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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SEVENTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 6 April 1959, at 3 p.m.

Chairman: Mr. LARSEN (Denmark)

Secretary: Mr. LIANG, (Executive Secretary of the Conference)

CONTENTS:

	Page
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 (continued)	
Article 5 (concluded)	2
Article 7	3

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

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

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(10 p.)

EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (item 7 of the Conference agenda) (continued)

Draft convention on the reduction of future statelessness (A/CONF.9/L.1) (continued)
Article 5 (A/CONF.9/L.12) (concluded)

The CHAIRMAN, referring to the Belgian amendment (A/CONF.9/L.12) to article 5 of the Draft Convention, said that there was a fundamental difference between the legislations which, like that of Belgium, applied the principle of recognition in the case of illegitimate children and those which did not know such a principle. Under Belgian law, for example, an illegitimate child born in Belgium of unknown parentage would apparently acquire Belgian nationality at birth automatically, whereas in certain other countries, in accordance with the provisions of article 1 of the draft convention as approved in Committee, nationality might not be conferred upon the child until the age of eighteen. If the Belgian representative were prepared to modify his amendment so as to restrict the possibility of loss of nationality to a period of perhaps two years from the child's birth, that would not expose a person recognized by a non-national parent at a much later age to the risk of losing the nationality at such a time.

Mr. HERMENT (Belgium) said that his delegation's amendment was intended to defend the basic principle of justice that illegitimate children should not enjoy a more privileged position than legitimate children.

The CHAIRMAN expressed the view that a certain departure from that strict principle might be justified if it worked only to the advantage of stateless persons.

Mr. TSAO (China) inquired whether the word "unemancipated" in the Belgian amendment was necessary. In his understanding the term "minor" required no qualification.

Mr. HERMENT (Belgium) explained that, under Belgian law, it was possible for a person to become sui juris before attaining the age of majority. The word in question had been added in order to exclude such persons. Provided, however, that that point was clearly understood, he would not object to the deletion of the word.

He was unable to accept the Chairman's suggestion; his amendment should be put to the vote as it stood.

The Belgian amendment to article 5 (A/CONF.9/L.12), without the word "unemancipated", was not approved, 5 votes being cast in favour and 5 against, with 21 abstentions.

Mr. RIPHAGEN (Netherlands) proposed that the words "possession or" should be inserted before the word "acquisition" in article 5, recalling that he had put forward a similar amendment at the seventh plenary meeting.

The Netherlands amendment was approved by 23 votes to none, with 3 abstentions.

Article 5 of the draft convention, as amended, was approved by 21 votes to 4, with 3 abstentions.

Mr. MEHTA (India) explained that his delegation had voted against article 5 as amended, because under Indian law change in personal status upon marriage did not entail loss of citizenship. His Government's view was that the other changes in status referred to in the text were not as fundamental as marriage and that an express clause was not required providing that loss of nationality in consequence of such changes would be conditional upon the acquisition of another nationality. If there had been a separate vote on the part of the article relating to change of status upon marriage, his delegation would have voted in favour of it.

Article 7, paragraphs 1 and 2 (A/CONF.9/L.16, L.17)

The CHAIRMAN drew attention to the amendments to article 7 submitted by the delegations of Ceylon (A/CONF.9/L.16) and Pakistan (A/CONF.9/L.17). It would be recalled that at the Committee's first meeting it had been agreed that article 6 would be discussed after articles 7, 8 and 9 had been disposed of.

Mr. HERMENT (Belgium) recalled that some delegations had argued that the respect for fundamental human freedoms demanded that a person should have a unilateral right to renounce his nationality. But the possession of a nationality surely implied obligations as well as rights and it was difficult to sympathize with those whose purpose in renouncing the latter was to avoid fulfilling the former. It had also been argued that refugees should be given the opportunity to free themselves from the nationality of their country of origin in order to avoid enforced repatriation. Since it was unlikely that such countries would be parties to the convention or would be willing to recognize the right to unilateral renunciation of their nationality if they considered it to be contrary to their interests to do so, the argument seemed to be purely hypothetical.

Moreover, it was inconceivable that the country offering asylum would consent to the enforced repatriation of refugees. Paragraph 1 had therefore an important function and should be retained.

Mr. TYABJI (Pakistan) explained that his delegation had submitted its amendment because, under section 16(4) of the Pakistan Citizenship Act, a Pakistan national was subject to deprivation of his nationality, if while resident abroad he failed to register at a Pakistan mission within seven years.

Rev. Father de RIEDMATTEN (Holy See) said that the Ceylonese amendment represented a compromise worked out by delegations in informal consultations. He conceded that the amendment might entail a few cases of statelessness, but in the existing world situation it had to be realized that for certain persons statelessness, at least of a temporary nature, was preferable to the possession of a nationality.

Mr. CALAMARI (Panama), while agreeing with the spirit in which the Ceylonese amendment had been submitted, said it was unacceptable as it stood since it did not effectively remove the difficulty facing persons renouncing their existing nationality in order to acquire a new nationality. If renunciation were permitted a period would elapse during which such persons would become stateless. He therefore proposed that the words "as a result of the said renunciation" be added at the end of paragraph 1.

Mr. KANAKARATNE (Ceylon) said that the dilemma in which a person desirous of renouncing his existing nationality in order to acquire a new one would be placed by the nationality laws of many countries had already been fully discussed. It was not desirable from the point of view either of the individual or of the State that such a person should be compelled to retain the nationality of a country of which he had no desire to be a loyal citizen. Apart from the few eccentrics who aspired to world citizenship, it was clear that any person wishing to renounce his nationality would take that step only because he desired to acquire a new nationality, and the Ceylonese amendment was designed specifically to deal with cases of that type.

It had been pointed out that paragraph 1 enunciated a general principle whereas paragraph 2 was concerned with its practical application. The Ceylonese amendment consolidated the provisions concerning principle and application in a single paragraph.

The Panamanian representative had stated that there was bound to be a period during which a person who changed his nationality would be stateless. At most, one could endeavour to shorten that period as much as possible.

Despite the amendment's imperfections, he was convinced that, if there were agreement on its substance, the Drafting Committee would succeed in working out an acceptable text.

Mr. FAVRE (Switzerland) drew attention to certain consequences of both article 7 of the draft convention and the Ceylonese amendment to it. If a refugee were enabled to renounce his original nationality, under the provisions of article 1 he would be entitled to acquire the nationality of the country of asylum. In effect, the nationality of the country of asylum would be conferred on such a person by virtue of the decision of the Government of another country.

At the Committee's fourth meeting the representative of the Federal Republic of Germany had submitted an amendment (A/CONF.9/L.18) - which had not been approved on account of an equally divided vote to article 1, paragraph 2, designed to prevent such a state of affairs. The Swiss delegation would not submit an amendment to article 7, but in order to limit its application to children born stateless, would submit an amendment on those lines when the Conference resumed discussion of article 1.

Mr. LEVI (Yugoslavia) said that his delegation supported the paragraphs 1 and 2 of article 7 of the draft convention, which were in harmony with the Yugoslav legislation. There did not appear to be any great difference between those paragraphs and the Ceylonese amendment, but the provision concerning renunciation of nationality should not apply only to persons seeking a new nationality. Yugoslav law permitted renunciation also in the case of persons possessing dual nationality.

Paragraph 3 of the article was not in accordance with Yugoslav law. His Government would not however oppose it since there would be an opportunity to reconsider the question before ratifying the convention.

Mr. SUBARDJO (Indonesia) said that the nationality laws of his country were particularly liberal both because of the great extent of its territory and because, being recent measures, they had been drafted in full knowledge of the gravity of the problem of statelessness. Thus, although based primarily on jus soli, they contained concessions to the principle of jus sanguinis.

His delegation had no difficulty in accepting the paragraphs 1 and 2 or the Ceylonese amendment thereto. As to paragraph 3, Indonesian law provided for the lapse of Indonesian nationality in the case of a citizen resident abroad who did not register with an Indonesian mission within a period of five years. He therefore supported the Pakistan amendment.

Mr. RIPHAGEN (Netherlands) said he would vote for the retention of the paragraphs 1 and 2.

The Drafting Committee should note that, as drafted, paragraph 1 assumed the form of a general rule of international law. The text should be amended so as to restrict its application to contracting parties. During the previous discussion of article 7 at the Committee's first and second meetings, several delegations had drawn attention to the situation that would arise if a person were unable to acquire a new nationality until he had been released from his existing nationality. The Drafting Committee should see to it that that point was reflected in the final draft, since it nowhere appeared in the text under consideration.

Mr. TSAO (China) expressed support for the Ceylonese amendment, which was a considerable improvement on the original draft of the paragraphs 1 and 2. He wished to place on record that his delegation understood the word "person" in the amendment to mean a person who had reached his majority and was fully sui juris. Under Chinese law, such majority was reached at the age of twenty years.

Mr. JAY (Canada) said that his delegation would support the Ceylonese amendment for reasons which he had explained at previous meetings.

With regard to the Netherlands representative's reference to further drafting changes in article 7, any change desired should be proposed while the article was under discussion.

Mr. BACCHETTI (Italy) said that his delegation preferred that paragraphs 1 and 2 should stand as drafted.

The Ceylonese amendment, which seemed to be lacking in clarity, was not acceptable.

The CHAIRMAN, speaking as the representative of Denmark, said that whereas article 7, paragraph 2 in the International Law Commission's text applied only to persons who wished to change their nationality, paragraph 1 applied also to persons who wished to divest themselves of their nationality even if as a consequence they became stateless. The amendment proposed by the delegation of Ceylon did not cover the latter case at all. It was by no means true that every person who wished to divest himself of his nationality wished to obtain another nationality. There were several cases of immigrants living in jus sanguinis countries who wished their sons to be divested of the nationality of their jus sanguinis country of origin so as to prevent their being called up by the authorities of that country for military service, even if the loss of that nationality would result in their becoming stateless; the sons in those cases would not be covered by the text put forward by the delegation of Ceylon, but they would be covered by paragraph 1 of the International Law Commission's text. The Ceylonese amendment would make it possible in the case he had cited for the authorities of the country of origin unilaterally to deprive the sons of their nationality and so, by rendering them stateless, place an onus on the country in which they were resident. It was by no means certain that the Danish Government would agree to such a provision. Some small densely populated countries, although willing to grant their nationality to persons who would otherwise be stateless, were not willing to grant it to persons who deliberately made themselves stateless.

The adoption of the Ceylonese amendment would mean the deletion of paragraph 1 of the International Law Commission's text. It would, for example, completely change the situation for Denmark.

The substance of the first sentence of the Ceylonese text was contained in paragraph 2 of the Commission's text. The second sentence related to a matter which should be covered by domestic legislation and not by an international convention.

Mr. JAY (Canada) said that, in the cases cited by the Danish representative, the wording of article 1 as approved by the Committee, would seem to ensure that no onus was placed on the country of residence.

Mr. KANAKARATNE (Ceylon), in connexion with the remarks of the representative of Italy, suggested that the Drafting Committee should give special consideration to the words "is assured of another nationality" in his delegation's text, because he feared they might give rise to difficulties of interpretation.

The second sentence of the Ceylonese amendment had been included in order to take into account the point made by the representative of Belgium.

In reply to the Danish representative, there might be a few hundred cases in the world of persons trying to avoid military service by deliberately becoming stateless, but surely the Conference had not been convened to draft provisions concerning such a relatively minor matter. On the other hand, unless a clause in the convention offered the appropriate remedy, a much larger number of persons wishing to change their nationality would be prevented from doing so by the refusal of the authorities of the country of residence to naturalize them so long as they had another nationality and by the refusal of the authorities of the country of nationality to release them of their allegiance. It was a question of protecting the individual against the State; such protection was often necessary.

Mr. ROSS (United Kingdom) said that he would prefer paragraph 1 of the International Law Commission's text to be retained. He did not agree with the representative of Ceylon that only very few persons would rather be stateless than nationals of the country of origin. There were many reasons why people preferred statelessness; e.g. some people wished to become stateless in order to avoid deportation. Furthermore, if a person divested himself of his nationality - at the risk of becoming stateless -, what would be the status of that person's wife and children? The children would not in all cases be able to acquire a nationality by virtue of either article 1 or article 4. It was essential to avoid the inclusion in the convention of any clause which would be detrimental to the interests of the wives and children. Lastly, the possibility of a refusal by the country of origin to release a person from his nationality could be dealt with by amending paragraph 2 of the International Law Commission's text.

Mr. HERMENT (Belgium) said that in his country it was possible for a person to become a naturalized Belgian citizen while still possessing the nationality of another country.

He welcomed the Ceylonese delegation's inclusion in its amendment of the second sentence.

Mr. BACCHETTI (Italy) suggested that, before voting on the text submitted by the delegation of Ceylon, the Committee should decide whether paragraph 1 of the International Law Commission's text should be deleted, since the Ceylonese amendment involved the deletion of the substance of that paragraph.

The CHAIRMAN supported that suggestion.

Mr. SIVAN (Israel) said it would be wrong to proceed as the Italian representative had suggested, for part of the substance of paragraph 1 of the International Law Commission's text was included in the text proposed by the delegation of Ceylon; both sentences of the latter, like paragraph 1 of the Commission's text, referred to "renunciation", whereas paragraph 2 of the Commission's text did not.

The CHAIRMAN, speaking as the representative of Denmark, proposed the deletion of the second sentence of the text submitted by the delegation of Ceylon as a substitute for article 7, paragraphs 1 and 2, of the International Law Commission's text.

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

The Ceylonese amendment (A/CONF.9/L.16) was rejected by 10 votes to 9, with 12 abstentions.

Paragraph 1 of the International Law Commission's text of article 7 was approved by 22 votes to 7, with 2 abstentions, on the understanding that the Drafting Committee would amend it in the sense that it would not apply to parties whose laws did not provide for renunciation of their nationality.

Rev. Father de RIEDMATTEN (Holy See) said he had voted against the paragraph because he feared that, perhaps in one case in a hundred, it would be used for purposes contrary to the humanitarian aims of the Conference.

Mr. ROSS (United Kingdom) proposed the addition of the words "or is assured of acquiring" after the words "unless he acquires" in article 7, paragraph 2, of the International Law Commission's text; that proposal had been suggested to him by the Ceylonese amendment which had just been rejected.

Mr. BACCHETTI (Italy) asked what was meant by the word "assured". Did it mean assured because the laws of the country whose nationality the person

wished to obtain were such that he would automatically acquire nationality of that country or because he held a certificate from the authorities of that country?

Mr. ROSS (United Kingdom) said that the convention could not be explicit in every respect. The wording was the best that he could suggest for the moment; perhaps the Drafting Committee would be able to improve it.

The CHAIRMAN, speaking as the representative of Denmark, said that the Danish authorities would never issue a certificate of the kind the Italian representative had in mind because they could not do so without a special Act of the Danish parliament and royal assent.

The United Kingdom proposal was approved by 11 votes to 4, with 16 abstentions.

Mr. SIVAN (Israel) said that it had been agreed in informal discussions among delegations that the words "or who obtains an expatriation permit for that purpose" in paragraph 2 should be deleted, since they added nothing to the clause and in many countries expatriation permits were never issued. He proposed the deletion of those words.

Mr. ROSS (United Kingdom) asked why the words had been included in the International Law Commission's text.

Mr. LIANG, Executive Secretary of the Conference, replied that they had been taken from The Hague Convention of 1930, which included a whole chapter on expatriation permits.

The proposal of the representative of Israel was approved by 12 votes to 6, with 12 abstentions.

Paragraph 2 of the International Law Commission's text of article 7, as amended, was approved by 25 votes to none, with 3 abstentions.

The meeting rose at 5.50 p.m.