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Summary record of the 224th meeting

Topic:
Nationality including statelessness

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of joint commissions in each State to settle certain disputes was a procedure which had been recommended by the Council of Europe.

74. In view of the delicacy of the matter and of the many possibilities which required considerable study, he believed that the Commisison should not go further than recommend without specification that some form of international supervision should be provided for.

75. Mr. YEPES thought that the discussion was the best that the Commission had had since its inception.

76. Although many authorities had been quoted in support of the doctrine that the individual could not be a subject of international law, several others could be quoted, and by no means unimportant ones, which supported the contrary theory. He personally had always been on the side of those who considered that the individual, as well as the State, could be the subject of international law. In his lectures at Colombian universities he had taught that one of the pillars on which modern international law rested was precisely that notion of the individual as one of the subjects — obviously not the only one — of international law. That was the doctrine which had been put into practice as early as 1907 by the five Central American Republics in the International Court of Justice which was set up at that time and which had lasted until 1917. Under the Statute of that Court, the individual had the right to summon a State before the Court even if he were not supported by his own State. It was only right that a tribute should be paid to the little Central American Republics which had never hesitated to accept the most advanced principles of international law. Consequently, if in 1953, the Commission did not accept a principle which had been recognized by American international law as long ago as 1907, it would be 50 years behind the times.

77. It was essential that the Commission be practical, and aim at the convention securing as wide acceptance as possible. He agreed, too, that the proposals made by Mr. Córdova and Mr. Hsu might be combined, but suggested that the United Nations commission proposed by Mr. Hsu should have more specific powers.

78. He pointed out that the Latin-American Republics had always favoured international arbitration; in that respect, the American Treaty on Pacific Settlement of 30 April 1948, the Treaty of Bogotá,[8] was comprehensive. It included for example, an article in which States undertook to abstain from the threat of war or other form of coercion; another article made compulsory the referral to the International Court of disputes not otherwise settled. The Treaty of Bogotá also regulated in a scientific manner the problem of the field of competence reserved to the State since, contrary to article 2, paragraph 7, of the United Nations Charter, it did not grant the State discretion to decide by itself whether or not a question fell within a reserved field. Article VII of the same Treaty directly concerned the question the Commission was at present dealing with. By the terms of that article, recourse to an international tribunal — an arbitral tribunal, for instance, or the Hague Court — was not permitted unless the parties had already exhausted every recourse provided for by the domestic legislation of the State against which action was being taken. That rule of the exhaustion of all recourse against the competent local authorities was another of those principles of American international law which ought to be taken into account if members wished the American republics to accept the Convention they were at present engaged in drafting. In his opinion, stateless persons also should be compelled to exhaust all legal means at their disposal in the States concerned before being permitted to have recourse to an arbitral tribunal or to the United Nations Commission proposed by Mr. Hsu.

79. He therefore proposed an additional paragraph, to read as follows:

"No proceedings may take place before the tribunal established by this Convention until the persons concerned have exhausted the remedial procedure of the competent local courts of the State in question".

The meeting rose at 12.55 p.m.

[8] Pan American Union, *Law and Treaty Series*, No. 24, p. 21.

224th MEETING

Monday, 27 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*)

Article on the interpretation and implementation of the Conventions [Article 10] (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the additional article, relating to the settlement of disputes, which it was proposed should be inserted in the draft Convention on the Elimination of Future Statelessness, and pointed out that it had before it revised proposals submitted by Mr. Córdova[1] and Mr. Hsu[2] and an amendment to them both submitted by Mr. Yepes.[3]

2. Mr. YEPES said that he had already explained his amendment at length at the close of the previous meeting. He feared that failure to adopt it would be sufficient to prevent not only the Latin-American States, but also many others, for example the Arab States, from acceding to the Convention. He had submitted his amendment in a constructive spirit and with a view to facilitating ratification of the convention by a greater number of States. It was a fact that the rule of the exhaustion of remedies from the local authorities before appealing to an international tribunal in the case of claims against a State was an essential principle of American international law, and, because that principle was identified with one of the great legal systems of the world, the Commission ought not to disregard it.

3. Mr. CÓRDOVA (Special Rapporteur) said that it was generally recognized that the remedial procedure of the competent local courts should be exhausted before diplomatic representations were made, but that it was quite a different matter to lay down that the remedial procedure of the competent local courts should be exhausted before a dispute between a State and an individual was submitted to arbitration.

4. Mr. LAUTERPACHT felt, on the other hand, that what Mr. Yepes proposed was fully in accordance with the normal rule, so much so indeed that Mr. Yepes' amendment might be thought to go without saying. If it was thought desirable, however, the point could be made clear in the report.

5. Mr. HSU agreed that Mr. Yepes' amendment was unnecessary, particularly in connexion with the text which he (Mr. Hsu) proposed, in view of the words "unless they are otherwise settled". The agency which he proposed would naturally avoid submitting a dispute to arbitration until it had exhausted all other means of settling it.

6. Mr. ALFARO supported Mr. Yepes' amendment, not only because it stated a recognized principle of international law but also because it would prevent the arbitral tribunal from being overwhelmed with cases. The Commission must assume that national courts would apply the convention, since, once ratified, it would be part of the national law; they might, however, sometimes misinterpret it, with resultant creation of statelessness, and in such cases the individual must be able to seek justice at the bar of a special international tribunal. Such cases, however, would be exceptional.

7. Mr. CÓRDOVA agreed that the principle stated in Mr. Yepes' amendment applied indirectly to ordinary arbitration; the arbitration which the Commission was envisaging, however, was a very special kind of arbitration, between an individual and the State. The competent local courts of a State whose administrative authorities had deliberately denied an individual its nationality would be bound to uphold such action, and the result of Mr. Yepes' amendment, therefore, would be to deprive the individual of nationality for much longer than was necessary.

8. Mr. SCELLE agreed. One of the main purposes of the special procedure which the Commission was considering was to avoid the long delay which normal arbitration procedure entailed; Mr. Yepes' amendment would have precisely the opposite effect.

9. Mr. SPIROPOULOS felt that the question of the admissibility of appeals, together with all other details of the arbitral tribunal's procedure, could be left for decision by the parties themselves, when they came to set up the arbitral tribunal.

10. Mr. LIANG (Secretary to the Commission) suggested that the Commission's attitude to Mr. Yepes' amendment must depend upon whether it intended the convention to be translated into municipal law, in which case the national courts would be bound to apply its provisions, or whether it did not intend it to be so translated, in which case the responsibility of States would remain international in character. It would certainly be illogical to insert Mr. Yepes' amendment in the text merely because the rule which it stated was applicable to arbitral procedure, since the great majority of disputes which arose from the Convention would be between a State and an individual and would therefore not be subject to the ordinary rules of arbitral procedure. The Commission should therefore decide whether it wished to forbid direct access to an international tribunal until all the possibilities of remedial action by the local courts had been exhausted, as proposed by Mr. Yepes, or whether it wished to leave the possibility of such action out of account, as suggested by Mr. Córdova. Either method was feasible. He recalled, for example, that the arbitrator in the case of the claim of Finnish shipowners against Great Britain in respect of

[1] See *supra*, 223rd meeting, para. 54.

[2] *Ibid.*, paras. 4 and 44.

[3] *Ibid.*, para. 79.

the use of certain Finnish vessels during the war[4] had found that the *compromis* itself had excluded remedies in the local courts; in other cases it had been agreed that, because such remedies were not available, or for some other reason, the rule that remedies in the local courts should first be sought need not apply.

11. Faris Bey el-KHOURI said that, in his view, there was no need for an international tribunal. If such a body was to be set up, however, Mr. Yepes' amendment would have considerable practical advantages. It would enable all the relevant facts to be ascertained and put on record before a case came to the tribunal, and would thus save the latter's time. On the other hand, as he had already pointed out, it was extremely doubtful whether States would agree that decisions of their domestic courts could be over-ridden by an international body.

12. Mr. CÓRDOVA asked what was meant by the "competent local courts of the State in question", since more than one State might be "in question".

13. Mr. YEPES thought that it was obvious that a stateless person could claim only one nationality at a time.

14. Mr. LAUTERPACHT said that since certain doubts had been expressed about Mr. Yepes' amendment, he felt obliged to repeat that, in his view, its only defect was that it was obvious and that what it stated was indisputable, whether the claimant was an individual or a State. An individual who did not succeed in establishing a claim before a lower court was always free to seek to establish it before a higher court, and so on to the highest available instance.

15. As an argument against Mr. Yepes' proposal, Mr. Córdova had said that the competent local courts would be bound to uphold an executive decision. Besides the rule stated by Mr. Yepes' however, there was another, which also went without saying and which stipulated that it was unnecessary to exhaust the remedial procedure of the competent local courts if there was no remedy to exhaust; for example, there would be no point in appealing and, therefore, no prior need to appeal, to the local courts against action taken by the executive where such action had been taken in pursuance of binding laws contrary to the convention.

16. Mr. SANDSTRÖM said that certainly a negative decision by the authorities of the State concerned must precede appeal to any international tribunal, but that it was a quite different thing to say that the remedial procedure of the competent local courts must be "exhausted". He agreed with Mr. Spiropoulos that detailed questions of the tribunal's competence and procedure should be left until the time came to set it up. He also agreed with what Mr. Spiropoulos had said at the previous meeting, that the Commission should not prejudge the form of the body to be set up. For that reason, and also because he thought it desirable to distinguish between the two types of case with which the proposed body would have to deal, he proposed that the additional article be amended to read as follows:

"The Contracting Parties shall provide for appeal to an international organ against decisions taken by their authorities with regard to disputes concerning the application of this convention.

"This appeals procedure shall be open to the States Parties to the Convention as well as to individuals whom the wrongful application of its provisions, or of those of the national legislation of such States, might render stateless.

"The appeals body shall also have the power to decide on disputes between States Parties to the Convention with regard to the interpretation of the Convention."

17. Mr. SCELLE felt that the rule which Mr. Yepes proposed be inserted in the convention was quite inappropriate; for it was really no more than a question of courtesy as between States. What the stateless person wanted was a nationality; he might consider that he had a claim to one of two or three; if his claim was rejected by the first State to which he applied, he would apply to the second; and if that also rejected it, he would apply to the third. Under Mr. Yepes' proposal he would have to exhaust the remedial procedures of the competent local courts in all three States before appealing to the arbitral tribunal. In France, for one, it would take four or five years to "exhaust the remedial procedure of the competent local courts". Mr. Yepes' amendment was therefore clearly inconsistent with the Commission's desire to provide an expeditious procedure for the settlement of disputes. There was, however, no reason why the Commission should not leave the whole matter over for decision by the parties, as Mr. Spiropoulos had suggested.

18. Mr. ALFARO said that in his previous remarks he had stressed the practical arguments in favour of Mr. Yepes' proposal. Indeed, it was most desirable that it should be made abundantly clear that an individual who was denied a nationality by an ignorant or arbitrary official could seek redress in the courts of his own country without having to appeal to a distant tribunal. If the Commission really wished to make the individual's rights effective, it should make their exercise and defence as easy as possible.

19. There was, however, another argument in favour of Mr. Yepes' proposal. The principle which it stated was one to which great importance was attached, particularly in the Latin-American countries, where it had been the custom in the past for foreign governments to espouse claims of their nationals at once without previous exhaustion of local remedies.

20. The CHAIRMAN pointed out that stateless persons enjoyed none of the reciprocal facilities which most aliens enjoyed for free legal action. If Mr. Yepes' amendment were adopted, therefore, they would have to bear all the expense of the remedial procedure in the local courts.

[4] *Reports of International Arbitral Awards*, Vol. III (United Nations publication, Sales No.: 1949.V.2) pp. 1479-1550.

21. Mr. YEPES said that he would have no objection to stipulating that the expense incurred by recourse to the remedial procedure of the competent local courts should not fall upon the claimaint. He would point out, however, that it would cost the stateless person much less to appeal to the local courts than to an international tribunal.

22. In order to meet the objections which certain members of the Commission had raised to his amendment, it might be better to speak of "authorities" rather than "courts".

23. The rule which his amendment reaffirmed was primarily an assertion of the impartiality and independence of local courts, an assertion provoked by the mistrust with which such courts, in a number of American States, had been regarded by certain European countries during the second half of the nineteenth century.

24. He again warned the Commission that if his amendment were not adopted, the convention was bound to be a failure. The Convention on Arbitration signed at Washington in 1929 by all the American States had also lacked a proviso that all remedies from the competent local authorities should be exhausted before recourse was had to arbitration, and for that reason nearly all the Latin American States had felt unable to ratify it except subject to express reservations, with the consequence that the treaty had been foredoomed to failure.

25. Mr. KOZHEVNIKOV pointed out that the Commission had not yet taken a decision concerning the etablishment of an international tribunal. It was now proposed, on the one hand, that the individual should have access to such a tribunal without first going through the national courts, on the grounds that that procedure would be more expeditious; and, on the other hand, that the individual should first have to seek redress in the local courts. For reasons which it was unnecessary for him to repeat he could not accept the former proposal; while Mr. Yepes' amendment was preferable to the extent that it did not entirely disregard the sovereignty of States. In the long run, however, it also provided for an international tribunal and as such a tribunal was contrary to his conception of statelessness as a matter solely within the competence of States, he was unable to support Mr. Yepes' amendment either.

26. Mr. SCELLE said that what Mr. Yepes' amendment amounted to, and what he was unable to accept, was that a case should not be submitted to the international tribunal until it was *res judicata* in municipal law. He wished to submit the following text, which was similar in purpose to Mr. Sandström's:

> "An appeal to the international organs provided for by this Convention may be made as soon as it appears that a decision taken by national authorities may render one or more individuals stateless."

27. Mr. CÓRDOVA felt that it would be exceedingly difficult for the Commission to vote on all the various proposals which had been submitted, and suggested that they should be referred to the Drafting Committee once the Commission had voted on the following three questions of principle: first, whether the convention should provide that an agency under the auspices of the United Nations should be established to act on behalf of stateless persons in disputes arising from the application of the provisions of the convention; secondly, whether it should provide that an international tribunal should be established with jurisdiction to decide all disputes arising out of the convention, whether between States or between States and individuals; and thirdly, whether it should provide that the remedial procedure of the competent local authorities should be exhausted before a dispute could be referred to such a tribunal. Once those questions had been decided it would be an easy matter for the Drafting Committee to prepare a text for submission to the Commission for approval.

28. Mr. KOZHEVNIKOV supported Mr. Córdova's suggestion.

29. The CHAIRMAN also felt that the procedure suggested by Mr. Córdova was the most sensible one. He would, however, put the third question of principle to the vote before the second, as he thought that some members of the Commission would be unable to vote in favour of the second unless the third was adopted.

30. He therefore first put to the vote the question whether the Convention should provide that an agency under the auspices of the United Nations should be established to act on behalf of stateless persons in disputes arising from the application of the provisions of the Convention.

That question was decided in the affirmative by 8 votes to 2, with 3 abstentions.

31. Mr. SANDSTRÖM explained that he had abstained because he considered that it was desirable to avoid setting up new organs unless and until the need for them was proved. He would have preferred the question to be simply referred to in the report.

32. Mr. SPIROPOULOS explained that he had abstained because he felt that discussion of all such questions of detail was premature.

33. Mr. KOZHEVNIKOV explained that he had voted against the suggestion because he was opposed to it in principle.

34. The CHAIRMAN then put to the vote the question whether the Commission wished to insert in the convention a provision to the effect that the remedial procedure of the competent local authorities should be exhausted before a case was submitted to any international tribunal established in pursuance of the convention.

That question was decided in the negative by 6 votes to 4, with 3 abstentions.

35. Mr. LAUTERPACHT said that, as the Commission had been voting only on the question whether such a provision should be included in the convention, he saw no reason why any member of the Commission who

considered that an international tribunal should be set up only if cases could not be referred to it until the remedial procedure of the competent local authorities had been exhausted should feel obliged to vote against an international tribunal.

36. Mr. CÓRDOVA agreed.

37. Faris Bey el-KHOURI said that he had voted in favour of insertion of the provision in the convention since he considered that the international arbitral tribunal represented an extraordinary procedure which should not be resorted to until the ordinary procedure had been exhausted.

38. Mr. KOZHEVNIKOV explained that he had voted against the inclusion of such a provision for reasons which he had already stated.

39. Mr. ZOUREK explained that he had abstained because, although he accepted the principle that the remedial procedure of the competent local authorities should be exhausted before recourse was had to any other procedure, he was altogether opposed to the establishment of the suggested tribunal.

40. Mr. SPIROPOULOS said that he had voted against such a provision because he believed that any consideration of the question was premature.

41. The CHAIRMAN put to the vote the question whether the convention should provide that an international tribunal should be established with jurisdiction to decide all disputes arising out of the convention, whether between States or between States and individuals.

That question was decided in the affirmative by 8 votes to 3, with 2 abstentions.

42. Mr. YEPES said that he had voted against such a provision because he considered that an international tribunal should be set up only if cases could not be referred to it until the remedial procedure of the competent local authorities had been exhausted.

43. Mr. AMADO said that he had voted in favour of the provision because he thought it was obvious that the Parties would stipulate that the remedial procedure of the competent local authorities should first be exhausted, even if no such stipulation were laid down in the convention.

44. Mr. ALFARO pointed out that, as Mr. Lauterpacht had rightly said, the Commission had not voted against the principle that the remedial procedure of the competent local authorities should first be exhausted, but only against the insertion of that principle in the text. It might, however, be useful to point out clearly in the comment that those provisions of the convention relating to the establishment of an international tribunal did not prejudice the individual's right to seek such local remedies as were provided for by the law of the State whose nationality he claimed.

45. Mr. AMADO said that, whether or not there was a convention, the local courts would do what they could to resolve all difficulties and to apply the appropriate national law.

46. Mr. LAUTERPACHT said that he had suggested[5] the addition of a fourth paragraph to the text proposed by Mr. Córdova, according to which if, after the lapse of a certain period, the parties to the convention had not in fact established the arbitral tribunal and other agencies, they would be established by the General Assembly or the Economic and Social Council. A similar procedure had been adopted by the Commission in its recommendations on fisheries.

47. Mr. AMADO said that Mr. Lauterpacht's proposal went too far; if States refused to act on the Commission's proposal concerning arbitration, the General Assembly would be able to oblige them to accept it.

48. Mr. LAUTERPACHT said that he had no objection to the matter being dealt with in the Commission's general report.

49. Mr. CÓRDOVA did not agree with Mr. Amado. If Mr. Lauterpacht's suggestion were accepted, any resulting action taken by the General Assembly would be based on the convention, which States were free to accept or reject. The Commission was thus not proposing arrangements that would enable States to be forced into a course of action of which they disapproved, but was rather ensuring that the will of the majority of States that accepted the convention should not be frustrated by an obstructive minority.

50. Mr. LIANG (Secretary to the Commission) pointed out that certain constitutional difficulties would result from Mr. Lauterpacht's suggestion, for it would not be possible for the Economic and Social Council to assume the obligations suggested merely as the result of a wish expressed by the Parties to the convention that an arbitral tribunal or other organ be established. The situation was different from that on which the relevant part of the draft on arbitral procedure was based; for there it was postulated that an agreement to establish an arbitral tribunal already existed, and the President of the International Court of Justice was authorized to act in certain specific circumstances. It would be possible, however, to include in the convention in contrast to the somewhat peremptory provisions suggested by Mr. Lauterpacht, an article under which the question of the establishment of an arbitral tribunal might be submitted to the General Assembly or the Economic and Social Council for consideration.

51. Mr. LAUTERPACHT explained that his intention was to take account of the possibility of failure by the Parties to discharge their legal obligation to establish an arbitral tribunal. He agreed that the constitutional difficulties mentioned by the Secretary needed further investigation, but doubted whether there were any.

52. The CHAIRMAN said that it seemed to him that the best thing would be for the Commission to consider Mr. Alfaro's and Mr. Lauterpacht's suggestions,

[5] See *supra*, 223rd meeting, para. 19.

which by then would have been circulated, when it considered the draft of the additional article as revised by the Drafting Committee.[6]

It was so agreed.

Additional article (Article 4)

53. The CHAIRMAN said that the Commission had now to consider an additional article proposed by the Special Rapporteur for inclusion in the draft Convention on the Elimination of Future Statelessness. The draft Convention on the Reduction of Future Statelessness contained, in article V, a provision which took account of the possibility of a child being born on the territory of a State not party to the convention, and consequently unable to benefit from the provisions of article I of that convention; that article read as follows:

"If a child does not acquire at birth any nationality either *jure soli* or *jure sanguinis*, it will acquire the nationality of one of its parents. In this case the nationality of the father shall prevail over that of the mother."

54. To meet the same difficulty in the case of the other convention, the Special Rapporteur had proposed an additional article reading:

"If article 1 does not apply to a person, he will acquire the nationality of the contracting state where one of his parents was born. In this case priority should be given to the contracting state where the father was born."

55. He suggested that, if the Commission was generally agreed that such a provision should be inserted, its precise form could be left to the Drafting Committee.

56. Mr. CÓRDOVA said that article V of the draft Convention on the Reduction of Future Statelessness was an extension of the principle of *jus sanguinis*. The article he was now proposing for inclusion in the draft Convention on the Elimination of Future Statelessness, on the other hand, was an extension of *jus soli*; but it was designed to meet the same need as had been provided for by article V of the draft Convention on the Reduction of Future Statelessness.

It was agreed by 6 votes to 1, with 2 abstentions, that an article be included in the draft Convention on the Elimination of Future Statelessness similar in purpose to article V of the draft Convention on the Reduction of Future Statelessness.

DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS (*resumed from the 223rd meeting*)

Preamble

57. The CHAIRMAN invited the Commission to consider the preamble to the draft Convention on the Reduction of Future Statelessness.

58. Mr. CÓRDOVA had no specific changes to suggest in the preamble, which should, however, be collated with the amended text of the convention itself.

59. Mr. SANDSTRÖM suggested as the preamble the text adopted at the 219th meeting for the draft Convention on the Elimination of Future Statelessness.[7] However, the final clause, which read:

"Whereas it is desirable to eliminate statelessness by international agreement"

would have to be amended to read somewhat as follows:

"Whereas it is desirable to reduce statelessness by international agreement so far as possible".

60. Mr. SPIROPOULOS agreed with Mr. Sandström, but would prefer the clause in question to read simply:

"Whereas it is desirable to reduce statelessness by international agreement."

61. Mr. CÓRDOVA said that, although the convention under discussion was concerned with the reduction of future statelessness, the Commission nevertheless still maintained as its ideal the elimination of future statelessness, an end to the attainment of which the reduction of statelessness was one means. It was in point, therefore, to repeat, unchanged, the wording of the preamble to the draft convention on the elimination of future statelessness.

62. Mr. YEPES would prefer the inclusion of the phrase "so far as possible".

63. Mr. SPIROPOULOS thought that, linguistically speaking, the phrase "...to eliminate...so far as possible" was not particularly elegant.

64. Mr. AMADO said that the elimination of future statelessness was the Commission's high hope; the phrase "as far as possible" was a mere colloquialism.

65. Mr. CÓRDOVA thought that no one would contest the assertion that it was desirable to eliminate statelessness, even though the assumption on which the convention was based was that its partial elimination or reduction was all that it would in practice be possible to achieve.

66. The CHAIRMAN, speaking as a member of the Commission, suggested that the Drafting Committee might consider an article reading substantially as follows:

"Whereas it is desirable to reduce statelessness by international agreement so far as its total elimination is not possible."

67. Mr. KOZHEVNIKOV asked that a vote be taken on the Chairman's suggestion. His opinion of the suggested preamble was identical with his opinion of the preamble to the draft Convention on the Elimination of Future Statelessness.

68. Mr. ZOUREK too said that his objections to the

[6] See *infra*, 231st meeting, para. 84.

[7] See *supra*, 219th meeting, paras. 1-41.

suggested preamble were identical with his objections to the preamble to the draft Convention on the Elimination of Future Statelessness.

The Chairman's suggestion was adopted by 10 votes to 2, with 1 abstention.

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS

Titles

69. The CHAIRMAN invited the Commission to consider the titles of the two draft conventions. The issue had been deferred earlier when the suggestion had been made that the phrase "the elimination of future statelessness" covered more than the abolition of the legal causes of statelessness, which was all that the Commission had been concerned with.

70. Mr. YEPES said that he had previously raised the matter for fear lest an impression be created that the convention was concerned with the total abolition of statelessness. He now believed that the title adequately described the contents, and he therefore urged its adoption.

71. Mr. SPIROPOULOS agreed that the word "elimination" should be kept; but as elimination could only result from future action, the qualifying word "future" was supererogatory.

72. Mr. LAUTERPACHT agreed with Mr. Spiropoulos; as the convention had no retrospective effect, the word "future" was redundant. For the same reason, persons who were stateless when the convention entered into force would remain stateless; hence the word "elimination" was more satisfactory than the possible alternative "suppression". Further, as the word "on" was little more than descriptive, a better title might be "Convention *for* the Elimination of Future Statelessness", the word "for" reflecting a declared objective.

73. Mr. CÓRDOVA recalled that the word "future" had been used throughout the Commission's work on the subject. Yet because the suggested title tended to give the impression that the convention was concerned with the elimination of all causes of statelessness, the Commission's general report ought to bring out the consideration that the major causes of statelessness were political rather than juridical. Indeed, the general report might even give a full account of the reasons why the Commission had not felt able to deal with the political issues involved.

74. Mr. ALFARO agreed that the use of the words "elimination" and "reduction" in the respective titles of the two conventions would make evident the essential difference between them.

75. Mr. SCELLE agreed that the word "future" should be dropped.

76. Mr. KOZHEVNIKOV said that as to the use of the word "future", he agreed that the convention could not have retrospective effect. Pursuant to the convention, States would take measures to prevent statelessness arising in future. The word "future" should therefore stand.

77. Mr. YEPES agreed with Mr. Lauterpacht's suggestion that the preposition "for" should be used instead of "on". The word "future" should be deleted, since in the circumstances in which the convention would be applied it was meaningless.

78. Mr. SPIROPOULOS agreed that the effects of the convention would be limited to the future.

79. Mr. ZOUREK said that, unless the title contained the word "future", it would arouse unjustified expectations.

80. Mr. LAUTERPACHT suggested that the Drafting Committee might consider the exact terms of the title.

81. Mr. YEPES opposed that suggestion, as the retention or deletion of the word "future" raised a matter of principle.

82. Mr. SCELLE said that in his understanding the convention would apply to all cases of statelessness: past, present and future.

83. The CHAIRMAN, referring to the wording of article 1 of the draft Convention on the Elimination of Future Statelessness, said that it was clear that that article related only to persons born after the convention came into force.

84. Mr. ZOUREK pointed out that it was a well-established principle of international law that a convention could not affect a situation existing at the time of its coming into force.

85. Mr. SCELLE said that in that case the title should read "Convention on the Maintenance of Statelessness".

86. Mr. LIANG (Secretary to the Commission) said that the Special Rapporteur and his predecessor[8] had considered both present and future statelessness. It seemed to him reasonable to take the view that once the conventions had entered into force article 1, for example, would apply to all persons. He agreed, however, that though the English text of the title was clear, the French text was ambiguous.[9] The matter should not be left in doubt; the mere omission of any word from the title would augment rather than allay doubt.

87. Mr. SANDSTRÖM said that if the Commission had intended the convention to have retrospective effect, nearly all the articles would have been drafted differently. Article 1, for example, might have started "If no nationality has been acquired at birth...".

88. Mr. LAUTERPACHT said that it was absurd to maintain that an effect of the convention could be that, for example, persons deprived of their nationality by

[8] Mr. Manley O. Hudson.

[9] The French text read as follows: "*Projet de convention sur la suppression de l'apatridie dans l'avenir*".

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

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

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

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

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

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

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

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

The meeting rose at 6.5 p.m.

225th MEETING

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

CONTENTS

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

Titles (continued)

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