United Nations Conference on the Elimination or Reduction of Future Statelessness

Geneva, 1959 and New York, 1961

Document:-
A/CONF.9/SR.21

Summary Records, 21st Plenary meeting

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.9/SR.21
11 October 1961
ENGLISH
ORIGINAL: FRENCH

UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE TWENTY-FIRST PLENARY MEETING

Held at Headquarters, New York,
on Thursday, 24 August 1961, at 10.30 a.m.

CONTENTS

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

PRESENTATION OF CREDENTIALS

The PRESIDENT, referring to rule 3 of the rules of procedure, invited representatives who had not yet submitted their credentials to do so without delay, so as to enable the President and the Vice-President to present their report to 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.86-L.87) (continued)

Article 8 of the Draft Convention (continued)

The PRESIDENT drew the attention of the Conference to the Yugoslav amendments to article 8, the text of which had just been circulated (A/CONF.9/L.87).

Mr. HEIMSOETH (Federal Republic of Germany) thanked the members of the Working Group for having drafted, in a true spirit of compromise, a new text for article 8. German law had no provision for the deprivation of nationality, even where the result would not be to render the person concerned stateless. That principle was, indeed, enshrined in the Fundamental Law. For that reason the delegation of the Federal Republic of Germany would have preferred to see article 8 limited to the provisions of paragraph 1. Being, however, aware of the difficulties of certain States which would find themselves unable to adhere to the Convention if provision was not made for at least some grounds for deprivation of nationality, it was ready, in a spirit of conciliation, to accept the text prepared by the Working Group (A/CONF.9/L.86).

His delegation thought, however, that that article was very elastic as it stood, and would be unable to agree to any further extension of the grounds for deprivation. He recalled in that connexion the observations made on the previous day by certain delegates who had expressed their inability to accept the draft because it did not coincide with certain provisions of their own nationality legislation; and he stressed that articles 1 and 4 of the Draft Convention would necessitate very substantial amendments to the German nationality legislation. He therefore hoped that other Governments, taking account of the humanitarian principles underlying the drafting of the Convention, would likewise see their way, in the interests of stateless persons, to amending certain provisions of their legislation.

Mr. HARVEY (United Kingdom) supported the text of article 8 as drafted by the Working Group. It was a compromise text which represented a happy medium between the extreme views. If any one of its provisions were amended, the balance would necessarily be upset and the Conference would find itself back where it had been previously. The United Kingdom, for its part, could have accepted a more restrictive article because, as its observations addressed to the Secretary-General (A/CONF.9/10, page 19) showed, it was ready if necessary to abandon some of the few grounds for deprivation of nationality existing in its national law. The new amendments revealed that the position of Yugoslavia was somewhat similar to that of the United Kingdom in that a more restricted article 8 would be acceptable to that country. Nevertheless, as had already been said, if the Convention was to be generally acceptable, each State should take account not only of its own difficulties and problems but also of those of other States. He therefore hoped that the Yugoslav amendments merely reflected Yugoslavia's desire to see its views formally entered in the records and that Yugoslavia would not press them to a vote if, as was likely, they did not meet with general approval.

Mr. AMADO (Brazil) said that his delegation, in coming to New York to take part in the work of the Conference, had been motivated, as at Geneva in 1959, by that same desire for international co-operation which - so far as statelessness was concerned - his country had already repeatedly demonstrated in its capacity both as member of the International Law Commission and as signatory to the Convention relating to the Status of Stateless Persons. That international attitude merely reflected Brazil's liberal legislation in that field, and the feelings of the Brazilian people.

On the subject of nationality, Brazilian legislation was very elastic, combining the jus soli and jus sanguinis principles in such a way as to ensure the complete elimination of statelessness at birth. Thus, persons born abroad of a Brazilian father or mother automatically acquired Brazilian nationality. Likewise, the only exception to the jus soli principle was the case of the children born in Brazil of alien parents who were in the service of their Government, e.g., the children of diplomats. Nor did Brazil contribute to the creation of cases of statelessness after birth since, with two exceptions to which he would refer later on, Brazilian nationality, once acquired, could not be lost by reason either of marriage with an alien or of residence abroad, or on any other grounds. In brief, loss of nationality was very rare in Brazil, and when it did occur a remedy at law was always available to the person concerned.

(Mr. Amado, Brazil)

What, however, made Brazil's position particularly delicate was that the few restrictions to the rule enunciated in article 8, paragraph 1, were enshrined in the Constitution and that it would perforce be a difficult matter to amend them.

With reference to the actual text of article 8, he congratulated the members of the Working Group, who had endeavoured to find a solution that would be acceptable to as many States as possible. Like the Canadian representative however (A/CONF.9/SR.20), he would have preferred it had the passage beginning with the words "if at the time of signature" and ending with "at that time" not been included in paragraph 3. He regarded that requirement as proof of grave mistrust towards States. Moreover, as the Argentine representative had said on the previous day, it was hardly conceivable that a State would agree to freeze its legislation and amputate its power to enact laws. The passage in question did not add anything to the effectiveness of the text, and Brazil had many misgivings about accepting it.

With regard to paragraph 3 (b), it was not clear to him how a person who had taken an oath, or made a formal declaration, of allegiance to another State could become stateless. It seemed to him that, in a case of that kind, such a person would acquire the nationality of the State to which he had sworn allegiance.

His final criticism of the Working Group's text related to paragraph 5. There again, one could see evidence of mistrust in the words "a court or other completely independent and impartial body". In Brazil, the whole procedure involving withdrawal or annulment of nationality was supervised by the courts. He wondered whether that system offered sufficient safeguards of impartiality, or whether what was envisaged was the creation of a new body to deal with such cases.

Despite those various objections which it had deemed it its duty to state, his delegation, in an endeavour to show maximum co-operation, would spare no effort in associating itself with the other delegations in the constructive spirit which had determined the calling of the Conference.

Mr. HELLBERG (Sweden) said that his Government had no difficulty in accepting article 8, since Swedish legislation contained no provision for deprivation of nationality.

Obviously the Conference, in the interests of the stateless persons, sought to make the Convention as restrictive as possible. In those circumstances it was likely that all States would be unable to adhere to it immediately. That, in particular, would be true of Sweden. However, as its representatives had already stated at Geneva, Sweden would be unsparing in its efforts to improve the lot of stateless persons, in line with the principles enunciated in the Declaration of Human Rights; it would, in particular, amend its nationality legislation on certain major points, in order to be able to adhere to the Convention at a later date.

Mr. DARON (Belgium) explained that the reason why his delegation had not submitted an amendment to the text prepared by the Working Group was that it did not wish to see article 8, which was of relatively secondary importance, endanger the future of the Convention as a whole. Belgium had already said that the Convention would be highly useful even if it did not contain an article on that point. What it would have liked was that the instrument should not, in any case, contain a clause entitling a Contracting State to deprive an individual of his nationality. After the discussions at Geneva, it had realized that that wish was impracticable and it was not therefore hostile, in principle, to the adoption of provisions entitling certain States to become parties to the Convention without in the process having to amend their legislation to an extent which they did not regard as feasible. It was indeed a fact that a theoretically perfect text which would be unacceptable in practice would be of no use to stateless persons.

In that spirit, Belgium could have accepted the provisions of paragraph 3, even though they were somewhat too general, had not the original idea of freezing the legislation at a date other than that of signature, ratification or accession been abandoned. Under the new text of paragraph 3, countries which had no provision for deprivation of nationality except in certain well-defined cases would, before becoming parties to the Convention, amend their legislation in a more comprehensive sense, by availing themselves of all the provisions of paragraph 3 (a) and (b). His delegation could not support that paragraph, which is both incompatible with the instructions it had received and inconsistent with the aim of the Conference, namely the elimination of statelessness.

Mr. ILIC (Yugoslavia), introducing his delegation's amendments (A/CONF.9/L.87), said that they were based on the principles which he had described the previous day.

Paragraph 1 proposed the deletion of paragraph 2 (a) of the Working Group's text, which was unnecessary since the case in question was already provided for under article 7.

Paragraphs 2 and 3 aimed at restricting the grounds for deprivation of nationality. The Convention had a humanitarian goal - the avoiding of statelessness - and should therefore permit deprivation only when no other sanction was possible.

Paragraph 4 proposed the deletion of certain words which appeared to cast doubt on the impartiality of the competent body. The very wording of the rest of the article indicated that justice would be administered impartially.

In Yugoslavia statelessness did not exist, and the only cases of deprivation of nationality were those provided for in paragraph 3 of the Yugoslav amendments. His delegation had submitted those amendments in the same spirit of co-operation in which, at Geneva, it had voted for a text that accorded neither with its principle nor with the laws of its country. It regretted that it could not accommodate the representative of the United Kingdom by refraining from having the amendments put to the vote: they represented the maximum compromise which it could accept.

Mr. YINGLING (United States of America) wondered whether paragraph 5 was a clear enough reflection of the thinking which the Working Group had tried to express. He considered that it had been the Group's idea, not to compel a State to act through judicial channels when it proposed to deprive an individual of his nationality, but rather to give the person concerned the opportunity of opposing that intention, as soon as he learnt of it, by taking the matter to a Court or any other impartial authority.

Mr. JAY (Canada) said that Canadian law provided for deprivation of nationality in the following cases only: fraudulent acquisition of nationality, irrefutable treason, repudiation of nationality for reasons of conscience and acquisition of a different nationality. Most of the provisions which the

(Mr. Jay, Canada)

Conference proposed to include in article 8 were therefore of no direct interest to Canada. Indeed, the great majority of States applied rules much less severe than those before the Conference. The Working Group had found itself faced with almost insurmountable difficulties; yet it had succeeded in drafting a text, general in scope, which took into account the considerations of special concern to the different countries. In those circumstances he found it difficult to understand why the Yugoslav delegation should have deemed it necessary to submit amendments (A/CONF.9/L.87) which, on the whole, were more restrictive than the text prepared by the Working Group. It went without saying that Yugoslavia's case was taken into account in the latter text. That was why, while prepared to accept in substance the provisions of paragraph 3 (b) of the Yugoslav amendment, he would have to vote against paragraph 2 of that amendment.

With regard to the United States representative's suggestion that the word "completely" be deleted from paragraph 5 of the English text prepared by the Working Group (A/CONF.9/L.86), he felt that the word was a deliberate pleonasm designed to place the accent on the protection of the individual. He would therefore abstain if the United States suggestion were put to the vote.

Finally, while the Canadian delegation keenly regretted the inclusion in paragraph 3 of a phrase which testified to a certain mistrust of Contracting States, it would submit no amendment to the text prepared by the Working Group.

Mr. ILIC (Yugoslavia) explained that the amendments tabled by his delegation were not of direct concern to his own country but stemmed from the desire for a Draft Convention which would be approved by the majority of the States.

Rev. Father de RIEDMATTEN (Holy See) asked the representative of Yugoslavia whether he did not think that his amendments might, in fact, make the Convention less easily acceptable.

Mr. ILIC (Yugoslavia) said that the Yugoslav amendments were based on principles much broader than those underlying the Working Group's text. The Yugoslav amendments, for instance, did not permit deprivation of nationality in the case of an individual who had served another State. Furthermore, paragraph 3 (b) of those amendments, which fixed fifteen years as the length of time during which an individual had to have resided abroad before he could be deprived of his nationality, was very liberal.

(Mr. Ilic, Yugoslavia)

Deprivation of nationality was a step to which the State should resort only when it had no other means of sanction, as happened in the case of individuals living abroad. In the case of persons living within its territory the State could apply other sanctions, such as deprivation of civil rights.

Rev. Father de RIEDMATTEN (Holy See) considered that paragraph 3 (b) of the Yugoslav amendment dealt with cases which were too specific. In his view, the provisions of paragraph 3 (b) of the text prepared by the Working Group, though broader in scope, met fully the points to which the Yugoslav delegation attached importance.

Mr. SIVAN (Israel) said that the text prepared by the Working Group reflected the desire of all members of the Group to find compromise provisions that would reconcile all points of view. It was both flexible and restrictive, although it took into account the demands of the different States. He would therefore ask the representative of Yugoslavia not to insist on restrictions which were not necessary to his country. For its part, Israel would support the text presented by the Working Group because it was based on humanitarian standards which Israel regarded as just. In order to abide by it, his country was ready to make any necessary changes in its own laws.

Knowing the spirit which had guided the representatives who, like himself, had served on the Working Group, he did not think that any feeling of mistrust should be read into the provision of paragraph 3 which stipulated that a declaration specifying the grounds for deprivation must be made at the time of signature, ratification or accession. Paragraph 3 listed all cases in which deprivation of nationality was authorized. Whether or not States took those cases into account would depend upon whether or not they were provided for in their national law. In view of the imperative terms of paragraph 1, it seemed only rational to specify, in paragraph 3, that the only countries which could apply the derogations authorized would be those which had made a declaration to that effect. It was thus a question in no way of mistrust, but of logic.

In conclusion, he would ask members of the Conference not to depart from the text proposed by the Working Group, as otherwise they would risk adopting a standard that would be out of keeping with their goal.

Mr. YRJÖ-KOSKINEN (Finland) said that the concept of deprivation of nationality was unknown to Finnish legislation. A Finnish citizen could lose his nationality on grounds similar to those covered by paragraph 3(b) of the United Kingdom amendment (A/CONF.9/L.80) only if he acquired another nationality. His delegation would have preferred to see the principle of deprivation of nationality excluded, States which wanted to retain it being permitted only to formulate reservations. However, in order not to hamper adoption of the Convention, the Finnish delegation would not submit any amendment to the Working Group's text.

Mr. IRGENS (Norway) said that his delegation would vote in favour of the Working Group's text, although it would have preferred it to consist of paragraph 1 only.

Mr. MAURTUA (Peru) considered that the full implication of the word "emoluments", in paragraph 3 (a) (i) of the Working Group's text, had not been taken into account. An individual residing abroad might well receive money as remuneration for technical services, for example, or under social security. In such cases the individual's duty of loyalty towards the State of which he was national was not in question. It would not be the same if the person concerned received emoluments for political or military reasons. Such a distinction was established in paragraph 3.

Furthermore, he could not accept the wording of paragraph 3 (b). In his country, the renunciation of one nationality came before the acquisition of a new nationality. The provisions of paragraph 3 (b) would tend to increase the number of cases of statelessness, since an individual who had taken an oath of allegiance to another State in order to become naturalized would find himself stateless until he had obtained his new nationality; the case would moreover still if naturalization were then refused him. He therefore proposed that paragraph 3 (b) should be worded as follows: "that the person has taken an oath of political allegiance to another State or, apart from such cases as are provided for in law, has made a declaration of allegiance to another State".

Mr. HARVEY (United Kingdom) said that the Working Group had realized that, in some cases, the fact that a person received emoluments from a foreign State should not be used as a pretext for the State of which he was a national to deprive him of his nationality. Naturally, item (i) was to be read in the context of sub-paragraph (a), and the person in question could be deprived of his nationality only if, inconsistent with his duty of loyalty, he received emoluments.

The case that the representative of Peru had in mind in connexion with the oath of allegiance taken to a foreign State was very rare. Besides, it was obvious that, before depriving the person in question of his nationality, the competent authorities of the State concerned would give due consideration to the circumstances in which the declaration of allegiance had been made. The Peruvian representative might have supposed that those countries whose national legislation laid down that the provisions of any international convention to which they acceded formed an integral part of that legislation would be obliged to deprive persons of their nationality in the circumstances set out in article 8. But it should be stressed that paragraph 3 of article 8 related to grounds for deprivation of nationality already existing in the national law, and that, moreover, the Geneva Conference in 1959 had adopted an article stipulating that the Convention should not be construed as affecting any provisions more conducive to the reduction of statelessness which might be contained in the law of any Contracting State now or hereafter in force or in any convention, treaty or agreement between two or more Contracting States (A/CONF.9/12, page 11).

Mr. AMADO (Brazil) said that the adoption of article 8 presented the Brazilian delegation with a problem of conscience. It was not that Brazilian law concerning loss of nationality was incompatible with paragraph 3 of the Working Group's draft; a Brazilian lost his nationality only if he acquired that of another State by voluntary naturalization or if he accepted a mission, employment or pension from a foreign State without the authorization of the President of the Republic of Brazil; and a naturalized Brazilian lost his nationality only if his conduct was contrary to the national interest. However, the Brazilian delegation found it difficult to reconcile article 8 with article 1 of the Convention, which did not lay down that exceptions must be specified by States at the time of

(Mr. Amado, Brazil)

ratification, signature or accession. Nevertheless, in spite of its doubts, the delegation of Brazil supported the Working Group's draft as a whole and would vote in its favour if it was put to the vote. He hoped that the vote would take place soon since article 8, however important, only constituted a very small part of the Convention.

Finally, he paid tribute to those delegations which, like those of Sweden and Israel, had informed the Conference of the intention of their Governments to bring their legislation into line with article 8.

Mr. LUTEM (Turkey) said that he also would vote for the compromise text submitted by the Working Group, although some of its provisions were foreign to Turkish law. The delegation of Turkey shared the view of the Canadian representative regarding the introductory part of paragraph 3. It also supported the amendment to paragraph 5 submitted by the delegation of the United States.

Rev. Father de RIEDMATTEN (Holy See) paid tribute to the delegations of Brazil and Canada which, despite their reservations, had expressed their intention of voting for the Working Group's draft. That attitude testified to their desire to reach a solution acceptable to the greatest possible number of States.

The wording of paragraph 3, which partly reproduced the text adopted by the Committee of the Whole at Geneva and which had been resubmitted by the delegation of the Holy See during the discussions of the Working Group, in no way implied mistrust of States. It took account of a de facto situation without passing judgement.

In reply to a request from Mr. MAURTUA (Peru) for some clarification regarding paragraph 4 of the text submitted by the Working Group, Mr. JAY (Canada) said that, while it was true that the wording of that paragraph was based on paragraph 5 of the amendment submitted by his delegation (document A/CONF.9/L.82), the draft of which it was a part had been submitted jointly and not by the Canadian delegation.

/...

(Mr. Jay, Canada)

In drawing up paragraph 4, the Working Group had had in mind the unlikely situation of a Government, after becoming a party to the Convention, wishing to recast its laws on nationality completely. When drafting the articles regarding deprivation of nationality, the Government in question might wish to adopt the same provisions as had existed in earlier legislation. Its right to promulgate new laws containing grounds for deprivation of nationality might then be disputed. Paragraph 4 eliminated the possibility of such dispute, since any country becoming a party to the Convention would retain the right to promulgate new legislation in the future and to maintain therein the provisions by which it had been bound at the time of its accession to the Convention.

Mr. MAURTUA (Peru) asked whether, after its accession to the Convention, A state would be able to promulgate new legislation concerning nationality more favourable than that in force at the time of accession.

Mr. JAY (Canada) replied that, according to his delegation's interpretation, paragraph 4 gave States the right to take new measures relating to deprivation of nationality provided that they were not less favourable than those in force at the time the Convention was signed.

Mr. FAVRE (Switzerland), supported by Mr. YINGLING (United States of America), observed that paragraph 4 constituted a source of confusion and expressed an idea which was obvious. It therefore had no place in an international convention and ought to be deleted.

Mr. JAY (Canada) said that he had made it clear in the Working Group that his delegation did not oppose deletion of the paragraph.

Mr. LUTEM (Turkey) stated that his delegation had favoured the insertion of paragraph 4 in the Working Group's draft, but would not insist on its retention.

Mr. HARVEY (United Kingdom) said that his delegation was among those which considered that paragraph 4 could be eliminated; however, certain States attached great importance to that paragraph which, in their view, indicated the way in which the Conference interpreted article 8 as a whole. Perhaps those States would be content with registering their views with regard to paragraph 4 in the summary records.

Mr. MAURTUA (Peru) considered that the words "not less favourable" seemed to prejudice the freedom of States to legislate in the future. The evolutionary process of law in general reflected the major transformations taking place in the juridical conscience of nations, and must not be paralysed. The matter was too importance for States to be content with having their views reported in the summary records of the Conference.

Mr. FAVRE (Switzerland) proposed the deletion, in the English text of paragraph 5, of the word "completely" and of the words "and impartial"; the French text should be likewise amended to read: "devant une juridiction ou un autre organisme indépendant". As the Brazilian representative had pointed out, it must be assumed that any State which had set up an independent organ for ruling on cases covered in article 8 had taken the necessary steps to ensure that the organ was impartial.

In reply to the Peruvian representative's request for clarification regarding the expression "vital interests of the State" in paragraph 3, sub-paragraph (a) (ii), he explained that it was true that the expression could be interpreted in different ways depending on the philosophical concepts of the person and the State. In the mind of the authors of the draft, the essential function of the State consisted in safeguarding its integrity and its external security and in protecting its constitutional foundations. It was acts prejudicial to that function which could justify deprivation of nationality.

On a procedural point, he asked whether the Working Group's draft would be put to the vote as a whole. The very existence of the Yugoslav amendments suggested that it would be logical to vote separately on each of the provisions.

Finally, he formally proposed the deletion of paragraph 4 of the text submitted by the Working Group.

The PRESIDENT felt that the Working Group's draft formed a whole, since it constituted a compromise between all the schools of thought. It would therefore seem to him preferable to put it to the vote as a whole; delegations could, however, by invoking the rules of procedure, request a separate vote whenever they deemed it necessary.

Mr. JAY (Canada) said that he would prefer the Working Group's draft to be voted on as a whole. He repeated his appeal to the Yugoslav representative to withdraw his amendments; he would be obliged to vote against those amendments if they were put to the vote. He reserved the right to speak again in the event that the Working Group's draft was voted on by division.

The meeting rose at 12.40 p.m.