Document:-
A/CN.4/SR.232

Summary record of the 232nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1953 , **vol. I**

the General Assembly to decide upon..." In that case paragraph 4 could be deleted.

91. Mr. LAUTERPACHT said that, although that would deprive any States not members of the United Nations which signed the convention of any part in setting up the tribunal, he would have no objections. The General Assembly, however, might not be the appropriate body, and he would therefore prefer the phrase "A tribunal shall be established by the United Nations."

92. Mr. SCELLE felt that the Commission had no right to impose such an obligation on the General Assembly.

93. Mr. LAUTERPACHT pointed out that the Commission was imposing no such obligation. If the General Assembly approved the draft Convention and opened it for signature, that would mean that it accepted the obligations which the text placed upon it.

94. Mr. ZOUREK said that he had already stated his views on the question at previous meetings, and had no wish to reiterate them. He would only say that he thought it very doubtful whether the General Assembly was entitled to set up an organ for any purpose other than those explicitly attributed to it by the Charter.

95. Mr. SPIROPOULOS recalled that similar doubts had been raised concerning the General Assembly's right to establish an International Criminal Court. If it was agreed that those doubts were not valid in the present case, it might be most appropriate to say "A tribunal *should* be established by the General Assembly".

96. Faris Bey el-KHOURI said that he could not support the proposal that the United Nations or the General Assembly should set up a new organ within the framework of the United Nations to settle disputes arising out of one particular international treaty, especially since it was not yet known by how many States that treaty would be ratified—if, indeed, it was ratified by any. The acceptance of the Conventions would certainly not be aided by the inclusion of such a provision. The Commission should leave the whole question open, since it could be raised in the General Assembly by any government which so desired.

Further discussion of the additional article proposed by the Drafting Committee was adjourned.

The meeting rose at 1.5 p.m.

232nd MEETING

Wednesday, 5 August 1953, at 9.30 a.m.

CONTENTS

	Page
Consideration of the draft report of the Commission covering the work of its fifth session (*resumed from the 231st meeting*)	322
Chapter II: Arbitral procedure (A/CN.4/L.45) (*resumed from the 231st meeting and concluded*)	322
Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*resumed from the 231st meeting*)	
Draft Convention on the Elimination of Future Statelessness and draft Convention on the Reduction of Future Statelessness (*resumed from the 231st meeting*)	
Article on the interpretation and implementation of the Conventions [Article 10] * (*resumed from the 231st meeting*)	325

* 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.

Consideration of the draft report of the Commission covering the work of its fifth session (*resumed from the 231st meeting*)

CHAPTER II: ARBITRAL PROCEDURE (A/CN.4/L.45)* (*resumed from the 231st meeting and concluded*)

*Paragraph 20 (29)*** and new text proposed by Mr. Zourek (paragraph 28) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of the General Rapporteur's redraft of paragraph 20 in the chapter on arbitral procedure in its draft report on the work of the fifth session, and of the proposal which Mr. Zourek had submitted at the previous meeting.[1] He assumed that Mr. Zourek's text was intended to replace not the whole of paragraph 20, but only that part of the first sentence in which the views of the minority were expressed. Although it would be impracticable to state in the report the minority's views on every question in the draft convention on arbitral procedure, it was, in his view, proper and desirable that its views should be stated on a question of such fundamental importance as that dealt with in paragraph 20. The wording which

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter II. (See vol. II of the present publication).

** The number within parentheses indicates the paragraph number in the "Report" of the Commission.

[1] See *supra*, 231st meeting, para. 58.

Mr. Zourek had proposed for that purpose was unexceptionable, and he was personally in favour of its insertion in the text in the manner in which he had suggested.

2. Mr. AMADO was in complete agreement with what the Chairman had just said. The Commission was composed of representatives of all the legal systems of the world, and while it was unnecessary to refer in the report to all the differences of view which arose from minor divergencies between those systems, it would be useful to the General Assembly and to readers if the Commission's report clearly indicated differences of view which arose from divergencies on fundamental points. He was therefore in favour of the inclusion of the text proposed by Mr. Zourek.

3. Mr. ALFARO said that, inasmuch as paragraph 20 purported to record the views of certain members of the Commission, they should be permitted to express those views in their own words. He also was therefore in favour of the insertion of the proposed text.

4. Mr. SPIROPOULOS said that he, too, was in favour of the inclusion of the proposed text.

5. Mr. SANDSTRÖM said that he took the same view, not only for the reasons which had already been advanced, but also because article 20 of the Commission's Statute obliged it to refer to "divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution". He suggested, however, that the text proposed by Mr. Zourek should be made a separate paragraph, and that what Mr. Zourek really meant was not "that the draft tended to impose on Contracting States an obligation to arbitrate even where no definite undertaking to arbitrate had been entered into", but "that the draft tended to impose on Contracting States an obligation to arbitrate even where the parties could not agree upon the *compromis* and in consequence no definite undertaking to arbitrate had been entered into".

6. Mr. SCELLE said that it had been his intention to make precisely the same suggestion as Mr. Sandström had made.

7. Mr. KOZHEVNIKOV agreed that it would be better if the text proposed by Mr. Zourek were made a separate paragraph. He himself wished to suggest the insertion of the word "fundamental" before the word "rights" in the phrase "its provisions implying the relinquishment by States of certain rights in favour of arbitral tribunals".

8. Mr. YEPES warmly supported the inclusion of the text proposed by Mr. Zourek. He had always contended that the Commission's reports should faithfully reflect its debates; they had not always done so in the past, and he was glad to note that his contention was now winning more general acceptance.

9. Mr. ZOUREK agreed that his proposed text should be made a separate paragraph. He could also accept the amendments suggested by Mr. Sandström and Mr. Kozhevnikov.

10. Mr. LAUTERPACHT agreed that the text proposed by Mr. Zourek should be included in the report. That text, however, put forward two arguments: that the draft was contrary to the traditional notion of arbitration, and that it was contrary to the principle of the sovereignty of States. It was only the second of those arguments that had any bearing on paragraph 20, and he suggested, therefore, that it would be more appropriate to insert Mr. Zourek's text after paragraph 7.

11. Mr. AMADO felt that it would be preferable to indicate the divergencies of view concerning the draft convention after describing it, and not before. It was clear from the French text of article 20 of the Statute, which referred to divergencies and disagreements which "*subsistent*" ("subsist"), that it was the unresolved disagreements which the Commission was required to indicate, not those which had been apparent at the outset.

12. Mr. LIANG (Secretary to the Commission) said that he was inclined to agree with Mr. Amado that the text proposed by Mr. Zourek should not be inserted at the point which Mr. Lauterpacht had suggested, not so much for the reason given by Mr. Amado, since the Commission was happily under no obligation to submit its *reports* in conformity with the principles stated in article 20 of its Statute, but because it would destroy the whole balance of the report if the "dissenting opinion" was inserted immediately after the general introduction. Mr. Lauterpacht had made a subtle distinction between the argument that the draft convention was contrary to the traditional notion of arbitration, and the argument that it was contrary to the principle of the sovereignty of States. He (Mr. Liang) would suggest that in the eyes of Mr. Zourek those two arguments merged into one; it was because he thought the draft convention encroached on the sovereignty of States that he thought it was opposed to the traditional concept of arbitration, and *vice versa*.

13. Mr. YEPES and Mr. SPIROPOULOS agreed that it would be inappropriate to insert Mr. Zourek's text after paragraph 7.

14. Mr. LAUTERPACHT withdrew his suggestion, but proposed that if Mr. Zourek's text was inserted before paragraph 20 the first sentence of that paragraph should be amended to read as follows:

> "For reasons stated in the preceding paragraphs and in those which follow, the Commission was unable to accept these views. In particular, the Commission was unable to share the view..."

It was so agreed.

It was unanimously agreed to insert the text proposed by Mr. Zourek, as amended, before paragraph 20.

15. The CHAIRMAN asked whether Mr. Lauterpacht could agree to delete the words "as distinguished from the unilateral assertion of the sovereignty of one of the parties" from his re-draft of paragraph 20, since he did not think it would be possible to express clearly the

idea behind those words without expanding them considerably.

16. Mr. KOZHEVNIKOV supported the Chairman's suggestion.

17. Mr. LAUTERPACHT said that he would agree to the deletion of those words if it was thought that that would make for clarity.

18. Mr. ALFARO felt that the reference in the same sentence to "the sovereignty of *both* parties" was also confusing. The view which had been put forward, and which the Commission as a whole could not accept, was that the draft convention was inconsistent with the sovereignty of the State *vis-à-vis* which it was proposed that certain action should be taken in certain circumstances. He suggested that the sentence be amended to read as follows:

> "However, once a State has undertaken that obligation, it is not inconsistent with principles of law or with the sovereignty of that State that the obligation it has assumed should be complied with and not frustrated by its sole action or failure to act."

19. Mr. LIANG (Secretary to the Commission) felt that the wording suggested by Mr. Alfaro was an improvement, particularly because it avoided the use of the words "on account of any defects in rules of procedure" contained in Mr. Lauterpacht's re-draft. It was far from clear whether those words referred to previous rules of arbitral procedure or to the rules set out in the draft convention; and if the text proposed by Mr. Lauterpacht were retained, they should be replaced by the words "on account of any defects in hitherto existing rules of arbitral procedure".

20. Mr. SCELLE said that he would regret the omission of the phrase "sovereignty of *both* parties", since it emphasized the equality of the parties, which was one of the fundamental principles of traditional international law. On the other hand, he agreed with the Secretary's suggestion concerning the last few words in the sentence.

21. Mr. LAUTERPACHT said that he, too, would regret the omission of the phrase "sovereignty of *both* parties". The gist of the whole matter was that if one party claimed to set itself up as a judge in the question whether or not an obligation to arbitrate existed, it would thereby encroach on the sovereignty of the other party.

22. Mr. CÓRDOVA said that if that was what was meant, it should be explained more clearly than was done in the text.

23. Mr. LAUTERPACHT pointed out that the explanation was to be found in the words which the Chairman had suggested should be deleted.

24. Mr. ALFARO felt that the wording suggested by the Secretary implied that there were no defects in the draft convention. He hoped that that was the case, but time alone could show.

25. Mr. KOZHEVNIKOV felt that the discussion showed that it would be wiser to omit from paragraph 20 a point which had already been expressed much more clearly in many other passages of the report.

26. The CHAIRMAN asked whether, in addition to the changes which Mr. Lauterpacht himself had suggested, he could accept the suggestions that the words "as distinguished from the unilateral assertion of the sovereignty of one of the parties" be deleted, and that the words "on account of any defects in rules of procedure" be replaced by the words "on account of any defects in hitherto existing rules of arbitral procedure".

27. Mr. LAUTERPACHT said that, in order to facilitate the Commission's work, he would accept those amendments.

Paragraph 20, as amended, was approved by 10 votes to none, with 3 abstentions.

28. The CHAIRMAN noted that the Commission had completed its consideration of the individual paragraphs of the chapter on arbitral procedure in the draft report covering the work done by the Commission at its fifth session. It could now therefore vote first on the draft convention as a whole, and then on the chapter as a whole.

29. Mr. KOZHEVNIKOV recalled that at the 186th meeting he had suggested that the expression "arbitral tribunal" should be used throughout the draft.[2] He believed that the Special Rapporteur had accepted his suggestion, but the necessary changes had not been made in the text annexed to the draft report (A/CN.4/L.45).

30. Mr. LIANG (Secretary to the Commission) said that no clear decision on the matter had been taken. The question had indeed been raised, but the view had also been expressed that it was unnecessary to use the expression "arbitral tribunal" in every case, and that it was often perfectly legitimate to use the word "tribunal" alone.

31. After some discussion, during which Mr. LAUTERPACHT and Mr. SCELLE pointed out that use of the full term "arbitral tribunal" in every instance would make the English and French texts unnecessarily turgid, Mr. AMADO and Mr. SPIROPOULOS suggested that the difficulty was one of translation, and that it was possible that the Russian text might be open to misinterpretation if the full term were not used in every case.

32. Mr. ALFARO and Mr. YEPES agreed, and suggested that the Commission need not concern itself with a question which was clearly only one of translation into Russian.

33. Mr. KOZHEVNIKOV said that it was his desire to obviate any possibility of misunderstanding in the

---

[2] See *supra*, 186th meeting, para. 39.

English and French texts as well as in the Russian. In exceptional cases, it might be permissible to leave out the word "arbitral", but his view was that, as a general rule, the expression "arbitral tribunal" should be used throughout. Moreover, he had the definite impression that that view had been accepted.

34. The CHAIRMAN said that as it appeared that the Commission had taken no formal decision on the matter,[3] and as Mr. Kozhevnikov pressed the point, he had no choice but to put his suggestion to the vote.

Mr. Kozhevnikov's suggestion was rejected by 8 votes to 2, with 2 abstentions.

35. The CHAIRMAN then put to the vote the draft Convention on Arbitral Procedure as a whole.

The draft Convention on Arbitral Procedure was adopted by 10 votes to 2, with 1 abstention.

36. The CHAIRMAN then put to the vote the chapter on arbitral procedure, as amended, in the Commission's draft report on its fifth session.

The chapter on arbitral procedure, as amended, was adopted by 10 votes to 2, with 1 abstention.

37. Mr. AMADO asked that, in accordance with the Commission's decision concerning the inclusion of footnotes in its report, a footnote should be added to the effect that he had voted in favour of the draft convention as a whole, but that he had voted against several of the individual provisions for reasons which he had explained during the relevant discussions.

38. Faris Bey el-KHOURI said that he considered that the autonomy of both parties should be strictly respected in the fundamental proceedings of international arbitration, particularly in defining the subject of dispute to be submitted to arbitration, and in the free choice of the arbitrators by the parties. The municipal laws of various States recognized those principles insofar as they applied to individuals, and it was unlikely that States would agree to deprive themselves of rights they recognized in the case of individuals. As a number of provisions in the draft convention denied those rights to one or both parties, he had been unable to support it.

39. Mr. KOZHEVNIKOV said that he would not repeat what he had already said on many occasions. He merely wished to state that he had voted against the draft Convention on Arbitral Procedure and against the relevant chapter of the draft report which constituted a commentary upon it, and to repeat that in his view the commentary had no legal force. He would have liked to explain his reasons for voting in that way in the report, but since the Commission's decision prevented him from doing so, he asked that the following footnote should be included:

> "Mr. Kozhevnikov said that, for reasons he had frequently given in the course of the discussion, he had voted against the final draft on Arbitral Procedure as a whole, and also against the chapter of the report accompanying the draft, which was in the nature of a commentary, and in many instances a one-sided commentary."

40. Mr. ZOUREK wished to place on record that he had voted against the draft convention as a whole and against the relevant chapter of the draft report explaining and supporting it, for reasons which he had already explained on several occasions, and particularly at the previous meeting. He, too, asked that a footnote should be inserted in the report, and would submit a text in due course.

41. Mr. HSU said that he had voted for the chapter on arbitral procedure with one misgiving. While the adoption of rules to ensure the correctness of awards was regarded in the report as codification, when it was to help the parties observe the agreement to arbitrate it was regarded as development. It seemed to him that both were of the same nature and that if one were regarded as codification or development, the other should be similarly regarded.

42. Mr. ALFARO said that he had voted in favour of the draft convention because he believed that it was a scientific work which represented a considerable step forward in international law and in ensuring the efficacy of arbitration as a civilized means of settling international disputes.

43. The CHAIRMAN said that the Commission had come to the end of its work on arbitral procedure; he congratulated the Special Rapporteur on the results which had been obtained. Although Mr. Scelle might not be entirely satisfied, he could rest in the knowledge that the Commission had followed him most of the way.

44. Mr. SCELLE said that he wished to thank all members of the Commission for the careful consideration they had given to his reports. In particular, he wished to thank the General Rapporteur for the special contribution which his commentary represented.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*resumed from the 231st meeting*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS (*resumed from the 231st meeting*)

Article on the interpretation and implementation of the Conventions [Article 10] (resumed from the 231st meeting)

45. The CHAIRMAN invited the Commission to resume its discussion, begun at the previous meeting,[4] of the additional article proposed by the Drafting Committee for inclusion in the draft Convention on the

[3] See *Yearbook of the International Law Commission, 1952*, vol. I, 181st meeting, paras. 72-86.

[4] See *supra*, 231st meeting, paras. 84-96.

Elimination of Future Statelessness and in the draft Convention on the Reduction of Future Statelessness.

46. The proposed additional article read as follows:

"... [see *supra* 231st meeting, para. 84]..."

47. There was a considerable area of agreement on the proposed text, but certain changes had been suggested to paragraph 2, and it had also been suggested that paragraph 4 should be deleted.

48. Mr. LAUTERPACHT thought that the proposed text should stand, except that in paragraph 2 the phrase "to be set up by the parties" should be replaced by the phrase "to be set up by the United Nations".

49. Mr. YEPES thought that there was no difference between the phrase suggested by Mr. Lauterpacht and the phrase "within the framework of the United Nations", which he himself had suggested.[5]

50. Referring to paragraph 1, he observed that the agency would presumably be established at the United Nations Headquarters. In that case it would be just as far removed geographically from the stateless persons with whom it would be concerned as the tribunal, and stateless persons would have little chance of gaining personal access to it. They should therefore be enabled to apply to the tribunal direct.

51. The CHAIRMAN, speaking as a member of the Commission, pointed out that there was a big difference between the tribunal, which was to decide upon complaints, and the agency, which was to represent the interests of stateless persons before the tribunal.

52. Mr. SANDSTRÖM said that there were only two possibilities in respect of the establishment of the tribunal: either it must be established by the contracting parties, or it must be established by the United Nations.

53. Mr. CÓRDOVA, referring to Mr. Yepes' observation about physical access to the agency, pointed out that the agency would nevertheless be useful, because it would be able to defray the cost of representation of the interests of stateless persons before governments and the tribunal.

54. Mr. AMADO said that, although he was in favour of the establishment of a tribunal, he doubted whether it would in fact be set up, as the proposal was not likely to receive much support from governments.

55. Mr. SPIROPOULOS agreed with Mr. Yepes about the difficulties that a stateless person would encounter in approaching the agency; it might therefore be necessary for that institution to have local representatives wherever there were large numbers of stateless persons. For a similar reason, he had previously suggested that it might be more desirable to establish separate tribunals in each State; indeed, he shared Mr. Amado's doubts about the feasibility of establishing a central tribunal in the manner envisaged by the Drafting Committee.

[5] *Ibid.*, para. 87.

56. In his view, the Committee's task was to establish a principle, leaving the United Nations and the contracting parties the necessary latitude in its application. That was why he was in favour of a text by which the tribunal would be set up within the framework of the United Nations. That would permit of its establishment, either by the contracting parties themselves or by the General Assembly. He therefore proposed that the opening phrases of paragraphs 1 and 2 should respectively read as follows:

"1. An agency should be established within the framework of the United Nations to act...

"2. A tribunal should be established within the framework of the United Nations which should be competent to..."

57. Mr. LAUTERPACHT said that on second thought he was not entirely satisfied with paragraph 1 as it stood. The Commission was engaged on drafting a convention, and a convention necessarily involved the assumption of obligations by the contracting parties. Paragraph 1, as proposed by the Drafting Committee, and paragraph 2, were Mr. Spiropoulos' amendment adopted, would impose no obligations on the contracting parties, except conceivably — by implication — the obligations to promote the establishment of an agency and of a tribunal; for it was clear that no mutual undertaking by the contracting parties could impose any obligation on the United Nations.

58. Mr. SPIROPOULOS accordingly suggested that the opening phrases of paragraphs 1 and 2 be amended to read:

"1. The parties undertake to establish within the framework of the United Nations an agency to act...

"2. The parties undertake to establish within the framework of the United Nations a tribunal which shall be competent..."

59. Mr. LAUTERPACHT agreed.

60. Mr. YEPES said that his remarks about the difficulty which stateless persons would experience in gaining access to the agency should not be construed as meaning that he disapproved in principle of the establishment of an agency.

61. Mr. SANDSTRÖM, referring to paragraph 4, said that he had some hesitation about accepting a text that enjoined the General Assembly in imperative terms to take certain action in certain circumstances.

62. Mr. SPIROPOULOS said that that was precisely why he had suggested that the conditional mood rather than the imperative should be used for the operative verb in paragraphs 1 and 2.

63. He doubted, if the contracting parties were unwilling to establish a tribunal, whether it would serve any useful purpose for the General Assembly to set one up. Nevertheless, if it was thought that the General Assembly should concern itself with the matter, the Commission might agree to re-draft paragraph 4 somewhat as follows:

"4. If, within two years of the entry into force of the convention, the tribunal referred to in paragraph 2 has not yet been set up by the parties, the General Assembly shall take the initiative in endeavouring to set it up."

64. Mr. LAUTERPACHT said that if the Commission accepted paragraphs by which the contracting parties were to establish an agency and a tribunal, it should also allow for the eventuality of those organs not being thus set up. Paragraph 4 should therefore be retained in some form or other.

65. Mr. LIANG, Secretary to the Commission, said that he had already alluded to the problems that derived from the proposal that the General Assembly should establish the tribunal. First, the possibility should be contemplated of the parties to the convention being identical with the membership of the General Assembly; in that event, paragraph 4 would clearly become inoperative. The alternative possibility was that the parties would be different from the membership of the General Assembly; in that event, the creation of an agency or a tribunal by the General Assembly would mean the matters being placed on the agenda of the General Assembly and duly considered, the necessary budgetary provisions for the organs and so forth being made, as had, for example, been done in the case of the International Bureau for Declarations of Death. That course would not be easy, since some members of the General Assembly would *ex hypothesi* not be in favour of the convention, and *a fortiori* not in favour of establishing an agency or a tribunal. The position would thus not be on all fours with that of the International Court of Justice, whose jurisdiction transcended the sum of those States which had subscribed to its Statute. It should be borne in mind, too, that the General Assembly had to observe the terms of the Charter and its own rules of procedure: it was not the repository of residual functions that could not be carried out under the terms of international treaties.

66. Mr. SCELLE agreed. He did not see how, in practice, it would be possible to implement the provisions of paragraph 4. He reminded the Commission that the General Rapporteur had already agreed to suggestions by Mr. Spiropoulos concerning amendments to paragraphs 1 and 2 to make certain that the responsibilities of the contracting parties were engaged. In his (Mr. Scelle's) opinion, similar considerations applied to paragraph 4. It was essential that the tribunal be created by the contracting parties themselves; they could not contract an obligation on behalf of a third party — the General Assembly. Nor had they any right to do so. The Commission ought not to go farther than adopting a text for paragraph 4 reading somewhat as follows:

"4. If,... the tribunal... has not been set up by the Parties, the Parties reserve the right to bring the matter before the General Assembly."

67. Mr. KOZHEVNIKOV said that he had already explained the basic reasons which impelled him to take a negative attitude to the additional article. Over and above those reasons, the proposed text was unsuitable because of its imperative tone. He deprecated the Commission's tendency to impose obligations on the contracting parties and to demand action of the General Assembly. Paragraph 1 opened with the words "An agency *shall* be established..."; in paragraph 2, the parties were *obliged* to establish a tribunal; paragraph 3 stated that "any dispute... *shall* be submitted..."; and paragraph 4 gave a direct order to the General Assembly. There seemed to be no reason for such inappropriate imperiousness on the part of the Commission.

68. Mr. LAUTERPACHT recollected that the Commission had entrusted the Drafting Committee with the preparation of the text of an additional article because after long discussion, it had been decided that the draft conventions should contain provisions to safeguard their implementation. It followed that any provisions that were not binding on the contracting parties were alien both to the Commission's purpose and to the objects of the conventions. For that reason, the use of the conditional mood, implying the absence of definite obligations, was inadequate.

69. Referring to the difficulties that the Secretary feared might arise from a recommendation that the General Assembly be empowered to act, he pointed out that it was possible that only five or six States might become parties to the convention; they might fail to establish an agency and a tribunal either out of inadvertence, or though in agreement on the principle, as a result of disagreement on, for example, the composition of the tribunal. It seemed to him that the General Assembly would be entirely justified in establishing a body in which only a few members were interested, because it would be acting pursuant to a convention which it had discussed, approved and laid open for signature, and for which it would thus have accepted general responsibility.

70. Mr. Kozhevnikov's objections to the imposition of rigid obligations on the contracting parties were understandable, for he disapproved of the conventions as a whole. But it was in the nature of a convention that obligations be laid on the States acceding to it. Those who approved of the provisions of the conventions should not be afraid of ensuring that those provisions were fulfilled; indeed, stateless persons would have no other protection.

71. Mr. CÓRDOVA quoted from the Convention on the Declaration of Death of Missing Persons,[6] article 8 of which established an International Bureau for Declarations of Death within the framework of the United Nations, and article 15 of which provided that the establishment of that Bureau should require the approval of the General Assembly. That provided an excellent precedent for dealing with a situation brought about by the inability of the parties to reach agreement.

72. He suggested, moreover, that the conventions as a whole and the additional article in particular were incomplete, in that they made no provision for the

[6] United Nations publication, Sales No.: 1950.V.1.

determination of the date on which they would come into force, and failed to stipulate how many signatures would be required for that purpose, how many States would be responsible for the establishment of the agency and so forth.

73. Mr. SPIROPOULOS, referring to Mr. Córdova's last point, said that as the final clauses were normally added to a convention by the General Assembly itself, there was no need for the Commission to propose them.

74. He suggested that the Commission should proceed to vote forthwith on the additional article. There was substantial agreement on the text of the first three paragraphs, which he considered adequate though not ideal. To meet the various views expressed in the Commission, he would suggest alternative texts for paragraph 4, reading as follows:

"4. If, within two years of the entry into force of the convention, the agency and the tribunal referred to in paragraphs 1 and 2 have not been set up by the Parties,

"*either* [any State may draw the attention of the General Assembly to that fact],

"*or* [the two organs should be set up by the General Assembly]".

75. He himself preferred the first alternative, as he considered it entirely proper to authorize the General Assembly to look into a failure of any parties to a convention to act on a matter of wide humanitarian concern.

76. Mr. LIANG (Secretary to the Commission) thanked Mr. Córdova for drawing attention to the Convention on the Declaration of Death of Missing Persons, but pointed out that the stipulation therein that the establishment of the International Bureau should be subject to the approval of the General Assembly was a very different matter from the provision suggested in paragraph 4. He doubted whether it would be proper for the Commission to submit to the General Assembly a text obliging the General Assembly to take certain action without giving it an opportunity of considering the facts rendering that action necessary. He therefore preferred the first of the two texts suggested by Mr. Spiropoulos, according to which the General Assembly's action would be governed by its general interest in the matter of statelessness.

77. Mr. AMADO thought that the Commission could well agree to approve paragraphs 1, 2 and 3, but was surprised to see that those members who supported paragraph 4 were apparently not afraid of thereby leaving the door open to all States Members of the United Nations to participate in any discussions in the General Assembly on the establishment of the proposed agency or tribunal.

78. Mr. SPIROPOULOS said that the General Rapporteur wanted paragraph 4 to be included so as to ensure that the General Assembly would be able to establish the agency or tribunal if it was not set up pursuant to the provisions of the conventions. If the General Assembly then accepted the text of those instruments, it would *ipso facto* accept the obligations imposed by paragraph 4. The Commission should therefore either delete paragraph 4, or adopt one or other of his (Mr. Spiropoulos') alternative suggestions for the final sentence.

79. He again hoped that the Commission would adopt as wide and elastic a formula as possible, for the failure of the Contracting Parties to establish a tribunal would not necessarily mean that they had no wish to establish it, but might merely mean — as the General Rapporteur had pointed out — that they were unable to agree on details.

80. Mr. LAUTERPACHT said that the first of Mr. Spiropoulos' alternatives was meaningless, for all States had the right to bring any matter before the General Assembly, and it would not enhance the Commission's reputation to include such a provision in the conventions. Referring to the Secretary's objection that it was not proper for States that were unable to agree between themselves to saddle the General Assembly with an unwanted responsibility, he said that he agreed with Mr. Spiropoulos that it was very natural for States to ask the General Assembly to act in a matter of which it had previously approved.

81. Mr. CÓRDOVA said that it must be assumed that the General Assembly was interested in solving the problem of statelessness, for not only had the Economic and Social Council asked the Commission to take the matter up, but the Commission on Human Rights was also interested in its solution. Further, as budgetary provision would have to be made for the agency or tribunal, it might be expected that the General Assembly would be interested on that ground, too.

82. Mr. YEPES said that, although the United Nations desired ardently to solve the problem of statelessness, and although the Commission had agreed to suggest that an agency should be set up to help stateless persons seek redress, yet the matter was beset with difficulties. He could not see how the tribunal would be organized, how many States would be required to establish it, or whether its establishment would need a separate convention. There were, indeed, so many practical difficulties that, if the Commission did not wish to abandon stateless persons to the bad faith of governments, it might be better for it to charge the International Court of Justice with the supervision of the conventions.

83. Mr. SPIROPOULOS did not think that the International Court of Justice would approve of Mr. Yepes' suggestion.

84. In order to allow the Commission to vote on a clear issue, he would withdraw the first of his alternative texts, namely, that according to which any State might draw the attention of the General Assembly to the failure of the Contracting Parties to establish the agency or tribunal. The Commission would thus be able to agree on a definite text for both conventions. It was true that the inclusion of provision for the establishment

of an agency or tribunal might make their adoption more difficult; but the proposal was very defensible, as it was not unreasonable to ask the General Assembly to act, as it were, as an arbitrator.

85. Mr. ZOUREK hoped that the Commission would give due thought to the matter before deciding to insert in the conventions a text according to which the General Assembly would be obliged to establish certain institutions in the event of disagreement between the contracting parties, for such action was beyond the competence of the General Assembly, which could only act in conformity with the Charter of the United Nations, and thus was empowered only to make recommendations to States Members. It could not make good the deficiencies of contracting parties.

86. Mr. HSU said that it would do no harm to include paragraph 4, as the General Assembly would then be able to consider the whole matter. He proposed the following text for that paragraph:

"4. If, within two years of the entry into force of the convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not been set up by the Parties, any one of the Parties shall have the right to request the General Assembly to set them up."

Paragraph 1 of the additional article, as amended during the discussion, was adopted by 10 votes to 2, with 1 abstention.

Paragraph 2 of the additional article, as amended during the discussion, was adopted by 9 votes to 2, with 2 abstentions.

Paragraph 3 of the additional article, as amended during the discussion, was adopted by 9 votes to 2, with 1 abstention.

Paragraph 4 of the additional article, in the form suggested by Mr. Hsu, was adopted by 4 votes to 2 with 5 abstentions.

87. Mr. SCELLE suggested that, as paragraph 4 established a form of sanction for non-compliance with the provisions laid down in paragraphs 1 and 2, it should follow those paragraphs. Paragraph 3, which was of more general concern, would then become the last paragraph.

It was so agreed.

The additional article proposed by the Drafting Committee was adopted, as a whole and as amended, by 10 votes to 2, with 1 abstention.

The meeting rose at 1.5 p.m.

233rd MEETING

Thursday, 6 August 1953, at 9.30 a.m.

CONTENTS

Page

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*continued*)

Page

Draft Convention on the Elimination of Future Statelessness and draft Convention on the Reduction of Future Statelessness (*continued*)

Relation between the two draft conventions (Paragraph 121 of the "Report") 329

Consideration of the draft report of the Commission covering the work of its fifth session (*resumed from the 232nd meeting*)

Chapter III: Régime of the high seas (A/CN.4/L.45/Add.1) 334

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*)

Relation between the two draft conventions (Paragraph 121 of the "Report")

1. The CHAIRMAN invited the Commission to discuss the relation between the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness. The General Rapporteur had presented a proposal reading as follows:

"The Commission deems it convenient, in order to clarify a situation which may otherwise give rise to misunderstanding, to indicate at this juncture in general terms the relation between the two drafts. The Commission is convinced of the desirability of eliminating or at least drastically reducing statelessness in the future. The Commission does not at present consider it necessary to recommend to Governments which of the two conventions they should adopt as the basis for their observations. However, it is of the opinion that members of the United Nations should recognize the urgency of the problem by giving consideration to both conventions and by commenting on them. It may be added that while the Convention on Elimination of Statelessness by its nature does not admit of reservations, it would be a matter for the decision of States accepting the Convention on Reduction of Statelessness to what extent reservations to that convention shall be declared admissible.