

TWO HUNDRED AND SIXTH MEETING

Held at Lake Success, New York, on Friday, 25 November 1949, at 3.15 p.m.

Chairman: Mr. LACHS (Poland).

Consideration, at the request of the Third Committee, of certain articles of the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/C.6/329 and A/C.6/329/Add.1) (concluded)

DRAFT ARTICLE 10

1. The CHAIRMAN asked the Committee to consider part V of the report of Sub-Committee 7 (A/C.6/L.88/Add.1) on the legal difficulties to which article 10 of the draft convention gave rise.
2. Mr. MATTAR (Lebanon), supported by Mr. LOUTFI (Egypt), stated that his delegation accepted the Sub-Committee's conclusion that draft

article 10 should be deleted. He thought that the great majority of States only recognized the jurisdiction of their own courts or the jurisdiction of the courts of the country of which the offender was a national. Moreover, serious difficulties would arise if the courts of any country had jurisdiction to try an alien charged with one of the offences enumerated in articles 1 and 2 of the draft convention. Finally, where penal questions were concerned, a trial could only take place on facts and circumstances and evidence which could not be at the disposal of the courts in question.

3. The CHAIRMAN put to the vote the question of deleting article 10 of the draft convention.

Draft article 10 was deleted by 29 votes to none, with 5 abstentions.

DRAFT ARTICLES 24, 25 AND 29

4. The CHAIRMAN invited the Committee to decide on the text of articles 24, 25 and 29, as recast by Sub-Committee 7 (A/C.6/L.96).

5. He pointed out that the word "accession" should be used in the English text wherever the word "*adhésion*" occurred in the French text, and that therefore "acceptance" should be replaced by "accession" in the three articles.

6. In reply to Mr. ZIAUDDIN (Pakistan), the CHAIRMAN said that the words "come into force" would be substituted for the words "enter into force" in draft article 25, paragraph 1.

7. Following a request by Mr. COHEN (United States of America), the CHAIRMAN stated that draft article 24, paragraph 3, would be worded: "States which have not signed the Convention may accede to it".

8. The CHAIRMAN, in answer to Mr. SOTO (Chile), declared that the Spanish translation of article 29 would be revised.

9. Mr. FITZMAURICE (United Kingdom) was not sure that it was expedient to insert the additional paragraph in connexion with draft article 30. He reminded the meeting that his delegation had taken that article to mean that, when a State became a party to the convention, it should be in a position immediately to enforce its provisions.

10. Mr. Fitzmaurice reserved his Government's rights with respect to the interpretation of draft article 30 and asked that his declaration should be mentioned in the Summary Record of the meeting.

11. Mr. PICK (Canada) pointed out that the additional paragraph in question did not relate to the text submitted by the United States delegation, as the representative of the United Kingdom appeared to think, but to a different text which had been put forward by the delegation of Egypt and adopted by the Committee.

12. The CHAIRMAN stated that that question had been raised in the Sub-Committee in connexion with the original text of draft article 30. As that text had been dropped, the question no longer arose.

13. Mr. COHEN (United States of America) said that his delegation, for its part, interpreted draft article 30 in a sense different from that given by the representative of the United Kingdom. Every State would be free to interpret the article as it understood it. The United States delegation held the view that the obligations deriving from the convention could be put into effect after, rather than before, ratification.

Draft resolution submitted by the delegations of Cuba and Mexico in connexion with paragraph 42 of the report of the International Law Commission (A/925, part I) (concluded)¹

14. The CHAIRMAN drew the Committee's attention to the draft resolution (A/C.6/L.92) submitted by the delegations of Cuba and Mexico. He recalled the fact that the question dealt with

therein had been referred to the Fifth Committee for its opinion. The Fifth Committee had sent its reply (A/C.6/L.79) to the President of the General Assembly, who had communicated it to the Chairman of the Sixth Committee. The reply had been studied by the Sixth Committee at its 192nd meeting on 15 November 1949. It appeared, both from the statements of the Vice-Chairman and from the Summary Record of that meeting, that the Sixth Committee had taken a final decision on the point. The Chairman must therefore regard the question as closed.

15. Mr. GÓMEZ ROBLEDO (Mexico) said that he had no intention of appealing against the decision which the Chairman had just given. Nevertheless, he considered that the question could not be regarded as finally settled.

16. In point of fact, the Sixth Committee had not devoted the time required for a proper examination of the contents of the Fifth Committee's letter. The Summary Record of the meeting on 15 November showed that the Sixth Committee had had before it a letter of the previous day's date, to which it had been unable to devote the close study which that letter required. The Summary Record also made reference to the fact that the Sixth Committee's decision did not relate to a draft resolution but to an actual resolution. Its approval had clearly been given in haste—it might almost be said automatically—and without discussion.

17. The delegation of Mexico was of opinion that the Fifth Committee had no right of veto over the decisions of the Assembly's other Committees. Moreover, it was common knowledge that the members of the International Law Commission had made a recommendation in paragraph 42 of the Commission's report (A/925). Since, therefore, the Sixth Committee had approved that paragraph, it would be acting inconsistently if it regarded the question as settled in its present stage. Mr. Gómez Robledo wondered whether the Chairman would not agree to alter his decision; otherwise he would ask that the question should be reconsidered under rule 112 of the rules of procedure.

18. Mr. GARCÍA AMADOR (Cuba) subscribed to the remarks of the Mexican representative on the suggested procedure. In his opinion, however, a simpler formula and one more in accordance with the unanimous desire of the Sixth Committee should be found. He recalled that, in his last statement on the question, at the 199th meeting, he had indicated that the Fifth Committee, in spite of the favourable recommendations contained in the Secretary-General's report, had not been able to take into account the feeling of the Sixth Committee, because the latter had not adopted the necessary amendment in connexion with article 13 of the Statute of the International Law Commission. Mr. García Amador had made that statement as a result of an error and on the basis of unofficial information on the discussions in the Fifth Committee. He was now in a position to make the necessary correction.

19. The report of the Secretary-General to the Fifth Committee stated (A/C.5/347, paragraph 1) — "The Secretary-General has consulted the Advisory Committee and is authorized to state that the Committee concurs in this report which incorporates its suggestions". It therefore appeared

¹ See the Summary Record of the 199th meeting, paragraphs 94 to 102.

from the report that the initiative had come from the Secretary-General, and that on the basis of his report the Advisory Committee had examined the question and taken up on its own account the considerations communicated by the Secretary-General to the Fifth Committee.

20. Moreover, paragraph 19 of the same document stated: "The Secretary-General believes that the data provided in this report and its annex lead to a negative conclusion on points (a) and (b)".

21. Mr. GARCÍA AMADOR emphasized that, in view of those points of the report, the problem assumed a certain gravity. Indeed, since the Secretary-General had been in a position to know the unanimously favourable opinion of the members of the Sixth Committee, his delegation was surprised that the Secretary-General should have refrained from repeating it to the Fifth Committee. It was that position which had allowed the Fifth Committee to take an unfavourable decision, despite the favourable opinion expressed by implication in the request for consultation. In those circumstances, on the one hand, the representative of the Secretary-General should be asked why he had disregarded the feeling of the Sixth Committee on the question; and, on the other hand, the Committee should be invited to take a decision on the draft resolution of the delegations of Cuba and Mexico.

22. Mr. PICK (Canada) was surprised at the reopening of a question which had already been settled by the Committee, as was evidenced by the Summary Record of the 192nd meeting on 15 November and by the *Journal* of the General Assembly of 16 November which stated: "The Committee agreed that no action was required in connexion with this communication, but that a reference to it should be included in the report to the General Assembly on this item". He recognized that there had been some confusion regarding the decision, but he thought that, in any event, the only document of any interest for the moment was the Fifth Committee's letter (A/C.6/L.79). The Fifth Committee, however, had adopted negative conclusions with respect to the increase in subsistence allowances and the honoraria of the members of the International Law Commission. There were perhaps grounds for inviting the Secretary-General to study the whole question of emoluments, but it would be useless to reopen a discussion on that matter by examining the draft resolution (A/C.6/L.92) submitted by the delegations of Cuba and Mexico. Indeed, if the Sixth Committee supported that draft resolution, it would be necessary under rule 142 of the rules of procedure to refer the question to the Fifth Committee, which, however, had already taken a decision on the question. The Canadian delegation therefore opposed any fresh examination of the matter.

23. Mr. WENDELEN (Belgium) also thought there was no need to reopen discussion on a question which had already been settled. In his opinion, only the General Assembly, in plenary meetings, could provide the final solution.

24. Mr. SPIROPOULOS (Greece) recalled that the question of emoluments had been brought before the Sixth Committee in connexion with the examination of paragraph 42 of the International Law Commission's report. Having taken a decision, the Sixth Committee had referred the ques-

tion to the Fifth Committee, which had given a reply. No new decision had since been taken by the Sixth Committee. It was, after all, a question of amending one of the articles of the Statute of the International Law Commission, and the Sixth Committee alone was competent to do so. The Fifth Committee was only qualified to decide what would be the financial repercussions of the contemplated measure. He thought it would be wise to reopen the debate. On the one hand, delegations which had not been able to express their opinion on the question would be given an opportunity to do so; on the other hand, the Committee would be in a position to give a reply to the International Law Commission; for that reply, whatever it might be, should come not from the Fifth Committee, but from the Sixth. His delegation was convinced that the matter affected the prestige of the International Law Commission.

25. Mr. GARCÍA AMADOR (Cuba) urged that the representative of the Secretary-General should reply to the clear question he had asked in connexion with the unfavourable conclusions expressed in paragraph 19 of the report (A/C.5/347).

26. Mr. LIANG (Secretariat) stated that personally, and as Director of the Division for the Development and Codification of International Law, he was specially interested in the efficient working of the International Law Commission. He desired in particular that measures should be taken to ensure that all members of the Commission without exception might attend its sessions, and to reduce their financial sacrifices. He recalled that, the previous June, he had made various suggestions to the members of the International Law Commission to settle the questions which had subsequently been raised in paragraph 42 of the Commission's report. As regards the report of the Secretary-General, Mr. Liang emphasized that the Secretary-General had been invited by the Fifth Committee to provide it with data on the nature and work of the International Law Commission, and on the way in which its members were elected, and also to institute a comparison with other United Nations Commissions. The Secretary-General had given his reply and had compared all the data at his disposal. In fact, whenever the Secretary-General received such instructions, he endeavoured to carry out a study of the problem as a whole; it was in that spirit that he had given the opinion set out in his report.

27. With regard to the 192nd meeting on 15 November, Mr. Liang noted that the Sixth Committee had actually taken a decision then, as was proved by the sound recording of that part of the discussion. The Chairman had stated:

"The document is before the delegates, and the letter from the President of the General Assembly requests that the letter of the Fifth Committee be placed before it, before the delegates here, for such action as would be necessary. If the delegates agree with me, no action appears to be necessary, except to refer this matter to the Rapporteur for such action as he may find necessary in submitting his report to the plenary session. Is it agreed?"

28. Mr. Liang added that, no objection having been raised, the question had been finally settled.

29. Mr. FITZMAURICE (United Kingdom) pointed out that the Committee had not yet received the text of its report to the General Assembly on

the International Law Commission's report. It would be desirable that that report should contain a statement of the question, which would prove that the matter had received all the attention it deserved. Moreover, the report could mention, for example, that the Sixth Committee had recommended that the emoluments of the members of the International Law Commission should be increased, and that the whole question of subsistence allowances for experts had been postponed for a complete study with a view to examination by the General Assembly at its next session.

30. The United Kingdom delegation thought that the emoluments of the members of the International Law Commission should be increased. It believed, however, that the discussion should not be reopened.

31. Mr. GÓMEZ ROBLEDO (Mexico) recalled that it was by 40 votes to 1, with 7 abstentions, that the Committee, at its 168th meeting, had adopted the draft resolution on the emoluments of the members and the rapporteurs of the International Law Commission. The first paragraph of that resolution read: "With a view to considering the amendment of article 13 of the Statute of the International Law Commission". Mr. Robledo concluded that the Committee had thus expressed its intention of amending that article of the Statute.

32. Again, the operative part of the resolution read:

"Requests the Fifth Committee to study the observations of the International Law Commission on this subject, bearing in mind the importance of the work of the Commission, the high qualifications of its members and the manner of their election; and to address its recommendations to the Sixth Committee as soon as possible."¹

It was clear, according to Mr. Robledo, that the recommendations in question referred to the requested increase.

33. The Sixth Committee had taken a decision after an almost unanimous vote. It could not have changed its opinion, without previous examination, following a brief exchange of letters.

34. Mr. Gómez Robledo again stressed that the Sixth Committee had expressed its opinion in favour of the increase, as the Summary Record of the 168th meeting proved, and that it was after an observation by the United Kingdom representative that it had not been clearly stated that the emoluments of the members of the International Law Commission should be the same as those of the *ad hoc* judges of the International Court of Justice.

35. In view of the negative reply of the Fifth Committee, the Mexican delegation felt it was necessary to undertake a new examination of the question. For that purpose, the delegation was prepared to invoke rule 112 of the rules of procedure.

36. Mr. Soro (Chile) noted that the representative of Canada himself, who was opposed to reopening the debate, had recognized that the Sixth Committee's decision had been taken amid some confusion during the meeting of 15 November 1949. He felt that it would be fair and equitable to reopen the debate in order to enable the Committee to express an opinion with a full knowledge of the facts.

37. Mr. MAÚRTUA (Peru) agreed with the observations made by the Mexican representative. He added that the Fifth Committee's decision implied that the Sixth Committee's decision had been annulled. The latter should re-examine the question, and even refer it again to the Fifth Committee if necessary.

38. Mr. SPIROPOULOS (Greece) stated that, if the Secretary-General's report were taken as a basis for discussion, the Committee would note that that report proceeded from the principle that the members of the International Law Commission were experts. However, that was not the case. Since the Fifth Committee's decision was also based on that report, that decision was therefore erroneous. It was for the Sixth Committee to determine if the Secretary-General's report and the Fifth Committee's decision were well-founded, and to decide accordingly.

39. Mr. GARCÍA AMADOR (Cuba) recalled that he had asked a definite question concerning the Secretary-General's report. The Secretary-General's representative had not replied to that question in a satisfactory manner. Mr. García Amador would like to know why the unanimously favourable opinion of the Sixth Committee had not been mentioned in that report. Since the Fifth Committee's decision was based on a unilateral view of the question, it was therefore null and void.

40. The CHAIRMAN stressed that the question was essentially one of procedure. He asked the Mexican representative if he intended to request a reconsideration of the matter under rule 112.

41. Mr. GÓMEZ ROBLEDO (Mexico) replied that that was his intention if the Chairman maintained his decision.

42. Mr. HSU (China) appealed to the Chairman to alter his decision. Doubtless that decision was legally justified but, in the circumstances, the problem should be envisaged on a higher level. It was true that the Fifth Committee had taken a decision. It was also true that the Sixth Committee should be able to express an opinion on that decision.

43. Furthermore, Mr. Hsu thought that, if the debate were not reopened in the Sixth Committee, it would certainly be resumed in a plenary meeting of the Assembly. However, one should avoid overburdening the Assembly's agenda. Finally, for reasons of prestige, the Sixth Committee should be able to give a reply to the members of the International Law Commission.

44. Mr. WENDELEN (Belgium) thought that the Committee should first decide if the debate was open. If it was considered that the question had already been settled, his delegation saw no means of reopening it except by invoking rule 112. If the Committee felt, however, that in a confused situation it had not realized the scope of its decision, there was nothing to prevent the debate being reopened. In that case, the Committee should examine the basic factors which the Fifth Committee had had before it; and it was possible that the Committee would arrive at a contrary decision, which would be regrettable, because the question would have to be referred again to the Fifth Committee. For that reason, the Belgian delegation felt that it would be preferable to submit the question to the General Assembly. The fifty-nine delegations, which would then have weighed the pros

¹ See the Summary Record of the 168th meeting, paragraph 61.

and cons of the question, could take up a definitive position.

45. Mr. CHAUMONT (France) could not share the view of the Belgian representative. In his opinion, the Sixth Committee alone was competent in the matter; the Fifth Committee should merely give its opinion on the budgetary implications of the contemplated measure.

46. The French delegation felt that a new examination of the question should be undertaken under rule 112.

47. The CHAIRMAN said that it was his duty to defend the authority of the Sixth Committee, but that he had also to defend that of the Committee's officers. According to the Vice-Chairman, the decision taken on 15 November was final. If the Committee did not defend its own decision, however, the Chairman was prepared to put to the vote the following question: "Was the decision taken at the meeting of 15 November final?"

48. Mr. FERRER VIEYRA (Argentina) pointed out that the Fifth Committee had only dealt, in its letter, with one aspect of the question, that relating to the Rapporteurs of the International Law Commission, and that it had not given any decision regarding the members of the Commission.

49. The conclusion might therefore be drawn that it had taken no decision as regards the members of the Commission, concerning whom its only reply had been that the matter would be studied later. Furthermore, since the Sixth Committee's decision of 15 November had related to the decision taken by the Fifth Committee, it might be inferred that it only concerned the Rapporteurs.

50. Mr. GARCÍA AMADOR (Cuba) said that his delegation and the Mexican delegation withdrew their draft resolution (A/C.6/L.92), and reserved the right to submit it direct to the General Assembly.

51. The CHAIRMAN said that the question was therefore withdrawn from the Committee's agenda.

Draft convention on the declaration of death of missing persons (A/999 and Corr.1)

52. The CHAIRMAN invited members of the Committee to express their views on the draft convention on the death of missing persons, which was annexed to the Secretary-General's memorandum (A/C.6/L.87), and on the joint draft resolution submitted by the delegations of Egypt, Ecuador, France and Iran (A/C.6/L.93).

53. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that the question of the death of missing persons had first been raised in the Economic and Social Council, which by resolution 158 (VII) had requested the Secretary-General to prepare a draft convention on the subject. The Council had then assigned the preparation of the draft to an *ad hoc* Committee of experts in which representatives of the States with a particular interest in the matter had participated. The *ad hoc* Committee had considered first whether the question under discussion would best be resolved by the adoption of an international convention. Several delegations had maintained that the matter could be dealt with within the framework of the domestic legislation of the States concerned

or, at the most, through bilateral conventions. The *ad hoc* Committee had come to the conclusion that neither domestic legislation nor bilateral conventions could be as effective as an international convention. It was for the Sixth Committee to say whether it was of the same opinion or whether it advocated a different solution.

54. Mr. CHAUMONT (France) explained why his delegation had wished to participate in the preparation of the joint draft resolution (A/C.6/L.93). The French delegation would have wished such an important question to be examined by the Sixth Committee at the very beginning of the current session. Since that had not been possible, it was difficult for the Committee to undertake, at the moment, a thorough examination of a draft which raised serious juridical problems, and of which certain points, as the text stood, were not readily acceptable to some delegations, including the French delegation.

55. For its part, France had adopted important and complete legislative measures to deal with the declaration of death of missing persons. It had succeeded in satisfactorily modifying its pre-war legislation relating to the declaration of missing persons. However, as the same steps had not been taken in all States concerned and as in some there was even no legislation on the matter, the United Nations should take the initiative in finding an international solution to the problem.

56. Such was the intention of the draft convention before the Committee. Unfortunately, it had not been possible for the Economic and Social Council to analyse the draft thoroughly and it had simply transmitted it directly to the General Assembly. Nevertheless, the importance of the problems raised by the draft convention necessitated a very close study of its provisions. The Sixth Committee no longer had the necessary time to consider the draft carefully, article by article. If it attempted to do so, it might find the item struck off the General Assembly's agenda or the draft abandoned because of its shortcomings.

57. The essence of the matter, which was the spirit of the draft convention, was that the United Nations should use its influence with States which had not yet taken the requisite steps, so that they would establish the necessary domestic legislation to deal with the matter and also prepare and subscribe to such conventions as might be required to deal with the matter directly with other interested States.

58. That was the precise object of the joint draft resolution put forward by the delegations of Egypt, Ecuador, France and Iran. On the basis that the Economic and Social Council had not examined the draft convention, the resolution recognized the importance of the question and, without questioning the competence of the United Nations, emphasized the legal difficulties arising from the differences in or absence of legislation on the matter. It then went on, in the first paragraph of the operative part, to propose that the draft convention should be referred to Member States for them to examine it thoroughly and to take all legislative or conventional measures necessary to deal with the legal status of persons missing as a result of events of war.

59. The second part of the operative part met the anxieties of delegations which did not wish to

abandon the draft convention in its entirety, but to preserve its essence. By requesting Member States to keep the Secretary-General informed of any measures that they might thus adopt so that he could report on them to the General Assembly, the sponsors of the draft resolution had hoped that the General Assembly might again deal with the question as soon as it thought fit.

60. Mr. SOTO (Chile) suggested that the joint draft resolution should be treated as a preliminary question on which the Committee should decide before proceeding to the substantial discussion.

61. The CHAIRMAN said that that had been his intention in inviting the Committee to consider the joint draft resolution immediately, since further discussions would be unnecessary if it was adopted.

62. Mr. RENOUF (Australia) said that his delegation did not at all favour the principle upon which the joint draft resolution was based, although it recognized the value of the French representative's observations. He would therefore abstain from voting on it. He requested, however, that a separate vote should be taken on the third paragraph of the preamble, which contained something in the nature of an accusation against the Economic and Social Council. His delegation would vote against that paragraph, as it believed that the Economic and Social Council had done its work satisfactorily. The Council had set up an *ad hoc* Committee, which had submitted a very complete report. Since the representatives in the Council were not legal experts, it had been difficult for the Council, in the time at its disposal during the brief sessions, to undertake a technical analysis of the draft convention drawn up by the *ad hoc* Committee. It had therefore been reasonable for the Council to submit the draft to the General Assembly for referral to the Sixth Committee.

63. Mr. TRUJILLO (Ecuador) explained that the authors of the resolution had in no way intended to criticize the Economic and Social Council in the third paragraph. That paragraph simply noted an undeniable fact which was the original reason for the submission of the draft resolution, since, if the Council had examined the draft convention and had made the necessary modifications, it would probably never have been submitted.

64. Mr. WENDELEN (Belgium) stated that his delegation was prepared to support the draft convention and that it would be glad to see it adopted, subject to some amendments, all of which were not of primary importance.

65. Belgium was particularly conscious of the problem raised by the disappearance of a large number of persons as a result of events during the war, not only in Belgium but in the majority of western European countries. The *ad hoc* Committee had concluded that the problem could only be solved in practice by an international convention. The Sixth Committee should also express its decision on the point. In that connexion, it was interesting to ask why the adoption of an international convention was desirable. The reason was that, although most countries concerned had already adopted the legislative measures necessary to meet the immediate needs arising from the war, other countries had as yet done nothing in their legislation to solve the difficulties raised by the problem. Thus a large number of missing persons of the

previous war had left property in the United States and that property could not be released in favour of their heirs because the courts of the United States, the legislation of which did not accept declarations of death, regarded such declarations pronounced by foreign courts as totally invalid. It would therefore be interesting if the representative of the United States were to explain to the Committee the legal difficulties which the problem met with in his own country's legislation and to what extent the draft convention might remedy them.

66. The Belgian law of 20 August 1948, which laid down the regulations concerning the legal declaration of death of missing persons, was applicable only if the missing person had been of Belgian nationality. But jurisprudence recognized the validity of judgments pronounced on the status and capacity of foreigners by competent foreign courts: those judgments, therefore, were fully valid in Belgium as soon as they had been authoritatively pronounced. As that did not appear to be the case in the United States, all the difficulties just mentioned arose.

67. If the Committee decided, like the *ad hoc* Committee, that the adoption of an international convention was indispensable to settle the problem, the procedure according to which that convention should be finally drawn up and adopted should be decided. The draft convention before the Committee had been prepared by a small group of representatives of Member States. All Member States had, indeed, been consulted about it and a number of them had submitted comments. But it remained none the less true that not all the States concerned had taken part in framing the draft convention. He did not think it desirable that the General Assembly or the Sixth Committee should proceed to a detailed examination of the draft, for experience had proved how difficult it was to prepare draft conventions in organs including the representatives of fifty-nine Member States. Much time had always been lost. In the present case, the Sixth Committee, which alone was competent in the matter, did not have the time necessary to carry out an examination of the draft. There were therefore two alternatives: either to call an international conference of plenipotentiaries to discuss the question and draft the text of a convention for submission to the General Assembly, or else to express in a very general form the Assembly's opinion on the principles of the draft convention and, without there being any question of its adoption, to refer it to Member States.

68. So far as the joint draft resolution was concerned, he thought its text implied that the Committee would not adopt the draft convention in its present form. His delegation was opposed to that solution in principle, since it wished to retain the draft, subject to certain reservations. However, if the majority of the Committee was in favour of the joint draft resolution, his delegation might accept it on condition that two amendments were made to it. The third paragraph of the preamble should be recast in the manner indicated by the Australian representative, and the first operative paragraph should clearly state that the General Assembly recommended that Member States should be guided by the principles of the draft convention in adopting legislative or conventional measures necessary to establish the legal position of persons missing during the war.

69. Mr. BARTOS (Yugoslavia) said that his delegation did not wish the Committee to take an immediate decision on the draft convention before it. Yugoslavia was particularly interested in the problem of persons missing as a result of the war but the text of the draft convention had been seen too late for a final opinion to be formed thereon. As a result of the preliminary consultations which had taken place between the Yugoslav Supreme Court, Legislative Committee and Public Prosecution Department, it had appeared that that draft had raised many legal difficulties and that Yugoslavia could not accept it without considerable amendments of substance.

70. Mr. Bartos explained that in the matter of the declaration of the death of missing persons the majority of central European countries applied the system of the Austrian Civil Code, which provided that, after proceedings had been taken in the court competent under international law and on the expiration of a certain period, a decision might be given certifying the death of the missing person. To expedite the proceedings and encourage the parties concerned to take advantage of the procedure, the period, which had originally been somewhat long, had been reduced by Yugoslav law to one year.

71. Facilities of the same kind had been applied in a number of other countries, but manifest abuses had sometimes resulted. Thus dishonest persons who had wished to free themselves from their marriage ties or from an obligation to pay alimony, or to prevent near relatives from succeeding to property, had obtained from foreign courts declaratory death certificates for persons still alive in Yugoslavia. One of the aims of the convention should be to prevent abuses of that sort. The convention should therefore be the subject of detailed study based on facts and on the indications of the Governments concerned, for the problem involved not only individual interests but also public security and the very principles of law.

72. Consequently, for practical and legal reasons alike, the draft convention should be sent first to States and then either to a committee or to an international conference at which all the Governments concerned would be represented.

73. The Yugoslav delegation therefore gave its complete support to the joint draft resolution which advocated precisely that the question should be referred to Member States for study.

74. Mr. ZIAUDDIN (Pakistan) said his delegation would support the draft convention, although it considered the convention too restricted in scope. It was, indeed, limited to persons missing during the years 1939 to 1945. Many disturbances, however, had occurred in various parts of the world and particularly in Asia since the end of the war, as a result of which tens of thousands of people were missing from their countries. Their legal position should be established and their right of succession protected. For that reason the application of the convention should extend not only to the present, but also to the future.

75. Mr. SVENNINGSSEN (Denmark) recalled that it was clear from the preparatory work on the draft convention that hundreds of thousands of persons had disappeared in different countries during the war, and that that had created serious

difficulties for their relatives, who were scattered throughout the world and could not regularize their family status and rights of ownership because they were unable to establish legally the death of those missing persons. It was natural that the United Nations should wish to assist them by making standard rules for the declaration of death of missing persons. The *ad hoc* Committee had felt that an international convention was necessary for that purpose, and after mature consideration it had rejected all the other proposed solutions. Those solutions were, first, national legislation; secondly, the conclusion of bilateral conventions, and thirdly, the exchange of information on the residence of displaced persons. The Danish delegation shared the *ad hoc* Committee's opinion and thought that the problem should be solved by the adoption of an international convention.

76. Mr. Svenningsen thought it desirable to explain how the problem of the declaration of the death of missing persons had been solved nationally by Danish legislation. Before 1946, the question of absence had been regulated only in so far as the property of the missing persons was concerned. Since that year an act had been in force which enabled the courts to declare the death of missing persons and fix the date of their decease. That act was applicable only to Danish citizens and aliens who had permanent ties with Denmark, on condition that the missing person had had his domicile or most recent residence in Denmark. On the other hand, the act could not be invoked in the case of aliens temporarily in Denmark, such as refugees.

77. The Danish Government thought that the presence of refugees in Denmark was not a sufficient reason to amend the 1946 act. In order to enable refugees to enjoy a definitive status, however, and to co-operate in international action in that field, the Ministry of Justice was quite prepared to suggest to Parliament that it should pass a special act, without modifying the general legislation, under which the convention would apply to Denmark during the entire period for which it was in force. If that were to be possible, however, the convention must not be at variance with the basic principles of Danish legislation; it should not depart, therefore, from the broad outline of the draft which the Committee was considering. Consequently, Denmark would be able to accept only those amendments which did not modify the principles of the draft convention to any great extent.

78. Mr. LEQUERICA (Colombia) stated that his country would not have any difficulty in approving the draft convention since its provisions could easily be incorporated in Colombian law, which already recognized the presumption of death of missing persons. In view of the fact that the Economic and Social Council had not been able to study the *ad hoc* Committee's draft, the simplest solution was that advocated in the joint draft resolution, namely that the draft should be referred to Member States to enable them to examine the possibility of adopting, if necessary, legislative or conventional measures on the legal status of persons missing as a result of events of war. The Colombian representative, however, suggested to the authors of the draft resolution that a time limit should be fixed within which States should be obliged to implement the operative part of the joint draft resolution. If no limit was fixed there was a danger that a long period would

elapse before the majority of States fulfilled the obligations laid down in the draft resolution.

79. Mr. PETREN (Sweden) agreed with the representatives of Belgium and Denmark on the obvious advantage of an international conference to settle the problem under discussion. Sweden had opened its doors to many refugees who had settled permanently in the country. Many of them could not remarry or regulate questions of succession when they wished to do so, because the death of one of their missing relatives could not be officially established. Existing Swedish legislation could not be of any assistance to them and the difficulties inherent in their situation could only be remedied by measures adopted at an international level.

80. Mr. Soto (Chile) said he would vote for the joint draft resolution because, in the first place, he did not favour the system of referring to the General Assembly draft conventions which had not previously been studied thoroughly by the appropriate organs of the United Nations, and secondly because he thought that the importance and nature of the question required that it should be studied carefully by highly qualified legal experts who would take into account not only the existing provisions of different national legislation but also the *de facto* situations created by the Second World War.

81. Mr. Soto then turned to the joint draft resolution and pointed out that the *ad hoc* Committee's report had been submitted to the Economic and Social Council and not to the General Assembly; it was therefore possible to consider that the General Assembly was not, properly speaking, seized of the report. In those circumstances it would be better to refrain from any mention of it in the first paragraph of the preamble, especially since the enacting part of the resolution did not conform to the conclusions of the report, which emphasized the importance of approving the draft convention as soon as possible. He therefore proposed the deletion of the first paragraph, and amending the second paragraph to read: "*Considering* resolution 249 (IX) of 9 August 1949, approved by the Economic and Social Council".¹

82. Furthermore, although the Chilean delegation had criticized in the Economic and Social Council the procedure which the Council had seen fit to adopt with regard to the draft convention, it thought that it was not desirable to repeat those criticisms even in the implied form in which they appeared in the third paragraph of the preamble to the draft resolution. Since the representative of Ecuador had stated that the authors of the draft had not intended to find fault with the Council in any way, Mr. Soto proposed that the third paragraph should be amended to read: "*Considering* that the Economic and Social Council was not able to examine the draft convention prepared by the *ad hoc* Committee", and that the words "but simply transmitted it to the General Assembly" should be deleted.¹

83. Mr. MATTAR (Lebanon), while reserving the right to express at a later stage the views of his delegation on the substance of the matter and on the joint draft resolution, requested the Chairman to invite members of the Committee to submit any amendments to the draft resolution within

twenty-four hours. The fixing of a time limit for amendments to be submitted would hasten a decision by the Committee.

84. Mr. WENDELEN (Belgium) observed that the fundamental question which should be settled first was whether the Committee should recommend approval of the draft convention to the General Assembly. Only if the Committee were to decide that question negatively would it be necessary to discuss and amend the joint draft resolution. As far as it was concerned, the Belgian delegation was certainly not ready to submit immediately the amendments which it would like to have made to the draft resolution.

85. Mr. COHEN (United States of America) noted that the joint draft resolution proposed to refer the draft convention to Member States to enable them to examine it and consider what legislative or conventional measures they might adopt to meet the problems raised by the disappearance of numerous victims of war and of persecution. In so far as it did not request Member States to express an opinion on the kind of convention which, in their view, would be most suitable, the draft took no account of the fact that the Economic and Social Council had recognized, in resolution 249 (IX), that the problem was urgent and that a convention was indispensable if it was to be solved. The introduction of special measures in the various national legislations would certainly be of considerable assistance to those who were concerned with establishing the death of missing persons, but the Committee could not completely ignore the conclusions reached by the Council after it had entrusted consideration of the matter to an *ad hoc* Committee consisting of well-qualified representatives of various Member States.

86. In reply to the Belgian representative's comments, Mr. Cohen stated that theoretically the United States could solve the problem, so far as it arose in the United States, by the adoption of legislation but that, in practice, it would be very difficult to do so without the assistance of an international convention to which the United States would adhere.

87. The United States delegation was fully aware of the complexity of the problem and of the fact that it would not be easy to draft a convention which would satisfy the whole world. It was of the opinion that that should nevertheless be attempted and that the draft prepared by the *ad hoc* Committee might be taken as a basis. However, in view of the fact that the Committee had not enough time to enable it to undertake a detailed examination of the draft, the United States delegation suggested that a sub-committee composed of the representatives of those Member States most directly interested in the question should be set up and requested to give rapid consideration to the draft with a view to making any amendments which might render it acceptable to all of them. The Committee would not study each of those amendments or the various articles of the draft convention; it would merely examine those provisions of the draft relating to the functions which the Secretary-General of the United Nations would be called upon to exercise, and it would recommend the General Assembly to refer the draft convention, together with the amendments proposed by the sub-committee, to Member States so that they could adopt any decisions

¹ The Chilean amendments were issued under the symbol A/C.6/L.100.

thereon which they might deem appropriate. If the Committee were to adopt that procedure it could not be blamed for having delayed the solution of a particularly urgent question. It would have done everything which it was within its power to do at that advanced stage of its work.

88. Mr. PÉREZ PEROZO (Venezuela) stated that, subject to certain minor formal amendments, he would vote for the joint draft resolution for the reasons given by the representative of France.

89. The Venezuelan delegation felt that a realistic approach was necessary. The question covered by the draft convention was a very delicate one; it raised many legal problems and had not yet been discussed by the Economic and Social Council. In view of the long debates which had been necessary on the draft rules for the calling of international conferences and the draft convention on the suppression of the traffic in persons and of the exploitation of the prostitution of others, it must be admitted that it was materially impossible before the end of the session for the Committee to examine in detail the draft convention drawn up by the *ad hoc* Committee.

90. In view of the practical difficulties connected with the examination of the draft convention, the joint draft resolution recommended that it should be referred to Member States and that they should be requested to examine it with a view to introducing into their national legislation those provisions of the draft convention which they considered acceptable, and to settling the problems raised by the disappearance of certain war victims by means of bilateral agreements. Mr. Pérez Perozo wished to emphasize that the resolution in no way excluded the possibility of adopting an international convention on the subject. If, after considering the draft, Member States thought that an international convention was necessary for the solution of the problem, they could inform the General Assembly of their view-point and the latter could always convene a conference of States to draw up that convention.

91. Mr. CHAUMONT (France), replying to the observations of the representative of the United States, pointed out that the joint draft resolution was more satisfactory than the draft convention in that it provided for the adoption of legislative or conventional measures, whereas the draft convention, though it gave international sanction to the judgments given by national tribunals on the question of declaration of death, did not in any way bind signatory States which had no provision in their statutes for the making of such declarations, to pass special legislation for the purpose. There were States, however, which had no legal system of declarations of death, and it was to them in particular that the draft resolution referred.

92. Mr. FERRER VIEYRA (Argentina) briefly recalled the history of the draft convention and emphasized the fact that in its resolution 249 (IX), the Economic and Social Council had referred the draft convention to the Governments of Member States for study. It was therefore unnecessary to follow the suggestion in the joint draft resolution and refer the draft to those Governments yet again.

93. By the terms of Article 62, paragraph 3, of the Charter, the Economic and Social Council

might prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence. Indisputably, then, the Council had a perfect right to propose the draft convention under discussion for adoption by the General Assembly. The only question which arose was whether States might prefer to solve the problem of missing persons by means of an international convention, or by the adoption of a basic text which would enable them to conclude separate bilateral or multilateral agreements. The representative of Argentina considered that, if the joint draft resolution were altered in such a way as to request Member States to give a definite decision on the matter, a great step would have been taken in the direction of a solution.

94. Mr. ABDOL (Iran) had no wish to recapitulate the reasons for which his delegation had associated itself with those of Egypt, Ecuador and France in submitting the joint draft resolution, since those reasons had been lucidly expounded by the representative of France. He was, however, anxious to point out that the two main factors which the delegation of Iran had taken into consideration were the complexity of the problem and the very brief time remaining to the Committee before the end of the current session.

95. The delegation of Iran would readily accept the change proposed by the delegation of Chile in the third paragraph of the preamble to the draft resolution. As the representative of Ecuador had explained, the authors of the draft had in no way desired to level any reproaches against the Economic and Social Council; they had merely stated a fact. The delegation of Iran did not reject outright any other amendments to the draft resolution which might be put forward, but thought that the representative of Lebanon's suggestion of imposing a time-limit of twenty-four hours for the submission of amendments was a sound one.

96. Some members of the Committee, regarding the problem of missing persons as a matter of urgency, had demanded the immediate adoption of an international convention. Mr. Abdol could see no objection, but wished to point out the danger inherent in the hasty drawing up of a convention on so important a question. If it were framed with such speed, there would be a risk of its not satisfying anyone.

97. In the opinion of the delegation of Iran, the solution advocated in the joint draft resolution was not only the most practical, but the one which would give the best results, since it called upon States whose statutes made no provision for the declaration of death of missing persons to take measures for such legal provision and to conclude bilateral agreements with other States to that end. Moreover, if the Economic and Social Council considered that an international convention was essential if the problem were to be solved, it could always convene an international conference for the purpose by virtue of its rights under the Charter and the rulings of the Committee.

98. Mr. COHEN (United States of America) could not agree with the representative of France and thought that the draft convention did indeed impose the obligation on signatory States to adopt legislative measures in connexion with the declaration of death of missing persons, where their national legislation was inadequate. In his view, that obligation was a direct consequence of article

3, paragraph 1, and articles 5 and 11 of the draft convention (A/C.5/L.87, annex). Obviously, if a State had to designate a tribunal competent to issue a declaration of death of a missing person, it would have to promulgate the necessary laws to enable the tribunal to carry out the functions specified in article 3. It would also have to take legislative measures to enable local authorities to recognize declarations of death issued in other countries, in accordance with article 11.

99. Mr. CHAUMONT (France) thought that the word "competent" in article 3, paragraph 1, would in itself destroy the obligatory nature of the provisions of that article. Indeed, in the absence of any special provisions in the domestic law of a country, it would always be possible not to take any action with regard to requests for declarations of death on the ground that no tribunal existed within the framework of the country's national legislation which was competent to issue those declarations. That was the reason why the French delegation would prefer that the obligation of signatory States to adopt national legislative measures should be specifically stated in a special article of the convention, and it would propose an amendment to that end if the draft convention was discussed.

100. Mr. LOUTFI (Egypt) pointed out that the Committee would certainly not have time to proceed to a detailed study of the draft convention and that, in those circumstances, the only possible course of action was to refer the draft convention to Member States for their consideration with a view to the adoption of the necessary legislative and conventional measures. The draft had, it was true, already been referred to Governments on the request of the Economic and Social Council, but it had been transmitted to them only a few weeks before the opening of the General Assembly's session so that they had not had the opportunity of studying it thoroughly. In order to expedite the Committee's proceedings he suggested that the Committee should first decide whether the draft convention could or could not be adopted at the current session of the General Assembly.

101. He added that his delegation was prepared to delete the third paragraph of the preamble of the draft resolution, which had met with criticism from the Belgian and Australian delegations.

102. Mr. FITZMAURICE (United Kingdom) said his country had long had detailed statutory provisions concerning the declaration of death of missing persons, which included not only cases of victims of war and persecution, referred to in the draft convention, but also many other cases such as, for example, that of persons missing owing to aeroplane or other accidents.

103. His delegation had no objection to offer on the joint draft resolution or the United States proposal, but since his country had much fuller internal legislation on the subject, it was unlikely that the United Kingdom would subscribe to the convention as it stood, in view of its limited scope. In explaining his Government's attitude, he noted the following differences between the provisions of the draft convention and those of British law.

104. In the first place, the convention prescribed that a period of at least five years would have to

elapse since the last known date on which the missing person was probably alive before the tribunals could issue a declaration of death, whereas under English law no time period was prescribed if the applicant could produce sufficient evidence in court to raise a presumption of death of the missing person. Thus, for instance, when the Air Ministry certified that an aeroplane which had crashed at sea should be deemed to be a total loss, the courts could immediately issue a declaration of death in respect of all the persons who had been travelling on that aeroplane.

105. Secondly, under the convention the applicant was apparently required in all cases to produce certain evidence in court, whereas, under English law, any person who had disappeared for more than seven years was presumed dead, unless it was proved that he was still alive.

106. Finally, the convention was applicable only to persons whose last residence was in Europe, Asia or Africa and who had disappeared in the years 1939-1945, in circumstances affording reasonable ground to infer that such disappearance was due to death as a consequence of events of war or racial persecution. English law was, however, applicable to all cases where persons had disappeared, irrespective of the circumstances.

107. It was quite wrong to say, as some had done, that, on certain points, existing law in the United Kingdom did not go so far as the draft convention. He reserved the right to prove his point if the debate on the convention was opened.

108. Mr. GARCÍA AMADOR (Cuba) deplored the slowness with which the United Nations was seeking the solution to a problem which was of vital concern to tens of thousands of persons. The importance and the urgency of the question had been recognized by the Economic and Social Council since August 1948. The Secretary-General and, after him, the *ad hoc* Committee had worked hard to prepare the draft convention, and the Economic and Social Council had considered the question on two occasions. Nevertheless, the Assembly was still not in a position to recommend the adoption of a draft convention to Member States.

109. The Cuban delegation would vote for the joint draft resolution in the hope that the adoption of that draft would lead to a solution, or at any rate a partial one, to the problem of missing persons.

110. Mr. WENDELEN (Belgium) wondered if the Committee could not decide immediately how it proposed to deal with the problem of missing persons.

111. Mr. COHEN (United States of America) recalled that he had suggested the appointment of a sub-committee entrusted to study the draft convention with a view to proposing amendments likely to make it acceptable to the majority of the States directly interested in the question. He inquired if his suggestion would be considered as having been automatically rejected should the Committee decide not to study the substance of the problem.

112. The CHAIRMAN replied that since any decision taken by a sub-committee required the approval of a plenary meeting of the Committee

before being submitted to the General Assembly, the draft convention could not be referred to a sub-committee if the Committee did not wish to study the substance of the problem.

113. Mr. COHEN (United States of America) pointed out that such amendments to the draft convention as the sub-committee might decide to propose could be transmitted to Governments, for

information purposes, without being considered in a plenary meeting of the Committee.

114. Mr. ROBINSON (Israel) moved the adjournment of the meeting, as the statement he was proposing to make would detain the Committee for too long.

The motion for the adjournment was agreed to.

The meeting rose at 6.40 p.m.

¹ See the Summary Record of the 206th meeting, paragraphs 102 to 107.

¹ See the Summary Record of the 206th meeting, paragraph 87.