

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

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UNITED NATIONS CONFERENCE ON THE  
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE FIFTH MEETING

held at the Palais des Nations, Geneva  
on Friday, 3 April 1959, at 3.15 p.m.

Chairman: Mr. LARSEN (Denmark)  
later: Mr. CALALARI (Panama)  
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.19)(continued)

The CHAIRMAN invited the representative of Belgium to introduce his amendment (A/CONF.9/L.19) to the draft article 1 submitted jointly by the delegations of Denmark, France, the Netherlands, Switzerland and the United Kingdom (A/CONF.9/L.10/Rev.1). It would be recalled that that joint draft had been accepted at the previous meeting as the basis for the discussion of article 1 of the draft convention.

Mr. HERMENT (Belgium) said that in paragraph 1 of his delegation's amendment in addition to the deletion of the words "The national laws of" in paragraph 2 of the joint draft, he proposed the insertion of the word "Contracting" before the word "Party".

Paragraph 1 of the Belgian amendment to draft article 1, paragraph 2, as revised orally, was approved.

Mr. HERMENT (Belgium) said, with regard to his delegation's amendment to paragraph 2(b) of the joint draft, that in Belgium a person aged sixteen required his parents' consent for the purpose of making an application of the type mentioned.

Mr. SIVAN (Israel) suggested that the English text would be made clearer by the deletion of the word "and" at the beginning of the Belgian amendment.

Mr. HERMENT (Belgium) accepted that amendment.

Paragraph 2 of the Belgian amendment to article 1, paragraph 2(b), was approved.

Mr. HERMENT (Belgium) said that paragraph 3 of his delegation's amendment (addition of a new sub-paragraph (d)) was self-explanatory.

Mr. FAVRE (Switzerland) said that the amendment in question was properly related to article 8 since there was a natural link between a State's reasons for refusing to grant its nationality to a person and its reasons for depriving a person of the nationality it had granted to him. In that connexion, the United Kingdom and French amendments to article 8 (A/CONF.9/L.11 and A/CONF.9/L.14) were relevant. He moved that consideration of paragraph 3 of the Belgian amendment be deferred until article 8 was considered.

Mr. BACCHETTI (Italy) said that his delegation would have to vote against the Belgian amendment and would do so also in the plenary meeting. It would be wrong to discriminate on the basis of a criminal offence. The Conference was endeavouring to establish a kind of limited, autocratic system for the reduction of statelessness, and to begin by discriminating on the basis of individual merit might lead it very far. With regard to political acts, the greatest caution should be exercised and precision was essential. Moreover, it might be possible to expel the person concerned.

Mr. HERMENT (Belgium), pointing out that a stateless person could not be deported, added that under Belgian legislation neither could a person who had been granted Belgian nationality.

Mr. HUBERT (France) supported the Swiss representative's motion since the question covered in the proposed new sub-paragraph was closely linked with the provisions of article 8. The French delegation would not be able to vote on the new Belgian clause until it knew what the reactions of the Conference would be to the French amendment to article 8 (A/CONF.9/L.14).

Mr. ROSS (United Kingdom), supporting the Swiss motion, expressed the view that those States wishing a provision on the lines of the new Belgian clause to appear in the convention would not often refuse a young man nationality for reasons as grave as those mentioned, for a person aged sixteen or seventeen would hardly ever have been guilty of an overt act of disloyalty or sentenced to imprisonment. Article 8 as amended by the United Kingdom delegation (A/CONF.9/L.11) explicitly distinguished between natural-born citizens and others. Persons who had acquired a nationality under the provisions of article 1 would clearly not be natural-born citizens, and under the United Kingdom amendment a State would have the power to deprive such persons of their nationality for extreme reasons only. It was more appropriate that the question covered by the Belgian amendment should be dealt with under article 8 because the latter article contained the safeguard of recourse to a review by an independent judicial authority. If article 8 as drafted were rejected the Belgian representative could resubmit his amendment to article 1 at a plenary meeting.

Mr. HERMENT (Belgium), replying to a question by the CHAIRMAN, said that he did not wish the consideration of the Belgian amendment to be deferred; he would, however, agree to a separate vote on the two conditions contained therein.

Mr. JAY (Canada), while appreciating the spirit of the Belgian representative's statement, said that if a young man were deprived of the right to obtain citizenship because of some misdemeanour, it would lead to situations which should not be covered in a convention designed to reduce statelessness. He could not therefore accept the Belgian amendment.

Sir Claude COREA (Ceylon), supporting the Belgian representative's statement, pointed out that article 8 referred to deprivation of nationality whereas article 1 referred to the acquisition of nationality. The Belgian amendment might be made even stronger by the insertion of the words "or the public interest" after the words "national security", but he would not submit a formal proposal to that effect.

Mr. CARSALES (Argentina) suggested that the Belgian amendment should be considered also in conjunction with article 1, paragraph 4. Under the joint draft of article 1, paragraph 2, a jus sanguinis State would be permitted to impose certain limitations on its obligation to grant its nationality to a stateless person born in its territory. Paragraph 3 of the same article contained a corresponding obligation for jus soli States and the conditions on which the latter would grant their nationality were set out in paragraph 4. In the Belgian amendment a new condition was laid down only in paragraph 2. While not wishing to express a final opinion on the substance of the Belgian amendment, he considered that if it were possible for a State covered by paragraph 2 not to grant nationality the States covered by paragraph 4 should also have that right.

Mr. SCHMID (Austria) supported the Belgian amendment, explaining that his delegation had voted against the amendment proposed by the delegation of Ceylon (A/CONF.9/L.15) because it would have given too much discretion to the States concerned and limited the rights of the individual. However, the Committee should be realistic and not expect a State to grant its nationality to a person who had committed a serious offence.

Mr. VIDAL (Brazil) said that, as the Belgian amendment would upset the balance of article 1, his delegation would vote against it.

The CHAIRMAN, speaking as the representative of Denmark, said that a rule such as that contained in article 1, paragraph 1 (b) had existed in Danish legislation for more than one and a half centuries and to the best of his

knowledge the Danish authorities had never met with the type of case covered by the proposed additional sub-paragraph (d).

Mr. HERMENT (Belgium) said that there had been two cases in his country which unfortunately had proved that young persons who had been granted Belgian nationality were quite unworthy of it.

Sir Claude COREA (Ceylon) said that certain States, before admitting a person to their citizenship, wished to be satisfied that that person was worthy of the grant of nationality. The aim of the Belgian amendment was to enable States to lay down certain conditions for that procedure.

The CHAIRMAN, referring to the Swiss representative's motion that consideration of paragraph 3 of the Belgian amendment (addition of new sub-paragraph 2(d)) should be deferred until article 8 was examined, said that under rule 16 of the rules of procedure two representatives might speak in favour of and two against the motion, after which it should be immediately put to the vote.

Mr. HERMENT (Belgium) and Mr. TSAO (China) expressed their opposition to the Swiss representative's motion.

Mr. BACCHETTI (Italy) and Mr. HUBERT (France) supported the motion.

The Swiss representative's motion was carried by 11 votes to 8, with 8 abstentions.

Mr. TYABJI (Pakistan), explaining his vote, said that he had voted against the Swiss motion because he considered that the Belgian amendment should not be debated at the same time as article 8.

Mr. HERMENT (Belgium), introducing paragraph 4 of the Belgian amendment, proposed that the word "Contracting" should be inserted before the word "Party".

Paragraph 4 of the Belgian amendment, to article 1, paragraph 3, as revised orally, was approved.

Mr. HERMENT (Belgium), explained that paragraph 5 of the Belgian amendment was a drafting amendment only.

Paragraph 5 of the Belgian amendment to article 1, paragraph 4, was approved.

The CHAIRMAN put draft article 1 as amended to the vote on the understanding that it might be further amended on the basis of paragraph 3 of the Belgian text (A/CONF.9/L.19) when the Committee considered article 8.

On that understanding, the joint draft of article 1, as amended, was approved by 17 votes to none, with 11 abstentions.

Mr. LEVI (Yugoslavia) said that he had voted for article 1 as amended on the understanding that the last part of paragraph 1 would be reconsidered by the drafting committee.

Mr. SIVAN (Israel) said that he had abstained in the vote on article 1 as amended. He hoped that the drafting committee would bear in mind the remarks made by the representative of Israel at the previous meeting.

The CHAIRMAN, replying to a question by Mr. BACCHETTI (Italy), said that the drafting committee would have to bear in mind certain unsolved problems, and that the Committee's intention with respect to certain points of substance would have to be made very clear. Representatives would have an opportunity of discussing such points before the text of article 1 was referred to the drafting committee.

Mr. JAY (Canada) recalled that he had stated at the fifth plenary meeting that his delegation's attitude to certain articles would depend on the substance of article 1. He did not wish to challenge the Chairman's remarks, but his delegation would have to reconsider its attitude if changes were made to the substance of article 1.

Article 2 (A/CONF.9/L.13)(concluded)

The CHAIRMAN, speaking as the representative of Denmark, and introducing his delegation's amendment to article 2 (A/CONF.9/L.13), said that the purpose of the proposal was to bring the text of article 2 into line with the amendments to article 1 which the Committee had already approved.

If an abandoned child were found in the territory of a jus soli country, and were presumed to have been born on the territory of that country, it would eo ipso acquire that country's nationality. But if the text of article 2 as drafted by the International Law Commission remained unchanged the situation would be quite different in the case of a child found in the territory of a jus sanguinis country. In accordance with the amended text of article 1, he would have to wait until the age of eighteen before he could declare that he wished to acquire that country's nationality. The purpose of the Danish amendment was to ensure that a child found in the territory of a jus sanguinis country would have the same rights as one found in the territory of a jus soli country.

Statistics tended to show that most foundlings were not in fact children of stateless persons, but of parents who were nationals of the country in whose territory they were found; they should therefore be entitled to acquire the same nationality as soon as they were found.

Mr. HERMENT (Belgium) said that his delegation could not support the Danish amendment. If an abandoned child were found in the territory of a particular country there might indeed be a presumption that he had been born there, until the contrary were proved. If it were eventually proved, however, that the foundling had in fact been born in the territory of another country, article 1 and not article 2 should apply.

Articles 2 and 3 should be dependent upon article 1. If the Danish amendment were adopted and that dependence no longer remained, then States parties to the convention would be required to confer their nationality on persons who might later be discovered to be nationals of other States which were not parties to the convention at all.

The CHAIRMAN, speaking as the representative of Denmark, agreed that his delegation's amendment to article 2, if adopted, should be regarded as autonomous, and that it would not be appropriate to place it between articles 1 and 3.

Mr. TSAO (China) said he was quite prepared to accept the Danish amendment, but did not fully understand the reasons underlying it. There was a close connexion between article 2 and article 1: and if, in accordance with the International Law Commission's draft of article 2, a child found in the territory of a certain State were presumed to have been born on that territory, then, under article 1, that child would automatically acquire the nationality of the country in whose territory he had been found. In the Chinese delegation's view there was no substantive difference between the Danish amendment and the original draft of the International Law Commission.

Mr. BACCHETTI (Italy) agreed with the Danish representative that, since the Committee had decided to amend article 1, some change was required in article 2. The objections of the Belgian representative might perhaps be met if the text of the Danish amendment were revised to read: "A foundling found in the territory of a Contracting Party shall be considered as a national of that Contracting Party".



Mr. ABDEL-MAGID (United Arab Republic) said that his delegation supported the Danish amendment. The words "in the absence of proof to the contrary", however, should refer to the foundling's place of birth and not to the nationality which he might possess. He would therefore ask the Danish representative if he would agree to his proposal being amended to read: "A foundling found in the territory of a Party and presumed, in the absence of proof to the contrary, to have been born in the territory of that Party, shall be considered as a national of that Party". In that form, the provision might be more acceptable to the Belgian delegation.

With regard to the alleged relationship between article 1 and article 2, in his view article 2 was autonomous for it presupposed that the parents of the foundling were unknown. If the nationality of the father or mother of the foundling were known, then other provisions would apply.

Mr. SIVAN (Israel) said his delegation preferred the original draft of article 2 as prepared by the International Law Commission. There was no doubt in his mind that, whatever the provisions of article 1 might be, article 2 should be consequential upon that article; and if the Commission's draft were retained a foundling would be no worse off than a stateless person. The Danish representative had said that, unless his delegation's amendment were accepted, an abandoned child found in a jus sanguinis country might have to wait for eighteen years before acquiring a nationality. Admittedly, that that would be the result, but he failed to understand why a foundling should be placed in a better position than a stateless person. In most countries represented at the Conference foundlings in any case enjoyed government protection during their minority.

Mrs. TAUCHE (Federal Republic of Germany) said that it was very probable that a foundling was the child of nationals of the country in whose territory he was found. For that reason alone it was justifiable to place the deserted child in a better position than a stateless person.

The CHAIRMAN, speaking as the representative of Denmark, agreed with the previous speaker. Further, even if a foundling were the child of foreign parents, those parents would not be present to undertake the child's education. Instead, he would be educated in the national institutions of the State in whose territory he had been found and it was surely better that the child should acquire

at birth the nationality of that country than that he should have to wait until the age of eighteen.

Mr. BACCHETTI (Italy) repeated his belief that the amendments to article 1 called for some corresponding changes in article 2. The International Law Commission's draft of article 2 spoke of a presumption of fact whereas the Danish amendment wished to assert a state of law. If the Danish amendment were accepted, there might be a certain vacuum juris. His delegation would submit its own amendment to article 2 that the words "For the purpose of article 1" at the beginning of the article be deleted, and that the words "and shall thereby acquire the nationality of that Party" should be added at the end of the article.

Mr. HERMENT (Belgium) said that if the words "For the purpose of article 1" were deleted, the provisions of article 2 would then refer to any persons, whether they were later discovered to be nationals of States parties to the convention or not.

Mr. JAY (Canada) said that his delegation supported the Danish amendment. Since it had been introduced, however, other delegations had laid special emphasis on the link between article 2 and article 1. In its deliberations on article 1 the Committee had retreated from the principles expressed in the original draft of the International Law Commission in order to take into account the special difficulties of certain jus sanguinis States. Since article 1 had been qualified by certain limitations, they should be retained in article 2. For that reason, he would abstain from voting on the Danish amendment.

Rev. Father de RIEDMATTEN (Holy See) said that his delegation also would be compelled to abstain from voting on the Danish amendment. His instructions had been to take part in the drafting of the convention for the reduction of statelessness. He had no instructions whatsoever to discuss the problem of foundlings.

Mr. TYABJI (Pakistan) supported the Danish amendment. Under the Pakistan Citizenship Act No. II of 1951, a child found on Pakistan territory was automatically granted Pakistan nationality.

Mr. LEVI (Yugoslavia) also expressed support for the Danish amendment. The clarification given by the representative of the United Arab Republic was

of particular value. He asked if that representative would be prepared to submit a formal amendment.

Mr. ABDEL-MAGID (United Arab Republic) said that he would be satisfied if his statement on the Danish amendment appeared in the summary record.

Mr. SCHMID (Austria) said that after the explanations given by the Danish and other representatives his delegation would support the Danish amendment.

Mr. HERMENT (Belgium) said that he interpreted the words "proof to the contrary" as applying not to the place of birth but to the nationality of the foundling. He would ask the Danish representative to consider the case of an abandoned child found in Danish territory. In accordance with the Danish amendment, he would acquire Danish nationality. If, however, the child were later recognized by the mother who was not of Danish nationality, that recognition in itself would prove conclusively that the foundling was likewise not of Danish nationality, even though indisputably born on Danish territory.

The CHAIRMAN, speaking as the representative of Denmark and explaining the effects of his Delegation's amendment as applied by each of the two groups of countries said that an abandoned child found in a jus soli country would acquire the nationality of that country. If it were later discovered that the child had been born abroad and that the parents possessed another nationality, the rules of nationality by descent such as existed, for instance, in the United Kingdom would apply and the child would acquire a new nationality, namely that of its parents.

If a child found in a jus sanguinis country were later discovered to have been born in another country, that child would either acquire the nationality of the parents or if they were stateless would at the age of eighteen be qualified under the amended article 1 to acquire the nationality of the country of birth.

In either case, the child would possess the nationality of the country in which he had been found until shown to be entitled to another nationality.

Sir Claude COREA (Ceylon) said that his delegation would vote for the Danish amendment, which reproduced the exact sense of his country's law relating to foundlings.

Mr. HERMENT (Belgium) said that the Danish amendment, if adopted, would seriously alter the whole purport of the convention. His Government was quite prepared to propose amendments to Belgian law as part of a general effort to reduce statelessness but had no intention of amending the law in so far as it affected the children of nationals of other countries.

Mr. ROSS (United Kingdom) pointed out that the effect of the Danish amendment would be to avoid statelessness in certain cases. He hoped that on those grounds at least it might be acceptable to the Belgian delegation.

The CHAIRMAN declared closed the discussion of article 2 and the Danish amendment.

Mr. Calamari (Panama), Vice-Chairman, took the Chair.

The CHAIRMAN put to the vote the Danish amendment (A/CONF.9/L.13) to article 2 of the draft convention.

The Danish amendment was approved by 20 votes to 5, with 4 abstentions.

The CHAIRMAN, speaking as the representative of Panama, said that, though debarred from voting on the amendment by rule 6 of the rules of procedure, he wished to place on record that his delegation was in favour of it.

Mr. Larsen (Denmark) resumed the Chair.

Article 3 (A/CONF.9/L.4) (concluded)

The CHAIRMAN recalled that at the fifth plenary meeting the Conference had already amended the text of article 3 by substituting the word "Party" for the word "State".

Mr. HARVEY (United Kingdom) said that his delegation's object in proposing that the words "For the purpose of article 1" be replaced by the words "For the purposes of articles 1 and 4" (A/CONF.9/L.4) was merely to correct an inadvertent error in the drafting of the International Law Commission's text. If the Committee took the view that the amendment was one of form rather than substance, he would be quite prepared to withdraw it.

Mr. HERMENT (Belgium) said that he did not regard the United Kingdom amendment as one of form only. Article 3 was related specifically to article 1; but article 4 introduced a new element, birth outside the territory of a contracting party.

Mr. TSAO (China) expressed the view that article 3 should expressly apply only to birth in a vessel or aircraft on or over the high seas.

The CHAIRMAN said that the attention of the drafting committee would be drawn to the points raised by the representatives of the United Kingdom and China.

Article 3, as amended by the Conference at its fifth plenary meeting, was approved unanimously.

APPOINTMENT OF DRAFTING COMMITTEE

Mr. ROSS (United Kingdom) proposed that a drafting committee should be appointed.

It was decided to appoint a drafting committee composed of the representatives of Argentina, Belgium, France, Israel, Panama and the United Kingdom.\*

The meeting rose at 6.10 p.m.

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\* The Drafting Committee elected the representative of Panama as its Chairman.