United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/SR.16

Summary Records, 16th Plenary meeting

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.9/SR.16
11 October 1961
ENGLISH
ORIGINAL: FRENCH

UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE SIXTEENTH PLENARY MEETING

Held at Headquarters, New York,
on Wednesday, 16 August 1961, at 3.15 p.m.

CONTENTS

President:	Mr. RIPHAGEN	Netherlands
Secretariat:	Mr. STAVROPOULOS	Legal Counsel, Representative of the Secretary-General
	Mr. LIANG	Executive Secretary of the Conference

EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (A/CONF.9/10 and Add.1 to 3, A/CONF.9/11, A/CONF.9/12; A/CONF.9/L.80)

Article 8 of the Draft Convention

The PRESIDENT invited the representative of the United Kingdom to present his delegation's amendment (A/CONF.9/L.80).

Mr. ROSS (United Kingdom) said that he first wished to make a few general remarks on article 8 and its place in the Convention. As the representative of the Secretary-General had said on the previous day, that place was only a secondary one. For the article did not cover either of the main causes of statelessness, i.e. either birth in such circumstances that the child acquired neither the nationality of its parents nor that of the country in which it was born, or the automatic loss of nationality because the person concerned had committed certain acts or had neglected to take the necessary steps to retain his nationality. The first case was dealt with in articles 1 to 4 and the second in article 7 of the Convention.

The case provided for in article 8 was a somewhat infrequent one - first because many countries did not have the power to deprive an individual of his nationality or, if they did, were ready to give it up, and secondly, because that power could often only be exercised in the case of naturalized persons, who represented but a small proportion of the population. Of all the Governments which had submitted observations, only six had the power to deprive natural-born citizens of their nationality. Moreover, the conditions in which nationality could be withdrawn were nearly always carefully defined by law. Finally, cases in which the State used its powers in the matter were rather rare: the United Kingdom, in fact, had used them only ten times during the past twelve years. Thus, even if article 8 were deleted altogether, the Conference, by adopting articles 1, 4 and 7, would have accomplished the main part of its task.

None the less the Conference still had the duty of doing its utmost to eliminate that minor cause of statelessness as well. The difficulty in that respect arose from differences in the provisions of national laws. Some countries considered that the State should never deprive an individual of his nationality

(Mr. Ross, United Kingdom)

and that, once it had agreed to confer its nationality upon a person by naturalization, it should accept the risk of having possibly made a mistake. Others, on the other hand, attached much importance to the right to deprive of his nationality a person whose conduct was incompatible with his duty of loyalty towards his country, or who had broken all links with that country. If therefore agreement was to be reached, the States in the first category should not object to those in the second retaining at least some of the powers which they considered necessary. In return, the States in the second category should ask themselves seriously whether they could not give up some of their powers when the exercise of such powers would lead to statelessness. In that respect it was encouraging to note that several Governments had shown themselves ready to make concessions (cf. A/CONF.9/10 and Add.1 to 3). The United Kingdom, for instance, would be ready to stop exercising its rights in the case of naturalized persons who had been sentenced for serious offences not involving loyalty or had lived abroad for more than seven years without maintaining effective contact with the United Kingdom.

With regard to the actual text of article 8, the first part of the Conference had considered that the International Law Commission's draft was too restrictive. A revised text, adopted by the Committee of the Whole (A/CONF.9/L.40/Add.3), had also been abandoned in the end because there was a risk, in theory at least, that it would increase rather than reduce the number of cases of statelessness; for while it compelled certain Contracting States to give up some of their rights, it gave others the possibility of extending their powers in the matter, within the fairly broad limits of the article's provisions. An amendment by the Federal Republic of Germany had encountered serious objections since it required no sacrifice on the part of any State. A compromise solution had been presented by Canada and the United Kingdom on the last day, but owing to lack of time the Conference had been unable to study it thoroughly enough to be able to take a decision on it.

The new United Kingdom proposal (A/CONF.9/L.80) was also a compromise, based on the observations submitted by Governments (A/CONF.9/10 and Add.1 to 3). It

(Mr. Ross, United Kingdom)

retained the idea underlying the Federal Republic of Germany's amendment in that, with two exceptions, it admitted no grounds for deprivation other than those already specified in the current law of the Contracting States. On the other hand, it attempted to overcome the objections raised to the German amendment by restricting the causes for deprivation of nationality to certain well-defined categories.

The two exceptions were the subject of paragraphs 2 and 3. Paragraph 2 covered the case of an individual who secured the nationality of a State by fraud. In some countries, naturalization obtained by such means was considered null and void. It would seem wrong to prevent the Government of such a country from adopting legislative provisions expressly prescribing that, in case of fraud, the State could deprive the guilty person of his nationality.

Paragraph 3 arose logically from the provisions of paragraphs 4 and 5 of article 7. The cases covered by those paragraphs led to the automatic loss of nationality; there was all the more reason why they should also be able to lead to deprivation.

Paragraphs 4 and 5 of article 8, which were the most important, specified the circumstances in which the nationals of a country, whether naturalized or not, could be deprived of their nationality. It would be noted that the grounds for deprivation were wider in the case of naturalized persons (paragraph 4) than in that of other citizens (paragraph 5). That was partly because naturalized persons represented a much smaller group of the population, and partly because it seemed normal to demand more of them than of native-born nationals of the country.

With a view to obtaining the largest measure of concurrence, the definitions appearing in those two paragraphs had been drafted in fairly general terms, and certain refinements which could be found in the initial drafts but appeared unlikely to result in any appreciable reduction in the number of cases of statelessness had been dropped. As the representative of the Secretary-General had said on the previous day, it would be unfortunate if a "perfectionist" attitude were to prevent the Conference from achieving good results.

Finally, he wished to stress that the amendment submitted by his delegation was merely a hastily drafted text in which the Conference would no doubt be able to make constructive changes.

Mr. AMADO (Brazil), Vice-President, paid tribute to the United Kingdom delegation for trying to draft a text which would bring divergent views into line. That text took into account the difficulties encountered by certain countries like Brazil which wanted to contribute to the reducing of statelessness but which were sometimes prevented from doing so by the provisions of their Constitutions. It should not be forgotten that while a State could easily change its laws, it could amend its Constitution only to the extent permitted by the Constitution itself.

With regard to the restrictions on deprivation of nationality, there appeared to be two lines of thought: first, that advanced by the delegation of the Holy See, whereby exceptions to the rules of the Convention should be specified, at the time of ratification, in the form of reservations entered by the Contracting Parties; secondly, that of certain countries which thought that such reservations should be specified in the actual text of the Convention. Brazil preferred the latter solution.

Rev. Father de RIEDMATTEN (Holy See) said that, in the view of his delegation, it would be preferable for the Convention to make no provision for deprivation of nationality; instead, States could be given an opportunity to submit reservations on specified grounds which should be held to a minimum. At Geneva, the Holy See had submitted an amendment which had greatly influenced the text finally adopted. The essential point was that, instead of citing the permissible grounds for deprivation of nationality, the Convention should indicate those reservations which States would be entitled to make.

The Holy See would of course be willing to agree to a more restrictive approach, if that met with the agreement of the Conference.

Mr. VAN SASSE VAN YSSELT (Netherlands) asked for clarification with regard to paragraph 4, which in actual fact applied to naturalized persons. In the Netherlands, no distinction was made between naturalized persons and other nationals so far as deprivation of nationality was concerned. Since the United Kingdom amendment appeared to make a distinction between the two cases, it was surprising to find mention of paragraph 5 in paragraph 4 when, according to the latter paragraph, the only grounds on which a naturalized person could be deprived of his nationality were those recognized by national law.

(Mr. Van Sasse Van Ysselt, Netherlands)

He also wished to observe that the subject under discussion did not concern those naturalized persons who accepted duties in a foreign country which were not inconsistent with their duty of loyalty. He would like to know whether an action of that kind would also constitute grounds for deprivation of nationality.

Finally, it appeared to him that paragraph 5 (c) duplicated paragraph 5 (d).

Mr. YINGLING (United States of America) said that, in paragraph 4, the words "grounds recognized by the national law in force on the ... September 1961" seemed to imply discrimination against new States. Also, he did not see what was meant, in paragraph 6, by "a completely independent and impartial body". He wondered whether the reference was to a national authority or to an international body such as the International Court of Justice.

Replying to the Netherlands representative, Mr. HARVEY (United Kingdom) said that paragraph 5 had a limiting effect on the general statement of permitted grounds of deprivation contained in paragraph 4. The grounds on which nationals other than naturalized persons could be deprived of their nationality were limited to the cases enumerated in sub-paragraphs (a), (b), (c) and (d). On the other hand, in its application to naturalized persons, paragraph 4 applied without limitation of the general grounds for deprivation of nationality, since it seemed reasonable that a more exacting standard should be applied in the case of a naturalized person.

In reply to the United States representative's question concerning paragraph 6, he said that it was difficult to provide a precise definition for the independent and impartial body mentioned in that paragraph. It was his delegation's view that the body in question would be a court or other authority provided for under national law, and not an international body.

A problem admittedly existed with regard to countries which attained independence after the Convention's entry into force; its solution could be entrusted to a working group, which could be instructed to draft provisions applicable in such cases.

Mr. AMADO (Brazil), Vice-President, observed that, in those countries where there was separation of powers, it was the Judicial Power which was the

(Mr. Amado, Brazil)

symbol of impartiality. In Brazil, the cases to which paragraph 6 applied were covered by special legislation; the court of first instance of the place of residence of the person concerned had jurisdiction in actions for the revocation of nationality acquired by naturalization, and they could be instituted at the request of the Minister of Justice or the Minister of the Interior, or on the basis of information supplied by any private individual.

Mr. JAY (Canada) commended the United Kingdom delegation for the expedition with which it had submitted a text that could provide a basis for the discussion of article 8. His delegation, like the others attending the Conference, was unable to make any specific comments on the amendment for the moment. Representatives must have an opportunity for detailed study of the various texts submitted to them; it should be borne in mind that the confusion amid which the Geneva Conference had ended had been largely due to lack of time.

For the present, he wished to raise the question whether it was desirable to refer, in paragraph 5, to the individual's duty of loyalty to the State of which he was a national. Cases could arise where a person was deprived of his nationality even though he had done nothing inconsistent with that duty of loyalty; for example, a person in full possession of his physical and mental faculties could decide to renounce his nationality; the State of which he was a national should then have the right to take the necessary steps to comply with his wishes. The Canadian delegation intended to propose the addition, to paragraph 5 of the United Kingdom amendment, of relevant provisions which would not nullify the existing text.

Mr. MAURTUA (Peru) said that he shared the view of the Brazilian delegation with regard to paragraph 6, which seemed to raise doubts concerning the jurisdiction of institutions existing in certain countries. The cases to which the paragraph in question applied should be submitted to either an administrative or a judicial authority. Hence, the term "independent body" should be replaced by "competent legal authority" or simply "competent authority".

Mr. TSAO (China) pointed out that Chinese law made no provision for deprivation of nationality and that, in China, no person had ever been deprived

(Mr. Tsao, China)

of his nationality as a penalty. Nevertheless, his delegation recognized the value of article 8 and hoped that the Conference would reach agreement on it.

Two factors had to be considered in examining the question of deprivation of nationality. On the one hand, since the primary objective of the Conference was to effect the greatest possible reduction in statelessness, the provisions governing deprivation of nationality should be drafted with the maximum of precision. On the other hand, grounds on which persons could be deprived of their nationality were provided under the law of certain countries. If the Convention was to be fully effective, it must be ratified by as many States as possible; hence it must contain provisions which were in line with national law, provided, of course, that they were reasonable. The problem, therefore, was to strike a balance between the primary objective sought by the Convention, on the one hand, and the national law of States, on the other. The draft submitted by the United Kingdom was extremely useful in that connexion; his delegation might wish to comment on it in greater detail after having had an opportunity of examining it, but desired to assure the Conference that any measure designed to reduce the causes of statelessness would receive its support. At the same time, as the Secretary-General's representative had very rightly pointed out in his opening statement, the Conference should not attach undue importance to article 8.

He wished to conclude by formally requesting the Secretariat henceforth to prepare a Chinese text of any article adopted by the Conference.

The PRESIDENT said that the Secretariat would comply with the Chinese representative's request.

Mr. WIRJOPRANOTO (Indonesia) said that he considered the United Kingdom amendment to be of the utmost importance, and agreed with the Canadian representative that delegations must have time to study it very closely before taking a stand on the matter. It would, in particular, be helpful if they could consult their Governments. On the whole, his delegation endorsed the United Kingdom amendment, but it might have further observations to make.

He wished to point out that the Indonesian Government had adopted, three years earlier, a new Nationality Act which was designed to avoid cases of dual nationality.

/...

Mr. CALDARERA (Italy) said that he too planned to examine the United Kingdom amendment in greater detail with a view to determining to what extent it was compatible with Italian law. A basic objective of Italian law was the avoiding of cases of statelessness. Furthermore, article 14 of the Italian Nationality Act placed stateless persons on an equal footing with nationals in all matters relating to civil rights and military duties.

The United Kingdom amendment could be said to follow the text adopted by the Committee of the Whole at Geneva, but it contained provisions applying solely to nationals other than naturalized persons and thus drew a clear distinction between that type of national and nationals by naturalization.

Furthermore, paragraph 2 was unnecessary, for if the Government of a State discovered that a person had obtained the nationality of that State by fraud it would, as a matter of course, annul the grant of nationality.

He shared the view of the Peruvian delegation with regard to paragraph 6; the body referred to in that paragraph could be either a judicial or an administrative authority, depending on the legislation of the country concerned.

The meeting rose at 4.40 p.m.