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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE EIGHTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 15 April 1959, at 10.50 a.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.

(10 p.)

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

Draft convention on the reduction of future statelessness (A/CONF.9/L.40 and Add.1-4, L.42) (continued)

The PRESIDENT pointed out that the revised drafts prepared by the Drafting Committee (A/CONF.9/L.40 and Add.1-4, A/CONF.9/L.42) should be regarded as the basic working documents of the Conference.

Article 1, paragraph 1 (A/CONF.9/L.54, L.58)

Mr. RIPHAGEN (Netherlands) said that he had submitted the first two amendments in document A/CONF.9/L.54 in order to make it quite clear that Governments would not be permitted to impose substantive conditions under their national law, and that the provision contained in the last sentence of paragraph 1 should be regarded as quite separate from the two modes of procedure set out in that paragraph

Mr. HERMENT (Belgium), supported by Mr. HUBERT (France), assured the Netherlands representative that the French text of the paragraph corresponded precisely to that representative's interpretation of the English text.

Mr. RIPHAGEN (Netherlands) said that he would withdraw the two amendments in question provided that the confirmation of his interpretation by the Belgian and French representatives were recorded in the summary record.

Mr. JAY (Canada) said that he found it difficult to understand why the final sentence of the paragraph had been included.

Mr. HARVEY (United Kingdom) said he had the same difficulty as the Canadian representative; the sentence seemed, however, to be regarded as essential by some delegations owing to the differences between national legislations.

Sir Claude COREA (Ceylon) said the final sentence of paragraph 1 (b) seemed to go beyond the decisions reached in Committee. If that sentence made no substantive addition to the paragraph it was unnecessary; if it made a substantive addition, it was unwarranted. His Government wished to be able to ratify the convention, but its difficulties in so doing were increased by the addition of the sentence in question. He had, therefore, submitted an amendment (A/CONF.9/L.58, para. 3) to delete the sentence.

Mr. HARVEY (United Kingdom) recalled his delegation's view that the rejection of the "application" referred to in paragraph 1 (b) should not be possible except on the grounds set forth in paragraph 2 of the article. The Drafting Committee had included the sentence in question because it had thought that it reflected more clearly the views expressed in Committee.

Mr. FAVRE (Switzerland) said that if the Ceylonese amendment were adopt he would proposed that the opening words of paragraph 2 of the article be amended by the insertion of the word "only" after the word "may". He agreed with the Ceylonese representative that the text in question in paragraph 1 (b) was not altogether appropriate in an international convention and might be amended.

At the request of the representative of the Netherlands, a vote was taken by roll-call on paragraph 3 of the Ceylonese amendment (A/CONF.9/L.58).

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

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

The amendment was rejected by 21 votes to 5, with 7 abstentions.

Rev. Father de RIEDMATTEN (Holy See) explained that he had voted for the amendment because he agreed with the Ceylonese representative that the sentenc in question represented a substantive addition which had not been approved in Committee.

Sir Claude COREA (Ceylon), introducing paragraph 1 of his delegation's amendment (A/CONF.9/L.58), said that the object of the particular amendment was to make it quite clear that the applications referred to in article 1, paragraph 1 (b) must be in conformity with the national law. As paragraph 1 (b) stood, the reference to the national law served merely to obscure the fact that States were being denied the right to decide which persons they would admit to their nationality. In Ceylon there was no statelessness, and his Government wished to co-operate in the endeavour to eliminate statelessness in other countries as well. It could not, however, agree to apply a convention which might result in injury to its vital social, economic and political interests. There might be some countries which, while paying lip-service to the aim of reducing statelessness, would in fact create large numbers of stateless persons who would then become a

burden to other countries. Since it was undesirable to enumerate all the conditio to which various States might wish to subordinate the granting of their nationalit the only alternative was to recognize their right to apply their nationality laws. Ceylon was a democratic country in which the interests of the individual were safeguarded; at the same time, however, his Government upheld the right of the State to defend its vital interests. The clauses approved in Committee admitted grounds for deprivation of nationality in accordance with the municipal law of som of the States represented at the Conference and he could not see why grounds for refusing to grant nationality should not also be admitted.

At the request of the representative of Ceylon, a vote was taken by roll-call on paragraph 1 of his delegation's amendment (A/CONF.9/L.58).

The Holy See, having been drawn by lot by the President, was called upon to vote first.

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

The amendment was rejected by 20 votes to 6, with 6 abstentions.

Sir Claude COREA (Ceylon) withdrew paragraphs 3 and 4 of the Ceylonese amendment in consequence of the vote just taken.

Mr. SIVAN (Israel) proposed that in the English text of the final sub-paragraph of paragraph 1 the words "which provides for the grant of its nationalit should be substituted for the words "which grants its nationality" and that in the same clause the words "may also provide for the grant of its nationality" should be substituted for "may also grant its nationality". That would make it clear tha the reference was not to the grant of nationality in a particular case but to the system in general.

The PRESIDENT, speaking as the representative of Denmark, drew attention to the Danish proposal (A/CONF.9/L.44) for a new paragraph to be inserted between paragraphs 2 and 3; if adopted, that proposal might affect the substance of paragraph 1.

Mr. HARVEY (United Kingdom) observed that some inconsistencies of style remained in some articles and drafting changes might be required in the light of decisions concerning substance. It had been his hope that the Drafting Committee, rather than the plenary Conference, might be able to deal with such changes.

The PRESIDENT said that a text formally adopted by the plenary Conference could hardly be changed by a subsidiary body. He suggested that, after the draft convention had been considered article by article in plenary meeting, the Drafting Committee should remedy any discrepancies and report back before the vote was taken on the draft convention as a whole.

It was so agreed.

Mr. RIPHAGEN (Netherlands) moved that the discussion should not be reopened, even if alleged drafting changes made by the Drafting Committee were found to be changes of substance.

It was so agreed.

The Israel amendments to paragraph 1 proposed orally were adopted by 21 votes to none, with 9 abstentions.

Article 1, paragraph 1, as amended, was approved by 24 votes to 1, with 7 abstentions.

Mr. KUDO (Japan) explained that he had abstained from voting on the paragraph, not because he was opposed to the substance, but because its expression differed in some respects from existing Japanese law, and he had therefore wished to reserve his Government's position in order to consider the matter.

Article 1, paragraph 2 (A/CONF.9/L.42, L.43, L.56)

The PRESIDENT drew attention to the text submitted by the Drafting Committee for an additional sub-paragraph to article 1, paragraph 2 (A/CONF.9/L.42)

Mr. WILHEIM-HEININGER (Austria) proposed that the additional sub-paragrap be amended by inserting the word "serious" before "criminal" and deleting the words "for a term of five years or more". Owing to its geographical position, Austria bore the heavy burden of an influx of refugees from certain countries. Other countries were willing to select from those refugees the persons who seemed to be of good character and conduct and to admit them and Austria was left with a large number of persons whose conduct left much to be desired. It could not therefore accept an obligation to accord its nationality to all persons who had not been sentenced to imprisonment for a term of five years or more on a criminal charge. Some of the undesirable persons might be habitual offenders who, however, had been

sentenced to terms of only four years. Under recent naturalization laws enacted in Austria, including those concerning Volksdeutsche refugees, Austrian nationality was denied to persons convicted of serious crimes. It was very unlikely that Austria would ratify a convention containing any such provision as that submitted by the Drafting Committee unless it were permitted to make reservations.

Mr. TSAO (China) asked what was meant by the phrase "legal authorization" in paragraph 2(a); was the authorization to be granted by parents, guardian or the competent authorities, and on what grounds, other than minority, was such authorization required?

Mr. HARVEY (United Kingdom) replied that, under certain systems of law, a juridical act by a young person required the authorization of some person or of the court. Under paragraph 2, such persons would be allowed at least one year, without having to obtain anyone's consent, to make the application.

Mr. HERMENT (Belgium) explained that a child between the ages of eighteen and twenty-one years might make a personal application.

Mr. CARASALES (Argentina) observed that paragraph 2 dealt with countries which did not apply jus soli, whereas paragraph 3 imposed additional obligations on the other group of countries. If the additional sub-paragraph was adopted, the jus sanguinis countries would be able to impose yet another condition for the grant of nationality. Article 1 should represent a balance. If the jus sanguinis countries were allowed to add new conditions, the jus soli countries should be allowed to do likewise. He would therefore reserve the right to submit amendments adding to article 1, paragraph 4, and to article 4 any further conditions that migh be attached to article 1, paragraph 2.

Mr. BACCHETTI (Italy) observed that, although the Argentine representativ should have raised his point after paragraph 2 had been approved, the Conference would do well to bear it in mind when it considered adding any further conditions, which he himself hoped that it would not do.

Mr. HERMENT (Belgium) said that he appreciated the Argentine representative's concern, but similar considerations should also have been borne in mind whe the grounds for deprivation of nationality had been enumerated in article 8.

After a brief procedural discussion, the PRESIDENT said that the French amendment (A/CONF.9/L.56) would be put to the vote before the United Kingdom alternative amendments (A/CONF.9/L.43) to the Drafting Committee's text (A/CONF.9/L.42), since the French amendment was tantamount to a proposal for total substitution.

Mr. VIDAL (Brazil) objected to the phrase "his having been sentenced to imprisonment for a term of not less than five years, for a criminal act" in the French amendment. It represented a retreat from the ideals of modern criminal systems in which the main stress was laid upon rehabilitation. If a young offender was sentenced to six years imprisonment, he would emerge, however good the rehabilitation facilities, with the additional stigma of statelessness. A separate vote should be taken on that phrase. In general, he supported the Argentine representative's point of view.

Rev. Father de RIEDMATTEN (Holy See) said he had some doubts about the French and other amendments for the same reason as the Brazilian representative. Sub-paragraph (a), although not wholly satisfactory, was acceptable because it provided some guarantees at the time of the grant of nationality. The main difficulty was that the paragraph concerned young persons. While he had every sympathy with the motives actuating the Austrian representative's amendment, he felt that it was too drastic to apply to young persons. The French amendment was open to the same objection.

Mr. HERMENT (Belgium) pointed out that in Belgium and most other countries a young person could not be sentenced for a serious crime until he had reached the age of eighteen.

Mr. LEVI (Yugoslavia) said that he could accept the first part of the French amendment, but not the final proviso, since no independent body dealing with the acquisition of nationality existed in Yugoslavia. A separate vote should be taken on that part of the French amendment.

Mrs. TAUCHE (Federal Republic of Germany) said that even if a State were permitted to refuse the grant of nationality to persons who had been sentenced to imprisonment for a term of not less than five years, a court could decide only whether the condition had been fulfilled or not, but it could not rule on the acceptance of the application. It would not be possible to institute in the Federal Republic of Germany an independent body which must be consulted before an application for nationality was refused, but any applicant not satisfied with the decision of an administrative body could appeal to an administrative tribunal and would in that way be protected against arbitrary administrative decisions.

Mr. HARVEY (United Kingdom) pointed out that paragraph 2 dealt essentially with the case of young men born in the country and established there. The acquisition of the nationality by such persons should not be subject to undue restrictions. The French amendment gave the State too much scope to reject an application. The phrase "manifest unworthiness" was far too broad and the proviso concerning consultation with an independent body did not remedy that defect. The examples of "manifest unworthiness" in the amendment were merely illustrative anddid not remove the vagueness of the term. The amendment would undermine the whole basis of article 1. After considerable discussion, the concept of acquisition of nationality at birth had been abandoned in favour of the idea that nationality should be granted to a young man who had made his home in a country. The French amendment went further. The young man must not only wait until he was twenty years of age and was an established member of the community, but he must also not have given evidence of manifest unworthiness, which meant that if the State did not think him a desirable citizen, it could reject his application. The question of acts prejudicial to national security was a special one and the United Kingdom delegation had very strong views concerning the text submitted by the Drafting Committee (A/CONF.9/L.42). There had been some misunderstanding in Committee about the reasons which had led to the adoption of that text. The United Kingdom amendments (A/CONF.9/L.43) were an attempt to express what many delegations had believed they had been voting for.

Mr. BACCHETTI (Italy) said that he was opposed both to the French amendment and to the text submitted by the Drafting Committee. Such proposals would alter the balance achieved in article 1. Additional conditions governing the grant of nationality were undesirable, especially if no explicit judicial guarantees were open to applicants. Of the two alternatives submitted by the United Kingdom delegation, the first was the less undesirable; but he had little enthusiasm for it, although it at least provided a judicial guarantee.

Mr. JAY (Canada) observed that the jus sanguinis countries had been induced to modify their system very considerably in the interest of reducing statelessness and deserved whatever compensation could be offered to them in return. The difficulty lay in the extent to which limitations could be admitted into the convention, especially in article 8 and in article 1, paragraph 3. He could accept article 1, paragraphs 2(a) and 2(b) readily and could even go further, but not to the extent of endorsing the clause submitted by the Drafting Committee.

The French amendment went too far; it removed any idea of conviction by a court and cited specific categories by way of example only. A provision permitting a State to decline to apply article 1 to a person who had been sentenced to imprisonment for a term of five years or more, although it also went too far, might, however, be accepted in deference to those countries which had made concessions in the drafting of article 1 as a whole. He would support some such provision and the first of the alternative amendments submitted by the United Kingdom.

Mr. HERMENT (Belgium) said he could not understand why delegations which had voted for the much vaguer provisions concerning deprivation of nationality in article 8 should now be unwilling to refuse to permit a State to reject an application for nationality on the grounds set out in the French amendment.

Sir Claude COREA (Ceylon) said that the debate in Committee had shown that a large number of delegations felt strongly that a clause on the lines of that submitted by the Drafting Committee should be added.

Mr. HUBERT (France) said that there was nothing new about the French amendment. He recalled that during the discussion of article 8 in the Committee of the Whole Conference (17th meeting) the French delegation had made certain concessions to the point of view of the United Kingdom delegation. It would be only fair that the Conference should now accede to the French delegation's wishes with regard to article 1.

Mr. BACCHETTI (Italy) said that the French and Belgian representatives were logical in their dislike of article 8 as it stood; the Italian delegation shared their dislike. There was, however, one important difference: article 1 dealt with young persons, whereas article 8 dealt with adults. No doubt the French system provided adequate guarantees, but an international convention could not take account of a particular system. In some countries the provision concerning "evidence of manifest unworthiness" might even be used as a pretext for spying on the political opinions of students. It was sound practice to interpret any legal texts submitted to a conference as unfavourably as possible to the interests of the individual in order to protect him.

Mr. HERMENT (Belgium) moved the closure of the debate.

The Belgian motion was carried.

The PRESIDENT put to the vote the French amendment to article 1, paragraph 2 (A/CONF.9/L.56) in parts, as requested by the Brazilian and Yugoslav representatives.

The first part, to the words "..... national security", was rejected by 13 votes to 7, with 9 abstentions.

The second part, "that the person concerned .... for a criminal act", was rejected by 17 votes to 6, with 7 abstentions.

Mr. JAY (Canada) explained that he had voted against the second part, but was still prepared to vote for a provision relating to a person sentenced to imprisonment for five years, since he was willing to defer to that extent to the wishes of the jus sanguinis countries, even though he could not subscribe to the basic principles.

The PRESIDENT said that in consequence of the foregoing votes it was unnecessary to put the last part of the French amendment to the vote.

The Austrian oral amendments to the text submitted by the Drafting Committee (A/CONF.9/L.42) were rejected by 10 votes to 6, with 13 abstentions.

The PRESIDENT invited the Conference to vote on the United Kingdom alternative texts in the order submitted (A/CONF.9/L.43).

Mr. HERMENT (Belgium) asked what the difference was between "being convicted of an offence" and "committed an offence".

Mr. HARVEY (United Kingdom) explained that the former phrase covered a person convicted by a court, the latter one who had committed an act which was an offence, even though he was neither brought to trial nor convicted. As the paragraph dealt with persons actually in the country concerned, the first alternative was the logical one to adopt.

The first of the alternative amendments submitted by the United Kingdom (A/CONF.9/L.43) was adopted by 12 votes to 8, with 9 abstentions.

The PRESIDENT invited the Conference to vote on the text submitted by the Drafting Committee (A/CONF.9/L.42), as amended.

Mr. VIDAL (Brazil) asked for a separate vote on the second part, beginning "nor has been sentenced .....".

That part was adopted by 8 votes to 4, with 16 abstentions.

The text submitted by the Drafting Committee (A/CONF.9/L.42), as amended, was adopted by 14 votes to 1, with 14 abstentions.

The meeting rose at 1.40 p.m.