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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE EIGHTEENTH PLENARY MEETING

Held at Headquarters, New York,
on Friday, 18 August 1961, at 10.30 a.m.

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President:	Mr. RIPHAGEN	Netherlands
Secretariat:	Mr. SANDBERG	Assistant Director, Codification Division, Office of Legal Affairs Acting Executive Secretary of the Conference

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. ILHAN-LUTEM (Turkey), stressing that article 8 was the crucial point of the proposed Convention, deplored the fact that so few States were attending the second part of the Conference. As the representative of France had said, the principle of acceptability was as important as that of effectiveness. The ideal way of reducing statelessness would be to induce the States Members of the United Nations to make the necessary changes in their national legislation, because the effectiveness of the Convention would depend on the number of States acceding to the Convention and ratifying it. The problem of securing changes in national law had been clearly stated by the representative of the United Kingdom, Sir Gerald Fitzmaurice, in the Sixth Committee of the General Assembly in 1954 (A/C.6/SR.397). Success depended largely on the extent to which such a Convention was likely to be generally accepted, and previous attempts at codifying international law in general had shown that no principle could be regarded as generally recognized unless it had been approved by at least two-thirds of the Members of the United Nations. It was to be hoped that the second part of the Conference would prove more fruitful than the first.

A draft law on nationality was at present pending before the Constituent Assembly of Turkey. Since those who had drafted it were aware of the evils resulting from statelessness, they had introduced provisions which were far more liberal than the previous ones.

Commenting that the amendment to article 8 submitted by the Federal Republic of Germany (A/CONF.9/SR.13, page 5) appeared to have been ignored although it had received a majority of 16 votes, he stated that his delegation would have preferred a comprehensive rule incorporating all the different grounds for deprivation of nationality. At least fifteen grounds had been mentioned in the memorandum prepared by Mr. Kerno (A/CN.4/66), and seven in "A Study of Statelessness" prepared by the Secretariat. It might therefore be preferable to concentrate on one key principle in the definition of nationality, which was the attachment of a person to his country. For instance, the report prepared by

(Mr. Ilhan-Lutem, Turkey)

Mr. Manley O. Hudson (A/CN.4/50, page 6) had quoted the following definition: "Nationality is the status of a natural person who is attached to a State by the tie of allegiance". Still another definition had been given by the International Court of Justice in the Nottebohm case: "Nationality ... constitutes a translation into juridical terms of the individual's connexion with the State which has made him its national" (ICJ Reports 1955, page 23). The importance of the principle that there should be a link between countries and the individuals to whom they granted their nationality had also been emphasized by Professor François, of the Netherlands, in the International Law Commission (Yearbook of the International Law Commission, 1953, Vol. I, page 184).

He welcomed the fact that the United Kingdom amendment (A/CONF.9/L.80) accepted that basic principle. The amendment was a useful basis for work, despite certain ambiguities, particularly in its paragraph 4. If agreement was reached on the various grounds mentioned in its paragraph 5, it might not be necessary to stipulate a date in paragraph 4. In any case he would suggest that a Contracting State ought to be able to give effect to a law passed subsequent to that date, provided that such law did not incorporate grounds for deprivation less favourable to individuals than those incorporated in the legislation existing at the date proposed.

He agreed with the view, already expressed during the discussion, that the number of cases of statelessness was not likely to be greatly increased under article 8. That fact might make it easier to arrive at an acceptable formula.

Mr. SIVAN (Israel) said that, in view of the indeterminate position in which article 8 had been left in 1959, all States should now make an effort to reconcile their previously conflicting views and discover a suitable text. The United Kingdom proposal contained in document A/CONF.9/L.80 was a valuable contribution to that end.

The text adopted by the Committee of the Whole (A/CONF.9/12, paragraph 12) and the text submitted by the representative of the Federal Republic of Germany (ibid., paragraph 17) differed, in that the former attempted a detailed definition and delimitation of the grounds justifying deprivation of nationality in regard both to non-naturalized and naturalized nationals, whereas the latter sought to reserve, without definition or categorization, all existing powers of deprivation which a State might wish to specify at the time of signature,

(Mr. Sivan, Israel)

ratification or accession. His own delegation had supported the former text as a minimum but none the less substantial contribution towards achievement of the aims of the Conference, in particular the restricting, so far as possible, of fresh cases of statelessness.

Consequently, the Israel delegation welcomed the fact that, at least as far as natural-born nationals were concerned, the United Kingdom text reverted to the idea of specifically defined grounds of deprivation. It was therefore prepared to regard that text as the Conference's working paper in the matter.

His delegation favoured the adoption of a similar approach to the problem of naturalized nationals since, in principle, it should be no more difficult to define acts "inconsistent with loyalty" in their case than in the case of natural-born nationals, as had been done in paragraph 5 of the United Kingdom text. Like the Belgian representative, he favoured similar treatment for both categories of nationals. Consequently, while he had no objection to paragraphs 1, 2 and 3 of the United Kingdom text, he believed that paragraph 4 required further consideration, particularly in view of the extreme generality of the phrase "grounds of conduct inconsistent with the duty of loyalty owed to the State". The conception of "conduct inconsistent with the duty of loyalty" seemed even wider and more imprecise than "acts against national security" and could well cover quite trivial acts which, while theoretically incompatible with the duty of loyalty, did not prejudice any grave interest of the State, let alone its security. There might be many definitions of the expression "duty of loyalty"; and he was sure that the United Kingdom delegation, in using that formula, had had no intention of encourabing the possibility of deprivation of nationality for non-substantial acts not capable of prejudicing the security or serious interests of the State. The wording should make that fact perfectly clear.

With regard to paragraph 5, sub-paragraph (d), of the United Kingdom text, which related to nationals other than naturalized persons, he felt that not any and every act "against national security" should be regarded as sufficient ground for depriving a natural-born national of his citizenship. There was a great variety of minor infringements of security regulations which could scarcely be placed in that category. The power of deprivation should be admitted only in the case of "acts seriously prejudicial to national security".

The provision concerning the person accused of such an act who was in a foreign State and failed to return for trial required strengthening in three respects. First, the person accused should be formally charged with the offence; secondly, he should be duly notified of the accusation - in which connexion the Netherlands text reproduced in paragraph 14 of document A/CONF.9/12 would be worth reconsidering; and thirdly, account should be taken of the existence or absence of cause for not returning to stand trial.

His delegation would also like to reinforce the wording of paragraph 6 of the United Kingdom text, by inserting in it an express requirement for "due process of law" providing for the submission of applications for deprivation to a judicial body or, if - but only if - such a provision were incompatible with the legal system concerned, alternatively to some other completely independent and impartial tribunal.

His delegation might, in due course, submit amendments to clarify the issues he had raised.

Article 12

The PRESIDENT drew attention to the obvious need to amend article 12, paragraph 1, in view of the circumstances in which the Conference was currently meeting. The Drafting Committee might be asked to make the necessary changes in the paragraph.

Mr. ROSS (United Kingdom) had no objection to the matter being taken up by the Drafting Committee, since no question of substance was involved. However, since from the procedural standpoint such action would involve reconsideration of a text adopted at Geneva, he formally proposed that the question of article 12, paragraph 1, should be reopened for discussion.

Mr. SIVAN (Israel) thought that a simple reference of the matter to the Drafting Committee would suffice, since only consequential changes, without reconsideration of substance, were involved.

Mr. ROSS (United Kingdom) said that he would prefer such a simple reference and would not press his motion for the reopening of discussion if it was not required.

Mr. HEIMSOETH (Federal Republic of Germany) suggested that article 12 as a whole might need review by the Drafting Committee, given for instance the United States representative's suggestion (A/CONF.9/SR.17, page 4) that in article 12, paragraph 2, sub-paragraph (c) the words "may be" should be replaced by the word "is".

After a procedural discussion in which Mr. ROSS (United Kingdom), Mr. SIVAN (Israel), Mr. JAY (Canada), Mr. TSAO (China) and Mr. HEIMSOETH (Federal Republic of Germany) took part, the PRESIDENT suggested that the text of article 12, as adopted, should be referred to the Drafting Committee for such revision as the latter deemed necessary, and that the question of formal reconsideration of the article did not at present arise.

It was so decided.

The meeting rose at 11.10 a.m.