United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/C.1/SR.2

Summary Records, 2nd meeting of the Committee of the Whole

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.9/C.1/SR.2
24 April 1961

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SECOND MEETING

held at the Palais des Nations, Geneva,
on Thursday, 2 April 1959, at 10 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.61-4245
(10 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 7 (continued)

Mr. CALAMARI (Panama) said that all delegations appeared to be in agreement about the objectives of the Conference; they differed only on the choice of means. If, however, in their desire to avoid creating cases of statelessness, they denied to an individual the fundamental human right to choose the nationality which he believed to be in his own best interests, that would be a decision of the gravest import for human liberty.

It was arguable that statelessness was prejudicial not only to the individual but also to the State and that an individual's decision to choose statelessness could be compared in its effects to suicide, which was sometimes considered to deny to society the contribution of one of its constituent elements. The reference in the preamble of the draft convention to the friction between States produced by statelessness might also be interpreted as placing upon States an obligation to eliminate statelessness and to give them the right to subordinate the liberty of the individual to that overriding purpose. The possibility that an individual who renounced his nationality might be actuated by caprice, thoughtlessness or ignorance of the consequences would lend further support to that view.

On the other hand, it was dangerous to lay down a rule which made the interests of the State prevail over those of the individual, even for the best of motives, for such a rule might lend itself to undesirable extensions.

Although article 7, paragraph 1 of the draft convention denied the right to the express renunciation of nationality, article 7, paragraph 3, and article 8, paragraph 1, provided for tacit renunciation. It was, therefore, clear that, in spite of its desire to reduce statelessness, the International Law Commission had been prepared to allow statelessness to occur in certain specific cases by virtue of the deliberate choice of the individual. There was consequently a certain contradiction between the liberality of those two provisions and the rigidity of article 7, paragraph 1.

His delegation had at that stage no solution to offer to the difficulty he had expounded but would welcome proposals by other delegations.

Mr. BERTAN (Turkey) said that since paragraphs 1 and 2 were concerned with the abandonment of nationality, whereas paragraph 3 related to the loss of nationality, the latter paragraph should be transferred to article 8.

Nationality, as the vinculum between the individual and the State, should be consonant with the political and social activities of the person concerned. As far as the rights of the individual were concerned, it was essential that he should be able to change his nationality if his interests so demanded, but since he was also a constituent element of a State it had a countervailing right to make the renunciation of its citizenship dependent on the fulfilment of certain conditions. It would be wrong to allow an individual a unilateral right to renounce his nationality. Turkish law laid down certain conditions governing the renunciation of Turkish nationality and further legislative measures were envisaged by his Government. His delegation was therefore in favour of the retention of paragraphs 1 and 2 as drafted.

Mr. HERMENT (Belgium) said that the right of the individual to decide his national status should be qualified by the condition that any change in that status must not operate to the prejudice of a State. An individual might well wish to renounce his nationality in order to obtain another, but it was hard to imagine that anyone of sound mind would deliberately aspire to become stateless. Although his Government was in favour of adopting paragraph 1, he recognized the difficulty arising from the fact that some countries - India, for example - did not allow a person to acquire their nationality if he already possessed another nationality.

Mr. LEVI (Yugoslavia) stated that the law of his country allowed certain categories of person to renounce Yugoslav nationality on condition that they had already acquired another nationality. His delegation accordingly supported paragraphs 1 and 2 as drafted.

Mr. TYABJI (Pakistan) said that the nationality laws of his country provided for voluntary renunciation of Pakistan nationality. He was opposed to paragraph 1 because it imposed a condition which was contrary to the basic rights of individuals.

The CHAIRMAN, speaking as the representative of Denmark, said that the Belgian representative had drawn attention to the dilemma of an individual who

was unable either to renounce his original nationality because he had not yet acquired another nationality, or to acquire a new nationality because he still retained his old one. The difficulty had probably been foreseen by the authors of paragraph 1, who had purposely included in that paragraph the words "or acquires". Their intention might be brought out more clearly if the word "unless" were replaced by the word "before". Under Danish law, Danish nationality could be renounced on condition that another nationality was acquired within a stipulated period.

Mr. VIDAL (Brazil) suggested that the difference of opinion between delegations arose from the fact that the law of some countries provided for renunciation of nationality whereas that of others, including his own, did not. One way to reconcile those differences would be to insert at the beginning of paragraph 1 the words "In those countries where renunciation of nationality is recognized by municipal law".

Mr. MEHTA (India), commenting on the Belgian representative's reference to India, explained that an Indian citizen possessing a second nationality could renounce his Indian citizenship except in certain circumstances, such as in time of war, and one who voluntarily acquired the nationality of another country ceased to be an Indian citizen upon such acquisition.

With regard to paragraph 3, Indian law required naturalized persons to register annually, failing which they might be deprived of citizenship if the Government considered such a course to be in the public interest.

In his view, those provisions provided adequate safeguards against statelessness.

Mr. HERMENT (Belgium) observed that he had spoken not of the renunciation but of the acquisition of Indian nationality.

Mr. FAVRE (Switzerland) said that all the rights of the individual were subject to certain limitations as the insistence in the preamble of the draft convention upon the interest of international society in the question of reducing statelessness clearly showed. In the case under discussion, the right of the individual must yield to his obligation not to prejudice the international order. The Swiss delegation favoured the adoption of paragraph 1, which would avoid the creation of statelessness. If a clause permitting the creation of statelessness

by renunciation of nationality were eventually adopted by the Conference his country would not avail itself of that clause.

Mr. CARASALES (Argentina) said that the law of his country, like that of Brazil, did not provide for the renunciation of nationality. He supported the suggestion of the Brazilian representative.

Mr. HARVEY (United Kingdom) said that he appreciated the position of the Brazilian and Argentine delegations. It might be necessary to introduce some general provision into the convention to take account of the special difficulties of Argentina, Brazil and other countries which incorporated international conventions in their municipal law. At the previous meeting the United Kingdom representative had made a full statement of his reasons for endorsing the principle contained in paragraph 1 and in that connexion his delegation would support the amendment suggested by the Danish representative.

The importance of the principle of individual liberty was not in question, but the Conference should not discuss human rights as such. Incidentally, article 15 of the Universal Declaration of Human Rights stated that no one should be denied the right to change his nationality but said nothing about the right to abandon a nationality and become stateless.

The persuasive arguments to the contrary did not shake his belief that in paragraph 1 the rights of the individual should be subject to limitations consistent with the declared aim of the Conference.

Sir Claude COREA (Ceylon) took the view that paragraph 1 constituted a violation of fundamental human liberties. It was clear from the Conference's decision not to adopt the draft convention on the elimination of statelessness as a basis of discussion that it recognized that statelessness was bound to subsist to some extent. Indeed, the combined effect of article 8, paragraph 1, and article 7, paragraph 3, might be to render a person stateless in certain circumstances, and the United Kingdom amendment to article 8 (A/CONF.9/L.11) might produce a similar consequence. Since the complete elimination of statelessness was not considered an attainable objective it was surely better to admit the possibility of the creation of further cases of statelessness than to violate a fundamental principle of human liberty. He fully subscribed to the principles enshrined in article 15 of the Declaration of Human Rights, but that

article should not be interpreted as giving any authority to article 7, paragraph 1, of the draft convention, for the Declaration neither asserted nor denied the right to renounce nationality. Although some individuals might decide on caprice or impulse to abandon their nationality the suspension of a final decision by the authorities of the country concerned was an adequate safeguard against ill-considered action on the part of the individual. No person of sound mind would persist in his desire to become stateless unless for very grave reasons, for nationality conferred not only obligations but also valuable rights. From the point of view of the State also it was therefore appropriate that an individual's decision to renounce his citizenship should be accompanied by the withdrawal of the rights attaching to citizenship.

Mr. TSAO (China) said that, if paragraph 1 were amended in the manner suggested by the Brazilian delegation, his Government would be able to accept the paragraph, which would then represent a happy compromise. His country's nationality law likewise did not provide for renunciation of its nationality, although it provided for loss of that nationality by reasons of marriage and recognition of the child or by virtue of permission given by the authorities.

Mr. ABDEL MAGID (United Arab Republic) said that he understood that in only four countries did the nationality law make provision for loss of nationality by virtue of voluntary renunciation and without any specific action by the authorities and without making it contingent on the acquisition of another nationality.

It was laid down in his country's nationality law that none of its nationals should acquire the nationality of another country without the permission of the Ministry of Internal Affairs. Any national of the United Arab Republic who acquired the nationality of another country without such permission continued to be treated by the authorities of his country as a national for the purposes of military service obligations and taxation. If a person lost the nationality of the United Arab Republic with the permission of the authorities that person's wife also lost that nationality if she acquired a different nationality, and in that way the nationality law of the United Arab Republic avoided the statelessness of such persons in both cases.

Mrs. TAUCHE (Federal Republic of Germany) said that paragraph 1 would not oblige any State to extend its nationality law so as to cover the concept of renunciation of its nationality; the paragraph would apply only to parties whose nationality law covered that concept.

Mr. JAY (Canada) said that, while he agreed with the principle of paragraph 1, it would be wrong to assume that in no case would a person prefer statelessness to the nationality of a State of which he did not approve. Statelessness was deplorable, but it was not more deplorable than the position of certain persons who possessed a nationality. In many cases, unfortunately, it was the lesser of two evils. The discussion however had shown that many delegations did not share the views regarding the paragraph that he had expressed at the previous meeting. He would propose the insertion of the words "of itself" after the word "Renunciation". An act of renunciation by an individual should never result in statelessness if the authorities of the individuals country did not take specific action in respect of that act. He would hope that, with that less categorical wording, the paragraph would be acceptable to a large number of States.

The CHAIRMAN observed that all delegations would probably agree that the paragraph should be amended so as to allay the fear of certain countries whose municipal law was amended ipso facto by accession to an international instrument that the paragraph would introduce the principle of renunciation into their laws regarding nationality. The paragraph should begin with some such words as "If a law of a Contracting State provides for renunciation of its nationality ...". Although important, it was only a question of drafting.

The spirit of the previous speaker's proposal was commendable but the Canadian representative might consider wording his amendment differently.

Sir Claude COREA (Ceylon) proposed that paragraph 1 should be amended to read: "... renouncing it has acquired or is able to prove that he is about to acquire another nationality". If so amended, the paragraph might be acceptable to his Government.

Mr. HERMENT (Belgium) said that the amendment proposed by the representative of Ceylon would be acceptable to the Belgian delegation.

Mr. ABDEL MAGID (United Arab Republic) asked whether the Canadian representative thought that the addition of the words he had proposed would make it impossible for an act of renunciation to result automatically in statelessness.

Mr. JAY (Canada) said that his wording might be improved in the drafting stage. The convention should contain no provision which would prevent national authorities from recognizing a renunciation of nationality if they thought it right to do so even though that might result in some statelessness. The Canadian authorities exercised the discretionary power he was advocating with great caution in cases where there was a possibility of a person becoming stateless.

Mr. SIVAN (Israel) said that he had been impressed both by the arguments for the substance of the paragraph and by those against it. He had always been of the opinion that the paragraph could never result in loss of nationality in consequence of an act of renunciation by an individual without action by the authorities concerned in respect of that act. The addition of the two words which the Canadian representative had proposed would not add anything of substance; it might however be argued that they would make it possible for individuals to become stateless as a result of an act of renunciation by them without the authorities taking any action specifically in respect of that act, because if the condition indicated in the clause beginning with the word "unless" were fulfilled that would be something in addition to the act of renunciation. He proposed the insertion, instead of the words proposed by the Canadian representative, of the words "to the extent and under the conditions prescribed in national law".

Mr. JAY (Canada) said that the wording proposed by the Israel representative did not cover his point.

Mr. TSAO (China) questioned whether the wording proposed by the Canadian representative would serve its intended purpose. He was not strongly opposed to the amendment proposed by the representative of Ceylon, but its adequacy was questionable, for there would doubtless be cases of persons wishing to acquire a new nationality, sometimes while they were travelling outside the country of which they were nationals on a passport of that country in order to escape various obligations, such as that to appear in court or compulsory military service.

Mr. JAY (Canada) said that Canada's laws regarding nationality gave the Canadian authorities discretionary power to prevent any Canadian citizen from becoming stateless, with the object either of protecting him against his own folly or of protecting the State against wrongful intentions such as those alluded to by the representative of China.

The CHAIRMAN said that the Committee was not required to deal with the problem of persons attempting to escape their obligations towards the State of which they were nationals by means of taking steps with a view to changing their nationality. The national laws of each country should settle the question whether its nationals could avoid obligations, such as military service, by means of renouncing the nationality of that country.

Rev. Father de RIEDMATTEN (Holy See) suggested that the Ceylonese representative's amendment might relate, more appropriately, to paragraph 2 of the article, in which case paragraph 1 could be deleted.

Sir Claude COREA (Ceylon) said that, if the substance of his amendment were included in paragraph 2, paragraph 1 might well be deleted. There was nothing in paragraph 2 to which he objected.

As to the situations mentioned by the representative of China, his amendment was concerned with the possibility of an act of renunciation resulting in a loss of nationality; it was not concerned with attempts by persons to avoid obligations towards the State of nationality.

Mr. LEVI (Yugoslavia) said that he would have difficulty in supporting the wording proposed by the representative of Ceylon and would propose as an alternative the following clause: "... unless the person renouncing it has acquired, or is able to prove that he is about to be granted, another nationality".

Mr. LIANG, Executive Secretary of the Conference, said that, after the discussion on article 7 at the previous meeting, he had consulted the records of the International Law Commission. The only passage relating to the article that was of interest to the Conference occurred in the summary record of the Commission's 245th meeting (A/CN.4/SR.245, page 9, statement by Mr. Cordova). The article 6 referred to in that passage corresponded to article 7 under discussion.

The Convention on Certain Questions relating to the Conflict of Nationality adopted by the Hague Conference for the Codification of International Law in 1930

did not contain a provision concerning renunciation of nationality, similar in scope and in effect to article 7, paragraph 1, of the draft of the International Law Commission. It did contain an article (article 6) regarding the renunciation of nationality, but that article had to do with a person possessing two nationalities acquired without any voluntary act on his part. Such a person might renounce one of them with the authorization of State whose nationality he wished to surrender. Apart from that, in normal cases the renunciation of a nationality by an individual arose only when he applied for naturalization in another State. The State of which he was a national might require that he should apply first for an expatriation permit in order that he might renounce his nationality. Paragraph 2 of article 7 contained all the necessary provisions of a practical character governing normal cases, while paragraph 1 enunciated only a general principle. There was much force therefore in the suggestion of the representative of the Holy See that paragraph 1 be deleted since the application of that principle in normal cases was already contained in paragraph 2.

Mr. HERMENT (Belgium) did not agree that paragraph 1 might be deleted because paragraph 2 would be sufficient. The two paragraphs dealt with completely different matters. Paragraph 2 dealt with cases in which two States were involved, whereas paragraph 1 dealt with cases in which only one State, the State of nationality, might be involved.

Mr. JAY (Canada) suggested that the Committee should establish a working group to consider the wording of article 7, paragraph 1.

After further discussion, the CHAIRMAN suggested that a working group, consisting of the representatives of Belgium, Canada, Ceylon, the Holy See and Israel and having the right to co-opt other representatives, should be established to draft a joint amendment to article 7, paragraph 1.

It was so agreed.

The meeting rose at 12.50 p.m.