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UNITED NATIONS CONFERENCE ON THE
ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SIXTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 6 April 1959, at 10.15 a.m.

Chairman: Mr. LARSEN (Denmark)

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 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 4 (A/CONF.9/L.21)

Mr. HARVEY (United Kingdom), introducing his delegation's amendment (A/CONF.9/L.21), said that it was intended to bring article 4 of the draft convention into line with article 1 as approved by the Committee. Article 4, as drafted, provided for the grant of nationality to persons not born in the territory of a party to the convention, on the principle of jus sanguinis. The amended text provided that nationality might be granted, as under article 1, either at birth by operation of law or later upon a declaration being lodged with the appropriate national authority.

When article 1 was being examined there had been much discussion of the terms "declaration" and "application", the final decision being left to the Drafting Committee. In using the term "declaration" in its amendment, his delegation was in no way prejudging the Drafting Committee's decision and the use of that term should not be taken as having any particular significance.

Paragraph 2 of the amendment laid down the conditions which might be embodied in the national law of a contracting party regarding the acquisition of nationality. It was intended that the only grounds on which an application for nationality under article 4 could be refused should be those specified in the national law in accordance with paragraph 2. The conditions in question were similar to those agreed on for article 1.

The CHAIRMAN, speaking as the representative of Denmark, asked whether it would be possible under the United Kingdom amendment for a State to decide to apply alternative 1(a) in the case of the first and second generations born abroad and alternative 1(b) in the case of the third and fourth generations born abroad.

Mr. HARVEY (United Kingdom) took the view that a State might argue, although with some difficulty, that such a course was possible. It would however be a surprising, though not necessarily a wrong, interpretation of paragraph 1.

Mr. BEN-HEIR (Israel) asked for clarification of the second sentence of paragraph 1 of the amendment. If only one of the parents had the nationality of the party, it might be possible to make the child take the nationality of the other parent.

Mr. HUBERT (France) said that, while he could accept the United Kingdom amendment, he also had some misgivings about the second sentence of paragraph 1, which might give a contracting party the power to confer the nationality of another State.

Mr. ROSS (United Kingdom) said that it should be borne in mind that both article 1 and article 4 made provision for the national law to impose tests of residence. The majority of States would to some extent take advantage of the permissive provisions of the articles and impose conditions as to residence. It was because of the residence test rather than the alleged defect of the provision criticized that some children might fail to acquire a nationality.

While sympathizing with the views expressed, he would appeal to the Committee to agree to the second sentence of paragraph 1 and not to reopen the debate on article 1.

Mr. JAY (Canada) said that there were three reasons for the retention of the second sentence of paragraph 1. First, the principle underlying it had already been incorporated in article 1. Secondly, it would be unwise to spoil the chance of a wide measure of acceptance of the convention by what might prove to be a minor objection. Thirdly, it was unlikely that the provision would result in many cases of statelessness.

Under Canadian law a child born abroad of Canadian parents was a Canadian citizen, provided his birth was registered at a Canadian Consulate or in Canada within two years of the birth of the child, or such extended period as might be authorized. Such a person must, however, make a declaration before he reached the age of twenty-four. That provision was not in conflict with the sense of article 4 as amended. He would like to know whether delegations considered that the Canadian provisions complied with the amended article.

Mr. SIVAN (Israel) said that he could not accept the argument that the second sentence should be retained merely because it was similar to a provision in article 1. Article 1 referred to persons born on the territory of a contracting party, whereas article 4 referred to those not born on the territory of a contracting party. He suggested that the second sentence be deleted and that the first sentence amended to read "A Party shall grant its nationality to a person who is not born in the territory of a Party and who would otherwise be stateless, if the nationality of one of his parents at the time of the declaration hereunder referred to was that of the Party".

Mr. RIPHAGEN (Netherlands) said that, his understanding of the second sentence was that a contracting party would have the right to confer either the nationality of the father or that of the mother on a child born abroad, but could not compel another contracting party to grant its nationality to such a child; that should however be made clear in the text.

In reply to the Canadian representative's question, his delegation considered that registration of birth would comply with the provisions of the amended article provided that such registration was permitted up to the age of twenty-three.

Mr. ROSS (United Kingdom) reiterated that the Committee should not go back on the compromise it had reached in regard to article 1: the provisions of article 4 were similar to those of article 1, paragraph 3, because both provisions referred to birth outside the territory of the country concerned. In essence, the provisions relating to birth were provisions to be used by those countries which followed the jus soli principle in conferring their nationality on certain categories of person born outside their territory. As to the question whether the nationality to be granted a child should be that of the parent at the time of the child's birth or at the time of its application for nationality, the United Kingdom delegation considered that it should be the former, which was consonant with the whole spirit of article 1, paragraph 3.

Rev. Father de RIEDMATTEN (Holy See) suggested that the first sentence of paragraph 1 be amended to indicate that a party should grant its nationality to a person who was not born in the territory of a party and who would otherwise be stateless, if the nationality of one of the parents at the time of the person's birth was that of the party.

Sir Claude COREA (Ceylon) said that he could accept the first sentence of paragraph 1 but not the second, since it appeared to mean that a contracting State would have the power to grant the nationality of another State to a child born of parents who had different nationalities at the time of its birth.

As to paragraph 1(a), it was questionable whether a party could grant nationality at birth by operation of law if the nationality to be granted was not its own.

The word "declaration" was still unacceptable.

Mr. ROSS (United Kingdom) opined that some of the difficulty encountered by representatives when reading the United Kingdom amendment would be removed by the Drafting Committee.

Although he welcomed the amendment proposed by the representative of the Holy See, which would simplify article 4, it would not be acceptable to his Government because English law held strongly to the principle of the priority of the father over the mother in the inheritance of nationality. The proposal would mean that when a British woman married an alien and had a child abroad, the United Kingdom would be obliged to confer British nationality on that child, even though it might subsequently also acquire the nationality of its father. His delegation therefore wished to reserve its right to provide for the priority of the father over the mother in the inheritance of nationality. It appreciated that other countries did not wish to recognize any such priority favouring equal rights for both parents.

Rev. Father de RIEDMATTEN (Holy See) said that he had not proposed a formal amendment to the first sentence of paragraph 1. If article 4 as amended by the United Kingdom were adopted, would there not be more cases of statelessness than if the text were amended as he had suggested?

Mr. ROSS (United Kingdom) agreed that the article as amended by the United Kingdom delegation would result in a few more cases of statelessness, but it was unlikely that they would be numerous.

With regard to the amendments suggested by the representative of Israel, a two-thirds majority vote would be required for their adoption. He moved the closure of the debate and asked that a vote be taken immediately.

The CHAIRMAN said that, although many delegations thought that the problems covered by article 1, paragraph 3 and article 4, paragraph 1 should be settled in the same manner, in view of their resemblance to one another a two-thirds majority vote was not required.

As to the United Kingdom representative's motion, under rule 17 of the rules of procedure permission to speak on the closure of the debate could be accorded only to two speakers opposing the closure, after which the motion must be immediately put to the vote.

Sir Claude COREA (Ceylon) and Mr. JAY (Canada) expressed their opposition to the motion.

The United Kingdom motion was rejected by 21 votes to 1, with 7 abstentions.

Mr. JAY (Canada) said that he could not support the amendments submitted by the delegation of Israel. The Canadian Government held very strongly that in the case of legitimate children the father's nationality should prevail and in the case of illegitimate children the mother's.

Mr. TSAO (China) said that the nationality of the father prevailed in his country and his delegation would therefore accept article 4 as amended by the United Kingdom delegation. The delegation of China could not accept the Israel amendments.

The CHAIRMAN put to the vote the oral amendments proposed by the delegation of Israel to the amendment to article 4 submitted by the United Kingdom delegation (A/CONF.9/L.21).

The Israel oral amendments were rejected by 11 votes to 4, with 15 abstentions.

Mr. SIVAN (Israel) proposed that in the third line of paragraph 1 of the United Kingdom amendment the words "at the times of the person's birth" be replaced by the words "at the time when the problem of the acquisition of nationality by the child arises."

The Israel amendment was rejected by 9 votes to 1, with 18 abstentions.

The United Kingdom amendment (A/CONF.9/L.21) to article 4 was approved by 15 votes to 1, with 17 abstentions.

ESTABLISHMENT OF A WORKING GROUP TO CONSIDER THE APPLICATION OF THE CONVENTION TO PERSONS BORN BEFORE ITS ENTRY INTO FORCE

The CHAIRMAN said that, since the Committee had completed its consideration of the four articles relating to acquisition of nationality, he would invite its attention to a question that was causing some concern to a number of delegations.

Upon the entry into force of the convention which the Conference was drafting stateless persons in the *jus soli* countries which were prepared to operate the procedure described in article 1, paragraph 1(a), would acquire nationality immediately; but in the *jus sanguinis* countries which preferred the procedure described in article 1, paragraph 1(b), the question arose whether the convention would apply only to persons born after it came into force or equally to those born before that date?

The Convention Relating to the Status of Stateless Persons concluded in 1954 had still not acquired the number of ratifications necessary for entry into force. If a similar period were to elapse before the convention under discussion acquired the necessary number of ratifications, twenty to thirty years would pass before a stateless person in a jus sanguinis country could acquire the nationality of that country under article 1, paragraph 1(b), unless it were specifically provided that the convention applied to persons born before its entry into force.

Speaking as the representative of Denmark, he would most strongly urge that the convention include a provision to that effect.

Mr. RIPHAGEN (Netherlands), Mr. IRGENS (Norway) and Mr. HERMENT (Belgium) enorsed the Danish representative's viewpoint.

Mr. JAY (Canada) said that the question raised by the Danish representative should be considered under article 14. It might be possible to amend that article to provide that the convention should apply to all stateless persons irrespective of whether they were born before or after it came into force.

Mr. VIDAL (Brazil) suggested that the words "future statelessness" in the title of the convention be replaced by the words "statelessness in the future".

The CHAIRMAN, speaking as the representative of Denmark, suggested that the word "future" might be deleted altogether. It was surely self-evident that any convention concluded and ratified by a number of States referred to the future.

Mr. FAVRE (Switzerland), while supporting the Danish representative's viewpoint, said that he would have to submit an amendment in plenary to the effect that the convention should apply to persons born before it came into force only if they had been stateless since birth.

Mr. ROSS (United Kingdom) said that he had some difficulty in accepting without reservation the principle that the convention should apply to all stateless persons whether born before or after it came into force. He proposed that a small working group be set up to consider the question raised by the Danish representative and to make specific proposals thereon to the Committee.

It was decided to establish a working group to consider the question raised by the Danish representative, composed of the representatives of Canada, China, Israel and Switzerland.

Article 5 (A/CONF.9/L.12, L.22)

Mr. TYABJI (Pakistan) submitted an amendment (A/CONF.9/L.22) that the words "or upon the procedure prescribed by the national laws of the Party" be added at the end of article 5.

The amendment was self-explanatory. If loss of nationality consequent upon changes in personal status were to be made conditional upon the acquisition of another nationality as provided in the International Law Commission's draft, then the Government of the country of which the person concerned was a national in the first instance would expect certain action by the Government of another country. If no action were taken or if the laws of that country did not provide for the conferring of nationality on the person who had changed his status, the Government of the former country must have some discretion to terminate nationality without reference to the actions or laws of the latter.

Mr. RIPHAGEN (Netherlands) said that he did not understand the purpose of the Pakistan amendment. Was it to make an exception to the principle stated in the article?

Mr. TYABJI (Pakistan) said that his delegation could not agree that acquisition of another nationality should be a prerequisite to loss of nationality as a consequence of changes in personal status. It urged that the Government of a country should have some freedom in deciding on the nationality of one of its citizens without reference to the Government of another country. The acquisition of another nationality should be the concern of the person changing his status and not of the State.

Mr. HERMENT (Belgium) asked if it would not be more appropriate for the Pakistan amendment to be applied to article 7.

Sir Claude COREA (Ceylon) supported the Pakistan amendment on the grounds that it would provide an additional obstacle to the loss of nationality and would therefore tend to reduce statelessness.

Mr. ROSS (United Kingdom) said that there appeared to be two ways of interpreting the Pakistan amendment. As interpreted by the representative of Ceylon, it constituted an obstacle to the loss of nationality. According to that interpretation, even if a person were to acquire the nationality of his or her spouse

on marriage a benevolent State would ensure that there was no inadvertent loss of nationality before marriage. If that were the sense of the amendment, it would certainly be in accord with the spirit of the convention; but its usefulness was questionable since the article already began with the words "If the law of a Party entails loss of nationality as a consequence of any change in the personal status".

On the other hand, as interpreted by its sponsor, the amendment seemed to imply that a person who did not acquire the nationality of the spouse on marriage might become stateless. If that were its effect, it was the exact opposite of what the International Law Commission had intended.

His delegation would vote against the amendment, whose adoption would be a retrograde step.

Mr. JAY (Canada) said that the Pakistan amendment was not acceptable to his delegation. The whole purpose of the article was to ensure that there should be no loss of nationality consequent upon changes in status if such loss would result in statelessness.

The individual might be protected to some extent if the word "or" in the Pakistan amendment were altered to "and"; but if the word "or" remained he would have no protection at all.

Mr. TSAO (China) said that his delegation would vote for the Pakistan amendment. Under Chinese law loss of nationality followed upon changes in status such as marriage and recognition by a foreign parent. The result in such cases was not statelessness, but the acquisition of another nationality. Hence there would be no conflict on that issue between Chinese law and the provisions of the article.

It was difficult however to agree that acquisition of a second nationality should be a precondition for loss of the first nationality, and the Pakistan amendment should make the convention acceptable to a larger number of States.

He would suggest that the amendment would be clarified if the additional phrase were re-worded to read "or upon compliance with the procedure prescribed in the national laws of the Party."

In reply to the Belgian representative, the purport of article 5 was quite different from that of article 7. Article 7 dealt with renunciation, taken upon the initiative of the person concerned whereas article 5 was concerned purely with changes of status.

The CHAIRMAN, speaking as the representative of Denmark, said that the word "procedure" was hardly appropriate. The International Law Commission's draft of article 5 was intended to apply to cases where there was conflict between the nationality laws of different countries. For example, a woman who was a national of a country in which marriage to a foreigner entailed loss of nationality might marry a man who was a national of a country whose law did not confer nationality on a person marrying one of its nationals; article 5 was designed purely and simply to prevent such a woman becoming stateless and was not intended in any sense to deal with matters of procedure.

Mr. WEIS (Office of the United Nations High Commissioner for Refugees), speaking at the invitation of the Chairman, agreed with the previous speaker. He had assisted the rapporteur in the drafting of the International Law Commission's report on nationality including statelessness, and was convinced that the purpose of article 5 was to consolidate in a single article the provisions of articles 9, 16 and 17 of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws, which dealt respectively with marriage, legitimation and adoption.

Sir Claude COREA (Ceylon) suggested that the additional phrase proposed in the Pakistan amendment should be re-worded to read "or upon compliance with the national laws of the Party".

Admittedly, the individual must be protected against loss of nationality as a consequence of change of status, but few Governments were likely to subscribe to a convention which forced them to perpetuate a person's nationality indefinitely simply in order to avoid statelessness.

Mr. CARASALES (Argentina) said that his delegation would vote for the International Law Commission's text of article 5.

With regard to the general question of delegations whose Governments could not amend their national laws to bring them into line with various articles of the convention, it was doubtful whether either the delegations themselves or the Committee gained anything from the practice of submitting amendments to those articles, as a result of which the convention might become more limited in scope

and fail to fulfil its objectives. Would it not be possible to leave the articles unamended and allow States to include reservations on them in their instruments of ratification?

Mr. TYABJI (Pakistan) said that he could accept the re-wording of his delegation's amendment proposed by the representative of Ceylon.

The CHAIRMAN put to the vote the Pakistan amendment to article 5 (A/CONF.9/L.22), as amended by the delegation of Ceylon.

The Pakistan amendment, as amended, was rejected by 18 votes to 5, with 6 abstentions.

Mr. HERMENT (Belgium), introducing his delegation's amendment to article 5 (A/CONF.9/L.12), said that it was intended to make good a serious omission in the provisions of the article. If a foundling acquired the nationality of the country in which he had been found and were then recognized by a stateless person, according to the International Law Commission's draft of the article, he would retain his first nationality. On the other hand, a legitimate child born of known stateless parents would remain stateless until the provisions of article 1, paragraph 1(b) could come into effect. The Belgian delegation considered that a foundling should lose the nationality of the country in whose territory he had been found as soon as he was recognized as being the child of stateless parents and should be placed on the same footing as the legitimate child of stateless parents.

Mr. ROSS (United Kingdom) said that his delegation would support the Belgian amendment. Relating only to a very small number of children, it would not tend to increase statelessness but would merely bring the provisions of the article into line with the national laws of certain countries.

He asked the Belgian representative what was meant by the word "unemancipated".

Mr. HERMENT (Belgium) replied that "unemancipated" meant "not yet having acquired the rights and privileges of majority".

Mr. RIPHAGEN (Netherlands) pointed out that the case to which the Belgian representative had referred in explanation of his amendment was also affected by the provisions of article 2. Should not the Belgian amendment contain a specific reference to the relation between articles 2 and 5?

Mr. HERMENT (Belgium) said that his delegation's sole reason for introducing the amendment was that article 5 still contained the word "recognition", which it had wished to delete. It also wished to limit the scope of the article so that it would not apply to non-emancipated minors recognized as the children of stateless persons.

There was the further question whether the phrase "termination of marriage" in the article referred to divorce or annulment.

The CHAIRMAN took the view that "termination of marriage" referred to a marriage which had been legally valid in the first instance, but which had been terminated later.

Mr. JAY (Canada) said that the terms marriage, termination of marriage, legitimation etc. were merely included in the text of the article as examples of changes in personal status. It might be better to omit all the examples rather than try to define each one of them.

The meeting rose at 1 p.m.