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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE TWENTY-THIRD PLENARY MEETING

Held at Headquarters, New York
on Friday, 25 August 1961, at 10.30 a.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

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) (continued)

Article 13 (A/CONF.9/12, paragraph 21)

The PRESIDENT recalled that at Geneva article 11, the article containing the Territorial Application clause and the article on the Settlement of Disputes had been adopted subject to the right of States Parties to enter reservations in regard to them.

He asked whether the Conference was ready to agree that those three articles should be the only ones to which reservations could be made in virtue of article 13.

Mr. FERREIRA (Argentina) said that, during the first part of the Conference, his delegation had requested the deletion of paragraph 2 of article 13. Argentina had compelling constitutional and other reasons for retaining the possibility of making reservations, although in that country's case such reservations would relate only to minor points. The fear had been expressed that reservations might serve as loop-holes. That fear was, however, unfounded since Governments which did not wish to respect the Convention would simply refrain from signing it. Without wishing to make a formal proposal, he expressed the hope that the participants would be able to agree on a sufficiently broad wording for article 13, so as to permit the Convention to receive the greatest possible number of signatures.

Mr. HARVEY (United Kingdom) wished to explain his Government's position regarding reservations. When drafting the most important articles of the Convention - articles 1, 4, 7 and 8 - delegations had sought to strike a balance between two aims: the drawing up of an ideal Convention to which few States would subscribe, and the preparation of a Convention which all States would sign but which would be very exiguous in content. A certain balance had been achieved, and it would therefore be inappropriate to authorize States to make reservations to the articles which he had mentioned.

Mr. HUBERT (France) concurred fully in the view expressed by the United Kingdom representative; it was France's tradition to permit as few reservations as possible to any legal instrument. The body of rules constituting the present Convention represented a balance which would inevitably be upset if some States were able to avoid applying those rules. The French delegation could not agree that reservations to articles 1 to 10 should be allowed; of the other articles, it considered that only the three mentioned could be subject to a right of reservation; otherwise, the adoption of the Convention would amount to the meaningless acceptance of a flimsy text.

Mr. ILIC (Yugoslavia) recalled that at Geneva his delegation had submitted an amendment to article 13. Yugoslavia's position had not changed.

Mr. WALKE (Pakistan) said that, while supporting the arguments advanced by Argentina, the Pakistan delegation would not insist on the deletion of paragraph 2 of article 13.

Mr. JAY (Canada) thought that it would be unwise to authorize an unlimited number of reservations. Article 13 might take two different forms: either it could stipulate that reservations would be allowed only in respect of article 11 and of the articles on Territorial Application and the Settlement of Disputes; or it could provide that reservations to articles 1 to 10 would not be permitted, in which case it would be implied that reservations to the remaining articles could be made. For its part, the Canadian delegation did not wish article 13 to enable States to enter reservations in respect of articles 1 to 10.

Mr. MAROM (Israel) said that he would like the possibilities of entering reservations to be as limited as possible, in order that the Convention should not be robbed of all value. Although it might be possible to speak of a compromise between idealism and a sense of what was practical, as the United Kingdom representative had indicated, the Convention seemed rather to favour those States which wished to retain extensive powers with regard to deprivation of nationality. He drew attention to the observations submitted by the United Nations High Commissioner for Refugees (A/CONF.9/11) and observed that in

(Mr. Marom, Israel)

order to improve the lot of stateless persons, the International Law Commission had incorporated, in article 11 of its draft, provisions stipulating that the Contracting Parties undertook to establish an agency to act on behalf of stateless persons, as well as a tribunal which would be competent to decide any dispute between them concerning the interpretation or application of the Convention. The same article would also have stipulated that Contracting States agreed that any such dispute not referred to the tribunal would be submitted to the International Court of Justice. While the Conference at Geneva had made no provision for a special tribunal, it had adopted an article providing that States would promote the establishment of a body to which a person claiming the benefit of the Convention might apply for the examination of his claim; but it had decided that that article should be subject to a right of reservation. It had taken the same course with respect to the new article on the settlement of disputes. As a consequence, stateless persons could not hope to enjoy real international protection. While not suggesting in any way the reopening of the discussion on any article finally adopted at Geneva, the Israel delegation would like it to be laid down, in article 13 of the Convention, which had not been finally adopted at Geneva, that the article relating to the settlement of disputes was not to be subject to a right of reservation. In that way, stateless persons, who were assured of certain safeguards on the national level under the last paragraph of article 8, would also be assured of protection by an international organ. The Israel delegation urged other delegations to keep in view the humanitarian purposes of the Convention, which was designed to protect the rights of individuals, and consider carefully the possibilities of providing individuals with international safeguards for their rights under the Convention.

Mr. YINGLING (United States of America) felt that it would be as unwise to allow no reservations as to allow too many. He therefore proposed that reservations to certain articles should be permitted and that it should be stipulated, in paragraph 2 of article 13, that no other reservations would be admissible "except with the consent of all Parties to the Convention".

Mr. AMADO (Brazil) explained that the States of Latin America had, with regard to reservations, an attitude totally different from that which the United States representative had just expressed. It would therefore be difficult for them to accept that representative's suggestion.

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Mr. MAURTUA (Peru) said that article 13 in the International Law Commission's draft did not satisfy the delegation of Peru, since it did not contain provisions calculated to eliminate the conflicts to which the Convention's application might give rise. It would be preferable to stipulate, in that article, that the option of submitting disputes to the International Court of Justice should be the subject of an agreement between the Contracting Parties. Articles 5 and 8 also contained some defects. In those circumstances, and if the Convention was to have any practical value, States must be allowed the possibility of making reservations.

Mr. TSAO (China) did not think that it would be possible to reconsider the articles which the Geneva Conference had adopted and whereby it had accepted the possibility of reservations being made. The discussion could now bear only on those articles to which the Geneva Conference had not stated whether reservations would be admissible.

In reply to a question from the Rev. Father de RIEDMATTEN (Holy See), the PRESIDENT said that paragraph 1 of article 13 would not be put to the vote as the Committee of the Whole at Geneva had not approved it.

Mr. JUSUF (Indonesia) proposed the deletion of paragraph 2 of article 13.

Mr. JAY (Canada) said that there were no grounds for reconsidering paragraph 1 of article 13 since the Geneva Conference had decided not to adopt it - unless, of course, it was formally reintroduced into the discussion. As for the Indonesian proposal, it did not seem to him admissible, since the Geneva Conference had decided to accept reservations with respect to the three articles already mentioned. Finally, the suggestion made by the United States representative raised problems of a practical nature.

Mr. SIVAN (Israel) shared the doubts expressed by the Canadian delegation regarding the United States representative's suggestion. It was difficult to see when and by what procedure it would be possible to obtain the agreement of the Contracting Parties.

Mr. TSAO (China) wondered whether the International Law Commission's draft of article 13 could be used as a basis for the Conference's discussions. At the present stage, the Conference could only decide on the principle of reservations and leave it to the Drafting Committee to prepare a text in line with that decision. The United States proposal also seemed to require some elucidation.

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Mr. YINGLING (United States of America) said that he had not intended to question the Geneva decisions regarding the three articles subject to reservations. He had merely proposed that no other reservation to the Convention should be permitted without the consent of all the Contracting Parties. The application of such a provision involved no difficulty: any country wishing to become a Party to the Convention would merely have to notify the depositary of the Convention to that effect, supplying a list of its reservations. The depositary would then transmit them to the Contracting Parties and the latter would state their views.

Mr. JAY (Canada) thought that the United States representative's proposal might complicate the Convention's implementation, since it implied that every State must be in possession of the views of all the other Contracting States on each reservation.

Mr. HARVEY (United Kingdom) agreed with the representative of Canada. He also thought that it would be difficult to make reservations to the substantive articles of the Convention, certain provisions of which - e.g. paragraphs 1 and 2, and paragraphs 4 and 5, of the first article - were closely interconnected.

In order to accede to the Convention, the United Kingdom was ready to amend its nationality laws. But the inclusion in the Convention of a provision permitting reservations in a general way would detract from the effectiveness of the instrument and would compel the United Kingdom delegation to re-examine its position. In fact, he very much doubted whether his country would be able to accede to a Convention of doubtful effectiveness.

Mr. POHRIS (Federal Republic of Germany) expressed his agreement with the representative of the United Kingdom.

Mr. LUTEM (Turkey) observed that the United States proposal was in line with the classic theory of reservations, that the Latin American countries were flatly opposed to that theory, and that Canada likewise did not approve it. He therefore thought that the Conference should either hand the question over to a Working Group for solution, or agree that reservations could be made only to the three articles in question (article 11, the Territorial Application clause and the Settlement of Disputes article).

The PRESIDENT considered that the Conference should decide what reservations should be permitted, without establishing any system for applying the reservations.

Mr. YINGLING (United States of America), referring to the remark made by the representative of Turkey, said that in tabling his proposal it had in no way been his intention to support the classic theory of reservations or to take a purely juridical stand. The Conference could make any provisions concerning reservations it saw fit. He merely thought that accession to the Convention, even when accompanied by reservations, provided such reservations were not nullifying, was better than no accession.

Mr. JUSUF (Indonesia) said that the very fact of States being able to make reservations might well encourage them to become Parties to the Convention. However, since the representative of Canada considered his proposal to be inadmissible, he was ready to change it: he would base himself on Indonesian law, which aimed at preventing statelessness and permitted deprivation of nationality only in cases where such nationality had been acquired by means of a false declaration or by fraud. He therefore proposed that paragraph 2 of article 13 should be drafted as follows:

"Other reservations are admissible in so far as they do not increase statelessness in the future."

Mr. MAURTUA (Peru) said that his delegation would vote for the Indonesian amendment, since the possibility of entering reservations would make it easier for States to accede to the Convention. If there were no reservations, what could a State do if its national laws contained provisions contrary to those of the Convention?

The United States proposal, it seemed to him, would paralyse the process of ratification. He therefore considered that the task of drafting the article with a view to reconciling the various points of view should be entrusted to a Working Group.

Mr. JAY (Canada) supported the suggestion of the representative of China that the Conference should decide principles only and let the Drafting Committee put them into words. That Committee could use, as a basis, article 42 of the Convention relating to the Status of Refugees.

Mrs. BERNARDINO-CAPPA (Dominican Republic) said that, if article 13 were put to the vote immediately, her delegation would have to abstain. She supported the Peruvian representative's suggestion that a Working Group be set up to draft an article which would take into account the different views and would be acceptable to the majority.

Rev. Father de RIEDMATTEN (Holy See) said that his delegation would have to abstain when the question of reservations was put to the vote. He asked delegations in favour of the possibility of entering reservations to accept a formula which would not compromise the work so far accomplished.

Mr. AMADO (Brazil) did not think there would be much point in setting up a Working Group at that particular stage of the discussion, especially since the need for permitting reservations in a multilateral Convention was not open to question.

The PRESIDENT, in the absence of any formal proposal for the establishment of a Working Group, put the amendment proposed orally by Indonesia to the vote.

The Indonesian amendment was rejected by 16 votes to 6, with 7 abstentions.

The PRESIDENT then put to the vote the amendment submitted by the United States delegation.

The United States amendment was rejected by 11 votes to 3, with 15 abstentions.

The PRESIDENT then put to the vote article 13 as a whole.

Article 13 was adopted by 16 votes to 2, with 11 abstentions.

Article 16 (A/CONF.9/12, paragraph 22)

Mr. WALKE (Pakistan) wondered whether, given the provisions of the first paragraph of article 13 as just adopted, the wording of paragraph 1 (b) of article 16 should not be changed.

The PRESIDENT said that the Drafting Committee could take any necessary action to that end.

Mr. HARVEY (United Kingdom) thought that paragraph 2 of article 16 should be changed, to the effect that the Secretary-General would take the action indicated when six States which had entered no reservations to article 11 had deposited their instruments of ratification or accession.

Mr. TSAO (China) pointed out that, in the English text, different words were used in article 11 and in article 16 to designate the body whose establishment was to be discussed by the General Assembly. The Drafting Committee could perhaps remedy that.

Mr. JAY (Canada) said that, whatever his delegation's opinion on the formal declaration called for in paragraph 3 of article 8, it would still be logical to stipulate that the Secretary-General should communicate the names of the States making such a declaration, so that all States would know what the position was.

The PRESIDENT said that the Secretary-General would give full information to all States.

Mr. SIVAN (Israel), referring to the remark just made by the representative of the United Kingdom, proposed that the words "at the latest" be deleted from paragraph 2.

Mr. YINGLING (United States of America) entirely agreed with the representative of Israel. The Secretary-General could do nothing before the Convention had entered into force.

Mr. WALKE (Pakistan) also thought that the words "at the latest" should be deleted. Contrary to the views of the United Kingdom representative, on the other hand, he considered that the Secretary-General could perfectly well take the action called for in paragraph 2 even if only two or three of the six States which had deposited their instruments had made no reservations to article 11.

The PRESIDENT put to the vote article 16, which would be transmitted to the Drafting Committee.

Article 16 was adopted by 26 votes to none, with 2 abstentions.

Preamble (A/CONF.9/12, paragraph 26)

Mr. SIVAN (Israel) proposed that an additional paragraph reading "Mindful of article 15 of the Universal Declaration of Human Rights" should be inserted after the paragraph of the preamble beginning with the word "Acting". The provisions of that article, which he read out, seemed to him to fit in quite naturally in the preamble of the Convention under consideration.

Mr. HARVEY (United Kingdom) said that he did not think that article 15 (2) of the Universal Declaration of Human Rights was relevant to the subject with which the Conference was concerned. The Convention did not deal in any way with the right to change nationality and, with regard to deprivation of nationality, article 8 of the draft provided that that should not be an arbitrary act. Besides, as had already been said, even the question of deprivation of nationality was not one of the essential provisions of the Convention. Article 15 (1) of the Declaration was very broad in its scope and was pertinent by reason of the fact that statelessness was regarded as an evil. The purpose of the Convention as a whole was to combat that evil to the fullest possible extent, as indicated in the second paragraph of the preamble. It was not therefore necessary to repeat that. Furthermore, the provisions of the Universal Declaration of Human Rights should be interpreted subject to article 30 of that instrument. He did not think that a useful purpose would be served by unnecessarily lengthening the preamble the provisions of which would carry all the more weight the briefer they were.

Mr. SILVAN (Israel) recalled that the text of the preamble as proposed by the International Law Commission was much fuller than the text under consideration. He himself had been under the impression that certain delegations at Geneva had thought that, since the Conference had departed so far, in the substantive articles, from the International Law Commission's text, it would be cynical to retain its long preamble which enunciated many lofty ideals. The Conference had, however, gone to the other extreme. Reverting to article 15 of the Universal Declaration of Human Rights, he said that he regarded it as the fons et origo of the conclusion of the Convention and, as such, as the explanation of the second paragraph of the present preamble.

It had been pointed out that the right to change nationality was outside the scope of the Convention. Nor was it the main subject of article 15 of the Universal Declaration of Human Rights; furthermore, articles 1 and 8 of the Convention recognized that right. For all the foregoing reasons, he hoped that the Conference would agree without a vote to include in the preamble a reference to article 15 of the Declaration.

Mr. JAY (Canada) feared that a reference to article 15 of the Declaration might induce stateless persons to place greater hopes in the Convention than was warranted since, unfortunately, the Conference was dealing with an incomplete text and all stateless persons would not benefit by it.

Mr. YINGLING (United States of America) said that he too did not think that it was desirable to refer to article 15 of the Declaration. Some provisions of the Convention were incompatible with that article and, moreover, the Declaration did not have force of law. It was therefore pointless to refer to it.

Mr. MAURTUA (Peru) also recalled that the Universal Declaration of Human Rights was not binding on States. Other instruments, which would have force of law, such as, for instance, the draft covenants on human rights, were needed to enforce the provisions of the Declaration. A reference to article 15 would imply that the Convention provided for the ways and means of putting that article into effect. In that respect the Convention would then seem to be patently incomplete.

Mr. TSAO (China) recalled that, in resolution 896 (IX), the General Assembly had asked Governments whether they thought that they should conclude a convention on the elimination or the reduction of statelessness, and that they had chosen the latter alternative. It followed that the second paragraph of the preamble was concerned with the reduction of statelessness. That paragraph constituted a step forward in its context but, were it to be read in conjunction with article 15 of the Universal Declaration of Human Rights. it might seem disappointing. That was why, while appreciating the lofty motives behind the Israel representative's proposal, he did not think that it was desirable to adopt it.

Mr. SIVAN (Israel), noting that many delegations were opposed to his proposal, said that he would not press it to a vote.

Mr. HARVEY (United Kingdom) stressed that his delegation, too, fully appreciated the reasons which had prompted the Israel proposal. It fully supported the principle, and the only reason why it had been unable to support the proposal itself was that it thought that a reference to article 15 would be out of place in the preamble as it stood.

The PRESIDENT put the preamble as a whole to the vote.

The preamble was adopted by 28 votes to none, with 1 abstention.

Title of the Convention (A/CONF.9/12, paragraph 25)

The PRESIDENT put the title of the Convention to the vote.

The title was adopted unanimously.

Draft resolutions

The PRESIDENT drew the attention of the Conference to the first draft resolution in document A/CONF.9/12, paragraph 27.

Mr. DARON (Belgium) recalled that his delegation had submitted that draft resolution at Geneva for purely humanitarian ends. To illustrate its usefulness, he said that Belgium which had only 9,000 de jure stateless persons had over 70,000 persons who were officially recognized as refugees by the Office of the United Nations High Commissioner for Refugees. His delegation thought that the Conference could not ignore those persons and pressed for the adoption of the draft resolution which, in practice, was concerned exclusively with the children of refugees.

Mr. JAY (Canada) wondered whether the text of the resolution would not be better without the phrase "not enjoying the protection of a government" which was not very clear and could apply to persons in very different circumstances and not only to refugees.

Mr. YINGLING (United States of America) pointed out that, even should a government refuse protection to an individual, there was nothing to prevent another State from granting him its nationality. There was nothing in the Convention prohibiting having more than one nationality.

Mr. HARVEY (United Kingdom) pointed out that cases of de facto statelessness were both numerous and diverse and difficult to establish. The Convention dealt with the rights, strictly speaking, of easily identifiable persons. However much one might wish to ensure that as many persons as possible should acquire effective nationality, he doubted whether the detailed provisions of the Convention, even when given a generous interpretation, could be applied in

(Mr. Harvey, United Kingdom)

the case of persons who were stateless de facto. No one could say at a person's birth whether or not he would enjoy the protection of his government in later years. It was also conceivable that a person having dual nationality lost one nationality without it being known whether he would be refused the benefits of the other; in such a case it was a moot point whether article 7 or article 8 was to be applied. Another hypothetical case was that of a child who was protected at birth by the State whose national he was but who could find himself deprived of that protection at the age of ten and regain it at the age of eighteen. How could the provisions of articles 1 and 4 be applied to him? In view of that multiplicity of difficulties, he feared that, although the circumstances of persons who were stateless de facto were a matter of the greatest concern, the terms of the proposed resolution were inappropriate in relation to the Convention.

Mr. DABON (Belgium) said that his delegation had not overlooked the problems just outlined by the United Kingdom representative. It should not, however, be forgotten that the text under consideration had been submitted as a draft resolution and not as an article of the Convention.

Furthermore, in the attribution of nationality, Belgian legislation took account of the status of a person who was stateless de facto. Thus, a Belgian woman who would normally have acquired her husband's nationality, retained Belgian nationality on marrying a person regarded as a refugee, because the view of the authorities was that otherwise she would have no effective nationality.

Mr. WEIS (Office of the United Nations High Commissioner for Refugees) said that the United Nations High Commissioner for Refugees attached particular importance to the object of the draft resolution under consideration. In that context he drew the attention of the Conference to the observations submitted by the High Commissioner in document A/CONF.9/11.

The scope of the provisions of the Convention, in particular of articles 1 to 4, was not clearly defined, since their application depended on the fact that the persons concerned would otherwise be stateless. Very often it was difficult to determine a person's nationality or lack of nationality. Similarly, the distinction between persons who were stateless de jure and those who were stateless de facto was hard to determine. The international instruments relating to refugees, be it the Statute of the Office of the United Nations High Commissioner for Refugees or the Convention relating to the Statute of Refugees, did not distinguish between those who were considered de jure or de facto stateless. /...

(Mr. Weis , Office of the United Nations High Commissioner for Refugees)

To enable the refugees within the competence of the United Nations High Commissioner and, particularly, those refugees' children, to benefit from the provisions of the Convention, it was desirable that the term "statelessness" should be interpreted as broadly as possible and, consequently, that persons who were stateless de facto should be regarded as stateless de jure.

That was why the Office of the United Nations High Commissioner, prompted by the desire that the application of the Convention should enable as many persons as possible to acquire an effective nationality, was very anxious to see the Conference support the draft resolution which had been submitted to it.

The meeting rose at 1.10 p.m.