

# **United Nations Conference on the Elimination or Reduction of Future Statelessness**

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UNITED NATIONS CONFERENCE ON THE  
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS  
COMMITTEE OF THE WHOLE  
SUMMARY RECORD OF THE TENTH MEETING

held at the Palais des Nations, Geneva  
on Wednesday, 8 April 1959, at 10.30 a.m.

Chairman: Mr. LARSEN (Denmark)  
Secretary: Mr. LIANG, Executive Secretary  
of the Conference

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Article 7 (resumed from the eighth meeting)

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A list of government representatives and observers and of representatives  
of specialized agencies and of intergovernmental and non-governmental organizations  
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A list of documents pertaining to the Conference was issued as document  
A/CONF.9/L.79

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EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS  
(item 7 of the Conference agenda) (continued)

Draft convention on the reduction of future statelessness (A/CONF.9/J.1) (continued)

Article 7, paragraph 3 (A/CONF.9/L.17, L.27/Rev.1, L.28, L.31) (resumed from the eighth meeting)

The CHAIRMAN drew attention to the joint amendment (A/CONF.9/L.27/Rev.1) to article 7 of the draft convention submitted by the majority of the Working Group on article 7, paragraph 3, namely the delegations of Canada, Denmark and the Federal Republic of Germany, the sub-amendment (A/CONF.9/L.28), to that amendment submitted by the other member of the Working Group, Pakistan, and the amendment to article 7 (A/CONF.9/L.31) submitted by the Netherlands delegation. He asked the representative of Pakistan whether he wished to withdraw his amendment to article 7 (A/CONF.9/L.17).

Mr. TYABJI (Pakistan) replied that he would withdraw his amendment insofar as it related to article 7, without prejudice to its bearing on paragraph 3 of the joint amendment.

Mr. SCOTT (Canada), introducing the joint amendment, said that despite the complexity of the wording the principle was quite clear and would become clearer if compared with the original draft of paragraph 3.

In drafting their amendment, the three Powers had intended that the right not to lose nationality on grounds of absence should be granted to all persons who had acquired nationality by procedures similar to those set out in both article 1, paragraph 1 and article 4. It was for that reason that they had included the sentence "a person who at birth or at the latest one year after having come of age has .....". That sentence was intended to apply to all persons who acquired their nationality under procedures similar to those set out in article 1, paragraph 1. Presumably, persons under article 1, paragraph 3 were in a different category. They could not be considered as natural-born nationals of a State, since they would have originally been assumed to be in the process of acquiring another nationality.

The second sentence of the joint amendment covered persons who had acquired nationality by procedures similar to those set out in article 4. It would be remembered that under article 4 as approved by the Committee, States were allowed to make the granting of nationality conditional. Canada was somewhat more generous in granting nationality than was required under the provisions of article 4; a Canadian family could live abroad for generations, provided the members satisfied

the requirements of the Canadian Citizenship Act and each member made a declaration of retention of nationality before he reached the age of twenty-four. On the other hand, because such nationality was granted outright at birth, Canada required protection under article 7 which was roughly analagous to the conditions allowed to those other countries which made acquisition of nationality conditional under article 4.

The residence condition in the last sentence of the joint amendment was reasonable, although it was not necessary to his country. With regard to the term "other nationals" used in that sentence, his understanding was that it had been more or less agreed in principle that countries of immigration such as Canada, which were generous in allowing persons to enter their territory, should not be penalized by the convention and made to recognize such persons as nationals if they resided abroad beyond the period specified by the law. His delegation considered that the words "country of origin" used in paragraph 3 of the International Law Commission's text were ambiguous and rather arbitrary and that it was important to lay down a minimum period after which "other nationals" might lose their nationality.

Mr. BERTAN (Turkey) asked whether the last sentence of the joint amendment would apply to immigrants or whether their case would be covered by the provisions of article 8. He reiterated his proposal made at the eighth meeting that article 7, paragraph 3 be discussed in conjunction with article 8.

Sir Claude COREA (Ceylon) said that he preferred the International Law Commission's draft of article 7, paragraph 3 since the joint amendment and that submitted by the Netherlands delegation both had the same objectionable feature: they would increase cases of future statelessness.

With regard to the words "other nationals" in the last sentence of the joint amendment, it would be hardly reasonable to provide that such persons might lose their nationality by reason of residence abroad for the period mentioned. There should be some escape clause in order to avoid penalizing persons who had to reside abroad for longer periods. The question arose of what evidence the persons mentioned in the second sentence of the joint amendment would have to produce to prove that they had resided in the territory of the State concerned.

In the Netherlands amendment, the first sentence was acceptable, since it was taken from the International Law Commission's text of article 7, but the period of seven years mentioned in the second sentence was not a very reasonable one.

Mr. BACCHETTI (Italy), recalling the comments he had made at the Committee's eighth meeting on article 7, paragraph 3, said that his delegation could not accept the joint amendment, since it would create a new category of stateless persons, namely those who had left their country to reside abroad.

He would prefer paragraph 3 as drafted in the International Law Commission's draft convention on the elimination of future statelessness, but in a spirit of compromise he would support the Netherlands amendment, particularly if the words "residence abroad" in the second paragraph were replaced by "residence in the country of origin". In any case, the period of residence outside the country to which the person concerned belonged should be specified.

Mr. RIPHAGEN (Netherlands) said that his delegation was prepared to accept paragraph 3 even in the form proposed by the International Law Commission in the draft convention on the elimination of future statelessness, although that would entail changes in Netherlands law. Paragraph 3 of the draft convention on the reduction of future statelessness was also acceptable, but the Netherlands delegation had submitted its amendment in order to meet the objections of some delegations to that clause.

His delegation considered that paragraph 3 should begin with the rule formulated by the International Law Commission in paragraph 3 of article 7 of the draft convention on the elimination of future statelessness and should not contain too many exceptions. Its amendment admitted of only two such, one for naturalized persons and the other for persons born outside the territory of a State. Any sub-amendment would be acceptable which would make the article more liberal and would prevent cases of future statelessness, but in view of the joint amendment submitted by the delegations of Canada, Denmark and the Federal Republic of Germany some concession should be made to those delegations and others. From the Netherlands point of view, the joint amendment was disappointing because it would lead to many cases of statelessness and he would hope that delegations would see their way to taking a more liberal attitude.

Rev. Father de RIEDMATTEN (Holy See) said that his delegation could not support the second sentence of paragraph 3 of the International Law Commission's draft. The joint amendment was very disappointing because it would create new cases of statelessness and he would vote against it.

The first paragraph of the Netherlands amendment raised no problems for his delegation. The second paragraph, however, was not acceptable because it would penalize by loss of nationality a naturalized person for failure to observe certain formalities. The third paragraph should indicate that the persons in question must be informed of the law of the contracting State; and in the second paragraph the words proposed by the Italian representative, namely "residence in the country of origin" should be substituted for the words "residence abroad". The meaning of residence should also be defined.

Mr. LA CIAIR (United States of America) said that his delegation saw no reason for penalizing a person for residing in his country of origin as against any other foreign country and would therefore accept the International Law Commission's text of paragraph 3 if the words "in his country of origin" were replaced by the word "abroad".

The CHAIRMAN, speaking as the representative of Denmark, said that the Working Group had based its study of article 7 on the International Law Commission's draft and on the comments made in the Committee. Paragraph 3 of the draft merely restricted the sovereignty of States with respect to two groups of citizens: natural-born nationals and naturalized persons. It did not refer to any other persons and a State would be entirely free to deprive of his nationality on grounds of residence any person not in either group. For example, a child who had acquired nationality by legitimation and a woman who had acquired nationality by marriage could be deprived of nationality on those grounds.

The sponsors of the joint amendment had endeavoured to restrict the freedom of contracting States by using the phrase "A person who at birth or at the latest one year after having come of age," rather than the words "A natural-born national". The second sentence of the amendment enlarged the freedom of a State in the case of persons born outside its territory. On that point, the joint amendment was much more liberal than the Netherlands amendment and had taken into account the view expressed in the Committee that mere birth in a country might not be sufficient to create ties with that country.

On the question of residence, the joint amendment did not provide that a child born outside the territory of a contracting State might be deprived of his nationality if he had not resided in that State. The Scandinavian countries had adopted the rule given in the second sentence without objections having been

raised. There had, however, been instances of persons of Danish descent whose families had lived abroad for generations and who still claimed Danish nationality although they had no intention of residing in Denmark. Such cases were not admissible.

Although the Danish delegation was not in favour of the third sentence of the joint amendment, it had thought that the work of the Committee would be expedited by the submission of a basic text, the merits of which should be judged by each delegation according to its viewpoint.

The solution offered by the joint amendment was preferable to the International Law Commission's text and to the Netherlands amendment.

Mr. LEVI (Yugoslavia) said that his delegation could not accept the joint amendment. His Government was anxious to protect persons from becoming stateless as a result of circumstances beyond their own control but did not see any need to protect persons who of their own free will had decided to stay abroad for a period of fifteen years or more, by which time they might have acquired entitlement to another nationality.

The Netherlands amendment, which at first sight appeared preferable to the joint amendment, required further consideration.

Mr. RIPHAGEN (Netherlands) expressed surprise at the Danish representative's claim that the joint amendment was more liberal than the Netherlands amendment. The contrary, rather, was true. According to the joint amendment, a contracting State would make retention of nationality by a person born outside its territory conditional upon residence in its territory. In the corresponding sentence of the Netherlands amendment, the condition imposed was not residence but registration, which was surely more liberal.

In any case, in both amendments the exception clauses were merely permissive. Neither amendment required a contracting State to make use of the exception clauses, and it was to be hoped that States would resort to them only in special cases, if at all.

Objections to the Netherlands amendment seemed to have been made on the ground that too many exceptions were proposed. He would be quite willing to accept amendments designed to reduce the number of exceptions and thus reduce statelessness.

Mr. ROSS (United Kingdom) said that he shared the preference of the representative of Italy for the text of paragraph 3 in the International Law Commission's draft convention on the elimination of future statelessness, which corresponded to the provisions of English law.

However, discussion had shown that no text of paragraph 3 was likely to secure general agreement unless it contained an exception clause. If exceptions were to be made on the ground of living abroad there was no sense in speaking of "residence in the country of origin" alone, first because the words "country of origin" were not free from ambiguity and secondly because there was little substantive difference between residence in the country of origin and residence in other foreign countries.

There were two main differences of substance between the joint amendment and the Netherlands amendment. In the first place, the latter left a gap, as it were, between natural-born nationals and naturalized persons. It was clear that there were other categories of person to consider as well, and in that respect his delegation preferred the joint amendment. On the other hand, the Netherlands amendment was preferable in regard to the second point on which there was a difference of substance. Persons born outside the territory of a contracting State might lose their nationality under the joint amendment if they failed to reside in the territory of the State whereas under the Netherlands amendment they might lose it if they failed to register. The second condition was more liberal and therefore preferable.

He was opposed to the Pakistan amendment (A/CONF.9/L.28), which would imply that retention of nationality was conditional on registration even in respect of persons born in the territory of a contracting State.

Mr. WEIS (Office of the United Nations High Commissioner for Refugees), speaking at the invitation of the Chairman, observed that loss of nationality on account of residence abroad was a frequent cause of statelessness.

He would have preferred the Committee to adopt the International Law Commission's text of article 7, paragraph 3 but if that were impossible he would favour the proposal of the representative of the Holy See that some warning be given to persons staying abroad, before they could lose their nationality.



Under the national laws of many countries loss of nationality was automatic after a certain period of residence abroad, the assumption being that the person concerned had of his own free will broken the ties binding him to the country of his nationality. That assumption however was false. After the upheavals of the past twenty years, thousands of persons were living outside the countries of their nationality for reasons entirely beyond their control. Distance between country of residence and country of nationality was another factor which often made it difficult for a person to fulfil the requirements of the law with a view to avoiding loss of nationality.

He suggested therefore, first that loss of nationality should not be automatic, but that it should require a decision by the competent authority, which would have discretion not to deprive a person of nationality where he had resided abroad for justifiable reasons; and, secondly that individuals should be enabled to avoid the consequence of loss of nationality through residence abroad by registering with the authorities of their nationality or by making a declaration of intention to retain their nationality.

Mr. TYABJI (Pakistan) explained that, having seen the text of the Netherlands amendment to article 7, which had been distributed only after the submission of his own sub-amendment, he wished to resubmit his original amendment (A/CONF.9/L.17), which he had withdrawn, and to propose that the additional phrase contained therein be added to the first sentence of the Netherlands amendment.

Mr. RIPHAGEN (Netherlands) said that he failed to understand on what grounds the United Kingdom representative could assert that the Netherlands amendment left a gap between natural-born nationals and naturalized persons. The first sentence stated the general principle that no person should lose his nationality on the grounds listed. The second and third sentences referred to exceptions to the general principle in the case of two classes of persons.

Mrs. TAUCHE (Federal Republic of Germany) said that, despite her preference for the text of article 7, paragraph 3 in the draft convention on the elimination of future statelessness, in a spirit of compromise she had participated in the drafting of the joint amendment, of which there was a revised text (A/CONF.9/L.27/Rev.1) containing in line 2, the words "other than by naturalization". The inclusion of those words was not welcome to her delegation, first, because it was essential to define clearly each of the groups to whom paragraph 3 applied and secondly because the word "naturalized", as used both in the joint amendment and in the Netherlands amendment, was itself ambiguous.

If the text of article 7, paragraph 3, in the draft convention on the elimination of future statelessness were not acceptable to the Committee, she would be inclined to favour the Netherlands amendment, with some clarification of the word "naturalized". The third sentence of the Netherlands amendment should contain a reference not only to persons born outside the State who had acquired its nationality at birth but also to persons born outside the State who had acquired its nationality at some later time. It would be unfair if the former were required to register in order to retain their nationality whereas the latter were not.

Mr. IRGENS (Norway) asked whether the sponsors of the joint amendment would agree to the insertion of the words "as well as his parents", after the words "If the person", in the second sentence. That change would prevent successive generations of the same family residing in one country while retaining the nationality of another.

Mr. RIPHAGEN (Netherlands), replying to the representative of the Federal Republic of Germany, said that in his delegation's amendment the word "naturalized" was used in the narrowest possible sense.

Mr. ROSS (United Kingdom) proposed that a new working group, to include the Netherlands representative, be set up to make a further study of article 7, paragraph 3 of the draft convention on the reduction of statelessness.

It was decided to set up a Working Group composed of the representatives of Canada, Denmark, the Federal Republic of Germany, Italy, the Netherlands and Pakistan to make a further study of article 7, paragraph 3 and report back to the Committee.

The meeting rose at 12.10 p.m.