United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/SR.10

Summary Records, 10th Plenary meeting

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.9/SR.10
24 April 1961

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE TENTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Thursday, 16 April 1959, at 10.15 a.m.

President: Mr. LARSEN (Denmark)

Executive Secretary: Mr. LIANG

CONTENTS:

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.61-4510

61-11751

(13 p.)

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

Draft convention on the reduction of future statelessness (A/CONF.9/L.40 and L.62) (continued)

Article 4, paragraph 1 (A/CONF.9/L.53, L.54) (resumed from the fifth meeting and concluded)

The PRESIDENT drew attention to the text of article 4 as approved in Committee (A/CONF.9/L.40), to the joint amendment submitted by the delegations of France, Israel and Italy (A/CONF.9/L.53) and to the amendment submitted by the Netherlands delegation (A/CONF.9/L.54).

Mr. BEN-MEIR (Israel) said that the first part of paragraph 2 of the joint amendment (A/CONF.9/L.53) had been withdrawn. The remaining part of the amendment was virtually identical with the amendment submitted at the previous meeting to article 1, paragraph 3.

Mr. ROSS (United Kingdom) observed that it should hardly be necessary to move the amendment to article 4, paragraph 1, after the decisive rejection of the similar amendment to article 1, paragraph 3,* especially since the text of the convention would be inconsistent should it, by some chance, be adopted.

Mr. MARSILIA (Italy) said that it would not be wasting the Conference's time to discuss the joint amendment to article 4 despite the rejection of the similar amendment to article 1, paragraph 3. The discussion at the previous meeting on the second sentence in article 1, paragraph 3, and the difficulties encountered in reaching a satisfactory wording for that paragraph might have induced some delegations to reconsider their attitude in order to make article 4 clearer. It might be possible to amend the second sentence in article 4, paragraph 1, if the Conference was unwilling to delete it, as the sponsors of the amendment would prefer. Since the article provided for the possibility of granting nationality by operation of law at birth, the text proposed at the previous meeting by the Belgian representative would not be adequate.

The United Kingdom delegation had stated at that meeting that the joint amendment, if adopted, might give rise to cases of double nationality. That apprehension was groundless, since article 4, like article 1, applied only to persons who would otherwise be stateless and who consequently did not and could not have any other

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* now article 1, paragraph 4 (see document A/CONF.9/L.62)

nationality. It was in fact article 1, as adopted by the Conference, and article 4, in the form before the meeting, which might lead to cases of double nationality. A stateless person born in State A whose father was a national of State B and whose mother was a national of State C and who himself had not been able to acquire the nationality of the State of his birth owing to non-fulfilment of the residence conditions might be told by State B that his nationality must follow that of his mother, who by then might conceivably have lost her nationality, and by State C that he must follow that of his father, who had possibly lost his nationality; as a consequence the person in question would remain stateless. That was the negative aspect.

It might, however, equally well happen that under the law both of State B and of State C the person concerned followed the nationality of the parent possessing the nationality of those States; in that event, the person would acquire double nationality.

Furthermore, a stateless person in such a position might well make two applications for nationality: to the State of the mother and to the State of the father. Since in the case used for the purpose of illustration, the person concerned would not be residing in the territory of either of those States, the only way in which he could find out what the law was would be to study the convention. The convention, however, did not lay down clearly to which State the application should be addressed. The only conclusion possible from a reading of articles 1 and 4, as they now stood, would be that a stateless person in such a situation might well remain stateless even if he made two applications. The convention should at least admit that in certain cases there might be no remedy for statelessness.

Article 1, paragraph 2, like article 8, paragraph 2 (A/CONF.9/L.40/Add.3), was too rigid, but at least the wording was clear. Article 4, however, was as disappointing for stateless persons as it was unnecessary. The residence clause in article 1 did at least stipulate some link between the stateless person and the State to which he applied for nationality and in fact provided for a form of naturalization. It had been stated that article 4 was the result of a very arduous endeavour to compromise and that other delegations should not therefore oppose it. If it had been a successful compromise between the jus sanguinis and the jus soli

countries, the appeal not to amend it might be acceptable, but the compromise seemed to have been achieved at the expense of logic and even of meaning. More than a drafting point was involved. The Conference might be well advised to discuss the matter anew.

Mr. HARVEY (United Kingdom) said that the United Kingdom Government would be prepared to introduce legislation to amend the law concerning the inheritance of nationality through the mother, subject to the stipulation that the nationality of the father prevailed if the child was legitimate. The Government would not be prepared to go further and accord nationality through the mother in any case in which the child could acquire a nationality through the father. Article 4 was a compromise not between the systems of jus soli and jus sanguinis but between systems of law concerning personal status, which differed greatly from State to State. He had been astonished at the suggestion that the amendment should be discussed at even greater length than the amendment to article 1, paragraph 3, had been at the previous meeting, especially since the discussion on article 1 might have to be reopened if the Conference amended article 4. His delegation would counter any move to prolong the discussion by invoking rule 14 of the rules of procedure.

The joint amendment submitted by the delegations of France, Israel and Italy (A/CONF.9/L.53) was rejected by 11 votes to 7, with 14 abstentions.

Mr. RIPHAGEN (Netherlands), introducing his amendment to article 4, paragraph 1 (A/CONF.9/L.54, para. 5), explained that it was designed simply to bring the French text into line with the English. The Spanish text should also concord with the English.

The Netherlands amendment was adopted by 12 votes to none, with 18 abstentions.

The PRESIDENT, speaking as representative of Denmark, submitted a drafting amendment to bring the French text of article 4, paragraph 1, into line with the similar text of article 1, paragraph 3*.

The Danish amendment was adopted by 15 votes to none, with 14 abstentions.

Mr. RIPHAGEN (Netherlands) introduced an amendment to article 4, paragraph 1(b) (A/CONF.9/L.54, para.6), affecting only the French text.

The Netherlands amendment was adopted by 16 votes to none, with 12 abstentions.

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* Now paragraph 4 (see footnote on p.2, supra)

Mr. JAY (Canada) asked for a separate vote on paragraph 1(b).

Paragraph 1(b) was adopted by 15 votes to none, with 17 abstentions.

Sir Claude COREA (Ceylon) explained that he had abstained from voting because he had the same objection to the second sentence in sub-paragraph (b) as he had had to the second sentence of article 1, paragraph 1(b).

Article 4, paragraph 1, as amended in the French and Spanish texts, was adopted by 21 votes to none, with 12 abstentions.

Article 4, paragraph 2

Mr. CARASALES (Argentina) said that article 4 was as important as article 1. Experience of international conventions showed that there were likely to be fewer contracting than non-contracting States, and hence the responsibilities of the contracting States would be very great. The countries having the jus soli system had deferred to the wishes of the jus sanguinis countries that additional restrictions be placed on the grant of nationality under article 1 and the former should therefore be allowed to require the addition of similar conditions in article 4. He proposed that the conditions stipulated in sub-paragraphs (c) and (d) of article 1, paragraph 2 (A/CONF.9/L.62) should be added to article 4, paragraph 2.

Mr. ROSS (United Kingdom) said that there was no need for him to repeat the arguments relating to the similar proposal made in connexion with article 1. They had greater force in respect of article 4, because under that article only one appeal was open to the stateless person, whereas under article 1 he could apply either to the country of birth or to the country of parentage.

Mr. VIDAL (Brazil) asked for a separate vote on the words "that the person has neither been convicted of an offence against national security" in the additional sub-paragraph (c) proposed by the Argentine delegation.

That part of sub-paragraph (c) was adopted by 12 votes to 10, with 11 abstentions.

The PRESIDENT put to the vote the phrase "nor has been sentenced to imprisonment for a term of five years or more on a criminal charge".

That part of sub-paragraph (c) was rejected by 10 votes to 6, with 14 abstentions.

The PRESIDENT put to the vote the additional sub-paragraph (d) proposed by the Argentine delegation: "That the person has not acquired a nationality at birth or subsequently".

The additional sub-paragraph (d) was adopted by 12 votes to 8, with 12 abstentions.

Subject to drafting changes, article 4, paragraph 2, as amended, was adopted

Mr. de la FUENTE (Peru) said that in Peru citizenship by naturalization was regarded as a strictly personal status and parents who were Peruvian citizens by naturalization did not transmit their nationality to their children unless the latter were born in Peru, in which case the jus soli rule operated. It was necessary to make that point clear because under article 4, if the parents were naturalized Peruvian citizens and the child was not born in the territory of Peru, the jus sanguinis rule in the Peruvian mixed system would not operate and such a child could not be granted Peruvian nationality.

Subject to drafting changes, article 4, as amended, was adopted by 20 votes to 9, with 12 abstentions.

Article 5 (A/CONF.9/L.22, L.49) (resumed from the seventh meeting and concluded)

Mr. TYABJI (Pakistan), introducing his delegation's amendment (A/CONF.9/L.22) to article 5 as approved in Committee (A/CONF.9/L.40) said that in keeping with a suggestion of the representatives of Ceylon and China the amendment should read: "or upon compliance with the national law of the Party". The amendment had not been accepted in Committee, but that merely meant that the majority of the countries did not need the qualification which Pakistan required and so would not be affected by its inclusion in the convention. The amendment was, in fact, procedural and would not affect the substance of the convention.

At the request of the representative of Pakistan, a vote was taken by roll-call.

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

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

The Pakistan amendment (A/CONF.9/L.22) was rejected by 15 votes to 9, with 9 abstentions.

Article 5 (A/CONF.9/L.40) was adopted by 22 votes to 2, with 9 abstentions.

Mr. HERMENT (Belgium), introducing his delegation's amendment (A/CONF.9/L.49), said that the proposed additional paragraph was intended to prevent illegitimate children being placed in a more favourable position than legitimate children.

The additional paragraph proposed by the Belgian delegation was adopted by 12 votes to 2, with 17 abstentions.

Article 5, as a whole, as amended, was adopted by 20 votes to 2, with 11 abstentions.

Article 7 (A/CONF.9/L.55, L.63)

Mr. LEVI (Yugoslavia), introducing his delegation's amendment (A/CONF.9/L.63, first alternative) to article 7 in document A/CONF.9/L.40, recalled that an earlier Yugoslav proposal to delete from article 7, paragraph 4, the word "naturalized" had been rejected at the eleventh meeting of the Committee of the Whole Conference. His new proposal did not place natural-born nationals on the same footing as naturalized nationals, but allowed a State to make reservations respecting the residence abroad of natural-born nationals.

Mr. TYABJI (Pakistan), proposing the deletion of article 7, paragraph 1, recalled that his delegation had submitted a like amendment at the seventh meeting of the Committee of the Whole Conference. Under the law of Pakistan renunciation of nationality was completely voluntary and was not contingent on the acquisition of another nationality. Although there might be some justification for making loss and deprivation of nationality subject to such a condition, he did not see why the condition should be admitted in respect of renunciation. A person would presumably not renounce his nationality unless he were sure of acquiring another.

The PRESIDENT said that, since opinion on the Pakistan proposal would be tested by the vote on paragraph 1, he did not consider the proposal as a formal amendment.

Mr. de la FUENTE (Peru) said he had the same difficulties as the Pakistan representative in accepting the paragraph. Although he understood the spirit in which the paragraph had been drafted, he considered it incompatible with fundamental human freedoms.

He reserved his delegation's position on paragraph 3 of the article. Under Peruvian law, a naturalized national was liable to lose Peruvian nationality if he resided abroad for a period of more than two consecutive years, unless he could show that such residence was due to factors beyond his control and unless he declared his wish to maintain his Peruvian nationality and could show that his vinculum with Peru had not been impaired.

Mrs. TAUCHE (Federal Republic of Germany) pointed out that, while the additional paragraph proposed in the Yugoslav amendment (A/CONF.9/L.63) referred to natural-born persons, and article 7, paragraph 4 (A/CONF.9/L.40) to naturalized persons, there was no provision for persons who had acquired their nationality by marriage, legitimation or option.

She proposed that the word "similar" should be deleted from paragraph 3 and replaced by the word "other". From the paragraph as it stood it was not absolutely clear that States were not prevented from applying other grounds for automatic loss of nationality than those listed.

Rev. Father de RIEDMATTEN (Holy See) proposed that "(a)" should be inserted at the beginning of the present text of paragraph 1 of the article and that a sub-paragraph (b) should be added providing that sub-paragraph (a) would not apply in cases where its application would be inconsistent with articles 13 and 14 of the Universal Declaration of Human Rights.[1/]

He recalled that his proposal to delete article 7, paragraph 1, had been rejected in Committee. He therefore considered it his duty to propose the inclusion of a reference to articles 13 and 14 of the Declaration of Human Rights which were concerned with the right of the individual to leave any country and to seek and be granted asylum. That seemed to him to be the only way of protecting individuals against infringement of their basic liberties. He appealed to all delegations to vote in favour of his proposal; such a vote would be evidence of their sincere humanitarian intentions and would bring prestige to the Conference.

Mr. POPPER (United States of America) associated himself with the delegations of Pakistan and Peru, which could not accept the terms of article 7, paragraphs 1 and 3. Both paragraphs would conflict with existing United States

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1/ Amendment subsequently submitted in writing as document A/CONF.9/L.65.

law, which provided for the formal renunciation of United States citizenship without stipulating that such renunciation was dependent upon the acquisition of another nationality; in addition, the law made provision for loss of nationality in consequence of protracted voluntary residence abroad.

He doubted whether it was desirable to include in an instrument such as the convention a specific reference to the Universal Declaration of Human Rights, which did not possess the force of law.

Mr. HERMENT (Belgium) moved the closure of the debate on article 7, paragraph 1.

After some procedural discussion, Mr. KANAKARATNE (Ceylon), opposing the motion, said that there should be an opportunity for further discussion of the proposal made by the representative of the Holy See.

The motion was rejected by 15 votes to 6, with 11 abstentions.

Mr. LEVI (Yugoslavia) agreed with the United States representative that a reference to the provisions of the Universal Declaration of Human Rights - which had recommending force only - would be out of place in a convention imposing contractual obligations. If however the Holy See's proposal could be redrafted in such a way as to recognize the desirability of observing the principles contained in articles 13 and 14 of the Declaration without giving them the force of obligations he would support the proposal.

Mr. KANAKARATNE (Ceylon) said that delegations should have an opportunity to study the implications of the Yugoslav amendments (A/CONF.9/L.63) since the articles to which they related (7, 8 and 13) were very important. Similarly, the implications of the Yugoslav suggestion for the redrafting of the proposal of the Holy See needed further study. He therefore considered that time would be saved later if further discussion of article 7 and the discussion of article 8 were deferred until the following meeting.

Mr. RIPHAGEN (Netherlands) explained that he had opposed the motion of closure because he saw certain legal difficulties in accepting the amendment proposed by the representative of the Holy See. He agreed with the representative of Ceylon that it would be desirable to defer further discussion of articles 7 and 8.

Mr. FAVRE (Switzerland) expressed surprise at the United States delegation's attitude. Early in the Conference (A/CONF.9/SR.2) that delegation had stated in effect that the convention concerning statelessness was of no interest to the United States and would not be signed or ratified by that country. Now the same delegation stated that article 7 was drafted in terms unacceptable to the United States because it would not be applicable without a change in United States law. Switzerland for its part wished to participate in the common action to reduce statelessness, even if as a consequence a considerable revision of Swiss nationality law had to be contemplated.

Although admittedly the Universal Declaration of Human Rights was not an international convention, it was undoubtedly open to the States to give some of its provisions the force of positive law by embodying them in a convention.

Moreover, he pointed out that certain United States courts had applied some provisions of the Declaration in the same way as provisions of municipal law because they regarded them as expressing general principles of law.

Mr. SCOTT (Canada) agreed with the Ceylonese representative that delegations should have an opportunity to consider at leisure the important amendments to article 7.

He was in sympathy with the purpose of the amendment proposed by the Holy See. Under paragraph 1 of the article a person who wished to become stateless in order to divest himself of a nationality odious to him would be unable to do so. The Ceylonese amendment (A/CONF.9/L.16) intended to solve that problem had been rejected by a narrow margin at the seventh meeting of the Committee of the Whole Conference. He agreed that it was not appropriate to refer to the provisions of the Declaration of Human Rights in a contractual instrument like the convention, but he hoped that, if time were allowed, the amendment of the Holy See could be so revised so as to command wider support.

Mr. KANAKARATNE (Ceylon) moved the adjournment of the debate on articles 7 and 8 under rule 16 of the Conference's rules of procedure.

Mr. POPPER (United States of America), speaking on a point of order, said that before the motion was put to the vote he wished to reply to the statements made by the Swiss representative.

The PRESIDENT drew the United States representative's attention to the strict language of rule 16.

Mr. KANAKARATNE (Ceylon) speaking on a point of order, said that he was prepared to defer his motion in order to allow the United States representative an opportunity to speak.

Mr. POPPER (United States of America) said that the Swiss representative had implied that it was wrong for the United States delegation to state what were its national laws and why it did not favour a particular provision of the convention. It was true that his delegation had, with commendable frankness, stated that the United States did not intend to sign or ratify the convention. That statement did not, however, prevent the United States delegation from expressing its views. Furthermore, his delegation considered itself entirely at liberty to state that certain provisions of the convention conflicted with United States law.

He agreed that United States courts had taken the Universal Declaration of Human Rights into account, but he firmly upheld his earlier statement, the sense of which had been echoed by other delegations. He sympathized with the object of the amendment of the Holy See and hoped that some method could be worked out by which that object could be achieved.

The motion for the adjournment of the debate on articles 7 and 8 was carried by 20 votes to 9, with 5 abstentions.

Rev. Father de RIEDMATTEN (Holy See) explained that he had voted against the motion because he feared that it might be impossible to take into account the suggestions which had been made in time for the following meeting. He appreciated the defence of his amendment by the representative of Switzerland. He was aware of the difficulties of including in the convention references to provisions of the Declaration, but he agreed with the Swiss representative that it was open to the States to give force of law to those provisions by incorporating them in the convention. He did not therefore intend to make any changes in his amendment for the time being but was willing to consider proposals from other delegations.

Article 10

The PRESIDENT drew attention to the text of article 10 in document A/CONF.9/L.40.

Paragraph 1 was adopted by 27 votes to none, with 7 abstentions.

Paragraph 2 was adopted by 24 votes to none, with 8 abstentions.

Article 10 as a whole was adopted by 25 votes to none, with 9 abstentions.

Article 11

The PRESIDENT referred to the text of article 11 in document A/CONF.9/L.40/Add.4.

Mr. HARVEY (United Kingdom) said that the word "agency", which had been used in the original draft of the article, had been replaced by the more general term "body", because it had been felt that in United Nations terminology the word "agency" had acquired a rather restricted and technical meaning.

Mr. JAY (Canada) said his delegation could support the article, but thought that some delegations would find it easier to accept the convention as a whole if the provisions of the article were embodied in a separate protocol or resolution. Provision might be made for reservations under article 13, but delegations did not yet know whether reservations would be allowed under article 13.

Mr. SIVAN (Israel) supported the views expressed by the representative of Canada. A provision of the kind included in article 11 should not be allowed to obstruct the adherence of States which in other respects found the convention acceptable. If an agency and a tribunal were to be established, it was desirable that they should be established under the same instrument, and he thought the best solution would be to attach an optional protocol or resolution to the convention. His delegation was not itself in favour of the establishment of a tribunal, but if some contracting States were prepared to recognize the competence of an agency and tribunal, other States should not stand in their way.

The PRESIDENT, speaking as representative of Denmark, said his delegation would prefer not to reopen the question of the establishment of an agency and tribunal, but would rather leave the matter to be decided by the General Assembly or some other appropriate body.

Speaking as President, he suggested the following procedure for voting on the article. The Conference would first vote on the article on the understanding that no reservations to it would be admissible. If the article was rejected on that understanding, a further vote would be taken on the understanding that reservations would be admissible. If the article was again rejected, the article would lapse, and any proposal regarding the establishment of an agency would have to be embodied in an optional protocol or resolution.

Mr. TSAO (China) said his delegation would vote against article 11 whether or not reservations thereto were admissible.

The PRESIDENT put article 11 to the vote on the understanding that no reservations to it should be allowed.

On that understanding, the article was rejected by 18 votes to 5, with 9 abstentions.

The PRESIDENT put article 11 to the vote on the understanding that reservations should be allowed.

On that understanding, the article was adopted by 15 votes to 5, with 12 abstentions.

The PRESIDENT observed that it was now a drafting question whether to include a provision for reservations in the article itself or in article 13.

Articles 12, 14 and 15

The PRESIDENT drew attention to the text of articles 12, 14 and 15 in documents A/CONF.9/L.40 and L.40/Add.1.

Subject to drafting changes, article 12 was adopted unanimously.

Article 14 was adopted unanimously.

Subject to drafting changes, article 15 was adopted unanimously.

The meeting rose at 12.55 p.m.