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ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE THIRD PLENARY MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 25 March 1959 at 3 p.m.

President: Mr. LARSEN (Denmark)

Executive Secretary: Mr. LIANG

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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 agenda) (continued)

Draft convention on the reduction of future statelessness (A/CONF.9/L.1) (A/CONF.9/L.2, L.4, L.6)

Article 1

The PRESIDENT said that in conformity with the decision taken at the previous meeting, the text which would form the basis of discussion was the draft convention on the reduction of future statelessness prepared by the International Law Commission (A/CONF.9/L.1).

He proposed that consideration of the preamble be postponed until after certain substantive provisions had been discussed.

It was so agreed.

The PRESIDENT invited debate on article 1 of the draft convention.

Mr. HERMENT (Belgium) said that his Government was reluctant to accept the provision laying down the principle of automatic citizenship by virtue of birth (article 1, paragraph 1), although it might be acceptable if applied to the child of stateless persons, provided that the child had resided for a number of years in the country of birth. A child who had acquired the nationality of the country of birth might, for example, in cases where the father was an alien, move to the father's country, acquire that country's nationality and receive his entire education there. It was unacceptable that in such a case the child should have the nationality of the country of birth as well.

It was true that the phrase "who would otherwise be stateless" in article 1, paragraph 1, was intended to exclude the children of parents already possessing a nationality, but it would be very difficult in practice to ascertain whether or not a child was eligible for nationality under the legislation of the country of origin of its parents. Cases of double nationality might easily arise in that way. His Government therefore would propose an amendment to article 1 which would enable a child to acquire the nationality of the State in which it had resided for a number of years without however conferring upon that child the automatic right to that nationality by virtue of birth (A/CONF.9/L.2).

Mr. HARVEY (United Kingdom) said that his delegation approved the underlying principle of article 1, paragraph 1, and article 4 of the draft convention, namely that nationality should be acquired from birth. The numerous applications for British nationality received by his Government on behalf of persons under eighteen years of age demonstrated that the need was felt to

establish nationality at an early age. In countries in which personal status was based on nationality and not domicile, it was particularly important that a person should be able to acquire nationality as early as possible.

Although United Kingdom nationality law was based on jus soli, his delegation understood the viewpoint of countries which followed jus sanguinis and it was therefore prepared to accept the residence qualification stipulated in article 1, paragraph 2. If however, a very close connexion with the country of birth were insisted upon, the contribution of the article to the reduction of statelessness would be gravely impaired, inasmuch as most persons having such a connexion were in any case qualified to acquire the nationality. If the delegations wishing to insist on the maintenance of a close connexion with the country of birth would state the minimum requirements acceptable to them, it would be possible to see whether sufficient scope remained to preserve the effectiveness of the article. An illustration of the hardship which might occur was the case of a child whose father was transferred to an overseas branch of his firm and maintained a home there throughout part of the child's minority. Although such a child could not be said to have been normally resident until the age of eighteen years in the territory of the State of nationality, in these circumstances he should be entitled to preserve the nationality, provided that he was normally resident in the territory of the state in question at the age of eighteen.

Although it was quite reasonable that a person should lose a nationality acquired in accordance with the convention if, at the age of eighteen, he opted for and acquired a different nationality (paragraph 2), there was no reason to limit the application of the provision to cases in which the new nationality was acquired by option. The question would be more appropriately considered in connexion with article 8, in which it should be clearly stated that a person who had acquired a nationality by virtue of the convention would lose that nationality if he acquired a different nationality whether before or after the age of eighteen years.

It was essential that a person should be required to declare his intention of retaining his nationality within a brief period after attaining the age of eighteen years in order to ensure that the responsible authorities were in a position to make an effective investigation of his claim respecting normal residence in the territory.

In the light of the considerations he had referred to, his delegation proposed certain amendments to paragraphs 2 and 3 (A/CONF.9/L.4). Among the reasons for requiring a declaration within, say, twelve months of the persons's attaining the age of eighteen years was that questions of military service obligations and the possibility of marriage arose at about that age.

Sir Claude COREA (Ceylon) said that countries whose nationality laws were based on jus sanguinis would have difficulty in accepting the provisions of the article 1, which was based on jus soli, In order to avoid infringement of the sovereign right of States to determine which persons should be admitted to their nationality, paragraph 1 should be amended so as to confer upon persons born in the territory of a particular State not the nationality of that State by automatic operation of law but the right to acquire that nationality. He therefore proposed that the words "shall be entitled to acquire" be substituted for the words "shall acquire" in the paragraph in question.

In paragraph 2 the stipulation of normal residence allowed excessive latitude of interpretation. A person might be absent for fourteen or fifteen years from the country of his birth and yet claim "normal" residence in it.

Unless paragraph 2 were supplemented by a provision expressly recognizing the right of the State to lay down further conditions governing the preservation of nationality, great difficulties would be put in the way of countries desirous of giving stateless persons the right to acquire their nationality.

The PRESIDENT, speaking as the representative of Denmark, took the view that the provisions of the article were artificial. They would confer nationality automatically at birth in accordance with the principle of jus soli, a principle which would be quite unacceptable to some countries. Moreover, at the age of eighteen years, which was precisely the age at which the possession of a nationality became of supreme importance, a person ran the risk of again becoming stateless. Paragraph 3, furthermore, would confer upon him the nationality of one of his parents at the very time when his legal bonds with his parents were being loosened.

His delegation also found unacceptable the provision in paragraph 3 under which, if the persons were of different nationalities, the nationality of the father would prevail over that of the mother. In the case of a child of divorced parents, the effect of that provision would be to confer on him the nationality of a father who might have had no effective influence on the child

during the greater part of the child's life. A nationality in which neither the person concerned nor the State had any real interest was no better than statelessness. In the view of his delegation, a child born while his parents were residing for a short time in a particular State should acquire the nationality of the parents and not the nationality of that State. If that principle were ignored, neither the nationality of the parents nor the nationality of the child could be said to be fully effective. It was to remedy some of the defects of the draft to which he had drawn attention that the Danish delegation was submitting certain amendments to the article (A/CONF.9/L.6).

As to the amendment to paragraph 1, while it was highly artificial to confer the father's nationality upon an illegitimate child, it was necessary to lay down some rule governing the case of such children. An illegitimate child should therefore acquire the mother's nationality and a legitimate child the father's.

The idea underlying the Danish amendment to paragraphs 2 and 3 was that, if a person had not acquired a nationality by birth or otherwise by the age of eighteen, he should acquire the nationality of the country in which he had been brought up.

Mr. JAY (Canada) emphasized that the Conference was concerned with the reduction of statelessness and not with the drafting of nationality laws.

At the previous meeting he had referred to the principle of State sovereignty stressed by the representative of Ceylon, but had expressed the hope that it would not be given undue prominence. If the principle were taken into account in article 1, the question of reducing statelessness would be relegated to a secondary position.

The Belgian amendment (A/CONF.9/L.2) seemed to be designed to preserve statelessness up to the age of fifteen or sixteen years, whereas the article as drafted left open the possibility of statelessness from the age of eighteen. The amendments proposed by the United Kingdom delegation did much to avoid that possibility.

His delegation would have preferred paragraph 1 to stand without amendment. Whether it would be able to accept the amendments submitted would depend on the turn taken by the discussion, but it was to be hoped that there would be no radical departure from the provisions of that paragraph, which by conferring nationality at birth did much to reduce statelessness.

Mr. LEVI (Yugoslavia) said that although the article of the Commissions's draft was not entirely in accordance with existing Yugoslav law

regarding nationality he could accept it, but would consider amendments thereto. The Belgian amendment did not appear to be far removed from his delegation's attitude. The Danish delegation's views regarding the last sentence of paragraph 3 were broadly acceptable. His delegation was submitting an amendment (A/CONF.9/L.7) which would overcome the difficulties to which attention had been drawn.

Mr. BACCHETTI (Italy) said that, even though Italy was a jus sanguinis country, he agreed with the remarks of the United Kingdom, for children should have a nationality from birth, especially for reasons connected with problems of inheritance, and should have the right to choose their nationality when capable of exercising such a right, if there were any choice. The arguments advanced against the rigid application of the jus soli principle were not without foundation, but it should be remembered that the article mainly referred to ordinary cases, not to the relatively uncommon case of children whose parents frequently changed their country of residence. A person who did not acquire the nationality of a country until the age of eighteen years would probably not be as good a citizen of that country as a person who had acquired that nationality at birth; school children who were not nationals of the country of residence were profoundly affected by their alien status.

Mr. ROSS (United Kingdom) said that the Conference appeared to be discussin two separate questions: first, whether the article should be based primarily on the principle of jus sanguinis or on that of jus soli; secondly, the time when persons to whom the article applied should acquire a nationality. As to the second question, the proposals made could be divided into three categories: first, those - which reflected the views of the International Law Commission and the United Kingdom delegation - under which persons to whom the article referred would automatically acquire a nationality at birth and their retention of that nationality would be subject to the fulfilment of certain conditions when they were about eighteen years old; secondly, proposals such as that submitted by the Belgian delegation under which the persons in question would automatically acquire a nationality around the age of eighteen subject to the fulfilment of certain conditions; and thirdly, proposals such as that put forward by the representative of Ceylon, under which such persons would not acquire any nationality at birth and would acquire a nationality around the age of eighteen only if the state to which they applied for naturalization approved their application. He was strongly opposed to proposals in the third category; the

Conference had been convened with a view to reducing statelessness and such proposals would place persons to whom the article applied very much at the mercy of States.

Mr. TSAO (China) said that his Government would have no difficulty in accepting the article. It could accept it even if it consisted only of paragraph 1, although the law of his country regarding nationality was primarily based on the principle of jus sanguinis Admittedly, there were difficulties over paragraph 1 described by other representatives, but paragraphs 2 and 3 should provide adequate safeguards.

The adoption of the Belgian amendment would weaken the convention, for it would have the effect of continuing the statelessness of some children until the age of fifteen or sixteen years. There was no objection to the substance of the United Kingdom amendment, but it was too complicated for a multilateral agreement and its adoption might well make it more difficult for some States to become parties to the convention.

Mr. HERMENT (Belgium) said that it was true that under the text proposed by the Belgian delegation children might remain stateless until the age of fifteen or sixteen; yet surely that solution was preferable to that proposed by the International Law Commission under which persons who had had a nationality from birth might in certain circumstances become stateless on attaining the age of eighteen years. Furthermore, it was preferable to the United Kingdom proposal under which persons who had had a nationality from birth would become stateless at eighteen unless they made a declaration of their intent to retain that nationality. The possession of a nationality between the ages of fifteen and eighteen was far more important than under the age of fifteen. The purpose of his delegation's amendment was to enable young persons to acquire the nationality of the country in which they were established by means of a simplified procedure.

Sir Claude COREA (Ceylon) said that article 1, paragraph 1, of the International Law Commission's text conflicted with the right of every State to determine who should be nationals of the State. The Conference could not ignore that right and the convention should therefore specify that a person could not acquire the nationality of a State unless that State expressly accepted him as a national.

The PRESIDENT, speaking as the representative of Denmark, agreed with the representative of Ceylon that each State had the right to decide who should be

nationals of that State, but it would not be incompatible with that right if the convention provided that persons who fulfilled certain specified conditions should automatically become nationals of a State party to the convention or if a State undertook, by becoming a party, to grant to persons who would otherwise be stateless the right to its nationality. The nationality laws of many countries provided that certain persons automatically acquired nationality. The Danish Nationality Act contained several provisions enabling persons who were not nationals of Denmark to acquire Danish nationality by virtue of a declaration which did not need the concurrence of the authorities.

Mr. RIPHAGEN (Netherlands) said that the law regarding nationality of his country was based primarily on the principle of jus sanguinis, but in the interests of a reduction of future statelessness, he would accept paragraph 1 if there were sufficient support for it and if it were laid down in the article that persons acquiring a nationality by virtue of that paragraph should retain it only if they did not acquire a different nationality, either voluntarily or involuntarily, and if there were some genuine link between such persons and the State concerned, such as that resulting from normal residence in the territory of that State.

He would not express a definite opinion on paragraph 2 until after he had studied carefully all the amendments put forward.

Paragraph 3, should be amended by the addition of a clause enabling a person who lost one nationality to acquire another before attaining the age of eighteen. Under the International Law Commission's text, provision was made only for the possibility of such a person's acquiring a new nationality at the age of eighteen.

Mr. HUBERT (France) said that his delegation would submit an amendment (A/CONF.9/L.5/Rev.1) that would steer a middle course between the proposals under which the persons to whom paragraph 1 referred would acquire a nationality at birth and those under which such persons would acquire a nationality when they were about eighteen years old.

The PRESIDENT, speaking as the representative of Denmark, said that it was illogical to argue, as did some representatives, that persons to whom paragraph 1 applied should have a nationality before they reached the age of eighteen years and sumultaneously to defend texts - such as paragraphs 2 and 3 - under which, in effect, persons who had had a nationality from birth might become stateless at the age of eighteen.

The words "the nationality of one of his parents" in paragraph 3 were not clear. Did they mean the nationality of one of the parents at the time of birth of the person concerned or the nationality of that parent at the time when the person reached the age of eighteen? Paragraph 3 was unacceptable because it was unreasonable to lay down in effect that a State must accept as a national at eighteen a person who could not be a national of that State before reaching that age.

The jus soli States would obviously continue to grant their nationality to persons born in their territory, even if the article were finally adopted in the form proposed by the Danish delegation. It was to be hoped that those States might be persuaded to agree to the application of the principle of jus sanguinis for the purposes of the article.

Mr. HARVEY (United Kingdom) said that it was better for children to have a nationality provisionally than to be stateless. If the United Kingdom amendment to the article were adopted, only very few of the persons who had acquired a nationality at birth by virtue of paragraph 1 would lose it at the age of eighteen and only because they had not taken steps to preserve it.

His delegation has considered the possibility of submitting an amendment to paragraph 3 with a view to making the words "the nationality of one of his parents" explicit but had decided that such an amendment might make the text unnecessarily complicated. He interpreted the phrase to mean the nationality of one of the parents at the time of the person's birth or, in the case of a posthumous child, the father's nationality at the time of his death.

Mr. BACCHETTI (Italy) said that it was true that paragraph 1 provided for the acquisition of a nationality at birth and paragraphs 2 and 3 for the possible loss of that nationality at the age of eighteen years. He would prefer the article to consist only of paragraph 1, but had not submitted a formal proposal to that effect because such a proposal would have little chance of being accepted.

Mr. VIDAL (Brazil) said that under Brazil's nationality laws any person born in Brazil who would otherwise be stateless possessed Brazilian nationality; accordingly, there were no cases of statelessness attributable

to Brazilian legislation. Article 1 should be so worded as to be acceptable to both *jus sanguinis* and *jus soli* countries, but it should not be forgotten that the purpose of the Conference was to reduce statelessness. He had been impressed by the argument that every person should have a nationality from birth. Statelessness was a worse hardship for persons under fifteen years of age than for persons who were older. He feared that large numbers of children both of whose parents were stateless would themselves be stateless too, unless paragraph 1 were adopted unconditionally.

The meeting rose at 5.30p.m.