatriation permit, and, consequently, lose their nationality without acquiring a new nationality. This special case alters the situation. A person who asks to be released from allegiance naturally becomes stateless, and such a situation is to be avoided.

The case is quite different from the one I had in view, and is sufficient in itself to justify the provision set out in Basis No. 6*bis*.

I think it would be desirable, therefore, to draft this clause in another form. The Chilian delegation would be prepared to modify its former attitude if Basis No. 6*bis* were given this more restricted range of application.

M. de Vianna Kelsch (Brazil) :

Translation : The idea of release from allegiance in naturalisation questions is quite foreign to Brazilian law. I shall therefore vote for the omission of Basis No. 6*bis*.

The Chairman :

With regard to this Basis, we have heard, in a remarkably short space of time, as many as twenty-two speakers, and we know fairly well the different currents of opinion. There are those who advocate the entire suppression of the Basis and those who propose amendments. Then there is a proposal that the whole matter be referred to a sub-committee, without specific instructions, except to find, if possible, a solution under somewhat difficult circumstances.

As there are no more delegates who desire to speak, I think it is now time to take a vote, and I suggest that, for convenience, the voting should be taken in this order. First of all we will vote on the proposal to refer the whole question to a sub-committee, without any instructions, except to find a solution, if possible, which is satisfactory to all. These are practically the same instructions, if they can be called instructions, as we gave to our Sub-Committee yesterday. If that proposal should be rejected, I shall put to the vote the proposal for suppression, made by the delegate of the United States of America, the Italian and other delegations. You will see that it is necessary to put the question of a sub-committee to the vote first before voting on the question of suppression. After we have taken the second vote, and if that proposal is rejected also, we shall then consider the various amendments submitted to the Basis.

Since there is no objection to that procedure, I will take it as adopted.

Adopted.

The Chairman :

I now ask those who are in favour of referring Basis No. 6*bis* to a sub-committee to raise their hands.

By a majority vote, the Committee voted against referring the Basis to a sub-committee.

The Chairman :

We will now take a vote on the proposal to suppress Basis No. 6*bis*. Will those delegates who are in favour of suppression raise their hands?

By a majority, the Committee voted against the suppression of Basis No. 6bis.

The Chairman :

Since there are no fresh amendments to Basis No. 6*bis* in addition to those previously proposed, I think I may say, judging from what the various speakers have said, that the South African amendment has, in principle at least, the largest number of supporters. I therefore propose to put that amendment before you.

M. de Navailles (France) :

Translation : I think Basis No. 6*bis* would be accepted by a greater number of States if, when adopting the South African amendment, we also adopted the wording proposed by the Yugoslav delegation, because that wording defines the problem very clearly. The objections raised to this Basis are, I think, based on a misunderstanding. We have been witnesses of a rather curious proceeding — namely, those countries which make no provision for expatriation permits in their laws have asked for the deletion of a clause which cannot in any way incommode them; whereas a country like Germany, which provides for expatriation

permits, has stated that its Government is prepared to alter its law with a view to avoiding cases of statelessness.

I therefore ask that a form of words be found which will combine the Yugoslav and South African amendments. This should, I think, be read in English as well as in French in order that its meaning may be absolutely clear to all.

The Chairman :

The South African amendment with the Yugoslav amendment thereto will now be read to the Committee in English and French :

"If a State admits an expatriation permit as causing loss of its nationality, such expatriation permit shall only cause the loss of that nationality if the person acquires or possesses a foreign nationality."

M. Alten (Norway) :

Translation : I suppose there is no need to mention in this Basis the question of dual nationality, because the case of a person who already possesses two nationalities and wishes to divest himself of one of them is regulated in Basis of Discussion No. 15.

Mr. Dowson (Great Britain) :

This discussion seems to me to have reached a point where the matter might well be referred to the Drafting Committee. I think we have agreed to accept the principle of this Basis ; we are also agreed as to the general lines of the amendments, and the precise wording of the Basis seems to be a matter which could now properly be referred to the Drafting Committee.

May I just read what I conceive to be the effect of the wording of the original text as amended in accordance with the proposals which have been made. It appears to me that it comes to this — that, if the law of a State provides for the issue of expatriation permits, it shall at the same time provide that such permits shall not entail loss of nationality unless or until a foreign nationality is obtained or already possessed.

The Chairman :

The proposal has been made that this Basis No. 6*bis* has been, in principle, accepted by this Committee, and that the various amendments, particularly the South African, in conjunction with the Yugoslav, might very well be referred to the Drafting Committee.

I think this is a very good suggestion, particularly in view of the fact that practically none of us has had the exact text in writing of these combined Yugoslav and South African amendments before us. So, if you permit, I will take that to be the decision of the Committee.

At the same time, it will be observed that another amendment has been proposed by the Polish delegation which involves an addition to Basis of Discussion No. 6*bis*. I shall ask you, therefore, to vote first on the proposal to refer Basis No. 6*bis* to the Drafting Committee ; after that I shall ask you to vote on the Polish amendment, so that the Drafting Committee may know exactly what it has to do.

*The proposal to refer Basis No. 6*bis *to the Drafting Committee was adopted.*

M. Rundstein (Poland) :

Translation : In reply to the Yugoslav delegate, I wish to explain that the point of our amendment is to make it quite clear that an expatriation permit does not itself involve loss of nationality. That is why it would be desirable to arrange that the permit should lapse after a certain time, and I venture to propose what I think would be a clearer wording — namely :

"A release from allegiance lapses if a new nationality is not granted within a time-limit to be determined by the State authorising expatriation."

M. de Navailles (France) :

Translation : The question raised by the Polish delegate is very interesting. We all have the same aim in view — the prevention of statelessness. But this question affects more intimately those countries which provide for expatriation permits. No expatriation permits exist under French law and, consequently, the question of a time-limit is of little importance to us. We could agree as to the fate of this proposal if the few countries which have a system of expatriation permits could come to an understanding on this subject. If they will kindly explain their standpoint, we can all agree to approve the amendment.

M. Soubbotitch (Yugoslavia) :

Translation : My country is one of those having a system of expatriation permits. I am prepared to furnish all the explanations the French delegate may desire. But, before doing so, I wish to observe, in connection with the Polish proposal, that this question is already settled by the text we have adopted, which lays down that the expatriation permit shall not take effect unless and until the person acquires another nationality. This is, after all, just what the Polish proposal says.

Mourad Sid Ahmed Bey (Egypt) :

Translation : My country also has a system of expatriation permits, but I do not entirely agree with my Yugoslav colleague. A time-limit is fixed implicitly by the fact of the acquisition of a new nationality ; but, of course, no new nationality may be acquired at all. I think that the question of the lapsing of the permit should be left to the discretion of the various States.

M. Hergel (Denmark) :

It seems to me that the system proposed by the French delegate is very sound. This matter really only interests the countries which issue expatriation permits. This Committee as a whole has expressed the opinion that it is desirable that those countries should agree on a form for the granting of expatriation permits in such a way that the object of this Conference is achieved — namely, that there should be as few cases of double nationality or loss of nationality as possible. As I understand it, there are two different ways of accomplishing this. The first is to say that nationality is only lost if a new nationality is obtained, and the other way is to say that the nationality is actually lost, but subject to the condition that a new nationality is later acquired in the other country.

The most practical thing, it seems to me, would be to leave this matter to a sub-committee composed of the countries which are familiar with expatriation permits so that they may agree on which of the two procedures is the more practical.

M. Hering (Germany) :

Translation : If I understand the Polish amendment aright, it only proposes to limit the validity of the expatriation permit to a certain period with a view to avoiding malpractices. If that is so, we might accept it.

M. Rundstein (Poland) :

Translation : The only object of the Polish proposal is to provide for the lapsing of the expatriation permit. There are no such permits in my country except in the case of persons liable to military service. In this connection, we adopt a very reasonable system — namely, the expatriation permit becomes effective only when a new nationality is acquired within two years ; after two years, the permit becomes null and void.

M. Piip (Estonia) :

The Estonian delegation agrees with the Polish delegation's proposal.

M. de Berczelly (Hungary) :

Translation : I am also of opinion that, if we maintain Basis No. 6*bis*, it will be preferable to accept certain restrictions. The ideal would be for each State to know who are its nationals. It would be desirable to maintain a register of nationals. I think, if we accept this Basis, we should set certain limits thereto as suggested by the Polish delegate.

M. Soubbotitch (Yugoslavia) :

Translation : From a practical point of view, our delegation sees no objection to adopting the Polish delegation's proposal, but I wish to draw attention to the theoretical side of this question as we see it.

Why seek to restrict the validity of the permit ? The State allows the individual to lose his nationality if and when he acquires a foreign nationality. There are States which, under their laws, already accord such certificates stating : " This person will cease to be a national of this country if he acquires a foreign nationality ". Other States require a special administrative act.

As we have already admitted that a State may by law consent beforehand to one of its nationals losing his nationality if he acquires a foreign nationality, why should we insist on administrative steps to ensure that this consent shall only be valid for one or two years ? If a State desires to introduce such domestic legislation, it is free to do so ; but I do not see why you wish to lay this down as an international rule.

M. Guerrero (Salvador) :

Translation : All that remained for us to do was to instruct the Drafting Committee to prepare a new text. We have given these instructions. Under these circumstances, I think the matter could now be referred to the Drafting Committee.

The Chairman :

May I take that as the wish of this Committee ?

The proposal was adopted.

The Chairman :

Before we can say that we have done with this Basis, there is still the Chilian amendment, or a separate proposal if you prefer it, to discuss.

M. Alvarez (Chile) :

Translation : The following is the Chilian delegation's proposal :

> " Naturalisation is lost when it is withdrawn by the country which has granted it."

The following are the arguments in favour of the proposal :

Naturalisation is an act of condescension and confidence on the part of a State towards a foreigner, and shows that the State has confidence in him. It is therefore natural that a State should be allowed to withdraw the benefit it confers if the person in question proves to be unworthy of that benefit. The naturalised person may have lost his original nationality, and then, if his new nationality is withdrawn, he may become stateless. But this situation, however regrettable it may be, is merely the logical consequence of, or even, one might say, a punishment for, the naturalised person's own misconduct.

A similar situation may arise in the case of a person who loses his nationality of origin. A State may decree loss of nationality by its nationals as a penalty for certain crimes, particularly treason. These persons then become stateless by their own fault, as in the previous case.

Finally, I think that both withdrawal of naturalisation and loss of nationality as a

criminal penalty are matters which should be left to the domestic jurisdiction of each State. It would not be easy to fix a uniform rule in a Convention.

M. Schwagula (Austria) :

Translation : It is not in any way my intention to criticise the laws of those countries which provide for the withdrawal of naturalisation, but I would like to make one observation.

The Chilian delegate has suggested that denaturalisation should be a penalty to be inflicted on a person who has proved himself unworthy of the honour conferred upon him by the State of his adoption, and of the confidence shown in him by that State. That may be perfectly just ; but I would beg him to take into consideration the fact that that punishment is not inflicted solely on the person guilty of disloyalty towards the State which has welcomed him ; it is also, to a certain extent, inflicted on the State which is obliged to receive the stateless person, or has received him, not being aware of the fact that his naturalisation has been withdrawn. As we saw when discussing Basis No. 2, it would be very undesirable to allow a foreign State to suffer for the sins of an individual who, in most cases, has no further connection with it.

I repeat that this remark is not in any way intended as a criticism of the laws of other countries.

Mr. Dowson (Great Britain) :

I do not desire to take up the time of the Committee at this stage. I only want to point out that this proposal, in my opinion, falls outside the scope of this Basis, and has nothing to do with expatriation permits.

I am not at all in disagreement with what the delegate for Chile says in regard to the system under which naturalisation is revoked, but it does not exist under the laws of certain States. At the same time, it seems to me that it is undesirable that this proposal should be mixed up, as it were, with the discussion we have just had on Basis No. 6*bis*, which deals with an entirely different subject. It might possibly be included in the form of some general proposal, in connection with the amendment submitted by the Indian delegation with regard to with another Basis.

The Chairman :

You will recall that, at the beginning of the discussion, I pointed out that the Chilian amendment had no close relation with Basis No. 6*bis*, and that it could be dealt with either as a separate proposal or in connection with the Indian amendment. I find now that there is agreement on the part of the delegate of Great Britain, and as we want to dispose of this proposal one way or the other, I suggest that it should be referred to the three delegates who are trying to evolve a formula for the Indian amendment, if that proposal would be agreeable to the Chilian delegate.

M. Alvarez (Chile) :

Translation : I have already said that I do not mind when my proposal is discussed, so long as it is discussed. I readily admit that it is not very closely connected with the question with which we are at present dealing.

The Chairman :

May I take it, then, that we agree to refer the Chilian amendment to the three delegates who are, I think, considering the Indian amendment, and may I also invite the Chilian delegate to join in the deliberations of those three gentlemen ?

These proposals were adopted.

Sir Basanta Mullick (India) :

I only desire to ask, Sir, for your permission to allow us to consult the Drafting Committee with regard to the form of the words. If we have your permission we can go to the Drafting Committee when we have reached some agreement amongst ourselves.

The Chairman :

I think the Drafting Committee would be only too happy to render what service it could.

The Committee rose at 12.50 p.m.

NINTH MEETING

Wednesday, March 26th, 1930, at 10 a.m.

Chairman : M. CHAO-CHU WU.

24. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 5 : TEXT PROPOSED BY THE SUB-COMMITTEE.

The Chairman :

I am glad to be able to report that the Sub-Committee appointed by this Committee has been able to arrive at a text for Basis of Discussion No. 5 which reconciles the views expressed by various delegates in the Sub-Committee. That text, which has been circulated, reads as follows :

" Within a third State, a person having more than one nationality shall be treated as if he had only one. In such cases, the authorities of the third State may exclusively recognise in their territories either the nationality of that one of the countries of which the person concerned is a national in which he is habitually and principally resident, or the nationality which, in the circumstances, appears to be that to which he is actually attached, without prejudice, however, to the application of the rules of law followed in the third State in regard to personal status, and subject to the Conventions in force. "

If no one wishes to speak, I shall now put to the vote the above text.

The text proposed by the Sub-Committee was adopted unanimously.

25. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 15.

The Chairman :

The next subject of discussion is Basis No. 15 (Annex I). Amendments have been submitted by the United States of America, Chilian, Belgian, Polish, Yugoslav and Danish delegations. Joint proposals have also been submitted by the Belgian and Greek delegations and the Finnish and Swedish delegations.

Mr. Flournoy (United States of America) :

Our delegation is heartily in favour of Basis No. 15, provided the last clause is eliminated. I think it is hardly necessary for me to discuss our reasons for recommending the elimination of that clause, because they are precisely the same reasons that caused us to object to the original proposal concerning naturalised citizens. We do not think that it is necessary for a person having dual nationality (by that we mean a person born with dual nationality) to satisfy the conditions necessary for loss of the former nationality to result from his being naturalised abroad. It seems to me that this clause should necessarily be dropped with the original proposal concerning naturalised citizens.

A person who is born in one State of parents having the nationality of the other, may have, under the laws of the two countries the nationality of each. It seems to us entirely unreasonable that, if he remains in the country of his birth, he should have to obtain the consent of the Government of the State from which his parents came before he can renounce the nationality of that State. If he has made his home in the State where he was born, that should be sufficient ; he should then be entirely free to renounce the nationality of the other State.

We admit that the same rule would be applicable in a case where such a person does not remain in the territory of the State where he was born, but takes up his abode in his parents' State ; in that case we think that he should be free, without any condition, to renounce the nationality of the State where he happened to be born.

I think it would be desirable to take a vote first upon that clause. We have proposed the addition to Basis No. 15 of a new rule for the termination of dual nationality (Annex II). According to this proposal, if an individual, born with two nationalities, actually has his habitual residence in one or the other of those two countries when he reaches a specified age, he loses the nationality of the other State. Thus the undesirable condition of dual nationality is ended in his case. That proposal is somewhat radical ; it is something new, and I think perhaps it would be best to vote first upon the proposal we have made to eliminate the last clause in the original Basis of Discussion No. 15.

The Chairman :

The proposal of the United States delegate suggests to me a course of procedure in regard to the discussion of Basis No. 15.

Eight amendments, so far, have been proposed to that Basis. According to their nature these amendments may be divided into three classes : first, there are amendments

to the first sentence of the Basis ; of these there are two only, the Chilian and the Polish. Secondly, there are amendments, a greater number of them, to the second sentence ; these are the amendments proposed by the United States of America, Chile, Belgium, Poland and Yugoslavia. Thirdly, there are amendments (or perhaps they might more properly be called additions to the Basis) by the Belgian and the Greek delegations, by the Finnish and Swedish delegations and by the Danish delegation.

Instead of putting all the amendments simultaneously to the Committee so that the speakers will be talking more or less at cross purposes, I think the best procedure would be to divide our discussion according to the nature of these amendments ; in other words, that we should first discuss sentence 1 of the Basis, then sentence 2, and then the additions represented by the remaining amendments. In that way we should know exactly where we are, and we could debate more relevantly on the various questions at issue.

The Italian delegate wishes to speak on a point of order.

M. Diena (Italy) :

Translation : I had put my name down to speak with the intention of moving the complete deletion of Basis No. 15. Since we are dealing with a point of order, I can explain my proposal later, but I would ask you, Mr. Chairman, to be good enough to note that a very radical proposal has been made by the Italian delegation.

Mourad Sid Ahmed Bey (Egypt) :

Translation : I agree with the delegate for Italy that this Basis should be struck out altogether. Basis No. 6, which deals with loss and acquisition of nationality has been suppressed ; Basis No. 15 deals with the loss of nationality. The deletion of one Basis therefore necessarily involves the deletion of the other.

I have other reasons to give as well for the omission of Basis No. 15. Before we discuss the amendments to the various parts of this Basis, I should like to state my views on this point.

The Chairman :

I think we will confine ourselves to the question of order. Addressing myself to the Italian delegate and the Egyptian delegate, both of whom apparently want the suppression of the entire Basis, may I say that the procedure which I have just suggested would, it seems to me, conform to their wishes? I suggested first of all the discussion of the first sentence. This sentence is the foundation of the whole Basis, that is to say, if this sentence is suppressed there will be nothing left of Basis No. 15. Those who want, therefore, to suppress the whole Basis can, whilst we are discussing the first sentence, simply propose its suppression. If it is suppressed, nothing remains of the Basis.

While it would be very easy to amend the procedure I have proposed by permitting discussion on the general question of suppression first, it seems to me it would save time if those who want to suppress the Basis discussed that proposal under the first sentence. I hope this meets the views of the Italian and Egyptian delegates.

Mourad Sid Ahmed Bey (Egypt) :

Translation : I raised a question which I think should be put to the Committee first. I stated that the disappearance of Basis No. 6 logically involves the striking out of Basis No. 15, and I think the Committee should be asked to vote on that point first.

M. Alvarez (Chile) :

Translation : I think the Egyptian delegate is labouring under a slight misapprehension. Basis No. 6 refers to naturalisation, whereas No. 15 refers to the right of option in the case of a person having plural nationality. These are two quite different matters, and the elimination of Basis No. 6 does not necessarily involve the omission of Basis No. 15.

M. Diena (Italy) :

Translation : The Egyptian delegate has raised a fundamental point. Might I be allowed to state the reasons why I think Basis No. 15 should be struck out ?

The Chairman :

We do not yet know how the Committee wishes to discuss this Basis. Let me recapitulate what I have said. I proposed that we should discuss Basis No. 15 under three heads : first, sentence 1, then, sentence 2, and thirdly, the various additions.

The Italian and Egyptian delegations propose that, before discussing the first sentence, we should discuss the proposal to suppress the whole Basis. I suggested that the question of total suppression can be discussed at the same time as the first sentence and the Italian delegate has been good enough to accept that suggestion. The Egyptian delegate, however, still finds himself in disagreement with me, so we must now settle a point of order as to the method we are to adopt in discussing this Basis. As thereisd is agreement, I shall now ask the Committee to decide whether we shall discuss this Basis under three headings or under four.

Mourad Sid Ahmed Bey (Egypt) :

Translation : I am prepared to accept your suggestion, Sir.

The Chairman :

I need hardly say that the adoption of the procedure which I have suggested does not preclude discussion ; it only, I trust, saves the time of the Committee.

The procedure I have suggested having been adopted, we will now discuss the first sentence of Basis No. 15.

Those who wish to suppress the entire Basis can, of course, speak and will be perfectly in order.

M. Diena (Italy) :

Translation : The delegate for Egypt has raised the question of a possible relationship between Basis No. 15 and Basis No. 6. I do not think it necessary to refer to this point at present. I would observe that Basis No. 15 is very closely linked up with Basis No. 5. That is not merely my opinion ; the Bureau must think so too, since it has placed Basis No. 15 after Basis No. 5, obviously because it recognised the relationship that exists between these two Bases.

After four days' discussion, the Sub-Committee you appointed to deal with Basis No. 5 succeeded in establishing the resolution which, subject to the necessary drafting, you adopted unanimously, including the delegate of the United States of America. In this new text, the whole of the original second part of Basis No. 5 has disappeared — the idea that the person concerned may opt no longer exists. If this idea is absolutely eliminated from Basis No. 5, we should, to be logical, also omit it from Basis No. 15, where it occurs again in the first part of the original text. I therefore propose the deletion of this first part of Basis No. 15.

Mourad Sid Ahmed Bey (Egypt) :

Translation : Basis No. 15 as it stands means that States will no longer be able to exercise their right of authorisation, a right on which several countries insist. Before granting it, they consider all the circumstances of the case. Now this Basis says that authorisation may not be refused if the person has his habitual residence abroad and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalised abroad. Thus, the only right left to the State would be that of registering the facts. The authorities would consider whether the person concerned was entitled to be naturalised abroad, and, if so, he would be automatically granted authorisation. That is certainly not the object States have in view in insisting on an expatriation permit.

M. Rundstein (Poland) :

Translation : The Polish delegation can only accept sentence 1 of Basis No. 15. The first sentence of this Basis is a definite innovation which has already been embodied in the new Polish law on nationality, but the Polish delegation proposes a slight modification in the form of the sentence. Instead of the words " a person of double nationality ", we suggest : " a person to whom another State attributes its nationality ".

This change should, we think, be taken into consideration in order to meet the possible objections of those countries whose laws regard dual nationality as absolutely inadmissible, the non-admissibility of dual nationality forming, in fact, the basis of their nationality law. This idea is even embodied in certain Constitutions. According to these provisions, a citizen of these countries cannot at the same time be a citizen of another State. This is the case in Czechoslovakia, Estonia, Latvia, Poland and Yugoslavia. From the point of view of these States, there can be no question of persons of double nationality opting for one nationality, for these countries do not recognise double nationality if their own law is involved. That is why I propose the above alteration.

M. de Navailles (France) :

Translation : Unless I am mistaken, we are now discussing the first part of Basis No. 15. If that is so, I must say that I do not see what objections can be raised to this first part. It has the distinct advantage of being in harmony with our general plan — namely, the elimination as far as possible of dual nationality. This Basis cannot cause any inconvenience to States which, in the case of their own nationals, make loss of nationality conditional upon the grant of an authorisation.

Somebody said a short while ago that Basis No. 15 is definitely linked up with Basis No. 5, and that in Basis No. 5 we have eliminated that part under which the person himself was allowed freedom of choice. That is correct, but the first part of Basis No. 15 does not allow freedom of choice to the individual. This Basis lays down :

> " Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person of double nationality may, with the authorisation of the Government concerned, *i.e.*, the Government whose nationality he is seeking to repudiate renounce one of his two nationalities."

If the Government refuses this authorisation, the person may not renounce that nationality. Consequently, countries which insist that nationality may not be renounced without permission, need feel no anxiety on this score. If we fail to adopt this provision, I think we shall be losing sight of one of our main objectives.

I would therefore request those delegates who have raised objections to this provision to be good enough not to take up a definite position as yet and to state whether they have any other comments to make. The main part of Basis No. 15 is modified by the second sentence. But as we shall be free to eliminate the second sentence, we might reach an agreement on the essential feature of the Basis.

M. Standaert (Belgium) :

Translation : My colleague M. de Navailles has just said very clearly and succinctly what

I myself should have said — and said less well. I entirely agree with his remarks. I merely wish to add that Basis No. 15 is indispensable, if only in relation to Basis No. 5. The latter, after all, is merely a makeshift: a sort of empirical solution of the case of dual nationality in a third State. But, obviously, if we are to adopt a purely juridical standpoint, we must endeavour to discover a solution for this problem of dual nationality, the solution being provided by the individual himself.

In the light of a great part of Western European law, including Belgian law, I think, as this Basis is a contractual one, that the problem of dual nationality should be solved by means of an authenticated and special declaration with regard to one of these nationalities or by there nunciation of such nationality, the renunciation or declaration being the act of the individual himself.

M. de Berczelly (Hungary):

Translation: I would like to be able to agree with the French and Belgian delegations, views, but looking at this first sentence in Basis No. 15, I wonder what it really means. It says that the person concerned may renounce one of his nationalities and that the State may, with the authorisation of the Government concerned, etc. In other words, the individual has the right to repudiate, and the State has the right to grant a permit. If we accept this formula, we shall in no way be altering what is already the practice in certain countries — namely, if an individual seeks permission, it is not refused him unless there are sound reasons for doing so.

As I am opposed to the adoption of the second part of Basis No. 15, for reasons which have been very clearly explained by the Egyptian delegate, I do not see any other solution than that of omitting the whole Basis.

Mr. Flournoy (United States of America):

I understood that one of the principal objects for which we have come here is to try to devise some reasonable rule for the termination of dual nationality. It seems to me that if, as soon as we are confronted with the problem, we throw up our hands and say it cannot be solved, we shall be making a very serious confession of failure.

I agree with the delegate for Belgium that the choice of the individual, manifested in some way, must be taken into account. It may be manifested either expressly or through the actual choice of his permanent home. The reason for that is that we have two distinct and conflicting systems in accordance with which nationality is acquired at birth — *jus soli* and *jus sanguinis*. Approximately half the States of the world base their law of nationality at birth upon one, and about half base their law of nationality at birth upon the other. It seems to me, therefore, that, if we are going to provide a rule for the termination of dual nationality, the only solution is to make it depend upon the choice of the individual concerned.

I do not see the necessity for conneting this Basis with Basis No. 6. The latter Basis relates distinctly to a person who, on his own application, acquires a foreign nationality. We encountered in our discussion of Basis No. 6 a difficulty which it was practically impossible to settle. Basis No. 15, however, is not expressly limited. From the point of view of our delegation, and I think that of other delegations, it should have no reference whatsoever to persons who acquire nationality through naturalisation. The problem would be simplified by changing the phraseology in such a way as to make it clear that it does not apply to naturalised citizens.

M. da Matta (Portugal):

Translation: I cannot agree with the Italian delegation's proposal, nor accept the reason (which may be thought to be decisive) invoked by the Egyptian delegate — namely, that the omission of Basis No. 6 necessarily involves that of Basis No. 15. On the one hand, I quite agree with the arguments put forward by the Chilian delegate; on the other, I see no reason why we should not alter our decision with regard to Basis No. 6, if logic so demands.

I accept and will vote in favour of the Polish delegate's amendment.

M. Alvarez (Chile):

Translation: I venture to suggest that we should slightly amend the text submitted by the Chilian delegation. Instead of the words "Without prejudice to the liberty of each State to grant its nationality. . .", we should read: "Without prejudice to the liberty of each State to regulate the right of option, a person. . ."

As we view the matter, there are two observations to be made in respect of the first point now under discussion.

In the first place, the right of option is primarily a matter to be settled by internal law. This is the rule recognised in Basis No. 1.

Secondly, subject to this reservation, a person ought to be allowed to choose which nationality he prefers, when he possesses more than one. This is the object the Chilian delegation had in view in submitting its amendment. The delegation feels that the only condition should be one of age.

In Basis of Discussion No. 15, we read: "with the authorisation of the Government concerned". We think that such authorisation is not necessary. Moreover, every individual should have this right of option whatever his or her civil status may be. I know that I am stealing a march on our future discussions, but I feel bound to state that, in our opinion, if a married woman possesses dual nationality, she ought to be able to opt for either nationality. There should be no distinction based on sex in this matter.

M. Piip (Estonia) :

My delegation is quite in favour of maintaining the first sentence of Basis No. 15. In particular, we strongly support the Polish amendment, because it gives exact legal expression to the scruples of some national laws such as our own. I venture to add that, because the rule included in this sentence is a truism and a generally accepted rule in international life, it would be most suitable for codification. It is sometimes very useful to remind ourselves of general rules. This is very often done in international Conventions: I might mention as an example, the Hague Convention of 1907, in which the attention of the signatory Powers is drawn to the fact that there are peaceful means for the settlement of disputes.

M. Schwagula (Austria) :

Translation : May I make a minor observation with regard to the remarks of the delegate for Hungary? Unless I am mistaken, he thinks that at any rate the first sentence of this Basis is superfluous because it contains no new provision. I cannot agree with him. If under certain laws provision has already been made to enable an individual possessing two nationalities to forgo one of them, it would be very useful to state the fact in the Convention. That is one of the aims of this Conference. Unfortunately, that is not a universal usage, and I must confess that Austria is one of the countries whose law contains no provision under which an individual may renounce Austrian nationality.

As, however, our mission is to bring about progressive codification and to improve on existing law, I am authorised to state that Austria would be prepared, if these proposals were generally accepted, to consider favourably the insertion in Austrian law of a clause according to which an Austrian national possessing two or more nationalities might, even without fulfilling any of the conditions specified in the second sentence of the Basis, renounce Austrian nationality provided it be proved that he clearly intends to retain one of his other nationalities. In this way, he might cease to be an Austrian subject. As I have already said on another occasion, we do not wish to force anyone to retain his Austrian nationality against his will. We are not in favour of any rigid rules on this subject, and do not propose to subordinate the right of option to any conditions.

Mr. Dowson (Great Britain) :

My delegation warmly supports this Basis, and in doing so, I should like, in a very few words, to refer to the statements made by the delegate for France and Belgium. I entirely agree with what they said in regard to the principle involved in the first sentence of this Basis. The proposal which it contains is a very modest and moderate one ; it is an attempt to deal with the problem of dual nationality which results from the competing systems of the *jus sanguinis* and the *jus soli.*

I cannot conceal the fact that I should like to have seen a considerable extension of the recognition of the right to renounce a nationality, for the purpose of contributing still further to the solution of the problem of the elimination of dual nationality. It may appear, however, from this discussion, that the hope of extending it further is a forlorn one. Let us, at any rate, retain, as a principle, what we have in this Basis, and let us, above all, not be afraid to incorporate it as a principle in a Convention.

I have some difficulty in understanding the objection raised, I think, by the delegate for Hungary, against including this principle in a Convention ; it appears to me that the fact that it has been, or can be, generally accepted at this meeting, is a reason for, and not a reason against, including it in a Convention as a principle upon which the nations are agreed. Let us, therefore, not fail to take advantage of the opportunity which this Conference affords for putting on record a plain and modest proposal as a contribution to the elimination of dual nationality.

Sir Basanta Mullick (India) :

I am not quite certain whether what I am going to say relates strictly to the first part of this Basis, or to the second ; but, in any case, it will apply to the Basis as a whole.

The question is to know how long the consequence of *jus sanguinis* should be allowed to operate. In my country cases have occurred where subjects of British India whose ancestors may, in some remote epoch, have come from another country, are now being claimed as the subjects of that country. If they wish to visit that country for the purposes of commerce, they are told that they must take out a passport as nationals of the country. If they possess British passports, they are required to give up that passport.

That is one difficulty. Another difficulty is that, if a man enters such a country without a passport from its Consul in British India, he is sometimes expelled and put back across the frontier. A third difficulty is that, if he should admit that he is a national of the country and wishes to renounce it, he must obtain a permit from the country and also transfer all the immovable property to a national of the country, although its law may allow aliens to hold such property therein.

These are actual difficulties that have occurred, and I think that this Committee might, in discussing Basis No. 15, also consider whether some limit cannot be put to the operation of *jus sanguinis.* A proposal was made some time ago that it should be limited to two generations, and I do not know whether that proposal will come up for discussion. That is why I have now raised the question

whether some limit cannot be placed on the extension of the principle of *jus sanguinis, ad infinitum.*

M. Soubbotitch (Yugoslavia) :

Translation : The first sentence of Basis No. 15 contains a principle of an entirely general nature. In my opinion, it is one of those principles which may be either included in a text or omitted ; in any case, it would make no difference. We can equally well support the French proposal to retain this part of the Basis or the Hungarian proposal to omit it.

The only possible objection is that, as worded at present, the sentence really does, to a certain limited extent, duplicate Basis No. 6, and I think the Egyptian delegation was right on this point — at all events in part, since the duplication is not complete. To take the case of a person who has one nationality and acquires another by naturalisation, the question whether this new naturalisation will or will not cause the person concerned to lose his former nationality is covered by Basis No. 6, and it is only on that point that Basis No. 15 duplicates Basis No. 6. The question, therefore, has already been settled.

There is another hypothesis, however, in which there is no duplication : I refer to the case of dual nationality by birth. We should make the position clearer, therefore, if we discussed this dual nationality on the basis of its original cause ; that is to say, by limiting our discussion of Basis No. 15 to the problem of dual nationality by origin.

For my part, however, as the first sentence is worded at present, I am quite prepared to vote either for or against it.

M. Buero (Uruguay) :

Translation : I would like to have one or two points explained. The Egyptian delegate said that we might omit this Basis No. 15 in view of our decision regarding Basis No. 6. But Basis No. 6 refers to the case of naturalisation in accordance with the individual's own wishes, whereas Basis No. 15 refers to a case of dual nationality arising, for instance, from the coexistence of the *jus soli* and the *jus sanguinis.*

On the contrary, I agree with the Italian delegate, who said that, when adopting Basis No. 5, we examined part *(b)* concerning the desire of a person to divest himself of one of his nationalities. The Italian delegation based its argument, and I think that the Committee concurred, on the fact that naturalisation is not a matter which ought to depend on the choice of the individual, but is a dignity which he cannot renounce at his pleasure. That was what our distinguished colleague M. Giannini observed when we were discussing Basis No. 5, and he proposed the omission of part *(b)* thereof. If the foregoing were really the motive for the omission of Basis No. 5, the new text of the Basis would militate against the maintenance of Basis No. 15, which still allows a person to renounce his nationality at will.

It would therefore be desirable to ascertain the scope of the text of Basis No. 5, from which we have excluded the original part *(b)*. If our intention was to eliminate personal initiative, the same criterion ought to be adopted with regard to Basis No. 15. Under these circumstances, I agree with the Italian delegation in thinking that we should omit from this Basis a provision which would be contrary to this principle.

M. Hering (Germany) :

Translation : The German delegation accepts the principle contained in the first part of Basis No. 15. The value of this Basis has been clearly brought out by the explanations of the Austrian delegate, who has told us that the Austrian Government will be prepared to alter its law, if this Basis is accepted, with a view to eliminating one of the sources of dual nationality.

Mr. Hearne (Irish Free State) :

I do not think the Committee is quite clear as to the position in regard to the first sentence of Basis No. 15. I entirely agree with the Chairman that we are now deciding a question of principle — the principle very clearly stated in the first sentence of that Basis. I agree with the delegate for France and his interpretation of that sentence—namely, that if it is passed in its present form it will be within the authority of each Government to give or withhold authorisation, just as it thinks fit, in accordance with its law.

I feel quite unequal to the task of reconciling the various points of view, and the various reasons given for the insertion or deletion of this part of the Basis. Various reasons have been given. The first was : because the question with which it is concerned is dealt with in Basis No. 6, and that, since Basis No. 6 has been suppressed, this Basis also must go. The second reason was, that it did not achieve anything at all ; the third reason was, that the principle involved is generally agreed, and therefore ought not to be inserted in the Convention ; and the fourth reason was, that because it was generally agreed, it should be inserted.

It is difficult to understand the logic on which all these views are based. I think, however, that the first sentence, as it stands, is wholly acceptable, and that any amendments which may be moved will give us all an opportunity of considering whether or not we are prepared to modify it so as to obtain some sort of general agreement at this Committee.

I agree with one delegate who said that this was a most modest proposal, and would scarcely remove the innumerable cases of double nationality resulting from the obligation at the instance of one-half of the world, which has the *jus sanguinis* as the basis of its law, and the obligation, at the instance of the the other half of the world, where the *jus soli* is the basis of the law. We have been endeavouring for years to discover, in the first

instance, what principle was at the root either of the *jus soli* or of the *jus sanguinis*, if there is a principle at the root of the *jus soli*, other than that of expediency ; if it is not merely a principle which various States have adopted in order to acquire the largest possible number of citizens by reason of the extent of their territory. If that is the principle involved and that only, it is not, I think, a matter which ought to be incorporated in international law.

We must, then, try to get some sort of basis which will remove the inconvenience of the cases and causes of friction which arise from the difficulties occasioned by these two systems. I do not think there is much hope of doing so. All we can do is to reduce the number of cases where inconvenience arises from the application of the two systems. At the same time my delegation is prepared to accept the principle in the first part of Basis No. 15, subject to any amendments which are made to it during the subsequent discussion.

M. Negulesco (Roumania) :

Translation : The Roumanian delegation wishes to state its opinion that Basis No. 15 has no connection with Basis No. 6, for the reasons so clearly expressed by the Chilian and Uruguayan delegations. It also wishes to state its opinion that Basis No. 5, as adopted, and the first part of Basis No. 15 are far from being contradictory, and are, indeed, perfectly concordant.

Basis No. 5 refers to the situation in a third State of a person possessing dual nationality, and we have voted that he cannot be allowed to choose freely. In the first part of Basis No. 15 quite another principle is proclaimed. Here the case is no longer one of an individual being free to choose, but of the choice being accepted by the Government concerned. The Roumanian delegation will therefore vote in favour of the first part of Basis No. 15.

M. de Berczelly (Hungary) :

Translation : My previous remarks show, I think, that the only objection I had to the first part of Basis of Discussion No. 15 was because I did not see how it could apply. But I note, as a result of the statement made by the Austrian delegate, that the contents of this first part may prove useful. I therefore wish to state that I have no objection to the first part of the sentence, provided the second part of the Basis is deleted.

M. Merz (Switzerland) :

Translation : I think, like the delegate for Yugoslavia, that the first sentence of Basis No. 15 formulates a generally admitted principle. It only assumes importance owing to the fact that its stipulations might constitute progress as compared with the existing situation — stipulations, I mean, such as those contained in the second sentence of the Basis. We should vote against the inclusion of the first sentence if it remained alone, on the ground that it would be useless to state formally a principle which has never been in doubt.

The Chairman :

There being no more speakers we can now proceed to vote.

M. Alvarez (Chile) :

Translation : It would be better to discuss the whole Basis in order to ascertain whether we should vote on the separate parts. It might be preferable to refer the whole Basis to a sub-committee for examination.

The Chairman :

In reply to the Chilian delegation, I had understood that we had adopted, about an hour and a-half ago, the procedure suggested — namely, to discuss, first, sentence 1, which involves a question of principle ; then, sentence 2, which contains the conditions ; and, thirdly, the additions to the Basis. I do not think we can now go back on that decision.

M. Alvarez (Chile) :

Translation : My remark does not apply to the discussion, but to the vote. I ask you not to take a vote until we have discussed the whole of the Basis, because we should get better results by referring the whole Basis to a sub-committee.

Mr. Flournoy (United States of America) :

I wish to say that it is utterly impossible to vote on this Basis intelligently, unless we decide definitely in advance whether or not it relates to both naturalised citizens and those who are born with double nationality. Unless we know for what we are voting, I do not see how we can vote. I think that this point ought to be cleared up so that we may know how to vote.

The Chairman :

The remark made by the delegate of the United States of America is, of course, quite just ; we cannot vote unless we know on what we are voting. I might, however, be permitted to ask whether we can discuss if we do not know what we are discussing.

M. Diena (Italy) :

Translation : The question is whether we should vote on the text as it stands, or not.

The Chairman :

I believed that the Committee had accepted the proposal I made an hour and a-half ago, and since discussion without voting (the point made by the Chilian delegate) would be without purpose, since this Committee is not a debating club, but a meeting of international delegates to take decisions and frame

resolutions, I am afraid we must adhere to the decision we took an hour and a-half ago.

I believe this decision is particularly just, as a motion has been put by the Italian delegate, and supported by others, for the suppression of the Basis. There are now, therefore, three proposals which have been put before us regarding the first sentence: one is the proposal for suppression, moved by the Italian delegation and supported by the Egyptian delegation; the second is the amendment proposed by the Polish delegate; and the third is the amendment proposed by the Chilian delegation. It would, I think, simplify matters if we voted on the question, whether we should suppress or not the first sentence.

In this connection, I want to address myself to the Polish delegate in regard to his amendment, and subsequently to the Chilian delegate. The Polish delegate has moved an amendment, to which the delegation of the United States of America has taken exception, and in connection with which the Yugoslav delegate has pointed out that Basis No. 15, the Basis under discussion, refers entirely to those who have acquired other nationalities by birth, and that the question of naturalisation, which is the point dealt with in the Polish amendment, is dealt with, in fact, in Basis No. 6. Can the Polish delegate accept that comment of the Yugoslav delegate, and consequently withdraw his amendment; or, if not, will he leave the question to the Drafting Committee?

M. Rundstein (Poland):

Translation: The provision in Basis No. 15 applies to all cases connected with nationality, whether that nationality be acquired by naturalisation or by birth, and whether it is a case of conflict between the *jus soli* and the *jus sanguinis*.

I quite agree with the Chairman's suggestion that the question be referred to the Drafting Committee.

The Chairman:

The Polish amendment is, for the present at any rate, disposed of and, if Basis of Discussion No. 15 is accepted by the Committee, that amendment will be referred to the Drafting Committee.

Mr. Dowson (Great Britain):

On a point of order, may I suggest that exactly the same course be taken as regards the amendment proposed by the delegate of Chile? He has proposed a form of words for the first sentence which seemed to me to deserve support and consideration, and is a matter which should be dealt with by the Drafting Committee.

The Chairman:

I was about to make a suggestion to the Chilian delegate on that point. In my opinion, the Chilian amendment really refers to the conditions relating to this matter, and should therefore be raised in connection with sentence 2. I was therefore going to suggest that the discussion of the Chilian amendment should be postponed until we reach sentence 2. The British delegate, however, has made another suggestion, and I ask the Chilian delegate whether he could accept either one of these suggestions.

M. Alvarez (Chile):

Translation: I agree with the Chairman's proposal. My idea is that the Drafting Committee should endeavour to discover some means of reconciling the different points of view as regards the whole of this Basis. For the present, I am merely discussing sentence 2. After this discussion we can see what will be the final fate of the amendment.

M. Guerrero (Salvador), Rapporteur:

Translation: I should like to say a few words with a view to clarifying the discussion. I do not think that the Chilian amendment can be referred to the Drafting Committee until we have ascertained what are this Committee's wishes with regard to the first sentence, and with regard to Basis No. 15 as a whole.

If the Committee decides to retain the first part of this Basis, M. Alvarez's amendment should be discussed before the matter is referred to the Drafting Committee. M. Alvarez's proposal is absolutely opposed to the sense of the first part of Basis No. 15, which makes choice of nationality conditional on the authorisation of the State concerned. M. Alvarez proposes that the person possessing dual nationality should himself decide, and not the State of which the person is a national. That is a point which the Committee ought to discuss beforehand, in order that the Drafting Committee may know the opinion of the full Committee. I repeat that M. Alvarez's proposal seems to me to be absolutely incompatible with the first part of Basis No. 15.

Mr. Flournoy (United States of America):

Before we vote, I should like to know whether it would be possible to cast an affirmative vote with the reservation that this Basis does not relate to naturalised citizens. If I could do that, I should like to vote for the first two sentences.

The Chairman:

We are dealing with the first sentence only.

Mr. Flournoy (United States of America):

I should like to cast my vote on the understanding that it is not applicable to naturalised citizens. That matter has been discussed and a certain arrangement was made, so I do not see why it has to be brought up again.

If it is impossible to vote in that way, that is to say, if my vote is to be final, I shall be obliged to vote against the Basis, although it seems to me most desirable to try to get some agreement upon the rule for the termination of dual nationality acquired at birth. If, therefore, I vote in favour, it will be simply a tentative vote and on the understanding that it does not cover that controversial question upon which it was quite impossible to obtain any agreement and which was disposed of several days ago.

The Chairman :

I am afraid the Chair cannot, without taking a vote on the matter, which would involve many speeches and considerable procedure, arrogate to itself the power of interpreting the sense of the Basis or the feeling of the Committee in regard to the Basis.

If I were asked my personal opinion, I could give it, but that of course would not be what was wanted. I think that each delegation must place its own interpretation on the Basis and it can, of course, always make what reservations and declarations it desires. In other words, I am afraid the Chair cannot give an interpretation.

Mr. Flournoy (United States of America) :

The matter is rather important. I wish to say that, if the United States delegation casts an affirmative vote, it will be on the understanding that this Basis relates only to persons who acquired dual nationality at birth, and that the meaning of the Basis will be clarified by the Drafting Committee, so that the Committee will have another opportunity of voting upon the whole article when it comes back from the Drafting Committee.

The Chairman :

The field is now, I think, clear for a vote. We have now only one proposal in regard to the first sentence of Basis 15 and that is a proposal to suppres sit. Those delegations who are in favour of suppression of the first sentence of Basis No. 15 will please raise their hands.

The Committee decided to retain the first sentence of Basis No. 15.

The Chairman :

We will now discuss sentence 2, and I call on the delegate for France to speak.

M. de Navailles (France) :

Translation : The French delegation would have liked to put forward an amendment with regard to the second sentence of Basis No. 15, in order to define its scope and make the provision more effective. As I have already said on several occasions, our intention is to minimise, as far as we can, the possibility of dual nationality. Consequently, we should have preferred a provision to the effect that the authorisation mentioned in the first sentence of Basis No. 15 cannot be refused when the person has his habitual residence in one of the two countries whose nationality he possesses, and lives there as if he were a national of that country. In this case, we should have liked to see it definitely laid down that the State whose nationality the person desires to repudiate cannot refuse him its authorisation.

We fully realise, however, that, much as we would value such a decision, the opposition thereto in this Committee is perhaps too strong. We hope that a large majority of the delegations will pronounce in favour of the provisions we wish to see inserted in the Convention. The French delegation, therefore, will not insist on the Committee taking a vote on its amendment.

From these remarks you will gather that the French delegation is entirely in favour of adopting the second part of Basis No. 15.

I propose — as we did in connection with the first part — to ask those delegations which are definitely opposed to the second sentence carefully to consider its contents. The Preparatory Committee, which was composed of highly experienced lawyers, was well aware of the difficulty. It quite realised that nothing but a very moderate provision could possibly secure general assent. Let us read that provision and put ourselves in the position of the country which applies the heaviest restrictions and does not wish that any of its nationals should be able to abandon its nationality without obtaining its permission. This text entirely meets the views of a State which possesses such restrictive rules. It says : " The authorisation may not be refused if the person has his habitual residence abroad . . . " Then follows the essential part : " and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalised abroad ".

This sentence gives complete satisfaction to a State whose nationality cannot be lost without authorisation. Its national cannot, without such authorisation, change his nationality, even when he is habitually resident in the territory of one of the two countries, because he is bound to comply with the conditions necessary to cause loss of his former nationality. I do not see what could prevent even those States which place the severest restrictions on such change of nationality from adopting this provision.

Mourad Sid Ahmed Bey (Egypt) :

Translation : M. de Navailles has given a very ingenious interpretation of the second part of the Basis. I still think, however, that this Basis is slightly ambiguous. I think we would be able to agree without reserve if we omitted the word " abroad ". The text would then read as follows :

> " The authorisation may not be refused if the person has his habitual residence abroad

and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalised. "

We — and I think all countries which provide for expatriation permits — could vote for that text.

Mr. Flournoy (United States of America) :

I wish briefly to call attention again to the fact that the last clause of the second sentence is tied up with the conditions concerning release from nationality contained in Basis No. 6, and I have already moved that the last clause be omitted. We could not possibly agree to the second sentence without the omission of the last clause.

M. Diena (Italy) :

Translation : I have greatly admired the French delegate's subtlety of thought, but, from a legal point of view, I do not quite understand his meaning.

He took the case of a country whose laws are highly restrictive. Suppose, under the law of a given country, previous authorisation has to be obtained in order to render loss of nationality effective. The proposed clause would prevent the Government from refusing authorisation. It is impossible to interpret the text in the way which the French delegate has suggested. Such an interpretation of the clause is like the solution of a riddle, and that is not the way to draft a legal text. I therefore insist that we should omit the second part of Basis No. 15, and I entirely agree with the proposal of the delegate of the United States of America.

M. de Navailles (France) :

Translation : The French delegation does not insist on the adoption of the second part of the Basis. It is satisfied with the acceptance of the principle laid down in the first sentence. We have had a very long and instructive discussion, but time is slipping by. In order to set a good example, I will abandon the position I took up.

I will now reply in a few words to M. Diena. I did not envisage the case of a State whose law prohibits the Government from allowing any of its nationals to lose its nationality. I merely contemplated the case of countries whose laws do not allow the loss of nationality without authorisation. The real objection which might be raised to my remarks is that our text amounts to nothing at all, because a State will always be able to refuse authorisation. I reply that States in which this authorisation is necessary will, in voting for this provision, show that they do not intend to make an improper use of their rights in this matter. Such a tendency would in itself be of sufficient importance to warrant our leaving it in the text, in order to indicate quite clearly the spirit which animates this Committee.

But I repeat what I said at the beginning. If the only alternative is to proceed with a long discussion of this sentence, it would be better to be satisfied with the first part of Basis No. 15 as adopted.

M. Rundstein (Poland) :

Translation : I venture to point out that the possibility of repudiating one nationality is limited to the case of a person who possesses two nationalities. For my part I cannot accept the principle laid down in Basis No. 15, because it would be a difficult task, I think, to oblige States in advance to declare that authorisation involving the loss of nationality may not be refused.

Mr. Dowson (Great Britain) :

I desire to support the view expressed by the delegate for France and to express my agreement with the view he has put before the Committee in regard to the effect of this second sentence.

As it stands, this proposal seems to me, as I said this morning, to be a very modest one. It merely requires that the authorisation may not be refused in any circumstances in which the person concerned would be able, by naturalisation, to put an end to the possession of his previous nationality. In those cases where, as the French delegate stated, an authorisation is necessary, that condition will apply and it will accordingly restrict the field of operation of this second sentence.

It is, nevertheless, a contribution towards the elimination of dual nationality, and I therefore hope that the Committee will not vote against the retention of this sentence, since it appears to me to lie at the root, as it were, of the objects, or one of the principal objects, for which this Conference has met to deal with the question of nationality. I do not, therefore, desire, at this late stage, to elaborate any argument in support of it, but to follow the example of the French delegate and to content myself with emphatically supporting the view that this sentence should be retained.

M. Soubbotitch (Yugoslavia) :

Translation : After hearing the French delegation's explanation of the meaning to be attached to the second part of this sentence, the Yugoslav delegation, representing as it does one of the very few States which issue expatriation permits, is prepared to vote for that second part.

M. Piip (Estonia) :

Translation : We will vote for the retention of this sentence, subject to the interpretation given by the French delegation.

M. Standaert (Belgium) :

Translation : The second part of this Basis says that authorisation may not be refused if the person has his habitual residence abroad and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalised abroad. Now, one of the conditions which must be fulfilled, if

naturalisation is to cause loss of nationality, is that the person concerned should be quite in order as regards his obligations of service to the State.

This is quite clear as regards the naturalisation of a person who has only one nationality. But in the case of a person who has two nationalities, the question arises: To which State does he owe obligations of service? If the mere fact that he has accomplished his service in one country and that it would be cruel to make him carry out his obligations again in another country is a motive for refusing authorisation, we think it is an insufficient one. The Belgian delegation, therefore, proposed the following amendment:

> "The authorisation may not be refused if the person, possessing the qualifications required for such purpose, has his habitual residence abroad *and has not fraudulently evaded* his service obligations towards the State for whose authorisation he applies."

This is the interpretation we give to the second sentence of this Basis.

M. Nagaoka (Japan):

Translation: There are two opposed currents of opinion. In order to bring them together I suggest that we should add the words "in principle", which would soften the phraseology of the second sentence.

Nousret Bey (Turkey):

Translation: Military service is not a matter in which an individual has free choice. No General Staff could admit that persons possessing two or more nationalities should escape military service in the country in which they are living. The essential point is that a person who possesses double nationality should be subject to all the laws and regulations of the country in which he lives. Consequently, the Turkish delegation is obliged to oppose the insertion of any reference to military service.

M. Désy (Canada):

Translation: The principle contained in the second part of Basis No. 15 can be accepted by the Canadian delegation, subject to the interpretation given by the French delegation. The text itself might be referred to the Drafting Committee.

The Chairman:

There are no more speakers on the list, so we must now vote on sentence 2. There have been different proposals and amendments to sentence 2, and in accordance with the usual practice I intend to put before you first of all the proposal to suppress the sentence, and then, if that proposal is rejected, I shall put the different amendments to the vote.

Mourad Sid Ahmed Bey (Egypt):

Translation: The vote might be taken to imply the interpretation given by M. de Navailles.

M. Diena (Italy):

Translation: I am sorry, but I am compelled to object. I am the first to admit that M. de Navailles' remarks were very interesting, but I cannot regard them as an official interpretation. It would be rather strange to interpret a Convention simply on the basis of the opinion expressed by one individual member of the Committee. As a personal contribution M. de Navailles' interpretation is very valuable, but for an authentic interpretation of the text I refer to the text itself and the text only.

Mr. Dowson (Great Britain):

I should like to suggest that a great deal of this difficulty could be removed if we adopted the suggestion made by the delegate for Canada.

He suggested that we should treat this, not as an expression of opinion by M. de Navailles regarding the meaning of this Basis, but should proceed on the understanding that the second sentence of this Basis has a particular meaning. If that proposal were adopted, the matter would be one purely for the Drafting Committee, which would put into words the meaning and effect of the second sentence as voted. I suggest that this procedure would get rid of the difficulty in which the delegate for Italy finds himself and would be much the most satisfactory way of proceeding.

M. Diena (Italy):

Translation: We must first vote on the principle.

The Chairman:

Since there have been several delegates who have asked for a clear statement of M. de Navailles' interpretation of sentence 2, may I ask the delegate of France to repeat, in as clear and concise a manner as possible, his interpretation?

M. de Navailles (France):

Translation: I quite agree with M. Diena. The opinion I gave cannot in any way be regarded as the opinion of the Committee. If the Committee adopts a proposal in keeping with my observations, then that of course will become the Committee's opinion; but if it takes no decision on this point, obviously the vote on this text will not compel anyone to take my own views into account.

I nevertheless repeat them. The second sentence of Basis No. 15 seems not to be at all to the liking of States whose nationality laws are what I call restrictive, mainly those laws which do not allow a person to lose his nationality without the authorisation of the Government. But even these States can perfectly well adopt this second sentence of Basis No. 15, because the right of authorisation is reserved by the last words of the provision, which says that a foreigner can only lose his nationality if the fact of his being naturalised abroad causes him to lose his

former nationality. Consequently, a person possessing dual nationality and who wishes to divest himself of one of his nationalities, may do so, provided he fulfils the conditions laid down by the law of the country whose nationality he wishes to renounce.

In the case I quoted, authorisation is necessary before nationality can be lost. It is therefore obvious that the restrictive provisions are absolutely reserved, and that the second sentence of Basis No. 15 does not create any difficulty or any fresh obligation for States.

It has been said that this provision means nothing. I have replied that it means that countries which have a restrictive law will, if they adopt this text, show a tendency not to refuse authorisation systematically, as they are entitled to do under their laws.

M. Giannini (Italy) :

Translation : In drawing up international rules we must be careful to draft them in such a way that it will not be possible for everybody to interpret them as he likes. M. de Navailles has given us an interpretation which seems to be clear, but I think it would be preferable to defer our decision until to-morrow, and request M. de Navailles to be good enough to submit a text in writting. I do not think it possible to interpret the second part of Basis No. 15 as M. de Navailles suggests. If the formula he submits does not appear to be satisfactory, we must insist on the omission of this sentence.

M. de Berczelly (Hungary) :

Translation : I beg to propose a text in place of the present wording of the second part of Basis No. 15 as follows :

> " The authorisation may not be refused if the legal conditions for release from allegiance, as laid down by the State concerned, are fulfilled. "

I think that this text, which is clear, would meet the view put forward by the French delegation.

M. Nagaoka (Japan) :

Translation : I understand that, in spite of M. de Navailles' interpretation, the delegation of the United States of America cannot accept this clause contained in the second sentence of the Basis of Discussion. My delegation is in the same situation. I therefore propose that we should vote without waiting for M. de Navailles' interpretation.

M. Guerrero (Salvador), Rapporteur :

Translation : If we keep discussing and voting on texts and interpretations, we shall get no farther. Would it not be better to refer the question to the Drafting Committee, which would submit to you as soon as possible suggestions taking into account the various amendments and opinions expressed in this Committee ? This procedure would be better than hearing M. de Navailles' interpretation, for obviously each delegation will wish to give its own interpretation.

M. Giannini (Italy) :

Translation : Does M. de Navailles accept the formula proposed by the Hungarian delegate ?

M. de Navailles (France) :

Translation : We can accept some such text as this because it is more or less non-committal. It would be preferable to refer the whole matter to the Drafting Committee as M. Guerrero proposed, because then we might see what could be extracted from the various amendments. There is nothing very special about my own interpretation. I merely offered a few explanations with a view to showing that the text could, as a matter of fact, be accepted as it stands.

Mr. Flournoy (United States of America) :

I am in favour of referring this text to the Drafting Committee on the understanding that the Drafting Committee will make clear to us what it means ; whether the provision is restricted to persons who acquired dual nationality at birth (which I think we all recognise) or whether it is also intended to include cases of naturalised citizens, in regard to which there is a very sharp divergence of opinion between the various delegations.

Personally, I see no reason why we should revert to the question of naturalised citizens which ought to be treated as a separate and distinct problem, and I hope the Drafting Committee will make it clear that this Basis does not relate to naturalised citizens.

M. Alvarez (Chile) :

Translation : I agree to the proposal to refer the matter to the Drafting Committee. I would ask that the Chilian amendment, which has not yet been discussed, should also be referred to that Committee.

M. Giannini (Italy) :

Translation : We have heard a definite proposal by our Japanese colleague asking for the deletion of this sentence. That proposal has priority. But if the Japanese suggestion is not accepted, I would request the Committee to reserve its decision until the Drafting Committee has submitted a formula, since we cannot approve a formula which is not yet in existence, particularly in view of the fact that we are not in agreement as to the principle which that formula should embody. You have heard M. de Navailles' proposal and the interpretations of the delegates of Hungary and the United States of America.

In short, I ask that the proposal of the Japanese delegate should be put to the vote and that, if it is rejected, we should reserve our decision until we have a definite text before us.

M. Rundstein (Poland) :

Translation : The Polish delegation seconds the Italian delegation's proposal.

The Chairman :

There are what might be called two previous proposals before the Committee, apart from the specific amendments. One is the suppression of sentence 2 of Basis No. 15, and the other is that of reference to the Drafting Committee.

As the Italian delegate has rightly remarked, a vote should first be taken on the proposal for suppression. That proposal was made by the delegate for Japan. The Drafting Committee, I know, does not desire any more work to be put upon it than is absolutely necessary. It has really been working very hard, and, in connection with some of the difficult proposals, it has been necessary to have two and even three meetings before an agreement has been reached. The second sentence of Basis No. 15 has been discussed here for about an hour and a-half to-day, and it seems that there are still opinions which have not been exhaustively expressed.

I wonder whether it would not be a wise thing to give more hard work to the Drafting Committee, and ask it to try to find some solution which would be satisfactory to everybody, in view of the success which it has already achieved on these lines. The Chair, however, can only make this proposal as a suggestion, and cannot put it before the Committee, unless the Japanese delegate consents. Would the Japanese delegate consent to such a course ?

M. Nagaoka (Japan) :

Translation : Since it is very difficult to harmonise these points of view, and as we shall only succeed in drawing up a formula similar to that which the Hungarian delegation has proposed, I venture to maintain my proposal.

The Chairman :

We then have two motions which I will put in this order : First, the motion for suppression, and, if that is rejected, the motion to refer the sentence to the Drafting Committee. I ask those delegations in favour of the suppression of sentence 2 of Basis No. 15 to raise their hands.

By a vote of twenty-one to twelve the Committee voted against suppression.

The Chairman :

The Committee must now vote on the proposal to refer this sentence to the Drafting Committee.

By a unanimous vote, the Committee accepted reference to the Drafting Committee.

The Chairman :

I suggest that to the Drafting Committee, the Bureau and the Rapporteur be added : the delegates of the United States, Poland, Italy, Chile and Hungary. If there is no opposition, I will take that proposal as adopted.

The proposal was adopted.

The Committee rose at 1.10 p.m.

TENTH MEETING

Thursday, March 27th, 1930, at 10 a.m.

Chairman : M. CHAO-CHU WU.

26. EFFECT OF NATURALISATION OF PARENTS ON NATIONALITY OF MINORS : BASIS OF DISCUSSION No. 7: TEXT PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman :

At the end of the meeting of the day before yesterday the Committee referred Basis of Discussion No. 7 to the Drafting Committee. The Drafting Committee met yesterday afternoon and now submits to you the following proposal :

" Naturalisation of the parents involves the naturalisation of their children who are minors in accordance with the law of the State which grants naturalisation. The law of each State may provide for exceptions to this principle ; it may also specify the conditions to which the naturalisation of minor children as a result of the naturalisation of the parents are subject.

" If naturalisation does not thus extend to the children who are minors, the latter retain their former nationality. "

M. Negulesco (Roumania) :

Translation : The Roumanian delegation has come to an agreement with the Czechoslovak, Polish and Portuguese delegations

to submit to you a single text in place of Bases Nos. 7, 8 and 9.

These delegations are of opinion that the effects of the naturalisation of the parents on the nationality of the children should be stated in one single provision laying down that the naturalisation of the parents involves the naturalisation of minor children, and that the naturalisation of parents causes both parents and children to lose their former nationality.

Unless the two considerations — the acquisition and loss of nationality — are expressed together in the same article, certain results may follow which the Committee ought not to admit.

Supposing, for instance, that the three Bases were voted on by the Committee separately, Basis No. 7 being adopted and Basis No. 8 rejected, the result would be that minor children would acquire a new nationality without losing their former nationality. We should thus be creating a case of dual nationality.

In order to avoid these consequences, we ought to vote on a text embodying Bases Nos. 7, 8 and 9 together. This is the text we propose :

> " Subject to the laws of each particular State, naturalisation of the parents shall involve the naturalisation of their children who are minors, and the loss, at the same time, of the previous nationality of both parents and children. "

You will note that we mention only minor children, for we felt that it was for national law to determine the situation of other children.

The Chairman :

Before I call on the next speaker may I, on a point of order, say a few words with regard to the motion which has just been submitted by the delegate of Roumania.

We must all be impressed by the fact that this combination of Bases Nos. 7, 8 and 9, as approved by these four delegations is, in point of form, at any rate, a very attractive proposal. You will see, however, that this combined text involves several points of principle which have not yet been accepted by the Committee, or else have been decided by the Committee in a different sense.

For example, if you refer to Basis of Discussion No. 6, which was discussed at length by this Committee and, after hard work on the part of a Sub-Committee appointed by the Committee, was finally deleted and replaced by a *vœu*, you will find that this combined text deals to a certain extent with Basis No. 6. If I am not mistaken, it also has something to do with Basis No. 6*bis*, the discussion of which has been postponed. Again, it has, of course, to do with Bases of Discussion Nos. 7, 8 and 9, as has been stated. Although, therefore, the combined text is very short, it seems to involve many knotty points and problems on which there will be, I am afraid, considerable discussion and perhaps considerable divergence of views.

May I suggest to these four delegations that we still continue with the discussion of the different Bases, Nos. 7, 8 and 9, as previously arranged and then, after they have been discussed and decisions taken, we can make such combined texts as would be best in the interests of clarity and neatness?

If there is no objection to that order of procedure I shall consider it adopted.

The proposal was adopted.

M. Alvarez (Chile) :

Translation : The Drafting Committee's text for Basis No. 7 is too general ; it confirms, though somewhat indirectly, the rule that the law of the State in which a person is naturalised governs such naturalisation, *i.e.*, the law of this State determines whether naturalisation of the father involves that of the children or not.

From this point of view the wording is in agreement with Basis No. 1 ; but it is in contradiction with that Basis from another point of view. Though it takes into consideration the law of the country in which the individual is naturalised, it does not take into account the law of the country in which the minor children have acquired their nationality of origin. I will quote an example to demonstrate the effect of this provision.

Let us take the case of a Chilian who has children under the age of puberty and other children who, though still minors, have attained the age of puberty and are studying for a University degree or are carrying out their military service. Their father becomes naturalised abroad and, under the law of the new country, the naturalisation of the father involves that of the children. What happens ? All the children, not only those who have not, but even those who have, attained to age of puberty and have come to love their country, will lose their Chilian nationality under the law of the country in which their father was naturalised, and will acquire the nationality of that country without any desire on their part and possibly against their wishes.

They will acquire the nationality of a country in which they may never intend to reside. This is the disadvantage of the proposal submitted to us, because it takes into consideration the law of one country only.

What will have occurred in the case to which I have just alluded ? The child will have acquired dual nationality. He will have obtained by the naturalisation of his father the nationality of the latter and will not have lost his Chilian nationality, since, under the Chilian Constitution, the naturalisation of the father does not cause the child to lose his nationality.

The provision embodied in this Basis is obviously favourable to countries of immigration, particularly to American countries. In point of fact, many persons, and particularly immigrants who are nationals of European countries, come to settle defintely in America. In most cases they never intend to return to Europe, and they apply for naturalisation. Under the terms of the provision under discussion, such naturalisation applies not only to the immigrant himself but also to his children, even when the latter continue to reside abroad.

What then would be the best solution for the avoidance of these difficulties ? A distinction should be drawn between persons applying for naturalisation who have, and those who have not, children under a certain age, children who are still quite young and live all the time with their father. Such children have no sentimental attachment to their nationality or country. For these, there can be no question of option. But children who are already over a certain age and who do not live at home may well feel an attachment to their country, and should therefore be allowed to choose their nationality. Children included in the first category ought, by reason of the naturalisation of their father, to acquire the latter's new nationality. The other children, however, should be allowed to opt ; they should be allowed to declare either that they accept the nationality chosen by their father, or that they prefer to retain their nationality of origin.

These are the reasons for which I consider that the provisions of the Basis now under discussion are too absolute ; they only take into consideration the law of the country in which the father is naturalised. They entirely ignore the law of the children's country of origin and do not take into account the children's wishes in the matter of their nationality.

The Chilian delegation has therefore decided as follows : either this Basis must be amended and made clearer, in order to meet our objections, or the Chilian delegation will abstain from voting on it as at present drafted.

The Chairman :

I think it would save time and add to our understanding of this matter if I were to call on a member of the Sub-Committee to act, as it were, as Rapporteur for it ; so I call upon M. de Navailles.

M. de Navailles (France) :

Translation : The Sub-Committee was confronted with a difficult problem ; it had to harmonise widely divergent opinions, a fact which has deeply influenced the text we propose to you.

It may be held that the text submitted to you contains too obvious a contradiction, since we lay down the principle that the naturalisation of the parents involves that of minor children, and then go on to say that the law of each country may provide for exceptions to this principle. That is rather a harsh way of putting it, I admit. I myself had proposed another wording, though I do not say it was any better than the present one; in fact I quite agree with the Sub-Committee's text. I said : In point of fact, what is our main object in this Basis ? We are defining the existing state of the law. Existing law, however, does not follow any one principle. In certain laws the principle of collective naturalisation prevails ; in others, naturalisation is an individual matter, and the naturalisation of the parents does not involve that of the children.

We had to consider many different amendments stating, for instance, what law should be followed in determining whether the child to be naturalised had attained his majority or not. Some thought the law in question should be that of the country of naturalisation, whereas others argued that the law of the country of which the child was already a national should be taken into account. I suggested that we might say that the naturalisation of the parents involves that of the children, who are minors, according to the law both of the naturalising State and of the State of origin. It is quite possible to take two age-limits into account.

A number of the members of the Sub-Committee representing a fairly large group of countries were not in favour of my proposal. They said that under their laws the question of a child's majority is determined according to the law of the naturalising country. They could not therefore accept a text which would turn their law completely upside down. Consequently, we had to adhere to the system of determining the question of minority according to the law of the naturalising country.

Are there any serious objections to the acceptance of this rule ? I do not think so. I am not acquainted with all the legal provisions of the various countries but, under French law, for instance, I note that M. Alvarez's very judicious observations can be taken into account. Account can be taken of them in two ways. We introduced into the law of 1927 the concept of collective naturalisation, for which no provision had been made in the Civil Code. But we were quite aware that difficulties might arise ; consequently we adopted very elastic provisions which allow us to avoid those difficulties.

When parents request French naturalisation and have children who are minors, I do not think there is anything to prevent a child being left out of the decree of naturalisation. This exception might, for instance, apply to a child who is a minor under French law but is of age under the law of his country of origin, or again to a child who is quite independent of his family or has his habitual residence in his country of origin.

If this procedure cannot easily be followed, there is still a provision under which the Government can, when and as it desires, release persons from French allegiance. Thus, whenever necessary, the possible drawbacks of collective naturalisation can always be avoided.

Quite possibly, under other laws, as under French law, there may be ways of escaping the difficulties mentioned by M. Alvarez.

Ought we, as the delegation of the United States of America desires, to make the naturalisation of minor children subject to the proviso that these children shall be resident in the same territory in which their parents have settled ? Personally, I should be rather tempted to advocate such a condition ; French law would allow of such procedure, though it does not expressly state the fact. It would allow it in the manner I indicated just now — namely, the possibility which the Government has of releasing from French allegiance.

We find ourselves, however, confronted by the laws of other countries which are more absolute, and involve the collective naturalisation of the whole family without exception.

Basis No. 7 lays down that the law of the naturalising country may determine the conditions to which the naturalisation of minor children, as a result of the naturalisation of the parents, is subordinated. This allows the naturalising country very considerable freedom of action.

Can we introduce into this text a provision making it possible to harmonise very widely divergent views and interests ? I do not think it is very likely. If, however, any proposals are put forward to this end, we should examine them. But I do not know how we can produce a text that would satisfy everybody.

I do not think I need add any other observations. It would be rather confusing to consider all the amendments and all the proposals. It would be better, if you think that it is I who should reply, for us to examine the suggestions separately.

The Chairman :

Before I call on the next speaker, I should like to inform the Committee that quite a number of delegates have expressed the desire to speak. Allow me to point out that we had a very full discussion of Basis No. 7 the other day, and that a decision was taken on it. The Committee accepted Basis No. 7 in principle, merely ruling out the two words " at present ", and the Sub-Committee received instructions to prepare a text within those limits. If we open a further discussion in regard to the principle of Basis No. 7, we should simply be duplicating our previous discussion, and we should not get very much farther.

May I also, supplementing the very clear explanation of M. de Navailles, point out that the Sub-Committee tried very hard to carry out the instructions given by this Committee? You will observe that in the text submitted, the principle of Basis No. 7 is stated in the first sentence. The second sentence gives very wide scope to the national laws of the different countries, not only the laws as at present existing, but also the laws which may be passed in the future. The very relevant objection raised by the Chilian delegate was met by M. de Navailles who quoted the law of France as affording a solution. It seems to me that the argument can be adduced from the laws of all countries, in that the Chilian objection can be met, if so desired by the different States, by their own legislation or common law.

We have many other Bases to discuss, and while calling on the other delegates who have expressed their desire to speak, may I ask them to bear in mind the position of Basis No. 7, and the sense of the text as submitted by the Sub-Committee.

Mr. Flournoy (United States of America) :

My delegation can, I think, in a general way, approve this text. There are two details of drafting that we should like to see changed eventually ; the first is, that the word " involves " is rather broad, and perhaps not entirely clear ; if the word " causes " were used, it would make the meaning clear. The second is that the word " each " might be, we think, changed to " such ", which would make it entirely clear that it refers to the naturalising State.

The third point which I wish to mention has been already brought up by the delegate for France. We deem it desirable that this rule should contain a statement to the effect that it applies only to children who are not at the time of the naturalisation of the parents residing in the country of which the parents were formerly nationals. We think, as I stated yesterday, that the naturalisation of children through the parents should have the same effect as the naturalisation of the parents themselves; and, as a general principle, we think it undesirable that naturalisation should be conferred by one State upon persons who are at the time still residing in the State of which they are nationals.

As regards the question whether it is desirable at all that children should be fully naturalised by the naturalisation of their parents, we think it is desirable, and our law provides accordingly. It is a very simple matter for such children, after attaining their majority, to apply for restoration of the nationality of the country of which they were formerly nationals.

M. Kosters (Netherlands) :

Translation : The text proposed by the Sub-Committee is a great improvement, in so far as it definitely explains what is meant by " children who are minors ". The phrase means " children who are minors according to the law of the State which grants naturalisation ". That is very clear. In favour of this system it may be argued that naturalisation is a question of public policy ; consequently, the law of the State which grants naturalisation should apply.

I foresee, however, one difficulty : we shall be depriving the child of an acquired right — that is to say, the right to decide upon his nationality, a right which he possessed before naturalisation. Supposing a Chinese

becomes naturalised in Hungary. He has a child twenty years of age. According to former Chinese law, unless I am mistaken, a child is deemed to be of age at sixteen, except for the matter of business transactions. In Hungary a person only attains his majority at twenty-four years of age. For four years, therefore, this young Chinaman has already been entitled to settle freely his own nationality. He will be deprived of this right during the four following years, since the naturalisation of the father will involve the naturalisation of the child, who is a minor according to the law of the State granting naturalisation.

That is why I prefer a system according to which the age of the child's majority is determined according to the law of his former country, as proposed in the amendment I have had the honour to submit. I could also agree to a system — that finds many highly qualified supporters in our Committee — in which the age is definitely fixed. This system involves certain difficulties, but I could nevertheless agree to it.

I have one more observation to make of quite a different nature, and must crave your pardon for not having made it before. Basis No. 7 deals with the effect produced by naturalisation of the parents on the nationality of their minor children. The authors of the text probably had in view the case in which both parents are of the same nationality. The following point, however, has occurred to the Netherlands delegation : What is the legal situation when the father's nationality is different from that of the mother, a situation which, though it cannot legally arise in the Netherlands, may occur under several existing national laws ?

Does the naturalisation of the father involve the naturalisation of the minor children, quite apart from the nationality they possessed before the naturalisation of the father ? Or does such naturalisation involve solely the naturalisation of children who have the same nationality as their father ? Finally, what is the position of children who possess dual nationality ?

Basis No. 7 is couched in quite general terms. It does not draw any distinction or allow for any exceptions in this matter. We should, however, take steps to ensure that the Basis is not later on so interpreted as to make the rule apply to all the above cases. Personally, I cannot conceive that the French child of a French mother, who does not possess his father's nationality — the father being, for instance, a United States citizen — should obtain his father's new nationality if the father becomes naturalised in a third State. Again, if the mother possesses a nationality other than that of her husband, and she becomes naturalised, will such naturalisation on her part involve the naturalisation of children who possess the same nationality as herself ?

I think that here we have a problem which has not yet been sufficiently studied. The Drafting Committee ought perhaps to be consulted on this point.

I must also, on behalf of the Netherlands, in connection with this Basis, reserve all our rights as far as our overseas possessions are concerned.

I wish to add just one word. Doubtless the proposed text is elastic and allows States to depart from the main rule, and, as M. de Navailles has said, each Government is left free to make exceptions and exempt certain children from collective naturalisation, for instance, children who have already attained their majority according to the law of their previous country. But Governments will not be obliged to do so. Moreover, administrative acts cannot render just and equitable a rule which I think possesses neither of these qualities. I therefore prefer the system I have indicated.

M. de Navailles (France) :

Translation : All the difficulties arise from the fact that the problem may be looked at either from the point of view of the naturalising country or from that of the country which loses its nationals. The text before us refers only to the naturalising country. Why so? Because, I think, of the principle we have embodied in the first provision — namely, that each State is free to decide who are its nationals.

If each State may decide who are its nationals, one of the means of obtaining nationals is naturalisation, as is admitted in all countries of the world. Consequently, that is the law to which we ought to refer in order to ascertain whether an individual, as a result of the naturalisation of his father or parents, does or does not acquire the nationality of the country which grants naturalisation. We have therefore dealt with the problem from the standpoint of the naturalising country.

If the Committee does not wish to adopt this principle, it should state in the text that some countries admit the concept of collective naturalisation, while others do not.

Should we venture on this path ? It would be a very difficult path to follow. If you want to take into account both sides of the problem, you will find yourselves confronted with a very complicated text which will not satisfy anybody.

As to what is meant by " parents " and what happens when the two parents, mother and father, are of different nationalities, or when they are divorced, or when one of the parents is dead, I think the expression " parents " should be taken to mean both together or the survivor. In point of fact, some other expression ought to be used corresponding to what is called in France " the paternal power ". In France we would say " the parent who exercises the paternal power ". Then there would be no difficulties. But this is an expression which is unknown in certain bodies of law, and we could find no absolute equivalent. We even proposed the formula " the parent who possesses power to act on behalf of the minor ". I do not say that this expression is a good one, but it may be agreed that, in actual practice, the expression " parents " shall mean the

parent who has power to act on behalf of the minor. This is not a difficulty which should hold us up for long.

The question of the law which should determine whether the child is a minor is a more difficult one. I think there can be only one solution—namely, that, in the matter of minor children, both laws should be taken into account. That would remove the difficulty. But I do not think that we could in this Committee secure a majority in favour of that view.

We might perhaps tabulate the difficulties and ask the Committee what it means by " minors " and whether it wishes the minority to be decided in the light of both laws, or according to the law of the naturalising State, or the law of the State which is losing its nationals. It may be argued that both laws should be taken into account, but I do not think it would be logical to decide the question of minor children solely in the light of the law of the country which is losing its nationals.

There is also the question of residence, and that of the minor's own wish. Should we state in the text that minor children are only naturalised as the result of the naturalisation of their parents if they reside in the same country as the parents ? Personally, I admit that solution, but I do not know what the other delegations think. That is another question which the Committee must decide for itself.

I think I have replied to the main objections. I have not, however, suggested any solution, because I do not yet see one. I can see things from the standpoint of the French delegation, but not from that of the Committee.

M. da Matta (Portugal) :

Translation : May I say a few words with regard to the — as M. de Navailles has rightly observed — complicated question as to what law should decide whether the children referred to in Basis No. 7 are minors or not?

Portuguese law takes into consideration both the law of the country of origin and that of the naturalising country. If we must choose one law only as a criterion, I think that that law should be the law of the country of naturalisation, as the Drafting Committee proposes. I do not think we could possibly take the law of the country of origin.

Let us take the case of a Chilian who becomes a naturalised Portuguese and has an unmarried child of twenty-three. The naturalisation of the father involves that of the child. The question whether the child is or is not of age is, we will suppose, settled by the law of the previous nationality — *i.e.*, Chilian law. The child being a minor according to Chilian law, he would also become Portuguese, his father having been naturalised in Portugal. But Portuguese law — like several other laws — expressly states that a person who is of age must, under Portuguese law, himself apply for naturalisation. There is no exception to this rule.

We should therefore be giving preference to the doctrine that the law of the former nationality should be taken into consideration to the exclusion of the law which, in this case, should be the determining factor : that of the country to which the person in question will owe allegiance after naturalisation. In other words, one State would force another State, in contravention of its law, to accept a person as one of its nationals. That would not be a solution in keeping with the principles we have laid down.

M. Rundstein (Poland) :

Translation : I wish to raise a few objections to the sentence in paragraph 1 of Basis No. 7, which states that the question whether a child is a minor shall be determined according to the law of the State which grants naturalisation. This again raises the question of personal status, of private international law.

For Basis No. 5 we have found a solution which meets all objections. But now the same question arises again. Personally, I cannot accept the proposed wording. That wording is very convenient for the administrative authorities who deal with questions of nationality, for they will not be obliged to make enquiries regarding the age of the persons applying for naturalisation; they will simply apply the *lex fori*, without any attempt to ascertain the statute personal or solve the complicated problems of *renvoi.* But I wonder whether this provision will not be contrary to the laws of some countries. It would not be in harmony with Portuguese law, which calls for the simultaneous application of the laws applicable before and after naturalisation. Nor will it concord with the Chinese and Japanese laws on nationality, which, in determining whether persons have attained their majority, refer to the provisions of the previous law — that is to say, the law of the naturalised child's country of origin. Similarly, it is in contradiction with Swiss law, which extends naturalisation to children if they are, according to the law of the country of origin, still subject to the paternal power.

For these reasons I advocate the omission of the words " in accordance with the law of the State which grants naturalisation ".

I would add that some laws lay down in advance the age up to which children are to be regarded as minors for purposes of naturalisation, without taking into account any provisions of the civil law regarding minority. One and the same person may be a minor from the point of view of civil law, but of age for the purposes of naturalisation. This is the case in Estonian, Danish, Norwegian and Polish laws (and perhaps in other laws), which specify eighteen years as the minimum age for naturalisation. I do not think we can touch upon questions of personal status at private international law in a public law Convention on nationality.

M. Alten (Norway) :

Translation : I proposed to the Drafting Committee that the question of minority should be settled according to the rules of law followed in the matter of personal status in the State which grants naturalisation —

that is to say, according to the law of the domicile or the law of the nationality of the child at the time when its parents become naturalised. I supposed that, under this principle, when a child was already deemed to be of age in another country, that fact should be respected by the State granting naturalisation. The British delegate, however, explained to me that my formula did not fit in with English law, which, in this connection, does not take cognisance of personal status, the question of minority being regulated under a special clause in the nationality law.

I do not therefore insist upon my own suggestion, but I wish now to emphasise an essential point in the Drafting Committee's proposal — namely, that the phrase in the first sentence — I refer to the French text — "*la loi de l'Etat qui accorde la naturalisation*", should be interpreted in the widest sense of the English word "law". This formula includes both statutory law and common law, established legal practice in the matter of minority, and also the rules of private international law. In any case, the application of this phrase must, in every case, depend on the legislation of the State which grants naturalisation.

According to the second and third parts, the contracting States are free to restrict the principle laid down in the first sentence to minors belonging to certain categories — for example, those who are under eighteen years of age, those who are unmarried, or those who are not resident in the naturalising country, to stipulate other conditions for the naturalisation of children, and to lay down the necessary rules for cases in which one of the parents only is naturalised. The law of the State can also allow individual exceptions. In short, it may be said that the contracting States remain free to apply the principle they please.

The objections raised by the Chilian and Netherlands delegates are, I think, entirely justified. It is desirable to avoid a conflict of laws, and I venture to suggest that we might, in order to meet these delegates, add the following sentence to the first point of the Basis:

> "If the law of the State whose nationality the child already possessed is not opposed to this extension of naturalisation."

M. Piip (Estonia):

In general, I am in sympathy with the proposal of the Yugoslav, Polish, Portuguese and Roumanian delegations; but, taking into account the explanation of M. de Navailles that the text proposed by the Drafting Committee purposely speaks only about the rights of the naturalising State, and does not lessen or alter the rights of the expatriating State to give the permit of expatriation, I am able to vote for the Basis as presented. Naturally, I should prefer the amendment as presented by the Polish and Norwegian delegates, because it makes the meaning of this Basis still more clear, and therefore I should vote also for that amendment.

I venture to add a remark on a point of order. You know that our delegation has presented a new Basis of Discussion, No. 9*bis*, dealing also with the naturalisation of minor children independently of their father (Annex II). I quite understand that our proposition involves a still larger principle — the unity of the family — which is dealt with also in our proposal about the separate naturalisation of married women. I move, therefore, that this, our supplementary Basis about the naturalisation of minor children, be discussed together with Basis No. 19*bis*.

Mr. Flournoy (United States of America):

Before this Basis is put to a vote, I wish to move an amendment — namely, the insertion, after the word "naturalisation" at the end of the first sentence, of the following words: "and are resident in the naturalising State".

Mr. Dowson (Great Britain):

We have had a very interesting discussion this morning and, I think, a very useful one. It is quite clear that there is a considerable difference of opinion with regard to the question whether the principle of this Basis should be confined to the case of children who are habitually or ordinarily resident with their parents in the naturalising country, and also with regard to the rule by which the age of majority or minority is to be determined.

I have been considerably impressed by the arguments which have been put forward this morning in favour of some amendment of the Basis as proposed by the Drafting Committee so as to meet these points, and I have a suggestion to make. In the first place, I would like to support the amendment proposed by the delegate for the United States with regard to the insertion of the words "and are resident in the naturalising State". It seems to me that, if that suggestion is adopted, it will get rid of some of the objections with regard to the age of minority.

My point is this: if the naturalisation of the parents is to extend to their children only in those cases where the children are residing with the parents in the naturalising country, any difficulty in regard to the age of minority will, if it does not disappear altogether, tend to be very much less than if those words were not employed.

In every case, if the amendment proposed by the United States delegation is adopted, the law of the naturalising State will apply in regard to the naturalisation of the children, and it is only in cases where the children are in the naturalising country that the point will arise. It follows that, when the children remain behind, either in the country of their origin or in some other country, no question as to their naturalisation as a result of their parents' naturalisation will arise at all.

Consequently, I think that, if this amendment is adopted, it will really be unnecessary to deal with the question of minority, in regard to which, after hearing the arguments this

morning, I feel that there is a difficulty. I suggest, therefore, that we deal with the matter on the lines proposed by the United States delegation.

M. Nagaoka (Japan) :

Translation : As M. Rundstein observed a short while ago, there are three systems for determining the age at which children are still to be regarded as minors. In order to reconcile these three systems and provide an acceptable formula, I propose that we should say : " The naturalisation of children below a certain age fixed by the law of the State which grants naturalisation ", instead of " who are minors according to the law of the State which grants naturalisation ". If this formula is adopted, Japan, who follows a system different from that laid down in the text, could nevertheless accept it without difficulty.

Mr. Lansdown (South Africa) :

I support the motion which has been put forward by the delegate for the United States of America and approved by the delegate for Great Britain. Indeed, when I put my name down on your list of speakers this morning it was with the intention of moving precisely the amendment which has been moved by my friend from the United States, save that, instead of the words : " are resident in the naturalising State ", I had proposed to say : " who are habitually resident in the naturalising State ". It seems to me preferable to employ the word " habitually " ; otherwise we might be extending naturalisation to a child who is only temporarily resident with his parents in the naturalising State.

I was impressed, as I think most of my colleagues were impressed, by the argument raised this morning by the delegates for Chile, the Netherlands and others as to the apparent injustice of thrusting upon a child who may be of mature years and who is not resident in the naturalising State a naturalisation resulting from the naturalisation of his parents in that State. The child may be eighteen, twenty, twenty-two or even twenty-three years of age, resident in its country of origin, and yet may find an alien nationality thrust upon him merely by reason of his father's adoption of the latter. That seems to be unjust.

Under the British nationality laws, the naturalisation of a child does not, *ipso facto*, follow from the naturalisation of its parents; but, when the parent is naturalised, the competent authority may extend the naturalisation to a minor child, a child under the age of twenty-one, on the special application of the parents, and even then it is provided that, when the child reaches the age of majority, he shall be permitted to declare alienage, and so divest himself of the British nationality thus acquired. Just as in the case of the United States of America, we regard our nationality, not as a thing to be thrust at anybody, but as a great privilege.

I do not wish merely to establish the practice of my own nation of South Africa — I think the delegates for Germany and Austria have set us a valuable example in their readiness to adapt their own law to the circumstances of a general concensus of international opinion — but I suggest that, if the Committee adopts the words : " who are habitually resident in the naturalising State ", it will remove many of the difficulties which have been mentioned this morning, and at the same time considerably diminish the difficulty in regard to the age of majority, since, if the child is habitually resident in the naturalising State, he will have ceased to retain that close and intimate connection with his own country of origin which might make the matter of the age of majority there one of importance.

May I just add that I agree with the view expressed by the delegate for the United States of America earlier this morning as to a couple of verbal amendments which are necessary in the first paragraph of the Basis as submitted by the Drafting Committee? It also seems to me that one other verbal amendment is necessary. In the last phrase of the Basis as proposed by the Drafting Committee, the words " former nationality " occur. The text reads : " If naturalisation does not thus extend to the children who are minors, the latter retain their former nationality. " That word " former " seems to me to be a mistake ; the word to be used should be " existing ", so that it would read : " its existing nationality ".

The Chairman :

Before I call on the next speaker, I should like to make a request. We have now before us a good many amendments, some of which are apparently more or less tentative, but none of which has been submitted in writing to the Chair. May I request those who want to have their amendments put to the vote to submit them in writing at once? In connection with this, may I also suggest that those delegations whose amendments are very much the same — for instance, the United States of America, British and South African — should get together and, if possible, submit a common formula? This will facilitate the work and save time.

M. Gomez Montejo (Spain) :

Translation : I wish to explain the views of the Spanish delegation with regard to the new text for Basis No. 7, proposed by the Drafting Committee. The first three lines of this draft are entirely in accordance with Spanish law (Article 18 of the Civil Code, and Article 99 of the Law of 1870) ; it solves all the questions which may arise in the case of a Spaniard who loses his nationality or a foreigner who acquires Spanish nationality by naturalisation. Consequently, the Spanish delegation has no objection to the remainder of the Basis, and is ready to vote for the Basis as it stands.

M. Kosters (Netherlands) :

Translation : The Norwegian amendment provides a satisfactory solution for the

difficulties to which I drew attention some little while ago. As the Norwegian amendment is nearer than our own to the Drafting Committee's text, I will support it and withdraw my amendment.

M. Malmar (Sweden) :

Translation : As I have not yet had time to examine the proposed text thoroughly, I will refrain from giving an opinion for the moment.

M. Schwagula (Austria) :

Translation : I quite understand the underlying motive of the amendments submitted by the United States of America, the South African and the British delegations.

I would remind you once more that, in Austria, naturalisation is only granted after a certain period of residence ; but the law provides that an individual who has not fulfilled this condition may be naturalised as an exception.

I have no objection to the amendment if it does not oblige Austria to refrain, when naturalising a foreigner, from including a child not resident in Austria at the time. I have already explained that Austrian law does not allow of collective naturalisation, but only individual naturalisation.

M. Alvarez (Chile) :

Translation : I accept the Norwegian amendment, which is in keeping with the views I expressed at the beginning of our work in connection with Basis No. 1.

Mr. Dowson (Great Britain) :

I only desire to intervene for one moment in order to deal with the point raised by the delegate for Austria. That point I fully appreciate and more so because, under British nationality law, the naturalisation of the children does not automatically follow on that of the parents. It is necessary that the naturalising authority of the State should include the name of the child or children in the certificate of naturalisation. Consequently, so far as British law is concerned, exactly the same point arises as in regard to Austria.

It appears to me quite clear, though I shall be very glad to have my opinion corroborated by other delegates, that the provision in the second sentence of this Basis with regard to exceptions clearly covers such a case; otherwise, I could not have supported the amendment proposed by the delegate for the United States. The second sentence reads : " The law of each State may provide for exceptions to this principle ", and as I construe that, it means, and can only mean, that the law of the State need not provide for the automatic acquisition of the new nationality of the parents by the children; but that, in principle, the naturalisation of the children should follow upon that of the parents.

If the amendment with regard to residence is accepted, it will merely qualify the general principle to the extent that there should be residence by the children in the country in which the parents are naturalised, and that provision, being followed by the further provision as to exceptions, completely covers the position, both in regard to Austrian law, as I understand it as stated by the Austrian delegate, and the law with which I am myself concerned.

The Chairman :

As there are no more speakers, I shall consider the debate closed.

M. Soubbotitch (Yugoslavia) :

Translation : Is the discussion closed only on the first paragraph, or both the first and second paragraphs ?

The Chairman :

I presumed that it is closed on the whole text, because we have heard no objections to the second paragraph.

M. Soubbotitch (Yugoslavia) :

Translation : The question dealt with in paragraph 2 should not, I think, be discussed in connection with Basis No. 7, but in connection with Basis No. 8. Basis No. 7 indicates the effects of the acquisition of the new nationality by the parents on the children ; Basis No. 8 refers to the loss or retention of the old nationality.

M. de Navailles (France) :

Translation : I do not think we ought to follow the suggestion of the delegate for Yugoslavia. The second paragraph of Basis No. 7 does not refer to Basis No. 8 ; the text proposed by the Drafting Committee reproduces Basis No. 9 textually. We might say that we would only take a decision on the first part of Basis No. 7, reserving our opinion regarding the second part, which is identical with Basis No. 9.

If we commence a discussion on Basis No. 8, two meetings of the Committee would probably be necessary. This subject is exactly the same as that mentioned in Basis No. 6. We would therefore be recommencing a discussion which has only led to a mediocre result. In due course, moreover, I propose to ask for the omission of Basis No. 8, since it is incorporated in the recommendation we have substituted for Basis No. 6.

I propose that the Committee should either vote on the whole or disconnect the two parts. When we have reached a decision with regard to the first part, we can express an opinion with regard to the second, or defer our discussion until we come to examine Basis No. 9.

The Chairman :

May I suggest that we now close the debate on the first paragraph of the Sub-Committee's text and vote on the various amendments

submitted? After that vote has been taken, and the first paragraph of the text disposed of, we shall open the debate, if necessary, on the second paragraph of that report, which is the same as Basis of Discussion No. 9. If there is no objection to that procedure, I shall take it as adopted.

The proposal was adopted.

The Chairman :

In regard to paragraph 1 of the new text, we have received four amendments. Very few of the speakers have brought in their amendment in writing, so I can only put what I take to be the sense of their amendments as given to us verbally in their speeches.

The amendments, I take it, are as follows ; and if I have not perfectly understood, not only the sense, but also the phraseology, of the amendments proposed by the different delegations, will they please correct me? I ask you to note also the order in which I am giving these amendments, because I have tried to decide which amendments are farthest from the original text, and, therefore, I am proposing to put to the vote the amendments in the order in which I am giving them.

The amendments are, first, that moved by the delegate of Poland, who has suggested the suppression of the following words in the first sentence : " in accordance with the law of the State which grants naturalisation ". The second amendment which I propose to put is that of Japan, which consists of the deletion of the word " minor " in the second sentence, and its replacement by the following words : " under a given age fixed by the law of the State granting naturalisation ".

M. Nagaoka (Japan) :

Translation : If the amendment of the delegate of Poland is accepted, I shall withdraw my proposal.

The Chairman :

That is the reason why I put the Polish amendment first.

The third amendment which I propose to put is that of the delegate for Norway, which consists of the addition, at the end of the first sentence, of the following words : " if the law of the State whose nationality the child already possessed is not opposed to this extension of naturalisation ". The fourth amendment is the text agreed to by the three delegations of the United States of America, Great Britain and South Africa; it consists of the addition of the following words at the end of the first sentence : " and are habitually resident in the naturalising State ".

It has not been an altogether easy task to determine which is the amendment farthest removed from the original text ; but the order in which I have given them is, I think, the best that I can do ; and, with your permission, I will take that as the order accepted by you.

I now ask you to vote on the amendment of Poland.

By seventeen votes to thirteen the Polish amendment was rejected.

The Chairman :

I now put to the vote the Japanese amendment, which consists of adding the words : " under a given age fixed by the law of the State granting naturalisation ".

By sixteen votes to eleven the Japanese amendment was rejected.

The Chairman :

I will now put to the vote the Norwegian amendment, which is to add at the end of the first sentence the words : " if the law of the State whose nationality the child already possessed is not opposed to this extension of naturalisation ".

By eighteen votes to nine the Norwegian amendment was rejected.

The Chairman :

I now come to the amendment of the United States of America, Great Britain and South Africa, which consists of the addition at the end of the first sentence of the following words : " and are habitually resident in the naturalising State ".

(The vote was taken by a show of hands).

The Chairman :

According to the first count, the division on that amendment is sixteen votes to sixteen. In order to make certain, I shall ask the delegates to rise to signify their votes.

(The vote was taken again.)

By sixteen votes to fifteen, the amendment was rejected.

The Chairman :

I take it, therefore, that, as all the amendments have been rejected, the text, as recommended by the Sub-Committee, is accepted.

Apparently there is a general chorus of disagreement. That being the case, I shall have to ask you to vote on the first paragraph of the text proposed by the Sub-Committee. Before doing so, I should like to point out that there have been various verbal amendments suggested, somewhat off hand, by the delegations of the United States of America and South Africa ; as, however, they do not involve questions of principle, they will, of course, be referred to the Drafting Committee for consideration if the paragraph is adopted. It is not necessary to vote on those amendments. Will those who are in favour of the first paragraph of the text proposed by the Sub-Committee please rise ?

The principle contained in the first paragraph was adopted by twenty-four votes to six.

M. Nagaoka (Japan) :

Translation : Since this first paragraph has been adopted by the Committee, I wish to state that the delegation of Japan understands that the exception referred to at the beginning of the second sentence covers the principle laid down in the whole of the first sentence.

The Chairman :

The declaration by the delegation of Japan will, of course, be noted in the Minutes.

As I stated just now, the discussion, if any, on the second paragraph of the Sub-Committee's text is now open.

As this second paragraph and Basis of Discussion No. 9 are identical, the two are being discussed at the same time.

M. Diena (Italy) :

Translation : The penultimate word in this sentence, " former ", seems to me superfluous from a legal point of view, since we are supposing that there will be no change in the nationality of the children.

The Chairman :

The attention of the Committee has already been drawn to that point by the delegate of South Africa and this, as well as other verbal alterations, will, if necessary, be considered by the Drafting Committee.

M. de Navailles (France) :

Translation : The French delegation would like to make a slight alteration in the second paragraph, but this alteration is connected with the first paragraph. Our Chairman said, a moment ago, that drafting questions will be held over, including those referring to the first part of Basis No. 7. I think I may, when the drafting questions come to be examined, submit my observations with regard to both parts of Basis No. 7.

I can, however, give you now the text I suggest for the second part, and point out that this new text does not involve any change of principle. My proposal is intended to avoid all semblance of contradiction in the text of the Basis. In the first part, we say : " This is the principle ", and, in the second part we say : " The law of each country may run counter to this principle ".

I should therefore prefer this exception to be mentioned in the second paragraph rather than in the first, although it refers to the whole of the text, because the exception, which is very comprehensive, would not in that case seem to be contradictory.

I propose that the second part should be drafted as follows :

> " In case the law of a State provides for exceptions to this principle [consequently, I fully admit the general exception] and does not extend the effects of the naturalisation of the parents to the children who are minors, the latter retain their nationality. "

We obviously ought to omit the word " former ", because it is meaningless.

Quite obviously the alteration in the wording which I propose does not modify the general principle of the text. The new wording would involve the omission from the first paragraph of the words : " the law of each State may provide for exceptions to this principle ", sinee the exception, instead of appearing in the first part of the Basis, would appear in the second part.

The Chairman :

These questions of wording are, it goes without saying, referred to the Drafting Committee.

Since there are no speakers, I take it that you are ready to vote. Will those who are in favour of the second paragraph please raise their hands ?

The second paragraph of the Sub-Committee's text was adopted unanimously.

27. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 15 (continuation).

The Chairman :

You will remember that, at the last meeting, we decided that there were certain amendments which were rather in the nature of additions to Basis of Discussion No. 15 that should be discussed. I declare now the discussion on those additions to be open. These amendments, you will recall, have been proposed by the Belgian and Greek delegations, by the Finnish and Swedish delegations and by the Danish delegation (Annex II).

M. Malmar (Sweden) :

Translation : The proposal of the Finnish and Swedish delegations is based on the same idea as that of the delegation of the United States of America, but is not so far-reaching. Its object is to decrease, as far as possible, cases of dual nationality.

I have, however, noted in the course of private conversations that there is no chance of this proposal being accepted. In order to avoid prolonging the discussion, I withdraw it.

M. Kaira (Finland) :

Translation : For the same reasons as the Swedish delegation, we withdraw our proposal.

The Chairman :

I thank the delegates of Finland and Sweden for economising the Committee's time.

M. Hergel (Denmark) :

Allow me to pay a tribute to the wisdom of the Chair in suggesting that the Danish proposal should not come up till the end of the chapter on double nationality, because the discussion which we have had in the

meantime has tended to clear up the situation and will probably enable us to deal more quickly with the subject.

The original Danish proposal has had a peculiar fate, because, as a matter of fact, it has never yet succeeded in being printed completely and correctly. It reads as follows:

"A person who possesses the nationality of two or more States may not be required to perform his military service, *or other national service*, in one State when he is habitually resident in the territory of another of these States."

When I first introduced this proposal, and when I gave my reasons for doing so, these words "or other national service" did not appear, and the document first circularised containing the Danish proposal and, later on, the document containing the text of the proposed amendment to Basis No. 15, also omitted this point. But I have taken this as a hint of fate. I have given up the struggle to try to get those words into the proposal and have made the new proposal.

The original proposal raised the question of principle, namely, that, when a person has a double nationality and is habitually resident in one of the States, that State has a preferential, or rather an exclusive, right to the services of that individual. I have, however, withdrawn that proposal, and the new proposal, which was distributed this morning, is more limited in scope. It only applies to military service and is in the following terms:

"A person who habitually resides in one of the two countries whose nationality he possesses, and who is, in fact, attached to the nationality of that country, will be exempt from military obligations in the other country.

"This exemption may involve the loss of allegiance to the other country."

As you will notice, the wording of paragraph 1 of this Basis is copied from the text of Basis No. 5 as we received it from the Drafting Committee, and as it was voted by this Committee. Then, as paragraph 2, we have added a clause enabling the country in which the person with double nationality is not resident to draw the conclusion that it cannot impose military obligations on that individual: on the other hand, this may involve the loss of allegiance to this country.

I have redrafted the proposal with a view to obtaining, if possible, the support of a greater number of delegations. The new proposal has been drafted at the last moment, and I realise that improvements might be made in it. Two points are involved in this text. One is that it refers to two countries only, whereas there may be a question, of course, of multiple nationalities. The other point is that raised by the delegate for the United States of America, who wanted to make it clear that these Bases which are contained in the chapter on double nationality do not refer to cases of double nationality which arise through naturalisation. I suppose, however, that those points could be dealt with by the Drafting Committee if this Committee adopts the proposal.

M. Standaert (Belgium):

Translation: We considered the possibility of releasing a person possessing two nationalities by the method of renunciation. But the person in question may be unable to renounce either nationality. It would, however, be inadmissible to compel him to perform military service in both countries. This might, indeed, be said to be a violation of the rights of man. A distinction should, therefore, be drawn between these two cases.

Under Belgian law, the basis of nationality is regarded as being contractual. We therefore at once conclude that a person must be able to choose what military service he will perform, and this may possibly involve loss of nationality. I would specially emphasise this point, because different countries embody in their laws the principle that voluntary acceptance of military service obligations constitutes a direct option for the country concerned. I would, in particular, mention French law; but I believe that the same is true of Italian law. Several cases have occurred of Belgian nationals who voluntarily fulfilled Italian military obligations in Italy. These persons, therefore, are able in this way also to acquire a foreign nationality.

While one of the general consequences of nationality is the obligation to perform military service, the choice of military service may in its turn also produce consequences in regard to nationality. Therefore, if we recognise that a person must be in a position to choose his nationality, he must also be able to choose the country in which he desires to fulfil his military obligations.

Again, seeing that a choice is possible, service obligations should at least be postponed until such time as the person concerned has been able, under the law of the countries concerned, to make his choice either by option or by renunciation. That was our object in submitting, with the Greek delegate, the amendment in question. I would add that, if this principle is not accepted, I am prepared to support the Danish proposals as an alternative.

M. Diena (Italy):

Translation: I rise on a point of order. I recognise that the question of military obligations is highly important and of very keen interest; but we must not forget that several questions are on our agenda which refer particularly to the determination of nationality. All the consequences deriving from the determination of this nationality law are outside the range of our discussion. I am not opposed to our discussing military service. I only ask that this discussion be adjourned.

The Chairman:

You have heard the motion of order made by the delegate for Italy. It was decided

the other day that this subject should be discussed now, but, since a motion has been put forward by the delegate of Italy, I shall ask you to vote on it. Will those who are in favour of the Italian proposal please raise their hands ?

The Italian proposal was adopted by a majority of the members.

M. Caloyanni (Greece) :

Translation : The proposal for an adjournment having been accepted, I suppose that does not mean that the question has been entirely shelved. My Government much desires a decision to be taken on this subject at the end of our work.

Mr. Flournoy (United States of America) :

I wish to make a similar statement. I hope that I shall have an opportunity at some time to support the proposal made by the delegate for Denmark.

Mr. Dowson (Great Britain) :

I emphatically support the suggestion that a time should be set aside, as soon as possible, for the discussion of this subject.

The Chairman :

The Bureau will take note of the requests which have been made.

The meeting rose at 1 p.m.

ELEVENTH MEETING

Friday, March 28th, 1930, at 10 a.m.

Chairman : M. POLITIS.

28. EFFECT OF NATURALISATION OF PARENTS ON NATIONALITY OF MINORS : BASIS OF DISCUSSION No. 8.

The Chairman :

Translation : I beg you to excuse my enforced absence. I also wish to thank the Vice-Chairman for the excellent manner in which he has directed the work of the Committee. I have read the Minutes and note how hard you have been working on the various texts. I also note, without surprise, that the results are very meagre. Therefore, while I must first thank you for what you have done, I must beg you to make an effort to accomplish twice as much in future, because time presses.

If I read the Minutes aright, you have reached a unanimous decision with regard to the text of Basis No. 7 — a decision which also covers Basis No. 9. There is still Basis No. 8, but it seems that you would prefer to delete it. If you agree, we will take a definite decision on this point. As the text adopted by the Committee with regard to Basis No. 7 also covers Basis No. 9, we need not discuss the latter ; secondly, as a result of this text and your previous decision with regard to Basis No. 6, there is no need to discuss Basis No. 8.

The Chairman's proposal was adopted.

29. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 15 : TEXT SUBMITTED BY THE SUB-COMMITTEE (continuation).

The Chairman :

Translation : We will now discuss the Sub-Committee's new draft for Basis No. 15, which reads as follows :

> " Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, any person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the Government of the State whose nationality he desires to surrender.
>
> " The Governments of the several contracting States may not refuse this authorisation if the person has his habitual residence abroad, provided that the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied. "

The delegation of the United States of America wishes to add a paragraph to this. We might, perhaps, hear the United States proposal, after which I will ask M. de Navailles to explain the new wording.

Mr. Flournoy (United States of America) :

I was with the Sub-Committee yesterday afternoon when it prepared this modified text

of Basis No. 15. I expressed the opinion then that it would be preferable to omit the proviso in the last clause : " provided that the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied ". If it is necessary to have a proviso, this is perhaps the best formula, and we agreed tentatively upon it in that sense. At the same time, I said that it would be preferable to have no such proviso.

It seems to me that this Basis, as it now stands, does not go very far towards accomplishing one of the objects of this Convention, — that is, the termination of dual nationality. The condition at the end to a great extent nullifies what precedes it. I, therefore, should like to have a vote taken upon an amendment we have proposed — namely, to eliminate the proviso and to insert in its place the text proposed by the delegation of the United States of America and which reads as follows :

> "If such a person, upon reaching the age of twenty-three years, shall have failed to renounce either nationality, he shall, if he then has his habitual residence in either of the States of which he is a national, be conclusively presumed to have elected the nationality thereof, and to have renounced the nationality of the other State of which he was a national. Provided, however, that a person reaching the age of twenty-three years within the period of three years immediately following the adoption of this Convention by a State shall not be presumed to have renounced the nationality thereof unless, having his habitual residence in the other State of which he is a national when he reaches the said age, he continues to reside therein during the remainder of the said period."

This formula sounds rather complicated because of the last provision. This last provision, however, is merely a temporary matter designed to prevent hardship in cases that might come up immediately after the adoption of such an agreement.

I do not wish to take up much of the time of this Committee in discussing this proposal. I might state very briefly, however, that its object is to make it necessary for a person who has dual nationality at birth, when he reaches his maturity, to decide to which country he wishes to belong. I think we are all agreed that, in principle, the indefinite continuance of a double allegiance is most undesirable. If the matter is left solely to be decided by some expression or declaration on the part of the individual, he may simply suit his own convenience in the matter; and if he thinks it is desirable to retain two nationalities indefinitely, in order that at some time he may get the benefits of either or both, such a situation, we think, would be very undesirable. As I have stated, the object of this proposed addition is to make it necessary for the person concerned to make a choice. If he makes no express choice, then the place where he actually establishes his permanent residence is presumed to indicate his choice.

I realise that this proposal is something new, and does not at present exist in the legislation of States ; but I should like to have it considered and to have a vote taken upon it.

The Chairman :

Translation : M. Diena wishes to speak on a point of order. Perhaps it would be better first to let M. de Navailles explain how the Sub-Committee came to prepare the text which is before you. As the United States delegation was represented on this Sub-Committee, M. de Navailles might tell us, since the proposal was made to the Sub-Committee, why the latter did not adopt it.

M. de Navailles (France) :

Translation : You will remember that the Committee adopted the first paragraph of Basis No. 15. The delegate of the United States of America made certain comments on this paragraph and asked whether the provision referred to all cases of dual nationality, no matter in what way the nationality was acquired, or only to dual nationality acquired at birth.

The Sub-Committee felt that it ought, without going back on the decision taken in respect of the first paragraph, to consider what reply should be given to the United States delegation.

After discussion in the Drafting Committee, we came to the conclusion that we might comply with the United States delegate's wishes. The Sub-Committee's text, therefore, involves a change in the first paragraph of the experts' text. The wording we propose is " a person possessing two nationalities acquired without any voluntary act on his part ". This limits the scope of the text. Whereas the former text appeared to apply to all persons possessing dual nationality, the new text only applies to persons who possess double nationality, with the exception of that arising from naturalisation.

Except for this change and a change in drafting which makes the text more precise, the provision of the first paragraph is the same as that proposed by the Committee of Experts.

The Sub-Committee experienced far greater difficulty in reaching an agreement with regard to the second paragraph. You will remember that the main difficulty was this : the Committee of Experts' draft referred to naturalisation. In the second paragraph, it was laid down that, when the person possessing dual nationality had his habitual residence in one of the countries whose nationality he possesses, the Government of the country in which he did not reside was obliged to release him from allegiance if he satisfied the conditions necessary to cause loss of his nationality in the latter country as a result of his being naturalised abroad.

That text introduced the notion of naturalisation which we desired to eliminate. We sought, therefore, to discover a wording which

would meet the wishes of countries whose laws are somewhat restrictive as regards the loss of nationality. We thought that the text now before you would secure your approval. We recognise that countries which subordinate loss of nationality to the obtaining of a permit, must, in principle, give their authorisation. Nevertheless, we argued that when, in a country, loss of nationality is subject to certain conditions, those conditions must be fulfilled before the person can change his nationality.

That may seem to be rather contradictory: the idea involved is nevertheless interesting. A tendency has been embodied in this Basis to the effect that we desire to avoid double nationality and, when an individual is habitually resident in one of the two countries of which he is a national, he should, in principle, be granted authorisation to lose the nationality of the country in which he does not reside. At the same time, we say that in countries in which authorisation is required for the loss of nationality, such authorisation should be granted as soon as the other conditions laid down in the law of that State have been observed. I think that the Committee ought to be able to agree to this text unanimously.

If I can trust my memory, the Sub-Committee did not expressly discuss the proposal set out in the United States amendment. It heard the explanations of the United States delegate, which were mainly concerned with naturalisation. The United States delegate told us that, in a spirit of conciliation, he would accept the formula we included in the first paragraph — namely, that the text referred to persons who had acquired two nationalities without any voluntary act on their part. The United States amendment was not then actually discussed by the Sub-Committee.

After a slight alteration had been made, the United States delegate declared that he could accept the Drafting Committee's text for the second paragraph. Nevertheless, he reserved his final decision until the matter came before the full Committee.

The Chairman:

Translation: The Polish delegate has asked to speak, but I am bound to maintain the discussion within its present bounds.

I think after reading the Minutes that all views have been expressed with regard to Basis No. 15. There has been a very long discussion, and a great number of speakers have been heard. You have referred a text to the Sub-Committee, and the Sub-Committee has submitted a compromise. We have now reached a point at which a decision can be taken. With regard to paragraph 1, there is an amendment, accepted by the Sub-Committee, to the effect that the text of this paragraph should apply only to cases of double nationality acquired without any voluntary act on the part of the person concerned. This amendment was accepted in a spirit of conciliation to meet the views of the delegation of the United States of America, and it secured the latter's adherence. A unanimous decision has been reached on this point, because no essential change has been made in the existing situation.

I venture to observe that this remark applies to most of our texts, for they do not alter the existing situation either. We have, indeed, arranged our texts in such a manner that every country retains its entire freedom, so much so indeed, that at first sight our work appears to be absolutely ridiculous. Nevertheless, though each State maintains its freedom, there is, in the various texts you have adopted, the suggestion of an ideal which States are free to accept or refuse.

Under these circumstances, you can take a decision with regard to the text before you without any tinge of anxiety, except as to whether the Committee will adopt the United States amendment to the effect that paragraph 2 should be replaced by the text which has just been read.

M. Diena (Italy):

Translation: I asked to speak so as to raise a point of order, and to move that the discussion of Basis No. 15 be adjourned. The text before the Committee is the result of very painful efforts on the part of the members of the Sub-Committee to reach an agreement. Each of us has had to make really important concessions in exchange for other concessions. It is now a question of withdrawing those concessions.

The proposal of the delegate of the United States of America brings the whole matter into discussion once more, even the very basis of the question, because the point raised by the United States delegation is not a point of form. Agreement seemed to have been reached; and now the whole discussion is being opened up again. If others withdraw their concessions, the Italian delegation will be bound to withdraw all the concessions it made in exchange, even those regarding paragraph 1.

The Sub-Committee had adopted an absolutely general wording. In order to meet the wishes of the United States delegation, it merely regulated cases of double nationality acquired without any voluntary act on the part of the person concerned. That was a very important concession. Subsequently, the Italian delegation abandoned its own text and adopted that which includes the words: "if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied". And now, after all these concessions, the whole question is brought into discussion once more!

I protest against any change in the text adopted by the Sub-Committee, particularly as, after yesterday's discussions, we were entitled to suppose that the United States delegation had abandoned its amendment. This is a very delicate question which cannot be solved in this manner.

M. Rundstein (Poland):

Translation: I do not see any need to agree to the proposal of the delegation of the United States of America concerning the

paragraph, which refers to the acquisition of nationality without any voluntary act. I think that this paragraph may give rise to very serious doubts. I was of a contrary opinion in the Sub-Committee and would like, in a few words, to explain the reasons for my attitude.

In order to facilitate the progress of our work, however, I will refrain from addressing the Committee, proveded my dissenting opinion is mentioned in the Minutes. I would merely point out that, if we adopt a text that can be interpreted in different ways, the conflict of nationality laws will become even more acute than at present.

M. Soubbotitch (Yugoslavia) :

Translation : On March 25th, the Yugoslav delegation proposed to substitute, in Bases Nos. 5 and 15, the words " principal habitual residence " for " habitual residence ". It did not intend thus to introduce a new criterion : its only object was to make the text clearer. On the following day, in connection with Basis No. 5, this criterion was adopted by the Committee and was embodied in the text.

The reasons which led to the adoption of this criterion in Basis No. 5 are equally valid in this case. I therefore propose " habitual and principal residence " in place of the words " habitual residence ". I do not wish to delay the work of the Committee, but if the Committee so desires, I can explain the reasons for my proposal, which are very clear.

M. de Berezeily (Hungary) :

Translation : Yesterday we accepted the first sentence of Basis No. 15 and referred the second to the Sub-Committee, which has brought us back a new text. This text owes its very existence to the hope that it might be adopted unanimously, and now the delegate of the United States of America says that he cannot accept it. The text therefore falls, and has no further reason to exist, because the concessions made yesterday were made with a view to reaching unanimity. Since we are not to be unanimous, then we revert to the previous situation : the first sentence is adopted, but we must ascertain whether the second sentence is to be adopted or not.

The Chairman :

Translation : Before calling upon the delegate for the United States of America to speak. I would earnestly beg him to consider whether, in view of the concessions which have been made, he could not withdraw his amendment, because, if he insists upon it, the whole question will be reopened and we shall achieve no result.

Mr. Flournoy (United States of America) :

The position is simply this. We have not rejected this proposal finally, but are willing to vote for it if we cannot get anything better. It seems to me that this proposal says almost nothing, and we are willing to vote for it simply because we think it innocuous. We should prefer a provision that would go farther.

I do not wish to delay the proceedings, and, if it is the wish of the Committee that we should simply vote upon this proposal, as it now stands, without any amendment at all, I think we can withdraw our proposal.

The Chairman :

Translation : You have heard the statement of the delegate of the United States of America ; we can now proceed speedily with our work and accept the Sub-Committee's draft.

There are still three more speakers ; I will call upon them to speak, but would request them to be very brief.

M. Alten (Norway) :

Translation : I should like to make one observation on the last paragraph. This paragraph is based on the assumption that the law of the State whose nationality is being renounced prescribes the conditions governing the renunciation of nationality. That, however, is not the case everywhere. Norwegian law, for example, simply stipulates that a person possessing a foreign nationality may be released from his Norwegian nationality by a Decree of the Crown or of the competent Ministry.

This provision leaves the Government discretionary powers to deal with such applications on their merits. Consequently, the formula proposed by the Drafting Committee will not bind our authorities in any way. Moreover, this formula seems to us harmless and therefore quite acceptable, though I should have preferred the last part of the sentence to be omitted, as proposed by the delegation of the United States of America.

M. Suarez (Mexico) :

The Mexican delegation wishes to say that it must vote against the adoption of the text proposed by the Drafting Committee, which is really quite useless. It does not solve any problem and merely states a principle which has never been contested by any State — namely, that a State has the right to grant the release of nationality if it thinks fit. I think, therefore, that it is altogether useless to adopt a text that does not say anything.

Mr. Dowson (Great Britain) :

I desire for one moment to refer to the remarks made by the delegate for Poland with reference to the words : " without any voluntary act on his part ". I personally agree with what he said, and I should very much have preferred to see the Basis drafted without that qualification. Unfortunately, there was, as he indicated, a great difference of opinion in the Drafting Committee with regard to those words, and the result is a compromise.

One of the troubles with regard to any compromise is that the result does not entirely please everybody, and I should have very much preferred to see this first paragraph drafted on a boarder basis. I can see no reason why the cases of dual nationality, to which this principle of renunciation would apply, should be in any way limited by reference to the manner in which the dual nationality arose. Consequently, as I say, I should very much have preferred a text without those words.

As regards the gencral result obtained. The first and second paragraphs of this draft also represent a compromise. They fall very far short of what I and my Government would have liked to see, as a recognition by this Conference of the right of a person of dual nationality to renounce one of his nationalities.

We feel that this Conference has an opportunity of making a real contribution to the problem of dual nationality, and I am afraid that this Basis as drafted fails to realise that hope. But, as I say, is is the best that can be done under the circumstances. It is no use for the Drafting Committee to propose a text which will at once be voted down by this Committee. We have put on record what we conceive to be the effect of the decision of the Committee in regard to the discussions on Basis No. 15 and, in the circumstances, whilst I have the very greatest sympathy for the amendment proposed by the United States delegation, I feel I must agree with the Chairman that it would be extremely difficult for us to embark on a discussion on the broad question of principle raised by that amendment.

The Chairman :

Translation : As no more delegates wish to speak, we might now take a vote.

Unless I am mistaken, the delegate of the United States of America has stated that, if this text, although it does not satisfy him, is adopted, he will accept it as a compromise and withdraw his amendment.

I would earnestly beg those delegations who have any objections to make to some part of this text to be good enough to reflect that the text does not add anything to existing practice. As I said just now, you can accept it without the slightest qualm. It may perhaps be asked : " What is the good of this text if it does not add one tittle to our obligations ? " Let us be sincere. We will tell the world that we have endeavoured to ascertain to what extent the number of cases of double nationality can be reduced.

We have not succeeded in our endeavours, but we nevertheless recognise, in this text, that certain easily attainable desiderata do exist. We have defined these desiderata, leaving States perfectly free, as they arc to-day. But the guiding principles we have indicated may perhaps be of use in the future. That is the whole philosophy of this text. You see, therefore, that no Government here represented will, in accepting this text, assume any obligations other than the obligation to meditate on these questions, as they emerge from this long and interesting discussion.

I am particularly anxious that the Committee should reach a unanimous decision on this text. It is thoroughly understood that, in the report, the various points of view will be clearly indicated. Any person reading the report will see that the Committee endeavoured to accomplish more than it has done, and that this desire was emphatically voiced by certain delegations. It will also, however, be clear to the reader that, for the moment, we could not achieve more. If you accept this text, the Drafting Committee will be requested to cxamine the definite point raised by the Yugoslav delegation in order to bring this text into line with the adopted text of Basis No. 7.

M. Diena (Italy) :

Translation : I should like the following statement to appear in the Minutes :

> " The Italian delegation proposed that the text adopted by the Sub-Committee should remain in its present form, without the addition of the word 'principal'."

The Chairman :

Translation : That is a mere question of drafting which we may disregard for the moment. When the Committee is called upon to decide upon the final drafting, the word "principal" may be proposed, and, if there be no invalidating objection, it can be maintained, together with the statements of those delegations which consider it unnecessary.

M. Merz (Switzerland) :

Translation : After our Chairman's statement regarding the scope of this provision, I think it would be preferable to delete the sentence entirely. I do not make any proposal, but shall abstain from voting on this text.

The Chairman :

Translation : I put the text submitted by the Sub-Committee to the vote.

The text was adopted.

The Chairman :

Translation : Certain delegations have abstained from voting, for instance, the Swiss, Portuguese and Polish delegations. Abstentions, however, do not prevent official unanimity. I think it is a matter for congratulation that the Committee should have reached a unanimous decision. I wish particularly to thank the delegation of the United States of America for withdrawing its amendment.

30. ATTRIBUTION IN CERTAIN CIRCUMSTANCES OF THE NATIONALITY OF THE COUNTRY OF BIRTH : BASIS OF DISCUSSION No. 10.

The Chairman :

Translation : In connection with Basis No. 10 (Annex I), which concerns the children of diplomatists and other persons exercising

official functions, amendments have been submitted by the Austrian, United States of America, Japanese and Portuguese delegations (Annex II).

I propose that we should examine the two paragraphs of the Basis separately. With regard to the first paragraph we have only one amendment, submitted by the Austrian delegation.

M. Schwagula (Austria) :

Translation : The question referred to in Basis of Discussion No. 10 is not of immediate interest to Austria, whose laws are not based on the *jus soli.* I have, nevertheless, proposed that the second sentence of the first paragraph should be omitted. I consider that the children of diplomatists, consuls or high government officials who are sent to a country, the laws of which recognise the principle of *jus soli*, are not in the same position as persons immigrating to those countries. The mission of these officials is sometimes of very short duration. It cannot be held that they are in any way bound to the country to which they have been sent.

M. Diena (Italy):

Translation : I can accept the first sentence of the first paragraph, and I would observe that this derogation from the ordinary law is very widely accepted. It is simply a matter of placing on record a rule which is generally applied.

On the other hand, I would ask for the deletion of the second sentence. The point at issue is the limitation of the scope of the previous sentence. This second provision is both dangerous and superfluous. It conflicts with the rules we adopted, after overcoming so many difficulties, in regard to Basis No. 15. It is superfluous because, when a derogation from ordinary law exists, it must be given a restrictive interpretation, so that, if nothing were added, the ordinary law would again become operative.

This sentence is dangerous, because it may involve obligations on the part of the State to which the child belonged, in virtue of the previous sentence. All that would be inconsistent with the very prudent formula laid down in Basis No. 15. That Basis, which we have just adopted, contains very complete provisions enabling Governments to withhold the authorisation in question.

The Chairman :

Translation : We should take a separate decision on each of the two sentences of the first paragraph of Basis No. 10. I take it that the Committee has no objection to the first. As M. Diena has rightly pointed out, this provision contains a rule which has been observed by all States and which has never been contested.

M. da Matta (Portugal) :

Translation : I support the Italian proposal.

The first sentence was unanimously adopted.

M. de Navailles (France) :

Translation : I would point out that the drafting of the second sentence could be improved. It says that a child will be entitled to claim to come within the provisions of the law of the country to the extent and under the conditions prescribed by that law. Obviously. But what the provision means is that the child will be entitled to claim the nationality of the country of its birth. The text should bring this out more clearly.

The Chairman :

Translation : M. de Navailles' observation is very sound. If the Committee decides to retain the second sentence, this point of drafting will arise.

M. Alvarez (Chile) :

Translation : I ask that this sentence should be retained, because certain laws, including Chilian law, allow the child in these cases to opt for the nationality of its country of birth.

The Chairman :

Translation : I would have M. Alvarez note that the omission of this second sentence would not in any way affect these laws. The main reason for which omission is requested is that this second sentence might create the impression that countries of origin are subscribing to an obligation.

M. Alvarez (Chile):

Translation : The child is allowed to opt.

The Chairman :

Translation : I think the question is quite clear. We shall now vote on the maintenance or omission of the sentence. I first of all ask whether it shall be deleted.

By eighteen votes to thirteen, the Committee decided that the sentence should be deleted.

The Chairman :

Translation : It is understood that our report, which will faithfully reflect our discussions, will indicate the reasons for which the majority of the Committee decided to omit this sentence and the reasons for which certain delegations asked for its retention.

We now come to paragraph 2, in connection with which there are three amendments, submitted by the United States of America, the Japanese and the Portuguese delegations respectively.

M. Nagaoka (Japan):

Translation : The Japanese proposal is simply to replace the words " in the the name of ", in the last sentence of paragraph 2, by the word " for ". If we maintain the text: " ...persons of foreign nationality exercising official functions *in the name of* a foreign Government ", I am afraid that persons not acting in the name

of a State might be excluded from the benefits of this rule. Vice-consuls or head clerks attached to a consulate might be unable to make good their claim to the provisions of this rule. The Japanese delegation proposes the above amendment in order that this Basis may apply to every person exercising official functions for a Government.

M. Kosters (Netherlands) :

Translation : The children of *consuls de carrière* and children born of other persons of foreign nationality exercising official functions in the name of a foreign Government have rightly been assimilated to children born of persons enjoying diplomatic immunities. But it may be asked whether this is enough. I am thinking mainly of international arbitration.

Let us suppose a long-drawn-out case of arbitration — for instance, arbitration in respect of international disputes which have been piling up for many years. The arbitrators appointed by the Governments of the contracting parties might well be said to be exercising official functions in the name of a foreign Government. But the umpire chosen by these arbitrators jointly, as laid down in the Hague Convention of 1907 for the Pacific Settlement of International Disputes (Article 40), cannot be said to be exercising official functions in the name of a foreign Government. This is also the case, I believe, with the Registrars of Courts of Arbitration. When, however, these persons in the exercise of their duties are obliged to live abroad, perhaps for many years, with their family, their children born abroad should, I think, be accorded the privileges specified in this Basis. That is a point which the Drafting Committee might take into consideration.

The Chairman :

Translation : M. Kosters' observation is very interesting and practical. The point arises, not only in the case of the persons to whom he has referred, but also to the staff of other international organisations, in particular, the officials of the League of Nations, living at Geneva, who must, in this respect, be in a position similar to that of diplomats. But I am inclined to think that these cases are covered by the first paragraph. For in all these instances, the persons occupying these international posts do in fact enjoy diplomatic privileges.

If the Committee agrees, we might merely state in the report that the first paragraph, referring to diplomats and diplomatic privileges includes all cases in which an official occupies a post placing him in a position similar to that of diplomats.

M. da Matta (Portugal) :

Translation : I quite agree with sub-paragraph 1 of paragraph 2 of this Basis of Discussion. Although, of course, consuls do not possess the representative character, like diplomatic agents, they do exercise official functions in the name of a foreign Government. Consequently, their presence in a country cannot be regarded as involving any actual attachment to that country.

The amendment which I had the honour to submit refers to the words at the end of the Basis. Instead of saying : " exercising official functions *in the name of a foreign Government* ", I propose, : " who have been entrusted by their Governments or by the League of Nations with an official mission ".

I think it would be right to extend the principle contained in this Basis to the members of certain international organisations like the staff of the League of Nations, the Institute of Intellectual Co-operation, etc. I think the question is of some practical importance, but I agree with our Chairman's remarks.

Mr. Flournoy (United States of America) :

I regret that we are obliged to propose so many changes in these Bases which have been prepared with so much care and intelligence. In the present case, we propose a change in the second paragraph, not because we have any objection to it in principle, but because it appears to be in conflict with a provision of the Constitution of the United States of America — namely, the provision that all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States. We have no discretion in this matter, because we are bound by the constitutional provision.

Consuls have no diplomatic immunity except where it may be granted by treaty, and that rule is also applicable to other officials not having diplomatic privileges. Therefore, under our Constitution, children born of consuls and other officials not having diplomatic immunity are born citizens of the United States. There may be various ways of meeting this difficulty, but we have proposed an amendment, that is to say, a paragraph to take the place of the second paragraph of Basis No. 10. It reads as follows :

> " A State which confers nationality at birth *(jure soli)* upon children born in its territory should provide by legislation that, when a child is born in its territory of parents who are officials of a foreign State but who do not enjoy diplomatic immunity, the parents may renounce the nationality of such State on behalf of the child during the minority of the latter. "

M. Rundstein (Poland) :

Translation : I regret that I cannot accept the Portuguese delegation's proposal as far as the League of Nations is concerned. Questions connected with the immunity conferred on officials of the League of Nations and the

juridical consequences of these immunities can be settled on a better and more practical basis by an agreement between the League of Nations itself and the Governments directly or indirectly concerned.

Mr. Dowson (Great Britain) :

As representing a State which possesses the *jus soli*, I feel that this matter concerns my Government somewhat closely. I desire accordingly to say a few words in regard to it, and in regard to the amendment which has been proposed by the delegation of the United States of America.

Under our existing law, the children of diplomatic persons are excluded from the *jus soli* on the theory that they owe no allegiance, so long as their parents are in the position of enjoying diplomatic privileges, and we naturally accept the first paragraph of this Basis.

With regard, however, to the second paragraph, somewhat different considerations arise. First, let me say a word about the consuls by profession. The acceptance of the first part of the second paragraph would involve an alteration of British law, and I have to consider whether we are prepared to accept that. The real considerations which underlie this proposal seem to me to be these. A *consul de carrière* is sent by his Government to reside temporarily in a State to which he is appointed; he receives an exequatur and he occupies an official position in a very special sense. He does not enjoy diplomatic immunity, but his position is such that it seems right, in principle, that his children should not be required to assume the nationality of the country where they are born, and there seems to be every justification for applying this principle in this case.

Such consuls owe no allegiance in any general sense to the country to which they are appointed and, moreover, their connection is of a purely temporary kind. Therefore, on behalf of my Government, I am quite prepared to accept the first part of the second paragraph, and exclude the application of the *jus soli*, in their case, though, as I say, it will involve the amendment of British law.

As regards the children of officials, somewhat different considerations apply. We feel that there are some difficulties, and that this is a subject which ought to be very carefully considered. The officials to whom this Basis refers are not in any way defined. It will be difficult to find a formula which will define them in such a way as to lead to a certainty ; indeed, I am afraid any certainty in the matter is quite beyond the range of possibility.

Even assuming, however, that a satisfactory formula can be found for indicating who these officials are, certain other difficulties arise in regard to the administration of the laws with which I am concerned. Birth on the territory confers the nationality of the State. A birth certificate is proof in every case of the possession of that nationality in the absence of facts showing that the person concerned has lost it. The only exceptions hitherto have been cases where the father has enjoyed diplomatic status.

We feel that very considerable practical difficulty may arise if an undetermined, unascertained body of officials is put in the same position as persons enjoying diplomatic status. There is no criterion or rule by which they can be ascertained, and, consequently, we feel that the value of the birth certificate, as evidence of nationality for general purposes, will be rather depreciated. That is a practical objection which appeals to my Government, perhaps, more than it may appeal to members of this Committee ; but it is a matter which has engaged its consideration, and causes it some anxiety.

Then, with regard to the proposal by the delegation of the United States of America. Assuming for a moment that the Committee is, in principle, in favour of extending this principle to the case of the children born of officials, where is the hardship if the child who has acquired dual nationality as the result of birth in the territory of a foreign father can, on attaining the age of twenty-one, make what we call a declaration of alienage ? Any difficulty, therefore, in regard to his possessing dual nationality, can, after attaining the age of twenty-one, be removed by his taking the action which our law enables him to take.

The proposal made by the United States delegation more or less adopts that principle, but applies it to the case of a declaration made during minority : " the parents may renounce the nationality of such State on behalf of the child during the minority of the latter ". This proposal, if we adopt it, would also involve an alteration in our law. Moreover, if the Committee is in favour of the amendment, I should suggest the addition of the words : " or the child may on attaining twenty-one renounce that nationality ", at the end of the proposal of the delegation of the United States.

I am, therefore, unable to support the second paragraph of this Basis, and I should be glad to listen to the further views expressed by members of this Committee before deciding what line it is possible for me to take. I hope, therefore, that there will be some further discussion as to the merits of this proposal and its real importance.

I am not sure that it is really important to deal with the position of persons who are sent to foreign countries on official missions, that is to say, to prevent the acquisition of dual nationality in those cases. So far as I am aware, no serious inconvenience has resulted from the operation of the *jus soli* in these cases, and I at present feel that there is not sufficient justification for the Committee to support the proposal.

M. Merz (Switzerland) :

Translation : I thank the Polish delegation for its observation concerning the position of officials of the League of Nations and, I might add, the staff of other international institutions such as the Bank of International

Settlements. We should much prefer that there should be no international rule concerning the nationality of the children of these officials.

Officials who enjoy diplomatic immunity are covered by the first paragraph of this Basis; as regards the others, no international rule should be laid down concerning the nationality of their children : it is preferable to rely on special agreements. For these reasons I think we should not — and hope we will not — delete, in the second paragraph, the words : " in the name of ". Officials of the League of Nations do not act on behalf of any foreign Government. If we adopted the wording of the Portuguese delegation, we should have to omit the expression " or by the League of Nations ", as the Polish delegate has already proposed.

The Chairman :

Translation . I will now summarise the situation with regard to paragraph 2 of Basis No. 10, as it appears to me after our very interesting discussion.

Certain hypotheses have been put forward by the speakers. They concern persons who are entrusted with an official mission, but do in fact enjoy diplomatic immunity. This is the case with officials of the League of Nations, accredited representatives of countries to the League of Nations and the various international commissions organised by the League of Nations. The same applies to all commissions of enquiry which Governments may establish outside the orbit of the League.

Obviously, in virtue, not only of tradition, but also of existing texts, in all these cases, the persons thus employed enjoy diplomatic privileges and immunities. Under these circumstances, we might disregard such cases, because they are covered by the first sentence of the first paragraph of our Basis of Discussion. In our report we will explain that this is how to understand the phrase : " persons enjoying diplomatic immunities in the country where the birth occurs ". If this is so, is sub-paragraph 2 of paragraph 2 really necessary ?

We have still to consider — and this appears to be the case from the various speeches — whether this second paragraph itself is really necessary.

The second point is the question of the children of consuls who are mentioned in sub-paragraph 1 of paragraph 2. Here we have two systems : (1) that suggested in the Basis of Discussion, which extends to the children of consuls the concept applied in paragraph 1 to the children of diplomats ; (2) the proposal made by the delegation of the United States of America to the effect that we should regard the law of the place of birth as applying in principle, but that the child concerned should have the right to repudiate, if necessary, the nationality so acquired.

It is rather late now to take a decision and I therefore propose that we should refer the matter in its present state to the Drafting Committee. I would also request the United States delegate to assist the Bureau and Drafting Committee ; together, they might endeavour to find a formula which would harmonise these two systems.

The Drafting Committee will also have to consider whether, according to the explanations I have given, all the cases at present provided for in sub-paragraph 2 of the second paragraph are indeed covered by the first sentence of the first paragraph, so that the Drafting Committee may give us its opinion, first, as to whether sub-paragraph 2 should be retained or omitted and, secondly, as regards the wording — in the form of a compromise, if necessary — which could be adopted for sub-paragraph 1.

M. Diena (Italy) :

Translation : I understand that the Drafting Committee, when drafting the texts which it will submit to us, will take into account the circumstances set out in the Minutes as regards the omission of the words " will be entitled to claim ". Is that so ?

The Chairman :

Translation : The Drafting Committee will merely be called upon to deal with paragraph 2 in the manner I indicated just now. If there is no objection, I take it that the Committee accepts this proposal.

The proposal was adopted.

31. QUESTION OF HEARING REPRESENTATIVES OF CERTAIN WOMEN'S ORGANISATIONS.

The Chairman :

Translation : A number of women's organisations now represented at The Hague have requested : (1) that the discussions of the question of nationality of married women should be held in public; (2) that these bodies should be represented on our Committee by an observer ; (3) that the Committee agree at any rate to hear the statement of a representative of these bodies who will explain their views.

The Committee decided to hear the statement of a representative of the women's organisations, after the delegates of Brazil, the Irish Free State, Roumania, Greece, Chile, Germany, Belgium, Austria, China, Czechoslovakia and France had spoken in favour of this course.

Mr. Flournoy (United States of America) :

I would suggest that one meeting be set aside for this hearing, and that the time to be allotted to each be agreed upon between the representatives of the various organisations. I do not know how many of them there are,

but perhaps one would like to speak longer than others.

The Chairman :

Translation : If there is no objection, I propose we devote half an hour to each of the two statements of these ladies, and that we should give them a hearing on Monday morning at 10 a.m.

These proposals were adopted.

The meeting rose at 12.55 p.m.

TWELFTH MEETING

Saturday, March 29th, 1930, at 10 a.m.

Chairman : M. POLITIS.

32. PROGRESS OF THE WORK.

The Chairman :

Translation : Before proceeding with our agenda, I think I should inform you of the decisions reached yesterday by the Bureau of the Conference. Together with the Chairmen and Rapporteurs of the three Committees, the Bureau examined the progress of our work. It contemplates closing the Conference on Saturday, April 12th, at the latest. In these circumstances the last three days — *i.e.*, April 10th, 11th and 12th — will be taken up with the plenary meeting of the Conference. If these plenary meetings are to accomplish anything, the work of the various Committees must be terminated on Tuesday, April 8th, in order that, on April 9th, the resolutions and reports of the Committees may be printed and distributed.

We have, as you are aware, to examine certain questions of secondary importance : that will be our first task to-day. But we have also to consider three very important groups : the Bases on the Nationality of Women (Nos. 16 to 19) ; and Bases Nos. 11 to 14, which were referred yesterday to the Drafting Committee in order that the latter might examine the various amendments. Finally, we have a third group of questions consisting of Bases Nos. 20, 20*bis*, and, 21.

If we are to get through the whole of this programme, we cannot devote more than two meetings to the question of married women, or more than one meeting to Basis Nos. 11 to 14. That will leave one last meeting for all the rest.

If you think that this programme is impossible, or if, in actual fact, it proves to be impossible, there will only be one conclusion to draw : we shall have failed. It was my duty to put these facts before you. I hope that everyone will make a great effort to ensure that all our work here shall not have been in vain.

Mr. Flournoy (United States of America) :

In view of the statement which the Chairman has just made, and owing to lack of time, I wish to move that the time for the hearing of the ladies representing various women's organisations be changed from Monday morning to Tuesday evening at 9 p.m. That will give us more time to devote to other subjects.

The Chairman :

Translation : Mr. Flournoy's proposal is the result of conversations he has had with the persons concerned. I had also heard of this suggestion. The ladies find that they cannot be ready on Monday, as some of them have not yet arrived at The Hague. They first of all asked that the audience might be adjourned. I told them that I thought it was impossible to adjourn the meeting for long, because we were pressed for time and could not alter the order of our work.

The ladies also ask that their time should not be calculated on so strict a basis as was suggested yesterday ; they would like to be allowed the possibility of speaking for an hour instead of half an hour. The suggestion, which Mr. Flournoy has now voiced in this Committee, was then made that, in order to harmonise all the interests concerned — in the first place to spare the Committee's time, and as an expression of courtesy — that an extraordinary meeting should be held on Tuesday evening.

If this procedure is adopted, we should postpone, until after that meeting, any decision on the Bases of Discussion referring to the nationality of married women.

The Chairman's proposals and that of Mr. Flournoy were adopted.

33. ATTRIBUTION IN CERTAIN CIRCUMSTANCES OF THE NATIONALITY OF THE COUNTRY OF BIRTH : BASIS OF DISCUSSION No. 10 (continuation).

The Chairman :

Translation : We will first decide the question left over from yesterday. I refer to paragraph 2

of Basis No. 10, which was submitted to the Drafting Committee in order that the latter might discover a compromise. The Drafting Committee unanimously proposes the following wording in place of this paragraph :

"The laws of the different States shall contain provisions enabling children born in their territories, either of consuls by profession or of officials of foreign States, who are on official missions from the Governments of those States, to be released from allegiance to the State in which they are born, by repudiation or in any other manner."

I hope that the Committee will be able, like the Drafting Committee, to accept this text unanimously without discussion.

M. da Matta (Portugal) :

Translation : I think it would be preferable to insert, instead of the word "officials" in the text proposed by the Drafting Committee, the formula employed in the Basis : "persons". It is the mission with which the person is entrusted that justifies the provision in this Basis. Why should not the provision apply to persons who, although they are not State officials, happen for the time being to be engaged on an official mission ?

The Chairman :

Translation : I believe that the Drafting Committee employed the word "officials" so that the provision might not apply to traders sent on a mission or to represent their country. If the word "officials" seems to be too precise, we might substitute another term, such as "representatives of States charged with official missions by their Governments . . .".

M. de Berczelly (Hungary) :

Translation : Hitherto, in our draft Convention, we have endeavoured either to create rules which would become binding as a result of the acceptance of the Convention or else to formulate recommendations. In this Basis of Discussion No. 10, paragraph 2, the Drafting Committee proposes to say : "The laws of the different States shall contain . . ." Unless I am mistaken, this means that States which accept this Convention will be obliged, if necessary, to alter their laws — that is to say, they will bind themselves to embody therein the provisions contained in this paragraph.

It would perhaps be clearer to say that the States which accept this Convention undertake to bring their laws into line with this provision, if necessary, within a certain time after their acceptance, because at the time the Convention is accepted, certain laws will not perhaps already include this rule. That is, I think, a slight drawback to the present text.

The Chairman :

Translation : I think I can reply to the Hungarian delegate that the question he raises in connection with Basis No. 10 might also arise in the case of other texts, for, whenever the Convention in preparation involves an alteration in the law, the time-limit ought to be stated. This might be laid down in a special article.

The Bureau of the Conference decided yesterday to entrust to the Central Drafting Committee the preparation of the texts for the general and formal clauses to be inserted in our Convention. These texts will be submitted to each Committee for consideration. That will be the time, therefore, to examine, not only in connection with this Basis, but in connection with all the other Bases in which this problem arises, the point so aptly referred to by the Hungarian delegate.

M. Alvarez (Chile) :

Translation : Would it not be better to say "*peuvent* (may)" instead of "*doivent* (shall)" ? The obligation for States would not then be absolutely imperative. The Conference cannot impose an obligation on States.

The Chairman :

Translation : May I remind M. Alvarez that international Conventions do contain a certain number of obligations ? I have already said that, whatever we may wish, we cannot go very far in this direction ; but we cannot omit the obligation from a text of this kind. If we substituted the word "may", the rule would become meaningless. If we wished to avoid all obligation, we should have to change the whole text ; we should no longer have an article of the Convention but a mere recommendation beginning : "It would be desirable that . . ."

Does M. Alvarez wish this text to become a recommendation ? If so, he can make a proposal to this effect.

M. Alvarez (Chile) :

Translation : I do not wish to prolong the discussion, but I would prefer to see this provision set out in the form of a recommendation.

M. Malmar (Sweden) :

Translation : I think we should make separate provision in this text for the case in which the child of an official to whom this rule applies has lost his father's nationality. The case, of course, is a very rare one. I do not propose that we should alter the text, but it might perhaps be useful to hear the Drafting Committee state that this case is not covered by the proposal.

M. de Navailles (France) :

Translation : The case quoted is one of a child born in the circumstances defined in the text. It possesses therefore the nationality of the country in which it is born, until it asks to be allowed to divest itself of it. The suggestion is that, later on, this child, for some reason or other, loses its father's nationality.

I quite see how the case might arise, but do not see what disadvantage there could be in making this provision apply to it. We have been told: "It is not desirable to allow a child, born in the territory in which his father is exercising consular duties, to divest himself of the nationality of that country if he has, in the meantime, lost the nationality of his father."

In the first place, the case would be an exceptional one. But what disadvantage could there be in allowing this child to repudiate the nationality of the country in which he was born? Personally I cannot foresee many disadvantages. If there are any serious ones, we will see how the matter can be remedied. But I ask my colleagues whether it would not be better to maintain the text in as general a form as possible.

The Chairman:

Translation: I think I should add, to complete M. de Navailles' observations, that the child is merely allowed an option. If, in the meantime, the child has lost his father's nationality of origin, it is hardly likely that, having no other nationality, he would wish also to repudiate the nationality of the country in which he was born. He will surely not voluntarily render himself stateless. I do not think the case is at all likely to occur in practice.

M. Buero (Uruguay):

Translation: I will explain in a few words why I do not agree with this Basis of Discussion. I do not think this text makes any great difference to the law of countries which apply the *jus sanguinis* in the matter of nationality. It does, however, involve an important exception in the cases of countries which, like most American countries, follow the *jus soli*. I think that the exception laid down in the first part of Basis No. 10 is in keeping with international usage. To a certain extent, exterritoriality is also enjoyed by children of foreign diplomats. But I think it would be going too far to extend this exception to officials of foreign States. I am therefore unable to accept this text.

As regards officials of the League of Nations . . .

The Chairman:

Translation: We dealt with that case yesterday.

M. Buero (Uruguay):

Translation: Yesterday we took it that they were all covered by the first part. But I think there is a slight mistake. In the Staff Regulations of the officials of the League of Nations, it is laid down that some shall enjoy exterritoriality and diplomatic immunity, but others not. Basis No. 10 covers the case of officials who enjoy diplomatic immunity. But no provision is made for the other officials. I could not agree that this exception should be extended to include officials who do not enjoy diplomatic immunity. Commercial firms may send representatives abroad; these representatives will be in the same situation. Their personal wishes have nothing to do with the fact that they are residing abroad. In these circumstances, I shall vote against the second part of this Basis.

The Chairman:

Translation: In spite of my desire to avoid prolonging the discussion, I cannot pass over one matter which might, in the Minutes, lead to a misunderstanding. It is quite true that certain members of the Secretariat enjoy diplomatic immunity, while others do not. But the question of the ultimate nationality of their children is of interest only to Switzerland. When they are away from the seat of the Secretariat in a private capacity, the question does not arise. But if they are absent on a mission on behalf of the League, they are covered by diplomatic immunity.

M. Kosters (Netherlands):

Translation: May I revert to the question I raised yesterday? For the interpretation of this Basis I think it is important to settle the following point: Does the Committee take for its starting-point the idea that there exists a rule of customary international law in connection with the courts of arbitration and commissions of enquiry to which we referred yesterday? I have always had doubts on this point. The 1907 Hague Convention for the Pacific Settlement of International Disputes contains no rule on this subject. I should therefore like to know whether that has been taken as a basic principle for this text.

The Chairman:

Translation: I replied to M. Kosters yesterday on this question. The only new point in M. Kosters' remarks is that he doubts whether the law really stands as I indicated yesterday. If there is some doubt, we cannot dispel it here. It will be dispelled either by practice (and I am quite sure that the tendency of case-law is in the direction I have suggested) or by Conventions on arbitration.

We might draw the attention of States to the desirability of inserting, in arbitration Conventions, a clause to the effect that the arbitrators shall enjoy diplomatic immunity.

M. Kosters (Netherlands):

Translation: It is precisely because there is some doubt, that I think we ought to specify quite definitely that certain commissions, courts or tribunals enjoy diplomatic immunity within the meaning of the Basis.

The Chairman:

Translation: I think it will be sufficient to state in the Committee's report on Basis No. 10, paragraph 1, the Committee's opinion that diplomatic immunity belongs to all

those who are charged with official missions, including, in particular, the members of Courts of Arbitration and International Commissions of Enquiry.

Mr. Dowson (Great Britain) :

I think it is of some importance to deal with the point raised by M. Kosters. It appears to me from the discussion we had last night in the Drafting Committee, that the question of diplomatic immunity, as such, does not really arise in connection with the facilities given by this second paragraph, as now drafted, for enabling the persons concerned to get rid of the nationality which they acquired by birth.

It does not appear to me that paragraph 2 is based upon diplomatic immunity. The first paragraph of the Basis clearly is; it deals with diplomatic persons who are, as a matter of law, entitled to diplomatic immunity. The paragraph under discussion merely extends certain facilities to a class which is not entitled to diplomatic immunities. I think it is important, therefore, that this distinction should be realised.

There is one further point, which is a matter of drafting. It has occurred to me, as the result of the discussion which has taken place this morning, that cases will arise where a person does not acquire the father's nationality at all at birth, as well as cases where he may have acquired that nationality and lost it. In those circumstances, it would, I think be desirable to add in the sentence which reads "the laws of the different States shall contain provisions enabling children", after the word "children", the words: "who acquired at birth two nationalities by reasons of the fact that they were born in their territories". In that way, the text would cover only the cases to which this paragraph is rightly directed, namely — persons of dual nationality, and it would enable such persons to get rid of the nationality they do not want.

M. Cohn (Denmark) :

Translation : I quite see the difference which exists between the first and second paragraphs. The first refers to persons enjoying exterritoriality whose children retain the nationality of their country, whereas the second refers to persons regarding whom there is some doubt, so that their children may possibly be deprived of any nationality owing to the fact that they are born in a country other than their own.

Consequently, I propose that we add at the end of the second paragraph the words: "provided that they retain the nationality of their country". The same question arises in the case of persons referred to in the first and second paragraphs; but, as regards the second category, we should also mention the case in which they retain the nationality of their country.

The Chairman :

Translation : "The nationality of their country" would not be sufficiently clear; we should have to say "the nationality of the country of their parents".

M. Cohn (Denmark) :

Translation : I agree.

M. de Berczelly (Hungary) :

Translation : I approve the Netherlands delegate's proposal concerning the children of persons who happen to be in a foreign country as members of a mixed tribunal or of a commission, and are not covered by paragraph 2 of Basis No. 10. I should hesitate to state in the report that such persons enjoy diplomatic prerogatives and exterritoriality, because we are not here dealing with rights in the matter of exterritoriality.

To meet M. Kosters' wishes, I propose that paragraph 2 should be referred to the Drafting Committee, so that the latter may supplement it with the statement that it applies, not only to children of *consuls de carrière* and State officials on an official mission abroad, but also to officials or persons who are members of an international commission and do not enjoy either diplomatic privileges or exterritoriality.

The Chairman :

Translation : I am sorry the Hungarian delegate did not hear the proposal I made just now, which meets M. Kosters' objections. I proposed that in the report on paragraph 1 of Basis No. 10, we should say that the Committee held that the reference to diplomatic immunities should be taken to apply to members of Courts of Arbitration and of International Commissions of Enquiry. M. Kosters said that that would satisfy him.

M. de Berczelly (Hungary) :

Translation : I heard your proposal, Sir. Nevertheless I consider it rather dangerous to extend the notion of persons enjoying exterritorial privileges and prerogatives. We are not defining the rules of exterritoriality. We are simply stating that paragraph 1 of Basis No. 10 applies to persons who enjoy exterritoriality, while the others are covered by paragraph 2 of the same Basis.

The Chairman :

Translation : I do not see what danger that can involve. We are not laying down rules for the question of full diplomatic immunities; we are stating that, from a special point of view, the children of a Hungarian judge, for instance, sitting in Paris, do not become French but remain Hungarian. That was the sort of case I had in mind.

M. de Berczelly (Hungary) :

Translation : I quite agree, Sir, but I think that this question ought to be settled in paragraph 2 of the Basis and that we should not say that these persons have a right of exterritoriality or are assimilated, from this point of view, to persons who do enjoy such a right.

The Chairman :

Translation : The Committee will decide that point presently.

M. Hering (Germany) :

Translation : I should like to make a suggestion with regard to the final text. We should choose a text expressing, more clearly than this does, the concept that the signatory States will be absolutely bound to bring their laws into line with this Basis. It is not enough to lay before the legislative power a draft law which that power may reject.

The Chairman :

Translation : This remark comes within the domain of the ideas that have just been expressed. I said that there should be a general clause in the Conventions stipulating the attitude which the contracting States must observe, from a legislative point of view, in order to harmonise their national law with the clauses of this Convention. It is useless to discuss this question now. The Central Drafting Committee will propose the text, and we shall be able then to express our views.

M. de Navailles (France) :

Translation : At times the Committee seems to be afraid to put anything into its texts, and at times it seems to aim at perfection and fear lest anything be omitted. I personally am quite prepared to steer a middle course. We cannot provide for all possible contingencies; no law can do that.

A number of objections have been raised. It has been said for instance : " This text is rather too general, because it states that the various laws should contain a provision in the sense indicated. That, however, is quite inapplicable in the case of countries whose law is based solely on the *jus sanguinis.* " Obviously. But as the difficulty could not arise in these countries, the latter will not need to introduce into their laws the provision laid down in the second paragraph of Basis No. 10.

It has also been said : " You are going too far, we think, in seeking to dissociate from the nationality of the country of origin the children of consuls and officials engaged on a mission abroad. " The proposal is such a normal one that I really cannot see on what grounds anyone could object to it. A consul is sent abroad by his Government : his duties oblige him to reside in a foreign country. How could it, in such exceptional circumstances, possibly be argued that the children should not retain their father's nationality ?

Let us go farther : let us even admit such a restriction. Countries which do not wish the children of a French consul, for instance, living in their country, to remain French, are allowed, according to our text, to refuse to release these children from their allegiance. We do not say here, as in paragraph one, which refers to diplomatic agents, that the children are released as of right from the nationality of the country in which they are born. We simply say that the various laws shall contain a provision allowing Governments to release from their allegiance children born in these circumstances. Consequently, if a country does not wish to accord permission, it will not accord permission. That is all. What do you find excessive in such a text ?

Mr. Lansdown (South Africa) :

I would only say one word. As regards the children of delegates attending international enquiries and conferences, I think the good sense of the wives of those representatives would always prevent the situation arising. In other words, I hope and belive that, in the circumstances, they would kindly stay at home.

M. Alvarez (Chile) :

Translation : The German delegation's proposal makes me come back to my own original proposal. When I submitted it, I was doubtless too concise, with the result that I was not properly understood. The meaning of my observations was as follows.

Countries, like the Latin-American countries, which base their nationality law on the *jus soli*, may be divided into two groups : some apply the *jus soli* absolutely, without any exception apart from diplomatic agents; consequently, the children of consular agents acquire the nationality of the country by operation of the *jus soli*. Other countries (like Chile) admit the principle of the *jus soli*, but allow a greater number of exceptions, for instance, the sons of foreigners who happen to be in Chile in the service of their Government. Thus, not only the sons of diplomatic agents but also those of consular agents may be excluded from the operation of the *jus soli*.

If, in these circumstances, you establish the rule that the laws of the various countries shall contain certain provisions, etc., those countries whose laws allow of no exception cannot admit the rule. We ought therefore to say " may " in order to satisfy States which admit the *jus soli*, but do not admit that the children of consuls should be entitled to opt in favour of the nationality of their country of origin.

The Chairman :

Translation : I have three comments to make on M. Alvarez' speech. The first is that, according to his own words, Chilian law is already in accordance with this rule, since it exempts the children of consuls from local nationality. The second is that, if we put " may " instead of " shall ", the provision will become absolutely meaningless, and we had better omit it altogether.

We have said at the very beginning of this Convention that all States retain their entire freedom to legislate in the matter of nationality. There is no need to repeat that here.

My third comment is the most important one. I have already drawn attention to this fact, but must do so again. If every delegation

absolutely insists on establishing a Convention which will not contravene its laws in any way at all, it is obviously futile for us to continue our discussion. We are met here to consider the extent to which we can, by mutual concessions, arrive at an international agreement. If every country insists on keeping its own laws intact, the best thing would be to sign a declaration to the effect that we cannot agree — and go home.

M. Alvarez (Chile) :

Translation : My observation was merely intended to give satisfaction to countries which apply the *ius soli* principle absolutely.

The Chairman :

Translation : If those countries wish to make no change, they need not sign the Convention ; that is all.

M. Alvarez (Chile) :

Translation : As my own country is not affected, I will not press the point.

The Chairman :

Translation : In that case, I think it is time we took a decision. Three amendments have been proposed. The first, proposed by the British delegation and supported by the Danish delegation, is that we should add after the words " to children " the words " who acquired at birth two nationalities by reason of the fact that they were born in their territory . . .". The second amendment, that of the Portuguese delegation, proposes the word " representatives " instead of " officials ". The third amendment, submitted by the Danish delegation, is to add, at the end of the Basis, the words " provided they retain the nationality of the country of their parents ".

I shall submit each of these amendments to the Committee, and then submit the whole text.

The first amendment was adopted.

The second amendment was not adopted.

The third amendment was adopted.

M. Nagaoka (Japan) :

Translation : I think that the British and Danish amendments overlap. If we accept the British amendment, it is needless to add " provided they retain the nationality of the country of their parents ".

The Chairman :

Translation : You have doubtless overlooked the fact that the Swedish delegation mentioned the case of a father having lost his nationality, in the meantime, thus causing the child to lose its nationality, so that the child, when the time came for him to opt, would only possess the nationality of the country of birth.

I put the whole text to the vote.

The whole text was adopted unanimously.

The Chairman :

Translation : Two points have still to be settled. The first is, does the Committee intend this text to be an article of the Convention, or a recommendation ?

The Committee unanimously decided to adopt this text as an article of the Convention.

The Chairman :

Translation : The second point is : Does the Committee think that, as regards the children of arbitrators and members of international commissions of arbitration, it will be sufficient to mention in the report, in the commentary on paragraph 1 of Basis No. 10, the meaning which the Committee attaches to the words : " diplomatic immunity " in this special case ? Or would it prefer to add something in the second paragraph, as the Hungarian delegate proposed just now ?

The Committee decided to mention this point in the report.

34. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 15 (continuation).

The Chairman :

Translation : You have before you the text of the Danish amendment (Annex II) and a similar amendment submitted by the Belgian and Greek delegations (Annex II). I open the discussion on those amendments.

M. Alvarez (Chile) :

Translation : The Chilian delegation accepts the Danish amendment, which it regards as very fair and quite in keeping with the general spirit of our Convention.

M. Nagaoka (Japan) :

Translation : The Japanese delegation does not deny that the question of military service is one of the main difficulties arising under the conflict of nationality laws. As, however, this question directly affects the organisation of national armies, we do not see how it can be discussed by a Conference having as its mission the codification of international law.

As I pointed out at the beginning of our work, the Japanese Government is prepared to give most serious consideration, in the matter of nationality, to all the principles recognised by this Conference, but those principles must be such as are intended to avoid the conflict of nationality laws in the strictest sense of the term.

For these reasons, the Japanese delegation is of opinion that the best procedure would be to cause this question to be carefully studied beforehand by the countries directly concerned, and that the matter should be dealt with, if necessary, in bilateral Conventions.

This method has already been followed by France, which has concluded several Conventions on the subject with other countries. We think it would be premature to insert in a

general Convention an article on so complex and thorny a question as that of the conflict of laws in the domain of military service.

For these reasons, the Japanese delegation cannot accept either the Danish proposal or that submitted by the Belgian and Greek delegations.

Mr. Flournoy (United States of America) :

Our delegation is in favour of the adoption of this proposal, although, perhaps, before its final adoption it would be desirable to make some drafting amendments in order to make it clear that the text relates to persons who acquire double nationality from the fact that they are born in one country of parents having the nationality of another.

With reference to the remarks just made, I may say that it seems to me that our subject, nationality, is a rather broad one, and includes the important incidents of nationality as well as the mere question whether a person is a national of one country or another.

This proposed rule, if adopted, would accomplish something definite and practical, and would not be like some of the rules regarding which it was remarked this morning — that they seem to have been adopted because they do not mean much. This text would have some meaning, and be of great practical use.

We support the proposal because we believe that human beings are something more than mere war material, that they have rights, needs and desires which should be considered, and that it is not reasonable that a person who has two nationalities imposed upon him as a result of conflicting laws should be torn between two countries. Some reasonable rule should be adopted to determine where his services are justly due, and we can think of no more reasonable rule than this, that his actual services, we might say his active allegiance, are due to the country in which he has established his home.

Cases constantly arise of persons born in the United States of America of parents having the nationality of other countries, who have definitely made up their minds to remain in the United States permanently, who have never left the country and have no intention of leaving it permanently, and who are yet called upon to cross the water to some far-distant land and perform military service there. They are confronted with the dilemma that they either have to obey the summons, sometimes at very great inconvenience to themselves and their families, or else refuse and thereby violate the law of the other country, which makes it impossible thereafter to enter that country temporarily, to visit relatives or to attend to some matter of business. By doing so, they are liable to be arrested and held for military service, or else punished for failing to obey the summons.

This proposal does not at all mean that the bonds of allegiance should be loosened. It does not mean that a man is free simply to cast off all his obligations to the State. Nationality is a dual relation. The rights are not all with the individual. On the other hand, the rights are not all with the State, and this merely means that as between two States, whose national a man is, a rule is laid down, a reasonable rule, to determine where his active allegiance is due.

For these reasons, we strongly support this proposal.

Nousret Bey (Turkey) :

Translation : The Turkish delegation desires to reiterate the reservations it formulated at our meeting last Wednesday. It feels that questions of military service cannot be settled in a general Convention ; they should be dealt with in special Conventions like the Bancroft Treaties and the Convention concluded between France and Belgium.

Laws concerning military service are really a matter of public policy. It is inadmissible that a person should be able to avoid military service on the plea that he has acquired foreign nationality contrary to the laws of the country of which he is still a national.

It is to be hoped that the Committee, which has hitherto endeavoured to harmonise these various points of view, will adopt a compromise with regard to this clause, and thus avoid creating a difficult situation for countries which admit the principle of compulsory military service.

Mr. Dowson (Great Britain) :

In my view this is a matter of considerable importance which it is well within the competence of this Conference to consider.

In supporting the Danish amendment, which I do most warmly, I should like to draw attention also to another case which I think it would be well to consider — namely, the unfortunate position of the person of dual nationality who, during his minority, becomes liable to military service in one or other of the States of which he is a national. The hardship in that case certainly arises when he can, under the law of the State in which he is ordered to perform military service, repudiate the nationality of that State when he attains his majority. That, in the experience of my Government, has been a very frequent source of hardship to the individual. It appears really to be a question of humanity and fairness.

In those cases where such a provision does exist under the law and a man is called upon to perform military service, say at the age of 18, while, at the age of 21 he can decline or repudiate the nationality of the State in question, it seems obviously undesirable, as a matter of common fairness, that he should be required, under those circusmtances, to carry out the military service during the years of his minority. My Government would like to see a general agreement reached at this Conference more or less to the effect that no military

service will be enforced upon any person who is still a minor and who would be entitled when he came of age to divest himself of the nationality of the State concerned.

There is also one further point which might be considered, and that is, that no compulsory military service will be enforced upon any person of a dual nationality whilst he is in the service of one of the countries whose nationality he possesses. I should be very glad if there could be a full discussion on this question, because, as I say, it seems to be a matter of great importance. I am very glad to have an opportunity of supporting the amendment proposed by the Danish delegation.

M. de Navailles (France) :

Translation : In principle, the French delegation shares the view of the Japanese delegation. In our opinion, military service questions do not normally come within the scope of a Convention on Nationality. Military service is a consequence of nationality, and when nationality questions are settled by a Convention, such consequences can logically be deduced from it.

Nevertheless, the French delegation is by no means opposed to the Danish amendment. The French delegation proposed an amendment to Basis No. 15, upon which a vote has been taken and which has now been adopted. It withdrew that amendment in order to avoid complicating a discussion which was already very difficult. I should like, however, to read you the French amendment again. You will remember that the object of that Basis was to enable persons having two nationalities to be divested of one by means of an authorisation. The French delegation, going further than the Committee of Experts, proposed the following wording :

> " The authorisation may not be refused if the person has his habitual residence in the country whose nationality he wishes to keep and actually uses. "

Thus we agreed that a Frenchman who was also an Italian, for example, and was habitually resident in Italy, should be compulsorily released from his French nationality.

The Danish proposal is based on the same idea. It does not require such a person to be divested of French nationality. In the case to which I have just referred, it requires him to be exempted from military obligations in France.

Since we have accepted the greater, we can now accept the less. At the same time we regard the choice of military service as implying that the individual is actually using one of the two nationalities, and we should release him from French allegiance. In the example I quoted just now, the person in question, being both French and Italian and performing military service in Italy, thereby shows that he intends to attach himself to Italy rather than to France. Normally, therefore, he would lose his French nationality.

The French delegation for its part sees no objection to the adoption of the Danish amendment.

I think the Greek delegation has also put forward a proposal with reference to questions of military service. I propose to speak on that question also.

M. Caloyanni (Greece) :

Translation : You already have before you a proposal submitted by the Greek delegation to the effect that :

> " A person of double nationality may, for the purpose of military service, choose in what army he shall serve. "

These cases are obviously of extreme importance. I will take an example : A Greek proceeds to France, and a child is born. According to French law, the child is French in virtue of the *jus soli ;* but he remains Greek, because Greek law applies the *jus sanguinis.*

We have to consider the consequences of double nationality from the child's point of view. A person proceeds abroad, leaving behind him his family and interests. He might perform his military service in France, but then, if he returned to his country, he would suffer most serious consequences.

This is not a question of nationality, but a question of justice and humanity. This Conference has been convened not only to codify law, but also to apply the principles of justice and equity.

We observed the other day that there was some opposition to our proposal. We now put forward another proposal. We should like agreement to be reached at any rate in so far as principles are concerned — principles which are at present desiderata, but which may later become realities. Our new text is as follows :

> " A person of double nationality may, under conditions which would be defined in bilateral Conventions between the countries concerned, choose in what army he will carry out his military service. "

Thus, this new proposal of the Greek delegation does not involve any change unless States are willing to conclude bilateral Conventions. We have intentionally employed the conditional tense " would be ".

I think that a common basis can be found for the Danish and Greek proposals. We hope that our proposal, in view of its underlying principle of justice and humanity, will be favourably received by the Committee.

M. Giannini (Italy) :

Translation : I should like to draw the Committee's attention to the cases quoted in which reference has been made to Italy. Each of these cases should be examined from the opposite standpoint also. M. de Navailles himself has quoted one very neat example.

In actual practice, however, it is always the Italian who performs his military service in France! It is never the other way about. In point of fact, Italy exports Italians; for us, therefore, the problem is one of the greatest importance.

First, there is the question of principle. Is it really necessary to insert any formula whatever on this subject in the Convention? I think not — and for two different reasons.

In the first place, the problem has already been dealt with in several bilateral treaties — establishment and nationality treaties. On examining these treaties, we perceive that the problem of military service is solved on practical lines. The principle therefore is not of great importance, and that for a very simple reason: whenever the problem is a a really serious one, it is regulated in a bilateral treaty; whenever it is not so regulated, it is because the matter is of little account!

I will now pass to a second aspect of the question. Though the matter can be settled in bilateral treaties, it is very difficult to lay down a universal rule. The problem, I mean, does not affect all countries in exactly the same manner. Suppose an agreement is reached with neighbouring States: what happens? In case of conflict, it may then happen that Italians who have become nationals of these neighbouring countries will be opposing Italians — an embarrassing situation, to say the least of it! If, however, a treaty is concluded with Peru or Nicaragua or some other American State, or with Japan, it is practically certain that Italians who have become Japanese nationals, for example, will never find themselves opposing Italians. Certain formulæ, which would be perfectly acceptable in the case of remote countries would not be so in the case of neighbouring countries. In other words, we have to take into account relativity and expediency — and I might almost say good neighbourly relations. It is therefore almost impossible to take a general view of the problem.

I now pass to a third point. Can all matters connected with nationality be included in a Convention? I think not. We are endeavouring in this Committee to solve certain fundamental problems touching on nationality, but not all problems which may arise in this connection. An entire session of the 1928 Conference on Private Law was devoted to the elucidation of rules regarding dual nationality. Certain very interesting aspects of the question were examined, such as the guardianship of minors and divorce: but only a limited number of points were settled.

Do you think it necessary to solve this problem here? Is it urgent? Surely not. Could it be settled by a rule based on expediency? No. Does it come entirely within the scope of the Convention? No.

If you wish to settle all problems connected with the main object of the Convention, you will have to remain at The Hague for a long time — for many months yet. Personally, I am entirely opposed to such a course. A number of delegations, however, regard the matter in a different light; and naturally they are quite entitled to do so.

I have no great faith in the persuasive power of anything we may say here. We have all received our instructions; for without explicit and careful instructions, we could hardly come to an agreement. We are all of us doing our best to harmonise, as far as possible, our systems of law.

I rely, not on my very limited powers of persuasion, but on the soundness of my arguments, to convince you that no such rule should be inserted in this Convention, seeing that it does not come within the general scheme of our work. By including such a rule, you would make agreement practically impossible. You would reduce the number of signatory States. Our action indeed would be quite opposed to the object for which we are met together.

We must make an initial effort to frame a first treaty establishing the rules of nationality. I must emphasise the point; this will be a first step. In course of time we shall perhaps be able to reach closer agreement. I desire, however, that we should take this step cautiously and in full sincerity. I wish to sign with a feeling of certainty that the agreement will ultimately be ratified, and I am against any member signing it unless he does so in this spirit. If we frame a Convention here which does not meet the requirements I have mentioned, I shall not sign it. I beg you to be very careful, and to adopt only such rules as can be unanimously accepted.

M. Merz (Switzerland):

Translation: This problem is of great importance, not only to States, but also, and above all, to individuals possessing double nationality, since its solution will indicate in what country they must perform their military service. We think it would be better for this question to be settled now. It is connected, at all events indirectly, with the questions with which we are dealing.

The Swiss delegation therefore supports the Danish amendment, for the reasons given by the delegations of the United States of America and Great Britain, subject to drafting changes, and reserving the right to mould the amendment in another form. We are specifically empowered to vote thus, because the principle laid down in this amendment is the one that the Swiss authorities actually follow. We therefore hope that the amendment will be adopted.

If, for reasons of form or of substance, the amendment is not adopted, we shall much regret that the discussion on this important point should have produced a purely negative result.

I note that my friend, M. Giannini, would be prepared to conclude special agreements on this subject with neighbouring countries. In my opinion, however, we must go much farther and, if the Danish amendment should be rejected, we have ventured to submit the recommendation which has been communicated

to you. We shall press this amendment if the discussion on the Danish amendment has a negative result, and I will also, if necessary, state the reasons for this proposal.

M. Nagaoka (Japan) :

Translation : I have asked to speak in order to expand my previous remarks.

Under the Japanese law on military service, Japanese residing abroad can only be exempted from their obligation to serve if, having resided abroad before they were twenty years of age, they have continued to reside there up to the age of thirty-seven. During the period between these two dates, Japanese nationals, even those who also possess another nationality, cannot avoid military service when they return to Japan.

At the same time, under Japanese nationality law, a Japanese who, by birth abroad, has acquired the nationality of the country in which he was born and resides there permanently, can divest himself of his Japanese nationality with the permission of the Minister of the Interior. This authorisation can be obtained even when the person is of an age for military service — that is to say, from seventeen years of age upwards.

Moreover, if the nationality of certain foreign countries specially designated in an Imperial Ordinance, such as the United States of America, Canada, Brazil or Chile, has been acquired by birth in the territory of one of those countries, the person concerned loses Japanese nationality as soon as he is born, unless the intention to maintain that nationality has been duly notified. In such cases, therefore, there would be no conflict of laws to avoid from the point of view of military service.

This freedom to renounce Japanese nationality clearly proves the sincerity of the Japanese Government's desire to avoid the disturbing consequences of the conflict of nationality laws in which the question of military service constitutes one of the main difficulties.

If the various Governments could accept this freedom to renounce nationality, there would be very few cases of conflict concerning military service ; this is very fortunately the case as regards the relations between Japan and the United States of America in this matter.

Nevertheless, for the reasons I explained just now, I cannot agree to adding to the Convention such a provision as that proposed by the Danish delegation.

Mr. Flournoy (United States of America) :

I have already spoken on this matter, but there are three points I would like to make.

With regard to the remarks of the delegate for Italy, I wish to say that we are not advocating a one-sided rule which would operate to the advantage of our country only. I mentioned cases of persons born in the United States and continuing to reside there ; we think it is very unreasonable that they should be called across the water to perform military or any other services.

On the other hand, cases constantly occur of persons who were born in our country, but who were taken in early childhood to the country of their parents. They clamour for American passports, sometimes to enable them to avoid service in the army of the foreign country in which they are residing and to which they also owe allegiance. We should have no objection whatever to a rule which would make it clear that those persons should perform military service in the other country to which they owe allegiance, if they are residing in that country.

Secondly, mention has been made of the possibility of settling these cases by means of bilateral Conventions. Perhaps, in some cases, the peculiar situation of some States may make it desirable for those States to conclude special agreements. This general agreement we are proposing would not, so far as I can see, prevent the conclusion of special agreements between States desiring to enter into them. In that connection, I call attention to the fact that the United States delegation has already proposed a very brief article reading as follows :

> " Nothing herein contained shall limit or affect any treaty or agreement now in force between or among any of the parties hereto."

We have also proposed a second article which reads :

> " Nothing herein contained shall derogate from the right of States to conclude agreements concerning nationality to govern cases in which those States are especially interested. "

I wish to call attention in the third place to the last paragraph of the proposal of the Danish delegation, which says : " This exemption may involve the loss of allegiance to the latter country. " I interpret that to mean that the country where the individual is not residing may withdraw its nationality from the individual if he chooses the nationality of the country where he is residing. That seems to me a very reasonable addition to the general rule laid down in the first paragraph.

M. Christitch (Yugoslavia) :

Translation : The Yugoslav delegation recognises the practical importance of the question raised by the Danish delegation. It nevertheless feels that this is not a question of nationality strictly speaking, but one of the consequences of nationality which should be regulated by bilateral treaties. As the aim of this Convention is not to regulate the consequences of nationality, but conflicts of nationality, the Yugoslav delegation is of opinion that the Danish amendment falls outside our terms of reference.

M. de Navailles (France) :

Translation : The French delegation's views are very similar to those of the Italian delegation

It does not, however, arrive at the same conclusions. I have explained to you why the French delegation was prepared to accept the Danish amendment. It is because this amendment constitutes one method of eliminating dual nationality.

The French delegation sees no objection to embodying the Greek delegation's proposal in the Convention, since under this amendment the ways and means of applying the principle will be left to bilateral treaties. Like Italy (I believe), the French Government has concluded Conventions with the Argentine, Peru and Uruguay to regulate questions of military service. France has even gone farther, since, in Article 99 of her recruitment law, she exempts from military service in France persons who have dual nationality and who were born on the other side of the Atlantic.

The French delegation, therefore, will not oppose the inclusion of this provision in the Convention, although its normal place is not there.

M. Hergel (Denmark) :

I just want to say that I have been in touch with a great number of delegates, and I am inclined to believe that a majority would be in favour of an article somewhat on the lines proposed in the Danish amendment. I therefore propose that we take advantage of the presence in this Committee of more than thirty delegations from different countries to ascertain how many could adopt the idea of solving this problem by means of a Convention signed by several delegations, rather than leave the matter, so far as they are concerned, to be settled by a great number of bilateral conventions. For this reason I should not be able to accept the Greek proposal, but I would like to uphold that made by the Danish delegation.

There is only one remark I would like to make in regard to the observation of the Turkish delegation. The Turkish delegate holds that, in principle, the individual is excluded from choosing between the countries, and from saying in which he wishes to do his military service. That is really the idea behind the Greek proposal, but it is not mine. In my view, it is not a question of a person being able to choose between two nationalities and having a preference for the one, which, perhaps, offers the easiest military service or no military service at all; it is his whole life, including his actual activities, which should decide which country can claim his military service. Consequently, I think that the Turkish delegate should be able to vote in favour of the Danish proposal, but not in favour of the Greek one.

The Chairman :

Translation : The discussion is now at an end. You have before you two proposals ; we must take a decision with regard to each.

The Danish amendment, which comes first, includes two paragraphs which I will put to the vote separately. The first is worded as follows :

> " A person who habitually resides in one of the two countries whose nationality he possesses, and who is in fact attached to the nationality of that country, will be exempt from military obligations in the other country. "

The first paragraph of the Danish amendment was adopted by twenty-one votes to thirteen.

The Chairman :

Translation : I now put to the vote the second paragraph of the Danish amendment, which runs as follows :

> " This exception may involve the loss of allegiance to the latter country. "

The second paragraph of the Danish amendment was adopted by nineteen votes to twelve.

The Chairman :

Translation : I put to the vote the Danish amendment as a whole.

The Danish amendment as a whole was adopted by twenty-one votes to twelve.

The Chairman :

Translation : I now put to the vote the Greco-Belgian amendment in the form in which it was submitted yesterday :

> " A person of double nationality may, under the conditions which would be laid down in bilateral Conventions between the countries concerned, choose in what army he will carry out his military service. "

The Greco-Belgian amendment was rejected by nineteen votes to eleven.

M. Diena (Italy) :

Translation : Now that these votes have been taken, the Italian delegation wishes to submit a proposal concerning a procedure which might give satisfaction to all the tendencies expressed in this Committee. It suggests that the Danish proposal (which is now the proposal of the Committee) should be formed into a special Protocol. Delegations, which are not prevented for other reasons, could sign the general Convention on Nationality even if they do not accept the provision which has just been voted. My suggestion would also possess the following advantage : delegations which are very anxious to have this provision adopted might sign the Protocol even if, for other reasons, they were not prepared to sign the general Convention.

The Chairman :

Translation : M. Diena's proposal fully accords with the views expressed when it was decided at Geneva that a first Codification Conference should be held. It also concords with the Conference's Rules of Procedure under which, in addition to a general

Convention, provision is made for a special Convention in which the signatory States may assume certain specific obligations.

The Italian proposal was supported by the Polish, Czechoslovak and Roumanian delegations.

Mr. Flournoy (United States of America):

I wish to raise a point of order. It seems to me that this is a very important point which has been brought up. Personally, I should prefer not to be obliged to vote on it until I have been able to consult my delegation. I think it is rather near the end of the meeting to vote on the proposal. We have not had time to consider it, and to-day I, personally, should find some difficulty in voting.

The Chairman:

Translation: That is a very reasonable suggestion. I would merely point out to the delegation of the United States of America that, when the Committee is confronted with the formal declaration of a delegation made on its responsibility to the effect that it will not sign a Convention containing a given clause, but at the same time indicates a way out, we cannot, I think disdain that solution.

M. Nagaoka (Japan):

Translation: I entirely agree with the Italian proposal.

M. de Navailles (France):

Translation: I support the Italian delegation's proposal, for it is very important that the Convention should allow the possibility of a choice with regard to certain provisions that might prevent a large number of countries from signing.

The Italian proposal was supported by the delegations for Yugoslavia, Turkey and the Netherlands.

The Chairman:

Translation: The proposal of the Italian delegation is supported by a large number of delegations. It is to the effect that the provision you have just adopted should be formed into a separate Convention or Protocol which might be signed by the delegations accepting it but which would still leave those who do not accept it free to sign the General Convention.

The Italian proposal was adopted by thirty-three votes.

The Committee rose at 12.45 p.m.

THIRTEENTH MEETING

Monday, March 31st, 1930, at 9.30 a.m.

Chairman: M. POLITIS.

35. NATIONALITY OF MARRIED WOMEN: BASES OF DISCUSSION Nos. 16 to 19.

The Chairman:

Translation: With regard to Bases Nos. 16 to 19, you have before you very voluminous documentation. You have also the work prepared by the Preparatory Committee, and amendments submitted by the following delegations: Austria, Belgium, Chile, Colombia, Denmark, Estonia, Germany, Italy, Netherlands, Roumania, United States of America and Yugoslavia (Annex II).

I would also draw your attention to the fact that the four Bases which have been grouped together under the heading "Nationality of Married Women" deal with four different situations.

Basis No. 16 concerns the question of nationality at the time of marriage; Bases Nos. 17 and 18 concern a change of nationality during marriage, the first referring to the law of the wife's country of origin and the second to the husband's new law. Finally, Basis No. 19 concerns the change in nationality occurring after the dissolution of marriage.

It would be preferable to discuss each of these questions separately. If, however, any delegation wishes to submit general observations or has any radical proposal to put forward, that shall be done when we examine Basis No. 16.

One last remark. A number of the amendments to these Bases are, I think, little more than questions of drafting. I would therefore request delegates to be good enough to discuss concepts and leave drafting questions to the Drafting Committee, which will submit a final text in due course.

M. Diena (Italy):

Translation: What exactly do you mean by a radical proposal?

The Chairman:

Translation: I mean a proposal which ignores detail and merely embodies a special recommendation.

M. Diena (Italy) :

Translation : Would you regard a proposal to omit one of these provisions as a radical proposal ?

The Chairman :

Translation : That would be a particular form of radical proposal.

Mr. Dowson (Great Britain) :

Will you forgive me if, on this very important matter, I commence with some rather general observations ? The particular proposals contained in Basis No. 16 and the other Bases on the subject of the national status of married women seem to me to represent a compromise between two extreme views. On the one hand, there is the view that the national status of the husband should, in all cases, govern that of the wife ; and, on the other, there is the view that there should be no distinction, based on sex or marriage, in the law and practice of States.

The nationality laws of certain States have gone a long way towards abolishing this distinction, but the laws of many other countries — I think I may say of most countries —at the present time provide that the nationality of a wife shall follow that of her husband ; there are certain minor exceptions in the laws of some States, but this is the broad principle which has been maintained for very many years in those countries.

The movement for the emancipation of women from the civil disabilities under which they used to be placed by the laws of different countries has continued apace in recent years, and I believe I am right in saying that, at the present time, there are comparatively few countries where any substantial traces of these disabilities still remain.

A wife has now the right to hold her own property ; in most countries she has been admitted to the franchise (although in some cases she has not complete equality with men on this point) ; she is entitled to belong to the learned professions, and to hold a number of offices. There is, in fact, at the present time, one woman member of the Cabinet in the United Kingdom, and several other women are members of the Ministry in the United Kingdom.

All this tends, in the view of my Government, to make it necessary to reconsider the attitude exemplified by the existing nationality laws with regard to the nationality of married women. If a woman is considered capable of holding the highest offices in the State, it seems to my Government to be unreasonable that she should, merely because she happens to marry a foreigner, involuntarily lose her nationality and thus become ineligible for these and other offices for which foreigners may be disqualified.

That is the position as matters stand at present, and such a position seems to my Government to be out of harmony with the ideas of the present day. I am, therefore, instructed to take this, the first opportunity, of stating, on behalf of my Government, that they are in favour of the principle that a British woman who marries an alien should not lose her nationality without her consent, and that, likewise, a foreign woman who marries a British subject, should not, by reason of her marriage, become a British subject without her consent.

In the British Government's view, a married woman should no longer be in the position of a person under a disability for the purposes of the Nationality Law, but she should be deemed competent to apply for, and be admitted to, British nationality in her own right. It is not so much a matter of sex equality as of ordinary justice and fair treatment as between husband and wife.

While, however, my Government holds these views, they recognise, none the less, that the question of their actual adoption by legislation must depend on the practically unanimous acceptance by other States of similar principles. Experience has shown that if some countries adopt this principle whilst others maintain the contrary view, serious practical inconveniences are bound to arise ; and since one of our main objects at this Conference is to find ways of avoiding, as far as possible, the occurrence of double nationality or statelessness, my Government feels that the partial adoption of this principle would be wrong since, in the absence of general international agreements, such action, so far from doing away with cases of double nationality or statelessness, would really greatly tend to increase them.

I do not think it is necessary for me to explain to the Committee why this result would follow. It is obvious that, if the law of one country causes a woman to lose her nationality, and the law of her husband's country does not confer its nationality upon her on marriage, she will become stateless, and in the converse case she will retain her original nationality and will acquire that of her husband also.

If a woman retains her own nationality on marriage to a foreigner and at the same time acquires his nationality, it is clear that, if, as generally happens, she resides in her husband's country, she will get little, if any, advantage from her own nationality, since she will, for all purposes, be regarded and treated by the authorities of her husband's country as one of their nationals.

Also, it is to be remembered that, in cases of double nationality (already much discussed in this Committee), the nationality of that country prevails in which the person actually is. This would prevent the wife from receiving in her husband's country the protection and assistance of her own country's diplomatic or consular representatives. On the whole, therefore, the retention of what one might call her "spinster" nationality by a married woman, far from being an advantage to her,

might be a positive disadvantage in such circumstances, unless the great majority of States are ready to adopt the same principle.

There are other points for consideration, such as the possibility that the husband might be refused admission to his wife's country, although she, as a national of that country, would have the right of entry. Sometimes questions and difficulties arise in regard to deportation.

Supporters of the view that the nationality of the wife and husband should always be the same will, no doubt, also urge that the adoption of any other principle would have a serious effect on married life ; that the interests of the family would be affected, and that it would introduce causes of friction. The position of the children might be difficult in that they, might be brought up in an atmosphere of divergent loyalties. The children might, perhaps, demand the opportunity of assuming the mother's rather than the father's nationality. My Government certainly does not underrate these social difficulties, but, none the less, it thinks that the wife ought to have the opportunity, on her marriage to a man who possesses a different nationality, of deciding for herself whether the marriage shall, or shall not, affect her national status.

I have no doubt that those States which are opposed to this view will advance serious reasons for not wishing to depart from their present attitude.

The question possesses inherent difficulties of its own, and I do not think that any particular solution can be regarded as ideal. The respective advantages of the two principles must be weighed up, and so far as my Government is concerned, they consider that the balance of advantage lies with the principle that marriage ought not, in itself, to determine a woman's nationality.

My Government would therefore urge the Committee to consider in all its aspects the question of the application of this principle. If, however, a sufficient measure of support amongst the various delegations represented on this Committee is not forthcoming, I shall have to reconsider my attitude, because it is only in the event of practical unanimity on this subject that my Government is prepared to take the necessary steps to give effect to the principle which I have commended to this Committee. It is for this reason that I have not prepared any amendments of the Bases of Discussion relating to this subject.

M. Kourski (Union of Soviet Socialist Republics) :

Translation : Basis No. 16 offers a negative solution for the limitation of cases of dual nationality ; it does not deal with the principle in all its aspects.

The delegation of the Union of Soviet Socialist Republics feels bound to point out to the Committee that the emancipation of women involves the absolute and unlimited application of the principle of women's status. Soviet law has not merely endowed women with an independent status in the case of the marriage of two persons of different nationality; it has laid down a fairly complete set of rules concerning the influence, on the nationality of the child, of differing nationalities of the father and mother (see the volume entitled "A Collection of Nationality Laws", edited by Richard Flournoy and Manley Hudson, published by the Carnegie Endowment for International Peace, page 512, article 6).

Under Soviet law, the nationality of the father has no greater influence than that of the mother. The nationality of the child, when the parents are of different nationalities, is determined according to circumstances : either by the parents' place of residence or by an agreement reached between them, but never by the mere nationality of the father. The same applies to changes of nationality ; if another nationality is acquired by the husband or the father, that change does not automatically involve a change in the nationality of the wife or the child.

More than ten years' experience has proved the soundness of these principles. Similar tendencies are becoming increasingly noticeable in other countries, although they are of course less radical.

The codification of international law ought to mark the realisation in practice and to the fullest degree possible, not only of the principle of women's independence in this matter, but the practical application of the principle to children born of mixed marriages.

In these circumstances we suggest that the two following principles should be adopted for Basis No. 16 :

1. If a marriage is contracted between persons of different nationality, each of these persons shall retain his or her nationality. In this respect change of nationality should be simplified.

2. When the parents are of different nationality, the nationality of the child shall be determined either by the place of residence or by an agreement concluded between the parents.

Either this thesis should be adopted or Basis No. 16 should be entirely omitted. As it stands, it tends to confirm outworn principles, which should be vigorously excluded from a programme of true codification.

M. Alten (Norway) :

Translation : As regards the effects of marriage on women's nationality, I wish to make the general observation that these questions are of no importance from the point of view of private law in States which apply the principle of domicile. In these countries, including Norway, questions of nationality come solely within the scope of public law. This circumstance will greatly facilitate the reform of our law, which, on the whole, has already progressed far along the path indicated by the Women's International Organisations.

I will not weary the Committee with an explanation of our law, but I feel bound to touch lightly on two points.

The first is this: The most legitimate complaint that a woman might make is that Norwegian law has maintained the old rule that a foreign woman who marries a Norwegian thereby automatically acquires her husband's nationality. The principal reason for this rule was a desire to make sure that the woman would not become stateless as a result of certain foreign laws under which women lose their nationality of origin when they marry a foreigner. The reason, however, is not a very cogent one. In Norway, it would be quite easy to specify that a woman acquires her husband's nationality only at her own express request. If this were done, I suppose the woman would generally choose her husband's nationality, particularly if husband and wife decided to settle in the husband's country.

The second observation is that if a Norwegian woman marries a foreigner, she retains her nationality of origin unless she acquires her husband's nationality. In any case she retains Norwegian nationality as long as she remains domiciled in Norway. It would doubtless be possible for us to go farther than that. We might even adopt the American rule according to which a woman does not lose her nationality of origin unless she renounces it formally.

The possible reforms I have outlined are quite in keeping with the text of Basis No. 16. This text in no wise prevents the contracting States from satisfying women's demands either by making the acquisition of the husband's nationality as the result of marriage dependent on the wife's express request, or by allowing the wife to retain her nationality of origin under the conditions deemed to be equitable in each country. The text makes it possible for women to continue their campaign for the triumph of their ideas in their own countries.

In view of the diversity of opinions and, in particular, the difficulties connected with private law which arise in many countries, my Government has not wished to propose that our Convention should lay down any uniform rules on this subject. My observations, moreover, show that the Norwegian delegation is prepared to support the German proposal which is entirely in keeping with our present law. We are also prepared to adhere to any other proposal to the effect that a woman's nationality should be altered by marriage only at her own express request.

Nevertheless, I think that, for the present, it is impossible to reach an agreement on these rules; it would therefore be preferable to adhere to the text of the Basis as submitted by the Committee of Experts.

Mme. Schönfeld-Polano (Netherlands):

Translation: Before explaining the reasons for the Netherlands amendment to Basis No. 16 (Annex II), the Netherlands delegation wishes to state in a few words its attitude towards the question of the nationality of married women.

Broadly speaking, two systems exist: the so-called system of unity of nationality, according to which husband and wife have only one nationality; and the system whereby, if the future spouses are of different nationality, each may maintain separate nationality after marriage.

There are many varieties of the latter system, which might be called the system of independence, but all have this in common: the married woman is allowed the possibility of having a separate nationality, whether this be permitted only in the case of a woman national who marries a foreigner, or also applies in the case of a foreign woman who married a national.

I refer to the laws under which loss of nationality by the woman on marriage is conditional upon her acquiring her husband's nationality, and those under which a woman loses her nationality unless she states that she wishes to retain her former nationality, or retains her nationality as long as she remains domiciled in her country of origin.

Laws which go still farther in the direction of individualism are those under which the woman retains her nationality unless she expressly renounces it.

An equal diversity exists as regards the acquisition by a married woman of foreign nationality.

The Netherlands delegation wishes to state that, in principle, it cannot adhere to a system under which husband and wife may possess separate nationality. Apart from considerations of principle and the difficulties which might arise in exceptional circumstances (when one of the spouses has been expelled as a foreigner, the other being unable to follow, as being himself or herself a foreigner, from the point of view of the expulsee's country of origin) we do not consider the system acceptable, since it occasions difficulty in applying the rules of private law.

The following questions arise:

When husband and wife are not of the same nationality, what will be the nationality of the children? In countries which follow the *jus soli* absolutely, the solution is simple; but in countries which, like mine (at any rate as far as the home country is concerned), adhere to the principle of the *jus sanguinis* — according to which the nationality of the children follows that of the parents — I cannot conceive of any solution which would satisfy everybody. Either precedence has to be given to one of the two nationalities possessed by the parents, or else the child has to be accorded dual nationality *jure sanguinis*, thereby increasing the number of cases of double nationality — an undesirable result.

The second question is this. What law is to govern the relations of man and wife when the

two parties are of different nationalities — for instance, the effects of marriage on their personal relations and property? Whether we accept the solution proposed by the Sixth Conference on Private International Law at The Hague, according to which the national law of the husband takes precedence, or whether the law of the first matrimonial domicile is held to apply; obviously, as both laws cannot be applied simultaneously, one of the two must be accorded preference, so that the principle of duality of nationality does not in any way mean that each of the two parties continues to be governed by the law of his or her country of origin.

The same applies to divorce. Suppose that the law of one of the two parties alone admits divorce. Should it be held that divorce is impossible, or that divorce is permissible, or should the party possessing the nationality of the country which allows divorce be entitled to divorce, whereas the other party would not be so entitled?

In 1928, the Sixth Hague Conference was called upon to pronounce on this point. It could not discover any formula capable of general acceptance. In principle, it adopted the system according to which divorce is inadmissible if the law of either the husband or wife is opposed thereto. But it also allowed that in certain cases the wife's application for divorce might be entertained, notwithstanding the fact that her husband's law did not recognise divorce. In these cases, the State of which the husband is a national remains free to refuse to recognise the divorce if granted.

All these complicated questions do not arise under the system of the unity of nationality. The Netherlands delegation is aware that the system of unity has this disadvantage, that it deprives a wife — if she loses her nationality on marriage — of her rights as a citizen and sometimes of her occupation. But looking at the question as a whole, the difficulties involved by independence are more numerous and more weighty than those involved by unity.

Certainly, the system of independence obviates the difficulty I have just mentioned. But in view of the many other difficulties occasioned by the system of duality, the Netherlands delegation feels that the remedy is worse than the disease.

In this connection, I would refer to the impartial evidence of Gaston Calbairac, who, partisan though he is of the system of independence in matters of nationality, writes as follows in his "Treatise on the Nationality of Married Women":

> "The system of dual nationality is vastly superior, from a theoretical point of view, to the system of unity, in that the former is securely based on respect for the independence of the woman's will and her freedom to change her nationality. But from the point of view of the practical and legal consequences of the two principles, the danger of a conflict of laws from the civil standpoint should militate in favour of one nationality for husband and wife, which obviates all such difficulties."

For these reasons our delegation cannot agree to a system which would allow a woman marrying a foreigner to retain her own nationality, either as of right or by her choice.

Nationality is not simply a question of the individual's unfettered choice and preference; it is also, and above all, a question of public policy.

The Netherlands delegation is, however, aware that a woman, the national of a country whose law causes her to lose her nationality when she marries a foreigner, would become stateless (an unenviable situation) if her husband were the national of a country whose law does not admit that foreign women acquire their husband's nationality.

The Netherlands delegation is quite prepared to vote for a Basis which would avoid this unfortunate result of the conflict of the two national laws of husband and wife, particularly as, in the case mentioned, the loss of the previous nationality would not prevent the unity of the nationality of husband and wife from being broken.

The Netherlands delegation, however adheres to Basis No. 16, but in principle only, and subject to the following restriction: it agrees that a Netherland woman who marries a foreigner shall retain her Netherlands nationality if the law of her husband refuses to accord her her husband's nationality.

This means that the delegation is not prepared to allow a woman to retain her Netherlands nationality when she marries a foreigner whose law allows her to opt at the time of her marriage, for or against her husband's nationality, since such a case would not be one of involuntary statelessness.

In order to prove quite clearly that we are not prepared to accept Basis No. 16 in its widest sense — which must also be taken to include the case in which loss of nationality of origin depends upon the woman's choice — the Netherlands delegation has the honour to propose the following amendment:

> "If the national law of the wife causes her to lose her nationality by marriage with a foreigner, this consequence shall not result if, owing to circumstances independent of her will, she has not been able to acquire her husband's nationality at the time of marriage."

We reserve all our rights as regards our overseas possessions, not only in respect of Basis No. 16, but also as regards Bases Nos. 17, 18 and 19.

Frau Dr. M. E. Luders (Germany):

The German delegation is putting forward to this Committee the proposal to insert a new Basis after Basis No. 16 (Annex II), concerning the question of the nationality of married women. The German Government is of opinion that the laws still existing in most of the countries which deprive a woman automatically on marriage or even during marriage of her

nationality are no longer in agreement with her completely changed position in social, economic and political life. The German Government feels strongly this disagreement, Germany being a country where women enjoy full equal suffrage, citizenship and political rights. We desire to put the existing laws in better accordance with this entirely changed position of women.

The German Government trusts that a development of the law in this direction will at the same time tend to diminish the numerous difficulties arising out of existing law, such as the misery of statelessness.

The German delegation wishes to emphasise that its proposals would leave any country free to go farther in that direction in its own legislation; this proposal is only meant to show the first step.

M. Alvarez (Chile):

Translation: The Chilian delegation is of opinion that Bases Nos. 16 to 19 should be entirely remodelled. These Bases lay down, either directly or indirectly, that a woman should follow her husband's nationality. Many countries, however, particularly in Latin America, have decided in favour of complete equality for husband and wife in the matter of nationality. Chile, for instance, draws no distinction between husband and wife in this respect. A woman acquires and loses nationality in exactly the same way as her husband.

Since the beginning of the Conference, the Chilian delegation has maintained that women should no longer be left in the position of unjustifiable inferiority in which they are placed under many laws.

This situation of inferiority is to a large extent due to the civil law under which women are subject to the paternal power and are treated as being under partial disability. This rule, which was very general at the beginning of the nineteenth century, is now rapidly losing ground; the most recent laws consecrate to a very large extent the legal equality of husband and wife, endeavouring to free the wife from disability.

Social justice requires that not only from a legal but also from a political point of view such differences should cease to exist. You are aware of the powerful movement in this direction which has been growing up throughout the world.

The Chilian delegation proposes an amendment under which it would be laid down that marriage shall have no effect on the nationality of the woman (Annex II).

If, owing to the provisions of many laws, it is not possible to adopt so radical a solution, the Chilian delegation proposes that you should adopt a recommendation on these lines.

Miss Ivy Williams (Great Britain):

Translation: Although English, I propose to speak in French, because I think that most members of the Committee understand French better than English. You will forgive me if my French is not impeccable — my interpreter will doubtless put matters right.

I am in a rather delicate position in that I cannot venture to make any recommendations to the Committee. I would, however, beg to remind you of certain principles which I hold to be very important in judging this question of the nationality of married women.

In the first place, I think the time has come to take a step forward. At present, the tendency in this direction is very marked. We have noticed it ourselves, and others have pointed it out. Various countries have recently modified their laws; I would quote, amongst the countries which have adopted a principle very similar to that laid down in the German amendment: Denmark in 1925, Finland in 1927, France in 1927 — and for her colonies in 1928 — Iceland in 1926, Norway in 1924, Sweden in 1924. Many other countries go much farther and grant equality to married women; for instance: The States of South America, China, Estonia, Yugoslavia, Lithuania, Roumania, Turkey, United States of America, and others.

We are endeavouring to codify international law and must take into account the tendency of existing legislation.

There is yet another point. I know there may be difficulties in the way of allowing married women to choose their nationality. The main difficulty is the need for family unity. Suitable legislative provision could be made for this, however; the difficulty is by no means insuperable. Does anyone seriously believe that, by obliging a woman to change her nationality, family concord is made more secure? Can it be argued that, if the woman is allowed to chose her nationality, such family concord will be diminished?

No, gentlemen. The woman would always sacrifice herself for her husband and her children; this has always been the case throughout history. We have no right to assume that a woman's first thought would not be for her family. She would certainly consider her family's interests and make her choice accordingly.

Suppose a woman marries a foreigner. The home is established in the wife's country, and the children are brought up there. I am sure that the husband himself would agree that in everybody's interest the wife should retain her nationality.

If, on the other hand, as is generally the case, the woman goes to live in her husband's country, it is quite natural that she should choose her husband's nationality.

There would therefore be no danger in allowing the woman to choose her nationality. Like her husband, she will take circumstances into account and will consult with her spouse. A common agreement would be reached as to what would be best for the children.

Thirdly, the law which compels the wife to take her husband's nationality is not very ancient; in the case of Great Britain it only goes back as far as the nineteenth century. The object of the change in this law was to accord a privilege to the married woman. Previously, no British subject could lose his nationality; when, therefore, men

were allowed to change their nationality, provision had also to be made for married women. It was therefore a privilege to allow the wife to take her husband's nationality.

Nowadays, the system is different; the tendency is to go still further and to allow the woman to choose — that is to say, to decide whether she wishes to maintain her nationality of origin or take that of her husband. That is a step forward.

Fourthly, it is a principle in modern law that all persons are equal in the eye of the law. This principle of equality has been embodied in several Constitutions; for instance, in that with which I am best acquainted — the Swiss Constitution. In several other countries the law strives to treat all men equally. I will leave the Committee to draw its own conclusions.

Fifthly, we ask that nationality should be retained and should not be changed. It is for legislators who demand the loss and change of nationality to prove that there are very important reasons in favour of an alteration of nationality owing to the fact that a woman marries a foreigner. It is not for the woman to prove that she ought to retain her nationality of origin. What we call the burden of proof lies on the legislators who demand loss of nationality against the will of the individual.

Lastly, there are economic and practical arguments. Unemployment is everywhere rife. In cases of unemployment it is often the woman who, by her work, keeps hearth and home together. We should remember that in many cases the husband and children would starve if the wife, too, did not earn. If the wife is to lose her nationality of origin, even when the husband does not want her to lose it, the law makes it impossible for her to provide for herself and her family; she will become a foreigner in her own country.

The German delegation has set a fine example. Its laws are not yet in conformity with the amendment it has submitted, but, nevertheless, it has shown us the path we should follow.

M. de Vianna Kelsch (Brazil):

Translation: In one of its articles the Brazilian Constitution lays down that a Brazilian woman never loses her nationality through marriage. The women of Chile, Colombia, the United States of America, Uruguay and many other countries also possess this right. Several European countries are taking this direction; France has ranged herself on our side and Great Britain will shortly follow.

In mentioning Brazil, I think I may say that our country has progressed in a manner of which we may be proud. I may even state that we shall never revert to the old state of affairs.

We understand how difficult it often may be for a State to divest itself of its old laws, in spite of its desire to do so. If our Committee achieves no positive result on this point I shall, on behalf of the Brazilian Federation for Women's Progress, submit a recommendation to the effect that all countries which have not granted equal rights to men and women as regards the acquisition and loss of nationality, should do all they can to attain this ideal, which is desired by the vast majority of the elite of mankind and against which no adequate arguments can be put forward, as the immediate future will show.

Mlle. Renson (Belgium):

Translation: The Belgian delegation regards Bases of Discussion 16, 17 and 19 as acceptable even in their proposed form. It is bound to recognise, however, that these Bases only tend to limit the consequences of statelessness and dual nationality, and merely confirm a principle admitted in many bodies of law.

A Belgian woman, when she marries a foreigner, only loses her nationality if she acquires the nationality of her husband. In addition, Belgian law allows her to retain her nationality and resume it, if she wishes, if the marriage is dissolved.

The Belgian delegation regrets that further progress has not been made with a view to diminishing conflicts of nationality when husband and wife are of different nationalities. In my opinion, it would be more logical and practical to lay down a single and definite rule fixing the nationality of the married woman, thus avoiding all conflict, instead of defining, as these Bases do, methods for settling the various conflicts of nationality to which divergent laws give rise.

Two simple solutions might be suggested: the first is that the wife should lose her nationality and acquire that of her husband; the second, that the wife should in all cases retain her nationality and should not acquire her husband's nationality unless she decides to do so of her own free will. Of these two solutions the latter can be regarded as reasonable and equitable, because it follows the modern tendency of the law as it is evolving to-day. It is equitable, because it does not withdraw from any person at any time of his or her life the benefit of a protecting law particularly suited to that person's race, tradition, habits and upbringing.

How can we justify the act of a country which, at a given moment, casts forth an individual from whose work, health, energy and intelligence it has derived profit for many years? The tendency of modern legislation is due far more to these principles of equity and humanity than to any feministic considerations. I will simply refer in this connection to the laws quoted very succinctly by Miss

Williams. These prove that in recent years a number of countries, which can certainly not be suspected of feminism, have, on grounds of equity, adopted solutions whereby the wife may retain her nationality either in all circumstances or by manifesting her desire to do so.

In defending a policy which some countries may consider too advanced, Belgium is not yielding to feminist pressure: she, too, is anxious to follow the trend of humanitarianism which led to the creation of the League of Nations. It is a current which can no longer be dammed. No action on our part can do more than delay a solution that is certain and inevitable.

The Belgian delegation, which desires to consider the possibility of a solution on more progressive lines, ventures to submit to you the following proposal: Can we not ascertain by means of a vote whether it would be possible forthwith to contemplate a resolution to the effect that a woman shall not lose her nationality on marriage unless she definitely expresses a desire to do so? If this principle is rejected — though I can hardly believe it possible — the Belgian delegation will at all events reserve the right to submit later a recommendation to the effect that countries, which refuse to consider the possibility of complying with these desiderata immediately, shall at any rate examine the possibility of bringing their laws into line with modern tendencies in the future.

I will terminate, gentlemen, by submitting to you a little problem for your consciences. I am sure that many of you have daughters. If one of these days one of your daughters marries a foreigner, I should like you to ask yourselves what you would really think, in the case of an unhappy marriage, of a system which would prevent you from defending your daughter in accordance with her own laws and would deliver her bound hand and foot to some system of law which you yourself may contemn.

M. Rundstein (Poland):

Translation: I have a few observations to make in connection with the German amendment. This amendment tends to introduce a new rule, a general line of conduct, binding on all the signatory States, and unconnected with the question of the settlement of nationality conflicts. If we accept this rule, we shall oblige States which recognise the unity of the family and are in favour of maintaining the wife's previous nationality (except when, by marriage, she acquires her husband's nationality) to introduce into their legislation a provision which would undermine their basic principles.

In addition, even if we accept this rule, we would still be faced with the following difficulty: the wife retains her nationality as long as she continues to reside in her country of origin; if she takes up her residence elsewhere, she will lose her nationality. The question then arises whether she will acquire her husband's nationality which she has previously repudiated of her own free will. That is a point which should be settled explicitly. In the absence of any definite clause on the subject (and the German amendment contains no reference thereto), the Convention would be multiplying cases of statelessness. This instance goes to prove the danger of provisions intended to introduce rules for the unification of law on these very complex questions, more particularly that of the status of married women.

I am the first to admit the principle of the equality of the sexes with regard to the choice of nationality. We are here, however, to find a just and reasonable solution for the most troublesome and thorny conflicts that create a difficult situation for the married woman, owing to the diversity of the various laws. It is not our task to lay down uniform rules for the whole world. That is rather a political question in which other factors, particularly women's organisations, should come into play. Each of these organisations can, in its own country, bring pressure to bear on the legislature with a view to causing the previous laws to be adapted to modern requirements. A law conceived in the spirit of absolute equality can only be entirely successful if it proceeds *ab interno ad externum*, for parallelism of domestic laws would facilitate the work of international conferences. In this matter, we can only express hopes and make recommendations.

There is a Chilian amendment with regard to Basis No. 16. If this amendment is defended by the Chilian delegate, I shall venture to make one or two comments, for our delegation has submitted a more radical proposal. If however the Chilian delegation does not wish to press its amendment, I should merely be wasting your time.

The Chairman:

Translation: I think the Chilian delegation is not at present pressing its amendment.

M. Rundstein (Poland):

Translation: If that is so, I have nothing more to say.

M. Martensen-Larsen (Denmark):

The whole question of the nationality of married women is in a state of evolution, and at the present moment I find Basis No. 16 as it stands, practical and clear. The proposed German amendment is also practical. It could go further, but it is practical and I shall vote in favour of it.

M. Giannini (Italy):

Translation: In order to understand properly the Italian delegation's views, it is necessary to realise the situation in our country. Italy is entirely Catholic; consequently marriage is a sacrament and not a contract; it is

a duty and not a pleasure. Moreover, account must be taken of the fundamental institution of Italian life : the family. We are the defenders of family unity. What then are the consequences we draw from these premises ?

All individual situations depend on these basic principles. What is the position of the Italian wife ? The husband may — as Italy exports human beings — have become the national of a country which does not accord its nationality to the wife as a result of marriage. Or possibly a country, whose nationality the husband is about to acquire, immediately accords its nationality to the wife also. In the latter case she becomes a national of her husband's country. If the country does not grant its nationality, she remains Italian. But when the law of the husband's country accords its nationality to the wife, she takes her husband's nationality.

I will quote an actual example. An Italian, living in the United States of America marries, as all Italians do, a woman from his own land. What happens ? United States law does not grant United States citizenship to the wife immediately, but it may do so after a certain time. At the time of marriage the wife remains Italian ; but as soon as she is able to acquire American nationality, we say that she becomes American. On the other hand, in the case of a country which never confers nationality on the wife, we say that the latter retains her nationality of origin. In this case we agree entirely with Basis No. 16.

There are, however, other cases in which the situation assumes a quite special aspect, for instance when judicial separation occurs, for in Italy we do not recognise divorce. In this case, the wife retains the nationality of her husband's country. If the wife becomes a widow, what is her situation ? In this case the main consideration is the family — the son. If the woman is going to live with her son or sons, she maintains the nationality she already possesses. If she has no son, she is free and can resume her nationality of origin if she wishes. She can retain her Italian nationality if she so desires ; in this case, and in this case only, she is free to choose.

This is the attitude we adopt in connection with the problems raised in this Basis. I have explained our attitude on this whole matter, for otherwise I do not see how we can properly examine this problem of the married woman.

In short, therefore, our principles are : unity of the family, protection of Italian women when they are not protected by the husbands' law. It has been said : " But if the husband changes his nationality, what is to happen ? Has an unfortunate wife to change her nationality at the same time as her husband ? "

The Chairman :

Translation : We are only considering Basis No. 16 now.

M. Giannini (Italy) :

Translation : In this particular case I am drawing attention to the fact that we regard in a different light the economic situation, on the one hand, and the moral and juridical situation on the other. I am referring to the latter.

As regards the economic situation, I would remind you that, at the 1928 Hague Conference, we considered the desirability of warning the married woman against fraud, in other words, we endeavoured to make it impossible for the husband to change his nationality in order to be free to waste the family fortune. But we are determined to safeguard family unity and protect the married woman. We therefore accept Basis No. 16 as submitted, and will vote against any amendment thereto.

Mme. Godyevatz (Yugoslavia) :

Translation : The Yugoslav delegation ventures to contribute to the general discussion by giving some information regarding existing Yugoslav law in this matter, and the practical results obtained under such law.

Yugoslavia is a relatively young State, its customs being still largely patriarchal. Nevertheless, it has not hesitated to adopt a system of law which allows the wife to choose her nationality. I will read you two articles from the Yugoslav law on this matter. The first refers to a foreign woman who marries in Yugoslavia, while the second refers to a Yugoslav woman who marries a foreigner.

> " *Article 10.* — A foreign woman acquires Yugoslav nationality as a result of her marriage with a national of the Yugoslav State, unless by a declaration made before the celebration of marriage she has stated that she wishes to retain her nationality of origin, provided always that the law of her country allows her to do so.

> " *Article 29.* — A Yugoslav woman loses her nationality on marrying a foreigner unless, according to the law of her husband's country, she does not obtain her husband's nationality, or unless she has expressly declared that she wishes to retain Yugoslav nationality in the marriage contract, or in default of such contract, by means of a declaration made at the time of the celebration of marriage. "

The Yugoslav delegation wishes to draw the Committee's attention, not to the fact that these provisions exist in Yugoslav law, but to the results which they have produced. In practice, the results have been satisfactory. The fears expressed in certain quarters regarding the effects of these rules have not been confirmed. Experience has proved their soundness.

In view of the provisions of Yugoslav law and the practical results obtained, the Yugoslav delegation would be prepared to support an international rule of law going farther than that laid down in Basis No. 16. We are prepared to support the principle of the German

amendment subject to minor modifications. If, however, the Conference feels that, at the present time, there would not be a sufficient number of delegations in favour of this clause to warrant its inclusion as an article of the Convention, the Yugoslav delegation is of opinion that we should not disperse without having at least embodied the principle in the form of a recommendation.

M. Malmar (Sweden) :

Translation : The Swedish delegation is prepared to adopt Basis No. 16 which is, moreover, in conformity with existing Swedish law. I may add that my Government is prepared in principle to comply to a certain extent with the desiderata of the women's associations by accepting a rule under which the automatic acquisition by the wife of her husband's nationality will be conditional on her taking up her residence in her husband's country.

M. Merz (Switzerland) :

Translation : I think it would be very difficult to lay down an international rule confirming the independence of the married woman from the point of view of nationality ; and it would perhaps be even more difficult to specify definitely that the married woman should in every instance follow her husband's nationality, both as regards acquisition and loss. Finally, I think it would be premature, in the present state of the law, to declare in an international agreement that married women shall have the right to opt.

As matters stand, the Preparatory Committee seems to have followed the path of prudence by adhering, for the moment, to the possibility of the simultaneous existence of different principles and by seeking to attenuate such conflicts as may ensue. This is the tendency expressed in Basis No. 16. We can agree to this Basis, either in the form submitted by the Preparatory Committee or with the amendment proposed by the Netherlands delegation. The amendment covers an exception, which we ourselves have admitted, to the principle on which our present legislation is based — namely, that the wife acquires and loses nationality with her husband, though this principle may perhaps be modified slightly in future legislation. We reserve the right to express an opinion on the recommendation which the Belgian delegate, in her very interesting speech, said she might eventually submit to the Committee.

Mme. Král-Horaková (Czechoslovakia) :

Translation : The Czechoslovak delegation merely begs to state that it accepts in principle all proposals destined to extend the right of a married woman to retain her former nationality. This right must, however, as previous speakers have so clearly explained, be subject to the economic, social and cultural requirements of each State.

Nevertheless, in view of the complexity of this question, linked up as it is with the whole of the public and private law of each country, our delegation is prepared to vote for a formula according the greatest possible freedom to each country to legislate beforehand in accordance with the probable line of evolution. We agree with the Yugoslav delegation, and accept in principle the amendment proposed by the German delegation, subject to one or two minor alterations.

M. Wu (China) :

I have the honour to speak on behalf of one-quarter of the women of this globe ; but I shall not, however, take up a proportionate length of time of this Committee.

The legislation of China, as has been remarked by other delegates, is much farther advanced than the Basis under discussion. Although we had a new nationality law in 1912, and although the Chinese nation preeminently considers the unity of the family, the feminist movement has made such progress in our country that last year we revised our law of nationality with special reference to the position of married women, so that they now have practical freedom of choice.

I am therefore ready to support Basis of Discussion No. 16 ; I am ready to support the German amendment, or rather, addition thereto ; but, in view of the fact that this Committee does not seem to be prepared unanimously to accept the German addition — and since, even if it is accepted by the Committee, the various States will probably make reservations in regard to it, I think it would be better to include a recommendation or *vœu* in the Final Act of the Conference somewhat in the sense that it is desirable that marriage should not of itself cause a change in the nationality of a woman.

M. Désy (Canada) :

Translation : The Canadian delegation ventures to point out that Canadian law, as it stands, causes the wife to take her husband's nationality. The Canadian Government is, however, prepared to accept the principle that the wife should be allowed to choose her nationality at the time of her marriage. The Canadian delegation is therefore prepared to support the German delegation's amendment. In any case, failing a formal provision, the Canadian delegation will support the idea of a recommendation like that proposed by the Belgian, Chilean and Chinese delegations.

M. Restrepo (Colombia) :

Translation : I really ought not to speak at this meeting because I arrived too late and am not acquainted with all the discussions which have already taken place, but on this point — the nationality of the woman at the time of marriage — my South-American colleague has made certain statements concerning Colombian law which are not quite accurate. We are, like Italy, a Catholic

country. In Colombia, Catholic marriages are held in higher esteem than civil marriages ; or, at least, are equally valid. The status of women in all Catholic countries, or at any rate in Colombia, is that fixed in the Civil Code, which is the code of old Roman and Spanish laws, the Code Napoleon, the old Prussian Code and other non-modern laws.

Our Civil Code provides for a marriage contract under which the husband is accorded the management of the affairs of husband and wife regarded as a partnership *(société conjugale)*. It is a particular form of partnership contract. In this contract, the husband is the principal. The woman who marries a foreigner loses her nationality of origin.

I quite understand the aims of the women's associations and sympathise with them in other spheres, but not in this. What do women want ? They want to retain their nationality when they marry. By so doing they would be introducing a disturbing factor into the marriage contract which is already sufficiently difficult and complicated. I would vote with pleasure in favour of all possible benefits for women in other domains, but I do not feel able to do so in this case. South America is an enormous territory with a still very sparse and limited population. We have to grapple with all the problems of immigration.

When naturalisation is demanded by the husband in Colombia, it is almost invariably stated that the wife and children have acquired Colombian nationality through the head of the family, the father. If we adopt some contrary provision in our Basis of Discussion and in compliance with the feminist movement, we should be raising in my country the following problems : the husband becomes a naturalised Colombian, but the wife retains her British, French, German, Chilian or Egyptian nationality. How is the Government to regard the children ? If the husband is Colombian and the wife Greek, what are the children ? Are they Colombian like the husband, or Greeks like the mother ? It would be impossible to tell. These are difficult problems, of particular importance to us, because almost every day foreigners are being naturalised, foreigners who — very fortunately — come in search of land, mines, or territory amid our vast expanse of plain and mountain.

I am prepared to be very liberal and very favourable to the claims of the ladies on other points, but in this respect I can concede nothing. For instance, in our country, divorce is absolute. Our divorce is the divorce of the Catholic Church. No new marriage can be contracted. I am therefore in favour of absolute divorce to allow the woman to regain her nationality.

For these reasons, Colombia is prepared to adopt the Bases as submitted by the Committee of Experts because our legislation is in agreement with them, or, if you prefer it, they are in agreement with our legislation. On the other hand, I do not wish to be uncompromising, and agree that individual laws must yield to the new law about to be established by the League of Nations.

M. de Vianna Kelsch (Brazil) :

Translation : Just now I referred to Colombia and to the bulletin of the Pan-American Union, March 1926, page 174, which reads as follows : "Colombia. — The Colombian Constitution (Chapter II, Article 8) makes no distinction as regards the nationality of man and wife. Marriage with a foreigner does not cause a Colombian woman to lose her nationality and, inversely, a foreign woman who marries a Colombian does not lose her nationality."

M. Medina (Nicaragua) :

Translation : I have understood the Chilian delegate to say that the laws of Latin America accept the principle that no distinction should be drawn, as regards the effects of marriage, between husband and wife.

I must, however, state that as regards the country I have the honour to represent — Nicaragua — the Chilian delegate's observation is inaccurate since, not only in our laws, but even in our Constitution, it is clearly laid down that a foreign woman acquires Nicaraguan nationality when she marries a Nicaraguan.

I am not one of those who consider that delegations should merely uphold the legislative provisions of their own laws and reject every tendency to improve such laws — even constitutional ones — but I must say that I have not yet heard, in the various speeches delivered this morning, any arguments which refute those put forward by the Netherlands expert in favour of one and the same nationality for husband and wife, particularly when there are children.

The Netherlands technical expert pointed out the difficulties inherent in any other system applied, in particular, to the marriage and divorce of persons of different nationalities subject to contradictory laws. She concluded that the remedy for the other difficulties would be worse than the disease.

Finally, the Belgian technical expert appealed to those of us who had daughters to consider what their lot would be in the case of an unhappy marriage if, at the time of marriage, these young women had not retained their nationality of origin.

Being myself the father of six daughters, I hasten to reply that it is precisely because I have the happiness of my children at heart that I would wish to eliminate everything which might prevent their marriage being a happy one, and in particular any provision which would weaken the ties binding them to their husband and perhaps to their children.

The Chairman :

Translation : I think we may declare the discussion on Basis No. 16 closed. This discussion has been very interesting, and I am happy to note that it has been maintained at a high level, as befits the subject. I would also beg to congratulate the five ladies who have spoken on the tactful manner in which they have dealt with the question.

To summarise our discussion: you have before you Basis No. 16. I have not heard any delegate absolutely oppose this Basis; on the other hand, a large number of delegations have formally stated that they are prepared to accept it. That is a first point.

Second point. There are certain minor amendments. I say " minor " because they do not affect the substance of the Basis. One has been submitted by the Netherlands delegation and the other by the delegation of the United States of America.

Thirdly, we have a proposal by the German delegation to add to Basis No. 16 a new provision which would constitute further progress towards complete freedom in the matter of nationality.

If the Committee accepts this proposal, it will have to decide whether it is to be inserted in the general Convention or is to become a special Convention or additional Protocol.

The fourth and last point is this: a proposal to make a recommendation has been put forward by several delegations and has been supported by many other delegations.

The Committee will have to decide seriatim all these points, which are not by any means contradictory. But, as we decided the day before yesterday to reserve our final decisions until we have heard the ladies to-morrow evening, I would request you — though I repeat that the discussion on Basis No. 16 is closed — kindly to note the four questions on which the Committee will have to give an opinion on Wednesday morning.

36. NATIONALITY OF MARRIED WOMEN: BASIS OF DISCUSSION No. 17.

The Chairman:

Translation: With regard to Basis No. 17 (Annex I), we have three amendments (Annex II): one submitted by the delegation of the United States of America, which consists in replacing the word " wife " by " a married person " and the words " of her husband " in the second and fourth lines by " of the other spouse ".

Another amendment has been proposed by the Chilian delegation — namely, to add at the end of the sentence the words: " whether by the law of the husband's country, or by naturalisation ".

Finally, the German delegation has submitted the following amendment, which concerns both Bases Nos. 17 and 18. It proposes to replace Bases Nos. 17 and 18 by the following provision:

> " A change in the nationality of the husband occurring during marriage in consequence of a voluntary act on his part does not involve a change of nationality for the wife except with her consent. If the husband loses his nationality during marriage without any voluntary act on his part, such loss does not cause the wife to lose her nationality unless she still possesses another nationality."

M. Alvarez (Chile):

Translation: In order to shorten the discussion, I will withdraw my amendment regarding Bases Nos. 16 and 17, provided my recommendation, which reads as follows, is adopted:

> " The Conference recommends that States should reform their nationality laws on the basis of the principle that nationality must not depend on civil status, and that, in particular, the nationality of the married woman must not be made by law inseparable from that of her husband. "

The Chairman:

Translation: Does anyone wish to speak on Basis No. 17?

I note that the Committee has made up its mind with regard to Basis No. 17. I would merely ask the German delegation to explain the reasons for its amendment in order that we may close the discussion on that question.

M. Hering (Germany):

Translation: The first sentence of our amendment refers to every change of the husband's nationality during marriage, as the result of a voluntary act on his part. Our amendment, therefore, does not refer only to the naturalisation of the husband, but also to the case when he abandons or repudiates a nationality.

The general idea of our proposal is clear: we hold it to be incompatible with the mutual duties of husband and wife to admit that the husband may, without his wife's knowledge, and against her will, cause her to lose her nationality.

Our amendment lays down that a change of the husband's nationality during the marriage as the result of a voluntary act on his part shall not involve a change of the wife's nationality, unless the latter consents. It also specifies that, if the husband loses his nationality during marriage, apart from any voluntary act on his part, that loss shall cause the wife to lose her nationality only if she still possesses another nationality. If, therefore, the wife has only one nationality, she will retain it, although the husband loses his. If she has two nationalities, she loses her husband's nationality when he loses his. Thus, many cases of statelessness will be avoided.

Mme. Schonfeld-Polano (Netherlands):

Translation: I am glad to be able to state, on behalf of the Netherlands delegation, that, in a spirit of conciliation, we withdraw our amendments to Bases Nos. 16 and 17 (Annex II).

M. de Berezelly (Hungary):

Translation: I agree with the German delegation's proposal regarding Basis No. 17.

The Chairman :

Translation : We can declare the discussion concerning Basis No. 17 closed. When the Committee votes, the questions will be as follows : it will first of all have to decide on Basis No. 17 and the first part of the German amendment. If the first part of the German amendment is accepted, this text will replace Bases Nos. 17 and 18. The Committee will then have to take a decision regarding the second part of the German amendment, which refers to another case that is not dealt with in Bases Nos. 16 and 17 — that is to say, when the husband loses his nationality.

37. NATIONALITY OF MARRIED WOMEN : BASIS OF DISCUSSION No. 18.

The Chairman :

Translation : We have now to discuss Basis No. 18, with regard, to which several amendments have been submitted : an amendment by the United States of America, similar to that submitted to the two previous Bases ; an amendment by the Chilian delegation ; an amendment by the German delegation, to which we have just referred; and, finally, a proposal by the Estonian delegation submitting a text in place of the present text, which refers to the nationality both of women and children.

M. Diena (Italy) :

Translation : I would request you to bear in mind, Mr. Chairman, that the Italian delegation proposes the omission of Basis No. 18.

M. Rundstein (Poland) :

Translation : The Polish delegation has submitted a proposal in connection with Basis No. 18, and which refers to passports (Annex II). With a view to economising the Committee's time, I will not speak upon the matter now, but will be satisfied if my proposal can be referred to the Drafting Committee.

The Chairman :

Translation : Certainly.

Mme. Schonfeld-Polano (Netherlands) :

Translation : The Netherlands delegation is obliged to oppose Basis No. 18, because, as I explained this morning when we were discussing Basis No. 16, Netherlands law is based on the unity of the family. Basis No. 16 did not affect that system. It merely asked States which adhered to the system of unity to assist in solving a legislative conflict due to the clash of two laws based on different systems.

Basis No. 18 requires much more than this of countries that adhere to the system of unity. They are asked to abandon their fundamental principles in the matter of nationality of husband and wife. They are asked to accord the wife freedom of choice if the husband becomes naturalised. This point was not raised either in M. Rundstein's report or in the questionnaire submitted to the Governments. We cannot allow ourselves to be drawn along in this direction, which is incompatible with the fundamental principles of our law, and which also, as far as we are concerned, involves difficulties from the point of view of private law in the case of the naturalisation of children when the father alone becomes naturalised, this question not being solved in the text of the present Convention.

We think it would be more practical to omit Basis No. 18, in order to avoid reopening the discussion on basic principles, the principle of unity as opposed to the principle of independency.

If the Committee took another view, the Netherlands delegation states forthwith that it might, as an alternative, agree to a solution under which States following the system of unity would undertake not to accord naturalisation to married persons unless both husband and wife submitted a joint request. By observing this rule, not only would the great principle of unity be safeguarded, but due acccount would be taken of the interest of the wife.

Certainly, it cannot be denied that, when a change of nationality occurs during marriage — a change which may affect the personal status of all members of the family —, a decision ought to be reached by husband and wife together. In this case, the wife has to take into consideration a desire on the part of her husband which she could not foresee at the time of her marriage.

The Netherlands delegation also wishes to point out that the system thus suggested affords greater benefits to married women than Basis No. 18 in its present form. This Basis accords the wife the right to retain her previous nationality. If the naturalisation of the father involves the naturalisation of minor children, the wife does not gain much by refusing to follow her husband's nationality. In the system applied in the Netherlands, which is based on the idea that, as the question is one of change, the views of the party that desires no change should be given precedence, the refusal of the wife is equally effective for the maintenance of the nationality of her children.

Finally, I would point out that practice in the matter of naturalisation is showing a tendency in my country to evolve in this direction. According to the German law of 1913, a woman does not, *ipso facto*, lose her nationality when her husband is naturalised abroad. When a German applies for Netherlands naturalisation, the Netherlands Government, before taking the request into consideration, requires the wife to countersign the request, in order to prevent the possibility of double nationality of the wife, who, under our law, acquires Netherlands nationality, owing to the naturalisation of her husband, but at the same time would retain her German nationality if she did not consent to naturalisation.

M. Schwagula (Austria) :

Translation : Austrian law is based on the principle of unity of the family, a principle which has been explained to this Committee far more eloquently than I could explain it myself.

I feel that the provision suggested in Basis of Discussion No. 18 would be bound, to a certain extent, to create complications and difficulties — that is to say, to go counter to one of the main aims of our work. I therefore agree with the proposal that this Basis of Discussion should be omitted.

Moreover, in view of the aim we are pursuing — that is to say, to make some progress with the codification of international law — I wish to state that, if the proposals contained in Basis of Discussion No. 18 are accepted more or less as they stand, Austria will reserve the right to reconsider her view and seek to discover a solution which, subject to certain guarantees and for serious and well-founded reasons, would make it possible to accept the rule laid down in Basis of Discussion No. 18.

Mourad Sid Ahmed Bey (Egypt) :

Translation : The Egyptian delegation agrees with the Italian proposal to the effect that Basis of Discussion No. 18 should be omitted.

Mr. Hearne (Irish Free State) :

Since the delegation of the Irish Free State has not made any declaration with regard to Basis No. 16 as it stands, it would like to make some observations in regard to Basis No. 18.

Basis No. 18 declares that naturalisation of the husband during marriage does not involve a change of nationality for the wife except with her consent. It is the first of these Bases which are grouped together under the heading of " Nationality of Married Women " into which the consent of the wife is introduced.

The delegation of the Irish Free State supports the general view which has been expressed by a number of delegations that, in matters of this kind, it is necessary to consider very fundamental social principles and very fundamental religious principles. That being so, my delegation will not commit itself to any position in which, as a matter of international law, or as a matter of national law, something in the nature of a national frontier would be thrown up between husband and wife, and something in the nature of a position would be reached under the law of all countries whereby it might become necessary for a husband to seek the deportation of his wife or for the wife to seek a confiscation of her husband's goods.

We do not think that tendencies of that sort in international law, although they have made themselves manifest, are sound or are tendencies which a Conference of this kind, which is seeking to codify international law or the principles which should underlie it, could, without grave consequences, follow. We have not yet heard the views of the ladies who are to address us to-morrow night. No doubt, they will bring forward a case which may make some delegations alter the fundamental views which they hold; but, so far, we have heard nothing in this Committee which would justify us in adopting a Basis of Discussion or a principle which would drive a wedge into the unity of the family or between husband and wife and place a barrier between parents and children.

Basis No. 18 deals with the events which should take place after marriage rather than those which take place at marriage, which we think should follow the principle which this Conference or Committee will accept in regard to Basis No. 16. We support Basis No. 16 because we think that it contains, first of all, the principle on which we stand, and also something in the nature of an advance towards a solution of the difficulties which arise upon a too rigid application of that method. The principle is that husband and wife should have the same nationality; but, if by the national law of the country of the female spouse she loses her own nationality upon marriage with a foreign spouse and does not acquire the nationality of her husband, then we are prepared to go so far as to say that something should be provided by this Conference, or international law, to deal with the position during that interval of statelessness.

Mlle. Renson (Belgium) :

Translation : The Belgian delegation would accept Basis of Discussion No. 18 in principle subject to two reservations. The first refers to the substance of the question. It is to the effect that consent should not be tacit, but that Basis No. 18 should definitely say that the wife must consent expressly. The second is a reservation of form, which the Drafting Committee may perhaps take into account. The Belgian delegation thinks that the present form of Basis No. 18 is imperative, whereas in the other Bases we have adopted a conditional form. This conditional form is more elastic and more likely to facilitate the adaptation of most laws.

We propose that Basis No. 18 should be worded as follows :

> " If the naturalisation of the husband during marriage involves a change in the nationality of the wife, such change shall in no case take place without the formally expressed consent of the wife. "

M. Diena (Italy) :

Translation : I wish to make a simple statement in order to explain why the Italian delegation proposes the omission of Basis No.18. According to certain laws, a mere declaration of will is not sufficient to produce loss of nationality at law. We have discussed this point at length in connection with Basis No. 15, and we found it extremely hard work to discover a formula that we could all accept. As we succeeded in reaching quasi-unanimity on this point in connection with Basis No. 15, I beg you not to let the cat come back through the window after you have just put it out through the door. As a unilateral change on

the part of the husband is, to a certain extent, provided for in Basis No. 17, I ask you to omit the question referred to in Basis No. 18. There are already many gaps in our Convention; this would only make one gap more.

These are the reasons for which, like the Netherlands, Egyptian, and Austrian delegations, the Italian delegation proposes the omission of Basis No. 18.

The Chairman :

Translation : The discussion is closed. When we come to vote, the questions will be as follows: first, the omission of Basis No. 18. If this proposal is rejected, the Committee, having accepted Basis No. 18 in principle, will have to vote on the various amendments thereto. We shall then have to take a decision with regard to the German proposal, which is new, and refers to the loss of nationality by the husband and the effects of such loss on the nationality of the wife. Finally, we shall have to pronounce on the proposal of the Estonian delegation to the effect that the wife should be able to acquire a new nationality for herself, apart from all change in the nationality of the husband.

38. NATIONALITY OF MARRIED WOMEN: BASIS OF DISCUSSION No. 19.

The Chairman :

Translation : We now come to Basis No. 19, which deals with the dissolution of marriage. In this connection, we have five amendments submitted by the Austrian, Danish, United States of America, Italian, and Norwegian delegations respectively.

The Austrian delegation's proposal is that we should insert in the second paragraph of Basis No. 19, after the words " if she does so ", the following words : " provided the dissolution of the marriage is recognised as valid by her former country ".

The Danish proposal is to add to the text now before you the following phrase : " The legislation of a State may, nevertheless, make such loss of its nationality conditional upon the fulfilment of particular legal requirements . . . " — as in Basis No. 6.

The proposal of the delegation of the United States of America is as follows :

> " After dissolution of a marriage, the former nationality of a person may be recovered only on the person's own application and in accordance with the law of the person's former country. The recovery of nationality in this manner shall involve the loss of nationality acquired by marriage. "

The only difference between the original text and this proposal is a matter of drafting.

The Italian delegation proposes the adoption of the following formula :

> " After dissolution of a marriage, the wife recovers her former nationality if there are no children of the marriage which has been dissolved. If there are children of this marriage, she recovers her former nationality if she establishes her residence in her former native country, or if she returns there."

Finally, we have the Norwegian proposal to this effect :

> " The death of the husband and dissolution of marriage do not necessarily involve any change in the nationality of the wife.
>
> " If the latter recovers her previous nationality at her request, she shall thereby lose the nationality acquired as a result of her marriage."

M. Alten (Norway) :

Translation : The Committee of Experts has pointed out that it would be desirable : (1) to establish concordance between the recovery by the woman of her former nationality and the loss of her nationality acquired by marriage; and (2) only to allow recovery of nationality if the wife so requests.

While the Basis excludes all automatic recovery, it does not prevent the loss of nationality acquired by marriage, apart from recovery, at any rate if the Basis is interpreted literally. If this solution truly expresses the experts' intentions, it is open to criticism.

I do not think we ought entirely to eliminate all possibilities of automatic recovery. Suppose the woman, who is a widow or has been divorced, marries again, as often happens, and marries a person possessing her former nationality. Why, in this case, should we exclude the application of the rule now generally followed that the woman thus acquires her husband's nationality ? Take another case. A woman has lost the nationality she acquired on marriage. If she is Norwegian by birth, she may recover her nationality of origin without any formality, provided only that she establishes her domicile in Norway. This rule applies also to men who have lost their Norwegian nationality. I do not see why we should create any inequality between the two sexes in this respect, making it harder for widows or divorcees to recover their nationality than for men.

The law presumes that, in such cases, recovery represents the person's wishes, and consequently exempts that person from all formalities. It would doubtless be possible to quote further examples as evidence of the inadequacy of this Basis.

The conclusion I draw is that we should not interfere with national laws to such a degree.

The Norwegian delegation's proposal is more prudent. It is to the effect that the first paragraph should lay down the following principle :

> " The death of the husband and dissolution of marriage do not necessarily involve any change in the nationality of the wife."

This is a principle to be found in most existing laws. I think its inclusion in the Convention should meet the wishes of the

women's associations in so far as this question is concerned.

In the second paragraph, I propose that the Committee of Experts' Basis should be reduced to the limits of a rule for the avoidance of any conflict of laws.

M. Diena (Italy) :

Translation : The drawbacks referred to by the Norwegian delegate as inherent in the text proposed by the Committee would not arise at all if the text proposed by the Italian delegation were adopted. This text, so far from making it harder for a woman who has lost her nationality of origin as a result of marriage (the marriage having then been dissolved) to recover her original nationality, would make it easier for her than would be the case if we adopted the Committee's text.

In Italy, the position of the woman after dissolution of her marriage with a foreigner is quite different, according to whether there are children of the marriage or not. In the first case, certainly, the woman is to some extent bound to the country whose nationality she has acquired as a result of her marriage. The link, however, is not unbreakable. Under this text, a person can return to his country of origin and reacquire his former nationality. In any case, it would be wise to draw a distinction according to whether there are children or not. If there are children, the change should be subject to different conditions. I therefore support the text submitted by the Italian delegation.

M. Schwagula (Austria) :

Translation : My amendment is to the effect that the second sentence of the Basis of Discussion should be altered and drafted as follows :

> " In this case, and provided that the dissolution of marriage is recognised as valid by her former country, she shall lose the nationality she acquired as a result of this marriage."

The reasons are as follows : I am thinking of the case of an Austrian Catholic married to a foreign Catholic woman living in a country whose law allows divorce and whose Courts are called upon to annul the marriage, although husband and wife are foreigners. If the divorced wife (who was Austrian for the time being) desires to recover her former nationality, she can do so and thus lose her Austrian nationality. But the fact of recovering her former nationality and losing Austrian nationality by the annulment of the marriage is not recognised in Austria. I think this instance clearly shows how abnormal it would be if Austrian law were thus bound to recognise such consequences in the matter of nationality owing to the decision of a foreign Court. I have therefore ventured to propose a small addition to this Basis, but I do not desire to complicate or retard the progress of our discussion, which is already slow enough.

M. Gomez Montejo (Spain) :

Translation : For the reasons explained by the Austrian delegate, I entirely agree with the amendment he proposes to Basis No. 19, because there is no absolute divorce in Spain. We have both civil and Catholic marriage, but in neither case have we divorce. I therefore agree that dissolution of marriage must be recognised as valid in the State concerned.

A typical case has occurred in Spain. A German married a Spanish woman in Madrid. Subsequently, the German Courts pronounced the dissolution of this marriage, and there was no way by which the Spanish woman could recover her nationality, because we do not, in Spain, recognise divorce granted by foreign Courts. In spite of the divorce granted by the German Courts, this woman remained a German and could not recover her Spanish nationality.

Mourad Sid Ahmed Bey (Egypt) :

Translation : The Egyptian delegation supports the Danish amendment and thinks that this formula is sufficiently comprehensive to meet the wishes of several delegations, including even the Italian delegation.

M. Soubbotitch (Yugoslavia) :

Translation : I should like to ask the Italian delegate to explain his text which is worded as follows : " After the dissolution of marriage the wife recovers her former nationality . . ." Does this mean that she recovers it automatically ? Does the Italian delegate propose that, whenever a marriage has been dissolved, the wife, if she has no children, shall revert to her former nationality ?

Secondly, I wish to draw the attention of the Norwegian delegate to the text he has submitted. I think it should be clearly stated that the second paragraph applies only when the marriage has been dissolved. As now worded, it might be taken to apply to all women.

I have a third observation to make in connection with the Spanish delegate's speech. There are countries which do not recognise the dissolution of marriage by divorce, and which only admit judicial separation. Yugoslav law, from the point of view of the recovery of nationality, admits both divorce and judicial separation ; consequently, a woman who was formerly a Yugoslav national and has married a foreigner may recover Yugoslav nationality, either when marriage is dissolved by divorce, or when judicial separation has been granted.

The Yugoslav delegation wholeheartedly supports the Danish amendment.

M. Hering (Germany) :

Translation : The German delegation proposes that the second sentence of the Basis be omitted. We do not think that there is any necessity to lay down special rules

for this case. All laws already contain general provisions on the conditions governing loss of nationality as the result of the voluntary acquisition of another nationality. We think these general provisions should suffice for the case referred to in Basis No. 19, there being no need to lay down special rules governing the situation of a married woman after the dissolution of marriage.

M. Martensen-Larsen (Denmark) :

Translation : The Danish delegation proposes the adoption of the Norwegian amendment to Basis No. 19, in conjunction possibly with the Danish amendment.

M. Giannini (Italy) :

Translation : In reply to the delegate for Yugoslavia, who asked me to explain the scope of our amendment, I would refer to the general statement I made at the beginning of the discussion. What is the situation ? If a married woman has children, she cannot recover her nationality unless she leaves the country to return to her own country. If she has no children, she recovers her former nationality according to the law of her country of origin, either automatically, if that law so provides, or on making a request, if that be the condition laid down.

I admit it will not be easy to discover a formula which will satisfy everybody, because in reality Basis No. 19 raises a number of problems with which it is difficult to deal as a whole. This question has many entirely different aspects. I therefore agree with the German delegation's proposal to omit this Basis.

Mr. Dowson (Great Britain) :

I only desire to refer for one moment to the Danish amendment to Basis No. 19. It appears to be unnecessary, and in some ways undesirable, to complicate the simple rule laid down in the Basis by providing that certain legal requirements shall be fulfilled before the loss of nationality shall occur. In my view the simple rule should be that stated in the Basis, and I have not at present heard any arguments which convince me that cases can arise in which it is desirable to provide that, before this loss shall occur, these legal requirements shall be fulfilled. In the absence of any further statement on the subject, I shall feel compelled to oppose this amendment.

M. Restrepo (Colombia) :

Translation : I do not think the wording of Basis No. 19 is quite adequate, in that it fails to take the wife's residence and domicile into account. If the woman lives in the country whose nationality she has obtained as a result of her husband's naturalisation, she can lose that nationality only if she leaves the country.

You know better than I do that, under international law, there are many cases of double nationality. For instance, a Colombian by birth may subsequently obtain Chilian nationality. So long as he lives in Chile, he will be a Chilian, but, as soon as he comes back to Colombia, he will recover Colombian nationality.

This may also occur in the case of a woman married to a Colombian. She can recover her former nationality which she had lost if she does not remain in the country.

I will therefore venture to propose a slight modification in Basis No. 19, when we come to vote, in order to define the points of domicile and residence.

The Chairman :

Translation : I venture to point out to the delegate for Colombia that, in order to facilitate our work, it is absolutely necessary that he should submit the text of his amendment as soon as possible.

M. Malmar (Sweden) :

Translation : I support the proposal submitted by the Norwegian delegation. I prefer the text of this proposal to that suggested by the Preparatory Committee.

The Preparatory Committee's wording calls for two important comments. First, it does not, in certain cases, exclude statelessness ; secondly, it restricts the influence of internal legislation to an undesirable extent.

Mourad Sid Ahmed Bey (Egypt) :

Translation : I am in favour of the amendment submitted by the Danish delegation and I carefully explained to Mr. Dowson, who said that he did not see the practical value of this amendment, that Egyptian law subordinates the recovery of nationality to residence outside the country or in the country, according to circumstances.

I would add that this amendment, which allows States themselves to define the conditions under which nationality may be recovered after dissolution of marriage, is, owing to its general scope, likely to meet the wishes of most delegations.

M. Giannini (Italy) :

Translation : May I ask the Colombian delegate whether the Italian delegation's amendment satisfies him ?

M. Alten (Norway) :

Translation : A short time ago, the Yugoslav delegate submitted observations regarding the drafting of the second part of our proposal. I would reply that, in my opinion, this paragraph obviously refers to the first paragraph and refers only to the cases mentioned in that paragraph. If I did not say so expressly, that was merely a question of style.

As regards the Danish amendment, I would point out that, although it refers to the text proposed by the Committee of Experts, it might perfectly well be combined with the Norwegian proposal.

The Chairman :

Translation : I would request the Colombian delegate to be good enough to reply to the

question asked him by the Italian delegate — namely, whether he could not accept the Italian amendment instead of submitting a text himself ?

M. Restrepo (Colombia) :

Translation : I do not think that the questions are exactly the same. My proposal is simply to make a small addition to the text which would be worded as follows :

" After the dissolution of marriage the wife only recovers her former nationality if she so requests and, in conformity with the law of her former country, comes to live there."

The Chairman :

Translation : We can consider the discussion of Basis No. 19 closed.

The questions we shall have to settle when we come to vote are as follows : We shall vote successively on the first and second parts of Basis No. 19. With regard to the first part, we shall first have to take a decision regarding the text of the Italian amendment because that is the proposal which is farthest from the Basis as at present drafted. If the Italian amendment is accepted, there will be no need to go any farther with this first part ; but, if the Italian amendment is rejected, we shall have to give an opinion on the Colombian delegation's amendment, and then on the amendments proposed by the delegations of Norway, Austria and the United States of America.

Then, we shall have to take a decision with regard to the German proposal, which has been supported by several delegations, to the effect that the second part of the Basis should be omitted.

Finally, we shall have to take a decision with regard to the additional proposal submitted by the Danish delegation.

This is the order in which I propose that you should vote on Wednesday morning on the provisions of Basis of Discussion No. 19.

Before the Committee rises I should like to thank it for having, at one single meeting, terminated the discussion of Bases Nos. 16 to 19 concerning the important question of the nationality of married women.

The Committee rose at 1 p.m.

FOURTEENTH MEETING

Tuesday, April 1st, 1930, at 9.30 a.m.

Chairman : M. POLITIS.

39. APPLICATION FROM THE BRITISH ASSOCIATION, THE " SIX POINTS GROUP ", TO BE HEARD BY THE COMMITTEE.

The Chairman :

Translation : Before we begin to deal with our agenda, I wish to consult the Committee on a point connected with the audience to be granted this evening to the representatives of the Women's Associations.

I have received a letter from the President of a British association known as the " Six Points Group ". The League tradition is that only international associations may submit requests or memoranda, and up to the present, as regards our hearing these ladies, it has been understood that only the representatives of international bodies would be granted an audience. Accordingly, the request of the President of the Six Points Group ought not to be taken into consideration. I think the British delegation, which received the same request even before the Bureau did, shares this opinion ; but I do not wish to send to my correspondent a negative reply on behalf of the Committee, without being sure that the Committee itself endorses the practice hitherto followed by the League.

Would the British delegation kindly give us its opinion ?

Mr. Dowson (Great Britain) :

I can only say, with regard to this proposal, that, so far as I know, this group is a national group. It has not an international standing. If the general rule is that only an international organisation should be heard on an occasion like this, it clearly must follow that this particular group should not be invited to attend this evening's seance. Consequently, I have nothing to add to what the Chairman has said with regard to the way in which the request should be answered.

The Chairman :

Translation : Does anyone wish to express an opinion on this question ? I take it then that the Committee endorses my view that we should not depart from the accepted rule that only international associations can enter into relations with the Conference. If there is

no objection, I will reply to my correspondent accordingly.

The Chairman's proposal was adopted.

40. (1) ATTRIBUTION IN CERTAIN CIRCUMSTANCES OF THE NATIONALITY OF THE COUNTRY OF BIRTH : (2) CHILDREN BORN ON MERCHANT SHIPS : BASES OF DISCUSSION Nos. 11 TO 14 *bis*.

The Chairman :

Translation : The Drafting Committee, to which these Bases, with the respective amendments, were referred, met yesterday. With the assistance of the various delegations concerned, it arrived at the following results. With the approval of delegations concerned, it unanimously decided that Bases 13, 14 and 14 *bis* should be omitted. With regard to Bases Nos. 11 and 12 it submits a new text which reads as follows :

> "11. — A child whose parents are both unknown has the nationality of the country of birth. If the child's parentage is established, its nationality will be determined by the rules applicable in cases where the parentage is known.
>
> "A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.
>
> "12. — Where the nationality of the State is not acquired as of right by birth on its territory, a child born on that territory of parents having no nationality, or whose nationality is unknown, may obtain the nationality of the said State.
>
> "The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."

We will begin to discuss the Drafting Committee's new draft for Bases Nos. 11 and 12. Then, when we come to the following Bases, we will decide that they should be omitted unless any delegation asks for their retention.

I submit the new text of Basis No. 11 to the Committee.

The new text of Basis No. 11 was adopted.

The Chairman :

Translation : We now come to Basis No. 12.

M. Diena (Italy) :

Translation : I should like to know whether the members of the Drafting Committee, when employing the words "where the nationality of the State is not acquired as of right" had in view those States which follow the system of the acquisition of nationality *jure soli*. It often happens that, in countries in which the system of the *jus sanguinis* is generally applied, certain cases, nevertheless, call for the application of the *jus soli*. Does the proposed formula cover such cases also ?

M. de Navailles (France) :

Translation : We examined the question in the Drafting Committee. We recognised that the beginning of our Basis referred primarily to States which grant nationality *jure soli*. We adopted a formula slightly different from that given in Basis No. 12 as drawn up by the experts, for the very reason that it should be a little more general. We had in mind the systems of law which provide for the acquisition of nationality both *jure sanguinis* and *jure soli*. Consequently, in all cases where, by birth, a child acquires the nationality of the State in whose territory it is living, Basis No. 12 does not apply. It applies only to cases where a child does not obtain, by birth, the nationality of the country in which it was born, and should therefore be given that nationality.

We encountered great difficulties. Basis No. 12 was very definite and laid down a rule. It was intended by this means to prevent statelessness among children. The French delegation went even further ; it proposed an amendment making this obligation still more precise. The Austrian delegation and, in particular, the German delegation, however, pointed out what their situation was in regard to persons without nationality. Their own laws would not permit them to adopt Basis No. 12 as drawn up by the experts. If that Basis were retained in its existing form those delegations would undoubtedly be unable to sign the Convention.

In these circumstances, we adopted a text which may seem somewhat unsatisfactory ; it seems to mean indeed that every country will do practically as it pleases. We thought, however, that the fact that we were pressing a proposal pointing out the importance of giving the nationality of the territory in question to a child born of parents without nationality or of unknown nationality indicated the general feeling of the Committee, and might therefore induce the Governments to change their own laws in such a way as to eliminate statelessness.

M. Diena (Italy) :

Translation : I accept this explanation.

M. Merz (Switzerland) :

Translation : The Swiss delegation has proposed the omission of Basis No. 12. I would add that we really meant to propose the omission of Basis No. 13 also. That point, however, has been settled, since the Drafting Committee itself has deleted Basis No. 13. We gave our reasons for this proposal when we submitted it, namely that we could not accept the obligation to naturalise the children of certain categories of stateless parents.

The text proposed by the Drafting Committee for Basis No. 12 does not contain this obligation. According to M. de Navailles' explanations, it merely embodies a recommendation to this effect. Under these circumstances, we have no objection to the new text. A similar pro-

cedure has been adopted in other cases by which each country is left free to settle the question. in its national law.

M. Rundstein (Poland) :

Translation : I would draw attention to the Polish amendment to Basis No. 12. This amendment concerns a special case which is nevertheless frequent and is of some importance. It is worded as follows :

> " Except where the nationality of the State is acquired directly by birth on its territory, a child born in the territory of the State of which its mother is a national has the nationality of that State, if the father has no nationality or if the nationality of the father is unknown. "

It might be argued that this amendment is useless, because the text of Basis No. 12, as it has emerged from the Drafting Committee, seems to imply the same legal position as defined in the Polish amendment. But, if the text of Basis No. 12 is compared with the Polish amendment, it will be seen that the Basis contains no obligation which would be binding on States ; it merely states the principle that the child may be naturalised subject to the conditions defined in the law of the country, whereas the Polish amendment lays down an unconditional obligation : the nationality of the child must be accorded as of right in the country in question.

If a woman, a national of State A, marries a person possessing no nationality, the nationality of the children born in the territory of the State of which the mother is a national may be open to doubt. In several bodies of law, for instance under Japanese and Polish law, the question is so regulated that the child acquires the nationality of the mother. But under other laws the child would remain stateless.

I think that Basis No. 12, as redrafted by the Drafting Committee, might be maintained ; but, owing to the special situation in the countries to which the Polish amendment applies, I suggest that this amendment might be taken into consideration and might, if necessary, be formed into a special Protocol.

M. Hering (Germany) :

Translation : The German delegation supports the Polish delegate's proposal ; it approves the suggestion that the Polish amendment should become a special Protocol.

We deeply regret that it has not been possible to discover a more satisfactory solution for this problem. In Germany, the situation is extremely difficult. There are, in our country, very many refugees without any nationality at all. Moreover, owing to the economic situation, unemployment has greatly increased. In these circumstances, we cannot agree to the suggestion that German nationality should be conferred as a right on all children born in Germany without nationality. There are too many of these children, and we have to be careful.

We might help to solve this problem by according the right of naturalisation to these children if they reside in Germany until they reach the agree of 21, and put in a request for naturalisation before their twenty-third birthday. A request of this kind would only be refused in certain cases specially defined by law — for instance, if the applicant were a person of bad character, or for reasons of public security. That, however, is the utmost concession we can make.

M. Schwagula (Austria) :

Translation : I quite agree with the explanations given by the Swiss delegate. I also endorse the general remarks made by the German delegate, and, for the reasons he has explained, I regret to say that I cannot accept the solution proposed by the Preparatory Committee. Neither can Austria agree to the compromise referred to by the German delegate. I think I might say, however, that a request for naturalisation on the part of the children of stateless persons who have resided for a lengthy period in Austria and have become more or less assimilated, will be accorded most favourable consideration. Austria is already a home for many refugees. If circumstances permit, we will do our best to provide these unfortunate persons with a new homeland ; but I cannot give any undertaking to that effect.

I willingly admit that the Polish amendment deals with a wholly special case which merits consideration. But I cannot at present express any definite opinion on this point on account of the present state of our law, which makes no provision for these special cases, although an Austrian woman who marries a stateless person retains her Austrian nationality.

I am, therefore, in favour of converting such a provision into a special Protocol that could be signed by those States in which the matter is urgent and whose law does not formally exclude the adoption of some such rule.

The Chairman :

Translation : The Committee will now, I think, be able to take a decision on this question. We have, first of all, the radical proposal of the Swiss delegation to omit Basis No. 12. In order to prevent misunderstanding, I would remind you that the reasons which originally inspired the Swiss delegation's proposal to delete this Basis no longer, in any way, apply to the new text.

M. Merz (Switzerland) :

Translation : I have said that we can agree to the new text because it no longer contains any obligation. We do not press our previous proposal.

Moreover, I can agree to the Polish amendment. Like Austria, we have no legislative provision to cover the case in question. But our courts have, in practice, already applied this solution, so that we can accept the amendment either as an addition to Basis No. 12 or as a special Protocol.

The Chairman :

Translation : I am glad to find myself in agreement with the delegate for Switzerland. The proposal to omit Basis No. 12 falls, and the Committee only has before it the new text proposed by the Drafting Committee, which I shall now put to the vote.

Basis of Discussion No. 12 was adopted unanimously.

The Chairman :

Translation : We now have to take a decision with regard to the Polish delegation's amendment, together with the suggestion, supported by several delegations, that, if the amendment is accepted, it should form the subject of a special Protocol.

I have no need to emphasise the importance of this amendment. Its object is to abolish a case of statelessness in countries which are at present able to accept this rule. If the amendment is accepted as a special Protocol, only countries whose law is not opposed to its provisions need accede thereto.

M. Nagaoka (Japan) :

Translation : The amendment proposed by the Polish delegation is in accordance with Japanese law. I therefore wholeheartedly support the Polish proposal.

The amendment submitted by the Polish delegation was put to the vote and adopted unanimously.

The Chairman :

Translation : This amendment will become the subject of a special Protocol.

Does anyone propose that Bases Nos. 13, 14 and 14*bis*, the omission of which is advocated by the Drafting Committee, be retained ?

Mr. Lansdown (South Africa) :

I think we should like the benefit of some explanation from the Drafting Committee of the reasons which have induced it to recommend the deletion of these Bases.

We might have a separate explanation in regard to each Basis.

M. de Navailles (France) :

Translation : For various reasons the Drafting Committee decided to omit Basis No. 13 — I speak only of that Basis in order to comply with the South-African delegate's wishes.

The Drafting Committee encountered great difficulties — that is clear from the text — in drawing up Basis No. 12. This Basis was an important one, because it referred to a case which is very common — that of children born of parents without nationality or of unknown nationality. In order to regulate this very common case, we were obliged to adopt a wording which virtually leaves every State free to decide for itself what is to happen to these children.

When we came to deal with Basis No. 13, we thought that we should encounter the same obstacles and that the only text we should agree upon would be as unsatisfactory as that of Basis No. 12.

As, moreover, the cases referred to in Basis 13 are quite exceptional, we thought there was no need to embody in a Convention (which has already caused so much difficulty) a special clause covering them. We have found it so hard to settle cases which are of daily occurrence, that we considered it expedient simply to omit Basis No. 13 from the proposed text.

The Chairman :

Translation : If nobody wishes to speak, I will consult the Committee with regard to the omission of Basis No. 13.

The Committee decided to omit Basis No. 13.

The Chairman :

Translation : Does anyone wish to speak regarding the omission of Basis No. 14 ?

Mr. Lansdown (South Africa) :

I thank the delegate for France for his explanations regarding Basis No. 13. Perhaps he will now kindly explain to us the reasons which induced the Drafting Committee to recommend the deletion of Basis No. 14 ?

M. de Navailles (France) :

Translation : The principal reason which led the Drafting Committee to propose that you should omit this Basis is that adduced in regard to Basis No. 13, namely that Basis Nos. 14, and 14*bis* also, only deal with quite exceptional cases. A birth may, of course, take place on board a merchant ship during a voyage, but such an occurrence is not at all frequent. It is therefore of no importance to embody in the Convention a special provision for exceptional cases when we have found it so difficult to regulate general questions.

There were other reasons as well, more particularly the difficulty of reaching agreement on account of the divergency of existing laws. Our own law makes no particular provision for births on board merchant ships, but English law, for example, provides that every child born on a British merchant ship must have British nationality, even if the vessel is lying in a foreign port.

Other countries' laws, on the other hand — and this is the general practice — provide that the nationality of a child born in a vessel lying in port must be governed by the law of that country and not by the law of the State whose flag the vessel flies.

Let us take the case of an Italian travelling with his wife on business in the United States. He returns to Italy — where his business and home are situated — on board a British ship. On the high sea his wife gives birth to a child. According to the text proposed this child would be both Italian and British.

We thought that if such abnormal results were the outcome of certain systems of law, it would not be desirable to embody them in international law.

M. Diena (Italy) :

Translation : I think it would be well to omit this Basis ; it would be the best way of reaching an agreement. I must, however, point out that the text as submitted before its modification possibly did not go quite so far as M. de Navailles thinks. What did it actually say ? The Basis stated that a child born on board a vessel should be regarded as having been born in the territory of the State whose flag the vessel flies. That is merely tantamount to stating that a child of Italian parents born at New York is deemed to be a child born in America. It does not in any way prejudge the question of nationality. I will not detain you any longer on this point, since I agree with the proposal to omit the text.

Mr. Dowson (Great Britain) :

I should like to add one word to what M. de Navailles has said with regard to the recommendation that Basis No. 14 should be suppressed. I personnally very much regret that it has been necessary to suggest its deletion and as representative of a country in which the rule of law stated by M. de Navailles exists, I think it would have been an advantage to have the principle recognised. Consequently, it was only with the greatest unwillingness that I acquiesced in the suggestion that the Basis should be deleted.

The difficulty, we found, was, as M. de Navailles has stated, that there was a very considerable difference of opinion and after some discussion we came to the conclusion that it was quite hopeless to attempt to agree upon any text which would meet all the views. Consequently, the only alternative was the suggestion which has been made to this Committee.

The Chairman :

Translation : I think we can now take a vote. Would those who are in favour of omitting Basis No. 14 kindly raise their hands ?

It was agreed that Basis No. 14 should be omitted.

The Chairman :

Translation : I now call upon you to take a decision with regard to the omission of Basis No. 14*bis*.

*It was decided that Basis No. 14*bis *should also be omitted.*

41. DOUBLE NATIONALITY : BASIS OF DISCUSSION No. 15 : PROPOSAL BY THE SWISS DELEGATION.

The Chairman :

Translation : A few days ago, the Swiss delegation circulated to the Committee some observations on the question of double nationality and a proposal relating thereto, as follows :

" The Swiss delegation was prepared to support in principle the amendments to Basis No. 15 proposed by the delegations of Denmark and the United States of America with regard to the military service of persons possessing double nationality.

" We think, however, that the short discussion on this subject has proved that the question is one that cannot be settled by this Conference. It is, moreover, only a small part of the problem of multiple allegiance. Though we do not think it possible, or even absolutely necessary, to eliminate at present by international agreement all the sources of double nationality, we think that it should be possible to reach a solution for the settlement of the consequences arising from this state of affairs. In order to achieve this result, however, the problem should be regarded not only from a legal and political point of view but also — and above all — from a practical and humanitarian standpoint, in such a way that the interests of the individual should be considered as much as the interests of the State

" The Committee, having adopted a recommendation to the effect that the position of Stateless persons should be settled by a special Conference, the Swiss delegation proposes that the Committee should also recommend that all conflicts resulting from double nationality should also be examined by a special Conference. "

The utility of the proposal contained in the final paragraph is, I think, obvious. One of the objects of this Conference is to restrict the possibility of double nationality. We have not been able to draw up basic rules on the subject, but I hope and believe that everyone will agree to recommend that this question, of such importance to international relations, should be examined later on.

If the Committee agrees in principle to adopt some such recommendation, I propose that it shall invite the Drafting Committee to find a suitable formula which will then be submitted to the Committee for approval.

The recommendation was put to the vote and adopted.

42. WITHDRAWAL OF NATURALISATION : PROPOSALS BY THE CHILIAN, INDIAN EGYPTIAN AND SOUTH AFRICAN DELEGATES.

The Chairman :

Translation : I call upon you to consider the proposals submitted jointly by the Chilian,

Indian, Egyptian and South African delegates concerning the withdrawal of naturalisation. These proposals are as follows:

"Naturalisation once acquired is final.

"It may, however, be withdrawn by the State which granted it in the following cases:

"(1) If the person naturalised is habitually resident abroad;

"(2) If, as the result of a dual nationality, or on account of the nationality which he has lost, the naturalised person is suspected of disloyalty to the State which conferred its nationality upon him;

"(3) If he becomes guilty of an act which according to law authorises the withdrawal of his naturalisation.

"The withdrawal of naturalisation may also apply to the naturalised person's wife and to his children who are minors."

M. Diena (Italy):

Translation: Is this matter to form the subject of a special Protocol?

The Chairman:

Translation: We will decide that point presently. If the question raises any difficulties we may consider the possibility of a special Protocol; that will not be necessary if no difficulty arises.

Sir Basanta Mullick (India):

I have an explanation to make with regard to the draft now before you. Since its circulation to the Committee, I have had conversations with several of our colleagues and have now further considered the matter and have come to the conclusion that a better draft is possible, one which will not in any way restrict the freedom of a State to withdraw its nationality from a naturalised person when it considers it necessary to do so according to its law.

Unfortunately, that draft, which I was anxious to have distributed in time, has not yet been circulated. I have, however, the text in my hand. It is practically the same as the first, the alterations being, in my opinion, verbal. The delegates for Chile and Egypt, however, do not agree with me and think the alterations are substantial. Nevertheless, if the principle is accepted perhaps the form, if it is referred to the Drafting Committee, can be settled to our mutual satisfaction.

My final draft runs as follows:

"Where a State has conferred its nationality on any person by naturalisation, it may provide by its law for the withdrawal of that nationality on the ground that the person naturalised is ordinarily or habitually resident outside its territory, or on the ground of any other act or default of that person. Such State may also withdraw its nationality in any such case if its retention by a person is deemed to be inconsistent with his obligations of loyalty to the State.

"The withdrawal of naturalisation may also apply to the naturalised person's wife and to his children who are minors."

The history of my amendment is as follows. When I first moved an amendment for a declaration that arbitrary revocation of nationality, in the case of a naturalised person, should be avoided so far as possible, I brought it forward as an amendment to Basis No. 6*bis*. Another amendment to that Basis was also tabled by the delegate for Chile and, in the discussion that followed upon my amendment, observations were made by the delegates for Egypt and South Africa. There were other speeches also, and the general impression produced on my mind was that the principle was accepted.

The draft prepared subsequently, and which the Chairman has just put before you, was the result of consultation between myself and my friends from Egypt and Chile. On further consideration, however, I find that it is not strictly accurate to say that "naturalisation once acquired is final", because there may be cases where a person may change his nationality by becoming naturalised in a third State; and in order to provide for a case of that kind I thought it better to delete that sentence altogether.

The remainder of my new draft runs on very much the same lines as the original draft, but I think the present wording is better inasmuch as it restricts as little as possible the power of a State to decide for itself for what reason naturalisation shall be withdrawn. My main object is that arbitrary revocation shall be discouraged as far as possible, and I submit that my proposal is in conformity with the laws of many States.

I have already, when introducing my first amendment, drawn attention to the fact that the matter has given rise to some concern in my country. It may be that, on some occasions, doubts are expressed in my country whether the League of Nations, or Committees called by the League of Nations for the settlement of international questions, concern themselves very much with the difficulties of the countries of the Far East. I think a favourable decision concerning the amendment now before the Committee would be a cogent refutation of that view. It will not, I think, be denied that protection against the arbitrary revocation of naturalisation is a matter of elementary justice and that the adoption of my proposal will be conducive to international peace.

Mr. Flournoy (United States of America):

I wish to request that no vote be taken on this very important proposal to-day. I think we should have some opportunity of studying it, particularly in view of the changes which have been made in the original draft.

I take this opportunity, also, to call your attention to the fact that the delegation of the United States of America has proposed two other Bases concerning naturalisation and we should be very glad if these proposals

could be presented to the Committee for action.

As this Committee knows from statements repeatedly made during this Conference, we are most desirous of obtaining general recognition of naturalisation as completely changing the national character of the naturalised person. My delegation, as you know, cannot admit that a person who has solemnly renounced his former allegiance, and has taken an oath of allegiance to our country, still owes allegiance to the country from which he came. We realise that there is another side to this question. Naturalisation has been abused, and we are very far from being desirous of having it recognised in those cases where it has not been entered into in good faith, or where the individual naturalised has not carried out, so to speak, his part of the contract.

For this reason we have proposed the following new Basis :

> " When a person, after having been naturalised by a State, establishes a residence of a permanent character within the territory of the State of which he was formerly a national, he shall thereupon lose the nationality acquired by naturalisation."

Similar provisions are already included in several bilateral Conventions to which the United States is a party, and one multilateral Convention with certain American States. We think that it would be quite desirable to have them included in our Convention, and also another new Basis which we have proposed and which relates, in a general way, to the same subject. It reads as follows :

> " When a person's nationality based upon his alleged naturalisation is in question between two States, such naturalisation may ordinarily be established by a certificate issued by the competent authority of the naturalising State ; but the validity of such a certificate may be impeached upon the ground that it was procured fraudulently or issued in violation of the provisions of a Convention to which the naturalising State is a party. "

I shall be glad to propose these two articles for a decision to be taken to-day or to-morrow, or at any other time that may be convenient.

The Chairman :

Translation : We shall see, after the discussion, what is the Committee's opinion with regard to the order in which we should vote on the amendment submitted by the Indian delegation and the other delegations who are associating themselves with this proposal, and on the amendment submitted by the delegation of the United States of America.

I would point out that our time is very limited. We shall be engaged for the whole of to-morrow morning, probably, in voting Bases Nos. 16 to 19, for the subject is a very complicated one. We discussed it yesterday and I put to you — quite clearly, I think — the questions which the Committee will have to decide ; but that will nevertheless take time. We shall then have only Thursday morning.

If necessary, we can, after the discussion which has just taken place, defer voting on these amendments until Thursday. I would, however, ask the delegate of the United States of America to note that the proposal put forward by the Indian, Chilian, Egyptian and South African delegations has been before us since March 28th — *i.e.*, for five days — and that the new text does not really alter the substance of the proposal. The difference is practically only one of wording. Thus, if the Committee decides to settle this question to-day, I would ask the United States delegation to try and make up its mind and give an opinion shortly on the amendment submitted by the delegations I have named.

M. Diena (Italy) :

Translation : I would propose, here and now, that the Committee should — if it adopts the Chilian, Indian, Egyptian and South African delegations' amendment — decide to embody this amendment in a special Protocol. The last formula proposed by these delegations is sufficiently elastic to allow all the contracting States to retain their legislative freedom.

Since this amendment deals solely with cases of naturalisation and since, under certain laws there may be other cases in which nationality is withdrawn, apart from cases of denaturalisation, I think that, in order to avoid a division of opinion on this point, it would be better to adopt the system of a special Protocol. This system might also meet the wishes of the delegation of the United States of America, because it would leave States entirely free to decide whether they should accede to this proposal or not.

The Chairman :

Translation : I thank M. Diena for his observation, but I venture to point out that it is rather premature. Before deciding where to place a provision, we must first ascertain whether the Committee accepts it. The Committee should, therefore, first decide whether it intends to accept this amendment. It will then say what it wishes to do with it.

M. Wu (China) :

I am in substantial agreement with the proposal put forward by the Chilian, Indian, Egyptian and South African delegations, and to a certain extent I agree with the delegate for the United States of America, that no vote should be taken to-day on a portion, at least, of this proposal. I refer to the text that has to do with the effect of the withdrawal of naturalisation from the naturalised person's wife and children.

This proposal obviously touches on the vexed question of the effect of a change of status of the husband on a married woman

— a question which we discussed very fully yesterday and on which we cannot vote until to-morrow. While, therefore, I am ready to vote on the first portion of this proposal, I think that the last part should be deferred until after the vote on married women has been taken.

The Chairman :

Translation : Naturally, the second part concerning married women will be reserved in order that we may take a decision to-morrow after deciding upon Bases Nos. 16, 17 and 19.

M. Hering (Germany) :

Translation : The German delegation regrets that it cannot accept the proposed amendment, because it does not sufficiently restrict the possibility of denaturalisation and it would not be desirable to establish for the future a rule regarding the withdrawal of naturalisation in a general Convention. The Conference should first of all consider the elimination of cases of statelessness, and I am afraid that a rule of this kind, so far from eliminating or diminishing statelessness, would augment the difficulties and give rise to new cases. The German delegation could not sign a Convention containing such a provision.

M. Rundstein (Poland) :

Translation : I consider the Chilian delegation's proposal to be perfectly fair and acceptable in the shape of a special Protocol, for example. But I have certain objections to raise. I wonder, in particular, whether it would be necessary to enumerate all the cases in which naturalisation may be withdrawn ? The Chilian proposal itself refers back to national law in paragraph 3.

There is, moreover, a main and fundamental question concerning the retrospective effects of naturalisation. It would be necessary to provide for this, in view of the fact that the rights of a naturalised person are acquired rights. I, therefore, venture to propose a simplified formula :

> " Naturalisation, once acquired, is final.
> " It cannot be withdrawn by the State which has granted it, except in the cases laid down in the law of that State.
> " The withdrawal of naturalisation may also apply to the naturalised person's wife and to his children who are minors.
> " Withdrawal of naturalisation shall have no retrospective effect. "

M. Malmar (Sweden) :

Translation : I do not wish to speak against the general idea that underlies the proposal, but would venture to raise one or two objections with regard to details.

I cannot accept the drafting of paragraph 2, for I think that every State should possess the right to denaturalise a person who already possesses another nationality, even if that person is not suspected of disloyalty towards the State which conferred its nationality on him.

I propose that the question be referred to the Drafting Committee.

M. Merz (Switzerland) :

Translation : The idea contained in the proposal submitted by the delegation of the United States of America is very sound and is, I think, tempting. But I believe that, in the present state of our law, we could not accept this proposal in final form ; at the most, we could adopt it in the form of a recommendation.

I note that the essential part of the proposals submitted by the Chilian, Indian, Egyptian and South African delegates is not so much the principle as the exceptions — that is to say, the cases in which naturalisation may be withdrawn. I do not think we should formulate such exceptions in an international Convention.

In the first place, there is the question of advisability ; the difficulty of discovering a general formula or specifying all cases in which the withdrawal of nationality is possible ; finally, there is the more comprehensive reason indicated by the German delegation — namely, that this proposal — at any rate, the second part which refers to exceptions — would be a new source of statelessness.

Under Swiss law we can withdraw naturalisation, but I must admit that, for a very long time, we have not availed ourselves of the right, precisely in order to avoid creating cases of statelessness.

We are therefore opposed to the adoption of this proposal.

M. de Navailles (France) :

Translation : The French delegation would be sorry to see the proposal of the delegates of Chile, India, Egypt and South Africa adopted.

As the German delegate very rightly said, we have constantly been striving in this Committee to prevent cases of statelessness. If we introduced such a provision into our Convention, we should be doing exactly the opposite of what we have hitherto been trying to do.

Various legal systems contain a number of provisions enabling nationality to be withdrawn from a person who has been naturalised, if he subsequently fails to fulfil the duties involved by his new nationality. As regards French law, such cases are rare and exceptional. They relate only to withdrawal of nationality when the person concerned has been guilty of acts inconsistent with his new nationality, such as acts endangering the safety of the State.

If we adopted a proposal such as that submitted to us, we should be greatly extending the power to withdraw nationality. Consequently, we should be doing something not only inconsistent with our previous decisions, but something that would be mischievous in general.

For the reasons I have stated, I ask you to reject the proposal submitted to you.

There remains the proposal of the delegation of the United States of America. This would not be open to the objection to which I have

just referred : it would not cause persons to have no nationality at all.

If I understand it aright, this proposal means that a person naturalised in a foreign country and returning and settling permanently in his country of origin must lose the nationality he acquired by naturalisation, and resume his original nationality. This would not bring about statelessness, but it seems to me that it would be imposing upon the State of origin an obligation which it has no interest in assuming.

Let us take the case of a young Frenchman who goes to the United States of America before the age of eighteen, and thereby escapes his military service obligations in France. In these circumstances, he may perhaps be exempted from military service in France. In the United States he becomes a naturalised citizen, and, as I have said, escapes military service obligations in France. Then, after a certain period, he returns to France. Under the provision contemplated, he would recover his French nationality and would enjoy all the benefits accorded him by his country of origin, while he would not have undertaken any military obligation. That would not be very fair.

In consequence, the French delegation urges that we should simply reject the two proposals submitted to us, that we should leave the matter to be settled by the laws of each of the countries concerned, and that the withdrawal of nationality should not be made the subject of a measure of international law.

Mourad Sid Ahmed Bey (Egypt) :

Translation : The proposal now under discussion emanates not from the Egyptian delegation at all but from the Indian delegation. The question is of no interest to us at all. In Egypt, naturalisation may be withdrawn from a naturalised foreigner, if, during the period of five years following his naturalisation, he commits an offence against the community, for instance, against the safety of the State.

The Egyptian delegation took part in submitting these proposals in order to state that, if this amendment is admitted in principle, naturalisation may be withdrawn not merely by the judicial but also by the supreme administrative authorities. In Egypt, naturalisation is withdrawn by decree — that is to say, by decision of the Cabinet.

Personally, I am prepared to agree to any amendment, provided it lays down that forfeiture of naturalisation may be imposed both by the judicial and by the administrative authorities.

M. Schwagula (Austria) :

Translation : In view of the very judicious observations of the German, Swiss and French delegations, with which I entirely agree, I will merely, first of all, state that Austrian law makes no provision for denaturalisation.

I would add that I quite understand the spirit in which the Indian delegation has submitted its amendment, but I wish to reiterate what has been said far more convincingly by other speakers — namely, that such a provision would be out of place in our Convention.

Finally, I would venture to repeat the observation I already made a few days ago : if a person living in a foreign country is deprived of his nationality a fresh burden is placed on the foreign country, since it is obliged to undertake to maintain the individual in question, a task which is often very difficult. That is one more reason, I think, why we should not deal with this delicate and difficult matter.

M. Nagaoka (Japan) :

Translation : In Japan, the authorisation of naturalisatiou is an act of the State. Consequently, the State which grants such authorisation must assume the responsibilities flowing therefrom. When once, therefore, this authorisation has been granted, it must be deemed to be final. Japanese law makes no provision for withdrawal of naturalisation.

Although the Japanese delegation does not think it necessary to provide in the Convention for the withdrawal of naturalisation, it is willing, in a spirit of conciliation, not to oppose the inclusion of a list of absolutely concrete and limited exceptions.

I wished to make these few comments in order to explain the reason for my vote.

M. Alvarez (Chile) :

Translation : Chile is not specially interested in this matter. Such cases are very rare in my country. Consequently, in a spirit of conciliation, I agree with the Polish delegation's proposal, since I think it contains the true principle governing this question — namely, that it is a matter to be dealt with by the law of each individual country.

Mr. Flournoy (United States of America) :

The delegate for France seems to have misunderstood our proposal. The proposed Basis does not provide that a naturalised citizen who resumes residence in the country from which he came thereby reacquires the nationality of that country ; it merely provides that he thereupon loses the nationality acquired by naturalisation.

It is quite true that such a provision creates cases of statelessness, and it is also true that one of our objects here is to avoid cases of statelessness as far as possible. If, however, the statelessness is due to the fault of the individual himself, who has not carried out his part of the contract, so to speak, in regard to naturalisation, there is no reason why he should not be left stateless.

Mr. Dowson (Great Britain) :

The discussion this morning has disclosed a considerable difference of opinion regarding this proposal and certain misconceptions have, I think, arisen as to its object. As I understand it, the object is not to enlarge or indicate the freedom of States to withdraw their naturalisation once granted, but to delimit or restrict that power by enumerating the cases in which

its exercise is regarded as proper and to exclude from those cases anything which is of an arbitary character and not a personal default or act of the person naturalised. In my view, however, it would be very much better not to proceed with this proposal if it is to be interpreted as in any way enlarging the freedom of States to withdraw their naturalisation or to encourage them to adopt that policy.

I feel myself very much in sympathy with the remarks made by the delegate for France with regard to the undesirability of creating fresh cases of statelessness by this method and, as a consequence I cannot feel any great enthusiasm for the proposal, having regard to the way in which it has been interpreted this morning as shown by this discussion. I think the Committee may decide, therefore, that it is perhaps better, in view of the differences of opinion which have been expressed, not to proceed with it.

Sir Basanta Mullick (India):

I only wish to explain that it was not my intention that denaturalisation should be encouraged. I do not want that at all; in fact my object was to limit the grounds of denaturalisation to faults of omission or commission — that is to say, grounds personal to the person who is denaturalised, or to cases where the conditions are such that the retention of the nationality is incompatible with the duties of loyalty which the naturalised person owes to the naturalising State. If it were ruled by this Committee that naturalisation once granted should not be withdrawn except for disloyalty, that would suit my purpose quite well.

As, however, many States have legislation in which they have specially enumerated some of the causes for which naturalisation may be forfeited, I have attempted in my amendment also to specify them; they are all grounds which are personal to the grantee. States which are averse to denaturalisation need not be under the apprehension that I am really trying to effect a change in their laws. My object is exactly the opposite; and if the principle of my amendment is accepted I would suggest that the matter be referred to the Drafting Committee to provide a suitable formula for insertion in a Convention or, in the last resort, in a Protocol.

M. Soubbotitch (Yugoslavia):

Translation: The American proposal is that a naturalised person should lose his nationality if he establishes his domicile or habitual residence in the territory of the State of which he was formerly a national.

The Yugoslav delegation is of opinion that a clause of this kind would be quite in place in national law; but it thinks that there is no reason why it should be made a rule of international law.

True, the proposed text does not cause the individual who has lost his new nationality to become a national of the State of which he was formerly a national. Nevertheless, it shows a certain tendency to direct the individual back to his former country. The latter might not be at all anxious to have in its territory a person who was once its national, went abroad, lost his nationality, and came back to his country once more as a national — perhaps even to enjoy certain treaty provisions concerning establishment.

The Yugoslav delegation does not think that this provision should be included as a rule of international law.

M. Caloyanni (Greece):

Translation: We have studied certain aspects only of the question now before us. It has, however, a far wider scope, a much vaster field of application than that which we have considered. For instance, as the Yugoslav delegate has observed, we are proposing to make this question of denaturalisation a question at international law; in other words, we are proposing to internationalise the problem.

Obviously, we ought to consider the various amendments, in particular, the basic one submitted by the Indian delegate. The two main cases to which it refers arise out of entirely different circumstances. Naturally it is desirable, and even necessary, that each State should be able to denaturalise a person who has proved to be unworthy of its nationality; nevertheless, this is an exceedingly serious measure that might leave the door open to arbitrariness.

Does this question really fall within the framework of our programme of codification? Some countries have special laws on this subject, whereas others have none. Countries which possess such laws have carefully studied them from a practical point of view and have limited their application; it would be dangerous for these countries to go further. To tell countries which have few or no definite rules on this subject that they must adopt rules, or supplement their rules, would be to trespass in a field which is the direct concern of those countries themselves.

In these circumstances, we have the following choice: either to accept the proposed amendments and thus adopt an international rule; or simply make a recommendation. The first alternative would perhaps be going rather too far; and what would be the use of the second?

I do not think, therefore, that there would be any point in referring this text to the Drafting Committee. I know beforehand what the Drafting Committee would do. Its decision would in all probability be negative. I do not wish to forestall its decision, but in view of the divergency of our opinions what could it do? It might refrain from giving an opinion or suggest that nothing should be done, as it has already decided in connection with other Bases. I think that, in the present case, we should not accept these amendments. With all due respect to the views of other delegations

which desire that this rule should be established, I think it would be better for us not to take any decision.

M. Hering (Germany):

Translation: We recognise that the Indian delegation's intention in submitting this amendment was to restrict the powers of States in the matter of denaturalisation and to exclude all arbitrary action. But, as a matter of fact, the text would lead to the opposite result; by seeking to obtain an agreement among States whose laws admit denaturalisation we should be enlarging the possibility of denaturalisation by increasing the number of reasons for which such action could be taken.

On several occasions, public opinion has expressed regret at the abusive use which has been made of denaturalisation since the war, with the consequent increase in the number of stateless persons. We think it would be a retrograde act on our part to accept this proposal. We do not believe that public opinion would be favourable to its acceptance.

Mr. Dowson (Great Britain):

May I, in view of the recent suggestion made by the delegate for India, add a word to what I have already said? I do not desire in any way to oppose his suggestion that this matter should be referred to the Drafting Committee; indeed, it seems to me that that is probably the best way to bring this discussion to a close. The Drafting Committee might quite well, I think, be able to find a formula which would enable us to put on record a statement which, while recognising existing legislation in regard to the withdrawal of nationality when it has been acquired by naturalisation, should recognise the principle that its arbitrary withdrawal is undesirable.

M. Merz (Switzerland):

Translation: I said that I would be able to accept the principle contained in the proposal of the delegation of the United States of America. I was, however, like other delegations, mistaken as to the true scope of this proposal, thinking that it referred only to cases of double nationality. According to the explanations given by the United States delegation, this proposal goes further. Under these circumstances, I cannot support it, and declare that I agree with the French delegation on this point.

M. Negulesco (Roumania):

Translation: I accept the general idea of the proposal, but as it leads to statelessness we should limit the number of cases and not leave every State, as suggested in proposal No. 3, free to withdraw nationality for reasons defined in its own legislation.

The Roumanian delegation is prepared to accept a restricted formula limiting withdrawal to very serious cases only: (1) When a naturalised person has committed acts contrary to public order or the safety of the State; (2) When he has left the country in order to avoid serving the State.

The Roumanian delegation agrees with the Polish and Chilian delegations, that the withdrawal of naturalisation should not be retrospective and should be dealt with in a special Protocol.

The Chairman:

Translation: After the twenty-two speeches you have heard on this question, you should surely be able, now, to make up your minds. The question has taken the following shape: two amendments have been proposed. One by the Indian delegation supported by other delegations, restricting the right of each State to withdraw naturalisation when once granted; the other, put forward by the delegation of the United States of America, to the effect that a person naturalised in one country, who returns to his country of origin, loses his second nationality — though the amendment does not state that he recovers his former nationality.

The question is, does the Commission accept either of these amendments in principle? I say "in principle", because the proposal has been made by several delegations that if these amendments are adopted in principle the final drafting should be left to the Drafting Committee. If that is what the Committee decides, it will have to give a decision also regarding M. Diena's proposal, which has the support of other delegations, to the effect that the question should, if necessary, form the subject of a special Protocol.

Before calling upon the Committee to take a decision, may I endeavour to convey the impression which this discussion has produced on an impartial observer. Very many countries here represented do not seem to be in favour of these amendments; moreover, the basic idea of these amendments seems to have been covered by the general principle adopted at the beginning of our work, namely the freedom of each State to legislate on these matters. Consequently, if no text is adopted either in the Convention or in a special Protocol, every State would still be free to regulate this question of the withdrawal of naturalisation.

True, the Indian proposal deals with the possibility of restricting the use of this right. But after listening to the various speakers, I have the impression that its effect would be illusory, since, as the Polish delegate has pointed out, in the wording which it suggests and which is seconded by the Chilian delegation, the present text still leaves States absolutely free to decide in what cases they may withdraw their nationality.

That being so, it might perhaps be wiser merely to state in the report that the Committee has examined the possibility of restricting the right of a State to withdraw its nationality, after it has granted that nationality, but, in view of the difficulties it encountered, and in its desire to avoid any possibility of being accused of creating a new source of statelessness, it does not propose to draw up any rules on this point, but appeals to the sense of justice of the

various States to use their right in the most quitable and limited manner possible.

M. Hering (Germany):

Translation: I propose that the Indian amendment be rejected.

The Chairman:

Translation: I have ventured to give you my own opinion. If the Committee shares that opinion, it could avoid taking a vote which might seem to be rather discourteous towards the promoters of the amendment. If, however, anyone asks for a formal vote I shall be obliged to consult the Committee.

Does the Indian delegation desire the vote to be taken?

Sir Basanta Mullick (India):

No, Sir.

The Chairman:

Translation: I take it, therefore, that the Committee will be satisfied, if we mention in the report the impressions I ventured to convey to you just now.

The Chairman's proposal was adopted.

43. LEGITIMATION AND ADOPTION: BASES OF DISCUSSION Nos. 20, 20*bis* AND 21.

The Chairman:

Translation: There are a number of amendments in connection with Basis of Discussion No. 20 (Annex I) proposed by the following delegations: South Africa, France, Poland, Belgium, Japan, United States of America, Denmark, Chile (Annex II).

In order to save the Committee's time, I shall not read these varicus amendments; I will merely call upon the delegates concerned to say whether they maintain their amendments, and if so, whether they would be good enough to explain their reasons.

Mr. Lansdown (South Africa):

I take it that the purpose of this Basis No. 20 is to place the child born out of wedlock, upon its legitimation, in precisely the same position as it would have been had it been born in wedlock. This principle, I think, can only operate under the *jus sanguinis*; under the *jus soli* it seems to me that the question will never arise, because the child born under the *jus soli* has its own independent nationality apart from the nationality of either or both of its parents, or apart from any other consideration.

Most countries operating the *jus sanguinis* do, I think, provide that the illegitimate child shall take the nationality of its mother, and that, upon legitimation, the child shall acquire the nationality of its father. In the German nationality law of 1913, for instance, it is provided, in Section 5, that: "legitimation by a German effective in accordance with German law bestows the citizenship of the father on the child". This, I think, is typical of a considerable amount of legislation on the subject, and seems to be a perfectly equitable principle.

There may be cases in which the application of the principle would result in considerable hardship and in some lack of uniformity. The adoption of this Basis No. 20 might possibly lead to there being conferred on a child of mature years, who has resided in its mother's country, the nationality of an alien country with which it has not had any intimate, or indeed, any association. That difficulty may possibly arise.

Further, the operation of the Basis may result in some lack of uniformity owing to the fact that the age of majority differs in many countries. There is, further, the possible difficulty that the State to which the illegitimate child belongs is not prepared to allow it to reject its nationality, because of the new nationality which it has received as a result of the legitimation conferred upon it by its father.

When we have heard those delegates who are opposed altogether to the acceptance of this Basis, we shall be in a position to consider these objections stated very much more in detail than I have done. I, for one, shall listen with considerable attention to the objections which will then be put forward.

The only point I wish to make at the moment is this, that it will be impossible to avoid all anomalies or to remove all difficulties. Hardly any general rule which we may adopt in the prospective Convention will succeed in doing that.

Assuming the adoption by the Committee of the general principle embodied in Basis No. 20, we come to the question of its actual wording. As I have said before, I think the purpose of the Basis is to put the child born out of wedlock in precisely the same position, upon its legitimation, as it would have if it had been born in wedlock. I am not at all sure, however, that the Basis as actually drafted does this, because it merely purports to confer upon the legitimated child the *father's* nationality. There may be a number of eases — there will, in fact, be cases — in which the child, had it been born legitimately, would not have acquired its father's nationality, but some other. Consequently, it seems to me to be necessary that the Basis should be stated in rather wider terms, and that is the object of the amendment which I have submitted and which is as follows: I propose to replace the words "gives the child the father's nationality and causes it to lose a nationality which it would previously have acquired by descent from its mother", by the words: "gives the child the nationality which it would have possessed had it been born legitimately and causes it to lose any other nationality which it may have acquired at birth".

But here I must ask the indulgence of the Committee in respect of a little error which has crept into my own amendment. I should not have used the two last words "at birth"; I should have said "acquired by descent from its mother", because the child, at birth, may, under the *jus soli*, have acquired the nationality of the country in which it was born. I do not wish to interfere with that rule at all. If I

did so, I should be going contrary to my own idea that the position of the legitimated child should be exactly the same as if he had been born legitimately.

I do not, therefore, wish to interfere in any way with the nationality acquired by the child as a result of the *jus soli*. It is for this reason that I ask you to substitute the words "acquired by descent from its mother" for the words "at birth". By doing this, it seems to me that you would be putting the child in precisely the same position upon its legitimation as though it had been born in wedlock.

You may say that this proposal might lead to dual nationality, but we are not concerned in this Basis with any question of dual nationality. We are merely concerned with putting the child in the same position as if it had been born legitimately.

May I just add that the wording of Basis No. 20 may, I think, to some small extent depend upon the decision taken by the Committee regarding the nationality of married women. In my view, if the Committee decides eventually to give to a married woman her own nationality — that is to say, a nationality quite independent from that of her husband — this present wording will be all right. If, on the other hand, the Committee decides otherwise, it will be necessary, for reasons which I hope will be clear, to add, after the word "minor", the words: "son or minor unmarried daughter".

M. Nagaoka (Japan):

Translation: The Japanese delegation proposes the addition of a short sentence to the text of Basis of Discussion No. 20. In the first line, we propose to insert, after the words "illegitimate child who is a minor", the following phrase: ". . . except in the case of married daughters . . .". This question is connected also with the provisions on which no vote is to be taken until to-morrow.

Before, however, the Committee takes its decision I wish to explain the reasons for our proposal, which are simple. If the legitimation of a daughter, married to a person of nationality other than that of the father of the daughter, confers upon her the nationality of the father, then husband and wife will have two different nationalities — a situation which is hardly favourable to family unity. In order to obviate this objection, we should adopt the rule that the married daughter still keeps the nationality of her husband even if she is legitimated after her marriage.

I wish to state now, however, that the Japanese delegation is able to accept Basis No. 20*bis* without any amendment.

M. Martensen-Larsen (Denmark):

The Danish delegation has proposed the following amendment:

> "If an illegitimate child under eighteen years of age and not married is legitimated by the marriage of its mother with its father it shall thereby acquire the father's nationality and shall lose the nationality which it would previously have acquired by descent from its mother."

I would draw attention to two points: first, an individual of eighteen years of age or more is not a mere appendix of its parents, and secondly, when a child is not legitimated by the marriage of its parents, it may be better for it to retain the nationality of its mother. Basis No. 20 is restricted by the Danish amendment, but I think that agreement might be reached in regard to it.

M. Diena (Italy):

Translation: The Italian delegation merely wishes to suggest that Basis No. 20*bis* should be adopted instead of Basis No. 20, in conformity with the Japanese delegate's proposal. The views which the Italian delegation has set out in the course of this long discussion explain our reason.

M. de Berczelly (Hungary):

Translation: I wish to make two observations in connection with Basis No. 20. I think that the first part of the Basis should take effect only when the denaturalisation of the minor illegitimate child is in conformity with the laws of the father's country. A drafting change is necessary in this Basis in order to ensure that it would take effect only when legitimation by the father is in accordance with the laws of the father's country.

My second observation is as follows: Should loss of nationality be limited to the nationality acquired by identification of the mother, even when the loss of such nationality extends to previous nationalities? To meet this case it would be sufficient to omit the words "acquired by descent from its mother".

Mr. Flournoy (United States of America):

The delegation of the United States of America proposes the elimination of Basis No. 20 and the substitution of Basis No. 20*bis*. I will not take up the time of the Committee in stating our reasons; they have already been put forward by the delegate for South Africa. If Basis No. 20 had been drafted in the form proposed in his amendment I am not sure that we might not have been willing to agree to it, but as it now stands we consider it objectionable and prefer Basis No. 20*bis*.

M. Hering (Germany):

Translation: I think it would be difficult to reach an agreement on Basis No. 20, on account of the questions of international private law which it involves. German law causes an illegitimate child to acquire German nationality by legitimation when such legitimation is in accordance with German law and provided, moreover, the child, or a third person legally related to the child, consents thereto.

We could not abandon these principles which have been established to safeguard the interests of minor illegitimate children; and we could not possibly accept Basis No. 21. We could only accept this Basis if the following words were added: "though each State shall remain free to make loss of the child's nationality conditional on the consent of the child or of a third person who is the child's relative at law".

We feel, moreover, that a legal definition should be given to the term "child who is a minor". We think that this might be decided in accordance with the law of the two countries concerned.

In these circumstances, we should prefer the adoption of Basis No. 20*bis*.

M. Rundstein (Poland):

Translation: I doubt very much whether we shall be able to unify law by agreeing that the legitimation of minor illegitimate children should affect the acquisition or loss of nationality. The period of minority regarded as the age-limit allowing legitimation varies according to the various national laws. Moreover, certain countries fix the age-limit at eighteen years.

In these circumstances Basis No. 20 could not be accepted.

Further, as loss of nationality is conditional on fulfilment of service on behalf of the State, the legitimation or acknowledgment of a child by a foreigner does not *ipso facto* involve the loss of that child's nationality of origin, notwithstanding the acquisition of foreign nationality owing to its legitimation or acknowledgment. Loss of nationality may therefore be conditional on the granting of authorisation.

It might have been said that the rule laid down in Basis No. 20 should only come into play subject to the rules also contained in Basis No. 6. But Basis No. 6 has not been accepted. We might, therefore, adopt Basis No. 20 if we inserted at the beginning "Subject to the provisions of the law of the State of which the illegitimate child is a national . . ."

The same observation applies to Basis No. 21.

M. de Navailles (France):

Translation: The French delegation has submitted an amendment on Basis No. 20. This amendment reads as follows:

> "A legitimated child who is a minor has the same status in regard to nationality as a legitimate child."

It will be noticed that Basis No. 20, as drafted by the Committee of Experts, applies only to those systems of law which treat nationality on the basis of *jus sanguinis*, and not to the others. A number of legal systems, however, — the French for example — combine the two principles of acquisition of nationality, by filiation and by birth in the territory in question.

The formula we propose is wider than that of the Committee of Experts. It enables the nationality of a legitimated child to be regulated in all circumstances, since we are considering only the situation of a legitimate child, which is governed either by the individual systems of law, or by international provisions such as that which we are discussing.

In our opinion, our proposal would simplify the matter a great deal by preventing the complications arising out of the question of the consequences of legitimation? If a legitimated child is assimilated to a legitimate child, we need only deal with the status of the legitimate child.

The Chairman:

Translation: I think that the Committee might now take a decision. With regard to Basis No. 20, I have received a radical proposal to the effect that it should be simply omitted, its place being taken by Basis No. 20*bis*. This is the first question you will have to settle. If you decide in favour of omission, we shall then have to consider whether the wording of Basis No. 20*bis* is satisfactory, or whether any formal modification is necessary.

If, however, the Committee decides to maintain Basis No. 20, the text will have to be referred to the Drafting Committee in order that the latter may bring it into agreement with the various amendments concerning formal modifications, it being understood, as the South African delegate has pointed out, that questions connected with the text referring to married women will be held over until the Committee takes a decision on the nationality of married women.

I ask you to decide whether Basis No. 20 should be omitted and Basis No. 20*bis* inserted in its place.

M. de Navailles (France):

Translation: I wonder whether the question ought to be put in that way. If we amalgamate the two Bases and I am asked to vote for the omission or retention of Basis No. 20, or if I am asked to vote for the omission of that Basis and its replacement by Basis No. 20*bis*, I cannot vote for Basis No. 20, because I do not want to decide in favour of Basis No. 20*bis*, of which we have proposed the suppression.

The Chairman:

Translation: Then, M. de Navailles, you ask for a separate vote on each Basis.

I ventured, in summarising the situation, to refer immediately to the connection between the two Bases in order that those who so preferrred might express an opinion more readily on the omission of Basis No. 20; in point of fact, if there were no Basis No. 20*bis*, some delegations might possibly hesitate to vote for the deletion of Basis No. 20.

Subject to these observations, I now put to the vote the omission or retention of Basis No. 20.

The Committee decided, by twenty-one votes to fourteen to omit Basis No. 20.

The Chairman:

Translation: Before asking you to decide

whether you wish to adopt Basis No. 20*bis* in place of Basis No. 20, which we have just decided to omit, I would ask M. de Navailles whether, in view of the vote which has been taken on Basis No. 20, he maintains his proposal to delete Basis No. 20*bis*.

M. de Navailles (France):

Translation: I desire to maintain my proposal for the omission of Basis No. 20*bis*, because the French delegation considers that there are serious objections to this Basis. In its present form its effect, contrary to what we decided upon in regard to Basis No. 1 of the Convention, may be to make the nationality of the individual in one country dependent upon the law of another country. In Basis No. 1, we agreed that every State has the right to determine by its own law who are its nationals. If we adopt Basis No. 20*bis* the consequence will be that, as the result of a change in civil status, it will be possible to give an illegitimate child the nationality of a State in virtue of a foreign law. For that reason we ask for the omission of Basis No. 20*bis*.

M. Diena (Italy):

Translation: I would point out that even French law admits this system as regards the nationality of married women.

M. de Navailles (France):

Translation: French law allows a woman to choose one nationality or the other when she marries. This principle is different from that laid down in Basis No. 20*bis*. In any case, it is embodied in French law whereas the principle of Basis No. 20*bis* is not. That is the difference.

The Chairman:

Translation: As the proposal to omit Basis No. 20*bis* is maintained, I put this proposal to the vote.

The Committee decided, by eighteen votes to ten, to maintain the Basis.

The Chairman:

Translation: We have now to take a decision concerning the amendment proposed by the Polish delegation which would have a restrictive effect on the text of Basis No. 20*bis*.

M. Soubbotitch (Yugoslavia):

Translation: I should like to ask the Polish delegate if its text means that the law of the country of which the child is a national may lay down that the child shall lose its nationality even if legitimation by the foreign father does not cause the child to acquire its father's nationality.

M. Rundstein (Poland):

Translation: I have in mind the case in which the child does not fulfil his service obligations towards the State. If you take the wording of the Basis as it stands, the child should lose its nationality unconditionally, but, if the phrase I propose is inserted, the situation will be quite different.

The Chairman:

Translation: I put the Polish amendment to the vote.

The amendment was adopted by eighteen votes to three.

The Chairman:

Translation: It is understood that the Drafting Committee, which is called upon, so to speak, to tidy up our texts, will see if this text can remain as it stands or whether some improvements are required to bring it into line with the other articles.

It is also understood that if, after the decisions to be taken to-morrow on the question of the nationality of married women, anyone desires a slight alteration in this text in order to bring it into line with other decisions, he may make a proposal, which I will duly submit to the Committee.

There now remains Basis No. 21. It is now very late and I would ask you to adjourn the discussion of this last Basis until we have considered Bases Nos. 16 to 19.

This proposal was adopted.

The meeting rose at 12.50 p.m.

FIFTEENTH MEETING

Tuesday, April 1st, 1930, at 9 p.m.

(RECEPTION OF JOINT DEPUTATION OF THE INTERNATIONAL COUNCIL OF WOMEN, AND OF THE INTERNATIONAL ALLIANCE OF WOMEN FOR SUFFRAGE AND EQUAL CITIZENSHIP, SUPPORTED BY OTHER INTERNATIONAL AND NATIONAL BODIES.)

Chairman : M. POLITIS.

The Chairman :

Translation : Gentlemen — In accordance with your decision, we shall have the pleasure of hearing the representatives of two great women's organisations which have expressed the desire to lay before us their views on the question of women's nationality. I will call upon each of these ladies to speak in turn. The first on my list is Miss MacMillan.

Miss Chrystal MacMillan :

Mr. Chairman, ladies and gentlemen — Mme. Vérone and I represent the Joint Conference of the International Council of Women and the International Alliance of Women for Suffrage and Equal Citizenship. These two international societies each have branches in more than forty countries.

We held recently here, at The Hague, a demonstration in support of the demand that a woman, whether married or unmarried, should have the same rights as a man to retain or to change her nationality ; and besides our own organisations, we have the support of many other organisations, international and national. A document has been distributed which indicates the organisations which supported that particular demand. You will see among them many important international organisations ; the International Federation of University Women, the International Women's Co-operative Guild, the Women's Committee of the Labour and Socialistic International, and the Bureau of the International Social Democratic Party and others.

There are several other important international organisations, and, in addition, on the subsequent pages of the document you will see a number of organisations, and of individuals, who particularly notified their support of our demonstration. They include all types of individuals ; jurists, such as Professor Daneff, of the International Arbitration Court at The Hague ; politicians, such as M. Paul Roby, the President of the German Reichstag ; members connected with the League of Nations, such as M. Undén, of Sweden, and former Members of the Council, such as Viscount Cecil of Chelwood, so well known to the League of Nations ; churchmen, such as the Archbishop of York, of Great Britain, and others. I only mention a few to indicate the type of support we have.

In addition to our joint demonstration of that resolution, at our Conference we adopted a further resolution, which is in the second document attached (Annex VI), which has been circulated. It reads as follows :

> " We recommend that, with respect to the derivation of nationality from a parent, that of one parent should have no preference over the other, and that any provision in the Convention to be adopted by the First Codification Conference should be consistent with this principle."

Our grounds for making these demands are that we look upon a woman as a human being who should have the rights which are exercised by other human beings ; that she should not have any of these rights denied to her because of her sex or because of her marriage. It is not in accordance with her dignity, or with the importance of nationality, that nationality should be given or taken away without the consent of the party concerned. It is not proper to look at such a very important question as nationality, to think that it can be treated in that way.

There are, under the present system, many hardships which result from that system, but we do not speak of these, because they are not the important aspects of this question. Under any system, necessarily, individual hardships arise ; it is always so, and, if the system were changed, we should get rid of many existing hardships, and probably new ones would arise — that is in the nature of international legislation.

It is suggested against us, when we ask for this reform, that it would mean increasing the conflict of international law. That would be

true with respect to certain combinations of countries ; but it would mean reducing conflict with respect to other combinations of countries. As M. Rundstein pointed out in his report : if the principle for which we stand were adopted universally, the conflicts would be completely abolished ; and we would point out that you here are, to a certain extent, trying to diminish the number of conflicts in international law. It is much more important to us that the woman should be asked to give her consent in these matters.

The abolition of statelessness, or the prevention of double nationality, are not the fundamentals, from our point of view. What we ask for is that the woman should be considered as a responsible citizen whose consent should be asked, and that is specially necessary with respect to this most fundamental of all political rights.

The Council of the League of Nations has laid it down that the spirit of this Conference should be in line with, and adopt the contemporary conditions of, international life. What are these conditions ? To-day, in States whose population amounts to just about half the population of the whole world, the nationality rights of married women are already conceded, sometimes completely, and sometimes with certain limitations. But when you consider that the United States of America, with more than one hundred millions of population, that China, with a population of one-quarter of the globe; that Russia, with a population of between one hundred and two hundred millions ; that seven of the Republics of South America, and that Belgium and Yugoslavia also recognise the rights of married women completely, and that a number of countries such as the whole of Scandinavia, France and its colonies, and Roumania, all recognise these rights, you see that the great part of the world has already taken a step in the direction which we ask.

These are " the contemporary conditions of international life " ; but another aspect of the question is of importance, and it is this : that the change, in the very great majority of these countries, has taken place within the last twelve years. Everything, therefore, is moving, and moving very rapidly, in the direction for which we ask. That is the reason why we would say to this Codification Conference that we hope you will recognise these " contemporary conditions of international life, " and that anything you decide here, shall be in line with these conditions. It would be most inappropriate if anything were inserted in that Codification Convention which was contrary to the progress that has been made in the last ten years.

I would point out that the four Bases which refer to married women are all Bases which assume that the dying past is going to be the living future, and from that point of view, they are inappropriate Bases ; they do not take into account the present tendency towards giving equality between men and women in the nationality laws.

There is one other point, Mr. Chairman, and it is this : we notice that one meeting of this Committee has been allotted to the four Bases which deal with the women, whereas thirteen meetings have been given to the other Bases.

There is one important aspect to which we would draw your attention — namely, the relationship between the other Bases, Nos. 1, 2, 3, 4, 5, 6 and 15, and the effect of these Bases on married women. That is a very important aspect of the question, and we think that that aspect has not been sufficiently considered because, in discussing all these Bases, the point of view considered has necessarily been that of persons who have the right themselves to naturalise ; whereas, in the world to-day, many women have not yet this right. Therefore, to introduce into a Convention the four Bases which refer to the married woman without considering their relation to these other Bases, means that the whole question is dealt with inadequately. We would ask you very seriously to consider whether the time has come to lay down any such restrictions when so very, very little consideration has been given to this important question which affects half the population of the world.

Mme. Maria Vérone :

Translation : Mr. President, ladies and gentlemen — I have been instructed by our Committee, and more particularly by the International Council of Women, to reply primarily to the objection in respect of family unity which has been raised against our recommendation.

The principle used to be generally — though I will not say unanimously — accepted that a wife must take the same status and nationality as her husband for the sake of the unity of the family, but we may now say that that unity exists only in theory and not in actual fact. Unity of nationality does not always exist in a family, because the husband may, during his married life, change his nationality by naturalisation, whereas, according to some systems of law, the wife does not necessarily and automatically take her husband's new nationality in such circumstances.

As we can show, unity of nationality does not always mean unity of law. Civic status, which must depend solely on nationality, is sometimes modified through the fact that the domicile of one of the members of the family is situated in a country which allows civil rights to be acquired without change of nationality. Sometimes, indeed, a person who has lived in a country for a certain number of years may enjoy the benefits provided by its civil laws without a change of nationality, and we have known many cases where a member of a family — the husband as a rule, since, according to most of our laws, the wife cannot have a separate domicile — goes to live in a country where he may legally make

a will absolutely inconsistent with the law of the country of which he and the other members of his family are nationals.

Legal codes may differ, however, not only in their treatment of persons, but also in that of property, according to the manner in which the family's property is composed, since a distinction is drawn between movable and immovable property. Movable property is generally governed by the law of the owner, but under many systems of law immovable property is governed by the law of the country in which it is situated.

As you will see, this unity of law is only apparent and not real, and we are well aware that conflicts of laws arise on that account. For some years these conflicts were not of great importance, because they did not often occur. Marriages between persons of different nationalities were rather exceptional. Now, however, in view of the existing travelling facilities and the great extent to which the different peoples come into contact with each other, such "mixed marriages" (if I may call them so) between persons of different nationalities have very greatly increased, and the various countries — or at all events some of them — have felt the need to change their laws.

On what lines have these nationality laws been changed? The constant tendency is to give greater independence and greater freedom to wives — in other words, to give a woman who marries a foreigner the right to keep her own nationality. Under the old system, it frequently happened that women had no nationality at all, because a country made no provision for the case of one of its women nationals marrying a foreigner and thereby losing her original nationality. Under the existing system, there being no uniformity of law on the subject, we frequently find that women have a dual nationality; in other words, they retain their nationality under their own laws and at the same time take their husband's nationality according to his law. Hence, there obviously arise fresh conflicts of laws.

We are quite aware of the large number of difficulties that arise through a person being able to possess two nationalities, but we also realise the difficulties caused by the fact that in one family there may be, nor dual nationality, but multiple nationalities, since it is clear that, in some cases, the children will have neither the father's nor the mother's nationality if they are born in a country where the *jus soli* prevails. They may have a nationality different from that of either of their parents.

These conflicts of laws are constantly increasing, and that is ā fact which there is a tendency to forget.

What will be the position of a family with these multiple nationalities?

The League of Nations has, I think, laid down the lines on which these conflicts of laws must be settled, as there now exists at Rome an institute for the purpose of unifying international private law. It will clearly be necessary to determine the position of the various members of a family and of the parents, the relations between the parents and the position of the children in respect of their parents.

As we have just shown, these conflicts already existed in one form or another under the old principle which was originally accepted — namely, that the wife must take the status of her husband.

Difficulties may still remain, perhaps, but that is surely no reason why we women should not keep our nationality. That, I submit, is the primary right of every individual.

This is no new question for the International Council of Women. For more than thirty years that Council has been studying the question of the married woman's nationality. At a reception which it gave recently at Geneva to the Council of the League of Nations, Sir Austen Chamberlain said to Lady Aberdeen that the International Council of Women was, as it were, the mother of the League of Nations.

And often, be it remembered, the children excel the parents!

But there is another method of work open to us. Formerly, we used to seek out what was best in each law and endeavour to persuade the other countries to adopt this. At the present time we feel that a new form of civil life is being created through the agency of the League of Nations. That is why we appeal to the League. We know, gentlemen, that you, as a Conference for the Codification of International Law, cannot impose any rules on the various Governments and nations, whether parties to this Conference or not. But you can see in what direction laws have been evolving for the last few years with regard to the situation of married women from the point of view of their nationality.

Having noted that the tendency of the ever-increasing reforms in the various laws is always in the direction of greater freedom for women. you can — and we hope you will do this at least — make a recommendation to the effect that the woman should always have the right to maintain or change her nationality under the same conditions as the man.

Then if, as we hope, you agree to this principle, we think it will be possible for you, in the various decisions you will reach, to keep it in view as being the general basic principle to which all laws should tend.

In so doing you will have helped to prove that woman is no longer a chattel which the owner may dispose of as he thinks best, but a human being who, like a man, is entitled to justice, freedom, independence and, I would say, the primary right of the human being: the right to a fatherland.

Miss Margaret Wittermore:

Mr. Chairman, members of delegations and guests — The National Women's Party, which

has endorsed the grand proposal of the Inter-American Commission of Women, and is in complete accord with the principle it embodies, is glad to cede its time to Miss Doris Stevens.

Miss Stevens :

I speak to-night on behalf of the Inter-American Commission of Women of which I have the honour to be Chairman and its member for the United States of America. This Commission is a juridical body, the first and only one of its kind in history. It was created by a unanimous resolution of the sixth Pan-American Conference in 1923. It represents the twenty-one republics of our hemisphere. Each Government appoints one woman to represent its country. The twenty-one Governments have charged the Commission with the drafting of recommendations on international measures to improve the status of women. It is also entrusted with safeguarding the legal position of the women of our hemisphere.

What you do here on the nationality of women affects vitally the women of the world and therefore us.

Immediately after our creation, we undertook, as our first research, an enquiry into the status of women in the sphere of nationality. We have examined the laws of eighty-four countries on this one point, and the results of our study are here before you to-night in manuscript form. We invite your inspection of these volumes.[1]

We chose this field, because the League of Nations Preparatory Committee had decided to attempt to codify the law on nationality, because we wished to collaborate with you in this new and inspiring endeavour.

To this end, the Commission appointed a Committee on nationality and the status of women, under the chairmanship of Miss Alice Paul, Doctor of Law, and a distinguished jurist of the United States of America. This report is the result and its practical outcome a proposal of three lines.

> "The contracting parties agree that from the going–into–effect of this treaty there shall be no distinction based on sex in their law and practice relating to nationality."

The report and draft proposal were unanimously adopted by plenary assembly of the Inter-American Commission of Women last month in Havana. I have come directly from that meeting to your Conference here, commissioned by my colleagues to ask you to adopt in the Code of International Law under discussion the principle of equality between men and women, in the field of nationality, embodied in our draft proposal.

[1] These volumes were placed at the disposal of the members of the Committee for consultation but were, at the request of Miss Stevens, returned to her at the end of the Conference.

The distinguished delegate from Chile, Dr. Miguel Cruchaga, introduced our proposal as a new basis of discussion for the Nationality Committee.[1] Therefore, it is before you for consideration.

We have been warned that no arguments we may advance and no matter how eloquently we may present them, will give us a single additional vote in your Committee. It is impossible for us to know whether this is true or not. In case it is, however, and because your time is so precious, we shall present to you only facts, believing facts to be more powerful than arguments.

When we ask for equal nationality rights between men and women, we do not ask for something new and untried. Equality already exists in the national law of many countries of the world in one or more respects.

If you will look at Table V,[2] which is before you in advance proof form, taken from our report, you will see that, in thirteen countries, father and mother have equal capacity to transmit nationality to their child at birth. In eight countries, the laws between men and women are equal in regard to the effect of marriage upon nationality ; in seven countries, there is equality of husband and wife in regard to changing nationality after marriage ; in these same seven countries, there is equality between a father and mother in the capacity to change the nationality of a minor child ; and, finally, in five countries, there is complete equality between men and women in *all matters* connected with nationality.

Four of these five countries are on our hemisphere ; Argentine, Chile, Paraguay and Uruguay, and the fifth is the Soviet Union.

It will be seen then that, if there is a desire to establish equal nationality rights between men and women, a way can be found.

For example, in the thirteen countries which have equality between the father and the mother in the capacity to transmit nationality to their child at birth, each one of these countries has its own way of establishing this equality under its national laws. Likewise, national machinery varies greatly in those countries which have equality in marriage ; change of nationality by husband or wife after marriage ; change of nationality by parents ; and even in the countries where complete equality on all points is established. In other words, if the principle of equality, for which we ask, is accepted, each country may keep all its various devices, all its individual modes of perfect equality. All the elements now

[1] Reproduced in Annex II, pages 280.

[2] Kept in the Archives of the Secretariat.

in the national law could still remain, such as effect of domicile, habitual residence, option, etc.

The only change would be that all those provisions, while remaining intact, would apply equally to men and women.

The principle of equality in nationality on one or more points in all these countries, we repeat, has been perfected. It will be done again. And between those countries which disregard women's rights in nationality and the other pole of those countries which give complete equality in all respects, there is a wide zone with infinite variety and degree of distinctions, all of which, however, march always towards equality. Sometimes the steps are slow and halting. Sometimes the steps taken are swift, as in the case of Turkey and the Soviet Union.

Some delegates have questioned the relative merits of the countries from which these laws for equality spring. Some have even cited their populations numerically as compared to the populations of those countries where there are distinctions. Surely that is no way to judge of the justice of a principle or the rightness of a law. It may be a political proof, but it is certainly not a proof of justice. A law is a law. Equality is equality wherever found and however manifest. Since our Commission is a juridical commission whose business it is to investigate the law, all States are equal in our sight. I believe this is, at least theoretically, a basic principle in international law. Therefore, the comparison between States and between populations does not move us.

You can see that the tables before you are but quick graphs of the laws of the world.[1] Our report contains, in addition, synopses of the eighty-four laws, in simple form, verified in each case by the Foreign Office of the home governments through the medium of the United States State Department. It contains also authentic texts in the original and translations made with the utmost care.

Our report will be printed and will be available to all Foreign Offices, universities, jurists and lay people who may wish to consult it. It is said by Dr. James Brown Scott, President of the American Institute of International Law and a distinguished world jurist, to be a great and authoritative contribution to the study of international law.

The adoption of our principle of equality does not result in uniformity. However we may feel personally about the need for uniformity in nationality, from the point of view of convenience, of beauty, and, in fact, of plain common sense, we women are not yet powerful enough to undertake such a task. Equality will not bring uniformity. It will merely introduce into national laws justice to women. It will leave all the vagaries of national law in other respects as they now stand. This seems to us so little to ask.

Our draft proposal has been endorsed by the Executive Committee of the American Institute of International Law; by the National Woman's Party of the United States of America, a very powerful and influential organisation which has worked long and faithfully for equality in all departments of life; and by numerous organisations in the United States.

We beg of you, gentlemen, not to begin the Codification of International Law on this subject, by writing into it in any form whatsoever, existing national discrimination against women, in the face of the manifest tendency towards equality in nationality throughout the world and in the face of the rapidly changing legal position of women. It will do no good to adopt something which we do not want. Far better to consider further our proposal than to write a Convention which we shall subsequently have to work to overturn.

Keeping to my promise that I would not present to you any of the beautiful, moving, and, to us, noble arguments on behalf of giving justice in nationality to one-half the human race, I will close my remarks with a story which I recommend to your most profound contemplation.

When I sailed from New York to come to this Conference, among the books which friends sent me to the boat, to serve as recreation, was a copy of Milton's very moving and tragic poem "Samson Agonistes" which I had not read for many years. To my great astonishment I found that all the disaster which overtook Samson and Delilah were due to imposing a foreign nationality on Delilah. I secured a copy of the Bible from the ship's library to check the facts. This is what I found:

Samson was an Israelite and worshipped his God Jehovah. Delilah was a Philistine and worshipped hers, Dagon. Under the laws of their time, Delilah was obliged to forsake her people and to worship Samson's God. You will remember that the Philistines were hard pressed by Samson, who was possessed of great strength. This secret must be ascertained. But all the wits of man could not ferret it out. And so the counsellors of State, the lords and princes of her people, the Philistines, went to Delilah and pleaded with her to learn and to destroy Samson's force. She refused. They offered her bribes — a quantity of money. Still she refused. Bribes failing, they told her it was her *civic duty* to stand by her own god and her own people, in short, not to respect the allegiance which she had acquired by her marriage to a foreigner; to disobey the law. She struggled between her love of country and her love of Samson to whom she was deeply attached.

[1] A copy of the tables presented by Miss Stevens is kept in the Archives of the Secretariat.

Finally, the appeal to her civic duty broke her resistance, and shey ielded to the pressure of the law-makers. You know the tragedies which followed. In the end both Samson and Delilah's people were destroyed. But sadder still, before that happened, the love these two people bore each other was destroyed.

Consider well these circumstances. The first immoral step was made by the State in taking away Delilah's allegiance to her own people. Then the State held its own act in contempt. It required her to behave as if she were still a Philistine. And for doing what in a man would be considered noble and patriotic — though he never can be put in such an equivocal position — Delilah has been called harsh and brutal names through ages.

The evil of forced allegiance is as old as this Bible story, and older. Do you not find it sad that the human race learns of liberty and freedom of choice so slowly, that equality comes so painfully ?

Some of you are impatient to move more rapidly toward a more civilised conduct of international affairs in the various realms which vitally interest you. So are we in this question which so vitally concerns women. We were told, however, that you had already taken up your attitude on the question and that we could not alter it. We cannot go on waiting. If you wish, you can confer on us the same rights as are enjoyed by men in regard to nationality. It is a mere accident that we were born women and that you were born men. That is not a reason for making a distinction. I would ask you simply to vote for the equality of the sexes.

Mme. Marta Vergara (Secretary of the National Council of Chilian Women) :

Translation : Mr. Chairman, ladies and gentlemen — I am addressing you to-night as the representative of one of the countries which are taking part in the work of the Inter-American Commission of Women, and on behalf of the women of Chile. I am moved to address you by a strong feeling of solidarity, because for the last hundred years the men of my country have, without being asked, granted us complete equality as regards nationality, and I am convinced that, in common justice, all the women of the world should be granted the right we possess.

I will tell you what our experience has been under a system of absolute equality, and I can show you that the fears which still haunt the minds of most men are entirely unfounded.

Chile is a Catholic country by tradition and through the fact that almost all its inhabitants practise that religion. Equality in the matter of nationality has not affected the religious sentiment of the Chilian people. The family is still the basis of our social and political organisation, thanks to its complete unity, because it is founded not on a purely legal obligation but on the free consent of the married persons.

We Chilian women know that the most absolute rights of the individual are limited by those of society as represented by the family, the State or mankind. Transcending every practical consideration there is one sentiment that cannot be destroyed by either law or custom — love.

The law protects those who, harassed by the hardships of existence, wish to resume their independence. Those fortunate persons who have achieved happiness can renounce rights which may help to destroy their ideals.

Whatever their nationality, women have their high ideals, and realise their duties as mothers and as citizens of great civilised countries. They ask simply that their innate right to dispose of their own lives as they wish should be recognised. You may be sure that their natural devotion will not be affected by the granting of that right. We Chilian women can proclaim it by appealing to past experience, and the men of our country will be proud to confirm the fact.

The principle upheld by the Chilian delegate, Professor Alejandro Alvarez, that nationality is quite independent of the individual's civil status, and the resolution adopted by the Inter-American Commission of Women and supported by the first delegate of my country, M. Miguel Cruchaga, have the effect of giving women throughout the world the rights which we possess.

I was anxious to lay before you evidence of the fortunate situation of my own country, where men and women have entirely equal rights, and to add my voice as that of a disinterested person to those of the women who are claiming a right and not a concession — a right of which they have been deprived without their consent.

The Chairman :

Translation : On behalf of the Committee, I thank you for the very interesting particulars which you have been good enough to give us. The Committee will certainly give them its close consideration; nor will it fail to give a thought to the misfortunes of Delilah as well as those of Samson.

The Committee rose at 10.10 p.m.

SIXTEENTH MEETING

Wednesday, April 2nd, 1930, at 9.30 a.m.

Chairman : M. POLITIS.

44.—NATIONALITY OF MARRIED WOMEN : BASES OF DISCUSSION Nos. 16 to 19 (continuation).

The Chairman :

Translation : As decided yesterday, the main object of to-day's meeting is to reach a decision with regard to Bases of Discussion Nos. 16 to 19.

I feel in duty bound to inform you that I have received a number of letters and telegrams from various parts of the world and from every kind of women's association, all expressing the general desire that the Committee should pronounce in favour of the principle of equality of the sexes. These documents will remain in the archives of the Conference.

The first question connected with Basis of Discussion No. 16 is the following : Does the Committee accept the text as drafted by the Preparatory Committee (Annex I), or does it prefer the amendment of the delegation of the United States of America, to the effect that, instead of the word "wife" we should read "a person" and, instead of "husband", "spouse" (Annex II) ?

I will first put to the vote the amendment submitted by the United States delegation.

On a show of hands, this amendment was rejected.

The Chairman :

Translation : I will now invite the Committee to vote on the text drawn up by the Preparatory Committee.

This text was adopted by thirty-one votes to one.

The Chairman :

Translation : We have now an additional amendment submitted by the Roumanian delegation. If the Committee accepts this amendment, it will become the second paragraph of Basis No. 16. Possibly some slight drafting changes may be necessary, but we can leave that task to the Drafting Committee.

M. Negulesco (Roumania) :

Translation : The Roumanian delegation feels that Basis No. 16 as at present drafted — its object is to avoid statelessness — refers only to the first group of laws — that is to say, those which require the wife to follow her husband's nationality. There ought to be another Basis, other than No. 16, or, at any rate, another paragraph referring to those laws which allow the wife to opt for her nationality at the time of marriage.

This new Basis would lay down the conditions governing such choice, so that in no case would the wife become stateless. This is the text we propose :

> "If the national law of the wife allows her to retain her nationality or to take that of her husband, the latter alternative shall be permissible only if she makes a declaration at the time of her marriage, and if the law of the husband allows such a change of nationality."

M. Soubbotitch (Yugoslavia) :

Translation : The Yugoslav delegation is prepared to support the Roumanian amendment, subject to slight modification. According to the Roumanian amendment, the wife retains her nationality if she makes no declaration. We should prefer the contrary. The acquisition of the husband's nationality would be the principle, and the retention of the wife's former nationality the exception, for which a formal declaration would be necessary. The Roumanian amendment should therefore read as follows :

> "If the national law of the wife allows her to take her husband's nationality or retain her own nationality, the latter alternative shall be permissible only if she makes a declaration at the time of her marriage and if the law of the husband allows such a change of nationality."

The Chairman :

Translation : Does the Roumanian delegation accept this modification ?

M. Negulesco (Roumania) :

Translation : Yes, subject to redrafting, because the words "and if the law of the husband..." no longer refer to the latter but to the former alternative — that is to say, when the wife takes her husband's nationality.

M. Medina (Nicaragua) :

Translation : In that case, we ought surely to omit the words "and if the law of the husband allows such a change of nationality" at the end of the amendment.

The Chairman :

Translation : You have before you a Roumanian amendment, modified by the Yugoslav delegation. The Roumanian delegation accepts this modification, while M. Medina suggests that the last phrase of the amendment ought to be omitted.

M. de Navailles (France) :

Translation : The French delegation asks that the Committee should first of all vote on the rejection of the amendment, because a question of principle is involved, no matter whether the Roumanian text or the Yugoslav text be considered. Both texts raise the preliminary question as to which system ought to be preferred. Some laws make the wife acquire her husband's nationality, while others allow her to retain her nationality. If we adopt one of these amendments rather than another, we shall be signifying our preference either for the rule which imposes the husband's nationality on the wife or for that which leaves the wife free to choose. Consequently, as our vote would amount to regulating a question of principle, we ask that the amendment be rejected.

Mr. Dowson (Great Britain) :

I entirely agree with the delegate for France that this amendment ought not to be accepted. It appears to me to be dealing with the subject from an entirely wrong point of view. The amendment reads :

"If the national law of the wife allows her to retain her nationality, or to take that of her husband . . ."

Now the latter alternative, "taking the nationality of her husband", is not a matter with which the national law to which the wife is subject can concern itself at all.

The question whether or not she takes the nationality of her husband is a matter to be determined solely by the national law of the husband. Accordingly, this amendment, in my view, proceeds from an entirely wrong basis. I desire to associate myself with the suggestion of M. de Navailles that it be rejected.

The Chairman :

Translation : The rejection of this amendment has been moved: I therefore put it to the vote.

The Committee decided not to retain the amendment.

The Chairman :

Translation : We now come to the additional German amendment, to the effect that we should add a paragraph to Basis No. 16 reading as follows :

"Without prejudice to the liberty of a State to accord wider rights to retain her nationality of origin to a woman marrying a foreigner, she shall retain this nationality provided she makes an application for the purpose and establishes within the country her first habitual residence after the solemnisation of the marriage. She shall retain this nationality for as long as she is resident in the country."

We examined the text at considerable length the day before yesterday.

Moreover, we have a modification to this amendment, proposed by the Austrian delegation which reads as follows :

"Without prejudice to the liberty of a State to accord wider rights to retain her nationality, a woman marrying a foreigner may retain her nationality of origin if, before solemnisation of marriage, she expressly and formally requests permission to do so and provided after marriage she establishes within her country of origin her first habitual residence.

"Finally, the woman shall only retain her nationality provided that as soon as she loses her nationality of origin by transferring her habitual residence abroad, she acquires, at that same period, the nationality of her husband."

I must tell you that the German delegation has informed me that it does not accept the modification proposed by the Austrian delegation in its amendment. I will, therefore, ask the Austrian delegation whether it insists on this proposal.

M. Schwagula (Austria) :

Translation : I do not quite know what to reply. My proposal was intended to enable us to accept the German amendment. I thought yesterday evening that my German colleague agreed to this wording. I must have misunderstood him. I would therefore ask you, Mr. Chairman, to put the German amendment to the vote. If that amendment is rejected, I will withdraw mine, as in that case the question will have been settled as far as I am concerned.

M. Hering (Germany) :

Translation : I think there has been some misunderstanding. We are not absolutely opposed to the Austrian delegation's text, but we think that the change in this text is unnecessary, because our amendment presupposes that Basis No. 16 is accepted, as indeed it has been. According to Basis No. 16, a wife can no longer become stateless owing to marriage, because, if she does not acquire her husband's nationality, she retains the nationality of her country of origin. Thus, the case referred to in the Austrian amendment cannot arise.

Our amendment was meant to apply to the following case. A German woman marries a foreigner ; she thus acquires her husband's nationality and, according to German nationality law, she loses her own. If the wife remains in her country or settles there, or remains in her habitual place of residence after the

celebration of marriage, it would be very hard for her to lose her nationality of origin whatever happens, particularly as no question of State policy can possibly be involved.

Our amendment therefore proposes that the wife should be allowed, if she likes, to retain her nationality as long as she continues to be habitually resident in her own country after marriage. When she transfers her residence to her husband's country, she loses her nationality of origin; but she does not become stateless, because she still possesses her husband's nationality.

Mr. Dowson (Great Britain):

I should like to explain my vote. The Chairman's suggestion to put this amendment to the vote came rather as a surprise, and I should like to say a word or two.

I do not think it has been brought to the attention of the Committee that this amendment contains a principle which, to my mind, is open to very serious objection, not in connection with any question as to married women's nationality, but in regard to the nationality law generally. I feel — and I think a great many members of this Committee feel, though the feeling has not hitherto been expressed — that the test of residence is a very unsatisfactory criterion for determining nationality. Secondly, I feel very strongly that it would be a great pity if, without fully appreciating that this test was incorporated in the present amendment, this Committee voted in favour of it.

The objection, in principle, to habitual residence as a test of nationality is that a person ought not to be able to disengage himself or herself from the solemn and binding obligation of nationality by a mere transference of residence. That is an unsatisfactory test both as a matter of principle and as a matter of practice. Regarded from the point of view of practice, it is extremely difficult to determine in any particular case where a person's nationality depends upon residence, whether the change of nationality has, in fact, taken place. It involves a proof of facts which are very often difficult to ascertain.

Consequently, I strongly invite the Committee not to accept this amendment as a matter of principle, irrespective of any question affecting the nationality of married women, without prejudice to any extension of Basis No. 16 which this Committee may be willing to allow.

The Chairman:

Translation: After these explanations, I think that it will be possible for the Committee to vote. I put the German amendment to the vote. Those who share Mr. Dowson's opinion will vote against the amendment. Those who agree with the arguments of the German and Austrian delegations will vote for the amendment.

On being put to the vote, the German amendment was rejected.

The Chairman:

Translation: Before we finish our discussion on Basis No. 16, we have to take a decision with regard to the recommendation on the general question of the nationality of married women.

We have before us four recommendations, the first being submitted by the Chilian delegation. This recommendation really consists of two parts. It is worded as follows:

"The Conference recommends that States should reform their nationality laws on the basis of the principle that nationality must not depend on civil status, and that in particular, the nationality of the married women must not be made by law inseparable from that of her husband."

If any delegate asks that this recommendation should be divided into two parts, I shall ask the Committee to vote separately on each part.

Secondly, we have the Belgian amendment, worded as follows:

"The Nationality Committee of the First Conference for the Codification of International Law considers it desirable that, in future, the laws of the various countries should not determine the nationality of a woman solely by reason of her marriage or of a change in the nationality of her husband, without to some extent granting her the right usefully to manifest her intention."

Thirdly, we have the Chinese amendment, which reads as follows:

"It is desirable that marriage shall not in itself cause a change in the nationality of a woman."

Finally, we have the amendment of the delegation of the United States of America, as follows:

"The Conference recommends to the study of the Governments the principle that in their law and practice relating to nationality there shall be no distinction based on sex, with particular consideration of the interests of children involved in the application of the principle."

In order to facilitate your choice of one of these texts, I would point out that the four proposals differ considerably. The most imperative is that of the Chilian delegation. In descending scale, we then have the Chinese, Belgian and United States amendments. The last of these is couched in a very mild form, since it does not indicate any principle as obligatory or even desirable, but merely recommends Governments to study the question in a particular light.

Although I hold that the discussion is closed on this question, I will call upon the United States delegation to explain its proposal.

Mrs. Shipley (United States of America):

On behalf of the United States of America, I desire to explain the recommendation now

before the Commission. It embraces the idea of the proposal made by the delegate from Chile; but it also contains an addition of importance, and accordingly I trust that my friends from Chile will gladly accept and approve this proposal of the United States. I even venture to hope that it will be adopted with the unanimous assent of this Commission.

It is well known to all here present that my country has gone very far in its legislation toward the removal of discrimination based on sex, in matters of nationality. I need not review that legislation in detail, but I may say that the changes in our laws during recent years have proceeded along lines which are quite compatible with the idea of the progressive removal of such discrimination. The Government of the United States, therefore, most naturally supports with cordial sympathy the thought that the question of the removal of discrimination, based on sex in nationality laws, should be carefully considered by all the Governments of the world, as it will be considered by my Government. That is part of the proposal of the United States.

Every one, however, who has made any study of questions of nationality knows very well the complexity of the whole subject. Surely no one could know it better than the members of this Committee who have followed so attentively our interesting discussions. Any change or proposed change in the law relating to nationality requires a study of all the considerations which it implies, some of which at first sight may even be obscure.

But in connection with any change of legislation, whether by internal law or by international agreement, relating to the status of married women, another question is directly and intimately involved — namely, the nationality of the children. The interests of children are most closely bound up with any and every application, and still more with any complete application, of the principle of the absence of distinction based on sex.

In anything and everything which involves the interests of children, my Government, and I think I may say every Government, is very deeply concerned. It is the view of my Government that, while this question of the interests of children has received some attention, it has not yet been given that detailed and profound study which it deserves.

The two problems, one the problem of the nationality of married women, and the other the problem of children, are not in truth two problems; they are one. We could not separate them if we would and, so far as my Government is concerned, we would not if we could.

And so I put before you, as part of the recommendation of the United States, the rights and interests of children. They have not been separately represented here by any one especially brought forward to plead for them. But I say to you that we all represent them — some as fathers and some, like myself, as mothers; but all of us with the same sentiment, which I have no doubt the unanimous vote of this assembly will show.

M. Alvarez (Chile):

Translation: I wish to state, as I have already done on several occasions, that the principle here submitted as a recommendation has for the last century formed part of our law. I therefore request that it shall be adopted in the most absolute terms possible.

The Chairman:

Translation: We will now vote, following the order of imperativeness, on the four texts submitted. We have, first of all, to take a decision on the most radical text — that is to say, the Chilian draft which I have just read. If that is rejected, we shall vote on the second recommendation, and so on.

The Chilian proposal was rejected by twenty-five votes to eleven.

The Chairman:

Translation: We have now to vote on the text proposed by the Chinese delegation.

This proposal was rejected by twenty-three votes to three.

The Chairman:

Translation: We will now vote on the Belgian proposal:

The proposal of the Belgian delegation was adopted by fifteen votes to twelve.

Mr. Miller (United States of America):

On a point of order, I submit that, in this case, a vote should be taken on the proposal of the United States delegation, because, however it may be described, it contains a principle which is not specifically stated in any of the other three proposals, including the one that has been adopted.

I would, accordingly, ask that the proposal of the United States delegation be put to the vote, and that, if it be carried, it be referred to the Drafting Committee together with the proposal of the Belgian delegation.

The Chairman:

Translation: I was on the point of making a similar proposal, because I think the recommendation of the United States of America contains certain new ideas.

If the Committee decides to retain this text in principle, the Drafting Committee will be called upon to combine the text of the Belgian proposal with that of the United States recommendation, so that you may have a final draft before you when we come to the second stage of our work.

I will put to the vote the text proposed by the United States delegation, it being understood that you are merely giving an opinion as to principle and that the final drafting will be left to the Drafting Committee.

The proposal of the United States of America was accepted by nineteen votes to six.

45. — NATIONALITY OF MARRIED WOMEN: BASIS OF DISCUSSION No. 17 (continuation).

The Chairman:

Translation: We have first to take a decision on an amendment submitted by the German delegation, a separate vote being taken on each of the two parts. The first part of the text reads as follows:

> "A change in the nationality of the husband occurring during marriage in consequence of a voluntary act on his part does not involve a change of nationality for the wife without her consent."

If this text is adopted, it will replace Bases of Discussion Nos. 17 and 18.

I put to the vote the first part of the German amendment.

The Committee rejected the first part of the German amendment by seventeen votes to ten.

The Chairman:

Translation: The second part is worded as follows:

> "If the husband loses his nationality during marriage without any voluntary act on his part, such loss does not cause the wife to lose her nationality unless she still possesses another nationality."

The Committee rejected the second part of the German amendment by thirteen votes to eleven.

The Chairman:

Translation: I put to the vote the text of Basis No. 17.

This Basis was adopted unanimously.

46. NATIONALITY OF MARRIED WOMEN: BASIS OF DISCUSSION No. 18 (continuation).

The Chairman:

Translation: There is a proposal to omit this Basis. If this proposal is rejected, the Committee will have to decide on the amendments submitted in connection with Basis No. 18.

I put to the vote the proposal to omit this Basis.

The Committee rejected the proposal for suppression by twenty-one votes to ten.

The Chairman:

Translation: We have now to consider the amendments. We have, first of all, to pronounce on the Belgian amendment which reads as follows:

> "If the naturalisation of the husband during marriage involves a change in the nationality of the wife, such change shall in no case take place without the formally expressed consent of the wife."

On a show of hands this amendment was rejected.

The Chairman:

Translation: We have now a proposal put forward by the Estonian delegation for an additional Basis No. 18 *bis*. The text reads as follows:

> "The wives and children of foreigners can acquire a new nationality without consent of their husband or father if they possess the requirements for that naturalisation in the naturalising State."

M. Piip (Estonia):

I desire to rise on a point of order — namely, that no vote be taken on our proposal. As I did not take part in the discussion, I am compelled to explain our motives.

When the Estonian delegation submitted the supplementary Bases Nos. 9*bis* and 18*bis*, which were united in a single proposition and which concerned the rights of married women and minor children to change their nationality by way of naturalisation independently of their husbands or fathers, it had in mind one object and one only, to bring to the attention of this Conference a serious problem with the solution of which several Governments have been faced and which our own law has decided in the affirmative.

Indeed, the post-war situation created an immense migration of masses, in some cases not smaller in scope than the migrations in the early Middle Ages. Families were dispersed, husbands and wives, and parents and children, whether minor or grown-up, were separated and compelled to live in various parts of the world. Like practically every country in Europe, especially in the East, we were faced with the question of stateless persons or with cases where the father, being a foreigner, had left his wife and family in our country, who were very often born Estonians.

To solve the difficult problems of the nationality of such abandoned married women and minor children residing in our country and desiring to become naturalised there, was the first and practical aim of Articles 10 and 11 of our Law on Nationality of October 27th, 1922. I venture to submit that this aim has been achieved and, in many cases, the provision has been very useful. On the contrary, no practical difficulties are known in regard to that provision of our law. Consequently, our Government has no intention of altering this law.

There was still another very important reason for such legislation—namely, the famous Article 6 of our Constitution of June 15th, 1920, which declares that there must be no privilege or discrimination in the public law because of the difference of sex. Being logical and having women in our Parliament, there was nothing more natural, to use the words of the feminine organisations, than to accept

the rule that a woman should have the same right as a man to retain or change her nationality. As personal status in our country is dependent upon domicile, the so-called pandect Roman Law being in force, the question of nationality interferes very little with the complicated problems of private international law . . .

The Chairman :

Translation : I am obliged to interrupt you because you are entering into the discussion. Your amendment has been debated at considerable length, but unfortunately you were absent. If you have the text of your observations, they will appear in the Minutes. It is quite unnecessary to read them and have them interpreted.

M. Piip (Estonia) :

I just wanted to say that, taking into consideration all that was said here on Monday, we withdraw our proposal, because we have seen that the liberal rule we suggested is not yet such a general principle that it could be codified, and because the Committee has accepted the Belgian and United States proposals, for which I voted, and which serve our purpose, as also the Chilian proposal regarding the non-discrimination of sexes.

The Chairman :

Translation : If no one wishes to speak, there is no need to take a decision on this amendment.

The text of Basis No. 18, as proposed by the Committee of Experts, was adopted.

47. NATIONALITY OF MARRIED WOMEN : BASIS OF DISCUSSION No. 19 (continuation).

The Chairman :

Translation : Basis No. 19 consists of two parts, and we shall vote on each part separately. In connection with the first part there is an Italian proposal to replace Basis No. 19 by the following text :

> " After dissolution of a marriage, the wife recovers her former nationality if there are no children of the marriage which has been dissolved. If there are children of this marriage, she recovers her former nationality if she establishes her residence in her former native country or if she returns there. "

M. Diena (Italy) :

Translation : In addition there is the proposal to omit this Basis if our amendment is not adopted.

The Chairman :

Translation : There will always be time to make that proposal. I put the text of the Italian delegation to the vote.

The text was rejected by the Committee.

The Chairman :

Translation : I put to the vote the proposal to omit this Basis.

The Committee decided, by twenty-six votes to three, to retain the Basis.

M. de Vianna Kelsch (Brazil) :

Translation : I wish it to appear in the Minutes that the Brazilian delegation voted for the omission of this Basis.

The Chairman :

Translation : We have now an amendment by the Colombian delegation to add at the end of the first sentence the words : " if she goes to live there ".

I put this amendment to the vote.

The Committee rejected the amendment.

The Chairman :

Translation : We now come to the amendment put forward by the Norwegian delegation as follows :

> " The death of the husband and the dissolution of the marriage do not necessarily involve any change in the wife's nationality. If the wife recovers her former nationality on her own application, she shall thereby lose the nationality acquired as the result of her marriage. "

I put this amendment to the vote.

The Committee rejected the amendment.

The Chairman :

Translation : I put to the vote the amendment of the delegation of the United States of America, which is worded as follows :

> " After dissolution of a marriage, the former nationality of a person may be recovered only on the person's own application and in accordance with the law of the person's former country. The recovery of nationality in this manner shall involve the loss of nationality acquired by marriage. "

The Committee rejected the amendment.

The Chairman :

Translation : The second part of this Basis is worded as follows :

> " If she does so, she loses the nationality which she acquired by her marriage. "

There is a proposal to delete this sentence submitted by the German delegation. I put the deletion of this second part to the vote.

The proposal to omit this sentence was not adopted.

The Chairman :

Translation : We have now an Austrian proposal to insert after the words " if she does so " the following qualificative clause :

"provided the dissolution of marriage is recognised as valid in her former country".

I put this addition to the vote.

This addition was rejected by the Committee.

The Chairman :

Translation : There is another additional proposal submitted by the Danish delegation to the effect that we should add to Basis No. 19 the following provision :

"The legislation of a State may nevertheless make such loss of its nationality conditional upon the fulfilment of particular legal requirements . . ."

I must remind you that you have already rejected Basis No. 6 to which this provision refers. That, however, is not an absolutely final reason for rejecting the Danish proposal. If this proposal is accepted, we shall have to re-embody in this text the essential part of Basis No. 6, this task being entrusted to the Drafting Committee.

I put the proposal to the vote.

This addition was rejected by the Committee.

The Chairman :

Translation : There is a last amendment which has been submitted by the Yugoslav delegation. It is to the effect that we add to Basis No. 19 a new paragraph worded as follows :

"The provisions of the preceding paragraph shall apply also to a wife who is judicially separated from her husband."

M. Alten (Norway) :

Translation : I should like to see "legally" substituted for "judicially" in order to meet the case of countries in which this decision is taken by the administrative authorities.

M. Soubbotitch (Yugoslavia) :

Translation : I accept this alteration.

The Chairman :

Translation : I put to the vote the Yugoslav proposal, as amended by the Norwegian delegation.

The proposed addition was rejected.

48. NATIONALITY OF MARRIED WOMEN : BASIS OF DISCUSSION No. 18*bis* PROPOSED BY THE POLISH DELEGATION.

The Chairman :

Translation : We will now consider the new Basis No. 18*bis*, proposed by the Polish delegation.

M. Rundstein (Poland) :

Translation : The proposal of the Polish delegation is worded as follows :

"A wife who does not acquire the nationality of her husband and is, at the same time, regarded by the laws of her State of origin as having lost her nationality shall nevertheless be entitled, on the same grounds as her husband, to a passport from the State of which the husband is a national."

Of all the suggestions emanating from the Women's Associations only the question of passports was taken into consideration by the Committee of Experts. Basis No. 17 seems calculated to exclude cases of statelessness. It is, however, possible — for instance, if a State does not accept the Convention as it stands and if a woman who is a national of this country marries a national of a contracting country which does not confer the husband's nationality on the wife — that the wife may become stateless, since she has lost the nationality of her country of origin. In this case, I think it would be desirable to allow her to obtain a passport from the State of which her husband is a national.

M. Buero (Uruguay) :

Translation : I approve the principle set out in the Polish proposal, particularly as Uruguayan law makes provision for this case and contains a clause identical with that suggested by M. Rundstein. I do not think, however, that this question comes within the sphere of the subject we are now considering. The matter is one of passport rules and not of nationality. I do not think that this is the proper time or place to examine the problem.

The Chairman :

Translation : Does the Polish delegation maintain its proposal ?

M. Rundstein (Poland) :

Translation : Could not our proposal be accepted in the form of a recommendation ?

The Chairman :

Translation : The Polish proposal is now submitted in the form of a recommendation. Does anyone wish to speak on this subject ?

Mr. Dowson (Great Britain) :

I only desire to intervene for the purpose of pointing out that the word "entitled", in this recommendation is a little strong, and that this is one of the points the Drafting Committee would have to consider. A person is not necessarily entitled, as a right, to a passport ; consequently, in admitting the principle of this recommendation, which seems to me a good one, I merely desire to reserve my view with regard to the use of the word in question.

M. de Berczelly (Hungary) :

Translation : I do not think that this question comes within the scope of our Convention ; it would be difficult to deal with it even in the form of a recommendation attached to the

Convention. We are not now dealing with the question of passports.

M. Guerrero (Salvador) :

Translation : Strictly speaking, this point lies outside the problem of nationality. The League of Nations, however, has for some time been engaged in considering the question of passports for stateless persons. The question is an extremely important one and deserves mention, at any rate in the form of a recommendation.

The case contemplated by M. Rundstein is connected with nationality in the same way as the obligation to do military service, which has already been discussed by the Committee. It is linked up indirectly, if not directly, with nationality. In these circumstances, I should be glad if M. Rundstein's proposal could be accepted in the form of a recommendation as he has requested.

The Chairman :

Translation : I would ask the Committee to decide whether it wishes to retain the Polish proposal in the form of a recommendation, subject to the condition that, if this recommendation is accepted in the manner suggested by Mr. Dowson, it shall be redrafted by the Drafting Committee.

The proposal was accepted by a large majority.

49. LEGITIMATION AND ADOPTION : BASIS OF DISCUSSION No. 21 (continuation).

The Chairman :

Translation : There are a number of amendments to Basis No. 21. One has been proposed by the Japanese delegation and another by the Polish delegation.

The Japanese text which would replace the original text, reads as follows :

> " If the adopted child acquires the nationality of the person adopting him, he shall lose his former nationality. "

M. de Berczelly (Hungary) :

Translation : In one of these two amendments, reference is made to Basis No. 6, and I should like to know what is the text of that Basis.

M. Diena (Italy) :

Translation : Basis No. 6 has been dropped.

The Chairman :

Translation : I must repeat the observation that it is perfectly in order that a delegation should, in connection with another text, take up once more an idea which has been rejected by the Committee. The Committee may reject a new proposal ; similarly it may, on second thoughts, decide to retain it.

M. Nagaoka (Japan) :

Translation : Basis of Discussion No. 21 merely refers to the case in which a State allows loss of nationality as a result of adoption. It should not, however, be forgotten that certain countries, including not only Japan, but China, Estonia, Latvia and Poland, allow the acquisition of nationality as the result of adoption. If, therefore, a child is adopted by a national of one of these countries and does not lose its former nationality, it will possess double nationalty. In order to avoid this situation with the concomitant possibility of international conflicts, we should, I think, accept the rule that an adopted child does not acquire the nationality of the person adopting it unless it loses its former nationality. These are, briefly, the reasons for my proposal.

If we adopt the Basis as at present worded, it will only apply to very rare cases and will be of very limited utility.

Finally, I wish to say that the Japanese amendment does not place any obligations on States in which adoption does not have any effect on the acquisition of nationality. It affects only those laws which admit such a possibility.

These are the reasons for which the Japanese delegation has proposed its amendment. If, however, the Committee is of opinion that the amendment departs too far from the principle laid down in Basis of Discussion No. 21, the Japanese delegation is prepared, in a spirit of conciliation, to accept another formula under which it would be permissible to make exceptions to this rule.

The new formula proposed is as follows :

> " In countries whose legislation allows the acquisition of nationality as the result of adoption, this result should be subject to the condition that the person adopted loses its former nationality. The legislation of the States concerned may make exceptions to this principle. "

This is a new text, which I propose in case the Committee feels itself unable to accept my original proposal.

M. Rundstein (Poland) :

Translation : I think there is a slight misunderstanding. The Polish amendment was prepared when the fate of Basis No. 6 still lay in the balance. I venture to remind you of an observation I made in connection with Basis No. 20. I said that this clause should be replaced, subject to the provision contained in paragraph 2 of Basis No. 6.

Basis No. 21 would therefore be worded as follows :

> " Subject to the provisions of the legislation of the State to which the adopted child belongs, the loss of its nationality shall be subject to the condition that it has thus acquired the nationality of the person adopting it ."

The reasons for this proposal are the same as those I had the honour to explain yesterday in connection with the question of legitimation.

M. Gomez Montejo (Spain) :

Translation : I venture to draw the Committee's attention to the words employed at the end of Basis of Discussion No. 21. This Basis refers to an "adopted child". In accordance with Spanish law a person over twenty-three years, which is the age at which Spaniards attain their majority, can be adopted. This is laid down in Article 178 of the Civil Code of 1889.

I therefore request that the words "adopted child" be replaced by "adopted person".

M. Soubbotitch (Yugoslavia) :

Translation : I cannot agree to the amendment proposed by the Japanese delegation.

The Chairman :

Translation : We will take a decision with regard to these various amendments.

Mr. Dowson (Great Britain) :

I only desire to say that I feel great difficulty in accepting this amendment on behalf of my Government and accordingly I shall not be able to vote in favour of it.

The Chairman :

Translation : Do you propose the withdrawal of Basis No. 21 ?

Mr. Dowson (Great Britain) :

No. I was only speaking with regard to the amendment.

M. de Vianna Kelsch (Brazil) :

Translation : I ask the Committee to agree to the text of Basis No. 21 as originally drafted.

The Chairman :

Translation : I am obliged to put to the vote the various amendments which have been submitted. The amendment which is farthest from the printed text is the amendment of the Japanese delegation worded as follows. Instead of the original text read :

> "If the adopted child acquires the nationality of the person adopting it, it shall lose its former nationality."

The Japanese amendment was put to the vote and rejected.

The Chairman :

Translation : There is now a second Japanese amendment to the effect that we should insert, instead of the present text, a similar text which, however, instead of allowing loss of nationality subject to certain conditions, refers to the acquisition of nationality under certain conditions. It is worded as follows :

> "In countries whose legislation allows the acquisition of nationality as the result of adoption, this result should be subject to the condition that the person adopted loses his former nationality. The legislation of the State concerned may make exceptions to this principle."

The Japanese amendment was put to the vote and rejected.

The Chairman :

Translation : I put to the vote the amendment of the Polish delegation which is worded as follows :

> "Subject to the provisions of the legislation of the State to which the adopted child belongs the latter only loses its nationality of origin if the law governing the effects of the adoption from the point of view of nationality assigns to it a new nationality."

The Polish delegation's amendment was put to the vote and rejected.

The Chairman :

Translation : Finally, we have a little Spanish amendment to the effect that in the last line but one of the printed text the words "adopted child" should be replaced by "adopted person".

The amendment of the Spanish delegation was adopted.

The Chairman :

Translation : I put to the vote Basis of Discussion No. 21, with the change which has been accepted — that is to say, the words "adopted person" instead of the words "adopted child".

Basis of Discussion No. 21 was adopted by twenty-six votes to two.

50. EXTENT OF THE APPLICATION OF THE CONVENTION ADDITIONAL ARTICLE.

The Chairman :

Translation : We have terminated our examination of the Bases. I shall be glad if we could utilise the time which still remains to settle a number of other questions.

The question has been raised as to the extent of the application of the Convention you are preparing. We have two proposals : one by the Italian delegation, and the other by the Netherlands delegation. The Italian delegation proposes to add to the Convention the following article :

> "The present Convention shall apply to the metropolitan territory of the several High Contracting Parties.
>
> "Each High Contracting Party may, by a declaration communicated to the Government of the Netherlands, extend the application of the Convention to all or any of the territories which are in any manner whatsoever under its authority."

The other is the proposal of the Netherlands delegation for a formal provision which reads as follows :

> " The present Convention shall apply to the home territory of the several High Contracting Parties.
>
> " Each High Contracting Party may, by means of a declaration notified to the Secretary-General of the League of Nations, extend the application of the whole of this Convention or of certain of the provisions thereof to the territories or to some of the territories or to certain parts of the population that are in any way whatsoever under its authority. "

As you see, the two proposals are based on the same idea ; the differences of meaning and drafting are slight. The Italian proposal lays down — and I think that M. Diena will not press this point — that the declaration shall be addressed to the Government of the Netherlands. The Netherlands proposal mentions a declaration communicated to the Secretary-General of the League of Nations. As regards the wording, the Netherlands proposal goes into greater detail and provides for the application — even in part — to colonies, to some colonies only, or even to certain sections of the population of colonies.

M. Diena (Italy) :

Translation : The Italian delegation is prepared in principle to agree to the Netherlands proposal provided the words : " by declaration communicated to the Government of the Netherlands " be retained instead of the words : " by declaration communicated to the Secretary-General of the League of Nations ". I think the tradition is that communication shall be made to the Government of the country in which a particular Conference has met. If necessary, the Italian delegation will not press this point either.

It is also prepared to withdraw its proposed additional amendment, provided the amendment of the Netherlands delegation is accepted by the Committee. If not, it will maintain its proposal.

The Chairman :

Translation : Before going any farther may I make one comment ? The question whether the declaration referred to in these texts should be communicated to the Secretary-General of the League of Nations or to the Government of the Netherlands cannot be settled by this Committee. It is a more general question which is at this moment being studied by the Central Drafting Committee. The place where the ratifications must be deposited is the place where the documents concerning the text we have adopted must also be addressed. Subject to this observation, I propose that the discussion shall continue.

M. Kosters (Netherlands) :

Translation : After hearing M. Diena's remarks I shall not need to say very much. Our proposal differs on several points from that of the Italian delegation.

With regard to the first point, I would venture to add a word to what our Chairman has already said. The Netherlands highly appreciate the idea which inspired the Italian proposal, and our Government would accept this duty with pleasure. It is possible, however, that the Conference may consider that ratifications should be deposited at Geneva and that the declarations referred to in the additional article should be submitted to the Secretary-General of the League of Nations. On this point I need only say that my Government will accept the decision of the Conference.

I venture to draw the Committee's attention to two other points. This is a Convention on Nationality. The nature of the matter dealt with implies that the rules of the Convention will apply to the nationals of the contracting parties. As, however, the conditions of the various sections of the population are so varied and so different in our overseas territories, it is absolutely impossible for us to accept all the provisions of the Convention for those overseas countries. We must be allowed to declare, if necessary, that some given provision will not apply to them.

I would add that this restriction has already been adopted in other Conventions. For instance, Article 9 of the Geneva Slavery Convention of 1926 lays down that :

> " At the time of signature or of ratification or of accession, any High Contracting Party may declare that its acceptance of the present Convention does not bind some or all of the territories placed under its sovereignty, jurisdiction, protection, suzerainty, or tutelage in respect of all or any provisions of the Convention ; it may subsequently accede separately on behalf of any one of them or in respect of any provision to which any one of them is not a party. "

It is the last point to which our attention should be directed.

Secondly, the Netherlands Government considers that the Convention cannot apply to the whole population of our overseas territories. What may be permissible for Europeans, or for Netherlands East Indian tribes of high and ancient civilisation, is not suitable for the natives of the interior of New Guinea. Consequently, in our opinion the Netherlands should be allowed to apply the provisions of the Convention in whole or in part only to those sections of the population for which other rules are unnecessary.

M. Diena (Italy) :

Translation : We agree.

The Chairman :

Translation : With a view to shortening our discussion, I venture to remind the Committee that the proposal you have heard is

practically a formal clause in most Conventions for a reason that is fairly obvious. If a country has no alternative other than to accept or reject the whole Convention — that is to say, if it is unable to accept a Convention in part, it may possibly find it is obliged to refuse to accept the whole convention. That is why this clause referring to colonies has become practically a traditional clause in modern Conventions.

M. Buero (Uruguay) :

Translation : I had intended to say much the same thing and to add, that, without wishing to tresspass upon our Chairman's prerogatives, I suggest we should vote only on general principle, leaving it to the Central Drafting Committee to put this clause into proper form, since there have been concluded, under the auspices of the League of Nations, other Conventions containing similar formal clauses with which we should bring the provisions of our Convention into line. I might quote the Slavery Convention, the Convention on Traffic in Arms, on the Simplification of Customs Formalities, and others, which all contain this clause.

I think that the original proposal of the Italian delegation, and even that of the Netherlands, present certain lacunæ. I would propose therefore that we should leave the final drafting of this provision to the Drafting Committee, particularly as other similar clauses already exist.

Sir Basanta Mullick (India) :

I agree with the principle of the proposal that has been made by the delegate for the Netherlands, but I think that it might have been more appropriately considered at the time of signing of the Convention.

The proposal affects the position of certain territories in India where the nationality laws are not developed to the same extent as in Europe, and where the changes proposed in the Convention that will be finally adopted here as regards nationality and the status of aliens may for the present be found unsuitable for introduction. The authorities in these territories ought not therefore to be bound in any way by our proceedings.

Mr. Dowson (Great Britain) :

I move that this discussion be adjourned. It appears to me to raise important and difficult questions, and we have not the material before us on which usefully to proceed with the discussion. These documents have only been circulated this morning, and we have not had time to consider the point or to discuss it with other members of our delegations.

It seems to me that these suggestions raise points which must be considered in connection with each of the three subjects that have been discussed here during the past weeks. Consequently, it would be very much better not to express any opinion at all in this Committee as to what is the appropriate method of applying, or the extent to which the decision of the Committee could be applied, to certain territories which are under the authority of the contracting parties.

We do not even know at the present stage the exact nature of the instrument which will be ultimately drawn up to give effect to the decisions which have been reached. I therefore think it would be much more convenient to adjourn this discussion without any expression of opinion.

The Chairman :

Translation : It is not correct to state that the documents have only been distributed this morning. The Italian proposal was sent out on March 15th ; it was the Netherlands proposal that was distributed this morning.

M. Kosters (Netherlands) :

Translation : I quite agree with M. Buero that it would be better, as he suggests, to leave this question to the Central Drafting Committee, provided we are able to examine this clause in connection with the three subjects laid before the Conference.

I must, however, mention the following points. Certainly the clause referring to colonies and overseas possessions is a normal one in most of the Conventions recently concluded. The Convention on Private International Law, for instance, contained a clause on this subject. One point of some importance, however, is that these clauses are not the same. There are differences.

The formal clause is that which deals with an extension to one or more of these colonies, territories or protectorates. I will quote, for instance, the Convention on the Execution of Foreign Arbitral Awards concluded at Geneva. In this Convention, reference is made only to extension to one or more colonies. But in the present case we have to take into account two other questions of capital importance. First, in the case of colonies, we propose to restrict the application of certain provisions of the Convention. Secondly, as the delegate for India has pointed out, we must provide a clause to cover certain sections of the population to which this Convention could not possibly apply.

Mr. Flournoy (United States of America) :

I agree with the views already expressed by one or two of the other members of the Committee to the effect that in matters of this kind we should have more time to consider them before being called upon to vote.

M. Diena (Italy) :

Translation : I am rather surprised that this very innocent proposal should raise such opposition. I feel bound to emphasise the following point : If we accept the Netherlands proposal, with which the Italian delegation agrees, what will happen ? Simply, that the provisions we have adopted will be applicable exclusively to the home countries. It will

only be after we have expressly made an official declaration, if we wish to do so, that these provisions will be extended. If no such declaration is made, they will only apply to the home countries. Therefore, you will have all the time you need to think the matter over.

I quite agree that this clause is a formal one; but each case may be slightly different and necessitate a somewhat different text.

I do not therefore think it at all superfluous that we should vote upon the text proposed by the Netherlands delegation; it is sufficiently complete and has the approval of the Italian delegation.

Mr. Wu (China):

I move the rejection of this proposal. It seems to me that upon logical grounds alone we should not accept it. Comparison has been made between this and other international Conventions, such as that dealing with slavery; but I would draw your attention to the fact that we are not dealing here with slaves, you are dealing with your nationals, the question of who are your nationals.

Even from the point of view of what might be called "selection", certain delegates have in mind their home territories — their metropolitan country — as against their overseas possessions. The delegate for India has not that distinction in view; he has in mind, rather, certain territories in the same metropolitan or home country. It is extremely difficult, therefore, to differentiate between the parts of a country's territory to which this Convention is or is not to be applied. I suggest, then, the suppression of this proposal.

As regards those countries which find difficulty in applying, shall we say, certain refinements of civilisation to certain populations under their control, it seems to me that the course is always open to them to make reservations, when they sign or ratify this Convention. In the end, therefore, there is not much difference between suppression of the proposal with the power to make reservation, as I suggest, and the proposal which has been made. At the same time, I repeat that my proposal would meet the objections of those delegates who have not had the time to consider this matter, because, by means of reservations, they can take all the time they need to think the matter over.

Mr. Hearne (Irish Free State):

I agree with the principle that this Convention should apply to the metropolitan or home territory, as described in both the amendments submitted to the Committee. I cannot, however, accept the view of the delegate for Italy that a proposal of this kind, inserted at this stage, can be treated as a matter of form.

Sometimes questions which are regarded as matters of form become, for some States, very important questions of principle, and in fact, questions of substance. I therefore think that the suggestion made by the delegate for Uruguay, supported by the delegate for Great Britain, is perfectly sound. We should not vote upon either of these amendments in their present form, or until they have been very carefully considered by the Drafting Committee. This is a question which involves the jurisdiction of individual States over their nationals, and if these proposals are discussed this morning in this Committee, and if a vote is taken, I must ask to be allowed to move an amendment.

M. da Matta (Portugal):

Translation: I entirely agree with the views which have been expressed by the Italian and Netherlands delegates. I accept the proposals of these two delegates which are practically the same.

I wish to state that the Portuguese Government cannot accept the principle extending this Convention to territories other than the home territories. I therefore think it is necessary to take into consideration the principle embodied in these proposals.

M. Soubbotitch (Yugoslavia):

Translation: I do not wish to express an opinion as to whether the Convention should apply *ipso facto* to colonies or only to the home countries. I would merely refer to an expression employed in the proposed formula which, if it were adopted, would not be a very happy innovation. Reference is made to "territories which are in any manner whatsoever under its authority".

I draw the Drafting Committee's attention to this expression which does not, I think, faithfully convey its authors' intentions. This wording might lead one to suppose that the mere occupation of territory would be sufficient to bring this clause into play.

The Chairman:

Translation: After the twelve speeches you have heard, we can, I think, declare the discussion closed. I agree in principle with the British delegate. The Central Drafting Committee should consider this question, as it applies to the three Conventions. I would, however, venture to point out that the Central Drafting Committee must at any rate be supplied with certain indications by each of the three Committees concerned, because obviously the three subjects dealt with are not identical. It might be desirable to insert a clause of this kind in the Convention on Nationality, and not to insert it in the others.

In any case, I think it would be desirable for the Central Drafting Committee to know what the feelings of this Committee are, so far as nationality is concerned. This is how the question now stands. There is a first proposal to the effect that no immediate decision should be taken; a second suggestion has been made that the Netherlands and Italian proposal should not be accepted, but this proposal is qualified by the proviso that, at the time of signature, every State shall be entitled to declare whether it extends the

application of the Convention to all or part of its colonies, or not. Finally, a proposal has been made that we should forthwith accept in principle, subject to any drafting changes which may be made by the Central Committee, this idea that the Convention, as a general rule, applies only to the home countries and that, if it is to be extended subsequently to the colonies, a special declaration must be made.

I put to the vote the proposal to defer consideration of the whole question.

This proposal was rejected by seventeen votes to eleven.

The Chairman :

Translation : I put to the vote the suggestion to reject the proposal, subject to the proviso indicated by the Chinese delegation.

This suggestion was rejected by fourteen votes to ten.

The Chairman :

Translation : I put to the vote the proposal of the Netherlands delegation, seconded by the Italian delegation, it being understood that you are taking a decision only on the principle of the question, and that the final drafting of this clause will be left to the Central Drafting Committee.

This proposal was adopted by eighteen votes to five.

51. REVISED TEXTS OF BASES Nos 1, 2 AND 6 *bis* PREPARED BY THE DRAFTING COMMITTEE, TOGETHER WITH TWO RECOMMENDATIONS CONCERNING (1) NATURALISATION AND (2) STATELESSNESS AND DOUBLE NATIONALITY.

The Chairman :

Translation : I should be glad if we could now take a decision in principle, and subject to final drafting, on certain texts submitted by the Drafting Committee. They are the revised texts of Bases Nos. 1, 2 and 6 *bis* and two recommendations concerning (1) Naturalisation and (2) Statelessness and double Nationality.

The new text of Basis No. 1. reads as follows :

" It will be for each State to determine under its own law who are its nationals. This freedom to legislate shall be recognised by the other States provided that the use made thereof is not at variance with international Conventions or with the principles generally recognised in the matter.

" Any question as to the acquisition or loss by an individual of a particular nationality and any question relating to the recovery by an individual of a particular nationality are to be decided in accordance with the law of the State whose nationality is claimed or disputed. "

The new text of Basis No. 2 reads as follows :

" If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose national he was remains bound to admit him, at the request of the State where he is residing (1) if this person is permanently indigent as a result of an incurable disease or for any other reason, (2) if the person has been sentenced in the State where he is residing to not less than one month's imprisonment.

" In the first case, the State of origin may refuse to receive its former national on undertaking to meet the cost of relief in the country of residence as from the thirtieth day from the date on which the request was made. In the second case, the person must either have served his sentence or have obtained total or partial remittance thereof and must be sent back to the territory of the State of origin at the expense of the State of residence. "

The new text of Basis No. 6*bis* reads as follows :

" An expatriation permit, in so far as provision is made for such by the law, does not entail loss of the nationality of the State which has issued it unless the holder of the permit possesses another nationality or unless and until he acquires another nationality.

" The expatriation permit lapses if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision does not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State which has issued the permit to him.

" The State whose nationality a person provided with an expatriation permit acquires, shall notify the fact to the Government of the State which issued the permit. "

The two recommendations proposed by the Drafting Committee read as follows :

1. *Naturalisation :*

" It is desirable that each State should, so far as practicable, refrain from conferring its nationality by process of naturalisation unless and until it is satisfied that the individual concerned has fulfilled or is in a position to fulfil the conditions necessary to cause the loss of its nationality. "

2. *Statelessness and Double Nationality :*

" The Conference unanimously expresses the opinion that it is highly desirable that the various States should endeavour, in the exercise of their legislative discretion on the subject of nationality to reduce to the minimum cases of double nationality and statelessness and that the League of Nations should prepare the way for an international settlement. "

The text of Basis No. 1 is the outcome of lengthy deliberation ; nevertheless,

immediately on its reappearance it has been bombarded with amendments.

I will read you the amendment submitted by the Belgian delegation. I beg the Committee to try and avoid reopening the discussion on fundamentals. We have before us the text, the drafting of which we have to consider only on a first reading.

The Belgian delegate proposes that we should employ, after the words " provided that the use made thereof ", the phrase " can be considered neither as an abuse of law nor as a violation of the International Conventions that bind such States ".

M. Standaert (Belgium) :

Translation : We were unable to agree at the time of the general discussion on the expression " principles generally recognised in the matter " ; yet this same expression reappears in the draft prepared by the Drafting Committee.

Since we are unable to define the principles generally recognised in the matter, I think the sentence should be drafted in another way and that we should say freedom to legislate must not be taken to mean toleration of abuse. That is the only difference in the first sentence.

M. Rundstein (Poland) :

Translation : I wish to make one small observation in connection with the first paragraph. I propose that we should add the word " intentional " and say " neither as an intentional abuse of law . . . ".

We are all acquainted with the theory of the abuse of law in international matters — indeed, the bases of this theory have been defined in the writings of our distinguished Chairman. But we also know that under municipal law the intention to harm is not necessary. Public and international law have not yet evolved to this extent. If we introduce the concept of intention as a condition restricting freedom to legislate, the Belgian proposal might be accepted.

M. de Berezelly (Hungary) :

Translation : I think that the text proposed by the Drafting Committee for the first paragraph of Basis No. 1 is not couched in terms suitable to an article of a Convention. It would be better, in my view, to transform this text into a recommendation or set out the ideas contained therein in a preamble.

Mr. Flournoy (United States of America) :

I wish to express the opinion that this matter is something more than one of mere redrafting. The present text distinctly changes the sense and the whole purport of the original Basis. Basis No. 1 was one of the few really significant points upon which there seems to have been some agreement, as it brings in international law in the matter of nationality. As I see it, the phrase " the principles generally recognised by States " in the original draft, is another way of saying " recognised in international law ". This draft leaves that idea out, so far as I can see. As to the vagueness of the original draft, I may say that it appears to me that the expression " abuse of the law " is still more vague.

M. Diena (Italy) :

Translation : The formula " abuse of law " is extremely vague. I need not point out to such an assembly of lawyers the difficulty of defining an abuse of law. I agree that the formula " general principles of law " does not mean much, but it is, at any rate, a formula which has already been embodied in the Statute of the Permanent Court of International Justice. It is a well-known formula which, if it has not much else in its favour, at least allows the application of these principles in a more liberal manner.

I venture to make one more observation without wishing to reopen the discussion on fundamentals. With regard to Basis No. 1, we have demonstrated the absurdity of the words : " whose nationality is claimed or disputed ". We have seen that these words, which mean nothing, allow all sorts of conjectures. I am astonished therefore to see that these words, which were objected to by so many speakers when we were discussing basic principles, are still included in the text. I would like to ask the Drafting Committee whether they could not employ some clearer phraseology.

M. Suarez (Mexico) :

The Drafting Committee has proposed an unacceptable formula. The limitations it attempts to place upon the right of the State to legislate in nationality matters, really tends to destroy this very right. The restriction proposed is both vague and dangerous. It is vague, because which are the prevailing general principles on nationality referred to by the Committee ? Are they principles of international law ? Or are they principles of municipal law which have been adopted by the generality of nations ?

The proposed formula is also dangerous because it conveys the meaning that a State must inevitably legislate on nationality matters upon the basis of the principles adopted by other States in their municipal legislations. This forces the State to decide one of its domestic problems, not in accordance with the principles it believes adequate to meet local conditions, but in accordance with those intended to cover conditions prevailing in most of the other States. This procedure cannot be accepted by nations which find themselves in the process of final organisation.

The accepted principle is that the State has the right to legislate on nationality matters, the limitations agreed upon by the State itself in treaties being the only exception thereto. The Permanent Court of International Justice has so decided in the two cases in connection with which it has been called upon to decide this issue.

I am of the opinion that we should adopt the proposal of the delegate for Japan, broadening it somewhat so that the limitations upon the right of the State to legislate on nationality matters may include, not only those established in the Conventions, but, in general, such restrictions as may arise from treaties.

It may perhaps be said that the principle thus formulated would involve some danger because the State must undoubtedly be bound in this matter by other restrictions than those it has freely accepted. Even if no treaty existed, it is unquestionable that Mexico, for example, could not declare all Spanish-speaking people to be Mexicans.

No doubt when a question is said to be within the exclusive domain of the State, this does not mean that the State has an unlimited authority thereon. It is restrained in the exercise of such power, both by the obligations into which it has freely entered and the condition that it shall not abuse its authority.

A State enjoys all rights only in principle. The absolute power which can be acknowledged to the State is conditioned by this restriction. But it does not seem necessary to incorporate this restriction in a formal text. It is understood that, if the State possesses a right, this right only exists while the State does not abuse such power. This is a general principle that can be found in public and private law and, as our Chairman has pointed out, in a remarkable lecture delivered in this same place, also in international law.

Consequently, if the principle of the freedom of the State to legislate on nationality matters is stated in the Convention, it should be understood that it is conditional upon the principle that it should not abuse its rights; and international tribunals shall decide, with all necessary care, if the State has used or abused its right.

The formula proposed, instead of establishing the right of the State to legislate on the matter practically makes it void.

The Chairman:

Translation: I note with the deepest regret that in spite of my earnest appeal to the delegations not to reopen the discussion but to give an opinion on the text, the delegate for Mexico has read us a whole dissertation on the subject, which has also had to be translated. We have thus lost a quarter of an hour. What is the gist of these comments? They merely amount to this, that the Mexican delegate is unable to accept the last sentence of the last paragraph. He might simply have said that he does not accept it.

This question of generally recognised principles has been discussed at great length; we cannot discuss it again. Those who do not wish to accept this addition will vote against it, or will ask for its omission, and, if the Committee agrees, the words in question will be omitted. But I do beg of you to refrain from reopening for the sake of a word here or there a discussion which lasted for several days. I wish to add that in future I shall enforce a stricter discipline. As a matter of courtesy I did not interrupt the speaker on this occasion; but, if anyone else attempts to follow suit, I shall have to intervene.

M. Suarez (Mexico):

As you will remember, when we discussed this Basis, we did not agree to certain points. A proposal was made by the Japanese delegation and another by the delegation of the United States of America. These were contrary proposals. The proposal of the United States delegation asked that the right of the State should be restricted on certain principles, and the Japanese proposal was that it should only be restricted by treaties. This question was open to discussion, and was not decided when we dealt with that point, and since the Committee now proposes to take a stand, I think it is the proper time to discuss whether we shall accept the Japanese proposal or the United States proposal. That is why I expressed my views.

The Chairman:

Translation: It is enough if a delegate expresses an opinion in order that the Committee may know whether the delegations accept any given part, but there is no occasion to reopen the discussion. I maintain my standpoint that the reading of a memorandum is tantamount to reopening the discussion.

M. Nagaoka (Japan):

Translation: In deference to our Chairman's wishes, I will confine my observation to the draft which has now been distributed. The second sentence of Basis No. 1 has now become the second paragraph of the text. I believe that this sentence was inserted in the first place as a sort of explanation. If, however, we now leave it in its present position, its importance will be considerably enhanced and its scope will be quite different. I propose, therefore, that the present second paragraph should become the second sentence of the first paragraph, the rest becoming a second paragraph.

M. de Navailles (France):

Translation: M. Diena has pointed out that the terms employed in the last line of our text, "whose nationality is claimed or disputed", might give rise to misunderstanding. No one knows exactly what they mean. The Committee of Experts seems to have employed them as a drafting expedient.

I venture to propose a slight change which does not modify the basic principle — namely, that we should say:

> "Any question as to the acquisition or loss by an individual of the nationality of a particular State and any question relating to the recovery by an individual of the nationality of a particular State are to be decided in accordance with the law of that State."

In this way, the principle remains absolutely the same and we shall avoid all possibility of difficulties in connection with the words: "claimed or disputed".

M. Merz (Switzerland):

Translation: I should like a vote to be taken on each paragraph separately. The Swiss delegation regards the second paragraph as unnecessary and will vote against it.

Mr. Flournoy (United States of America):

It is my opinion that the first paragraph of the original text is preferable to the first paragraph of the proposed amendment of the Belgian delegation. I also wish to add that I greatly prefer the second paragraph of the proposed amendment to the second paragraph of the original Basis. For reasons which I have stated here frequently, I do not see how our delegation could agree to the statement in the second paragraph of the original draft that any question as to the loss by an individual of a particular nationality is to be decided "in accordance with the law of the State whose nationality is claimed or disputed". It is unnecessary for me to reiterate the reasons why we object to that statement.

The Chairman:

Translation: Does Mr. Flournoy propose that we should delete the first paragraph of the new text and replace it by the first paragraph of the former text?

Mr. Flournoy (United States of America):

Yes.

The Chairman:

Translation: We can, I think, take a decision on this question.

The following is the order of the various proposals on which we have to vote.

We will examine separately the two paragraphs of the text now before you, reserving until the end the suggestion of the Japanese delegation. If you accept the second part, you will decide whether it should form the second sentence of the first paragraphs.

Subject to this reservation, we will now consider the first two paragraphs separately. With regard to the first, we have a radical proposal to the effect that this draft should be omitted and the former text restored.

M. Nagaoka (Japan):

Translation: I would remind you of my proposal that we should maintain the previous arrangement of the text.

The Chairman:

Translation: That is exactly what I have said. Your proposal is that the present second paragraph should become the second sentence of the first paragraph, and that the rest should become the second paragraph.

Mr. Flournoy (United States of America):

I am afraid there is some misunderstanding. It may have been on my part. What we prefer is the first paragraph of the text proposed by the Drafting Committee, and the second paragraph of the amendment proposed by the Belgian delegation which reads as follows:

> "When only one nationality is involved, any question as to the acquisition, loss, or recovery of this nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed."

The Chairman:

Translation: Then the proposal for deletion falls through.

I would ask you to take a decision regarding the first part of the new text. In connection with this paragraph, we have an amendment by the Belgian delegation, supplemented by an amendment by the Polish delegation.

The Belgian delegation proposes that the last two lines, should be replaced by the following text:

> ". . . be considered neither as an abuse of law nor as a violation of the International Conventions that bind such States."

Moreover, the Polish delegation proposes that we should add the word "international" and say: "neither as an intentional abuse of the law . . .".

Finally, we have a Mexican proposal to the effect that the last line: "or with the principles generally recognised in the matter" should be omitted.

We will take a decision in turn on all these questions. I first put the Belgian amendment to the vote. If it is accepted, I will then put to the vote the supplementary Polish amendment.

The Belgian amendment was put to the vote and rejected.

The Chairman:

Translation: In these circumstances we shall not need to vote on the Polish amendment.

I put to the vote the proposal of the Mexican delegation to the effect that the words "or that the principles generally recognised in the matter" should be omitted.

This amendment was rejected.

The Chairman:

Translation: We now come to the second part regarding which you have received an amendment proposed by the Belgian delegation and worded as follows:

> "When only one nationality is involved, any question as to the acquisition, loss or recovery of this nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed."

The French delegation has suggested the redrafting of this paragraph to read as follows :

"Any question as to the acquisition or loss by an individual of the nationality of a particular State, and any question relating to the recovery by an individual of the nationality of any particular State, are to be decided in accordance with the law of that State."

I think that the Belgian delegation will be prepared, if necessary, to modify its amendment in such a way that the word which has been criticised will be replaced by those proposed by M. de Navailles.

M. Standaert (Belgium) :

Translation : We agree to this alteration.

The Chairman :

Translation : In these circumstances, the difference between the two amendments is the following. Whereas, the Belgian delegation says, at the beginning, "When only one nationality is involved . . .", the other text begins : "Any question as to the acquisition or loss . . .".

In these circumstances, I need only ask the Committee, in the first instance, whether it accepts in principle the Belgian amendment limiting the scope of the second paragraph of the draft you have before you.

M. de Navailles (France) :

Translation : I would strongly urge the adoption of the Drafting Committee's text. The Belgian delegation proposes that the decision should be taken in accordance with the national law invoked, solely when the individual possesses one nationality only. I do not see why the same principle should be rejected if the individual possesses two nationalities. Some time ago it was asked, "Is our text sufficiently clear for the Courts ?" I do not think that it offers any difficulty.

Suppose a person can claim in a third country both German and French nationality. What will the Courts do which have to deal with the question ? They will first of all consider whether the person is a German according to German law. They may decide that he is or is not German. They will then consider whether he is French according to French law. They may decide that he is or is not French. But one thing is certain. They will either decide that the person is German according to German law and is not French — in which case the question will be settled. Or else they will decide that he is both German and French. Would that matter ? The Courts would merely have to decide what were the consequences of such dual nationality in the case submitted to them.

The Chairman :

Translation : I would ask the Committee whether it decides to retain the Belgian amendment in principle.

The Belgian amendment was rejected.

The Chairman :

Translation : I put to the vote the text proposed by M. de Navailles.

The text of the Drafting Committee was adopted.

The Chairman :

Translation : We now have to give an opinion regarding the Japanese suggestion to the effect that the second part you have adopted shall become the first sentence of the first paragraph, and that the second sentence of the first paragraph shall form a separate paragraph.

This suggestion was rejected.

The Chairman :

Translation : We now have to vote on the whole text and decide whether we approve the Hungarian delegate's suggestion that this text should not become an article of the Convention but should be retained as one of the supporting arguments in the preamble or as a recommendation at the end of the Convention.

M. de Berczelly (Hungary) :

Translation : I said that my proposal related solely to paragraph 1 of this Basis.

The Chairman :

Translation : I put the whole of the text contained in these two paragraphs to the vote.

The Basis was adopted.

The Chairman :

Translation : In addition, the Hungarian delegate proposes that the first paragraph of the text should not be retained in the Convention itself but should be placed in the preamble, or should be made into a special recommendation.

I put this proposal to the vote.

The proposal was not adopted.

The Chairman :

Translation : We have therefore finished with this Basis. I had hoped to continue the examination of the following Basis, but that is now impossible.[1] We are now reduced to the following expedient.

To-morrow there will be no meeting. Your Drafting Committee will work this afternoon and to-morrow morning. To-morrow afternoon we shall endeavour to distribute the final texts on all the questions you have examined and adopted.

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[1] The new text of Basis No. 2, read out by the Chairman at the beginning of the discussion was later submitted to the Committee, slightly amended, by the Drafting Committee in the form of a separate Convention. Basis No. 6*bis* was eventually submitted to the Committee by the Drafting Committee as Article 8 of the main Convention. The two recommendations quoted at the opening of the discussion were submitted to the Committee in the collection of texts adopted by the Drafting Committee and which are to be found in part I of Annex III.

On Friday morning, we will begin the second reading. I earnestly beg all delegations to be present at that meeting on Friday at which we will take our final votes. We must be able to ascertain whether your decisions are taken on a majority vote and what the size of the majority is and whether, as I still hope, it will be possible for us to reach a unanimous decision.

The Committee rose at 1.10 p.m.

SEVENTEENTH MEETING

Friday, April 4th, 1930, at 9.30 a.m.

Chairman : M. POLITIS.

52. TEXTS PROPOSED BY THE DRAFTING COMMITTEE : SECOND READING.

The Chairman :

Translation : As I promised you at our last meeting, you have now received the texts you have already adopted, as redrafted by the Bureau and the Drafting Committee in the order in which it is proposed that they should appear in the Convention (Annex III).

I would point out that the list of final clauses (Annex IV) is still incomplete from two points of view. In connection with Article 21, it is stated that " the Colonial Clause is reserved ". In regard to this text, the Drafting Committee requires some further explanations which will be given by the Central Committee. Moreover, other general clauses will perhaps be inserted at the end of the Convention at the request of the Central Committee.

The English text has been prepared with the greatest care : nevertheless, it calls for a few minor drafting improvements. The British delegation tells me that it will have distributed a document indicating these slight changes.[1]

I must also tell you, in order to make the texts quite clear, how these texts have been classified and to what Bases they correspond. The Drafting Committee thought that, according to the usual custom, the texts of our draft Convention should be grouped into chapters. It has taken, as its starting-point, the grouping adopted by the Committee of Five, as set out in the original Bases of Discussion. It has only slightly altered the order, with a view to obtaining a more logical sequence, and has inserted a first chapter entitled " General Principles " which includes Article 1 (corresponding to Basis No. 1), Article 2 (corresponding to the second part of the same Basis), Article 3 (corresponding to Basis No. 3), Article 4 (corresponding to Basis No. 4), Article 5 (corresponding to Basis No. 5), and Article 6 (corresponding to Basis No. 15).

A second chapter, containing only one article (Article 7), refers to nationality according to the place of birth. This article corresponds to Basis No. 10.

A third chapter, which deals with the loss of nationality by the voluntary acquisition of another nationality also consists of one article which corresponds to Basis No. 6*bis*.

We then have, in Chapter IV, which deals with the nationality of married women, four articles corresponding to Bases Nos. 16 to 19.

Finally, in a fifth and last chapter concerning the nationality of children, Articles 13 to 17 correspond to Bases Nos. 7, 11, 12, 20*bis* and 21.

You will note that of the Bases you have adopted, one is not included in the draft Convention. I refer to Basis No. 2. The Drafting Committee thought that this Basis ought to be formed into a supplementary Convention, as in that way we should be most likely to obtain general agreement. As a matter of fact, certain delegations were not quite easy in their minds concerning the advisibility of including this Basis in the main Convention.

To round off this special Convention, we have added the provision on military service, arising out of the Danish amendment and the provision regarding the status of children whose mother and father are of an unknown nationality or have no nationality, arising out of a Polish amendment.

I should add that this additional Convention also includes the general and formal provisions that have already been inserted at the end of the main Convention. Finally, we have collected the various recommendations already adopted at the first reading by the Committee and have arranged them in an order

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[1] This document was not circulated to the Committee ; the modifications proposed by the British delegation were taken into consideration by the Drafting Committee of the Conference when it drew up the final text of the Convention for submission to the Conference in plenary session.

corresponding to the order of the provisions of the two Conventions.

There are five of these recommendations, and we propose to classify them as follows: (1) Recommendation concerning statelessness; (2) recommendation concerning double nationality; (3) recommendation regarding the two cases connected with naturalisation; (4) recommendation arising out of the two proposals adopted by this Committee in connection with the nationality of married women; (5) recommendation arising out of a Polish proposal concerning passports for stateless women.

I propose that we should examine and vote on the texts in the following order:

We might first consider the body of the main Convention and then examine the Preamble. After that, we might examine the text of the special Convention and finally the various recommendations.

If any delegation really finds itself unable to vote immediately on some particular provision, it can ask the Committee to adjourn the vote either until the end of the meeting or until the beginning of the next meeting.

After each text has been read and any comments thereon have been heard, I propose that we should vote by roll-call in order that the situation may be quite clear because, according to our Rules of Procedure, no provision can be embodied in the main Convention which we submit to the Conference unless it has been adopted by a majority of two-thirds of the delegations present in this Committee.

I would also remind you that, according to the rules adopted last night, if a provision does not obtain a two-thirds majority of the delegations present, any group of not less than five delegates may ask that a new vote be taken, so that if the text obtains a bare majority it may be included as an annexed Protocol.

Convention on Certain Questions relating to the Conflict of Nationality Laws.

Article 20.

M. Wu (China):

Before we vote, I think we should decide on the question of reservations which I raised at the last meeting. According to the regulations which were adopted last evening by the general Conference it was left to the discretion of each Committee to decide, first, whether any reservations are to be allowed and, secondly, if so, on what articles. It seems to me that, before we can vote intelligently, we should know the answer to these two questions.

The Chairman:

Translation: I think this proposal is a very important one. It is referred to in the clause inserted in Article 20 which deals precisely with the question of reservations. For the time being, however, we will merely consider the point of order raised by the Chinese delegate.

M. Giannini (Italy):

Translation: I wish to make one small observation regarding the order of our work. The Drafting Committee has not yet decided whether the Preamble should contain a few paragraphs concerning the relationship between the Conventions and international law. I propose, therefore, that we should postpone our examination of the Preamble until the end of our work.

Moreover, as regards the special Protocol, perhaps the General Committee will consider the possibility of adopting a more simple formula, and I should be glad if these clauses could be distributed as soon as possible.

The Chairman:

Translation: I thank M. Giannini for having forestalled me. I was just about to draw the Committee's attention to the relationship between the reports of our Committee and those of the other Committees and the Central Drafting Committee.

From the outset, it was understood that the Central Drafting Committee would co-ordinate the final texts in order to avoid all contradictions. It was also understood that a number of general clauses — to which I referred a few minutes ago — will be prepared by the Central Committee and will be inserted if necessary in one or all of the Conventions.

All these points therefore are reserved, and either to-day or to-morrow morning we shall receive the proposals or suggestions of the Central Committee. Thus, before completing this part of our work, we shall be able to take into account the Central Committee's views.

We will now consider the point of order raised by the Chinese delegate.

Mr. Dowson (Great Britain):

I agree with the Chairman that the article relating to reservations is of very great importance, and I think it ought to be carefully considered. If complete freedom is given to each contracting party to make reservations to this Convention, the effect may be very largely to nullify its value. Consequently it is, in my view, very desirable that, if the power to make reservations is granted at all, that power should be exercisable only in respect of specific articles, to be stated in the provision which grants the power to make reservations.

That is a suggestion which I think this Committee should consider. I do not know what is the feeling of other members of Committee with regard to it, but I do ask that the power to make reservations as stated in the draft before us, should be limited in some definite way so as to keep it within the narrowest possible limit.

Mr. Flournoy (United States of America) :

I am obliged to differ from the views just expressed by the delegate for Great Britain, because it seems to me that if the power to make reservations is, as he expressed it, reduced to the narrowest possible limits, it may make it impossible for some delegations to sign the Convention at all. I think, in view of the great differences of opinion on some very important questions which have been brought out in our discussions, it is specially important that there should be very considerable freedom to make reservations.

M. de Navailles (France) :

Translation : You will remember how much difficulty we experienced in drafting the texts you have before you. If we do not adopt Article 20, purely and simply, in the form in which it is submitted, there will be a renewal of certain expressions of doubt to which voice has already been given, and some delegations may possibly hesitate to accept the text of the draft Convention.

As the delegate for Great Britain has pointed out, it is highly important that the delegations should not allow the essential articles of the draft to disappear. I do not think that such a contingency is likely to occur since these drafts have been very carefully studied. They are, moreover, so worded that they satisfy practically everybody, even those countries which have shown rather conflicting tendencies.

It would be very awkward under these circumstances, I think, if numerous reservations were to be made. Reservations with regard to points of detail would, as the delegate for Great Britain agrees, not inconvenience anyone. Consequently, we can allow such reservations.

If we are to limit this right of making reservations to certain articles, we must first of all decide what articles are essential and what are not. The texts before us are not very numerous ; they are, however, all important as regards their intention, far more than as regards their result, because, as a matter of fact, none of them contain imperative stipulations. They all indicate a desire, a tendency ; they are almost all recommendations in the form of articles of a convention.

In short, I think that there can be no danger in adopting Article 20 as it stands and in allowing reservations to all the articles. I feel sure that these reservations will not be very numerous.

M. Giannini (Italy) :

Translation : What are the contending theories regarding reservations ? We can either admit absolute freedom, as laid down in Article 20, or limit the possibility of reservations. If we decide to accept the second system (favoured by our British colleague), we shall have to include in our Convention a number of what I might call " basic " articles — that is to say, articles establishing the foundation of the juridical system referred to in the Convention. Does this Convention, however, embody any juridical system ? Is there any system at all ? No. The chapter headed " General Principles " does, indeed, contain nothing but general principles.

In these circumstances, and in view of the composition of our Convention, I do not think we can include any " basic " articles regarding which no reservations could be made.

I am therefore in favour of this Article 20, although I am still, generally speaking, opposed to reservations.

The Chairman :

Translation : I did not understand that the British delegate had made any formal proposal to modify Article 20. I thought he had merely expressed a desire that as limited use as possible should be made of the right to formulate reservations and that, in principle, he agreed with M. de Navailles' remarks, which have just been supported by M. Giannini. If that is so, we can easily come to an agreement, particularly as our Chinese colleague informs me that he also is not opposed to the acceptance of Article 20 as it stands.

The Chinese delegate's proposal is that we should first vote on Article 20 before examining any other text. If there is no objection I shall take it that the Committee agrees and we will proceed to vote on Article 20.

Mr. Dowson (Great Britain) :

In view of what the Chairman said just now, I desire to add one word of personal explanation in regard to my previous remarks. I am entirely in agreement with what M. de Navailles has said in regard to the general attitude which the delegates should take up concerning reservations, but as regards the precise text of Article 20 I wished to suggest, for the consideration of this Committee, that, if possible, the power to make reservations should be limited to specific articles which the Committee might think it desirable to specify in Article 20. This procedure appears to me to be very desirable and it is one which is very commonly adopted in articles concerning reservations.

I do not desire to press my objection further but merely to add that, if the Committee has made up its mind that Article 20 shall stand in its present form, I trust that the High Contracting Parties to any Convention that may result from our work, will use this power in the sense indicated by M. de Navailles and M. Wu — that is to say, with the utmost desire to refrain from making reservations in any case in which they really agreed with the spirit of the articles.

M. de Berczelly (Hungary) :

Translation : I wish to submit two observations with regard to Article 20. First of all, we are all agreed that, if reservations are admitted, it will be very difficult to apply a plurilateral Convention. As, however, it seems necessary to make some provision for

reservations, I should like to know whether it is understood by all that a reservation can refer only to the mere exclusion of a provision. I think that the text does not make this sufficiently clear. It would perhaps be desirable to strengthen the provision on this subject by adding a few words to the effect that a reservation may only exclude some provision and may neither be an interpretation of the text nor advocate some particular system.

Secondly, it is said at the beginning of this article : " . . . when signing the present Convention or adhering thereto . . . " Would it not be desirable to provide that a reservation may also be made at the time of ratification, since accession implies ratification and the signing of an Act? According to the present text, a contracting party which does not accede but signs is placed in a more difficult position than a party which accedes, since the latter has plenty of time to consider what reservations it will make. In my opinion, the text should allow the possibility of making a reservation when signing, or when ratifying, or when acceding.

The Chairman :

Translation : My reply to the second observation of the Hungarian delegate is as follows : The text as it stands refers only to exclusion. It is correct that no reference is made to the time of ratification. The text is purposely silent on this point. If a formal proposal is made to add to the two times indicated — the time of signature and that of accession — the time of ratification as well, I will consult the Committee as to whether it desires to make such an addition or not.

M. Wu (China) :

I desire to associate myself with the remarks made by the delegates for France and Great Britain. The Committee, as well as its Sub-Committees, have worked so hard in trying to reconcile the often extremely divergent points of view, and the search for a formula has been carried out with such care that I do not imagine there will be many reservations. Such reservations as will be made will refer only to points of extreme importance to the State concerned.

I therefore move the adoption of Article 20 as it stands, but also the recommendation of this Committee that the power of making reservations should be exercised as sparingly as possible, and that this point be brought by the appropriate means to the attention of the different Governments.

Mr. Flournoy (United States of America) :

I fully agree that, after all the discussions which have taken place here, it should not be necessary for any one delegation to make any reservations, and I also agree that reservations should not be made with regard to matters which are not essential in character or with regard to mere questions of detail or form. There are, however, some very essential points upon which there is disagreement, and the right of any contracting party to make a reservation with regard to those essential points should not, in my opinion, be restricted.

I do not see that it is necessary to accept any one article or to reject it as a whole. I notice that Article 20 speaks of " reservation excluding any one or more of the above provisions " ; it does not say " any one or more of the above articles ". It seems to me that a sensible interpretation of this phrase would be that it should be within the competence of any contracting party to make a reservation, if it sees fit, with regard to a particular point in an article without rejecting the whole article.

M. Alvarez (Chile) :

Translation : I make a formal proposal on the lines suggested by the Hungarian delegate that we should add the words " when ratifying ".

I think that M. de Berczelly's observations are very sound. The discussions on this subject in the Drafting Committee show that the right to make reservations may be exercised either at the time of signing the Convention or when it is ratified.

The Chairman :

Translation : The Committee is now in possession of the facts and can take a decision. I understand that it desires to take a decision immediately.

There are, however, two amendments in connection with this article. The first, proposed by the Hungarian delegation and supported by the Italian, Chinese and Chilian delegations, is that we should add, after the words " when signing ", the words " or when ratifying ". The second amendment has just been submitted by the delegation of the United States of America to the effect that either a provision or a part of a provision may be excluded.

Mr. Flournoy (United States of America) :

I did not make a formal proposal, but I am willing to do so, if necessary. It seems to me that the fact that we have divided the Convention up into articles should not carry the implication that it is necessary to accept or reject an entire article.

M. Wu (China) :

If I understood aright the previous remarks of the delegate for the United States of America, he merely wished to draw attention to the fact that the word " provision " in English and the word " disposition " in French refer merely to points and not to entire articles. It seems to me that, if this is the opinion of the Committee as a whole, his point would be met and it would be therefore unnecessary to move an amendment in regard to it.

Mr. Flournoy (United States of America) :

If that is the meaning which the Committee attaches to the word "provision" I am entirely satisfied on this point, and no motion will be necessary.

The Chairman :

Translation : I also think it would be useless to make an addition to Article 20 in connection with the point raised by Mr. Flournoy. The same question was raised in connection with Article 36 of the Statute of the Court and it was unanimously recognised that, when this article said that a main provision could be accepted, it must *a fortiori* mean that any part of that provision could be accepted, in virtue of the rule that the greater includes the less. Consequently, if we agree that when we say that a given provision can be excluded we refer, not only to the whole article, but also to any part of the article, it is unnecessary to make any change in the text submitted to you.

We therefore have only one amendment, to the effect that we should add after the words "when signing", the words "or when ratifying". I put this amendment to the vote.

The amendment proposed by the Hungarian delegation was adopted.

The Chairman :

Translation : Article 20 will therefore read as follows :

> "A High Contracting Party may, when signing or ratifying the present Convention or adhering thereto, append an express reservation excluding any one or more of the above provisions.
>
> "The provisions thus excluded cannot be applied against any contracting party who has made the reservation nor relied on by that party against any other contracting party."

As no one has asked for a vote on the separate paragraphs we will vote on the provision as a whole. The vote will be by roll-call.

M. Giannini (Italy) :

Translation : I think we are unanimous.

The Chairman :

Translation: If nobody disputes M. Giannini's opinion that we unanimously accept Article 20, I will very gladly note the fact.

Article 20 was adopted unanimously.

The Chairman :

Translation : I think you will all agree that we should now proceed to consider the body of the Convention in the order of articles set out in the document before the Committee.

Article 4.

M. Soubbotitch (Yugoslavia) :

Translation : I only wish to draw your attention to a probably unintentional omission in the document on which we are asked to vote.

I refer to Article 4, which relates to diplomatic protection. At the meeting of March 21st, the Yugoslav delegation proposed an amendment to the effect that direct protection in an arbitral tribunal or before a mixed commission should be included in the case of all persons possessing dual nationality. This amendment was adopted subject to drafting.

True, the Drafting Committee was to have consulted the Third Committee on this point. I do not know whether this was done or not. In any case, we cannot trace in Article 4 the amendment which we proposed and which was adopted. We ask that the necessary addition should be made, since our amendment can only have been omitted in error.

The Chairman :

Translation : What you say is quite correct. This is an amendment the Committee adopted at the first reading. It has not been included in Article 4, because we have not yet been able to reach an agreement with the Third Committee. I will do all that lies in my power to-day to reach an agreement. I will then explain to you how the matter stands, and, if necessary, you can add to Article 4 the second paragraph which has been proposed and already adopted in principle by the Committee.

Article 1.

M. Wu (China) :

I have an amendment to suggest in regard to the second sentence of Article 1, which reads :

> "This law shall be recognised by the other States so long as it is consistent with international Conventions and with the principles generally recognised in the matter."

On referring to the text proposed by the Drafting Committee, I find that it says that this freedom to legislate shall be recognised by the other States provided that the use made thereof is not at variance with international Conventions or with the principles generally recognised in the matter. If I remember correctly, at the time of our discussion, a good many delegations showed a certain hesitation in accepting the latter part of that second sentence.

Referring again to the Basis of Discussion as originally drafted by the Committee of Experts, I find that the sentence which corresponds to the second sentence reads : "The legislation of each State must nevertheless take account of the principles generally recognised by States." We see, therefore, by comparing these three drafts that the undoubted sovereign right of each State to legislate in regard to the law of nationality has been gradually diminished by a sort of sliding scale.

I doubt whether many delegations can accept the draft as it stands — the last part, I mean — because it says that this law shall not be recognised by the other States if they consider that that law is contrary to international Conventions or principles generally recognised in the matter — the latter being an extremely vague phrase.

I appreciate the difficulty that has been experienced, not only by this Committee, but also other Committees, in finding a formula for principles generally recognised. Those of you who are members of the Third Committee will know what keen debates we had and what weary hours we spent in the search of a formula, somewhat unsuccessfully.

I move, then, that, instead of trying, at this late hour of our Conference, to get over the difficulty by a change in the wording of the latter part — that is, the phrase about principles generally recognised —, we should make an alteration in the first part. Instead of saying: "This law shall be recognised by the other States so long as it is consistent . . .", I suggest, and formally move, that we should return to the phraseology employed in the draft prepared by the experts. The second sentence would then read:

> "The legislation of each State must nevertheless take account of international Conventions and the principles generally recognised in the matter."

M. Giannini (Italy):

Translation: The utility of the second reading is that the delegations are able to see the text as a whole and also to regard it in what I might almost call an historical light, since our discussions have already become a matter of the past. On reading this text, I have great difficulty in refraining from sharp criticism. I find it very hard to accept this draft. I do not understand it. It has been drawn up in such a way that — to me, at any rate — it seems to be a codification of nothingness.

The text says: "It is for each State to determine under its own law who are its nationals." Very good. When I assert a right, I say that others are obliged to respect that right. But how does the article continue? There is nothing more. It says that this law should be recognised by other States, but that is the very essence of a right. When once a right has been acknowledged, of course it must be respected: there is no need to reiterate the fact. Then comes the sentence: "in so far as it is consistent with international Conventions". Obviously. And then what is left? All that remains is ". . . with the principles generally recognised in international law". I ask you whether it is not rather ironical to refer to the principles of law generally recognised in the matter.

There are, I think, two legal systems in the matter of nationality. Under the first, the State drives away its nationals as though they were a swarm of bees, and, under the second, a State protects its nationals.

The two systems are based upon entirely different general principles. What are these principles? Those, it is said, which are generally recognised!

If you examine the two systems, will you find any general principles common to both? If, on examining the most divergent bodies of law — French, Italian, South American, British and North American — you can find any common principles at all, then I will admit that I am wrong.

As a matter of fact, there are no similar legal systems in national laws or international law — and yet you speak simply of the "principles of law generally recognised with regard to nationality". Really, is not that rather ironic?

Does this first Conference on the Progressive Codification of International Law show that there exist any principles generally recognised with regard to nationality?

In short, is not Article 1 a bad translation of Article 2? Ought this Article 1 really to stand at the head of our Convention? Personally, I do not think it ought.

I ask you, therefore, to delete Article 1 entirely — or, at any rate, the second sentence.

The Chairman:

Translation: The number of delegates who have asked to speak continues to grow. I must remind you that we are engaged on a second reading and are not re-opening the discussion; indeed, we cannot re-open the discussion on questions which have already been examined.

I therefore venture to beg all delegations who wish to speak to indicate very briefly whether they accept or do not accept any given part of the article in discussion, stating their reasons.

Will M. Giannini forgive me if I remind him that our first discussion clearly showed that the Committee desires, above all, to state at the outset of this Convention that States are free to legislate on the subject of nationality? That is a first point.

But it is not possible to assert this freedom to legislate without immediately indicating that the freedom is not absolute. There must be certain limits. Quite possibly, the second sentence of Article 1 is open to criticism. In that case, however, delegates should propose a change or ask for its omission without going contrary to an essential idea admitted by the Committee.

If we were to discuss the usefulness of this second part as a whole, that would be to re-open the discussion on fundamentals, and I could not, as Chairman of the Committee, allow such a procedure.

M. Kosters (Netherlands):

Translation: May I make one small observation, or, rather, draw a comparison between Article 1 and Article 18?

In Article 1, we refer to "the principles generally recognised with regard to nationalality",

whereas, in Article 18, we say: "The acceptance of any rule in the present Convention shall in no way be deemed to prejudice the question whether such a rule does or does not exist as a customary rule of international law." I do not think that these two expressions are in harmony.

On examining the Statute of the Permanent Court of International Justice, it will be seen that the Court applies, as far as unwritten international law is concerned, international usage and the general principles of law recognised by civilised nations, etc.

I venture to ask the Drafting Committee whether it would not be advisable to harmonise somewhat the texts of these two articles. This is simply a question of drafting.

I propose, therefore, that we should insert in the two articles the words "international Custom" and "the principles generally recognised with regard to nationality". These two concepts can very easily be brought into line, or can even be placed side by side, as in Article 38 of the Statute of the Permanent Court of International Justice.

M. Alvarez (Chile):

Translation: I ask that only the first part of the article should be maintained and the second part deleted. I mean the part which begins: "This law . . ." My reasons are that the second part is in places obscure, or, at any rate, vague.

As I pointed out when we were discussing Basis No. 1 at the very beginning of our work, and as M. Giannini has very rightly reminded us, there are no universally recognised principles in this matter. Therefore, although, as our Chairman observed just now, we cannot leave States absolutely free to legislate on this subject, on the other hand, States will not accept any limitation of their sovereign right. I very much fear that a limitation of this kind will not satisfy the various States and that they will hesitate to accept it. That is why I ask for the omission of this sentence.

The Chairman:

Translation: With a view to making the discussion clearer, I would point out that it would be quite possible, when inserting at the head of a Convention of this kind a provision allowing legislative freedom (if we wish to indicate that such freedom is not absolute), to state certain limitations, even when these limitations do not apply to any concrete case.

At present, there is such a case: I refer to treaty law. There is no doubt on this subject. Where limitations flow from usage or general principles, they may, I admit, be theoretical at the present time — that is to say, they may not really exist. But do not let us forget that we are engaged in a work of codification. This article may, and indeed should, remain in force for many years, and we do not know what may happen ten, twenty or thirty years hence.

We are simply marking out the path; that is our main duty. So that, even if there are at present no generally recognised principles of law on this subject, it is sufficient for us to be able to hope that one day the limitation — at present theoretical — will become a reality from the point of view of codification.

Mr. Flournoy (United States of America):

I intended to express an opinion, and support it by some examples, to the effect that there are principles which are generally recognised. I do not know whether I am out of order or not, at this stage, in bringing forward any argument to that effect. I will say, however, that our delegation is heartily in favour of this article in principle. We see no objection to redrafting, it in the way suggested by the delegate for China. As the matter is one of considerable importance, it seems to me that a final vote on the phraseology might be deferred to a later meeting.

The Chairman:

Translation: I will ask the Committee, at the end of this discussion, whether it wishes to reserve its vote on Article 1 or whether it prefers to vote immediately. For the present, the discussion continues, and I call upon the Japanese delegate to speak.

M. Nagaoka (Japan):

Translation: I quite agree with M. Wu. The Japanese delegation supports the proposal of the Chinese delegation.

M. de Navailles (France):

Translation: If we do as M. Giannni suggests, our work will be greatly simplified, because no Convention at all will remain. If we begin, our Convention by saying that every State may do as it likes, it will be quite useless to lay down any rules of international law.

Reference is made to the "principles generally recognised in this connection". We have been asked: "What are these principles?" They exist beyond all doubt. We can probably not enumerate them all, because that would be a somewhat difficult task. But it must occur to everyone here present that three of these principles are universally recognised, to quote only three: first, the fact that birth in a country gives the nationality of that country. There we have a principle which governs nationality in many countries. Another principle is nationality as the result of parentage. A third is that of the acquisition of nationality by a voluntary act — that is to say, by naturalisation.

These three essential principles are included in the formula "generally recognised principles". There are others — of less importance, it is true — which are also admitted. It cannot therefore be denied that generally recognised principles exist.

In my opinion, the text should remain as it stands, though it might be slightly improved upon in conformity with the suggestion of the Netherlands delegate. It will, however, be useless to continue our work if we are to omit the essential part of Article 1.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : The reservation regarding conventions already occurs in Article 19, which lays down : " Nothing in this Convention shall affect the application, as between the High Contracting Parties, of any bilateral Convention . . . " Does Article 1, therefore, refer to plurilateral Conventions, or to something other than bilateral Conventions ? In any case, I consider that the reservation in regard to international Conventions already exists, and that it is unnecessary to repeat it in Article 1.

Moreover, there is some doubt whether any generally rcognised principles exist. Each group of laws has its own principles.

Again, as the Chinese delegate pointed out, the words, " This law shall be recognised by other States, in so far as it is consistent . . . with the principles generally recognised ", aggravates the existing situation. Under this international instrument, each State is expressly given the right to dispute the law of another State on the basis of a matter of principle which may lead to unlimited differences of opinion.

I therefore propose that the text be modified as follows : " It is for each State, taking into account the principles recognised in the matter . . . " There may be recognised principles, but there are certainly none which are generally recognised. It is impossibe to apply to a country which follows a particular trend of thought principles representing another tendency. If we make the alteration I propose, we shall escape the second difficulty, resulting from an aggravation of the international situation, since the question would be restricted to a mere obligation to take certain principles into account. If so, the second part of the article could be deleted.

Article 2 merely repeats the principle laid down in Article 1, though from a different point of view. If, however, Article 2 is retained, it should be connected up with Article 1 by adding the word " consequently ". As a matter of fact, the provisions of Article 2 are a consequence of Article 1.

The Chairman :

Translation : I note the amendment proposed by the Egyptian delegate and will consult the Committee on this point.

I would, however, have you observe that there is no overlapping between Article 19 and Article 1. The second part of the latter shows that the freedom recognised in the first part is not absolute, whereas Article 19 is intended to guarantee the maintenance of international Conventions, already in force or to be concluded in the future, which are not quite in agreement with the provisions of the present Convention. Conventions may quite well be concluded which go futher than this Convention, and it should be understood that the putting into force of our Convention does not implicily mean the abrogation of other Conventions.

M. Suarez (Mexico) :

I very earnestly support the views expressed by the delegates for Italy and Chile. These views are in full accord with the statement I made two days ago, and which our Chairman was pleased to condemn, in somewhat severe terms, as abusive.

The Chairman :

Translation : The situation is this : We have a motion for the adjournment of the vote ; then a proposal for the omission of the first sentence and, with regard to this sentence, we also have an Egyptian amendment. With regard to the second sentence, there is a proposal that it should be omitted which is supported by several delegations ; at the same time, we have a Chinese amendment, an amendment by the Netherlands delegation and an amendment by the Latvian delegation.

I will first put to the vote the motion to adjourn the vote.

This proposal was rejected.

The Chairman :

Translation : I put to the vote the proposal to omit the first sentence : " It is for each State to determine under its own law who are its nationals."

Obviously if the Committee agrees to omit the first sentence it would be useless to maintain the second. The omission of the first sentence would involve the omission of the whole article.

I put to the vote the omission of the first sentence.

The Committee decided to maintain the first sentence of Article 1.

The Chairman :

Translation : With regard to the first sentence, there is an Egyptian amendment to the following effect : " It will be for each State, taking account of principles recognised in the matter to determine under its own law who are its nationals."

If the Committee accepts this amendment, the second sentence will be *ipso facto* omitted.

I put the Egyptian amendment to the vote.

The Egyptian amendment was rejected.

The Chairman :

Translation : The first sentence is therefore accepted without amendment.

We now have an amendment to the effect that the second sentence should be omitted. I put this to the vote.

The Committe decided to retain the second sentence of Article 1.

M. Diena (Italy) :

Translation : I want it to be stated in the Minutes that the Italian delegation has voted for the omission of this sentence.

M. Suarez (Mexico) :

The Mexican delegation makes the same request.

M. Alvarez (Chile) :

Translation : The Chilian delegation asked that this sentence should be omitted if the text could not be made clearer.

The Chairman :

Translation : All these statements will appear in the Minutes.

With regard to the second sentence, there is a Chinese amendment to replace the text you have before you, by the following :

" The legislation of each State must, nevertheless, take account of international Conventions and the principles generally recognised in the matter. "

It is understood that if the Committee accepts this amendment it will still have to vote on the Netherlands amendment to the effect that it should add, after the words " with international Conventions and the principles generally recognised ", a reference to custom. We shall also have to take a decision with regard to the Latvian delegation's amendment to the effect that we should add, after the word " principles ", the words " of law ". I put the Chinese delegation's amendment to the vote.

The Chinese delegation's amendment was rejected.

The Chairman :

Translation : I put to the vote the amendment of the Netherlands delegation to the effect that we should insert, after the words " in so far as it is in agreement with international Conventions ", the words " and international custom ". The text would then go on, " and the principles, etc. ".

The Netherlands delegation's amendment was adopted.

The Chairman :

Translation : We now have the amendment of the Latvian delegation to the effect that we should insert, after the word " principles ", the words " of law ".

M. Duzmans (Latvia) :

Translation : I wish to say just two words before the vote is taken. My intention was the same as that of the Netherlands delegate — namely, we wished to bring the text of Article 1 into line with the terms of the Statute of the Permanent Court of International Justice.

The Chairman :

Translation : I put the Latvian delegation's amendment to the vote.

The Latvian delegation's amendment was adopted.

The Chairman :

Translation : I will read you the whole text of Article 1 as it is worded now, with the addition of the two amendments you have just accepted ; I will then put the whole article to the vote.

" It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international usage and with the principles of law generally recognised with regard to nationality. "

We will vote by roll-call.

M. Buero (Uruguay) :

Translation : The Uruguayan delegation votes for the adoption of this article for the reasons set out by our Chairman in reply to M. Giannini's criticism. It wishes to state that it accedes to Article 1 in the light of the long discussion on the original text of Basis No. 1 — that is to say, that the general principles to which this Basis refers are either those of the *jus sanguinis*, or of the *jus soli*, or a combination of both, and the voluntary adoption of the nationality by naturalisation, following on a sufficiently long period of residence in the country, etc. The second part of the article refers solely to the limitation of abuses under certain laws which might grant naturalisation on so wide and liberal a scale as to appear to constitute an abuse of a recognised right that has been accorded in a general manner, in the first part of the article.

Article 1 was put to the vote by roll-call.

The following delegations voted in favour of Article 1 : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Japan, Latvia, Luxemburg, Netherlands, Nicaragua, Norway, Persia, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegations voted against : Italy, Mexico.

The following delegations were absent or abstained : Bulgaria, Iceland, Monaco, Peru, Roumania, Salvador.

Article 1 was thus adopted by thirty-eight votes to two.

Article 2.

M. Merz (Switzerland) :

Translation : I have already asked, on another occasion, that this article should be omitted, for I think it is useless. It seems to me that this is a question of procedure which should not be introduced into a Convention containing rules of positive law.

M. Duzmans (Latvia) :

Translation : Article 2 reads :

"The question whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State."

Obviously the French should be : "d'un Etat déterminé", because the English text reads : "a particular State". I therefore propose that the French should read : ". . . la nationalité d'un Etat déterminé . . .".

The Chairman :

Translation : This question was discussed at great length in the Drafting Committee. The word "déterminé" appeared in the previous texts. The Committee thought it was quite unnecessary, but the English wording had to be left as it stood because our British colleague said that : "A particular State" was the only suitable phrase. The Committee held that it was unnecessary to add the word "déterminé" in the French text. That is the explanation.

M. Duzmans (Latvia) :

Translation : Since the Drafting Committee has discussed this point and thought it preferable to omit this word, I withdraw my amendment.

Article 2 was voted upon by roll-call.

The following delegations voted in favour of Article 2 : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Persia, Poland, South Africa, Spain, Sweden, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegation voted against : Switzerland.

The following delegations were absent or abstained : Bulgaria, Iceland, Monaco, Peru, Portugal, Roumania, Salvador.

Article 2 was thus adopted by forty-one votes to one.

Article 3.

M. Merz (Switzerland) :

Translation : The Swiss delegation feels bound to maintain its opposition to Article 3 for the following reason. Article 3 contains only a general principle. As, however, the object of our Committee is precisely to limit the scope of this principle of absolute sovereignty, we regard its insertion in the Convention as useless.

The Chairman :

Translation : I note that you will vote against this article, but do you ask for its omission ?

M. Merz (Switzerland) :

Translation : Yes.

The Chairman :

Translation : I put to the vote the proposal to omit this article.

The proposal was rejected.

The Chairman :

Translation : I put to the vote Article 3. We shall vote by roll-call.

The following delegations voted in favour of Article 3 : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Persia, Poland, Portugal, South Africa, Spain, Sweden, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegation voted against : Switzerland.

The following delegations were absent or abstained : Bulgaria, Iceland, Monaco, Peru, Roumania, Salvador.

Article 3 was thus adopted by forty votes to one.

Article 4.

M. de Navailles (France) :

Translation : Before we take a decision on Article 4, the French delegation wishes to say that, in its opinion, the principle embodied in Article 1 of the Convention covers the whole Convention. Consequently, the reference in Article 4 to a national of a country means the national of a country according to the generally recognised principles.

The Chairman :

Translation : You do not ask for any alteration ?

M. de Navailles (France) :

Translation : No. We merely wish to make the point clear.

M. de Berczelly (Hungary) :

Translation : This article refers to diplomatic protection. I think such reference is out of place in a Convention on nationality and therefore propose that this article be omitted.

M. Nagaoka (Japan) :

Translation : The Japanese delegation opposed this article when it was being discussed. In view of the number of other delegations which voted against it, I ask

that the omission of Article 4 be put to the vote first. If this proposal is rejected, I suggest that the article should be made into a separate Protocol.

The Chairman :

Translation : The omission of Article 4 will be put to the vote. The question whether the text should remain in the Convention or become a separate Protocol will be decided according to the Rules of Procedure.

If this article obtains a two-thirds majority, it will be embodied in the Convention. If it does not obtain that majority, but if five delegations ask for a second vote with a view to obtaining a base majority, it will be made into a special Protocol.

M. Soubbotitch (Yugoslavia) :

Translation : I rise on a point of order. According to the statements we have heard, Article 4 contains a second paragraph, the text of which has not been submitted to us. Would it not be better, in these circumstances, to adjourn the second reading and also our vote on the article as a whole, until we have seen the text of the second paragraph ?

M. Wu (China) :

When this article was before the Committee last time, I took the liberty of placing the views of the Chinese delegation before you. I shall not now burden you with a repetition of those views, but will merely associate myself with the motion of the Hungarian and Japanese delegations for the suppression of the article.

M. Rundstein (Poland) :

Translation : I support the Yugoslav proposal that we should defer our vote on Article 4, as there is a new paragraph which we have not yet seen.

M. Buero (Uruguay) :

Translation : I think that the provisions of Article 4 are important, and I should be sorry if it were omitted. I admit, however, that some of the comments we have heard have a certain weight. As the Hungarian delegate has said, the question of affording diplomatic protection to the nationals of different countries should not be included in a Convention on nationality.

Moreover, I wish to remind you that Article XX, paragraph 4, of the Rules which were approved yesterday, lays down :

> " The provisions referred to in the preceding paragraphs which have not been included in a draft convention or protocol shall be inserted in the Final Act of the Conference. "

Relying then on the provisions of paragraph 3 of Article XX of the Rules of Procedure, I propose that, if Article 4 is adopted by a two-thirds majority, it shall be inserted in the Final Act but neither in the Convention nor in the Protocol.

The Chairman :

Translation : You mean if the Committee decides to omit it ?

M. Buero (Uruguay) :

Translation : Exactly.

M. Joachim (Czechoslovakia) :

Translation : We are in favour of the Yugoslav proposal for adjournment.

The Chairman :

Translation : The position is as follows : There is a proposal for omission which has priority. If the article is deleted, no other question can arise. If the motion to omit is rejected, the Committee will have to decide on the Yugoslav motion that the vote be adjourned.

On a show of hands the proposal to omit this article was rejected.

The Chairman :

Translation : I put to the vote the Yugoslav proposal that we should adjourn our vote on this article until we have before us the text of the Yugoslav amendment which, it is suggested, should form the second paragraph. In order that the situation may be quite clear, I would observe that if the Committee decides to take the vote immediately and the vote is in favour of maintaining this article, it will be understood that the Yugoslav amendment will be submitted to-morrow as a second paragraph to the text. You would then vote on that amendment and finally on the article as a whole.

M. Soubbotitch (Yugoslavia) :

Translation : In these circumstances, we withdraw our point of order, since we shall have an opportunity to-morrow of pronouncing on the whole article.

The Chairman :

Translation : We will now vote by roll-call on the text as it stands, it being understood that to-morrow you will be called upon to decide on the second paragraph, and then on the article as a whole.

The text was voted upon by roll-call.

The following delegations voted in favour of Article 4 : Australia, Austria, Brazil, Canada, Colombia, Cuba, Czechoslovakia, Denmark, Egypt, Estonia, Finland, Germany, Great Britain, Greece, India, Irish Free State, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, South Africa, Spain, Sweden, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegations voted against : China, Hungary, Italy, Japan, Persia.

The following delegations were absent or abstained : Belgium, Bulgaria, Chile, Danzig, France, Iceland, Monaco, Peru, Poland, Portugal, Roumania, Salvador, Switzerland.

Article 4 was thus adopted by twenty-nine votes to five.

M. Diena (Italy) :

Translation : The Italian delegation has voted against this text because it observes that the condition of habitual residence, which was included in the original text, has now disappeared.

Article 5.

Mr. Flournoy (United States of America) :

I have discussed Article 5 with my delegation, and it is our view that it does not make sufficient allowance for the express choice of the individual who has two nationalities. For that reason we shall be obliged to vote against it.

M. de Vianna Kelsch (Brazil) :

Translation : I should be glad if we could introduce the word " domicile ", without prejudice to the present contents of the text. This addition is necessary if the article is to be in agreement with the Brazilian Civil Code. Otherwise, I do not know whether my country will be able to accept it. As I wish to vote in favour of the Convention and will make every effort to secure its ratification I propose that we should introduce the word " domicile ".

M. Wu (China) :

I agree with the objection of the delegate of the United States of America. In order to obviate the difficulty, I suggest an amendment in the last phrase of the article. As you observe, it says : ". . . or the country which in the circumstances, appears to be that in which he is most closely connected in fact ". I think this text is altogether too vague and does not give sufficient freedom of choice to the individual concerned. I suggest an amendment in this sense : ". . . or the country which in the circumstances appears to be that in favour of which he has made his choice ".

One or two of my neighbours have suggested to me the inversion of these two clauses dealing with the two countries, in other words, that we should put the country of his choice first and the country of habitual residence second — and I agree with that proposal.

Mr. Flournoy (United States of America) :

I am in agreement with the suggestion of the delegate from China, with one condition — namely, that the two countries should not be alternative, but that the first should control the choice which the individual has actually made, not at the time when a question arises, but at the moment when the choice was made. That should be the sole rule, and, in the absence of any such choice, the other rule, that of the place of habitual residence, should be followed.

M. Diena (Italy) :

Translation : I rise to a point of order. The result of the proposal of the Chinese and United States delegates will be that we shall reopen the discussion. These questions have already been discussed at great length and we came to conclusions which have been embodied almost word for word in the text of Article 5. If we allow proposals to be made which again put forward ideas we have already rejected, we shall be reopening the discussion which I, for my part, regard as closed.

The Chairman :

Translation : The position is as follows :

We have first a Brazilian amendment to the effect that we should add after the words " in which ", the words : "he has his domicile or ". The passage would therefore read as follows : " in which he has his domicile or is. . . resident ".

We then have a Chinese amendment to replace the last sentence by the following : ". . . or the country which in the circumstances, appears to be that in favour of which he has made a choice ".

Moreover, the Chinese delegation asks, if its amendment is accepted, that the order of the countries mentioned at the end of Article 5 be reversed and that the country in whose favour a choice has been made should be mentioned first, and, secondly, the country of which the person concerned is a national and in whose territory he has his domicile or residence.

Finally, we have a third amendment, proposed by the United States delegation, to the effect that no alternative should be allowed, but that we should merely take into account the nationality of the country which has been chosen, — or, failing that, the nationality of the country of which the person concerned is a national, etc.

M. Wu (China) :

I should like to reply very briefly to the remarks made by my friend, M. Diena. He considers that the motion which I made, supported by the delegate of the United States of America, is out of order because it is contrary to the decision of the Committee in regard to this particular Basis. I have looked up, the records, however, and find that the present draft is not the same as that passed by the Committee.

If my memory serves correctly, the Committee approved the text : ". . . the nationality which in the circumstances appears to be that to which he is actually attached ". Now, as you see, the present draft says : " the nationality. . . to which he is most closely connected in fact ". I must confess that I cannot understand either expression, both being extremely vague, but I feel that there is a difference and a considerable difference between the two.

The Chairman :

Translation : The Chinese delegate was quite in order. He availed himself of the right which every delegation has, since we are at the second reading. Only one thing is forbidden and that is to reopen a discussion which has been closed. Anyone, however,

may submit an amendment and briefly explain the reasons for which he submits it.

Mr. Lansdown (South Africa) :

If the amendment of the Chinese delegate is to be accepted, we shall want an alternative. It is stated that it is to be the country which the person concerned has indicated as his choice. It is then necessary to continue " or failing such choice, the country in which he is habitually and principally resident ". This would be the formula ". . . which in the circumstances appears to be that in favour of which he has made his choice or, failing such choice, that one of the countries in which he is habitually and principally resident ".

May I also say a word as to the amendment suggested by my friend the delegate for Brazil, in regard to the word " domicile ". The idea of domicile would be in conflict with the phrase : " the country in which he is habitually and principally resident ". That idea of habitual or principal residence is not identical with the idea of domicile. Domicile in general is residence, plus the intention to remain, and it is not tested solely by the question of habitual or principal residence, so that domicile would be irreconcilable with the proposal of habitual and principal residence. We must have either one or the other, but we cannot, it seems to me, have both.

M. de Vianna Kelsch (Brazil) :

Translation : I am perfectly well aware that a person's domicile is the place in which that person resides with the intention of remaining there, but that does not mean that the individual in question will never change his mind. If there is any way possible of inserting the word " domicile " in this article simply in order to meet the requirements of Brazilian law without affecting anything that is already there, I should be grateful if the Committee would do so.

M. de Navailles (France) :

Translation : The French delegation desires to explain the vote which it is about to take. It could not possibly accept the idea of the arbitrary choice of nationality. There exists a means for every person to obtain a nationality, namely, to seek naturalisation. Outside this means, the choice is the result of the individual's own attitude and that is what has been laid down in the article.

When a person proves, by his actions, that he is attached to one nationality rather than to another, that means that he has made his choice. Consequently, our text satisfies everybody. We have had great difficulty in drawing it up and the best course would be to accept no amendment.

M. Wu (China) :

I wish to say that I accept the amendment suggested by the delegate for South Africa to my amendment, which consists of the addition of the words " failing such choice ".

The Chairman :

Translation : I will consult the Committee on the various amendments submitted, in the order I have already indicated.

I first put to the vote the Brazilian amendment to the effect that we should say : " in which he is domiciled or is resident ".

The amendment of the Brazilian delegation was rejected.

The Chairman :

Translation : We now come to the first part of the Chinese delegation's amendment to the effect that, instead of the last part of the sentence, we should say : " or the country which, in the circumstances, appears to be that in favour of which he has made his choice ".

If this amendment is accepted, we shall have then to decide whether these sentences are to be inverted, the text proposed by the Chinese delegation taking the first place and the second sentence being preceded — according to the proposal made by the South African and United States of America delegations, which the Chinese delegation supports — by the words, " failing such choice ".

I put to the vote the first part of the Chinese amendment, to the effect that the last part of the sentence should be replaced by the one I have quoted.

The Chinese amendment was rejected.

The Chairman :

Translation : In these circumstances it is unnecessary to consult the Committee with regard to the change in the position of the sentences.

I will now put to the vote, by roll-call, Article 5 as drafted by the Drafting Committee, without any change.

M. Martensen Larsen (Denmark) :

Translation : The Danish delegation will abstain from voting on this article.

Article 5 was put to the vote by roll-call.

The following delegations voted in favour of Article 5 : Austria, Belgium, Canada, Colombia, Cuba, Czechoslovakia, Danzig, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Mexico, Netherlands, Norway, Persia, Poland, Portugal, Roumania, South Africa, Spain, Sweden, Switzerland, Turkey, Uruguay, Yugoslavia.

The following delegations voted against : China, United States of America.

The following delegations were absent or abstained : Australia, Brazil, Bulgaria, Chile, Denmark, Iceland, Monaco, Nicaragua, Peru, Salvador.

Article 5 was thus adopted by thirty-five votes to two.

Article 6.

M. Kosters (Netherlands) :

Translation : I beg to remind you of the question raised by the Netherlands delegation when we were discussing the general Bases, and, in particular, former Basis No. 6. The point which arose at that juncture was whether the general provisions of the Convention applied to married women, and our Chairman said : " It is understood that the question of married women is reserved until we have examined Bases Nos. 16 to 19 ; even if this question happens to come up incidentally, it would be better to reserve it in order that we may examine the situation of married women in the light of Bases Nos. 16 to 19. "

We now again come to the question whether the general articles, in particular Article 6, apply to married women. Article 6 refers to persons possessing two nationalities acquired without any voluntary act on their own part. That is no doubt a question for subsequent interpretation. But the Netherlands delegation wishes to state that, in its opinion, after the general discussions which have taken place, questions connected with the nationality of married women are not affected by this article.

The Chairman :

Translation : Has M. Kosters any definite proposal to make ?

M. Kosters (Netherlands) :

Translation : No Sir. It would be impossible to make any proposals without revising all the provisions concerning married women, and I do not think we could do that ; but as it is important to ascertain whether Article 6 does apply to married women, I merely wish to state my opinion that it does not.

M. Nagaoka (Japan) :

Translation : In Article 5, which we have just adopted, there is the expression, " habitually and principally resident " ; the word " principally " does not appear in Article 6.

The Chairman :

Translation : That is an oversight.

M. Alten (Norway) :

Translation : I propose the deletion of the last paragraph. I think it would be difficult to oblige Governments not to refuse authorisation, particularly in countries in which the decision is left to the administrative authorities.

The Chairman :

Translation : I put to the vote this request for deletion.

The amendment was rejected.

M. Buero (Uruguay) :

Translation : I wish to state that my own opinion is absolutely contrary to that of the Netherlands delegate.

M. Medina (Nicaragua) :

Translation : The Nicaraguan delegation wishes to state that it adopts the same interpretation as the Netherlands delegation.

Article 6 was put to the vote by roll-call.

The following delegations voted in favour of Article 6 : Austria, Belgium, Canada, China, Colombia, Cuba, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Japan, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Persia, Poland, Portugal, Salvador, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegations voted against : Italy, Norway.

The following delegations were absent or abstained : Australia, Brazil, Bulgaria, Chile, Iceland, Monaco, Peru, Roumania.

Article 6 was thus adopted by thirty-seven votes to two.

Article 7.

M. de Navailles (France) :

Translation : The title of Chapter II indicates that the provisions are of a general nature. It speaks of nationality according to the place of birth. There is only one single article in this chapter, and that article refers solely to the children of diplomatic agents and officials.

It seems to me to be rather surprising to find so special a provision under so general a heading. I wonder whether it would not be preferable to define the heading further and say, for instance : " Nationality of Children of Diplomatic Agents and Foreign Officials, born in the Country in which the Agents or Officials exercise their Functions. "

We might adopt some such wording in order to make the title correspond with the contents of the chapter.

The Chairman :

Translation : This observation is very true ; but would it not be preferable to place Article 7 in what is now Chapter V, which deals with the nationality of children ?

M. de Navailles (France) :

Translation : I quite agree.

The Chairman :

Translation : Since we have now reached Article 7, we will vote on this article. But its position will be changed ; we will put it at the beginning of what is now Chapter V, which will become Chapter IV, since Chapter II disappears.

M. Diena (Italy) :

Translation : I call for a separate vote on the sentences.

The Chairman :

Translation : A separate vote on the sentences has been called for. We shall now vote on each of the two paragraphs of the article.

Mr. Dowson (Great Britain) :

There is one small point I should like to clear up. I should like to ask M. de Navailles with regard to the expression " *de plein droit* " — whether, in view of the text now adopted, that expression might not be cut out.

In the English text, the words are : " Rules of law which make nationality depend upon the place of birth shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs ". The word " automatically ", in my view, properly translates the expression " *de plein droit* ", but I think the term is unnecessary in the text as it now stands. If M. de Navailles agrees with me, perhaps it is unnecessary to pursue the matter further, and we could agree to omit it.

M. de Navailles (France) :

Translation : I think that the expression " *de plein droit* " ought to be retained in the French text, because it signifies that the children of these diplomatic agents may, if they so desire, claim the nationality of the country in which they are born. If we delete the words " *de plein droit* ", it will seem as though we were refusing them this opportunity.

The Chairman :

Translation : Does Mr. Dowson make a formal proposal to the effect that the words " *de plein droit* " should be omitted ?

Mr. Dowson (Great Britain) :

No.

The Chairman :

Translation : We will now vote, by roll-call, on the first paragraph of Article 7.

The first paragraph of Article 7 was put to the vote by roll-call and adopted by thirty-seven votes.

Paragraph 2 was voted upon by roll-call and adopted by thirty-nine votes to one.

The Chairman :

Translation : I take it therefore that the Committee agrees that this text shall be placed at the head of the chapter at present numbered five.

This was agreed.

The Chairman :

Translation : Though it may seem rather unnecessary, I am obliged to put the whole of the article to the vote.

Article 7 as a whole was put to the vote by roll-call.

The following delegations voted in favour of Article 7 : Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Cuba, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Japan, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Persia, Poland, Portugal, Roumania, South Africa, Spain, Sweden, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegation voted against : Italy.

The following delegations were absent or abstained : Bulgaria, Chile, Iceland, Monaco, Peru, Salvador, Switzerland.

Article 7, numbered Article 12 in the final text, was thus adopted by thirty-six votes to one.

Article 8.

M. de Navailles (France) :

Translation : The title of this chapter is not in keeping with its contents. The chapter is headed, " Loss of Nationality by the Voluntary Acquisition of Foreign Nationality ", which would seem to mean that the chapter will deal with everything connected with naturalisation. As a matter of fact, it merely refers to expatriation permits. The title should therefore be : " Loss of Nationality as the Result of the Issue of an Expatriation Permit. "

M. Wu (China) :

I suggest that the discussion of this heading, as well as of future headings to chapters, be relegated to the end of the discussion of the substance of the chapters. If we spend half an hour discussing the headings, and finally the articles which follow are deleted, all that time is wasted.

This proposal was adopted.

Mr. Flournoy (United States of America) :

Our delegation is obliged to vote against this article. Our reasons, I think, hardly need extended explanations. It seems to me that this article is entirely contrary to our view concerning the right of an individual to change his nationality. While it does not say expressly that permits for expatriation are necessary, it does seem to imply that they are at least reasonable and legitimate, and for that reason we are obliged to vote against the article.

M. Hering (Germany) :

Translation : We propose the omission of the second sentence of the second paragraph beginning "This provision shall not apply . . .". It is unnecessary.

M. de Berezelly (Hungary) :

Translation : I propose the omission of the whole article. The expatriation permit in this text is equivalent to the release from allegiance mentioned in the Basis of Discussion. It is simply one way of losing one's nationality. Such loss occurs with the consent of the individual, according to the laws of countries which allow loss of nationality in this way.

Originally the Bases of Discussion included Basis No. 6 ; but Basis No. 6 has been dropped. The second sentence of this Basis contained a provision to the effect that other States, which did not follow this system, would also recognise release from allegiance. As Basis No. 6 was omitted, Basis No. 6*bis* was retained in the form of Article 8. We now note that States which make no provision for release from allegiance are entirely free to apply their laws regarding nationality and the loss of nationality, whereas Article 8 obliges States which recognise release from allegiance to subordinate their sovereign rights in the matter of loss of nationality to certain restrictions.

Under this provision, a State whose national has, in conformity with the law of that State, been released from allegiance, or has by expatriation permit definitely lost his nationality, would nevertheless be obliged to admit that its former national, by the mere fact of his not having acquired another nationality, has once more become its national.

The base formed by Article 8 is an entirely unilateral obligation imposed on a certain group of States. For these reasons I propose its omission.

The Chairman :

Translation : I call upon the Committee to vote.

Two proposals have been submitted, the first is to omit the whole article ; the other is to omit the second sentence of the second paragraph.

M. Diena (Italy) :

Translation : I second the Hungarian delegation's proposal to omit this Basis.

Mlle. Renson (Belgium) :

Translation : I wish to submit a third proposal — namely, that we should omit the third paragraph of Article 8 regarding notification. The Belgian delegation is of opinion that such notification would impose heavy expenditure on the various countries particularly from an administrative point of view.

The Chairman :

Translation : We will put these three proposals to the vote one after the other. In the first place, we have the proposal to omit Article 8 entirely.

This proposal was rejected.

The Chairman :

Translation : I put to the vote the proposal that we should omit the second sentence of the second paragraph.

This proposal was rejected.

The Chairman :

Translation : I put to the vote the Belgian amendment that we should omit the third paragraph.

This amendment was rejected.

The Chairman :

Translation : If no one requests a vote on the separate sections I call upon you to vote, by roll-call, on the article as a whole.

Article 8 as a whole was put to the vote by roll-call.

The following delegations voted in favour of Article 8 : Austria, Belgium, Canada, China, Czechoslovakia, Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, India, Irish Free State, Latvia, Luxemburg, Netherlands, Norway, Persia, Poland, Portugal, Roumania, South Africa, Spain, Sweden, Switzerland, Turkey, Yugoslavia.

The following delegations voted against : Colombia, Hungary, Italy, Nicaragua, United States of America, Uruguay.

The following delegations were absent or abstained : Australia, Brazil, Bulgaria, Chile, Cuba, Iceland, Japan, Mexico, Monaco, Peru, Salvador.

Article 8, numbered Article 7 in the final text, was thus adopted by thirty votes to six.

The continuation of the discussion was adjourned to the next meeting.

The Committee rose at 10 p.m.

EIGHTEENTH MEETING

Saturday, April 5th, 1930, at 9.30 a.m.

Chairman : M. POLITIS.

53. TEXTS PROPOSED BY THE DRAFTING COMMITTEE : SECOND READING (Continuation).

CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS *(continuation).*

Article 4 (continuation).

The Chairman :

Translation : I would ask you in the first place to cats your minds back to Article 4, which we must now settle. You will remember that yesterday we adjourned consideration of a second paragraph to Article 4 which was submitted by the Yugoslav delegation. I have enquired whether this text would meet with any objection in the Third Committee, and I think there will be no objection on the part of that Committee. Consequently, our Committee can discuss this proposed additional paragraph 2 to Article 4 in all freedom.

I would remind you that the paragraph proposed by the Yugoslav delegation is worded as follows :

"Similarly, a person possessing two or more nationalities cannot put forward the fact that he is a national of one of these States in order to bring a personal action before an international tribunal or commission against another State of which he is also a national."

M. Soubbotitch (Yugoslavia) :

Translation : Before a decision is taken, I would remind the Committee of the reasons for which my delegation, in agreement with the Polish delegation, has proposed this text, which, apart from drafting changes, you have already adopted at a previous meeting.

We have laid down the principle that an individual who has two nationalities cannot rely on one of these in order to obtain diplomatic protection, in one of the two countries, against the other country of which he is a national. This principle should also be extended to the case in which a person might undertake a direct action against the other State. Consequently, an individual should not be able to invoke one of his nationalities either to obtain diplomatic protection or to bring an action before an international tribunal against the other State of which he is also a national, the action being based on the fact that the individual is a national of the first State.

In short, this is nothing new : it is only a confirmation of the principle accepted by the Committee. This principle has been adopted by the Committee, and all that remains is to draft it.

M. Merz (Switzerland) :

Translation : We abstained from voting on the first paragraph. We now propose the omission of the second. We do not see what its general scope could be. I think that a paragraph of this kind would be of interest in special cases only and for a limited time. Consequently, we think that its place is not in a convention on international law, the scope of which is worldwide.

M. de Berczelly (Hungary) :

Translation : I agree with the proposal of the Swiss delegation. If paragraph 2 were inserted, it would be difficult for an international tribunal to decide, for instance, whether an individual does or does not possess a given nationality. I am therefore in favour of omitting paragraph 2, as I was in the case of paragraph 1.

M. Rundstein (Poland) :

Translation : I support the Yugoslav delegation's proposal, in view of the fact that such cases have already arisen in practice.

M. da Matta (Portugal) :

Translation : I expressed a view yesterday against Article 4. I cannot agree with the proposal of the Yugoslav delegation in view of the Swiss delegate's remarks.

M. Joachim (Czechoslovakia) :

Translation : We agree with the Yugoslav proposal.

The Chairman :

Translation : If nobody else wishes to speak we will take the vote by roll-call.

There is one proposal to reject the amendment. We will put it to the vote. We will only take a roll-call vote on the text if the Yugoslav proposal is adopted.

On a show of hands a vote was taken on the proposal to reject the Yugoslav amendment.

The proposal to reject the amendment was adopted.

Article 8 (continuation).

M. Wu (China) :

Yesterday, when we were about to discuss Article 8, the delegate for France drew attention to the impropriety of the heading of Chapter III ; but on a motion proposed by myself, and approved by the Committee, the discussion of the heading of that Chapter was relegated to the end. As we have discussed Article 8, I think we should now discuss the question raised by the delegate for France.

The Chairman :

Translation : The French delegation has proposed that the heading of Chapter III, which now becomes Chapter II and which reads as follows : " Loss of Nationality resulting from Voluntary Acquisition of a Foreign Nationality ", should, in order to bring it more closely into line with Article 8, be altered to : " Loss of Nationality resulting from the Issue of an Expatriation Permit ".

M. Buero (Uruguay) :

Translation : I do not know whether the new heading exactly corresponds to what we have decided in Article 8. I think it might increase the importance which certain countries attach to expatriation permits, whereas what we have done in Article 8 of the Convention is merely to settle certain details, an action rendered necessary by the fact that, in some countries, expatriation permits exist, whereas, in others, they do not.

I do not think, therefore, that the new heading exactly describes the contents of the article. I am afraid it may cause misunderstanding by leading people to think that loss of nationality is subject to an expatriation permit. But, unlike my French colleague or the Chairman, I have not sufficient mastery of the French language to propose another formula.

The Chairman :

Translation : Would this be roughly what you had in mind : " Effects of the issue of an expatriation permit " ?

M. Buero (Uruguay) :

Translation : That might possibly do.

M. Caloyanni (Greece) :

Translation : It would be desirable to make the titles as short as possible, and they should not themselves contain the principles set out in the articles to which they refer. That would be unnecessary. Why should not Article 8 be headed : " Expatriation Permits " ? That would be sufficient for those who understand the law. My first observation with regard to this article applies to all the others.

Mr. Lansdown (South Africa) :

I wish to suggest that the importance of this article hardly justifies its being placed in a chapter by itself. I suggest that it should be put at the end of the chapter on " General Principles ", as new Article 7. You will see that Article 6 deals with the question of loss of nationality by renunciation. If we are going to have a chapter about loss of nationality, it seems to me that Article 6 should be included in that chapter. I personally, however, do not see any necessity for a special chapter dealing with loss of nationality. The present Article 7 would then be Chapter II, and numbered as Article 8. This, I think, would form a simple division of the whole matter : General Principles, first ; Nationality according to Place of Birth ; Nationality of Married Women ; Nationality of Children.

M. Buero (Uruguay) :

Translation : I second the proposal of the South African delegate.

Mr. Dowson (Great Britain) :

With your permission I would suggest a further alternative — namely, that we should have no chapter headings at all. The articles upon which we have agreed cannot be described as very complete or exhaustive and as covering the whole field of nationality law. It occurs to me that it is a little difficult to have chapter headings without unduly emphasising certain articles by placing one article or two of them under a single heading. In this way, we shall be unduly emphasising the inadequate extent to which we have been able to agree upon common principles with regard to those particular headings.

The Chairman :

Translation : The objection to that proposal is that we should have to delete all the headings. Does the British delegation wish the Committee to be consulted on his proposal ?

Mr. Dowson (Great Britain) :

I do not think the amendment of sufficient importance to demand a vote. I merely suggested it for consideration in case great difficulties occur in arranging what the chapter headings shall be.

The Chairman :

Translation : There now remains only one proposal, which is that the text of Article 8 should be inserted at the end of the first chapter.

M. de Berczelly (Hungary) :

Translation : I quite agree with the British delegate. It would be better to omit all the headings, but I think that Article 8, which we have adopted and which deals with expatriation permits, does not come within the scope of the chapter on general principles.

The Chairman :

Translation : I ask the Committee whether it wishes to omit the headings.

The Committee decided to retain the headings.

The proposal of the South African delegate to omit Chapter III and append Article 8 to the end of Chapter I was put to the vote and adopted.

Article 9.

M. Kosters (Netherlands) :

Translation : I wish to explain the way in which our delegation proposes to vote in connection with Articles 9 and 10. The Netherlands Government desires to reserve its attitude with regard to these provisions ; that is why the Netherlands delegation will abstain from voting.

M. Cruchaga (Chile) :

Translation : When voting on the chapter concerning the nationality of married women, the Chilian delegate (whose representative in this Committee, M. Alejandro Alvarez, is detained elsewhere in connection with other work of the Conference) wishes to state that it would have preferred, in the text of the Convention we are now preparing and in place of Articles 9, 10, 11 and 12 of the draft, either a proposal to the effect that nationality is independent of the civil status of persons (document No. 30) or the equitable principle of the absolute equality of the sexes in the matter of nationality (document No. 27) which it had the honour to submit to this Committee and which has for long formed an integral part of Chilian law.

As it is impossible to secure such progress, the Chilian delegation appeals most earnestly to the various delegations to approve the recommendation to the effect that the various countries should study the possibility of incorporating this principle in their national laws as an expression of the general desire to eliminate in the future from this new code of international law which we are beginning to prepare those provisions which we have been obliged to insert in order to settle conflicts arising under laws that place women in a position of inferiority as regards their nationality.

The Chairman :

Translation : Does the Chilian delegate wish to make any definite proposal ?

M. Cruchaga (Chile) :

Translation : No.

The Chairman :

Translation : We have just had a proposal submitted by the Roumanian, Portuguese and Polish delegations to the effect that we should add to Article 9 the following paragraph :

> " If the national law of the wife enables her to retain her nationality, or to take that of her husband, the latter consequence shall be conditional on her acquiring the nationality of the husband."

I will ask you to vote first on Article 9, as at present drafted, and then to consider the amendment which has just been communicated to you.

The following delegations voted in favour of Article 9 : Austria, Belgium, Canada, Colombia, Czechoslovakia, Denmark, Free City of Danzig, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Mexico, Norway, Poland, Roumania, South Africa, Spain, Sweden, Switzerland, Turkey, Uruguay, Yugoslavia.

The following voted against : Chile, United States of America.

The following delegations were absent or abstained : Australia, Brazil, Bulgaria, China, Cuba, Iceland, Monaco, Netherlands, Nicaragua, Persia, Peru, Portugal, Salvador.

Article 9, numbered Article 8 in the final text, was thus adopted by thirty-two votes to two.

M. Wu (China) :

I want to make a declaration in regard to the vote of the Chinese delegation on Article 9. The declaration which I have to make applies also to all the four articles referring to married women. While the Chinese delegation has no objection to the operative parts of Articles 9 to 12, it considers that the assumption underlying them is not in consonance with the general principles of Chinese law, or with the tendencies of the times. For that reason it abstains from voting.

Mr. Dowson (Great Britain) :

I desire briefly to indicate my reasons for objecting to the amendment which has been proposed. I do not think it really adds anything to Article 9 and it is extremely confusing. Frankly, I do not understand it.

In the first phrase the amendment suggests that, according to the law of the wife's country, she can acquire her husband's nationality. That, as I have already pointed out in regard to another amendment, which I think was defeated, is a misapprehension. Her own law cannot in any way determine whether or not the woman acquires the nationality of her husband. It is her husband's law which determines that.

Again, the amendment goes on to say that this result shall be conditional upon the acquisition by her of her husband's nationality. That text appears to me to be extraordinarily difficult to follow. If it means anything, it means exactly what in fact is meant by Article 9 in the form in which we have just adopted it, and I see no useful purpose which can be served by this amendment.

M. Hering (Germany) :

Translation : Like Mr. Dowson, I do not in the least understand the amendment submitted by the Roumanian, Portuguese and Polish delegations. What effect is to be subject to the acquisition ? Is it to be the

effect of obtaining the husband's nationality? I do not think it could be admitted that this effect should be subject to the acquisition of the nationality of the husband.

M. Negulesco (Roumania):

Translation: Article 9 only refers to laws which make the woman acquire her husband's nationality automatically. Another group of laws, however, allows the woman to choose; she herself decides the nationality which she wishes to take; she can retain her own nationality or take that of her husband.

In an undertaking of this magnitude, is it not desirable to refer to all groups of laws? In the text we propose, we take into account those laws which allow the wife to choose and we have endeavoured, in this text, to make it impossible for the wife to become stateless. This is the text proposed by the Roumanian, Portuguese and Polish delegations:

"If the national law of the wife enables her to retain her nationality or to take that of her husband, the latter consequence shall be conditional on her acquiring the nationality of the husband."

I have heard the objections which have been raised, but they do not seem to me to be adequate.

The text provides for the case of a woman whose law allows her to choose, at the time of her marriage, between her own nationality and the nationality of her husband. Supposing, according to the provisions of her own law, the wife has exercised her right of choice, and has selected her husband's nationality. She may be left without any nationality at all, if her husband's law does not cause her to acquire his nationality. In order to avoid this possible case of statelessness, the law of the wife should only accord the husband's nationality as a result of choice, provided the law of the husband's country allows her to acquire that nationality.

These are the reasons for which the Portuguese, Polish and Roumanian delegations have the honour to submit this amendment.

The Chairman:

Translation: The case covered by this amendment is quite a different one from that dealt with in Article 9, which you have just voted. The wording of the amendment is, however, rather ambiguous. If I understand M. Negulesco aright — and I would beg him to correct me if I go astray — his amendment provides for the following case. A woman has, according to the law of her country, the right to choose, when she marries, between retaining her nationality of origin and acquiring her husband's nationality. Let us suppose she chooses to take her husband's nationality. If the husband's law does not confer his nationality upon her, the wife becomes stateless. The proposal is put forward with a view to avoiding this possibility.

If this is indeed the aim of the amendment, I think the text might be worded as follows:

"If, according to her national law, a woman is, at the time of her marriage, entitled to choose between the retention of her own nationality and the acquisition of her husband's nationality, and if she chooses the latter nationality, she shall lose her nationality of origin only if, according to the national law of her husband, she acquires his nationality."

This is an improvised text which must, of course, be examined more carefully, but I think it makes the amendment clearer.

M. Buero (Uruguay):

Translation: I wonder if this amendment is absolutely necessary. I think it very unlikely that a woman who has the right to choose would so exercise her right as to render herself stateless.

That is why I ask whether the amendment is really necessary. In principle, I agree that it might be made to apply within the general framework of our Convention. But is it indeed necessary?

M. Negulesco (Roumania):

Translation: I am quite satisfied with the Chairman's formula. I do not think it need be referred to the Drafting Committee.

Abd el Hamid Badaoui Pasha (Egypt):

Translation: I had asked to speak in order to make certain observations with regard to the confused and ambiguous wording of the proposal submitted as a possible paragraph 2. After our Chairman's explanation, I do not think I need occupy the Committee's time. I would merely point out that the aim of paragraph 2 is indirectly included in the paragraph we have just adopted. It refers to a case of indirect loss. The principle laid down in the first paragraph is sufficient to prevent the case of statelessness which paragraph No. 2 is intended to avoid.

M. Diena (Italy):

Translation: The Italian delegation thinks it would be preferable to adhere to the present text. This text has been drawn up with great care in order to satisfy everybody. Any change would complicate matters and we should have to discuss the whole text again: the question of choice, etc., and that would lead to many differences of opinion.

I therefore strongly urge that we maintain the text as it stands.

M. Alten (Norway):

Translation: The proposed amendment is unnecessary. To my mind, the present text refers, not only to an automatic change in nationality, but also to laws under which loss of the former nationality or acquisition of the new nationality is conditional on a declaration

of intention by the person concerned. It is quite admissible that the legal effect of a particular circumstance should depend on a request by the party concerned.

M. de Navailles (France) :

Translation : I agree with what several delegates have already said, that we should retain the text we adopted a little while ago and make no addition to it. The object of this text is to prevent cases of statelessness in the event of marriage. It is difficult to imagine a case which would not be covered by the text of Article 9. We should require to imagine a most exceptional hypothesis such as that of a woman who, under her national law, had the right to retain her nationality or to take that of her husband and who chose the latter nationality, whereas the law of the husband does not bestow his nationality on her. This is so unusual a case that there is no need to provide for it.

The Chairman :

Translation : I wonder whether M. Negulesco and his colleagues who have submitted this amendment will be satisfied with a reference to this matter in the report to the effect that this case has not been specially dealt with in the text because it was thought that a woman thus able to opt would opt for her husband's nationality only if she were sure that her husband's law would accord her that nationality.

M. Negulesco (Roumania) :

Translation : I am quite satisfied with our Chairman's proposal. We will withdraw our amendment.

Article 10.

The Chairman :

Translation : We now come to Article 10. If no one asks to speak we will put this article to the vote by roll-call.

A vote was taken on Article 10 by roll-call.

The following delegations voted in favour of Article 10 : Australia, Austria, Belgium, Canada, Colombia, Czechoslovakia, Denmark, Free City of Danzig, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Mexico, Norway, Poland, Spain, South Africa, Sweden Switzerland, Turkey, Yugoslavia.

The following delegations voted against : Chile, United States of America.

The following delegations were absent or abstained from voting: Brazil, Bulgaria, China, Cuba, Egypt, Iceland, Monaco, Nicaragua, Netherlands, Persia, Peru, Portugal, Roumania, Salvador, Uruguay.

Article 10, numbered Article 9 in the final text, was adopted by thirty votes to two.

Article 11.

The Chairman :

Translation : We now come to Article 11.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : Consent may also be presumed. As at present drafted, the text requires express consent, whereas I should prefer, if possible (in order to bring the text into line with present Egyptian law), that consent should be presumed if the woman does not signify a contrary desire. Instead of the naturalisation of the husband during marriage involving a change of nationality for the wife only with her consent, I should prefer the rule that nationality itself involves such a change, the wife being, however, free to opt otherwise. What is necessary — and would be quite sufficient — is that the naturalisation of the husband should not involve a change in the wife's nationality against her wish.

The text we propose reads as follows :

> " Naturalisation of the husband during marriage shall involve a change in the nationality of the wife, subject to the right of the latter to declare that she keeps her nationality."

M. Restrepo (Colombia) :

Translation : I am obliged to suggest a change in this article because it is contrary to the principle of naturalisation which *de jure* causes the wife to lose her nationality when the husband accepts or chooses a new nationality. The article is also contrary to Articles 9 and 10 which we have just adopted. Those articles do not allow the woman to retain her nationality if she marries a foreigner or if, by any procedu e, her husband changes his nationality; in these cases she is obliged to follow her husband's nationality. This article constitutes an exception to the general principle by laying down that, if the husband becomes naturalised, the wife is allowed to refuse the new nationality and retain her former nationality.

The Chairman :

Translation : May I venture to suggest, Sir, that you are practically reopening a discussion which is closed ? You are invited to state whether you accept or do not accept the text ; if you do not accept it, what are your reasons and do you propose an amendment ? But you must not reopen the discussion.

M. Restrepo (Colombia) :

Translation : As this article is of great importance to us, I am bound to explain the reasons for which we do not propose to accept it. In addition, I venture to propose a modification. I propose the following modification which you can put to the vote and which the Committee is naturally free to accept or reject :

> " Naturalisation of the husband during marriage shall involve *de jure* a change in the nationality of the wife."

This is the change I propose, the main argument in its favour being that in all countries where naturalisation is frequent — that is to say, in countries possessing wide

territories to which people come to begin life anew — the consequences of this article would be truly appalling. If the husband accepts a new nationality and the wife does not, what is to become of the children? It would be more logical to deprive the wife of the right of choosing her nationality at the time of the husband's naturalisation, because marriage, we should remember, is a social union. What would become of such a union if the husband were British and the wife American? The article therefore presents serious drawbacks and I ask that it shall be modified in the way I suggest or, if the Committee prefers, that it be omitted.

M. Diena (Italy):

Translation: The Italian delegation asks for the omission of Article 11, and refers the Committee to what was said on the subject when the Bases were being discussed.

M. Merz (Switzerland):

Translation: We shall vote for the omission of this article. If, however, the Committee decides to maintain it, I declare, as the Netherlands delegation and other delegations have declared, that Article 6 of the Draft Convention does not apply to married women.

M. Soubbotitch (Yugoslavia):

Translation: The Yugoslav delegation supports the suggestion put forward by the Italian and Swiss delegations, to omit this article. If the article is retained, the Yugoslav delegation is of opinion that the wife's consent need not be obtained expressly — it may be implicit.

The Chairman:

Translation: Do you propose to submit an amendment if the text is not omitted?

M. Soubbotitch (Yugoslavia):

Translation: No, Sir. I simply wish to state how I interpret the text.

The Chairman:

Translation: We now have: (1) a proposal to omit, put forward by the Italian delegation and supported by two other delegations; (2) an amendment submitted by the Colombian delegation to the effect that the question defined in Article 11 should be solved in a manner radically opposite to that proposed in the present text; (3) an amendment to alter the text slightly, submitted by the Egyptian delegation. I will consult the Committee on these three points in turn.

The proposal to omit Article 11 was put to the vote and rejected.

The Chairman:

Translation: We now have the Colombian delegation's amendment, on which I shall ask the Committee to vote:

"Instead of the present text of Article 11, read:

"'Naturalisation of the husband during marriage shall involve *de jure* a change in the nationality of the wife.'"

The amendment was put to the vote and was rejected.

The Chairman:

Translation: I will now ask the Committee to give an opinion concerning the Egyptian proposal:

"Naturalisation of the husband during marriage shall involve a change in the nationality of the wife, subject to the right of the latter to declare that she keeps her nationality."

The proposal was put to the vote and was rejected.

Abd el Hamid Badaoui Pasha (Egypt):

Translation: I should like to know whether a law in which the naturalisation of the husband involves a change in the wife's nationality unless the wife states that she wishes to maintain her nationality would, in the opinion of the Committee, be compatible with the proposed text. My vote will depend on this interpretation.

The Chairman:

Translation: This proposal really means that the Committee admits a rule for Governments to bear in mind when legislating — namely, that if the husband changes his nationality during marriage, such change shall not automatically involve a change in the wife's nationality.

Abd el Hamid Badaoui Pasha (Egypt):

Translation: In that case, I shall vote for the text.

The proposal was put to the vote and was rejected.

Article 11 was put to the vote by roll-call.

The following delegations voted in favour of Article 11: Australia, Belgium, Canada, Denmark, Free City of Danzig, Egypt Estonia, France, Germany, Great Britain, Greece, Hungary, India, Latvia, Luxemburg, Mexico, Norway, Poland, Roumania, South Africa, Sweden, Turkey, United States of America.

The following delegations voted against: Chile, Colombia, Irish Free State, Italy, Japan, Netherlands, Switzerland.

The following were absent or abstained: Austria, Brazil, Bulgaria, China, Cuba, Czechoslovakia, Finland, Iceland, Monaco, Nicaragua, Persia, Peru, Portugal, Salvador, Spain, Uruguay, Yugoslavia.

Article 11, numbered Article 10 in the final text, was adopted by twenty-three votes to seven.

Mr. Hearne (Irish Free State):

May I raise a point of order with regard to the vote on this article, because I do not

understand exactly what the position is. The Rule XX, paragraph 2, says:

> " A Committee may embody in the draft conventions or protocols any provisions which have been finally voted by a majority containing at least two-thirds of the delegations present at the meeting at which the vote takes place. "

The voting on Article 11 was as follows: 23 for the article ; 7 against, and 9 abstentions. It does not appear to me that 23 is a two-thirds majority of the delegations present at the meeting, and I would like some explanation in order to understand the rule properly.

The Chairman :

Translation : I must remind the delegate for the Irish Free State of the text of our Rules of Procedure — *i.e.*, Article 19, paragraph 5, of the Rules of Procedure of the Assembly of the League of Nations, to which the Rules of Procedure of this Conference refer. This article is worded as follows:

> " For the purposes of this rule, representatives who abstain from voting shall be considered as not present. "

This rule confirms a very general custom; only the votes actually expressed count in calculating the majority.

Accordingly, with regard to Article 11, 30 votes were given — 23 for and 7 against. The text therefore obtained more than three-quarters of the votes.

Mr. Hearne (Irish Free State) :

Thank you for your explanation.

Article 12.

M. Alten (Norway) :

Translation : I propose to replace the words, " after the dissolution of the marriage ", by the words: " in consequence of the dissolution of the marriage ".

If this amendment is rejected, I propose that the whole article be omitted. In support of my motion, I would merely refer to the observations I made at the meeting at which we discussed Basis No. 19. The Convention must not, in my opinion, exclude any method of recovery subsequent to the dissolution of the marriage and independent of the request of the wife, for example, in the case of her re-marriage or of her establishing her permanent residence in her native country.

M. Rundstein (Poland) :

Translation : I propose that we should add at the end of Article 12 the words : " or during the marriage ".

The present wording of Article 12 might be misunderstood. It says that the loss of nationality owing to marriage involves, in certain cases, recovery of nationality. It is quite possible that a woman may lose her nationality owing to marriage, or during the marriage, and acquire a new nationality. If we interpret the second sentence of Article 12 strictly, it might be thought that the subsequent nationality acquired by naturalisation will not be affected by the provision of the first sentence of the article.

M. Hering (Germany) :

Translation : The German delegation renews its proposal to omit the second sentence. It has already stated that it considers the elaboration of a special rule for the case of married women to be unnecessary, seeing that the matter has already been settled in the General Provisions, since a national loses his nationality by the voluntary acquisition of another nationality.

The Chairman :

Translation : We have two proposed additions and one proposal to omit the second sentence. We will take a seperate decision on each of the two sentences.

The Norwegian delegation proposes to insert instead of the words " after the dissolution of the marriage ", the words : " in consequence of the dissolution of the marriage ".

M. Diena (Italy) :

Translation : That alteration may produce very far-reaching effects.

The Norwegian proposal was put to the vote and was rejected.

The Chairman :

Translation : The Norwegian delegation has asked that, if the amendment is not accepted, the whole article should be omitted.

This proposal to omit was put to the vote and was rejected.

The Chairman :

Translation : We have a radical amendment put forward by the German delegation to omit the second sentence.

The German amendment was put to the vote and was rejected.

The Chairman :

Translation : The Polish delegation proposes that we should add at the end of the text the words : " or during the marriage ".

The Polish amendment was put to the vote and was rejected.

The Chairman :

Translation : We will now vote by roll-call on Article 12.

The following delegations voted in favour of Article 12 : Australia, Belgium, Canada, Czechoslovakia, Denmark, Egypt, Estonia, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Luxemburg, Netherlands, Poland,

Roumania, South Africa, Spain, Turkey, United States of America, Yugoslavia.

The following delegations voted against the article : Chile, Norway.

The following delegations were absent or abstained : Austria, Brazil, Bulgaria, China, Colombia, Cuba, Free City of Danzig, Finland, Iceland, Mexico, Monaco, Nicaragua, Persia, Peru, Portugal, Salvador, Sweden, Switzerland, Uruguay.

Article 12, numbered Article 11 in the final text, was thus adopted by twenty-six votes to two.

Article 13.

M. Alten (Norway) :

Translation : In the second sentence of paragraph 1, I propose the following amendment :

"The law of such State may define *the restrictions* and conditions governing. . ."

The reason for my proposal is that I wish to make it quite clear from the text that the general rule may be restricted to certain classes of minors, for example, to those who have not yet reached the age of eighteen, or to those who do not reside in a country which grants naturalisation.

M. Restrepo (Colombia) :

Translation : In view of the acceptance of Article 11, which allows the wife the right to become naturalised or not, I think it is illogical to say, in Article 13 : "as a result of the naturalisation *of the parents* ". I therefore propose that throughout the article instead of "parents" we should say "of the father", since it is the father who is the head of the conjugal group in all countries in the world. The destiny of the children should be bound up with that of the father.

M. da Matta (Portugal) :

Translation : On behalf of the Portuguese delegation, I propose that the last paragraph of Article 13 should be omitted.

M. Nagaoka (Japan) :

Translation : For the reasons I stated a few days ago, I propose that we should omit from the first paragraph the following sentence : "according to the law of the country which grants naturalisation ".

M. de Berczelly (Hungary) :

Translation : I agree with the Colombian delegate's proposal.

M. Hering (Germany) :

Translation : The German delegation is of opinion that the object of the amendment submitted by the Norwegian delegation has already been attained by the text now before us.

M. Diena (Italy) :

Translation : On behalf of the Italian delegation, I propose the total omission of Article 13.

M. Duzmans (Latvia) :

Translation : With reference to the Portuguese delegate's amendment, I assume that M. da Matta is rather astonished that, after laying down in the first paragraph an imperative rule : "shall confer . . . the nationality of the State ", we should admit, in the second paragraph, an exception to this imperative rule.

If all conventions were systematic instruments, M. da Matta might possibly be right, but again and again we have been bound to note that we are unable to draw up systematic instruments, and have had to fall back on compromises. With all due respect, therefore, I entreat the Portuguese delegation to withdraw its amendments.

I would add that I have spoken not merely in view of the Portuguese proposal, but in order to draw the attention of the Committee to the possibility of admitting this restriction in paragraph 2 in spite of the imperative rule in paragraph 1.

M. de Navailles (France) :

Translation : I should like to say a few words to indicate the sense in which the French delegation will accept Article 13. The second paragraph appears to contradict the first. We adopted this formula in an endeavour to reconcile the points of view of all delegations. In any case, paragraph 1 lays down the principle which it is desirable to follow. It possesses a certain value, since it will indicate a tendency which will be practically general if a majority is secured for Article 13.

Other difficulties arose — rather serious as a matter of fact — in regard to the first two lines : "The grant of naturalisation to the parents shall confer on such of the children as, according to its law, are minors. . ." It is possible, however, to mitigate the disadvantages of including children who are of full age under their law of origin in a collective naturalisation. The various countries are in a position to meet this difficulty, since the second sentence of Article 13 states explicitly that : "The law of such State may specify the conditions governing the acquisition of its nationality ".

There is nothing to prevent countries from modifying their law, so that collective naturalisation will not cover children who are of full age under their law of origin. Similarly, States have the right to conclude bilateral conventions to settle all difficulties. Our text is sufficiently elastic to allow of this being done. For these various reasons, the French delegation recommends the Committee to adopt Article 13.

M. Schwagula (Austria) :

Translation : I entirely agree with the observations submitted by the Latvian and French delegates. On the other hand, I do not share the Portuguese delegate's views and cannot accept his amendment. It is precisely the second paragraph which makes it possible for States, whose legislation provides for

collective naturalisation, to accede to Article 13.

M. da Matta (Portugal) :

Translation : The provision of the second paragraph flows implicitly from the first paragraph.

The Chairman :

Translation : I will summarise the position. We have a proposal to omit the whole of the article ; a proposal to omit the second paragraph, and three amendments : one by the Norwegian delegation to the effect that a sentence in the first paragraph should be altered, one by the Colombian delegation to the effect that we should substitute the word " father " for the word " parents " ; finally, an amendment by the Japanese delegation, calling for the deletion, in the first paragraph, of the following phrase : " according to its law ".

I will first of all put to the vote the Italian delegation's proposal to omit Article 13.

This proposal was rejected.

The Chairman :

Translation : We will now consider the two paragraphs separately. I will first put to the vote, in connection with the first paragraph, the Japanese delegation's request for its deletion.

The amendment was rejected.

The Chairman :

Translation : I put to the vote the proposal of the Colombian delegation to the effect that we should, in three places in the text, insert the word " father " instead of " parents ".

This proposal was rejected.

The Chairman :

Translation : The Norwegian delegation has put forward an amendment to the effect that we should replace the beginning of the second sentence of the first paragraph by the following text : " The law of such State may define the restrictions and conditions to which. . . " I put this to the vote.

This amendment was rejected.

The Chairman :

Translation : With regard to the second paragraph there is an amendment proposed by the Portuguese delegation to the effect that the paragraph should be omitted. I put this proposal to the vote.

The proposal to omit the paragraph was rejected.

The Chairman :

Translation : I now call upon you to vote by roll-call on both paragraphs of Article 13 together, unless anyone asks that they should be voted on separately.

As nobody has asked that the two paragraphs should be voted upon seperately, the vote will refer to the whole of Article 13.

The following delegations voted in favour of Article 13 : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Czechoslovakia, Free City of Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Latvia, Luxemburg, Netherlands, Nicaragua, Norway, Poland, Portugal, Roumania, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay.

The following delegations voted against the article : Colombia, Italy, Japan.

The following delegations were absent or abstained : Bulgaria, Cuba, Iceland, Mexico, Monaco, Peru, Persia, Salvador, Yugoslavia.

Article 13 was thus adopted by thirty-three votes to three.

Article 14.

M. de Navailles (France) :

Translation : I think it would perhaps be desirable to delete the second sentence in paragraph 1 of Article 14 and to return simply to the Basis as drafted by the Committee of Experts. The sentence in question appears to me, although I myself had a share in the drafting, not to serve any purpose at all.

We state at the beginning of Article 14 that : " A child whose parents are both unknown shall have the nationality of the country of birth ". This sentence determines the nationality of the child so long as the parents are unknown. We then go on to say : " If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known ". There is no need to say this, for in all systems of law rules are laid down for the nationality of the illegitimate child as soon as the parents are known. We are, therefore, only stating what already exists, and the insertion of this provision might give rise to some confusion. It will be asked why such a provision appears in this article.

The sole purpose of the article is to determine the nationality of an illegitimate child if the parents are unknown. Immediately the parents are known, Article 14 no longer applies, and other provisions, either of the present Convention or of the laws of the various countries, come into operation.

I therefore ask that the second sentence of paragraph 1 should be deleted.

M. de Berczelly (Hungary) :

Translation : I quite agree with the delegate for France on the substance of the question, but if we omit the second sentence certain difficulties may arise. If we simply say in a first sentence that a child whose parents are unknown shall have the nationality of the country, it may be argued later that when once nationality has been acquired it cannot be lost. If we omit the second sentence we ought to add after the words : " unknown ", the words

" until the contrary is proved ". The sentence would then read " a child whose parents are both unknown shall, until the contrary is proved, have the nationality of the country of birth ".

The Chairman :

Translation : Would you be good enough to draft your proposal and submit it to the Bureau ?

M. Schwagula (Austria) :

Translation : This second sentence of the first paragraph is my amendment. In view of M. Navailles' explanations I do not insist on maintaining this sentence if in effect the case, which is bound to be rare, is sufficiently covered by the first sentence of paragraph. But perhaps it might be desirable to insert the wording proposed by the delegate for Hungary.

M. Nagaoka (Japan) :

Translation : I propose that we simply omit the second sentence without any addition.

M. Caloyanni (Greece) :

Translation : I agree in principle with the French delegate, but there are many unnecessary things which it is better to say. The second sentence says things that may seem useless at first sight but which have a practical side because they do state something ; and that in itself is not absolutely superfluous.

We can accept the basic idea of the Hungarian delegate's proposal, but we nevertheless prefer the text before us and ask that it shall be retained.

Mr. Dowson (Great Britain) :

I see no objection to the proposal made by M. de Navailles for the suppression of the second sentence, but I do see great objection from the point of view of countries which possess the *jus soli* with regard to the insertion of the words " until the contrary is proved ". The general rule prevailing in countries having the *jus soli*, that birth confers nationality, is not in any way dependent on the establishment of the child's parentage, and I think it would be very much better not to accept that amendment. If it were accepted, I should have to move that some such words as appear at the beginning of Article 15 should be inserted in Article 14, so as to except from the operation of the article those countries which possess unlimited *jus soli*.

M. de Navailles (France) :

Translation : Seeing that serious objections have been raised to my proposal, I withdraw it. Whether the second sentence appears in Article 14 or not, the sense and the purpose of the provision remain the same.

M. de Berczelly (Hungary) :

Translation : As my proposal was only additional and subsidiary to the French proposal, I withdraw it also, since the French proposal is not maintained.

The Chairman :

Translation : Does the Japanese delegate maintain his request that this clause be omitted?

M. Nagaoka (Japan) :

Translation : Yes, sir.

The Chairman :

Translation : The Committee will decide.

The proposal to omit the second sentence of the first paragraph was put to the vote and was rejected.

Article 14 was put to the vote by roll-call and was unanimously adopted by forty-one delegations.

The following delegations were absent or abstained : Bulgaria, Cuba, Iceland, Monaco, Persia, Peru.

Article 15.

Article 15 was put to the vote by roll-call and was unanimously adopted by forty delegations.

The following delegations were absent or abstained : Bulgaria, Cuba, Iceland, Monaco, Persia, Peru, Switzerland.

Article 16.

The Chairman :

Translation : In connection with Article 16 there is a proposal by the Polish delegation to amalgamate Articles 16 and 17 into a single text. The proposed text reads as follows :

> " If the law of a State recognises that the nationality of its nationals may be lost in consequence of a change in civil status (legitimation, acknowledgment, adoption), such loss shall nevertheless be conditional on the acquisition of the nationality of another State under the laws regulating in that State the effect of the change in civil status."

M. Rundstein (Poland) :

Translation : The Polish delegation proposes that Articles 16 and 17 should be combined into a single text because there is a certain lack of proportion and an *inelegantia juris* in the drafting of Article 17. Article 16 refers expressly to the legal conditions in the country which govern changes of civil status. Article 17 does not make sufficient mention of these essential points. If, however, we interpret Article 17 strictly, it might be thought that these conditions would be unnecessary in the case of adoption. That, of course, is not so ; but, in order to avoid all doubt on the subject, I propose this new wording.

M. da Matta (Portugal) :

Translation : I entirely agree with the Polish delegation's proposal.

M. de Navailles (France) :

Translation : I should like a vote to be taken on Article 16 and Article 17 separately. If we adopt the Polish amendment, we cannot do as I suggest.

The French delegation has no objection to Article 17, but has serious objections to adopting Article 16. Under Article 16, a country might have a national imposed upon it in virtue of a foreign law, and the French delegation accordingly asks that this article be omitted.

This would not cause any inconvenience, seeing that the cases covered by Article 16 are of somewhat rare occurrence ; they may be even regarded as altogether exceptional. In order not to take up your time, I shall merely give a single example.

Take the case of two persons in France who have an illegitimate child. The child is French, since it was born in French territory and has not been acknowledged by its parents. The parents then marry and in that way legitimate the child. They then return to their country of origin and settle down there permanently. Under French law the legitimation has caused the child to lose its French nationality ; under the law of the parents, however (English law for example), legitimation does not confer their nationality on the child.

If we delete Article 16, matters remain as at present. This does not lead to any objection from the French point of view, because the child will be neither French nor British. If, however, we adopt Basis No. 16, and if the child I have spoken of is taken to England by his parents, lives constantly in England, possesses all his property there and has no longer any connection with France, he will nevertheless remain a French national ! That is the anomaly which we want to avoid and that is why we ask that Article 16 should be omitted.

The Chairman :

Translation : After M. de Navailles' explanations, I think that the logical course would be to decide on the maintenance or suppression of Article 16. It is only if the Committee decides to maintain this article that we shall have to consider the Polish proposal. I will therefore ask the Committee to pronounce on M. de Navailles' proposal that we should entirely omit Article 16.

The proposal to omit this article was rejected.

The Chairman :

Translation : We now have to consider the Polish proposal. You have heard the text. If you accept this draft, Article 17 will be omitted.

M. Gomez Montejo (Spain) :

Translation : I recently had the honour to submit to the Committee, orally, an amendment regarding adoption.

As regards the drafting of Chapter V, the title should not be "adopted *children*", but "adopted *persons*" — for adults may also be adopted. If a decision is taken to retain Article 17, I suggest that thereC should be a chapter — Chapter VI — referring only to the adoption of children.

The Chairman :

Translation : I think the Spanish delegate's observation is very sound. If the Polish amendment is accepted instead of Article 17, as it applies even apart from cases of children, it would be right, from a logical point of view, to put it in a separate chapter. We could devise a heading for that chapter. If it is rejected, as Article 16 has been retained, the Spanish delegate's observation would apply to Article 17.

I will now ask the Committee to take a decision with regard to the Polish amendment. I think you all quite understand the proposal which is that there should be only one text instead of Articles 16 and 17, and that this text should deal with all cases of loss of nationality as a result of a change in civil status, not only in the case of legitimation and acknowledgment, but even in the case of adoption.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : If the Polish proposal is accepted and remains in Chapter V, which concerns children, I do not see what objection there could be from the point of view stated by the Spanish delegate. The Spanish delegate, basing his argument on the fact that Spanish law allows the adoption of adults, asks that the provision concerning adoption should be kept apart from provisions concerning a change in civil status. In particular, he asks that it should be put into a separate chapter.

We should remember, however, that under most laws a child can be adopted. From the point of view of these laws, therefore, there might be some objection to excluding this provision from the chapter on children. The wording of Article 16, as submitted by the Polish delegation, does not in any case mention children. In these circumstances the article could be included in the chapter concerning children, and we might, from the point of view of the Spanish delegation, explain its situation by the fact that most cases concern children, but that the inclusion of the provision in this chapter does not prevent the possibility of the adoptee not being a child in some cases.

The Chairman :

Translation : That is exactly what we said a short while ago.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : I wished to explain that I did not see any reason why the Polish proposal should not be adopted.

The Chairman :

Translation : I thought I had made myself clear just now. The Polish text, although

in principle it applies only to children, can also, in cases of adoption, apply to adults. In these circumstances, I thought that the Spanish delegate's observations were very sound and that we ought to take this text out of the chapter on children and put it in a special chapter.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : I concluded differently. If the text of a chapter does not cover all cases, but leaves one untouched, that is no reason why we should make two separate articles. We could still maintain the combined text for Articles 16 and 17 without in any way affecting the Spanish delegate's argument.

The Chairman :

Translation : Your idea is therefore that if the Polish amendment is accepted, it might remain where it stands.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : That is what I mean.

The Chairman :

Translation : We will consult the Committee on this point.

M. Restrepo (Colombia) :

Translation : I should prefer the expression " illegitimate child " to " natural child ".

A natural child cannot be acknowledged. It has already been acknowledged. This change would be in harmony with the law of the Latin countries. A child may be legitimated by the subsequent marriage of its father and mother. But if it is a natural child, as the article states, no acknowledgment can be contemplated.

The Chairman :

Translation : I would remind the delegate for Colombia that, under all laws of which I am aware, a natural child may or may not be acknowledged. A child is a natural one when it is born of an irregular union, and it remains so until it has been acknowledged.

M. Restrepo's proposal was put to the vote and was rejected.

M. Duzmans (Latvia) :

Translation : I wish to come back to the last line of Article 16, which reads : " *d'après la loi de ce dernier Etat régissant ledit changement d'état civil* ". In the English text we read : " the effects of the change ". I suggest that the Drafting Committee should make a choice between these two texts. Personally, I prefer the English text.

If the expression employed in the French text is retained, we ought to say " *le* " instead of " *ledit* ".

If you will allow me, I would point out to the Drafting Committee that the English text of Article 8 does not contain the sentence in the French text : " *s'il n'en possède pas déjà une seconde* ". I do not think there is any practical disadvantage in this, but the Drafting Committee might examine the point.

Naturally, I make these proposals subject to the understanding that they are approved by the French and British delegations.

The Chairman :

Translation : The Latvian delegate's observations will be submitted to the Drafting Committee as regards both Article 8 and Article 16.

M. Alten (Norway) :

Translation : As regards the acquisition of a new nationality, there is a difference between the Drafting Committee's text and the Basis which was accepted on first reading. The Drafting Committee's text refers to the law of the State which governs the change in civil status, whereas Basis No. 20*bis* refers to the law governing the effects of a change in civil status from the point of view of nationality. The following words should be added : " *au point de vue de la nationalité* ".

M. de Navailles (France) :

Translation : This addition seems to me perfectly logical.

The Chairman :

Translation : The English text will be brought into line with this new wording.

We will now take the vote by roll-call on the new text.

The following delegations voted in favour of Article 16 thus modified : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Czechoslovakia, Free City of Danzig, Denmark, Egypt, Estonia, Finland, Germany, Great Britain, Greece, India, Irish Free State, Japan, Latvia, Luxemburg, Mexico, Netherlands, Norway, Poland, Portugal, Roumania, Salvador, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay.

The following delegation voted against : Colombia.

The following delegations were absent or abstained : Bulgaria, Cuba, France, Hungary, Iceland, Italy, Monaco, Nicaragua, Peru, Yugoslavia.

The text of Article 16, thus modified, was adopted by thirty-five votes to one.

Article 17.

M. Rundstein (Poland) :

Translation : We have proposed a modification of this article to bring it into line with Article 16 — namely :

> " If the law of a State recognises that the nationality of its nationals may be lost as the result of adoption, this loss shall be conditional . . . "

The rest of the article would remain unchanged.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : If we do not alter the last part of this article, it will not be in harmony with the first part as modified in accordance with the suggestion of the Polish delegation.

The Chairman :

Translation : Instead of saying " this result shall be conditional ", we say : " this loss shall be conditional ".

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : I do not think that this ending of the article is in harmony with the beginning.

The Chairman :

Translation : In order to make the text more concordant with Article 16, the Polish delegate proposes the following wording :

" If the law of a State recognises that the nationality of its nationals may be lost as the result of adoption, this loss shall nevertheless be conditional on the acquisition of the nationality of another State, under the laws regulating in that State the effects of adoption in matters of nationality. "

Does the Polish delegate agree to our adding : "in matters of nationality " ?

M. Rundstein (Poland) :

Translation : I quite agree.

The text thus modified was put to the vote and was adopted.

The Chairman :

Translation : We will now vote by roll-call on the text you have just accepted on a show of hands.

Article 17 was put to the vote by roll-call.

The following delegations voted in favour of Article 17 : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Czechoslovakia Free City of Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, India, Irish Free State, Italy, Latvia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Poland, Portugal, Salvador, South Africa, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay, Yugoslavia.

The following delegations were absent or abstained : Bulgaria, Cuba, Hungary, Iceland, Japan, Monaco, Persia, Peru, Roumania.

Article 17 was unanimously adopted by all the votes cast, thirty-eight in number.

Heading of the Chapter.

The Chairman :

Translation : We have now to decide how the chapter is to be headed. Are we to leave this text under the present heading or should we convert it into a special chapter headed " Adoption " as the Spanish delegation proposes ?

The Spanish proposal was put to the vote and was adopted.

54. FINAL CLAUSES PROPOSED BY THE CENTRAL DRAFTING COMMITTEE.

The Chairman :

Translation : We now have to consider Articles 18, 19, 21 and 22 (Annex III, Part II) and the clauses embodied in the document distributed to you to-day, which contains the proposals of the Central Drafting Committee (Annex IV).

Article A.

Article A refers to the obligations involved by the coming-into-force of the Convention. The Drafting Committee of the Third Committee had suggested that the following provision should be inserted at the end of the Preamble :

" The High Contracting Parties agree to apply the principles and rules contained in the following articles in their relations with each other, as from the date of the entry into force of the present Convention. "

The idea is the same in this case, only instead of placing this clause at the end of the Preamble — *i.e.*, before the articles — it now comes after the articles. Consequently, instead of the " following articles " we shall say " above articles ".

" The High Contracting Parties agree to apply the principles and rules contained in the above articles in their relations with each other, as from the date of the entry-into-force of the present Convention ; the inclusion of these principles and rules in the Convention in no way prejudices the question whether they do or do not already form part of international law.

" It is moreover understood that, on any point which is not covered by the above provisions, the principles and rules of international law are applicable. "

You will note that this Article A contains the two ideas which your Drafting Committee was in favour of placing at the end of the Preamble and in Article 18.

M. Kosters (Netherlands) :

Translation : I had asked to speak on Article 18 which I consider to be too limited, but I am satisfied now that its contents have been inserted in Article A in quite general terms, so that the article definitely conveys the impression that we are referring to the principles and rules of international law.

The Chairman :

Translation : Before we take a decision on this text, and in order to make the situation quite clear, I must remind you that we ourselves raised the question when and how the contracting States would have to bring their laws into line with the provisions of this Convention.

The rule proposed to you is that the contracting parties should agree to apply the

rules contained in the Convention as from the date of its entry into force. That means that each State will consider whether its law must be altered and will not ratify the Convention and apply it until it is properly in a position to do so.

Consequently, there is no time-limit and States remain absolutely free. They will see what has to be done and, as soon as they are able to assume the obligations implied under this Convention, they will ratify it. Our Rapporteur will explain this point in his report because it is of great practical importance.

M. de Berczelly (Hungary) :

Translation : As it was I who enquired when the various national laws would have to be harmonised with the Convention, I thank you, Sir, for your statement, which fully satisfies me.

I have certain slight misgivings concerning the second paragraph of Article A, because it seems to state that not everything in the Convention is included in the principles and rules of present international law.

Obviously, that is not what we mean, so that we should ask the Drafting Committee to make sure that the text cannot be interpreted in that way.

The Chairman :

Translation : The important point about the second paragraph is that, if it did not exist, the Convention might perhaps be so interpreted as to cover every conflict of nationality laws which may arise in practice. That was not our ambition ; nor is such the result of our work. We have done very little. We have indicated a few rules. But we have left as many, indeed far more, questions unsettled. It must not be said that those questions which have not been definitely regulated in this Convention are no longer rules of international law. There may be at present, or there may be in the future, certain rules of international law which are not mentioned in the present Convention. That does not mean that the Convention aims at their exclusion. The provision now under discussion is a sort of safeguard, the importance of which must be obvious to all.

M. Giannini (Italy) :

Translation : I would draw the Committee's attention to the possible disadvantage of inserting general explanations in the reports regarding the three Committees. If each Rapporteur deals separately with the principles which have been admitted, there may be slight differences of interpretation. As the rules are identical, it might perhaps be desirable to have one single report on these general rules in order to avoid all doubts as to their interpretation.

Moreover, our Chairman has clearly explained the scope of this article. The Bureau asked the Drafting Committee to lay down a few rules concerning the relationship between the Convention and the principles of international law. First, the relationship between the Convention and international law in general has been explained. The Conventions are a codification of certain rules of existing international law. Again, this work is a true work of conventional codification. Consequently, we have to establish a relationship between conventional law and international law in general.

As, however, only certain rules are laid down in the matter of nationality — this applies also to the other questions — the object of the last paragraph is to explain that all the problems not settled in the three conventions are still subject to the rules of international law in general. The formula employed has been studied with all possible care, and we regarded it as satisfactory. But if there are any more doubts on the subject, I think it would be better if suggestions were sent to the Drafting Committee, because, as the clauses are general ones, we must obtain a wording which will avoid all possibility of different interpretations.

The Chairman :

Translation : As regards the relation between the Conventions prepared by this Conference, I agree with M. Giannini that, in order to avoid all differences of opinion, the general report should mention the relationship of the texts which are common to the three Conventions — whichever Committee prepared them in the first place. Nevertheless, I think provisionally it would be useful if this Committee were to insert a small paragraph on these general rules in its Rapporteur's report, it being understood that subsequently the Central Committee will embody these various passages in its reports on the different questions. The Central Committee will thus obtain a correct view of the position and will not run any risk of making a mistake.

The question in general is, of course, one for the Central Drafting Committee, but I do not see how that Committee can carry out its work unless each Committee submits its views separately — in the first instance, on its own work. As we are dealing here solely with the question of nationality, it is for us to say whether we, as a Committee, accept or do not accept, or propose a modification of, the rules submitted to us by the Central Drafting Committee. I think that on this point M. Giannini will agree.

M. Giannini (Italy) :

Translation : I fully endorse our Chairman's remarks and would even go a little farther. I did not say that these rules should apply absolutely and integrally to all three Conventions. As this Convention is in the main a plurilateral agreement, I wonder whether it would not be desirable to omit this paragraph. In this case, it is perhaps unnecessary. If the Committee agrees to omit this paragraph, we might state the reasons why it has not been included in the Convention.

M. Wu (China) :

I agree to the deletion of this paragraph. We are dealing in this Committee with conflicts of national laws. I doubt very much whether you can find many principles of international law which can be made applicable to questions that may arise. It is quite apparent to everyone that this Convention is not a complete code of international law regarding nationality. It is obvious that not only are there many *lacunæ*, but that we are dealing rather with only a very small part of the subject and therefore that, where international law can apply, it must be applicable.

I think, therefore, that this second paragraph, since it means nothing, is unnecessary, and should be struck out. If it means anything, its meaning is obscure and we do not quite know what it does mean. For that reason, too, it should be struck out.

M. Nagaoka (Japan) :

Translation : It seems to me that the second sentence of the first paragraph indicates that this Convention has laid down certain rules which are contrary to international law. Consequently, the second sentence is, if anything, harmful to the Convention. I therefore ask the Committee to recommend its omission though paragraph 2 should be maintained.

M. Duzmans (Latvia) :

Translation : I wish to refer to the doubts mentioned by the Japanese delegate, and strongly to urge the retention of the second part of paragraph 1, which, in reality, refers to two questions that are absolutely fundamental as far as our work is concerned and which have frequently been discussed in the First Committee of various sessions of the Assembly of the League. It was expressly stated that the aims of the First Conference for the Codification of International Law would be twofold : To codify existing law and supply omissions — that is to say, create new law.

We must all have received the same impressions at this Conference — namely, that we have not been content to fill in omissions, but have accomplished a creative task on a much greater scale than that contemplated by the First Committee of the League Assembly. Our Rapporteur, therefore, will doubtless mention a very important point—namely, what are the relations between codified law and the law which has been the source of such codified law. According to the text of the second part of the first paragraph, this latter law should continue to exist independently of codified law. The second part of the article, which refers to new law, does not involve the same difficulty.

The work to which I have just referred will be entirely analagous to similar work in the domain of municipal law. In municipal law, after codification, it is easy to refer to the sources which generally consist in the written texts of these codified laws. In the present case, however, this is not possible ; if a need for interpretation should arise, it will be much more difficult to refer to the source. I therefore wonder whether, after codification, the law which has served as a source will continue to remain in force as regards the interpretation of the codified text.

If differences of opinion arise regarding our Convention, probably the only solution will be to state that the codified part constitutes a text the source of which cannot be taken into consideration. I do not propose that we should settle this point ; I merely raise it and ask that our Rapporteur should bear it in mind.

M. de Berczelly (Hungary) :

Translation : I am in favour of maintaining Article A, paragraphs 1 and 2. In the light of our Rapporteur's recommendation, I suggest that we should insert in paragraph 2, after the words " principles and rules of international law ", the following words : " not embodied in this Convention ". The last paragraph would then read as follows :

> " It is, moreover, understood that, on any point which is not covered by the above provisions, the principles and rules of international law not embodied in this Convention shall remain in force. "

M. de Ruelle (Belgium) :

Translation : I wish to speak on a general point which has already been discussed in the other Committees at whose meetings I have had the honour to be present. The aim of our Conference is to codify progressively both customary international law, and conventional international law in its relationship to customary international law. Obviously, we do not claim to have solved all the problems. It is therefore clear that questions not settled in the provisions of our Convention will still be subject to the general provisions of existing international law. That is so obvious a truth that I am entirely in favour of omitting the second paragraph of Article A.

The continuation of the discussion was adjourned to the next meeting.

The Committee rose at 1.15 p.m.

NINETEENTH MEETING

Saturday, April 5th, 1930, at 10 p.m.

Chairman : M. POLITIS.

55. FINAL CLAUSES PROPOSED BY THE CENTRAL DRAFTING COMMITTEE (continuation).

Article A (continuation).

The Chairman :

Translation : We have discussed Article A of the general clauses prepared by the Central Drafting Committee and, as the discussion is closed, I will now take a vote as an indication of this Committee's views.

I would remind you of the proposals laid before us this morning — one to the effect that we should omit the second sentence of paragraph 1, and the other that paragraph 2 should be omitted.

As doubts have been expressed concerning the usefulness of the second sentence of paragraph 1 and as, accordingly, the omission of this text has been requested, I shall ask M. Pépin, one of the members of the Drafting Committee, to be good enough to state in a few words the importance which the Drafting Committee attached to this sentence.

M. Pépin (France), Member of the Central Drafting Committee :

Translation : Some time ago certain delegations made a proposal which has become Article A. The second sentence of this paragraph, which seems to have caused some misgivings, is intended to make it quite clear that, although at the present time the Convention embodies certain principles or rules specified in preceding articles, this does not mean that only existing rules are indicated or that these rules did not exist previously in international law. Our idea was to leave the path entirely free for all future interpretations if certain States did not sign or ratify the present Convention. It is, therefore, absolutely necessary to reserve, as the second paragraph does, this possibility of forming an opinion.

M. Nagaoka (Japan) :

Translation : The Japanese delegation has asked for the omission of this sentence. After hearing the explanations submitted by a member of the Central Drafting Committee, it wishes to state the reasons for its proposal to delete this sentence. Our Committee, I think, unanimously agrees that all provisions concerning nationality are treaty provisions. Up to the present, no rule of nationality has been established by international law. That is why I have requested, and still request, the deletion of this sentence.

M. de Ruelle (Belgium) :

Translation : I will vote for the deletion of the second paragraph. In so doing, I do not contest what is laid down in this clause, namely, that in respect of all points not covered by the provisions we are about to sign, international law will continue to apply. That is an elementary truth.

I have ventured to criticise the clause because it is couched, I think, in rather naive terms. That, however, is a mere question of drafting. In the Preamble it is stated that certain questions have been settled. That means, I take it, that the points not settled in the Convention are still governed by the principles of international law.

The Chairman :

Translation : I venture to point out to the Belgian delegate that this clause is not quite so naive as it seems. As we are engaged in codifying these questions, it might indeed be thought that the rules laid down in this Convention abrogated any other existing rules on similar points. In order to avoid all possibility of anyone believing that they have been implicitly abrogated, we have inserted this text. I think, therefore, you must admit it is of some use.

M. de Ruelle (Belgium) :

Translation : I quite understand the position, but I venture to observe that this argument is an argument *a contrario* and consequently a bad one. I quite agree that the provision is of some importance, but could not we find a more satisfactory wording?

The Chairman :

Translation : The Committee will have to decide. There is a proposal to omit the second sentence of the first paragraph. This is the proposal I shall first of all put to the vote.

Mr. Dowson (Great Britain) :

It seems to me very desirable to retain this sentence, and I cannot see what harm it can do. All it says is that " the inclusion of these principles and rules in the Convention in no way prejudices the question whether they do or do not already form part of international law ".

I desire merely to explain my reasons why I shall vote for the inclusion of this sentence. It has been suggested that the principles with which we have been dealing in the articles we have considered are not principles of international law. It seems to me very difficult to justify that statement. In my view they are, or will become, principles of international law, and it is very desirable that we should have on record a statement to the effect that these principles having been agreed, their inclusion in a Convention does not, in any way, prejudice the application of similar principles, which may be recognised in international law and which may be applied in circumstances to which the Convention, which we hope we shall sign, will not be applicable.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : I shall vote for the omission of this sentence for the following reason : When we say that " the High Contracting Parties agree to apply the principles and rules contained in the preceding articles in their relations with each other, as from the date of the entry into force of the present Convention ", there is absolutely, no need to ascertain whether any given rules existed before the signature of the Convention, since the signatories agree to apply, in the future, only such rules as the Convention contains. This part of the sentence refers to a group of ideas which is not expressed in this article. It really refers to the position of States which are not parties to the Convention.

It may be asked what system of law will apply to such cases. For cases which are not governed by the articles of this Convention, it may be interesting to know whether there existed before the Convention any rules of international law applicable to the circumstances. I therefore quite understand that we should take care to say that, because the rules included in this Convention are henceforth established, this does not mean that they existed or did not exist previously. If, however, this sentence is separated from the rest of its context, it becomes incomprehensible. In the case of the contracting parties there is no need to ask whether any rules of international law existed or did not exist before the Convention, since the contracting parties agree in future to apply the principles of the Convention in their relations with each other.

My request for deletion does not mean that I reject the idea ; I would vote for the maintenance of this sentence if it were not thus isolated from its context.

On a show of hands the Committee decided to maintain the second sentence of the first paragraph of Article A.

The Chairman :

Translation : There is also a proposal to omit the second paragraph of Article A. I will consult the Committee on this point.

On a show of hands the Committee decided to retain the second paragraph of Article A.

The Chairman :

Translation : There is a small amendment by the Hungarian delegation to the effect that we should add after the words " principles and rules of international law " the words : " which are not embodied in this Convention ".

On a show of hands the Committee rejected this amendment.

The Chairman :

Translation : The article as proposed by the Central Drafting Committee is accepted by the First Committee as a clause in the Convention on Nationality.

Article B.

The Chairman :

Translation : We now come to Article B. I would point out that this article, as drafted by the Central Drafting Committee, is rather shorter than that which your Drafting Committee prepared in connection with No. 19. The draft of the Central Drafting Committee reads as follows :

> " Nothing in the present Convention shall affect the provisions of any Treaty, Convention or Agreement in force between any of the High Contracting Parties."

This article has a very wide scope. The text which your Drafting Committee had prepared read as follows :

> " Nothing in this Convention shall affect the application as between the High Contracting Parties of any bilateral Convention relating to nationality or matters connected therewith."

I think that these two drafts might be combined. The text of Article B proposed by the Central Drafting Committee is couched in general terms so that it might be embodied in the clauses of our Convention. We might accept this text, adding the final sentence of our article 19, so that the article would then read as follows :

> " Nothing in the present Convention shall affect the provisions of any Treaty, Convention or Agreement in force between any of the High Contracting Parties relating to nationality or matters connected therewith. "

I do not see what objection could be made to the text with this addition.

M. Standaert (Belgium) :

Translation : These treaties are confirmed by the present Convention only in so far as they are not contrary to it. That is an idea which should be stated in the text and which has not been stated.

M. Alvarez (Chile) :

Translation : I thought our Drafting Committee had also adopted a proposal to

the effect that the Parties were free to conclude *inter se*, notwithstanding this Convention, such agreements as they may deem necessary. This clause does not seem to have been included in the texts.

M. Pépin (France), Member of the Central Drafting Committee :

Translation : The text was drawn up, but it was only a draft recommendation or *vœu*. This text will be distributed later, with the other recommendations or *vœux* which the Drafting Committee has prepared.

For the present, we have only included in the general clauses a provision to the effect that nothing in the Convention to be signed shall affect the provisions in other treaties in force on this same question of nationality. We are not, therefore, called upon at present to give an opinion with regard to the possibility of concluding treaties in conformity with the provisions which will be adopted. This will form the subject of a recommendation in which, later on, we shall express a hope that any parties concluding treaties in the future will draw their inspiration from these provisions.

M. Alvarez (Chile) :

Translation : The question is a very important one and ought to be embodied in a special article in the final clauses.

M. Pépin (France), Member of the Central Drafting Committee :

Translation : It is impossible to insert in the final clauses, for submission to the plenary Conference, a draft recommendation which should normally be in the Final Act.

The Chairman :

Translation : Will you kindly submit a draft?

M. Alvarez (Chile) :

Translation : I will prepare one.

M. Kosters (Netherlands) :

Translation : Article B refers to Treaties, Conventions or Agreements in force between the contracting parties. If I understand the article aright, it refers to Treaties, Conventions or Agreements already in force. The original Basis No. 7 reads :

> " Naturalisation of parents involves that of their children, who are minors and not married, but this shall not affect any exceptions to this rule at present contained in the law of each State."

The words " at present " have been omitted, and in the new Article 5 we read :

> " Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any Conventions in force . . . "

In this Article 5, the expression " any Conventions in force " means either present or future Conventions, Conventions already concluded or which may be concluded in the future. That should be the case here. The expression " Treaties, Conventions or Agreements in force ", in Article B, should be explained in the same way as the previous expression. Consequently, these rules are also the rules which are meant to be followed, not only at the time of ratification, but in the future. Unless I am mistaken, however, Article B does not imply this. Under these circumstances, the text should be made clearer. In order to avoid all difficulties and confusion, we should say, in Article B, " Treaties, Conventions or Agreements *at present* in force between the High Contracting Parties ".

The Chairman :

Translation : I take it that M. Kosters asks that we should add the words "at present" after the words "Conventions or Agreements". He means that future agreements should be excluded.

M. Kosters (Netherlands) :

Translation : Yes.

M. Diena (Italy) :

Translation : But that is not the meaning of the article.

The Chairman :

Translation : That is precisely why I asked M. Kosters whether he really intended that future Conventions should be excluded. To my question he replied in the affirmative. The Committee now knows what it has to decide.

Two amendments have been submitted in connection with Article B, one by the Netherlands delegation to the effect that we should add the words " at present " after the words " Conventions or Agreements ", so that the text would only refer to agreements applicable at the time when the Convention comes into force, to the exclusion of future agreements :

The second amendment, submitted by the Belgian delegation, is to the effect that we should add to the present text " in so far as they are not contradictory to the present Convention ".

M. Talas (Finland) :

Translation : I consider that this article applies perhaps with even greater force to the provisions of treaties which a contracting party may conclude with countries that do not adhere to the agreements in force between the contracting parties. I therefore propose the following amendment :

> " Nothing in the present Convention shall affect the provisions of any Treaty, Convention or Agreement in force between any of the High Contracting Parties or between

a High Contracting Party and any State which is not a Party to the present Convention."

The Chairman :

Translation : I do not understand the reasons which lead you to submit such an amendment. How can we conceive that the present Convention can create any obligations at all between a contracting party and a third State ? I venture to make this observation in case you may conclude that after all your amendment is not necessary.

M. Giannini (Italy) :

Translation : I beg the Committee to adopt the text proposed by the Central Drafting Committee, for the following reasons, which apply solely to this Committee.

We cannot accept the proposal of the Belgian delegation because it lays down this condition : " in so far as they are not contrary to the present Convention ". That would undermine all the special agreements which have been concluded in the light of particular requirements and needs which, in this matter, are of exceptional importance. I think that would be quite impossible.

Moreover, the delegate for the Netherlands proposes that we should regard all that has been done up to the present as having been definitely established, to the exclusion of all possible modifications in the future. We should not forget that the present agreements are in the nature of compromises, which may give rise to other compromises and other agreements depending on special conditions of State policy. Why should we place an obstacle in the path of such tendencies ? I do not see any reason why we should.

I entirely share our Chairman's views with regard to the proposal of the Finnish delegation. How can we possibly try to bind a third State ? That State would certainly reply : " This Convention does not apply to us."

For these various reasons, I invite you to reject all these amendments. The article prepared by the Drafting Committee contains all that is necessary. Moreover, we have already adopted a recommendation to the effect that the Conference hopes that, in future, all States will draw their inspiration, as far as possible, from the acts of the present Conference. The present text refers to existing and future treaties. Let us not attempt to forestall the future. In any case, we ought not to prevent other States from reaching agreement among themselves.

I again beg the Committee to reject these amendments and endorse the text submitted by the Drafting Committee.

M. Soubbotitch (Yugoslavia) :

Translation : Among the various ideas which have just been expressed, I think we should make a clear distinction between two questions : First, the relations between this Convention and the particular Conventions which are already in existence, and, secondly, the relations between this Convention and future bilateral Conventions. I think that the text as drafted satisfies all requirements. It regulates, not only the relations between this Convention and existing Conventions, but also the relations between this Convention and future Conventions.

As regards existing Conventions, we can readily agree that our Convention does not derogate from particular Conventions, for the latter regulate relations between the States on the basis of the mutual relations existing between those States. The solutions in question were adopted after long negotiation, and there is no reason to make any exceptions to them under this general Convention. The latter, indeed, is merely supplementary to the other Conventions.

As regards future Conventions, I see no reason why States should not regulate, by means of bilateral Conventions, questions covered by the instrument we are now considering. The provisions of these bilateral Conventions might differ from those of our proposed Convention. Naturally, a solution adopted in that way cannot be pleaded against third States, but it will have the force of law. *Lex specialis derogat generali.*

M. Rundstein (Poland) :

Translation : I am in favour of maintaining Article B, as drafted by the Central Drafting Committee.

There can be no doubt with regard to existing Conventions : our Convention cannot have any retrospective effect.

As regards future Conventions, I think we cannot prohibit States from concluding bilateral or even plurilateral agreements.

I will take a very simple example : Under Article 15 of our draft, a child whose nationality is unknown can, in certain cases, obtain the nationality of the State of birth. Can we prohibit two States from concluding a Convention under which this child will obtain such nationality ?

M. Alvarez (Chile) :

Translation : I do strongly urge that we should leave no doubt on this important point. I propose that we add, as a separate article, the following provision :

> " The High Contracting Parties may conclude *inter se*, agreements modifying the principles or rules laid down in the present Convention. "

The recommendation will prove that our desire is to ensure that agreements concluded by parties to this Convention shall be in harmony with it. This recommendation would concord entirely with the text.

Mr. Flournoy (United States of America) :

I think it is important to make it entirely clear that nothing in this Convention prevents States from concluding Conventions in all

cases in which they are specially interested, and it does not appear to me that, as it now stands, the article makes that clear. It speaks of Treaties, Conventions or Agreements at present in force.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : Article B in its present form can refer only to Conventions at present in force. The expression, " shall not affect the provisions of any Treaty, Convention. . . in force ", cannot refer to future Conventions. The case of future Conventions is regulated by the provisions of the present Convention as a whole, in so far as those provisions are binding on the contracting parties. Naturally, these parties cannot conclude between themselves any agreement contrary to those principles. In so far as the various States are free to do so, they may conclude new Conventions which will, to a certain extent, be the application of the present Convention. But the present wording of Article B cannot apply to future Conventions.

M. Kosters (Netherlands) :

Translation : I am happy to note that the words " Treaties, Conventions or Agreements in force ", occurring in Article B, have the same meaning as the same expression employed in other articles, for instance, in Article 5. In these circumstances, I can withdraw my amendment. But I think it is necessary, when we use an expression which is so general that it might also apply to future treaties, to insert the few words which the Belgian delegate has suggested.

Mr. Dowson (Great Britain) :

I only desire to say that Article B, as it stands, refers to Conventions in force at the time of the signing of our Convention. As regards future treaties, the position appears to me to be this, that it may be open to parties to this Convention to conclude bilateral Conventions as between themselves only in respect of matters which concern those parties. If two parties to the Convention which we hope to negotiate conclude a bilateral treaty which is inconsistent with our proposed Convention, and if that bilateral Convention affects parties other than the parties to it, such a Convention would be inconsistent with the obligations assumed by the parties to our Convention, and therefore with the principle laid down in this article.

Such are the limitations. I hope that this point is quite clear, because it seems to me to be important. Only those bilateral treaties which concern matters affecting the parties themselves can be concluded. Any other matters which concern other parties to our Convention will be, as indicated in this article, beyond their power.

M. da Matta (Portugal) :

Translation : I propose an amendment to the effect that we should omit the words " Treaties and Agreements " in Article B. It is unnecessary to give a list which may be incomplete. I consider the formula at the beginning of Article 19 (French text) : " *Aucune stipulation de la présente Convention* ", preferable to the expression : " *Rien dans cette Convention* ", as in Article B. I think the first wording is more satisfactory from a legal point of view.

The Chairman :

Translation : We will now take a decision on the various amendments submitted to us. M. Kosters has withdrawn his.

We have, first of all, the amendment by the Finnish delegation to the effect that we should say, instead of " Agreement in force between any of the High Contracting Parties ", " Agreement in force between any of the High Contracting Parties, or between a High Contracting Party and any State which is not a Party to the present Convention ".

I will consult the Committee on this amendment.

The amendment of the Finnish delegation was rejected.

The Chairman :

Translation : We have now to take a decision on the amendment submitted by the Belgian delegation to the effect that we should add at the end of the text the words " in so far as they are not contrary to the present Convention ".

I put this to the Committee.

The Belgian delegation's amendment was rejected.

The Chairman :

Translation : We now come to M. Alvarez's amendment.

Mr. Flournoy (United States of America) :

My amendment is very similar to that of M. Alvarez. It is simply to the effect that nothing should prevent States from concluding treaties between themselves with a view to governing cases in which they are especially interested. For instance, if two States choose to conclude an agreement in regard to military service or the termination of dual nationality or on the subject of naturalisation, I cannot conceive any reason why this Convention should prevent them from doing so, they only being affected.

M. Pépin (France), Member of the Central Drafting Committee :

Translation : The two amendments submitted embody ideas which have already been discussed in the Drafting Committee. The Committee considered that it would certainly be impossible to prevent two States from concluding between themselves special agreements modifying the principles inserted in another Convention to which they are parties. But we thought it would be giving a very bad example for the progressive codification of

international law if we inserted such a provision in a Convention which forms the starting point of such codification.

Moreover, in agreement with M. Alvarez himself, the Committee prepared a recommendation inviting States to model, as far as possible, their future treaties or Conventions on the principles and rules embodied in this Convention.

M. Alvarez (Chile) :

Translation : The recommendation which I accepted in agreement with the Drafting Committee is the supplement to the proposal I now make. It suggests that Conventions concluded in the future should be based, as far as possible, on the present Convention. That means agreement and not disagreement.

The Chairman :

Translation : The Committee would be better able to form an opinion if I read M. Alvarez's proposal, which is worded as follows :

> " The High Contracting Parties may conclude, *inter se*, agreements modifying the principles or rules laid down in the present Convention."

That is to say, everybody will be entirely free to do as they like in the future.

Another proposal is this.

> " The Conference expresses the hope that States will, when concluding special Conventions between themselves, draw their inspirations, as far as possible, from the provisions of the acts of the first Codification Conference."

This recommendation would seem to suggest that there is no freedom and that States should conform to the Convention.

M. Alvarez (Chile) :

Translation : You might also add to my text " or amplifying ".

I would add that the latter text is a mere recommendation. States, however, are free to conclude any Conventions they please.

The Chairman :

Translation : We will now take a decision with regard to M. Alvarez's amendment. Before doing so, I would point out that Mr. Flournoy's amendment is based on the same idea, although it is differently worded.

His amendment is as follows :

> " Nothing in the present Convention shall derogate from the right of States to enter into special Treaties, Conventions or Agreements to govern cases which are of interest only to themselves."

I will put M. Alvarez's amendment to the vote first, because I think it is of a more radical nature than that of the United States.

M. Alvarez's amendment was rejected.

The Chairman :

Translation : I put the United States of America amendment to the vote.

The United States amendment was rejected.

The Chairman :

Translation : I invite the Committee to take a decision with regard to Article B as a whole, this article being worded as I stated just now.

M. da Matta (Portugal) :

Translation : I have proposed that the words " Treaties or Agreements " should be omitted and that we should merely say " Conventions ".

The Chairman :

Translation : I am sorry ; I forgot your amendment — which only proves that it is preferable to submit these amendments to the Bureau in writting. I will therefore put M. da Matta's amendment to the vote.

On a show of hands this amendment was rejected.

On a show of hands Article B was adopted as a whole.

Article C.

The Chairman :

Translation : As you will perceive, the Drafting Committee was of opinion that each Committee should decide whether a clause concerning the application of the Convention to colonies, protectorates or mandated territories should be included. The Drafting Committee of the Conference will prepare the necessary texts as soon as it has ascertained the wishes of the Committees.

I would remind the Committee that, on a first reading, it adopted the proposal by the Netherlands delegation, which was supported by the Italian delegation. This proposal reads as follows :

> " The present Convention shall apply to the home territory of the several High Contracting Parties.
>
> " Each of these Parties may, by means of a declaration notified to the Secretary-General of the League of Nations, extend the application of the whole of this Convention or of certain of the provisions thereof to the territories or to some of the territories or to certain parts of the population that are in any way whatsoever under its authority."

If the Committee is of opinion that it can now accept the idea expressed in this text we might merely refer that text to the Central Drafting Committee in order that the latter may prepare a final text for the Convention.

M. da Matta (Portugal) :

Translation : I ask permission to submit a slight amendment to the effect that we should add, after the word " colonies " in the text proposed by the Central Drafting Committee,

the word " possessions ". This word is to be found in several Conventions, for instance, in all the Hague Conventions on Private International Law. In my country, certain territories are designated as colonies (for instance, the West and East African territories) while others are known as possessions (for instance, the Indian territories).

M. Nagaoka (Japan) :

Translation : I understood that the Committee had accepted the Netherlands delegation's proposal in principle. Personally, I prefer this wording to that submitted by the Central Drafting Committee. I would therefore request our Chairman to consult the Committee as to whether it prefers to maintain the Netherlands text and refer it back to the Central Committee.

Mr. Dowson (Great Britain) :

When we discussed this question on the first reading, I suggested that the discussion should be postponed, because, as I then understood, and as I understand now, this is a matter which the Central Drafting Committee has undertaken to consider. Accordingly, I take this opportunity of repeating the views I have already expressed and of suggesting that it would be very undesirable for us to adopt the text proposed by the delegate for the Netherlands, in view of the fact that, for many years now, a form of Article indicating the application of multilateral Conventions negotiated under the League of Nations, to colonies, protectorates and territories under the authority of the contracting parties, has been adopted, and it appears to me to be most undesirable that we should depart from the precedent which has been established in those multilateral Conventions.

One of the differences between what I might call the common form and that which is proposed by the delegate for the Netherlands is, that in the Article which M. Kosters proposed the colonies are automatically excluded, whereas in the common form they are automatically included, unless and until the parties to the Convention take steps to declare that they do not assume any of the obligations incurred under the Convention in respect of any one or more of the territories under the authority of the contracting parties.

I move that we should adopt the common form which has been in force in the League of Nations multilateral Conventions, and should not accept, or refer to the Central Drafting Committee, the form which has been proposed by the delegate for the Netherlands.

M. Giannini (Italy) :

Translation : In recent years, it is true, various formulæ have been adopted in connection with territories placed under a State's authority, and we might adopt one of those most recently employed by the League of Nations which refers solely to the concept of authority. I think, however, that the actual drafting of this clause should be left to the Drafting Committee. The expression or concept of authority may include every form of authority: possession, suzerainty or mandated territory.

Sir Basanta Mullick (India) :

I only wish to mention that a very comprehensive phrase was used in the Slavery Convention of 1926. It relates to " territories under sovereignty, jurisdiction, protection, suzerainty or tutelage ". When the matter is considered by the Central Drafting Committee, I hope that this clause in the Slavery Convention will be taken into account.

M. Soubbotitch (Yugoslavia) :

Translation : Our Uruguayan colleague has raised objections to the formula proposed a few days ago by M. Kosters and now supported by M. Giannini, and the Committee has listened very attentively to these objections. I think that the term " authority " is not very suitable, since it is too wide and even embraces actual occupation. This certainly does not correspond to the idea of the drafters of the formula. We must be more precise, and I think that the delegate for India has very well expressed the ideas of the other delegations.

The Chairman :

Translation : After this exchange of views, I think we ought to agree to insert a so-called colonial clause in the Nationality Convention. The Committee will, I think, also be willing to leave the drafting of this clause to the Central Drafting Committee.

M. Kosters (Netherlands) :

Translation : I wish to emphasise another point. This is a very special matter ; the formal clause relating to it in most international Conventions is not entirely satisfactory. In the matter of nationality, we should not be content with the ordinary wording employed in connection with other matters, because, in this case, there are two restrictions :

(1) Each State must be able to make reservations regarding certain provisions and be free to say that such and such a provision of the Convention shall not apply to Colonies or overseas countries ;

(2) It is also absolutely necessary that each State should be able to say that the future Convention will not apply to certain categories of its population. In the Netherlands Colonies, though there are Europeans and highly cultured Indians, there are other categories of the population which are on quite a different footing.

These two principles should be borne in mind in reviewing this provision.

The Chairman :

Translation : It is understood that the Drafting Committee will take into account the observations made both now and at the time of the discussion on the first reading. We can, I think, rely on the Drafting Committee's discretion.

Article D.

The Chairman :

Translation : Continuing our examination of the Drafting Committee's report, we need not consider Article D, which has already been examined by our Committee.

Article E.

The Chairman :

Translation : Article E contains the judicial clause. It has been the subject of long discussion in the Third Committee. Doubtless, some of the delegates here present took part in that discussion. This text was finally adopted at a first reading by the Third Committee and I suppose that our Committee will have no difficulty in adopting it also.

If no one wishes to speak, I will take it that the Committee accepts this text in principle and leaves the final drafting to the Central Drafting Committee.

Agreed.

Article F.

The Chairman :

Translation : This article concerns signature. If there are no observations I will regard it as adopted.

Article F was adopted.

Article G.

M. Soubbotitch (Yugoslavia) :

Translation : Should we not add " will give notice of ratifications, of the date, and of the reservations, if any "?

The Chairman :

Translation : That is always done. It is rather difficult to give these details now, because I suppose that most countries will state their reservations when signing. That is the custom.

The instruments of ratification, with or without reservations, and with all the necessary details, are deposited at the Secretariat ; the Secretariat communicates copies to the other Sates.

M. Soubbotitch (Yugoslavia) :

Translation : We do not press our proposal. We put it forward merely in order that the method should be clearly defined.

Article G was adopted.

Article H.

Adopted without discussion.

Article I.

M. Duzmans (Latvia) :

Translation : In the first paragraph of Article I, I read : " on behalf of ten Members of the League of Nations ". I propose that the passage should read as follows : " on behalf of ten States whether or not Members of the League of Nations ".

M. Diena (Italy) :

Translation : The text is worded thus in order to take the Dominions into account.

M. Duzmans (Latvia) :

Translation : But surely the word " ten " applies only to Members of the League of Nations.

The Chairman :

Translation : No, it applies also to States non-Members.

Article I was adopted.

Article J.

Adopted without discussion.

Article K.

M. Pépin (France), Member of the Central Drafting Committee :

Translation : The Drafting Committee is at present considering an additional clause to this article which would avoid one of the disadvantages often noticed as a result of the revision of international conventions, namely, the co-existence of former texts which are in force for certain States and the new texts which are in force for others. A clause will, therefore, be added in order to make sure that after a revised Convention has come into force, the aforesaid drawback shall not arise.

The Chairman :

Translation : The Committee notes this statement and, if there are no objections, I shall regard Article K as adopted.

Article K was adopted.

Article L.

M. Nagaoka (Japan) :

Translation : I should like to know why the Drafting Committee has fixed the time-limit at five years. Why does the Convention not allow States to denounce it, apart from any time-limit ?

M. Giannini (Italy) :

Translation : The authors of this Article had the following aims in view : When States come here to enter into undertakings with regard to progressive codification, they must realise that they are going to bind themselves when they sign and ratify a Convention for which a certain time-limit must be allowed for trial. If there were no trial period — a very short one, moreover — it would be impossible to say whether codification has produced any results or not.

If, as a general rule, we were to allow the Convention to be denounced fifteen days after its ratification, progressive codification would become almost impossible, because there would be continual changes and we should never have a sufficiently long period of trial to ascertain whether the Convention ought to be revised or not.

In order to harmonise these general requirements of progressive codification with the interests of a State which may regard the experiment as unsatisfactory, we have adopted this five years trial period which seems to us to be neither too long nor too short.

Nevertheless, if you still think that this period is too long, I have no doubt that we could shorten it a little. I hope you will not make it too short, however, to the extent of leaving practically no trial period at all.

M. Nagaoka (Japan) :

Translation : I think that the fixing of a time-limit rather contradicts the provisions of the previous article.

Article K provides that States, signatory to this Convention, are entitled to request revision five years after ratification. As a period of five years after the coming into force of this Convention is already stipulated in Article K, that article itself provides for a certain amount of stability. It is reasonable to allow States which have ratified the Convention but desire to withdraw, to do so.

M. Giannini (Italy) :

Translation : I wish to draw particular attention to the special nature of this Convention. We have been endeavouring to secure progressive codification by international agreement. Concessions have been made of which the result is the agreement which is now submitted to the Conference. If you think that the time-limit of five years is too long, it might perhaps be reduced to two or three years. But it should be borne in mind that States which have made concessions for the sake of codification are entitled to demand a fairly long trial period.

M. Nagaoka (Japan) :

Translation : After hearing M. Giannini's explanation, I propose that we should say " with a period of three years " for denunciation since, after five years, all signatories are entitled to request the revision of this Treaty. Three years is a reasonable time-limit.

The Chairman :

Translation : I venture to point out that this would upset the whole system. Unless I am mistaken, the system which the Drafting Committee had in mind was this : To include the principle of denunciation in deference to the freedom of States and to allow the possibility (in case the request for revision submitted by a State is not supported by nine other States, so that the request becomes inoperative), for each State to resume its freedom at that moment and denounce the Convention.

Nevertheless, there is a connection between denunciation and revision, and my own personal inclination would be, not to reduce the period from five to three years, but rather to make it five and a-half or even six years. Consequently, as from January 1st, 1936 (that will, perhaps, be five years after the coming into force of the Convention), we might ask for revision. If our request is supported by other States and the procedure is set in motion, we merely have to await events. If we can obtain satisfaction by revision, there is no need for us to denounce the Convention ; but if we do not, we must have the possibility of denouncing it.

That is why I think it would be even more logical to say, not " after a period of . . . ", but to give a definite date. Personally, I would suggest a rather later date : for instance, a period of six months or one year.

Does the Committee accept this proposal ? In other words, would it be willing to insert in the text of the Article L, the words : " as from January 1st, 1937 " ?

It has been pointed out to me that, under Article K, the procedure for revision may take some time, because there will first of all have to be a request, and then a consultation of the various Members within twelve months. Nine of the Members must be in agreement. Then, after consultation, the Council of the League of Nations will decide whether a Conference ought to be convened. This procedure would require, from the day on which the request for revision was made, at the very least eighteen months, so that if the two systems are to hold together, we ought to say in Article K : " as from January 1st, 1935 ", and in Article L : " as from January 1st, 1937, the present Convention may be denounced ".

I think the best thing would be to communicate this discussion to the Drafting Committee in order that it may harmonise the two texts.

The proposal was adopted.

M. Giannini (Italy) :

Translation : I think that the Committee is in agreement as regards the principle — that is to say, the necessity of establishing a certain connection between revision and denunciation. Obviously, the result of a request for revision can be ascertained only after a certain time. Moreover, it is understood that denunciation will take effect after a year. We must, therefore, find some means for conciliating the interests of States with the interests of codification.

The Drafting Committee will doubtless find a practical formula which, nevertheless, does not bind States too strictly, a possibility which might prevent their signing. The dates might be changed. The main point is that we should all recognise that denunciation may be allowed, if the request for revision is not accepted.

The Chairman :

Translation : We all, I think, agree to that.

Mr. Dowson (Great Britain) :

If this matter is to be referred to the Central Drafting Committee, I should like to mention one point, which I think should be brought to the notice of the Committee — namely, that we do not know when this Convention is going to come into force. It may be some considerable time ahead. Consequently, it seems to me desirable that some definite date should be fixed after the Convention comes into force. Otherwise we do not know where we shall be.

In order to ensure the satisfactory working of Articles K and L, it is desirable to avoid unnecessary complications. The principle of a fixed period, of say three, four or five years, seems to be simple, but the date of entry into force of the Convention being uncertain, uncertainty would, under this system, necessarily reign as regards the date for requests for revision or denunciation.

I would, therefore, request that the Drafting Committee should weigh the merits of the two systems carefully before taking its decision.

The Chairman :

Translation : I think we can trust the Drafting Committee to deal with this matter. It will take account of the views expressed here, and will prepare a practical text taking all the various standpoints into account.

Subject to these observations, I think that Article L might be regarded as adopted.

Article L was adopted.

Articles M and N.

Articles M and N were adopted without discussion.

56. CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS.

Preamble.

The Chairman :

Translation : The Preamble to our Convention reads as follows :

" Being firmly resolved to settle by international agreement questions relating to the conflict of nationality laws ;

" Being convinced that it is in the general interest of the international community to secure the acceptance by all its members of the principle that every person should possess one nationality and one only ;

" Holding that the ideal towards which the efforts of civilised humanity should be directed in this domain is the abolition of all cases of statelessness and double nationality together ;

" Considering that, under the economic and social conditions which at present exist in the various countries and which govern the state of their nationality law, it is not possible to proceed immediately with the uniform solution of the above-mentioned problems ;

" Being desirous, nevertheless, of beginning this great undertaking by a first attempt at progressive codification, regulating those questions relating to the conflict of nationality laws on which it is possible at the present time to reach international agreement :

" Have decided to conclude the present Convention . . ."

You will note that the last paragraph which precedes the first chapter is now no longer necessary, since the idea expressed therein has been embodied in one of the general clauses. It has therefore been omitted.

The Preamble was adopted.

ADOPTION OF THE CONVENTION AS WHOLE.

The Chairman :

Translation : We will now vote on the whole Convention including the Preamble and the general and formal clauses, it being understood that the final drafting of these latter clauses will be left to the Drafting Committee.

Mr. Flournoy (United States of America) :

In cases where a delegate has voted against a particular article, and where he feels it will be necessary to make reservations, I take it he can vote for the Convention on the understanding that he can make such reservations later.

The Chairman :

Translation : The power to make reservations is dealt with in a special article which we adopted at the meeting before last. It is understood that those who now vote in favour of the Convention leave their respective Governments to make reservations either at the time of signature or at the time of ratification or — if they neither sign nor ratify — at the time of accession.

I hope that, in view of this, we shall obtain a very large number of votes or even a unanimous vote if possible. Perhaps those who are not very enthusiastic about this Convention would be good enough to abstain, instead of voting against it.

The vote was taken by roll-call on the Convention as a whole.

The following States voted in favour of the Convention : Australia, Austria, Belgium, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, Free City of Danzig, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, India, Irish Free State, Italy, Japan, Latvia, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Roumania, Spain, Sweden, Switzerland, Turkey, Yugoslavia.

The following delegations were absent or abstained : Bulgaria, Colombia, Hungary, Iceland, Luxemburg, Nicaragua, Persia, Peru, Salvador, South Africa, United States of America, Uruguay.

The Convention was adopted unanimously by the thirty-five delegations voting, with two abstentions.

The Committee rose at 12.15 a.m.

TWENTIETH MEETING.

Monday, April 7th, 1930, at 9.30 a.m.

Chairman : M. POLITIS.

57. CONVENTION ANNEXED TO THE CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS.

The Chairman :

Translation : In order to complete this stage of our work, we have still to approve the three articles of the annexed Convention (Annex III, Part I, 2), including the Preamble, the text of which will be distributed this morning. We should, I think, vote on the whole of the annexed Convention ; then approve a series of recommendations (Annex III, Part I, 3), some of which have already been adopted at a first reading and others of which you have before you now. One comes from the Drafting Committee and refers to future Conventions ; another comes from the Polish delegation and refers to proof of nationality ; the last is submitted by the Danish delegation and concerns the preparation of subsequent conferences. On this last point, you will, this morning, receive a proposal submitted by the Greek delegation.

Question of separating into Three Protocols the Three Articles of the Annexed Convention.

M. Rundstein (Poland) :

Translation : Are the articles of this Convention so closely bound together that they must form one single document ? Article 1 deals with repatriation, Article 2 with military service, and Article 3 with statelessness. It is possible that certain delegations may be prepared to sign one or two of these articles, but not all three. Articles 1 and 2 may meet with opposition from a political or financial point of view, whereas Article 3 is perfectly innocuous.

I propose that each of these articles should be formed into a separate protocol. It would be undesirable that any delegation should sign the whole of the annexed Convention with reservations regarding Articles 1 and 2.

The Chairman :

Translation : Either system could be adopted. The Committee may choose that proposed by the Polish delegate — namely, that each article should be formed into a separate Protocol — or the other system — namely, that the three articles should be formed into an annexed Convention, with the possibility of reservations to be included in the Convention as in the main Convention, in order to allow each State to exclude one or two of these articles when signing or ratifying the Convention. The latter system is that followed in the Geneva General Act, which consisted of three Chapters, the signatory or acceding Powers being at liberty to accept only one or two of these Chapters.

M. Nagaoka (Japan) :

Translation : I second the proposal of the Polish delegation. My delegation, for instance, can only sign Article 3. I therefore think it would be preferable to have three separate Protocols.

The Chairman :

Translation : If there is no objection, I will take it that the Committee prefers the system of three Protocols, as proposed by the Polish delegation and seconded by the Japanese delegation. These three Protocols will be regarded as annexes to the general Convention but will nevertheless have a separate existence. The only advantage in putting the three articles together is that we should avoid having to repeat the final clauses.

It was decided that the three texts submitted as the annexed Convention would form three separate Protocols to be regarded as annexed to the general Convention.

Article 1.

The Chairman :

Translation : Article 1 is the former Basis No. 2, which gave rise to so much discussion. Its object is to settle a particular case of statelessness.

M. Malmar (Sweden) :

Translation : Since, at the first reading, the Committee took no decision regarding the subject matter of Article 1, I think I may be allowed to explain our views in a few words.

The principle on which this article is based is sound in many cases, but inadmissible in many others. In the case of a vagabond, a person without habitual domicile or residence, it is natural that the State whose nationality he last possessed should be bound to receive him ; but that is not what usually happens. Stateless persons are generally persons who have long been habitually resident, and

probably domiciled, abroad. A person may have lived all his life in a country and may have become practically an ordinary unit of the population of that country which has, so to speak, benefited by his labour. Would it not, in this case, be unjust to send the person back to the former country simply because he can no longer work, and oblige him to return to the country of origin in which he has never lived and where he will feel in a strange land? Has the country of origin invariably greater obligations towards the stateless person than the country of his domicile, which has benefited by all his labour? I do not think so.

It is a general principle, admitted in many international conventions governing public relief, that a State is not always obliged to receive and afford relief to indigent persons, even when they are its own nationals, when these persons have for long been habitually resident in another country. For such an obligation to arise, many circumstances have to be taken into account, for instance, the length of the indigent person's stay in the foreign country and his age when he emigrated into that country. These are circumstances which the Committee has not been able to study in detail. Before accepting such an obligation, we ought to hear the opinion of the public relief authorities.

We are not here to settle such questions, which are unconnected with the conflict of nationality laws. If, however, we can do something to improve the situation of stateless persons I shall be ready to accept a provision of some kind, but not the text now submitted. I think I have proved that this provision is more likely to make it possible for the States of the stateless person's domicile to avoid its obligations towards that person. The rule proposed is, moreover, to a certain extent, contrary to the generally admitted principle as regards the personal status of stateless persons, which is determined by their domicile or habitual residence and not by their former country.

For these reasons, I propose the omission of the article. I think it would be, in every respect, preferable for the League of Nations to deal with this question, closely related as it is to many others with which the League is already dealing; but if the Committee desires to maintain the article, I propose a new paragraph with a view to restricting its scope. The paragraph in question might be worded as follows:

> "A State in which a stateless person has been habitually resident for fifteen years cannot rely on the provisions of the preceding paragraph."

The Chairman:

Translation: I would remind the Committee that the discussion on this text is closed. We have already discussed Basis No. 2 at great length. The question was referred to a Sub-Committee. That Sub-Committee, after a number of meetings, managed to submit to us a text which is a compromise between the divergent opinions of several delegations. Finally, this practical solution is proposed on humanitarian grounds. You will now be asked to decide regarding its maintenance, omission or modification. It is therefore desirable to be as brief as possible.

M. Hering (Germany):

Translation: At the first reading we proposed to omit the words: "after entering a foreign country". These words are still included in the first article. We have explained that the difficulties of countries in which persons stay are exactly the same whether the loss of nationality occurred before or after entry into those countries. We stated that the principle embodied in the first article ought to be applied in both cases.

The obligation laid down in this provision is the usual practice in Germany. We are continually receiving ex-nationals at the request of the country in which these persons are living when they have not acquired any other nationality. The treaties concluded between Germany and other countries, for instance, Switzerland and the Netherlands, provide that such ex-nationals must be received.

The Chairman:

Translation: Do you still urge that these words should be omitted?

M. Hering (Germany):

Translation: Yes, Sir.

Nousret Bey (Turkey):

Translation: The Turkish delegation thinks that this article is contrary to the general principles which have been accepted and is incompatible with the legislative sovereignty of States.

Mr. Flournoy (United States of America):

Our delegation was prepared to support the original proposal of the Preparatory Committee; but, with the conditions which have been added, we are unable to agree to it — not only because it is inconsistent with our own legislation, but because we think it is wrong in principle.

If a stateless person should be received back by the State of which he was formerly a national it would seem no conditions should be imposed; that is, if the State of which he was formerly a national is responsible for him in any case, it would seem that it is responsible for him in all cases. We are therefore in favour of suppressing this article as it now stands. I would like to suggest, however, that it might be desirable to say something in the recommendations about this subject as being one which needs further study.

Mr. Dowson (Great Britain):

I do not desire to continue the discussion in regard to this article. We had a very full

discussion, and the Committee was generally agreed, on the occasion of the first reading, that an article on these lines should be accepted. The underlying principle of the article is that a State ought not to be able, by unilateral action, to free itself from the obligation to receive back its national, the unilateral action being the deprivation of that person's nationality. If it can do so, it clearly deprives the State on whose territory the national has been residing of a right which it possesses — that is to say, the right to look to the State whose nationality the person in question possesses to receive him back in the event (no doubt, the very unlikely event) of that person proving to be an undesirable person.

This seems to me to be a very reasonable position, because, in a sense, a kind of contract or obligation results from the grant of a passport to an individual by a State so that when that individual enters a foreign State with that passport, the State whose territory he enters is entitled to assume that the other State whose nationality the person possesses will receive him back in certain circumstances. If the State whose nationality he possesses arbitrarily deprives him of that nationality, it seems only right and reasonable that the principle should be recognised that the obligation to receive back survives, notwithstanding that the nationality has been technically brought to an end.

Such is the underlying principle of this article and I hope that the Committee will not miss this opportunity of accepting a principle which will go a long way to remove a source of considerable difficulty and friction which has from time to time arisen internationally as regards cases of this class. I therefore hope that the Committee will accept this article.

M. Alvarez (Chile) :

Translation : As I have already stated, in connection with Basis No. 2, this question is an international police question. In these circumstances, we should either conclude a more detailed Convention on this point or else — and I think this would be preferable — leave the matter to be dealt with by private agreements between the parties concerned. I am therefore in favour of omitting Article 1.

M. de Ruelle (Belgium) :

Translation : The Belgian delegation will vote for the first article, whether it is formed into a separate Protocol or inserted in a Protocol together with other articles. It will, however, vote it without enthusiasm, as being a half-concession to a concept it has at heart.

This question of the stateless person sent away by the country in which he lives and taken back by his country of origin should not be regarded in the light of juridical principles ; above all, as the Belgian delegate in this Committee said, it is a question of international hygiene and a humanitarian question. We ought not to tolerate the existence on the fringe of the community of a number of unfortunate persons who are bandied about from frontier to frontier. We will therefore vote for Article 1, but should have preferred it with fewer restrictions to the idea it contains.

M. Schwagula (Austria) :

Translation : I entirely agree with the statements made by the delegates for Great Britain and Belgium. We request the Committee to adopt this article which, as previous speakers have so well pointed out, is really a question of humane sympathy. Our work would be incomplete if we did not include such a provision in the Convention.

M. Caloyanni (Greece) :

Translation : I entirely agree with the statements made by the British, Belgian and Austrian delegates.

As they have so clearly pointed out, we are here not merely to settle questions of pure law, but also to settle matters of interest to the international community and consequently to mankind. In these circumstances, I do not think we ought to leave any man without a fatherland. Many concessions have been made in connection with the first article now before us. The subject of that article should appeal, not only to our feelings as lawyers, but to our higher feelings as the brothers of all those who have no country.

M. Alten (Norway) :

Translation : At the first reading of Basis No. 2, opinions were very divided, and I thought then that the Drafting Committee would not be very successful in its task. The Drafting Committee, indeed, was asked to submit a text which could be accepted both by the opponents and defenders of this Basis. Obviously, it has not achieved such a result.

Personally, I cannot say I am in favour of this article and I support the Swedish delegation's request that it should be omitted.

The Chairman :

Translation : I think that the Committee will now be in a position to vote on the question. This is how the matter stands :

I have a proposal for the total deletion of this article, put forward by the Swedish delegation and supported by the delegations of Turkey, Italy, the United States of America, Chile and Norway.

If you decide to omit this article, there is a proposal to the effect that it should be changed into a recommendation to Governments.

If the text is maintained, I will put to you the proposal of the German delegation asking for the deletion in the first line of the words " after entering a foreign country ".

There is also a proposal by the Swedish delegation which we shall have to consider if the text is accepted. The Swedish delegation proposes the addition of a new paragraph.

I now consult the Committee on the Swedish proposal to the effect that this article should be entirely omitted.

On a show of hands the Committee decided, by fifteen votes to fourteen, to retain the text.

The Chairman :

Translation : I will now consult the Committee on the German proposal to the effect that we should omit, in the first line, the phrase : " after entering a foreign country ".

On a show of hands, the German proposal was rejected.

The Chairman :

Translation : I put to the vote the Swedish delegate's proposal, that we should add a third paragraph worded as follows :

> " A State in which a stateless person has been habitually resident for fifteen years cannot rely on the provisions of the preceding paragraph. "

On a show of hands this text was rejected.

The Chairman :

Translation : I put to the vote the whole text of Article 1. The vote will be taken by roll-call.

The following delegations voted in favour of Article 1 : Australia, Austria, Belgium, Canada, China, Colombia, Free City of Danzig, Germany, Great Britain, Greece, India, Irish Free State, Mexico, Salvador, Spain, Switzerland.

The following delegations voted against : Chile, Czechoslovakia, Denmark, Hungary, Italy, Japan, Latvia, Netherlands, Norway, Portugal, Roumania, Sweden, Turkey, United States of America, Yugoslavia.

The following delegations were absent or abstained : Brazil, Bulgaria, Cuba, Egypt, Estonia, Finland, France, Iceland, Luxemburg, Monaco, Nicaragua, Persia, Peru, Poland, South Africa, Uruguay.

Article 1, not having obtained a two-thirds majority (sixteen votes for, fifteen against), was not adopted.

Article 2.

The Chairman :

Translation : With regard to Article 2, the Committee has before it two amendments.

The first is proposed by the French delegation which asks that we should add to the text a paragraph worded as follows :

> " Similarly, a person who has lost his nationality according to the law of his country of origin and has acquired another nationality will be exempt from military obligations in the country whose nationality he has lost. "

The other amendment is submitted by the British delegation :

> " Without prejudice to the provisions of Article 2, if a person possesses the nationality of two States, and under the law of either State has the right to renounce or decline the nationality of that State on attaining his majority, he shall be exempt from military service in that State during his minority."

M. Diena (Italy) :

Translation : The Italian delegation asks for the complete deletion of this article.

Nousret Bey (Turkey) :

Translation : The Turkish delegation seconds the Italian proposal.

Mr. Flournoy (United States of America) :

My delegation is very much in favour of Article 2 as it stands, provided, of course, that it relates to persons born with dual nationality. We think a great deal will have been accomplished if we can obtain agreement to this article.

I should like to enquire whether the proposal of the British delegation is intended as an additional article, or as an additional paragraph to Article 2. I understood that it was to be an additional article, and my delegation is prepared to support it as such. We think it would be desirable to keep it separate from Article 2, as the two subjects are quite different.

M. Hering (Germany) :

Translation : The German delegation supports the British amendment. We presume that the question whether we should embody the idea in the text of Article 2 or make it into a separate article will be examined by the Drafting Committee.

Mr. Dowson (Great Britain) :

In reply to the enquiry made by the delegate for the United States of America, our amendment was certainly intended to be inserted as a new article following immediately upon Article 2. That seems to me to be the most convenient course to adopt.

As regards the article which I suggest shall be added, I do not desire to take up the time of the Committee in explaining it. It seems to me that it really explains itself. It simply adds a small class to the class of persons which is dealt with in Article 2, and it adds that class as a matter of justice to the individual.

It is a matter of some hardship to an individual who has the power under the law of his State to get rid of his nationality on attaining the age of majority that he should be compelled to perform military service in that State if he has the power to make a declaration, and so get rid of its nationality when he attains the age of twenty-one years, or whatever is the age of majority in the State in question. The text, of course, applies only to persons of dual nationality which is not a large class of persons. I ask the Committee to accept this proposal as being one which meets a hardship which has been found in practice to exist in a certain number of cases.

and which this article would really go a long way to remove.

May I add that in view of the decision that this matter should be dealt with in a Protocol, this additional article should appear as Article 2 of a single Protocol dealing with this matter?

M. Piip (Estonia) :

I desire to explain my vote. The laws of my country are not at present in full accordance with Article 2, but the rule proposed in it seems to be very useful, and its acceptance would help to abolish many difficulties in international life. I therefore vote for this article. Nevertheless, I must declare that my vote does not prejudice in any way the liberty of my Government to make reservations regarding the article at the time of ratification.

The Chairman :

Translation : We now have a proposal, put forward by the Italian delegation and supported by the Turkish delegation, to the effect that this article should be entirely omitted. If, however, the text is adopted, we shall have to decide on the British amendment, and if the French delegation maintains its amendment we shall also have to decide on that.

I now put the proposal to omit Article 2 to the vote.

On a show of hands, the proposal was rejected.

The Chairman :

Translation : I put the British amendment to the vote.

On a show of hands the British amendment was adopted.

The Chairman :

Translation : We now come to the French amendment.

M. de Navailles (France) :

Translation : Article 2 has this serious disadvantage, that it dissociates two ideas which were always closely associated — the idea of nationality and that of military service. Consequently, the French delegation hesitates to accept this text.

We were told that there were cases in which it was practically impossible to settle the conflict of nationality and free an individual possessing two nationalities from one of them. The desire was then expressed that at least this person should not have to bear twice over the heavy burden of military service. When military service had been accomplished in one country, there was no reason why it should be insisted upon by the other country.

We can understand this point of view, but we think that if we embark on this course the same might be said not only of an individual having two nationalities but *a fortiori* of a person who has only one.

It seems illogical that a person who has been released from the nationality of his country of origin should still be required to perform military service in that country. As we know, however, certain anomalies of this kind do exist. There are States whose laws — which I do not presume to criticise — maintain in certain cases the obligation of military service for persons who have ceased to be their nationals. Since the desire is to avoid this drawback, we should prefer it to be avoided on absolutely general lines. We therefore propose the addition of the provision which our Chairman has read, and which might, as one of my colleagues has just suggested, be better worded as follows :

> "Similarly a person who has lost the nationality of a State in accordance with the law of that State and has acquired another nationality. . ."

There is no change in the rest of the sentence. I do not think we need discuss this point, because delegations who accept Article 2 should logically accept the French amendment.

Mr. Flournoy (United States of America) :

On a point of order, Mr. Chairman, I should like to enquire whether the French delegation would have any objection to making this proposal a separate article. It seems to me unfortunate to join together two things which do not necessarily relate to the same subject. I am in favour of the proposal, but it seems to me that it is desirable to have it in a separate article, so that we can vote upon it separately and know for what we are voting.

M. de Navailles (France) :

Translation : I think it would be unwise to separate the two texts, because the object is the same in both. We wish to free from military service a person who, for some reason or other, is at present bound to accomplish such service in two countries. That is the main idea. In my text, we free from military service a person who has lost his nationality of origin in due form and who, nevertheless, on account of certain anomalies of national law, is still bound to accomplish military service in the country whose nationality he has duly lost.

The concepts are the same in the two texts. If we separate the texts, I, personally, shall be in a very difficult position, because I am prepared to adopt the text with my amendment, whereas I should not be entirely prepared to do so if my amendment were rejected.

Mr. Flournoy (United States of America) :

I did not suggest that the proposal made by the delegate for France should be put in a separate Protocol, but merely that it should be a separate article. I am in favour of its being included in the Protocol, but as a separate article.

M. de Navailles (France) :

Translation : I agree to that suggestion.

Mr. Dowson (Great Britain) :

As I have proposed an amendment to this article, I should like to take this opportunity

of saying that I support the further amendment proposed by the delegate for France.

The French amendment was put to the vote and adopted.

The Chairman :

Translation : We will now take a vote by roll-call. I would state again that this article will become a Protocol containing all three articles : the first will be the text of the present Article 2, the second will be the British amendment, and the third the French amendment.

In pursuance of the Rules, I am obliged (however tiresome it may seem) to call for a vote by roll-call ; first, on each of the three texts, and then on the whole.

The existing text of Article 2 was put to the vote by roll-call.

The following delegations voted in favour of Article 2 : Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Free City of Danzig, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, India, Latvia, Mexico, Monaco, Netherlands, Norway, Salvador, Spain, Sweden, Switzerland, United States of America.

The following delegations voted against : China, Czechoslovakia, Irish Free State, Italy, Japan, Portugal, Roumania, Turkey, Yugoslavia.

The following delegations were absent or abstained : Bulgaria, Cuba, Egypt, Hungary, Iceland, Luxemburg, Nicaragua, Persia, Peru, Poland, South Africa, Uruguay.

Article 2 was adopted by twenty-six votes to nine.

The Chairman :

Translation : We shall now vote by roll-call on the British amendment.

The following delegations voted for the British amendment : Australia, Austria, Belgium, Canada, Chile, Colombia, Free City of Danzig, Denmark, Estonia, France, Germany, Great Britain, Greece, India, Mexico, Monaco, Nicaragua, Salvador, Spain, Sweden, Switzerland, United States of America.

The following delegations voted against : Czechoslovakia, Finland, Italy, Japan, Portugal, Turkey, Yugoslavia.

The following were absent or abstained : Brazil, Bulgaria, Cuba, Egypt, China, Hungary, Iceland, Irish Free State, Latvia, Luxemburg, Netherlands, Norway, Persia, Peru, Poland, Roumania, South Africa, Uruguay.

The British amendment was adopted by twenty-two votes to seven.

The Chairman :

Translation : We will now vote by roll-call on the French amendment.

The following delegations voted for : Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Free City of Danzig, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, India, Latvia, Mexico, Monaco, Nicaragua, Salvador, Spain, Sweden, Switzerland, United States of America.

The following delegations voted against : Czechoslovakia, Italy, Japan, Portugal, Turkey, Yugoslavia.

The following delegations were absent or abstained : Bulgaria, China, Cuba, Egypt, Hungary, Iceland, Irish Free State, Luxemburg, Netherlands, Norway, Persia, Peru, Poland, Roumania, South Africa, Uruguay.

The French amendment was adopted by twenty-five votes to six.

The Chairman :

Translation : We will now vote by roll-call on the text as a whole.

The following delegations voted for : Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Free City of Danzig, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, India, Latvia, Mexico, Monaco, Salvador, Sweden, Switzerland, United States of America.

The following delegations voted against : Czechoslovakia, China, Irish Free State, Italy, Japan, Nicaragua, Portugal, Turkey, Yugoslavia.

The following delegations were absent or abstained : Bulgaria, Cuba, Egypt, Hungary, Iceland, Luxemburg, Netherlands, Norway, Persia, Peru, Poland, Roumania, South Africa, Spain, Uruguay.

The text as a whole, with the three articles, was adopted by twenty-three votes to nine.

The Chairman :

Translation : I note, in accordance with the Rules of Procedure, that this text has obtained more than a two-thirds majority.

Mr. Flournoy (United States of America) : I notice that the heading of our original document is : " Convention annexed to the Convention relating to Conflicts of Laws on Nationality. " I should like to be informed whether a change will be made, so that the text we have just adopted will be a separate convention which is not necessarily annexed to the main convention on Nationality.

The Chairman :

Translation : We have taken a decision regarding a Protocol. Article 1 of the original text has been rejected. There will be a Protocol with regard to Article 2 of the original text consisting of three articles. This Protocol will be called a Protocol annexed to the General Convention. We call it " annexed " in order that the general and formal clauses of the General Convention may apply to it and particularly in order that the signatory States may use any of the reservations with a view to eliminating, if they wish, some particular part of the Protocol.

M. Wu (China) :

I wish to raise a question of order. As regards Article 1, which has been rejected, the delegate of the United States of America expressed the desire that the matter should be brought to the attention of the various Governments. I do not know whether he made that as a formal proposal or not. In any case, I make it a formal motion.

The Chairman :

Translation : When we come to examine the various recommendations, every delegation will be able to submit new proposals. I note now, however, that the Chinese delegation wishes to submit a draft recommendation on the lines indicated by the delegation of the United States of America.

Mr. Flournoy (United States of America) :

It is possible that some delegations may be unable to sign the main Convention, but may wish to sign this Protocol. I should like to know whether that can be done.

The Chairman :

Translation : That is quite possible.

The continuation of the discussion was adjourned to the next meeting.

The Committee rose at 11.15 a.m.

TWENTY-FIRST MEETING.

Monday, April 7th, 1930, at 3 p.m.

Chairman : M. POLITIS.

58. CONVENTION ANNEXED TO THE CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS (continuation).

Article 3.

The Chairman :

Translation : We will now open the discussion on Article 3 (Annex III, Part I, 2).

M. Alvarez (Chile) :

Translation : This article deals with one special case and I do not think it is important enough to be made the subject of a special Convention. I propose that, if these provisions are adopted, they should be inserted in the general Convention.

The Chairman :

Translation : During the first reading there was very strong opposition to the insertion of this article in the general Convention. Nevertheless, if you wish it, I will consult the Committee.

M. Alvarez (Chile) :

Translation : I do not wish to press the point, although, as I have already said, the article only deals with one particular case.

M. Diaz de Villar (Cuba) :

Translation : I beg to support the proposal made by my Chilian colleague — namely, that the article should not form the subject of a special Convention.

The Chairman :

Translation : You mean that it should be inserted in the general Convention?

M. Hering (Germany) :

Translation : The German delegation will abstain from voting, because the practical consequences in Germany, owing to the situation there, are not yet clear.

M. de Ruelle (Belgium) :

Translation : I presume that the discussion on this article is closed. I should, however, like to make one slight observation regarding the words " shall have " in the following sentence : "A child born of a mother possessing the nationality of that State and of a father without nationality, or of unknown nationality *shall have* the nationality of the said State. " The words " shall have " seem to me rather too imperative, in view of our conception of nationality — namely, that it has a contractual basis. We should have preferred to give the child a right of option.

I suggest that we should say that a child " shall be allowed to have " or " may have " the nationality, as he should be given an option.

The Chairman :

Translation : The position is thus as follows : A formal amendment has been proposed which also affects the substance of the article, because, if it were adopted, the article would cease to be imperative as it is at present. It would be

merely optional for the countries which accept it. The amendment is to replace " shall have " in the last line by the words " may have ". I will put that amendment to the vote; the Committee will then take its decision upon the adoption of the text, whether amended or not, and will finally have to take a decision on the proposal of M. Alvarez, which is supported by the delegate for Cuba — namely, whether this article is to form the subject of a special Protocol or is to be inserted in the general Convention.

I will now consult the Committee on the Belgian amendment.

A vote was taken by a show of hands, and the Belgian amendment was rejected.

The Chairman:

Translation: We will now vote by roll-call on the text of Article 3.

The following delegations voted in favour of Article 3: Australia, Belgium, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, Free City of Danzig, Estonia, France, Great Britain, Greece, India, Irish Free State, Japan, Latvia, Mexico, Netherlands, Nicaragua, Poland, Portugal, Roumania, Switzerland, Turkey, United States of America.

The following voted against: Hungary, Yugoslavia.

The following delegations were absent or abstained: Austria, Bulgaria, Colombia, Denmark, Egypt, Finland, Germany, Iceland, Italy, Luxemburg, Monaco, Norway, Persia, Peru, Salvador, South Africa, Spain, Sweden, Uruguay.

Article 3 was adopted by twenty-six votes to two.

The Chairman:

Translation: We must take a decision on M. Alvarez's proposal. You have just adopted Article 3 by twenty-six votes to two. It has been proposed that this article should form the subject of a special Protocol. The Chilian delegation now requests that this provision should be inserted in the general Convention.

I would ask the Committee to be good enough to take a decision upon this proposal which is supported by the Cuban delegation.

M. Diena (Italy):

Translation: I think that some of those who voted in favour of the text, and some who abstained, did so on the understanding that this article was to be inserted in a special Protocol. I am inclined to think that certain of them might have voted otherwise if they had known that this article was to stand alone or to be inserted in the general Convention, or even to take some other special form.

M. Alvarez (Chile):

Translation: If my proposal raises objections or is likely to cause any misunderstanding, I am quite prepared to withdraw it.

The Chairman:

Translation: I am grateful to M. Alvarez for displaying this conciliatory spirit.

Does M. Diaz de Villar associate himself with M. Alvarez's offer?

M. Diaz de Villar (Cuba):

Translation: I also agree to the withdrawal of the proposal.

The Chairman:

Translation: I should like to thank M. de Villars also.

Article 1 (continuation).

The Chairman:

Translation: I have just received a proposal from the Australian, Austrian, Belgian, British, Canadian, German and Swiss delegations to apply to Article 1 — which only obtained a simple majority this morning — Article XX of the Rules of Procedure of the Conference. This article provides that:

" In the case of provisions which have secured only a simple majority, a Committee, at the request of at least five delegations, may decide by a simple majority whether such provisions are to be made the object of a special protocol open for signature or accession."

I suggest that the Committee should now vote on the question whether the text of Article 1 is or is not to be the subject of a special Protocol. The vote will be taken by roll-call.

The following delegations voted in favour of the proposal: Australia, Austria, Belgium, Brazil, Canada, China, Cuba, Free City of Danzig, Germany, Great Britain, Greece, India, Irish Free State, Poland, Portugal, Roumania, Switzerland.

The following delegations voted against: Czechoslovakia, France, Hungary, Italy, Japan, Latvia, Norway, Sweden, Turkey, Yugoslavia.

The following delegations were absent or abstained: Bulgaria, Chile, Colombia, Denmark, Egypt, Estonia, Finland, Iceland, Luxemburg, Mexico, Monaco, Netherlands, Nicaragua, Persia, Peru, Salvador, South Africa, Spain, United States of America, Uruguay.

The Committee decided by seventeen votes to ten, that Article 1 should form the subject of a special Protocol.

59. STATELESSNESS: RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman:

Translation: The recommendation regarding statelessness (Annex III, Part I, 3) reads as follows:

" The Conference is unanimously of the opinion that it is very desirable that the

various States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce, so far as possible, cases of statelessness, and that the League of Nations should continue the work which it already has in hand for the purpose of arriving at an international settlement of this important matter."

M. Hering (Germany) :

Translation : In voting in favour of this recommendation, the German delegation would urge that, when future regulations are drawn up, Governments should endeavour to remove the causes of statelessness which still exist in the legal provisions of certain countries and should refrain from imposing the burdens and difficulties resulting from those provisions upon countries which offer hospitality to stateless persons.

The Chairman :

Translation : A vote will now be taken on the draft recommendation concerning statelessness. As this is merely a recommendation, it will be taken by a show of hands — unless anyone asks for a vote by roll-call.

By a show of hands the recommendation concerning statelessness was unanimously adopted.

60. DUAL NATIONALITY : RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman :

Translation : The recommendation regarding dual nationality (Annex III, Part I, 3), reads as follows :

"The Conference is also unanimous in declaring that it is very desirable that the various States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of dual nationality and that steps should be taken to prepare the way for a settlement by international agreement of the conflicts which arise from the possession by individuals of two or more nationalities."

M. Merz (Switzerland) :

Translation : The Swiss delegation wishes to repeat its original proposal to the effect that the Conference should recommend the League of Nations to examine the possibility of settling all the conflicts arising out of dual nationality by international agreements. It considers that this is the only means of reaching an early solution of this important problem.

In view of the fact that the Preparatory Committee appointed by the League has already gone into certain aspects of the problem of the position of persons possessing dual nationality, we think it only logical to ask the League to examine this question as a whole.

The Chairman :

Translation : Are you sure that the League has already dealt with dual nationality?

M. Merz (Switzerland) :

Translation : I only know that the Preparatory Committee appointed by the League to deal with codification has already examined certain aspects of this question.

Mr. Flournoy (United States of America) :

Our delegation has proposed an addition to this article which reads as follows :

"In particular, it is recommended that the various States adopt legislation designed to facilitate renunciation by persons born with dual nationality of the nationality of the countries in which they are not residing and that such renunciation be not made subject to the fulfilment of unnecessary conditions."

M. Soubbotitch (Yugoslavia) :

Translation : The Yugoslav delegation suggests that the text of the recommendation submitted to the Committee might be made clearer by the addition of the word "various" to the word "conflicts", so that the text would read as follows : ". . . for a settlement by international agreement of the various conflicts which arise from the possession by individuals of two or more nationalities". From the proposed text, it might be thought that this text referred to conflicts of nationality, with which the recommendation does not deal. It refers to an agreement to regulate the consequences of dual nationality and not conflicts of nationality as such.

The Chairman :

Translation : I will now consult the Committee on the various amendments. There is, first, the Swiss amendment to substitute in the fifth line "and that the League of Nations should consider what steps should be taken", for "and that steps should be taken".

By a show of hands the Swiss amendment was adopted.

The Chairman :

Translation : I will now ask you to vote on the Yugoslav amendment, which is to add the adjective "various" to the word "conflicts".

By a show of hands, this amendment was adopted.

Mr. Flournoy (United States of America) :

I want to make a very brief explanation of our proposed amendment. The rule laid down in the general Convention upon this subject seems to us almost meaningless. One of the objects of this Conference was to devise means of terminating or preventing dual nationality ; but when we came to the very reasonable

proposal contained in the original draft of the Preparatory Committee, it was very largely nullified by the addition of certain conditions which seemed to me to make it mean almost nothing. While our text, of course, in no way changes that rule, it does propose that a certain principle be followed in the legislation of various States towards this end, that is, towards the termination of dual nationality.

M. Soubbotitch (Yugoslavia):

Translation: Is this an amendment to the third recommendation or a new recommendation? It seems to me that, in its present form, the amendment deals with an entirely different question from that referred to in the third recommendation. The latter is concerned with conflicts resulting from dual nationality and, in particular, with questions relating to military service, which we had in view when we drew up the recommendation. The United States amendment refers to the renunciation by a person possessing two nationalities of one of those nationalities.

The Chairman:

Translation: We are dealing with a recommendation relating to dual nationality. In this recommendation, States are urged to make every effort to reduce cases of dual nationality. The United States amendment comes within the scope of this recommendation.

M. Soubbotitch (Yugoslavia):

Translation: But that amendment refers to conflicts of nationality.

The Chairman:

Translation: Do you desire to make a formal proposal to the effect that the text submitted by the United States delegation should form a separate recommendation?

M. Soubbotitch (Yugoslavia):

Translation: I should like to propose that a vote be taken separately on the two recommendations. We are prepared to accept the former but not the latter.

Mr. Flournoy (United States of America):

I have no objection to the two texts being voted separately.

M. Giannini (Italy):

Translation: I do not know whether the Committee is prepared to accept this recommendation, the wording of which seems to me to be rather — well, American. Our United States colleague proposes that we should adopt a text recognising that the conditions laid down in certain legislations are unnecessary. To what legislations does that apply? America will say that it applies "to the laws of other countries" and other countries will say "to American legislation".

Is it desirable to adopt this somewhat strange word, which is in any case unnecessary?

Mr. Flournoy (United States of America):

I appreciate the compliment that the text is very American; I admit it was drafted rather hastily and I have no objection to changes in phraseology which do not change the sense. That is a matter of drafting.

The Chairman:

Translation: Would M. Giannini accept, instead of "unnecessary" the following expression: "fulfilment of conditions that are not essential"?

M. Giannini (Italy):

Translation: Certainly; "unnecessary" is a somewhat strong term to use.

Mr. Flournoy (United States of America):

I shall leave that matter to the Drafting Committee.

The Chairman:

Translation: The Committee must now vote on each of these two texts; first, on that in regard to which it has just accepted two amendments — the Swiss and the Yugoslav — and, afterwards, on the text proposed by the delegation of the United States of America, which it has just been suggested should form a seperate recommendation.

I will now consult the Committee on the text relating to dual nationality.

This text was unanimously accepted.

The Chairman:

Translation: I will next ask the Committee to vote on the United States amendment, it being understood that the word "unnecessary", at the end of the amendment, will be replaced by another expression, such as "which are not essential". In accordance with what has just been decided, the Drafting Committee will see whether that expression is in conformity with the views put forward by M. Giannini.

The United States text was accepted by fourteen votes to thirteen.

The Chairman:

Translation: There is a majority of one vote, only, but that is sufficient as this is a recommendation.

61. NATURALISATION: RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman:

Translation: We will now consider the recommendation concerning naturalisation.

The first paragraph reads as follows (Annex III, Part I, 3):

"It is desirable that States should give effect to the principle that the acquisition of

a foreign nationality through naturalisation involves the loss of the previous nationality."

The second paragraph reads:

"It is at the same time desirable that, before conferring their nationality by naturalisation, States should endeavour to ascertain that the person concerned has fulfilled, or is in a position to fulfil, the conditions required by the law of his country for loss of nationality."

Mr. Flournoy (United States of America):

I regret to rise so frequently, but I have another distinctly American suggestion to make. This Committee has already resolved to delete Basis No. 6 submitted by the Preparatory Committee. The first sentence, to the effect that a person acquiring a foreign nationality thereby loses his former nationality, was rendered practically meaningless by the second sentence which made such termination depend upon the fulfilment of conditions prescribed by the Government of the country of which the person was formerly a national. At the same time, the Committee unanimously adopted the provision contained in the first paragraph of this recommendation now before us.

The recommendation has come back from the Drafting Committee completely changed, not only in form, but in substance; for it now contains an additional paragraph similar in effect to the second sentence of Basis No. 6 which was definitely rejected by the Committee because a considerable number of delegations was unalterably opposed to it.

The provision in the first paragraph of this recommendation was accepted because of the obvious impossibility of finding for insertion in the Convention a formula concerning the effect of naturalisation which would meet the views of all or of most of the delegations. It is obvious that the real meaning of the recommendation as it now stands is to be found in the second paragraph, which serves to nullify the first. With the second paragraph included, the recommendation makes it necessary for an applicant for naturalisation to show that he has fulfilled conditions prescribed by the State from which he came, however drastic they may be, before he can be naturalised.

I move that this second paragraph be deleted leaving the recommendation in the form in which it was originally adopted unanimously by this Committee, and that a vote then be taken upon the first paragraph. Allow me to add that the delegation of the United States of America will attach much importance to the action to be taken by the Committee in regard to this matter, and believes that other countries of immigration, being desirous of establishing liberal rules concerning naturalisation, will have the same view.

Mr. Dowson (Great Britain):

I quite appreciate the criticism which has been made by the delegation of the United States of America in regard to this recommendation. At the same time, I think there is something of real value in the second paragraph, and that the criticism of the United States delegation might be met if we were to insert after the words "desirable that" the words "pending the full realisation of this principle", the sentence would continue "States, before conferring . . ."

This text appears to me to meet the objection which has been made, and which might, in any event, have been made against this recommendation as it stands — namely, that the two paragraphs are to some extent inconsistent. I therefore move that those words be inserted.

The Chairman:

Translation: According to this proposal the second paragraph would read as follows:

"It is, at the same time, desirable that, pending the full realisation of this principle, States, before conferring . . ."

M. de Berczelly (Hungary):

Translation: I ask that a vote on the two paragraphs be taken separately and wish to draw the Drafting Committee's attention to the necessity of keeping out of the Final Act recommendations which have not been adopted unanimously so as not to prevent the delegation which voted against those recommendations from signing the Final Act, because it would contain recommendations contrary to the views of their Governments. That would be the case in particular with my delegation. Some means of preventing this must be found.

The Chairman:

Translation: The various parts of a recommendation must be taken separately when this is asked for, and I have noted the request made by the Hungarian delegation. However, as regards his conception of the Final Act, I should like to point out to my colleague that the Final Act is merely a record of the Conference's work. Signature does not imply approval of anything whatsoever; it is merely a confirmation of what has been done.

M. de Berczelly (Hungary):

Translation: A distinction should, however, be made between recommendations adopted unanimously and those which merely obtain a simple majority.

The Chairman:

Translation: We are quite agreed on that point. In the Final Acts of Conferences it is customary to indicate anything that has not been accepted unanimously. It is stated that such and such recommendations or provisions were accepted unanimously, adding that the Conference also expressed certain other recommendations. This implies that the

latter were not adopted unanimously. In any case, this is a question which must be discussed by the Conference at its plenary meeting.

M. de Berczelly (Hungary) :

Translation : But the Conference also includes the delegates who voted against certain provisions.

M. Merz (Switzerland) :

Translation : The Swiss delegation proposes to delete this recommendation, because it merely deals with the special case of dual nationality resulting from naturalisation, and the first part of the recommendation on dual nationality, which we have already accepted, states that it is desirable that all cases of dual nationality should be eliminated.

In our opinion, these two recommendations overlap and the former appears to be superfluous. We accordingly request that it should be deleted. If our proposal is not supported, we shall support the amendment submitted by the delegation of the United States of America to delete the second paragraph.

M. de Navailles (France) :

Translation : The French delegation supports the proposal of the delegate of the United States of America. Since the vote is to be taken separately, it desires to state at once that it will vote for the first paragraph and against the second.

The Chairman :

Translation : The position is as follows : I have before me a proposal for the total deletion of this recommendation, which at present consists of two paragraphs ; a proposal to delete the second paragraph ; a proposal for a separate vote on each paragraph, and a proposal for an amendment to paragraph 2 submitted by the British delegation.

M. de Vianna Kelsch (Brazil) :

Translation : I am entirely in agreement with the views expressed by the United States of America and French delegations.

The Chairman :

Translation : I would ask the Committee to vote first of all on the proposal to delete the whole recommendation. If this proposal is accepted, no further discussion will be necessary.

By a show of hands, the proposal to delete the whole recommendation was rejected.

The Chairman :

Translation : I will now consult the Committee on the deletion of paragraph 2.

By a show of hands, the proposal to delete paragraph 2 was rejected.

The Chairman :

Translation : We now come to the British amendment which proposes to add to the second paragraph, after the words " it is also desirable ", the words : " pending the full realisation of this principle ".

By a show of hands, the addition was accepted.

M. de Berczelly (Hungary) :

Translation : I propose that the first paragraph should be deleted.

The Chairman :

Translation : A proposal has been made to delete the first paragraph, which I will put to the vote.

By a show of hands, the motion to delete the first paragraph was rejected.

The Chairman :

Translation : As it has been requested that a separate vote should be taken on each paragraph, the Committee will vote on the adoption of the recommendation, paragraph by paragraph.

The vote will now be taken on the first paragraph.

By a show of hands, the first paragraph was adopted.

The Chairman :

Translation : We will now vote on paragraph 2.

By a show of hands, paragraph 2 was adopted.

The Chairman :

Translation : I will now ask the Committee to vote on the two paragraphs taken together.

By a show of hands the whole of the text was adopted by twenty-three votes to seven.

62. NATIONALITY OF MARRIED WOMEN : RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman :

Translation : We now come to the recommendation (Annexe III, Part I, 3), which deals with married women, and which reads as follows :

> " The Conference recommends to the Governments the study of the question whether it would not be possible to introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the children, and especially to decide that, in principle, the nationality of the wife should not be affected without her consent either by the mere fact of marriage or by any change in the nationality of her husband."

This is the outcome of the work of the Drafting Committee, which combined the two proposals originally put forward by the United States of America and Belgian delegations.

M. de Ruelle (Belgium) :

Translation : I need not repeat that Belgium is entirely in agreement with the spirit of the draft recommendation which our Chairman has just read to us. I am inclined to think, however, that it is expressed in terms which go somewhat further than we intended, and that it might accordingly give rise to difficulties in certain countries. I propose, therefore, that we should go back to the wording originally suggested by the Belgian delegation, which says the same thing in substance, but, if I may say so, says it rather more tactfully and is less likely to cause cynics to assert that we have gone too far.

The Chairman :

Translation : Am I to understand that the Belgian delegation desires the deletion of the first part of this text and the substitution of the original formula proposed by the Belgian delegation for the second part?

M. de Ruelle (Belgium) :

Translation : That is so, Mr. Chairman. We do not think there is any advantage to be gained from stating in so many words the principle of the equality of the sexes — which is, of course, what we have in view.

M. Hering (Germany) :

Translation : According to the text before us, we presume that the expression " especially to decide " refers to the words " whether it would not be possible ", and that the obligation to take account of the interests of the children also applies to the second part of this paragraph. If so, we shall vote in favour of the amendment.

The Chairman :

Translation : This difficulty could easily be removed by separating the two sentences by a semi-colon : " The Conference recommends to the Governments . . . children ; it also recommends them especially to decide . . . "

M. Hering (Germany) :

Translation : I think we only wish to recommend that Governments should study the question, so that the second part should read : " The Conference recommends the study of the question whether it would not be possible especially to decide . . . "

The Chairman :

Translation : The German delegation's wishes would be met by inserting a semi-colon after the word " children " and saying " it also recommends them to study the question whether it would not be possible especially to decide . . . ".

Do you wish to mention the children again in the second part?

M. Hering (Germany) :

Translation : Yes.

M. Alten (Norway) :

Translation : I have no objection to the wording proposed by the Chairman, but I would point out that it would have been possible merely to insert the numbers " (1) " and " (2) " before the words " introduce " and " decide " respectively.

M. Giannini (Italy) :

Translation : I think this is really rather naive. The discussion has revealed the varying conceptions of society held by the different countries. We were unable to agree upon the principle to be inserted in the Convention, but we now propose to ask countries which hold other views to alter their conception of society. I would repeat that this is really too naive and absolutely useless.

For the same reason that I could not accept the principle as an article of the Convention, I obviously cannot accept it as a recommendation. If the Italian conception of family life had enabled me to accept the Convention the question would be settled. I cannot accept a recommendation to alter our conception of society.

The Chairman :

Translation : To consider, not to alter.

M. Giannini (Italy) :

Translation : That is too naive, and I prefer to vote against the recommendation.

The Chairman :

Translation : I think the Committee is now sufficiently enlightened and that we can proceed to take a vote.

First, we have a proposal to delete the first sentence ; secondly, to insert after the word " possible " " (1) ", and before the words " to decide " " (2) ", to meet the views of the German delegation, as suggested by the Norwegian delegation. Lastly, it is proposed to substitute for the second part of the text the formula submitted by the Belgian delegation in document 16 *(b)*.

I will now consult the Committee with regard to the deletion of the first part of the text, which M. Giannini has termed too naive.

M. Giannini (Italy) :

Translation : I desire the deletion of the whole article.

The Chairman :

Translation : I am sorry. The proposal is to delete the whole text. I will now put the proposal to delete the recommendation to the vote, but I must observe that this will cause the ladies great disappointment.

By a show of hands, the Committee decided to retain the recommendation.

The Chairman :

Translation : I will now consult the Committee on the proposal to omit the first part of

the recommendation, and would inform you that this deletion would also grieve the ladies.

By a show of hands, the Committee decided to retain the first part of the recommendation.

The Chairman:

Translation: Does the Belgian delegation desire to maintain its proposal?

M. de Ruelle (Belgium):

Translation: Yes.

The Chairman:

Translation: The Belgian delegation's proposal is to replace the second part of the recommendation by the text submitted by that delegation, which reads as follows:

"The Nationality Committee of the First Conference for the Codification of International Law considers it desirable that, in future, the laws of the various countries should not determine the nationality of a woman solely by reason of her marriage or of a change in the nationality of her husband without, to some extent, granting her the right usefully to manifest her intention."

I will now put that proposal to the vote.

By a show of hands, the Belgian proposal was rejected.

The Chairman:

Translation: Does anybody wish the final vote to be taken separately on each part of the recommendation?

M. Merz (Switzerland):

Translation: I beg to move that.

The Chairman:

Translation: Before taking the final vote, I must ask the Committee whether it is prepared to accept the slight alteration proposed by the Norwegian delegation, to insert "(1)" after the word "possible" and "(2)" after the words "of the children and", so as to separate the two sentences.

By a show of hands, the Norwegian delegation's proposal was accepted.

The Chairman:

Translation: As a separate vote has been requested, I will consult the Committee on each of the two sentences and then on the whole text.

I put to the vote the first part of the recommendation down to the words "the interests of the children".

By a show of hands, the Committee adopted the first part of the recommendation by twenty-seven votes to two.

The Chairman:

Translation: We will now vote on the second part.

By a show of hands, the Committee adopted the second part of the recommendation by twenty-six votes to three.

The Chairman:

Translation: I will now put to the vote the whole recommendation.

By a show of hands, the Committee adopted the whole recommendation by twenty-seven votes to two.

63. PASSPORTS OF MARRIED WOMEN WHO HAVE LOST THEIR NATIONALITY OF ORIGIN: RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman:

Translation: We pass now to the following recommendation:

"The Conference is of opinion that a woman who, in consequence of her marriage, has lost her nationality of origin without acquiring that of her husband should be able to obtain a passport from the State of which her husband is a national."

M. Joachim (Czechoslovakia):

Translation: I propose that, instead of saying "her nationality of origin", we should say "her former nationality".

M. Giannini (Italy):

Translation: If a woman has not acquired a new nationality in consequence of her marriage, we cannot speak of her previous nationality.

M. de Navailles (France):

Translation: It is sufficient to say "her nationality".

M. Joachim (Czechoslovakia):

Translation: I support M. de Navailles's proposal.

The Chairman:

Translation: I will now ask you to vote on the Czechoslovak amendment as modified by the French delegation.

By a show of hands, this amendment was adopted.

By a show of hands, the recommendation, amended as above, was adopted unanimously — less two votes.

64. RECOMMENDATION REGARDING A CERTAIN CASE OF STATELESSNESS PROPOSED BY THE CHINESE DELEGATION.

The Chairman:

Translation: I have before me an amendment submitted by the Chinese delegation and reading as follows:

"The Conference recommends to the Governments the study of the question

whether it would not be desirable that, in the case of a person losing his nationality without acquiring another, the State whose nationality he last possessed shall, at the request of the country where he is residing and under certain conditions, admit him to its territory."

I wish to point out that this amendment is closely connected with the old Article 1 of the annexed Convention, which as a result of the special vote which has just been taken, is to be inserted in a special protocol.

M. Wu (China):

This recommendation was prepared as the result of our discussion this morning. Since then, the original Article 1 which gave rise to the proposal has been accepted as a special Protocol by the Committee. Nevertheless, I think it is not useless to include this recommendation — in view, first, of the considerable minority which voted against the special Protocol, and also the considerable number of abstentions.

The recommendation, as you will see, is drafted so as to remove as many as possible of the objections which were raised originally in regard to the Article 1. I may say, further, that if the principle of this recommendation is accepted, I shall have no objection either to its adoption in its present form, or, if the Committee thinks fit, to its being left to the Drafting Committee to incorporate it in the recommendation on statelessness which we have already adopted. This text can, if so desired, be easily so incorporated, making a recommendation to the various States to spare no effort to reduce, as far as possible, cases of statelessness. We could also add, if necessary, "to remove also the inconvenience of statelessness". I would like to ask the Committee to vote on the principle of the recommendation rather than on the exact wording.

Mr. Flournoy (United States of America):

I wish to support the proposal of the Chinese delegation because the provision contained in the special Protocol which has already been adopted seems to us inadequate, and this subject of deportation is quite an important one, of great interest to all immigration countries. It is not an easy problem to solve in a short time and therefore I think it would be very desirable to have it studied further.

Mr. Dowson (Great Britain):

I also desire to support the proposal of the Chinese delegation, subject to any formal alteration which it is possible to make.

M. Giannini (Italy):

Translation: If we adopt so many recommendations, this will, I think, be interpreted as a sign of weakness on the part of the Conference. Since we have been unable to reach agreement on essential questions, we have taken refuge in recommendations. What purpose do they serve?

Rules have already been inserted in a special Protocol and I do not see the use of multiplying the recommendations. If you think you are going to get the people who refused to sign the Protocol to vote for the recommendations I think you are mistaken.

In any case, I should like to know what practical purpose these recommendations will serve.

The Chairman:

Translation: I will now consult the Committee on the Chinese proposal, it being understood that, if it is adopted, the Drafting Committee will be asked to consider whether it is not possible to combine this text with the text which you have just adopted with regard to statelessness. You are merely asked to decide on the principle.

The Chinese proposal was adopted by twelve votes to nine.

65. UTILISATION OF THE INSTRUMENTS OF THE CONFERENCE AS A BASIS FOR FUTURE CONVENTIONS: RECOMMENDATION PROPOSED BY THE DRAFTING COMMITTEE.

The Chairman:

Translation: We now come to the proposal drawn up by the Drafting Committee with regard to future Conventions. This reads as follows:

"The Conference, with a view to facilitating the progressive codification of international law, recommends that, in the future, States should be guided as far as possible by the provisions of the Acts of the First Conference for the Codification of International Law in any special Conventions which they may conclude among themselves."

By a show of hands, this recommendation was adopted unanimously.

66. PROOF OF NATIONALITY: PROPOSAL OF THE CZECHOSLOVAK, POLISH, PORTUGUESE, ROUMANIAN AND YUGOSLAV DELEGATIONS.

The Chairman:

Translation: We will now take the proposal submitted by the Czechoslovak, Polish, Portuguese, Roumanian and Yugoslav delegations, which reads as follows:

"The First Conference for the Codification of International Law draws attention to the advisability of examining at a future conference questions connected with the proof of nationality.

"It would be highly desirable to determine the legal value of certificates of nationality which have been, or may be, issued by the competent authorities, and to lay down the conditions for their recognition by other States."

By a show of hands, the recommendation was adopted by twenty-one votes to three.

67. PREPARATION OF FUTURE CONFERENCES : PROPOSALS OF THE DANISH AND GREEK DELEGATIONS.

The Chairman :

Translation : We have now reached the last item on our agenda : the preparation for future conferences. There are two proposals, one by the Danish delegation and the other by the Greek delegation. The Danish proposal reads as follows :

"The First Conference for the Codification of International Law draws attention to the fact that it would be desirable to continue the work of codifying international law which has been so successfully begun.

"In view of the detailed discussions between delegations of the Governments attending the Conference, it is of opinion that the previous preparation of future preliminary drafts or Bases of Discussion by the International Committee for the Progressive Codification of International Law might be considerably reduced.

"In order to ensure as useful a development as possible of the work of codifying international law, it would be desirable to prepare first of all the codification of those parts of international law where the interests of States may be assumed to be in harmony and where agreement on fundamental principles may be held to exist."

M. Martensen-Larsen (Denmark) :

The Danish proposal is withdrawn.

The Chairman :

Translation : The Greek proposal reads as follows :

"The Conference recommends the League of Nations to convene a second Conference for the Codification of International Law for a date to be fixed after consulting the Powers which have taken part in the present Conference, and not later than two years before the expiration of the period laid down in the Conventions concluded to-day within which the right of denunciation therein reserved by the High Contracting Parties must take effect, if such right is exercised by them.

"The Conference calls the attention of the League of Nations to the necessity of preparing the work of this second Conference sufficiently far in advance to enable its proceedings to be carried out with the necessary authority and rapidity.

"For this purpose, the Conference considers it very desirable that the procedure of preparation followed for the present Conference should be supplemented, more particularly, in the following respects :

"1. The programme of this second Conference should be drawn up only with the formal consent of a very large majority of the Powers who will be called upon to take part in it.

"2. The Powers should be asked, if necessary more than once, to reply accurately to the Questionnaire to be drawn up by the Preparatory Committee, and it would be highly desirable that the Council of the League of Nations should take steps to ensure that a large majority of these Powers submit replies.

"3. On receipt of these replies, the Preparatory Committee would have to draw up, in regard to each part of the programme of the suggested Conference, a preliminary draft Convention, which would be submitted to all Governments for their consideration, with a request to send in any observations they might desire to make ; the Preparatory Committee would consider these observations and would modify, if necessary, the said preliminary draft Convention, which would serve as a basis of discussion for the Conference.

"4. The same procedure should be followed in framing precise Rules of Procedure for the work of the Conference. They would lay down, in particular, the majority required for the adoption of the decisions of the Conference.

"5. Finally, a recommendation should be made to the Powers prepared to take part in this second Conference not to give their delegations an exclusively technical character, and to include therein a number of persons sufficient to take part in the work of the various Committees of the Conference."

M. Alvarez (Chile) :

Translation : The present Conference has given us valuable indications with regard to international law and its codification. It has shown us the need for scientific work and the critical study of that law, and also of the best methods of preparing and carrying out the work.

I should first like to say a few words as to the necessity for scientific work, which should cover the whole field of international law. The various Committees have discussed or examined many of the fundamental questions of that law, such as sovereignty, principles, rules, custom, international obligations, and so on.

This examination has shown that there was no agreement among the delegations on these fundamental questions, and I will even say that some confusion existed. Consequently, the co-ordination of these matters and of many other subjects is necessary in order to ascertain the true nature and character of this law which has undergone so many modifications since the middle of the nineteenth century. We might call this work the reconstruction of international law.

I will not dwell further on this subject, important though it is, as our time is limited. My views are expounded more fully in the report which I submitted to the session of the Institute of International Law recently

held in New York. Moreover, the Drafting Committee has adopted a recommendation to that effect.

In addition to the necessity for an examination of the whole field of international law so as to bring it into line with new international conditions, the question of its codification must be examined. Codification, in fact, raises many problems which it is necessary to foresee and solve.

I will not go into further details, but will pass on to the procedure suggested by the Greek delegation. That delegation has drawn attention to the lacunæ noted by the Conference in the preparation of its work, and, in particular, the inadequacy of the procedure by questionnaire employed by the Committee of Jurists. In some cases, the replies given by Governments to that questionnaire are very vague. I would point out in this connection that the American States do not care for this procedure and prefer a different one, which I will briefly explain.

In 1912, when a committee of American jurists met for the first time to prepare for the codification of international law, we thought that the best method would be to consult Governments by means of a questionnaire, as has just been done by the Committee of Jurists appointed by the League of Nations. We did not do so, however, because we ascertained that Governments were unwilling to give replies *in abstracto* without knowing precisely to what they were committed.

In 1923, when the Fifth Pan-American Conference decided to resume the work of codifying international law, we felt that methods should be changed, and that it would be better to submit to the American States for their opinion preliminary drafts drawn up by the Committee.

This Committee, consisting of Government delegates, met in 1927 to prepare drafts, or rather preliminary drafts, which were transmitted to their Governments. The latter studied them and issued instructions to their delegates to the Sixth Pan-American Conference, at which they were to be discussed. That Conference was thus able, in a very short time, to adopt ten drafts on different subjects.

The procedure I have indicated, therefore, seems to be the best one. If, as the Greek delegation proposes, a questionnaire should be sent to the Governments, this should be supplemented by a preliminary draft drawn up by the Committee entrusted with codification; the draft should also be submitted to Governments, so that the latter may give their opinions with a full knowledge of the facts.

For these reasons, I support the Greek proposal, which is very well thought out and merits the approval of the Conference.

The Chairman :

Translation : The very pertinent observations of M. Alvarez throw light, I think, on the problem, but what we have to do is merely to give an indication — we are not called upon to adopt a text. Notwithstanding the interest of this proposal, we need not concern ourselves with its wording; it will be for the Central Drafting Committee to draw up a text to be submitted to the Conference for its approval. It is our privilege, owing to the fact that our work is further advanced than that of the other two Committees, to be able to deal with questions of this kind. I will ask the Committee to state its views and to say whether it is in favour of this proposal or not.

M. Caloyanni (Greece) :

Translation : Personally I agree, and I feel sure the rest of the Committee will also agree, with the Chairman's observations and the remarks made by M. Alvarez. The object of our proposal is to turn to account the results of the lengthy experience which we have had. The Preparatory Committee had a definite task to fulfil; possibly our proposal does not come within the scope of that task, but there are various ways and means of dealing with any question, and it is the duty of this Committee to suggest what it considers to be the best procedure, since mention has already been made of a second Conference.

I need not say anything about the first part of our proposals. There are, however, three main points which I should like to bring to your notice. Paragraph 1 quoted above contains a sentence providing for " the formal consent of a very large majority of the Powers ". We have all noticed that, considering the number of Powers represented at this Conference, the number of replies was fewer than might have been expected. We should therefore endeavour to obtain a much larger number of replies.

You will see that, in Section 2, it is suggested that pressure should be brought to bear upon the Powers, who should be urged to send in their replies as soon as possible, because the greater the number of replies, the easier it will be to draw up the draft Convention referred to in Section 3 of the Greek proposal. After the bases, the preparatory work and the questionnaire have been examined, the remainder of the work, consisting largely of academic questions, can be done outside an assembly of this kind. That is the preparatory work for a conference which has to be done by Governments.

As a matter of fact, it is not sufficient to prepare the bases thoroughly; ideas must be expressed in concrete form. For that purpose, a preliminary draft must be drawn up. The Governments, after consulting each other, sending in their replies to the questionnaire, and examining any bases, can then draw up a new preliminary draft to be communicated to all Governments. We respectively submit our proposal in the hope that it may facilitate the work and enable each article to be considered separately.

You will have read the preliminary draft prepared by our distinguished colleague, M. Rundstein, and which is contained in the Preparatory Documents. One Government — namely, our own — replied article by article.

When general and abstract legal principles have been formulated and carefully considered as a whole, it is then possible to arrive at a text ; that text is examined and subsequently pronounced upon. This procedure saves time, and has the additional advantage of clearness ; it also enables each article to be taken by itself.

These few observations can and should be applied also to the second part of the proposal which we have had the honour to submit with reference to the question of majorities. After the Governments have been consulted and the time has come to draw up rules of procedure, it would be advisable for the same method to be followed. That would not only prevent objections being raised at the Conference but would also help it to take a decision at its general meetings.

I do not wish to detain you any longer. You have before you the Greek Government's proposal, which I feel will meet with the Committee's approval, and on the strength of M. Alvarez's remarks, I venture to thank the Committee in anticipation.

M. Giannini (Italy) :

Translation : I am somewhat reluctant to speak on a matter which is to be examined by the Central Drafting Committee, and possibly also at a plenary meeting. It is always tiring to me to have to repeat what I have already said, and I am sure you will not want to hear two speeches from me on the same subject. Nevertheless, I think it advisable that each Committee should turn to account the experience gained during its work, and should make practical proposals. The practical proposals made by the three Committees, which will be submitted to the Central Drafting Committee, may suggest to the latter the best method to be followed. I accordingly attach considerable importance to the practical proposals which may emanate from this Committee.

I should, however, like to draw your attention to certain points and to make some suggestions.

In considering methods of international codification, you may conclude that all methods are good or, on the other hand, that all are bad. You may even arrive at the conclusion expressed by the distinguished economist Pantaleoni that there are no schools of political economy, but only people who understand economics and others who do not. There is no perfect method of preparing for diplomatic conferences: there are some conferences which succeed and others which fail.

For instance, think of the difficulties we encountered in dealing with the codification of public and private air law ! Yet the determination to reach agreement enabled us to overcome all the obstacles which we met with in preparing for the Conference. It is all a question of method.

With regard to other conferences, however, and in particular the Hague Conference on Private Law, a very simple method was adopted. This consisted in drawing up a questionnaire, to which the Governments replied. The Conference was then summoned. When the Governments were prepared to reach agreement, the Conference approved the bases of the questionnaire. At the 1928 Conference, there was no possibility of reaching agreement with regard to sale. We set up a Committee to prepare a draft for submission to the Conference — that is to say, we acted in very much the same way as other conferences for which the preparatory work had been done by a special Committee ; a draft was then drawn up and examined and a Conference summoned.

It is unnecessary for me to remind you of the procedure adopted for the Conferences on Maritime Law. A permanent organisation prepares the drafts ; when these are considered ripe, they are sent to the Governments ; the latter convene the conference and agreement is usually reached. In some cases, it is necessary to revise the draft, but, on the whole, progressive codification is being achieved.

As regards private air law, after a first attempt at the Paris Conference in 1925, a draft was prepared and a Conference convened in 1929. In 1925, no one was so bold as to say that the draft was a final one. It was merely embodied in a Final Act. As it was subsequently found to be unsatisfactory, the draft was revised by the International Technical Committee of Legal Experts on Air Questions and agreement finally reached.

There are other methods also, but I need not describe them in detail.

What did the League of Nations do ? It first attempted to prepare drafts. That was the task of the Committee of Jurists. M. Caloyanni has just reminded us of the draft on nationality drawn up by M. Rundstein. As this method was not satisfactory, it was changed. A return was made to the method of questionnaires and Government replies. Then, after the replies had been received from the Governments, Bases of Discussion were prepared. I do not wish to be too critical, but I cannot help feeling that the League has acted rather mechanically. The Committee of Five argued that questions had been asked ; *ergo*, there must be replies ; *ergo*, these replies must constitute Bases of Discussion. Then, since the replies conflicted with each other, the Committee thought that it would perhaps be better not to do anything at all. Two attempts have thus been made to prepare for this League Conference.

What, now, does the Greek delegation propose? First of all : preparation, questionnaires, preliminary draft, then consultation of Governments on that preliminary draft, with a request to submit any objections they may have to make; next, a final preliminary draft, and lastly the summoning of the Conference.

But, at this point, I become sceptical.

In the first place, can we attach much importance to replies to questionnaires? Personally, I rather distrust over-careful replies. As a rule, and I say it without malice, these replies are prepared by a zealous secretary in some office, who very frequently copies them out of a handbook. His chief is too busy to go through the replies carefully; he thinks that the work the League has asked him to do is useless, and he sends off replies which in many cases do not really represent the views of his Government.

The Committee of Five has to work on those replies; it compiles statistics and draws conclusions, such as, for example, territorial waters. Five States are agreed on such a point, that point can stand. But that will not do, because the problem is only considered from a mechanical standpoint.

Even if replies to questionnaires are of some use, they are not a certain guide.

According to the Greek proposal, the Preparatory Committee is to draw up a preliminary draft convention to be submitted to all Governments for their consideration, with a request to send in their observations. In this case, also, we should have to contend with officialdom, and cautious, meaningless and non-committal replies would be given.

It is proposed that the final preliminary draft should then be submitted to the Preparatory Committee which would have before it a second series of replies. At this point, my scepticism increases. The Committee is to revise the draft and prepare for the Conference.

Is there any advantage to be gained from dividing this procedure into two stages? I do not think so. The question is still the same: if a Government desires to arrive at an agreement it will give a clear and definite reply to the questions asked and its observations on the preliminary draft and final preliminary draft will be very carefully drawn up. On the other hand, if it does not wish to reach agreement it will give very vague or learned replies, transcribing passages out of books.

Beacause I am sceptical, this does not mean that I consider the matter hopeless. After a lengthy examination of the problem and as a result of the experience gained by participating in all sorts of committees and conferences, I have reached the conclusion that the preparation for a conference is not of any great importance. I do not wish to advocate any particular method — it all depends on the subject; some questions require very lengthy preparation and others less. It is not possible to lay down any fixed rules on this matter.

In my opinion, the simplest procedure is to draw up very short questionnaires and not documents containing fifty or sixty questions. If doubts are aroused in the minds of those who are to give the replies, whether they are jurists or magistrates, they will give an inadequate answer when they are faced with general questions or, on the other hand, they may think of some particular case brought before their court of cassation or court of appeal and in regard to which they were called upon to display great legal skill, and will have that particular case in mind the whole time. Consequently, by going into too many details, the work will be hampered instead of hastened and negative results will be obtained.

The second point which I should like to emphasise is that the questionnaire should be very short and deal with essential points only.

It is necessary to have replies from Governments, but these replies must be accurate. In some cases, they consist of "Yes" or "No". In others, the reply covers a whole page and quotes legal works of reference, and after reading it you find that there is no real answer. Very often "Yes" or "No" is preferable to a lengthy reply.

When the replies to the questionnaires have been received, what is the next thing to be done? A preliminary draft is, I think, useful, since it fixes ideas. The preliminary draft can be prepared by legal experts. Then, although the jurists need not be sent away altogether, they should be invited to attend the conference as little as possible.

I am myself a jurist, and I am speaking quite frankly. If jurists have had no political or diplomatic experience, they are useless at a conference, as they do not possess the conciliatory spirit which is required. They cannot help thinking all the time of the academic aspect of the question and are too self-critical. Their mentality is not sufficiently supple to enable them to make the concessions which are essential in order to reach agreement. This remark should be taken as a paradox and not as the absolute truth. Nevertheless, negotiators certainly need to display a conciliatory spirit.

I accordingly support the last part of the Greek proposal. I do not know whether the wording is very elegant, but I leave that to M. Politis. At a conference it is obviously necessary to have persons who are capable of negotiating, but it is even more necessary for the work to be prepared by jurists whose wisdom and experience of human nature enable them to examine problems calmly and define them in accurate terms. Then, when the time comes to find practical formulæ, and compromises are necessary in order to reach agreement, the discussion should be left to persons accustomed to negotiating.

Preparation must therefore be reduced to a minimum. If the very lengthy procedure suggested in the Greek proposal is adopted, three or four years' hard work will be necessary before anything is done.

Another question has been raised, on which I have no advice to give. Care must be taken in selecting points for discussion, and we must

have the courage not to ask too much. In politics, it is often a sign of courage to ask for very little, especially in regard to progressive codification. The problems and questions should therefore be few in number, the preliminary drafts should be carefully drawn up and the negotiators well prepared.

It is very difficult to formulate these suggestions, but, in the Drafting Committee, we shall take into account the proposals submitted by each Committee and endeavour to find as elegant a formula as possible, bearing in mind the practical suggestions of the three Committees and the views of the Central Drafting Committee, to which, as you know, a new member has been added — a man of wide experience, M. Alvarez.

In conclusion, I would ask the Committee to make as many practical suggestions as possible, and to bear chiefly in mind the fact that if we really desire to codify international law we must renounce certain prejudices, and not continue to believe that the work can be expedited by over-preparation.

I hope the members of the Committee who have practical suggestions based on their experience to make — and your experience, Mr. Chairman, has been of the greatest value to the Committee — will be good enough to submit them to the Drafting Committee and thus help forward the work in regard to nationality.

M. Guerrero (Salvador), Rapporteur :

Translation : In my opinion, the Greek proposal is not in any way an improvement on the procedure followed by the League. Section 2 appears to imply that sufficient time was not allowed for the preparation of this Conference. As a matter of fact, the first resolution of the League on this subject dates back to 1924 and the Conference was not held until six years later. As you will see, sufficient time has elapsed for the preparation of the Conference.

I would add that, in my opinion, this preparation has been carried out very thoroughly. It was first undertaken by a Committee of jurists who were experts in the matter of codification. The various Governments were then consulted ; thirdly, the Preparatory Committee drew up questionnaires which were sent to the Governments and on which they gave their opinion. After all this preliminary work, the Conference was convened.

I do not think that the experience of the last few weeks is likely to prove very helpful for the future. While that experience has been encouraging in some respects it has not been so in others ; consequently, it is very difficult to deduce from this Conference any useful indications which may be placed at the disposal of the League for future reference.

I think, however, that one recommendation might be made. It should be said that the Committee of Legal Experts should not merely prepare reports and send them to the Governments, but should, after discussion, give an opinion, which would doubtless have some weight with the Governments. As you know, the Committee of Experts consists of fifteen or sixteen jurists drawn from every continent who have been selected because they represent the various legal systems of the world. But as this Committee has no fixed rule as to what should be done after a question has been examined, it has merely engaged in academic discussions which are set out in confidential Minutes ; it has not given any opinion on the various questions examined by it. I think that the Governments would find it easier to reply if, either by some indication on the part of the Conference, or as a result of direct action, the League recommended the experts in future to give an opinion on each question.

I have felt bound to offer certain, I think well-founded, criticisms with regard to the questions that have been retained as subjects for the present Conference. It has been said, for instance, that the League Council and Assembly placed on the agenda of our Conference questions which were very difficult for the beginning of the work of codification, and that it would have been preferable to start with questions on which agreement could have been reached with less difficulty.

My reply is that this criticism should be addressed to the Governments and not to the League or the Preparatory Committee. The Governments were consulted as to what were the most mature questions which they desired to see codified first of all. The Committee of Experts took into account the wishes expressed by the majority of those replies. Hence, important questions such as the matter of international responsibility or political questions such as the problems of nationality and territorial waters, were retained, while, on the other hand, problems such as diplomatic immunity on which we might more easily have arrived at an agreement, were not placed on the agenda of the Conference.

In conclusion, I would repeat that, in my opinion, the Greek proposal cannot be regarded in any way as an improvement on the procedure followed by the League.

M. Piip (Estonia) :

Translation : I should like to support the Greek proposal. This Conference should not be the last one. If international relations are to be governed by international law, that law must be defined. This can only be done by means of a conference, even if that conference is not able to frame a definite draft Convention, as has been the case in regard to certain questions.

I accordingly accept the proposal submitted by the Greek delegation, subject to any formal amendments which may be made by the Drafting Committee.

The Chairman :

Translation : I think that after this interesting exchange of views we can close the discussion.

The Drafting Committee will find sufficient data both in the Greek proposal and in the statements made by M. Giannini, M. Guerrero — who has had such extensive experience in these matters — and by the delegate for Estonia. M. Giannini said that certain conferences were bound to succeed and were in fact successful, whereas others, whatever preparation was made for them, were doomed to failure and did in fact fail. That is true. The essential point is, however, that the international authorities responsible for convening conferences should find out beforehand whether the conference will be successful or not, so as to avoid summoning conferences which are doomed to failure.

I do not think I am mistaken in saying that the public is very disappointed when successive conferences are summoned, in many cases with a programme promising speedy reforms, and in the end achieve little or nothing at all.

That was the case with some conferences held in the last months of the year 1929. I do not know what will be the outcome of the present Conference, but I think that the worst thing that can happen is public disappointment in regard to an international question.

Whatever the method of preparation, whatever the object in view, the authority whose duty it is to convene a conference must be absolutely certain that it will succeed, otherwise it is better not to convene it.

That is, I think, the only practical lesson taught by the experience of the last few years, and I expect that those who, like myself, have taken part in various conferences, will share my view.

If there are no objections, I shall take it that the Committee agrees to refer the Minutes of this meeting, which contain all the views exchanged, to the Central Drafting Committee. The latter will prepare its report, which will be examined, discussed and approved at a plenary meeting of the Conference.

The Committee rose at 5.50 p.m.

TWENTY-SECOND MEETING.

Tuesday, April 8th, 1930, at 10 a.m.

Chairman : M. POLITIS

68. EXAMINATION OF THE DRAFT REPORT OF THE COMMITTEE TO THE CONFERENCE.

The Chairman :

Translation : This morning we are going to examine the report of M. Guerrero on the Committee's work (Annex V).

M. Guerrero (Salvador), Rapporteur :

Translation : The report contains a summary of the Committee's work. It does not go into all the details and does not include all the comments made on the various articles. Only those which reflect the Committee's views — that is to say, which were tacitly adopted by the Committee — have been mentioned. The comments which were made by our Chairman and which did not meet with any opposition on the part of the delegations present have also been included.

The first part of the report contains some general observations which I hope will meet with your approval. In the latter part, certain changes had to be made at the last moment in view of the decisions reached by the Committee yesterday.

M. Restrepo (Colombia) :

Translation : May I congratulate Dr. Guerrero on the report which he has submitted to us? It gives an extremely accurate picture of the discussions — at all events, of those in which I took part. There is, however, one sentence on the second page of the French text which I feel should be changed. The text refers to countries which are "*exportateurs ou importateurs de populations*". It would be unworthy of the Conference to talk of shipping human beings as though they were cattle. In another part of the report, the term used is "*pays d'émigration et d'immigration*", and this term should be employed here.

M. Alvarez (Chile) :

Translation : I also wish to congratulate the Rapporteur on his very concise report. Conciseness is, in fact, the chief quality to be desired in a survey of this kind.

I should like to make an observation on a point of detail. The second paragraph of the report states : "From the outset of its work, the Committee realised that the nationality question . . ." I am not sure whether the expression "nationality question" is the right one ; would it not be better simply to

say "nationality", since nationality is not a question?

M. Guerrero (Salvador), Rapporteur :

Translation : M. Restrepo has pointed out (and quite rightly) that we have referred to "*l'exportation et l'importation de populations*". We had no intention whatever of comparing foreigners to cattle. However, in order to clear up any doubts on this point, we will change the term to "*émigration et immigration*".

In the first paragraph of my report, in referring to the Bureau and its constitution, I omitted to mention the Drafting Committee. That omission will be remedied.

The Chairman :

Translation : We will now read the report, page by page.

Introduction.

The Chairman :

Translation : In order to meet M. Alvarez's objection, we will use the term "nationality" instead of "nationality question". Has the Rapporteur any objection?

M. Guerrero (Salvador), Rapporteur :

Translation : None whatever.

The Chairman :

Translation : The verb "solve", in the second paragraph, is not the right one to use, because one does not solve a matter. It would be better to say : "From the outset of its work, the Committee realised that nationality, which is primarily a question of public law, is one of the most delicate and difficult matters to *regulate*".

Mr. Dowson (Great Britain) :

I desire to draw attention to the first sentence of the second paragraph of this admirable report, in order to clear up one small point. It appears to me that the meaning in the English text is not altogether clear, especially the reference to "public law". In the French text the term used is "*le droit public*". I understand that phrase to mean "municipal law". Otherwise it appears to me that the meaning of the sentence is a little difficult to follow. I suggest that so far as the English text is concerned the sentence might read as follows :

> "From the outset of its work, the Committee has realised that the nationality question is one of the most delicate and difficult to solve since, although it is primarily a matter for the municipal law of each State, it is nevertheless governed, to a large extent, by principles of international law."

It appears to me that this text expresses the contrast which the sentence is intended to bring out. I shall be glad to know whether this is the true sense intended by the sentence and, if not, exactly what is the relation between the "*droit public*", mentioned in the middle of the sentence, and the suggestion at the end : "*bien qu'elle soit entièrement dominée par des principes de droit international*".

M. Guerrero (Salvador), Rapporteur :

Translation : I am quite willing to agree to the changes proposed by the delegate for Great Britain, but in order to bring the French and English texts into line, I propose that we should employ the term "*droit interne*" in the French text, which corresponds more closely to the expression "municipal law" in the English text.

The Chairman :

Translation : That is, in fact, the correct translation.

M. Caloyanni (Greece) :

Translation : We have referred to "public law". But "*droit public*" is not "*droit interne*". Perhaps, in English, the expression "municipal law" means "public law". But is this so in French? Would it not be better to say "*droit national*"?

The Chairman :

Translation : The usual translation of the English term "municipal law" is "*droit interne*".

M. Caloyanni (Greece) :

Translation : The scope of the English term is wider than that of "*droit interne*".

Mr. Flournoy (United States of America) :

I should like to refer to the following sentence in the second paragraph : "This necessity gives rise to a clash between the conceptions — all of which are quite legitimate — on which the municipal law of the various countries is based". It seems to me that that statement is a little too sweeping and too strong. If all the claims of all States are quite legitimate from the standpoint of international law, it is hard to see how any changes would ever be made. I think the text might be made less sweeping and that it should be changed to read : ". . . all of which find support in the legislation of States", or something of that sort.

It seems to me that this is somewhat contradictory to the previous statement that the right of States to legislate on the subject is limited to some extent by general principles of international law.

M. Guerrero (Salvador), Rapporteur :

Translation : The words "all of which are quite legitimate" refer to two conceptions

which exist in international law — namely, the *jus soli* and the *jus sanguinis.* The words were inserted in order to satisfy countries whose municipal law is based on one or other of those conceptions, because it is not possible to say that only one of them is legitimate. The words in question can, however, quite well be omitted.

Mr. Flournoy (United States of America) :

I should see no objection whatever if it were made clear that this text only refers to the two systems of acquisition of nationality at birth, *jus soli* and *jus sanguinis.* Of course, it must be admitted that these two systems are recognised and it would be impossible to deny that either one is legitimate. The text, however, does not make that clear, and it seems to me that either the phrase should be omitted or else it should be made clearer.

The Chairman :

Translation : It would be better to omit the words "all of which are quite legitimate".

This was decided.

M. de Vianna Kelsch (Brazil) :

Translation : In paragraph 3, we read : "The Committee thus realised the inadvisability of any attempt to reconcile . . . " The French text differs from the English text. I think it would be better to say : "The Committee thus realised that the difficulties are at present insurmountable . . . "

M. Guerrero (Salvador), Rapporteur :

Translation : I take it that the proposal of of our Brazilian colleague refers mainly to the word "inadvisability". It is true that the Committee did not intend to lay it down as a principle that the attempts were "inadvisable". We could therefore satisfy our colleague by saying, for instance : "The Committee thus realised the difficulty of reconciling . . . "

M. de Vianna Kelsch (Brazil) :

Translation : " . . . realised the difficulty of reconciling now . . . "

M. Medina (Nicaragua) :

Translation : I propose the following formula : "The Committee realised the impossibility of reconciling now . . . "

M. Guerrero (Salvador), Rapporteur :

Translation : I accept that wording. It is of course understood that the general style of the report will be revised by your Rapporteur himself. Certain words must in some cases be deleted in order to avoid repetition.

Mr. Dowson (Great Britain) :

May I suggest that the English text should also be submitted to the same method of procedure, that it also should be looked through and questions of style dealt with?

Mr. Lansdown (South Africa) :

I think that, in the paragraph which begins : "Thus, the Committee began its work in full consciousness of the difficulties", the Rapporteur, in his very excellent report, has been just a little too modest in saying that it does not "attempt to bring about any uniformity in the laws governing the question".

I am not competent to say what the shade of meaning may be in the French text, but in the English text this would mean that we are abandoning all idea of effecting uniformity, whereas that is not the case ; moreover, I think that some measure of uniformity has happily been obtained. It seems to me, therefore, that it would be a good suggestion to add the word "complete" making it "any complete uniformity". The sentence would then read : "It did not attempt to bring about any complete uniformity in the laws governing the question". That would prevent anyone from getting the idea that we had abandoned all effort to obtain uniformity.

M. Guerrero (Salvador), Rapporteur :

Translation : I am quite prepared to accept that addition.

The Chairman :

Translation : Before we read the following paragraphs, I should like to point out that it was drafted before yesterday's decisions were taken. Some changes have accordingly had to be made and the Secretary will read the new text which has been brought into line with the position of our work.

The following text was read :

"The texts adopted by the Committee include :

"(1) . . . .

"(2) Two annexed protocols adopted by a majority of more than two-thirds of the delegations present : one on the question of military service, the other on the nationality of children whose fathers have no nationality or are of unknown nationality ;

"(3) A special Protocol, adopted by a simple majority, on the relations of stateless persons with the State whose nationality they last possessed ;

"(4) A number of recommendations to be inserted in the Final Act of the Conference."

This text was adopted.

The introduction, as amended, was adopted.

Article 2.

The Chairman :

Translation : The three paragraphs beginning "The Committee did not adopt the text" were replaced by the following :

"The Committee adopted, by a simple majority, the text thus submitted to it. It forms the subject of a special protocol.

"The Committee also unanimously adopted a recommendation proposed by the Swiss delegation concerning the settlement of statelessness in general.

"This recommendation, intended for insertion in the Final Act of the Conference, is worded as follows: (for text, see p. 306).

" . . . " (for text, see page 306).

"Another *vœu*, proposed by the Chinese delegation, was adopted by a majority. It reads as follows :

" . . . " (for text, see page 306).

This text was adopted.

Basis No. 3.

The text relating to Basis No. 3 was also adopted.

Article 3, Basis No. 4.

M. Wu (China) :

In regard to this Basis, you will remember that the Chinese delegation held certain rather strong views in the matter. While the report has given the various reasons why certain delegations opposed this article, I do not think it has mentioned the reasons for the Chinese objection, which is an objection to it in principle. I should like to ask the Rapporteur to insert the reasons for our objection.

The Chairman :

Translation : The observation of the Chinese delegate is quite in order, and to save time I suggest that we should leave it to the Rapporteur to consult with the Chinese delegation in regard to the addition of the necessary words at the end of the paragraph.

Agreed.

M. Rundstein (Poland) :

Translation : I propose that the last paragraph but one should read as follows :

"The Committee has not embodied this proposal in the Convention, since it deals with a case that is so rare as to be of little interest *at present* to the majority of States."

Possibly, this question might become of interest to States in future.

This text was adopted.

M. Nagaoka (Japan) :

Translation : In the last paragraph, it is stated that the text was adopted by forty votes to one. I understand that the majority was twenty-nine to five.

The Chairman :

Translation : That is correct. I have just consulted my notes. The number was in fact twenty-nine votes to five.

The text relating to Article 3, as amended, was adopted.

Article 4, Basis No. 5.

The text relating to Article 4 was adopted without observation.

*Article 5, Bases Nos. 6 and 6*bis.

Mr. Flournoy (United States of America) :

I should like to have a statement added after the recommendation to the effect that strong objections were raised by a minority to the second paragraph.

The Chairman :

Translation : In that case, it will also be necessary to mention that the whole was adopted by twenty-three votes to seven. Does the delegate for the United States of America agree to this?

Mr. Flournoy (United States of America) :

Yes.

The Chairman :

Translation : Then, in order to meet the wishes of the delegation of the United States of America, the sentence immediately preceding the quotation of the text should read as follows :

"This recommendation, though the second paragraph was strongly opposed by a minority of the Committee, was adopted as a whole by twenty-three votes to seven. It reads as follows : . . . "

M. Nagaoka (Japan) :

Translation : Just before the recommendation, the following words : "to omit Basis No. 6 and put forward a recommendation adopted by the majority" appear. Are the last four words to be retained?

The Chairman :

Transation : We might say : "to omit Basis No. 6 and put forward a recommendation to be inserted in the Final Act of the Conference". We could then go on to say : "This recommendation, though the second paragraph was strongly opposed . . . "

Mr. Dowson (Great Britain) :

There is one small point in the last sentence of the last paragraph but one of this section which reads as follows : " . . . the other that the fact that a new nationality has been acquired shall be notified". The sentence should read : " . . . the fact that the new nationality has been acquired shall be notified". I think also it is desirable that we should insert the words "where an expatriation permit has been issued", in order to draw attention to the fact that it is in that case that the proposal applies. The sentence, therefore, would read : " . . . the other that, where an expatriation permit has been issued, the fact that a new nationality has been acquired shall be notified".

The Chairman :

Translation : We need only add the words : " where an expatriation permit has been ssued ". Would that satisfy Mr. Dowson.

Mr. Dowson (Great Britain) :

Yes.

The text relating to Article 5, as amended, was adopted.

Article 7, Bases Nos. 7, 8 and 9.

The text relating to Article 7 was adopted without observation.

Article 13, Basis No. 10.

M. de Berczelly (Hungary) :

Translation : The last sentence of the first paragraph appears to give a quasi-authentic interpretation of Article 12 and to lay down that certain persons enjoy diplomatic immunities. I think this statement somewhat exceeds the scope of the report and also the competence of the Committee, which is not called upon to interpret the text of the Convention to be concluded.

According to Article 22 of the draft Convention, disputes relating to the interpretation of the Convention are to be settled by arbitration or judicial procedure. Consequently, a dispute relating to the question whether the child of a person entitled to diplomatic immunities was or was not subject to the law of the country in which it was born would be settled by arbitration or judicial procedure. I consider, therefore, that the last sentence of of the first paragraph of this section of the report should be deleted.

The Chairman :

Translation : When this Basis was discussed, certain delegations submitted an amendment to the effect that this provision should also cover the members of arbitral tribunals and international commissions of enquiry. They only agreed to withdraw their amendment on the understanding that this point would be mentioned in the report. Moreover, it is customary for the report to be a faithful record of a Committee's discussions. It is not to be regarded as an authentic interpretation by which judges will in future be bound, but merely shows the spirit in which the text was adopted.

M. de Berczelly (Hungary) :

Translation : As it stands, this passage looks very like a quasi-authentic interpretation, and should, in any case, be made somewhat less strong, so that this danger may be avoided.

Mr. Dowson (Great Britain) :

May I suggest, in order to meet the point raised by M. de Berczelly, that we might say " persons exercising official functions, but not necessarily enjoying diplomatic immunities " ? That would possibly meet the difference in meaning which he suggests.

The Chairman :

Translation : The Hungarian delegate's point is this : that he would not like this sentence in the report to be regarded as an interpretation of the Convention.

Mr. Flournoy (United States of America) :

The expression in the English text " the ordinary law " seems to me a mistranslation from the French. The meaning is not clear. I suppose it is intended to be " the common law ", but I doubt even the accuracy of that term. It seems to me that it would be still clearer if we simply said " the *jus soli* " because the *jus soli* is applied in many countries where the principles of what is usually known as " the common law " are not applicable.

The Chairman :

Translation : The correction will be made in the English text.

M. Guerrero (Salvador), Rapporteur :

Translation : In reply to the delegate for Hungary, I would point out that the second sentence is entirely in accordance with the resolution adopted by the Committee in regard to the first paragraph of this article ; it refers to persons enjoying diplomatic immunities. The only point on which we have departed to some extent from the resolution is in regard to the question of the assimilation of members of arbitral tribunals and international commissions of enquiry. You will remember that, during the discussion, this assimilation was considered necessary, because the provisions of arbitration treaties dealing with the constitution of a tribunal stipulate that the members of this tribunal shall enjoy diplomatic immunities.

As regards the last paragraph referred to by the delegate for Hungary, we have adhered to the provisions of the second paragraph of the article because these were approved by the Committee. We referred to consuls by profession and also mentioned persons exercising official functions, because they had also been mentioned by the Committee.

You will remember that the question of officials of the League of Nations was raised. I did not wish to refer to the latter in my report, because some of them enjoy diplomatic immunities and are therefore included among the persons covered by the first paragraph of the article adopted. As regards officials of the League of Nations who cannot be regarded as higher officials, no provision has been made.

I do not know how to draw up this paragraph, in view of the observations of our Hungarian colleague. As a matter of fact, the passage to which objections have been raised contains, not comments, but a summary of the discussions. Could we not refer to the Minutes?

M. Diena (Italy) :

Translation : As regards the children of officials of foreign States, do these include the officials of the League of Nations ? I do not think the latter are Government officials. If it is intended to mention them indirectly, I do not consider that this sentence covers the League's officials.

M. Guerrero (Salvador), Rapporteur :

Translation : At the request of the Swiss delegation we decided that we would not deal with the special case of the League's officials. As I have just pointed out, the highest officials of that institution, such as the Secretary-General, etc., already enjoy diplomatic immunities and are consequently covered by the first part of the article. No mention is made of the other officials because the article merely deals with the officials of foreign States employed by their Governments on official missions.

M. Medina (Nicaragua) :

Translation : Some officials, such as the representatives of States accredited to the League of Nations are, however, covered. The latter are also covered by the League Covenant and are assimilated to diplomats from the point of view of immunities.

M. Guerrero (Salvador), Rapporteur :

Translation : The representatives of States in question are all included in the first paragraph of the article and enjoy diplomatic immunities. If there is any doubt on this point, the matter is settled by the last paragraph of this section of the report, which states that : " It considered, in particular, the case of consuls by profession and, in general, that of officials of foreign States employed by their Governments on official missions." This covers the representatives of States, who are also included in the first paragraph, because diplomatic immunities are already accorded to representatives of States accredited to the League of Nations.

M. Medina (Nicaragua) :

Translation : I should like the Rapporteur's explanation to be inserted *verbatim* in the Minutes.

M. Nagaoka (Japan) :

Translation : In view of the objections raised by the Hungarian delegate, I propose that we should add, at the end of the first paragraph, the words : " as provided for in international agreements ". That would meet the case of the members of arbitral tribunals and international commissions of enquiry. I do not think, though, that, when they return to their own country, they should continue to enjoy diplomatic immunities, especially when they are travelling there as private individuals.

The Chairman :

Translation : If I have understood M. Nagaoka's observation correctly, he desires that the words " in accordance with existing treaties " should be added after the words " the case of members of arbitral tribunals and international commissions of enquiry ".

M. Diena (Italy) :

Translation : " . . . in accordance with the rules of international law."

The Chairman :

Translation : " . . . in accordance with existing rules." Would you accept that ?

M. Diena (Italy) :

Translation : We might say " in accordance with the customary rules ".

M. Guerrero (Salvador), Rapporteur :

Translation : I am quite willing to accede to M. Medina's request and to add a sentence making express reference to the representatives of States accredited to the League of Nations. Nevertheless, there is no doubt about the matter, since they already enjoy diplomatic immunity.

The Chairman :

Translation : M. Guerrero's proposal goes further than the request of M. Medina, who merely asked that the matter should be mentioned in the Minutes. That would be the simplest way. If it were inserted in the report, other additions might possibly be necessary. The point raised by M. Diena would also have to be specially mentioned, although it is included in the expression : " Officials of foreign States employed by their Governments on official missions ". It is quite clear that this phrase does not cover officials employed by the League of Nations on an official mission. It would be better to refer to the Minutes of the present meeting.

In the passage relating to Basis No. 10, apart from the correction of the English text proposed by the delegate of the United States of America in connection with " the common law ", an addition should also be made, in accordance with the Japanese delegate's request, the words " in accordance with the existing rules of international law " being added. That would also give satisfaction to the Hungarian delegation.

M. Medina (Nicaragua) :

Translation : If the addition proposed by M. Nagaoka is adopted, it would also be necessary to add : " and the Covenant of the League of Nations ". Those words would cover the representatives of States accredited to the League.

The Chairman :

Translation : That is obvious, since the League Covenant constitutes a rule of international law.

M. Diena (Italy):

Translation: It is a convention.

M. Medina (Nicaragua):

Translation: It would be advisable to make this quite clear.

M. Diena (Italy):

Translation: In my view, the proposal of the delegate for Japan should be adopted.

The Chairman:

Translation: That proposal covers all cases.

M. Medina (Nicaragua):

Translation: I thank you for this explanation, Mr. Chairman.

The text relating to Article 13, as amended, was adopted.

Article 12, Basis No. 11.

The text relating to Article 12 was adopted without observation.

Article 14, Basis No. 12.

The Chairman:

Translation: The end of the text should read: "The text, adopted unanimously by the forty members who voted"; to which should be added: "the protocol adopted by twenty-six votes to two . . .".

The text relating to Article 14, as amended, was adopted.

*Article 15, Bases Nos. 13, 14, 14*bis *and 15.*

M. Diena (Italy):

Translation: In accordance with the views expressed in this Committee during the lengthy discussion on this matter, I propose that the words "in certain specific cases", in the last sentence of the last paragraph but one of the section should be replaced by the following: "under the conditions laid down in the law", in accordance with the text adopted by the Committee.

M. Guerrero (Salvador), Rapporteur:

Translation: I am prepared to agree to that.

M. Duzmans (Latvia):

Translation: I should like the revised text to be read to the Committee.

The Chairman:

Translation: This sentence would read as follows:

"If, however, States have the right to refuse release from allegiance, it is desirable that their laws should make provision for such release under the conditions laid down in the law of the State concerned."

Mr. Dowson (Great Britain):

In the fourth paragraph, under the subheading "Basis No. 15", the expression: "on reaching puberty" occurs. Should not the word "majority" be used?

I should like to couple with this suggestion a further one with regard to the use of the word "opt", in the same sentence and in the following one, which reads: "It [that is, the Committee] has made the right of opting depend on the authorisation of the State".

I think it is very desirable that we should be clear on this point. We are dealing here with a right to make a declaration getting rid of one nationality, and, accordingly, the expression "opt" — suggesting that a person can choose between one or the other — is not strictly correct. It would be better to say: "It has made the right of a person to divest himself of one of his nationalities depend upon the authorisation", and so on.

The Chairman:

Translation: Renunciation is an indirect form of option.

M. Guerrero ((Salvador), Rapporteur:

Translation: The expression: "the age of puberty" was mentioned in an earlier proposal. That was why it was referred to in the report; the following paragraph shows, however, that the proposal was rejected.

The Chairman:

Translation: I think we are all agreed on the words "the majority".

M. Diena (Italy):

Translation: No, Mr. Chairman, since there is a reference to the conditions laid down in the law of the State concerned. Among those conditions comes the question of age to which this sentence refers.

The Chairman:

Translation: The sentence objected to states that a proposal was made. The following paragraph goes on to say that: "the Committee did not agree with this suggestion". In view of this, I do not think that M. Diena will object to our using the words "on reaching his majority".

M. Diena (Italy):

Translation: As regards the amendment suggested by the British delegation, I propose that we should merely reproduce the text that was adopted after such lengthy discussion and examination.

The Chairman:

Translation: In order to keep as closely as possible to the text adopted, we should say: "It has made the right to renounce one of the

nationalities depend upon authorisation being given by the State whose nationality the person concerned intends to relinquish."

Mr. Dowson (Great Britain) :

I should be quite content with that.

M. Diena (Italy) :

Translation : So should I.

You will remember that the following paragraph of this section refers to the most important point of the whole discussion. An agreement was finally reached. On my proposal the Committee decided to insert the resolution adopted by it in a special Protocol. I should be glad if the Rapporteur would make this quite clear and would explain that it was proposed to insert this rule in the body of the principal Convention but that, as it stood, the rule was not unanimously accepted.

After unanimously adopting the resolution in question, the Committee decided to embody the rules in a special and separate Protocol. That point is of special importance, and I would ask the Rapporteur to make it quite clear.

M. Guerrero (Salvador), Rapporteur :

Translation : M. Diena is quite right, and his observation will be taken into account; mention will also be made of the recommendations and the manner in which they were adopted.

Subject to the above observations, the text relating to Article 15 was adopted.

Article 6, Basis No. 16.

M. da Matta (Portugal) :

Translation : The report ought to be brought into line with the Minutes, and we should not say that the delegations which proposed this additional passage withdrew their amendment — that is not correct.

The Chairman :

Translation : No vote was taken, however, on that amendment. We might say that the delegations did not press the proposal. That would be more accurate.

M. da Matta (Portugal) :

Translation : We agree.

The text relating to Article 6 was adopted.

Articles 8, 9 and 10, Bases Nos. 17, 18 and 19.

These texts were adopted without any observation.

*Article 11, Bases Nos. 20 and 20*bis.

The Chairman :

Translation: The French text of the first sentence is not quite irreproachable. It should read : "*La Commission a supprimé la Base N° 20 visant l'acquisition, par un enfant naturel légitimé, de la nationalité de son père.*"

The text relating to Article 11, as modified, was adopted.

Article 16, Basis No. 21, and Article 17.

The texts relating to Articles 16 and 17 were adopted without observation.

Final Clauses.

M. Rundstein (Poland) :

Translation : The last sentence might give rise to uncertainty. It states that :

> "As regards the intrepretation of the word 'provision', it was understood that that term must be taken in a very wide sense. Since a State has the right to exclude whole articles from its acceptance, it may, under the rule that 'the whole includes the part', also exclude parts of articles."

It is quite possible not to accept part of an article if that part can be taken by itself. For instance, as regards Article 14 of the Convention, we might sign the first paragraph and make a reservation in regard to the second, which deals with foundlings. Similarly, as regards Article 12, the second sentence could be reserved and the first accepted under such a provision, but that would not be allowable. A sentence reading as follows should therefore be added at the end of this text : "Such a partial reservation will be allowed only if the part of the article reserved contains an independent provision."

M. Diena (Italy) :

Translation : I agree with M. Rundstein. The expression : "in a very wide sense" is a dangerous one. Is every possible interpretation to be allowed, or is it to be understood in a vague sense? This is not very clear. Moreover, another objection arises if you exclude part of a sentence and not the whole, because in some cases a principle is accepted on account of the exception allowed. It is therefore a very delicate matter to say that part of a sentence may be accepted and the rest rejected, as that might distort the meaning of the provision.

Mr. Flournoy (United States of America) :

It seems to me that the question now is not what should be done with regard to this matter, but what has been done, and in my view the English text states accurately what took place. I do not see that we can change it now. The French, so far as I can see, is a little different.

M. Guerrero (Salvador), Rapporteur :

Translation : I still think there is a good deal in what M. Rundstein says, and I do not think that the Committee desires to retain this wording, but would prefer it to be made more definite, as suggested by the delegate

for Poland. I am quite prepared to accept his proposal.

I have also just noticed that there is no reference in the text to the colonial clause. That omission will be remedied.

The Chairman :

Translation : It is very difficult to give in one sentence an adequate explanation of all the questions raised. Unless I am mistaken, when we adopted the article relating to reservations, at the request of the delegation of the United States of America, it was understood that a reservation could relate, not merely to an article as a whole, but also to a part of an article.

What exactly does that mean? When an article consists of several paragraphs, I think it is obvious that a reservation may be made in regard to one of them since the article contains two provisions ; one can be accepted and the other excluded. That exclusion can be effected by means of a reservation, and a State will be within the limits allowed, but is it possible to go further and exclude from the acceptance of an article or a paragraph a part of that article or of that paragraph? That is what we have to decide. Must this point be expressly stated? Is the expression " independent provision ", suggested by the Polish delegate, the best one to use? Personally, I am afraid that it would lead to further difficulties, because we should then have to define that expression. We might perhaps say that a State has the right to exclude either a whole article or a paragraph.

I am only making a suggestion, and I should like to know the Committee's views. We might say that a State has the right to exclude whole articles from its acceptance, and that it may, under the rule that " the whole includes the part ", exclude such and such a paragraph of the article only.

M. Hering (Germany) :

Translation : It would be better not to say " such and such a part " or " such and such a paragraph of the article ", but to restrict the scope of the whole article. Under the rule, " the whole includes the part ", the State could either apply the article as a whole or restrict its scope and decide to apply a part of the article only.

M. Wu (China) :

I think we shall have a difficult task in defining the exact limits of reservations, and I doubt whether we can really arrive at an actual formula. I think that the most we can do to-day is to content ourselves with embodying in the report the substance of what has already been agreed upon, as has been remarked by the delegate for the United States of America.

I suggest, therefore, not a positive definition, but rather a negative one. The amendment I propose in regard to this paragraph is simply this :

" As regards the interpretation of the word ' provision ', it was understood that that term was different from and not synonymous with the term ' Article ' ".

I should then omit the following sentence.

M. Soubbotitch (Yugoslavia) :

Translation : I do not think that the Chinese delegate's proposal solves the difficulty. It defines the meaning of the term " provision " but we still have to decide how far reservations can go.

Our delegation is of opinion that it is very important to make this point as clear as possible, otherwise, when the time comes to make reservations, serious difficulties will arise.

In these circumstances, the Yugoslav delegation considers that, in view of the impossibility of reaching a more satisfactory and more definite solution, it might perhaps be better to adopt the Chairman's suggestion to the effect that reservations may relate either to an article or a paragraph and I would even add " or to a numerical point ", by which I mean Nos. 1, 2, etc., into which certain articles are divided.

M. Diena (Italy) :

Translation : I would agree to reservations relating to a paragraph.

Mr. Flournoy (United States of America) :

It seems to me that the same difficulty with regard to making sharp divisions as to articles, so that an article must be adopted or rejected as a whole, would apply equally with regard to the paragraphs of an article. Certain concepts or rules may run all the way through the Convention, or through a good many articles, to which any State adhering should be able to make reservations. I do not know just what the solution is, but this is the difficulty I see. Moreover, I agree in general with the views expressed by the delegate for Germany.

The Chairman :

Translation : It is difficult to draw up a text on the spur of the moment. Nevertheless, for your Rapporteur and more especially for the Central Drafting Committee, which will be called upon to revise all the final clauses, it is necessary that you should give definite indications as to which system you prefer.

There are two systems, one of which limits the power of making reservations by stating that an article or such and such a paragraph of the article — or, again, such and such a point enumerated in that article — may be excluded. According to the other system, which does not go into so many details, a State may accept any provision or article of the Convention as a whole or may restrict its scope by defining the limits within which it is to be applied.

M. Diena (Italy) :

Translation : In that case it would no longer be a Convention.

M. Guerrero (Salvador), Rapporteur :

Translation : I think the Committee intends to lay down that the reservation may relate either to the whole or to a part of the article. If we agree to that, the paragraph might be drawn up in that way.

I do not think we are all in favour of the German delegation's proposal that reservations may relate to the scope of an article, that is to say, to the spirit of an article ; it would be better not to have an article at all than to have one and allow States to accept or reject its contents as they please. I consider that we should merely say that reservations can relate either to the whole or to a part of an article.

M. Soubbotitch (Yugoslavia) :

Translation : I gather our Rapporteur means that the Committee apparently accepts the idea of a reservation excluding part of an article but not of a reservation interpreting that article.

M. Duzmans (Latvia) :

Translation : The suggestion made by the Yugoslav delegation is a dangerous one. It is usually understood that, after accepting a Convention, no Government is allowed to interpret it in its own way.

M. Joachim (Czechoslovakia) :

Translation : I think we should take the phrase in the material and not the formal sense, because the same sentence may contain provisions which are materially different.

The Chairman :

Translation : It is nevertheless necessary for the Committee to take a decision.

A definite proposal has been made by the Rapporteur, the precise wording of which is reserved, for the reasons which I have just indicated. He suggests that we should adopt the principle of material exclusion and should not allow reservations in regard to the scope, meaning or interpretation of an article.

M. de Navailles (France) :

Translation : I am entirely in agreement with our Rapporteur's proposal, because, in reality, the report should only contain what is in the provisions which we have adopted. If we look again at the provision relating to reservations, we shall see that the possibility of interpretation is completely excluded. It states that any provisions of the Convention may be excluded at the time of signature, accession or ratification ; consequently, a State may exclude the whole article or part of an article but may not say that it intends to interpret the provision in such and such a way.

M. Hering (Germany) :

Translation : I should like provision to be made for the possibility of material reservations. Let us suppose that the first part of an article contains a principle and the second exceptions ; it is not possible to allow reservations in regard to the first part — that is to say, to exclude the principle and only apply the exceptions. I do not think that this is what the Committee wants, but the present wording of the report would make it possible.

M. Alten (Norway) :

Translation : If I have rightly understood the observations of the delegate for Germany — although I am not quite certain that I do — they do not refer to the definition of the word "provision" but to the conception of the term "reservation". We might perhaps meet his wishes by adding after the definition of the term "provision" a sentence reading more or less as follows : "A reservation may involve, not only the complete exclusion of a provision, as laid down above, but also the restriction of the application of the provision to part of its scope."

M. Diena (Italy) :

Translation : In view of these difficulties and as no decision has yet been reached, would it not be better to change our minds and simply state that reservations may be allowed in regard to any article? That is all that is necessary.

The Chairman :

Translation : I do not think that is possible. The old Article 20 relating to reservations was accepted by a large majority of the Committee on the distinct understanding that any particular provision might be excluded. By provision, was meant not only an article as a whole but a part of the article. The point we are now discussing is the interpretation of the term "part of the article" — whether it is a purely material part, that is to say, part of the actual text of the article, or whether it relates purely and simply to the application of that article.

It is true that, if we inserted in the passage in question of the report the word "paragraph", the danger pointed out by the delegate for Germany might arise. It is quite possible for a principle and exceptions to that principle to be laid down in the same paragraph. It has been asked whether, if a principle is accepted, one or more exceptions provided for could be excluded. That seems to me to be absolutely impossible. I think it would be better, instead of using the word "paragraph", to maintain the expression "part of an article" in the meaning which has so far been attributed to those words.

We must find out whether the Committee agrees that only a part of the article in the material sense may be excluded, and, if so, we will ask the Rapporteur to find a satisfactory formula after consulting the Central Drafting Committee.

Does the Committee agree that the partial exclusion of an article is meant in the sense of a material part of the text?

Agreed unanimously.

The Chairman :

Translation : You will notice, and the Rapporteur will remember, that the passage which you have just examined is to be completed by a reference to the colonial clause.

Protocols.

The Chairman :

Translation : Under the heading "Protocols", we should say :

"As indicated above, two Protocols were adopted by a majority of over two-thirds of the votes cast. They will be annexed to the Convention. The Committee further adopted a special Protocol by a simple majority."

The second paragraph would read as follows :

"These Protocols are independent of the Convention . . ."

M. Nagaoka (Japan) :

Translation : Is it necessary to maintain the third sentence of the second paragraph : "States desiring to do so may also accede to them on or after January 1st, 1931"?

The Chairman :

Translation : M. Nagaoka is right. This sentence is unnecessary because the date of accession to the Convention is mentioned in the general clauses.

The text relating to the Protocols, amended as above, was adopted.

"*Vœux.*"

The Chairman :

Translation : In order to mention what actually took place, the last paragraph should be completed by the following words :

"The Committee also referred to the Drafting Committee a *vœu* of the Greek delegation and the *observations submitted* on the organisation . . ."

The second sentence of the same paragraph might read as follows :

"The Committee hopes that the Conference may thus make recommendations on this important question."

M. Diena (Italy) :

Translation : In the previous paragraph, the following words occur : ". . . that, in the future, States should be guided as far as possible by the provisions . . .". Would it not be better to say : "should take into account as far as possible"?

The Chairman :

Translation : The text has been adopted and cannot be changed.

Conclusion.

Mr. Lansdown (South Africa) :

Once again, the well-known modesty of our respected Rapporteur asserts itself. In the first paragraph of the Conclusion we read : ". . . it has not succeeded in the principal aim of preparing a Convention to regulate the problem of nationality". I think he has been a little too modest there, because we have, in fact, produced a document for the regulation of nationality. We might, I think, say that we have not accomplished the complete regulation of nationality. If the Rapporteur will allow me, I would suggest that the words "to regulate" should be replaced by the words "for the complete regulation". The text would thus read : ". . . it has not succeeded in the principal aim of preparing a Convention for the complete regulation of the problem of nationality".

The Chairman :

Translation : The previous sentence should also be modified as follows : ". . . it notes with regret that it has been unable to accomplish at present the main object of its work, which was to provide full regulations . . .".

Mr. Flournoy (United States of America) :

I call attention to the phrase in the next paragraph : "The idea is that every individual has a right to a nationality". I am unable to agree to that text. It seems to me that individuals may so act that States have a right to deprive them of their nationality, and that this text should be changed to read : "It is desirable that every individual should have a nationality."

The Chairman :

Translation : I agree.

Since there are no other observations, I take it that the Committee accepts this last chapter of the report, amended as above, and adopts the report as a whole.

The report as a whole was adopted.

69. CLOSE OF THE SESSION.

The Chairman :

Translation : I think I am interpreting the feelings of the whole Committee in expressing to M. Guerrero our sincere thanks for the valuable work which he has done and for the great trouble he has taken in the matter.

M. Guerrero (Salvador), Rapporteur :

Translation : I beg to thank the Chairman for his kind words, and I also desire to thank the Committee for the applause with which it received his remarks.

I feel that the honour done me should be shared, in the first place, by our Chairman, for I have very largely followed his suggestions, and also by the Secretariat of the Committee which has done everything it could to assist me in my task.

The Chairman:

Translation: Before closing our discussions, I will call on the members of the Committee who have asked to speak, but I would request them to be as brief as possible as the hour is late.

M. Standaert (Belgium):

Translation: I think that when we are expressing our thanks we should not forget the members of our Drafting Committee who have been most zealous and self-sacrificing.

M. Alvarez (Chile):

Translation: I propose that we should also convey our warmest thanks to our Chairman for the tact, ability and discretion with which he has guided our discussions. At times, our debates touched on very thorny points, but he has enabled us to achieve successful results.

The Chairman:

Translation: I thank my excellent friend, M. Alvarez, for what he has just said and I am grateful to the Committee for indicating its approval by its applause.

M. Caloyanni (Greece):

Translation: At the close of our discussions, we are able to say that our Committee has really performed useful work, but although we have all individually done our best to make a personal contribution to the success of that work, it is mainly due — I feel bound to repeat this on behalf of the Greek delegation — to the conciliatory spirit and goodwill which has been invariably shown by all. We also owe this success to those who have taken a specially active share in our proceedings — I mean our Chairman, the members of our Sub-Committees and of our Drafting Committee and our distinguished Rapporteur. All the delegations present have contributed materially to the work and, if the results have not been very great, they are nevertheless as satisfactory as could be expected in view of the difficulty of the subject with which we have had to deal and its wide scope.

I would propose that we should not only thank our Chairman and the members of the Sub-Committees, but should warmly congratulate the League of Nations which put these important problems before the Conference. In view of the results obtained, we may hope that the next Conference, profiting by our experience and the universal goodwill shown, will achieve still better results at an earlier date than we perhaps now think possible.

M. Buero (Uruguay):

Translation; I desire to associate myself with the thanks given to our Chairman for his distinguished services; we also desire to express our gratitude to our Vice-Chairman who directed our discussions with the greatest ability and zeal during the absence of M. Politis.

M. Wu (China):

I thank my colleagues very much for their kind words of appreciation. My task was a comparatively light one compared with that of our Chairman.

The Chairman:

Translation: Ladies and gentlemen — The hour is late, and I will not make a speech. Before we separate, however, I should like to say that we may congratulate ourselves on the work we have done. The progress of our work has been greatly assisted through your assiduity, through the conciliatory spirit you have all evinced and through your unanimous and never-failing desire to reach a definite and satisfactory agreement. I have been most ably seconded by my distinguished friend M. Wu, who has given us fresh evidence of his great talents and of his high idealism combined with practical insight. I have also received great help from the Secretariat, which, as we once again realise, has worked for us with untiring zeal. We have repeatedly made heavy demands upon it. Night after night it has spent in helping our work forward, and it has done its best to ensure that that the work should be carried though as expeditiously as possible.

Among those who have thus helped us, I must not omit to mention the interpreters. They, too, have often had a heavy task, particularly when we have held night meetings when we remember that they have other duties at the Conference besides their work on the Committee to which they are attached, we may particularly appreciate the modest yet indispensable assistance they render us.

We have done a great deal. We have held twenty-two meetings. We have examined a large number of questions, and now that we come to the end of our session we may say that we have carried out the major part of our programme. Very few of the Bases submitted to us by the Preparatory Committee have been actually discarded. On all the rest, agreement has been reached and has been embodied either in the draft Convention, which was unanimously adopted by all those who voted, or in various Protocols, or else in *vœux* and recommendations.

When we began our work, I pointed out that pessimists were saying that the work of the Conference in the domain of nationality would prove a failure, and I expressed the hope that the falsity of these predictions would be strikingly demonstrated. I am glad to see to-day that this hope has been realised, and that we have succeeded in reaching agreement on most of the points submitted to us.

No doubt it will be said that we have done very little, that we have simply drawn up formal provisions which set no more than theoretical limits to the freedom of States. But, in reply, we can say that, if there are no very considerable restrictions on the legislative freedom of States in the matter of nationality, yet the Convention contains a number of indications which give a definitely conventional value through the nature of the document in which they are embodied; that our recommendations contain further indications, no less valuable, which mark out the road and will guide the future work of the national legislatures. I am convinced that, when these various indications have been approved by the Governments, and when they have been analysed and commented upon by publicists, they will constitute an element in that international legal conscience which is the ultimate source of all the rules whereby the peoples are governed.

It is a first step on the road of codification — an unpretentious and a timid step, it is true; yet I cannot but feel gratified that it is so.

In a matter which is so difficult, so complex and so pre-eminently political in character, the first step was necessarily timid and restricted, since it is only in this way that great work is ultimately done. When the road is dangerous we must not go too fast; otherwise, we may have accidents, and sometimes accidents are fatal. We have begun to advance, slowly and cautiously; but now we have begun we shall not stop. At future conferences, we shall go forward steadily, stage by stage.

In my opinion, the most important thing we have done has been to open a fresh breach through which international law can make its way, slowly yet surely, into the domain of nationality, a domain which until now has always been the exclusive preserve of the individual States.

That is the great advance that we shall have helped to make. We may congratulate ourselves on having succeeded in doing so.

Ladies and gentlemen — I declare the work of the First Committee of the Conference for the Progressive Codification of International Law concluded.

The Committee rose at 1.20 p.m.

ANNEX I.

BASES OF DISCUSSION
DRAWN UP BY THE PREPARATORY COMMITTEE, REPRODUCED IN THE ORDER WHICH THAT COMMITTEE CONSIDERED WOULD BE MOST CONVENIENT FOR DISCUSSION BY THE CONFERENCE.

General Principles.

Basis of Discussion No. 1.

Questions as to its nationality are within the sovereign authority of each State. Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed. The legislation of each State must nevertheless take account of the principles generally recognised by States. These principles are, more particularly :

As regards acquisition of nationality : Bestowal of nationality by reason of the parents' nationality or of birth on the national territory, marriage with a national, naturalisation on application by or on behalf of the person concerned, transfer of territory ;

As regards loss of nationality : Voluntary acquisition of a foreign nationality, marriage with a foreigner, *de facto* attachment to another country accompanied by failure to comply with provisions governing the retention of the nationality, transfer of territory.

Basis of Discussion No. 2.

If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose national he was remains bound to admit him to its territory at the request of the State where he is residing.

Double Nationality.

Basis of Discussion No. 3.

A person having two nationalities may be considered as its national by each of the two States whose nationality he possesses.

Basis of Discussion No. 4.

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

Alternative : Add to the above text the words :

"... if he is habitually resident in the latter State."

Basis of Discussion No. 5.

Within a third State : *(a)* As regards the application of a person's national law to determine question of his personal status, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality which appears from the circumstances of the case to be the person's effective nationality ; *(b)* for all other purposes, the person concerned is entitled to choose which nationality is to prevail ; such choice, once made, is final.

Basis of Discussion No. 15.

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person of double nationality may, with the authorisation of the Government concerned, renounce one of his two nationalities. The authorisation may not be refused if the person has his habitual residence abroad and satisfies the conditions necessary to cause loss of his former nationality to result from his being naturalised abroad.

Loss of Nationality resulting from Voluntary Acquisition of a Foreign Nationality.

Basis of Discussion No. 6.

In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality. The legislation of a State may nevertheless make

such loss of its nationality conditional upon the fulfilment of particular legal requirements regarding the legal capacity of the person naturalised, his place of residence, or his obligations of service towards the State ; in the case of persons not satisfying these requirements, the State's legislation may make the loss of its nationality conditional upon the grant of an authorisation.

*Basis of Discussion No. 6*bis.

A release from allegiance (expatriation permit) does not entail loss of nationality until a foreign nationality is acquired.

Effect of Naturalisation of Parents on Nationality of Minors.

Basis of Discussion No. 7.

Naturalisation of parents involves that of their children, who are minors and not married, but this shall not affect any exceptions to this rule at present contained in the law of each State.

Basis of Discussion No. 8.

Naturalisation of the parents causes children who are minors and not married to lose their former nationality if the children thereby acquire their parents' new nationality and the parents themselves lose their former nationality in consequence of the naturalisation.

A State may exclude the application of the preceding provision in the case of children of its nationals who become naturalised abroad if such children continue to reside in the State.

Basis of Discussion No. 9.

When naturalisation of the parents does not extend to children who are minors, the latter retain their former nationality.

Attribution in Certain Circumstances of the Nationality of the Country of Birth.

Basis of Discussion No. 10.

Rules of law which make nationality depend upon the place of birth do not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs. The child will, however, be entitled to claim to come within the provisions of the law of the country to the extent and under the conditions prescribed by that law.

The same principle shall apply : (1) To the children of consuls by profession ; (2) to the children of other persons of foreign nationality exercising official functions in the name of a foreign Government.

Basis of Discussion No. 11.

A child whose parents are unknown has the nationality of the country of birth.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

Basis of Discussion No. 12.

Except where the nationality of the State is acquired directly by birth on its territory, a child of parents having no nationality, or whose nationality is unknown, has the nationality of the State of birth if it lives there up to an age to be determined by the State. The age thus to be determined shall not exceed eighteen years.

Basis of Discussion No. 13.

Except where the nationality of the State is acquired directly by birth on its territory, a child of parents whose nationality is not transmitted to it by operation of law has the nationality of the State of birth if it lives there up to an age to be determined by the State. The age thus to be determined shall not exceed eighteen years.

Children born on Merchant Ships.

Basis of Discussion No. 14.

For the purposes of acquisition of nationality by birth, birth on board a merchant ship is assimilated to birth on the territory of the State whose flag the ship flies, whether the ship be in the waters or ports of such State or on the high seas or in foreign territorial waters or in a foreign port.

*Basis of Discussion No. 14*bis.

Birth in a port on board a merchant ship constitutes birth on the territory of the State to which the port belongs, even if the ship is a foreign ship.

Nationality of Married Women.

Basis of Discussion No. 16.

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

Basis of Discussion No. 17.

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

Basis of Discussion No. 18.

Naturalisation of the husband during marriage does not involve a change of nationality for the wife except with her consent.

Basis of Discussion No. 19.

After dissolution of a marriage the wife recovers her former nationality only on her own application and in accordance with the law of her former country. If she does so, she loses the nationality which she acquired by her marriage.

Legitimation and Adoption.

Basis of Discussion No. 20.

Legitimation by the father of an illegitimate child who is a minor and does not already possess the father's nationality gives the child the father's nationality and causes it to lose a nationality which it would previously have acquired by descent from its mother.

*Basis of Discussion No. 20*bis.

The original nationality of an illegitimate child is not lost by change in its civil status (legitimation, recognition) unless the law governing the effects thereof in regard to nationality invests it with another nationality.

Basis of Discussion No. 21.

In countries of which the legal system admits loss of nationality as the result of adoption, this result shall be conditional upon the adopted child acquiring the nationality of the adoptive parent.

ANNEX II.

OBSERVATIONS AND PROPOSALS SUBMITTED TO THE PLENARY COMMITTEE RELATING TO THE BASES OF DISCUSSION DRAWN UP BY THE PREPARATORY COMMITTEE.[1]

Austria.

Proposals concerning Bases Nos. 10, 11, 12, 13 and 19.

Basis of Discussion No. 10.

Omit the second sentence of the first paragraph *i.e.*, the words: " The child will, however . . . proscribed by that law ".

Basis of Discussion No. 11.

The following text is proposed for the first paragraph :

" A child whose parents are unknown is deemed to have the nationality of the country of birth, until it is proved to be the national of another State. "

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[1] This Annex does not contain amendments which were proposed during the course of the discussions; such amendments are reproduced in the Minutes.

Basis of Discussion No. 12.

Omit.

Basis of Discussion No. 13.

Omit.

Basis of Discussion No. 19.

The second sentence should be worded as follows :

" If she does so, provided the dissolution of the marriage is recognised as valid by her former country, she loses the nationality acquired by her marriage."

MODIFICATION PROPOSED BY THE AUSTRIAN DELEGATION TO THE NEW BASIS OF DISCUSSION PRESENTED BY THE GERMAN DELEGATION TO BE INSERTED AFTER NO. 16 (see page 286).

Without prejudice to the liberty of a State to accord wider rights to retain her nationality, a woman marrying a foreigner may retain her nationality of origin if, before solemnisation of marriage, she expressly and formally requests permission to do so, and provided, after marriage, she establishes within her country of origin her first habitual residence.

Finally, the woman shall only retain her nationality provided that, as soon as she loses her nationality of origin by transferring her habitual residence abroad, she acquires, at that same period, the nationality of her husband.

Belgium.

PRELIMINARY PROPOSALS AND OBSERVATIONS CONCERNING BASES OF DISCUSSION NOS. 1, 5, 12, 13, 15, 18 AND 20.

Basis of Discussion No. 1.

Observation. — Basis of Discussion No. 1 actually contains three principles, which should be dealt with separately. The Belgian delegation thinks that the following wording would be suitable :

" (A) As questions of nationality lie within the sovereign authority of the State, each State is entitled to lay down its own regulations in this matter, taking into account, however, the following principles :

" Nationality is acquired automatically at birth, either by reason of descent *(jus sanguinis)* or by reason of birth on the national territory *(jus soli)*.

" Nationality may be acquired by naturalisation, at the request of the party concerned, or by marriage.

" Nationality is lost by the voluntary acquisition of a foreign nationality, or by renunciation, when the person renouncing it possesses or is granted another nationality.

" It may also be lost as the result of marriage.

" (B) In the case of transfer of territory, the treaties involving such transfers regulate the question of nationality as regards the inhabitants of the territory.

" (C) Every question relating to the acquisition or loss of a nationality by an individual must be settled in accordance with the laws of the State whose nationality is claimed or disputed."

Basis of Discussion No. 5.

In *(b)*, after the words " nationality is to prevail ", read as follows :

" In exercising this choice, the person concerned is bound to conform, if possible, to any rules established for the purpose by the laws of the countries of which he is simultaneously a national. If the choice is made in any other form, however, it will be definitive in regard to the third State, if the latter informs the States concerned."

Basis of Discussion No. 12.

A child of parents having no nationality, or whose nationality is unknown, may take the nationality of the State of birth, either from the time of birth or, if it remains there, until the age prescribed by the laws of that State. This age may not exceed 21 years.

In any case, the child has the nationality of the State of birth, if born of a father who himself was born there.

Basis of Discussion No. 13.

A child born of parents whose nationality is not transmitted to it by operation of law may have, etc. (as in Basis 12).

Basis of Discussion No. 15.

Change the second sentence to read as follows :

" The authorisation may not be refused if the person, possessing the qualifications required for such purposes, has his habitual residence abroad and has not fraudulently evaded his service obligations towards the State for whose authorisation he applies.

" A person of double nationality may, for the purpose of military service, choose in what army he shall serve." [1]

Basis of Discussion No. 18.

If the naturalisation of the husband during marriage involves a change in the nationality of the wife, such change shall in no case take place without the formally expressed consent of the wife.

Basis of Discussion No. 20.

Legitimation by the father of a child who is a minor and not married, and does not already possess the father's nationality, gives the child the father's nationality and causes it to lose the nationality which it had previously acquired by birth or by descent from its mother.

Chile.

Observations and Proposals concerning Bases of Discussion Nos. 5, 6, 6*bis*, 7, 8, 9, 14 and 14*bis*, 16, 17, 18 and 20.

Observations. — Nationality is a question of capital importance to States from the point of view both of their internal life and of their external relations. It is also one of the most complex of problems.

It possesses, not only the political and international aspects ordinarily perceived ; it has a social and a psychological aspect : *social*, since the great currents of human emigration and immigration are closely bound up with the nationality problem, and *psychological* because every individual is born with a sentiment of nationality, of devotion to and love for a country to which he feels himself bound.

In view of its political importance, nationality is a question depending exclusively on the internal law of each country. But the law must take into account all the aspects of the problem, including its psychological aspect. If the law imposes nationality on individuals who do not love the country, then there is some danger of its introducing an element of disruption instead of an element of cohesion.

On account of the increasing interdependence of States, the conviction is growing that this question of nationality must be settled internationally.

There are three main schools of thought as regards the rules that should be established to govern nationality from a domestic as well as from an international point of view.

1. Nationality should not depend on civil status — *i.e.*, civil status should not be a cause of discrimination as regards the acquisition or loss of nationality.

The present outward manifestation of this tendency is a strong current of opinion against making the nationality of the married woman inseparable from that of her husband. For a century now, the constitutions of Chile and of other Latin-American countries have given effect to this desire.

2. The individual should, in certain cases and under certain conditions, be allowed to choose his nationality freely — *i.e.*, he should either be granted direct the right of option in case of double nationality, or he should be accorded facilities for naturalisation.

3. Steps should be taken to prevent as far as possible the conflict of laws in matters of nationality and to prevent the possibility of statelessness.

The Chilian delegation thinks that the Convention now being prepared on this subject should afford as much room as possible for these three tendencies, and, in particular, the first.

It is fully aware that this will be a difficult task, particularly as nationality is governed in several countries by a constitutional charter which can neither be modified nor abrogated by an ordinary law or by treaty. It feels, however, that all possible efforts should be made in the direction indicated.

On the basis of the above considerations, the Chilian delegation proposes the following amendments to the Bases of Discussion :

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[1] The addition of this last sentence was proposed by the Belgian and Greek delegations jointly. In the course of the discussion the drafting was modified and the text submitted to the vote was as follows : " A person of double nationality may, under the conditions which would be laid down in bilateral Conventions between the countries concerned, choose in what army he will carry out his military service. "

Basis of Discussion No. 15.

Without prejudice to the liberty of each State to grant its nationality, a person of double nationality shall, when he reaches the age of 21 years, and irrespective of his civil status, be free to choose his nationality. The choice, when once made, shall be irrevocable. The option may be effected either by an express declaration of the person's will in conformity with the law of the countries concerned, or tacitly by the performance of an act which may be carried out only by a national of the country concerned.

Basis of Discussion No. 6.

A national of a State who has become naturalised in a foreign country in accordance with the law of that country thereby loses his previous nationality.

*Basis of Discussion No. 6*bis.[1]

Observation. — The Chilian delegation proposes that this Basis should be omitted and replaced by the following :

" Naturalisation is lost through its withdrawal by the country which granted it."

Basis of Discussion No. 7.

To be combined with the following Basis.

Basis of Discussion No. 8.

Naturalisation of the parents does not cause children who are minors, whatever their age, to lose their previous nationality on that account.

Basis of Discussion No. 9.

To be omitted.

*Bases of Discussion Nos. 14 and 14*bis.

Observation. — The Chilian delegation considers that, in certain cases, these Bases are fundamentally opposed to each other.

Basis of Discussion No. 16.

Add at the end : " whether by the law of the husband's country, or by naturalisation ".

Basis of Discussion No. 17.

Add at the end the same words as those added to the previous Basis.

Basis of Discussion No. 18.

Add at the end : " and by naturalisation ".

Basis of Discussion No. 20.

Observation. — The Chilian delegation considers that, in certain respects, this Basis is inconsistent with the following Basis ; it will give a verbal explanation of these inconsistencies.

The Chilian delegation also has the honour to propose that, in the Convention which is being prepared, a recommendation should be added as to the desirability of States reforming their nationality laws in accordance with the rules laid down in the Convention and on the new tendencies indicated above.

New Basis of Discussion and Note relating thereto.

When the Sixth International Conference of American States met at Havana, Cuba, in January 1928, the women of the western hemisphere expressed before the plenary assembly,

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[1] The following text concerning the withdrawal of naturalisation was proposed later by the delegations of Chile, Egypt, India and South Africa :

" Naturalisation, once acquired, is final.

" It may, however, be withdrawn by the State which granted it in the following cases :

" (1) If the person naturalised is habitually resident abroad ;

" (2) If, as the result of a dual nationality, or on account of the nationality which he has lost, the naturalised person is suspected of disloyalty to the State which conferred its nationality upon him ;

" (3) If he becomes guilty of an act which, according to law, authorises the withdrawal of his naturalisation.

" The withdrawal of naturalisation may also apply to the naturalised person's wife and to his children who are minors."

at a specially arranged unofficial meeting, the views they entertained, as set forth by numerous collective bodies, with regard to the principle of the absolute equality of both sexes to be incorporated in the law of all countries.

In view of the limitations imposed by the Conference's agenda, which had been agreed upon beforehand by the Governments members of the Pan-American Union, the insufficiency of the data immediately available on the matter, and the absolute lack of time for a thorough study thereof, the Conference, mindful of the far-reaching importance of the subject, decided that the Pan-American Union, as the permanent executive organ of the Pan-American Conferences, should set up an advisory body charged with the compilation of all materials and the preparation of such drafts as should be submitted to the forthcoming Seventh International Conference of American States.

In pursuance of this resolution, the Inter-American Commission of Women was organised with members appointed from all the countries of the American continent. Among the principal resolutions so far adopted by the aforesaid Commission, there is one concerning nationality, and I have been honoured with the request to sponsor it before this Conference for inclusion in the Convention on Nationality whose bases are now the subject of this Committee's studies. The resolution in question, which I move be taken as an additional Basis of Discussion, reads :

> " The contracting parties agree that, from the coming into effect of this Convention, there shall be no distinction based on sex in their law and practice relating to nationality."

In support of the foregoing proposal, I offer the arguments advanced in the pamphlet entitled " Nationality ", by the distinguished American jurist, Dr. James Brown Scott the English text of which I have the honour of presenting to my learned colleagues with the compliments of the Chairman of the Inter-American Commission of Women.[1] A French text of the same paper will be available for distribution to the members of this Conference within the next few days.

(Signed) Miguel CRUCHAGA.

China.

PROPOSAL CONCERNING BASIS OF DISCUSSION No. 5.

The Chinese delegation proposes that this Basis should read as follows :

> " Within a third State, as regards the application of a person's national law to determine questions of his personal status, and for all purposes, the person concerned is entitled to choose which nationality is to prevail. Such choice, once made, is final."

Colombia.

PROPOSAL CONCERNING BASIS OF DISCUSSION No. 19.

Add at the end of the first sentence the words : " if she goes to live there ".

Denmark

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1, 2, 3, 5, 7, 8, 15, 19 AND 20.

Basis of Discussion No. 1.

Paragraph 2. — After the word " naturalisation ", add " abroad ".
Paragraph 3. — After the words " voluntary acquisition ", add " abroad ".
Paragraph 4 (new) :

> " It would be desirable, as a general rule, that the laws of the various countries should be based on the principle that double nationality should, as far as possible, be avoided in the same way as statelessness."

Basis of Discussion No. 2.

Omit the words : " after entering a foreign country ".
Paragraph 2 (new) :

> " Unless there is any treaty stipulation to the contrary, the request must be submitted in every case through the diplomatic channel. The request shall not be transmitted until it has been duly ascertained that the State is under an obligation to admit the person in question."

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[1] This pamphlet is kept in the archives of the Secretariat.

Basis of Discussion No. 3.

Paragraph 2 (new) :

" A person who possesses the nationality of two or more States may not be required to perform his military service, or any other national serice, in one State when he is habitually resident in the territory of another of these States."

Basis of Discussion No. 5.

Instead of : " *(a)* As regards the application of a person's national law to determine questions of his personal status, preference is to be given . . . " insert the following :

" *(a)* If, according to the existing law in this State, the rules of a person's national law are applied wholly or in part to determine questions of his personal status, preference is to be given . . . "

Basis of Discussion No. 7.

Instead of the present Basis, insert the following text :

" Naturalisation of parents involves that of their children who are under 18 years of age and not married, unless these children are explicitly excluded in the act of naturalisation."

Or else as above, with the addition of the phrase :

" . . . or unless they remain in the country of which they were, up till then, nationals and maintain their former nationality."

Basis of Discussion No. 8.

Paragraph 1. — Instead of the words " minors and not married ", insert the words : " under 18 years of age and not married ".

Omit the sentence : " and the parents themselves lose their former nationality in consequence of their naturalisation ".

Basis of Discussion No. 15.

A person who habitually resides in one of the two countries whose nationality he possesses, and who is, in fact, attached to the nationality of that country, will be exempt from military obligations in the other country.

This exemption may involve the loss of allegiance to the latter country.

Basis of Discussion No. 19.

Add :

" The legislation of a State may nevertheless make such loss of its nationality conditional upon the fulfilment of particular legal requirements. . ." (See Basis of Discussion No. 6.)

Basis of Discussion No. 20.

Insert, instead of the present Basis, the following text :

" If an illegitimate child under 18 years of age and not married is legitimated by the marriage of its mother with its father, it shall thereby acquire the father's nationality and shall lose the nationality which it would previously have acquired by descent from its mother."

Egypt.

Proposals concerning Bases of Discussion Nos. 1, 2, 6, 6*bis*, 7 and 8.

Basis of Discussion No. 1 (paragraph 1).

Questions as to its nationality are within the sovereign authority of each State. Any question as to the acquisition or loss by an individual of a particular nationality is to be decided in accordance with the law of the State whose nationality is claimed or disputed. The freedom of every State to legislate on this subject can only be limited by general or special Conventions on nationality or by the obligation to take account of the general principles recognised by States, more particularly : . . .

Basis of Discussion No. 2.

Add the following phrase : " unless his nationality has been forfeited at law ".

Basis of Discussion No. 6.

Add, after the words " his place of residence ", the following words : " the fact that he does not possess any immovable property in the country of origin ".

*Basis of Discussion No. 6*bis.[1]

Bases of Discussion Nos. 7 and 8.

Omit the words " not married ".

Estonia.

Proposals concerning Two New Bases of Discussion Nos. 9*bis* and 18*bis*.

*Basis of Discussion No. 9*bis : *Naturalisation of Children*

Observations. — As a general rule, the legitimate or illegitimate children of foreigners up to the age of 18 acquire Estonian nationality by naturalisation of their parents (Article 2, point 7, of the Law of October 27th, 1922). In practice, there are cases where it is imperative for minor children to acquire a new nationality independently of the wish of their father — *e.g.*, when his whereabouts is unknown, but the children, with their mother, are domiciled in Estonia.

To ameliorate the situation of the wives and children of foreigners domiciled in Estonia, the Estonian Law on Nationality provides that the wives and children of foreigners can acquire Estonian nationality independently of their husband or father.

The corresponding articles of the Law of October 27th, 1922, read as follows :

" *Article 10.* — Applicants for acquiring Estonian citizenship by naturalisation must be at least eighteen years of age. Minors must present for this purpose the consent of their guardians or trustees."

" *Article 11.* — The wives and children of foreigners can express their wish to acquire Estonian citizenship in spite of the wish of their husband or father, if they possess the requirements for that naturalisation."

As the Estonian Government has no reason to amend this useful provision of the existing Law, and as it seems to be desirable that a certain amount of freedom be given to change the nationality of children without simultaneous change of the nationality of their father, the Estonian delegation beg to introduce a new Basis of Discussion to that effect, to be placed after No. 9 as Basis of Discussion No. 9*bis* and reading as follows :

" That children of foreigners can acquire new nationality by naturalisation, in spite of the wish of their father, if they possess the requirements for that naturalisation in the naturalising State."

*Basis of Discussion No. 18*bis : *Nationality of Married Women.*

Observations. — The Estonian Law on Nationality of October 27th, 1922, stipulates *(a)* that the wife or widow of an Estonian citizen is considered to be an Estonian citizen (Article 2, point 5), and *(b)* that no citizen of the Estonian Republic can be, at one and the same time, a citizen of another State (Article 6).

Despite those general rigid principles, the same Law on Nationality makes some optional provisions which give a woman, whether married or unmarried, practically the same right as a man has to retain or to change her nationality (or citizenship as it is called in the Law).

The Estonian Constitution of June 20th, 1920 (Article 6), states :

" All Estonian citizens are equal in the eyes of the law. There cannot be any public privileges or prejudices derived from birth, religion, *sex* . . . "

Following this fundamental rule about the complete equality of both sexes in public law, the Estonian Law on nationality further stipulates :

(1) That Estonian female citizens who have married foreigners, are entitled to retain their Estonian citizenship or nationality by simply expressing to that effect a wish to preserve it within a fortnight from the date of contracting the marriage (Article 19, point 1) ;

(2) That the wife of an Estonian citizen does not lose her Estonian citizenship by the expatriation of her husband unless she herself expresses the wish to leave the Estonian citizenship (Article 22) ;

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[1] *Withdrawal of Naturalisation.* — The Egyptian delegation proposed, in conjunction with the delegations of Chile, India and South Africa, a text concerning the withdrawal of naturalisation. This text is reproduced under the observations of the Chilian delegation on page 280.

(3) That the wives of foreigners can acquire Estonian citizenship independently from their husbands if they possess for that naturalisation other necessary requirements (Article 11).

The last-mentioned Article 11 in full reads as follows :

" The wives and children of foreigners can express their wish to acquire Estonian citizenship, in spite of the wish of their husbands or fathers, if they possess the requirements for that naturalisation."

The points 1 and 2 are covered by the Bases of Discussion Nos. 16 to 18. There is nothing said about point 3. As Article 11 of the Estonian Law on Nationality is quite useful, has caused no difficulty in practice, and as, therefore, the Estonian Government has no reason to amend this liberal provision of the existing Law, the Estonian delegation begs to introduce a new Basis of Discussion to that effect to be placed after No. 18 as Basis of Discussion No. 18*bis* and reading as follows :

" The married woman can acquire a new nationality by naturalisation without the consent of her husband."

LATER PROPOSAL.

Substitute the following text for *Bases of Discussion Nos. 9*bis *and 18*bis :

" The wives and children of foreigners can acquire a new nationality, without the consent of their husbands or fathers, if they possess the requirements for that naturalisation in the naturalising State."

Finland.

PROPOSAL CONCERNING BASIS OF DISCUSSION NO. 4.

Basis of Discussion No. 4.

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also, and rightly, possesses, unless the person in question is treated by the other State in a manner incompatible with the rights of man and of the citizen, such as are recognised by civilised nations.

NEW PROVISION DESIGNED TO REDUCE THE NUMBER OF CASES OF MULTI-NATIONALITY.

A person who, from birth, has possessed the nationality of two or more States shall, on reaching the age of 23 years, retain only the nationality of the State in which he is then habitually resident.

A person who has acquired the nationality of the State on the territory of which he is, or will be, habitually resident shall, by the fact of the acquisition of the nationality, coupled with that of habitual residence, lose his former nationality.

Nevertheless, the law of a State may render these effects subject to certain legal conditions regarding the qualifications of the naturalised person, his place of residence or his service obligations towards the State. As regards persons who do not fulfil these conditions, the law may render the loss of nationality subject to the granting of an authorisation.

AMENDMENT COMBINING THE FINNISH PROPOSAL QUOTED ABOVE AND THE SWEDISH PROPOSAL REPRODUCED ON PAGE 294.

If a person possessing, from birth, the nationality of two or more States has been habitually resident in one of them up to an age to be determined by the law of the other State but not exceeding 23 years, he shall lose the nationality of the latter. That State, however, may grant him the right to retain its nationality if he has, beyond all doubt, manifested his attachment to the State in question.

The provision of the preceding paragraph does not apply to a married woman if her husband is not liable to lose his nationality under the terms of this provisions.

France.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1, 2, 5, 6, 7, 12, 13, 14, 14*bis*, 15, 20 AND 20*bis*.

Basis of Discussion No. 1.

Paragraph 1 :

" Questions as to its nationality are within the sovereign authority of each State. Any question as to the acquisition or loss by an individual of a particular nationality

is to be decided in accordance with the law of the State whose nationality is claimed or disputed. The legislation of each State must nevertheless take account of the principles which are generally recognised by States, and of which the most important are the following : . . ."

Paragraph 2 :

" As regards acquisition of nationality : Bestowal of nationality by reason of the parents' nationality or of birth on the national territory, marriage with a national, domicile in case of statelessness, voluntary acquisition of nationality on application by the person himself or his legal representatives, transfer of territory."

Paragraph 3 :

" As regards loss of nationality : Voluntary acquisition of a foreign nationality on application by the person himself or his legal representatives, marriage with a foreigner, *de facto* attachment to another country, transfer of territory."

Basis of Discussion No. 2.

To be omitted.

Basis of Discussion No. 5.

Within a third State, a person having two nationalities shall de deemed to possess that one of his two nationalities which he has always actively exercised and, in particular, the nationality of the country, in which he has freely fulfilled military service obligations or applied for and obtained public functions or duties.

Basis of Discussion No. 6.

Paragraph 1 :

" In principle, a person who, on his own application acquires a foreign nationality loses his former nationality as a result of such action."

Basis of Discussion No. 7.

Second paragraph (new) :

" This principle is not applicable to minors who may be serving or may have served in the armies of their country of origin or against whom an expulsion order has been issued the effects of which have not been suspended."

Basis of Discussion No. 12.

Except where the nationality of the State is acquired directly by birth on its territory, a child of parents having no nationality or whose nationality is unknown may, in principle, obtain during its minority the nationality of the State of birth by means of a claim submitted through the instrumentality of or by its legal representatives, provided that it therein affords sufficient evidence as to its habitual residence. The claim may be refused on account of disqualification or on grounds of public security. The child has the nationality of the State of birth if it is domiciled there when it attains the age of majority as fixed by the law of the State of birth.

Basis of Discussion No. 13.

Except where the nationality of the State is acquired directly by birth on its territory a child of parents whose nationality is not transmitted to it by operation of law may, in principle, obtain during its minority the nationality of the State of birth by means of a claim submitted through the instrumentality of or by its legal representatives, provided that it therein affords sufficient evidence as to its habitual residence. The claim may be refused on account of disqualification or on grounds of public security. The child has the nationality of the State of birth if it is domiciled there when it attains the age of majority as fixed by the law of the State of birth.

*Bases of Discussion Nos. 14 and 14*bis.

For the purposes of acquisition of nationality by birth, birth on board a merchant ship is assimilated to birth on the territory of the State whose flag the ship flies, whether the ship be in the waters or ports of such State or on the high seas, or in foreign territorial waters, or in a foreign seaport in the course of a voyage.

Except when it takes place in the course of a voyage, birth in a foreign seaport constitutes birth on the territory of the State to which the port belongs.

Basis of Discussion No. 15.

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person of double nationality may at any time, with the authorisation of the Government concerned, renounce one of his two nationalities. The authorisation may not be refused if the person has his habitual residence in the country whose nationality he wishes to keep and actually uses, and if that nationality has been acquired by one of the methods of bestowal of nationality generally recognised by States.

Basis of Discussion No. 20.

A legitimated child who is a minor has the same status in regard to nationality as a legitimate child.

*Basis of Discussion No. 20*bis.

To be omitted.

Germany.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 2 AND 6.

Basis of Discussion No. 2.

Delete the words : " after entering a foreign country ".

Basis of Discussion No. 6.

Insert in the first sentence, after the words " In principle ", the following : " and in the absence of agreement to the contrary between the two States concerned ".

NEW PROVISIONS (1) TO FOLLOW BASIS NO. 16 AND (2) TO TAKE THE PLACE OF BASES NOS. 17 AND 18.

Insert after *Basis of Discussion No. 16,* a new Basis to read as follows :

" Without prejudice to the liberty of a State to accord wider rights to retain her nationality of origin to a woman marrying a foreigner, she shall retain this nationality provided she makes an application for the purpose and establishes within the country her first habitual residence after the solemnisation of the marriage. She shall retain this nationality for as long as she is resident in the country."

Replace *Bases of Discussion Nos. 17 and 18* by the following provision :

" A change in the nationality of the husband occurring during marriage in consequence of a voluntary act on his part does not involve a change of nationality for the wife, except with her consent. If the husband loses his nationality during marriage without any voluntary act on his part, such loss does not cause the wife to lose her nationality unless she still possesses another nationality."

Great Britain and Northern Ireland.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1, 5, 7, 8 AND 9.

These amendments are submitted in response to the desire expressed by the Bureau that delegations should formulate their views as early as possible. They should not be taken as representing an attempt to submit a text in the form of a final draft, and the delegation wishes to reserve the liberty of amending or withdrawing any of them during the course of the discussion.

Basis of Discussion No. 1.

Substitute the following text for that contained in the first paragraph of this Basis :

" Each State may determine by its law what persons are its nationals and recognition must be accorded by other States to the law of any State as to the acquisition or loss of its nationality, provided that such law does not involve any material departure from generally recognised principles.

" The principles which have received such recognition are more particularly : . . ."

N. B. — It seems clear that the intention underlaying this Basis is to express the extent of the obligation of States to recognise and give effect to the legislation of other States relating to the acquisition and loss of nationality. The phraseology of the Basis as originally drafted does not bring this point out quite clearly, and, in particular, the words " the legislation of each State must nevertheless take account of the principles generally recognised by States " appear to be capable of giving rise to some misconception as to the real intention of the Basis.

Basis of Discussion No. 5.

Substitute the following text :

"Within a third State, for all purposes other than that of determining the question of personal status, the person concerned is entitled to choose which nationality is to prevail, so long as he remains in that third State."

N. B. — Part *(a)* of the original draft has been deleted because it deals with questions of the choice of law in matters of personal status, which are matters to be determined according to the rules of private international law. This subject appears to be outside the scope of the present Conference. The effect of part *(b)* of the original Basis is retained in the above draft with a modification that the choice of nationality is to prevail only so long as the person concerned remains in the third State, instead of the choice being final. It is to be observed that the choice, as contemplated in the Basis, is to be effective only within a third State, and it would appear therefore to be in accordance with the intention of the Basis that it should be limited as in the above-amended text.

Bases of Discussion Nos. 7, 8 and 9.

A rider should be added at the end of these Bases to the following effect :

"Where the children of parents who are naturalised in a State have previously acquired the nationality of that State under the *jus soli*, the naturalisation of the parents in that State shall cause the loss of the children's other nationality acquired under the *jus sanguinis.*"

N. B. — This addition is suggested to meet the case, which often occurs in countries whose nationality law is based on the *jus soli*, where a child already possesses, by reason of his birth in the territory, the nationality which the parents obtain by naturalisation.

Greece.[1]

Hungary.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1 AND 3.

Basis of Discussion No. 1.

In the second paragraph, after the words " parents' nationality ", insert the following words : " or, in the event of legitimation, the nationality of the father of the illegitimate child . . . "

Insert also in the third paragraph of the same Basis of Discussion, after the words " voluntary acquisition of a foreign nationality ", the following words : " acquisition of a foreign nationality by legitimation ".

Basis of Discussion No. 3.

Replace by the following text :

"A person having two or more nationalities may be regarded as its national by each of the two States whose nationality he possesses."

India.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 6 AND 6*bis*.

Add to *Basis of Discussion No. 6* the following words :

"A State which has conferred its nationality on a person by process of naturalisation shall not, so long as that person habitually resides on its territory, withdraw from the person the rights and privileges incidental to the enjoyment of its nationality, save upon grounds based upon personal misconduct on the part of the person."

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[1] See footnote to Basis of Discussion No. 15 under the observations of the Belgian delegation on page 279.

Following upon a later proposal, made in the name of the delegations of Chile, Egypt, India and South Africa (see page 277), the delegation of India proposed a new text as follows :

" Where a State has conferred its nationality on any person by naturalisation it may provide by its law for the withdrawal of that nationality on the ground that the person naturalised is ordinarily or habitually resident outside its territory or on the ground of any other act or default of that person. Such State may also withdraw its nationality in any such case if its retention by a person is deemed to be inconsistent with his obligations of loyalty to the State.

" The withdrawal of naturalisation may also apply to the naturalised person's wife and to his children who are minors."

Italy.

Proposals concerning Bases of Discussion Nos. 7 and 19.

Basis of Discussion No. 7.

Add after the words " and not married " the words : " or not emancipated ", and after the words " exceptions to this rule " suppress the words : " at present ".

The first proposal is necessary in order to take account of the position of minors who are emancipated but not married. The reason for the second proposal is that it is evidently not intended to stop the progress of national legislation.

Basis of Discussion No. 19.

The following formula is proposed for adoption :

" After dissolution of a marriage, the wife recovers her former nationality if there are no children of the marriage which has been dissolved. If there are children of this marriage, she recovers her former nationality if she establishes her residence in her former native country or if she returns there."

Japan.

Proposals concerning Bases of Discussion Nos. 1, 5, 10, 13, 14, 20 and 21.

Basis of Discussion No. 1.

1. Amend the last two sentences in paragraph 1 so as to read :

" . . . of the principles which are generally recognised by States and are laid down *inter alia* in the following articles."

2. Omit paragraphs 2 and 3.

Basis of Discussion No. 5.

Modify this Basis to read as follows :

" Within a third State, preference is to be given to the nationality of the State in which the person concerned is habitually resident or, in the absence of such habitual residence, to the nationality of the State in which he was last habitually resident."

Basis of Discussion No. 10.

Towards the end of paragraph 2 read : " official functions for a foreign Government ".

Basis of Discussion No. 13.

Replace the existing text by the following :

" A State, the legislation of which makes the transmission of the nationality of the parents to their children dependent in general on the child being born in the territory of the said State, shall recognise that a child born in the territory of a foreign State which follows the principle of *jus sanguinis* acquires the nationality of the parents in accordance with the principle of *jus sanguinis*."

Basis of Discussion No. 14.

Omit the last two phrases : " or in foreign territorial waters or in a foreign port ".

Basis of Discussion No. 20.

Insert after the words " an illegitimate child who is a minor " the following phrase : " except in the case of married daughters ".

Basis of Discussion No. 21.

Replace the existing text by the following :

" If the adopted child acquires the nationality of the person adopting him, he shall lose his former nationality. "

Netherlands.

Proposals concerning Bases of Discussion Nos. 5, 7, 8, 9, 16 and 17.

Basis of Discussion No. 5.

Omit paragraph *(a)*.

Basis of Discussion No. 7.

Replace the words " children who are minors and not married " by the words : " children who are minors under the law of the former country and who are not married ".

Bases of Discussion Nos. 8 and 9.

Replace the words " children who are minors and not married " by : " children referred to in Basis No. 7 ".

Basis of Discussion No. 16.

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall not ensue if, at the time of the marriage, she cannot acquire her husband's nationality.

Basis of Discussion No. 17.

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall not take effect if the wife is unable to acquire the nationality of her husband as a result of his naturalisation.

Norway.

Proposals concerning Bases of Discussion Nos. 5, 7 and 19.

Basis of Discussion No. 5.

Within a third State, preference is to be given to the nationality of the State in which the person concerned is habitually resident, or, in the absence of such habitual residence, to the nationality which appears from the circumstances of the case to be the person's effective nationality.

Basis of Discussion No. 7.

Naturalisation of parents involves that of their children who are minors and not married, but each country may limit the application of this rule to minors who have not reached a specified age and may make other exceptions to this rule.

Basis of Discussion No. 19.

The death of the husband and the dissolution of the marriage do not necessarily involve any change in the wife's nationality.

If the wife recovers her former nationality on her own application, she shall thereby lose the nationality acquired as the result of her marriage.

Poland.

Observations and Proposals concerning Bases of Discussion Nos. 3, 4, 5, 6*bis*, 7, 8, 9, 12, 13, 15, 20, 20*bis* and 21.

In submitting these suggestions to the First Committee, the Polish delegation desires to observe that the considerations put forward below in no way prejudge its point of view in

regard to any criticism of the Bases which are not mentioned in the present observations. The fact that a Basis is not mentioned does not mean that it is accepted.

Similarly, the Polish delegation reserves the right to submit, during the discussions of the First Committee, any amendments or suggestions not included in the list attached to the present communication.

Basis of Discussion No. 3.

Observation. — The question arises whether the rule laid down here could not be regarded as already prescribed by existing international law. It would thus be in the nature of a declaration. (See modifications introduced by the Final Protocol of the Sixth Conference on International Private Law (The Hague, January 28th, 1928) ; see Article 9, Bustamante Code.)

Basis of Discussion No. 4.

Observation. — If this Basis were not accepted as it stands, the possibility of limiting its scope might be considered.

The exclusion of diplomatic protection in cases of naturalisation might be accepted if the naturalised person were not released from his allegiance by his State of origin. The term " naturalisation " should be taken in its usual limited sense — i.e, an act whereby, after enquiry, a State confers its nationality on an individual (see the Swedish Government's observations, Committee of Experts, first report to the Council of the League of Nations : Questionnaires Nos. 1 to 7, document C.196.M.70.1927.V., page 227).

A State which grants naturalisation when the applicant is not released from his allegiance is not empowered to exercise the right of protection against the State of which the naturalised person is a national (Article 6, second paragraph of the preliminary draft of the Committee of Experts).

As the exclusion of diplomatic protection is based on the principle of respect for the sovereignty of the States concerned, it should be laid down that, similarly, the State of origin forfeits the right of protection against the State granting naturalisation. On this principle the Basis of Discussion might be worded as follows :

> " A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses if he has been naturalised without obtaining the expatriation permit required by the relevant legislation. "

Basis of Discussion No. 5.

Observation. — The distinction proposed by Basis No. 5 could not be accepted. There seems to be no need for the differentiation which has led to the adoption of different criteria. The distinction in treatment, first, for cases where the person's national law applies in questions of his personal status (international private law) and, secondly, in all other matters arising out of nationality, is an artificial one. The principle of allowing the person concerned to make his own choice may give rise to abuse, and is therefore dangerous. If the individual has no habitual or ordinary residence in either of his two countries, the third State will be guided by the data enabling the effective (active) nationality to be determined according to the actual circumstances of the case.

Obviously, the declaration of the will of the person concerned (choice) might be taken into consideration, but the third State would not be unconditionally bound by such choice, even if the selection were regarded as final. *(Electa una via non datus recursus ad alteram.)*

Basis No. 5 might thus be worded as follows :

> " Within a third State, preference is to be given to the nationality of the State in which the person concerned is habitually resident, or, in the absence of such habitual residence, to the nationality of the State in which he is residing.
>
> " If he is not resident in any of the States of which he is a national, preference is to be given to the nationality which appears from the circumstances of the case (last place of residence, presumptive intention or will of the person concerned) to be the person's effective nationality. "

Basis of Discussion No. 6 bis.

Observation — It would perhaps be desirable to add that : " release from allegiance (expatriation permit) becomes invalid after the expiration of a period to be determined by the State authorising expatriation. "

In order to obviate the difficulties created through differences in the periods to be fixed by the individual States, the logical course would be to determine that period by international agreement, with the option of extending it in exceptional cases. A period of two years would seem sufficient.

Bases of Discussion Nos. 7, 8 and 9. [1]

Bases of Discussion Nos. 12 and 13.

Omit and replace them by a single Basis reading as follows :

" Except where the nationality of the State is acquired directly by birth on its territory, a child born in the territory of the State of which its mother is a national has the nationality of that State if the father has no nationality or if his nationality is unknown. " [2]

Basis of Discussion No. 15.

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person to whom another State assigns its nationality may, with the authorisation of the Government concerned, renounce one of his two nationalities.

(Omit the second part.)

*Bases of Discussion Nos. 20 and 20*bis.

Observation. — It is very doubtful whether the law could be made uniform by agreeing that the legitimation of illegitimate minors may affect the acquisition or loss of nationality. The period of minority, as the age-limit allowing of legitimation, varies in the laws of the different countries; moreover, according to certain systems of law, the age-limit is 18, and for this reason Basis No. 20 could not be accepted.

Further, the loss of nationality being contingent upon the fulfilment of certain services to the State (Basis of Discussion No. 6), the legitimation (or recognition) of a child by a foreigner does not, as of right and automatically, connote the loss of the original nationality, even if the foreign nationality is acquired by the act of legitimation (or recognition). The loss of nationality may thus be made subject to the granting of an authorisation.

For these reasons Basis No. 20*bis* must be modified so as to take into account the requirements of the national systems of law. Even if an illegitimate child acquires the nationality of its father by legitimation (or recognition), the nationality of origin will be lost only provided the legal provisions of the country in question are duly observed. Accordingly, the following provision should be added at the beginning of Basis No. 20*bis* :

" Subject to the terms of the second paragraph of Basis No. 6, the original nationality of an illegitimate child is not lost . . . "

Basis of Discussion No. 21.

Observation. — The same observation applies to Basis No. 21, which might be worded as follows :

" Subject to the terms of the second paragraph of Basis No. 6, the original nationality of an adopted child is not lost unless the law governing the effects of adoption in regard to nationality invests it with another nationality."

New Provisions.

1. Add the following as a new *Basis of Discussion No. 18*bis :

" A wife who does not acquire the nationality of her husband and is, at the same time, regarded by the laws of her State of origin as having lost her nationality shall nevertheless be entitled, on the same grounds as her husband, to a passport from the State of which the husband is a national. "

N.B. — This rule is recognised by many States. (See Flournoy-Hudson, pages 12 and 13 (Argentine), pages 628, 629 (Uruguay) ; Calbairac, " Treatise on the Nationality of Married Women ", 1929, page 398 (Brazil, United States) ; see also draft of the International Women's Suffrage Alliance, Clause II *(f)*.)

Basis of Discussion No. 17 is intended to prevent cases of statelessness. The inclusion of proposal No. 18*bis* would seem desirable, however, if the wife's State of origin is not a party to the Convention and if the signatory State of which the husband is a national allows the wife a separate nationality (whether through marriage or through the naturalisation of the husband during the marriage). See observations of the Swiss Government (Committee of Experts, Reports to the Council of the League of Nations, Questionnaires Nos. 1 to 7, page 241) ; see also observations of the Czechoslovak Government, *loco cod.*, page 254 : Extension of the rule in question to cover the wife's right to public relief from the State of which the husband is a national.)

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[1] The delegations of Poland, Portugal, Roumania and Yugoslavia proposed combining these three Bases in a single text. This text is reproduced under the observations of the Roumanian delegation on page 293.

[2] At the meeting at which this amendment was discussed the Polish délegation proposed to modify the text as follows : instead of " if his nationality is unknown ", read : " if the father's nationality is unknown ".

2. Add new *Basis of Discussion No. 22 :*

" A certificate issued by the competent authority and confirmed by the central authority of the State shall be accepted as evidence of nationality.

" The certificate shall indicate the legal basis of the nationality which it attests. It shall be valid for a period of three years. "

(See the Convention of Rome, signed on April 6th, 1922, Article 2 (FLOURNOY-HUDSON, page 650) ; " Draft Convention : The Law of Nationality " (Harvard Law School), Article 17.)

3. Clauses regarding the scope and application of the Convention :

" A. The provisions of the present Convention shall not affect any existing treaties, Conventions or agreements concluded by the contracting States before the date of the entry into force of the present Convention.

" B. No State shall bind itself by the present Convention to apply a law other than that of a contracting State. "

(See the formal clauses of the Hague Conventions on International Private Law.)

4. General clause providing for judicial regulations to govern disputes arising between the contracting Parties in regard to the interpretation of the Convention.

Observation. — The method adopted might be that recommended by the Sixth Conference on International Private Law. (See the draft protocol to be signed at The Hague, empowering the Permanent Court of International Justice to interpret Conventions under international private law.)

Portugal.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1, 4, 5, 6, 7, 10, 11, 12 AND 13.

Basis of Discussion No. 1.

Questions as to its nationality are in principle within the sovereign authority of each State. Any question as to the acquisition, loss or recovery by an individual of a particular nationality, is to be decided in accordance with the law of the State whose nationality is claimed or disputed. The legislation of each State must nevertheless take account of the principles generally recognised by States. These principles are, more particularly :

As regards acquisition of nationality : Bestowal of nationality by reason of the parents' nationality or of birth in the national territory, marriage with a national, naturalisation, transfer of territory ;

As regards loss of nationality : Voluntary acquisition, in due form, of a foreign nationality, marriage with a foreigner, denationalisation, transfer of territory ;

As regards recovery : Reversion to her previous nationality, after the dissolution of marriage and on her own application, of a woman who was married to a foreigner.

Basis of Discussion No. 4.

A person who is regarded as being simultaneously a national of two or more States may not, while habitually resident in one of those States, plead the status of a national of any of the others to which he belongs.

Basis of Discussion No. 5.

Within a third State, if a person is habitually resident in one of the States of which he is a national, preference must b given to the nationality of his State of residence ; if he has no habitual residence in any of the countries to which he belongs, he is entitled to choose which nationality is to prevail ; such choice, once made, is final.

Basis of Discussion No. 6.

In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality. The legislation of a State may nevertheless make such loss of its nationality conditional upon the fulfilment of particular legal requirements regarding the legal capacity of the person naturalised, his place of residence, or his obligations towards the State.

Basis of Discussion No. 7.[1]

Naturalisation of parents involves that of their children who are minors, not married or not emancipated, legitimate or legitimated, and illegitimate children, when the parent in respect of whom filiation was first established has been naturalised, but this shall not affect any exceptions to this rule at present contained in the law of each State.

Basis of Discussion No. 10.

Rules of law which make nationality depend upon the place of birth do not apply automatically to children born to persons enjoying diplomatic immunities in the country where birth occurs. The child will, however, be entitled to claim to come within the provisions of the law of the country to the extent and under the conditions prescribed by that law.

The same principle shall apply : (1) to the children of consuls by profession ; (2) to the children of other persons of foreign nationality who have been sent by their Government or by the League of Nations on an official mission.

Basis of Discussion No. 11.

A child whose parents are unknown at law has the nationality of the country of birth.

(Omit the second paragraph.)

Basis of Discussion No. 12.

A child born of parents having no nationality, or whose nationality is unknown, has the nationality of the State of birth.

Basis of Discussion No. 13.

A child born of parents whose nationality is not transmitted to it by operation of law has the nationality of the State of birth, though such a child may, when it attains its majority, choose between the nationality of the State in the territory of which it was born and that of the State to which its parents belong.

Roumania.

Proposals concerning Bases of Discussion Nos. 4, 7, 8 and 9.

Basis of Discussion No. 4.

Add to the text :

" A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses. "

The following :

" . . . unless the person is habitually resident in the former State, and only for such time as he is resident in that State. "

Bases of Discussion Nos. 7, 8 and 9.

Bases Nos. 7 and 8 to be combined in one text, and Basis No. 9 to be omitted.

Combined Text of Bases of Discussion Nos. 7 and 8.

" Subject to the laws of each particular State, naturalisation of the parents shall involve the naturalisation of their children who are minors, and the loss, at the same time, of the previous nationality of both parents and children. "[2]

New Provision.

Add after *Basis of Discussion No. 16 :*

" If the national law of the wife allows her to retain her nationality or to take that of her husband, the latter alternative shall be permissible only if she makes a declaration at the time of her marriage, and if the law of the husband allows such a change of nationality. "

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[1] At a later date the delegations of Poland, Portugal, Roumania and Yugoslavia presented a single text to replace Bases Nos. 7, 8 and 9; this text is reproduced below under the observations of the Roumanian delegation.

[2] The proposal to combine Bases of Discussion Nos. 7, 8 and 9 in a single text as above was put forward jointly by the Polish, Portuguese, Roumanian and Yugoslav delegations.

South Africa.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 6, 6*bis*, 14 AND 20.

Basis of Discussion No. 6.

Proposal to delete the words " the legislation of a State . . . towards the State " and to substitute :

" . . . ; but the law of a State may make such loss conditional upon the fulfilment of specific requirements as to the legal capacity of the person concerned, his place of residence, his due regard to his obligations of loyalty, service or otherwise, and similar circumstances. "

*Basis of Discussion No. 6*bis.[1]

Proposed text :

" A release from allegiance (expatriation permit) does not entail loss of nationality unless a foreign nationality is acquired or possessed. "

Basis of Discussion No. 14.

Proposal to delete the word " merchant ".

Basis of Discussion No. 20.

Proposal to delete the words " father's nationality and causes it . . . from its mother's ", and to substitute :

" . . . nationality which it would have possessed had it been born legitimately, and causes it to lose any other nationality which it may have acquired at birth. "

Sweden.

PROPOSAL AMENDING THE PROVISION PROPOSED BY THE FINNISH DELEGATION, DESIGNED TO REDUCE THE NUMBER OF CASES OF MULTI-NATIONALITY. (See page 284).

A person who from birth has possessed the nationality of two States and who, up to the age of 22, has been habitually resident in one of these States, shall, on attaining that age, lose the nationality of the other State unless he has, beyond all doubt, manifested his desire to retain that nationality.

The provision of the preceding paragraph does not apply to a married woman if her husband is not liable to lose his nationality under the terms of the provision.

Switzerland.[2]

OBSERVATION CONCERNING BASIS OF DISCUSSION NO. 12.

The acceptance of this Basis would impose on States the obligation to confer their rights of citizenship on (1) children of stateless persons ; (2) children of foreigners who have been deprived of their former nationality and (3) children who, at birth, have not acquired the nationality of their parents.

While we might agree to create a *jus soli* for children of stateless persons, we must decline to assume this obligation in regard to the other two categories. On the one hand, by naturalising children of foreigners deprived of their former nationality, we should be sanctioning the right of a State to declare, perhaps arbitrarily, that its nationals have forfeited their nationality, whereas what we desire to remove is any arbitrary procedure of denationalisation, considering it as unjust in itself and as constituting a fruitful source of statelessness.

We also regard it as inadmissible that the State of domicile should be compelled to make good defects in the law of another country and we think it more logical to recommend that States, under whose existing law children of their nationals may be born without nationality, should apply the necessary correctives to their legislation.

The Swiss delegation therefore proposes to delete Basis of Discussion No. 12 in its present form.

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[1] *Withdrawal of Naturalisation.* — The delegations of Chile, Egypt, India and South Africa, presented subsequently a text relating to the withdrawal of naturalisation, which is reproduced under the observations of the Chilian delegation on page 280.

[2] The Swiss delegation also submitted to the Committee a note relating to Article 15. This note is reproduced on page 167.

United States of America.

PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1, 2, 3, 4, 5, 15, 6, 6*bis*, 7, 8, 10, 16, 17, 18, 19, AND 20.

Basis of Discussion No. 1.

Questions as to its nationality are within the sovereign authority of each State. The law of each State should nevertheless take account of the principles generally recognised by States relating to the acquisition and loss of nationality.

Basis of Discussion No. 2.

If a person loses his nationality without acquiring another nationality, the State whose national he was remains bound to admit him to its territory at the request of the State where he is residing.

Double Nationality.

Basis of Discussion No. 3.

A person having two nationalities acquired at birth may be considered as its national by each of the two States whose nationality he possesses.

Basis of Discussion No. 4.

(Suppressed.)

Basis of Discussion No. 5.

A person having two nationalities acquired at birth, shall, when he is within the territory of a third State, be treated as a national of that one of the two States whose nationality he first claimed in such third State, whether at the time of entry or thereafter. If he has not asserted a claim to either nationality while in the third State, he shall be treated as a national of that one of the two States whose nationality he last claimed, prior to entry into such third State.

Basis of Discussion No. 15.

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person of double nationality may, with the authorisation of the Government concerned, renounce one of his two nationalities. The authorisation may not be refused if the person has his habitual residence abroad. If such a person, upon reaching the age of 23 years, shall have failed to renounce either nationality, he shall, if he then has his habitual residence in either of the States of which he is a national, be conclusively presumed to have elected the nationality thereof and to have renounced the nationality of the other State of which he was a national. Provided, however, that a person reaching the age of 23 years within the period of three years immediately following the adoption of this Convention by a State shall not be presumed to have renounced the nationality thereof unless, having his habitual residence in the other State of which he is a national when he reaches the said age, he continues to reside therein during the remainder of the said period.

Loss of Nationality resulting from Voluntary Acquisition of a Foreign Nationality.

Basis of Discussion No. 6.

A person who, in the country where he resides, acquires the nationality of such country, either upon his own application or through naturalisation of a parent in accordance with the provisions of Basis of Discussion No. 7, thereby loses his former nationality.

*Basis of Discussion No. 6*bis.

(Delete.)

Effect of Naturalisation of Parents on Nationality of Minors.

Basis of Discussion No. 7.

Naturalisation of a parent having lawful custody of an unmarried child may, if the local law so provides, involve that of such child who, while a minor, resides in or comes to reside in the country of naturalisation.

Basis of Discussion No. 8.

(Delete.)

Attribution in Certain Circumstances of the Nationality of the Country of Birth.

Basis of Discussion No. 10.

Replace paragraph 2 by the following text :

"A State which confers nationality at birth *(jure soli)* upon children born in its territory should provide by legislation that, when a child is born in its territory of parents who are officials of a foreign State but who do not enjoy diplomatic immunity, the parents may renounce the nationality of such State on behalf of the child during the minority of the latter."

Nationality of Married Women.

Basis of Discussion No. 16.

If the national law of a person causes loss of nationality on marriage with a foreigner, this consequence shall be conditional on the acquiring of the nationality of the alien spouse.

Basis of Discussion No. 17.

If the national law of a married person causes the loss of nationality upon a change in the nationality of the other spouse occurring during marriage, this consequence shall be conditional on the acquisition of the new nationality of the other spouse.

Basis of Discussion No. 18.

Naturalisation of one spouse during marriage does not of itself involve a change of nationality for the other spouse.

Basis of Discussion No. 19.

After dissolution of a marriage, the former nationality of a person may be recovered only on the person's own application and in accordance with the law of the person's former country. The recovery of nationality in this manner shall involve the loss of nationality acquired by marriage.

Legitimation and Adoption.

Basis of Discussion No. 20.

(Delete.)

Proposed additional Bases of Discussion.

No. 1. — A State may not confer its nationality at birth *(jure sanguinis)* upon a person born in the territory of another State, beyond the second generation of persons born and continuously maintaining an habitual residence therein, if such person has the nationality of such other State.

But this provision shall have no application to persons born in territory in which the State of the parents' nationality has extra-territorial jurisdiction or in territory of a protectorate of such State.

No. 2. — When a person, after having been naturalised by a State, establishes a residence of a permanent character within the territory of the State of which he was formerly a national, he shall thereupon lose the nationality acquired by naturalisation.

No. 3. — When a person's nationality, based upon his alleged naturalisation, is in question between two States, such naturalisation may ordinarily be established by a certificate issued by the competent authority of the naturalising State ; but the validity of such a certificate may be impeached upon the ground that it was procured fraudulently or issued in violation of the provisions of a Convention to which the naturalising State is a party.

No. 4. — Nothing herein contained shall limit or affect any treaty or agreement now in force between or among any of the parties hereto.

No. 5. — Nothing herein contained shall derogate from the right of States to conclude agreements concerning nationality to govern cases in which those States are especially interested.

Yugoslavia.

OBSERVATIONS AND PROPOSALS CONCERNING BASES OF DISCUSSION NOS. 1 AND 6, 4, 6*bis*, 5 AND 15, 7, 8, AND 9, AND 19.

Bases of Discussion Nos. 1 and 6.

Observations. — According to Yugoslav law, Yugoslav nationality is not lost through the mere fact of the acquisition of a foreign nationality. The law also requires an act of release from allegiance (Articles 22 to 27 of the Law of September 21st, 1928).

If, therefore, a list of possible causes of loss of nationality is introduced in the text, the Yugoslav delegation considers it necessary, either that this list should specifically mention release from allegiance followed or proceeded by the acquisition of a foreign nationality, or that some other method of reservation should be established whereby countries could still — at all events, as far as their existing laws allow — cause their nationality to be lost by the granting of expatriation permits in conjunction with the acquisition of a foreign nationality.

Basis of Discussion No. 4.

Add a second paragraph as follows :

> " Similarly, a person possessing two nationalities may not plead his status as a national of another State in order to seek a personal remedy through an international tribunal or commission against the State of which he is also a national. "

The Yugoslav delegation considers that Basis of Discussion No. 4, although its underlying idea is quite just does not cover all possible contingencies.

There are a number of treaties providing for joint tribunals or commissions before which private individuals may seek a remedy direct and not through the intermediary of their own country. For these reasons, the Yugoslav delegation considers it desirable to propose a wording which would prevent not only States from affording diplomatic protection but also private individuals from seeking a remedy direct through the intermediary of an international tribunal against the State of which they are nationals.

*Basis of Discussion No. 6*bis.

In Basis of Discussion No. 6*bis*, substitute for the word " until " the word " unless ".[1]

Bases of Discussion Nos. 5 and 15.

The Yugoslav delegation has the honour to propose that in Bases of Discussion Nos. 5 and 15 the expression " principal habitual residence " should be inserted instead of " habitual residence ".

The Yugoslav delegation is of opinion that the former expression reproduces more faithfully the authors' intentions.

Bases of Discussion Nos. 7, 8 and 9.[2]

Basis of Discussion No. 19

Add to Basis of Discussion No. 19 a paragraph worded as follows :

> " The provisions of the preceding paragraph shall apply also to a wife who is judicially separated from her husband. "

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[1] This amendment was afterwards withdrawn in favour of the following text :

"If a State admits an expatriation permit as causing loss of its nationality, such expatriation permit shall only cause the loss of that nationality if the person acquires or possesses a foreign nationality."

[2] At a later date the delegations of Poland, Portugal, Roumania and Yugoslavia presented jointly a single text to replace these three bases ; this text is reproduced under the observations of the Roumanian delegation on page 293.

ANNEX III.

TEXTS DRAWN UP BY THE DRAFTING COMMITTEE. APPOINTED BY THE COMMITTEE.

Part I.

1. CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS.

Chapter I. — General Principles.

Article 1.

It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international usage, and with the principles generally recognised in international law.

Article 2.

The question whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

Article 3.

Subject to the provisions of this Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

Article 4.

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such a person also possesses.

Similarly a person possessing two or more nationalities cannot put forward the fact that he is a national of one of these States in order to bring a personal action before an international tribunal or commission against another State of which he is also a national.

Article 5.

Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any Conventions in force, the authorities of such third State shall, of the nationalities which any such person possesses, recognise exclusively in their country either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

Article 6.

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may, with the authorisation of the Government of the State whose nationality he desires to surrender, renounce one of them.

This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

Chapter II. — Nationality according to the Place of Birth.

Article 7.

Rules of law which make nationality depend upon the place of birth shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.

The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments to renounce, by repudiation or otherwise, their allegiance to the State in which they were born in any case in which, on birth, they acquired dual nationality, provided that they retain the nationality of their parents.

CHAPTER III. — LOSS OF NATIONALITY RESULTING FROM VOLUNTARY ACQUISITION OF A FOREIGN NATIONALITY.

Article 8.

If, and in so far as, the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.

An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which issues the permit. This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit already possesses a nationality other than that of the State by which the permit is issued to him.

The State whose nationality is acquired by a person to whom an expatriation permit has been issued, shall notify the fact to the Government of the State which issued the permit.

CHAPTER IV. — NATIONALITY OF MARRIED WOMEN.

Article 9.

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

Article 10.

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

Article 11.

Naturalisation of the husband during marriage shall not involve a change in the nationality of the wife, except with her consent.

Article 12.

The wife who, under the law of her country lost her nationality on marriage shall not recover it after the dissolution of the marriage, except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage.

CHAPTER V. — NATIONALITY OF CHILDREN.

Article 13.

The grant of naturalisation to the parents shall confer on such of their children as, according to its law, are minors the nationality of the State by which the naturalisation is granted. The law of that State may specify the conditions governing the acquisition of its nationality by minor children as a result of the naturalisation of the parents.

If, and in so far as, under the conditions specified in the law of any State, minor children do not acquire the nationality of their parents as the result of the naturalisation of the latter, they shall retain their existing nationality.

Article 14.

A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.

A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.

Article 15.

Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.

Article 16.

If the law of the State whose nationality an illegitimate child possesses recognises that that nationality may be lost as a consequence of a change in the civil status of the child

(legitimation, recognition), such loss shall nevertheless be conditional on the acquisition by the child of the nationality of another State under the laws by which in that State the effects of the change in civil status are regulated.

Article 17.

In countries whose law recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the person adopted acquiring the nationality of the adoptive parent.

2. CONVENTION ANNEXED TO THE CONVENTION RELATING TO CONFLICT OF NATIONALITY LAWS.

Article 1.

If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality he last possessed remains bound to admit him at the request of the country where he is residing (1) if he is permanently indigent, either as a result of an incurable disease or for any other reason ; (2) if he has been sentenced in the country where he is residing to not less than one month's imprisonment and has served his sentence or obtained total or partial remission thereof.

In the first case, the State whose nationality he last possessed may refuse to receive him on undertaking to meet the cost of relief in the country where he is residing as from the thirtieth day from the date on which the request was made. In the second case, the person must be sent back to the territory of the State whose nationality he last possessed at the expense of the country where he is residing.

Article 2.

A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses and is in fact most closely connected with that country will be exempt from all military obligations in the other country or countries.

This exemption may involve the loss of allegiance to the other country or countries.

Article 3.

In a State whose nationality is not conferred by the mere fact of birth in its territory, a child born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State.

3. RECOMMENDATIONS.

I.

It is desirable that States should give effect to the principle that the acquisition of a foreign nationality through naturalisation involves the loss of the previous nationality.

It is at the same time desirable that, before conferring their nationality by naturalisation, States should endeavour to ascertain that the person concerned has fulfilled, or is in a position to fulfil, the conditions required by the law of his country for loss of nationality.

II. Statelessness.

The Conference is unanimously of the opinion that it is very desirable that the various States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of statelessness and that the League of Nations should continue the work which it already has in hand for the purpose of arriving at an international settlement of this serious question.

III. Dual Nationality.

The Conference is also unanimous in declaring that it is very desirable that the various States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of dual nationality and that steps should be taken to prepare the way for a settlement by international agreement of the conflicts which arise from the possesssion by individuals of two or more nationalities.

IV.

The Conference recommends to the Governments the study of the question whether it would not be possible to introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the children,

and especially to decide that, in principle, the nationality of the wife should not be affected without her consent either by the mere fact of marriage or by any change in the nationality of her husband.

V.

The Conference is of opinion that a woman who, in consequence of her marriage, has lost her nationality of origin without acquiring that of her husband should be able to obtain a passport from the State of which her husband is a national.

Part II.

1. CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS.

PREAMBLE.

Being firmly resolved to settle by international agreement questions relating to the conflict of nationality laws ;

Being convinced that it is in the general interest of the international community to secure the acceptance by all its members of the principle that every person should possess one nationality and one only ;

Holding that the ideal towards which the efforts of civilised humanity should be directed in this domain is the abolition of all cases of statelessness and double nationality together ;

Considering that under the economic and social conditions which at present exist in the various countries and which govern the state of their nationality law, it is not possible to proceed immediately with the uniform solution of the above-mentioned problems ;

Being desirous, nevertheless, of beginning this great undertaking by a first attempt at progressive codification, regulating those questions relating to the conflict of nationality laws on which it is possible at the present time to reach international agreement :

Have decided to conclude the present Convention and have for this purpose appointed as their plenipotentiaries :

[Designation of plenipotentiaries.]

Who, having deposited their full powers found in good and due form, have agreed as follows :

The High Contracting Parties agree to apply, as from the date of the coming into force of the present Convention, in their relations with each other the rules set out in the following articles :

. . . .

CHAPTER VI. — GENERAL PROVISIONS.

Article 18.

The acceptance of any rule in the present Convention shall in no way be deemed to prejudice the question whether such a rule does or does not exist as a customary rule of international law.

Article 19.

Nothing in this Convention shall affect the application as between the High Contracting Parties of any bilateral Convention relating to nationality or matters connected therewith.

Article 20.

A Contracting Party may, when signing the present Convention, or adhering thereto, append an express reservation excluding any one or more of the above provisions.

The provisions thus excluded cannot be applied against the Contracting Party which has made the reservation nor relied on by that Party against any other High Contracting Party.

Article 21.

(Colonial Clause : *reserved.*)

Article 22.

If there should arise between the High Contracting Parties any dispute relating to the interpretation or application of the present Convention and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the Parties to the dispute. If no other tribunal is agreed upon, the dispute shall be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Court, or, at the choice of the Parties, either to the Permanent Court of International Justice or to a tribunal constituted in accordance with the Hague Convention of October 18th, 1907, if any of the Parties to the dispute are not Parties to the Protocol of December 16th, 1920.

* * *

Note. — The general provisions (Articles 18 to 22) of the above Convention on certain questions relating to the conflict of nationality laws should equally form part of the annexed Convention.

2. RECOMMENDATIONS.

The recommendations proposed by the First Committee should be inserted in the following order in the General Act of the Conference.

The Conference makes the following recommendations:

1. Statelessness.
2. Dual Nationality.
3. Naturalisation.
4. Married Women.
5. Passports for Stateless Women.

Part III.

CONVENTION ANNEXED TO THE CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS.

PREAMBLE.

Considering that it has not been possible to embody certain provisions adopted by the First Conference for the Progressive Codification of International Law, with a view to providing a practical remedy for special situations arising in cases of statelessness or double nationality, in the Convention concluded this day concerning certain questions relating to conflicts of law on nationality;

Being desirous, however, of reserving the advantages of these provisions in their mutual relations:

Have resolved to include them in an annexed Convention and have for this purpose appointed as their plenipotentiaries:

[The names of plenipotentiaries.]

Who, having deposited their full powers found in good and due form, have agreed as follows:

. . . .

ANNEX IV.

FINAL CLAUSES PROPOSED BY THE DRAFTING COMMITTEE OF THE CONFERENCE.

The Drafting Committee of the Conference has, at the request of the Bureau, drawn up final clauses for insertion in the Conventions or protocols adopted by each Committee.

The annexed text of these clauses appears to require no explanation. They are based upon various precedents and account has been taken of the special character of the present Conference. In addition, in the drafting of these clauses, which was done in collaboration with M. Alvarez, the proposals put forward by a number of delegations were taken into consideration. The Drafting Committee has, however, not felt it desirable to retain a proposal laying down the principle that the Conventions are only binding on the States which become parties thereto. This principle is the ordinary legal rule and to insert it might have led to misinterpretation.

The Drafting Committee merely feels that it should point out, with reference to Article 1, that the accessions which are to be counted for the purpose of the entering into force of a convention must be accessions given without any reservation of ratification.

Summary of the Articles proposed.

Article A.

Principles and rules of existing international law.

Article B.

Treaties in force.

Article C.

Colonial clause.

Article D.

Reservations.

Article E.

Arbitration clause.

Article F.

Signature.

Article G.

Ratifications.

Article H.

Accession.

Article I.

Procès-verbal of the deposit of the first ratifications.

Article J.

Entry into force.

Article K.

Revision.

Article L.

Denunciation.

Article M.

Registration.

Article N.

Both languages to be authoritative.

Recommendations.

Article A.

The High Contracting Parties agree to apply the principles and rules contained in the above articles in their relations with each other, as from the date of the entry into force of the present Convention ; the inclusion of these principles and rules in the Convention in no way prejudices the question whether they do or do not already form part of international law.

It is moreover understood that, on any point which is not covered by the above provisions, the principles and rules of international law are applicable.

Article B.

Nothing in the present Convention shall affect the provisions of any treaty, Convention or agreement in force between any of the High Contracting Parties.

Article C.

It will be for each Committee to decide whether provisions concerning the application of the Convention to colonies, protectorates or territories under mandate, should be inserted. The Drafting Committee will prepare the necessary provisions so soon as it is informed of the decisions of the Committees.

Article D.

In accordance with Article XX of the Rules of Procedure of the Conference, adopted on April 3rd, it will be for each Committee to pronounce upon the question of reservations. The following drafts have been prepared to meet the various possible cases :

(a) Reservations may be made, at the time of signature or that of deposit of a ratification or accession, in respect of all the provisions of the present Convention.

(b) Reservations may be made, at the time of signature or that of deposit of a ratification or accession, in respect of Article . . . of the present Convention.

(c) No reservation is allowable in respect of any of the provisions of the present Convention except such reservation, being maintained or made at the time of deposit of a ratification or accession, is accepted by all the Members of the League of Nations and non-Member States on whose behalf the Convention has been signed, or ratifications or accessions have been deposited.

Article E.

If there should arise between the High Contracting Parties any dispute of any kind relating to the interpretation or application of the present Convention, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the Parties to the dispute. If no other tribunal is agreed upon, the dispute shall be referred to the Permanent Court of International Justice if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Court, or, at the choice of the Parties, either to the Permanent Court of International Justice or to a tribunal constituted in accordance with the Hague Convention of October 18th, 1907, if any of the Parties to the dispute are not Parties to the Protocol of December 16th, 1920.

Article F.

Down to December 31st, 1930, the present Convention may be signed on behalf of any Member of the League of Nations or any non-Member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy for this purpose.

Article G.

The present Convention is subject to ratification. The ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the Members of the League of Nations and to the non-Member States mentioned in Article F, indicating the date of the deposit.

Article H.

As from January 1st, 1931, any Member of the League of Nations and any non-Member State mentioned in Article F on whose behalf the Convention has not been signed before that date, may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the Members of the League of Nations and to the non-Member States mentioned in Article F, indicating the date of the deposit of the instrument.

Article I.

A *procès-verbal* shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten Members of the Leagues of Nations or non-Member States have been deposited.

A certified copy of this *procès-verbal* shall be sent by the Secretary-General to each Member of the League of Nations and to each non-Member State mentioned in Article F.

Article J.

The present Convention shall enter into force on the ninetieth day after the date of the *procès-verbal* mentioned in Article I as regards the Members of the League of Nations or non-Member States on whose behalf ratifications or accessions have been deposited on the date of the *procès-verbal.*

As regards any Member of the League or non-Member State on whose behalf a ratification or accession is subsequently deposited, the Convention shall enter into force on the ninetieth day after the date of the deposit of a ratification or accession on its behalf.

Article K.

As from January 1st, 1936, any Member of the League of Nations or any non-Member State in regard to which the present Convention is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of the Convention. If such a request, communicated to the other Members of the League and non-Member States in regard to which the Convention is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the Members of the League of Nations and the non-Member States mentioned in Article F, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

Article L.

The present Convention may be denounced after the expiration of five years from the date of the *procès-verbal* mentioned in Article I.

The denunciation shall be notified in writing to the Secretary-General of the League of Nations, who shall inform all Members of the League of Nations and the non-Member States mentioned in Article F.

Each denunciation shall take effect one year after it has been notified, but only as regards the Member of the League or non-Member State on whose behalf it has been notified.

Article M.

The present Convention shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

Article N.

The present Convention is drawn up in the French and English languages ; both texts shall be authoritative.

DONE at The Hague on the . . . day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which authenticated copies shall be delivered by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

ANNEX V.

DRAFT REPORT FOR SUBMISSION TO THE CONFERENCE ON BEHALF OF THE FIRST COMMITEE (NATIONALITY)[1].

Rapporteur : His Excellency M. J. Gustavo GUERRERO.

The First Committee of the Conference for the Codification of International Law, after completing its Bureau by appointing M. Chao-Chu Wu, as its Vice-Chairman, and M. J. G. Guerrero, as its Rapporteur, examined the problem of nationality, discussing the various points as far as possible in the order indicated in the Bases of Discussion laid down by the Preparatory Committee.

From the outset of its work, the Committee realised that the nationality question, which is primarily a question of public law, is one of the most delicate and difficult to solve, despite the fact that it is wholly governed by principles of international law. As M. Politis, the Chairman, reminded the Committee, at the opening of its proceedings, the difficulty — indeed, the impossibility — of solving this question is due to the fact that nationality is essentially a political problem which affects the life of the State throughout the course of its development. The very formation of the State requires a population which will ensure its preservation and continuity. This necessity gives rise to a clash between the conceptions — all of which are quite legitimate — on which the municipal law of the various countries is based.

The Committee thus realised the inadvisability of any attempt to reconcile, by setting up rules which would be in the nature of a compromise, the vital interests of emigration and immigration States.

Having thus admitted the autonomy of the State in determining matters connected with its nationality, the Committee also unanimously recognised the need to proceed with the utmost caution when examining the conflicts which arise in practice through the diversity of, and divergencies between, the various systems of municipal law.

Thus, the Committee began its work in full consciousness of the difficulties attending the international regulation of the nationality question. It did not attempt to bring about any uniformity in the laws governing the question, or to remove all the difficulties attendant upon double nationality, or entirely to eliminate statelessness. The results of its work may accordingly appear limited and unpretentious. They will nevertheless provide a clear indication of the existing tendency to modify, as far as possible, certain principles which are still in force.

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[1] The drafting amendments which the British delegation proposed to this text were considered by the Drafting Committee of the Conference and incorporated in the final text as reproduced in document C.229.M. 116. 1930. V — Legal. 1930 V.8, which document is annexed to the Minutes of the plenary sessions of the Conference.

The articles and recommendations adopted by the Committee are reproduced here in the form in which they resulted from their examination by the Drafting Committee of the Conference.

The texts adopted by the Committee include :

(1) A Convention on certain questions relating to conflict of nationality laws, adopted unanimously, thirty-five delegations voting ;

(2) A Protocol consisting of three articles on military service, adopted by a two-thirds majority ;

(3) A number of recommendations to be inserted in the Final Act of the Conference.

* * *

Basis of Discussion No. 1.

First of all, the Committee examined the first Basis proposed by the Preparatory Committee of the Conference, which lays down certain general principles in connection with nationality — on the one hand, the principle of the sovereignty of the State which determines, by its laws, who are its nationals ; on the other, the necessity for these laws to take into account the principles generally recognised by States.

The Preparatory Committee had, moreover, prepared a text containing a non-limitative schedule of these generally recognised principles.

During the discussion of this Basis several currents of opinion became manifest, either in the amendments submitted, or the explanations given by the delegations. The most radical proposal was to omit this Basis altogether, not because the State's right to legislate was contested, but because a special provision to this effect was thought to be unnecessary. The suggestion was also made that if this Basis were omitted, its essential features should be embodied in the Preamble to the Convention.

Another suggestion was that the general principles circumscribing legislative freedom which ought to be taken into account by the various States should be defined in greater detail.

There were, however, contrary proposals in favour of avoiding any indication that any such general principles might exist outside the conventional provisions freely accepted by States.

The Committee felt itself unable to accept any of these suggestions. It asserted the general principle that each State has exclusive competence to determine under its laws who are its nationals, and that these laws should be recognised by other States, provided they are in accordance with international Conventions, international custom, and the generally recognised principles of law in connection with nationality.

Basis No. 1 has become Articles 1 and 2 of the Convention.

Article 1, which was adopted by thirty-eight votes to two, is worded as follows :

" It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international Conventions, international custom, and the principles of law generally recognised with regard to nationality."

Article 2, which was adopted by forty-one votes to one, has been worded as follows:

" Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State."

Basis of Discussion No. 2.

The text proposed as Basis of Discussion by the Preparatory Committee laid down that, if a person after entering a foreign country lost his nationality without acquiring another nationality, the State whose national he had been remained bound to admit him to its territory at the request of the State where he had been residing.

The discussion on this question showed that the Committee was divided into two almost equal groups. Some delegations were in favour of maintaining this Basis, while an almost equal number was in favour of its omission.

The latter argued that the question, as enunciated by the Preparatory Committee, was of a political nature transcending the limits of nationality questions and becoming a matter of international policy. Various delegations added that if a provision of this kind were adopted, it would be the first time that an international Convention had interfered with the freedom of States to admit or refuse to admit foreigners into their territory.

An attempt was made to reach an agreement on a formula which would enable an indigent and stateless foreigner, and also a stateless foreigner sentenced to not less than one month's imprisonment, to be sent back to his country of origin.

The Committee did not adopt the text thus submitted to it.[1]

The Committee, however, adopted a recommendation concerning the settlement of statelessness in general.

This recommendation, intended for insertion in the Final Act of the Conference, is worded as follows :

> " The Conference is unanimously of the opinion that it is very desirable " that States should, in the exercise of their power regulating questions of nationality, make every effort to reduce so far as possible cases of statelessness, " and that the League of Nations should continue the work which it has already undertaken for the purpose of arriving at an international settlement of this important matter."

Another *vœu*, proposed by the Chinese delegation, was adopted by a majority. It reads as follows :

> " The Conference recommends States to examine whether it would be desirable that, in cases where a person loses his nationality without acquiring another nationality, the State whose nationality he last possessed should be bound to admit him to its territory, at the request of the country where he his, under conditions different from those set out in the Special Protocol relating to statelessness, which has been adopted by the Conference."

Basis of Discussion No. 3.

The Preparatory Committee had proposed, as Basis of Discussion, that a person having two nationalities might be considered as its national by each of the two States whose nationality he possessed.

This text gave rise to two observations which have been taken into account in the text finally adopted by the Committee.

In the first place, several delegations observed that provision had to be made, not merely for cases of double, but also multiple, nationality.

It was also pointed out that, as one of the objects of the Convention in which this provision was to be inserted was to remedy as far as possible the inconvenience caused by double or multiple nationality, a reservation should be made concerning the provisions about to be adopted on this subject.

The Committee, therefore, adopted by forty votes to one the text proposed by the Drafting Committee, which thus became Article 3 of the Convention. This article is worded as follows :

> " Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses."

Basis of Discussion No. 4.

The Committee examining the following text proposed by the Preparatory Committee : " A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses ". The Preparatory Committee had also proposed as an alternative to be added to the above text : " . . . if he is habitually resident in the latter State ". Certain delegations held that this Basis should be omitted because, they thought, it went beyond the scope of a nationality Convention. Other delegations formulated reservations ; these would have preferred a specification to the effect that diplomatic protection might still be granted, on humanitarian grounds, in special cases. The majority of the Committee, nevertheless, pronounced in favour of the text without the alternative proposed by the Preparatory Committee.

A proposal had been made to add a new paragraph to Basis No. 4. According to this proposal a person possessing two or more nationalities could not put forward the fact that he was a national of one of the States whose nationality he possessed in order to bring, before an international tribunal or commission, a personal action against another State of which he was also a national.

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[1] In the course of the discussion of the report, the Committee decided by a simple majority, that this text should be incorporated in a special Protocol, which reads as follows :

> "If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality he last possessed is bound to admit him at the request of the State in whose territory he is :
>
> " *(i)* If he is permanently indigent, either as a result of an incurable disease or for any other reason; or,
>
> " *(ii)* If he has been sentenced, in the State where he is, to not less than one month's imprisonment and has either served his sentence or obtained total or partial remission thereof.
>
> " In the first case, the State whose nationality such person last possessed may refuse to receive him if it undertakes to meet the cost of relief in the country where he is as from the thirtieth day from the date on which the request was made. In the second case, the cost of sending him back shall be borne by the country making the request."

The Committee has not embodied this proposal in the Convention, since it deals with a case that is so rare as to be of little interest to the majority of States.

The text, adopted by forty votes to one, becomes Article 4 of the Convention, worded as follows :

> " A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses."

Basis of Discussion No. 5.

In connection with this Basis, a first question arose regarding the preference which might be given, within a third State, to one of the nationalities possessed by a person who is a national of two or more States. Was it desirable or not to make a distinction, as was done in the text proposed by the Preparatory Committee, according to whether the question was regarded from the point of view of the personal status of the individual or from the other points of views?

Some delegations were in favour of doing away with this distinction, while others asked that the application of the rules of law followed by the third State in regard to personal status should be expressly reserved. A number of delegations further observed that the present Conference should avoid taking up questions, such as that of personal status, which come within the scope of private international law, and some of which are dealt with in the Hague Conventions on Private International Law. The Committee eventually adopted this view, and reserved both the Conventions in force and the rules of law followed in the third State in the matter of personal status.

Another question was what criterion or criteria should be adopted to determine in a third State the nationality of a person possessing two or more nationalities. The idea set forth in the Basis of allowing the person concerned to put forward, under certain conditions, the nationality of his choice was rejected by the majority of the Committee.

The text finally adopted is governed by the idea that a person possessing more than one nationality must be treated in a third State as if he had only one. In order to determine that nationality, it was agreed that the authorities of the third State might take certain definite factors into account — namely, the fact that the person concerned has his habitual and principal residence in one of the countries of which he is a national, or other circumstances which show more clearly his attachment to one particular nationality. In the opinion of the majority of the Committee, if he establishes his habitual and principal residence in one of the countries whose nationality he possesses, or if he shows by his acts that he is most closely connected with one of those countries, he thereby makes his choice and enables the third State, if necessary, to recognise him as exclusively possessing one particular nationality.

The text, adopted by the Committee by thirty-five votes to two, has become Article 5 of the Convention. It is worded as follows :

> " Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any Conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected."

Basis of Discussion No. 6.

This Basis, which concerns the loss of nationality resulting from the voluntary acquisition of another nationality, and the conditions to which a State may subject the loss of its nationality, formed the subject of very long and interesting discussions. The Committee seemed to be divided into two groups. Many delegates, almost all being delegates of countries of emigration, explained that their laws laid down certain conditions or even in certain cases required the issue of expatriation permits before their nationals could lose their nationality. On the other hand, the representatives of certain countries of immigration — but not all — stated that they were in favour of the principle that naturalisation abroad involved the loss of the previous nationality. The former group pleaded that it was in the interest of the country of origin to prevent certain of its nationals renouncing their nationality in order to avoid certain obligations, whereas the latter considered that the system of authorisation for obtaining freedom from allegiance was an antiquated system which did not take into account the conditions of modern life or of the right which, in their opinion, every person possessed to change his allegiance freely. Attempts to harmonise these two points of view failed, and the Committee found itself obliged, as a compromise, to omit Basis No. 6 and put forward a recommendation adopted by the majority to be inserted in the Final Act of the Conference. This recommendation is worded as follows :

> " It is desirable that States should apply the principle that the acquisition of a foreign nationality through naturalisation involves the loss of the previous nationality.
>
> " It is also desirable that, pending the complete realisation of the above principle, States, before conferring their nationality by naturalisation, should endeavour to ascertain whether the person concerned has fulfilled, or is in a position to fulfil, the conditions required by the law of his country for the loss of its nationality."

* * *

The Committee also considered a proposed addition to Basis No. 6 to the effect that a State which has conferred its nationality on a person by naturalisation should not be able to withdraw from that person the rights and privileges attaching to such nationality, except in certain cases specifically defined.

The Committee decided not to insert this proposal as an article of the Convention, but to state in its report that it had examined the possibility of restricting the freedom of each State to withdraw its naturalisation. In view of the difficulties encountered, it decided not to settle this point but merely to call upon the various States, appealing to their sense of justice, to use their right of withdrawing their nationality in the most reasonable and limited manner possible.

Basis of Discussion No. 6*bis*.

The Preparatory Committee had proposed in Basis No. 6*bis* that a release from allegiance (expatriation permit) does not entail loss of nationality until a foreign nationality is acquired.

Several delegations proposed that this Basis should be omitted, but the majority of the Committee agreed that its maintenance would be calculated to eliminate certain cases of statelessness.

The Committee also adopted two proposals intended to complete the proposed text ; one provides that the expatriation permit shall lapse if a new nationality is not acquired within a certain time-limit ; the other that the fact that a new nationality has been acquired shall be notified.

The text finally submitted by the Drafting Committee was adopted by the Committee by thirty votes to six. It has become Article 7 of the Convention, and is worded as follows :

> " In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.
>
> " An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him.
>
> " The State whose nationality is acquired by a person to whom an expatriation permit has been issued, shall notify such acquisition to the State which has issued the permit."

Bases of Discussion Nos. 7, 8 and 9.

Bases Nos. 7, 8 and 9 of the Preparatory Committee concerned the question of the effects of the naturalisation of parents on the nationality of their minor children.

Basis No. 7 provides that the naturalisation of the parents in a country shall endow the infant children with the nationality of that country except in certain cases defined by its laws. Several opinions were expressed as to the conditions to which such acquisition of nationality may be subjected and as to the law which should apply for the determination of the children's nonage ; law of the country of origin, law of the country of naturalisation or both. On this last point, the majority of the Committee considered that it must choose one or the other, and it finally decided in favour of the law of the country of naturalisation.

Further, finding that the laws of the various countries differ in many respects among themselves in regard to this question as a whole, the Committee drafted a text which leaves States wide freedom of action. At the same time, the Committee took care in this case, as in the others, to eliminate statelessness as far as possible, and the provision it adopted precludes the possibility of a minor remaining without nationality in any circumstances.

The text, which was adopted by the Committee by thirty-five votes to three, and which combines Bases Nos. 7 and 9, has become Article 13 of the Convention. It reads as follows:

> " Naturalisation of the parents shall confer on such of their children as according to its law are minors the nationality of the State by which the naturalisation is granted. In such case, the law of that State may specify the conditions governing the acquisition of its nationality by the minor children as a result of the naturalisation of the parents. In cases where minor children do not acquire the nationality of their parents as the result of the naturalisation of the latter, they shall retain their existing nationality."

Basis of Discussion No. 10.

The Committee retained the text of the first sentence of this Basis, which provides, in the cases of children born to persons enjoying diplomatic immunities, for an exception to the ordinary law that is very widely admitted. In so doing, it merely placed on record a rule that is generally applied. It considered, moreover, that the formula " persons enjoying diplomatic immunities " covers in particular the case of members of arbitral tribunals and international commissions of enquiry.

The Committee felt bound, however, to omit the second sentence in the first paragraph of this Basis, which read as follows: " The child (born to persons enjoying diplomatic immunities) will, however, be entitled to claim to come within the provisions of the law of the country to the extent and under the conditions prescribed by

that law ". Certain countries asked that this sentence should be retained, as their laws allowed children born to persons enjoying diplomatic immunities to choose the nationality of their country of birth. The Committee considered, however, that in abolishing this provision it in no way interfered with the law of those States, and, moreover, avoided giving rise to the belief that States were in general bound to grant their nationality to children who, being born in their territory to persons enjoying diplomatic immunities, claimed the benefit of their laws.

With regard to the second paragraph, the Committee considered the case of various persons exercising official functions but not entitled to enjoy diplomatic immunities. It considered, in particular, the case of consuls by profession, and in general that of officials of foreign States employed by their Governments on official missions. All these persons have been included in this second paragraph.

The text, adopted by the Committee by thirty-six votes to one, has become Article 12 of the Convention, and is worded as follows:

> " Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.
>
> " The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born in any case in which on birth they acquired dual nationality, provoded that they retain the nationality of their parents."

Basis of Discussion No. 11.

This Basis did not lead to any difficulties as regards substance, and the Committee merely amplified it by a provision regarding the case in which the filiation of a child of unknown parents is established later.

The text, adopted by the Committee by forty-one votes, has become Article 14 of the Convention, and is worded as follows :

> " A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known.
>
> " A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found."

Basis of Discussion No. 12.

The text adopted by the Committee to replace the text of Basis No. 12 proposed by the Preparatory Committee appears, on comparison with the latter, to mark a backward step. It does not, in fact, contain any obligation to confer on a child of parents having no nationality, or whose nationality is unknown, the nationality of the State of birth if it lives there up to a certain age.

The Committee desired, indeed, to take into account certain observations made by the delegations of various States regarding the provisions of their domestic laws relating to persons without nationality. A few States also wish, for economic reasons, the force of which must be admitted, not to assume at present an obligation to increase the number of their nationals by granting their nationality indiscriminately to stateless children. For these reasons, the text, as adopted, has not the same scope as the original Basis. It nevertheless indicates a tendency of the Committee, which desires that States should consider the possibility of introducing into their national laws provisions which would prevent an alarming increase of stateless persons.

The Polish delegation submitted a compromise which, if accepted by States, would be likely to do away with a number of cases of statelessness. The Committee decided that this proposal should form the subject of a Protocol annexed to the Convention.

The text, adopted by forty votes as an article of the Convention (Article 15), reads as follows :

> " Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."

The Protocol, adopted by twenty-six votes, is drafted as follows :

> " In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State."

Basis of Discussion No. 13.

The Committee decided to delete Basis No. 13, which refers to the acquisition under certain conditions of the nationality of the State of birth by a child of parents whose nationality is not transmitted to it by operation of law.

This Basis had raised numerous difficulties, and a further argument for its deletion was that the cases to which a conventional provision of this kind could have applied are altogether exceptional.

Bases of Discussion Nos. 14 and 14*bis*.

Guided by the same considerations as in the case of Basis No. 13, the Committee decided to omit Articles 14 and 14*bis*, concerning the nationality of children born on ships.

Basis of Discussion No. 15.

Basis No. 15 provided, without prejudice to the liberty of each State to accord wider rights to renounce its nationality, that a person having two nationalities might renounce one of these, with the authorisation of the Government concerned. The text proposed by the Preparatory Committee added that such authorisation might not be refused if the person had his habitual residence abroad and satisfied the conditions necessary to cause loss of his former nationality to result from his being naturalised abroad.

The text adopted by the Committee, after long discussion, constitutes a compromise intended to reconcile the divergent views expressed.

The text of the Basis was limited so as to exclude the case of an individual possessing two nationalities, one of which was acquired voluntarily by naturalisation. This was done in order to meet the wishes of certain immigration countries.

It was also pointed out that, as the Committee desired to eliminate double nationality as far as possible, it should be laid down that a person possessing two nationalities acquired at birth should be able, on reaching puberty, to opt for one or the other of these nationalities.

The Committee did not agree with this suggestion. It has made the right of opting depend on the authorisation of the State of which the person concerned intends to relinquish his nationality, and agreed that such authorisation should not be refused to a person having his habitual and principal residence abroad, provided the conditions required by the law of the State whose nationality is to be relinquished are complied with.

In spite of the Committee's desire to eliminate cases of double nationality as far as possible, it has not admitted that a person possessing two nationalities may, in order to avoid service obligations in one of the countries of which he is a national, renounce the nationality of that country without further formalities. If, however, States have the right to refuse liberation from allegiance, it is desirable that their laws should make provision for such liberation in certain specific cases and circumstances.

The Committee adopted by thirty-seven votes to two the following text, which has become Article 6 of the Convention:

> "Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.
>
> "This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied."

Moreover, on the proposal of several delegations — in particular, the Danish delegation — the Committee decided to examine the question of the military obligations of persons having double nationality and to draft a text allowing States which so desire to undertake to exempt such persons from military service in one of the countries of which they are nationals.

This provision, which forms the subject of the first article of a Protocol annexed to the Convention, was supplemented by two other articles, proposed by the British and French delegations respectively.

These three articles are worded as follows :

> "*Article 1.*
>
> "A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries.
>
> "This exemption may involve the loss of the nationality of the other country or countries.
>
> "*Article 2.*
>
> "Without prejudice to the provisions of Article 1 of the present Protocol, if a person possesses the nationality of two or more States and, under the law of any one of such States, has the right, on attaining his majority, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.

"*Article 3.*

"A person who has lost the nationality of a State under the law of that State and has acquired another nationality, shall be exempt from military obligations in the State of which he has lost the nationality."

The Committee also adopted two recommendations regarding the settlement of the problem of double nationality in general. The first was proposed by the Swiss delegation and the second by the delegation of the United States of America.

These recommendations are worded as follows:

"I. The Conference is unanimously of the opinion that it is very desirable that States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of dual nationality, and that the League of Nations should consider what steps may be taken for arriving at an international settlement of the different conflicts which arise from the possession by an individual of two or more nationalities.

"II. The Conference recommends that States should adopt legislation designed to facilitate, in the case of persons possessing two or more nationalities at birth, the renunciation of the nationality of the countries in which they are not resident, without subjecting such renunciation to unnecessary conditions."

BASIS OF DISCUSSION NO. 16.

A very full discussion took place on the question of the nationality of married women. Further, the Committee, before taking its decisions, heard the views of the delegations of the women's international associations, who, after being received by the Bureau of the Conference, expressed the desire to lay their views also before the Committee itself at a plenary meeting.

Thus the texts of Bases of Discussion Nos. 16 to 19 were adopted with a full knowledge of the facts and after an exhaustive examination both of the situation and of existing tendencies.

Basis No. 16 provides that, if the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband. As already observed, this text forms a compromise between two diametrically opposed conceptions: that of the countries which consider that, in the matter of nationality, there should be complete equality between the sexes, and that of the countries in which the status of the husband governs that of the wife. Although some countries admit this latter principle in their laws either wholly or in part and apply it more or less completely, the laws of many countries provide that, from the point of view of nationality, the wife must, as a rule, follow her husband.

It was observed that the co-existence of these two principles — the freedom of the wife on the one hand and the unity of the family on the other — had the effect of increasing the number of cases of double nationality and also of statelessness. In point of fact a woman can lose her nationality through marriage with a foreigner, and being unable to acquire that of her husband can become stateless, while, on the other hand, retaining the nationality she possesses by birth, she can also acquire that of her husband. For that reason, the Committee, without attempting to decide in favour of either of the two existing systems — indeed, that is rather the duty of the legislatures of the different countries — simply endeavoured to remedy some of the defects resulting from existing conditions and, in particular, the case of statelessness provided for in the text of this Basis.

If States adopt this text, progress will have been made in eliminating cases of statelessness among married women.

Several delegations had proposed to add a provision to the effect that a woman who, according to her national law, is entitled, on marrying a foreigner, either to take her husband's nationality or to retain her own nationality, does not lose her nationality unless she acquires her husband's nationality under the latter's national law.

The delegations which proposed this additional paragraph withdrew it, because the Committee thought, first, that the case was covered by the text of the Basis, and also because the possibility referred to in this proposal would in practice very seldom arise. A woman who, under her national legislation, is allowed an option, will certainly not renounce her nationality until she has made sure that, according to the law of her husband's country, she can acquire her husband's nationality.

The text, adopted by the Committee by thirty-two votes to two, has become Article 8 of the Convention. It reads as follows:

"If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband."

Although, in order to harmonise the various opinions expressed as far as possible, the Committee did not feel itself called upon to introduce any alterations in Basis No. 16, it nevertheless agreed to the suggestion, put forward by various delegations, to adopt a *vœu* pointing out that there was a fairly pronounced tendency to place both sexes on an equal footing in the matter of nationality, taking into consideration the interest of the children, and also to allow a woman who marries a foreigner greater freedom in the matter of retaining her nationality of origin.

In this connection, the Committee combined in one text two proposals submitted, one by the Belgian delegation and the other by the delegation of the United States of America and, by twenty-seven votes, it adopted the following *vœu :*

" The Conference recommends to States the study of the question whether it would not be possible :

" (1) To introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into consideration the interests of the children ; and

" (2) Especially to decide that, in principle, the nationality of the wife shall henceforth not be affected without her consent, either by the mere fact of marriage or by any change in the nationality of her husband."

Basis of Discussion No. 17.

The text of the Preparatory Committee, which the Committee adopted by thirty votes to two and which has become Article 9 of the Convention, is as follows :

" If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality."

Basis of Discussion No. 18.

The Committee rejected a proposal to omit this Basis and adopted the text of the Preparatory Committee by twenty-three votes to seven. This has become Article 10 of the Convention, and reads as follows :

" Naturalisation of the husband during marriage shall not involve a change in the nationality of the wife, except with her consent."

Basis of Discussion No. 19.

The Committee did not accept a proposal to delete this Basis. By twenty-six votes to two, it adopted the following text, which has become Article 11 of the Convention :

" The wife who, under the law of her country, lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage."

The Committee then adopted, in the form of a recommendation, a Polish proposal, supported by the delegation of Salvador, to the effect that a woman who becomes a stateless person in consequence of her marriage may obtain a passport from the State of which her husband is a national.

This recommendation reads as follows :

" The Conference recommends that a woman who, in consequence of her marriage, has lost her previous nationality without acquiring that of her husband, should be able to obtain a passport from the State of which her husband is a national."

Basis of Discussion No. 20.

The Committee deleted Basis No. 20, which refers to the acquisition of the father's nationality by an illegitimate child who has been legitimated. It considered that States should, in particular, undertake to prevent statelessness in illegitimate children, and that Basis No. 20*bis* would serve this purpose.

Basis of Discussion No. 20*bis*.

The Committee agreed to Basis No. 20*bis*, which is designed to prevent an illegitimate child becoming a stateless person, in certain cases, on being legitimated or recognised.

The text, adopted by the Committee by thirty-five votes to one, has become Article 16 of the Convention, and is as follows :

" If the law of the State whose nationality an illegitimate child possesses recognises that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of such State relating to the effect upon nationality of changes in civil status."

Basis of Discussion No. 21.

Basis No. 21 is intended to prevent statelessness in certain cases as a result of adoption. The Committee accepted an amendment to the Preparatory Committee's text to replace

the words "*enfant adoptif*" by the word "*adopté*". This wording is of wider scope and allows any adopted person, no matter what his age may be, to retain his nationality if he does not acquire that of the adoptive parent.

It was also proposed to draft this Basis by following as closely as possible the text adopted for Basis No. 20*bis*. This proposal was agreed to, and the Committee adopted, by thirty-eight votes, the following text, which has become Article 17 of the Convention :

> "If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality."

Final Clauses.

The Committee examined the general and formal clauses to be embodied in the Convention which it drew up.

It adopted as the basis of this study the texts prepared by the Central Drafting Committee, to which it referred certain proposals formulated by various delegations.

The Committee proposed that the article referring to the relations of the Convention with agreements which have already been concluded or may subsequently be concluded by Governments should be worded as follows :

> "Nothing in the present Convention shall affect the provisions of any treaty, Convention or agreement in force between any of the High Contracting Parties relating to nationality or matters connected therewith."

As regards the article relating to reservations, the Rules of Procedure of the Conference left each Committee to take its own decision as to the limits within which States could exclude individual provisions from acceptance by means of reservations.

Two tendencies were revealed in the Committee. Some delegations thought that States must be left free to exclude any provision whatever from their acceptance, while others would have preferred that certain provisions should not be made the subject of reservations. The latter view was not accepted, but it was generally agreed that States should themselves limit as far as possible their right to make reservations when signing or ratifying the Convention or when acceding to it.

As regards the interpretation of the word "provision", it was understood that that term must be taken in a very wide sense.

Since a State has the right to exclude whole articles from its acceptance, it may, under the rule that "the whole includes the part", also exclude parts of articles.

Protocols.

Protocols A, B, and C, annexed to the Convention, contain certain texts referred to above which were adopted by a majority.

They are independent of the Convention, but the final provisions of the Convention also apply to each of them. They will have to be signed and ratified like the Convention. States desiring to do so may also accede to them on or after January 1st, 1931.

Recommendations.

Apart from the recommendations mentioned above, the Committee also adopted the following texts :

I. Recommendation submitted by the Czechoslovak, Polish, Portuguese, Roumanian and Yugoslav delegations.

The Conference draws the attention of States to the advisability of examining at a future Conference questions connected with the proof of nationality.

It would be highly desirable to determine the legal value of certificates of nationality which have been, or may be, issued by the competent authorities, and to lay down the conditions for their recognition by other States.

II. Recommendation submitted by the Drafting Committee :

"The Conference,

"With a view to facilitating the Progressive Codification of International Law,

"Expresses the *vœu* that, in the future, States should be guided as far as possible by the provisions of the Acts of the First Conference for the Codification of International Law in any special Conventions which they may conclude among themselves."

The Committee also referred to the Drafting Committee a *vœu* of the Greek delegation regarding the organisation of future conferences for the progressive codification of international law. The Committee hopes that the text submitted by the Greek delegation and the exchange of views to which it gave rise will enable the Conference to make recommendations on this important question.

* * *

Although the Conference has succeeded in drawing up the texts mentioned in the present Report, it regretfully realises that its work is incomplete, since it has not succeeded in the principal aim of preparing a Convention to regulate the problem of nationality. It has encountered almost insurmountable obstacles, due to divergencies in the different laws and also to the more or less marked tendency of each delegation to press the claims of its own country's laws. As a result, the agreements adopted do not entirely eliminate the unfortunate consequences of double nationality and statelessness.

Nevertheless, the Convention as a whole is imbued with a general idea which the legislatures of every country must regard as expressing the feeling of the Conference. This idea is that every individual has a right to a nationality and that it is most important for all countries to prevent any person from possessing multiple nationality.

Although there are still very important questions to be settled, it is only right to point out that this first attempt at the codification of nationality laws marks a very noteworthy advance.

In conclusion, the Rapporteur would like to emphasise one point which is of particular importance : When and how do the contracting parties propose to bring their own laws into line with the provisions of the Convention adopted? According to Article 18, the parties agree to apply, in their relations with each other, the principles and rules of the Convention as from the date of its coming into force. In order to be able to carry out this undertaking the States must, before ratifying, take any steps that may be necessary to bring their laws into line with the new conventional provisions which they are prepared to accept.

ANNEX VI.

NATIONALITY OF MARRIED WOMEN.[1]

I.

MEMORANDUM OF THE JOINT CONFERENCE AND DEMONSTRATION OF THE INTERNATIONAL COUNCIL OF WOMEN AND THE INTERNATIONAL ALLIANCE OF WOMEN FOR SUFFRAGE AND EQUAL CITIZENSHIP ON THE NATIONALITY OF MARRIED WOMEN, HELD ON MARCH 13TH, 1930, ADDRESSED TO THE FIRST CODIFICATION CONFERENCE OF THE LEAGUE OF NATIONS AT THE HAGUE.

Married Women's Nationality.

The right of citizenship is the most fundamental political right. For a woman to have her own nationality taken from her or her husband's imposed upon her without her consent is to refuse her the status of an adult. It is treating nationality and allegiance as matters of little importance if nationality may be changed without the consent of the individual concerned.

We recommend therefore :

That a woman, whether married or unmarried, should have the same right as a man to retain or to change her nationality ; and in particular

(a) That the nationality of a woman shall not be changed by reason only of marriage, or a change during marriage in the nationality of her husband ;

(b) That the right of a woman to retain her nationality or to change it by naturalisation, denationalisation or denaturalisation shall not be denied or abridged because she is a married woman ;

(c) That the nationality of a woman shall not be changed without her consent except under conditions which would change the nationality of a man without his consent.

The essential point in these proposals is that the woman should herself have the same right to choose as a man; that she should be treated as an adult and not as a subordinate entity because she is married; that she should not have a nationality taken from her or imposed upon her without her consent.

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[1] The Memorandum and Minutes reproduced in this annex were submitted to the Committee by a decision of the Bureau of the Conference.

Article 18 of the Bases of Discussion, drawn up by the Preparatory Committee, is in accordance with this principle.

With regard to proposals *re* statelessness on the one hand or double nationality on the other, it has to be remembered that *to prevent a woman being stateless by imposing on her a nationality for which she has not asked or to prevent her being of double nationality by taking from her a nationality she may wish to retain, is no substitute for the right to decide for herself what her nationality should be.*

Unity of the family is a common argument against giving a choice of nationality to a married woman. But that is really the argument that the woman ought to be the subordinate partner in marriage. In so far as this argument concerns the children it assumes that facts are other than they are, for under many existing systems of law it is possible for a child to have a different nationality from a parent.

Derivation of Nationality from a Parent.

Under many existing legal systems it is also possible for a child to have double nationality, and it is a common practice to give such children the right to choose between these nationalities at the age of majority or at the age for military service.

We recommend that, with respect to the derivation of nationality from a parent, the nationality of one parent should have no preference over that of the other and that any provision in the Convention to be adapted by the First Codification Conference should be consistent with this principle.

The Spirit of the Codification.

We remind the Conference of the Resolution of the League of Nations Assembly of September 24th, 1927, that the spirit of codification " should not confine itself to the mere registration of existing rules but should aim at adapting them as far as possible to contemporary conditions of international life ".

As the Preparatory Committee of the Codification Conference points out, " the work of codification involves a risk of setback in international law if the content of the Codification instrument is less advanced than the actually existing law ". (Bases of Discussion : Volume I, page 9.)

Since in the world of to-day where, in the last twelve years, thirteen additional countries — and these with a population of hundreds of millions — have given a right of choice to the married woman, it is clear that the tendency of progressive legislation is with us.

Equality between the sexes is in line with modern thought.

Let the Convention adopted by this Codification Conference, look forward and not backward. Let it be in accordance with enlightened thought and inspired by human justice.

Note. — A brochure on this question, published by the International Federation of University Women, Crosly Hall, Cheyne Walk, London, S.W.3., is appended for the information of delegates.[1]

II.

JOINT DEPUTATION OF THE INTERNATIONAL COUNCIL OF WOMEN AND OF THE INTERNATIONAL ALLIANCE OF WOMEN FOR SUFFRAGE AND EQUAL CITIZENSHIP, SUPPORTED BY OTHER INTERNATIONAL AND NATIONAL BODIES.

Verbatim Report of a Meeting with the Bureau of the Conference, held at The Hague on Saturday, March 15th, 1930, at 11.30 a.m., under the presidency of M. Heemskerk.

The President :

Translation : The Bureau of the Conference is happy to see so many ladies present here who want it to receive the memorandum which they have drawn up. It will also be happy to hear their observations.

I see that there are six ladies who would like to speak, and I may perhaps venture to ask whether we should not fix a time-limit of ten minutes for each speaker in order not to prolong the meeting unduly.

Agreed.

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[1] This brochure is kept in the archives of the Secretariat.

The President :

Translation : I will first ask Miss Chrystal Macmillan, Chairman of the Joint Conference and Chairman of the International Alliance of Women for Suffrage and Equal Citizenship, Nationality of Married Women Committee, to speak.

Miss Chrystal Macmillan :

Your Excellency — I should first like to thank you on behalf of our Conference for your kindness in receiving it here and allowing so many of us to have the privilege of hearing what you may say to us.

Our Conference has been called specially to support a particular resolution — namely, that a woman, whether married or unmarried, should have the same right as a man to retain or to change her nationality. We regard nationality as the most fundamental of political rights, and we consider it therefore of the greatest importance that a woman should be asked to give her consent. To think that allegiance and nationality can be changed without the consent of the individual concerned is to treat them as matters of very little importance. That fact lies at the base of all for which we are asking.

There are three aspects of this matter which we particularly wish to emphasise : in the first place, that marriage only should not change the nationality, and, with respect to naturalisation, that the woman also, as an individual, should have a similar right to naturalise, and that the conditions under which her nationality should be lost should not differ from those under which a man loses his nationality without his consent, because we recognise that cases exist in which nationality is taken away without consent. We only say that women should be put in the same position as men in this respect.

A number of hardships arise under the present system. It is a commonplace occurrence that women under a number of legal systems must cease to exercise a profession if they marry an alien. We find, too, that property may be taken from them, that they may be required to register as aliens in their own country, and so on. Many women who have never left their country are treated as foreigners because their husbands have gone to some other part of the world. You must know the difficulties that exist. The following are some of the reasons which are urged against our thesis : It is said that it is desirable to have unity in the family. Even at present that does not exist under the law of the country from which I come — namely, Great Britain.

If a British woman marries, say, a German, and lives in England and has children there, under British law she is treated as a foreigner and her children are treated as British. Under this system, therefore, there is disunity in the family. We do not think, however, that these difficulties are greater than disunity with regard to political or religious points of view. It is not possible to change the real loyalties of individuals by outside legislation.

A further argument which has not now the same force as it used to have is that by changing our law we are increasing conflicts of law. That may perhaps have been true twelve years ago in Europe, but during the past twelve years many countries have amended the law in the direction in which we are seeking to move.

Many of the South American Republics have always recognised the complete independent right of the married woman to her nationality ; the three largest, the Argentine, Brazil and Chile, and others also, have taken that step. Further, in the last twelve years, the great countries of Russia and the United States of America have adopted the same procedure, and the Scandinavian countries, and also France, Roumania, Yugoslavia and Turkey have gone a certain distance in that direction. The question of the conflicts of law is therefore a much less important one than before.

I wish to call your attention to a statement made by M. Rundstein in his report in which he said that, if a proposal in line with ours were adopted universally, the conflict of laws would be abolished ; he also pointed out that everything was tending in that direction.

Another point to which we would call your attention is this. Proposals are often made with regard to the prevention of statelessness or the prevention of double nationality. Such proposals have been put forward by a certain number of legal organisations, and certain of the Bases of Discussion which are to be before the Nationality Committee of your Conference, deal with the same question.

The question of the prevention of statelessness is a very important general question of nationality, but when it is put forward as a substitute for allowing a woman the same choice as a man, we are bound to say that it is no substitute. We ask that a woman shall be treated as an adult human being with full responsibility to decide upon one of the most important of all questions — namely, the country towards which her loyalty should be given. The same applies to double nationality ; to prevent double nationality sometimes is not a help.

Many countries have in their system of law provisions by which, when their nationals become naturalised in another country, their nationality is retained. I understand that that is so in Switzerland and in other countries and it is sometimes considered a benefit to have a double nationality. We would ask that the woman be put under the same conditions as a man in that respect.

A further resolution included in the memorandum we have submitted to you deals with the derivation of nationality from a parent. Under most systems of law to-day, the derivation of a nationality is as a rule taken from the father. Under some systems of law, I believe, it may be taken from the mother. We think — and we would emphasise this for those who argue about the unity of the family — that as the mother has as much interest in the children

as the father, her nationality should be of as great importance as that of the father, where it is a question of deriving it from the parent.

To-day, already under many systems of law, it is a custom to give a child an opportunity of choosing at the time of its majority — or at the moment when it attains the age for military service — between the two nationalities that it has acquired at birth. This would not be introducing any new principle and it would very often be of great value, especially where children are living with their mother and are going to continue so to live.

Such are the main outlines of the proposal we place before you. I would call your attention to the fact that to the memorandum is attached a report which amplifies to a considerable extent what I have said. It is in both French and English ; the English is the authentic text. The French is, in some cases, not quite an accurate translation.

The President :

Translation : I now call upon Madame Maria Vérone, Chairman of the International Council of Women, Laws Committee, to speak.

Madame Maria Vérone :

Translation : I desire to add only a few words to what Miss Chrystal Macmillan has said.

We are well aware that, in coming to lay our views before the Conference, we cannot ask for anything more than a recommendation.

The older legislation on the nationality of the married woman was based on a single principle — unity of the family, unity of nationality and unity of legislation. This principle is still set up to-day in opposition to the recommendation that we are making.

While we have no desire to place ourselves on a level with the distinguished jurists attending this Conference, we cannot overlook the fact that, as regards nationality and legislation, the unity of the family does not always exist. The father of a family is entitled to change his nationality by naturalisation, and it frequently happens that the unity of the family is thereby broken.

Moreover, as regards legislation, cases arise where members of one and the same family, on leaving the country to which they belong and on taking up residence in another country, obtain a domicile and citizenship even without having to acquire the nationality of the new country. Legislation may therefore differ widely in respect of members of the same family.

In addition, most of our systems of law draw a distinction between the various kinds of property. Moveable property, as a rule, depends on the personal status of the owner, but this is not always the case with immoveable property. Under the law of many countries immoveable property is subject to the law of the country in which it is situated. Consequently, differences may exist in the same family as regards moveable and immoveable property.

We have even been told of cases of fathers of families going to a country where, after residing continuously for a number of years, they are able under the law of the new country entirely to disinherit the members of their family, contrary to the legal provisions governing the personal status of those members.

You will thus see that, in reality, unity of nationality in the first place, and unity of legislation in the second place, do not always exist in one and the same family.

These cases were once exceptional, at a time when communication between countries was, of course, much more difficult and less rapid than at present. To-day, however, relations between the nationals of various countries are so close that what was formerly the exception has become so frequent — I shall not say it is the rule — that many countries have felt the need of modifying their law relating to the nationality of the woman who marries a foreigner.

What has been the nature of these modifications?

If we merely take the chronological order of the new laws regarding the nationality of the married woman, we shall see that all the changes are being made in the same direction, and that there is a growing tendency to make the consent of the woman essential before any change takes place in her nationality.

That being the case, we should be glad if you would ask the Conference whether it could not indicate very clearly the tendency of existing legislation and, therefore, the direction in which the various States ought to legislate.

I am aware that the sovereign rights of States can be invoked in opposition to our views. A beginning has, however, already been made with agreements on international lines, and certain countries have signed Conventions. We readily admit that, if this question of nationality were to be definitively settled by countries acting independently of each other, there would be a risk of many woman acquiring double nationality ; a result which obviously would cause enormous difficulties.

But this we do ask. In the resolutions which it may adopt, the Conference should keep in mind the general tendency and not take a decision which runs counter to that tendency and which might hamper, or at all events influence, the action of the many States which do not yet allow women to retain or to choose their nationality.

Lastly, we would ask you to look to the future and not too much to the past. We think that, while respecting the sovereignty of States, you may find it possible, if not to adopt a resolution, at least to make a recommendation indicating the new tendency of legislation and the Conference's desire that the various States should take up a progressive attitude and accept — we hope at not too distant a date — the recommendation we are making to-day.

The President :

Translation : I call upon Mlle. Ingeborg Hansen.

Mlle. Ingeborg Hansen :

Mr. Chairman and gentlemen — in the Scandinavian countries, we already have in our laws of nationality some of the things for which the International Women's Organisations now ask. Women retain their nationality as long as they do not acquire another and, in any case, as long as they stay in their own country. But this is only half of our desire, and it is not enough. We can, of course, in this way avoid being stateless through marriage, but the double nationality will be imposed upon a woman even if foreign nationality does not interest her at all.

On the other hand, the foreign woman still acquires Danish or Scandinavian nationality through marriage with a Dane or Scandinavian, and against this I want to refer to an argument which the Professor in Law at Copenhagen University, Dr. Berlin, has used. We find it is unjust that a foreign woman shall acquire the same rights through marriage for which a foreign man or an unmarried woman must wait and for which they must work for ten or fifteen years. In spite of our position in Scandinavia, we Scandinavian women support the aims of the Women's Organisations and the resolution that the woman, whether married or unmarried, shall have the same right as the man to retain or change her nationality.

The President :

Translation : I call upon Mme. Ciselet.

Madame Ciselet :

Translation : Mr. Chairman — I did not know that Miss Chrystal Macmillan was going to ask me to say a few words this morning on our legislation in Belgium, so that, not having prepared a speech, I will only venture to make a few brief observations.

In Belgium, we have a law, passed on May 15th, 1922, which lays down the conditions governing the acquisition and loss of Belgian nationality. This law is generally regarded, both in Belgium and abroad, as giving full satisfaction to women. We think that it is wrong, and that it would be very unfortunate if a uniform international law were to follow the principles adopted in Belgium.

Our law contains two articles relating to married women. According to the first, a foreign woman who marries a Belgian, or whose husband acquires Belgian nationality, becomes Belgian.

I would at once point out to you that this law contains an error, due to the fact that our legislation does not bar double nationality. The Belgian law gives Belgian nationality to a foreign woman marrying a Belgian, no matter whether she still has a foreign nationality. That is certainly a serious mistake.

The second article is worded approximately as follows : " A Belgian woman who marries a foreigner, or whose husband acquires foreign nationality by option, loses Belgian nationality."

Here the law provides for two derogations in order to give us an ostensible remedy. A Belgian woman who marries a foreigner may retain her nationality by complying with certain rather strict formalities. She must, within six months, expressly declare her intention either to the competent registrar at the place in Belgium where she resides, or to the Belgian diplomatic or consular agents abroad. Similarly, a Belgian woman who has already lost her nationality may recover it after the dissolution of her marriage, but there again there are very strict formalities with which she must comply. She must reside in Belgium for one year and must make a specific declaration of her intention.

We think that that is a fundamental error, both in law and in logic. Women should not be required to comply strictly with certain formalities and to make express declarations in order to retain their nationality ; they should only do so in order to change it. That, in our opinion, would be far more equitable and logical.

Those are the few observations I wished to lay before you. I trust you will be good enough to take them into consideration.

The President :

Translation : I call upon Mrs. Corbett Ashby, President of the International Alliance of Women for Suffrage and Equal Citizenship, to speak.

Mrs. Corbett Ashby :

Mr. Chairman and gentlemen — I am not speaking as a woman lawyer, but as a quite ordinary married woman who is interested as such, and as a mother, in the freedom of choice for women on marriage.

May I just point out to you that women are not more inclined than men to agree on any question, but on this one point of nationality we have an amazing agreement among the women of the forty-seven countries which are represented here to-day.

Those countries are in all stages of development. We represent countries where polygamy still exists. We represent countries where the woman is a perpetual minor, passing from the guardianship of her father to that of her husband, perhaps even to that of her son. But we also rerpresent twenty-nine countries in which women are full citizens and the women of all those countries are unanimous in wishing the choice to be allowed to the woman and that her nationality should not be taken from her without her free consent.

We would like to point out to you that the whole of the legislation of the last twelve years is in this direction and that very great progress has been made. Therefore, as a quite ordinary married woman and mother, may I beg you to bring into the Codification Conference the new spirit, that nothing shall be done which will in any way prevent the new tendency in legislation.

We recognise the difficulties and, as a lay woman, I recognise the legal difficulties that may result. But freedom of choice always implies freedom to make mistakes, and we crave that freedom for women now. Women, though this is not always recognised, are not all fools ; they are as interested in the unity of the family as men can possibly be. Every request that women have made for education or development or status of citizenship has always been met with a refusal on the ground that it will break up the family.

The family luckily is more solid than the objectors can imagine and, where women have the greatest freedom, there, I think, you will find that the family is most satisfactory, at any rate in this one point, that we keep the children alive. Mortality is greatest where the position of the woman is most unfair.

We perfectly understand that hardships will arise under this choice, but we would point out the very great difficulties that arise under the present system. For one thing, the entry of women into industry and professions means that to take nationality from the woman now without her consent might land her into very great economic difficulties. The difficulties of the legislation of different countries, however, regarding the control of the married woman over her children, over her property and over her own person vary so greatly that, even if nationality is attached to residence, it is possible for a woman seriously to consider whether, for her own protection and for the protection of her children, it may not be to her advantage to keep the nationality of a progressive country rather than of a country which is less liberal in this respect.

We must also, I think, remind you, of the great increase in mixed marriages, and that this is not now a problem affecting only a few people. The whole of the world intercourse means that this is a growing problem. It can of course be settled by sacrificing the married woman, but that is not possible now that women are themselves a political factor in so many countries and will become so in more. We, therefore, speaking as quite ordinary women, with the whole of our life's experience gained in working for women and with women, urge that you will take into account the new spirit of the age. We recognise that a resolution such as that put before you by the Joint Conference may mean that consequential national legislation will have to be undertaken, it may be, on the lines already adopted. Such legislation would make it easier, without distinction of sex, for one spouse to acquire the nationality of the other, coupled perhaps with the condition of residence in the country of one or the other. We are not here to settle the difficulties of a very intricate problem, but only to put before you this very widespread and very human demand, that this most vital of all personal privileges, that of citizenship, with all its traditions and loyalty may be taken from woman only with her concurrence and of her free will.

The President :

Translation : I call upon Mlle. Louise van Eeghen, Honorary Corresponding Secretary of the International Council of Women, to speak.

Mlle. Louise van Eeghen :

Translation : Your Excellency, gentlemen — I have the honour to address you on behalf of forty million women, representing all classes of society, all professions and occupations, every race and every religion. Organised women throughout the world demand justice. Not merely intellectual women, but working women also, ask that they should not be deprived of the possibility of working on account of a change of nationality which has been imposed upon them and which they did not want. Our resolution has received as many signatures of quite ordinary as of educated women — more, indeed.

The International Council of Women and the International Alliance for Suffrage have, for more than twenty-five years, been working to bring about an improvement in the nationality laws applying to women, in order to give women, should they so desire, the same right as men to retain their nationality after marriage with a foreigner.

Throughout this period, progress has been made in a number of countries. There can be no question now of falling behind, or adopting as a guiding principle a rule which is not abreast of public opinion or of the people's will.

In your speech at the opening of the Conference for the Codification of International Law, you said, Sir, that the Conference must be guided by the general principles of international law. Those general principles follow a process of evolution in accordance with the development of the fundamental conceptions of justice and equity.

You, gentlemen, are our judges. I venture to ask you to exercise the prerogative of the Judges of the Court of International Justice to take a decision, when they think fit, *ex æquo et bono*. In doing so, you will simply be putting into practice the motto of the International Council of Women : " Do unto others as you would that others should do unto you."

Our fate is in Your Excellency's hands. We place our trust in the good intentions of the Conference. We place our trust in justice. We should like, however, to be present at your discussions, to be on the spot in order that, when the time comes, we may state our position from our point of view. Even a criminal is not refused a legal defender, and we are no criminals. We ask to be heard by the Committee on Nationality.

On behalf of the Joint Conference of the International Council of Women and the International Alliance of Women for Suffrage and Equal Citizenship, we beg you to allow us to have an observer in the Committee on Nationality. We could submit to you a list of names from which you could make a choice. By acceding to our request, you will, we assure you, increase our confidence in the success of your work and that of the League of Nations.

The President :

Translation : I thank Mlle. Louise van Eeghen for her speech. I shall, of course, give a detailed reply at once. I may say now, however, that though Mlle. van Eeghen has compared women to criminals, no one would dream of making such a comparison. I may add that the memorandum which you have been good enough to lay before us, and the record of the present meeting, will be communicated to the First Committee for its information.

Miss Chrystal Macmillan :

I should like to thank Your Excellency very much for the way you have received us and for your kindness in circulating the documents, which will thus be before the Committee for its consideration.

The meeting rose at 12.20 p.m.

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