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Summary record of the 160th meeting

Topic:
Nationality including statelessness

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the two rules in point 2 should form the foundation for a draft convention. All it had done was to state its agreement with the argument that their universal adoption would preclude further additions to the number of stateless persons. Unless point 3 were replaced by something more positive the Commission would in effect have made no practical progress whatsoever.

51. Mr. AMADO fully endorsed Mr. Spiropoulos' remarks. It was essential for the Commission to go further than mere agreement with point 2, and to enter the realm of practical possibilities.

52. Mr. CORDOVA agreed with the Assistant Secretary-General that the Commission must decide whether it was desirable to apply the rules stated in point 2, since the question of the probability of their being adopted did not come within its purview. He accordingly suggested that point 3 be replaced by the positive assertion contained in Mr. Lauterpacht's proposal, that the Commission intended to formulate a draft convention on the basis of those rules.

53. Mr. YEPES proposed that point 3 be replaced by the following text:

"It is desirable that the rules stated in paragraph 2 should be generally adopted and these rules should therefore be included in the report to be submitted to the Commission at its fifth session in 1953".

54. Mr. HSU said it would be most undesirable for the Commission to decide by only a narrow majority whether the two rules should be embodied in a draft convention. The possibility of separate conventions for the elimination and for the reduction of statelessness might therefore be considered.

The meeting rose at 1.5 p.m.

160th MEETING

Wednesday, 9 July 1952, at 9.45 a.m.

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Chairman : Mr. Ricardo J. ALFARO.

Rapporteur : Mr. Jean SPIROPOULOS

Present :

Members : Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi Hsu, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), 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 6 of the agenda) (A/CN.4/50) (*continued*)

SECTION VI OF ANNEX III: STATELESSNESS; POINTS FOR DISCUSSION (*continued*)

Point 3 (*continued*) and point 2 (ii) (*resumed*)

1. The CHAIRMAN invited the Commission to continue its discussion of point 3 of the points for discussion contained in section VI of Annex III to the special rapporteur's report on nationality, including statelessness (A/CN.4/50). Several proposals had been submitted to the Commission: first, a proposal by Mr. Lauterpacht calling for the preparation of a draft convention on the elimination of statelessness, in conformity with the rules contained in point 2;¹ secondly, a text submitted by Mr. Yepes, which urged the adoption of the rules contained in point 2;² and, thirdly, a proposal by Mr. Hudson that the Commission take a decision upon the following issue:

"Does the Commission wish to request a special rapporteur to draft a convention including the rules set forth in paragraph 2 of section VI of annex III of Mr. Hudson's report?"

2. Mr. SANDSTRÖM proposed that the special rapporteur be requested to draw up a draft convention for the elimination of statelessness based on the rules contained in point 2 and one or more other draft conventions designed to reduce statelessness. Once the Commission had completed that task, it would then be for the competent organs of the United Nations to adopt whichever draft they might prefer.

3. Mr. HSU supported Mr. Sandström's proposal and thought that since it was broader than the other proposals before the Commission, it should be put to the vote first.

4. Mr. CORDOVA agreed with Mr. Hsu, particularly as the possibility of more than one convention had clearly been contemplated by the Economic and Social Council in its resolution 319 B III (XI).

5. Mr. FRANÇOIS could not support either the proposal of Mr. Yepes or that of Mr. Lauterpacht. Both were too rigid, in that they limited the Commission's work to the preparation of a draft convention based on the rules set forth in point 2. He could not agree with the view that, whenever the Commission felt a certain rule of law to be desirable, it need not consider whether its adoption by States was probable. The Commission had a dual task, the codification of international

¹ For text of proposal, see summary record of the 159th meeting, para. 31. For text of point 2, see *ibid.*, para. 1.

² *Ibid.*, para. 53.

law and its progressive development. In respect of the former, the possibility of its recommendations being adopted was clearly of vital importance. In the case of the latter, the situation was somewhat different. Nevertheless, he would like to point out that the progressive development of international law could only proceed by stages and only if States were prepared for its implementation. It was inadvisable to ignore the extent to which States would be willing to modify their legislation in accordance with the recommendations of the Commission, and it served no useful purpose to minimize, as Mr. Lauterpacht had done, the possible resistance on the part of States to the adoption of the two rules in point 2.

6. Nor could he agree that the practice as a legal sanction of withdrawing nationality had already been to a large extent abandoned. Perusal of the document *A Study of Statelessness* (*op. cit.*) prepared by the Secretary-General indicated that many States used deprivation of nationality as a penalty, on grounds which were enumerated in Part Two, chapter I, of that document. He therefore had the gravest doubts as to whether rule (ii) in point 2, which had not been discussed by the Commission, would be acceptable to States.

7. In the light of the foregoing considerations he felt that the preparation of a draft convention on the basis of the two rules in point 2 would be no more than an untimely attempt at the development of international law, and one which was unlikely to be crowned with success. Thus, if the Commission decided to prepare two or more draft conventions, he would suggest that the special rapporteur be requested to take into account the modifications which would have to be made to the two rules in point 2 in order to make the drafts more acceptable to States.

8. Mr. KOZHEVNIKOV said that Mr. François' remarks had confirmed the view he had expressed at the previous meeting that the Commission was not ready to take an important decision of principle, and that it could not go beyond a preliminary exchange of views. He accordingly made the following proposal:

"The Commission instructs the special rapporteur to prepare a detailed report setting forth the views expressed at the present session, in order to enable the Commission, at its next session, to take a decision on the possibility of preparing a draft convention on the elimination or reduction of statelessness".

9. Mr. KERNO (Assistant Secretary-General) said that there was nothing in resolution 319 B III (XI) of the Economic and Social Council to prevent the Commission from preparing more than one draft convention on statelessness. Mr. Sandström's proposal therefore represented an excellent approach.

10. Mr. YEPES said that all he had proposed was that the Commission declare it desirable that the two rules in point 2 be generally adopted. He was quite willing to leave it to the special rapporteur to decide how that should be done.

11. Mr. HUDSON, referring to the two rules contained in point 2, said that the replies from governments analysed in the report by the Secretary-General (E/2230-A/CN.4/56) did not indicate any disposition on the part of States to accept rules of that kind. In 1929 the Harvard Research Institute had put forward rule (i) as a principle which should be adopted. That proposal had, however, been made in a period of relative stability, whereas the present world situation was far less favourable to its adoption. The small number of ratifications of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws demonstrated the difficulty of winning universal acceptance for such rules.

12. Mr. François had called attention to the fact that a number of States applied deprivation of nationality as a sanction, and those States would therefore be unlikely to adopt rule (ii) or to give serious consideration to a draft convention of which it formed part.

13. The two rules also raised certain practical difficulties. How was a State to judge whether another nationality was acquired at birth, or whether, if it deprived a person of his nationality, he would acquire another? No State could be expected to be judge of the laws of another country.

14. As to Mr. Lauterpacht's proposal, he wondered what precisely was meant by "preparing a draft convention in the form of a report". Nor was he able to understand what Mr. Yepes meant in asking that the rules should be included in the report to be submitted to the Commission at its next session. No useful purpose could be served by either of those two procedures in view of the general recognition of the fact that it was unlikely that the rules would be adopted by States. In his view, to base a draft convention on them would be nothing but an idle manoeuvre.

15. On the other hand, there was nothing to prevent the Commission from preparing one or more draft conventions for the reduction of statelessness, and he had made certain suggestions in that direction in Annex III.

16. Mr. el-KHOURI said that it was the task of the Commission to prepare international instruments which had the prospect of general acceptance by States; otherwise its work would have no practical value. He did not think that any member of the Commission believed that the rules in point 2 had any chance of being generally accepted. If, for example, the Syrian Government wished to give Syrian nationality to the children of the refugees within its borders, it did not need any international convention to enable it to do so.

17. Mr. HSU moved that the proposals made by Mr. Yepes and by Mr. Lauterpacht be amended by the addition of the words:

"It is understood that the first of the two principles contained in paragraph 2 will not be made applicable to cases of persons born to stateless refugees in a State which has not legally accepted the refugees' settlement in its territory".

18. He submitted that amendment in order to meet certain objections raised by Mr. el-Khoury at the previous meeting, and if it did not serve that purpose he would withdraw it. It dealt with a particular category of refugees and the exception made would not detract from the general principle.

19. He thanked Mr. François for emphasizing the fact that one of the Commission's functions was to promote the progressive development of international law. Some members seemed to regard that task with aversion, and in a spirit of pessimism and undue circumspection. Nothing would be achieved by such an approach. The Commission must not reduce itself to inactivity by doing nothing until the attitude of States became known. Its function was not to make political predictions. On the other hand, it could do much to influence States and to persuade governments to modify their views. If a few courageous nations were to take the lead, recommendations such as those at present under consideration would eventually gain universal acceptance.

20. He was in no sense a radical, but merely an advocate of the constructive approach. Recommending the adoption of the two rules would in no way preclude the Commission from preparing one or more draft conventions for the reduction of statelessness.

21. Mr. LAUTERPACHT welcomed Mr. Hudson's statement, because it showed where Mr. Hudson stood. Up to the present moment the only indication that the Commission had had of his (Mr. Hudson's) personal opinion was the somewhat inconclusive statement made in point 3. Mr. Hudson had now made it plain that he was opposed to framing a draft convention based on the two rules in point 2. However, he had failed to explain why States which might be expected to show reluctance to change their legislation within the framework of a general convention on the elimination of statelessness should be prepared to do so within the framework of a limited convention relating only to the reduction of statelessness. The amount of change required might not be substantially different in the two cases.

22. Mr. Hudson had stated that there was nothing in the replies submitted by governments in response to resolution 352 (XII) of the Economic and Social Council to indicate that they would be willing to adopt rules like those set forth in point 2. He (Mr. Lauterpacht) had made a careful perusal of the Secretary-General's report (E/2230-A/CN.4/56) and the analysis of the replies contained therein, and had come to the conclusion that governments were very much aware of the general trend towards the elimination of statelessness, and that their legislation was in many cases moving in that direction.

23. Mr. Hudson had suggested that very little had been achieved by The Hague Convention of 1930. Yet the 1930 Convention was one of the most significant international instruments, because it not only reflected the influence of public opinion in the matter of nationality, but had also been followed by a definite trend towards the amendment of national laws, a trend which found

expression in several resolutions of the Economic and Social Council, which spoke of the need for eliminating statelessness. It was for the Commission to give that trend legal expression, in accordance with a view that was becoming increasingly accepted—the view that statelessness was derogatory both to the authority of international law and to the dignity of the individual human being. The matter raised an important question of method and certain considerations relative to the Commission's functions. Admittedly the Commission could not but codify international law by stages. That was what was meant by progressive codification and development of international law. It did not mean that the drafts proposed by the Commission ought to leave unsolved the problems with which it was confronted, and merely reflect the existing legislation of States. Development implied a change. A change could not take place without, in appropriate cases, a change in the legislation of the individual States. The question which governments had to decide—and on which the Commission was entitled to express an opinion—was whether any sacrifice which was implied in such changes of legislation was justified by considerations of international progress and the general trend of public opinion on the subject.

24. Although—apart from the problem created by mass denationalization—the question of statelessness was intrinsically of limited importance, it raised conspicuously the general issue of the function of the Commission. That issue was whether the Commission was disposed to supply the legal form and the weight of its authority, based on a thorough examination of the matters put before it, to developments which public opinion felt to be overdue, or whether it was to treat as immutable any national legislation at variance with such changes as foreshadowed, for instance, by the Economic and Social Council, which had asked the Commission to draft instruments for the elimination of statelessness.

25. Thus, in reply to Mr. François, he did not deny that many States had enacted legislation depriving persons of their nationality by way of penalty. The issue was whether such legislation was sufficiently general, rational and serving any vital interest of States to be entitled to prevent the general elimination of statelessness.

26. In conclusion, he was willing to accept Mr. Sandström's proposal on the assumption that it did not, in fact, conflict with his own.

27. Mr. AMADO said that the duty of the Commission, as a body responsible for codifying and developing international law, was to declare what the existing law was on certain points and to recommend the direction in which it could be improved and developed. He could not associate himself with that school of idealistic international lawyers which believed itself competent to dictate to States what their vital interests were. He accordingly could not vote in favour of any of the proposals before the Commission, all of which seemed to him wholly impracticable.

28. Mr. LAUTERPACHT said that he would vote in favour of Mr. Yepes' proposal on the understanding that there was no contradiction between that proposal and his own, as amended by Mr. Sandström.

29. Mr. YEPES said that that was also his own understanding, and that he intended to vote in favour of Mr. Lauterpacht's proposal, as amended, as well as his own.

30. In reply to a question by the CHAIRMAN, Mr. HSU said that he would withdraw his amendment, since it had not commanded the support for which he had hoped.

31. The CHAIRMAN accordingly put Mr. Yepes' proposal to the vote.

Mr. Yepes' proposal was rejected by 7 votes to 5, with 2 abstentions.

32. In reply to a question by the CHAIRMAN, Mr. SANDSTRÖM explained that his proposal was that the first two sentences of Mr. Lauterpacht's proposal be replaced by the following text:

"The special rapporteur should be requested to prepare:

"(a) A convention on the lines of paragraph 2 of section VI of annex III to his report;

"(b) One or more conventions containing attenuation of those principles with a view to reducing statelessness."

33. Mr. SPIROPOULOS felt that the decision which had just been taken on the proposal of Mr. Yepes precluded the Commission from voting on sub-paragraph (a) of Mr. Sandström's amendment. With regard to sub-paragraph (b), the Commission should first consider the remaining points for discussion listed in Section VI of Annex III to the special rapporteur's report.

34. Mr. YEPES said that he personally could support sub-paragraph (a) of Mr. Sandström's amendment. He agreed, however, that the vote on sub-paragraph (b) should be deferred until points 4 to 19 had been discussed.

35. Mr. KERNO (Assistant Secretary-General) pointed out that Mr. Sandström's amendment appeared to be a compromise between the various points of view which had been expressed and, as such, must be regarded as a whole.

36. The CHAIRMAN and Mr. CORDOVA endorsed the view expressed by the Assistant Secretary-General.

37. Mr. SPIROPOULOS remained unconvinced. Much as he would have liked to vote in favour of any proposal which would mean progress towards a solution of the problem of statelessness, he did not see how the Commission, immediately after it had rejected the rules set forth in point 2, could ask the special rapporteur to prepare a convention on the lines of those rules.

38. Mr. AMADO supported the views expressed by

Mr. Spiropoulos and Mr. Yepes, so far as sub-paragraph (b) was concerned. The Commission had not yet discussed the second of the two rules set out in point 2, let alone the other points for discussion. It must first decide the question put by Mr. Hudson.

39. Mr. FRANÇOIS pointed out that what the Commission had rejected was a proposal that the rules set forth in point 2 should be taken as the sole basis for a single draft convention. Mr. Sandström's proposal was that the special rapporteur should be requested to prepare, in addition to a draft convention drawn up on that basis, one or more other drafts on a somewhat different basis, namely, for the reduction of statelessness.

40. After some further discussion on procedure, the CHAIRMAN pointed out that Mr. Hudson had formulated his question in lieu of the original point 3 in his report. Mr. Lauterpacht's proposal, with the amendment proposed to it by Mr. Sandström, and Mr. Kozhevnikov's proposal were both answers to that question. Under the rules of procedure of the General Assembly, those two proposals would have to be put to the vote in the order in which they had been submitted, unless the Commission decided otherwise.

41. Mr. KOZHEVNIKOV felt that it would be more logical, as Mr. Amado had suggested, to decide first whether the special rapporteur was to be requested to submit any draft convention or conventions at all to the Commission at its next session. He therefore moved that his proposal be put to the vote first.

42. Mr. ZOUREK supported Mr. Kozhevnikov's motion.

It was decided by 9 votes to 2 that Mr. Kozhevnikov's proposal be voted on first.

43. Mr. HSU said that he had voted against the motion that Mr. Kozhevnikov's proposal be put to the vote first because he felt that the Commission should abide by the procedure it had so far followed.

44. The CHAIRMAN then put Mr. Kozhevnikov's proposal to the vote.

Mr. Kozhevnikov's proposal was rejected by 7 votes to 5, with 1 abstention.

45. The CHAIRMAN then put to the vote the amendment proposed by Mr. Sandström to the first two sentences of Mr. Lauterpacht's proposal.

Mr. Sandström's amendment was adopted by 5 votes to 3, with 5 abstentions.

46. Mr. YEPES said that he had abstained from voting because he regarded sub-paragraphs (a) and (b) of Mr. Sandström's amendment as self-contradictory. The principles set forth in point 2 of section VI of Annex III to the special rapporteur's report were absolute principles, and he did not see what could be meant by "attenuating" them.

47. Mr. LAUTERPACHT said that, as the essence of his proposal had been substantially modified by

Mr. Sandström's amendment, he would withdraw the last sentence.

48. Mr. el-KHOURI said that he had abstained from the vote on Mr. Sandström's amendment because, although he did not like it, he greatly preferred it to the first two sentences of Mr. Lauterpacht's proposal. The last sentence of Mr. Lauterpacht's proposal, on the other hand, which provided that

"The draft convention should be in the form of articles accompanied by exhaustive comment, discussion and any relevant information"

served a useful purpose, and he would therefore sponsor it himself, subject to the words "The draft convention" being replaced by the words "The draft conventions" in view of the adoption of Mr. Sandström's amendment.

49. Mr. SPIROPOULOS asked whether Mr. el-KhourI did not agree that it would be sufficient to state merely that "The draft conventions should be in the form of articles accompanied by comment", which would be in accordance with the Commission's past practice.

50. Mr. el-KHOURI accepted Mr. Spiropoulos's suggestion.

Mr. el-KhourI's proposal was adopted, as amended, by 7 votes to 2, with 3 abstentions.

51. Mr. LIANG (Secretary to the Commission) referring to Mr. Sandström's amendment, suggested that the principles contained in points 4 to 19 of Section VI of Annex III to the special rapporteur's report could hardly be described as "attenuations" of the rules set forth in point 2. Indeed, those rules related to a somewhat different matter from that dealt with in points 4 to 19. He wondered therefore whether it might not be advisable to delete the words "containing attenuations of those principles" before reproducing in the Commission's report to the General Assembly the decision just taken.

52. Mr. el-KHOURI said that the amendment proposed by Mr. Hsu had been in the nature of an attenuation of the first of the two rules contained in point 2 of the points for discussion listed in Annex III to the special rapporteur's report, and that he regretted that that amendment had been withdrawn. Sub-paragraph (b) of Mr. Sandström's amendment meant that the special rapporteur would be empowered to suggest a limitation to the scope of application of the principles in ways similar to that which had been proposed by Mr. Hsu.

53. Mr. HSU pointed out that he had withdrawn his amendment because it had not commanded the support he had hoped for, particularly the endorsement of Mr. el-KhourI. He agreed with the Secretary that the words "containing attenuations of those principles" had little meaning in the text which had been adopted, and suggested that they might be deleted altogether.

54. In response to a request by Mr. SCELLE, the CHAIRMAN put to the vote Mr. Lauterpacht's proposal as amended, as a whole.

Mr. Lauterpacht's proposal as a whole was adopted, as amended, by 6 votes to 4, with 3 abstentions.

55. Mr. CORDOVA said that he had voted in favour of Mr. Sandström's amendment because the first part of it covered the essence of Mr. Lauterpacht's proposal, namely, that a draft convention should be prepared by the rapporteur based on the principles set out in paragraph 2 of section VI of Annex III to his report. Furthermore, it enabled the Commission to choose between two conventions, one for the total elimination of statelessness and the other for its reduction.

The meeting rose at 1.5 p.m.

161st MEETING

Thursday, 10 July 1952, at 9.45 a.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), 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 6 of the agenda) (A/CN.4/50) (continued)

SECTION VI OF ANNEX III: STATELESSNESS; POINTS FOR DISCUSSION (continued)

9.* The CHAIRMAN invited the Commission to continue its consideration of Annex III to the special rapporteur's report on nationality, including statelessness (A/CN.4/50).

10. He suggested that, in the light of the decisions taken on points 2 and 3, the Commission might confine

* Paras. 1—8 were devoted to the programme of work of the Commission for the remainder of the session.