

**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 SEVENTEENTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 13 April 1959, at 3.30 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 organiza-
tions 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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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)(resumed from the sixteenth meeting and concluded)

The CHAIRMAN announced that since the Committee's sixteenth meeting the French delegation had agreed to withdraw its amendment (A/CONF.9/L.14) to paragraph 2 (b) of the United Kingdom amendment (A/CONF.9/L.11 and Corr.1) to article 8 of the draft convention.

It had also agreed to propose that in paragraph 3 of the United Kingdom draft the words "of a judicial character" be replaced by the words "offering every guarantee of impartiality".

Mr. HUBERT (France) said that his delegation had provisionally withdrawn its amendment to paragraph 2 (b) on certain conditions. It would accept the principle of consultation of an independent body in regard to deprivation of nationality provided that provision were made for similar consultations in regard to the acquisition of nationality under article 1 of the draft convention. But he would abstain from voting on the amended text of paragraph 3.

The CHAIRMAN put to the vote the French amendment to paragraph 3 that the words of the United Kingdom amendment (A/CONF.9/L.11 and Corr.1) "of a judicial character", be replaced by the words "offering every guarantee of impartiality".

The French amendment was adopted by 19 votes to none, with 11 abstentions.

Paragraph 3, as amended, was adopted by 20 votes to none, with 7 abstentions.

The CHAIRMAN recalled that at the sixteenth meeting paragraphs 1 and 2 had been approved and paragraph 4 rejected.

He put to the vote article 8, as a whole and as amended.

Article 8, as a whole and as amended, was adopted by 9 votes to none, with 18 abstentions.

Article 11 (A/CONF.9/L.24, L.33, L.37) (resumed from the thirteenth meeting and concluded)

The CHAIRMAN, speaking as the representative of Denmark, recalled that at the fourteenth meeting his delegation had submitted a draft protocol (A/CONF.9/L.37), which might be of interest to delegations opposed to the inclusion in the convention of any reference to the establishment of an agency to act on behalf of stateless persons or of a tribunal to decide disputes between States concerning the interpretation or application of the convention

His own delegation took the view that the convention should provide for the establishment of an agency and proposed that in article 11, paragraph 1 the words "or international organizations" be inserted after the word "Governments".

Mr. BOSS (United Kingdom) suggested that the Committee first decide whether the convention should contain any reference to the establishment of a tribunal. If it did, his own delegation and others could not sign it unless adherence to such provision were made optional. He would therefore urge that provision for the establishment of a tribunal be contained in a separate instrument, such as a protocol, signature of which would be optional.

As to the agency, a reference to its establishment might be included either in the convention or in an optional protocol, but his delegation's preference would go to the former.

If the Committee decided in favour of establishing an agency, it would first have to define its functions; some proposals on that matter were contained in the International Law Commission's draft of the article and in the United Kingdom amendment thereto (A/CONF.9/L.24). The final task would be to establish the machinery by which the agency would be set up.

Mr. FAVRE (Switzerland) said that his Government thought that it should be possible to refer disputes on the interpretation of the convention to an independent tribunal, but believed that parties to the convention should recognize the jurisdiction by the International Court of Justice as compulsory. There was no need to establish a special tribunal.

Mr. TSAO (China) said that his delegation had some misgivings in regard to the establishment both of an agency and of a tribunal and would prefer the provisions relating to them to be deleted from the convention.

Mr. CARSALES (Argentine) expressed the hope that the Committee would give serious consideration to the Danish draft protocol. Some delegations wished to reserve their position on the establishment of an agency and a tribunal and on the question of compulsory jurisdiction. It would be more satisfactory if all three questions were made the subject of a separate instrument.

Mr. HERMENT (Belgium) observed that the Danish draft protocol was extremely ingenious since it met the wishes of States which supported both the agency and the tribunal, of those which supported the agency but not the tribunal and of those who were opposed both to the agency and to the tribunal.

Its great drawback, however, was that it might allow the Conference to neglect the establishment of a body to assist and protect stateless persons just as the Office of the United Nations High Commissioner for Refugees assisted refugees. His delegation urged that provision for the establishment of the agency be made in the convention itself, although the question of the tribunal might be left to Contracting Parties.

Mr. RIPHAGEN (Netherlands) said that his delegation would have preferred the International Law Commission's draft of article 11, as of many other articles, but would take the wishes of other delegations into account.

Sharing the view of the Belgian representative that the convention should provide for the establishment of an agency, he preferred the description of the agency's functions given in the Belgian amendment (A/CONF.9/L.33) to that contained in the United Kingdom amendment.

Mr. JAY (Canada) considered that the work of the Committee could be expedited if it were known as soon as possible how many delegations were opposed to the establishment of a tribunal being provided for in the convention. He therefore moved the closure of the debate under rule 17 of the rules of procedure, and explained that if the motion were carried he would propose as an amendment to the article that no reference to the establishment of a tribunal be included in the convention.

The motion for closure of the debate was carried unanimously.

The CHAIRMAN put to the vote the Canadian amendment to article 11 to the effect that no reference to the establishment of a tribunal be included in the convention.

The Canadian proposal was approved by 21 votes to 2, with 3 abstentions.

The CHAIRMAN observed that it was still open to the Committee to decide that provision for establishment of a tribunal be made in a separate instrument.

He put to the vote a proposal that no reference to the establishment of an agency be included in the convention.

The proposal was not approved, 10 votes being cast in favour and 10 against, with 8 abstentions.

Mr. TSAO (China), expressing regret that a proposal on so important an issue had not been approved owing to an equally divided vote, said that it was to be hoped that the Committee would still have an opportunity to discuss the Danish draft protocol.

Mr. KANAKARATNE (Ceylon) thought that the Committee should first consider the method by which the agency was to be established. He observed that according to International Law Commission's draft of the article "the Parties undertake to establish an agency", whereas the United Kingdom delegation had proposed an addition to article 16 to the effect that "the Secretary-General of the United Nations shall bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such an agency"

Mr. JAY (Canada) said that it might be possible for the Conference to adopt a resolution calling for the establishment of an agency.

Mr. HERMENT (Belgium) took the view that the question how and when the agency was to be established was of secondary importance. The main decision to take was whether the convention itself should provide for the establishment of an agency.

The CHAIRMAN, in reply to a question by Mr. SIVAN (Israel), ruled that the Committee's failure to approve the proposal that the convention should not contain any reference to the establishment of an agency did not preclude the deletion of article 11 from the convention and a decision to provide for the establishment of an agency in a separate protocol if a majority of representatives were subsequently to favour that course.

Mr. LIANG, Executive Secretary of the Conference, replying to the point raised by the representative of Ceylon, said that there was no substantive difference between the words "the Parties undertake to establish an agency" as used in the International Law Commission's draft of article 11 and the words which appeared in the addition to article 16 proposed by the United Kingdom delegation. In paragraph 161 of the report on its fifth session (A.2456), the International Law Commission had stated that: "After the draft conventions have been approved by the General Assembly and accepted by States, they will become, in a general sense, United Nations conventions. The United Nations, by giving its approval to the conventions, will accept the responsibilities - including those of a financial nature - devolving upon it under the various provisions of article 10."

Whether the Committee accepted the International Law Commission's draft of article 11, paragraph 1 or the addition to article 16 proposed by the United Kingdom delegation, it would be for the United Nations and not for the parties themselves to deal with the details of establishing the agency.

The CHAIRMAN observed that in resolution 896 (IX) the General Assembly had noted and expressed its appreciation of the work of the International Law Commission in preparing a draft convention on the reduction of future statelessness. It would not therefore come as a surprise to the General Assembly if the Committee were to adopt the wording of article 11, paragraph 1 proposed by the Commission.

Mr. KANAKARATNE (Ceylon) thanked the Executive Secretary of the Conference for the explanation he had given of the role of the United Nations in establishing an agency, but reiterated his belief that it would be better for the Committee to adopt the addition to article 16 proposed by the United Kingdom delegation in order to remove any possible doubts as to the obligations of parties in regard to the agency.

In paragraph 160 of the report on its fifth session the International Law Commission had stated: "It was not considered necessary at this juncture to provide for the details of the organization of the agency referred to in paragraph 1. That task must be left, in the first instance, to the contracting parties. It is only when they have failed to take the steps necessary for the purpose that the setting up of the agency will become a responsibility of the General Assembly of the United Nations".

The General Assembly, in paragraph 3 of resolution 896 (IX), had merely requested the Secretary General to communicate the draft conventions to member States and to fix the time and place for a conference. If the Committee were to adopt the provision that "the Parties undertake to establish an agency" it might be that the General Assembly would decline to undertake the responsibilities of establishing the agency.

Mr. HELLBERG (Sweden) asked the United Kingdom representative if he would accept the Belgian amendment (A/CONF.9/33) to the United Kingdom amendment.

Mr. ROSS (United Kingdom) said that his delegation was not opposed in principle to the Belgian amendment, but preferred its own wording. He expressed the hope that a separate vote would be taken on the Belgian sub-amendment.

If it appeared likely that the Belgian amendment would command the support of a majority of the Committee, his delegation would propose that the words "and its submission to the competent authority" be replaced by the words "and assistance in its submission to the competent authority". Otherwise, it might seem that the agency itself could appear before a court of law.

Mr. SIVAN (Israel) said that article 11, paragraph 1 of the International Law Commission's draft suggested that an agency be set up on what might be called a contractual international basis. As the representative of Ceylon had suggested, if the agency were set up by the parties they might be responsible for its maintenance and conduct.

The Committee should first decide by whom the agency would be set up, what should be its functions, and then whether or not it should be mentioned in the convention. His own view was that the agency should be set up by the parties to the convention, who should define its functions as closely as possible in an optional protocol or resolution.

Mr. HERMENT (Belgium) said that his delegation would prefer the agency to be set up by the Contracting Parties.

Mr. BUSHE-FOX (United Kingdom), referring to his delegation's amendment to article 11, paragraph 1 (A/CONF.9/L.24) said that some confusion had arisen because the first line had been translated into French as "Les Parties contractant voteront pour la creation". The English text merely said that "the Parties shall support the establishment".

Mr. JAY (Canada) recalled that at the ninth meeting the Committee had approved the Danish amendment (A/CONF.9/4, article 19) to article 12, which removed from its debates any suggestion that the text relating to the mutual contractual responsibilities of the parties could in any way be changed by the General Assembly. Article 11 must be examined against that background and the Committee should not amend it in any way that would jeopardize the coming into effect of the mutual contractual obligations assumed by contracting parties in regard to substantive matters. If reference were made to an agency in the article countries which would otherwise be willing to accept the obligations imposed by the convention might hesitate to do so. He therefore suggested that the question of an agency be dealt with in a resolution.

Mr. CARSALES (Argentina) considered that the Conference should not leave the task of setting up an agency to the General Assembly. If it did so it was quite possible that States not represented at the Conference would vote against the establishment of an agency in the General Assembly. The contracting States must assume the financial burden of setting it up and its establishment should be dealt with in a separate protocol.

Mr. LIANG, Executive Secretary of the Conference, said that he did not interpret the International Law Commission's draft as meaning that the contracting parties should themselves set up the proposed agency. In that connexion, he would draw attention to paragraphs 7 and 8 of the document on organs and agencies established by treaty within the framework of the United Nations (A/CONF.9/8) which had been prepared by the Secretariat.

If the Conference recommended in the convention or in a resolution that the General Assembly should approve the establishment of an agency, then that body would study the matter and if it approved the proposal would regard the agency as a subsidiary organ of the United Nations and make financial provision for it. Such action had been taken in connexion with the Convention on the Declaration of Death of Missing Persons, when the General Assembly had made provision for the establishment and maintenance of the International Bureau for Declarations of Death.

Mr. TSAO (China) took the view that the agency should not be mentioned in the convention but should be dealt with in a resolution or an optional protocol. His delegation supported the Belgian subamendment to the United Kingdom amendment.

Mr. BUSHE-FOX (United Kingdom), referring to the statement by the Executive Secretary of the Conference, said that certain countries experienced the same difficulties with article 8 of the Convention on the Declaration of Death of Missing Persons as they did with article 11 of the International Law Commission's draft convention on the reduction of future statelessness.

The United Kingdom delegation saw merit in the Canadian representative's suggestion that the question of an agency should be dealt with in a resolution or recommendation.

Mr. FAVRE (Switzerland) emphasized that the States which had met to draw up the convention on the reduction of future statelessness were not acting in their own interests but in the interests of the international community as a whole and it was from that point of view that the establishment of an agency should be considered.

The CHAIRMAN declared closed the debate on the question of the proposed agency and put to the vote paragraph 1 of the Belgian amendment (A/CONF.9/L.33) to the United Kingdom amendment to article 11, paragraph 1 (A/CONF.9/L.24).

Paragraph 1 of the Belgian amendment was approved by 6 votes to 4, with 19 abstentions.

The CHAIRMAN suggested that the amendment to paragraph 2 of the Belgian amendment proposed orally by the United Kingdom delegation should be referred to the Drafting Committee.

It was so agreed.

On that understanding, paragraph 2 of the Belgian sub-amendment was approved by 12 votes to 4, with 13 abstentions.

The United Kingdom amendment to article 11, paragraph 1, as amended by the Belgian amendment, was approved by 15 votes to 2, with 11 abstentions.

Mr. ABDEL-MAGID (United Arab Republic) said that he wished to reserve his delegation's position regarding article 11, paragraph 1 since the nature and competence of the agency had not yet been defined.

Mr. PEREIRA (Peru) explaining his vote, said that although his delegation did not object in principle to the setting up of the proposed agency it was not in favour of a multiplicity of international bodies.

The CHAIRMAN ruled that as a result of the vote on the United Kingdom amendment, article 11, paragraph 3 of the International Law Commission's draft must be considered as deleted.

Mr. BUSHE-FOX (United Kingdom) pointed out that his delegation's proposal for a new paragraph 2 to be added to article 16 related to the matters covered in the deleted paragraph.

Mr. CARSALES (Argentina) said that he would have to vote against the United Kingdom amendment to article 11, paragraph 4.

The United Kingdom amendment to article 11, paragraph 4 (A/CONF.9/L.24) was approved by 20 votes to 3, with 6 abstentions.

The CHAIRMAN suggested that the United Kingdom amendment to article 11, paragraph 4 should be inserted in the Convention as a separate article.

It was so agreed.

The CHAIRMAN pointed out that a vote for article 11, paragraph 1, as amended would be a vote for the inclusion of a reference to the proposed agency in the convention.

Article 11, paragraph 1, as amended, was approved by 10 votes to 9, with 12 abstentions.

Mr. PEREIRA (Peru) proposed that the next plenary meeting of the Conference should not be held until twenty-four hours after the close of the last meeting of the Committee.

Mr. HARVEY (United Kingdom) opposed that proposal.

The Peruvian representative's proposal was rejected by 13 votes to 3, with 12 abstentions.