# United Nations Conference on the Elimination or Reduction of Future Statelessness

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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

# SUMMARY RECORD OF THE NINETEENTH PLENARY MEETING

Held at Headquarters, New York,
on Monday, 21 August 1961, at 10.20 a.m.

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| President: | Mr. RIPHAGEN | Netherlands |
| Secretariat: | 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, A/CONF.9/L.82) (continued)

Article 8 of the Draft Convention

Mr. JAY (Canada) said that the Canadian amendment (A/CONF.9/L.82) should be regarded merely as a working paper and that his delegation would be ready to accept any suggestions which appeared to it to be useful.

Several delegations which were of opinion that the United Kingdom amendment (A/CONF.9/L.80) did not in all respects meet the actual situation existing in certain countries, and which realized that it would be inexpedient for each State to submit proposals containing its own views, had joined the Canadian delegation in drawing up the new amendment circulated as document A/CONF.9/L.82. The essential idea underlying article 8 was the philosophic conception of citizenship, a notion which each State interpreted in its own way in accordance with differing historical, geographic or demographic principles. If the final text of the article did not take into account the particular circumstances of each Contracting State, there was a danger that all the work done at the Geneva Conference would prove fruitless. To avert that risk, the delegations of Brazil, Yugoslavia, the United Arab Republic, Turkey, Pakistan and Canada had formed a working group. They had also foreseen the day when a large number of countries not represented at the Conference would wish to adhere to the Convention - a development which they very much hoped would come about; they had therefore sought to submit a text which would be acceptable to those countries also, and thus ensure that the Convention would so far as possible be of a universal nature.

He wished to point out, in the first place, that the new text (A/CONF.9/L.82) made no distinction between naturalized persons and natural-born citizens; it also restricted the grounds on which a naturalized person could be deprived of his nationality. Furthermore, it involved the deletion of paragraph 3 of the United Kingdom amendment, which repeated what had already been stated in paragraphs 4 and 5 of article 7 as adopted by the Geneva Conference. Moreover, in order to prevent statelessness arising out of mere carelessness or ignorance of the law,

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(Mr. Jay, Canada)

paragraph 3 (b) of the Canadian amendment provided that a person could be deprived of his nationality only if he had given formal evidence of his determination to repudiate his allegiance to the Contracting State.

To a large extent, paragraph 4 and the first part of paragraph 5 of document A/CONF.9/L.82 followed the United Kingdom text. No date had been mentioned in paragraph 5, because the countries which would become independent in the more or less remote future had been borne in mind. On the other hand, a new idea had been put forward in the second sentence of paragraph 5: each Contracting State would be free to alter its legislation on citizenship at any time, provided that it did not introduce grounds for deprivation which were more extensive than those specified at the time of signature, ratification or accession.

Mr. FAVRE (Switzerland) noted that the wording of the Canadian amendment (A/CONF.9/L.82) was more restrictive than that of the United Kingdom amendment (A/CONF.9/L.80), and that no delegation had submitted an amendment under which States were given powers to deprive persons of their nationality wider than those contained in the United Kingdom proposal. Most States had preferred to await developments; so far as his own country was concerned, Swiss legislation did not in any circumstances allow a citizen to be deprived of Swiss nationality acquired by him on valid grounds, if that would result in his becoming stateless, and constitutional provisions relating to deprivation of nationality were therefore not of direct interest to it. Nevertheless, he did not think that too much importance was being attached to article 8; it was to be expected that States whose nationality could be acquired easily through the operation of jus soli should desire to retain some control in the interest of their security and their cohesion.

He expressed his appreciation of the efforts made by delegations such as those of the Netherlands, Canada and the United Kingdom to understand the position of States which were countries of refuge or asylum. Nevertheless, he regretted the failure to adopt the proposal submitted by France at Geneva, under which it was provided that the grant of nationality would be subject to the person concerned not having given evidence of his manifest unworthiness. He could not help thinking,

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(Mr. Favre, Switzerland)

too, that it was unfair to force persons to adopt a nationality which they did not desire, and unreasonable to oblige a State to admit a person who could not be assimilated.

Neither Switzerland, which in a few years had witnessed the arrival on its territory of thousands of refugees, nor the other States of asylum could afford to adopt towards refugees an attitude of such generosity that it might be a source of danger. Accordingly Switzerland's aim was to reduce the number of cases of statelessness by a policy of assimilation, in so far as the requirements of its security and of international order would allow.

After drawing a parallel between jus sanguinis countries, where legislation prevented cases of statelessness from arising, and the jus soli States which were able to absorb more easily persons of diverse origins and thus made a great contribution to the reduction of statelessness, he pointed out that many States which were the countries of origin of refugees who were stateless in fact or in law were not represented at the Conference. It was therefore reasonable to suppose that the purpose of the Conference was to establish standards of a general nature such as would characterize a real law of international application, rather than to seek to achieve a compromise between the views of the States represented at it.

In his view, moreover, there was a danger that, if a long list of cases in which persons could be deprived of their nationality were drawn up, it would produce an unfortunate impression in a Convention which was intended to reduce statelessness.

The system adopted by the Committee of the Whole at Geneva, which gave the Contracting State the right to derogate from the rule of article 8, paragraph 1, by making a reservation at the time of signature, ratification or accession, seemed more suited to the character of a Convention on the reduction of statelessness than the system advocated by the United Kingdom and Canada, which proposed to rely on a State's law on nationality. His delegation would prefer it if the text of article 8 did not contain vague and general terms such as "loyalty" or "activities prejudicial to national interest".

In conclusion, he formally proposed the establishment of a working group which would draw up a text meeting the proposals and suggestions made up to then, and which would be requested to report to the Conference as soon as possible.

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Mr. IRGENS (Norway) recalled that, as stated in the observations transmitted to the Secretariat by the Norwegian Government (A/CONF.9/10, page 9), Norwegian legislation contained no provision for deprivation of nationality. As however his delegation recognized that many States had compelling reasons for requesting the inclusion of a provision on that subject in the Convention, it hoped that it would be possible to work out a compromise text, to which it wished to contribute.

While it was still too early for a detailed discussion of the amendments which had been submitted, he already considered, after perusal of the United Kingdom amendment, that paragraph 5 (c) might be amended, at the proper time to read: "being convicted of assisting an enemy State in time of war".

Rev. Father de RIEDMATTEN (Holy See) said that the humanitarian considerations which had led his delegation to take part in the Conference had not made it lose sight of the need to be realistic. It was that latter consideration which had impelled it at Geneva, in 1959, to support the text adopted by the Committee of the Whole and even to help in evolving its final form, since the more categorical draft of the International Law Commission had been unable, as the debates had shown, to gain enough votes to make the Convention a useful instrument for stateless persons. The discussions held thus far since the resumption of the Conference had confirmed the differences of views which had appeared at Geneva, and had thrown more light on the reasons underlying them. He regarded as very constructive the United Kingdom and Canadian proposals (A/CONF.9/L.80 and 82), which would enable the Conference to move forward once more. If the participants believed that it would serve a useful purpose to combine those two proposals with that presented by the Holy See in 1959 whereby at the time of signature, ratification or accession a State could reserve the right to deprive a person of its nationality on certain grounds - which could be those listed in the Canadian or the United Kingdom draft - he would be prepared to re-introduce an amendment to that effect. He was aware that many Governments disliked the principle of reservations and he was certainly not seeking to obtain a majority vote in support of that principle. His intention, like that of the United Kingdom and Canada, was solely to facilitate the work of the Conference.

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(Rev. Father de Riedmatten, Holy See)

One reason why he continued to regard the procedure of reservations as the best was that if the Conference - which was supposed to be striving to eliminate, or at least reduce, statelessness - gave the impression that it was consecrating grounds for deprivation of nationality in international law, the public, and especially the persons concerned, might feel that it had failed to achieve its objective. As he had pointed out at Geneva, that was an extremely important point, and one which could hardly be over-emphasized.

He was aware that the delegations which had submitted amendments were motivated by the desire to obtain as many signatures as possible for the Convention. As the Swiss representative had rightly stated, however, the Conference should avoid formulae couched in too general terms, which some States might one day regard as sanctioning the adoption of legislative measures calculated to create new sources of statelessness. The idea of a working group seemed excellent, but it would doubtless be well to postpone its establishment until all the delegations had expressed their views on the Canadian and United Kingdom proposals, so that the working group might have full information on which to suggest a compromise solution.

Mr. ROSS (United Kingdom) agreed with the representatives of Switzerland and the Holy See that it would undoubtedly be regrettable if the provisions of article 8 could encourage the adoption of retrograde measures. At the same time, it would certainly be a mistake to embody in that article important statements of principle which might prevent many countries from signing the Convention and might therefore jeopardize the application of the much more important provisions of articles 1, 4 and 7. If practical results were to be obtained, article 8, without being too general, must be acceptable to the largest possible number of countries.

Two efforts had been made to achieve that objective, but the time had not yet come for a detailed examination of the respective merits of the Canadian and the United Kingdom amendments. That responsibility could be assumed by the working group, the creation of which he supported.

Meanwhile, he wished to make a few observations regarding the Canadian amendment (A/CONF.9/L.82). He wondered whether the proposed deletion of paragraph 3 of the United Kingdom amendment (A/CONF.9/L.80) would really serve

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(Mr. Ross, United Kingdom)

a useful purpose. As he had pointed out earlier, it seemed illogical and even unfair to prevent a State from repealing a law providing for the automatic loss of nationality, in the circumstances set out in article 7, paragraphs 4 and 5, in order to replace it by a law providing for deprivation of nationality. Such a change would in fact be a step forward, since instances of deprivation of nationality would inevitably become fewer as soon as deprivation required a positive act by the State in each case. Again, the cases covered by paragraph 3 (a) and (b) of the United Kingdom draft differed from those covered by the last phrase of paragraph 3 (b) of the Canadian amendment: according to the United Kingdom draft, loss would result from negligence by the persons concerned, whereas under the Canadian text they would have to give some formal evidence. That difference might be very important for certain States.

He also wondered whether the abolition of the distinction between naturalized persons and natural-born citizens might not give rise to difficulties, particularly in the case of such countries as Argentina. Many States, of course, had much wider powers with regard to naturalized persons. He would like to hear the opinions of delegations concerned in that connexion.

The wording of paragraph 3(d) of the Canadian amendment might be improved. The provisions of that paragraph should be construed in the light of the introductory sentence, and were therefore not as broad as they might appear at first glance. For example, they would apparently not apply to financial operations contrary to the national interest.

Referring to paragraph 5 of the Canadian draft, he said that the insertion of a fixed date was essential. For it was important to show that the derogations from the general rule stated in the first paragraph of the article were allowed only because of the difficulties involved in repealing the laws in force, but that legislators were expected to adopt a more liberal attitude in the future.

Mr. LUTEM (Turkey) supported the Canadian amendment but thought that the United Kingdom and Canada, as well as any delegations which wished to submit amendments, should now endeavour to arrive at a joint text acceptable to the greatest possible number of States.

Mr. SIVAN (Israel) announced that his delegation too had submitted amendments.

Mr. VAN SASSE VAN YSSELT (Netherlands) said that, while the Canadian amendment was a constructive effort, he nevertheless had one comment to make. In his country, a person entering the service of another State lost Netherlands nationality merely by application of the law. In Canada and the United Kingdom, deprivation of nationality in such cases could only result from a decree or judgement. Therefore, before the decision was taken, the person concerned could, without there being any subsequent possibility of expelling him, return to the country he had betrayed because, in the absence of a special agreement, no State was required to accept a person who had been the subject of such a measure. It would therefore be desirable for the Canadian amendment to include a paragraph 6 under which the provisions of paragraphs 3 to 5 would apply by analogy in cases of deprivation through application of the law.

He furthermore felt that the words "not less favourable" in paragraph 5 of the Canadian text were not very well chosen and were even ambiguous; the State should be allowed simply to provide "new" grounds for deprivation.

Mr. MAURTUA (Peru) considered that both paragraph 3 of the text proposed by the United Kingdom (A/CONF.9/L.80) and the Canadian amendment had omitted something, because there was no mention of deprivation of nationality by cancellation of naturalization in the case of persons who had performed military service in a foreign army. He recalled that, as a result of various negotiations, the countries of Latin America had adopted the Act of Montevideo, under which such a measure, which had been initially adopted and extended during the war to prevent acts of subversion and espionage, was permitted. He hoped that the Conference might consider including in the text of the Convention a provision covering such cases, as that would enable all States having such a provision to sign the Convention.

Mr. WEIDINGER (Austria) said that under the provisions of the Austrian Nationality Act of 1945 any person, without exception, who entered the civil service of a foreign State or performed his military service in the armed forces of a foreign State lost Austrian nationality. However, the Minister of the Interior of the Federal Republic of Austria would be prepared to submit an amendment to that Act providing that an Austrian national who voluntarily entered the service of a foreign State would lose his nationality only if he did not leave the service of the foreign State by a prescribed date.

(Mr. Weidinger, Austria)

The 1950 General Administrative Procedures Act provided for a second possibility of loss of nationality, in that it authorized the competent authority automatically to reopen naturalization proceedings whenever the naturalization decision had been obtained by fraudulent means.

His delegation was pleased to note that the amendments submitted by the United Kingdom (A/CONF.9/L.80) and by Canada (A/CONF.9/L.82) took into account those two grounds for deprivation of nationality, and it hoped that they would be included in the Convention.

With regard to the provisions of article 8 as a whole, he felt that paragraph 1 should indicate that the Contracting States would not deprive any person of his nationality if such deprivation would render him stateless.

In order to ensure equality among States and a well-balanced Convention, the grounds for deprivation should not be set forth in the text of the Convention as provisions of positive law. It should rather be possible for them to be the subject of reservations by any of the Contracting States. He therefore considered it desirable to delete paragraph 4 of the United Kingdom amendment and to include in paragraph 5 of the same amendment the grounds applicable to both naturalized and natural-born citizens.

The provisions of paragraphs 1, 2, 3 and 6 of the United Kingdom amendment were acceptable to his delegation.

Austria was also prepared to accept paragraphs 3 and 4 of the Canadian amendment, but, just as it could not accept paragraph 4 of the United Kingdom text, it was unable to support paragraph 5 of the Canadian amendment.

Mr. JAY (Canada) supported the Swiss representative's suggestion that a working group should be established for the purpose of considering the texts submitted by delegations.

The Canadian amendment (A/CONF.9/L.82) had been prepared in the light of a study of various national legislations and of particular cases which had been reported, and he hoped that it might satisfy the majority of States.

Since it was undesirable to take into account the individual interests of each country as to develop too general a formula, he suggested that delegations

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(Mr. Jay, Canada)

which wished to know whether the Canadian amendment applied to their particular case should request information on the subject. The Conference should be called upon to give a decision only in extreme cases.

He did not quite see why some delegations were opposed to listing the grounds for deprivation of nationality in the text of the Convention and preferred that reservations should be specified at the time of ratification.

Mr. LUTEM (Turkey) proposed that the United Kingdom and Canadian delegations should together form a working group in which all delegations desiring to do so could participate.

Mr. MAURTUA (Peru) said that paragraph 1 of the United Kingdom amendment (A/CONF.9/L.80) implied that the State concerned should first determine what would be the situation of a person who might be made stateless in the event of his being deprived of his nationality. He therefore wondered what a State which simply applied a constitutional provision could do.

He approved the establishment of a working group, which should begin by studying the United Kingdom and Canadian proposals.

Mr. HELLBERG (Sweden) said that, since the Swedish Nationality Act did not provide for deprivation of nationality, his delegation had no difficulty in accepting the text of article 8 as adopted by the Committee of the Whole. He did, however, appreciate the difficulties encountered by certain countries, and he would be prepared to agree that States whose legislation contained grounds for deprivation should be allowed to make reservations.

Rev. Father de RIEDMATTEN (Holy See) formally proposed that paragraph 1 of the United Kingdom amendment (A/CONF.9/L.80) should be replaced by paragraphs 1 and 2 of article 8 as adopted by the Committee of the Whole (A/CONF.9/12).

Mr. CALDARERA (Italy) supported the proposal of the representative of the Holy See. In addition, he would like some clarification of the meaning of the word "pension" in paragraph 3, sub-paragraph (a), of the Canadian amendment (A/CONF.9/L.82). The expression "activities seriously prejudicial to national security" in sub-paragraph (d) of the same paragraph appeared to him difficult to define.

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(Mr. Caldarera, Italy)

In Italy, a judgement depriving a person of his nationality could be made the subject of an appeal to an administrative or judicial tribunal which gave full guarantees of impartiality. For that reason he could accept paragraph 6 of the United Kingdom amendment (A/CONF.9/L.80).

Rev. Father de RIEDMATTEN (Holy See) pointed out, in clarification of his proposal, that paragraph 1 of the Committee of the Whole's text laid down an obligation that was absolute in view of the fact that it did not include the words "subject to the provisions of this article". Paragraph 2 provided for the possibility of reservations - which might be those set forth in the United Kingdom and Canadian amendments - being made at the time of ratification of the Convention.

Establishment of a working group

The PRESIDENT, recalling the Swiss representative's proposal that a working group should be set up and taking into account the comments which had been made during the meeting, proposed the establishment of a working group consisting of the representatives of Brazil, Canada, France, Israel, Norway, Switzerland, Turkey and the United Kingdom. Representatives of other countries who so desired could also take part in its work. He himself intended to do so.

It was so decided.

The meeting rose at 12.15 p.m.