# United Nations Conference on the Elimination or Reduction of Future Statelessness

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## Summary Records, 20th Plenary meeting

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# UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

## SUMMARY RECORD OF THE TWENTIETH PLENARY MEETING

Held at Headquarters, New York,
on Wednesday, 23 August 1961, at 3.20 p.m.

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

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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, L.81, L.82, L.83, L.84, L.85 and L.86) (continued)

Announcement of the President to the Conference

The PRESIDENT said that he had been asked by International Social Service to bring to the attention of the Conference a resolution which had been adopted by the VIIIth International Conference of Non-Governmental Organizations interested in Migration at its session on 9 August 1961. After expressing best wishes for the success of the present Conference, the resolution continued thus:

"Urges that any Convention adopted by the Conference will lead to real progress in reducing statelessness further than by the practices already adopted;

"Urges further that the Convention will include provisions for de jure or de facto stateless children to acquire nationality so that a new generation of stateless persons will not be created."

Article 8 of the Draft Convention (continued)

In view of the fact that a new draft text of Article 8 had been prepared by the Working Group appointed by the Conference (A/CONF.9/L.86), Rev. Father de RIEDMATTEN (Holy See), Mr. HUBERT (France), Mr. SIVAN (Israel), Mr. JAY (Canada) and Mr. HARVEY (United Kingdom) withdrew their delegations' amendments in respect of article 8 (A/CONF.9/L.84, L.85, L.83, L.82 and L.80 respectively) and indicated their willingness to use document A/CONF.9/L.86 as the working paper.

Mr. HARVEY (United Kingdom), speaking as the Rapporteur of the Working Group, emphasized the spirit of conciliation which had informed its discussions. The aim had been to produce a draft which would reflect the main trends of thought represented at the Conference. Hence those taking part had borne in mind not only their own views and problems but also those of other States participating in the Conference, and, indeed, those of other States not represented at it. The Group, having ascertained the general feeling of its members through a discussion of the main points arising under article 8, had appointed a sub-group to draw up a draft text. The Group as a whole had then considered the text and made some improvements. The final text had won general acceptance in the Working Group.

(Mr. Harvey, United Kingdom)

Paragraph 1 set out the basic principle of article 8. Paragraph 2 dealt with what might be termed "technical exceptions". Since article 7 entitled a State to provide in its legislation for automatic loss of citizenship in the cases which the article mentioned, it was only logical that it should also be allowed to deprive a person of his nationality in those cases. Under the system of automatic loss of nationality more persons lost their nationality than under the system of deprivation, where each case was decided on its merits. Deprivation was only to be exercised in accordance with a procedure established by law (paragraph 5). With regard to paragraph 2 (b), some legal systems stipulated that where nationality was obtained fraudulently it was void ab initio; since the nationality was never acquired, there could be no question of deprivation. Under other systems the nationality was held to be granted until the person was specifically deprived of it. The sub-paragraph would cover the case of a country which might in the future wish to change from the former system to the latter, i.e., that of formal deprivation proceedings.

Paragraph 3 covered non-technical exceptions to the principle. There had been considerable discussion as to whether or not separate grounds of deprivation of nationality should be applied to natural-born and to naturalized persons. The feeling of the Group had been that the distinction was not a happy one, and it had concluded that it was unnecessary to grant extended grounds for deprivation in the case of naturalized persons. Hence the grounds mentioned applied to both types of cases. The effect of the article was to "freeze" the grounds of deprivation at the date on which the State acceded to the Convention, and to limit them to certain specified types. Paragraph 4 provided that, while the grounds could not subsequently be extended, certain modifications and improvements could be made.

There had been no dissent from the view expressed in paragraph 5 that anyone deprived of his nationality should have an opportunity to submit his case to an independent and impartial body, although details of procedure would naturally vary from State to State.

Mr. ILIC (Yugoslavia), giving his delegation's views on the problems covered by article 8, said that it was important for the Conference to bear in mind the two aspects of the question, viz. the rights and obligations of the individual person, and the rights and obligations of the State, which protected

(Mr. Ilic, Yugoslavia)

the interests of the community. Linked with the citizen's right of nationality were certain obligations to the community; similarly, linked with the State's obligations towards its citizens was the right to require the fulfilment of certain obligations.

In the case of a person living in the territory of the State of which he was a national, the only grounds for deprivation of nationality were misrepresentation or fraud in obtaining naturalization. That did not really represent an exception to the rule, since it would merely entail an administrative measure designed to correct a previous error. The fact that a person was living within the jurisdiction and power of the State in question meant that other forms of sanction were available to the State; hence there was in that case no justification for deprivation of a validly held nationality.

Adequate grounds for deprivation of nationality could only arise in the case of a person residing abroad, outside the jurisdiction of the State concerned. His delegation therefore recognized only two genuine cases in which deprivation was justified:

(a) that of a person residing abroad and engaging in activities against the national interest of his State;

(b) that of persons residing abroad for a long period who had ceased to perform their obligations as citizens and had failed to register at the time prescribed by the law of their State.

The latter case was simply the recognition de jure of a situation de facto.

In conclusion, he said that his delegation would make every effort to co-operate in arriving at a satisfactory text for article 8, despite the fact that several of the grounds mentioned in document A/CONF.9/L.86 were not, in Yugoslavia, considered valid. He would have to request a separate vote on several of the paragraphs in the document.

Mr. JAY (Canada) said that his delegation's position was more than covered by the draft of article 8 produced by the Working Group. The text as a whole took into account considerations which were of great importance to certain countries, and he hoped that similar conferences in the future would bear in mind

(Mr. Jay, Canada)

the way in which agreement had been achieved and, in particular, the specific suggestion made by the representative of Yugoslavia.

His delegation could, therefore, accept the Working Group's text; but he wished to draw attention to one element which did not reflect the normal approach to matters covered by international Conventions of the kind now under consideration. Paragraph 3 would lay on any Government wishing to accede to the Convention and to avail itself of the rights conferred by article 8 the duty of specifically declaring its desire to retain the right to deprive a person of his nationality on certain grounds; in the view of his delegation, the same legal effect would be achieved if that requirement were omitted. The approach differed from that adopted in the case of other articles; if there was some justification for such an approach in the case of article 8, the same would apply to the articles already adopted, but it was obviously not possible to reopen discussion of the latter. His delegation felt quite strongly on the point but, unless there was a majority opinion in favour of pressing the matter to a vote, he would not take the initiative, lest it should impede progress in the work of the Conference; he would, however, support any proposal to delete the words in question. He had been very impressed by the way in which other delegations had tried to meet the point of view of countries like Canada, for which article 8 had special significance.

He understood that the whole text of article 8 would be referred to the Drafting Committee; and he suggested that the word "déchéance" in the French text of paragraph 4 should be replaced by the word "privation", which would be more in harmony with the verb "priver" used throughout the text.

Mr. MALALASEKERA (Ceylon) expressed his delegation's appreciation of the great effort made by the Working Group to draft article 8 in a form likely to obtain the widest measure of support. However, he regretted that, on the instructions of his Government, he was unable to accept the Group's text of article 8, for the following specific reasons:

(1) Paragraph 2 (a) provided that a naturalized person might lose his nationality if he had resided abroad for a period of not less than seven consecutive years specified by the law of the Contracting State and had failed to declare his

(Mr. Malalasekera, Ceylon)

intention to retain his nationality. The Ceylon Citizenship Act specified a period of five years, and Ceylonese legislation made no provision for a declaration of intention to retain nationality. A basis for agreement could be reached if the reference to a specified number of years were deleted and States were permitted to take into consideration absence over a period of years, without mention of the exact number. His delegation would also ask for the exclusion of any reference to a declaration of intention to retain nationality.

(2) The Ceylon Citizenship Act made no provision for the submission to tribunals of cases referred to in paragraph 5, with the exception of cases coming under sections 22 (1) (d) and (e) of the Act (A/CONF.9/10/Add.3, page 5).

Unless the Working Group's draft could be broadened so as to cover those two points, his delegation could not support it. In view of the obvious difficulties in establishing criteria for deprivation of nationality, it would be more profitable to concentrate on seeking a very wide and general formula, under which States would have freedom of action to legislate on the subject. His delegation approached the question in the same spirit as that in which it had objected to some of the articles already adopted, in particular articles 1, 4 and 7, which he would have liked to see reopened for full discussion at the second part of the Conference. The only practical approach would be to recognize the principle of the right of States to apply their citizenship laws and to assume that they would be applied with a sense of international responsibility. An important principle was involved. Ceylon had no problem of statelessness, and was a democratic country in which the interests of the individual were considered paramount and were adequately safeguarded by judicial and other methods. At the same time, Ceylon wished to uphold the right of every State to defend its vital interests - a right which necessarily implied the ability to withhold or to take away, from an individual the attributes of nationality if and when circumstances warranted such action. Moreover, unless the Convention was so drafted that many countries could ratify it, it might be still-born for want of a sufficient number of ratifications.

Mr. TSAO (China) said that the text of article 8 produced by the Working Group evidenced a commendable spirit of compromise. On the one hand, it listed certain permissible grounds for deprivation of nationality; on the other hand, it established the principle that Contracting States should not deprive persons of their nationality if such deprivation would render them stateless. His delegation appreciated the difficulties of drafting the article, and considered that the text represented a balanced approach which it could accept in general, subject to any further improvements which the Conference might wish to make.

He had one minor doubt concerning the use of the word "emoluments" in paragraph 3 (a) (i); the Canadian draft (A/CONF.9/L.82) had used the words "pay or pension", and he wondered whether the word "emoluments" in English and French was meant to cover precisely pay or pension or, if not, what it did in fact cover. He raised the point only because he wished to be sure of the precise meaning in various languages.

Mr. VAN SASSE VAN YSSELT (Netherlands) said that his delegation, although the Working Group's text of article 8 did not satisfy it in every respect, was prepared to accept that text in a spirit of co-operation.

Mr. YINGLING (United States of America) commented that the word "emoluments" was used in United States legislation in a broader context than that of pay or pension, and meant any kind of reward, including payment in cash or in kind or a benefit of any nature. For the present purposes, he considered it a better term than "pay or pension".

He did not wish at that stage to indicate his delegation's attitude to the Working Group's text as a whole, since there had not been enough time for its study; but he would like to raise some minor points for clarification, and in respect of drafting. He wondered whether there would be any difference in the meaning of paragraph 3 if the introductory words of paragraph 3 (a), reading "inconsistent with his duty of loyalty to the Contracting State", were deleted. The concept of the "duty of loyalty", as there stated, was not clear to him. Secondly, in his opinion the word "declaration", in paragraph 3 (b) of the English text as drafted, did not necessarily mean a declaration of

(Mr. Yingling, United States)

allegiance or any other specific type of declaration. He suggested that the meaning would be clearer if the first two commas were omitted and the wording amended to read "that the person has taken an oath or made any other formal declaration of allegiance ...". Finally, there might be some inconsistency between the words "or given definite evidence of his determination to repudiate his allegiance to the Contracting State", in paragraph 3 (b), and the text of article 7 as adopted at the first part of the Conference.

The PRESIDENT suggested that the second point raised by the United States representative might be referred to the Drafting Committee; the other points were substantive ones, which the United Kingdom representative would perhaps be able to clarify.

Mr. HARVEY (United Kingdom) agreed with the United States representative's view that the word "emoluments" meant more than merely "pay or pension". It might be argued that the latter excluded certain forms of payment.

The Working Group had attached considerable importance to the inclusion, in paragraph 3 (a), of the words "inconsistent with his duty of loyalty to the Contracting State", which acted as a limitation on the provisions immediately following them. There might be cases of services, rendered to another State, which no one could expect to be considered possible grounds for deprivation of nationality - such as humanitarian services in the event of shipwreck. The intention was to make it quite clear that the services contemplated were of the type inconsistent with the duty of loyalty. The words in question also provided protection for the individual in a number of possible cases - where, for instance, he was subjected to force majeure, or was insane and not responsible for his actions.

Mr. CALDARERA (Italy) commended the Working Group for its efforts which had resulted in a text that was generally acceptable to his delegation. In connexion with the Yugoslav representative's remarks concerning naturalization obtained by misrepresentation, he wondered whether the Convention should not perhaps establish some form of prescription in regard to acquired nationality.

He believed that definition of the term "emoluments" could be left to the discretion of the States concerned.

(Mr. Caldarera, Italy)

In his view, there would in all cases exist some court or body competent to give the fair hearing called for in paragraph 5 of the new draft article 8.

The Ceylonese representative's reference to paragraphs 4 and 5 of article 7 led him to inquire whether he was right in assuming that that article, like the other articles adopted at Geneva, could not now be reconsidered.

Mr. MALALASEKERA (Ceylon) thought that, under the Conference's rules of procedure, any article adopted at Geneva could be reopened for discussion by decision of the appropriate majority.

Mr. MAURTUA (Peru) regarded the draft article 8 prepared by the Working Group as a positive step forward, but felt that it attached undue importance to article 7, paragraphs 4 and 5. In his view, sub-paragraphs (a) and (b) of paragraph 3 of the new article 8 were more fundamental. He did not, however, propose any specific amendment in that connexion.

In paragraph 3, sub-paragraph (a) (ii), the expression "seriously prejudicial" required some clarification or definition. He thought that the three grounds for deprivation listed in sub-paragraph (b) of the same paragraph could not be regarded as distinct alternatives. The mere taking of an oath was scarcely an adequate ground in itself, as oath-taking was a very common and frequently a purely administrative formality.

In order to avoid many reservations with respect to article 8, he believed that the latter should expressly permit deprivation of nationality in the case of military service performed for another State. The concept of "rendering services" was not clear, and in that connexion he wondered what, under sub-paragraph (a) (i), the position of honorary consuls would be.

It was necessary to bear in mind, in connexion with the grounds for deprivation mentioned in sub-paragraph (a) (ii), that "conduct prejudicial to the vital interests of the State" would normally give rise to penal sanctions, and that deprivation of nationality would only be an accessory penalty imposed in the case of persons who were not natural-born citizens.

It might prove difficult for some delegations to accept paragraph 5, as certain countries regarded courts of law as an integral, not an independent, part of the machinery of the State.

Mr. YINGLING (United States of America) felt that the requirement imposed by paragraph 5 was unduly restrictive on Contracting States. In his own country, for example, a person taking an oath of allegiance to another State automatically lost United States citizenship. However, if such a person was deprived of a right which he would enjoy as a citizen, such as the right to hold a passport he could contest the denial of that right in the courts. The possibility of such a hearing, his delegation considered, was all that was required.

Mr. HARVEY (United Kingdom), speaking as Rapporteur of the Working Group, pointed out that paragraph 5 of document A/CONF.9/L.86 referred to the exercise of a power of deprivation, which was a formal act by the State. It did not refer to automatic loss of nationality, which might occur without the knowledge of the State concerned. The paragraph did not call for a court hearing in the case of automatic loss of nationality, but only where a positive initiative was taken by the State. The Working Group considered the provision an important one, and presumed that the court referred to would always take into account the particular circumstances of the case involved.

The Group had intended the term "services", in paragraph 3, sub-paragraph (a) (i), to include military service. Such service, rendered to another State, could clearly be regarded as inconsistent with the duty of loyalty.

Mr. VAN SASSE VAN YSSELT (Netherlands) said that the power of deprivation mentioned in paragraph 5 referred to the nationality legislation of a country, as a whole. What the paragraph made conditional was the exercise of that power. He believed that a procedure such as that described by the United States representative was regarded by the Working Group as meeting the requirements which the latter had laid down in the paragraph.

Mr. FERREIRA (Argentina) complimented the Working Group on the contribution it had made to the progress of the Conference's work. His delegation nevertheless had to express certain reservations concerning the Group's new text of article 8. In view of the provisions of his country's nationality legislation (A/CONF.9/10/Add.1, page 2), his delegation did not consider it appropriate for article 8 not to provide separately for natural-born and for naturalized citizens.

(Mr. Ferreira, Argentina)

The alien who acquired the nationality of a State gained certain rights, but he also assumed certain obligations, and failure to carry out those obligations should be mentioned in the article as a permissible ground for deprivation of nationality.

The meeting rose at 4.50 p.m.