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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE THIRD MEETING

held at the Palais des Nations, Geneva
on Thursday, 2 April 1959, at 3.20 p.m.

Chairman: Mr. LARSEN (Denmark)

Secretary: Mr. LIANG, Executive Secretary of the Conference

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A list of government representatives and observers and of representatives of specialized agencies and of intergovernmental and non-governmental organizations attending the Conference was issued as document A/CONF.9/9.

A list of documents pertaining to the Conference was issued as document A/CONF.9/L.79.

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EXAMINATION OF THE QUESTION OF THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS (item 7 of the Conference agenda)(A/CONF.9/L.1, L.4, L.7 and Corr.1, L.8, L.10/Rev.1, L.15) (continued)

Draft convention on the reduction of future statelsssness (A/CONF.9/L.1) (continued)

Article 1

The CHAIRMAN drew attention to the revised joint amendment to article 1 of the draft convention submitted by the delegations of Denmark, France, Netherlands, Switzerland and the United Kingdom (A/CONF.9/L.10/Rev.1) in which a revision should be made. The sponsors had agreed that the word "conditional" in the second line of paragraph 2 should be replaced by the words "subject to one or more of the following conditions."

Mr. ROSS (United Kingdom), said that the joint amendment did not go as far as his delegation would have wished. However, since its own amendment to article 1 (A/CONF.9/L.4) was unlikely to meet with general acceptance and since it appeared that a large number of States would be able to ratify a convention containing the joint amendment the United Kingdom delegation would support it and withdraw its own amendment.

If the joint amendment to article 1 were accepted, article 4 would have to be redrafted and the United Kingdom amendment to that article (A/CONF.9/L.4) would not be moved. His delegation would probably submit a revised draft amendment to article 4.

Representatives who were looking at the joint amendment for the first time might find it rather complicated, but on examination it would be seen that the complications were due to an attempt to meet the widely different points of view of the various countries represented at the Conference and that the text contained a large number of alternatives, some of which would suit one country and some another.

Acceptance of the new draft article 1 should not result in a larger number of persons remaining stateless. While some might fail to obtain a nationality under paragraphs 1 and 2, it must be remembered that the restrictive conditions of paragraph 2 were optional. It was highly probable that by no means every State would impose a residence condition of ten years and although not all stateless persons would obtain a nationality at birth, they would have the right to a nationality during their minority. The residence condition in paragraph 4 was

much less onerous than that in paragraph 2 and had been included in order to provide a last chance of obtaining a nationality during a person's early years.

The general effect of the amendment as compared with the International Law Commission's text would be to shift the burden to some extent on to the jus soli countries, but in his view the additional burden would not be very great.

The new draft had the great merits of being likely to be generally acceptable to the Conference and to reduce considerably the number of stateless persons in the world.

Mr. HERMENT (Belgium) paid a tribute to the sponsors of the joint amendment for the work they had done in preparing the draft before the Committee. Its wording however could be improved and the use of the present tense in the French version would lead to a misunderstanding. The words in paragraph 2(b) "make the application by himself" presumably meant that the application would be made by an individual who had reached his majority; in Belgium minors could apply for nationality only through their parents or guardians.

Referring to the right of States to refus to grant nationality to persons who had acted in such a way as to endanger national security, it was his understanding that an appropriate provision would be discussed under article 8; he would later suggest an amendment to article 1 providing for such a refusal.

Sir Claude COREA (Ceylon), after thanking the sponsors of the joint amendment, said that the revision to paragraph 2 suggested by the Chairman did not improve the original text. The whole of paragraph 2 was based on the idea that a declaration had been lodged; once that had been done the provisions of paragraphs 2(b) and (c) would have to be considered. It would be illogical for the three sub-paragraphs to be separated. A State might well apply all three conditions, but if it wished to apply only one of them it could do so.

With regard to paragraph 1 (b), it was regrettable that the words "in accordance with their national law..." contained in the Swiss amendment (A/CONF.9/L.8) had been omitted from the joint amendment. He had explained at the third plenary meeting of the Conference that one of the greatest difficulties faced by his delegation in connexion with the International Law Commission's text of article 1 and certain amendments thereto was that they contemplated a declaration by an individual irrespective of whether the State had any interest in such a declaration. It would be preferable for the article to include a provision to the effect that nationality would be conferred in accordance with the national law of a contracting party.

The Swiss delegation's amendment had made some attempt to meet the difficulties of countries in the same position as Ceylon, but the joint amendment did not do so since it provided only for a declaration by an individual and made no reference to national law. The acquisition of nationality could not be made a unilateral act and his delegation would be unable to accept paragraph 1 (b) as drafted. It had therefore submitted amendments to paragraphs 1 (b) and 2 (A/CONF.9/L.15), the amendment to the latter being to replace the word "declaration" by the word "application".

Mr. IRGENS (Norway) said that he would support a text which could be accepted by the majority of delegations and which did not conflict too greatly with the principles of Norwegian law governing nationality. This could accept the joint amendment although it would call for certain changes in Norwegian law.

Mr. JAY (Canada) said that his delegation, too, could accept the joint amendment. The representative of Ceylon had read the text as meaning that the declaration required would have no relationship to national law. That was not his interpretation of it. Paragraph 1 (b) provided that nationality should be granted "upon a declaration being lodged with the appropriate authority". Whether it was called "a declaration" or an "application", the document must be lodged in the manner required by the appropriate authority. The freedom of Governments to deny such an application was circumscribed by conditions laid down in paragraph 2 and it was those conditions which Governments were asked to accept. The Canadian delegation would have preferred such conditions not to appear in the convention, but would go as far as possible towards agreeing on a text which would take account of the difficulties of certain States.

With regard to paragraph 4, under Canadian law a person was allowed to lodge a declaration up to the age of twenty-four.

The five delegations sponsoring the joint amendment deserved the Committee's thanks, and it was to be hoped that the text they had submitted would be adopted unanimously.

Mr. FAVRE (Switzerland) said that the joint amendment was a compromise between *jus soli* and *jus sanguinis* States, not a compromise between the *jus soli* and *jus sanguinis* principles.

Referring to the statement of the representative of Ceylon, he said that the new text was an improvement on the Swiss amendment. He added that, in the context, "declaration" was coterminous with "application". Paragraph 1 of the joint amendment accepted the principle that a

person had the right to obtain the nationality of the State in whose territory he was born if he would otherwise be stateless, but in order to do so he would have to fulfil certain conditions. His delegation was unable to accept the Ceylonese amendment which would have the effect of giving the State absolute discretion in the matter of the grant of nationality to stateless persons. The conditions governing the admission of such persons to citizenship should be stipulated in the convention.

Mr. LEVI (Yugoslavia) asked what was meant by the phrase "by operation of law" in paragraph 1 (a). His delegation was ready to accept the joint amendment and would withdraw its own amendment to article 1 (A/CONF.9/L.7 and Corr.1).

Mrs. TAUCHE (Federal Republic of Germany) said there was an important difference between the Swiss amendment and the joint amendment; the words "upon any person who .... did not acquire a nationality at birth or subsequently", which were included in the former, were omitted from the latter. That phrase was important and should be inserted in paragraph 2 of the joint amendment.

Mr. HARVEY (United Kingdom) agreed with earlier speakers that there was a lack of elegance in the text of the joint amendment, which perhaps, rather than the substance of the amendment, made it difficult for other delegations to accept.

The representative of Ceylon appeared to have difficulty in accepting paragraph 2 (c) because the residence qualification it contained seemed to preclude the necessity of a declaration. That was not the intention of the sponsors of the amendment. They had intended paragraph 1 (b), which called for a declaration, to be read before paragraph 2, which mentioned additional conditions such as age and residence. Stipulation of the condition of residence did not in any sense make the declaration unnecessary and in fact paragraph 2 (c) did contain a reference to the declaration.

The representative of Ceylon had also raised objections to the use of the word "declaration" and appeared to prefer the phrase used in the Swiss amendment namely "application made in accordance with their national law". In his view, there was little difference between the substance of the Swiss amendment and that of the joint amendment. It would still be possible for a State to comply with the terms of article 1, as amended by the joint proposal, even if it prescribed a special form of declaration. Indeed, most States would probably insist on a special form of declaration.

There was a doubt whether the delegation of Ceylon fully understood the implications of its amendment. It would be tantamount to adding an additional sub-paragraph providing that over and above age and residence a State could impose any conditions it wished, however liberal or illiberal they might be. His delegation would strongly oppose such an amendment and he would hope that the representative of Ceylon would not press his proposal.

With regard to the Canadian representative's comment on paragraph 4 of the joint amendment, the sponsors of the amendment had no intention of preventing a State from allowing applications for nationality before the age of twenty-three.

There was nothing to prevent a State from being more generous than had been contemplated.

The Yugoslav representative had asked what was meant by the phrase "by operation of law" in the final sentence of paragraph 1. Those words, both in line 3 of the paragraph and in line 7, meant simply "without the person concerned taking any specific action himself".

The representative of the Federal Republic of Germany, had raised the question of persons who had not been born stateless, but might still qualify for nationality under article 1. It was certainly possible that a person, having acquired a nationality at birth, and having later lost it, could acquire another nationality under article 1; but that was a very remote possibility already, and when the convention had been signed it should be even more unlikely. The more refinements that were introduced into the draft the more difficult it would be for the ordinary person to understand.

Mr. LEVI (Yugoslavia), while thanking the United Kingdom representative for his explanation of the phrase "by operation of the law", said that he still did not understand why it occurred both in sub-paragraph (a) of paragraph 1 and in the last sentence of the paragraph, which referred to parties applying the system under (b).

The CHAIRMAN explained that, in sub-paragraph (a) of paragraph 1, the phrase "by operation of the law" referred to the operation of jus soli. The use of the same phrase in the last sentence of paragraph 1 was intended to allow States to confer nationality automatically on persons who by a certain age had not made any declaration or voluntary application.

With regard to the words "declaration" and "application", "application" implied asking for something which could be refused. It was the intention of the sponsors of the joint amendment that if the conditions mentioned therein were fulfilled nationality could not be refused.

Mr. LEVI (Yugoslavia) suggested that in view of the Chairman's explanation of the phrase "by operation of law" it might be advisable to replace the words "applying the system under (b)" by the words "not applying the system under (a)".

Mr. ROSS (United Kingdom) did not think that anything would be gained by that amendment. Parties who signed the convention would either accept system (a) or system (b). Since the provision in question was an addition to system (b), it would be better to retain the existing words.

Sir Claude COREA (Ceylon) said that the Chairman's explanation of the word "declaration" confirmed his worst fears. If the word "application" had been used, parties to the convention would still have been able to refuse nationality, but it seemed that the sponsors of the joint amendment wished to exclude the right of refusal; if that were so, his delegation would strongly oppose it.

He could not avoid the conclusion that, in submitting their amendment, the five jus sanguinis countries had capitulated to the jus soli countries, for the conditions for acquisition of nationality, as set out in the amendment, were merely birth, age and residence, together with a declaration which had no significance at all since it was a unilateral act by the person desiring nationality, which the State could not refuse to grant. If the Committee were to adopt the amendment it would be reverting to the position of the Conference when considering the original draft of article 1 by the International Law Commission. If the word "application" were substituted for the word "declaration" the position would be quite different and some substantial progress would have been made.

The Canadian representative had spoken of the declaration being linked with the national law of the country concerned. That presumably meant that the declaration should comply with certain conditions. If so, why did not the joint amendment contain a specific statement to that effect, as did the Swiss amendment?

The United Kingdom representative's interpretation of the amendment submitted by Ceylon did not in the least surprise him. His delegation could not agree that a person should have the right to acquire nationality on conditions of birth, age and residence alone. The right of the State to decide what other conditions should be imposed must be safeguarded.

Mr. JAY (Canada) said that so far both the jus sanguinis and the jus soli countries had been prepared to make concessions. The delegation of Ceylon however seemed to have arrested that progress. The position of Ceylon was, briefly, that the jus soli countries could, if they wished, proceed with the reduction of statelessness, but other countries had no intention of increasing their contribution to its reduction. If such an attitude were to command general approval the discussions which had already taken place would be stultified. It was to be hoped that the representative of Ceylon would in the end be prepared to make the same concessions as other jus sanguinis countries.

The CHAIRMAN asked the representative of Ceylon to bear in mind the recommendation contained in paragraph 12 of the report of the International Law Commission on its sixth session (A/2693) that, "if Governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should be prepared to introduce the necessary amendments in their legislation".

If the Committee adopted a text which made the conferring of nationality under certain conditions permissive rather than obligatory, it would not have gone any further than the provisions of the 1954 Convention relating to the Status of Stateless Persons, article 32 of which called upon contracting parties to "facilitate the assimilation and naturalization of stateless persons".

Mr. TSAO (China) agreed, after the Chairman's explanation, that there was a substantial difference between the meanings of the words "declaration" and "application", and fully supported the proposal of the representative of Ceylon that the word "application" be substituted for the word "declaration" wherever the latter occurred in the joint amendment.

Sir Claude COREA (Ceylon) said that his Government was not unwilling to alter its laws on nationality. The laws of Ceylon had been amended many times to bring them into line with Conventions that it had ratified, but his delegation was not prepared to subscribe to a convention which rejected the principle that each State should have the right to decide whether to confer or to refuse nationality. Without that principle, States would lose all control over the composition of their peoples and their sovereignty would be impaired.

He could not lend his support to a text for article 1 which not only spoke of a declaration, without right of refusal, but also began with the words "A Party shall grant its nationality ..."

Mr. HARVEY (United Kingdom) opined that it was unimportant whether the word "declaration" or the word "application" were used in the amendment. In other contexts "application" was often used when the person or authority applied to had no right of refusal.

Mr. ROSS (United Kingdom) suggested that the representative of Ceylon might be prepared to reconsider his attitude to the joint amendment if the first words "A Party shall grant its nationality ..." were replaced by some such words as "A person born in the territory of a Party shall be entitled to its nationality ..."

Sir Claude COREA (Ceylon) said that he would gladly consider any drafting changes to the joint amendment but would not accept them if they ran counter to the principles for which his delegation stood.

Mr. HERMENT (Belgium) observed that the representative of Ceylon wished to reserve for his Government the right to decide whether to accept or refuse an application for nationality. Paragraph 2 of the joint amendment indicated some grounds on which nationality could be refused. The representative of Ceylon clearly believed that there should be other grounds, and it was for him to state what he thought they should be.

The meeting rose at 5.40 p.m.