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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE EIGHTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 7 April 1959, at 10.15 a.m.

Chairman: Mr. LARSEN (Denmark)

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

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

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

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EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (item 7 of the Conference agenda) (A/CONF.9/4) (continued)

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

Mr. PEREIRA (Peru) expressed the desire to place on record his delegation's reason for its abstention from voting on a number of articles of the draft convention (A/CONF.9/L.1) which the Committee had already approved. That abstention did not indicate either agreement or disagreement with the provisions of the articles; nationality laws in Peru were extremely liberal, and his Government had instructed him to reserve its position on provisions which tended to be more restrictive.

Article 7 (A/CONF.9/L.17) (resumed from the seventh meeting)

Mr. STABEL (Norway) said that he was not clear as to the relationship between the provision in the first sentence of article 7, paragraph 3 and the rules on deprivation of nationality in article 8. Article 7 was presumably intended to cover cases where a person lost his nationality automatically by the operation of law whereas article 8 was concerned with individual actions taken to deprive a person of his nationality. If that were correct the Drafting Committee might perhaps consider whether the distinction could be made more clear in the text.

His comments should not be taken to mean that his delegation was opposed to the provisions of paragraph 3. Like many other provisions in the International Law Commission's draft, paragraph 3 appeared to be drafted from a jus soli angle, and there was some doubt in his mind whether it took full account of all the legal systems it was intended to cover. Presumably, persons who had acquired their nationality on the principle of jus sanguinis were protected as "natural-born" nationals under paragraph 3 and thus could not lose their nationality and become stateless on the ground of absence from their country.

The Scandinavian countries based their nationality laws on the principle of jus sanguinis and with regard to the acquisition of nationality that principle was applied without limitation. A Norwegian citizen conferred his nationality upon his children whatever their birthplace and regardless of where he, his father or his grandfather had been born. It was thus possible for a family of Norwegian origin to live abroad for generations without losing their Norwegian nationality provided they did not voluntarily acquire another nationality and maintained certain ties with Norway. If they did not maintain such ties, a situation arose which was somewhat contrary to the Norwegian concept of the functions of nationality and the right to a nationality.

Some countries placed restrictions on the right of a person born abroad to acquire their nationality. That would not seem to be contrary to the draft convention provided that the provisions of article 4 did not come into operation. Under Norwegian law a Norwegian citizen born abroad lost his nationality at the age of twenty-two if at that age he had never resided in Norway or stayed there in circumstances showing that he retained some ties with the country; he could however apply for permission to retain his nationality, a request that was seldom refused.

The Norwegian delegation did not wish to defend the merits of that rule; it might well be amended, for instance, to make it apply only to the children of the first generation born outside the country provided that those children had themselves also been born outside the country and had failed to re-establish a connexion with it after having reached a certain age. However, the rule would still be contrary to paragraph 3. If his country acceded to a convention giving effect to that paragraph, it might or might not find itself in the position of having to consider restricting its laws on the acquisition of nationality. Norway might, for example, subject to its possible obligations under article 4, prescribe that a Norwegian citizen conferred his nationality upon his children born outside the country subject to certain conditions, for instance, that he himself - or at least one of his parents - was born in Norway or had resided there for a specified number of years. Similar rules were to be found in the nationality laws of other countries. While such action might be taken by Norway, he was afraid that if it were, the implementation of article 7 of the draft convention would be regarded in Norway as a retrograde step, both in general and in respect of the reduction of statelessness. As far as the principle involved was concerned, the system at present followed by Norway seemed preferable, mainly because it upheld the unity of the family in nationality questions.

The Norwegian delegation did not wish to submit an amendment to paragraph 3 at that stage, since it understood and respected the motives that had led to the inclusion of the paragraph in the draft and did not wish to see it weakened to any considerable degree. Before taking a position on paragraph 3, he wished to know whether other countries had similar difficulties. The Danish draft convention (A/CONF.9/4) contained a provision relating to the problem faced by Norway.

He would have to reserve his delegation's position on the amendment submitted at the previous meeting by the representative of Pakistan (A/CONF.9/L.17), since from the Norwegian point of view it appeared to grant a contracting state more discretionary powers than were justified.

Mr. BERTAN (Turkey) proposed the deletion of paragraph 3, the provisions of which should be included in article 8, which dealt with deprivation of nationality.

Mr. BACCHETTI (Italy), referring to the comments made by the representatives of Norway and Turkey, considered that there was a clear distinction between article 7, paragraph 3 and article 8. The former stipulated that a person could not lose his nationality on the ground of change of residence. The latter stipulated that a party could not deprive its nationals of their nationality by way of penalty, if statelessness would result, except in one single case. The confusion between the provisions of article 7, paragraph 3 and those of article 8 was due to the inclusion in article 8 of the words "except on the ground mentioned in article 7, paragraph 3", which could be omitted without loss.

Generally speaking, the text of article 7, paragraph 3 which appeared in the draft convention on the elimination of statelessness was preferable. In a spirit of compromise, however, he would merely propose that with regard to naturalized persons the State granting nationality should not have the right to fix the minimum period of residence in the country of origin which might entail loss of nationality. That period should be stated in paragraph 3, and it should be a long one for it would not be fair to impose very strict conditions of residence for the acquisition of nationality by stateless persons and at the same time deprive a naturalized person of his nationality after a very short period of residence in his country of origin.

After hearing the opinions of other delegations he would submit an amendment to that effect.

Mr. BEN-MEIR (Israel) said that his delegation would accept the first sentence of paragraph 3 as drafted by the International Law Commission.

The second sentence however called for further deliberation. In the first place, it was not clear what was meant by the phrase "country of origin". Was it the country in which a person had been born? Or the country whose nationality he had acquired at birth? Or the country whose nationality he had acquired later by naturalization? Which of those three countries would be regarded as the "country of origin" if the person concerned had possessed the nationality of more than one of them either simultaneously or at different times?

Secondly, it was not fair to restrict the provisions of the second sentence to residence in the country of origin alone. If residence normally meant resumption of ties with the country of origin and dissolution of ties with the country of adoption, then paragraph 3 should contain a specific reference to those ties as the factor determining whether nationality should be retained or lost.

Thirdly, the nationality laws of many countries made residence abroad in general - not only in the country of origin - a ground for losing nationality. If that ground were included, the convention would probably be ratified by more States and especially by those which found it difficult to abandon the principle of the maintenance of a real attachment between a naturalized person and the State which accepted him into its community.

Admittedly, an article drafted on those lines would not reduce statelessness to the same degree as the original article prepared by the International Law Commission. But due regard should be paid to the wishes of States which attached overriding importance to the existence of a real link between naturalized persons and the community to which they belonged. The views of other delegations on that point would be welcome.

Lastly, paragraph 3 should stipulate a minimum period of residence abroad which might entail loss of nationality; as the representative of Italy had suggested, it should be relatively long.

Mr. HELLBERG (Sweden) said that so long as his country's laws remained unchanged, his delegation could not vote for paragraph 3 as it stood. Swedish nationality laws did provide for loss of nationality after a certain period of residence abroad; that was one of the few instances in which they permitted a case of statelessness to arise. Although there were good prospects of amending Swedish law on that point, for the moment he would have to abstain from voting on the paragraph.

Mr. LEVI (Yugoslavia) said that his delegation would support the Pakistan amendment to article 7, paragraph 3. If the amendment were rejected by the Committee, however, he would abstain from voting on the International Law Commission's text of paragraph 3, since it was at variance with article 15 of the Yugoslav Nationality Act of 1 July 1946.

Mr. TSAO (China) said that paragraph 3 coincided, in spirit at least, with the corresponding law of his country. None of the grounds specified in the paragraph entailed loss of nationality in China and his delegation would therefore have no difficulty in approving it as drafted.

He would however, vote for the Pakistan amendment, which he regarded as purely procedural. It would take into account the wishes of States which were anxious to reserve their rights in regard to their nationals living abroad.

Mr. JAY (Canada) said that confusion had been introduced into the discussion by regarding paragraph 3 as a single provision. A clear distinction should be made between the first and second sentences. To take for the moment the first sentence only, it was mandatory in character, stating that a natural-born national should not lose his nationality for any of a number of specific reasons listed. It would hardly be logical for the Committee to adopt a paragraph on those lines in view of the attitude it had taken on articles 1 and 4. Provisions had been included in articles 1 and 4 to protect countries which conferred nationality on a somewhat stricter basis than the International Law Commission had contemplated. It would surely be logical to introduce the same protections in article 7, paragraph 3. He would welcome the views of other delegations on a proposal that the following phrase be added to the first sentence of paragraph 3: "except that the retention of nationality by a natural-born national born abroad shall be conditional on his making a declaration before the age specified in the national laws of the Party".

Mrs. TAUCHE (Federal Republic of Germany) pointed out, first, that paragraph 3 referred to natural-born nationals and naturalized persons, but said nothing of those who had acquired their nationality by other means. How, for instance, would it affect children who had acquired nationality as a result of the naturalization of their parents?

Secondly, was it fair to differentiate between natural-born nationals and naturalized persons? A naturalized person had acquired a nationality at his own request, by his free will: was not free will more important than the accident of birth?

Thirdly, it was hardly just that naturalized persons should be deprived of their nationality only on account of residence in their country of origin. It was difficult to discern any great difference between that and prolonged residence in other foreign countries.

Mr. RIPHAGEN (Netherlands) said that, like other delegations, he found the provisions of paragraph 3 at variance with his country's nationality laws. The Netherlands however would probably be prepared to amend its laws to bring them into line with the provisions of the paragraph.

It was conceivable that the statelessness which might result from the adoption of paragraph 3 could be avoided by the inclusion in the draft convention of a provision similar to that contained in article 1 of the Rio de Janeiro Convention of 1906, which laid down that "If a citizen, a native of any of the countries signing the present Convention, and naturalized in another, shall again take up his residence in his native country without the intention of returning to the country in which he has been naturalized, he will be considered as having reassumed his original citizenship, and as having renounced the citizenship acquired by the said naturalization."

The CHAIRMAN agreed that the International Law Commission's draft of paragraph 3 was based on the assumption that jus soli was the most common basis for acquiring nationality but it was quite clear that there were other grounds for acquisition. How, for instance, would paragraph 3 apply to those who acquired their nationality under paragraph 1 (b) of article 1? The Committee should distinguish between groups of persons who had acquired their nationality on different grounds and should try to establish principles for each group.

Mr. JAY (Canada), endorsing that viewpoint, said that, whereas the first sentence of paragraph 3 was mandatory, the second was permissive in respect of a limited category of persons, i.e. naturalized persons who had returned to their country of origin. The question had arisen during the discussion whether the second sentence should apply also to other persons such as naturalized persons living in any foreign country. In his delegation's view, it should.

His country was relatively generous in conferring nationality and in return required that naturalized persons should demonstrate their attachment to Canada. In the Canadian nationality laws it was assumed that a Canadian citizen residing abroad for a period of exceeding ten years did not wish to retain his Canadian citizenship and should therefore be liable to lose it.

He proposed two changes in the second sentence of paragraph 3: first, the replacement of the words "in his country of origin" by the word "abroad", and secondly, the insertion of a provision specifying a minimum period of residence abroad which might entail loss of nationality.

Mr. TYABJI (Pakistan), explaining his delegation's amendment (A/CONF.9/L.17), said that his country's nationality laws required a national of Pakistan living anywhere abroad to register with a Pakistani mission if the period of residence abroad exceeded seven years. So long as the national registered, he could live abroad and retain his nationality as long as he wished.

Mr. SUBARDJO (Indonesia) supported the Pakistan amendment.

Mr. ROSS (United Kingdom) said that his delegation was satisfied with the International Law Commission's draft of paragraph 3. Other countries had difficulty in accepting it for one of two reasons: either they wished to include a provision that natural-born nationals born abroad should be required to register and that if they did not do so loss of nationality would follow even if it entailed statelessness; or they thought it was illogical to permit a naturalized person to lose his nationality on account of residence in his country of origin only, and not elsewhere.

There were a number of amendments before the Committee, but the only one submitted formally was that of Pakistan, which was not likely to command very wide support. He proposed that the Committee should first vote on it and then set up a small working group to draft a fresh text of paragraph 3 for submission to the Committee.

Mr. HERMENT (Belgium) suggested that the discussion of paragraph 3 be deferred until all the amendments proposed had been submitted formally.

Mr. BACCHETTI (Italy) observed that the changes in the second sentence of paragraph 3 proposed by the Canadian representative would perpetuate a class of stateless persons.

He could not agree with the Chinese representative that the Pakistan amendment was merely procedural for it would give discretionary powers to contracting parties and was therefore substantive.

Mr. MEHTA (India) said that, since under Indian law in no circumstances could a natural-born citizen lose his citizenship, the first sentence of paragraph 3 was acceptable to his delegation. The second sentence however was not acceptable because the Indian Government's view was that where a naturalized citizen had been resident out of India for a continuous period of seven years without registering annually his intention to retain Indian citizenship it should have the right to deprive him of his citizenship if it considered it to be in the public interest to do so.

He proposed that a separate vote be taken on each of the two sentences.

Mr. BERTAN (Turkey) said that, under articles 6 and 7 of his country's Nationality Act of 1957, nationality was conferred automatically on immigrants applying for it. Thousands of persons took advantage of that provision every year.

His Government could not therefore give up its right to withdraw nationality from naturalized persons in the light of their subsequent activities.

Mr. LA CLAIR (United States of America) seconded the United Kingdom representative's proposal that a working group be set up to draft a fresh text of paragraph 3.

It was decided to appoint a Working Group composed of the representatives of Canada, Denmark, the Federal Republic of Germany and Pakistan to draft a fresh text of article 7, paragraph 3 for submission to the Committee.

Mr. JAY (Canada) suggested that the United Kingdom representative become a member of the Working Party established at the Committee's sixth meeting.

It was so agreed.

The meeting rose at 11.40 a.m.