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Summary record of the 225th meeting

Topic:
Nationality including statelessness

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way of penalty would reacquire their lost nationality. Normally, legislation governing nationality never had retrospective effect; indeed, when it had been desired to ensure that the British Nationality Act of 1948 would enable married women who had lost their nationality on marriage to an alien to regain it if they so wished, the retrospective effect had had specifically to be provided for. Nevertheless, he found the inclusion of the word "future" in the title slightly pedantic, and felt that the matter could best be dealt with by an appropriate passage in the Commission's general report.

89. Mr. KOZHEVNIKOV said that the Special Rapporteur had been instructed to deal only with the elimination of future statelessness; and in the light of the Commission's discussion the elimination of the word "future" from the title could only lead to ambiguity. Mr. Scelle, for example, might then have sound ground for his broad interpretation of the effect of the convention. He emphasized that the convention would not affect the situation of persons who were stateless when it came into force; it would only ensure that no new cases of statelessness should arise. In his view, the title was not a mere technicality; the Special Rapporteur's original suggestion was more accurate than any subsequent proposal.

90. Mr. CORDOVA said that the issue which had arisen was basic to the problem the Commission had been discussing for several weeks. In his report on nationality including statelessness (A/CN.4/64), he had made it clear that he had been prevented from making any recommendations for the elimination of existing statelessness, and that he deplored that limitation. He quoted parts of paragraphs 20 and 21 from his report, and said that he thought it was well understood that no article in the draft convention was concerned with the elimination of existing statelessness.

91. For his part, he would be happy to have the terms of the convention apply to all cases of statelessness existing at the time when it came into force. But if that were intended, it would have to be stated categorically.

92. Mr. ALFARO expressed sympathy with Mr. Scelle's intentions and said that he would personally be ready at any time to sign a convention whose object was the elimination of existing statelessness. Nevertheless, any interpretation of the convention already drafted that gave a retrospective sense to its terms was barred by its very words: in nearly every clause the future tense of the operative verbs had been used.

93. Mr. SPIROPOULOS said that the issue, in spite of its fundamental importance, had been raised as a matter of drafting. The instructions that had been given to the Special Rapporteur were clear, and the English text of the title was clear; the convention could only apply to future cases of statelessness. It had never been the intention of the Commission at any time during its work on the convention that the provisions of the latter should apply to existing cases. Further, as Mr. Lauterpacht had said, nationality laws were never retrospective in effect.

94. The applicability of the convention should follow

the normal rules of international law. Any suggestion of retrospective effect would be absurd, and cause complete confusion in, for example, the articles referring to deprivation of nationality as a penalty and to change of nationality as a result of change in personal status; it would only make acceptance of the convention by States even more difficult than it was already.

95. Mr. SANDSTRÖM said that he was in entire agreement with Mr. Spiropoulos.

The meeting rose at 6.5 p.m.

225th MEETING

Tuesday, 28 July 1953, at 9.30 a.m.

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Chairman : Mr. J. P. A. FRANÇOIS.

Rapporteur : Mr. H. LAUTERPACHT.

Present :

Members : Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat : Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*continued*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS (*continued*)

Titles (*continued*)

1. The CHAIRMAN said that he wished to comment briefly on the discussion which had taken place at the previous meeting. Mr. Córdova had stressed in his report that the two draft conventions which he had prepared referred only to future cases of statelessness, but had also said that in his view the Commission should do something to help the very large numbers who were already stateless. Mr. Córdova had expressed the same view when introducing his report; he had "urged the Commission to reconsider its decision to leave existing

cases of statelessness out of account".¹ Finally, after the general debate on his report, he had said, referring to the comments which had been made on the absence from it of references to existing statelessness, that "he was the first to deplore an omission which was due to the Commission's own decision... He was perfectly willing that the Commission should reverse its decision, but if the problem of existing statelessness was to be tackled, he would like to know in good time what the Commission expected of him."²

2. There could therefore be no doubt that the two draft conventions had been prepared and considered with sole reference to future cases of statelessness. There was, however, another entirely distinct question, namely, whether the Commission wished to take any separate action in favour of existing cases of statelessness. He agreed that that question would have to be discussed once the Commission had disposed of the question out of which the whole discussion had arisen, namely, that of the title of the Conventions.

3. Mr. SCHELLE admitted that what the Chairman had said was perfectly correct, and agreed that he himself had been mistaken in maintaining the contrary. Through error or forgetfulness he had formed the impression that the conventions would apply to existing cases of statelessness as well as to future cases. He now agreed that that was not so, and that the word "future" must be included in the title. Indeed, to be perfectly accurate the title might well read "Convention for the Elimination of Certain Cases of Statelessness in the Indefinite Future".

4. Mr. YEPES paid tribute to Mr. Scelle's courageous *mea culpa*, but feared that he could not associate himself with it. If the convention did not apply to existing cases of statelessness, it would not be worth signing. He had acted in perfect good faith in protesting against the inclusion of the word "future" in the title, since it had been agreed that the present title was provisional, and since, in any case, it was the substance of the articles that mattered, not the title. During consideration of the articles he had spoken, made proposals and voted on the assumption that they applied to existing cases of statelessness. Moreover, the argument which had been advanced against many of the proposed provisions was that they would involve nationality being conferred on millions of persons who were at present stateless, and that that was something which the States in question could not accept. In his view it was essential that something be done to succour the millions of people who were at present deprived of the protection of which possession of a nationality would assure them.

5. Mr. Spiropoulos had suggested that if the Commission made the convention applicable to existing cases of statelessness, it would make its acceptance much more difficult, as it would violate the principle that laws were not retrospective. However, that principle, which was humanitarian at root, was applicable to criminal

law but not to international law. The principle that criminal law was not retrospective was founded on the rule *nulla poena sine lege*, a rule which, though stated in Latin, had been unknown in ancient Rome. But even in criminal law, the non-retrospective principle was not always observed; for example, when a severe penalty was replaced by a more lenient one, the latter was imposed even for offences which were committed before its introduction. The rule of non-retrospectiveness, in fact, was an exceptional rule applicable only where the law in question violated an existing right. Such was clearly not the case with the convention.

6. Mr. Lauterpacht had maintained that it would be absurd if the convention resulted in a person who had been legally deprived of his nationality re-acquiring it. He (Mr. Yepes) could not agree. There would be one stateless person the less, and the Commission would not have been guilty of condoning action taken by States in violation of a fundamental human right.

7. The Nürnberg principles, which the Commission had accepted, after a lengthy discussion, as valid international law, were the typical example of a retrospective law, and he recalled that Mr. Spiropoulos, who was now opposing the convention's being given retrospective effect, had at that time been one of the most ardent supporters of the retrospective principle. Again the Universal Declaration of Human Rights did not state that certain rights should be enjoyed by persons born after its adoption; it stated that they should be enjoyed by all from the day of its adoption. Moreover, when the Rights of Man were proclaimed in 1789, did anyone pretend that that noble declaration should only apply to persons born after its approval?

8. Several members of the Commission had expressed the view that the convention represented an ideal, and that in practice no State would be able to ratify it. If that was their view, they should have the courage of their convictions and not be deterred by the bog of non-retrospectiveness from making the convention the ideal instrument they believed it to be. The convention had also been described as a remedy which, if universally applied, would deliver mankind from the scourge of statelessness. Could anyone imagine a medical body discovering an efficacious cure for cancer and at the same time insisting that it should be reserved for future cancer cases and not used for existing sufferers. That would be senseless.

9. Mr. LIANG (Secretary to the Commission) with reference to the title of the convention, said that there was no doubt, having regard to what had gone before, that the word "future" had been inserted deliberately. When the Economic and Social Council and the *Ad hoc* Committee on Statelessness had considered the whole problem, their discussions had largely hinged about existing statelessness; and when the question had been referred to the International Law Commission, it had been understood that the Commission could deal with existing statelessness as well as with future statelessness. It was on that basis that Judge Manley O. Hudson, then Special Rapporteur, had been instructed to report. In

¹ See *supra*, 211th meeting, para. 10.

² *Ibid.*, para. 49.

his report (A/CN.4/50), Mr. Hudson had distinguished clearly between the two, and the Commission had, in his view wisely, concentrated its attention on future statelessness, on the ground that the elimination of existing statelessness was mainly a matter for political arrangement. The title of a convention should surely correspond to its subject matter, and there was no doubt that the question which the Commission had been examining during the past fortnight had been that of the elimination of future cases of statelessness or, to put the matter differently, the elimination of the legal origins of statelessness.

10. With regard to the suggestion that the convention should be made retrospective, he drew attention to the wording adopted for articles 2 and 4, where it was said that "A foundling, so long as its place of birth is unknown, shall be presumed to have been born in the territory of the Party in which it is found" and that "Birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies". That "presumption" and that "deeming" must necessarily be subsequent to the convention's entry into force.

11. Mr. HSU said that he had not taken part in the discussion, since he believed that it was based on a misunderstanding of the word "elimination". Elimination could be either instantaneous or gradual.

12. There was no doubt that in its resolution 319 B-III (XI) the Economic and Social Council had had existing statelessness in mind, since the whole question would never have come before the Council had it not been for the large number of existing cases. If the Commission had felt that it was impossible to eliminate statelessness by legal means, it should have so informed the Council. The majority of its members, however, had not held that view, and further study of the question had accordingly been entrusted to the Special Rapporteur. The Special Rapporteur had in due course reported to the effect that statelessness could not be eliminated by legal means, but only reduced. His report, however, had failed to convince some members of the Commission, and it was for that reason that Mr. Hudson's successor as Special Rapporteur had been instructed to prepare two conventions, one for the elimination and the other for the reduction of statelessness. Now that the Commission had considered the two conventions, however, the differences between them were seen to be slight. Even the first would not "eliminate" statelessness, if that word were used in its strict sense; it was by no means certain that the additional article which had been proposed by the Special Rapporteur at the previous meeting³ would close all the gaps in respect of statelessness arising at birth, and the article on transfers of territory also was far from watertight. The difference between the two conventions, then, was only one of degree, and of small degree at that. There was therefore no reason why the Commission should not submit a single convention instead of two.

13. With regard to the question whether that convention should apply to existing cases of statelessness, he felt that it was the Commission's duty to carry out its instructions, which were perfectly clear. Provided the text it submitted was likely to be acceptable to those States which were the most advanced in the matter, it need not concern itself unduly with the question of its general acceptability.

14. Mr. AMADO said that, although he had not made a special study of the problem of statelessness, he had read the Special Rapporteur's report. He had therefore been surprised to hear statements made at the present and at the previous meetings which should have been made at the time when Mr. Córdova's report had first been introduced, when there had been an opportunity of calling into question the very foundations on which it was built. Now, after lengthy discussion, the Commission had adopted provisions of remarkable boldness, so much so, indeed, as to have sometimes alarmed those members who, like himself, felt it necessary to keep a firm hold on realities; such members, however, had gone as far as possible along the path which the enthusiasts had wished to tread. If the whole question was thrown open again at that late hour, the Commission would be unable to give the Economic and Social Council the help for which it had asked.

15. Mr. CORDOVA felt that the Chairman had made it perfectly clear that the conventions had all along been intended to "dry up the sources of statelessness" to use an expression found in the "Study of Statelessness".⁴ If the title did not clearly show that the conventions did not apply to existing cases of statelessness, the whole juridical world would be confused, just as the Commission had been confused, despite the fortnight it had already spent discussing the matter.

16. There was no doubt that the conventions could be modified fairly easily so as to make them apply to existing cases of statelessness, due to conflict of nationality laws or penalties imposed on individuals, and in that connexion the question of retrospective effect would not arise. The vast majority of existing cases of statelessness, however, were due to a cause which was not covered by the convention, namely, mass deprivation of nationality. For such mass deprivation did not spring from legal sources at all, but had political origins. He therefore suggested that, in order that the subject matter of the convention should be perfectly clear the title should be changed to "Convention for the Elimination of Future Cases of Statelessness", and that in its report the Commission should refer to the question of existing statelessness somewhat along the following lines:

"The Commission is mindful of the fact that the two Conventions on Elimination and Reduction of Statelessness which it has elaborated in no way mean that it has finished its task with regard to this question. Both conventions only envisage future cases of statelessness and do not refer to the thousands of stateless persons who now exist and who constitute

³ See *supra*, 224th meeting, para. 54.

⁴ United Nations publication, Sales No.: 1949.XIV.2.

a pressing and painful problem. This problem could not unfortunately be taken up by the Commission at the present session, due to lack of sufficient time to deal with the many important aspects which existing statelessness presents from the juridical as well as from the political viewpoints.

"Therefore, in presenting the two drafts it has prepared, the Commission wishes to state that it intends to continue working on this most delicate aspect of its work at its 1954 session, in order eventually to submit its conclusions in the hope that they may contribute to the final solution of the dreadful situation of thousands of innocent persons, whose only hope of redress lies in the organs of the United Nations."

17. Mr. SANDSTRÖM felt that it was premature to discuss the title before finally establishing what the convention was to contain. However, on the assumption that its scope was not to be extended beyond the limits so far agreed, he supported the suggestion that it should be entitled "Convention for the Elimination of Future Cases of Statelessness".

18. It would certainly be quite possible to make that convention apply to existing cases of statelessness, and to do so would have the advantage that it would enable States to realize just what was entailed by the elimination of existing statelessness. On the other hand, it would be very unwise to modify the second draft convention, on the reduction of statelessness, in the same way, since, whatever had been said to the contrary, that would mean giving it retrospective effect. Mr. Yepes had overlooked the fact that nationality laws were not penal laws, although the word "penalty" was used in connexion with them. If the Commission made the draft Convention on the Reduction of Future Statelessness apply to existing cases, it would effectively destroy any hope of its ratification. By attempting too much, it would achieve nothing.

19. Many analogies had been cited in an effort to show that the conventions should cover cases of existing statelessness. To be of value, however, an analogy must be valid, and many of those which had been adduced were not.

20. Mr. LAUTERPACHT said that it was unavoidable that the discussion should have ranged beyond the question of the title. With regard to that question, he still considered that the correct and proper title was "Convention for the Elimination of Statelessness" which neither said nor implied that it was a convention for the immediate elimination of all statelessness past and future. The fact remained that statelessness would in due course be eliminated in the countries which signed the convention. With regard to the suggestion, made for the first time during the present discussion, that the Commission should give the convention retrospective effect, he pointed out that there was no reason in law why it should not do so; the only difficulty was that it would thereby make it immeasurably more difficult for States to accept the convention. Moreover, the difference

between the two conventions was not such as to justify their being treated differently in that respect.

21. Even if the Convention for the Elimination of Statelessness were universally adopted, however, many thousands of people born stateless before it entered into force might well remain stateless all their lives. If the Commission ruled out the possibility of giving retrospective effect to the convention, there was, he suggested, another legal principle which would dispense the Commission from having to accept that situation, intolerable from the humanitarian point of view. The conventions could be supplemented by a provision reading somewhat along the following lines:

"The parties shall confer their nationality on stateless persons who have had their habitual residence in their territory for a period of not less than 12 years and who desire to acquire their nationality. In the case of a stateless person who was previously a national of the State in question, the period of habitual residence shall be reduced to 6 years."

22. He realized that it was perhaps too late for the Commission to consider his suggestion at the present session. Even as they stood, however, the conventions which it had drafted were by no means worthless, as had been suggested; they represented an achievement whose value should not be under-rated.

23. Faris Bey el-KHOURI pointed out that, if the provisions of the first draft convention were faithfully applied, statelessness would in due course be eliminated in so far, but only in so far, as concerned the contracting Parties. Even if the convention would not eliminate statelessness throughout the world, it would considerably improve the situation, provided that new wars did not create new hordes of stateless refugees.

24. In the contracting States, the existing cases of statelessness would gradually disappear, as they died off. That was indeed a solution, but it was hardly consistent with the principles which ought to inspire the work of an organ of the United Nations. He considered therefore that the Commission should devote one meeting at least to discussing what could be done for the existing cases of statelessness, other than simply leaving them to die in the course of nature.

25. It did not seem practical or even just to extend the provisions of the Convention to them. On the one hand, that would make it impossible for many States to accept the Convention. On the other, existing stateless persons had usually been forcibly expelled from their homes and it did not seem right automatically to confer another nationality upon them and so destroy the hopes which they still cherished of returning home.

26. Mr. KOZHEVNIKOV had never doubted that both conventions were concerned only with future statelessness. The titles used in the Special Rapporteur's report (A/CN.4/64) were therefore appropriate.

27. He could not share the satisfaction of several members with the draft conventions. They were in no sense ideal conventions; indeed, in some respects they

flatly contradicted certain fundamental principles of international law. Many States would be reluctant to accede to them, for, in the first place, they increased the possibility of interference in the domestic affairs of States; that was a threat to international relations. Secondly, there was the undesirable possibility that cases of dual nationality might be created by their application. And, thirdly, as Faris Bey el-Khoury had said, the application of certain provisions of the conventions, resulting in persons automatically acquiring a nationality, might not be in the interests of those persons themselves, who might well be prevented from returning to the countries to which they were attached by the links of culture and origin. That curious result had been obtained in spite of the fact that the Commission had neglected the interests of States and expressly emphasized the apparent interests of individuals.

28. In addition to the unsatisfactory nature of the conventions, they suffered from the disadvantage that many of their provisions did not even reflect the opinion of a substantial majority of the Commission. Article 1 of the draft Convention on the Elimination of Future Statelessness had been adopted by 7 votes to 2 with 5 abstentions; article 2 had been changed by 7 votes to 6 with 1 abstention; and article 4 had been adopted by 6 votes to 3 with 5 abstentions. And in the Convention on the Reduction of Future Statelessness, article VII had been adopted by only 5 votes to 4 with 4 abstentions.

29. Mr. ALFARO said that, although the subject formally under discussion was just the titles of the two conventions, the Commission had in fact been discussing the desirability of extending the benefits of the conventions to existing cases of statelessness. He considered that it was technically impossible so to apply the conventions, for the Commission had decided at its fourth session that it would confine itself to preparing conventions relating to future statelessness. It was open to the Commission to decide to consider the vast and complex problem of existing statelessness; but a new, separate convention would be necessary, as many provisions of the conventions under discussion would be inapplicable. He therefore urged the Commission to vote on the titles of the two draft conventions, and then to take up the matter of existing statelessness if it so wished.

30. The CHAIRMAN asked whether it was possible to vote on the titles to be given to the conventions before the Commission had finally decided what they should contain. It was evident that the clarification of the issue in which the discussion had resulted had enabled the great majority of members of the Commission to come to the conclusion that the conventions that had been prepared were inapplicable, without revision, to the problem of existing statelessness. The question therefore arose whether the Commission should consider existing statelessness during the present session. Mr. Hsu had formally proposed that it should do so, in the following words:

“The Special Rapporteur is requested to prepare a redraft of the Convention on the Reduction of Future Statelessness so that it might apply both to present

and to future statelessness, and to bring the draft before the Commission during its fifth session”.

31. Only two and a half weeks remained of the present session, and during that time the General Rapporteur's report had to be approved. It was possible that the Commission might be able to complete that task in the time still left to it, but members had recently been particularly loquacious and he therefore concluded that it was most improbable that the Commission would have time to undertake the work suggested by Mr. Hsu.

32. Mr. Córdova, on the other hand, had made the commendable suggestion that the General Rapporteur should mention in his report that the Commission had produced two conventions on the elimination and reduction of statelessness, that it did not consider its work on statelessness completed, and that it accordingly intended to study the matter further at a later session. He (the Chairman) therefore hoped that the Commission would leave the conventions as they stood, agreeing that they applied only to future statelessness; that it would adopt appropriate titles; and that it would in principle adopt Mr. Córdova's suggestion.

33. Mr. HSU explained that he had submitted his suggestion as a basis for discussion, after being assured by Mr. Córdova that the latter would have time to go into the matter. Existing statelessness was an urgent problem, for the solution of which the whole world was waiting. The Commission's work on statelessness had been largely exploratory, but had brought it to a position where it could, with very little extra effort, draft provisions that would crown its work with the logical conclusion that would make it of interest to the world rather than to lawyers alone. He urged the Commission, therefore, to adjourn the discussion on statelessness for, say, one week and to ask the Special Rapporteur to study the matter of existing statelessness in that time, perhaps with the assistance of a small sub-committee, and to report in due course.

34. Faris Bey el-KHOURI reminded the Commission that he had already suggested that the question of what action should be taken on existing statelessness should be discussed at a meeting specially reserved for the purpose.

35. Mr. SPIROPOULOS sympathized with Mr. Hsu in his sense of urgency in the face of a critical problem. The Commission should, however, be practical. It had taken two years to elaborate two conventions; any general discussion of existing statelessness would probably last at least two weeks, for it was a complicated problem that was essentially of a political nature. He concluded, therefore, that it would be impossible to treat it adequately at the present session, though it might well be placed on the agenda for the sixth session; indeed, a special discussion such as Faris Bey el-Khoury had suggested might assist the Special Rapporteur in the drafting of a third convention. Mr. Hsu's proposal was, however, over-optimistic, and would only result in loss of time.

36. Mr. CORDOVA recalled his suggestion that the

General Rapporteur might mention the matter of existing statelessness in his report, in order to enable it to be taken up at the sixth session. Mr. Hsu had asked him (Mr. Córdova) whether he might be able to prepare a tentative draft for discussion at the present session. He was willing to try to draft, for example, a transitional article for insertion in the Convention on the Elimination of Future Statelessness, to the effect that governments might apply the terms of that convention to existing cases of statelessness if they so wished.

37. The difficulty of leaving the matter until the sixth session was that, in view of the impending elections to it, it was not known what the Commission's membership would be at the sixth session, and no one could be appointed Special Rapporteur for Statelessness.

38. Mr. SANDSTRÖM said that much very thorough research would be required before the Commission could adequately consider the problem of existing statelessness. Amendment of the two conventions already completed, with the object of making them applicable to existing cases would not be sufficient, for the remedy for existing statelessness would in all probability turn out to be quite different from that required to eliminate future statelessness. He considered, therefore, that the Commission should abandon any intention of reaching a final conclusion on existing statelessness at the present session; that would not prevent it from deciding that the subject might figure in its programme of future work.

39. Mr. HSU said that he had proposed that the draft Convention on the Reduction of Future Statelessness be redrafted, in order to avert the disturbing effects of a technical and highly controversial discussion in the Commission. In spite of Mr. Spiropoulos' statement that the problem of existing statelessness was primarily political, he (Mr. Hsu) affirmed that the Commission must confine itself severely to legal matters, leaving politics to the politicians. The problem was, however, both pressing and practical; on humanitarian grounds alone, action upon it should not be delayed for another twelve months. Indeed, the Commission might be well-advised to defer less urgent matters until the sixth session, and to concentrate immediately on existing statelessness.

40. Mr. ZOUREK said that there was no doubt in his mind that the conventions under discussion related solely to future statelessness. He was concerned, however, to learn that the Commission was now discussing the possibility of drafting yet another convention before the two on which it was at present working had been given their final form.

41. At its fourth session, the Commission had taken a formal decision that the conventions to be drafted should not be concerned with existing statelessness. The Special Rapporteur had faithfully respected that decision; nor had any member of the Commission suggested any change in the ultimate objective at any time during the general or detailed discussions on the drafts.

42. It would be impossible to decide at the present

session on measures to be taken with regard to existing statelessness, for even were the Special Rapporteur to succeed in producing a draft, members would have no time to study or discuss it. He therefore hoped that the Commission would finish what it had started, before embarking on anything new.

43. The CHAIRMAN pointed out that Mr. Hsu's proposal envisaged the modification of the draft convention on the reduction of future statelessness. Technically, therefore, that convention could not be completed until the matter under discussion had been disposed of.

44. Mr. YEPES was in favour of eliminating statelessness, and would vote for anything likely to contribute thereto. Consequently, he fully supported the suggestions made by the Special Rapporteur and by the General Rapporteur for modifying the draft conventions on the elimination and reduction of future statelessness in order to make them applicable to cases of existing statelessness.

45. It might be objected that the Commission was not competent to deal with existing statelessness; if that were indeed the case, the Commission should tell the General Assembly so.

46. Mr. SPIROPOULOS agreed that the problem of existing statelessness was important. He felt, however, that a question of method was involved, and that the two draft conventions should be left as they were.

47. He agreed, too, that existing statelessness raised urgent problems. But if the Commission was realistic, it must see that the mere adoption of a convention would have little effect; the Convention on Prevention and Punishment of the Crime of Genocide was a case in point.

48. Whether a new convention, or only a transitional article in one of the present conventions, was adopted, there should be a special discussion and a formal decision by the Commission, to ensure that problems arising out of existing statelessness were not confused with the avoidance of future statelessness. There was, in any case, no object in taking precipitate action, for the General Assembly and governments would have to consider the proposals, and that would take a long time.

49. Among the matters that would have to be discussed was whether it would be equitable to confer nationality on stateless persons to their possible detriment, and without the right of option.

50. Mr. KOZHEVNIKOV took up a matter which Mr. Spiropoulos had mentioned in passing. The results of the Commission's deliberations were to be submitted to governments. It would therefore be more profitable if the Commission were to discuss the problems arising from existing statelessness after it had had the benefit of the comments of governments on the draft conventions for the elimination and reduction of future statelessness.

51. It would surely be frivolous for the Commission to consider making hasty changes to the existing draft

conventions or hurriedly to draft additional provisions. The matter could only be dealt with after due and thorough preparation.

52. Mr. LAUTERPACHT dissociated himself from the defeatism displayed by Mr. Kozhevnikov and Mr. Spiropoulos. He doubted whether Mr. Spiropoulos was really convinced of the futility of conventions in general. In any event, the value of the Commission's work was to some extent independent of the acceptance or entry into force of conventions; for the intrinsic merit of drafts produced by the Commission would have some lasting effect.

53. In his capacity as General Rapporteur, he said that he had understood that the Commission was to allow one week for the discussion of each of the three parts of its general report, and that it was also to discuss the programme of work for and the time and place of its next session. The Commission was accordingly in arrears. He therefore proposed, first, that further discussion on the titles of the two draft conventions be deferred until the discussion of the relevant part of the general report; secondly, that the discussion on the relationship between the two conventions should be similarly deferred; and thirdly, that the Special Rapporteur, in consultation with Mr. Hsu and others, should in the meantime make a preliminary study of the juridical methods which might be used to reduce or eliminate existing statelessness. If the Commission was able to complete its other work in good time, that preliminary study could be briefly considered at the present session; if not, it could be expanded for fuller discussion at the sixth session.

54. Mr. SANDSTRÖM said that the Commission had in general considered that it would be enough for it to suggest arrangements by which stateless persons might acquire a nationality; but, as Faris Bey el-Khoury and Mr. Spiropoulos had said, it was not clear that stateless persons would necessarily agree. The first disadvantage from which a stateless person suffered was that he was unable to choose his country of residence; there had, for example, been many cases of *refoulement* after the first world war. Secondly, stateless persons commonly lacked permission to work; but that was a disability from which most aliens suffered. Thirdly, stateless persons required special travel documents. He thought that stateless persons in general wished to acquire the nationality of the country in which they resided; that was not necessarily the country in which they had been born, the nationality of which they might well not wish to acquire. Those considerations led him to the conclusion that any consideration of measures to eliminate or reduce existing statelessness must be prefaced by a realistic rather than an abstract study of the wishes and interests of stateless persons themselves. Indeed, the elimination or reduction of existing statelessness would primarily result from naturalization, which was a matter for statesmen rather than for lawyers. He thought that the Commission should agree that it was not competent to consider that matter, and that its work on statelessness should be thereby limited.

55. Mr. SCELLE said that the Commission had been

discussing in the first place whether the conventions that had been drafted could be given retrospective effect—and he had come to the conclusion that they could not—and secondly, whether it could do something to alleviate and improve the lot of those already stateless.

56. It seemed to him that the consensus of opinion was that neither convention could be given retrospective effect; the Commission should therefore adopt a resolution to that effect. He felt that it might be possible, by suitably modifying it, to make one of the conventions applicable to the problem of existing statelessness; if that were to be done, there should be a clear decision to that effect.

57. If the Commission failed to do anything about existing statelessness it would be laying itself open to the charge that it was neglecting the humanitarian aspects of its work by undue concentration on its strictly legal aspects. Yet it was evident that existing statelessness raised urgent problems, and the Commission should not, in his view, decline the Special Rapporteur's offer to study the connexion between the conventions so far drafted and the wider, immediate problem.

58. The CHAIRMAN said that he thought that almost every member of the Commission agreed that, as drafted, the two conventions did not apply to existing cases of statelessness. That apparent agreement should be confirmed by a vote.

59. The second question before the Commission was whether the Special Rapporteur should be asked to draw up a further report on existing statelessness, to be discussed at the present session if the Commission had time.

It was decided by 11 votes to 1, with 1 abstention, that the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness did not apply to existing statelessness.

60. Mr. YEPES explained that he had voted against the proposition that the two conventions were not concerned with existing statelessness because he thought that the Convention on the Elimination of Future Statelessness could and should be applied to existing cases of stateless persons.

61. Mr. HSU explained that he had abstained because, although the proposition was in his view theoretically correct, it appeared futile when viewed in the light of common sense.

62. Mr. ZOUREK said that his vote in favour of the proposition should not be construed as a vote in favour of the conventions as a whole.

63. In the light of the decision the Commission had just taken, he suggested that agreement could now be reached on the titles of the conventions.

64. Mr. LAUTERPACHT said that in his view a decision on the titles of the conventions was not urgent.

65. Mr. KOZHEVNIKOV explained that he had voted in favour of the proposition because he was convinced

that the conventions did not relate to existing statelessness; his vote did not, however, mean that he approved them.

66. Mr. ALFARO said that, although he had voted in favour of the proposition, he considered that it was still open to the Commission to add an article to either convention with the object of enabling existing statelessness to be reduced.

67. Mr. SCELLE agreed with Mr. Zourek that the time had now come for the Commission to vote on the titles to be given to the two conventions. He formally proposed that the titles used in the Special Rapporteur's draft be adopted.

68. Mr. LAUTERPACHT said that if the Commission accepted Mr. Scelle's proposal it would be stopped from accepting later the proposal that he (Mr. Lauterpacht) had made concerning the further study of existing statelessness.

69. Mr. SCELLE thought that any result that might spring from the Special Rapporteur's study of existing statelessness could be comprehended in the title proposed.

70. Mr. SANDSTRÖM approved the suggestion that the Special Rapporteur should make a study of existing statelessness, but said that if an article was to be added to one of the conventions already drafted it would be better to postpone the decision on the title to be given to that convention.

71. Mr. KOZHEVNIKOV asked whether the Commission had before it any proposal that the titles of the conventions should be other than those contained in the draft; if not, was there anything to be put to the vote?

72. The CHAIRMAN said that there was no suggestion before the Commission that the titles should be modified. The vote, therefore, was merely on their adoption.

It was decided by 6 votes to 4, with 3 abstentions, that the two conventions that had been drafted should be entitled "Convention on the Elimination of Future Statelessness" and "Convention on the Reduction of Future Statelessness" respectively.

73. The CHAIRMAN said that the Commission should decide whether or not to ask the Special Rapporteur to make an immediate study of the elimination or reduction of existing statelessness with a view to the presentation of a report for discussion at the present session if time allowed.

74. Mr. KOZHEVNIKOV asked the Special Rapporteur whether he did not agree that it would be advantageous to draw up a report on existing statelessness only after the receipt of the comments of governments on the two conventions that the Commission had just drafted.

75. Mr. CORDOVA was sure that any discussion of a preliminary report would be protracted. He felt that the urgency of the matter was such, however, that he should make an effort to meet the request.

It was decided by 9 votes to none, with 4 abstentions, to ask the Special Rapporteur to study the elimination or reduction of existing statelessness and to submit a report for discussion at the present session, time permitting.⁵

The meeting rose at 1.5 p.m.

226th MEETING

Wednesday, 29 July 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

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

CHAPTER II: ARBITRAL PROCEDURE (A/CN.4/L.45)*

1. The CHAIRMAN, inviting discussion of the chapter on arbitral procedure in its draft report covering the work of its fifth session, congratulated the General Rapporteur on having provided an accurate account of the Commission's discussions which was at the same time a scientific work of great value.

2. Mr. YEPES suggested that the report be read paragraph by paragraph.

3. Mr. LAUTERPACHT wondered whether time would permit of that procedure.

4. Mr. SANDSTRÖM thought there was no need to read the report aloud. It was an excellent piece of work, on which he would have few comments.

⁵ See *infra*, 237th meeting, para. 90.

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter II. (See vol. II of the present publication).