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Summary record of the 239th meeting

Topic:
Other topics

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requested that, as he had been obliged to leave the meeting, discussion of it be deferred until the next meeting, when the Commission would also have to vote on the draft chapter as a whole.

76. Mr. ZOUREK recalled that he too had submitted an amendment to the section of the report dealing with the contiguous zone. Since the purpose of his amendment was identical with that of Mr. Kozhevnikov's, he would consult him with a view to submitting a joint proposal for consideration at the next meeting.¹⁴

CHAPTER IV: NATIONALITY, INCLUDING STATELESSNESS (A/CN.4/L.45/Add.2) *

77. The CHAIRMAN invited the General Rapporteur to introduce the chapter on nationality, including statelessness, in the draft report covering the work of the Commission's fifth session (A/CN.4/L.45/Add.2).

78. Mr. LAUTERPACHT said that he was in a difficulty, as he feared from what Mr. Córdova had said about previous chapters that the chapter on nationality, including statelessness, would not conform to the Special Rapporteur's ideas of what the report should contain. The Commission's report could, of course, be limited to a summary of what had been said in the discussion, but in his (Mr. Lauterpacht's) view it was essential that it should explain the purpose of the texts which the Commission was submitting to the General Assembly, and their relation to existing international law, even if those questions had not been discussed in the Commission. There was no question of his trying to impose his own views on the Commission, but only of presenting the Commission's views to the world in the manner best calculated to secure their acceptance. The Commission was under an obligation to explain to the General Assembly and to the world at large what it was doing, and why, and whatever had been the practice in the past, he intended, so long as he remained General Rapporteur, to press for the adoption of a report along the lines he had indicated.

79. He would not, however, wish the Commission to include in its report a chapter which did not meet with the approval of the Special Rapporteur, and if his fears proved well-founded, he saw no alternative to withdrawing the whole of the draft chapter on nationality, including statelessness, except the first six paragraphs.

80. Mr. CORDOVA agreed that he had said it was essential that in preparing his draft report the General Rapporteur should limit himself to what had been said in the discussions, in order to avoid controversy as to whether the views expressed were those of the Commission as a whole. In the present instance, however, he wished to make it quite clear that he had no objections to the general form of the draft chapter on nationality, including statelessness, and wished to pay a tribute to the excellence of the General Rapporteur's work. It was

true that not everything in the chapter had been said in the discussions, but even if it had not been said, it had been present in members' minds.

81. Mr. LIANG (Secretary to the Commission) pointed out that the chapter on nationality, including statelessness, was not on the same plane as the chapters on arbitral procedure and on the régime of the high seas. It was clear from the Commission's Statute that the draft conventions on the elimination and on the reduction of future statelessness should be submitted to governments for comment, and given appropriate publicity; for that purpose they might or might not be accompanied by explanatory comment, and the chapter drafted by Mr. Lauterpacht could or could not be regarded as such explanatory comment. It should be clearly understood, however, that the Commission was not submitting to the General Assembly the final results of its work on statelessness.

82. He suggested that it would be desirable for the Commission to submit the draft conventions to the Economic and Social Council as an interim report, in accordance with the second part of article 17, paragraph 2 (c), of its Statute.

83. The CHAIRMAN said that, in view of what Mr. Córdova had said, there was clearly no need for the General Rapporteur to consider withdrawing any part of the draft chapter. The explanations contained in it were absolutely necessary to avert misunderstanding of the draft conventions, and the Commission would begin to examine it paragraph by paragraph at the next meeting, adhering strictly to the procedural rules which it had adopted at the beginning of the 236th meeting.¹⁵

The meeting rose at 1 p.m.

¹⁵ See *supra* 236th meeting, para. 1.

239th MEETING

Thursday, 13 August 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Faris Bey el-KHOURI,

¹⁴ See *infra*, 239th meeting, para. 83.

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter IV.

Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, 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 (continued)

CHAPTER IV: NATIONALITY, INCLUDING STATELESSNESS (A/CN.4/L.45/Add.2)* (concluded)

1. The CHAIRMAN invited the Commission to take up, paragraph by paragraph, the chapter on nationality, including statelessness, in its draft report covering the work of its fifth session (A/CN.4/L.45/Add.2).

*Paragraphs 1-3 (115-117)***

Paragraphs 1, 2 and 3 were approved without discussion.

Paragraph 4 (118)

2. Mr. LAUTERPACHT suggested the following addition to paragraph 4:

"The Commission also appointed Mr. Ivan Kerno as an expert to assist the Special Rapporteur; in his report the Special Rapporteur expressed his appreciation of Mr. Kerno's help."

3. Faris Bey el-KHOURI suggested the insertion of the phrase "for reasons of health" in order to explain that Mr. Manley O. Hudson had been unable to continue as Special Rapporteur owing to ill health.

It was agreed by 7 votes to 2 to make the suggested additions.

Paragraph 4, as amended, was approved by 8 votes to 2.

Paragraph 5 (119-120)

4. Mr. LAUTERPACHT suggested that the following passage be added at the end of the paragraph:

"Reference is also made to the report, referred to above in paragraph 3, of Mr. Manley O. Hudson presented in 1952; the report, referred to in this paragraph, of Mr. Córdova on the elimination or reduction of statelessness (A/CN.4/50); the memorandum prepared by Dr. I. S. Kerno on national legislation concerning grounds for deprivation of nationality (A/CN.4/66); and the consolidated report by the Secretary-General on the problem of statelessness (E/2230, A/CN.4/56)."

It was so agreed.¹

Paragraph 5, as amended, was approved by 7 votes to 2.

Paragraph 6 (121)

5. Mr. CORDOVA suggested, and Mr. LAUTERPACHT agreed to, the deletion of the words "desirable and" from the third sentence.

6. Mr. ALFARO, referring to the same sentence, suggested that the verb "can solve" be qualified by the word "fully" ("entièrement").

It was so agreed.

7. Mr. SANDSTRÖM suggested the insertion of the phrase "in the future" after the word "statelessness" at the end of the first clause of the third sentence.

It was so agreed.

8. After some discussion, in which Mr. KOZHEVNIKOV, Mr. LAUTERPACHT and the CHAIRMAN took part, *it was agreed* that the phrase "as a whole" should be deleted from the fourth sentence.

Paragraph 6, as amended, was approved by 5 votes to 2, with 1 abstention.

Additional paragraphs (122-123)

9. Mr. LAUTERPACHT proposed that the following two additional paragraphs be inserted after paragraph 6:

"7. The Commission decided, in view of the considerations adduced below in paragraph 9, to ask the Secretary-General to transmit to the Economic and Social Council the draft conventions and the comment thereon as embodied in the report, as well as the supporting documentation referred to at the end of paragraph 5.

"8. In adopting the titles 'Convention on the Elimination of Future Statelessness' and 'Convention on the Reduction of Future Statelessness' the Commission desired to draw attention to the fact that, as is the normal case, these Conventions are not intended to have retrospective effect, and that they are not concerned with the problem of the elimination or reduction of existing statelessness. The Commission devoted discussion to the latter problem. During the session the Special Rapporteur prepared an interim report and drafts of Conventions bearing on this subject. The Commission asked the Special Rapporteur to devote further study to the matter and to prepare a report for the next session."

10. Mr. SANDSTRÖM asked whether the Commission was permitted by its Statute to transmit reports to a United Nations body other than the General Assembly.

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter IV.

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

¹ In view of this proposed addition, paragraph 5 was later split into two parts and the passage suggested by Mr. Lauterpacht was added at the end of the first part (para. 119), the remaining part becoming paragraph 120.

11. Mr. LIANG (Secretary to the Commission) confirmed that the Commission was so permitted under article 17 (c) of its Statute.

12. Mr. KOZHEVNIKOV wondered whether the Russian translation was correct, since in the new paragraph 8 it was stated that the Commission had discussed the elimination or reduction of existing statelessness.

13. Mr. LAUTERPACHT said that the Commission had discussed that problem, with the result that a special report had been prepared by the Special Rapporteur during the session.

14. Mr. KOZHEVNIKOV thought that the second sentence of the new paragraph 8 therefore might be worded: "The Commission discussed the latter problem in a general manner."

15. Mr. ZOUREK thought that the sentence in question was inaccurate, even if amended as suggested by Mr. Kozhevnikov, for there had been only the shortest general discussion of the report on existing statelessness, and not all members had even had an opportunity of making known their views on it.

16. Mr. LAUTERPACHT suggested that it might be better to delete the sentence in question.

It was so agreed.

17. Mr. SCILLE, referring to the phrase "as is the normal case" in the first sentence of the new paragraph 8, said that some conventions had retrospective effect, whereas in others it was specified that they were not to be retrospective. That indicated that it was not completely abnormal for conventions to have retrospective effect. The phrase should accordingly be deleted.

It was so agreed.

The additional paragraphs proposed by the General Rapporteur, as amended, were approved by 8 votes to none, with 2 abstentions.

Paragraph 7 (124)

18. Mr. LAUTERPACHT said that the word "also" should be deleted from the first sentence.

Paragraph 7 was approved by 7 votes to none, with 3 abstentions.

Paragraph 7 bis (125)

19. Mr. LAUTERPACHT said that the text immediately following the heading of section II of the chapter should form a numbered paragraph (for the sake of convenience, 7 bis), and that a sentence should be inserted at the beginning reading as follows: "The preambles of the two conventions are as follows:"

Paragraph 7 bis was approved by 7 votes to 2, with 1 abstention.

Paragraph 8 (128)

20. Mr. ZOUREK suggested, and Mr. LAUTER-

PACHT agreed to, the deletion of the word "precise" from the first sentence, in the phrase "precise legal obligation".

21. Mr. KOZHEVNIKOV, referring to the second sentence, in which it was stated that the Universal Declaration of Human Rights had been "conceived as an expression of compelling moral principle", asked whether it was in order to raise moral considerations in a purely legal text.

22. Mr. LAUTERPACHT thought that it was entirely in order, as the Commission was involved in the development of international law which was based on considerations not exclusively legal, and as various moral considerations had been adduced in the preambles to the two conventions on the elimination and reduction of future statelessness.

Paragraph 8, as amended, was approved by 7 votes to none with 2 abstentions.

Paragraphs 9, 10 and 11 (127-129)

Paragraphs 9 and 10 were approved by 7 votes to none, with 3 abstentions.

Paragraph 11 was approved by 6 votes to none with 3 abstentions.

Paragraph 12 (130)

23. Mr. CORDOVA said that the first two sentences appeared slightly contradictory, in that the first referred to nationality as "the link between the individual and international law", whereas the second affirmed that the rights of the individual were not yet independent of the law of the State; unless and until international law recognized the rights of individuals independent of national law it would be impossible to say there was a link between the individual and international law.

24. Mr. LAUTERPACHT said that the meaning of the first sentence was that unless an individual had a nationality he could have no direct connexion with international law, as he would have no State to protect his interests.

25. Mr. CORDOVA said that if, as he understood it, the meaning of the first sentence was that the State was the link between the individual and international law, it should be clearly so stated.

26. Mr. LAUTERPACHT suggested that the word "situation" be substituted for the word "principle" at the beginning of the second sentence.

27. Mr. ZOUREK had considerable difficulty with the first sentence, which seemed to imply that the individual could be the subject of international law. The second and subsequent sentences seemed to him to be mere speculation, appropriate to an academic paper but not to the Commission's report. He therefore proposed that the whole of paragraph 12 be deleted.

28. Mr. SCILLE thought that the paragraph was quite clear and should stand.

29. Mr. CORDOVA suggested the deletion from the fourth sentence of the phrase "although permitted by international law".

30. Mr. LAUTERPACHT felt some hesitation about agreeing, for the object of the paragraph was to show the inconsistency between the existence of statelessness and one of the basic principles of existing international law.

31. Mr. ALFARO suggested that the phrase to which Mr. Córdova had objected should be amended to read "although not prohibited by international law".

It was so agreed.

Mr. Zourek's proposal was rejected by 6 votes to 3, with 1 abstention.

Paragraph 12, as amended, was approved by 6 votes to 3, with 1 abstention.

Paragraph 12 bis (131)

32. The CHAIRMAN suggested that, for the sake of convenience, the second paragraph erroneously numbered 12 should be referred to as paragraph 12 bis.

33. Mr. LAUTERPACHT proposed that the last sentence be amended by the deletion of the words "very limited" in the phrase "to that very limited extent..." and by the replacement of the words "to codify" by "to give expression to" ("de marquer").

It was so agreed.

Paragraph 12 bis, as amended, was approved by 6 votes to none, with 4 abstentions.

Paragraph 13 (132)

34. Mr. CORDOVA suggested the deletion from the fourth sentence of the phrase "in a sphere which has been hitherto within the exclusive domestic jurisdiction". The Commission should not gratuitously furnish States with a pretext for maintaining that all questions of nationality and statelessness were within their domestic jurisdiction.

35. Mr. LAUTERPACHT said that that matter would undoubtedly be raised in the General Assembly in any event. The report would be the stronger for having mentioned it first.

36. Mr. CORDOVA withdrew his suggestion.

37. Mr. ZOUREK suggested the deletion of the penultimate sentence. Any treaty imposing obligations would not be compatible with the sovereignty of States, and would thus not be in conformity either with international law or with the Charter of the United Nations.

38. Mr. LAUTERPACHT said that he had inserted that sentence in an endeavour to meet Mr. Zourek's and Mr. Kozhevnikov's point of view.

39. Mr. KOZHEVNIKOV said that Mr. Lauterpacht had evidently not achieved his object, as his opposition was maintained. It would be better to delete the sentence.

40. The CHAIRMAN suggested that the sentence to which Mr. Zourek had referred might be amended to read as follows:

"Agreements of this kind freely concluded between States in the full exercise of their sovereign rights would not be incompatible with their sovereignty".²

It was so agreed.

41. Mr. KOZHEVNIKOV, although proposing no formal amendment, wondered whether the last sentence might not be improved if the word "only" were replaced by "also" or "equally".

42. Mr. LAUTERPACHT pointed out that the basis of the Commission's work was that only international agreement was capable of securing maintenance of the necessary national legislation.

Article 13, as amended, was approved by 7 votes to 2 with 1 abstention.

Paragraph 14 (133)

Paragraph 14 was approved by 7 votes to 1, with 2 abstentions.

Paragraph 15 (134)

Paragraph 15 was approved by 7 votes to 1, with 2 abstentions.

Paragraph 16 (135)

Paragraph 16 was approved by 7 votes to none, with 3 abstentions.

Paragraph 17 (136)

43. Mr. ZOUREK, referring to the fourth sentence, asked, as a matter of information, whether it was true that countries whose law was based on *jus soli* in fact conferred their nationality according to the principles of *jus sanguinis* on children born to their nationals abroad.

44. Mr. CORDOVA said that nearly all *jus soli* countries did so.

45. Mr. ALFARO added that to the best of his knowledge only Uruguay applied *jus soli* absolutely.

Paragraph 17 was approved by 7 votes to 2, with 1 abstention.

Paragraph 18 (137)

46. Mr. LAUTERPACHT thanked the Chairman for the help he had given him in drafting paragraph 18.

Paragraph 18 was approved by 7 votes to none, with 3 abstentions.

² Instead of "However, being an agreement freely included by States in the full exercise of their sovereign right to conclude treaties, it would not in any way be incompatible with their sovereignty".

Paragraph 19 (138)

47. Mr. ZOUREK said that the last sentence was inaccurate and should be deleted. The use of the word "fully" in the phrase "fully safeguards" was particularly objectionable.

48. The CHAIRMAN agreed that it was going too far to say that article 1 of the draft convention on the reduction of future statelessness fully safeguarded the basic considerations of the law of countries not adhering to *jus soli*.

49. Mr. LAUTERPACHT agreed that the word "fully" should be deleted.

It was so agreed.

50. Mr. ZOUREK proposed that the whole paragraph be deleted.

Mr. Zourek's proposal was rejected, 3 votes being cast in favour and 3 against, with 4 abstentions.

51. Mr. ALFARO pointed out that the French text of the paragraph required emendation so as to make it concord with the English original.

Paragraph 19 was approved by 7 votes to 2, with 1 abstention.

Paragraphs 20, 21, 22 and 22 bis (139-142)

Paragraph 20 was approved by 7 votes to 1, with 2 abstentions.

Paragraph 21 was approved by 7 votes to 2, with 1 abstention.

Paragraph 22 was approved by 7 votes to none, with 3 abstentions.

Paragraph 22 bis was approved by 7 votes to 2, with 1 abstention.

Paragraph 23 (143)

52. Mr. ALFARO thought it had already been decided that the Committee should refer to the "dissolution" rather than to the "termination" of marriages.

53. The CHAIRMAN asked the Secretariat to verify whether that was so, and to make any necessary emendation.

Paragraph 23 was approved by 7 votes to none, with 3 abstentions.

Paragraph 24 (144)

54. Mr. CORDOVA, referring to the position adopted by the Commission on the Status of Women to the effect that the nationality of women should be no more affected by marriage than was the nationality of men, suggested the addition of the following sentence:

"The Commission has refrained from expressing any opinion on the question of the retention of their

original nationality by women who marry nationals of a foreign country."

It was so agreed.

Paragraph 24, as amended, was approved by 7 votes to none, with 3 abstentions.

Paragraph 25 (145)

Paragraph 25 was approved by 7 votes to 2, with 1 abstention.

Paragraphs 26 and 27 (146-147)

Paragraphs 26 and 27 were approved by 7 votes to none, with 3 abstentions.

Paragraph 28 (148)

55. Mr. LAUTERPACHT said that Mr. Sandström had suggested to him that the title of section VI was neither elegant nor precise. He proposed that the Commission leave it to him (Mr. Lauterpacht) and the Secretariat to reconsider that title, and insert an improved version in the final text.³

It was so agreed.

Paragraph 28 was approved by 7 votes to 2, with 1 abstention.

Paragraph 29 (149)

Paragraph 29 was approved by 7 votes to 2, with 1 abstention.

Paragraph 30 (150)

Paragraph 30 was approved by 7 votes to 1, with 2 abstentions.

Paragraph 31 (151)

56. Mr. LIANG, Secretary to the Commission, pointed out that the phrase in the first sentence "national-born" should read "natural-born".

Paragraph 31, as thus amended, was approved by 7 votes to none, with 3 abstentions.

Paragraph 32 (152)

Paragraph 32 was approved by 7 votes to none, with 3 abstentions.

57. Mr. KOZHEVNIKOV explained that he had abstained from voting on paragraph 32 not because he had any doubt as to the principle proclaimed in article 8 of both draft conventions, but because in his view deprivation of nationality fell within the domestic jurisdiction of States.

58. Mr. ZOUREK said that during the discussions on article 8 he had made it clear that he accepted the prin-

³ The title remained unchanged.

principles proclaimed therein; he had abstained from voting on the paragraph because in his view the application of those principles ought to be left to the judgement of the State concerned.

59. Faris Bey el-KHOURI explained that he too agreed with the principle proclaimed in article 8; but the article was out of place in the draft conventions. As originally worded it had provided that the parties should not deprive "...persons of their nationality on racial, ethnical, religious or political grounds so as to render them stateless". The final phrase alone could have justified the inclusion of the article in the draft conventions, yet it had been deleted at Mr. Sandström's instance. He (Faris Bey el-KHOURI) had therefore abstained from voting on the paragraph.

Paragraphs 33, 34 and 35 (153-155)

Paragraph 33 was approved by 7 votes to 2, with 1 abstention.

Paragraphs 34 and 35 were approved by 7 votes to none, with 3 abstentions.

Paragraph 36 (156-157)

60. Mr. LAUTERPACHT pointed out that the first word of the comment, following the quotation of article 10, should be "this" rather than "that"; that the word "provisions" in the first sentence should be in the singular; and that the phrase "advisory opinions" in the parentheses in the fourth sentence should be "advisory opinion".⁴

Paragraph 36 was approved by 7 votes to 3.

Paragraph 37 (158)

61. Mr. CORDOVA proposed that the word "nationals" in the last sentence be replaced by the word "persons".

It was so agreed.

Paragraph 37, as amended, was approved by 7 votes to 3.

Paragraphs 38 and 39 (159-160)

Paragraphs 38 and 39 were approved by 7 votes to 3.

62. Mr. ZOUREK explained that he had voted against paragraph 39 as a matter of principle, and referred to the arguments he had put forward during the discussion of article 10 of the draft conventions. In his view, the terms of the Charter of the United Nations did not empower the General Assembly to create the organs suggested in article 10. He requested that his position be made clear in the summary records.

Paragraph 40 (161)

63. Mr. LAUTERPACHT pointed out that the first sentence was incomplete.⁵ It should read:

"...after having been approved by the General Assembly, will enter into force."

64. He also proposed that the word "binding" in the third sentence be replaced by the word "devolving".

It was so agreed.

65. Mr. ZOUREK proposed the deletion of the second sentence, as there were no such things as "United Nations conventions".

66. Mr. CORDOVA agreed that, in the literal sense of the words, United Nations conventions did not exist. However, it was clear that what was meant was conventions concluded by governments under the auspices of the United Nations.

67. Mr. LIANG (Secretary to the Commission) said that the second sentence was not inaccurate, although it might perhaps be regarded as an exaggeration.

68. Referring to the first sentence, he pointed out that the entry into force of the two conventions was not dependent on their approval by the General Assembly. The first two sentences would therefore read better if drafted as follows:

"After one or both of the two draft conventions have been approved by the General Assembly and accepted by States, they would become in a general sense United Nations Conventions."

69. Mr. LAUTERPACHT accepted the Secretary's suggestion.

70. The CHAIRMAN agreed that the Secretary's suggestion was in accordance with the sense of the Commission. Nevertheless, the text was still somewhat obscure, and required further polishing. He proposed therefore that it be approved on the understanding that the Drafting Committee should make the necessary emendations.

It was so agreed.

71. Mr. CORDOVA, referring to the last sentence, said that the phrase "the international community organized in the United Nations" suggested that the Commission considered that the United Nations was a kind of super-State.

72. Mr. ALFARO thought that the last sentence should refer to "...the international community organized by the Charter of the United Nations".

73. Mr. LIANG (Secretary to the Commission) thought that the text was satisfactory as it stood. Its meaning was simply that there was an international community organized in the form of the United Nations.

⁵ The first sentence read as follows: "The two draft conventions are based on the assumption that in due course one or both of them will be accepted by States and after having been approved by the General Assembly they will then become ...".

⁴ That phrase became footnote 17 of the "Report".

74. The CHAIRMAN thought that the problem might be solved by deleting the words "international community organized in the".

It was so agreed.

75. Mr. LIANG (Secretary to the Commission) suggested that the word "binding", which was superfluous — for if conventions were no longer in draft form they were automatically binding on the parties to them — should be deleted from the same sentence.

Mr. Zourek's proposal that the last two sentences be deleted was rejected by 6 votes to 3, with 2 abstentions.

76. Mr. KOZHEVNIKOV thought that paragraph 40 was extremely confused. Members had had their doubts about the first sentence. The second sentence was an attempt on the part of Mr. Lauterpacht to obtrude his own point of view — which had not been discussed by the Commission — that international organizations could be subjects of international law. The fifth sentence contained the unequivocal statement that persons "threatened" with statelessness had no State to protect them; that was *prima facie* inaccurate. And the sixth sentence carried the implication that States not members of the United Nations were not members of the international community either; yet there were many active members of that community who were not allowed to take part in the activities of the United Nations.

77. He therefore proposed that the entire paragraph be deleted.

78. Mr. LAUTERPACHT said that an important purpose of article 10, which was a crucial part of the draft conventions, was to link them with the United Nations. He could assure Mr. Kozhevnikov that it was neither his wish nor his intention to use the Commission's report to push his own point of view; nor had he any intention of linking the commentary on article 10 with the question of treaties.

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

Paragraph 40, as amended, was approved by 8 votes to 1, with 1 abstention.

79. Mr. KOZHEVNIKOV requested that his observations on the different articles of the draft conventions be included as footnotes in the Commission's report.

80. Mr. LIANG (Secretary to the Commission) said that they might be included either as footnotes to the articles themselves, or as footnotes to paragraph 5 of the chapter.

81. The CHAIRMAN asked the General Rapporteur to consider where Mr. Kozhevnikov's observations would best be placed.

The chapter on nationality including statelessness in the Commission's draft report covering the work of its fifth session (A/CN.4/L.45/Add.2) was adopted by 8 votes to 2.

82. Mr. YEPES explained that he was still opposed to article 1 of the draft Convention on the Elimination of

Future Statelessness, for reasons which he had given in the course of the discussions and in his explanations of his votes.

CHAPTER III: RÉGIME OF THE HIGH SEAS (A/CN.4/L.45/Add.1) (*resumed from the 238th meeting and concluded*)

Paragraph 54 (106)

83. The CHAIRMAN said that the Commission had before it a proposal by Mr. Kozhevnikov that the following passage be added at the end of paragraph 54:

"Certain members of the Commission were opposed to the inclusion of this article in the draft, on the ground that it had no direct connexion with the régime of the high seas; moreover several governments in their observations had also put forward the view that the article in question should be examined in connexion with the discussion of territorial waters."

84. Mr. KOZHEVNIKOV requested the Secretariat to ensure that the French text was brought into conformity with the Russian and English versions.

85. Mr. LAUTERPACHT said that, as the Commission had adopted similar paragraphs, the present one should also be adopted. The English text, however, might be slightly re-drafted to read:

"... the régime of the high seas, and moreover that several governments..."

It was so agreed.

Mr. Kozhevnikov's proposal was adopted by 9 votes to none, with 1 abstention.

86. Mr. KOZHEVNIKOV asked that the text just adopted should form a separate paragraph, in accordance with precedent.

87. Mr. SANDSTRÖM pointed out that the precedents varied.

Mr. Kozhevnikov's proposal that his text form a separate paragraph was rejected, 5 votes being cast in favour of and 5 against it.

88. The CHAIRMAN suggested that, in view of the tied vote, the decision whether or not Mr. Kozhevnikov's text should form a separate paragraph should be left to the General Rapporteur.

89. Mr. LAUTERPACHT said that he would endeavour to make the result satisfactory to Mr. Kozhevnikov.

Additional paragraph (110) to follow paragraph 57 (109)

90. The CHAIRMAN said that the Commission had before it a proposal by Mr. Zourek for the addition of a new paragraph to follow paragraph 57, reading:

"Certain members of the Commission opposed the inclusion in the draft of the article on the contiguous zone, on the ground that it prejudged the question of the outer limit of territorial waters. They pointed out

that, by taking as the base line the inner limit of the territorial waters, the article tended to restrict the width of these waters—a point on which the Commission had not yet taken any decision.”

91. Mr. ZOUREK explained that the purpose of his amendment was to make it clear that the Commission would in future be free to adopt any limit it might choose for the territorial sea.

92. Mr. LAUTERPACHT thought that that followed from the text of article 57 as it stood.

93. Mr. YEPES recollected that during the relevant discussions several members had spoken in the sense of Mr. Zourek's amendment, which should therefore be adopted.

94. Mr. ZOUREK said that he had drafted his amendment on the basis of the summary records of the relevant meetings. He also asked that in the French version the word “*souligné*” in the second sentence be replaced by the word “*affirmé*”.

It was so agreed.

Mr. Zourek's proposal was adopted by 8 votes to none, with 2 abstentions.

95. After some discussion in which Mr. YEPES, Mr. LAUTERPACHT and the CHAIRMAN took part, it was agreed that it would not be in order for the Commission to vote separately on the various sections of the chapter under consideration.

The chapter on the régime of the high seas in the Commission's draft report covering the work of its fifth session (A/CN.4/L.45/Add.1) was adopted by 8 votes to none.

96. Mr. YEPES explained that, although he had voted in favour of the draft chapter as a whole, he remained opposed to section IV (contiguous zone), because in his opinion the question of the contiguous zone ought to be examined together with the problem of the territorial sea. Further, in his view, it would be better not to create an artificial zone contiguous to the territorial sea, but to extend the limits of the territorial sea correspondingly, as was envisaged in American international law.

97. Mr. KOZHEVNIKOV explained that he had abstained from voting on the draft chapter as a whole because, although he approved of some paragraphs, he had opposed or abstained on others.

98. Mr. ZOUREK said that, in abstaining, he had been actuated by the same considerations as had Mr. Kozhevnikov.

99. Mr. LAUTERPACHT congratulated the Chairman on the successful conclusion of an important piece of work as Special Rapporteur on the régime of the high seas. He had displayed immense learning, patience and restraint.

The meeting rose at 1.5 p.m.

240th MEETING

Friday, 14 August 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, 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 (*concluded*)

CHAPTER I: INTRODUCTION (A/CN.4/L.45/Add.3) *

1. The CHAIRMAN invited the Commission to consider paragraph by paragraph the introductory chapter in its draft report covering the work of its fifth session (A/CN.4/L.45/Add.3).

*Paragraphs 1 to 5 (1-5) ***

Paragraphs 1 to 5 were adopted unanimously.

Paragraph 6

2. Mr. ZOUREK was surprised to note that there was no mention in paragraph 6, in which the agenda for the fifth session was set forth, of an item which the Commission had added to its provisional agenda in a perfectly regular manner, namely: “Ways and means of providing for the expression of dissentient opinions in the report of the Commission covering the work of each session”. He proposed that that item be inserted after item (8).

3. The decision which the Commission had taken on that issue was, in his view, an unfortunate one, which it was still open to it to reconsider as regards future sessions. Unless other members of the Commission were in favour of reopening the question, however, he would not press that point, but at least it was essential that the

* Mimeographed document only. Incorporated with drafting changes in the “Report” of the Commission as Chapter I.

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