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Summary record of the 183rd meeting

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183rd MEETING

Friday, 8 August 1952, at 9.45 a.m.

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Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

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

Filling of a casual vacancy in the Commission
(*resumed from the 182nd meeting*)

1. Mr. LAUTERPACHT proposed the election of Dr. Radhabinod Pal.

2. Mr. HSU said that, having now examined the *curricula vitae* of the candidates on the list submitted by the Indian Government, he had decided to support the candidature of Dr. Radhabinod Pal who, although neither a professor of international law nor a man of affairs closely connected with diplomacy would, as an eminent jurist, be able to make a valuable contribution to the work of the Commission.

Dr. Radhabinod Pal was elected by 9 votes to 1.

3. The CHAIRMAN announced that the necessary communication would be sent to Dr. Pal, whose election would also be recorded in chapter 1 of the general report.

Nationality, including statelessness (item 6 of the agenda) (*resumed from the 181st meeting*)

4. Mr. YEPES proposed that two special rapporteurs be appointed, one to deal with the problem of nationality and the other with the problem of statelessness.

Although the two subjects were closely linked, they could conveniently be dealt with separately ; the former was certainly too vast in scope to be undertaken by one person.

5. Mr. CORDOVA suggested that it would be over-ambitious to envisage anything being done on the question of nationality in general at the present stage of the Commission's term. The special rapporteur would have to confine himself to preparing a report on statelessness, and that was a subject that could not be divided.

6. Mr. el-KHOURI considered that one special rapporteur should be appointed.

7. Mr. SPIROPOULOS suggested that, once elected, it was for the special rapporteur to indicate how much he would be in a position to undertake.

8. Mr. LAUTERPACHT asked whether the purpose of Mr. Yepes' proposal was that in principle there should be two rapporteurs on the subject of nationality, including statelessness, or whether it was that the Commission should immediately proceed to the election of two special rapporteurs.

9. Mr. YEPES said that the reply to both Mr. Lauterpacht's questions was in the affirmative.

Mr. Yepes' proposal was rejected by 5 votes to 1 with 5 abstentions.

10. Mr. SPIROPOULOS said that it was a delicate matter to choose between the suitability of various members of the Commission for appointment as special rapporteur on nationality, including statelessness. If he ventured to make a proposal, therefore, it was only because of his particular interest in the question, as general rapporteur, and because the Commission could not escape the task of electing a special rapporteur to succeed Mr. Hudson.

11. It was natural that the Commission should elect as special rapporteur on any subject one of its members who held the majority view on that subject rather than one who was known to dissent from it. He wished, therefore, to propose Mr. Córdova, who had always played a prominent part in the debates on nationality, including statelessness, and whose views thereon were in sympathy with those of the majority of the Commission.

12. Mr. el-KHOURI seconded, and Mr. YEPES supported, the nomination of Mr. Córdova.

13. Mr. KOZHEVNIKOV said that he would vote in favour of Mr. Córdova because of his legal and scientific qualifications, and not for the reason put forward by Mr. Spiropoulos. The Commission could not base the election on the assumption that it would never reach agreement on the subject and that there would continue to be "a majority view" and "a minority view".

14. Mr. ZOUREK also felt that it was inappropriate to speak of "a majority view" and "a minority view". Each question was decided in the light of the principles of international law and on its scientific merits, as each member of the Commission saw them; on no two was the vote the same.

15. Mr. CORDOVA said that he felt it was his duty to accept nomination, since it was the duty of every member of the Commission to serve it to the best of his ability. He was bound to state, however, that he did not think he could be elected as holding "the majority view". If he were elected he would wish always to retain his freedom to support either the view held by the majority or that held by the minority on any particular question.

Mr. Córdova was unanimously elected special rapporteur on nationality, including statelessness, to succeed Mr. Hudson.

16. Mr. CORDOVA expressed his gratitude to the Commission for the confidence it had shown in electing him. It had thereby placed him, however, in the difficult position of having to succeed Mr. Hudson, whose work on the subject of nationality, including statelessness, had been of outstanding value. He (Mr. Córdova) would have to rely heavily on the assistance of Mr. Kerno, whose services had been enrolled as expert on that subject, and of the Secretariat.

17. He asked for confirmation of his understanding that the Commission would not expect him to submit a report on nationality in general, but only on the problem of statelessness. A special rapporteur on the subject of nationality itself would presumably have to be elected at a subsequent session, when the membership of the Commission during its next five years' term of office was known.

18. Mr. el-KHOURI recalled that the resolution adopted by the Commission at its 160th meeting¹ had referred only to statelessness. It went without saying that Mr. Córdova would not be expected to submit a report on the subject of nationality in general.

19. The CHAIRMAN agreed. The Secretariat would record the election of Mr. Córdova in the general report.

20. Mr. KERNO (Assistant Secretary-General) said that he wished to take the present opportunity of expressing his gratitude to the Commission for the confidence it had placed in him in appointing him expert on the subject of nationality, including statelessness. He wished to assure the Commission that he would fulfil his duties to the best of his ability, under the general guidance of the Chairman of the Commission, and in close collaboration with Mr. Córdova and the Division for the Development and Codification of International Law.

¹ See summary record of the 160th meeting, paras. 32 and 45.

Consideration of the draft report of the Commission covering the work of its fourth session (A/CN.4/L.38 and Add. 1 to 6, A/CN.4/L.38/Corr. 1, A/CN.4/L.38/Add.2/Corr.1, A/CN.4/L.38/Add.3/Corr.1) (resumed from the 182nd meeting)

21. The CHAIRMAN invited the Commission to continue its consideration of the draft report on the work of the fourth session.

**CHAPTER II : ARBITRAL PROCEDURE
(A/CN.4/L.38/Add.6) ***

22. Mr. YEPES moved the adoption of chapter II of the report as a whole.

*Paragraph 8 [18] * of the introduction*

23. Mr. LAUTERPACHT proposed the deletion of the word "also" in the second sentence of paragraph 8 of the introduction, since it obscured the meaning.

It was so agreed.

Article 13

24. Mr. LAUTERPACHT drew attention to a discrepancy between the two texts of article 13. The English version should be brought in line with the French, since the latter corresponded to the decision taken by the Commission.

25. Mr. LIANG (Secretary to the Commission) suggested that the English text should be changed to: "In the absence of agreement between the parties".

It was so agreed.

Chapter II of the report as amended was approved by 7 votes to 3.

**CHAPTER III : NATIONALITY, INCLUDING STATELESSNESS
(A/CN.4/L.38/Add.2 and Corr. 1) (resumed from the 182nd meeting)**

Paragraph 7 [31]

26. Mr. ZOUREK said that, in accordance with his statement at the previous meeting, he had prepared the text for a footnote to paragraph 7; it read as follows:

"Mr. Zourek pointed out that he had voted for the proposal to request the special rapporteur to submit to the Commission at its next session a detailed report on the basis of which a decision could be taken as to the possibility of preparing a draft convention on the elimination or reduction of statelessness. That proposal having been rejected, he had voted against the general directions to the special rapporteur on the subject."

* Mimeographed document only. It was incorporated, with drafting changes, in the "Report" as Chapter II (see vol. II of the present publication). The drafting changes are given in the present summary record.

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

27. Mr. KOZHEVNIKOV read out the text of his own footnote to the same paragraph, which ran as follows :

“ Mr. Kozhevnikov said that he had voted against the general directions as an effective basis for the establishment of draft conventions for the elimination of statelessness and reduction of future statelessness.”

28. The CHAIRMAN said that the Commission must decide whether those two footnotes to the general report were in accordance with the rule adopted at the previous session,³ on the proposal of Mr. François, to the effect that from that day on the Commission would no longer accept detailed explanations, but merely a statement to the effect that, for the reasons given in the summary records, a particular member was opposed to the adoption of a particular passage in the report.

29. Mr. LAUTERPACHT moved that the Commission decide that the footnotes submitted by Mr. Kozhevnikov and Mr. Zourek were in conformity with the above rule.

30. Mr. SPIROPOULOS said that it was highly distasteful to him to have to criticize Mr. Zourek's text, but he was bound to point out that it conflicted with the Commission's rule, inasmuch as it gave the reasons why its author had voted against a certain decision.

31. Mr. ZOUREK pointed out that he had said no more than what was already in the summary records. The footnote could hardly be more concise.

32. Mr. HSU agreed with Mr. Spiropoulos.

33. Mr. SPIROPOULOS withdrew his objection to Mr. Zourek's text.

34. Mr. HSU deplored the action of the general rapporteur. If he considered that Mr. Zourek's footnote conflicted with the rule adopted by the Commission, he should have stood by his opinion, since otherwise the authority of the rule would be undermined to such an extent as to render it a dead letter.

35. The discussion had confirmed his own belief in the wisdom of the view expressed earlier by Mr. el-Khoury that in the future no footnotes to general reports should be accepted.

36. Mr. LIANG (Secretary to the Commission) pointed out that a difficulty would arise if Mr. Zourek's footnote were accepted, since it referred to a proposal which was not mentioned in paragraph 7.

37. Mr. KOZHEVNIKOV proposed that Mr. Zourek's footnote be accepted without further discussion, since it fully conformed to the rule adopted by the Commission at the previous session.

38. Mr. LAUTERPACHT supported Mr. Kozhevnikov's proposal.

39. Mr. YEPES considered that there was nothing objectionable in Mr. Zourek's footnote, which could accordingly be accepted.

40. Mr. FRANÇOIS contended that Mr. Zourek's text was not in conformity with the rule adopted by the Commission, in that it gave the reasons why he had voted against the decision on the draft convention on statelessness.

41. Mr. SPIROPOULOS observed that, if Mr. Kozhevnikov and Mr. Zourek had framed their footnotes to chapter III in the same form as those to chapter II, no difficulty would have arisen.

42. Mr. CORDOVA asked whether Mr. Zourek would be prepared to withdraw his reference to the proposal rejected by the Commission, since it was not mentioned in paragraph 7 of chapter III.

43. Mr. ZOUREK observed that the Commission had voted on two separate matters. Without referring to both he could not make his point of view clear. It would be more appropriate to amplify the account given in paragraph 7 than to ask him to withdraw part of his text. He emphasized that his text did not contain any reference to the substantive reasons he had given for voting against the Commission's decision. It was strictly confined to a factual account of what had taken place.

44. Mr. el-KHOURI said that he wished the text of his footnote to paragraph 7 to read :

“ Faris Bey el-Khoury declared that, for reasons indicated in the summary records of the Commission, he was opposed to these general directions.”

45. His opposition to the decision taken by the Commission concerning the proposed draft conventions on statelessness had been far stronger than Mr. Zourek's and he therefore appealed to him to accept a similar formula for his own footnote.

46. The CHAIRMAN, speaking as a member of the Commission, said that he would vote in favour of Mr. el-Khoury's and Mr. Kozhevnikov's footnotes, but against that of Mr. Zourek which, in fact, gave a statement of reasons. The rule adopted by the Commission was perfectly clear and was obviously designed to prevent any statement of reasons however short.

47. Mr. LAUTERPACHT thought that, on an impartial interpretation of the rule adopted by the Commission, there was nothing in Mr. Zourek's text which could be regarded as a statement of reasons.

48. Mr. KERNO suggested that a very slight verbal amendment to Mr. Zourek's text might render it acceptable to most members of the Commission.

49. Mr. ZOUREK said that he was prepared to substitute the words “ When that proposal was rejected he voted against the general directions to the special rapporteur on this subject ” for the words “ That proposal having been rejected, he had voted against the general directions to the special rapporteur on the subject.”

50. Mr. KOZHEVNIKOV said he wished to make a

³ See summary record of the 128th meeting, para. 56.

drafting amendment to his footnote by deleting the word "future".

Mr. Kozhevnikov's footnote as amended was accepted unanimously.

Mr. el-Khouri's footnote was accepted unanimously.

Mr. Zourek's footnote as amended was accepted by 6 votes to 4 with 1 abstention.

51. Mr. SPIROPOULOS said that the Commission's rule on footnotes must be complied with as long as it remained in force. He was unable to understand how members could support footnotes which violated that rule on the plea that they must uphold the principle of freedom to express personal views.

52. Mr. CORDOVA agreed with the general rapporteur that any member preparing a footnote for submission to the Commission must examine it by reference to the Commission's rule, but unlike Mr. Spiropoulos, he considered that Mr. Zourek's text did comply with that rule.

53. Mr. LAUTERPACHT explained that, at the previous meeting, he had voted against the proposal that the Commission's rule be reconsidered only because there was too little time left for that at the present session. He believed, however, that to deprive members of the right to express dissent and give their reasons for it was both objectionable in principle and contrary to the dignity of the Commission. On the other hand, footnotes might lend themselves to abuse in the form of propaganda or self-advertisement. Some solution to the problem must be found.

54. Mr. KOZHEVNIKOV said that undoubtedly the Commission would have to re-examine the question of footnotes. He considered it a fundamental right of each member to declare his personal views, particularly on questions of substance.

55. Mr. YEPES said he had voted in favour of Mr. Zourek's text because all members had the right to explain the reasons for their vote. The Commission was always free to waive any of its own rules in a particular case.

56. Mr. el-KHOURI maintained that, until it was abrogated, a rule must be complied with. Accordingly, though he had himself opposed the Commission's decision concerning the draft conventions on statelessness, he had voted against Mr. Zourek's footnote because it violated the rule adopted by the Commission. He agreed with Mr. Lauterpacht that the Commission would have to tackle the whole problem of footnotes.

Chapter III of the report was approved.

CHAPTER VII : OTHER DECISIONS (A/CN.4/L.38/Add.3 and Corr.1)⁴ (*resumed from the 182nd meeting*)

57. The CHAIRMAN drew the attention of the Commission to the text (A/CN.4/L.38/Add.3/Corr.1) submitted by the general rapporteur in response to Mr. el-Khouri's proposal that a reference be made in the general report to the fact that the Commission had taken note of certain resolutions adopted at the sixth session of the General Assembly.

The general rapporteur's text was approved.

The draft report as a whole as amended was adopted by 9 votes to none with 2 abstentions, subject to the necessary editorial changes by the Secretariat.

Closure of the session

58. The CHAIRMAN indicated that the Commission had completed its work for the fourth session.

59. Mr. el-KHOURI said that he wished to express the Commission's gratitude to its Chairman for his devoted service in that office and for his wise and patient conduct of its deliberations throughout the 49 meetings that had been held.

60. Mr. YEPES said that he wished to associate himself cordially with the well-merited tribute to the Chairman.

61. Mr. LAUTERPACHT said that, as a newcomer to the Commission, he wished to associate himself with the tributes paid by two members of long standing to the Chairman's dignified and statesmanlike conduct of what he was sure all, in retrospect, would agree had been a most successful session.

62. Mr. HSU wished to add a personal tribute to the Chairman's conduct of the Commission's debates, which had been in accordance with the best traditions of democratic procedure.

63. Mr. KOZHEVNIKOV, Mr. ZOUREK and Mr. CORDOVA associated themselves with the tributes paid to the Chairman.

64. The CHAIRMAN said that he was deeply grateful for all the kind remarks which had been made. His sole aim had been to advance the Commission's work in accordance with the established rules and to apply those rules to all its members with strict impartiality. He had been greatly assisted in that task by the co-operation of all members of the Commission. On their behalf, he wished to express his appreciation of the contribution made by all members of the Secretariat to the work of the fourth session, which he then declared closed.

The meeting rose at 11.40 a.m.

⁴ Mimeographed document only. It was incorporated in the "Report" as para. 53.