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CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF STATELESS PERSONS

SUMMARY RECORD OF THE EIGHTH MEETING

Held at Headquarters, New York,  
on Friday, 17 September 1954, at 10.45 a.m.

CONTENTS

Revision of the draft protocol relating to the status of stateless persons in the light of the provisions of the Convention relating to the Status of Refugees of 28 July 1951 and of the observations made by the Governments concerned: consideration of the substantive provisions to be applied to stateless persons (A/CONF.2/108, E/CONF.17/3) (continued)

President:

Mr. LARSEN

(Denmark)

E/CONF.17/SR.8

English

Page 2

REVISION OF THE DRAFT PROTOCOL RELATING TO THE STATUS OF STATELESS PERSONS IN THE LIGHT OF THE PROVISIONS OF THE CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951 AND OF THE OBSERVATIONS MADE BY THE GOVERNMENTS CONCERNED:

CONSIDERATION OF THE SUBSTANTIVE PROVISIONS TO BE APPLIED TO STATELESS PERSONS (A/CONF.2/108, E/CONF.17/3)

E/CONF.17/3, para.55 (article 26)

Mr. SCHELTEMA (Netherlands) said that the article was generally acceptable to his delegation. He had, however, been instructed by his Government to reserve its right, for purposes of public order, to assign certain places of residence to stateless persons.

Mr. TUNCEL (Turkey) said that his country was in the same position as the Netherlands with regard to article 26. The right of stateless persons to choose their place of residence was contrary to Turkish law and his Government might therefore make a reservation.

The inclusion of or reference to the article in the future instrument was approved by 16 votes to none, with 1 abstention.

E/CONF.17/3, para.56 (article 27)

Mr. HERMENT (Belgium) thought that the words "se trouvant" in the French were too vague and should be replaced by the word "résidant".

Mr. VOIGT (Federal Republic of Germany) thought that it would be better to use the words "résidant régulièrement" in the French text and "lawfully resident" in the English text.

Mr. BROWN (United Kingdom) felt that if the words "lawfully resident" were introduced into the article it would be meaningless if article 28 were subsequently adopted. He could not visualize any circumstances under which a stateless person could stay without documents in a country where he was not a resident. If, by some chance, that did happen, such persons could be issued with identity papers which did not confer any special privileges on them.

The PRESIDENT explained that the Style Committee at Geneva had had long discussions about the English translation of "résidant régulièrement", and had adopted the words "lawfully staying" (A/CONF.2/102, para. 5).

Mr. BOZOVIC (Yugoslavia) said that the article was acceptable to his delegation. Some distinction should, however, be made between identity and travel papers. He agreed with the representatives of Belgium and the Federal Republic of Germany on the question of residence. The text should not mean that identity papers could be issued to anyone who happened to be staying in a country; grant of them should be based on a definite fact such as residence.

Mr. HOLMBACK (Sweden) recalled that at the 1951 Conference a distinction had been drawn between article 27 and article 28. Under article 27 a refugee could be issued identity papers without being a resident whereas he had to be a resident to enjoy the benefits provided under article 28. In view of that distinction he did not think it appropriate to alter article 27.

Mr. HERMENT (Belgium) thought that the distinction mentioned by the representative of Sweden was based on the fact that a refugee was issued provisional papers until his status had been definitely established following exhaustive inquiries, after which he could be issued valid travel documents. Such, at least, was the practice in Belgium. In his opinion, therefore, article 27 referred to provisional identity papers.

Mr. de BARROS GOMES (Brazil) pointed out that any refugee or stateless person arriving in his country without identity papers was issued provisional papers valid for six months, after which he had the possibility of obtaining a valid travel document.

Mr. BOZOVIC (Yugoslavia) thought that there were two aspects to the question. If article 27 were interpreted as referring to provisional identity papers, it would be better to leave it unchanged but, if it referred to the final identity papers issued by some countries, the word "in" should be changed to "lawfully staying in".

Miss SENDER (International Confederation of Free Trade Unions) wondered whether the word "lawfully" should appear in the text, since in many cases stateless persons were not legally entitled to stay in a country.

Mr. LOOMES (Australia) thought it best not to give too precise a definition of the words "identity papers", which could cover both provisional and final documents of the kind issued to aliens under similar circumstances. He was in favour of the article being left unchanged.

Mr. AYCINENA (Guatemala) pointed out that in his country an alien was not regarded as a permanent resident unless he produced identity papers first.

Mr. BROWN (United Kingdom) observed that, if article 27 referred only to provisional identity papers, the countries concerned were under no obligation to issue final papers to stateless persons and could interpret the article in the light of their own legislation.

Mr. JOBEZ (France) was of the opinion that article 27 should remain unchanged and refer to both provisional and final papers.

Mr. BOZOVIC (Yugoslavia) agreed that the article should be left as it stood, for each country to interpret according to its legislation.

Mr. SERRANO GARCIA (El Salvador) said that his delegation agreed with the present wording of article 27, which was fully in accordance with the spirit of the 1951 Convention.

The PRESIDENT felt that the Conference had perhaps been misled by the fact that in some countries identity papers included a statement from the issuing authority indicating whether the person in question was allowed to stay in the country.

The inclusion of or reference to the article in the future instrument was approved by 18 votes to none, with 2 abstentions.

E/CONF.17/3, para. 57 (article 28)

Mr. LOOMES (Australia) recalled that in ratifying the Convention relating to the Status of Refugees his Government had made a reservation whereby article 28 would not be applied. His delegation did not consider the article desirable in connexion with stateless persons and shared the view of the Government of France, which had excluded reference to the article in its draft protocol (E/2373/Add.4).

Mr. HERMENT (Belgium) asked the representatives of Australia and France what travel documents would be available to stateless persons if article 28 were excluded.

Mr. BOZOVIC (Yugoslavia) said that the article was generally acceptable to his delegation. However, he had two reservations. First, the words "shall issue" were obligatory in meaning in spite of the fact that the issue of travel documents was closely linked with the right of every State to regulate the admission and residence of all aliens, including stateless persons. On that point, he was in agreement with the comments of the Netherlands Government on article 27 (E/2373/Add.13). Secondly while he would agree, in connexion with paragraph 2 of the article, that his Government should recognize travel documents issued by parties to an agreement to which it was itself a party, he could not agree that it should necessarily recognize those issued by parties to an agreement, in which the Yugoslav Government had had no part.

Mr. JOBEZ (France) explained why his delegation did not wish article 28 included or referred to in the instrument on stateless persons. It would be confusing to issue to stateless persons travel documents modelled on a document that had been drafted especially for refugees. Moreover, under regulations adopted in 1949 stateless persons in France received travel documents equivalent to those provided for in article 28. There was therefore no reason to create an additional travel document.

Mr. BROWN (United Kingdom) said that his delegation hoped that the article would be included in the proposed international instrument. From the standpoint of benefits to stateless persons, the article was one of the most important in the entire document. He appreciated that stateless persons in France would suffer no disability from the exclusion of the article, but unfortunately the system that existed in France did not exist in all countries. The absence of a national passport and of any entitlement to a travel document in lieu thereof was one of the most serious disabilities under which many stateless persons laboured. They were completely dependent upon the administrative benevolence of the State in which they resided. The article would give to a carefully defined class of stateless persons, those who were "lawfully staying" in the territory of a Contracting State, a definite right to a travel document.

The PRESIDENT, speaking as representative of Denmark, observed that there would be ample opportunity, when the Conference examined the Schedule to the Convention, to decide to what extent the model travel document for refugees should apply to stateless persons. However, it might be in order at the present stage to point out that the first point made by the French representative was important. There would have to be a difference between the travel document for refugees and that for stateless persons, even if the Conference decided to adopt the same provisions for both categories of persons. The community of States acceding to the Convention on refugees would not necessarily be the same as that adhering to the instrument on stateless persons. Moreover, it would be highly desirable for the authorities to be able readily to determine whether an alien entering their country was to be treated in accordance with the Geneva Convention on Refugees or the New York instrument on stateless persons.

The two types of travel documents might be different in colour and would have to have differences in the text, depending on the provisions of the relative instruments. An identical text might embarrass the High Commissioner for Refugees, who had no responsibility for stateless persons.

Mr. BROWN (United Kingdom) hoped that it would not be necessary to change the substance of the travel document. A difference of colour and a change in the material in parentheses under the heading "Travel Document" should be sufficient. He emphasized the advantages of a uniform travel document for all stateless persons in States parties to the new instrument.

Mr. LOOMES (Australia), replying to the question by the Belgian representative, explained that Australian law already provided for the issue of travel documents to stateless persons. He saw no need for a new form of the kind contained in the Schedule.

Mr. BOZOVIC (Yugoslavia) felt there was no disagreement as to substance; the technical difficulties might be overcome with a little thought. For example, the Conference might decide to make the form of the travel document in the Schedule a recommendation instead of an obligation. In any event, he would suggest that further consideration of article 28 should be deferred to a later meeting.

It was so agreed.

E/CONF.17/3, para. 58 (article 29)

The inclusion of, or reference to, article 29 in the future instrument was approved by 18 votes to none, with 2 abstentions.

E/CONF.17/ 3, para. 59 (article 30)

Mr. HERMENT (Belgium) observed that the subject matter of article 30 concerned refugees primarily and was not applicable to stateless persons. The Ad Hoc Committee had quite properly decided not to refer to it in the draft protocol.

Mr. BROWN (United Kingdom) felt that the words "in conformity with its laws and regulations" protected Contracting States against any possible abuse of the provisions of article 30. There might be some instances where stateless persons would benefit from such provisions, and his delegation proposed the inclusion of, or reference to, the article.

Mr. GRANDJEAN (Switzerland) supported the United Kingdom proposal.

Mr. DONS (Norway) also supported the United Kingdom proposal, but indicated that his Government might have to make certain reservations to the article.

The inclusion of, or reference to, paragraph 1, paragraph 2 and the whole of article 30 in the future instrument was approved by 15 votes to none, with 5 abstentions.

E/CONF.17/3, para. 60 (article 31)

Mr. JOBEZ (France) observed that the article was applicable only to refugees. A stateless person would not be under the pressures described in the article.

Mr. VOIGT (Federal Republic of Germany) agreed with the French representative.

The PRESIDENT said that the Conference could dispense with further consideration of the article unless there was a formal proposal to include it or refer to it in the new international instrument.

E/CONF.17/3, para. 61 (article 32)

Mr. HERMENT (Belgium) said that although the article was applicable primarily to refugees, his delegation could accept it for stateless persons with the exception of the second sentence of paragraph 2, which conflicted with his country's regulations.

Mr. JOBEZ (France) said that his Government could not accept article 32 for different reasons. It felt that the article concerned refugees in particular, who could hardly be expelled except on grounds of national security.



That would not be true in the case of stateless persons. Moreover, pursuant to the 1951 Convention, the French Government in 1952 had passed a law providing a certain procedure for refugees exercising the right of appeal from administrative decisions relating to articles 31, 32 and 33. As stateless persons were not the responsibility of the High Commissioner, he did not think that they should enjoy the privileges of that procedure. Stateless persons, like all aliens in France, could ask the competent administrative authority to review its expulsion order.

Mr. BROWN (United Kingdom) said that his delegation supported the view of the Ad Hoc Committee with respect to article 32. He agreed that there was a stronger case for applying the benefits of the article to refugees than to stateless persons but he thought that the latter should have some kind of guarantee against arbitrary expulsion. He pointed out that under the expression "save on grounds of national security or public order" in paragraph 1, Contracting States would retain very wide powers because the interpretation of that expression would have to be left to each Government. In other words, all that was asked was that Contracting Parties should grant to stateless persons what they were prepared to grant to aliens generally.

Paragraph 2 was almost identical with article 13 of the draft covenant on civil and political rights just completed by the Commission on Human Rights, and he felt that most countries would be able to accept the whole of that paragraph.

Paragraph 3 seemed to be almost equally applicable to refugees and stateless persons. There were strong grounds for reasonable delay to enable stateless persons to find a country that would accept them.

Mr. LOOMES (Australia) recalled that, in signing the Geneva Convention, his Government had made a reservation whereby it did not accept article 32. He felt that there was even less reason to apply the substance of the article to stateless persons.

Mr. HERMENT (Belgium) observed that, as in France, his country's law made a special exception in favour of refugees, with representation by a representative of the High Commissioner against an expulsion order. His Government was not prepared to extend such rights to stateless persons.

Mr. AYCINENA (Guatemala) explained that many of his Government's regulations were being revised and he wished to reserve its right to make a reservation to the article when it ratified the instrument.

The PRESIDENT, speaking as representative of Denmark, said that paragraphs 2 and 3 met the possible requirements of stateless persons who could not have recourse to any diplomatic representatives of their own and protected them from unfair treatment. Paragraph 3 covered situations in which the country of former nationality would not accept the return of a person who had lost or renounced that nationality.

Mr. PASTRANA (Colombia) said that he was against the inclusion of or reference to article 32 and that, if it was adopted, his Government would make a reservation at the time of ratification. Its purport would not square with existing Colombian law.

Mr. BOZOVIC (Yugoslavia) said that he was in complete agreement with the spirit of article 32, even though it concerned refugees more than stateless persons. He had noted, however, that article 33 of the 1951 Convention had not been included in the draft protocol and he wondered whether some of the essential ideas in article 33 might not somehow be combined with those in article 32. It would be intolerable that a stateless person should be returned to the frontiers of territories where his life or freedom would be threatened.

The PRESIDENT, speaking as representative of Denmark, said that in Denmark any stateless person in such a position would be treated as a potential refugee and given the status of a refugié sur place.

Mr. BOZOVIC (Yugoslavia) said that that would be satisfactory, provided that the terminal date of 1 January 1952 was not retained in the definition.

The PRESIDENT, speaking as representative of Denmark, said that article 32, paragraph 1, had been adopted at the 1951 Conference in order to cope with the circumstances of a refugee in flight from his country. Expulsion would be permitted only on grounds of national security or public order. Stateless persons, however, might become liable to expulsion for other reasons, such as overstaying the period for which they were admitted to a country. They could not be said to have endangered national security, but administratively the offence might be deemed for convenience to constitute a breach of public order. Such an extended construction of the term "public order", as applied to stateless persons, might well lead to a similar construction of the same words as applied to refugees, and thus weaken the provision in the 1951 Convention. The Danish Government could not accept that paragraph and it was to be feared that many other countries would also have to make reservations to it.

Mr. BROWN (United Kingdom) said that that point had not occurred to his delegation. There might be some doubt whether, in the normal course of events, a stateless person could be expelled for failure to comply with regulations. The difficulty might be met by the substitution of the words "habitually resident" for "lawfully". That would give stateless persons a greater degree of protection than other aliens.

Mr. VOIGT (Federal Republic of Germany) said that, although it was true that the difference between refugees and stateless persons should always be borne in mind, their position was very similar with regard to the specific case of expulsion. An expulsion order against a stateless person could rarely be executed. Perhaps the difficulty could be overcome by specifying that the stateless person must have been lawfully resident in a country for a stated period. It was true that that would create different categories of stateless persons, but that might, in the particular instance, be more useful than harmful. Aliens resident for a long time in a country were in fact largely assimilated to nationals, even though they did not have the nationality.

Mr. de BARROS GOMES (Brazil) observed that under the Brazilian Constitution no alien could be expelled save on grounds of public order, and even then, he could not be deported if he had a Brazilian wife or dependent children. Stateless persons had the same rights as other aliens. He could, therefore, have no objection to the paragraph.

The PRESIDENT, speaking as representative of Denmark, said that the objection was legal rather than administrative. He would, however, be prepared to accept the paragraph, on the understanding that a reservation might be made subsequently.

Mr. HOLMBACK (Sweden) cited the various terms used in connexion with residence in articles 12, 14, 26 and 28 and concluded that the paragraph might best be amended by the use of the term "habitually residing".

Mr. BROWN (United Kingdom) agreed that that was probably the best term. It would probably be unwise to specify a stated period of residence; each State should use its own discretion.

Mr. HERMENT (Belgium) doubted the wisdom of abandoning the word "lawfully"; many stateless persons resided in countries unlawfully for years and ought to be liable to expulsion.

Mr. BOZOVIC (Yugoslavia) said that his support of paragraph 1 had been shaken by the arguments against it. The danger of an expanded construction of the term "public order" was a very real one.

Mr. SCHELTEMA (Netherlands) observed that in general he had no objection to the inclusion of or reference to article 32, but difficulties had arisen with regard to paragraph 1 and he had asked for further instructions. He might have to submit an amendment, possibly along the lines suggested by the German representative. He therefore suggested that the decision, at least on paragraph 1, should be postponed.

The PRESIDENT said that it would be useful for the delegations concerned to attempt to work out a compromise text for submission to the next meeting.

It was so agreed.

E/CONF.17/3, para. 63 (article 34)

The inclusion of or reference to the article in the future instrument was approved by 17 votes to none, with 2 abstentions.

E/CONF.17/3, para. 65 (article 36)

The PRESIDENT pointed out that article 36 had been adopted by the 1951 Conference in place of a differently worded article 31 of the convention drafted by the Ad Hoc Committee, and reproduced in the draft protocol. The inclusion of or reference to either of the drafts - which were not mutually exclusive - would require a formal proposal by one of the delegations.

Mr. BROWN (United Kingdom) proposed the inclusion of or reference to article 36 of the Convention relating to the Status of Refugees.

Mr. HERMENT (Belgium) proposed the inclusion of or reference to article 31 of the draft convention.

Mr. TUNCEL (Turkey) said that article 36 of the Convention raised important matters of principle which needed further consideration. He asked whether it was really advisable to burden the Secretary-General in that way.

Mr. SCHWELB (Secretariat) replied that the Secretary-General would find no difficulty in performing the work. As the depositary of international instruments, he frequently discharged such functions.

The PRESIDENT observed that the purpose of the article was simply to have a single centre at which the pertinent laws and regulations could be consulted by Member States.

E/CONF.17/SR.8  
English  
Page 14

Mr. TUNCEL (Turkey) reminded the Conference that the Secretary-General had referred in the Economic and Social Council to the very voluminous documentation which the Secretariat was requested to prepare. He wondered whether such a compilation would really be useful.

After a brief procedural discussion, Mr. BROWN (United Kingdom) moved the adjournment of the meeting.

The motion for adjournment was adopted.

The meeting rose at 1.10 p.m.