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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE SIXTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 31 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) (continued)

Article 1 (A/CONF.9/L.4, L.5/Rev.1, L.8, L.9) (resumed from the fifth meeting)

Mr. FAVRE (Switzerland) explained that the amendment (A/CONF.9/L.8) to article 1 of the draft convention submitted in his delegation's name represented the combined opinions of the delegations of jus sanguinis countries which had met informally after the fourth plenary meeting of the Conference. Had it been drafted by the Swiss delegation alone it would have been different in many respects, but it came so close to expressing his delegation's views that he was prepared to introduce it as a basis for discussion.

The amendment dealt only with paragraphs 1 and 2 of the article, since paragraph 3 had not been discussed at the meeting of delegations of jus sanguinis countries. It offered States parties to the convention the choice between two courses: to grant nationality on the basis of jus soli, either ipso jure or on fulfilment of certain conditions, a course which would be more attractive to countries anxious to safeguard their existing social and political structures. The conditions were application by the person concerned and a period of residence. There was no intention whatever of preventing countries which favoured jus sanguinis or countries whose nationality laws were complex in other respects from being more generous in granting nationality. The proposed second course represented merely the minimum which the convention was to require of all contracting parties.

Application for nationality was an extremely important condition, for no one would wish to impose a nationality on a person against his will. The jus sanguinis countries had discussed at length how and by whom application should be made. In some countries, it could be made by young persons themselves, in others only by their legal representatives and in others by a legal representative acting in the name of the child. As a compromise, it had been provided that application should be made in accordance with the national law of the contracting party.

With regard to the time when application should be made, it appeared that in many countries applications were made by or on behalf of persons who had not reached the age of eighteen, and the authors of the amendment were not opposed to that practice. The point they wished to establish was that once a person had reached the age of eighteen a State was obliged to accept his application.

In the third line of paragraph 1 (ii) of the amendment, the words "at the latest" had been accidentally omitted, and should be inserted immediately before the words "in the year ....". There were two advantages in including that provision in the amendment. First, a prospective applicant would have a whole year after attaining his majority in which to make up his mind whether he wished to take the nationality of the country in whose territory he was born. Secondly, there would be a time limit after which a State was no longer obliged to grant an application for nationality.

The period of residence had been fixed at ten years because that was the normal period of education. The jus sanguinis countries had discussed whether the qualifying ten years should be the ten years immediately preceding the submission of the application for nationality; but, since a young person might have to travel abroad to complete his education, it had been decided to stipulate only that the ten years should include the five years immediately preceding application.

Many countries would have preferred article 1 to include some reference to assimilation within the community of the country concerned and to moral and spiritual worthiness for the acquisition of nationality. In that connexion, attention had been drawn to the difference of opinion between States with regard to article 8. A number of countries were not in favour of that article; others, like his own, supported it, and under Swiss law it was impossible to deprive a person of his nationality, whatever offence he might have committed. The question had arisen whether the country of birth should not be given the right to deny its nationality to persons whom it might subsequently deprive of it, but the members of the drafting group had thought it better not to confer nationality in the first instance than to grant it on grounds of jus soli and then withdraw it on grounds of moral unworthiness. It had been decided, however, to discuss refusal to confer nationality during consideration of article 8 and, if necessary, to revert to article 1 in order to amplify it.

The PRESIDENT congratulated the delegations of jus sanguinis countries on combining their proposals in a single amendment.

Mr. TSAO (China) asked, if the Swiss amendment was put before the Conference as representing the views of all the jus sanguinis countries, what was the status of the other amendments already submitted? Which of them were withdrawn, and which were still to be considered?

The PRESIDENT asked whether the Conference would now wish the Swiss amendment to be treated as a basic document. That would mean that the other amendments would become amendments to the Swiss amendment, which would necessitate some change in the rules of procedure.

Mr. JAY (Canada) observed that the fewer documents before the Conference the better. Some consideration, however, should certainly be given to the Netherlands amendment (A/CONF.9/L.9).

Mr. RIPHAGEN (Netherlands) said that he would welcome consideration by the Conference of other amendments to the article, particularly that submitted by his own delegation.

Mr. ROSS (United Kingdom) said that he would be interested to hear an explanation of the Netherlands amendment, after which he would introduce his delegation's amendment (A/CONF.9/L.4).

Sir Claude COREA (Ceylon) pointed out that any amendment already circulated must be considered by the Conference unless it had been formally withdrawn by the delegation submitting it. He suggested that the sponsors of all amendments to article 1 be invited to explain their amendments or to state whether or not they wished to withdraw them. Some would undoubtedly be withdrawn, and the Conference could then proceed to discuss the article in the light of the amendments that remained.

Mr. HUBERT (France) agreed with the representative of Ceylon on that point. While fully appreciating the work done at the informal meeting of jus sanguinis countries, he could not accept without reservation the amendment introduced by the Swiss representative. He had no intention, for the moment, of withdrawing the revised French amendment (A/CONF.9/L.5/Rev.1).

Mr. HERMENT (Belgium) announced that in the light of the discussion he would withdraw his delegation's amendment (A/CONF.9/L.2). He would revert to the question of the right of refusal to confer nationality when article 8 was being discussed.

Mr. BACCHETTI (Italy) observed that under rule 30 of the rules of procedure the Conference was required to consider first the amendment furthest removed in substance from the original proposal. Hence it was necessary only to decide which amendment was furthest removed from the substance of the original proposal, namely, the International Law Commission's draft of article 1 and to proceed forthwith to consider it.

The PRESIDENT observed that it was extremely difficult to decide which of the amendments already submitted was furthest removed in substance from the International Law Commission's original draft. Many of the amendments were exceedingly liberal in some respects and equally restrictive in others.

Sir Claude COREA (Ceylon) pointed out that rule 30 of the rules of procedure applied to voting on amendments and not to consideration of them.

The Belgian amendment had already been withdrawn and it was highly probable that it would be followed by others. If all delegations submitting amendments were asked whether they wished to press their amendments or not, that would make it clear exactly how many amendments remained for consideration.

Mr. ROSS (United Kingdom) said that he did not intend to withdraw his delegation's amendment but would reserve the right to request a vote on it at a later stage. It obviously had low priority for consideration since it was closer then other amendments to the International Law Commission's original draft.

For the moment, he would only enunciate the three or four main points for which his delegation stood. First, he hoped that the final text of article 1 would assert the right of stateless persons to acquire a nationality as early as possible, at birth if that were feasible, or at any rate during minority. Secondly, a person's right to apply for nationality should not be hampered too much by onerous conditions of residence. Thirdly, it was undesirable for the Conference to agree on a provision which automatically conferred nationality on a young person if certain conditions of residence were fulfilled. The persons concerned would not in fact know whether the conditions were actually fulfilled, unless application were made when the facts were fresh. Lastly, it was to be hoped that the Conference would agree to include paragraph 3 of the International Law Commission's draft in the final text of the article. The principle of that paragraph was retained in the Netherlands amendment. Were the authors of the Swiss amendment also in agreement with that principle?

If a vote were taken on the proposal that the Swiss amendment be adopted as a basic document, his delegation would abstain, because it preferred the International Law Commission's draft. But, if the Swiss amendment was adopted as a basic document, his delegation would, in a spirit of co-operation, continue its efforts to secure agreement on article 1.

Mr. BESSLING (Luxembourg) believed that there was, in fact, an objective criterion for judging which of the amendments was furthest removed in substance from the original proposal. Both the International Law Commission's text of the article and the United Kingdom amendment proposed that nationality be conferred at birth. The Netherlands amendment contemplated the possibility of conferring nationality at birth in certain circumstances if application were lodged by the child's legal representative. The Swiss amendment, on the other hand, provided for the conferring of nationality only at the age of eighteen and was thus clearly furthest removed in substance from the original proposal.

Mr. HUBERT (France) asked the Luxembourg representative where he would place the revised French amendment.

Mr. BESSLING (Lusembourg) replied that he would place it between the United Kingdom and the Netherlands amendments.

Mr. JAY (Canada) said that his delegation, like those of the other jus soli countries, fully understood the difficulties of the jus sanguinis countries and their desire to reach agreement among themselves on the maximum concessions they could accept. Every retreat however from the provisions of paragraph 1 as drafted by the International Law Commission would mean transferring more of the burden of reducing future statelessness from the jus sanguinis countries to the jus soli countries.

The Netherlands amendment represented an admirable compromise between the interests of the two groups of countries and the Netherlands representative should be given an opportunity to introduce it formally.

Mr. RIPHAGEN (Netherlands), introducing his delegation's amendment (A/CONF.9/L.9), said that to a certain extent it resembled that submitted by the French delegation. Under the Netherlands amendment, a child who would otherwise be stateless and who was born in the territory of one of the contracting parties would acquire the nationality of that party provided he himself or his legal representative lodged an application with the appropriate authority.

It had emerged from the discussion that certain States considered that there should be a maximum age for making application for nationality. That point was covered by paragraph 2 (a) of the Netherlands amendment, and the person applying for nationality would have at least one year in which to lodge his application.

Paragraph 2 (b) contained a residence requirement and resembled similar provisions in the French and United Kingdom amendments. The Netherlands amendment, however, included a proviso that the period of residence required should not exceed five years. Paragraph 4 contained conditions concerning the age by which an application for nationality must be submitted and the period of residence required.

The Netherlands delegation maintained its amendment, which it considered more liberal than that of the Swiss delegation.

Rev. Father de RIEDMATTEN (Holy See) supported the suggestion of the representative of Ceylon that there should be a general discussion of the various amendments before the Conference in order that they might be compared and co-ordinated, but it was not necessary to adopt one of the amendments as a basic text. It would be helpful if the Conference first discussed paragraphs 1 and 2 of the article together and paragraph 3 afterwards.

Mr. FAVRE (Switzerland), replying to a question by the United Kingdom representative, said that his delegation would accept the principle in article 1, paragraph 3 of the United Kingdom amendment and considered that the differences between the Netherlands and Swiss amendments could easily be removed.

Mr. ROSS (United Kingdom) moved the adjournment and proposed that a generally acceptable text for article 1 be prepared at an informal meeting.

It was so agreed.

The meeting rose at 4.30 p.m.