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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE NINTH PLENARY MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 15 April 1959, at 3.15 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 AND REDUCTION OF FUTURE STATELESSNESS (item 7 of the agenda) (continued)

Draft convention on the reduction of future statelessness (A/CONF.9/L.40 and Add.1-4 L.42) (continued)

Article 1, paragraph 2 (A/CONF.9/L.18, L.47, L.54) (continued)

Mr. MEYER (Switzerland) pointed out that his delegation's amendment to article 1, paragraph 2 (A/CONF.9/L.47) was similar to the amendment submitted by the Federal Republic of Germany (A/CONF.9/L.18) which had not been approved at the fourth meeting of the Committee of the Whole Conference as the result of an equal vote, except that the Swiss amendment did not contain the words "or subsequently".

Among the States unlikely to sign the convention, there were several which permitted their nationals to renounce nationality, even if they did not possess another nationality. It would be possible, under the draft convention, for nationals of those countries born on Swiss territory to obtain Swiss nationality at the age of eighteen, by renouncing their original nationality and becoming voluntarily stateless.

Switzerland was extremely generous to the stateless child of a Swiss mother and a foreign father. If such a child was stateless at birth, it was usually granted full nationality; if it had been a foreign national by birth but had become stateless later, it could still acquire Swiss nationality by naturalization. The fathers of such children often deliberately caused them to become stateless after birth, so that they could acquire Swiss nationality by naturalization - a procedure which his country could not tolerate.

The rejection of his delegation's amendment would be regrettable for he would then be unable to propose to his Government that the convention be signed and ratified. It might be said that it was unwise to add a further condition to the paragraph, but the addition proposed by his delegation was essentially preventive, and it was optional. States granting nationality on the basis of jus soli would not need to apply it.

Logic might demand that the condition of statelessness at birth should also be introduced in paragraph 1(b), but his delegation did not wish on grounds of logic alone to prevent other countries from being more generous than its own, and was making no such proposal. It would not, of course, be opposed to the introduction of the same condition in paragraphs 3 and 4 of the article.

Mrs. TAUCHE (Federal Republic of Germany), endorsing the comments of the Swiss representative said that she wished to re-submit her delegation's amendment to article 1, paragraph 2 on the grounds that the additional words "or subsequently" were essential. A person born on German territory might emigrate with his parents to another country, acquire the nationality of that country and later be deprived of it; if he returned to the Federal Republic of Germany, under paragraph 2 as it stood he could not be refused German nationality Her Government did not wish to be obliged, without option of refusal, to confer nationality on persons already deprived of the nationality of another country.

Mr. WILLFORT (Austria) said that his delegation strongly supported both the Swiss amendment and that submitted by the Federal Republic of Germany.

The PRESIDENT put to the vote the amendment to article 1, paragraph 2, submitted by the Federal Republic of Germany (A/CONF.9/L.18).

The amendment was adopted by 13 votes to 6, with 11 abstentions.

Mr. MEYER (Switzerland) accepted the PRESIDENT's suggestion that the adoption of that amendment made it unnecessary to vote on the Swiss amendment.

The PRESIDENT put to the vote article 1, paragraph 2, as amended.

Article 1, paragraph 2, as amended, was adopted by 17 votes to none, with 10 abstentions.

Article 1, additional paragraph (A/CONF.9/L.44)

The PRESIDENT, speaking as the representative of Denmark, said that the purpose of his delegation's proposal to introduce a new paragraph between paragraphs 2 and 3 (A/CONF.9/L.44) was to include in the convention the provisions of article 15 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws. His delegation did not think that there was any need for the legitimate child of a marriage in which the father either was stateless, or possessed a nationality which could not be conferred upon his child at birth, to remain stateless until the age of eighteen, if the mother had a nationality which could be conferred upon the child.

Mr. LEVI (Yugoslavia) disliked the use of the words "legitimate" and "illegitimate" in the convention: might it not be better for the Danish delegation to refer to "a child born in wedlock"?

The PRESIDENT, speaking as the representative of Denmark, accepted the Yugoslav representative's proposal, though he thought that "a child born in wedlock" would still have to be translated as "un enfant légitime" in the French text.

Mr. RIPHAGEN (Netherlands) said that there was a difference of substance between the article 15 of the 1930 Convention and the new paragraph proposed by the Danish delegation. Article 15 of the 1930 Convention stated that: "Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State." From that it would appear that the legitimate child of a father who possessed a nationality which could not be conferred on his child at birth, would become stateless: for there was no explicit obligation on the country whose nationality the mother possessed to confer its nationality on the child.

He would therefore propose that the words "and if the father at the time of birth was stateless" be added at the end of the proposed new paragraph.

Mr. LEVI (Yugoslavia) said that he would oppose the Netherlands sub-amendment. It was unwise in that context to re-open discussion on the respective priority of the father's and mother's nationality.

The PRESIDENT, speaking as the representative of Denmark, said that he could not accept the Netherlands sub-amendment, the consequences of which would be that the legitimate child of a father possessing a nationality which was not automatically conferred on his child at birth would remain stateless until the age of eighteen.

The PRESIDENT put to the vote the Netherlands oral sub-amendment to the additional paragraph proposed by the Danish delegation.

The Netherlands oral sub-amendment was rejected by 10 votes to 4, with 15 abstentions.

The PRESIDENT put to the vote the additional paragraph to article 1 proposed by the Danish delegation (A/CONF.9/L.44).

The additional paragraph to article 1 was adopted by 19 votes to 2, with 11 abstentions.

Paragraph 3 (A/CONF.9/L.53, L.54)

Mr. BACCHETTI (Italy) said that under the amendment submitted jointly by his delegation and those of France and Israel (A/CONF.9/L.53) the second sentence of paragraph 3 would be deleted. It was clear that in the circumstances contemplated by the sentence a contracting State could not decide whether the child concerned should have the nationality of State A or State B; it was for each State to decide for itself whether to confer its nationality on a person who applied for it and the matter could not be decided by a third party.

Nor could it be argued that the sentence in question would tend to reduce statelessness. Statelessness would remain so long as there were negative conflicts between the nationality laws of different States. All the second sentence said was that each State could adopt in its national law the solution which it preferred. It was not the Conference's task to say what a State could do, but what it must do. In the case in question, there should be a single principle for all States to the effect that the nationality of a child should normally follow that of the father but, if the father were stateless or if he possessed a nationality which could not be conferred upon the child at birth, the nationality of the child should follow that of the mother, when the latter possessed the nationality of the contracting State. There were countries, such as the Netherlands, whose laws already contained a provision to that effect; if other countries were to adopt similar provisions, that would be a small sacrifice indeed to make in the interests of reducing statelessness.

Mr. ROSS (United Kingdom) urged the Conference to reject the joint amendment on three grounds. First, article 1, paragraph 3 as drafted was the result of a compromise carefully worked out in the earlier stages of the Conference and any substantial change at that time might result in a lengthy and complicated debate. Secondly, the joint amendment would create a number of cases of dual nationality. While the United Kingdom Government did not object to dual nationality, it was a matter to which other States often took exception. Thirdly, so far as the United Kingdom was concerned, the amendment was unacceptable because, although the United Kingdom was prepared, if it ratified the convention, to modify its legislation to provide for the inheritance of nationality through the mother if the child could not obtain a nationality through its father, it was not yet prepared to legislate for the unconditional conferment of nationality through the mother.

The United Kingdom delegation had been prepared to accept the principle in the International Law Commission's text of article 1, but it had not been acceptable to certain other States represented at the Conference. It was true that as a result of the present text of article 1 a few children might be unable to claim a nationality, but it was his belief that that was the best arrangement that could be reached by the Conference and to change it would make article 1 unacceptable to a number of participating States. If the amendment were adopted and the United Kingdom were not permitted to legislate so as to make the nationality of the father prevail over that of the mother, it was doubtful whether it would be able to accede to the convention unless it were explicitly permitted to make a reservation on the point, and his delegation deplored making reservations to important articles such as articles 1 and 4.

Mr. BEN-MEIR (Israel), endorsing the remarks of the Italian representative, said that there were two reasons why his delegation had become a co-sponsor of the joint amendment. First, article 1, paragraph 1, and article 4, paragraph 1, as amended by the delegations of Switzerland and the Federal Republic of Germany, would lead to the creation of cases of statelessness, since a number of States which might accede to the convention already granted their nationality to a child only one of whose parents was a national. Secondly, his delegation considered that the fact that only one of the parents of a child had the nationality of the State concerned was sufficient to justify the granting of nationality. The provisions of article 1, paragraph 4, and of article 4, paragraph 2, contained an additional guarantee in the form of a residence qualification which ensured the existence of sufficient links between the child and the State concerned, should the State consider it necessary to avail itself of that guarantee. He therefore urged delegations to support the joint amendment.

The compromise text referred to by the United Kingdom representative had already been modified to a considerable extent by the adoption of various amendments.

Mr. RIPHAGEN (Netherlands), referring to the Italian representative's statement, said that Netherlands law contained two conditions for the grant of nationality through the mother, viz: the child must have been born in Netherlands territory and the father must have no nationality. He would have the same objection to the joint amendment as he had had to the Danish amendment and would therefore vote against it.

Mr. BACCHETTI (Italy) quoting the first sentence of article 1, paragraph 3, asserted that the joint amendment would not lead to cases of dual nationality.

Mr. HERMENT (Belgium) said that he could not support the joint amendment since it would involve important changes in the law of his country.

The PRESIDENT, speaking as the representative of Denmark, said that the joint amendment might cause certain States not to accede to the convention; there were wide differences in the municipal law of States.

Sir Claude COREA (Ceylon) said that the joint amendment would tend to reduce statelessness; he could not understand representatives who said that it would necessitate changes in municipal law and that their Governments would be unable to accede to the convention if it were adopted. Laws should be changed in order to conform to the provisions of the convention.

The PRESIDENT said that States could not be expected to change their systems of law.

He put to the vote paragraph 1 of the joint amendment (A/CONF.9/L.53).

The paragraph was rejected by 14 votes to 7, with 12 abstentions.

The PRESIDENT drew attention to paragraph 3 of the Netherlands amendment (A/CONF.9/L.54), which related to the French and Spanish texts only.

Mr. PEREIRA (Peru) said that his delegation would prefer the text of article 1, paragraph 3 as drafted in document A/CONF.9/L.40 to that proposed in the Netherlands amendment.

Mr. CORIASCO (Italy) said that in the case covered by article 1, paragraph 3, three States might be involved, namely, the State of birth of the child, the State of which the father was a national and the State of which the mother was a national. The text of that paragraph would become completely incomprehensible if the Netherlands amendment were adopted.

Mr. HERMENT (Belgium) suggested that in the French text of paragraph 3 the words "l'Etat contractant qui accorde sa nationalité" (in line 7) should be replaced by the words "l'Etat compétent dont la nationalité est sollicitée".

Mr. RIPHAGEN (Netherlands) said that he would withdraw his amendment if the Belgian amendment were approved.

Rev. Father de RIEDMATTEN (Holy See) thought the Belgian amendment might make the sentence in question even more incomprehensible; the sentence should be redrafted.

Mr. HARVEY (United Kingdom) moved the closure of the debate on paragraph 3 of the Netherlands amendment (A/CONF.9/L.54).

Rev. Father de RIEDMATTEN (Holy See) and Mr. PEREIRA (Peru) opposed the motion.

The motion for closure of the debate on paragraph 3 of the Netherlands amendment was rejected by 13 votes to 8, with 9 abstentions.

The PRESIDENT said that the meeting would adjourn for a short period.

The meeting was suspended at 4.45 p.m. and was resumed at 5.10 p.m.

Mr. CARASALES (Argentina) supported the oral amendment proposed by the Belgian delegation.

Mr. BACCHETTI (Italy) expressed the view that the adoption of that amendment would create difficulties when the Conference came to discuss article 4.

The PRESIDENT put to the vote the Belgian oral amendment to paragraph 4.

The Belgian oral amendment to paragraph 3 was adopted by 11 votes to 2, with 19 abstentions.

Mr. RIPHAGEN (Netherlands) said that his delegation would withdraw its amendment to paragraph 3 (A/CONF.9/L.54).

The PRESIDENT invited delegations to consider an amendment to paragraph 3, suggested to him by the United Kingdom delegation, that the words "the required residence conditions" in the first sentence, be replaced by the words "such a condition as is mentioned in sub-paragraph (b), sub-paragraph (c) or sub-paragraph (d) of paragraph 2 of this article".

Mr. CARASALES (Argentina) said that he would vote against the United Kingdom amendment. It was not fair to the jus soli countries to oblige them to confer nationality on persons who had been refused nationality by other countries on the grounds of having been sentenced to imprisonment for terms of not less than five years.

Mr. ROSS (United Kingdom), in explanation of his delegation's proposal, pointed out that the intention of article 1, paragraph 3, was that countries should confer nationality on persons who had failed to acquire it under article 1, paragraph 2, with the exception of those who were not old enough to lodge an application. Thus, those who might have failed under conditions (a) and (b) of paragraph 2 were to have another chance under paragraph 3. The Israel representative had already stated that the introduction of two new conditions (c) and (d) in

paragraph 2 would entail more statelessness, unless corresponding adjustments were made in paragraph 3, and the United Kingdom amendment would give effect to the spirit of the Israel proposal. As the representative of Argentina had already objected to the acquisition of nationality under paragraph 3 by those who failed under paragraph 2(c), he would propose that, for the purposes of voting, his delegation's amendment be divided into two parts, the first referring to sub-paragraphs (b) and (c) of paragraph 2 and the second to sub-paragraph (d).

Mr. HERMENT (Belgium) expressed the fear that if the United Kingdom amendment were adopted jus sanguinis countries would be obliged to confer nationality on many persons whom they regarded as undesirable.

The PRESIDENT put the United Kingdom amendment to the vote in two parts.

The United Kingdom amendment to the effect that the words "the required residence conditions" be replaced by the words "such a condition as is mentioned in sub-paragraph (b) or (c) of paragraph 2 of this Article", was rejected by 8 votes to 7, with 17 abstentions.

The United Kingdom amendment referring to sub-paragraph (d) only of paragraph 2 was rejected by 8 votes to 7, with 16 abstentions.

The PRESIDENT put to the vote paragraph 3, as amended.

Paragraph 3, as amended, was adopted by 18 votes to none, with 14 abstentions.

Paragraph 4 (A/CONF.9/L.18)

Mr. CARASALES (Argentina) said that there was a close relationship between paragraph 2 and paragraph 4, and he would have difficulty in explaining to his Government why the two new conditions contained in sub-paragraphs (c) and (d) of paragraph 2 were not included in paragraph 4. They were, after all, only optional conditions and no State would have any obligation to impose them if it did not wish to do so.

The delegation of the Federal Republic of Germany had proposed the addition, at the end of paragraph 4, of the condition contained in paragraph 2(d) A/CONF.9/L.18. He would propose the inclusion in paragraph 4 of the condition contained in paragraph 2(c).

Mr. ROSS (United Kingdom) said that he was opposed both to the Argentine amendment and to that submitted by the delegation of the Federal

Republic of Germany. His understanding was that it had been the intention of the Committee to provide in paragraph 4 a last chance for stateless persons and to make the conditions enumerated in that paragraph less onerous than those of paragraph 2. The number of persons applying for nationality under paragraphs 3 and 4 would be exceedingly small compared with the number applying under paragraphs 1 and 2.

Mrs. TAUCHE (Federal Republic of Germany) withdrew her delegation's amendment to article 1, paragraph 4.

Mr. CARASALES (Argentina) re-submitted that amendment in the name of the Argentine delegation.

Mr. PEREIRA (Peru) and Sir Claude COREA (Ceylon) supported the Argentine amendment.

The PRESIDENT put to the vote the Argentine proposal that a new sub-paragraph (c) drafted in similar terms to article 1, paragraph 2(c) should be inserted in article 1, paragraph 4.

The amendment was rejected by 10 votes to 9, with 12 abstentions.

The PRESIDENT put to the vote the Argentine proposal that a new sub-paragraph (c) drafted in similar terms to article 1, paragraph 2(d) should be inserted in article 1, paragraph 4.

The amendment was adopted by 8 votes to 7, with 13 abstentions.

Article 1, paragraph 4, as amended, was adopted by 16 votes to 3, with 13 abstentions.

Mr. HELLBERG (Sweden) recalled that the Swedish delegation had abstained from voting on article 1 in Committee because under Swedish law a longer period of residence was required than under article 1, paragraph 2(b). However, he had received instructions from his Government to vote for article 1 as amended.

Mr. VIDAL (Brazil), explaining his vote on the Argentine proposal, said that he had been unable to vote for it because his Government had faith in the penal and penitentiary systems of the jus sanguinis countries.

Mr. BEN-MEIR (Israel) said that he had voted against paragraph 4 because he felt that its scope had been restricted by certain additional conditions inserted in it. His delegation would, however, vote in favour of article 1 as amended.

Mr. CARASALES (Argentina) said that he would abstain from voting on article 1 as a whole, since his delegation supported article 1 of the International Law Commission's draft, which was wider in scope and more flexible than the text before the Conference.

Mr. BACCHETTI (Italy) said that he would abstain from voting on article 1 as a whole because all the amendments which would have made it wider in scope had been rejected.

Article 1 as a whole, as amended, was adopted by 19 votes to none, with 14 abstentions.

The PRESIDENT said that the necessary drafting changes, such as renumbering of paragraphs, consequent on the adoption of the additional paragraph proposed by the Danish delegation, would be made by the Secretariat.

Article 2 (A/CONF.9/L.50)

The PRESIDENT, speaking as representative of Denmark, recalled that five delegations had voted against the Danish amendment (A/CONF.9/L.13) when it had been submitted in Committee. In order to meet the views of those delegations, he had redrafted the amendment to read: 'Replace the words "be considered a national of a State", at the end of article 2, by the words "be considered as born within that territory of parents possessing the nationality of that State".'

Mr. HERMENT (Belgium) expressed his delegation's gratitude to the Danish representative for the gesture he had made.

The Danish amendment was adopted by 19 votes to none, with 10 abstentions.

Article 2, as amended, was adopted by 25 votes to none, with 7 abstentions.

Article 3

Mr. RIPHAGEN (Netherlands) proposed the deletion of the word "Contracting" in sub-paragraphs (a) and (b). Article 3, as drafted, did not solve the problem of the nationality of a child born in a ship of a non-contracting State when that ship was in the harbour of a contracting State. The child might either be considered as having been born within the territory of the contracting State, in which case article 1 would apply, or as having been born outside the territory of the contracting State, in which case article 4 would apply. His delegation considered that article 4 should apply, and not article 1.

Mr. HARVEY (United Kingdom) said that while his delegation had thought that the distinction between the words "Contracting State" and "State" in the context of article 3 was one which had no substance, he had been convinced by the arguments of the Netherlands representative and would vote for his amendment.

Mr. SIVAN (Israel) recalled that the Netherlands representative had raised the same point at the fifth meeting and that the delegation of Israel had supported his view. The amendment had not been adopted probably because representatives feared that they would be legislating for non-contracting States by such an amendment, but the fear was groundless.

The PRESIDENT, speaking as the representative of Denmark, said the adoption of the amendment would mean that under article 3 a child born in an aircraft which landed at a Danish airport could not be considered as having been born in Denmark.

Mr. CARASALES (Argentina) considered that article 3 should refer only to persons who would otherwise be stateless. If a child was born in Buenos Aires harbour in a ship flying a foreign flag it would be an Argentine citizen under Argentine law, whether the ship belonged to a contracting State or not. His country could never agree to such a child being considered as a national of the country whose flag the ship was flying.

Mr. SMALL (Brazil) agreed with the Argentine representative.

Mr. RIPHAGEN (Netherlands) said that article 3 was of vital importantance to the determination of the obligations to be assumed by contracting States under the convention. His amendment would in no way prevent a State which so wished from considering a child born on a ship in its territorial waters as a national. He suggested that article 3 might begin with the words "For the purpose of determining the obligations of contracting States under this convention..."

Mr. JAY (Canada) said that he could not support the Netherlands amendment as he considered that article 3 was clearly drafted. The amendment suggested might lessen the obligations of contracting States and increase cases of statelessness.

The PRESIDENT, speaking as the representative of Denmark, said that the question of birth within the territory of a contracting State was fully covered by article 1. He suggested that the point raised by the Netherlands representative might be met if article 3 were redrafted to read: "For the purposes of this

Convention ... birth outside the territory of a Contracting State, but occurring (a) in a ship ... etc. (b) in an aircraft ... etc. shall be deemed to have taken place in the territory of that State."

Mr. TSAO (China) supported the Danish amendment.

Mr. HARVEY (United Kingdom) said that while it was true that article 1 provided for persons born in the territories of contracting States, the question now before the Conference was whether a child was to be deemed for the purpose of the convention to have been born in the territory of a contracting State, and the Conference must consider the odd case of a child born in an aircraft or in a ship who might or might not be thought to have been born within the territory of a contracting State. If the child in question was deemed to have been born in the territory of a contracting State then article 1 would apply. If not, then article 4 might apply. He did not think that article 3 should be limited as suggested by the Danish representative.

Mr. JAY (Canada) said that he could not support the Danish amendment. The only purpose of including an article of the type under consideration was to avoid the possibility of misinterpretation or misunderstanding. He therefore supported article 3 as approved by the Committee of the Whole Conference (A/CONF.9/L.40).

Sir Claude COREA (Ceylon) supported the Danish amendment.

Mr. BEN-MEIR (Israel) thought that the Danish amendment was superfluous and did not cover the point raised by the Netherlands representative. All delegations seemed to agree that a child born in a ship of a contracting State outside its territory should be regarded as having been born in that State.

The PRESIDENT put to the vote the Netherlands proposal that the words "For the purpose of determining the obligations of contracting States under this convention" should be substituted for the first line of article 3, and that the word "Contracting" should be deleted in sub-paragraphs (a) and (b).

The amendment was adopted by 12 votes to 6, with 11 abstentions.

The PRESIDENT, speaking as the representative of Denmark, withdrew his delegation's oral amendment.

Mr. TSAO (China) pointed out that article 3 as originally drafted by the International Law Commission referred to birth in ships on the high seas and not in territorial waters. Under article 3, as amended, the question arose what

country would be considered the birthplace of a child born in a ship flying the Netherlands flag in Danish territorial waters.

Mr. JAY (Canada) took the view that in the case to which the representative of China had referred the nationality of the ship would be the governing factor.

Article 3, as amended, was adopted by 14 votes to 4, with 10 abstentions.

The meeting rose at 6.45 p.m.