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Summary record of the 219th meeting

Topic:
Nationality including statelessness

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108. The CHAIRMAN put to the vote the suggestion that the Special Rapporteur should be asked to prepare a text, with a view to its insertion in the Convention, dealing with the settlement of disputes by arbitration.

The suggestion was adopted by 6 votes to 5, with 2 abstentions.[5]

The meeting rose at 1.5 p.m.

[5] See *infra* 219th meeting, para. 45.

219th MEETING

Monday, 20 July 1953, at 2.45 p.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, 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 (*continued*)

Preamble (resumed from the 216th meeting)

1. The CHAIRMAN said that two matters remained to be dealt with before the Commission completed its work on the draft Convention on the Elimination of Future Statelessness. One was a proposal for an additional article, made jointly by the Special Rapporteur and Mr. Scelle. Since however, the English text had not yet been distributed, he therefore proposed to open the discussion with the other matter, namely, the preamble to the convention. The Special Rapporteur having withdrawn his original text,[1] the Commission had before it only the text prepared jointly by the Special and General Rapporteurs, which read as follows:

"1. *Whereas* the Universal Declaration of Human Rights proclaims that 'everyone has the right to a nationality';

"2. *Whereas* the Economic and Social Council has recognized that the problem of stateless persons demands 'the taking of joint and separate action by Member nations in co-operation with the United Nations to ensure that everyone shall have an effective right to a nationality';

"3. *Whereas* statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man;

"4. *Whereas* statelessness is frequently productive of friction between States;

"5. *Whereas* statelessness is inconsistent with the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law;

"6. *Whereas* the practice of many States has increasingly tended to the progressive elimination of statelessness;

"7. *Whereas* no vital interests of States are opposed to the total elimination of statelessness;

"8. *Whereas* it is desirable, by international agreement, to render legally impossible situations which give rise to statelessness;

"The Contracting Parties

"Hereby agree as follows:"

2. Mr. ALFARO approved the new text in general, but suggested the deletion of the seventh clause, which could be construed in such a manner as to provoke opposition to the convention.

3. Mr. SANDSTRÖM agreed that it might be preferable to drop the seventh clause, though the difficulties might be overcome by redrafting it to read somewhat as follows:

"No vital interests of States requires the upholding of legislation concerning nationality so as to create statelessness."

4. He further suggested that continuity of thought might be better served by re-arranging the clauses in the order: 1, 5, 3, 4, 6, 2, 7.

5. He agreed with a suggestion by Mr. LAUTERPACHT that the order of the clauses might be left to the Drafting Committee.

6. Mr. LAUTERPACHT hoped that clause 7 would stand, its final version to be decided by the Drafting Committee. There was a clear distinction between the vital interests and the important interests of States, and

[1] See *supra*, 216th meeting, para. 70.

the clause in question was concerned with the former. Ratification of the Convention would undoubtedly entail changes in the domestic legislation of the ratifying States, but that did not mean that the vital interests of States were in conflict with the proposed convention.

7. Further, the view had been expressed even in the Commission that the convention involved some fundamental issues of national jurisprudence. That, again, was inaccurate. The principles embodied in the convention had already been incorporated in the legislation of some States. He considered it entirely proper for the Commission to express a view on what was or was not a vital interest of States.

8. Mr. SANDSTRÖM said that, whereas no State could object to statelessness being abolished, the means by which that was to be done might well be questioned.

9. Mr. ALFARO did not oppose the substance of clause 7, but considered that the contents of the preamble should be so self-evident that there could be no reasonable opposition to them. He believed that there was a feeling in some quarters that some interests of States were involved. That clause would inevitably cause confusion between the vital interests of States, which he agreed were not opposed to the elimination of statelessness, and the measures for the elimination of statelessness recommended in the convention. He suggested therefore that the clause might be redrafted to read somewhat as follows:

> "Whereas it is in the interests of States to devise means for the elimination of statelessness."

10. Mr. SCELLE agreed with Mr. Alfaro, and welcomed his efforts and those of Mr. Sandström to draft a more acceptable text. He had some sympathy with Mr. Lauterpacht in his distinction between the vital and the important interests of States, but felt that the draft would provoke an instinctive revulsion on the part of some States, who would consider that it was their own responsibility to decide what was and what was not in their interests.

11. Mr. KOZHEVNIKOV said that his first impression was that the new text of the preamble was to some extent better than the original, for it did not purport directly to impose on parties to the convention acceptance of the principle that international law was superior to municipal law. In particular, he noted the elimination of the sentence suggesting that all nations should "abide by the principle of the priority of international law over national legislation". Nevertheless, Mr. Córdova had said that substantively the new draft was identical with the original, and he (Mr. Kozhevnikov) agreed that that was the case. The concept to which he objected still remained, and his attitude towards the preamble was therefore negative.

12. He would support the deletion of clause 7, for he felt that it would be presumptuous of the Commission to attempt to evaluate the vital interests of States; governments themselves were alone competent to do that. Further, he considered clause 8 to be unrealistic; he doubted whether any or a majority of governments would agree that it was desirable by international agreement to render legally impossible situations which gave rise to statelessness.

13. The CHAIRMAN, speaking as a member of the Commission, agreed with Mr. Lauterpacht. It was logical to include clause 7. Indeed, it went without saying that any State which adopted the convention would agree with that clause. Thus it would make evident the division between the States which supported the convention and those who did not; for some States would consider, as he himself did, that their vital interests were in fact affected by the measures proposed in the draft convention.

14. Mr. AMADO said that the Commission's discussions on the elimination of statelessness always came back to Mr. François' point. In his (Mr. Amado's) view, the adoption of clause 7 would not help to solve the problem before the Commission, for States opposed to the convention would be forewarned by the clause of the trend of the whole text. Talleyrand had said that everything that was exaggerated was insignificant; and he (Mr. Amado) felt that the convention was weakened by the number of exaggerations. Clause 7 of the preamble should be replaced by an appropriate formula; he would vote against it as it stood.

15. Faris Bey el-KHOURI said that the convention and its acceptance were not postulated merely on the assumption that statelessness was an evil to be eliminated; the convention specified a particular method, with which he could not agree as it would involve the compulsory grant of nationality to very large numbers of stateless persons. In his view, the convention ought to meet not only the difficulties of the large numbers of refugees who were at present stateless, but also those of the small States who would be expected to confer their nationality on them. He felt compelled to vote both against the preamble and against the draft convention.

16. Mr. HSU was substantially in agreement with Mr. Lauterpacht that the draft convention would not affect the vital interests of the majority of states. He suggested, however, that that point should be made in the Commission's report rather than in the text of the convention.

17. Mr. YEPES said that the preamble should be recast in more sober terms. Clause 7 would surely be considered superfluous by those who approved of the convention, and might therefore be deleted whether or not it were true.

18. As to clause 8, he suggested the deletion of the phrase "by international agreement". Further, as there were political, economic and social causes of statelessness as well as legal ones, he would prefer the clause to read;

> "Whereas it is desirable to eliminate all causes of statelessness;".

19. Mr. ZOUREK felt that the preamble was similar to the rest of the convention in that it overstressed the

rights of individuals and understressed the rights of the States of which they were nationals. To him, clause 5, in emphasizing that certain rights of individuals "were recognized by international law", failed to take due account of the consequence of municipal law on stateless persons; he therefore suggested the deletion of that phrase. As to clause 7, the Commission should not in his view judge the interests of States; the clause should therefore be deleted. To his mind, there was a conflict between clause 8, which emphasized the desirability of international agreement for the elimination of statelessness, and the recognition quoted in the second clause that the problem of stateless persons demanded "...joint and separate action by Member nations in co-operation with the United Nations...". Clause 8 was therefore clearly incomplete; it should either be completed or dropped.

20. Mr. LAUTERPACHT said that, as clause 7 clearly had not found favour with the Commission, he would withdraw it. As for Mr. Yepes' objection to the phrase in the eighth clause "...to render legally impossible situations which give rise to statelessness;", he pointed out that statelessness was a creature of law rather than of nature, and that legal remedies for it must therefore be provided.

21. The CHAIRMAN then put the several clauses of the preamble to the vote.

Clause 1 was adopted by 10 votes to none, with 3 abstentions.

Clause 2 was adopted by 10 votes to none, with 3 abstentions.

Clause 3 was adopted by 11 votes to none, with 2 abstentions.

Clause 4 was adopted by 7 votes to 2, with 4 abstentions.

Mr. Zourek's amendment for the deletion of the words "recognized by international law" from clause 5 was rejected by 6 votes to 2 with 5 abstentions.

Clause 5 was adopted by 8 votes to 2, with 3 abstentions.

22. Mr. YEPES asked whether clause 6 really corresponded with the facts — in other words, had the practice of many States increasingly tended to the progressive elimination of statelessness — or was that merely an expression of the Commission's hopes and wishes?

23. Mr. LAUTERPACHT, referring to the Secretariat study entitled "The Problem of Statelessness" (E/1112),[2] pointed out that the policy and recent legislative practice of many States were directed to the elimination of statelessness; the clause was therefore conservative and moderate.

24. Mr. SCELLE felt that the insertion of the clause was a matter of international courtesy.

[2] United Nations publication, Sales No.: 1949.XIV.2.

Clause 6 was adopted by 10 votes to none, with 3 abstentions.

25. Mr. CÓRDOVA (Special Rapporteur) hoped that clause 7 might be preserved in some form. It should, perhaps be cast positively rather than negatively, as the Commission's work had been based on the general desirability, from the point of view of international law, of eliminating statelessness. He suggested therefore that the clause might read:

"Whereas it is in the interest of States to favour the total elimination of statelessness".

26. Mr. SANDSTRÖM drew attention to the curious situation which had arisen, in that Mr. Córdova's draft for clause 7 was almost identical in substance with Mr. Yepes' previous suggestion for clause 8.

27. Mr. LIANG (Secretary to the Commission) said that the first six clauses of the preamble were couched in emphatic language; he warned the Commission against perpetrating an anticlimax. Mr. Yepes' draft was too mild for rounding off the preamble. If the words "by international agreement" and the word "legally" were omitted, then the clause would convey very little but generalities which were already implicit in the previous clauses.

28. Mr. LAUTERPACHT, referring to Mr. Yepes' objection to the phrase "by international agreement", pointed out that the Commission was preparing a convention, so that it was entirely proper to refer to the desirability of international agreement. It would be another matter if the Commission were preparing amendments to municipal law.

29. Mr. CÓRDOVA withdrew his proposal for reviving clause 7.

30. Mr. YEPES withdrew his suggestion that the phrase "by international agreement" should be deleted. His proposed text for clause 7 (formerly clause 8) would therefore become:

"Whereas it is desirable by international agreement to eliminate the causes of statelessness;".

31. Mr. ALFARO drew attention to a discrepancy between the French and English texts of original clause 8; the former mentioned the legal causes of statelessness ("*les causes juridiques d'apatridie*") whereas the latter did not.

32. Mr. CÓRDOVA said that statelessness, with which the convention dealt, was a juridical problem and had no causes other than legal ones.

33. Mr. LIANG (Secretary to the Commission) said that the Drafting Committee might reconsider clause 7. The English version referred to "situations which give rise to statelessness"; but there were many such situations, of which the second World War was one, to which the Commission had no wish to refer.

34. Mr. CÓRDOVA suggested that clause 7 (originally clause 8) should follow the French text, and read:

"Whereas it is desirable, by international agreement, to render impossible legal situations which give rise to statelessness".

35. Mr. SCELLE agreed that the Commission was not called upon to legislate for all situations — including, for example, deportation — from which statelessness might arise.

36. Mr. AMADO said that Mr. Yepes' proposal was virtually identical with Mr. Córdova's.

37. Mr. LAUTERPACHT said that the Commission seemed to be in substantial agreement on the contents of the eighth clause.

Clause 7 (originally clause 8) was then adopted in the form suggested by Mr. Córdova by 10 votes to 2 with 1 abstention.

38. Mr. SANDSTRÖM raised a legal point concerning the vote on clause 7 and the preamble as a whole. Should a vote in favour of clause 7 be taken as indicating full approval of the objects of the Convention for the Elimination of Future Statelessness?

39. Mr. LAUTERPACHT thanked Mr. Sandström for raising the point. He (Mr. Lauterpacht) hoped that the Commission would adopt both the conventions under consideration. He assumed that the Commission would take care to see that the second convention — that on the reduction of future statelessness — was not indistinguishable from the first. The Commission would then, as he saw it, forward not one convention to the General Assembly, but both conventions. The Commission would not recommend the exclusive adoption of one or the other convention. It would not express a preference, but it would recommend that either the one or the other be adopted. The Commission's attitude, in his view, was that, whereas some members considered that only the total elimination of statelessness was a worth while object, others felt that total elimination was impossible of achievement, although the deleterious effects of statelessness could be minimized; at the same time, the Commission thought in general that the adoption of one or other convention was desirable. Indeed, it might have been possible, given the necessary time and skill, for the Commission to have devised a single convention containing two chapters either one of which might have been acceded to by a State accepting the convention. Such a procedure had been followed in the case of the General Act of 1928 for the Pacific Settlement of International Disputes.

40. Mr. CÓRDOVA said that the Commission's general understanding was that both conventions would be presented on an equal footing to the General Assembly and to governments Members of the United Nations. Given that the Commission was preparing a convention on the elimination of future statelessness on the conditions outlined by Mr. Lauterpacht, a vote in favour of clause 7 and the preamble as a whole would not indicate more than that the clause as drafted was appropriate for insertion in the preamble to the draft Convention on the Elimination of Future Statelessness. Such a vote would have no bearing on the Convention on the Reduction of Future Statelessness, which would contain no corresponding clause.

41. Mr. SANDSTRÖM said that he entirely accepted the position as just explained, and that his vote should therefore not be interpreted as implying that he personally approved of one convention rather than the other.

The preamble to the draft Convention on the Elimination of Future Statelessness was adopted by 10 votes to 2, with 1 abstention.

42. Mr. YEPES felt that members of the Commission should give some thought to the title to be given to the draft convention under consideration. Its present provisional title "Draft Convention on the Elimination of Future Statelessness" was inappropriate, since its adoption would not eliminate all future cases of statelessness.

43. After some discussion, the CHAIRMAN suggested that further consideration of the matter be deferred until the draft Convention on the Reduction of Future Statelessness had been examined.

44. Mr. YEPES said that he had no objection to the Chairman's suggestion. His only purpose in raising the question had been to ensure that members of the Commission should give some thought to it.

The Chairman's suggestion was adopted.

Arbitration clause [Article 10]

(resumed from the 218th meeting)

45. Mr. CÓRDOVA said that, acting on the Commission's instructions to draft an article which would provide for recourse to arbitration in the event of disputes arising out of the convention,[3] he and Mr. Scelle had prepared the following text:

"1. With a view to determining the nationality of persons who are stateless or likely to become so, the Parties signatory to this Convention shall each nominate a legal expert on nationality questions. The names of those experts shall be entered on a single list of candidates from which any conciliation commissions that may be required can be formed.

"2. In every disputes case, the Conciliation Commission shall comprise an expert from each of the countries concerned. It may be seized of the case either by one of the governments concerned, or by any person who is stateless or in danger of becoming so, or by his legal heirs and assigns.

"3. Should the Conciliation Commission fail to reach agreement on a settlement of the dispute, the High Contracting Parties undertake to submit it to arbitration [in accordance with the procedure adopted by the International Law Commission in the draft prepared by it at its fifth session].

[3] See *supra*, 218th meeting, para. 108.

"4. They shall also submit to arbitration all disputes regarding the interpretation or the application of this Convention."

46. He and Mr. Scelle had felt that it was absolutely necessary that an individual who was stateless or in danger of becoming stateless should be able to seize the conciliation commission of his case, since it might well happen that it would not be seized of it by any of the governments concerned. It also seemed obvious that in the event of the conciliation commission's failing to reach agreement, the parties to the dispute should be under an obligation to submit it to arbitration and that, in order that the arbitration might not be frustrated by failure of the parties to agree on an arbitrator or by obstructive action on the part of one of them, the procedure followed should be that approved by the Commission.

47. Mr. LAUTERPACHT felt that it might, after all, be impossible for the Commission to insert in the text of the Convention any provision relating to the settlement of disputes, and that it might have to content itself with making a reference to that subject in its general report. The subject was an extremely difficult one, for the disputes which arose out of the convention would be not only disputes between the parties to it but also, and to a greater degree, disputes between one of the parties to it and an individual whom no State recognized as being its national. Paragraph 2 of the text proposed by Mr. Córdova and Mr. Scelle, however, stated that "the Conciliation Commission shall comprise an expert from each of the countries concerned". The proposed procedure would therefore be inapplicable in the majority of cases.

48. The same point appeared to have been overlooked in paragraph 3. The rules of arbitration which the Commission had prepared referred to arbitration between States, and would not be applicable in cases where the dispute was between a State and an individual who was not recognized by any State as its national.

49. Mr. ALFARO asked the Special Rapporteur and Mr. Scelle how they considered that the conciliation commissions referred to in their proposal should be set up.

50. Mr. SANDSTRÖM said that he agreed in principle that an article on the settlement of disputes must be included in the convention if it was not to remain a dead letter. Such an article was particularly necessary in the case of a convention like the one under consideration, where the disputes that arose would be mainly between individuals and States, since no recognized procedure for the settlement of such disputes existed. It was because the disputes that arose out of the convention would be mainly of that type that he had been about to make the same point as had been made by Mr. Lauterpacht.

51. Mr. YEPES said that he regarded conciliation as the best possible means of settling international disputes in all cases where it was applicable. It was, however, a political means of settling disputes, particularly disputes about questions of fact. In the present case, as had been previously stressed by other members of the Commission, the Commission was dealing with questions of law, and disputes relating to questions of law could only be settled by arbitration.

52. Mr. KOZHEVNIKOV recalled that he had already had a number of opportunities of stressing the fact that he was flatly opposed to the idea of compulsory arbitration. Leaving that question aside for the present, however, he wished to point out that the joint proposal by the Special Rapporteur and Mr. Scelle entailed a radical change in the nature of international law. As was recognized by jurists, and as could be seen from history, international law regulated the relations between States. In international law, the individual had no place; he was represented by his State. Under the joint proposal, however, individuals would no longer necessarily be represented by a State; they would themselves be able to bring cases before an international tribunal, without the intermediary of any State. Such a provision appeared to be contrary to the general principles of international law, and also to the wording which the Commission had just adopted for the preamble to the convention; for the preamble referred to "the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law".

53. He also noted that the joint proposal provided that, in the event of the conciliation commission's failing to reach agreement, the parties should submit the dispute to arbitration "in accordance with the procedure adopted by the International Law Commission in the draft prepared by it at its fifth session". He did not understand what was meant. No such draft had yet been adopted, and it seemed premature to refer to it.

54. Mr. HSU said that it seemed clear that the joint proposal did not fulfil the purpose which the Commission had in mind. It might prove satisfactory so far as disputes between governments were concerned, although he did not see why it should be necessary to prepare a new list of candidates from which members of conciliation commissions could be drawn, when a suitable list already existed such as the United Nations Panel for Inquiries and Conciliation. Nor did he see, indeed why the Commission should be at pains to draft a special article dealing with disputes between States. The only purpose of the proposal was to provide for cases where one of the parties to the dispute was an individual who had no government to represent him, and, as had been pointed out, such cases were not covered by the text proposed. It was doubtful, indeed, whether such cases could be covered by any form of conciliation or arbitration as those terms were usually understood, and the Commission might well have to consider establishing for the purpose some type of independent tribunal placed under United Nations auspices.

55. Mr. SCELLE, replying, said that, in considering the proposal which he and Mr. Córdova had submitted, it must be borne in mind that the convention in which it

was to be placed was a convention designed to have the effect of completely eliminating statelessness. It was true that the proposed text did not cover disputes in which only one State was concerned, but in the majority of cases he thought that two or more States would be involved. It would have been possible to give more details of the way in which conciliation commissions should be constituted, but he and Mr. Córdova had not thought that necessary. He and Mr. Córdova had been unable to agree, however, whether it was desirable to include the words "in accordance with the procedure adopted by the International Law Commission in the draft prepared by it at its fifth session", and it was for that reason that they had been placed in square brackets. Whatever procedure was followed, however, arbitration could only take place between States, and he did not think it possible to envisage arbitration between a State and an individual. Mr. Yepes' point he did not understand, since the draft on arbitral procedure itself recognized that recourse should be had to arbitration only after conciliation had failed. Finally, he would point out to Mr. Kozhevnikov that the whole convention was designed to give certain rights in international law to the individual who had no State to represent him.

56. Mr. LAUTERPACHT agreed with Mr. Sandström that a special provision was necessary because the majority of disputes which arose from the convention would be disputes between the State and the individual. Cases of disputes solely between States could be dealt with in a more orthodox way. The only point of the proposed article was to give the individual an internationally recognized right of action before an international tribunal. Mr. Kozhevnikov had argued that that would be contrary to the existing situation as it was defined in the preamble, but the whole purpose of the convention was none other than to change the existing situation.

57. The joint proposal could probably be amended to meet the various points which had been raised. If the Commission were to attempt to adopt such a text, however, it should at least be aware of the fact that in doing so it would be undertaking a task similar to that which the Commission on Human Rights had considered for six years but upon which it had finally been unable to agree. The draft international covenants on human rights did not give the individual the right of petition.

58. It should also be borne in mind that the International Law Commission could not afford to devote more than another week to the question of statelessness. It must make up its mind between attempting to establish detailed machinery for the implementation of the convention — for that was what it amounted to — and confining itself to stating in its general report that it had not the time to devote to the whole complicated question of implementation, which must therefore be dealt with separately. In the circumstances, the latter course might appear the only practicable one.

59. Mr. SCELLE agreed that the thorny question which was dealt with in the text which the Commission had invited him and the Special Rapporteur to prepare was not yet ripe for discussion. He would have no objection to its being simply mentioned in the report.

60. Mr. SANDSTRÖM said that he shared the same views, particularly in view of what had happened with regard to a similar matter in the Commission on Human Rights.

61. Mr. YEPES said that although he was in favour of inclusion in the Convention of an article dealing with the settlement of disputes, he wished to reiterate his view that the only method of peaceful settlement which was appropriate in cases relating to questions of law was the method of arbitration, first defined in the General Act of 1928 and subsequently endorsed by the United Nations.

62. It was claimed that individuals could never be the subjects of international law. Several precedents to the contrary existed, however. To mention only one, the Central American Court of International Justice, which had functioned from 1907-1917, had permitted individuals to submit to it cases similar to those which the Commission was at present considering.

63. Mr. CÓRDOVA thought that all members of the Commission agreed that the question at issue was an important and difficult one requiring full consideration. The Commission had to choose, however, between doing nothing about it, and having the courage to try to solve one element, and one only, of a problem which was exercising legal minds throughout the world. There were twenty-nine different ways in which a State could violate the draft conventions on human rights, but it was with only one of those ways that the Commission was concerned. Unless the individual had the right to defend his interests before an international jurisdictional tribunal in cases where there was no one else to defend them, the convention would largely remain a dead letter, and the Commission would be disregarding the Economic and Social Council's appeal that it conclude a convention for the *effective* elimination of statelessness.

64. Mr. SPIROPOULOS recalled that he had abstained from voting on the suggestion that the Special Rapporteur should be asked to prepare a text dealing with the settlement of disputes, since he had foreseen the difficulties that would arise. He agreed with Mr. Scelle and Mr. Córdova, however, that unless the convention contained provisions for its implementation it would prove of little value. The greatest difficulty, perhaps, related to disputes between a State and an individual, and he agreed with Mr. Lauterpacht that such would form the majority. As Mr. Yepes had pointed out, however, precedents existed for recourse by an individual to an international tribunal; in addition to that referred to by Mr. Yepes, he could mention the European Court of Human Rights and the draft Convention on Settlement in Europe which was being prepared under the auspices of the Council of Europe. It was true that in those cases an international body had been established to settle disputes submitted to it, but there were precedents, too, for the procedure which Mr. Lauterpacht had suggested, under which the individual and the State

could each choose its own representative in order to form an arbitral tribunal. The difficulties were not therefore insoluble, but it would certainly take much longer to solve them than the Commission had still to sit. He agreed therefore that it could do no more, at the very most, than make a general suggestion in its report.[4]

The meeting rose at 6 p.m.

[4] Discussion of the question of inserting an arbitration clause was reopened at the 223rd meeting. See *infra* 223rd meeting, paras. 4-79.

220th MEETING

Tuesday, 21 July 1953, at 9.30 a.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, 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 (*continued*)

Arbitration clause [Article 10] (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of the article on implementation that had been proposed at the previous meeting by the Special Rapporteur and Mr. Scelle as an addition to the draft Convention on the Elimination of Future Statelessness.[1]

2. Mr. KOZHEVNIKOV wondered whether there was any point in his speaking, as on the previous day the authors of the article had appeared no longer to be insisting on its addition to the draft convention.

3. The proposed additional article again raised the question of the legal status of the individual in international law. In his view, the Commission's task was to confirm the basis of international law: to develop and perfect existing law, rather than to change its substance. The Commission should eschew anything that might imperil or violate the structure of international law as it existed. He emphasized yet once more that, in his view, international law concerned exclusively relations between States. The proposal under consideration, on the contrary, would allow individual physical persons to take part in the processes of international law. He was glad that Mr. Lauterpacht had admitted that there was a contradiction between that proposed additional article and other articles in the draft convention.

4. If the individual physical person were accepted as a subject of international law, additional opportunities of interfering in the domestic affairs of States would inevitably result. For there were forces at work that were bent on destroying, first the doctrine of sovereignty, and then sovereignty itself. If they succeeded, international law would be directed not towards democracy, peace and progress, but towards other and reprehensible ends.

5. The text of the proposed additional article was in any event vague and indefinite. How was the conciliation commission to be established? Which were the "governments concerned" mentioned in paragraph 2? The article related not only to persons who were stateless, but also to "persons... likely to become so"; but who was to determine that a person was likely to become stateless?

6. Apart from his anxiety about the whole idea, which he regarded as wrong, of compulsory arbitration between individuals and States, he felt that the text itself was bewildering. He thought the Commission would be wise not to accept the article, and he was therefore glad that the authors appeared to be willing to withdraw it.

7. Mr. ZOUREK said that other members of the Commission had already emphasized that the machinery proposed in the additional article left much to be desired. He expected that in the majority of cases only one State would be concerned; it was therefore likely that it would be difficult to set the machinery in motion.

8. In his view, the greatest disadvantage of the proposed additional article was that it would enable an individual physical person to engage in litigation on a basis of equality with States. Such a possibility was incompatible with the relationship between an individual and the State of which he was a national. For, according to the additional article, an individual would be entitled to

[1] See *supra*, 219th meeting, para. 45.