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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE FOURTH MEETING

held at the Palais des Nations, Geneva,
on Friday, 3 April 1959, at 10 a.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) (continued)

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

Article 1 (A/CONF.9/L.10/Rev.1, L.15, L.18) (continued)

The CHAIRMAN suggested that representatives who could not accept certain amendments to article 1 of the draft convention (A/CONF.9/L.1) should merely reserve their position in regard to the article instead of proposing amendments to it. That would make the Committee's task easier and the Governments of those representatives might perhaps later find themselves able to accept whatever text was ultimately adopted.

Mr. HELLBERG (Sweden) welcomed the joint amendment by Denmark, France, Netherlands, Switzerland and the United Kingdom (A/CONF.9/L.10/Rev.1), because if it did not represent a marriage of the principles of jus soli and jus sanguinis at least it provided for their peaceful co-existence, and should help to reduce statelessness. Since in his country's laws regarding nationality, which were very liberal, the clause corresponding to sub-paragraph 2 (c) of the joint amendment was rather more stringent than the sub-paragraph, he must reserve his position in regard to the article; he had, however, already written to the appropriate Swedish authorities asking whether it would be possible to bring his country's laws regarding nationality into line with the sub-paragraph and he hoped to receive a definite answer before the end of the Conference.

Mr. TYABJI (Pakistan), recalling that at the previous meeting there had been much discussion on the word "declaration" as used in the joint amendment and that several representatives had said it was immaterial to them if the word "application" were used instead of "declaration", expressed a marked preference for the word "application" because it was more suited to the practice in Pakistan.

The CHAIRMAN said that the question of which of the two words should be used had since been the subject of informal discussion and the Chinese representative had agreed that it should be left to a drafting committee to settle the point. He himself thought that, if the word "application" were used, some such clause as "any such application may not be refused except on the grounds set out in the Convention itself" should be added.

Mr. TYABJI (Pakistan) said that he would welcome the views on that point of the representative of Ceylon.

Mr. BACCHETTI (Italy) said that paragraph 1 of the joint amendment, if standing alone, would be acceptable but that he was opposed to the other paragraphs which qualified paragraph 1 because of their very restrictive nature. Paragraph 2 laid down that the national law of a party might make the acquisition of its nationality in accordance with sub-paragraph 1(b) conditional on the declaration being lodged after the person had attained an age not exceeding eighteen years, whereas the Belgian delegation had proposed an age of fifteen or sixteen years. The inclusion of the word "normally" before the word "resident" in sub-paragraph 2(c) made that sub-paragraph more restrictive than the corresponding clause in the International Law Commission's text because it might be argued that a person was not normally resident in a country unless he had a dwelling there and was actually in the country at least once every six or twelve months. If the text of the joint amendment were adopted instead of the draft text, the period during which persons to whom it applied might automatically acquire a nationality by means of a declaration would be reduced to the years when they were eighteen to twenty-one.

It was not entirely clear at what ages the various paragraphs of the amendment would be applicable, and more particularly paragraph 3, which he supposed had been introduced as a concession by the jus soli countries. Nor was it clear what party was intended in the phrase "the national law of the Party" in the last sentence of paragraph 3; he had in mind especially cases of dual nationality. It would not be possible to apply paragraph 3 of the joint amendment to any person until he was quite old because it had first to be established by the authorities that the person concerned did not meet the conditions mentioned in sub-paragraph 2(c), and that could not be established until the periods mentioned in sub-paragraph 2(c) had elapsed. After that, it would probably take a long time to decide whether the conditions had been fulfilled.

Mr. BESSLING (Luxembourg) said that the provisions of paragraph 1 of the joint amendment should not be restricted to the extent they were by the other paragraphs of the amendment.

If paragraph 1 were adopted, there should be added to it a clause requiring parties to declare whether they intended to apply sub-paragraph (a) or sub-paragraph (b).

The International Law Commission's text for article 1 was clearly intended to apply only to persons born after its entry into force. In view of the wording of paragraph 2 of the joint amendment in particular, the text of that amendment should be redrafted so as to make it clear whether it would apply to persons who were already alive when it came into force.

It was certainly not at all clear at what age many of the clauses of the joint amendment would be applicable.

Mr. BEN-MEIR (Israel) expressed the desire to know whether other representatives were proceeding, as he was, on the assumption that the Convention would apply only to persons born after its entry into force, whatever wording was finally adopted for article 1. It was clear that the International Law Commission's text for article 1 was intended to apply exclusively to such persons, because the principal clause provided for the acquisition of nationality only at the time of birth.

There was a discrepancy between the joint amendment and the original text where he believed no change of substance was intended; for the first words of the joint amendment read "A Party shall grant ..." whereas the original text read "A person ... shall acquire". That discrepancy might have been at the root of the discord which had manifested itself at the previous meeting over the question whether States lost any of their sovereignty by assuming obligations through becoming parties to international conventions. There appeared to be no obstacle in the way of changing the first two lines of the joint amendment to read "1. A person who would otherwise be stateless shall acquire the nationality of the Party in whose territory he is born, either ... ".

There was another discrepancy between the two texts. Paragraph 3 of the joint amendment had the words "parents' nationality at the time of the person's birth", whereas the International Law Commission had obviously intended to refer to the nationality of the parents at the time when the clause became applicable, i.e. when the person reached the age of eighteen. It would be wrong to lay down in the proposed paragraph that persons should acquire at eighteen the nationality

of a parent at the time of their birth if the parent had lost that nationality and acquired another. Moreover, in such a case, the child would have practically no chance of acquiring even the parent's previous nationality, for the parents would have most probably moved permanently to another country together with the child, who would thus be prevented from fulfilling the conditions to which paragraph 4 of the joint amendment related.

He had not been convinced by the assertion at the previous meeting that the last sentence of paragraph 1 of the joint amendment served any useful purpose. It would not impose any kind of obligation on a party, nor would it derogate from the effect of any obligation undertaken by a party by virtue of article 1 or any oth article. It amounted merely to a declaration that parties might be more generous in granting their nationality in order to reduce statelessness than was provided in sub-paragraph 1(b). Such a declaration was superfluous. It would not meet any requirement of policy or legislation of any State which had made its views known to the Conference.

It was laid down in the joint amendment that the age for filing declarations covered by paragraph 2 should be fixed by the party on whose territory the child was born, whereas the provision in paragraph 4 regarding the lodging of a declaration before the person reached the age of twenty-three related to a different party. As they were different parties, there was a possibility that, since the age for filing a declaration mentioned in sub-paragraph 2(b) might be relatively advanced, the right accorded by paragraph 4 to submit a declaration to a different State might in many cases be useless. A person who in good faith believed that he would acquire the nationality of his country of birth and was denied that nationality for a valid reason when submitting his declaration might be unable to benefit from the provisions of paragraphs 3 and 4 because they were not co-ordinated with paragraph 2. Instead of specifying an age in paragraph 4, provision should be made for the declarations to which that paragraph related to be made at the latest one or two years after the nationality of the country of birth was finally and validly refused.

With reference to the oral amendment moved by the representative of the Federal Republic of Germany at the previous meeting, States applying sub-paragraph 1(b) of the joint amendment should not be able to add the further condition that the person making the declaration must have been stateless from birth until the time of filing the declaration.

If these discrepancies and defects were removed, the joint amendment would probably help to reduce statelessness, although not to the same extent as would the Commission's text, from which his delegation would part only with great regret.

Sir Claude COREA (Ceylon) said that he had submitted the first part of his amendment (A/CONF.9/L.15) to sub-paragraph 1(b) of the joint amendment because he considered it of cardinal importance that States should be free to decide who their citizens should be. His Government was far from opposed to granting Ceylonese nationality to all people who would otherwise be stateless. During the past two years Ceylon had granted Ceylonese nationality to approximately 125,000 applicants. Recently, a number of stateless persons who had come from Europe had found refuge in Ceylon and been granted Ceylonese nationality. Ceylon's laws on the acquisition of nationality were very liberal where certain necessary conditions were fulfilled.

As the second part, he had proposed the substituion of the word "application" for the word "declaration" in paragraph 2 of the joint amendment because the use of the word "declaration" would oblige parties applying sub-paragraph 1(b) to accept as nationals persons whom they ought not to be obliged to accept. It had been asserted that the two words would have the same effect. They would not. If it were true that they would have the same effect, there would be no grounds for objecting to the use of the word "application". It was not merely a matter of drafting. The word "application" would imply refusal or acceptance, whereas the word "declaration" would imply that there could be no refusal and suggest that the authorities concerned should not even check whether the person making the declaration possessed the requisite residence qualifications.

As an alternative to the first part of his amendment to sub-paragraph 1(b), he would propose the wording "under the conditions provided for by its legislation". Some representatives would be opposed to that wording because it would leave too much to the discretion of parties, but it was essential that parties to the convention should enjoy freedom of action.

Mr. HERMENT (Belgium), referring to the point raised by the representative of Luxembourg and Israel, said that it had clearly not been the intention of the International Law Commission to legislate for stateless persons born before the entry into force of the convention. It was nevertheless important that the Conference itself should place beyond any doubt that it too did not intend to legislate for such persons.

The Israel representative had made a number of most important points which should not be disregarded during subsequent discussion.

While he did not doubt the generous intentions of the Ceylonese Government, his delegation could not accept the Ceylonese amendment, which would do nothing to modify existing national legislation in respect of statelessness. He had no objection in principle to the Ceylonese proposal to substitute the word "application" for the word "declaration" so long as it was clearly understood that an application could be refused only for the reasons set out in paragraph 2 of the joint amendment.

Mrs. TAUCHE (Federal Republic of Germany) said that she shared some of the apprehensions expressed by the representative of Israel. If, as contemplated in paragraph 3 of the joint amendment, States were allowed to decide whether the national status of a stateless person should follow that of the father or that of the mother, one party might decide in favour of one parent while another party decided in favour of the other. In that event, which nationality would apply? Would the child have the right to acquire the nationality of both parents or of neither?

Mr. ROSS (United Kingdom) reiterated that the joint amendment was the result of a compromise and hence was inevitably open to criticism.

Replying to the representatives of Italy and Israel, he pointed out that the conditions contained in paragraph 2 of the joint amendment should be regarded as representing the maximum degree of stringency. It was probable that very few States would wish to apply all those conditions and consequently, from the point of view of countries like the United Kingdom which preferred a more liberal policy, the paragraph need not be considered as restrictive as might appear. Even on its strictest interpretation, however, paragraph 2 would enable a considerable number of persons not currently eligible to apply for nationality. Some cases, it was true, would fall within the purview neither of paragraphs 1 and 2 nor of

paragraphs 3 and 4, but they would probably not be sufficiently numerous to warrant an attempt to draft yet another paragraph to bring them under the jus soli principle, which might have the effect of unduly complicating the text.

The arguments of the Italian representative had not convinced him that there was any real danger that countries would be tempted to introduce less liberal legislation as a consequence of the adoption of paragraph 2.

Admittedly there was the risk pointed out by the Israel representative that as a result of the discrepancy between the ages indicated in paragraphs 2 and 4 some persons might fail to acquire a nationality, but even allowing for bureaucratic delays there should not be much likelihood that a person who had applied for one nationality at the age of eighteen would not have time to make application for another nationality before the age of twenty-three.

He appealed to all countries which, like Ceylon, had difficulty in accepting the provisions of article 1 to follow the lead of the Belgian and Swiss delegations, which had withdrawn amendments more restrictive than the provisions under discussion.

The valuable points made by the Israel representative should be taken into account as drafting amendments.

Mrs. SCHMID (Austria) requested that the two parts of the Ceylonese amendment be put to the vote separately.

After some procedural discussion, the CHAIRMAN put to the vote the first part of the Ceylonese amendment to the joint amendment.

The first part of the Ceylonese amendment was rejected by 20 votes to 4, with 8 abstentions.

Sir Claude COREA (Ceylon) said that he would withdraw the second part of his delegation's amendment.

The CHAIRMAN suggested that the choice between the word "declaration" and the word "application" - it being understood that an application could be refused only in virtue of the conditions set forth in paragraph 2 of the joint agreement - should be left to the drafting committee.

It was so agreed.

The CHAIRMAN invited comments on the Ceylonese oral amendment to substitute for paragraph 1(b) of the joint amendment the phrase "under the conditions provided for by its legislation".

Mr. JAY (Canada), said that the Ceylonese oral amendment bore the same meaning as the amendment that had just been rejected, and he would vote against it.

Sir Claude COREA (Ceylon) expressed the view that his oral amendment was narrower in scope than the rejected amendment.

Mr. ROSS (United Kingdom) moved the closure of the debate on the subject under discussion under rule 17 of the Conference's rules of procedure.

The motion for the closure was carried by 20 votes to none, with 5 abstentions.

The CHAIRMAN put to the vote the Ceylonese oral amendment.

The Ceylonese oral amendment was rejected by 19 votes to 4, with 9 abstentions.

Mr. PEREIRA (Peru) said that he had abstained from voting because he had not yet received instructions from his Government.

Mr. BACCHETTI (Italy) observed that, although a number of amendments had been submitted to the joint amendment, it had not as yet been given the status of a basic document.

Mr. JAY (Canada) proposed that the joint amendment (A/CONF.9/L.10/Rev.1) to article 1 be adopted as a basis for discussion.

The Canadian proposal was adopted by 16 votes to none, with 16 abstentions.

The CHAIRMAN invited the Committee to discuss the German amendment (A/CONF.9/L.18) to the joint amendment.

Mr. BEN-MEIR (Israel) said that it would be necessary to delete the words "at birth" in both places where they occurred in the German amendment, since it related to the provisions of paragraph 2, which was concerned with persons who had not acquired a nationality at birth.

Mrs. TAUCHE (Federal Republic of Germany) asserted that the words were necessary, since without them there would be no provision for persons who lost a nationality which they had acquired at birth.

The CHAIRMAN, speaking as the representative of Denmark, said that if the German amendment were adopted the Danish Government would not avail itself of its provisions. Danish nationality law was based on an extension of the principle of jus soli under which Danish nationality was granted to all persons brought up in the country whether born in its territory or not.

Mr. ROSS (United Kingdom) took the view that only a small number of cases would fall under the provisions of the German amendment and that it was undesirable to extend further the restrictions already contemplated. His delegation would vote against the amendment.

Mr. FAVRE (Switzerland) considered that the amendment was justified. As an illustration of the circumstances to which it might apply, one could imagine the case of a mass of refugees flooding into a country, settling there, having children, and, after a period of twenty years, being deprived of the nationality of their country of origin. Should the country which, from humanitarian motives, had received the refugees then be obliged to confer its nationality upon them and their children?

Mr. SIVAN (Israel) admitted that the phrase "at birth" might have some possible application. The attempt to include such a provision would however result in a further departure from the jus soli principle of article 1 as drafted by the Commission and his delegation was opposed to any extension of the restrictions already envisaged in paragraph 2 of the joint amendment.

Mr. JAY (Canada) said that he would vote against the German amendment, which could only increase the number of stateless persons ineligible to acquire nationality either under paragraph 2 or under paragraph 3.

Mrs. TAUCHE (Federal Republic of Germany) explained that her delegation's amendment was intended to avoid an obligation to grant German nationality being imposed upon her country as a consequence of the legislation of other States.

Mr. HERMENT (Belgium) said that in addition to the case imagined by the Swiss representative it might happen that persons migrating from their country of birth and acquiring the nationality of another country would, in the event of being deprived as a penalty of their new nationality, claim the right to re-acquire the nationality of the country in which they had been born. A proposal making such a situation possible seemed to him quite unacceptable.

The CHAIRMAN put to the vote the German amendment (A/CONF.9/L.18) to the revised joint amendment (A/CONF.9/L.10/Rev.1).

The German amendment was not approved, 9 votes being cast in favour and 9 against, with 15 abstentions.

The meeting rose at 1.10 p.m.