United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/SR.12

Summary Records, 12th Plenary meeting

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.9/SR.12
24 April 1961

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE TWELFTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Friday, 17 April 1959, at 10 a.m.

President: Mr. LARSEN (Denmark)

Executive Secretary: Mr. LIANG

CONTENTS:

	Page
Adoption of report on credentials	2
Examination of the question of the elimination or reduction of future statelessness (item 7 of the agenda) (resumed from the previous meeting)	2
Draft convention on the reduction of future statelessness (continued)	2
Article 7 (resumed from the previous meeting and concluded)	2
Article 8	3

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.61-4514.

61-11753

(11 p.)

ADOPTION OF REPORT ON CREDENTIALS (A/CONF.9/L.66)

The PRESIDENT invited the Conference to vote on the report on credentials (A/CONF.9/L.66). He pointed out that Luxembourg should be added to the countries listed in sections A.1 and B and deleted from the list in section A.

Mr. ROSS (United Kingdom) stated that his delegation would vote for the adoption of the report only on the grounds that the credentials were in order, and its vote would not necessarily imply recognition of each of the authorities by which the credentials had been issued.

Mr. MEHTA (India) said his delegation would vote for the adoption of the report on the same understanding.

Section A. was adopted by 30 votes to none, with 2 abstentions.

Section B. was adopted by 28 votes to none, with 3 abstentions.

EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (item 7 of the agenda) (A/CONF.9/L.40 and Add.1 to 5) (resumed from the previous meeting)

Article 7 (resumed from the previous meeting and concluded)

The PRESIDENT drew attention to the joint amendment (A/CONF.9/L.68) submitted by the delegations of the Federal Republic of Germany and the United Kingdom. The amendment previously submitted by the Federal Republic of Germany (A/CONF.9/L.67) had been withdrawn.

Mr. HARVEY (United Kingdom) said he had been impressed by the arguments of the representative of the Federal Republic of Germany in favour of the need for a further paragraph in article 7. The joint amendment, which he formally moved, contained a residuary provision against loss of nationality rendering a person stateless, to cover cases not expressly covered by the convention.

Mrs. TAUCHE (Federal Republic of Germany), supporting the United Kingdom representative, gave an illustration of the circumstances in which the provision would operate. If a State enacted a law providing that persons sentenced to a term of imprisonment of more than three years would lose their nationality, such a law would be admissible under article 7 unless the proposed new paragraph 6 were added. Article 8 as adopted in Committee (A/CONF.9/L.40/Add.3) laid down that deprivation of nationality was not permissible except in the cases mentioned in paragraph 2 of that article. There was no such general provision in article 7. The adoption of the joint amendment would thus close a gap in the provisions of the convention.

Mr. FAVRE (Switzerland) supported the joint amendment but thought that the reference to paragraph 1 was superfluous.

Mr. SIVAN (Israel) said he would vote for the joint amendment on the assumption that article 7 dealt only with loss of nationality by automatic operation of law.

Rev. Father de RIEDMATTEN (Holy See) supported the amendment but agreed with the Swiss representative that the reference to paragraph 1 was superfluous.

Mr. HERMENT (Belgium) proposed that the words "in paragraphs 1, 4 and 5 of this article" in the joint amendment be replaced by the words "in this article"

Mrs. TAUCHE (Federal Republic of Germany) and Mr. HARVEY (United Kingdom accepted the Belgian amendment.

The joint amendment as so amended was adopted by 18 votes to none, with 11 abstentions.

Article 7 as a whole as amended was adopted by 17 votes to none, with 12 abstentions.

Mr. HELLBERG (Sweden) explained that, although he had previously voted against article 7, paragraph 3, he had found it possible to vote in favour of article 7 as a whole because of the adoption of the Brazilian amendment to paragraph 5 at the previous meeting.

Article 8

Mr. BERTAN (Turkey) said that the idea underlying his delegation's amendment (A/CONF.9/L.64) to paragraph 1 of the article (A/CONF.9/L.40/Add.3) was that a State could take punitive action against a resident national without resorting to the extreme measures of depriving him of his nationality.

Mr. de la FUENTE (Peru) reserved his delegation's position on paragraphs 1 and 2 because they conflicted with certain provisions of the Constitution of Peru.

Mr. HERMENT (Belgium) asked whether it was the intention of the Turkish delegation's amendment to limit the application of paragraph 1, or whether it was not rather its intention to limit the application of the provisions of paragraph 2.

Sir CLAUDE COREA (Ceylon) thought that the effect of the Turkish amendment would be to nullify, so far as resident nationals were concerned, the conditions set out in the article as a whole.

Mr. ROSS (United Kingdom) agreed with the representative of Ceylon. He failed to see why a distinction should be made between resident nationals and

nationals residing abroad. The latter might well suffer greater hardship if deprived of their nationality. No such distinction had been made by the International Law Commission.

The PRESIDENT said he understood the Turkish amendment to mean that the power vested in the State by virtue of a reservation formulated under article 8, paragraph 2 should, so far as resident nationals were concerned, be exercisable only in the cases mentioned in paragraph 2(a)(i) and (ii) and in paragraph 2(b)(iii) and (iv). For the purpose of obtaining the Conference's decision on that interpretation the simplest procedure would be to put each of the clauses of the paragraph to the vote separately, construed to mean that the particular provision applied only to persons resident arroad. Accordingly, that was the procedure he proposed to follow.

Mr. BERTAN (Turkey) confirmed the President's interpretation of the intention of the amendment.

Mr. JAY (Canada) said that he had no strong views on the question so far as paragraphs 2(a)(i) and 2(b)(iv) were concerned, but was opposed to such a limitation in the case of paragraphs 2(a)(ii) and 2(b)(iii).

Mr. SIVAN (Israel) said that a person might take on oath of allegiance to a foreign country while resident in his home country; such conduct surely deserved deprivation of nationality even more than if the oath were taken abroad.

Mr. RIPHAGEN (Netherlands), replying to the representative of Canada, thought that the grounds in paragraphs 2 (a)(i) and (ii) were similar in nature, since both involved the formation of a strong connexion with a foreign Government. It would be strange if the Conference decided to confine the application of one of the grounds to persons resident abroad.

Mr. JAY (Canada) agreed that there was some connexion between the two provisions. He failed, however, to see the relevance of the place of residence to paragraphs 2(a)(ii) and 2(b)(iii).

Mr. BACCHETTI (Italy) said he could not support the Turkish amendment. He did not see what difference it made whether a person serving a foreign government was resident in his own country or not. It was easy to imagine cases in which such service could be performed in the home territory, for example by persons employed in a foreign embassy. The Turkish amendment would prevent such persons being deprived of their nationality.

Mr. BERTAN (Turkey) said that there were many circumstances in which a national resident in his home country might enter the service of a foreign Government; he might, for example, take employment with a State-operated airline.

Since it was always possible to take other action against resident nationals, he did not think an express provision was necessary empowering the State of nationalit to deprive a resident national of that nationality. His delegation's amendment would avoid the creation of statelessness in such cases.

Mr. LEVI (Yugoslavia) thought that the President's interpretation of the Turkish amendment was not supported by the actual text of the amendment.

Mr. VIDAL (Brazil) recalled that in Committee (twelfth and fourteenth) meetings) the Turkish delegation had attached particular importance to the problem of military defaulters resident abroad. The voting procedure would, he thought, accordingly be simplified if the phrase "when abroad" were added to the Turkish amendment to sub-paragraph 2(a)(iii).

The PRESIDENT, in keeping with the procedure he had outlined, put to the vote the interpretation that paragraph 2(a)(i) should apply only to persons residing abroad.

That interpretation was rejected by 11 votes to 7, with 15 abstentions.

The PRESIDENT put to the vote the interpretation that paragraphs 2(a)(ii) should apply only to persons resident abroad.

That interpretation was rejected by 11 votes to 4, with 19 abstentions.

Mr. BERTAN (Turkey) said that so far as paragraph 2(b) was concerned, his delegation wished the interpretation to apply only to sub-paragraph (iv).

The interpretation that the sub-paragraph should apply only to persons resident abroad was rejected by 13 votes to 6, with 13 abstentions.

The PRESIDENT asked whether the Turkish amendment for the addition of a new sub-paragraph (2)(a)(iii) was intended to apply to all deserters or only to deserters residing abroad.

Mr. BERTAN (Turkey) replied that it would only apply to deserters residing abroad for the reasons of principle which he had explained before. Although the amendment seemed to extend the catalogue of exceptions to the rule stated in paragraph 1, full protection against arbitrary administrative action was given by the provision in paragraph 3 that no administrative action would become final unless confirmed by a completely independent andimpartial body.

Mr. JAY (Canada) supported the Turkish amendment, on the understanding that it applied only to deserters resident outside their country. He could do so because it would now be in the form of a permissible reservation. He moved the closure of the debate.

The motion for the closure was carried by 23 votes to none, with 6 abstentions.

The Turkish amendment for the addition of a new sub-paragraph 2(a)(iii) was rejected by 8 votes to 5, with 17 abstentions.

The PRESIDENT invited the Conference to consider the Yugoslav amendment (A/CONF.9/L.63) for the insertion of a new sub-paragraph in paragraph 2(a).

Mr. LEVI (Yugoslavia) drew attention to the fact that his delegation had submitted alternative amendments to article 8. A great deal had been heard during the Conference about the need to do as much as possible to reduce future statelessness, but when individual articles were being discussed, even those delegations which had placed so much emphasis on the reduction of statelessness had insisted on inserting restrictions. If there was a real desire to reduce statelessness, the Conference should vote for the second alternative proposal by the Yugoslav delegation, to delete paragraphs 2 and 3, and thereby exclude all reservations, but although that would be ideal, he would not press that alternative.

Mr. JAY (Canada) said that he wholeheartedly supported the first Yugoslav alternative. The Yugoslav Government undoubtedly had a serious problem, and had given it expression in an amendment which was not likely to upset the central purpose of the Convention. He could the more readily support the amendment as it was now placed in the context of reservations.

The PRESIDENT pointed out that the consequence of adopting the first Yugoslav alternative would be, for the purposes of paragraph 2, to place the case of natural-born nationals on the same footing as that of nationals other than natural-born nationals. He put the amendment to the vote.

The Yugoslav amendment to paragraph 2(a) was rejected by 10 votes to 8, with 10 abstentions.

The PRESIDENT drew attention to the Yugoslav amendment (A/CONF.9/L.63) for the insertion of a new sub-paragraph in paragraph 2(b).

Mr. WILHELM-HEININGER (Austria) recalled that the Austrian oral amendment referring to a "serious crime", to the Drafting Committee's text for an additional sub-paragraph to article 1, paragraph 2, (A/CONF.9/L.42) had been rejected at the eighth plenary meeting. The Yugoslav amendment to article 8, paragraph 2(b) seemed to be based on considerations similar to those underlying the earlier Austrian amendment.

The Yugoslav amendment to paragraph 2(b) (A/CONF.9/L.63) was rejected by 13 votes to 10, with 11 abstentions.

At the request of the representative of Yugoslavia a vote was taken by roll-call on the second alternative Yugoslav amendment for the deletion of paragraphs 2 and 3.

The United Arab Republic having been drawn by lot was called upon to vote first.

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

The second alternative Yugoslav amendment to article 8 (A/CONF.9/L.63) was rejected by 6 votes to 5, with 22 abstentions.

Mr. RIPHAGEN (Netherlands) said that the object of paragraph 2(b)(ii) was to stipulate that, before a State could deprive a person of its nationality on the grounds mentioned, the commission of a treasonable or disloyal act must have been proved by judicial process and also to take into account the law of some countries under which judgements could not be given by default in such cases. The word "accused" was, however, too vague; presumably it meant an official accusation publicly announced. Accordingly, he suggested that the words "officially and publicly" should be inserted after the word "person".

Mr. JAY (Canada) said that he had no intrinsic objection to the Netherlands suggestion, but in practice Governments might take different views. In Canada, for instance, the accusation need not necesarily be made public. A person accused of a treasonable or disloyal act had to be legally charged and the notification sent to his last-known address. The essential was that the accusation should be in legal form.

Mr. SIVAN (Israel) thought the sub-paragraph was unsatisfactory, because it would be hard to ascertain the reason for the person's failure to return for trial. It would be too drastic to deprive a person of his nationality if he was prevented from defending himself against such a charge. There should be provision for due process, and it should be left to each country to

decide what steps should be taken to bring the charge to the knowledge of the person concerned. The depriving authority should have at least the assurance that a disloyal act had been committed and the person concerned should at least be aware that he had been charged with such an act. Some such wording as "duly charged with such an act and failing, with such knowledge, to return for trial" might be suitable.

Sir Claude COREA (Ceylon) said that, though admittedly the word "accused" was vague, it was qualified by the reference to a "trial". The wording suggested by the Netherlands' representative was not wholly satisfactory since the intention of the provision was that the person concerned should be charged in a court of law.

Mr. JAY (Canada) said that since he would have to abstain from voting on the article for other reasons, he had some reluctance in arguing against the defects of the amendments to that particular sub-paragraph. Nevertheless, he felt bound to do so. Despite possible drafting changes the difficulty still remained how the charge would be brought to the knowledge of the person concerned. In some circumstances it would be physically impossible for a State to know whether the person concerned had in fact been notified. The idea of publicity could not be entertained, since it would mean that a State might have to advertise in every paper in the world and even then might not be sure that the person concerned would see the advertisement. The essential point however, was not the service of notice of the accusation but the person's failure to return to the country of nationality.

Mr. ROSS (United Kingdom) said that the amendment proposed by the Netherlands representative seemed to be based on two considerations, the first being that a person should not be deprived of his nationality merely because some government department had fabricated a groundless charge against him, and the second that if a charge was brought against a person by due process of law, that person should not be deprived of his nationality on account of the charge without his having knowledge of the charge.

So far as the first point was concerned, the difficulty was to find a form of words which would not conflict with the different national systems of law. He was not sure, for example, whether such phrases as "legally cited" or "duly charged with" were compatible with United Kingdom law, which did not provide for the

institution of legal proceedings against a person who was outside the jurisdiction of the court but merely empowered a warrant to be issued for his arrest when he did return. He would therefore prefer the phrase "officially accused".

So far as the second point was concerned, he observed that in some cases there might be no means of bringing the charge to the knowledge of the person involved, who might have gone into hiding. In any case, a safeguard was provided by paragraph 3, under which a person could bring his case before an independent tribunal even if he did not return to the country whose nationality he was in danger of losing. So far as the second point was concerned, therefore, he did not think any amendment of the text as it stood was required.

Mr. PAULY (Federal Republic of Germany) proposed that the whole of paragraph 2 should be replaced by the following text:

> "at the time of signature, ratification or accession, any Contracting State may reserve the right to make exceptions to paragraph 1 of the present article, even though the person concerned would as a consequence become stateless, for imperative reasons based on its national law in force at the time of its signature, ratification or accession."

Paragraph 2 as it stood was very complicated and contained a list of grounds for deprivation of nationality which parliaments would find very unpresentable. To public opinion, which was under the impression that the purpose of the convention was to achieve the reduction of statelessness, the list would look positively ugly. Far from tending to reduce statelessness, the paragraph as it stood might have the effect of increasing it.

His delegation realised however, that some Governments would be unable to accept the convention unless it contained some provision for deprivation of nationality; but for that purpose a reference to existing municipal law would be enough, and a list of grounds was unnesssary. The aim should be, as in other conventions such as those prepared by the Council of Europe, to "freeze" the present legislative situation. That was the purpose of his delegation's amendment. The Federal Republic of Germany was in a favourable position to propose such a radical solution because, since its national law contained no provision for deprivation of nationality, it had no direct interest in paragraph 2 and could act with complete impartiality.

If the Conference was unable to adopt the solution he had proposed, his delegation would have to reconsider its earlier position with regard to the Yugoslav proposal concerning the reservations clause, article 12 (A/CONF.9/L.51).[1/]

Mr. BACCHETTI (Italy) said his delegation could not accept the amendment proposed by the Federal Republic of Germany. Article 8 as it stood was far from satisfactory, but at least it represented a compromise. "Freezing" the present legislative situation would not improve matters.

Mr. LEVI (Yugoslavia) moved the closure of the debate on the amendment proposed by the delegation of the Federal Republic of Germany.

The motion was carried by 23 votes to 1, with 6 abstentions.

The amendment proposed by the Federal Republic of Germany was not adopted, 11 votes being cast in favour and 11 against, with 9 abstentions.

Mr. RIPHAGEN (Netherlands) proposed formally that article 8, paragraph 2(b) (ii), be relaced by the following text:

> "having been convicted of a treasonable or disloyal act or, in the case of a person who is in a foreign country, having been officially accused of such an act, and, having been duly notified (légalement cité) of such an accusation, failing to return for trial."

The phrase "duly notified of such an accusation" would mean that the contracting party concerned had done everything in its power to serve notice of the accusation on the person in question, not that the accused person must necessarily have received the notice.

The Netherlands amendment was adopted by 13 votes to none, with 17 abstentio

Mr. JAY (Canada) said he had voted for the amendment on the understandi that the phrase "duly notified of such accusation" was to be interpreted in the manner described by the Netherlands representative.

Mr. TYABJI (Pakistan) proposed that sub-paragraph 2 (b)(iii) be amended to read:

> "having broken his oath of allegiance or having made a declaration of allegiance to a foreign country".

Mr. JAY (Canada) said he could not accept the amendment proposed by the representative of Pakistan. There was a distinct difference between the positive

1/ For relevant discussion see eighteenth and nineteenth meetings of the Committee of the Whole Conference.

act of breaking the oath of allegiance to the country of nationality and taking an oath or making a declaration of allegiance to another country.

Mr. TYABJI (Pakistan) submitted the following revised amendment:

"having taken an oath, or made a declaration of allegiance to a foreign country, or having otherwise broken his oath of allegiance to the Contracting State concerned, or".

The revised Pakistan amendment to paragraph 2 (b)(iii) was rejected by 9 votes to 6, with 14 abstentions.

The PRESIDENT put article 8, paragraph 1, to the vote.

Paragraph 1 was adopted by 16 votes to none, with 10 abstentions.

The meeting rose at 1.20 p.m.