

**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 FIFTEENTH MEETING

held at the Palais des Nations, Geneva,
on Saturday, 11 April 1959, at 10 a.m.

Chairman:

Mr. LARSEN (Denmark)

Secretary:

Mr. LIANG, Executive Secretary of
the Conference

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of specialized agencies and of intergovernmental and non-governmental
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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/L.1) (continued)

Article 8 (A/CONF.9/L.11 and Corr.1, L.25, L.32, L.36, L.45, L.46) (continued)

Mr. SCHMID (Austria) said that his delegation could not support paragraph 2 (b) of the United Kingdom amendment (A/CONF.9/L.11) to article 8 of the draft convention since Austrian law did not differentiate between natural-born and naturalized citizens; in a spirit of compromise, however, it would not vote against the paragraph.

His Government would not be willing to sign a convention which would force it and others like it in Europe to accept countless refugees, whereas overseas countries were able to pick and choose their new nationals. His delegation would therefore vote against any provision in the convention which would create more cases of statelessness in the future.

Paragraph 2 (b) (i) giving a party the power to deprive a person of his nationality on the ground of false representation or fraud for the purpose of obtaining the party's nationality might with advantage be replaced by a stipulation that nothing in paragraph 2 should be construed as preventing a State from declaring null and void nationality which had been acquired by fraud. He would welcome such an amendment since the provision as drafted raised some difficulties for the Austrian delegation.

Rev. Father de RIEDMATTEN (Holy See) said that he was not in favour of listing the grounds on which a party might deprive one of its nationals of nationality; it would be better to amend article 13 to provide for reservations by parties relating to deprivation of nationality.

The question arose whether a minor who had acquired nationality through the naturalization of his parents would be within the scope of paragraph 2 (b): there were no grounds for making a distinction between such a minor and a natural-born citizen. Difficulties would certainly arise if a distinction were made between natural-born and naturalized citizens in the matter of deprivation of nationality. Paragraph 1 of the Turkish delegation's amendment (A/CONF.9/L.25) could be accepted by his delegation.

He supported the Netherlands amendment (A/CONF.9/L.32) to paragraph 2 (b) (ii) of the United Kingdom amendment but could not accept sub-paragraph (iv) unless it were amended in the sense of article 7, paragraph 4.

Mr. BACCILETTI (Italy) referring to the statement made by the Swiss representative at the previous meeting, said that his delegation fully shared the view that efforts must be made to reduce future statelessness to the minimum.

He supported article 8 as drafted by the International Law Commission, but not the United Kingdom amendment as it stood because it differentiated between natural-born and naturalized nationals, and listed grounds on which a citizen could be deprived of his nationality.

Paragraph 2 (b) (i) of the United Kingdom amendment conferred too much power on a party. Such a threat should not be allowed to hang over a person for an unlimited time and after a certain period had elapsed following naturalization Governments should not be permitted to take action on the grounds mentioned. Deprivation of nationality affected the family of the person concerned, paragraph 2 (b) (i) should therefore be amended to include a certain time limit, say fifteen years. If that were accepted his delegation would be able to support the provision.

He considered the suggestion on article 13 made by the representative of the Holy See a good one, but thought that the article should not give States an opportunity of expanding the grounds on which a person could be deprived of his nationality.

Mr. BERTAN (Turkey) said that the amendment submitted by his delegation had been submitted as an amendment to draft article 8 prepared by the International Law Commission and not as a sub-amendment to the United Kingdom amendment. The latter proposal would lead to the creation of more cases of statelessness in the future, and although the Turkish Government was ready to amend its nationality laws to conform to the convention, it would do so only if that instrument were really calculated to reduce future statelessness.

The words "Everyone has the right to a nationality" in the preamble to the convention were of real importance and the Committee should not continually act in a spirit of conciliation and should take the law of certain States into account.

He asked that in accordance with the rules of procedure his amendment be put to the vote as a whole.

Mr. FAVRE (Switzerland) said that his delegation would have been prepared to accept article 8 as drafted. As to paragraph 2 (b) (i), of the United Kingdom amendment, the time-limit suggested by the Italian representative was too long and might be reduced to a period of five years.

His delegation would not oppose paragraph 2 (b) (ii) if it would help other countries to accede to the convention. But, without proposing a formal amendment, he suggested that it would be preferable to exclude such a provision, since what might be called treachery or disloyalty in one country might not be so regarded in another. The sponsor of the amendment certainly did not need such a provision in a convention and its inclusion might justify acts contrary to the principles accepted by the civilized world.

Sir Claude COMEA (Ceylon) said that article 8 was one of the most important articles of the convention since it concerned both the interests of the party and those of the person concerned.

There was a case for paragraph 2 (b) (i) of the United Kingdom amendment, but he could not support the Italian representative's proposal that action by the party concerned should be barred after a certain lapse of time.

While he had no objection to the grounds for deprivation of nationality being listed, such a list might become endless. It would be therefore wiser to insert a general clause in the convention giving a party the right to deprive a national of his nationality in certain circumstances. In that connexion, he would draw attention to paragraph 3 of the United Kingdom amendment, and to the amendment submitted by the delegation of Ceylon (A/CONF.9/L.45), which might be adopted as a general clause rather than as a new sub-paragraph of paragraph 2 (b).

Mr. MENA (India) said that under Indian law the Government had the right to deprive such a person of his nationality in certain specified circumstances, e.g. if registration or naturalization were obtained by fraud, false representation or concealment of material fact, or if by act or speech a person had shown himself to be disloyal or disaffected towards the Constitution of India. Such a person could also be deprived of his nationality if in wartime he unlawfully traded with or in any way assisted the enemy or if within five years of his naturalization he were sentenced to imprisonment for a term of not less than two years. Lastly, a citizen could be deprived of his nationality if he resided abroad for a continuous period of seven years without registering annually his intention to retain his Indian citizenship.

The Government of India attached importance to that right, for otherwise it would have no means of withdrawing its nationality from a person who might have acquired it by naturalization or registration but who might prove to be thoroughly unworthy.

As the United Kingdom proposal was in substance in accord with the Indian position, his delegation would support it, but considered that a Government should have the right to withdraw its citizenship from a naturalized national during an initial period if he were proved guilty of an offence and sentenced to imprisonment for a period of not less than two years, provided that the Government was satisfied that it was contrary to the public interest for such a person to continue to be a citizen. Since in that respect the Yugoslav amendment (A/CONF.9/L.46) covered that point, he would support it.

Mr. JAY (Canada) said that he respected the views of those delegations which believed that a Government had no right to deprive a national of his nationality on any ground whatsoever, especially since they were ready to move away from that position in an attempt to meet the views of other countries. All delegations were convinced that the right to deprive a person of his nationality should be restricted in the convention, but the Canadian delegation could not accept article 8 as drafted by the International Law Commission since it recognized only one broad and unimportant ground of deprivation.

There were many ways of approaching the problem. The suggestion however that article 13 might provide some right of reservation as to deprivation of nationality might make the convention meaningless if too broad, while an attempt to restrict it would provoke the same discussion as under article 8. It would be preferable to have a general clause of reasonably limited scope covering deprivation under article 8; failing that, he would support the enumeration of grounds for deprivation of nationality contained in that article.

He could not accept the suggested five-year period in the Netherlands amendment for it would conflict with Canadian law.

Mr. IRGENS (Norway) explained that a natural-born Norwegian national could not be deprived of his nationality on any grounds whatsoever.

His delegation considered that with a view to adopting a convention acceptable to a large number of States those which so wished should be permitted to retain the right to deprive naturalized citizens of nationality on certain grounds.

He would support the United Kingdom amendment, but would be unable to vote for any amendments adding to the list of grounds on which a citizen could be deprived of his nationality.

Mr. BACCHETTI (Italy) said that he would support the Swiss representative's proposal that the period within which a person could be deprived of his nationality under paragraph 2 (b) (i) should be limited to five years.

With regard to paragraph 2 (b) (ii), under a régime such as that which had existed in the past in Italy many distinguished persons would have been deprived of their nationality if such a provision had been included in Italian law. He would therefore prefer that paragraph to be deleted or replaced by the Netherlands amendment. The aim of the Conference was, after all, to reduce future statelessness.

Mr. ROSS (United Kingdom) referring to the suggestion made by the representative of the Holy See, said that the United Kingdom delegation would be willing to consider the replacement of paragraph 2 of its amendment by a general paragraph stipulating that a contracting party, at the time of ratifying the convention, might make a reservation in respect of deprivation of citizenship relating to any existing provision in its law. However, the United Kingdom delegation believed that fewer cases of statelessness would arise if a short list of grounds on which a national could be deprived of his nationality were included in the convention. It should be noted that the United Kingdom proposal, if adopted, would circumscribe the freedom of the United Kingdom Government to deprive persons of their nationality.

The United Kingdom delegation could not support the amendment submitted by the delegation of Ceylon.

Mr. LEVI (Yugoslavia) supported the suggestion of the representative of the Holy See. Although the grounds mentioned in paragraph 2 (b) (iii) and (iv) of the United Kingdom amendment were not recognized by Yugoslav law, he would not vote against those sub-paragraphs but would abstain.

Mr. RIPHAGEN (Netherlands) said that, although the United Kingdom amendment would give every contracting party the power to make reservations as to its national law, the International Law Commission's text would also raise some difficulties.

If Governments were not prepared to amend their national laws to conform to the convention, there was little object in their representatives attending the Conference. It was advisable that the cases in which it was strictly necessary to provide for deprivation of nationality should be listed. His delegation could accept most of the grounds listed in the United Kingdom delegation's amendment but not paragraph 2 (b) (ii), to which it had submitted an amendment.

As to the Canadian representative's comments, his delegation would be willing to change the period specified in its amendment, but would emphasize that cases of treachery or disloyalty must be determined by a judicial authority before they could be considered as grounds for deprivation of nationality.

The CHAIRMAN, speaking as the representative of Denmark, said that he shared the misgivings of the Italian representative in regard to paragraph 2 (b) (ii) of the United Kingdom amendment. In the national laws of some countries the term "treachery" was applied only to crimes of extreme seriousness; in other countries, it embraced a large number of less serious crimes. His delegation therefore tended to favour the Netherlands amendment (A/CONF.9/L.32), which would ensure that deprivation of nationality under paragraph 2 (b) (ii) was permissible only if the national concerned had committed one of the more serious treasonable offences.

With regard to paragraph 2 (b) (i), the establishment of a time-limit beyond which a party could not deprive a person of nationality on the ground that it had been acquired by false representation or fraud would be welcome. It would surely be unjust to deprive a naturalized person of a nationality he had possessed for a number of years merely because there had been some technical irregularity in his application. His delegation therefore proposed that in paragraph 2 (b) (i) the words "provided that deprivation takes place within five years of acquisition of the nationality" be inserted after the words "the Party's nationality".

Mr. TSAO (China) said that his delegation would abstain from voting on all amendments to article 8. There was no provision in his country's national law for depriving either a natural-born national or a naturalized person of his nationality on any grounds whatsoever.

Mr. ROSS (United Kingdom), referring to the Italian representative's statement, said that in the United Kingdom a person retained his nationality until the moment when, by decision of the Secretary of State, he was deprived of it. There was no reason, however, why the provision contained in paragraph 2 (b) (i) should not be applied also in countries where proof of false representation or fraud in the application entailed annulment of the nationality ab initio.

His delegation agreed that it would be reasonable to provide for a time-limit in the application of paragraph 2 (b) (i), and would not oppose the amendment submitted orally by the Danish delegation.

Mr. JAY (Canada) expressed the hope that a separate vote would be taken on the Danish amendment notwithstanding its acceptance by the United Kingdom representative. He was not certain of Canadian practice on the issue to which the Danish amendment referred and in the Committee would vote against the proposal while reserving the right to alter his vote in plenary meeting.

Mr. VIDAL (Brazil) observed that, having approved the right of States to withhold nationality from persons who had committed offences punishable by five years' imprisonment, in the interests of consistency the Committee should also permit States to deprive persons of their nationality on the grounds of treachery or disloyalty.

His delegation supported the Danish amendment to paragraph 2 (b) (i) and would vote in favour of the United Kingdom draft of paragraph 2 (b) (iii) as it had voted for paragraph 2 (a), which contained the same provision in respect of natural-born nationals.

Mr. SCHMID (Austria) said that he would be compelled to vote against the Danish amendment to paragraph 2 (b) (i). Ratification of the convention as a whole by his country would, however, in any case entail sweeping changes in Austrian law and, if the Committee and later the Conference were to adopt the Danish amendment, he would hope that the necessary changes would be made.

Sir Claude COREA (Ceylon) said that he opposed the Danish amendment. A State should have the right to deprive a person of his nationality on the grounds of extensive and deliberate fraud in the application regardless of the time when the fraud was discovered.

Mrs. TAUCHE (Federal Republic of Germany) expressed support for the Danish amendment; paragraph 2 (b) (i) however should contain a specific reference to the annulment of nationality ex tunc, if the Committee wished to permit annulment, as well as deprivation ex nunc, on the ground of fraud in the application.

There was a question of the application of Danish amendment to the case of a woman who had obtained German nationality by a marriage which was subsequently annulled. Her country's law held that annulment of the marriage automatically entailed annulment of the nationality ex tunc. Did the Danish amendment imply that nationality in that case could not be annulled, if the marriage were annulled more than five years after it had been contracted?

The CHAIRMAN, speaking as the representative of Denmark, said that the sole purpose of his delegation's amendment was to establish a time-limit after which naturalized persons could rest assured that their nationality could no longer be either withdrawn or annulled on the grounds of technical irregularities in the application. There were occasions when Governments, wishing to withdraw nationality from persons whom they regarded as politically undesirable, would re-examine applications lodged twenty or thirty years previously. His delegation earnestly wished to see an end put to that practice. In his country, nationality was conferred by legislation and could not be withdrawn or annulled if the application were later found to have been based on false representation.

Mr. CALAMARI (Panama) said that his country's laws did not provide for deprivation of nationality on grounds of fraud in the application, but, understanding as it did the position of other countries, his delegation would vote for the Danish amendment to paragraph 2 (b) (i).

With regard to paragraph 2 (b) (ii), the Netherlands amendment was acceptable in principle, but if the Netherlands delegation would consider substituting for it the words "the person having been convicted by a competent court of treachery or disloyalty" that would eliminate the reference to the arbitrary figure of five years' imprisonment.

He would vote for paragraph 2 (b) (iii), which merely reproduced the provision in respect of natural-born nationals adopted by the Committee at its fourteenth meeting.

He was opposed to the Ceylonese amendment (A/CONF.9/L.45) and to a similar proposal by the representative of the Holy See, because they would give States too wide discretion in deciding whether or not to withdraw nationality.

Mr. ROSS (United Kingdom) said that his delegation would abstain from voting on the Danish amendment to paragraph 2 (b) (i), though it would still support that paragraph if the Committee decided to amend it.

With regard to paragraph 2 (b) (ii), his delegation did not accept the principle of the Netherlands amendment with its reference to court proceedings in connexion with treachery and disloyalty; in the United Kingdom for instance a person could not be charged or convicted in absentia. However, should the Netherlands amendment find favour in the Committee, he would propose a sub-amendment to replace the words "five years" by the words "one year".

With regard to the discussions and the decisions taken by the Committee on paragraphs 2 (a) and 2 (b) at its fourteenth meeting, his delegation agreed with the International Law Commission in recognizing a distinction, for the purposes of article 8, between natural-born nationals and naturalized persons. The natural-born person had a birthright to his nationality: but the naturalized person was expected to justify his acquisition of nationality by a higher standard of behaviour and States should have greater freedom to deprive him of his nationality. Article 8, paragraph 3 and article 9 would prevent States from abusing their rights in that respect.

He could not agree with the remark made by the Swiss representative at the fourteenth meeting that the United Kingdom delegation was inconsistent in its attitude to articles 1 and 8. Article 1 was designed to confer a quasi-birthright and contained no reference to an independent body of a judicial character such as was mentioned in article 8, paragraph 3.

Mr. BERTAN (Turkey), referring to his delegation's amendment to article 8 (A/CONF.9/L.25), proposed that the words "or if, being abroad, he is liable for military service and fails without good cause to report when officially called up", contained in paragraph 2 of the amendment, be included as an additional sub-paragraph in paragraph 2 (b) of the United Kingdom amendment. His Government took the view that a provision to that effect was essential since under Turkish law a person could not be tried for desertion in his absence, nor was it possible under international law to apply for extradition on grounds of desertion.

Mr. LEVI (Yugoslavia) said that if delegations were going to reject all restrictions on the deprivation of nationality other than those contained in their own amendments his delegation would reserve the right to introduce fresh proposals for articles 7 and 8 in the plenary Conference. He would propose that article 7 should read simply: "Absence abroad shall not be a ground for loss of nationality", and article 8: "A Party may not deprive its nationals of their nationality on any grounds whatsoever".

Mr. RIPHAGEN (Netherlands) accepted the proposal of the representative of Panama that the Netherlands amendment to paragraph 2 (b) (ii) should read "the person having been convicted by a competent court of treachery or disloyalty".

Mr. JAY (Canada) agreed that the new text of the Netherlands amendment met the requirements of an internationally recognized criterion for deciding whether a person to be deprived of his nationality under paragraph 2 (b) (ii) had or had not committed a serious offence.

It did not, however, cover the case of a person who was legally charged with an offence but could not be tried on account of absence. He therefore proposed the addition to the new text of the Netherlands amendment of the words: "or, when charged with such offences, having refused to return to the territory of the Party".

Mr. RIPHAGEN (Netherlands) said that he would accept the Canadian proposal although in his own country judgment by default was permitted in some cases.

Mr. ROSS (United Kingdom) said that he would withdraw his original amendment to the Netherlands amendment in favour of the Canadian proposal. In the latter, however, he proposed that the word "refused" be replaced by the word "failed". The word "refused" implied that a request to return had actually been made to the person, but in cases of treachery it was often difficult to discover his whereabouts.

Mr. HERMENT (Belgium) expressed a preference for the word "refused". If an act of treachery were known to a Government, the whereabouts of the person committing it would normally also be known, or at least easily ascertainable.

Mr. BERTAN (Turkey) supported the United Kingdom proposal.

Mr. JAY (Canada) and Mr. RIPHAGEN (Netherlands) agreed to replace the word "refused" by the word "failed".

The CHAIRMAN asked the United Kingdom representative whether he wished to retain sub-paragraph (iv) in paragraph 2 (b). It would seem that the case in question was covered by the text already approved by the Committee for article 7, paragraph 4.

Mr. ROSS (United Kingdom) said that sub-paragraph (iv) should be retained. Whereas article 7 dealt with automatic loss of nationality on certain grounds, article 8 was concerned with specific orders for deprivation of nationality.

Mrs. TAUCHE (Federal Republic of Germany) agreed with the United Kingdom representative.

The CHAIRMAN suggested that, since the representative of Israel was not present to introduce his delegation's amendment to sub-paragraph (iv) (A/CONF.9/L.39), further discussion of that sub-paragraph be deferred.

It was so agreed.

The CHAIRMAN declared closed the discussion of paragraph 2 (b) of the United Kingdom amendment to article 8 (A/CONF.9/L.11 and Corr.1) and the amendments thereto, with the exception of sub-paragraph (iv) and the amendment thereto.

He put to the vote separately sub-paragraphs (i), (ii) and (iii) of paragraph 2 (b) of the United Kingdom amendment and amendments thereto, and amendments adding new sub-paragraphs to paragraph 2 (b).

The Danish amendment to sub-paragraph (i), to the effect that the words "provided deprivation takes place within five years after acquisition of the nationality" be added after the words "the Party's nationality" was adopted by 14 votes to 6 with 6 abstentions.

Sub-paragraph (i) as amended, was adopted by 19 votes to none, with 7 abstentions.

The CHAIRMAN speaking as the representative of Denmark, said that the Danish delegation reserved the right to submit in plenary meeting an amendment to the effect that sub-paragraph (i) applied to annulment of nationality ex tunc as well as deprivation ex nunc.

Mr. JAY (Canada) said that he would have voted against the adoption of sub-paragraph (i) if he had believed that it referred to deprivation only and not to annulment ex tunc.

Mr. HERMENT (Belgium) said that the application of sub-paragraph (i) could be decided by the national law of contracting parties.

The Netherlands amendment to sub-paragraph (ii) (A/CONF.9/L.32), as amended on the proposals of the representatives of Panama, Canada and the United Kingdom, reading: "the person having been convicted by a competent court for treachery or disloyalty, or, when charged with such an offence, having failed to return to the territory of the Party", was adopted by 14 votes to 6, with 8 abstentions.

Sub-paragraph (ii), as amended, was adopted by 12 votes to 2, with 12 abstentions.

Sub-paragraph (iii) was adopted by 13 votes to 1, with 5 abstentions.

The Turkish proposal introducing the words: "or if, being abroad, he is liable for military service and fails without good cause to report when officially called up" as an additional sub-paragraph to paragraph 2 (b) was not adopted, 3 votes being cast in favour and 3 against, with 22 abstentions.

Mr. JAY (Canada) said that he wished to revise paragraph 2 of his delegation's amendment (A/CONF.9/L.36), so as to propose the addition to paragraph 2 (b) of the following sub-paragraph: "the person having taken or made an oath, affirmation or other declaration of allegiance to a foreign country", which text would correspond with the amendment already adopted to paragraph 2 (a).

Mr. CARASALES (Argentine) suggested that the word "voluntarily" be added between the word "having" and the word "taken".

Mr. JAY (Canada) took it as a general assumption that all acts giving rise to deprivation of nationality under paragraph 2 (b) were voluntary acts and that deprivation would not follow action taken by the person concerned under a disability.

The Canadian amendment to paragraph 2 (b) was adopted by 10 votes to 1, with 16 abstentions.

Sir Claude COREA (Ceylon) said that in view of the trend of the voting on the foregoing amendments he would withdraw his delegation's amendment to paragraph 2 (b) (A/CONF.9/L.45).

The Yugoslav amendment to paragraph 2 (b) (A/CONF.9/L.46) was rejected by 13 votes to 7, with 6 abstentions.

The meeting rose at 1 p.m.