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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE ELEVENTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 8 April 1959, at 4 p.m.

Chairman: Mr. LARSEN (Denmark)

Secretary: Mr. LIANG, Executive Secretary of the Conference

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

A list of documents pertaining to the Conference was issued as document A/CONF.9/L.79.

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(10 p.)

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/L.1) (continued

Article 7 (A/CONF.9/L.17, L.27/Rev.1, L.28, L.31, L.35) (concluded)

The CHAIRMAN said that he had been asked by the sponsors of the amendment (A/CONF.9/L.35) to article 7, paragraph 3 of the draft convention submitted jointly by the delegations of Canada, Denmark, the Federal Republic of Germany, Italy and the Netherlands to make some observations on its contents.

In paragraph 4 of the joint amendment, the question whether an express reference to residence in the naturalized person's country of origin should be included was the subject of reservations by all the sponsors.

The sponsors had considered the suggestion made by the representative of the Holy See that there should be some assurance that the provisions of paragraph 4 of the joint amendment would if embodied in the convention be brought to the notice of the persons affected by it. It had been found impossible to include a provision to that effect in the paragraph, but the final act of the Conference might perhaps recommend States to endeavour to bring the clause to the notice of such persons.

In paragraph 4 the sponsors had intended the word "naturalized" to be understood in the sense current in international law, in accordance with the concepts of which naturalization meant the grant of nationality at the discretion of the State concerned. If a State granting nationality had no such discretion it would not, for the purposes of paragraph 4, be understood to have naturalized a person even if it followed a procedure similar to that of naturalization. The sponsors considered that a statement to that effect should appear in the final act of the Conference and some delegation might usefully prepare a draft to that end.

The representative of Pakistan had been unable to join in sponsoring the amendment and maintained his delegation's amendment (A/CONF.9/L.17) on the understanding that it would relate to paragraph 3 of the joint amendment and not to article 7 of the Commission's draft. In consequence of the submission of the joint amendment, the amendments submitted jointly by the delegations of Canada, Denmark and the Federal Republic of Germany, by the delegation of Pakistan and by that of the Netherlands (A/CONF.9/L.27/Rev.1, L.28 and L.31) would be withdrawn.

Mr. TYABJI (Pakistan) moved his delegation's amendment on that understanding. He had not been convinced that its point of view was inconsistent with the spirit of the convention. His amendment was intended to ensure the right of his country to withdraw its nationality from persons who showed no evidence of a desire to preserve it. But his Government had no intention whatever of depriving Pakistan citizens of their nationality by refusing their registration with a Pakistan mission.

Mr. BERTAN (Turkey) said that although the provision concerning loss of nationality in the joint amendment previously submitted by Canada, Denmark and the Federal Republic of Germany did not apply to countries like Turkey, which followed the jus sanguinis principle, he was willing to accept it if considered necessary by jus soli States. The same remark applied to the second paragraph of the Netherlands amendment. However, Turkey, which automatically and immediately conferred its nationality on immigrants of Turkish race, insisted upon retaining the right to withdraw that nationality. There was a close connexion between article 7, paragraph 3 and article 8, and his delegation reserved its position on article 8 for the reasons he had given.

Mr. SUBARDJO (Indonesia) observed that his delegation had the same difficulty in accepting the joint amendment as had the delegation of Pakistan. The nationality legislation of his country provided for the reacquisition of Indonesian nationality on condition that the persons in question returned to Indonesia.

Mr. HELLBERG (Sweden) expressing his reluctance to accept the joint amendment, considered it unreasonable that a person of Swedish descent born abroad in a jus sanguinis country should have the right to retain a purely artificial Swedish nationality in spite of the fact that his parents - perhaps even grand-parents - had had ample opportunity of acquiring the nationality of the country of residence. If such a person became stateless it was entirely his own fault. The Swedish delegation would therefore abstain from voting on the joint amendment.

Sir Claude COREA (Ceylon) regarded the joint amendment as a considerable improvement on previous drafts. It was well that, apart from the addition of the words "subject to the following provisions", the original text of article 7, paragraph 3 of the International Law Commission's draft had been substantially retained in paragraph 3 of the joint amendment.

The provision in paragraph 4 of the joint amendment recognizing the right of States to protect their interests by legislation was particularly welcome. He proposed however that the words "of not less than seven consecutive years" should be deleted since they were in conflict with the principle that the State had an unfettered right to specify the admissible length of residence abroad.

Paragraph 5 of the joint amendment was superfluous and should be deleted. There would be provision in articles 1 and 4 of the draft convention for all categories of person except those covered by paragraph 4 of the joint amendment. Should the Committee approve paragraph 5, the question arose whether the word "registration" meant a declaration of intention to retain the nationality. If so, the principle was acceptable but should be couched in clearer language.

It would be in keeping with the spirit of compromise to incorporate the Pakistan amendment.

Mr. MENDOZA (Peru) said that the nationality law of his country provided for the loss of Peruvian nationality by naturalized Peruvians resident abroad for more than two years unless they could prove that they had retained an effective vinculum with Peru.

Mr. SIVAN (Israel) congratulated the sponsors of the joint amendment on their success in combining the best points of the various proposals previously submitted. He had, however, some difficulty in understanding why the words "if he fails to declare to the appropriate authorities his intention to retain his nationality" had been added to paragraph 4, because he had no recollection of that provision having been previously discussed. It was widely recognized that countries of immigration granted their nationality more easily than other countries, but there was all the more need for them to insist that persons naturalized by them should maintain a more effective connexion than the mere expression of the desire to retain their nationality. The nationality law of Israel provided for the loss of Israel nationality if a naturalized citizen resided abroad for seven consecutive years and had no effective connexion with Israel. Deprivation of nationality was not automatic in such cases since it was necessary for the State to prove that the person had in fact resided abroad continuously for seven years and had severed his connexions with the country.

There were also further legal safeguards. He therefore proposed that the words in question be deleted from paragraph 4. If that proposal were rejected, he would propose that the words "or if he has no effective connexion with such State" be added at the end of the paragraph.

Mr. SCOTT (Canada) said that he understood the word "registration" in paragraph 5 of the joint amendment in the same sense as the representative of Ceylon. There was no necessity to use more precise language in the convention and such questions could in any event be left to the Drafting Committee.

With regard to the Ceylonese proposal that paragraph 5 should be deleted, the provisions of article 4 of the convention were certainly relevant to article 7. Article 4 however dealt merely with acquisition of nationality and not with its loss. A problem arose in connexion with article 7 for countries which followed a more generous course than that laid down in article 4, and paragraph 5 of the joint amendment was necessary in order to take their position into account. Whereas the original joint amendment of Canada, Denmark and the Federal Republic of Germany (A/CONF.9/L.27/Rev.1) and the Netherlands amendment (A/CONF.9/L.31) had referred to persons born outside the territory of the contracting State, paragraph 5 of the joint amendment under discussion was more specific in that it referred only to persons who had never resided in the territory of the contracting State.

His delegation could not support that limitation without instructions from the Canadian Government and therefore found it necessary to reserve its position on that matter when discussion of article 7 was resumed in plenary meeting.

Mr. LEVI (Yugoslavia) said that he could support paragraph 5 of the joint amendment the provisions of which were less liberal than the nationality laws of his country.

Since no distinction was made in Yugoslav nationality law between naturalized persons and other nationals he proposed the deletion from paragraph 4 of the word "naturalized" which in any case represented no substantive addition to the provisions of the article.

Sir Claude COREA (Ceylon) thanked the Canadian representative for his clarification of the meaning of the word "registration" in paragraph 5 of the joint amendment. He would reiterate his suggestion that if that paragraph were adopted the Drafting Committee should find a clearer substitute for the word. It might be possible to agree on some such wording as "declaration of intention to retain nationality".

The Canadian representative's view that article 4 of the draft convention was concerned with the acquisition and not with the loss of nationality was correct. It was article 7 which was concerned with loss of nationality, and paragraph 5 of the joint amendment dealt with persons born outside the territory of the Contracting State concerned. His point was that such persons would already have acquired nationality under the provisions of article 1 of the draft convention. Since all possible cases not coming under articles 1 and 4 were covered by paragraphs 3 and 4 of the joint amendment he still failed to see why paragraph 5 was necessary and maintained his proposal that it should be deleted.

Mr. HILBE (Liechtenstein) said that although he would have preferred to leave the article as it stood in the International Law Commission's text, nevertheless in a spirit of compromise his delegation would vote in favour of the joint amendment. At the same time, since the joint amendment was in any case the result of a compromise, a further concession should be made to incorporate the Pakistan amendment.

Rev. Father de RIEDMATTEN (Holy See) said that he would vote for the joint amendment, although there were dangers in enumerating exceptions to the provisions of the article.

Like the representative of Liechtenstein, he failed to see why the Pakistan amendment could not be incorporated. It would however be out of place in paragraph 3 of the joint amendment since its wording was not consistent with the opening phrase of the paragraph.

The Ceylonese proposal for the deletion of the words "of not less than seven consecutive years" should be acceptable to the sponsors of the joint amendment. Since there was provision in the paragraph for a declaration by a naturalized person of his intention to retain his nationality there seemed to be no necessity to specify the period of residence abroad.

Mr. TYABJI (Pakistan) supported the Yugoslav proposal for the deletion of the word "naturalized" in paragraph 4 of the joint amendment.

The amendment of the delegation of Pakistan (A/CONF.9/L.17) to article 7 was rejected by 12 votes to 8, with 8 abstentions.

Paragraph 3 of the joint amendment (A/CONF.9/L.35) was approved by 22 vot to 5, with 3 abstentions.

The Yugoslav representative's proposal that the word "naturalized" be deleted from paragraph 4 of the joint amendment was rejected by 16 votes to 5 with 8 abstentions.

The proposal of the representative of Ceylon that the words "of not less seven consecutive years" be deleted from paragraph 4 of the joint amendment wa rejected by 13 votes to 6, with 10 abstentions.

The Israel representative's proposal that the words "or if he has no effe connexion with that State" be added at the end of paragraph 4 was rejected by 11 votes to 3, with 15 abstentions.

The Israel representative's proposal that the words "by operation of law be inserted immediately after the words "may lose his nationality" was rejected by 8 votes to 1, with 19 abstentions.

Paragraph 4 of the joint amendment was approved by 17 votes to 3, with 8 abstentions.

Paragraph 5 of the joint amendment was approved by 17 votes to 3, with 10 abstentions.

Article 7 as a whole and as amended was approved by 18 votes to 4, with 8 abstentions.

Mr. SIVAN (Israel) said that it had been suggested to him that his apprehensions regarding paragraph 4 of the text just approved were groundless since article 7 related to loss of nationality only by operation of law; if that were indeed so - and, in the absence of any other interpretation, he would assume that such was the view of the Conference - it would become easier for his delegation to vote in plenary for the text just approved for article 7.

Article 8 (A/CONF.9/L.11, L.14, L.19, L.32), and article 1 (resumed from the fifth meeting)

Mr. ROSS (United Kingdom) said that his delegation had submitted a new text for article 8 (A/CONF.9/L.11) because it considered the International Law Commission's text for that article unsatisfactory in several respects.

To deprive persons of their nationality so as to render them stateless should certainly be an exceptional step and the freedom of States to deprive persons of their nationality should be severely circumscribed by means of

appropriate clauses in the convention; but the exceptions permitted by the International Law Commission to the rule that a party must not deprive its nationals of their nationality if such deprivation would render them stateless were not sufficient. His delegation did not wish to see those exceptions extended in respect of natural-born citizens but they should be extended, as proposed in paragraph 2 (b) of the United Kingdom amendment, so as to enable parties to deprive of their nationality naturalized persons who had obtained their nationality by fraud or who committed acts of treachery or were disloyal, even if such deprivation rendered the person in question stateless. The International Law Commission had discussed the question of persons obtaining a nationality by fraud; in the report on its fifth session (A/2456, paragraph 151) it had agreed that there was no need to include in the convention a clause regarding such cases because it might be argued that where the grant of nationality had been induced by fraud, the grant would be "void ab initio". In the United Kingdom, however, a person who obtained British nationality by fraud retained that nationality until he was deprived of it by the authorities.

Under the draft text for article 8 a person could be deprived of his nationality if he voluntarily - and in disregard of an express prohibition - entered or continued in the service of a foreign country; a fortiori the party whose nationality he possessed should be empowered to deprive him of that nationality if he committed acts of treason or disloyalty. In view of the terms of paragraph 3 of his delegation's text and of those of article 9, there should not be many cases of persons becoming stateless because of the inclusion of the additional clauses proposed by his delegation.

His delegation had omitted from its text the words "by way of penalty or on any other ground" since they were both unnecessary and obscure.

The words in the draft "in accordance with due process of law" might mean anything or nothing. Some might argue that they meant in accordance with any law. What was required was a clause to prevent persons to whom the article would apply from being deprived of their nationality by virtue of arbitrary decisions of the executive. It was not clear what was meant by the words "recourse to judicial authority" in the International Law Commission's text;

did they mean that a court of law should decide whether the person concerned should be deprived of his nationality? The administrative decision should be reviewed by "an independent body of a judicial character", as was stated in paragraph 3 of his delegation's amendment. That was the practice in the United Kingdom.

The French delegation had proposed the substitution of the word "jurisdictional" for the word "judicial" (A/CONF.9/L.14). The word "jurisdictional" would have little meaning in the context because in English it meant only "having jurisdiction", and every body had some jurisdiction.

The words between square brackets in his delegation's text had been included before any decision had been taken on article 1 and were no longer necessary.

Paragraph 2 (b) (iv) of his delegation's amendment should be revised in keeping with the text approved for article 7.

Paragraph 4 of his delegation's text was a new provision intended only for avoidance of doubt.

The CHAIRMAN recalled that during consideration of article 1 at the fifth meeting it had been decided that the third proposal in the Belgian amendment (A/CONF.9/L.19) would be considered in connexion with article 8.

Mr. HERMENT (Belgium) considered that the Committee should deal with the Belgian amendment independently of the United Kingdom text for article 8 and before it dealt with that text. His delegation's proposal was self-explanatory. Its purpose was to enable parties to withhold their nationality from persons to whom article 1 as drafted applied and who had been sentenced for a criminal act to imprisonment for a long term or had committed an act detrimental to the party's national security. Since article 1 would apply mainly to young people it was not likely that many persons would be affected by the amendment, but it was necessary to include it as a protection against the few who would be affected.

Mr. HUBERT (France) said that France had always been very liberal towards persons seeking refuge in its territory and for that very reason could not renounce the application to those persons who might prove to be unworthy of that liberality of measures in protection of its nationality that it

considered lawful, which no one could accuse it of having abused. He therefore viewed the Belgian amendment with sympathy. It might perhaps be amended to read "on the person not having shown himself to be obviously unworthy, for example by engaging in an activity detrimental to national security or having committed a criminal act for which he was sentenced to imprisonment for a term of not less than five years". If that suggestion were accepted he would withdraw paragraph 1 of his delegation's amendment (A/CONF.9/L.14) to the United Kingdom amendment.

The meeting rose at 6.15 p.m.