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Summary record of the 181st meeting

Topic:
Nationality including statelessness

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Paragraph 8 [18]

90. Mr. SCELLE said that though there was no fundamental difference between the two texts of paragraph 8, he could not accept the wording of Mr. Lauterpacht's, which was neither explicit nor sufficiently authoritative.⁹

91. The paragraph dealt with three essential issues. First, that the obligation to arbitrate did not necessarily derive from the *compromis* but was often anterior to it; second, the question of arbitrability and third, the choice of arbitrators. He wished all three issues to be placed in sharp relief.

92. He was prepared to meet an objection raised by Mr. HUDSON to the expression "nudum pactum" by substituting for it the word "pacte".

93. Mr. LAUTERPACHT said that he had tried to eliminate the speculative and authoritative elements in Mr. Scelle's text, which he was reluctant to accept owing to the way in which the points had been elaborated. He wondered, for example, how the expression "*le lien juridique liant les parties résultait souvent d'un engagement arbitral pur et simple*" could be conveyed in English.

The meeting rose at 1.10 p.m.

⁹ Para. 8 of Mr. Lauterpacht's text (A/CN.4/L.36) read as follows :

"8. On the other hand, it has been considered that, in the light of experience, it is necessary to adopt provisions for rendering the undertaking to arbitrate—and the arbitral procedure in general—as effective as possible. Thus in the past the efficacy of the undertaking to arbitrate has often been impaired as the result of the absence of legal machinery for determining whether a particular dispute is covered by the treaty of arbitration or in consequence of the inability of the parties to agree on the terms of the *compromis* or the constitution of the tribunal. The Articles of the first two Chapters of the present draft are intended to meet difficulties of this nature."

181st MEETING

Wednesday, 6 August 1952, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35, A/CN.4/L.36, A/CN.4/L.37, A/CN.4/L.39) (continued)	238
Introduction to the Draft on Arbitral Procedure (continued)	238
Request by Mr. Hudson for insertion of footnote in the Commission's Report to the General Assembly	242
Question of the insertion of footnotes in the Report of the Commission	243
Nationality, including statelessness (item 6 of the agenda)	244

Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi Hsu, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, 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).

Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35, A/CN.4/L.36, A/CN.4/L.37, A/CN.4/L.39) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the introduction to the Draft on Arbitral Procedure (A/CN.4/L.35).

INTRODUCTION TO THE DRAFT ON ARBITRAL PROCEDURE (continued)

Paragraph 8 [18] (continued)

2. Mr. LAUTERPACHT reminded the Commission that Mr. Scelle had declared his readiness to amend the second sentence of his alternative text (A/CN.4/L.37), by substituting the word "pacte" for the words "nudum pactum". Thus amended, however, the sentence would make very little sense. He hoped the special rapporteur would agree to withdraw it.

3. Mr. HUDSON agreed that the second sentence in Mr. Scelle's text should be deleted, but the remainder had the advantage of being more detailed and explanatory than Mr. Lauterpacht's alternative text (A/CN.4/L.36).¹

4. Mr. SCELLE withdrew the second sentence in paragraph 8 of his text.²

Paragraph 8 of Mr. Scelle's text as amended was adopted by 7 votes to 2.

Paragraph 11 [21]

5. Mr. SCELLE said that there were no substantial differences between the two alternative texts for paragraph 11. He had accepted the last sentence of Mr. Lauterpacht's text, though with some hesitation since it dealt with a matter which the Commission had only considered very superficially.

Mr. Scelle's text for paragraph 11 was adopted by 7 votes to none with 2 abstentions.

* The number within brackets refers to the paragraph number in the "Report".

¹ See summary record of the 180th meeting, footnote to para. 90.

² This sentence read as follows: "Elle a considéré que le lien juridique liant les parties résultait souvent d'un engagement arbitral pur et simple, et que le compromis n'était parfois que la conséquence de ce 'nudum pactum'."

Proposal by Mr. Zourek of two new paragraphs (A/CN.4/L.39) to replace paragraphs 12 and 13 [22 and 23] of the introduction (A/CN.4/L.35)

6. Mr. ZOUREK pointed out that neither of the two alternative texts before the Commission (A/CN.4/L.36 and A/CN.4/L.37) mentioned the two concepts of arbitration, a matter which had been dealt with in the original text of paragraph 12. In order that the report might be both complete and objective, he considered it essential to indicate that there had been two trends of opinion in the Commission. That was all the more important because the commentary did not reflect the differences of view which had emerged during the discussions. To remedy that deficiency he proposed the inclusion in the introduction of two new paragraphs which might conveniently be inserted between paragraphs 5 and 6. The text read as follows :

"As was to be expected, two currents of opinion have arisen in the Commission :

"The first follows the concept of arbitration corresponding to contemporary international law, according to which the sole basis of international arbitration is the agreement of States, which are only amenable to jurisdiction when, and insofar as, they have so agreed. This concept is based on long-standing international practice and follows from numerous international treaties, in particular The Hague Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes. According to this view, international arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law, and is an international institution having the following characteristics :

(a) the voluntary nature of arbitration,

(b) the choice of arbitrators by the parties to the dispute,

(c) the determination by the parties of the rules of law to be applied.

"The second concept, which might be called that of judicial arbitration, tends to assimilate arbitral tribunals to true courts of law, by making them as independent as possible of the will of the parties. This is obviously calculated considerably to restrict action by governments, their influence on arbitral procedure and the importance of the *compromis*, in favour of the arbitral tribunal, whose powers become considerably wider than in previous practice.

"The majority of the Commission supported the second view. Hence the present text prescribes compulsory recourse to the International Court of Justice in all cases where the arbitrability of the dispute is contested by the parties and provides for compulsory constitution of the arbitral tribunal even if agreement cannot be reached on the *compromis*. This is also the reason why the text makes frequent provision for recourse to the International Court of

Justice when the parties are in disagreement and why it rejects the practice of *non liquet*".³

7. Mr. LAUTERPACHT said he could not support Mr. Zourek's proposal because it was based on the inaccurate contention that the Commission had accepted a new concept of arbitration. Surely the whole draft was based on recognition of the three elements which Mr. Zourek claimed were characteristic of diplomatic arbitration. In fact, they were the characteristics of judicial arbitration. The only innovation contained in the draft was that, in cases of deadlock between the parties, it provided machinery for rendering the existing obligation to arbitrate as efficacious as possible.

8. Mr. SCELLE said that it was less easy for him to criticize Mr. Zourek's text because its content had been dealt with in the original text of paragraph 12 (A/CN.4/L.35).⁴ He had decided to exclude that topic from his second text because of its somewhat controversial tinge. The draft articles accepted by the Commission represented a compromise between two trends of opinion which had inevitably arisen in the Commission, but in his opinion there was no need to mention that in the introduction. The Sixth Committee of the General Assembly was composed of persons who were fully competent to choose between the two.

9. Mr. KOZHEVNIKOV supported Mr. Zourek's proposal, which would amplify the introduction and increase its objectivity. It would give readers of the report a more accurate idea of what had taken place in the Commission.

10. Mr. HUDSON agreed with the aim of Mr. Zourek's amendment, since it was necessary to state in plain words the nature of the two trends implicit in the draft. He could not accept, however, the first sentence of the second paragraph, which seemed to go too far. It would be preferable to substitute the words "to some extent independent" for the words "as independent as possible".

11. Mr. YEPES also considered that some mention should be made in the introduction of the two concepts of arbitration.

12. Mr. FRANÇOIS said he could not accept Mr. Zourek's text as at present formulated, since it could not be claimed that the three characteristics of arbitration listed in the first paragraph were confined to diplomatic arbitration.

13. Mr. ZOUREK disagreed with Mr. François. If the present draft were accepted and took the form of an international convention, arbitration would lose some of its essential features and assume the character of obligatory jurisdiction, somewhat on the lines of that exercised by the International Court of Justice by virtue of the Optional Clause.

14. Mr. SCELLE said that, as Mr. Zourek's proposal had given rise to sharp differences of opinion, he would

³ This proposal was later issued as doc. A/CN.4/L.39.

⁴ See text in summary record of the 175th meeting, footnote to para. 14.

re-introduce paragraph 12 of his original text (A/CN.4/L.35)⁵ amended by the deletion of the second, third and fourth sentences of the second paragraph, beginning: "This principle of so-called diplomatic arbitration" . . . and ending: "as a source of law", since they implied a criticism of diplomatic arbitration.

15. The text as thus amended expressed no preference for either of the two concepts of arbitration. If it were not accepted he would be forced to vote against Mr. Zourek's proposal on the ground that it failed to recognize the advance made in recent years in the practice of arbitration.

16. Mr. LAUTERPACHT said that another criticism of Mr. Zourek's proposal was that it seemed to imply a contradiction between traditional and judicial arbitration. In his (Mr. Lauterpacht's) opinion, however, the only difference between the two was, that possibly the traditional concept of arbitration was based on the view that there must be agreement between the parties at *every stage* of the dispute in order to make the obligation to arbitrate effective. The Commission had rejected that view.

He then submitted an alternative text for that of Mr. Zourek.

The text read as follows :

"Two currents of opinion were represented in the Commission : the first follows the conception of arbitration according to which the agreement of the parties is the essential condition not only of the original obligation to have recourse to arbitration, but also of the continuation and the effectiveness of arbitration proceedings at every stage. The second conception, which prevailed in the draft as adopted and which may be described as judicial arbitration, is based on the necessity of provision being made for the efficacy of the obligation to arbitrate in all cases in which, after the conclusion of the arbitration agreement, the attitude of the parties threatens to render nugatory the original undertaking".

17. Mr. SCELLE and Mr. FRANÇOIS accepted Mr. Lauterpacht's text.

18. The CHAIRMAN considered that the Commission had agreed not to refer in the report to the two concepts of arbitration, since they could not be precisely defined and had certain purely academic features. However, there was nothing to prevent the Commission from reconsidering the matter.

19. Mr. HUDSON said that he had no recollection of the Commission having reached any such decision.

20. Mr. KOZHEVNIKOV suggested that the original text of paragraph 12 might be amplified by Mr. Zourek's proposal.

21. Mr. SCELLE thought it would be difficult to evolve a harmonious whole out of the original text of paragraph 12 and Mr. Zourek's proposal. He would prefer the Commission to adopt Mr. Lauterpacht's new text,

which brought out clearly that the whole draft was designed to place the obligation to arbitrate above the will of the parties. Not only did it reflect more accurately than paragraph 12 the discussions and decisions of the Commission but also it was more subtle and achieved finer shades of meaning. Nothing in it could be regarded as controversial.

22. Mr. KERNO (Assistant Secretary General) wondered whether Mr. Zourek might be prepared to withdraw his proposal in favour of Mr. Lauterpacht's text. If not, perhaps it might be possible to agree on a compromise text.

23. Mr. el-KHOURI supported Mr. Lauterpacht's text.

24. Mr. YEPES moved that the Commission first decide the question whether or not mention should be made in the introduction of the two concepts of arbitration.

The question was decided in the affirmative by 6 votes to none with 3 abstentions.

25. The CHAIRMAN ruled that further discussion on Mr. Zourek's proposal and Mr. Lauterpacht's text be deferred until the latter had been circulated.

Paragraph 12 [22]

26. Mr. SCELLE said that he had accepted Mr. Lauterpacht's text for paragraph 12.

Mr. Lauterpacht's text was adopted by 8 votes to 2.

Paragraph 13 [23]

27. Mr. SCELLE said that he had accepted Mr. Lauterpacht's text for paragraph 13.

28. Mr. HUDSON, referring to the second sentence, said he doubted whether "most" of the provisions of the draft were qualified by the recognition of the admissibility of alternative solutions agreed upon by the parties. He proposed that the word "many" be substituted for the word "most".

29. Mr. KERNO (Assistant Secretary-General) pointed out that Mr. Hudson's amendment conformed entirely with Mr. Scelle's text for that sentence.

Paragraph 13, as amended, was adopted by 8 votes to none, with 2 abstentions.

Paragraph 14⁶

30. Mr. SCELLE said that he accepted Mr. Lauterpacht's text for paragraph 14.

⁶ Paragraph 14 of document A/CN.4/L.36 read as follows :

"14. The Commission deems it at present premature to express an opinion as to the various methods contemplated in Articles 17 and 23 of the Statute, for giving formal sanction to the final draft which may emerge from the deliberations of the Commission and the General Assembly. Yet it believes that the adoption of the draft code of arbitral procedure is bound to be of usefulness. Such approval need not, in the first instance, assume the form of a convention. Even if approved through some less formal text or procedure, the draft — which is based both on past practice and the

⁵ *Ibid.*

31. Mr. HUDSON proposed the deletion of paragraph 14. It was altogether premature at the present stage to express any opinion as to the final form which the draft would take.
32. Mr. KOZHEVNIKOV agreed with Mr. Hudson. Paragraph 14 was entirely inappropriate in the introduction. Even if it were possible to endorse such an evaluation of the work done, it was neither timely nor proper for the Commission to do so. Furthermore, as the Commission was aware, he regarded the draft as marking a retrogression rather than an advance.
33. Mr. SCELLE contended that such a paragraph would be useful, since the Commission should not remain indifferent to the fate of its work. The introduction should close on a hopeful note, and it was fitting for the Commission to declare now that the draft represented an advance in international law.
34. Mr. LIANG (Secretary to the Commission) suggested that it was necessary to substantiate the argument in paragraph 14 that the adoption of the draft was bound to be useful. Again, the text might be modified in order to avoid confusion between the present and final drafts on arbitral procedure. That could be done by the substitution of the word "a" for the word "the" before the words "draft code", and the insertion of the words "along the lines of this document" after the words "arbitral procedure" in the second sentence.
35. Mr. FRANÇOIS said that he had no objections to the substance of paragraph 14. The view stated in the third sentence was perhaps too modest. The decisions of the Commission itself had a certain weight even if they did not result in the adoption of an international convention. However, he did not believe that the inclusion of such a paragraph in the introduction was opportune at the present stage in the Commission's work. To express enthusiasm for the results so far achieved would be premature. That could only be done when the work had been completed.
36. Mr. LAUTERPACHT observed that no one had raised substantial objections to paragraph 14, except Mr. Kozhevnikov and Mr. Hudson, who had dissociated themselves from the draft as a whole. The purpose of the paragraph was to place the subject in historical perspective and to record that the Commission had not merely produced a repetition of existing international instruments.
37. He accepted the Secretary's amendments to the second sentence, and also proposed the insertion of the word "eventual" before the word "adoption" in the same sentence.
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- lessons to be derived from it — may be of distinct utility as affording a guide for the drafting and interpretation of instruments creating the obligation to have recourse to arbitration. In conjunction with the governing authority and authority of the International Court of Justice, some such codification and development of the law of arbitral procedure is bound to serve the cause of international justice."
38. In order to meet Mr. François' objection to the third paragraph, he proposed that the opening of the fourth sentence be redrafted to read: "Whether approved or not by some less, etc.".
39. Mr. SCELLE, replying to Mr. François, said that paragraph 14 struck a note of optimism but certainly not of enthusiasm. It was surely not inappropriate for the Commission to express a hope that the draft would be useful.
40. Mr. KERNO (Assistant Secretary-General) said that it would be premature to adopt paragraph 14 in its present form. The Commission could not at present decide what was to be recommended to the General Assembly.
41. Mr. FRANÇOIS said that, as the report was to be circulated to Governments for comment, it was hardly fitting for the Commission to express the view that the draft it contained was bound to be useful.
42. Mr. ZOUREK considered that it would be presumptuous for the Commission to put forward any opinion on the value of a draft which was essentially provisional and would have to be reconsidered in the light of comments by governments.
43. Mr. el-KHOURI felt that there was little point in paragraph 14, since the General Assembly was not going to examine the present draft. Governments should be left to form their own views on it.
44. Mr. LAUTERPACHT felt that paragraph 14 was of little value unless it was generally approved by the Commission. In the circumstances, therefore, he would withdraw it, if Mr. Scelle agreed. He would, however, point out to Mr. François that he did not think it was presumptuous for the Commission to ask governments to devote the necessary time to examining the draft articles it had prepared and to state at the same time that, in its view, the adoption of a code of arbitral procedure would be useful.
45. Mr. SCELLE agreed with Mr. Lauterpacht that paragraph 14 would only serve a useful purpose if it reflected the general view of the Commission. In the circumstances he agreed, albeit regretfully, that it should be withdrawn.

Proposal by Mr. Zourek of two new paragraphs (A/CN.4/L.39) to replace paragraphs 12 and 13 of the Introduction (A/CN.4/L.35) (resumed from paragraph 25 above)

46. The CHAIRMAN drew attention to the texts proposed by Mr. Zourek (A/CN.4/L.39) and Mr. Lauterpacht.⁷ Mr. Zourek had now withdrawn the third sentence of the first paragraph of his proposal and agreed to amend the words "as independent as possible", in the fourth sentence, to read "very largely independent".

⁷ See paras. 6 and 16 above.

47. He asked whether Mr. Zourek and Mr. Lauterpacht had been able to agree on a joint text.

48. Mr. LAUTERPACHT replied in the negative.

49. Mr. ZOUREK said that there was a fundamental difference between his text and that proposed by Mr. Lauterpacht. Mr. Lauterpacht appeared to take the view that both currents of opinion reflected existing international law. He (Mr. Zourek) could not agree. It seemed clear to him that existing international law did not provide, for example, for compulsory recourse to the International Court of Justice in all cases where the arbitral nature of the dispute was contested, for compulsory constitution of the arbitral tribunal in the event of there being no agreement on the *compromis*, or for interim measures of protection other than at the request of the parties. As the special rapporteur himself had often stressed, many of the provisions contained in the draft articles were *de lege ferenda*, and could only be binding on States which accepted them.

50. Mr. el-KHOURI agreed that it was impossible to combine the texts proposed by Mr. Zourek and Mr. Lauterpacht. The former's views were basically opposed to the concept underlying the whole draft. For that reason he would vote in favour of Mr. Lauterpacht's text.

51. Mr. KOZHEVNIKOV also agreed that the two texts could not be reconciled. One of the two currents of opinion which had been represented in the Commission was in accordance with existing international law, the other one against it. His own views were based on existing international law, and he believed that it would be wrong for the Commission to depart from it.

52. The CHAIRMAN put Mr. Zourek's proposal, as amended, to the vote.

Mr. Zourek's proposal was rejected by 7 votes to 3, with 1 abstention.

53. The CHAIRMAN then put Mr. Lauterpacht's proposal to the vote.

Mr. Lauterpacht's proposal was adopted by 8 votes to 2, with 1 abstention.⁸

54. The CHAIRMAN indicated that the Commission had completed its consideration of the comments and the introduction contained in document A/CN.4/L.35. He would next put the comments and introduction, as amended, to the vote as a whole.

The comments and introduction, as amended, were adopted by 8 votes to 2, with 1 abstention.

REQUEST BY MR. HUDSON FOR INSERTION OF FOOTNOTE IN THE COMMISSION'S REPORT TO THE GENERAL ASSEMBLY

55. Mr. HUDSON asked the Commission's permission to append, at an appropriate place in the Commission's

Report to the General Assembly covering the present session, a footnote reading as follows:

"In explanation of his vote against the adoption of this draft as a whole, Mr. Hudson stated that he was unable to accept many of its provisions, in particular those envisaging limitations on the freedom of the parties resorting to arbitration."

56. At the request of Mr. HSU and Mr. FRANÇOIS, Mr. LIANG (Secretary to the Commission) read out the relevant parts of the summary record of the Commission's discussion of a similar request at its previous session,⁹ from which it appeared that Mr. François had expressed the hope that "the Commission would decide, from that day on, it would no longer accept detailed explanations, but merely a statement to the effect that for the reasons given in the summary records, one member was opposed to the adoption of a particular passage in the report". The Assistant Secretary-General had suggested that a standard formula might be used, reading as follows: "Mr. X. voted against this passage in the Report, for the reasons given in the summary record of the... meeting, page...". Mr. François' proposal had finally been adopted by 7 votes to 5.

57. The CHAIRMAN observed that the Commission must accordingly consider Mr. Hudson's request in the light of that decision.

58. Mr. LAUTERPACHT pointed out that the wording of Mr. Hudson's request did in effect contain an explanation of his grounds for opposing the draft. It contained a controversial argument to which the majority had no opportunity to reply. The inference which Mr. Hudson clearly meant to be drawn was that the draft, in his view, placed undue restrictions on the parties' freedom of action.

59. Mr. HUDSON said that he agreed that footnotes indicating individual members' dissent from the Commission's decisions should not contain explanations of their reasons. He had been careful not to include any such explanations in the wording he had proposed, and he submitted that what he said did not amount to an explanation.

60. Mr. el-KHOURI proposed that Mr. Hudson's request be granted, but that in order to avoid the difficulties to which such requests gave rise, the Commission should decide that no requests for the inclusion of footnotes expressing the attitude of individual members be granted in future.

61. Mr. KOZHEVNIKOV submitted that the meaning of the decision taken by the Commission at the previous session was not clear. It should therefore re-consider the whole question of principle involved. It was his view that any member of the Commission had the right to request insertion in the Commission's report to the General Assembly of any brief footnotes, explaining his views, which he desired.

⁸ This proposal became para. 24 in the "Report".

⁹ See summary record of the 128th meeting, paras. 31—56.

62. The CHAIRMAN said there was no doubt that the Commission was bound, for the present, by the decision it had taken at the previous session. If the Commission wished to adopt another rule for the future, as proposed by Mr. el-Khoury, that question would have to be considered later. He then put to the vote the question whether the Commission should grant Mr. Hudson's request.

The question was decided in the affirmative by 4 votes to 3, with 2 abstentions.

63. Mr. YEPES, explaining his vote, recalled that at the previous session he had expressed the view that members of the Commission should be allowed a certain latitude in explaining their attitudes in footnotes to the Commission's reports. His view had not been supported by any other member of the Commission. In those circumstances he had not felt called upon to vote either for or against Mr. Hudson's request.

64. Mr. el-KHOURI said that he had voted in favour of granting Mr. Hudson's request, but that he intended to propose that no footnotes be allowed in future.

65. The CHAIRMAN, speaking as a member of the Commission, said that he had voted against Mr. Hudson's request since he did not consider it acceptable under the terms of the decision taken at the previous session.

66. Mr. SPIROPOULOS said that he had not been present when the vote was taken. He wished, however, briefly to express his opinion. He recalled that at the previous session he had requested permission to include a brief statement of his views in the Report. His request had not met with favour, and he had been obliged to withdraw it. He did not think it was consistent, therefore, for the Commission to accept similar requests.

67. Mr. FRANÇOIS felt that those who had voted in favour of granting Mr. Hudson's request had done so not because they considered it to be in accordance with the decision taken at the previous session, but only because they wished to depart from that decision, either in the particular case under consideration, or as a general rule.

68. The CHAIRMAN recalled that he had clearly indicated before the vote that the Commission was bound by its previous decision.

69. Mr. LAUTERPACHT said that he had abstained because he had understood that the vote was on the question whether Mr. Hudson's request should be granted by way of an exception to the rule established by the Commission at its previous session. If he had understood that the vote was on the question whether the text proposed by Mr. Hudson was in accordance with that rule, he would have voted against, since he thought it was obvious that it was not.

70. Mr. KOZHEVNIKOV said that he had voted in favour of the principle which he had already stated.

71. Mr. HUDSON said that, in view of the discussion to which his request had given rise, he would withdraw it in favour of the following :

"Mr. Hudson wished to state that he had voted against the adoption of this draft as a whole."

His only object had been to protect himself against the charge that he was opposed to all the provisions in the draft. He was opposed to some, and in favour of others. In particular, he was opposed to many of those which restricted the liberty of the parties having recourse to arbitration ; he was not, however, opposed to them all.

Mr. Hudson's new request was granted unanimously.¹⁰

QUESTION OF THE INSERTION OF FOOTNOTES IN THE REPORT OF THE COMMISSION

72. The CHAIRMAN invited comment on Mr. el-Khoury's proposal that in future no requests for the insertion in the Commission's reports to the General Assembly of footnotes indicating the attitude of individual members of the Commission should be granted.

73. Mr. KOZHEVNIKOV said that he also intended to request the inclusion of a footnote in the Commission's report indicating his attitude on the draft. Would adoption of Mr. el-Khoury's proposal prevent him from doing so or did it refer only to future sessions ?

74. Mr. KERNO (Assistant Secretary-General) said that it seemed only fair to apply the same rule to all members of the Commission. As Mr. Hudson's request had been granted, Mr. el-Khoury's proposal could surely relate only to future sessions.

75. The CHAIRMAN agreed.

76. Mr. HUDSON said that he was firmly opposed to Mr. el-Khoury's proposal. Individual members of the Commission should be permitted to indicate what provisions they objected to, so as to avoid being saddled with the responsibility for something with which they did not agree.

77. Mr. SPIROPOULOS felt that there was much to be said on both sides in the question. He recalled that at the first session he had supported Mr. Koretsky's request for insertion of a footnote indicating his attitude, as he regarded it was the legitimate right of all members of the Commission. After discussion, the Commission had acceded to Mr. Koretsky's request, but the right had been subsequently abused. For that reason, and in order to avoid the lengthy discussions to which such requests seemed inevitably to give rise, he (Mr. Spiropoulos) now agreed with Mr. el-Khoury that no such footnotes should be permitted in future. The attitude of individual members of the Commission could be ascertained from the summary records.

¹⁰ Footnote 4 in the "Report".

78. Mr. FRANÇOIS drew Mr. Spiropoulos' attention to the fact that the summary records did not normally show how individual members of the Commission voted.

79. The CHAIRMAN pointed out that, if any member particularly wished it to be recorded how he or some other member of the Commission had voted on a question, he could always request a roll-call vote.

80. Mr. ZOUREK said that he also intended to request the insertion of a footnote indicating his attitude. He had therefore been about to ask the same question as Mr. Kozhevnikov. If the Assistant Secretary-General's view was accepted, he was satisfied.

81. On the question of principle, he felt that it would be inadmissible that an individual member of the Commission should not be able to request insertion in the Commission's report of, at the very least, a bare indication that he disagreed with the Commission's decision on a matter of importance. The Commission could always refuse individual requests if it felt that the right was being abused, but it surely could not deprive members of that right altogether.

82. Mr. LAUTERPACHT agreed with Mr. Hudson that members of the Commission should be able to protect themselves against being saddled with responsibility for a text with which they did not agree. He did not see how there could be any possibility of that right being abused, so long as explanations were not permitted.

83. Mr. HSU feared that Mr. el-Khoury's proposal was too restrictive. He agreed with Mr. Lauterpacht that the existing rule, established at the previous session, was sufficient to prevent abuse.

84. Mr. el-Khoury said that his main desire was to avoid weakening the Commission's reports in the eyes of governments and the General Assembly. It was common knowledge to all who read the Commission's reports that its decisions were not necessarily unanimous; that was surely sufficient to give individual members the protection they desired. He did not agree that the rule established at the previous session made abuse impossible.

85. Mr. KOZHEVNIKOV said that he could not support Mr. el-Khoury's proposal, which appeared to be based on a desire to conceal the true facts from public opinion.

Mr. el-Khoury's proposal was rejected by 5 votes to 3, with 1 abstention.

86. The CHAIRMAN noted that the Commission would therefore continue to be bound by the rule it had established at the previous session.

Nationality, including, statelessness (item 6 of the agenda)

87. The CHAIRMAN said that, in pursuance of the Commission's decision to accept Mr. Hudson's

resignation as special rapporteur on nationality, including statelessness, he had drafted the following letter:

“Dear Judge Hudson,

“On the occasion of your resignation from the position of special rapporteur on Nationality including Statelessness, which the Commission accepted on 4 August 1952, may I, on behalf of the Commission, express the most sincere regret that your present state of health should have made such a step necessary.

“As you will recall, the Commission had been most reluctant to lose the benefit of your learning and ability as special rapporteur and had expressed the earnest hope that you would reconsider your position and find it possible, by readjusting your many undertakings, to carry on the task which you had been requested to assume. The Commission accepted your resignation only when you persisted in the desire to be relieved. It has done so with the utmost regret.

“The Commission deeply appreciates the valuable contributions which you have made on the subject of nationality including statelessness and hopes that you will soon be restored to full health.

“With warm regards,

“I am,

“Yours sincerely.”

The draft prepared by the Chairman was approved.

The meeting rose at 1.10 p.m.

182nd MEETING

Thursday, 7 August 1952, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Filling of a casual vacancy in the Commission	245
Arbitral procedure (item 2 of the agenda) (<i>resumed from the 181st meeting</i>)	245
Requests by Mr. Zourek and Mr. Kozhevnikov for insertion of footnotes in the Commission's Report to the General Assembly	245
Consideration of the draft report of the Commission covering the work of its fourth session A/CN.4/L.38 and Add. 1 to 5, A/CN.4/L.38/Corr.1, A/CN.4/L.38/Add.2/Corr.1)	248
Chapter I: Introduction	248
Chapter III: Nationality, including statelessness	248
Chapter IV: Régime of the territorial sea	249
Chapter V: Law of treaties	250
Chapter VI: Régime of the high seas	250
Chapter VII: Other decisions	250

Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.