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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SIXTEENTH MEETING

held at the Palais des Nations, Geneva,
on Monday 13 April 1959, at 10 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 published 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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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.14, L.23, L.25, L.39) (continued)

Mr. SIVAN (Israel) said that his delegation would have supported paragraph 2(b)(iv) of the United Kingdom amendment (A/CONF.9/L.11) to article 8 of the draft convention with the addition of the specific provision requiring seven years' consecutive absence abroad as a ground for deprivation (A/CONF.9/L.11/Corr.1). He could, however, accept the condition respecting declaration of intention only if the words "or if he has no effective connexion with such State" in the Israel amendment (A/CONF.9/L.39) were added. The reference to intention had been designed to bring article 8 into line with article 7, paragraph 3, which was referred to in the International Law Commission's draft of article 8. His delegation did not agree with such automatic co-ordination since the texts of both article 7, paragraph 3 and article 8 as eventually to be adopted by the Conference would differ greatly from the International Law Commission's draft. Moreover, the articles dealt with distinct problems - loss of nationality by automatic operation of law in the one case and deprivation by discretionary act of the authorities in the other. Israel law did not provide for automatic loss of nationality and, although it provided for deprivation in the case of naturalized persons, no case of that kind had occurred in practice. The oral amendment proposed by his delegation to article 7, paragraph 3, at the eleventh meeting had probably not been adopted because of the distinction pointed out by some delegations, including that of the United Kingdom, between the two articles in question; admittedly, the proof needed to establish whether there was an effective connexion between a person and the State might not be appropriate in cases of loss of nationality by automatic operation of law without judicial process. If, however, as had appeared possible during the discussion, article 7 could apply to deprivation, some provisions at least of article 8 were superfluous. Conversely, if revocation of naturalization were to be dealt with in article 8 it was desirable that certain restrictions appearing in article 7 which might be applicable to loss of nationality by operation of law only should not be repeated in article 8.

The text of paragraph 2(b)(iv) in the United Kingdom amendment (A/CONF.9/L.11/Corr.1) did not provide an adequate test of the severance of effective connexion with the country of nationality since some countries did not impose upon their naturalized citizens any obligation to register with a diplomatic mission when abroad. It was with a view to providing an alternative formula covering such cases that his delegation had submitted its amendment. As a corollary of the ease with which Israel nationality could be acquired, his country's legislation insisted on a naturalized person maintaining an effective connexion with Israel.

The Pakistan representative's comment at the fourteenth meeting that a State would hardly deprive a person of its nationality without cogent reasons was pertinent. Most countries provided for judicial safeguards and a provision in that sense appeared in paragraph 3 of the United Kingdom amendment. There was accordingly no justification for apprehensions that article 8 would be applied arbitrarily.

The provisions of the United Kingdom amendment (A/CONF.9/L.11 Corr.1) and those of the Israel proposal had the same purpose. The only difference between them was that one was appropriate to legislations imposing on citizens resident abroad the duty to register with a mission of the State of nationality, or some similar duty, whereas the other was appropriate to legislations which did not impose such obligations. The convention should take account of both systems. No country would be obliged to add the further clause proposed by his delegation to its national legislation, but the inclusion of that clause in the convention would facilitate the support of those States whose legislation required it. The Israel delegation had shown its willingness to support provisions not in accordance with its national law, and hoped that its amendment would be accepted in the same spirit by other delegations.

The Israel amendment (A/CONF.9/L.39) was approved by 9 votes to 8, with 12 abstentions.

The United Kingdom amendment (A/CONF.9/L.11/Corr.1), as amended, was approved by 10 votes to 7, with 13 abstentions.

Paragraph 2(b) of the United Kingdom amendment (A/CONF.9/L.11 and Corr.1) as a whole, as amended, was approved by 9 votes to 2, with 19 abstentions.

The CHAIRMAN invited debate on the introductory words of paragraph 2 of the United Kingdom amendment (A/CONF.9/L.11).

Rev. Father de RIEDMATTEN (Holy See) proposed that those words should be replaced by a clause drafted on the following lines: "A Party may at the time of signature or ratification of the Convention make the following reservations to paragraph 1 ....". The text of paragraph 2 as drafted would give to the grounds for deprivation of nationality listed therein the sanction of an international convention. His delegation's amendment permitted Parties to make reservations in the same sense but without such sanction.

At the suggestion of the CHAIRMAN, Rev. Father de RIEDMATTEN (Holy See) agreed to include in his proposed clause the words "or accession" after the word "ratification", the word "or" after "signature" being replaced by a comma.

Mr. JAY (Canada) said the proposal of the representative of the Holy See was most interesting. He would vote against it as applying to article 8, but it should be reconsidered when the Committee dealt with article 13 on reservations.

Mr. HERMENT (Belgium) endorsed the principle of the proposal of the Holy See.

Mr. RIPHAGEN (Netherlands) supported the principle of the proposal. It would be advisable, however, to include a provision similar to that found in various international instruments to the effect that a State could subsequently withdraw any reservations it had made. The Committee might vote on the principle of the proposal, leaving its precise formulation to the Drafting Committee.

Mr. CARASALES (Argentina) said that he would vote for the proposal.

Mr. LEVI (Yugoslavia) asked whether it was intended to include as reservations all the grounds of deprivation rejected by the Committee.

The CHAIRMAN observed that the representative of the Holy See would probably not wish the list to be extended. Its discussion could be resumed in plenary meeting.

Mr. LEVI (Yugoslavia) opined that that would be the effect of the proposal.

Mr. HARVEY (United Kingdom) opposed the idea of treating the various grounds of deprivation of nationality as reservations. If however the Committee

approved the proposal of the representative of the Holy See, it would be inappropriate to enumerate specific grounds. The correct procedure might perhaps be to provide that a State could reserve its right to deprive a person of its nationality on any ground which existed in its municipal law immediately prior to the entry into force of the convention.

Mr. BACCHETTI (Italy) said that he would not be able to support any extension of the list of grounds for depriving a person of his nationality.

He had not spoken to the Israel amendment because he had expected that there would be an opportunity for a fuller discussion in plenary meeting and had voted against it for reasons which he had explained previously.

The CHAIRMAN pointed out that since paragraphs 2(a) and 2(b) of the United Kingdom amendment had already been approved by the Committee there was no question of extending the list of grounds at that stage.

Mr. SCHMID (Austria) said that the proposal of the representative of the Holy See was a useful one. He would abstain from voting on it at that stage, but its discussion might be resumed in connexion with paragraph 13.

Mr. FAVRE (Switzerland) said that the authors of the Commission's draft would be astounded when they learnt that the Committee had approved paragraph 2(b)(ii) of the United Kingdom amendment respecting treachery or disloyalty and the Israel amendment, which would enable a State to deprive a citizen of his nationality on the grounds of having no effective connexion with that State. Such provisions were out of place in a convention intended to reduce statelessness. They were not needed by the States represented at the Conference, but once inserted in an international convention they could be used by other States to justify arbitrary acts. He therefore supported the principle of the proposal of the representative of the Holy See.

Sir Claude COREA (Ceylon) said that the question of reservations should be decided in connexion with article 13. Furthermore, the right to make reservations implied the existence of mandatory provisions from which such reservations were a departure. If the proposal of the representative of the Holy See were adopted there would be no such mandatory provisions.

The CHAIRMAN observed that if the proposal were approved it would be necessary to delete the opening words of paragraph 1 of the United Kingdom amendment: "Subject to the provisions of this article". That matter could be left to the Drafting Committee.

Mr. BEN-MEIR (Israel), replying to the representative of Switzerland, agreed that the Commission might well be astounded by some of the provisions approved by the Committee - and not only in connexion with article 8. His delegation, which had supported measures to achieve a radical reduction or even the complete elimination of statelessness had, for example, been willing to accept article 1 of the draft convention on the elimination of future statelessness. Other delegations however, including that of Switzerland, had preferred article 1 of the draft convention on the reduction of future statelessness, and had added further restrictions to it. The Conference had, rightly or wrongly, embarked on a course which it was hoped would ensure the support of the greatest possible number of States.

The assertion that his delegation's amendment opened the door to arbitrary deprivation of nationality could not stand. Israel nationality did not apply the principle of automatic deprivation and included a number of legal safeguards. There was not a single example to date of a person being deprived of Israel nationality on the grounds contained in the Israel amendment.

The proposal of the Holy See should be discussed in connexion with article 13.

Rev. Father de RIEDMATTEN (Holy See) said that the Swiss representative had well expressed the intention behind his proposal and the Netherlands representative had suggested an improvement. Admittedly, it would be more logical to discuss the proposal in connexion with article 13, but he had submitted it at that stage to avoid loss of time later.

The CHAIRMAN said that he would put the proposal to the vote. If any delegation wished to oppose his decision it could do so under rule 13 of the rules of procedure.

In the absence of any opposition, the CHAIRMAN put to the vote the oral amendment of the representative of the Holy See to paragraph 2 of the United Kingdom amendment (A/CONF.9/L.11 and Corr.1).

The oral amendment of the representative of the Holy See was approved by 15 votes to 4, with 13 abstentions.

Subject to the consequential changes necessitated by the foregoing decision, paragraph 2 of the United Kingdom amendment was approved by 14 votes to 1, with 16 abstentions.

Mr. BACCHETTI (Italy) said that his delegation had abstained from voting on the paragraph only because it could not accept the Israel amendment.

The CHAIRMAN invited debate on paragraph 3 of the United Kingdom amendment.

Mr. HUBERT (France), introducing the French amendment (A/CONF.9/L.14), said that it was intended to cover legislations in which there was provision for appeal to an independent judicial body and those which provided for appeal to an independent administrative body. The word juridictionnel would apply to both.

Mr. HARVEY (United Kingdom) suggested that the problem was one of translation. "Judicial" in the English text of the United Kingdom amendment implied an independent and impartial body which was either a court of law or had a similar character. In the United Kingdom such cases were submitted to an ad hoc body consisting of a High Court Judge and distinguished members of the public. That body could be correctly described as judicial, for a judge was its president, it followed the same procedure as courts of law and it was impartial. The French word judiciaire did not apparently describe such a body. His objection to the French amendment was that not only was there no such word as "jurisdictional" in English, but that, even if an English word of similar meaning could be found, it would imply a body competent to give a final determination and that would exclude an ad hoc body of the type he had described. The problem would be solved if a French word synonymous with "judicial" could be found.

Mr. BACCHETTI (Italy) thought that the precise wording could be left to the Drafting Committee. He supported the principle of the French amendment and hoped that it would be voted on forthwith.

Sir Claude COREA (Ceylon), in view of the approval of the Holy See's proposal concerning reservations, questioned the point of discussing paragraph 3 of the United Kingdom amendment referring to cases in which deprivation of nationality was permitted.

The CHAIRMAN observed that, although paragraph 3 of the United Kingdom amendment would need to be redrafted in consequence of the adoption of the Holy See's proposal, the question of making provision for cases to be submitted to an independent body still remained.

Mr. HUBERT (France) agreed with the Chairman.

The competent body in France was the Conseil d'Etat, whose decisions were binding upon the Executive. If the decisions of the body referred to by the United Kingdom representative were also binding upon the Executive he would agree that the problem was merely a drafting one. Otherwise the difference between the two texts would be substantive.

The CHAIRMAN recalled that a similar difficulty had been encountered in the drafting of earlier conventions. Some attempt to solve it had been made in article 32 (2) of the 1951 Convention Relating to the Status of Refugees and article 31 (2) in the 1954 Convention Relating to the Status of Stateless Persons. It would be necessary to agree on a text which did not do violence to the various systems followed in different countries.

Mr. ABDEL-MAGID (United Arab Republic) agreed with the Frence representative that if the decisions of the body described by the United Kingdom representative were not binding on the executive there would be a difference of substance between the two amendments. He would support the French amendment, which was in keeping with the legal structure of his own country.

Mr. HERMENT (Belgium), in reply to the representative of Ceylon, said that, even if the convention merely laid down that States should have the right to make reservations, it would be still necessary to guarantee the impartiality of the body deciding the cases referred to in paragraph 3 of the United Kingdom amendment.

As a compromise, some such words as "an independent and completely impartial body" might be used.

Mr. ROSS (United Kingdom) repeated that the ad hoc body to which such cases were referred in the United Kingdom could be correctly described as of a judicial character since, in addition to the characteristics already mentioned, there was provision for the representation of the parties by counsel.

In reply to the French representative, in the United Kingdom the body was a purely advisory one, the final decision resting with the Home Secretary. The Home Secretary would not, however, disregard its advice except in very special circumstances. The British and French systems were suited to different constitutions and the United Kingdom Government had no wish to alter its own

system or to compel others to alter theirs. He would however support the compromise proposal of the Belgian representative.

Mr. HUBERT (France) said that, as he had supposed, there was a substantive difference between the English and the French terms. In France the executive could not disregard a decision of the Conseil d'Etat, which therefore had the final word, whereas in the United Kingdom it would seem that the final word lay with the Government. The latter system did not provide sufficient guarantees.

Mr. JAY (Canada) said that the Committee should attempt to establish principles rather than take into account the legal position prevailing in each country. The main point was that the decision on deprivation of nationality should be taken by a body which was independent and impartial, but it would be extremely difficult to specify exactly how those qualities were to be represented. It would be well for the Committee to vote on the principle, leaving it to the Drafting Committee to devise language giving effect to the principle.

Mr. HUBERT (France) observed that the crucial question was quite simply whether the executive or an independent body had the final decision.

Mr. TSAO (China), in view of the poor prospects of reconciling the two systems, proposed the deletion of the entire phrase "which shall provide for submission of the case to an independent body of a judicial character".

Mr. HERMENT (Belgium) said that the Chinese amendment was too drastic. The clause should specify that the appelate body should be an independent body of a completely impartial character.

Mr. LEVI (Yugoslavia) supported that suggestion. In Yugoslavia the Supreme Court had the final decision.

Mr. BACCHETTI (Italy) said that, although he preferred the French amendment, the Belgian amendment might be acceptable if it specified that the body should be independent of the executive.

Mr. SIVAN (Israel) suggested that the clause might read: "which shall provide for submission of the case to a court of law or to an independent and impartial body acting in accordance with judicial principles".

The CHAIRMAN put the Chinese proposal to the vote.

The Chinese proposal was rejected by 14 votes to 4, with 14 abstentions.

It was decided to defer further consideration of paragraph 3 of the United Kingdom amendment.

The CHAIRMAN invited debate on paragraph 4 of the United Kingdom amendment.

Mr. ROSS (United Kingdom) said that paragraph 4 had originally been drafted in the light of proposals made in connexion with article 1 in order to make it clear that a State might deprive of its nationality a person who possessed at the time another nationality; but in view of the changes in article 1 the paragraph could if necessary be omitted.

Mr. BACCHETTI (Italy) proposed that paragraph 4 of the United Kingdom amendment be deleted.

The Italian proposal was adopted by 15 votes to 3, with 10 abstentions.

The CHAIRMAN pointed out that consequential upon the decision taken by the Committee on paragraph 2 some drafting changes would be required in paragraph 1.

Mr. FAVRE (Switzerland) suggested that the Drafting Committee might consider whether paragraph 1 would not be better placed at the beginning of article 7 as approved by the Committee since that article already contained exceptions to the prohibition against depriving persons of nationality.

Mr. BERTAN (Turkey), introducing the amendment submitted by his delegation to paragraph 1 (A/CONF.9/L.25), explained that it contained an element not included in the United Kingdom text (A/CONF.9/L.11 and Corr.1). Since a person could be deprived of the nationality of a State by reason of activities incompatible with the status of national, such an exceptional step should be taken only if the Stage was wholly unable to compel such a person to comply with national laws and regulations, but the State could certainly apply the law of the land to nationals residing in the country. Deprivation of nationality could thus be justified only if the national were not resident in the country. A serious concomitant of deprivation of nationality was deportation. Denationalized persons moved to neighbouring countries and if they were dangerous to their own country might also be dangerous to other countries. It would be immoral for a State to deprive a national of its nationality at its discretion and then deport him. Such penalties should be limited by the unanimously accepted principle that every person had the right

to a nationality. In Turkish law no Turkish national could be deprived of nationality while resident in Turkey. The adoption of such a general rule would certainly go some way towards at least preventing statelessness from increasing in the future.

Mr. JAY (Canada) pointed out that the Turkish amendment would alter substantively the interpretation of the list in paragraph 2 as approved. Furthermore, drafting changes would be needed in paragraph 1.

The CHAIRMAN observed that drafting changes might be left to the Drafting Committee.

Rev. Father de RIEDMATTEN (Holy See) suggested that the Turkish representative should submit his amendment in connexion with article 8, paragraph 2, in plenary meeting where if a system of reservations was accepted his point could be made.

Mr. BERTAN (Turkey) explained that he had originally suggested that article 7, paragraph 3 and article 8 be discussed together. He had introduced his amendment because paragraph 2 of the United Kingdom amendment had already been discussed and his delegation had already accepted the list of exceptions to the prohibition against deprivation of nationality.

Mr. ROSS (United Kingdom) suggested that the Turkish representative should make clear the exact meaning of his proposal before it was raised in plenary meeting, since it seemed capable of meaning either that a State had complete freedom to deprive a person of its nationality if he were not resident in the country or that in no circumstances could a State deprive a person of its nationality if he were resident in the country.

Mr. BERTAN (Turkey) explained that the main intention of his delegation's amendment was to prohibit a State from depriving of its nationality any national resident in the country. The only exceptions to that rule would occur if a person voluntarily entered or continued in the service of a foreign country in disregard of an express prohibition, or if a naturalized person had obtained the nationality by false representation or if a naturalized person committed an act detrimental to the security of the State which had naturalized him.

Mrs. TAUCHE (Federal Republic of Germany) observed that if States were allowed to deprive their nationals of their nationality for the reasons

given in paragraph 2 they could do so whether or not the persons in question were resident in the country. The State's main interest was to prevent persons deprived of nationality from exercising political rights.

Mr. FAVRE (Switzerland) remarked that approval of the Turkish amendment would involve a revision of articles 7 and 8.

Mr. BERTAN (Turkey) said that in view of the Swiss representative's observation he would withdraw the Turkish amendment (A/CONF.9/L.25), reserving his right to bring up the matter again in plenary meeting.

Paragraph 1 of the United Kingdom amendment (A/CONF.9/L.11) was approved, subject to drafting changes, by 18 votes to none, with 14 abstentions.

Article 9 (resumed from the ninth meeting and concluded)

The CHAIRMAN drew attention to the Pakistan amendment (A/CONF.9/L.23) to the International Law Commission's text for article 9 (A/CONF.9/L.1).

Mr. ROSS (United Kingdom) said that the Pakistan amendment was wholly unacceptable, especially in view of the amended form of article 8. The necessity to retain in the original text the term "racial" as well as the term "ethnic" was questionable.

Mr. SCHMID (Austria) pointed out that in the recent past groups which could not be distinguished from the remainder of the population on ethnic grounds had been discriminated against on racial grounds; both terms should be retained.

The Pakistan amendment (A/CONF.9/L.23) to article 9 was rejected by 23 votes to 2, with 6 abstentions.

Article 9 (A/CONF.9/L.1) was adopted by 28 votes to none, with 5 abstentions.

Article 6 (A/CONF.9/L.34) (resumed from the first meeting and concluded)

The CHAIRMAN said that the Committee could pass to article 6 as the principles of article 8 had been settled. Dealing with the consequences for the children of the loss of nationality by the parents, article 6 should probably be inserted in the final draft after article 9.

Mrs. TAUCHE (Federal Republic of Germany) expressed the view that article 6 should be placed after article 8 rather than after article 9 since article 9 contained an absolute prohibition.

Mr. SIVAN (Israel), introducing the Israel amendment (A/CONF.9/L.34)

to the article, said that his delegation had already made it clear that it accepted the principle laid down in the article although that would entail some changes in national legislation. It would however be unrealistic and illogical to stretch the article to preserve the nationality of children when both parents had ceased to be nationals of a State and the children were not normally resident in its territory.

Mr. HELLBERG (Sweden) observed that there was an obvious link between articles 6 and 7. The Swedish Government was not prepared to allow a person who had been born abroad as a Swedish national but who had never been domiciled in Sweden to retain, together with his children, Swedish nationality by a simple act of registration on attaining the age of majority. If such persons became stateless it would be largely due to their own remissness in omitting to acquire the nationality of the country of residence. He had voted against article 7, paragraphs 3, 4 and 5 and would abstain from voting on article 6, which was consequential on article 7. Having been unable to do so earlier, his delegation would submit an amendment to article 6 in plenary meeting.

Mr. ROSS (United Kingdom) opposed the Israel amendment. The general principle stated in article 6 was that the loss of nationality by a parent should not entail the loss of nationality by the children. A child might not wish to lose his nationality through some action or omission by his parents over which he could have no control.

Mr. IRGENS (Norway) supported the Israel amendment, which was consequential on the terms of article 7, paragraph 5 as approved by the Committee (A/CONF.9/L.40). If the preservation of nationality were made dependent on registration the link between the children of persons resident abroad and the country of nationality would be even weaker than in the case of the parents and the retention of nationality would benefit neither the child nor the country.

The CHAIRMAN, speaking as the representative of Denmark, agreed with the Norwegian representative. A child who had had no connexion with Denmark and had never even registered could hardly remain a Danish national after his parents had lost Danish nationality.

Mr. RIPHAGEN (Netherlands) pointed out that if the parents failed to

register themselves and failed to register their child and the child failed to register himself, he would lose his nationality under article 7 by such failure to register but not because the parents had lost their nationality. The Danish requirements would be met in that way and the Israel amendment was therefore unnecessary.

Mr. CARASALES (Argentina), agreeing with the United Kingdom representative, said that he would vote against the Israel amendment. Some drafting changes would be required at the beginning of the article to bring it into line with article 5.

The Israel amendment (A/CONF.9/L.34) was rejected by 14 votes to 5, with 12 abstentions.

Article 6 (A/CONF.9/L.1), subject to drafting changes, was approved by 25 votes to none, with 6 abstentions.

The CHAIRMAN, speaking as representative of Denmark, explained that, having voted for the Israel amendment, he had abstained from voting on the article because as a result of the rejection of the former the Danish Government would have to restrict the jus sanguinis, in the sense that it would not be able to accord Danish nationality to children born abroad unless at least one of the parents had been born in Denmark. Being a small country, Denmark had few consular facilities for registration. It was to be doubted whether such a restriction was in the best interest of reducing future statelessness.

The meeting rose at 1 p.m.