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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE ELEVENTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Thursday, 16 April 1959, at 3.10 p.m.

President: Mr. LARSEN (Denmark)

Executive Secretary: Mr. LIANG

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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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(14 p.)

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

Draft convention on the reduction of future statelessness (A/CONF.9/L.40 and Add 1, 2 and 4 and L.62)

New article on territorial application (A/CONF.9/L.40/Add.1 and A/CONF.9/L.59)

The PRESIDENT invited discussion on the new article on the territorial application of the convention (A/CONF.9/L.40/Add.1).

Mr. GHORBAL (United Arab Republic), introducing the joint amendment submitted by the delegations of Ceylon, India, Iraq, Pakistan and the United Arab Republic (A/CONF.9/L.59), said that the question of the territorial application clause was not a new one for the United Nations. The United Nations Conference on Slavery, 1956, had adopted such a clause[1] and a similar one had been included in the Convention on the Nationality of Married Women, 1957.[2] He considered that those precedents should be followed, and that the Conference should accordingly not adopt the new article.

The text of the joint amendment was the same as that of the United Kingdom proposal (A/CONF.9/L.26), to which the Committee of the Whole Conference had preferred the Belgian text (A/CONF.9/L.29) (see Committee's thirteenth meeting); it attempted to give non-self-governing, trust and other non-metropolitan territories an international personality, which they needed and were yearning for, during the interim period before they reached complete independence and became eligible for membership of the United Nations.

The text adopted in Committee was a retrograde step. The authors of the joint amendment could have made it stronger, but they had been guided by a spirit of conciliation and a desire to bring the Conference to a successful conclusion, and had decided merely to submit a text which had been included in earlier conventions prepared under the auspices of the United Nations.

Mr. TEIXEIRA (Portugal) said that the joint amendment would not make the adoption of the convention any easier for certain States. His delegation preferred the article as adopted in Committee, since it was more elastic.

1/ See Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, adopted by the United Nations Conference of Plenipotentiaries held at Geneva from 13 August to 4 September 1956 (E/CONF.24/23, article 12).

2/ See General Assembly resolution 1040 (XI), annex, article 7.

He pointed out that the overseas territories of Portugal were provinces of the metropolitan country, and that legislation sometimes had to be amended to take their customs into account. While Portugal might be able to accede to the convention, the latter might not be applicable, without change, to the overseas provinces. He thought the joint amendment could be considered as interfering in the internal affairs of a State, and would oppose it.

Mr. HERMENT (Belgium) recalled that his delegation's proposal (A/CONF.9/L.29) had been accepted by the United Kingdom delegation as an amendment to its proposal (A/CONF.9/L.26) and adopted in Committee. It followed closely the terms of a similar article in the 1954 Convention relating to the Status of Stateless Persons.

Mr. MEHTA (India) recalled that the United Kingdom representative had expressed the view in Committee that the only difference between his delegation's proposal and that of the Belgian delegation was one of form. However, the representative of Argentina had pointed out that there was a difference of substance between the two proposals. When the representative of Pakistan had suggested in Committee that the United Kingdom proposal should be voted on first, as it had been submitted first, the United Kingdom representative had intimated that he had accepted the Belgian proposal and invited support for it.

He was sure that representatives were aware of the feelings of India regarding colonialism in its various manifestations; his delegation was opposed to the perpetuation of any vestige of the discretionary right of reservation of a metropolitan Power in regard to non-self-governing territories. In view of the humanitarian nature of the work of the Conference his delegation had refrained from raising controversial issues and, though not quite satisfied with the text as proposed, which he would have liked to be more binding and precise, his delegation, in a spirit of compromise, had agreed to co-sponsor it so as to avoid lengthy debate on procedural and other aspects and also because the text had been approved for other similar conventions. He hoped that the text now introduced would be accepted in that spirit by other delegations.

Mr. CARASALES (Argentina) recalled the statement he had made in Committee on the United Kingdom and Belgian proposals. He had explained why he preferred the United Kingdom text, which was in closer agreement with the position taken by the General Assembly and by other international conferences.

Without prejudice to the position adopted by his country on the territorial application clause, he would vote in favour of the joint amendment.

Mr. ROSS (United Kingdom) explained that for technical reasons it was necessary for the United Kingdom to have a territorial application clause of one kind or another, and that either the text of the new article or that of the joint amendment would satisfy its constitutional requirements. So far as the United Kingdom was concerned, the two texts differed in form only, since in either case the United Kingdom Government would go through the same procedure of consultation before the convention was applied.

He would prefer the joint amendment, but wished to see the maximum number of States accede to the convention and would not vote in such a way as to make it impossible for other States to accede. His delegation would therefore abstain from voting on the joint amendment; but if that amendment were accepted, it would gladly support the wording adopted by the Conference.

Mr. PAULY (Federal Republic of Germany) said that his delegation would vote for the new article, which would allow his Government to apply the convention to the Land Berlin, whereas the joint amendment would not permit of such action.

Mr. LEVI (Yugoslavia) said that he had voted against both the United Kingdom and the Belgian proposals in Committee, but would vote for the joint amendment since it would delete from the draft convention an article which his delegation could not support.

Mr. JAY (Canada) said that his delegation had been struck by the dignified and statesmanlike manner in which the sponsors of the joint amendment had approached the problem of the territorial application clause and would therefore vote in favour of the amendment.

Mr. HERMENT (Belgium) said that it would be virtually impossible for his Government to apply the provisions proposed in the joint amendment.

Sir Claude COREA (Ceylon), speaking as one of the co-sponsors of the joint amendment, said that the new article had been adopted in Committee by 12 votes to 9 with 11 abstentions. The five States sponsoring the joint amendment had formed the considered opinion that the text adopted in Committee should not become part of the convention because it was at variance with the precedents established by the United Nations, and because it would prevent the question

of statelessness from being dealt with in certain territories for which metropolitan Powers were responsible. The words used in the joint amendment were mandatory ("This Convention shall apply.....") whereas the wording of the article adopted in Committee was not. A metropolitan Power should not have the right to decide whether a convention on statelessness should or should not apply to a non-self-governing territory. It was the duty of the metropolitan Power to ensure that the convention applied to all territories for which it was responsible.

Mr. TYABJI (Pakistan), speaking as a co-sponsor of the joint amendment, could not agree with the representative of Portugal that the amendment constituted interference in the internal affairs of a State. The delegation of Portugal had voted in favour of article 1, paragraph 1, which certainly did constitute such interference. Why then did that delegation object to the joint amendment on that ground?

Referring to the Belgian representative's remarks, he said that the joint amendment would allow any metropolitan Power to decide whether or not to apply the article in question. Besides, it was open to the Belgian Government to make a reservation under article 13.

Mr. HUBERT (France) supported the Belgian representative's views, and pointed out that the question of the territorial application clause had been discussed at great length in Committee. He therefore moved the closure of the debate.

Mr. HERMENT (Belgium) and Mr. de SOIGNIE (Spain) opposed the motion.

The motion for the closure was adopted by 9 votes to 1, with 23 abstentions.

Mr. HERMENT (Belgium), explaining his vote, said that his delegation could not vote for the inclusion of such an article in the convention before the Conference.

Mr. TYABJI (Pakistan) said that his delegation had abstained from voting on the motion for closure.

The PRESIDENT suggested that the joint amendment (A/CONF.9/L.59) be put to the vote twice: first on the understanding that no reservations to its provisions be allowed and then, if it was rejected, on the understanding that reservations would be admissible.

Mr. GHORBALI (United Arab Republic) said that in sponsoring the joint amendment his delegation had considered that no reservations should be allowed to the proposed article.

Sir Claude COREA (Ceylon) said he could not support the procedure suggested by the President since it might complicate matters.

Mr. TYABJI (Pakistan) said that if the joint amendment was adopted, any delegation which had reservations on the proposed new article could raise them when the general question of reservations was dealt with in article 13.

Mr. CARASALES (Argentina) suggested that it might be advisable for the Conference to vote first on whether reservations to the proposed new article should be allowed.

The PRESIDENT put to the vote the joint amendment (A/CONF.9/L.59) on the understanding that no reservations to its provisions would be admissible.

At the request of the representative of Pakistan a vote was taken by roll-call.

Luxembourg, having been drawn by lot by the President, was called upon to vote first.

In favour:	Pakistan, Turkey, United Arab Republic, Yugoslavia, Ceylon, China, India, Iraq.
Against:	Luxembourg, Netherlands, Panama, Portugal, Spain, Belgium, France, Federal Republic of Germany, Liechtenstein.
Abstaining:	Norway, Peru, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, Austria, Brazil, Canada, Chile, Denmark, Holy See, Indonesia, Israel, Italy, Japan.

On that understanding, the joint amendment was rejected by 9 votes to 8, with 17 abstentions.

The PRESIDENT put the joint amendment to the vote on the understanding that reservations to its provisions would be admissible.

At the request of the representative of Pakistan a vote was taken by roll-call.

Peru, having been drawn by lot by the President, was called upon to vote first.

In favour: Peru, United Arab Republic, Yugoslavia, Argentina, Brazil, Canada, Ceylon, Chile, China, India, Indonesia, Iraq, Pakistan, Panama.

Against: Portugal, Spain, Belgium, France, Federal Republic of Germany, Liechtenstein, Luxembourg.

Abstaining: Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Austria, Denmark, Holy See, Israel, Italy, Japan, Netherlands, Norway.

On that understanding, the joint amendment (A/CONF.9/L.59) was adopted by 14 votes to 7, with 13 abstentions.

Mr. PUSHE-FOX (United Kingdom) pointed out that the adoption of the new article would necessitate a consequential amendment to article 15 on denunciations, in order to provide for the case where the convention ceased to apply to a non-metropolitan territory.

The PRESIDENT suggested that the United Kingdom representative should submit a suitable amendment to the Drafting Committee.

New article (Saving clause) (A/CONF.9/L.40/Add.2)

The PRESIDENT invited comments on the new article in document A/CONF.9/L.40/Add.2.

Mr. LEVI (Yugoslavia) pointed out that the new article was linked with articles 7 and 8, and suggested that debate on it should be deferred until those articles had been dealt with.

It was so agreed.

New draft article on the effect of the convention (A/CONF.9/L.40/Add.4, L.60)

The PRESIDENT invited the Conference to consider the new draft article on the effect of the convention (A/CONF.9/L.40/Add.4) and the United Kingdom delegation's amendment thereto (A/CONF.9/L.60).

Mr. HARVEY (United Kingdom), introducing part 1 of his delegation's amendment (A/CONF.9/L.60) pointed out that under article 1, paragraph 4, as adopted,[3/] the contracting Parties were, subject to a number of conditions,

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3/ The reference to article 1, paragraph 3, in the new article should be construed as a reference to article 1, paragraph 4, see document A/CONF.9/L.62.

obliged to confer nationality on persons who had been unable to acquire the nationality of the country of their birth because they had passed the age for lodging an application or had not fulfilled residence or certain other conditions.

When the Committee had discussed the text of article 1, paragraph 4, it had been thinking mainly of the future. The Conference now had to decide how the convention would apply to persons born before its entry into force; and it seemed unreasonable to oblige States to confer nationality under article, 1, paragraph 4 on persons who had been unable to acquire the nationality of their country of birth because they were over age at the time of the entry into force of the convention. If it were mandatory to confer nationality on such persons, the whole effect of article 1 would be distorted: for the primary, rather than the residual, responsibility would be placed on countries granting nationality under paragraph 4. To avoid such a consequence, his delegation proposed the insertion of the words "not more than twenty-five years" after the words "applying to persons born" in paragraph 2 of the new article.

Mr. JAY (Canada) recognized that the intention of the United Kingdom amendment was to assist countries which in practice applied article 1, paragraph 4 but did not wish to impose the conditions contained in paragraph 5.

However, the amendment might well create more difficulties than it removed. Under the terms of article 1, paragraph 5, read in conjunction with paragraph 4, States had a right to make the grant of nationality subject to the condition of an age limit, which was to be not less than twenty-three years. The United Kingdom amendment raised the age limit to twenty-five years, which would put a number of countries in a difficult position.

Mr. HARVEY (United Kingdom) confirmed that the object of his delegation's amendment was to assist countries granting nationality under article 1, paragraph 4, without imposing the conditions contained in paragraph 5.

The PRESIDENT announced that discussion of the new draft article on the effect of the convention and the United Kingdom amendment thereto was closed.

He put to the vote part 1 of the United Kingdom amendment (A/CONF.9/L.60) to the new article on the effect of the convention (A/CONF.9/L.40/Add.4).

Part 1 of the United Kingdom amendment was rejected by 7 votes to 6 with 16 abstentions.

Mr. HARVEY (United Kingdom) said that, in view of the rejection of part 1 of his delegation's amendment, he would withdraw part 2.

The PRESIDENT then put to the vote the new article on the effect of the convention (A/CONF.9/L.40/Add.4).

The new article was adopted by 16 votes to none, with 11 abstentions.

New draft article on the settlement of disputes (A/CONF.9/L.40/Add.4)

The PRESIDENT invited the Conference to consider the new draft article on the settlement of disputes (A/CONF.9/L.40/Add.4).

Mr. CARASALES (Argentina) said that his Government would wish to enter reservations to the new article and asked the Conference to admit the right of contracting Parties to make reservations to the new article, as well as to article 11 and to the territorial application clause. The common element of the three articles in question was that none of them related to the substance of the convention.

The reservations which his government wished to make were not of a general character; they would be confined to a few cases.

Sir Claude COREA (Ceylon) observed that opinions were divided on the submission of disputes of all kinds to the International Court of Justice. He thought it would be better to omit the new article from the convention altogether.

Mr. VIDAL (Brazil) seconded the remarks of the Argentine representative concerning the admissibility of reservations.

Mr. BACCHETTI (Italy) also considered that reservations to the new article should be allowed.

The PRESIDENT put to the vote the new article on the understanding that reservations to the article would not be admissible.

On that understanding the article was rejected by 17 votes to 10, with 5 abstentions.

The PRESIDENT then put to the vote the new article on the understanding that reservations thereto would be admissible.

On that understanding the new article was adopted by 21 votes to 1, with 9 abstentions.

Article 7 (A/CONF.9/L.40) (resumed from the previous meeting)

The PRESIDENT invited the Conference to consider the text of article 7 and amendments thereto.

Paragraph 1 (A/CONF.9/L.16, A/CONF.9/L.65)

Sir Claude COREA (Ceylon) re-submitted part 1 of his delegation's amendment to paragraph 1 (A/CONF.9/L.16).

Rev. Father de RIEDMATTEN (Holy See) said that he would ask for a vote on his delegation's amendment (A/CONF.9/L.65) only if that of Ceylon were rejected. The purpose of his delegation's amendment was to ensure that persons not wishing to retain their existing nationality should have a legal basis for exercising their rights under articles 13 and 14 of the Universal Declaration of Human Rights.

Mrs. TAUCHE (Federal Republic of Germany) asked whether the amendment submitted by Ceylon implied that persons would be allowed to renounce their nationality if they became or wished to become stateless.

Mr. HERMENT (Belgium) thought that that would appear to be the implication of the amendment.

Sir Claude COREA (Ceylon) disagreed. According to his delegation's amendment, renunciation would not entail loss of nationality until a second nationality had been acquired.

Mr. SCOTT (Canada) thought that the amendment referred only to renunciation in the cases in which it normally occurred, namely where application was being made for a second nationality.

The PRESIDENT announced that the discussion of paragraph 1 and the amendments thereto was closed. He put to the vote the amendment submitted by Ceylon (A/CONF.9/L.16).

The amendment was rejected by 15 votes to 13, with 6 abstentions.

The PRESIDENT then put to the vote the amendment submitted by the delegation of the Holy See (A/CONF.9/L.65).

The amendment was adopted by 14 votes to 5, with 12 abstentions.

Paragraph 2

Mr. BACCHETTI (Italy) thought that the words "is assured of acquiring" were too imprecise for a legal document.

Mr. SIVAN (Israel) said that it was essential to retain the words in question, or words of similar meaning. He proposed the words "has been accorded assurance of acquiring".

Mr. FAVRE (Switzerland) thought that the words "is assured of acquiring" were sufficiently precise. Similar language was used in article 42 of the Swiss Nationality Act.

Mr. ROSS (United Kingdom) and the PRESIDENT, speaking as the representative of Denmark, agreed with the Swiss representative.

The proposal of the representative of Israel that the words "is assured of acquiring" be replaced by the words "has been accorded assurance of acquiring" was adopted.

The PRESIDENT announced that discussion of paragraph 2 was closed. He put to the vote article 7, paragraph 2 (A/CONF.9/L.40) as amended.

Paragraph 2, as amended, was adopted by 23 votes to none, with 7 abstentions.

Paragraph 3 (A/CONF.9/L.63)

Mr. LEVI (Yugoslavia) thought that the Conference would save much time in its discussion of paragraph 3 and the possibility of reservations thereto, if it were first to consider and vote upon the first alternative in his delegation's amendment (A/CONF.9/L.63).

Mr. TYABJI (Pakistan) said that his delegation, considering that reservations to paragraph 3 should be allowed, would re-submit the proposal which it had made in Committee for the addition, at the end of paragraph 3, of the words "provided that he has complied with the procedure prescribed by the national law of the Party" (A/CONF.9/L.17).[4/]

The PRESIDENT drew attention to a proposal by the Federal Republic of Germany that the word "similar" be replaced by the word "other".

Mr. ROSS (United Kingdom) said that the proposed amendment would have a far-reaching effect on articles 5 and 6.

Mr. TYABJI (Pakistan), thought that the expression "other ground" was ambiguous; moreover, the convention was not intended to be a panacea for

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4/ See discussion at tenth meeting of the Committee of the Whole Conference.

statelessness. The very title of the Conference suggested the possibility of a more restricted goal. His delegation would be obliged to vote against the proposed amendment.

The PRESIDENT, speaking as the representative of Denmark, thought that the object of the amendment proposed by the Federal Republic of Germany would be accomplished by article 9 (A/CONF.4/L.40/Add.2).

Mrs. TAUCHE (Federal Republic of Germany) pointed out that article 9 forbade deprivation of nationality on specifically "racial, ethnic, religious or political grounds". There were many other conceivable grounds for automatic loss of nationality, and the purpose of her delegation's amendment was to ensure that States did not unduly restrict the sense of article 7.

Mr. RIPHAGEN (Netherlands) said that although he was sympathetic towards the idea which the delegation of the Federal Republic of Germany had in mind, the legal implications of the amendment needed careful study, and his delegation would therefore hesitate to vote for it.

Mr. PAULY (Federal Republic of Germany) said that various grounds for loss of nationality were enumerated in articles 5 and 9 as well as in article 7, paragraph 3. If it could be said that the list was exhaustive, the amendment would not be necessary. But other possible grounds were conceivable, and it would be as well to be on the safe side and cover all eventualities.

Mr. RIPHAGEN (Netherlands) suggested that the principle underlying the amendment proposed by the Federal Republic of Germany might be better applied by amending article 9, which was wider in scope than article 7.

Mrs. TAUCHE (Federal Republic of Germany) said that the incorporation of her delegation's amendment in article 9 would not serve the purpose intended. Article 9 dealt with deprivation of nationality, not with automatic loss.

The PRESIDENT, speaking as the representative of Denmark, said that the scope of article 7, paragraph 3, and of the provisions of paragraphs 4 and 5 referred to therein, was restricted to the effect of absence from the country on nationality. The idea behind the amendment submitted by the Federal Republic of Germany was excellent; but if it was to be embodied in the text, it should not be slipped in unobstrusively, but should be put in the form of a general rule.

Mr. PAULY (Federal Republic of Germany) welcomed the President's suggestion. The point might be made by adding a new paragraph to article 7, with the same wording as paragraph 3, except that the words "on the ground... similar ground" would be replaced by the words "on any other ground".[5/]

Mr. HERMENT (Belgium) pointed out that the proposed change would affect the provisions of article 4 in a way which many countries would find undesirable. The Belgian delegation would therefore vote against the amendment.

The PRESIDENT, reverting to the Yugoslav delegation's amendment concerning reservations to paragraph 3 (A/CONF.9/L.63), said that a better solution might be to add a suitable sentence to paragraph 4.

Mr. SCOTT (Canada) sympathized with the Yugoslav delegation's concern for the question on reservations. Unfortunately, however, the Yugoslav position was broader than his own delegation could accept. He would therefore abstain from the voting on the particular amendment, but would support the Yugoslav amendment to article 8.

The PRESIDENT put to the vote article 7, paragraph 3, as set out in document A/CONF.9/L.40.

Paragraph 3 was adopted by 24 votes to 1, with 8 abstentions.

Mr. SIVAN (Israel) explained that in voting for the paragraph his delegation interpreted it as referring to loss of nationality as distinct from deprivation, which was dealt with in article 8.

The PRESIDENT put the Yugoslav amendment (A/CONF.9/L.63) to the vote.

The Yugoslav amendment was rejected by 16 votes to 6, with 9 abstentions.

Paragraph 4

Paragraph 4 was adopted by 14 votes to 2, with 13 abstentions.

Paragraph 5 (A/CONF.9/L.55)

Mr. IRGENS (Norway), introducing his delegation's amendment (A/CONF.9/L.55), explained that under the terms of paragraph 5 as it stood, some residence qualification could be imposed. It was anomalous that the

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5/ An amendment based on this idea was circulated (A/CONF.9/L.67) but withdrawn at the next meeting (q.v.).

children of the persons concerned should retain their nationality while they themselves could not.

Mr. SCOTT (Canada) said that his delegation would ask for a separate vote on the words "who has never resided therein". Canada had reserved its position on that point in Committee. The principle of the paragraph was clear and acceptable: a person born outside the country of his nationality should either reside in the country or should register. In Canada, such a person was given the choice of residing in the country or making a declaration of nationality.

Mr. VIDAL (Brazil) associated himself with the view expressed by the Canadian representative. The paragraph as it stood was not acceptable. His Government could not agree that a person who had never lived in Brazil and did not even speak Portugese could possess Brazilian nationality simply by registering.

The PRESIDENT, speaking as the representative of Denmark, said that in his delegation's opinion, jus sanguinis alone was no more adequate as a qualification than jus soli. Denmark was liberal in its attitude towards such matters, but States should have some power to prevent meaningless anomalies such as could arise. He would therefore support the Norwegian amendment.

Mr. VIDAL (Brazil) formally proposed the insertion of the words "residence or" before the word "registration", and the deletion of the words "who has never resided therein".

Mr. IRGENS (Norway), replying to a question by Mr. RIPHAGEN (Netherlands), explained that the essential purpose of the amendment was that States should be at liberty to treat the children of persons liable to lose their nationality in the same way as the persons themselves.

Mr. SCOTT (Canada) welcomed the Brazilian amendments, which he thought would help to increase the number of accessions to the Convention. The present wording gave the advantage to States which were not liberal in granting nationality.

The PRESIDENT, speaking as the representative of Denmark, supported the Brazilian representative's amendments.

The oral amendments to article 7, paragraph 5, proposed by the representative of Brazil were adopted by 15 votes to 6, with 12 abstentions.

The Norwegian amendment (A/CONF.9/L.55) was rejected by 7 votes to 6, with 19 abstentions.

Paragraph 5, as amended, was adopted by 15 votes to 2, with 15 abstentions.