

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

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/C.1/SR.18

Summary Records, 18th meeting of the Committee of the Whole

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/CONF.9/S.1/SR.18
24 April 1961

Original: ENGLISH



UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 14 April 1959, at 10.20 a.m.

Chairman: Mr. LARSEN (Denmark)
Secretary: Mr. LIANG, Executive Secretary of
the Conference

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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.

GE.61-4343

61-11777

(11 p.)

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

Draft convention on the reduction of future statelessness (A/CONF.9/L.1)
(continued)

Article 16 (A/CONF.9/L.24, L.33) (resumed from the ninth meeting and concluded)

The CHAIRMAN recalled that at the ninth meeting article 16 of the draft convention had been approved subject to any modifications necessitated by subsequent decisions. An amendment to the article had been submitted by the United Kingdom delegation (A/CONF.9/L.24) and the Belgian delegation had submitted an amendment (A/CONF.9/L.33) to the United Kingdom amendment.

Mr. HARVEY (United Kingdom) said that he accepted the Belgian amendment.

The United Kingdom amendment (A/CONF.9/L.24), as amended was approved.

Article 16, as amended, was approved.

Effect of the convention: report of the Working Group (A/CONF.9/L.30) (resumed from the thirteenth meeting)

The CHAIRMAN recalled that paragraphs 1, 2 and 3 of the draft article concerning the effect of the convention (A/CONF.9/L.30) prepared by the Working Group had been approved but that consideration of paragraph 4 had been deferred. As it stood, paragraph 4 was not very satisfactory because a State might act according to its national law before the convention came into force and might act subsequently only if the cause of loss or deprivation of nationality were specified in the convention. In other words, there would be no provision covering cases not finally disposed of before the convention came into force.

Mr. BEN-MEIR (Israel) said that during the drafting of the new article his delegation had submitted a proposal - which had not been taken into account owing to pressure of time - for dividing paragraph 4 into two parts: the first dealing with cases arising under articles 5, 6 and 9, and the second with cases arising under articles 7 and 8 and specifying that provisions concerning loss or deprivation of nationality under articles 7 and 8 should apply to persons in whose case the fulfilment of the conditions constituting the grounds for such loss or deprivation had begun before and terminated after the entry into force of the convention. Articles 5, 6 and 9 dealt with acts and events that took place at a specific time, whereas

articles 7 and 8 dealt to a certain extent with continuous events, such as prolonged residence abroad.

Mr. RIPHAGEN (Netherlands) thought that preferably paragraph 4 should be omitted altogether. The matter with which it attempted to deal was very complex, and the provision might produce unintended results. The articles cited implied some limitation of State sovereignty in the sense that loss or deprivation of nationality would not be permitted save on the grounds set forth in the convention. If circumstances constituting such grounds occurred before the convention came into force the cases would be solved by the normal interpretation of the convention, although the difficulty would be how to reconcile that conception with the principle that the provisions of the convention should, if possible, be more favourable to the persons concerned than existing national law.

Mr. ROSS (United Kingdom) did not wholly agree with the Netherlands representative. There might be varying interpretations of the effect of the convention. In principle, in the cases arising under articles 5 and 6 the date on which the act occurred should be decisive. In cases arising under article 7, a State should not be debarred from applying existing law concerning long residence abroad if the seven-year period of foreign residence had been completed before the entry into force of the convention. With regard to article 8, a State should be free to take action in respect of a fraud or crime committed before the entry into force of the convention, if proceedings had been started before the convention's entry into force.

Mr. JAY (Canada) said that he was not entirely clear what was meant by the term "events". If it meant the grounds for some subsequent action by the State, it was hard to see the difficulty referred to by the United Kingdom representative; an action for deprivation would surely be based on events antedating the entry into force of the convention.

Mr. HARVEY (United Kingdom) pointed out that there was a material difference between loss of nationality and deprivation of nationality and that to devise a single formula to cover both would be almost impossible. In cases where loss occurred automatically by operation of law (articles 5, 6 and 7) it occurred at the time of the decisive event; in the case of deprivation (articles 8 and 9) a considerable time might elapse between the

occurrence of the material event and the final decision. In the latter case proceedings should be instituted promptly - if at all. With the object of distinguishing between the two different situations the United Kingdom delegation proposed that paragraph 4 of the draft article be replaced by two paragraphs in the following terms:

"4. Article 5, 6 or 7 shall not preclude the loss of the nationality of a Contracting State if the condition precedent for such loss was fulfilled before the coming into operation of this Convention for that State.

"5. Article 8 or 9 shall not preclude a Contracting State from depriving a person of his nationality if deprivation proceedings were brought before the entry into force of this Convention for that State".

Mr. HERMENT (Belgium) suggested that it would be preferable not to include in the convention any provision such as that in paragraph 4 of the draft article. In any case, it was unthinkable that there should be any article in the convention permitting any derogation from article 9 once deprivation proceedings had been instituted.

Mrs. TAUCHE (Federal Republic of Germany) said that it was questionable whether a State should have the power to deprive a person of its nationality after the convention had entered into force on any grounds other than those set out in article 8. Deprivation proceedings initiated before its entry into force should of course be completed, but after its entry into force it should not be possible to deprive a person of his nationality except on the grounds specified in article 8. If such deprivation were permitted by reason of earlier events that would not be consistent with paragraph 1 of the draft article which obliged contracting States to apply the convention to persons born before it had come into force.

The CHAIRMAN, speaking as the representative of Denmark, drew an analogy with criminal law. The benefit of any amendment in the criminal law enured to the accused. Similarly, on the entry into force of the convention, the only grounds on which a person could lose or be deprived of his nationality were those expressly mentioned in the convention. Naturally,

earlier events would be taken into consideration but only if they were recognized in the convention as capable of constituting grounds for the loss or deprivation of nationality.

Mr. HARVEY (United Kingdom) explained that the provisions proposed by his delegation were intended as transitional provisions permitting the conclusion of pending proceedings. A very anomalous position would arise if a person were to be able to take advantage of procedural delays to postpone a decision on deprivation of nationality until the convention came to his rescue. The decisive question was when the proceedings had been begun, not when they were concluded.

Mr. SIVAN (Israel) disagreed with the United Kingdom representative. Admittedly, some persons might take advantage of technicalities, but such instances could not be taken as a basis for a general provision. He was inclined to agree with the Belgian representative that no such provisions as those proposed by the United Kingdom delegation were needed. In most cases, municipal law was compatible with the provisions of the convention but in others the law might have to be adjusted. In the case of proceedings for deprivation on the ground of false representation or fraud the end rather than the beginning of the proceedings should be regarded as the material point in time. The case of prolonged absence abroad might not even have to be referred to in the article, for if national law permitted deprivation of nationality on the ground of long residence abroad on conditions compatible with the convention there would be no problem.

Mr. TYABJI (Pakistan) said that the provisions proposed by the United Kingdom delegation were undesirable.

Mr. TSAO (China) said that since it was obviously impossible to find a universally acceptable formula he was inclined to agree with the Belgian representative's suggestion that paragraph 4 be omitted.

Paragraph 4, as proposed orally by the United Kingdom delegation, was rejected by 10 votes to 4, with 16 abstentions.

Paragraph 5, as proposed orally by the United Kingdom delegation, was rejected by 15 votes to 4, with 12 abstentions.

It was decided by 23 votes to none, with 6 abstentions, that the new article concerning the effect of the convention (A/CONF.9/L.30) should consist of the three paragraphs as approved previously.*

Article 13 (A/CONF.9/L.51) (resumed from the thirteenth meeting)

The CHAIRMAN recalled that it had been agreed at the thirteenth meeting to delete paragraph 1 of the article and to defer discussion of paragraph 2, and drew attention to the Yugoslav amendment (A/CONF.9/L.51).

Mr. CARASALES (Argentina) said that the fact that so many provisions of the convention had been approved by a relatively small majority indicated that a number of countries would have difficulty in accepting some of its provisions. It was necessary to achieve a compromise between two desirable aims: to obtain the greatest possible number of ratifications on the one hand, and to make the convention as effective as possible as a means of reducing statelessness on the other. Those two objectives were not necessarily incompatible since the reservations which States might wish to make would probably refer only to certain points of detail and in many cases would affect only one article. Admittedly, there was a danger that some States might seek to evade their obligations under the convention by making a number of major reservations, but that danger should be very slight since States would hardly ratify the convention if they did not intend to accept most of its provisions. The danger of failing to obtain a sufficient number of ratifications if there were no provision for reservations to be made was a much greater one. His delegation therefore proposed the deletion of paragraph 2 of article 13.

Mr. LEVI (Yugoslavia), introducing his delegation's amendment (A/CONF.9/L.51), recalled that although the importance of article 8 was generally recognized only nine delegations had voted for its adoption, whereas nineteen delegations had abstained. It seemed unlikely that the States represented by the latter would ratify the convention and it might well be that only the nine States which had voted for the article would do so. But ratification by those nine States would do nothing to reduce statelessness since the States in question were precisely those which had succeeded in

* See A/CONF.9/C.1/SR.13.

having the article amended in order to conform with their municipal law. His delegation's amendment would enable States to make reservations concerning articles 7 and 8.

If any delegations desired the insertion in the convention of a general reservation clause or wished to add some other article to those mentioned in his delegation's amendment, he would consider their suggestions favourably. He would also consider any proposal to introduce in paragraph 3 of the amendment provisions similar to those contained in article 8 of the Convention on the Nationality of Married Women.

Mr. TSAO (China) proposed that paragraph 1 of the Yugoslav amendment should include a reference to article 11, which dealt with the establishment of an agency.

Mrs. TAUCHE (Federal Republic of Germany) expressed the view that the Yugoslav amendment conflicted with article 8, paragraph 2, as approved at the sixteenth meeting.

Paragraph 3 of the Yugoslav amendment discriminated against States whose existing legislation did not provide for deprivation of nationality on certain grounds which were admitted by other States, since the former would be precluded by the Yugoslav text from enacting subsequently legislation admitting such grounds.

Mr. BACCHETTI (Italy) said that the Conference should seek a compromise solution which would ensure the greatest possible reduction of statelessness. With regard to the statement of the representative of Yugoslavia, the International Law Commission's draft had already been extensively modified in order to give States broader powers to deprive citizens of their nationality. If the Yugoslav amendment were adopted States would be given absolute powers in that respect. He could not support any proposal which would involve departing even further from the Commission's draft.

Mr. LEVI (Yugoslavia) said that if his delegation's amendment were approved he intended to introduce in the plenary Conference an amendment to article 7 excluding absence abroad as a ground of loss of nationality and an amendment to article 8 ruling out deprivation of nationality altogether.

In reply to the representative of Italy, he was not convinced that article 8 as approved would tend to reduce statelessness. The article was acceptable to a very few countries only and those few would not be obliged by it to amend their national law. His Government might decide not to make any reservations but States should have an opportunity to consider their positions before ratifying the convention.

Mr. HILDE (Liechtenstein) observed that the problem of reconciling the desirability of obtaining the largest possible number of ratifications by allowing reservations to be made and of making the instrument as effective as possible by forbidding reservations was one which inevitably arose in the drafting of any international convention. He had difficulty in understanding why reservations to articles 7, 8 and 11 should be admitted if reservations to article 1, which presented great difficulties to a number of countries, were disallowed.

Mr. KANAKARATNE (Ceylon) said that he appreciated the Yugoslav representative's point that the contribution of the convention to the reduction of statelessness would be small if only a few countries were willing to ratify it. On the other hand, there was a conflict between the ideal of universality and the practical object of effectiveness.

In view of General Assembly resolution 598 (VI), which laid down that multilateral conventions should contain provisions relating to the admissibility or non-admissibility of reservations, the question arose of the effect of the Argentine representative's proposal to delete article 13 altogether. If that proposal were adopted, would States be entitled to make any reservations at all?

He found great difficulty in deciding what attitude to adopt to the Yugoslav amendment so long as the articles to which it related were liable to be amended in plenary meeting.

Mr. EBERTAN (Turkey) said that unless States were allowed the right to make reservations the scope of the convention would be severely limited. The provisions of article 8 as approved were entirely acceptable to the Turkish Government since they were in conformity with existing Turkish legislation. But his Government would insist upon the right to make a reservation in respect of compulsory military service.

Rev. Father de RIEDMATTEN (Holy See) recalled that he had introduced his amendment to article 8 at the sixteenth meeting in order not to give the sanction of an international convention to the restrictions introduced by various delegations to bring the article into line with their national legislation. He had thought it preferable that those restrictions should take the form of reservations. It had been his expectation that when once the principle of reservation had been admitted those delegations whose amendments to article 8 had been rejected would seek to reintroduce them in plenary meeting.

He therefore agreed with the representative of the Federal Republic of Germany that the Yugoslav amendment proposed admitting reservations to reservations, and thought that some other approach would have to be found. If the Yugoslav amendment were maintained he would be able to vote for it only on condition that the reservations clause did not apply to article 9, and that the principles of articles 13 and 14 of the Declaration of Human Rights were safeguarded.

Mr. JAY (Canada) expressed the opinion that if delegations had known at the time when the provisions of article 8, paragraph 2 were being discussed that they would take the form of reservations rather than mandatory principles a very different list would have been drawn up. Ideally it would have been desirable to adopt a very simple convention ensuring the complete elimination of statelessness. In practice however it was necessary to take account of the varying requirements of different States, for example in the matter of compulsory military service. The purpose of reducing statelessness would not be accomplished if States wishing to make reservations which would create but a few cases of statelessness were prevented from adhering to the more important basic clauses of the convention.

Drafting improvements would probably be required in paragraph 3 of the Yugoslav amendment. His Government would not welcome the adoption of too general a provision forbidding States to deprive persons of their nationality, but the Conference should be able to devise a reasonable general provision.

The representative of the Federal Republic of Germany had suggested that paragraph 3 of the Yugoslav amendment discriminated against some States: that suggestion called for examination.

Mr. LEVI (Yugoslavia), in reply to the comments of representative of Ceylon, repeated that his delegation intended to submit in the plenary Conference amendments to articles 7 and 8 on the lines he had indicated.

Replying to the representative of Liechtenstein, he said that his delegation had been anxious not to avoid interfering with the compromise between the jus soli and jus sanguinis principles achieved in article 1. He would however consider all proposals for addition to his delegation's amendment.

In deference to the remarks of the representative of the Holy See, he was willing to include a reference to articles 13 and 14 of the Declaration of Human Rights and would welcome drafting improvements on the lines suggested by the Canadian representative.

Mr. LIANG, Executive Secretary of the Conference, replying to the question asked by the representative of Ceylon, explained that General Assembly resolution 598 (VI) had been adopted on the basis of a report of the International Law Commission on reservations to multilateral conventions. The object of the resolution was to avoid disputes about the validity of reservations not acceptable to all Parties. It was incumbent upon the authors of conventions to include in the conventions specific provisions regarding reservations so that any subsequent controversy would be avoided. It was not necessary for individual Parties to avail themselves of all the reservations permitted.

Mr. RIFHAGEN (Netherlands) said that there was a close connexion between the substance of the various articles and the question of reservations. A great many compromise decisions affecting article 8 and a great many other articles had been reached in order to avoid conflict between the convention and existing national laws. If reservations were permitted the balance in the articles previously approved would be disturbed. The proper course for delegations not satisfied with article 8 as approved would be to propose a different reservations clause in the plenary Conference. He therefore suggested that further discussion on the Yugoslav amendment be postponed until the entire convention was considered in the plenary.

It would be desirable to include a reference to the possibility of withdrawing reservations and in that connexion the suggestion in paragraph 3

of the Yugoslav amendment might be of value. Reservations should be admitted only in so far as they were required by existing national legislation.

Mr. HARVEY (United Kingdom) said that the convention should lay down the limits within which reservations would be admissible. He agreed with the Netherlands representative that if reservations were admitted there should be provision for their withdrawal.

He had been impressed by the Canadian representative's observations that the list of grounds for deprivation of nationality in article 3, paragraph 2 had not originally been drawn up in the knowledge that they would be treated as reservations. It was a defect in that paragraph that the reservations had been drafted with the particular laws of certain countries in mind and it was arguable that they should be stated in broader terms.

He agreed that articles 7 and 8 were less important than articles 1 and 4.

Mr. LEVI (Yugoslavia), replying to the Netherlands representative, said he could not agree that article 8 reflected any compromise since only nine delegations had voted in favour of it while nineteen had abstained. He would accept the inclusion of a provision respecting the withdrawal of reservations.

The meeting rose at 12.45 p.m.