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UNITED NATIONS CONFERENCE ON THE ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

SUMMARY RECORD OF THE SECOND PLENARY MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 25 March 1959, at 10.05 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) (A/CONF.9/4, A/CONF.9/L.1)

The PRESIDENT paid a tribute to the work of the International Law Commission in preparing two draft conventions on future statelessness (A/CONF.9/L.1) and asked the Conference to bear in mind the Commission's observation in the report on its sixth session that "if Governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should be prepared to introduce the necessary amendments in their legislation" (A/2693, para.12). Nothing would be gained if after a convention had been approved Governments decided merely to reject those provisions which were in conflict with their national laws. The position of human beings in need could be improved only if Governments were prepared to make some sacrifices.

A stateless person, it was clear, was a person not having the nationality of any of the eighty odd existing States. But the problem before the Conference was not to enable such a person to acquire any nationality, since in most cases the nationality of seventy to seventy-five of the existing States would be inappropriate. It was no use ensuring that a person of German or French origin could become a national of some country far from Germany or France. Theoretically, he might cease to be stateless, but in fact one evil would be replaced by another. The Conference's task was to ensure that a stateless person could obtain the nationality of a State with which he had at least a minimum connexion.

As a first step, the Conference should choose which of the draft conventions before it should be regarded as the basic document. The choice would be purely procedural and would not prejudice any subsequent decisions on matters of substance.

Mr. ROSS (United Kingdom) observed that his country occupied a middle-of-the-road position on one of the main issues before the Conference, since its nationality laws contained elements both of jus soli and of jus sanguinis.

The Conference should beware of two dangers. First, in its eagerness to eliminate statelessness altogether, it might draw up a convention which only a few States would be prepared to sign. Secondly, in its desire to achieve some practical result, it might prepare an instrument which many States would sign and ratify, but which would improve the condition of stateless persons only in a very small degree. The Conference should attempt to steer a middle course by drafting a convention which would secure many ratifications and at the same time represent an appreciable improvement in the lot of stateless persons.

The main cause of statelessness at birth was the conflict between jus soli and jus sanguinis. No general agreement could be obtained if the Conference were to attempt to solve the problem through either principle alone; it was a source of satisfaction that the two draft conventions prepared by the International Law Commission (A/CONF.9/L.1) and the draft submitted by the Danish delegation (A/CONF.9/4) represented a combination of the two principles.

Any country signing and ratifying a convention on statelessness would have to agree to some alteration in its national laws, and if any one of the three drafts were approved his own country contemplated amending its laws to confer British nationality on illegitimate children born abroad and on children of a stateless father and a British mother. Inheritance through the mother and inheritance by an illegitimate child were novel concepts in English law, but his Government would amend the law in that sense if other countries followed suit.

The draft convention submitted by the Danish delegation had some attractive features, but one of the two drafts submitted by the International Law Commission would make a better basic document, first, because to disregard the work of a body of such eminent jurists would be lacking in respect and, secondly, because one or other of the Commission's drafts was more likely to secure general agreement. The Danish draft was very heavily weighted against jus soli and contained many features that were exceedingly complex and not fully understood by his delegation. His Government did not hold very strong views on the choice of a basic text and would agree to a convention based on either of the two drafts prepared by the Commission; it was probable, however, that the draft convention on the reduction of future statelessness would secure a wider measure of agreement and might well be adopted by the Conference as the basic document. Neither draft was perfect, and his delegation would submit amendments to whichever was chosen.

Mr. TSAO (China) observed that, although there were indeed two distinct principles on which nationality laws were generally based, the difference between them was not so large as would seem. The nationality laws of his country were based on jus sanguinis, whereas the two drafts prepared by the International Law Commission rested primarily upon jus soli, but with one or two exceptions both texts were acceptable to his Government.

On the choice of a basic document for the Conference, he would agree with the United Kingdom representative that, despite the merits of the Danish draft, it

would be advisable to accept one of the texts prepared by the International Law Commission, in which case the draft convention on the reduction of future statelessness offered better prospects of agreement.

Mr. HERMENT (Belgium) expressed appreciation of the deep understanding of the problem of statelessness displayed in the draft convention submitted by the Danish delegation, but agreed with the United Kingdom representative that the Danish draft was in some respects excessively complex. It was true that Governments would have to make concessions if statelessness were to be eliminated or reduced, but the Conference should make a careful study of the consequences of such concessions, and particularly the repercussions of article 1 of the two draft conventions prepared by the International Law Commission.

In his view, both the Commission's draft conventions called for too many concessions on the part of States whose nationality laws were based on jus sanguinis, but with some reservations he would suggest that the Conference adopt as its basic document the first draft convention, on the elimination of future statelessness.

Mr. ABDEL MAGID (United Arab Republic) said that it was well known that matters of nationality were within the exclusive competence of States. Before asking States to make sacrifices for the solution of the difficult problem of statelessness - sacrifices that might sometimes be necessary - and expecting Governments to amend their national legislations, the extent to which existing laws were in harmony with the relevant international law should be ascertained. Provisions to avoid statelessness were contained in the Egyptian Nationality Act No. 391 of 1956 and in a similar Act (No. 82) passed in the United Arab Republic in 1958. Representatives were attending the Conference not only as legal experts but as representatives of Governments; they should therefore eschew purely academic considerations and endeavour to reach a practical solution which would later meet with the approval of their Governments.

Mr. LEVI (Yugoslavia) said that since on the whole his Government preferred the draft convention on the reduction of future statelessness, he would propose that the Conference adopt it as its basic document, although the Yugoslav delegation would have a number of amendments to submit thereto.

Mr. BACCHETTI (Italy) expressed the view that, although the Danish draft convention was most useful, it would be advisable for the Conference to start its discussion on the basis of one or other of the two draft conventions prepared by the International Law Commission.

His Government preferred the draft convention on the elimination of future statelessness on the grounds that the text which offered the greater guarantees to the individual should be studied first. The first duty of the Conference was not to adjudicate between the merits of jus sanguinis and jus soli, but to consider actual cases and discover empirically and without dogmatism how the stateless person could best be protected.

Mr. HUBERT (France) observed that the International Law Commission's draft convention on the elimination of future statelessness was technically the most effective of the three drafts before the Conference, for it closed the door to statelessness altogether. Its most serious shortcoming was that it contained no reference to a real attachment of a person to the State whose nationality he was to obtain, since a person born on the territory of a given State would automatically acquire the nationality of that State. The Commission's draft convention on the reduction of future statelessness went some way towards meeting that difficulty in that to a certain extent it permitted a State to verify whether a person had a genuine connexion with it or not, although it might not go far enough in that direction.

The interesting Danish draft convention, on the other hand, went too far. It would be better to steer a middle course between the Danish draft convention and the Commission's draft on the elimination of future statelessness and he would therefore propose that the draft convention on reduction of future statelessness be adopted as the basic text.

Mr. CARASALES (Argentina) said that for the reasons explained by the United Kingdom representative it would be difficult to adopt the Danish draft convention. The two drafts prepared by the International Law Commission represented a compromise reached by legal experts and had already been commented on by Governments and discussed by the Sixth Committee at the ninth session of the General Assembly (A/C.6/SR.397-402).

While believing that the draft convention on the reduction of future statelessness would command the greater support, his delegation would accept either of the Commission's two draft conventions as a basic document.

Mr. VIDAL (Brazil) proposed that the Conference adopt the Commission's draft convention on the elimination of future statelessness as its basic document and that delegations be invited to submit amendments to it.

Mr. JAY (Canada) said that his Government believed that there were some cases where statelessness, however undesirable, represented the lesser of two evils. It was essential to keep in mind a person's real attachment to the country to which he belonged as the first principle of nationality and citizenship. In the past, his country had been relatively generous in granting citizenship to newcomers, but it was anxious to protect the status and prestige of Canadian citizenship.

Each of the draft conventions before the Conference gave rise to a number of special difficulties, but it was to be hoped that forthcoming discussions would reduce those difficulties to a minimum and enable his Government to accept the final convention. His preference went to the draft convention on the reduction of future statelessness as a working text but in submitting amendments many delegations would undoubtedly draw heavily on the ideas embodied in the Danish draft.

Mr. FAVRE (Switzerland) said that his country could not be held responsible for creating statelessness in the past, but for humanitarian reasons it would co-operate in drafting agreements to reduce future statelessness.

The two draft conventions of the International Law Commission were based on the principle of jus soli, a solution that had the merit of simplicity, and one or other of the draft conventions should certainly be approved by States whose nationality laws were also based on jus soli. The same could not be said, however, of States - many of them European States - whose nationality laws rested upon jus sanguinis. Those States, many of them over-populated, could not, without seriously affecting their political and social structures, assimilate thousands of persons who had no real links with them and whose birth on their soil was often fortuitous.

A country such as his own, which at the moment had more than 500,000 foreigners on its territory out of a total population of about 5 million and in the last quarter of a century had offered temporary or permanent hospitality to more than 300,000 refugees or stateless persons, could not assume the risks which would be involved in granting nationality to stateless persons merely

because of their birth on its territory. Before granting nationality, it had to ensure that the persons concerned were adapted to the habits, customs and mentality of its nationals and that they would become good citizens. Birth on the territory of a State could be regarded as one link with that State and was to be taken into account in deciding whether citizenship should be granted; but it could not be the determining factor.

The main task of the Conference therefore was to find a way for the jus sanguinis States to co-operate in reducing future statelessness. The variant to article 1 in the Commission's second draft was obviously designed for that purpose, but the solution proposed there was contestable, since it was based essentially on jus soli. The Conference should produce a fairly flexible text so as to allow States which could not accept the jus soli formula to make the granting of citizenship to persons born on their territory subject to an examination of their conduct and the possibility of their assimilation within the community.

Sir Claude COREA (Ceylon) said that it was unimportant which of the draft conventions the Conference took as its basic document. It would, for instance, be quite possible to adopt the Commission's first draft convention, on the elimination of future statelessness, and by subsequent amendment, to bring it into line with the second draft, on the reduction of future statelessness. His preference, however, lay with the draft convention on the reduction of future statelessness. He would reserve the right to speak at a later stage on matters of substance, such as the meaning of statelessness. New factors had arisen since the adoption of the concepts jus soli and jus sanguinis and it was clear that statelessness needed to be defined afresh.

Mr. POPPER (United States of America) said that his delegation fully shared the appreciation of the humanitarian aspects of the problem of statelessness to which previous speakers had alluded. The United States delegation realized the hardships to which individuals might be subjected through no fault of their own because they were deprived of a nationality and considered it important that Governments be induced to eliminate or reduce as far as possible the amount of statelessness which resulted from the operation of their national laws.

It might be asked how that objective could best be attained, whether through an international convention concluded within the framework of the United Nations or through appropriate legislative action by individual Governments taken pursuant to a recommendation of an appropriate organ of the United Nations. In the field of human rights, the United States Government had inclined to the latter view and its action at the Conference would be based on that attitude.

There were very few instances in which the loss of American nationality under United States law had resulted in a person becoming stateless. Moreover, stateless persons admitted to the United States of America for permanent residence were eligible for naturalization upon compliance with the statutory requirements to the same extent as other aliens. Consequently, the present United States laws did not to any great extent add to the number of stateless persons but rather aided the reduction of statelessness by affording stateless persons the same opportunity for naturalization as other permanently resident aliens.

The United States delegation would participate in the Conference with a view to assisting as and when it could in producing the best possible draft convention susceptible of ratification by a significant number of States. His Government did not however believe that there was any pressing necessity for it to sign or ratify a convention of the kind being negotiated and did not contemplate any such action.

With regard to the various texts before the Conference, the United States delegation would prefer as a basis for discussion the draft convention on the reduction of future statelessness, prepared by the International Law Commission. The other draft prepared by that Commission and the document submitted by the Danish delegation contained many excellent ideas and could, if necessary, be used as starting points. In the light of the discussion however it seemed clear that the most effective and expeditious procedure would be to begin consideration of the draft convention on the reduction of future statelessness and to add to it such points from the other two drafts as the Conference might decide.

Mr. HERMENT (Belgium) congratulated the Swiss representative on the clarity with which he had expressed the viewpoint of States whose nationality laws were based on jus sanguinis.

Delegations favouring the Commission's second draft convention should consider the fact that under paragraph 2 of article 1 of that draft a person might become stateless at the age of eighteen if certain conditions were not fulfilled. He was opposed to any provisions which might lead to a lapse of citizenship on the grounds that they were at variance with the aims of the Conference.

The PRESIDENT, speaking as the representative of Denmark, explained that his Government had never assumed that the Danish draft convention would be adopted as a basic document of the Conference. Its object in submitting the draft had merely been to put forward some realistic proposals. In 1954, a Convention on the Status of Stateless Persons, which conferred only the minimum of rights upon them, had been adopted unanimously by a conference representing twenty-seven States, but had been ratified by three States only. His Government feared that the Conference might produce a magnificent, idealistic document containing provisions to eliminate or reduce statelessness, which after scrutiny by experts and practical politicians would never come into force. Surely it was better to give real assistance to 5, 20 or 30 per cent of stateless persons than to aim at perfection. The Chairman of the ad hoc Committee on Statelessness and Related Problems in 1950 had said that it was unwise to reach for the stars and that actual results, however, modest, were of far greater value.

His delegation certainly had no intention of asking other delegations to sponsor its draft convention as a basic document, but hoped that certain of its features would be embodied in the text finally approved by the Conference. The Conference's choice lay solely between the two draft conventions prepared by the International Law Commission.

Mr. BERTAN (Turkey) said that, whereas the nationality laws of Turkey were based on the principle of jus sanguinis, the principle of jus soli was respected, provided that the person concerned had a definite link with Turkey. The Conference should adopt as a basis for discussion the text of the draft convention on the elimination of future statelessness prepared by the International Law Commission.

The PRESIDENT, replying to a question by Mr. HERMENT (Belgium), said that the adoption of one of the two texts prepared by the International Law Commission as a basis for discussion would not preclude a delegation from submitting amendments thereto and would not mean that the Conference bound itself in advance to accept a certain set of principles.

Mr. RIPHAGEN (Netherlands))said that his Government would favour a convention along the lines of the draft on the reduction of future statelessness prepared by the International Law Commission.

Mr. JAY (Canada) said that, if the Conference adopted the draft convention on the reduction of future statelessness as a basis for discussion, that decision would not mean that delegations completely rejected the text of the draft convention on the elimination of future statelessness.

Rev. Father de RIEDMATTEN (Holy See) said that his delegation wished to co-operate fully in the Conference's humanitarian task. Although of the opinion that the draft convention on the reduction of future statelessness would stand a better chance of acceptance by States, it would not vote against the adoption as a basis for discussion of the draft convention on the elimination of future statelessness.

Mr. TSAO (China) said that the consensus of opinion was strongly in favour of adopting the draft convention on the reduction of future statelessness as a basis for discussion, although no delegation would wish to vote against the draft on the elimination of future statelessness.

Mr. HELLBERG (Sweden) said that in May 1954 the Swedish Government had notified the Secretary-General of the United Nations that the Swedish Citizenship Act No. 382 of 1950, which had come into force on 1 January 1951, had been drafted in close co-operation with the Governments of Denmark and Norway. Although the draft convention on the reduction of statelessness submitted by the Danish Government was more compatible with the Swedish Citizenship Act, the Swedish delegation was willing to take part in the discussion of the two drafts prepared by the International Law Commission. It would, however, prefer the draft convention on the reduction of future statelessness to be taken as a basis for discussion.

Sir Claude COREA (Ceylon) proposed that, without any commitment on the principles underlying the draft, the Conference adopt as a basis for discussion the draft convention on the reduction of future statelessness (A/CONF.9/L.1).

Mr. VIDAL (Brazil) supported that proposal.

The PRESIDENT put the proposal of the representative of Ceylon to the vote

The proposal was adopted by 28 votes to none, with 5 abstentions.

The meeting rose at 12 noon.