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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE SEVENTEENTH PLENARY MEETING

Held at Headquarters, New York,
on Thursday, 17 August 1961, at 10.35 a.m.

CONTENTS

President:	Mr. RIPHAGEN	Netherlands
Secretariat:	Mr. STAVROPOULOS	Legal Counsel, Representative of the Secretary-General
	Mr. LIANG	Executive Secretary of the Conference

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EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (A/CONF.9/10 and Add.1 to 3, A/CONF.9/11, A/CONF.9/12; A/CONF.9/L.80) (continued)

Article 8 of the Draft Convention (continued)

Mr. HUBERT (France) thought that, on the basis of a first reading of the United Kingdom amendment to article 8 of the proposed Convention (A/CONF.9/L.80) and of the discussions of the preceding meeting, that amendment might lead to a solution of the problem before the Conference.

It was true that a Convention would be useful even if it contained no clause concerning deprivation of nationality; the United Kingdom representative had quoted figures showing that, during the past twelve years, only ten cases of deprivation of United Kingdom nationality had rendered the person concerned stateless, and the figures in France for that period were similar. The omission of such a provision would not of itself deprive the Convention of effectiveness, but the failure of the Conference to agree on a question of undoubted importance woule be unfortunate psychologically.

The two criteria governing the drafting of an article relating to deprivation of nationality were that it should be effective and that it should be acceptable to the greatest number of Governments represented at the Conference or of those which might later wish to accede to the Convention. The most radical solution would obviously be a complete prohibition of deprivation, but no clause to that effect would have any chance of being accepted by any substantial number of States. On the other hand, a right of reservation at the time of signing, ratifying or acceding might be granted to all States, but that would lead to too wide a variation in the grounds for deprivation adopted by various countries. The only realistic solution was to retain certain grounds for deprivation, but to limit them to a reasonable number. That was what the United Kingdom delegation, in submitting its amendment, had aimed at. Some delegations, including his own, would naturally have observations to make with regard to the United Kingdom draft, and he reserved the right to speak accordingly at a later stage. In general, however, he thought the grounds mentioned in the United Kingdom amendment were serious ones, and his delegation could therefore accept that amendment as a basis for discussion.

(Mr. Hubert, France)

The Canadian representative had said that the grounds mentioned in paragraph 4 of the United Kingdom amendment were too indefinite; but if the Conference hoped to reach agreement it must eschew over-rigid provisions; some flexibility was essential. Moreover, the freedom of action of Contracting States would not be unlimited; action under paragraph 4 must be taken under the legislation which was in force and which was specified at the time of signature, ratification or accession, and under paragraph 6 such action could be submitted to an independent and impartial body for authorization.

Mr. ROSS (United Kingdom) thought that he should clarify his delegation's intentions as expressed in paragraphs 4 and 5 of the amendment, which were to be read together. Paragraph 4 related to all nationals, whether natural-born or naturalized; while paragraph 5 referred only to nationals other than naturalized persons and restricted the grounds of conduct inconsistent with the duty of loyalty more precisely, under four heads. That distinction had been made because it appeared, from their observations contained in documents A/CONF.9/10 and Add.1 and 2, that some Governments wished to have wider powers in respect of naturalized citizens, whereas the powers available under paragraph 5 should be sufficient in the case of natural-born nationals.

Mr. DARON (Belgium) thanked the United Kingdom representative for his clarification of paragraphs 4 and 5 of the amendment, which had caused some concern to his delegation. He would have preferred a text which made no distinction between the treatment of naturalized persons and that of other nationals, but he would leave that point aside for the time being. In general, the United Kingdom amendment might be acceptable to the Belgian delegation.

Mr. JAY (Canada), supported by Mr. AMADO (Brazil), suggested that those delegations, including his own, which still had difficulty in accepting the United Kingdom amendment should meet informally and try to reach agreement on the minimal changes required to make the amendment acceptable to the Conference as a whole, and that further discussion of the amendment should be deferred until such a meeting had taken place.

It was so decided.

The PRESIDENT suggested that the Conference should discuss some other points of the work awaiting completion, referred to in document A/CONF.9/12.

It was so decided.

Final provision of the Draft Convention

The PRESIDENT invited the Conference to consider the proposed text of the final provision of the Convention (A/CONF.9/12, paragraph 23), and pointed out that the French text, as contained in that document, was not in conformity with the English text; a corrected version of the French text would be issued.

Mr. HUBERT (France), commenting that representatives would sign the Convention on behalf of their respective States and not of their Governments, proposed, solely in the interests of legal accuracy, that the words "the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments" should be replaced by the words "the undersigned Plenipotentiaries have signed this Convention".

Mr. YINGLING (United States of America) pointed out that the draft final provision mentioned "the non-member States referred to in article 12". He questioned the aptness of the drafting of article 12, paragraph 2 (c), which referred to "any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations"; and he suggested that the words "may be", in the English text, should be replaced by the word "is".

Mr. TSAO (China) said that the text of the final provision, as adopted by the Committee of the Whole, contained several blanks. The date and place could not be filled in at the present stage, but the names of the five official languages of the United Nations could be inserted in the space before the word "texts".

Mr. JAY (Canada) said that, before taking a position on the suggestion made by the representative of France, he would like to know what had been the practice in drafting similar United Nations Conventions in the past, and whether such Conventions had mentioned Governments or States. There might be legal niceties concerning the manner in which plenipotentiaries were appointed, and he would like to know the implications.

Mr. ROSS (United Kingdom) thought that the word "Governments" had been introduced to conform with two precedents, namely the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons.

Mr. LIANG (Executive Secretary) agreed that the formula was in conformity with that used in those two Conventions. He did not have before him the dossier of all precedents, but could supply it if the Conference so desired. His personal opinion was that it made little difference which formula was used, since a representative signing on behalf of a Government also signed, from another point of view, on behalf of the State.

Mr. YINGLING (United States of America) said that the final clauses of treaties generally provided for signature on behalf of Governments. However, the question was more one of style than one of substance since, in the last analysis, the treaties became binding on States. The States were represented by Governments which, in turn, were represented by delegates.

Mr. HUBERT (France) agreed that there was no great difference in substance; however, he preferred a reference to States. He recalled the classic distinction between formal and simplified acts or instruments. Under the French Constitution, for example, Treaties were negotiated and signed by or on behalf of the Head of State, whereas agreements in simplified form were negotiated and signed by or on behalf of the Government and did not require ratification by the Head of State. In both cases, however, the State was committed. He was not convinced by the fact that certain precedents which took no account of that distinction might be invoked; on the contrary, he thought that such errors should not be repeated.

Mr. JAY (Canada) said that in his country some distinction was made between the Government and the Head of State, so far as the conclusion of treaties was concerned. His delegation would prefer to see the final provision refer to Governments.

The PRESIDENT said that, since the procedure varied from country to country, it might be preferable, for practical reasons, not to modify the existing wording of the draft final provision.

Mr. MAURTUA (Peru) suggested that the Conference might wish to consider the desirability of providing for the delivery of certified copies of the Convention to interested specialized agencies. He wished to know what was the practice generally followed in that regard.

The PRESIDENT said he believed that the specialized agencies would take formal note of the adoption of any Convention which concerned them. He understood, however, that it was not the practice to send them certified copies.

Mr. LIANG (Executive Secretary) said that the specialized agencies had been invited to send observers to the Conference. The specialized agencies would certainly take note of any Convention which was signed, but he did not believe there was any requirement to send to them certified copies of the present Convention, which was open for signature by States alone and which would not be binding on any specialized agency. The Office of the High Commission for Refugees was represented at the Conference, but the action which that Office might take in relation to the Convention was a matter which concerned it alone.

Mr. MAURTUA (Peru) said that he did not wish to make any formal proposal, and had raised the matter only in view of the status which an invitation to the Conference appeared to confer upon any interested specialized agency invited to attend. Some difference might conceivably arise between an agency concerned with the subject-matter of the Convention and a signatory State which it held not to be complying with the Convention's provisions.

Mr. JAY (Canada) suggested the substitution of the word "authentic" for the word "authoritative" in the draft final provision, as the former adjective was more commonly used in treaties.

Mr. ROSS (United Kingdom) said that there had no doubt been sound reasons for the substitution of "authoritative" for "authentic". He suggested that no hasty decision should be taken either on that point or on the question of providing for signature on behalf of States.

On the question of languages, the Conference ought not to ignore the arguments for specifying only English, French and Spanish texts as authoritative or authentic. The same three languages had been specified in the case of the Convention relating to the Status of Stateless Persons, and only English and French had been specified in the case of the Convention relating to the Status of Refugees. The greater the number of authoritative texts, the greater would be the possibility of differences of interpretation. Moreover, only draft texts in English, French and Spanish had been discussed during the Conference.

Mr. TSAO (China) was surprised that there should be any objection to providing for texts in the five languages which were not only the official languages of the United Nations but also those of the present Conference, as specified in the rules of procedure (A/CONF.9/2). His delegation was the only Chinese-speaking delegation attending the Conference and had therefore, in a spirit of co-operation, refrained from insisting on the preparation of Chinese texts of all proposals submitted. However, it expected to see a Chinese text of the draft Convention before it was opened for signature and before the final act was approved. In that connexion, the Conference might wish to consider the desirability of taking measures to ensure the uniformity of the various texts.

Mr. YINGLING (United States of America) said that the word "authentic", and not the word "authoritative", should be used in the final provision since the latter should specify what texts of the Convention were actually agreed upon. The texts derived their authoritativeness only through the signature and adoption of the Convention.

Mr. JAY (Canada) expressed appreciation of the co-operative attitude shown by the Chinese delegation, and supported its proposal in favour of texts in the five official languages.

The PRESIDENT said that since, under article 12, the Convention would be open for signature on behalf of a great number of States, it appeared desirable to have texts in the five languages proposed. However, the Conference did not need to take a decision on that point immediately.

Mr. LIANG (Executive Secretary) said that the final provisions contained in the Handbook of Final Clauses (ST/LEG.6) all contained the word "authentic". He did not immediately recall the reason for the substitution of the word "authoritative" during the first part of the Conference.

With regard to the question of signature on behalf of Governments or on behalf of States, it was clear that the practice varied, but, as the United States representative had pointed out, in the last analysis States were involved.

Mr. ROSS (United Kingdom) suggested that, since no decision was yet being taken on the points under discussion, it might be desirable to refer them to an ad hoc committee or to the Drafting Committee which had been established at Geneva.

Rev. Father de RIEDMATTEN (Holy See) proposed that the points raised in connexion with the final provision (A/CONF.9/12, paragraph 23) should be referred to the Drafting Committee.

It was so decided.

Article 18 of the Draft Convention

The PRESIDENT invited comments on the International Law Commission's draft article 18, which the Committee of the Whole had agreed should be deleted.

Mr. ROSS (United Kingdom) recalled that the reason for the deletion had been that provision for registration was made in the Charter.

Mr. YINGLING (United States of America) contended that, although Article 102 of the Charter provided for the registration of treaties with the Secretariat, draft article 18 was not necessarily redundant because it specified that the Convention was to be registered on the date of its entry into force.

Mr. ROSS (United Kingdom) was inclined to think that the point was adequately covered by the words "as soon as possible" in Article 102 of the Charter.

Mr. LIANG (Executive Secretary), commenting that Article 102 emphasized the obligation of the parties to hand in agreements for registration, considered that it would have been more accurate to quote, as the reason for the deletion of article 18, the regulations adopted by the General Assembly for the registration and publication of treaties and international agreements, which did provide that all such agreements should be automatically registered by the Secretariat (United Nations Treaty Series, Volume 76, 1950, page XXII). It would be useful if that matter also could be considered by the Drafting Committee.

Mr. JAY (Canada) said he would agree to the Drafting Committee tackling the question provided that further discussion could take place later, since

(Mr. Jay, Canada)

matters of substance were involved. There was, however, some justification for regarding draft article 18 as redundant. The purpose of the registration of treaties was to ensure that they were open knowledge. That purpose had been accomplished in other articles, particularly article 17.

Mr. YINGLING (United States of America) agreed that the question was one of substance and not simply of drafting, but felt that draft article 18 should be retained. Anyone who had experience of the registration of bilateral treaties knew that there was considerable flexibility in the interpretation of "as soon as possible". What the International Law Commission had desired was that the Convention, immediately upon its coming into effect, should be published so that the world at large should know what its effect was.

Mr. MAURTUA (Peru) was in favour of retaining draft article 18. His delegation regarded such a clause as an affirmation of an important basic idea - the public character of treaties, as against secret diplomacy.

Mr. CALDARERA (Italy) also favoured the retention of draft article 18.

Mr. ROSS (United Kingdom) pointed out that the Convention, as so far agreed, was not to enter into force until two years after the date of the deposit of the sixth instrument of ratification or accession (draft article 14). That would be the point at which the Convention would require registration under draft article 18; but under Article 102 of the Charter it would be registered before then. Since there appeared to be a formal proposal that draft article 18 should be included in the Convention, he proposed that the word "on" in that draft should be replaced by "not later than".

Mr. STAVROPOULOS (Representative of the Secretary-General) said that technically no agreement could be registered before the date on which it came into force. The United Kingdom amendment would seem to imply that the Convention could be registered before its entry into force.

Mr. YINGLING (United States of America) said that his delegation would prefer it to be explicitly stated that the Secretary-General must register the Convention immediately it came into force - in case the regulations were changed.

Mr. JAY (Canada) thought that the Conference should consider what the normal United Nations practice was. There might be a difference between a multilateral convention and the kind of treaty envisaged under Article 102 of the Charter. The Convention would already be deposited with the Secretary-General. If, as the Representative of the Secretary-General had said, it would automatically be registered when it entered into force, draft article 18 was redundant.

Rev. Father de RIEDMATTEN (Holy See) inquired whether there was any precedent for the wording proposed.

Mr. STAVROPOULOS (Representative of the Secretary-General) explained that at one time the regulations had not stipulated that the Secretary-General could register treaties ex officio and the matter had been left for decision in individual treaties. A difficulty had arisen when the provision had been omitted in one treaty, and the General Assembly had therefore decided to make it a duty for the Secretary-General to register treaties deposited with the United Nations. From that point of view, an article of the kind proposed was redundant. However, if the United States representative wished to provide for the contingency of a change in the regulations, there was no objection to the article's retention.

In reply to a question from Mr. ROSS (United Kingdom), he said that a treaty could not be an effective treaty until it had entered into force; hence it could not be registered before it came into force.

Mr. YINGLING (United States of America) wished the record to show that his delegation disagreed with the United Kingdom's interpretation of Article 102 of the Charter. That Article could not apply until the treaty had entered legally into force; before that, the treaty was simply a draft.

THE PRESIDENT invited the Conference to vote on the United Kingdom amendment to replace the words "on the date of its entry into force" by "on a date not later than that of its entry into force".

The amendment was rejected by 11 votes to 2, with 14 abstentions.

The PRESIDENT then put to the vote the proposal that article 18 be inserted in the Convention.

The article was adopted by 16 votes to 2, with 9 abstentions.

Mr. JAY (Canada) wished to make it clear that he had voted against draft article 18 simply because he believed it to be redundant, bearing in mind the earlier articles which had already been agreed.

Mr. AMADO (Brazil) explained that he had abstained from voting because, although the question was covered by the Charter, it was particularly important, in view of Article 102, paragraph 2 of the Charter, for treaties to be registered so that they could have their full effect.

Draft resolutions adopted by the Committee of the Whole

The PRESIDENT asked the Conference to turn to the two draft resolutions adopted by the Committee of the Whole and revised by the Drafting Committee (A/CONF.9/12, page 19).

Mr. VAN SASSE VAN YSSELT (Netherlands) commented that if the first draft resolution were accepted, many cases of dual nationality would arise.

Mr. DARON (Belgium) proposed that discussion of that resolution be postponed.

It was so decided.

The PRESIDENT suggested that discussion of the second draft resolution, proposed by Denmark, should also be postponed as it had a bearing on article 8.

It was so decided.

Proposed new article to follow article 4 of the Draft Convention

The PRESIDENT asked whether the sponsor of the proposed new article to follow article 4 wished it to stand.

Mr. GREEN (Denmark) stated that he would prefer discussion of the article in question to take place the following week.

Draft resolutions submitted but not discussed

The PRESIDENT inquired whether the two draft resolutions submitted but not discussed (A/CONF.9/12, page 20) were still before the Conference.

Mr. SIVAN (Israel) asked that the Israel resolution be regarded provisionally as still before the Conference, pending a decision on article 8, paragraph 5 (d) concerning conviction as proposed by the United Kingdom (A/CONF.9/L.80).

Mr. IRGENS (Norway) stated that there had been no change in his delegation's opinion concerning the Norwegian resolution.

The meeting rose at 12.45 p.m.