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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE FIFTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 31 March 1959, at 10.15 a.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)(continued)
Article 1 (continued)

The PRESIDENT said that, since a new draft of article 1 was expected to be submitted shortly by a group of delegations, further discussion of the article in plenary would be deferred until the text had been circulated.

Article 2 (A/CONF.9/4)

The PRESIDENT, speaking as the representative of Denmark, said the principle laid down in article 2 of the draft convention was probably acceptable to all delegations, but, since it was expressed in terms of pure jus soli, he proposed that it should be amended in conformity with the corresponding provision (article 4) of the Danish Government's draft convention (A/CONF.9/4). The great majority of foundlings were born in the territory of the State in which they were found and were the children of nationals of that State and not of stateless persons; hence it would be wrong to apply to all foundlings rules applicable to the children of stateless persons. In respect of foundlings, assumptions had to be made. In jus sanguinis countries it was generally assumed that they were children of nationals of the State in which they were found, and in jus soli countries that they had been born in the territory of the State in which they were found. In both jus sanguinis and jus soli countries, foundlings were generally brought up by the State in whose territory they had been found; they should therefore be given the nationality of that State until it was proved that the assumptions on the strength of which they had been given the nationality of that State were incorrect. If it were proved that those assumptions were incorrect, the normal rules, i.e. those relating to children who were not foundlings should be applied.

Sir Claude COREA (Ceylon) said that article 2 as drafted by the International Law Commission was dependent on article 1; it merely raised a presumption that foundlings were born in the territory in which they were found, whereas the Danish Government's draft article provided for the granting of a nationality to foundlings. He would suggest that further consideration of article 2 be deferred until the substance of article 1 were known.

Mr. JAY (Canada) said that it was certainly difficult to deal with article 2 without knowing what would be the substance of article 1.

Mr. ABDEL-MAGID (United Arab Republic) said that the Danish Government's draft article was preferable to the Commission's text. For humanitarian reasons, foundlings should be presumed to have been born in the State in which they had been found and to be the children of nationals of that State.

Mr. HARVEY (United Kingdom) agreed with the representative of Ceylon that it would be difficult to deal with article 2 before it was known what would be the substance of article 1 for in the Commission's text the two articles were interdependent. By contrast, the Danish draft provision concerning foundlings was self-contained and as it had the added advantage of being very liberal might be accepted provisionally. Although he welcomed that text, he would not vote for it unless he were satisfied that it would be acceptable to a large number of States.

Mr. RIPHAGEN (Netherlands) said that a defect of the Danish Government's text was the presupposition of the necessity of making an assumption regarding the country of birth of every foundling to which the article would apply. What would happen if it were established that a foundling, although of unknown parents, had been born in a country other than that in which he was found? The words "in the absence of proof to the contrary" might well render the text inapplicable to such a child.

The PRESIDENT, speaking as the representative of Denmark, said that the Danish draft provision did not refer to the place of birth of foundlings. If, for example, it were established that a foundling found in Danish territory had in fact been born in the territory of a neighbouring State, under that draft provision the child would nevertheless be a Danish national.

Mr. HERMENT (Belgium) said that, according to the Danish Government's draft article, contracting parties which were jus sanguinis countries would have an obligation to treat as their nationals foundlings, wheresoever born, who were found in their territory.

Mr. TSAO (China) said he could accept either the Commission's draft article 2 or the Danish Government's draft article 4. His country's law regarding nationality did not make any distinction between children whose parents

were unknown and children whose parents were stateless. He suggested, however, that the discussion of article 2 be deferred until a decision had been taken on article 1.

It was so agreed.

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

Mr. HARVEY (United Kingdom) said that the principle of article 3 was entirely acceptable to his delegation, although it proposed the substitution of the word "Party" for the word "State" and of the words "for the purpose of article 1 and article 4" for the words "for the purpose of article 1" (A/CONF.9/L.4). Since article 3 related to article 1 it would, in effect, apply only to children born in vessels or aircraft belonging to parties, but his delegation was proposing the first of those amendments in order to dispel any idea that the convention contained clauses applicable to States which were not parties. It proposed the second amendment, because, if that amendment were not made, a child born in a vessel or aircraft belonging to a party would be covered by article 4 as well as by article 1 as qualified by article 3, for such a child would not have been born "in the territory" of any party. Presumably, it was the intention of the Commission that such a child should be covered by articles 1 and 3 but that it should not have any rights by virtue of article 4.

The PRESIDENT, speaking as the representative of Denmark, agreed that the convention should not contain any provisions applying to States which were not parties. The corresponding clause (article 8) in the Danish Government's draft spoke of "Contracting States".

Mr. HERMENT (Belgium) said the article should certainly be so worded as to apply to parties only, but it should not be subordinated to article 4, as proposed by the United Kingdom delegation, because such an amendment would make it necessary to endeavour to establish the paternity of every illegitimate child to whom article 3 applied.

Mr. RIPHAGEN (Netherlands) said that he had always looked on article 3 as a clause constituting an exception to article 1 in that it would prevent that article from being applied to a child born in a vessel belonging to a contracting State in the territorial waters of another State or to a child born in an aircraft belonging to a contracting State over the territory or territorial waters of another State.

The PRESIDENT, speaking as the representative of Denmark, said that the Netherlands representative had raised an important point. He had previously considered article 3 only as an extension of the principle laid down in article 1 and as applying only to vessels and aircraft in or over the high seas. Perhaps the words "on the high seas" should be added to article 3.

Mr. TSAO (China) said that article 3 was surely meant to apply only to birth on board a vessel or aircraft on or over the high seas. An express provision to that effect should be added.

Mr. BACCHETTI (Italy) agreed with the representative of China.

Sir Claude COREA (Ceylon) said it was difficult to deal with article 3 because it was dependent on article 1. He agreed that the word "State" should be changed to "Party", because otherwise the article might prevent children born in vessels or aircraft of a non-contracting State from acquiring the nationality of one of the parties.

Mr. CARASALES (Argentina) thought that the words "on the high seas" should be inserted in the article itself.

Mr. de SOIGNIE (Spain) asked what would be the status of children born in warships in the territorial waters of a party.

Mr. JAY (Canada) said that the points which were being discussed were very minor and very difficult ones and should find no place in the convention lest it became too complicated.

Mr. HERMENT (Belgium), agreeing with the Canadian representative, said that he was certain that the Commission, in drafting the article, had purposely made no distinction between vessels on the high seas and vessels in territorial waters. In some cases it might be very difficult to decide whether a child to whom the article applied had been born on the high seas or in territorial waters.

Mr. RIPHAGEN (Netherlands) explained that he was not advocating any change in the Commission's text of the article; he had been arguing against the amendment proposed by the United Kingdom delegation.

Mr. ROSS (United Kingdom) said that there was no need to make a distinction in the article between a child born on the high seas and one born in territorial waters, for a child to whom the convention would apply would, if born on a vessel in the territorial waters of a party, either acquire the nationality of that party or be covered by article 4.

Mr. LIANG, Executive Secretary, said that he had followed very closely the debate in the International Law Commission on the draft under discussion. He did not think the Commission had used the word "State" as opposed to the word "Party" in order to place obligations on States which were not parties.

The Majority of States considered their territorial waters as part of their territory for most purposes. With respect to the minority of States which took a different view, article 3 meant that a person born on board a vessel in the territorial waters or on board an aircraft over the territorial waters or territory of such a State would - if he would otherwise be stateless - acquire the nationality of the State to which the vessel or aircraft belonged.

Mr. RIPHAGEN (Netherlands) said that the Commission's text of article 3 should be approved without change because, in his opinion, a child born in a ship or aircraft belonging to a non-contracting State should be covered by article 4 rather than by article 1. Such a child would be covered by article 4 if article 3 were not amended, being deemed not to have been born on the territory of a party.

The PRESIDENT said the convention could hardly stipulate that a child born in the vessel of a non-contracting State should be deemed to have been born on the territory of that State, for article 1 would not affect children born on the territories of non-contracting States.

Mr. ROSS (United Kingdom) thought that the effect of the United Kingdom amendment to article 3 would be precisely that desired by the Netherlands representative. A child who was born in a vessel or aircraft not registered in a contracting State would come under the provisions of article 4. The United Kingdom amendment did not attempt the inappropriate task of laying down which nationality the child should have, but it made it quite clear that the child would not be deemed to have been born in the territory of a contracting party; accordingly, article 4 would become operative automatically.

Mr. JAY (Canada) agreed with the United Kingdom representative that the term "Party" was the logical one to use in the first three articles. Article 4 dealt with the quite distinct category of persons not born on the territory of a party.

Mr. SIVAN (Israel) thought that the somewhat subtle distinction drawn by the Netherlands representative might have some importance. It was desirable

that article 3 should be so worded as to bring as many cases as possible within the scope of article 1, which would be more fundamental than article 4.

Mr. CARASALES (Argentina) pointed out that in the Spanish text of article 3 the word "State" was qualified by the adjective "contracting".

Sir Claude COREA (Ceylon) said that the first three articles were interrelated for they all dealt with persons born in the territory of a party. Article 4 however was concerned with the quite distinct category of persons not born on the territory of a party. The intention of the International Law Commission was quite evident from that arrangement of the provisions. It would not be logical to attempt in article 3 to legislate for non-contracting States.

The PRESIDENT said that, in view of the Spanish text of article 3 and of the logical connexion between the first three articles, the Commission's intended meaning in article 3 was beyond doubt.

Mr. RIPHAGEN (Netherlands) said that, whether or not the drafting of the French and English texts was in error, they could not be rejected out of hand. Article 3 provided for a legal fiction, and the use of the word "Party" would narrow its application.

Mr. HARVEY (United Kingdom), in reply to a question from the PRESIDENT concerning the United Kingdom amendments to article 3 (A/CONF.9/L.4), said that his delegation moved that in article 3 "Party" should be substituted for "State" in each place where it occurred. He was willing that a separate vote be taken on that particular amendment.

The United Kingdom proposal was adopted by 23 votes to 2, with 5 abstentions.

The PRESIDENT invited comments on the other United Kingdom amendment to article 3.

Sir Claude COREA (Ceylon) said that he would have difficulty in admitting in article 3 a reference to article 4 because, whereas the first three articles were interrelated, article 4 was quite distinct.

Mr. HERMENT (Belgium) agreed with the representative of Ceylon.

Mr. JAY (Canada) said that he failed to see that the United Kingdom amendment made any contribution to the text as a whole. If, however, it were to be admitted in article 3, he did not see why a reference to article 4 should not also be introduced into article 2.

Mr. HARVEY (United Kingdom), replying to the Canadian representative, said that there was a real distinction between the cases contemplated in articles 2 and 3 respectively, since the difficulty of determining territorial attachment did not arise in the case of a foundling.

The effect of article 3 was to extend the application of article 1 to persons born on board vessels or aircraft, with a consequent reduction in the number of cases falling under the provisions of paragraph 4. If article 3 stood as drafted, a person might be eligible for a nationality under both articles 1 and 4. The purpose of the United Kingdom amendment was to eliminate that overlap.

Mr. JAY (Canada) observed that in any event every article of the draft convention would be subject to interpretation in the light of all the other articles. He did not wish to oppose the United Kingdom amendment but would abstain from voting on it.

Rev. Father de RIEDMATTEN (Holy See) requested that no vote be taken on the United Kingdom amendment until final agreement had been reached on articles1 and 4.

The PRESIDENT said that, since the United Kingdom amendment was essentially a drafting amendment, he would prefer not to put it to the vote.

Mr. ROSS (United Kingdom) said that his delegation would not press for a vote on that amendment.

Article 4

Mr. LEVI (Yugoslavia) said that his delegation would have great difficulty in accepting the final sentence of the article, which conflicted with the principle of the equality of rights of both parents.

The PRESIDENT, speaking as the representative of Denmark, said that it was not clear from the text at what point the child would acquire the nationality of one of the parents. If the intention was that the child should acquire the nationality at birth, then the condition of normal residence was not applicable. The condition must in fact govern not the acquisition, but the preservation of nationality. The second sentence of the article should be amended in that sense.

Mr. ROSS (United Kingdom), inviting attention to the United Kingdom amendment (A/CONF.9/L.4) to article 4, said that his delegation was prepared to

accept the underlying principle of the article, even though that would involve amending United Kingdom law. The observations of the previous speaker concerning the condition of normal residence were to the point, but, in order to avoid hardship, nationality should not be lost by the automatic operation of the law. For example, a person might not discover that he was stateless until an advanced age, and not only he but his descendants might suffer.

Further, a clear distinction should be made between the position of legitimate and that of illegitimate children. Since article 4 was closely dependent upon article 1 he would not press for a vote on his delegation's amendment until a final decision had been reached on article 1.

The PRESIDENT suggested that the Yugoslav representative's difficulty might be solved if the parties were left free to decide which parent's nationality should prevail. Although it was desirable to avoid multiplying cases of dual nationality, a country should not be prevented from conferring nationality through the mother, even though the father were a national of one of the parties.

Mr. HERMENT (Belgium) said that under Belgian law an illegitimate child could acquire Belgian nationality through the mother only if recognized by her.

Mr. BACCHETTI (Italy) said that Italian law on that point was similar to Belgian law. One way out of the difficulty would be to prescribe that the child should acquire the nationality of the parent recognizing the child.

The PRESIDENT thought that, while that course might solve the difficulties of some countries, it would create difficulties for countries not imposing conditions of recognition.

Mr. JAY (Canada) said that under Canadian law the father's nationality prevailed in the case of legitimate, the mother's nationality in the case of illegitimate children. If article 1, as finally adopted, created at the age of eighteen a whole new group of the category of persons dealt with in article 4, his delegation's difficulty in accepting the latter would be greatly increased. He would prefer further discussion of article 4 to be deferred until final agreement had been reached on article 1.

Mr. CALAMARI (Panama) pointed out that article 4 applied only to children one of whose parents possessed a nationality. If statelessness were to be effectively reduced, children both of whose parents were stateless should not be overlooked.

A specific period, perhaps five years, of continuous residence prior to an application for the preservation of nationality would be preferable to the condition of "normal" residence stipulated in paragraph 2 of the United Kingdom amendment.

The Yugoslav representative's objection to the provision under which the father's nationality prevailed over that of the mother was pertinent. Under Panamanian law, both parents enjoyed equal rights. The difficulty might be removed if the article provided that the child should acquire the nationality of the parent responsible for its education and upbringing.

The PRESIDENT, speaking as the representative of Denmark, proposed that the words "A person who under article 1 would not acquire the nationality of a contracting Party, and who would otherwise be stateless" should be substituted for the opening words of paragraph 1 of the United Kingdom amendment.

Mr. ROSS (United Kingdom) thought that the proper context for the Danish representative's amendment was article 1, paragraph 3. The United Kingdom delegation intended to submit a further amendment to article 1 having the same object.

The PRESIDENT, speaking as the representative of Denmark, explained that his amendment was meant to cover the case of birth in a country which based its legislation on a modified jus soli. It was immaterial to him under which particular article his suggested amendment was considered.

Mr. HERMENT (Belgium) recalled that his delegation had submitted an amendment (A/CONF.9/L.3) to article 4 providing for a child to acquire, by a simplified procedure from the age of sixteen [fifteen] years, the nationality of of the party of which one of his parents was a national.

The meeting rose at 12.50 p.m.