

United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

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

Summary Records, 9th meeting of the Committee of the Whole

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

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

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE NINTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 7 April 1959, at 3 p.m.

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

CONTENTS:

Page

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 (continued):

Article 9	2
Article 10 (concluded)	2
Article 11	5
Article 12 (concluded)	8
Article 13 and article 14	9
Article 15 (concluded)	11
Article 16	12
Article 17 (concluded)	14
Article 18 (concluded)	14

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.61-4262

61-11768

(14 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)

The CHAIRMAN stated that, pending the circulation of a new joint amendment (A/CONF.9/L.27/Rev.1), to article 7, paragraph 3 of the draft convention, discussion of that provision and of the related article 8 would be held over. Meanwhile, the Committee could consider article 9 and the succeeding articles of the International Law Commission's draft.

Article 9 (A/CONF.9/L.23)

Mr. TYABJI (Pakistan) said that his delegation had submitted its amendment (A/CONF.9/L.23) because, although under the law of Pakistan a person could not be deprived of nationality on racial, ethnic or religious grounds, a naturalized citizen could be deprived of Pakistan citizenship on political grounds. Since the oath of allegiance was an essential condition of naturalization the authorities of the nationalizing State should have power to deprive a naturalized person of its nationality if he broke the oath.

Mr. RIPHAGEN (Netherlands) observed that it was difficult to express an opinion on the Pakistan amendment to article 9 so long as the terms of article 8 had not been decided.

It was agreed to defer consideration of article 9 until after article 8 had been discussed.

Article 10 (A/CONF.9/4, A/CONF.9/L.20) (concluded)

Mr. HARVEY (United Kingdom), explaining the reasons for the submission of his delegation's amendment to article 10 (A/CONF.9/L.20), said that he agreed with the criticism of the article expressed in the Danish Government's memorandum (A/CONF.9/4, page 11); the Commission's text went too far in providing that stateless persons resident in a ceded territory would acquire automatically the nationality of the acquiring State and in purporting to impose obligations on "new States" which were not yet in existence and on existing States which would not be parties to the convention. The article should simply provide that persons who possessed a nationality should not become stateless in consequence of a transfer of territory. So far as treaties providing for the transfer of a territory between parties to the convention and States which were not parties thereto were concerned, at most the convention could provide, as did the second sentence of paragraph 1 of the United Kingdom amendment, that the

party should in such cases "use its best endeavours" to secure that the treaty would include provisions which would ensure that no person would become stateless as a result of the transfer.

His delegation had not included in its text the words "subject to the exercise of the right of option" which appeared in paragraph 1 of the Commission's text, because it was scarcely likely that persons resident in a ceded territory who had the right to opt for one of two nationalities would become stateless. Those words did not make sense in that paragraph; it was not clear what they were intended to qualify. His delegation's text did not cover persons who possessed dual nationality because they would not become stateless.

Mr. HERMENT (Belgium) said that the United Kingdom delegation's amendment to the article was completely satisfactory and was far more acceptable than the International Law Commission's text.

The CHAIRMAN, speaking as the representative of Denmark, said that the United Kingdom text fully met the criticism of the article expressed in his Government's memorandum.

Sir Claude COREA (Ceylon) agreed that the International Law Commission's text of the article should be amended, because it would be wrong to include in the convention mandatory clauses relating to States which would not be parties to the convention.

There was no objection to the second sentence in paragraph 1 of the United Kingdom text in itself, but it was doubtful whether it should be included in an international convention.

He suggested that the words "subject to the exercise of the right of option" be inserted after the word "nationality" in paragraph 2 of the United Kingdom text, so that in the case of treaties providing for the transfer of a territory between a party to the convention and a State which was not a party to it the party would have a duty to allow its nationals resident in the territory to opt for its nationality.

Mr. RIPHAGEN (Netherlands) suggested that the words "unless they retain their former nationality by option or otherwise or have or acquire another nationality.", which appeared in paragraph 2 of the International Law Commission's text, should replace the words "as would otherwise become stateless as a result of the transfer or acquisition." in the United Kingdom text.

Mr. HARVEY (United Kingdom) said that, as he had already explained, there was no more valid reason for including the words "subject to the exercise of the right of option" in paragraph 2 than in paragraph 1.

Even though it would not place an absolute obligation on parties, the second sentence of paragraph 1 of his delegation's amendment should be retained, especially since the International Law Commission's text contained provisions relating to treaties providing for the transfer of territory from a party to a State which was not a party to the convention.

The CHAIRMAN said that it would be wrong to approve either the amendment suggested by the Ceylonese representative or that suggested by the Netherlands representative, since the Conference had been convened to adopt a convention to eliminate or reduce statelessness, and not one dealing with nationality problems involving no question of statelessness.

Mr. HARVEY (United Kingdom) said that the Ceylonese representative presumably intended the words he had suggested to be added to paragraph 2 of the United Kingdom text to indicate a right of option only between two nationalities and not a right of option between a nationality and statelessness.

Mr. HERMENT (Belgium) said that the only option to which the words in question could refer was that between having a nationality and becoming stateless.

Mr. LINDGREN (Sweden) expressed support for the substance of the United Kingdom amendment, but suggested that the text should be rearranged so as to consist of three parts, the first relating to transfers of territory by virtue of treaties between parties, the second to transfers by virtue of treaties between a party and a State not a party, and the third to transfers without a treaty.

Mr. HARVEY (United Kingdom) said that the Drafting Committee could deal with that suggestion.

Mr. CARSALES (Argentina) pointed out that the draft article related only to persons who were "inhabitants" of territories that were transferred from one State to another whereas the United Kingdom text related to persons who would become stateless by reason of a transfer of territory if the action for which that text provided were not taken. He asked whether the United Kingdom amendment would place an obligation on parties to confer their nationality in some cases on the children of persons who had acquired the nationality of those parties by virtue of residence in a territory transferred to them, even though the children themselves had not been resident in the territory.

Mr. HARVEY (United Kingdom), replied that it would do so. The point was a very important one, which the International Law Commission had failed to cover.

The first sentence of paragraph 1 of the United Kingdom amendment to article 10 (A/CONF.9/L.20) was approved by 25 votes to none, with 5 abstentions.

The second sentence of paragraph 1 of that amendment was approved by 23 votes to none, with 7 abstentions.

Paragraph 2 of the United Kingdom amendment to article 10 was approved by 23 votes to none, with 8 abstentions.

Article 11 (A/CONF.9/L.24)

The CHAIRMAN pointed out that article 11 provided for the establishment of an agency "within the framework of the United Nations" and also for the establishment of a tribunal within that framework. Since several delegations were not in a position to vote for paragraph 2 relating to the tribunal, he would suggest that that paragraph be removed from the draft convention and that the proposed tribunal should be made the subject of a protocol, so that States could become parties to the Convention without undertaking any obligations in respect of the tribunal.

Mr. ROSS (United Kingdom), endorsing the Chairman's suggestion, said that under his delegation's amendment (A/CONF.9/L.24) paragraph 2 of the article would be deleted.

Mr. BACCHETTI (Italy) said that on the whole he was in favour of the Chairman's suggestion. The Committee should consider, however, whether the functions which the International Law Commission had allocated to the new agency might perhaps be performed by the Office of the United Nations High Commissioner for Refugees or by some other existing body.

Mr. LEVI (Yugoslavia) said that, having doubts regarding all four paragraphs of the Commission's text, he would vote for the United Kingdom amendment.

Mr. SUBARDJO (Indonesia) said that he would vote for paragraph 4 if it were so worded as not to make it compulsory to refer to the International Court of Justice all disputes between parties regarding the interpretation or application of the convention that could not be settled by other means.

Mr. HORLESBERGER (Austria) said that since most of the persons to whom the convention would apply were refugees or the children of refugees the Committee should at least consider entrusting to the Office of the United Nations High Commissioner for Refugees or to some other existing body the functions to be performed by the proposed new agency.

Mr. TSAO (China) said that his delegation was one of those that did not wish to undertake any obligation regarding the proposed tribunal; it even had misgivings regarding the proposed agency. In view of the fact, however, that some delegations were in favour of establishing both the agency and the tribunal, he would support the Chairman's compromise suggestion.

Sir Claude COREA (Ceylon) reserved his delegation's position with regard to paragraph 1 of the article and also with regard to the other paragraphs because his Government was opposed to the compulsory reference of cases to the International Court of Justice.

Mr. CARASALES (Argentina) said he would have difficulty in supporting the United Kingdom amendment because of the vagueness of its paragraph 1; if it were adopted as drafted the parties would be undertaking to establish an agency whose functions might either be very broad or very limited.

Mr. HERMENT (Belgium) agreed that the part of the article relating to the proposed tribunal should not be included in the convention itself and also that the United Kingdom delegation's text for paragraph 1 was not sufficiently explicit. It was not at all clear what the words "shall support" and "supervising" were intended to mean. There should be an agency to assist persons who were stateless or were in danger of becoming stateless to obtain the benefits to which the convention would entitle them. The United Nations High Commissioner for Refugees should be able to give that assistance.

Mr. KAWASAKI (Japan) welcomed the Chairman's suggestion that paragraph 2 relating to the proposed tribunal be removed from the draft convention itself. No new international agencies should be set up unless they were really necessary. The United Nations High Commissioner for Refugees should be asked to perform the functions intended to be performed by the proposed new agency.

Mr. LIANG, Executive Secretary of the Conference, said that it was clear that the International Law Commission had intended that the agency should "act ... on behalf of stateless persons before Governments or before the tribunal". If the convention provided that such action should be exercised by an agency within the framework of the United Nations, it would bring about an important change in international law. The United Kingdom text for paragraph 1 was drafted in very general terms and was not sufficiently explicit. It might be interpreted as covering the whole of the substance of the Commission's text, or it might not. Under the Commission's text the proposed agency was to be established within the

framework of the United Nations by the parties or, if they did not establish it within two years after the entry into force of the convention, by the General Assembly. The United Kingdom amendment, while providing for the establishment of the agency within the framework of the United Nations, did not clearly indicate who should establish it nor what functions it should perform. There were bodies within the framework of the United Nations, such as the Permanent Central Opium Board, which had not been established by the General Assembly or by any other United Nations organ, but by the parties to a convention and which were consequently independent in many respects, although they were within the framework of the United Nations. It was, of course, possible for the General Assembly to entrust to the Secretary-General the responsibility for defining the functions of an agency whose establishment it approved as an alternative to defining those functions itself. It had assigned such responsibility to the Secretary-General when it had approved the establishment of the International Bureau for Declarations of Death in 1950. It had also made financial provision for that agency. Accordingly, article 11 should, in addition to indicating who should establish the agency - if it were agreed that a new agency should be established - also state who should define the agency's functions and the method of financing its activities.

Mr. ROSS (United Kingdom) said that the clause in the International Law Commission's text referring to the functions of the proposed agency, in particular the words "to act on behalf of stateless persons", was too broad; it would authorize the agency to deal with matters quite outside the convention. At the same time, that text, particularly the words "before Governments or before the tribunal referred to in paragraph 2", was too restrictive. Most of the wording of his delegation's amendment had been taken from article 35 of the Convention Relating to the Status of Refugees of 1951; his delegation had considered that its text was sufficiently precise but it was ready to discuss ways of making it more explicit.

The words "within the framework of the United Nations" were vague. If the wording his delegation had proposed for article 16 (A/CONF.9/L.24) were approved, the points referred to by the Executive Secretary would be adequately covered.

There was nothing in his delegation's text for article 11 to prevent the Office of the United Nations High Commissioner for Refugees from acting as the agency.

The CHAIRMAN said that further discussion on article 11 could be postponed until the document mentioned by the Executive Secretary had been circulated.

Article 12 (A/CONF.9/4) (concluded)

The CHAIRMAN recalled that article 12 had been drafted on the assumption that the convention would be submitted to the General Assembly for adoption. The General Assembly had, however, subsequently decided to convene a special conference to prepare the convention with the result that article 12 as drafted was no longer applicable.

Speaking as the representative of Denmark, he proposed that article 12 be replaced by article 19 of the draft convention submitted by the Danish Government in its memorandum (A/CONF.9/4), which was almost identical with article 35 of the Convention Relating to the Status of Stateless Persons, 1954. An impossible situation would arise if any State not a Member of the United Nations which was attending the Conference were not invited by the General Assembly to sign the convention.

Mr. HARVEY (United Kingdom), supporting the Danish proposal, proposed that the date left open in article 19 of the Danish draft convention should be 31 December 1960 and that article 19 of the Danish draft convention be adopted as the basis of discussion.

Sir Claude COREA (Ceylon) said that he would support the Danish proposal but asked whether there was any special reason why the International Law Commission had included in its draft of article 12 the words "having been approved by the General Assembly".

The CHAIRMAN explained that the International Law Commission's draft had been prepared before the General Assembly had decided to call a conference of plenipotentiaries to draft the convention.

Mr. JAY (Canada) supported the United Kingdom proposal that article 19 of the Danish draft convention be adopted as the basis of discussion.

That United Kingdom proposal was adopted.

The CHAIRMAN said the United Kingdom proposal that 31 December 1960 should be the closing date for signature was in keeping with the corresponding provisions of the Conventions Relating to the Status of Stateless Persons and to the Status of Refugees.

The United Kingdom proposal that the date "31 December 1960" be inserted in article 19 of the Danish draft convention (A/CONF.9/4) was approved.

The Danish proposal that the text of article 12 of the International Law Commission's draft be replaced by article 19 of the Danish draft convention, with the addition of the date, was approved.

Article 13 and article 14

Mr. HARVEY (United Kingdom) welcomed article 13 in so far as it recognized the principle that States should make the necessary changes in their municipal legislation before ratifying a convention so that they could immediately thereafter carry out its provisions. The reference to "signature" in paragraph 1, however, of the article should be deleted since it could hardly mean anything other than that States should ratify the convention within two years of signature. The reservation mentioned in article 13 should, if retained, be permitted only at the time of ratification or accession.

The intention of article 14 was that the convention should not come into force until ratified by a sufficient number of States. If however article 13, paragraph 1 were retained, the consequence would be that the first States below the critical number to be fixed in article 14 which ratified the convention would be permitted to postpone application for two years. The convention would therefore come into force before it had been implemented by the critical number of States. Article 13, paragraph 1 would in that way frustrate the purposes of article 14.

Since there were several articles of the draft convention on which no decision had been reached, he proposed that discussion of article 13, paragraph 2 be postponed until their provisions had been settled.

The CHAIRMAN agreed that it would be inopportune to discuss paragraph 2 at that stage.

Mr. HERMENT (Belgium) supported the United Kingdom proposal for the deletion of paragraph 1. It was unthinkable that the convention could come into force until States had taken the necessary measures to fulfil its provisions.

Mr. TSAO (China) agreed that discussion of paragraph 2 be deferred.

His delegation would prefer paragraph 1 to stand. Although its deletion would deprive Governments of an excuse for delaying the application of the convention for two years, it would provide them with an excuse to defer ratification. The essential point was to obtain ratifications as early as possible.

The CHAIRMAN, speaking as the representative of Denmark, said that article 20 of the Danish Government's draft convention reproduced article 13 of the International Law Commission's draft. His delegation's support for paragraph 1 of that article was inspired by the desire to avoid the vicious circle in which States would become involved if there were no such provision. If in article 14 the critical number of ratifications or accessions were fixed at six, the first

five States ratifying the convention would be obliged to modify their legislation without knowing whether the convention would ever come into force and whether the obligations they were assuming would ever be reciprocated. The period of two years should be regarded as a maximum, and it was not necessary to assume that all States would avail themselves of the full period.

Mr. LIANG, Executive Secretary of the Conference, endorsed the remarks of the Danish representative. Since the convention would come into force only upon deposit of the necessary number of instruments of ratification or accession, it was important that ratification should be effected as early as possible.

The establishment of the agency proposed in article 11 would also be dependent upon the receipt of the requisite number of ratifications.

Governments would hesitate to modify their municipal law until they had become parties to the convention, in other words, until after ratification. Although it appeared that in some countries adherence to an international convention entailed automatic modification of internal legislation, that was not the case in most countries and paragraph 1 had been drafted by the International Law Commission to meet their circumstances.

Mr. SIVAN (Israel) agreed that discussion on paragraph 2 of the article be deferred.

The Danish representative's defence of paragraph 1 was valid, but it might be necessary to indicate that the period of two years should date from the time of the entry into force of the convention or accession to it, as the case might be.

Mr. TSAO (China) invited the Israel representative's attention to the provision in article 14, paragraph 2 that the convention should "enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State".

If article 13, paragraph 1 were retained, Governments ratifying the convention would be obliged to make the necessary changes in their municipal law within the two-year period. If it were deleted, they might defer indefinitely making those changes. Thus more might be lost than would be gained by that course.

Mr. HERMENT (Belgium) said he was not convinced by the arguments in favour of the retention of article 13, paragraph 1. Under its provisions, the fact that several States had ratified the convention would not make the latter executory. The convention under discussion differed from others in the form of its provisions and it was unthinkable that it should exist without have mandatory force.

Mr. HARVEY (United Kingdom) agreed with the Belgian representative. The Committee might perhaps agree on the principles, first, that no State should be required to implement the convention before it came into force in accordance with the provisions of article 14; and secondly, that a reasonable period should be allowed during which States should know when the convention would enter into force. The ninety-day period provided for in article 14 might be replaced by a period of perhaps one year after ratification or accession. His delegation would not for the time being propose any specific amendment, but it would be prepared to do so if other delegations thought that a solution might be found on those lines.

The United Kingdom was not one of the States whose municipal law was automatically modified by adherence to an international convention, but the entry into force of legislation could be suspended until a day appointed by the Secretary of State. Other legislations probably had some similar provision.

If other delegations wished to have more time to consider the question, he would agree to the postponement of a decision on article 13, paragraph 1 but would hope that it would be possible to reach agreement on its deletion.

Mr. VIDAL (Brazil) thought that the difficulties facing the Committee might be solved by substituting for the opening words of paragraph 1 the following words: "At the time of the deposit of the instruments of ratification or accession with the Secretary-General of the United Nations, the first six countries to deposit the above mentioned instruments may make a reservation". By that change not only ratification but also the amendment of municipal law would be facilitated.

The CHAIRMAN, speaking as the representative of Denmark, said that it would be contrary to the Danish Constitution to suspend the entry into force of legislation. The Danish Parliament might well have the greatest hesitation in modifying the municipal law without knowing whether or not ratification of the convention would result in Denmark's becoming one of a fairly large group of States that applied the convention.

Speaking as Chairman, he suggested that further discussion of articles 13 and 14 be deferred to a later stage.

It was so agreed.

Article 15 (concluded)

Article 15 was approved.

Article 16 (A/CONF.9/4)

The CHAIRMAN, speaking as the representative of Denmark, pointed out that the International Law Commission's draft contained no revision clause similar to those incorporated in the Conventions Relating to the Status of Refugees and to the Status of Stateless Persons. Such a provision was all the more necessary as it was hoped that the convention on the reduction of statelessness would be adhered to by a large number of States. He therefore proposed that article 23 of the Danish Government's draft convention be substituted for article 16 of the Commission's draft.

Mr. ROSS (United Kingdom) said that at that stage of the discussion he had no objection to the Danish proposal.

Mr. JAY (Canada) inquired whether paragraph 2 of the Danish text would allow the General Assembly to discuss the substance of the convention or whether it was merely intended to provide machinery for the convening by the Assembly of a new conference.

The CHAIRMAN, speaking as the representative of Denmark, thought that the need for revision was more likely to occur in the case of a convention to which a large number of States had adhered and there should be some convenient machinery for that purpose. The General Assembly would not of course be qualified to modify the provisions of the convention in any way. The machinery for revision had already come into operation in the case of the Convention Relating to the Status of Refugees.

Mr. HARVEY (United Kingdom) suggested that it might be necessary to redraft paragraph 2 of the Danish text since it was doubtful whether the Conference had the right to impose an obligation on the General Assembly to recommend what steps should be taken. Possibly a clause on the following lines should be added: "The Contracting States shall support any steps recommended by the General Assembly".

Mr. BEN-MEIR (Israel) said that there was a basic difference between the two earlier Conventions which had been quoted in support of the Danish text and the draft convention on the reduction of statelessness. It was easy to conceive the necessity for revision in the case of the former since they concerned an essentially changing situation. That necessity was not apparent in the case of the convention under discussion. Moreover, the Conference was concerned with the codification of certain rules for the reduction of statelessness and there seemed to be no reason for including a revision in such a convention. No revision clause had been included in the Conventions relating to the law of the sea, 1958.

Mr. LIANG, Executive Secretary of the Conference, said that there was much substance in the observations of the Israel representative. Quite apart from the question of the propriety of imposing obligations upon the General Assembly as contemplated in paragraph 2 of the Danish text, it was doubtful whether the Secretary-General would be prepared to place the question of revision of the convention on the Assembly's agenda at the request of a single State. The situation would be quite different if the request for revision emanated from, say, two-thirds of the contracting parties in accordance with a provision to that effect contained in the convention. Moreover, even if the question of revision came before the Assembly, all it could do would be to convene a new conference of plenipotentiaries.

It was also a somewhat delicate question whether non-contracting States should be given an opportunity to discuss the question of the revision of the convention in the General Assembly.

The CHAIRMAN observed that any Member State of the United Nations had the right to request that any matter be placed on the General Assembly's agenda.

Speaking as the representative of Denmark, he said that the advantage of the Danish text was that it would enable States not Members of the United Nations to make a similar request.

Mr. ROSS (United Kingdom) said that after listening to the discussion and the statement by the Executive Secretary of the Conference he was inclined to agree with the Israel representative that it might be advisable not to adopt the revision clause proposed by the Danish Government.

Mr. RIPHAGEN (Netherlands) agreed with the United Kingdom representative. If a number of the parties to the convention wished to revise its provisions, they could do so without recourse to the complicated procedure contemplated in that clause.

The CHAIRMAN, speaking as the representative of Denmark, said that his delegation would withdraw the proposed clause.

Speaking as Chairman, he said that it would be desirable to defer discussion of the United Kingdom amendment to article 16 (A/CONF.9/L.24) since the Committee had already decided to postpone a decision on the establishment of the agency proposed in article 11.

Mr. ROSS (United Kingdom) agreed that it would be inappropriate to discuss his delegation's amendment at that stage.

Mr. CARSALES (Argentina) pointed out that article 16 (b) of the Commission's draft referred to reservations under article 13, which had not yet been approved.

The CHAIRMAN suggested that article 16 of the Commission's draft be approved as drafted, on the understanding however that it would be subject to amendment in the light of the terms of other articles still awaiting approval.

On that understanding, article 16 of the International Law Commission's draft was approved.

Article 17 (A/CONF.9/4) (concluded)

The CHAIRMAN, speaking as the representative of Denmark, proposed that article 17 of the draft convention be deleted and that article 24 of the Danish draft be approved as the final article of the convention.

It was so agreed.

Article 18 (concluded)

The CHAIRMAN, speaking as the representative of Denmark, proposed the deletion of article 18 since its purpose was already fulfilled by the provisions of the United Nations Charter.

It was so agreed.

The meeting rose at 6 p.m.