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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE THIRTEENTH MEETING

held at the Palais des Nations, Geneva,
on Friday, 10 April 1959, at 10.15 a.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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(13 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 1 (A/CONF.9/L.42) (continued)

Mr. HARVEY (United Kingdom) said that the text (A/CONF.9/L.42) submitted by the Drafting Committee for an additional sub-paragraph to article 1, paragraph 2 of the draft convention and purporting to reproduce the sense of the oral amendment submitted by the French representative at the eleventh meeting and approved by the Committee at its twelfth meeting*, did not in fact give the sense of that amendment as his delegation had understood it when it was put to the vote.

There seemed to be three different interpretations of the oral amendment in question. Some delegations regarded it as meaning that nationality might be withheld from a stateless person if he had been convicted of an offence prejudicial to national security: others, as meaning that nationality might be withheld if the stateless person had committed an offence prejudicial to national security, whether or not he had been charged and convicted, and others, as meaning that nationality might be withheld if the stateless person had acted in a manner prejudicial to national security, regardless of whether he had committed an offence against the national laws of the contracting State. The Drafting Committee had adopted the third interpretation.

Had his delegation shared that interpretation of the oral amendment at the time when it had been submitted, it would have voted against it. Owing to the misunderstanding which had arisen, he wished to submit two alternative amendments to the Drafting Committee's text and to that end he moved that discussion of the additional sub-paragraph to article 1, paragraph 2, be re-opened.

Sir Claude COREA (Ceylon) opposed the United Kingdom motion on the ground that delegations which had not understood the oral amendment submitted at the Committee's twelfth meeting should have asked for clarification before voting took place. Completion of the Committee's work would be delayed indefinitely if discussion of proposals already adopted were to be re-opened at the request of delegations who said that they had misunderstood the proposals.

The CHAIRMAN put to the vote the United Kingdom motion that discussion of the additional sub-paragraph to article 1, paragraph 2, be re-opened.

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* See A/CONF.9/C.1/SR.11, p.10 and A/CONF.9/C.1/SR.12, p.7.

The result of the voting was as follows: 15 for, 9 against, and 8 abstentions.

The CHAIRMAN ruled that, the United Kingdom motion not having obtained the two-thirds majority of representatives present and voting required under rule 23 of the rules of procedure, discussion of the additional sub-paragraph to article 1, paragraph 2, could not be re-opened.

Article 11 (A/CONF.9/L.37, A/CONF.9/L.41) (resumed from the ninth meeting)

The CHAIRMAN, speaking as the representative of Denmark, observed that some delegations favoured the establishment of an agency to act on behalf of stateless persons as envisaged in article 11, paragraph 1 of the draft convention, but were opposed to the establishment of a tribunal for deciding disputes between Parties concerning the interpretation or application of the convention, as envisaged in the following paragraph. Other delegations were unlikely to support the establishment either of the agency or of the tribunal.

His delegation was therefore proposing that the provisions of article 11 be deleted from the convention altogether and included in a separate protocol. States which accepted the remaining provisions of the convention and were in favour of the establishment of an agency and a tribunal could then sign both the convention and the protocol. States which opposed the establishment of the agency or the tribunal or both would be able to sign the convention only.

Article 1 of the draft protocol submitted by his delegation (A/CONF.9/L.37) was similar in content to article 11 of the International Law Commission's draft convention. Article 2 of the draft protocol allowed States which were in favour of the agency but opposed to the tribunal to make a reservation to that effect. The remaining two articles were merely formal in character.

Mr. LIANG, Executive Secretary of the Conference, said that the Secretariat had prepared two models for an optional protocol of signature, which were circulated as document A/CONF.9/L.41.

The first model (Annex A) was similar in substance to the draft protocol submitted by the Danish delegation with the exception that whereas the Danish draft protocol dealt with the establishment of the agency, Annex A was drafted on the assumption that the agency was established under the terms of the convention.

The second model (Annex B) was quite different in essence from the Danish draft protocol as it referred only to jurisdiction by the International Court of Justice in disputes between States.

The two models were submitted to the Committee for reference only and were not in any sense intended as substitutes for the Danish draft protocol.

The CHAIRMAN observed that delegations might desire some further time for considering the models of optional protocols of signature, and suggested that further consideration of the matter be deferred until a later meeting.

It was so agreed.

Article 13 (resumed from the ninth meeting)

The CHAIRMAN, speaking as the representative of Denmark, repeated the proposal made by the representative of Brazil at the Committee's ninth meeting, that the right to make a reservation under article 13, paragraph 1, be confined to the first six States ratifying or acceding to the convention. The seventh, eighth and ninth States ratifying the convention would know exactly where they stood, since the convention would already be in force. They could first make the necessary changes in their legislation before ratifying or acceding to the convention. In their case, the right to make the reservation referred to in paragraph 1 was unnecessary.

Mr. TSAO (China) did not agree with the Chairman's proposal. It might be that the first six ratifications would be made three months after the signature of the convention and the seventh ratification only five or six months later. If the Chairman's proposal were adopted, the seventh State to ratify the convention would be deprived unjustly of its right to make a reservation.

Mr. JAY (Canada) said that the difficulty to which the Chairman had drawn attention might be overcome if amendments were made both to article 13, paragraph 1, and to article 14. In article 13, paragraph 1, the words "for a period not exceeding two years" might be replaced by the words "until the entry into force of the convention" and in article 14 the words "on the ninetieth day" be replaced by the words "two years", or "one year" if the Committee preferred a shorter period.

Mr. HERMENT (Belgium) said that he failed to see why States should not be required to execute the convention immediately after ratification.

Mr. CARASALES (Argentina), seeing no reason to provide for the possibility of making a reservation at the time of signature, proposed that the word "signature" be deleted from paragraph 1.

Mr. LEVI (Yugoslavia), agreeing with the previous speaker, said that the only reservation which could possibly be made at the time of signature was "subject to ratification".

Mr. HARVEY (United Kingdom) said that the representative of Argentina had raised a point which the United Kingdom delegation had brought up when the article had first been discussed. It was hard to understand what real meaning could be attached to a reservation made by a State at the time of signature reserving its right not to implement the convention for two years. Such a reservation could be made only at the time of ratification. For the sake of clarity the word "signature" and the comma following it should certainly be deleted.

The CHAIRMAN, speaking as the representative of Denmark, supported the amendment proposed by the United Kingdom representative.

The amendment was approved.

Mr. BUSHE-FOX (United Kingdom) said that his delegation would have some difficulty in accepting the suggestion that the application of the convention should be postponed for a certain period after it had been ratified. It was inconsistent with the general principle that a convention should not be ratified by a country unless it was in a position to give effect to it.

The Committee was dealing with a situation in which a convention would enter into force when there had been a comparatively small number of ratifications. It was unlikely that the initial small number of ratifications would be prevented from being obtained simply because some countries were unwilling to make the necessary legislation effective until there was a measure of reciprocity on the part of other States. To that extent the assumption on which the procedure suggested in paragraph 1 of the article was based was questionable; even if it were limited to the first six Parties which ratified, it might still be possible for the convention to be in force in theory though its application was postponed for a considerable period. A convention should be applied from the moment it entered into force; the United Kingdom delegation must therefore continue to oppose paragraph 1 of the article.

Mr. HERMENT (Belgium), supported by Mr. TYABJI (Pakistan), associated himself with the United Kingdom representative's statement and proposed the deletion of paragraph 1.

The Belgian representative's proposal was adopted by 13 votes to 5, with 13 abstentions.

The CHAIRMAN said that as a result of the deletion of paragraph 1 paragraph 2 would be referred to the Drafting Committee.

Article 14 (resumed from the ninth meeting and concluded)

The CHAIRMAN, speaking as the representative of Denmark, said that as a result of the vote on article 13, paragraph 1, he wished to propose that the words "on the ninetieth day" in article 14, paragraph 1 be replaced by the words "two years". In that connexion a number of conventions adopted in recent years had not yet been ratified because of the time taken by the legislative processes of some States.

Mr. HERMENT (Belgium) supported by Mr. BEN-MEIR (Israel), suggested a period of one year.

Mr. JAY (Canada), supported by Mr. TSAO (China), pointed out that, although he understood why certain representatives thought that the period specified in paragraph 1 should be reduced, the legislative processes in some countries took longer than one year to complete. His delegation therefore supported the Danish amendment.

Mr. CARASALES (Argentina) said that as the date of entry into force of the convention would be linked with the number of instruments of accession or ratification deposited, if the Committee accepted the Danish amendment the necessary number of ratifications should be reduced to three.

Mr. BUSHE-FOX (United Kingdom) observed that it was normal that a convention or treaty should not be ratified unless it was possible within domestic law for a State to give effect to it. He would agree however that in the case of the convention under consideration it would be proper to provide a much longer period than usual. The voting on article 13, paragraph 1 had taken place in the knowledge that an amendment would be proposed to article 14, paragraph 1, and if a relatively short period for the entry into force after deposit of a certain number of ratifications were retained it would be somewhat unfair to those delegations which had voted for the deletion of article 13, paragraph 1.

Mr. HERMENT (Belgium) pointed out that States could prepare amendments to their domestic legislation before the convention entered into force.

Mr. RIPHAGEN (Netherlands) considered that the two paragraphs of the article were connected and that paragraph 2 would have to be amended if the Danish amendment to paragraph 1 were adopted.

The CHAIRMAN, speaking as the representative of Denmark, disagreeing, pointed out that the words "subsequently to the latter date" in paragraph 2 referred to the date on which the convention entered into force.

Mr. JAY (Canada) said that paragraph 2 referred to States which ratified the convention after it had entered into force. He could accept the change proposed in paragraph 1 but would have to vote against a similar amendment being made to paragraph 2.

Mr. LEVI (Yugoslavia) suggested that if the words "subsequently to the latter date" in paragraph 2 were replaced by the words "after the entry into force of the convention" the difficulties of certain delegations might be removed.

Mr. BUSHE-FOX (United Kingdom) said that the Yugoslav suggestion did not solve the problem, since it would entail a further amendment of paragraph 2 to cover the case of States which became Parties to the convention between the date of deposit of, say, the sixth ratification and the date of entry into force of the convention.

Mr. JAY (Canada) considered it otiose to make provision for the States which the United Kingdom representative had in mind.

Mr. BEN-MEIR (Israel) suggested that the Committee should decide forthwith on the number of ratifications necessary to bring the convention into force.

The CHAIRMAN, speaking as the representative of Denmark, recalled that at the Geneva Conference on the Status of Refugees, the Danish delegation's suggestion that two ratifications should be sufficient to bring the convention on the status of refugees into force had been rejected and the figure of six had finally been agreed on. He therefore proposed that the convention on the reduction of future statelessness should enter into force after six instruments of ratification or accession had been deposited.

Mr. SCHMID (Austria), Mr. JAY (Canada) and Mr. ROSS (United Kingdom) supported that proposal.

The proposal was approved by 29 votes to none, with 3 abstentions.

The Danish amendment to article 14, paragraph 1 that the words "on the ninetieth day" be replaced by the words "two years" was approved by 19 votes to 3, with 9 abstentions.

Mr. TSAO (China) said that he had voted for the period of two years as a matter of principle and suggested that the text of paragraph 1 be referred to the Drafting Committee.

It was so agreed.

Article 14, paragraph 1, as amended, was approved by 29 votes to none, with 5 abstentions.

Mr. LEVI (Yugoslavia) asked that the amendment he had proposed to paragraph 2 should be referred to the Drafting Committee.

Article 14, paragraph 2 was approved.

Article 14, as a whole and as amended, was approved by 29 votes to none with 3 abstentions.

New draft article (A/CONF.9/L.38)

The CHAIRMAN, speaking as the representative of Denmark, proposed the inclusion in the convention of a new draft article (A/CONF.9/L.38) to the effect that the provisions of the convention should be without prejudice to any provisions more favourable to the reduction of statelessness contained in the laws of any Contracting State or contained in any other convention between two or more Contracting States.

Mr. JAY (Canada), Mr. ROSS (United Kingdom) and Rev. FATHER DE RIEDMATTEN (Holy See) supported the Danish proposal.

The CHAIRMAN put the Danish proposal (A/CONF.9/L.38) to the vote.

The Danish proposal was adopted unanimously.

Effect of the convention: report of the Working Group (A/CONF.9/L.30) (resumed from the sixth meeting)

Mr. MEYER (Switzerland), introducing the report (A/CONF.9/L.30) of the Working Group on the effect of the convention set up at the sixth meeting,

observed that both draft conventions prepared by the International Law Commission had provided for the acquisition of nationality at birth. It was clear therefore that articles 1 to 4 of those draft conventions would have applied only to children born after the conventions had entered into force.

The new draft approved by the Committee however had adopted another system which, in addition to automatic acquisition of a nationality at birth, established that nationality might be conferred after birth on stateless persons who lodged an application when they reached the age of eighteen. If that provision were only applied to persons born after the convention had come into force, a State making use of its reservations under article 1, paragraph 2(a) might defer the application of article 1 by 18 years, which would be manifestly absurd. The Working Group had encountered no difficulty in drafting a text which would provide for the application of paragraphs 1 and 2 of article 1 not only to persons born after the convention came into force but also to persons born before it came into force, so long as they satisfied the conditions which a Party demanded of them.

It had been further decided that the time of application for the provisions of article 4 should be the same as that for article 1, paragraphs 1 and 2; and paragraph 1 of the proposed new article thus coupled articles 1 and 4 together in the opening words "A Contracting Party which does not grant its nationality at birth by operation of law in accordance with articles 1 or 4".

The Working Group had decided on a slightly different arrangement for the operation of article 1, paragraph 3. Article 2, dealing with foundlings, should clearly apply only to abandoned children found after the entry into force of the convention, whose main purpose was the reduction of future statelessness. No special provision seemed to be required concerning the time of application of article 3, which did not in itself give grounds for the acquisition of nationality and was merely an appendage to article 1. Finally, it was quite clear that articles 5 - 9 could only apply to a loss of nationality occurring after the entry into force of the convention. The Working Group had mentioned those articles in its draft, on the proposal of the representative of Israel, but the reference could be deleted if the Committee wished.

Mr. ROSS (United Kingdom), supporting the draft article prepared by the Working Group, emphasized that under it a country granting nationality at

birth under articles 1 or 4 was not obliged also to confer it on persons born before the convention came into force, though it still had freedom to do so if it wished.

Mr. HERMENT (Belgium), supported by Mr. BACCHETTI (Italy), criticized the use of the negative in paragraph 2 of the draft article. He would have preferred a draft similar to that of paragraph 1, namely "Paragraph 3 of article 1 shall apply in regard also to persons who were born before the convention comes into force".

Mr. ROSS (United Kingdom) said that the use of the negative in paragraph 2 of the draft article was justified. The sense of the paragraph was that if a person born before the convention came into force and entitled to apply for nationality under article 1, paragraph 1(b) failed to do so, he would not be debarred from applying under article 1, paragraph 3 by the mere fact of his having been born before the convention came into force.

Mr. MEYER (Switzerland) observed that the text proposed by the representative of Belgium was acceptable and might be referred to the Drafting Committee.

Mr. HERMENT (Belgium) suggested that paragraph 4 of the draft article as it stood might have some awkward consequences. He could not believe that the Working Group really intended that provisions as to loss of nationality under articles 8 or 9 should apply only to events occurring after the entry into force of the convention.

Mr. BEN-MEIR (Israel) said that paragraph 4 of the draft article had been included at his suggestion and approved by the Working Group without discussion. He would be the first to admit that the wording had not received adequate consideration by the Group and that the objections of the Belgian representative were sufficiently well-founded in respect of article 8 to justify further examination by that body.

The CHAIRMAN suggested that paragraph 4 of the draft article might be referred back to the Working Group for further consideration.

It was so agreed.

The CHAIRMAN declared closed the discussion on paragraphs 1, 2 and 3 of the draft article contained in the report of the Working Group on the effect of the convention (A/CONF.9/L.30).

He put to the vote, separately, paragraphs 1, 2 and 3 of the draft article.

Paragraphs 1, 2 and 3 of the draft article were adopted unanimously.

Territorial application clause (A/CONF.9/L.26 and L.29)

Mr. HERMENT (Belgium) said that his delegation's proposal for a territorial application clause (A/CONF.9/L.29) should be regarded as an amendment to the United Kingdom proposal on the same subject (A/CONF.9/L.26).

Mr. HARVEY (United Kingdom) said that from a procedural point of view his delegation could accept the Belgian representative's statement.

The new article proposed by the United Kingdom delegation already appeared in the Convention on the Nationality of Married Women. His delegation had considered it necessary to submit the clause because the organization of the British Commonwealth was extremely complex and included lands in various stages of constitutional development. Her Majesty's Government in the United Kingdom was completely responsible for the government of some small territories, but there were also States within the Commonwealth which enjoyed complete independence. Some members of the British Commonwealth were at a half-way position: although the United Kingdom was responsible for their international relations they had their own nationality laws. The purpose of the proposed clause was to ensure that the United Kingdom Government, when it signed and ratified the convention, would not be binding itself in respect of territories which were autonomous in regard to their nationality laws, although it was responsible for their international relations.

The difference between the two proposals before the Committee was one of form only. If the Committee preferred the Belgian proposal the United Kingdom delegation would vote for it, otherwise it would probably abstain.

Mr. HERMENT (Belgium) said that the Belgian delegation had been unable to support the Convention on the Nationality of Married Women referred to by the United Kingdom representative. The Belgian proposal before the Committee was based on a clause in the Convention relating to the Status of Stateless Persons.

Mr. CARASALES (Argentina) expressed the view that there was a substantial difference between the two drafts before the Committee. In the United Kingdom draft a distinction was made between three classes of territory, namely, the metropolitan territory, non-metropolitan territories which had gained a certain

degree of independence and which would have to be consulted by the Contracting State responsible for them and non-metropolitan territories which had not gained that degree of independence and would therefore not have to be consulted by the Contracting State concerned. Under the United Kingdom proposal the convention would automatically apply to the first and third classes and the Contracting State would merely have to submit a list of such territories.

The Belgian draft, on the other hand, left a State entirely free to decide whether or not the convention should be applied to non-metropolitan territories which did not have to be consulted. The Argentine delegation would therefore prefer the United Kingdom proposal. Argentina was opposed to all colonial systems and in that attitude was supported by all Latin American countries.

Mr. LEVI (Yugoslavia) said that he had received instructions from his Government to vote against both the United Kingdom and the Belgian proposals as the Yugoslav Government opposed all territorial clauses as a matter of principle.

Mr. SUBARDJO (Indonesia) supported that view.

Mr. HUBERT (France) said that he could accept paragraph 1 of the Belgian proposal subject to certain drafting changes which he would suggest to the Drafting Committee. Paragraph 2 of the proposal was also acceptable but the final words of paragraph 3, beginning from the words "subject, where necessary", should be deleted.

Mr. HERMENT (Belgium) accepted that amendment.

Mr. TSAO (China) said that he understood that the intention of the United Kingdom proposal was not to discriminate against any of the territories for whose international relations it was responsible, but rather to respect their rights. It was for that reason that his delegation had been able to support the similar clause in the Convention on the Nationality of Married Women and would support the inclusion of the clause proposed by the United Kingdom delegation.

He agreed with the Argentine representative's comment on the Belgian proposal and would abstain from voting on it.

Mr. KANAKARATNE (Ceylon) suggested that the Committee should first consider whether a territorial clause was required. If it decided in the affirmative the Drafting Committee could decide on the type of clause to be included.

Mr. TYABJI (Pakistan) said that his delegation did not regard the Belgian proposal as an amendment to the United Kingdom proposal. Under the rules of procedure the latter, which had been submitted first, should be voted on first.

Mr. HARVEY (United Kingdom) said that he could not agree that the Drafting Committee should decide what type of territorial clause should be included in the convention. The two proposals before the Committee were based on similar texts which already appeared in other conventions and had thus been carefully considered by various drafting committees.

Referring to the Pakistan representative's suggestion, he would point out that the United Kingdom delegation had already accepted the Belgian proposal as an amendment to its own proposal.

The CHAIRMAN ruled that the Belgian proposal should be voted on first. It would be difficult for the Drafting Committee to prepare a third text for consideration by the Committee.

The Belgian proposed new article containing a territorial application clause (A/CONF.9/L.29), as amended, was approved by 12 votes to 9, with 11 abstentions.

The meeting rose at 1.10 p.m.