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Chairman: Mr. Francisco V. GARCIA AMADOR
(Cuba).

AGENDA ITEM 49

**Report of the International Law Commission on
the work of its sixth session (except chapter
III) (A/2693, A/C.6/L.329, A/C.6/L.330)
(concluded)**

**Chapter II: Nationality, including statelessness
(concluded)**

GENERAL DEBATE (concluded)

1. Mr. TOLENTINO (Philippines) said that his Government had shown an active interest in the distressing plight of stateless persons. Statelessness was not a problem in his country, but no country worthy of membership in the community of civilized nations could remain indifferent to the unfortunate position, both in law and in fact, of stateless persons.
2. He considered what countries with stateless persons in their territory could do to relieve their plight, to absorb them into the national community, or at the very least, so far as possible, to afford them equal rights. The problem was both humanitarian and legal. Stateless persons did not enjoy the protection of the country in which they resided. That country usually considered them to be an unavoidable evil.
3. The Convention on the Status of Stateless Persons adopted by the Conference of Plenipotentiaries held in New York from 13 to 23 September 1954 on the initiative of the Economic and Social Council was an encouraging, though doubtless imperfect, instrument for dealing with the humanitarian aspect of the problem.
4. The two draft conventions submitted by the International Law Commission, both very fine and clear documents, attempted to resolve the legal problems of statelessness.
5. After referring to his Government's written comments (A/2693, annex, 12) on the draft conventions and expressing a preference for the draft convention on the reduction of future statelessness, he pointed out that the establishment of the agency proposed in article 11 of both drafts would be wholly in accord with the spirit and letter of the United Nations Charter and would not create a precedent.
6. Those opposed to the establishment of such an agency refused to consider the individual as a subject of international law. That view was obsolete. At the Nürnberg trials, individuals had appeared before an international criminal tribunal. It was no accident that

the United Nations Charter, in several places, explicitly referred to the fundamental rights and freedoms of the individual. So long as there were régimes that reduced individuals to the status of beasts of burden and considered them as cannon fodder, there would be voices, particularly in the United Nations, to proclaim the dignity and worth of the human person.

7. He added that, while his delegation had no objection to either of the two draft resolutions submitted, it would prefer the Netherlands draft (A/C.6/L.329).

8. Mr. TARAZI (Syria) thought it was difficult—in fact, impossible—to claim that the delegations that had taken part in the debate had favoured the immediate adoption of the draft conventions. Proceeding from theoretical to practical considerations, he said that there was still too great a distance between the supranational order, which the draft conventions presupposed, and the legal order currently prevailing, which recognized the sovereignty of States and the equality of all nations large and small. While he had been impressed by the moving words spoken by the representative of Panama at the previous meeting, he had not been convinced by the somewhat unrealistic arguments.

9. One could not really solve the problem of statelessness without striking at its causes, whether political or otherwise; and those were hardly a fit subject for debate in the Sixth Committee.

10. After referring to the plight of the Palestine refugees, who were dispersed in the Arab countries and unable to return to their homes although their right to do so had been recognized by the General Assembly, he said that adoption of the draft conventions would be no more than a superficial solution.

11. That was why the Syrian delegation had proposed that chapter II of the report of the International Law Commission should be referred to the Economic and Social Council (A/C.6/L.330). The United Kingdom representative had objected that the Council had not called for a special study of the question because the Commission's agenda had in any case included the topic. The terms of resolution 319 B III (XI) of the Economic and Social Council met that objection.

12. Other representatives had described the Syrian draft resolution as a dilatory measure. That was not true. The problem of nationality was not a legal problem; it was a social problem to be solved partly by legal means. The Economic and Social Council should resume consideration of the problem of statelessness as a whole, with particular reference to the opinions expressed by the jurists.

13. Contrary to the view expressed in the Netherlands draft resolution (A/C.6/L.329), it was not the business of the Sixth Committee to decide on the convening of a conference of plenipotentiaries. Moreover, there was an obvious contradiction between paragraphs 2 and 4 of the operative part of that draft resolution.

14. For those reasons, he felt that the draft resolution submitted by his own delegation offered the most logical and sensible solution.

15. The CHAIRMAN said the general debate on chapter II of the report of the International Law Commission on the work of its sixth session (A/2693) was closed.

CONSIDERATION OF DRAFT RESOLUTIONS (A/C.6/L.329, A/C.6/L.330) AND AMENDMENTS THERETO

16. Mr. ROBINSON (Israel) said that the day was one of historic significance, for it seemed possible that a crucial problem might be solved if States were willing to agree to some limitation of their sovereignty, and, for the first time, action was about to be taken on a draft prepared by the International Law Commission.

17. While he fully supported the Netherlands draft resolution (A/C.6/L.329), which brought matters forward to a point where action seemed not far distant, he thought it could be improved. That was the purpose of the amendments submitted by his delegation (A/C.6/L.331).

18. The preamble of the draft resolution should be supplemented so that it did not omit any factor. It should mention that the International Law Commission had taken the initiative of including in its agenda the question of nationality, including statelessness, and it might be pointed out in that connexion that the General Assembly had approved that agenda. But the problem of statelessness also concerned the Economic and Social Council, which deserved credit for some initiative.

19. However—and that was the purpose of point 2 of the draft amendments—the Council had completed its task when it had approved the principles of the two draft conventions; the problem was no longer a social one, but had become a legal one, to be dealt with by the adoption of a convention.

20. He withdrew point 3 of his draft amendments because it might be confusing.

21. There was no contradiction between paragraphs 2 and 4 of the operative part of the Netherlands draft resolution, as the Syrian representative had alleged, but there was perhaps an absence of logical sequence. It might be preferable to put paragraph 4 immediately after paragraph 2. He felt that the text of paragraph 4 should be interpreted to mean that the governments concerned were requested to state whether, in their view, the conclusion of a multilateral convention was the best solution of the problem of statelessness. The word "concerned" in paragraph 4 seemed to introduce a subjective factor that the Secretary-General might find difficult to interpret. His proposed amendment would provide an objective and unequivocal rule.

22. It should also be made clear that the figure of twenty States in paragraph 2 of the operative part was not a fixed figure but indicated a minimum.

23. Finally, the proposed amendment to paragraph 3 (b) had the advantage of presenting the Secretary-General's three tasks in a logical order and setting out their purposes in a natural way.

24. Mr. CASTAÑEDA (Mexico) said that the contention that the United Nations must not intervene in matters that were the exclusive concern of sovereign

States represented the most serious objection to the draft conventions.

25. The laws governing nationality were within the domestic jurisdiction of States, despite the fact that they might have important international implications. In that connexion, it should be recalled that the Charter referred to matters "essentially" within domestic jurisdiction, in contrast to the Dumbarton Oaks proposals and to the corresponding clause of the Covenant of the League of Nations, Article 15, paragraph 8, which referred to matters "solely" within the domestic jurisdiction. Nationality might not be an exclusively domestic matter in that it affected several countries, but it continued to be basically—that is, "essentially"—internal, and that was sufficient, for the time being, to exclude it from international control.

26. It should be pointed out, however, that the question of nationality was not *per se* within domestic jurisdiction. It was for the present, because no relevant international legislation had been adopted, but there was no reason why such legislation should not be adopted. If an international convention on statelessness were concluded in the future, matters governed by that convention would become matters of international jurisdiction.

27. The question therefore arose whether in future the question of nationality should cease to be within the domestic jurisdiction, so that the number of cases of statelessness could be reduced or eliminated. He did not think the question could be solved *in vacuo* or that any objective rule equally applicable to all States could be enunciated, since the position with regard to statelessness varied from country to country. It was clear that States in which the question of statelessness was very important would be eager to become parties to an instrument that offered them a means of solving their problems, despite the fact that they might thereby be obliged perhaps to make far-reaching changes in their domestic legislation; conversely, States in which the problem of statelessness scarcely arose would see no purpose in signing a convention that obliged them to revise substantially their national legislation and therefore would be unlikely to sign it. Those were the two extremes, between which there was a large variety of intermediate cases.

28. The relevant criterion was, as it were, the price that States would be prepared to pay for acceding to such an instrument, each considering the advantages, on the one hand, and the changes it would have to make in its national legislation, on the other. A further criterion was the advisability of extending certain rules of international law at present in force, as, for example, that which provided that only States were subject to international law and which would be violated, as some held, by establishing an international court such as envisaged in the draft conventions under consideration and before which individuals could bring their disputes with States.

29. The Netherlands draft resolution (A/C.6/L.329) merely proposed the convening of an international conference of plenipotentiaries, a method that did not imply any commitment regarding the contents of the instrument or instruments prepared during such a conference. The International Law Commission's draft conventions would be submitted to the conference as working documents, and delegates would be free to make amendments to them or even to submit completely different texts.

30. He thought it might be well to submit to the conference the records of the Sixth Committee's discussions setting out the suggestions of principle and the criticisms made there.
31. He agreed with the Israel representative that operative paragraphs 2 and 4 of the Netherlands draft resolution appeared to involve a question of chronology; the provisions of paragraph 4 more or less conditioned the measures referred to in the other operative paragraphs of the resolution; his delegation consequently thought the paragraph should follow paragraph 1 and not be interpolated between the existing paragraphs 2 and 3 as the Israel representative had proposed.
32. In the existing paragraph 2 it would be preferable to replace the words "Expresses its desire" by "Decides" since the General Assembly should not express a desire but should take a decision, it being understood that such decision was subject to the agreement of at least twenty States.
33. With regard to paragraph 3 (b), he pointed out that sufficient time should be allowed between the date on which at least twenty acceptances had been received and the start of the conference, to enable governments to study existing documents.
34. Finally, he did not interpret paragraph 4 as the Israel representative had done but understood it to mean that governments were invited to state whether they wished a conference to be held and whether they intended to be represented if one were held.
35. In conclusion, he stated that his delegation accepted the Netherlands draft resolution (A/C.6/L.329) but did not commit itself either on participation in any conference that might be held or on the draft conventions submitted by the International Law Commission.
36. Mr. SERRANO GARCIA (El Salvador) stated that his delegation was not opposed to the adoption of the draft conventions submitted by the International Law Commission; his own country's legislation was very favourable to stateless persons, to whom it granted all the rights and privileges enjoyed by nationals; and, in order to prevent cases of statelessness, it gave persons who had lost Salvadorian nationality the opportunity of regaining it.
37. With regard to the question whether the draft convention should be referred to the Economic and Social Council or examined by a conference of plenipotentiaries, his delegation would prefer the second alternative, as envisaged in the Netherlands draft resolution, for a variety of reasons—but in particular because a conference of plenipotentiaries sometimes received publicity in the press and was therefore more likely to arouse public interest, and furthermore the representatives sent to such a conference often had more accurate knowledge and instructions on the matter under discussion than those who attended the proceedings of the United Nations bodies, where the matters considered by a single body were many and varied.
38. In accepting, in principle, the idea of a conference of plenipotentiaries he was not interpreting the Netherlands draft resolution as intended to exclude some countries from the conference, as had happened in the case of the United Nations Conference on the Status of Stateless Persons, to which Spain had not been invited for reasons that had not been explained.
39. He would support the Israel amendments (A/C.6/L.331), especially those affecting the preamble and properly describing the previous history of the matter.
40. It should be noted that, in the Spanish text of the amendment, in point 4 the words *en cuando por lo menos* should be replaced by the words *tan pronto como 20 Estados por lo menos*, which would be closer to the English text of the amendment. Similarly, it would be better if the word *Pide* in paragraph 4 of the Netherlands draft resolution were replaced by the word *Solicita*, which expressed the same idea in a somewhat milder form.
41. As the Mexican representative had suggested, operative paragraph 4 of the Netherlands draft resolution should be placed immediately after paragraph 1.
42. Mr. RÖLING (Netherlands) explained that the essential purpose of his delegation's draft resolution was to do everything possible to settle the problem of statelessness by international agreement. That was the idea expressed in the last paragraph of the preamble. The Netherlands delegation proposed that an international conference should be convened to conclude a multilateral convention on the subject, provided, and only provided, that a sufficient number of States communicated their willingness to co-operate in it.
43. In that respect, he did not share the Mexican representative's view that the words "Expresses its desire" in paragraph 2 of the operative part should be replaced by the word "Decides", for, in his opinion, the General Assembly should say that it was desirable to convene a conference of plenipotentiaries provided that a sufficient number of States showed their willingness to take part.
44. Secondly, the Netherlands draft resolution was intended to ensure that the conference would be convened without delay as soon as the condition laid down in paragraph 2 had been fulfilled.
45. Accordingly, he readily accepted the Israel amendment to the effect that the words "in case twenty States have communicated" in paragraph 2 should be replaced by the words "as soon as at least twenty States have communicated" (A/C.6/L.331, point 4).
46. The procedure that the Netherlands delegation proposed for giving effect to the General Assembly's wishes was set forth in paragraph 3 of the operative part. It was obvious that the States referred to in subparagraph (a) would be provided with all the relevant documentation, in particular the summary records of the discussions in the Sixth Committee. Hence it was hardly necessary to mention the summary records of meetings expressly in the draft resolution, as the Mexican representative has suggested, and it seemed better to leave it to the Secretary-General to provide States with all the relevant documents.
47. With regard to subparagraph (b), he accepted the amendment proposed by the Israel representative (A/C.6/L.331, point 5).
48. In reply to the Mexican representative's observation that governments should be given sufficient time to study the documentation before the conference was convened, he said that that would naturally be the case and that there again the Secretary-General should be left to decide, in the light of his experience of such matters, how long the time allowed should be. However, he wished once again to stress the need not to lose too much time and to arrive at an early solution

of the important problem of statelessness. That was why paragraph 4 of the operative part requested governments concerned, by which were clearly meant the governments invited to the conference by the Secretary-General, "to give early consideration to the merits of a multilateral convention", and there seemed to be no contradiction between that paragraph and paragraph 2, in which the General Assembly expressed its desire that a conference should be called.

49. Paragraph 3, sub-paragraph (c), was intended to prevent the problem of statelessness from being shelved in the event that less than twenty States declared themselves in favour of convoking a conference. If the Secretary-General, in his report to the eleventh session of the General Assembly, stated that less than twenty States had signified their agreement, the General Assembly could reconsider the matter with that development in mind.

50. He accepted the amendments proposed by Israel to the preamble of his draft resolution (A/C.6/L.331, points 1 and 2).

51. With regard to the order of the various paragraphs in the resolution, he hoped that the explanation he had just given would clearly bring out the essential idea of the draft resolution without the present order having to be changed.

52. In conclusion, he wished to reply briefly to the observations made by the representative of the USSR, the Byelorussian SSR, Czechoslovakia and Poland. The Mexican representative had already discussed the argument that the draft conventions conflicted with a fundamental principle of international law by dealing with a matter essentially within the jurisdiction of States. Yet surely there was neither infringement of national sovereignty nor violation of Article 2, paragraph 7, of the Charter, if States attempted to solve a particular problem by agreeing to conclude a multilateral convention, which each State would be free to sign or not, and by undertaking to make consequential amendments in their domestic legislation. In any event, as the Mexican representative had pointed out, the conference envisaged by the Netherlands draft resolution would in no way be bound by the draft conventions prepared by the International Law Commission. Those would simply have the status of working documents on the basis of which the various States would no doubt be able to work out a much more flexible text allowing wider scope for possible reservations.

53. The CHAIRMAN said that if there were no objection he would first put to the vote the Netherlands draft resolution (A/C.6/L.329), which had been the earliest submitted, with the Israel representative's proposed amendments to it.

54. Mr. TARAZI (Syria) proposed that the Committee should first vote on the draft resolution submitted by his own delegation (A/C.6/L.330), in view of its nature.

The proposal was rejected by 20 votes to 16, with 3 abstentions.

55. The CHAIRMAN put to the vote the whole of the preamble to the Netherlands draft resolution (A/C.6/L.329), as amended by the Israel delegation (A/C.6/L.331, points 1 and 2).

The preamble, as amended, was adopted by 25 votes to 5, with 19 abstentions.

56. The CHAIRMAN put to the vote the operative part of the draft resolution paragraph by paragraph.

Paragraph 1 of the operative part was adopted by 44 votes to 5, with 3 abstentions.

57. In reply to a question by the CHAIRMAN, Mr. CASTANEDA (Mexico) stated that he would not insist on the existing operative paragraph 4 being placed immediately after paragraph 1.

58. Mr. SERRANO GARCIA (El Salvador) formally proposed that paragraph 4 should be placed immediately after paragraph 1.

59. The CHAIRMAN drew attention to a small drafting difficulty that would arise if the Salvadorian representative's proposal was adopted, in view of the fact that according to the Israel amendment (A/C.6/L.331, point 6) the phrase "governments concerned" would be replaced by the phrase "governments to whom the draft conventions have been communicated". That wording would not be very clear, as the reader could not tell which governments were meant until he saw the following paragraph.

60. Mr. ROBINSON (Israel) had no objection to a drafting change that would make the paragraph immediately understandable; if the Salvadorian proposal were adopted, the passage in question might perhaps be amended to read: "The governments mentioned in paragraph 4 (a)" (existing paragraph 3 (a)).

61. Mr. MOROZOV (Union of Soviet Socialist Republics) said that before voting on the Salvadorian proposal, which concerned the position of the existing operative paragraph 4, the Committee should vote on the contents of that paragraph.

62. Mr. RÖLING (Netherlands) observed that the meaning of paragraph 4 would remain the same, irrespective of its position.

63. If necessary he was ready to accept the modification proposed by the Israel representative.

64. The CHAIRMAN stated that a vote would first be taken on the content of paragraph 4 and then on its position in the draft resolution. The Committee would therefore vote first on the existing paragraphs 2 and 3 of the operative part without prejudice to the final order.

Operative paragraph 2 was adopted as amended by 28 votes to 13, with 12 abstentions.

Paragraph 3 (a) was adopted by 28 votes to 13, with 12 abstentions.

Paragraph 3 (b) was adopted as amended by 27 votes to 12, with 12 abstentions.

Paragraph 3 (c) was adopted by 26 votes to 12, with 12 abstentions.

The existing paragraph 4 was adopted as amended by 26 votes to 11, with 15 abstentions.

65. The CHAIRMAN put to the vote the Salvadorian proposal for placing the existing operative paragraph 4 immediately after paragraph 1.

The proposal was not adopted, 8 votes being cast in favour and 8 against with 32 abstentions.

66. The CHAIRMAN put to the vote the Netherlands draft resolution (A/C.6/L.329) as a whole, as amended.

The draft resolution, as amended, was adopted by 30 votes to 9, with 12 abstentions.

67. The CHAIRMAN stated that consequently the Committee would not vote on the Syrian draft resolution (A/C.6/L.330), and that the consideration of chapter II of the International Law Commission's report had been completed.

Chapter IV: Régime of the territorial sea

68. The CHAIRMAN recalled that the International Law Commission had undertaken a study of the question of the régime of the territorial sea, with a view to the codification of the question, and pursuant to a recommendation contained in General Assembly resolution 374 (IV) had given the topic priority. An account of the Commission's work appeared in paragraph 55 *et seq.* of its report. He drew attention to paragraph 67, which stated that the International Law Commission had adopted a number of draft articles, with comments, that were to be submitted to governments in conformity with provisions of its statute.

69. Chapter IV of the Commission's report did not call for any decision by the General Assembly, and he therefore proposed that the Committee should simply take note of it.

It was so decided.

Chapter V: Other decisions

70. Sir Gerald FITZMAURICE (United Kingdom) observed that the International Law Commission had decided to hold its next session in Geneva, beginning on 20 April 1955.

71. In its early days the Commission had usually met towards the end of May, and it was desirable that it should follow that practice in the future as some professors of international law were unable to be present during the first weeks of the Commission's work on account of their university duties. The question of dates involved an important principle.

72. Mr. SANDSTRÖM (Chairman of the International Law Commission) stated that the Commission had had to take account of General Assembly resolutions 694 (VII) and 790 (VIII) on the programme of conferences at Headquarters and Geneva. If the Economic and Social Council met a little later in 1955, the Commission might meet early in May without overlapping the Council's summer session.

73. Mr. TRIKUMDAS (India) and Mr. AMADO (Brazil), who supported the United Kingdom proposal, Mr. MENDEZ (Philippines), and Mr. STAVROPOULOS (Secretariat) took part in a brief exchange of opinions.

74. The CHAIRMAN stated that the question raised by the United Kingdom representative came within the competence of the Fifth and not of the Sixth Committee.

75. In reply to a question from Mr. CASTAÑEDA (Mexico), Mr. STAVROPOULOS (Secretariat) stated that arrangements had been made to ensure that there would be simultaneous interpretation from and into Spanish at future sessions of the International Law Commission, as recommended in the resolution reproduced in paragraph 76 of its report.

76. Mr. MAURTUA (Peru) drew particular attention to the resolution concerning co-operation with Inter-American bodies (paragraph 77 of the report) and to the very important part played by those bodies in the development and codification of international law.

77. Mr. STAVROPOULOS (Secretariat) said the Secretariat had studied the question of suitable action to give effect to that resolution and would take advantage of the presence in New York of its sponsor (who was now Chairman of the Sixth Committee) in determining what steps to take.

78. The CHAIRMAN proposed that the Committee should take note of chapter V of the report of the International Law Commission.

It was so decided.

The meeting rose at 5.55 p.m.