

TWO HUNDRED AND SEVENTH MEETING

Held at Lake Success, New York, on Saturday, 26 November 1949, at 11.20 a.m.

Chairman: Mr. LACHS (Poland).

Expression of appreciation to the Chairman of the International Law Commission

1. The CHAIRMAN, in declaring open the meeting, stated that the Sixth Committee would certainly join him in thanking Judge Manley O. Hudson, Chairman of the International Law Commission, for his advice and assistance in connexion with the report of the International Law Commission.

Draft Convention on the declaration of death of missing persons: item proposed by the Economic and Social Council (A/999 and Corr.1) (concluded)

2. The CHAIRMAN recalled that the Committee had been requested, at the preceding meeting, to be prepared to decide on the desirability of discussing in detail the substance of the draft convention on the declaration of death of missing persons, and asked the members to express their opinions on the matter.

3. Mr. DUYNSTEE (Netherlands) explained that his country was deeply interested in the conclusion of a multilateral convention on the subject of the declaration of death of missing persons and, with certain reservations, it would accept the draft convention before the Committee (A/C.6/L.87, annex). That draft was in general satisfactory. His delegation, like several others, believed that articles 2 and 11 of the draft required further study. The Netherlands had special statutory provisions to take care of the problem, which were adequate for the cases under its jurisdiction. The need for a convention should not be judged, however, in the light of the national jurisprudence of the interested countries. His country, like the United Kingdom, had no need for such national legislation.¹ Moreover, such legislation, if based on the draft convention, would be less liberal than the domestic legislation of the Netherlands.

4. The aspect of the problem that most interested his country was the recognition of its declarations of death by courts of other countries. Efforts to obtain such recognition by United States courts had failed so far. That aspect of the problem had not been adequately studied and needed further consideration.

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

5. The delegation of the Netherlands had studied the joint draft resolution of Egypt, Ecuador, France and Iran (A/C.6/L.93) and had not found it entirely satisfactory. It objected to the operative part of the draft resolution, especially to the transmittal of the draft convention to Governments. The draft convention prepared by the *ad hoc* Committee had been referred to Governments which had had the opportunity to express their views. The draft before the Committee had been amended in the light of those comments and it was unnecessary to send it back to the Member States. The draft convention was acceptable as a basis for discussion in the Committee. The only thing left for the Committee to do was to improve the draft by amending it. That could not be done in the short time at the Committee's disposal.

6. The delegation of the Netherlands therefore proposed that the substance of the draft convention should not be debated. A sub-committee would not be of great assistance in reaching a decision on the merits of convention. The delegation of the Netherlands appreciated the United States' gesture of collaboration in proposing such a sub-committee at the previous meetings¹, but the procedure suggested would not facilitate the conclusion of a multilateral convention. The delegation of the Netherlands thought that the best solution was to call an international conference of plenipotentiaries to deal with the matter.

7. Mr. ROBINSON (Israel) stated that his delegation thought that the Sixth Committee should discuss the substance of the draft convention. The remarks made at the previous meeting had shown that no delegation was opposed to the idea of such a convention. The authors of the joint draft resolution had invoked the element of time. Some members had thought that the Committee did not have sufficient time in which to discuss the convention in detail before the end of the current session. He disagreed with that view because there were only four items remaining on the Committee's agenda, none of which was urgent. For instance, the discussion of non-member States to which a certified copy of the Revised General Act for the Pacific Settlement of International Disputes should be communicated was a political as well as a legal question and could be better solved by another Committee. The invitation to non-member States to become parties to the Convention on the Prevention and Punishment of the Crime of Genocide was not urgent because that

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

Convention could enter into force only after twenty States had ratified it and, so far, not more than four States had ratified it. The other items were no more urgent. From a practical point of view, only the draft Convention on the declaration of death of missing persons required immediate action.

8. As for the time element, the target date of 30 November for the ending of the current session had been abandoned. The Committee could probably count on the session's lasting from ten to fifteen days longer. The General Assembly would probably devote only one day to consideration of the items referred to it from the Sixth Committee. That would give the Committee nine or ten days in which to complete its work. The draft convention contained nineteen articles, but only eleven articles were substantive. There was considerable freedom to make reservations in respect of at least half of the articles. He considered that there would be adequate time in which to discuss the substance of the matter. It had been said that the convention would raise many serious legal difficulties. He did not agree with that idea and thought that only two real legal problems would be likely to arise: first, the question of the competence of the tribunals in declarations of death, and secondly, recognition of such declarations.

9. The other problems were subsidiary, accessory, or purely administrative. The *ad hoc* Committee of experts which had been appointed to study the matter had, after eighteen meetings, found it necessary to make only a few changes in the draft convention. The Secretary-General had submitted a commentary (A/C.6/L.87) which would greatly aid the Committee in its consideration of the question. The time required for that consideration would depend on the quality of the draft and on the number and nature of the amendments proposed to it. The supporters of the joint draft resolution of Egypt, Ecuador, France and Iran (A/C.6/L.93) had stressed the fact that the Economic and Social Council had not been able to examine the draft convention prepared by the *ad hoc* Committee. They had not stated, however, that the reason was that the draft was prepared by a special committee of experts. The Council had had complete confidence in the latter's work. The Council itself was not equipped to consider legal matters. Its procedure in referring such a draft to the Sixth Committee was not unusual; it had often done so in the past.

10. The discussion at the preceding meeting of the Committee had made it clear that the problem could not be solved by national legislation. Many delegations considered that a solution was urgent. It would not only be useful to the persons concerned, but would contribute to international security. There was need for immediate action on the matter.

11. Mr. MATTAR (Lebanon) stated that his delegation also was interested in the problem and realized the importance of solving it as soon as possible, but his delegation realized that there were serious obstacles to discussion of the question at the current session. Consideration of the matter might require from two to four weeks.

12. His delegation favoured the joint draft resolution, in general, and certain amendments which had been submitted at the preceding meeting, especially that to the third paragraph¹ and to the operative part of the joint resolution.²

13. Mr. CHAUMONT (France), referring to the statement of the representative of Israel concerning the lack of time for study of the draft convention and the legal difficulties raised by the convention, stated that he did not think that only two serious difficulties were likely to arise. The fact that the *ad hoc* Committee with its small membership had devoted eighteen meetings to a discussion of the convention and had made only a few changes in the draft showed that the convention required further study. The Legal Committee of fifty-nine Government representatives would probably find it necessary to devote more than eighteen meetings to the subject of the convention, if it undertook to study the substance in detail. For example, he had pointed out in the preceding meeting in connexion with articles 2, 3 and 11, the scope of the obligations which would be assumed by the signatories of the convention in regard to adapting their national legislation to the convention, and had provoked a discussion with the United States representative which showed what differences of opinion the discussion of the convention would bring out.³ The character of the obligations set forth in the draft convention was not made clear in the text as it was worded.

14. To point out some of the legal difficulties involved, he wished to cite a few articles in particular. The provisions of article 2, which mentioned the tribunals empowered to adjudicate the fact of death, involved a principle of competence which was of great importance and complexity; it would have to be thoroughly discussed. No French tribunal would agree to the provision of paragraph 2 of article 2 concerning the right of applicants who had applied to any competent tribunal to make subsequent applications to other competent tribunals. Article 4, paragraph 2, providing that, in the absence of any other indication, the presumed date of death should be fixed as the last day of the year during which death probably took place, was contrary to French law and would make it difficult for France to adhere to the convention. Article 6, on the establishment of an International Bureau for Declaration of Death, would raise problems because it would conflict with a resolution which the Third Committee was referring to the General Assembly on the subject of an organization to deal with the problem of the declaration of death as it affected refugees. Many such situations had already been satisfactorily settled in various countries under their domestic legislation. It was not advisable to question such solutions of the problem or to raise any doubt as to whether or not such problems should be solved by the proposed refugee organization or by the bureau contemplated in the draft convention. That was an important provision and should not be lightly disposed of. Article 13, fixing the date for the entry into force of the convention, was an unusual provision and was likely to provoke a lengthy discussion. Article 19, on reservations, would be difficult to accept. It risked nullifying the principal effect of the convention and rendering the latter useless.

15. Those examples showed that the articles of the convention could not be considered in detail

¹ See the Summary Record of the 206th meeting, paragraph 82.

² *Ibid.*, paragraphs 68, 78 and 93.

³ *Ibid.*, paragraphs 91, 98 and 99.

in a week; to reach a satisfactory agreement on them would probably require a month. The French delegation, therefore, thought that it was impossible for the Committee to discuss the substance of the convention at that session. On behalf of the authors of the joint resolution, he wished to say that they would accept the amendments of Chile.¹

16. Mr. KHOMOUSKO (Byelorussian Soviet Socialist Republic) stated that his delegation thought that the problem could be solved more effectively if the countries which were victims of occupation could be given complete information about the present residence of their citizens. The time which elapsed between the date when a person was reported missing and the date when death was recognized, varied in different countries. For example, article 12 of the civil code of Byelorussia stated that if a person was recognized to be missing he could be declared dead five years after his disappearance or, in the case of war casualties, several months after the military department had declared him missing in action. The decision of the court was registered in the files. It was therefore a problem which already had a legal solution and one for which special procedures were already provided. There was no need to deal with the matter in the Sixth Committee. It was adequately regulated by the national legislation of his country and of other countries. Anglo-Saxon law recognized such deaths after seven years. At all times evidence of the disappearance of missing persons could be presented. There was no need to complicate the issue by adopting a convention.

17. His delegation supported the views of the delegations which had opposed the draft convention in the *ad hoc* Committee and would vote against it if it was put to the vote.

18. Mr. BARTOS (Yugoslavia) stated that his delegation maintained its view that certain articles of the draft convention were inadmissible for the Yugoslav delegation. That delegation considered that concurrent jurisdiction between courts was dangerous and would give rise to certain problems.

19. By notification to another State the difficulties could be reduced, but he did not see why a non-competent court should notify a competent court so that the competent court could make an inquiry of the non-competent court. His delegation did not consider that a normal procedure; it doubled the procedure, yet only a few persons were involved. In his country, there had been 1,702,000 deaths due to the war. There had been at least 300,000 persons whose deaths had had to be legally established. The Government had been able to establish the deaths of a great majority of that number, by its normal procedure.

20. He saw no reason for adopting an international convention to settle the cases of two or three thousand persons, the establishment of whose death was more difficult because their relatives were outside the country. Referring to certain persons in whom the representative of Israel was interested, he stated that Yugoslavia had had approximately 60,000 Jewish citizens and had unfortunately lost about two-thirds of them. It would have been impossible for anyone except the Yugoslav authorities to establish the death of those persons. Inquiries had been made at camps throughout Germany and through registries and

other procedures. All available evidence from other courts had been collected. The fate of almost all of those persons had been determined. That could not have been done through other courts where there was no evidence. The representative of Israel would have much more certainty of obtaining reliable evidence concerning the death of some of the Jews domiciled in Yugoslavia, if he proceeded through Yugoslav courts. The competent courts must be consulted, courts whose competence was recognized in international law and which had had years of experience in such matters.

21. He was convinced that the solution proposed in the joint draft resolution was the best solution of the problem.

22. Mr. TRUJILLO (Ecuador) stated that he respected highly the opinion of the representative of Israel, but felt compelled to answer some of his views on the draft convention. When the delegation of Ecuador participated in drawing up the joint draft resolution, it had decided that such a complex problem could not be settled in a short discussion. Article 1 referred to three qualifications of the individuals concerned: persons whose last residence was in Europe, Asia or Africa, who had disappeared in the years 1939-1945 and whose disappearance was due to death as a consequence of events of war or persecution. Ecuador had a provision in its legislation which gave the court power to make such declarations as declarations of death of missing persons, and he could not see why Ecuador should change its law on the subject in regard to citizens who had not resided in the country and had no economic or social ties in that country, their only relation to the country being the fact that their relatives were domiciled there. The same applied to many other countries.

23. The Sixth Committee was not sufficiently well-informed to decide the matter. Moreover, the matter was not urgent and the delegation of Ecuador saw no necessity to decide it at the current session. So far as Ecuador was concerned, the only new element in the problem emerging from the draft convention was the limitation of its applicability to a certain group of persons, to certain circumstances and to a given period of time. From the point of view of the codification of international law, the problem was extraordinarily difficult; the Sixth Committee could not solve that aspect of the problem, either.

24. As for the establishment of an international bureau to supervise the decisions of national courts, that aspect of the problem might not be acceptable to all countries.

25. The delegation of Ecuador, in drawing up the joint draft resolution, foresaw the difficulties that would arise. It realized that the Committee did not have sufficient time to study the substance of the convention. It believed that the best solution of the problem was for Governments to adopt legislative measures to take care of the cases provided for in the draft convention or to amend their legislation, so that they could do so. It did not believe that the problem would be solved most effectively on the international level; such a solution was most difficult and complex. As the representative of France had stated, the delegation of Ecuador would accept the Chilean amendment.

26. The CHAIRMAN requested the Committee to decide first whether it wished to undertake a

¹ See the Summary Record of the 206th meeting, paragraphs 81 and 82.

detailed consideration of the substance of the convention before it.

It was decided not to discuss the substance of the draft convention by 24 votes to 2, with 11 abstentions.

27. The CHAIRMAN recalled that the Committee had before it the joint resolution presented by the delegations of Egypt, Ecuador, France and Iran (A/C.6/L.93) into which the Chilean amendments had been incorporated. The following amendments had just been handed to him by the Danish delegation:

To insert between the fifth and sixth paragraphs of the draft resolution the following text:

"Decides that an international conference of Government representatives be convened not later than 1 March 1950 with a view to conclude a multilateral convention on the subject;

"Instructs the Secretary-General to take the measures necessary to this effect".

To delete in the sixth paragraph the words "or concluding bilateral or multilateral conventions"; and to delete the seventh paragraph.

28. Mr. PÉREZ PEROZO (Venezuela) had already remarked that the joint draft resolution did not rule out a third solution to the problem of what action should be taken with regard to the question in hand.¹ After studying the draft convention Member States could consider the possibility of adopting legislative measures on the legal status of persons missing as a result of events of war, or could conclude bilateral conventions on that subject. There was the third possibility, the solution recommended by the Economic and Social Council in resolution 249 (IX) and supported by the *ad hoc* Committee on the Declaration of Death of Missing Persons, that a multilateral instrument could be prepared. In order to ensure that the concerns of those delegations which would prefer to have such a convention were satisfied, he wondered whether the authors of the joint resolution would agree to add the following text to the sixth paragraph: "and requests them to transmit their views concerning the possibility and advisability of solving the problem in question by means of a multilateral agreement". If adopted, that amendment would entail a consequential change in the seventh paragraph which should then read: "*Requests Member States to transmit their replies to the Secretary-General so that he may report on them to the General Assembly*" (A/C.6/L.104).

29. In their replies Member States could indicate their preference for a multilateral agreement. The General Assembly would be empowered by the draft resolution either to call an international diplomatic conference or to proceed itself to the conclusion of such an agreement.

30. Mr. FERRER VIEYRA (Argentina) had introduced an amendment earlier to the effect that governments should be consulted on the advisability of preparing either an international convention, or a text to serve as a basis for any future bilateral agreements.² The Economic and Social Council had recommended that an international convention should be prepared. The joint draft resolution, however, implied that the General Assembly had abandoned that idea, leaving it for the States to decide what final action should be taken.

¹ See the Summary Record of the 206th meeting, paragraph 90.

In view of the great importance of the problem, the General Assembly should take a clear decision in the matter. For those reasons he suggested that the following text should be incorporated in the joint draft resolution: "Requests Member States to express their opinion on the advisability of signing an international convention on the subject, or of merely drafting a document which could serve as a basis for bilateral agreements". His text and the Venezuelan amendment were attempting to achieve the same purpose and he felt that either would be satisfactory.

31. Mr. WENDELEN (Belgium) thought that the possibility for drafting an international convention should be left open. He believed that it would be only reasonable for the General Assembly to instruct the Secretary-General to call a conference in the near future to study the problems involved in preparing an international convention on the question as proposed in the Danish amendment, particularly since many of the States directly concerned had stressed that an international convention was the only satisfactory means of solving the problem. Other States not so directly concerned, or States which would have to alter their domestic legislation if the convention was adopted, had also urged that the possibility of an international convention should not be rejected. The Belgian delegation would support the suggestion to call an international conference, and appealed to Members of the Sixth Committee to heed the wishes of the States most directly concerned in the matter.

32. It might prove that urgent problems could not be solved by domestic legislation or by bilateral treaties. In that case States might be obliged themselves to call a conference to prepare the necessary convention. It might then appear that if the United Nations did not implement the suggestion of the Economic and Social Council which had been supported by the *ad hoc* Committee, it would have failed in its duty. Such an event would not enhance the Organization's prestige. For those reasons the Belgian delegation, he repeated, would support such a proposal as the Danish suggestion for an international conference on the problem.

33. If that amendment was rejected, the Belgian delegation would support the joint draft resolution, but it would introduce certain amendments to the third paragraph to reinforce the text. That paragraph would have to be amended to indicate that the General Assembly had not considered the draft convention in detail because it could do so only if one of its Main Committees had the necessary time, and because there had been two other alternatives, namely, the General Assembly still had the choice either of referring the draft convention to Governments for further comments and suggestions, or of calling an international conference to draft the final convention.

34. With regard to the sixth paragraph of the draft resolution, he thought the text should be made more formal. The least the Committee could do, if it did not recommend that the conference should be called, would be to make a definite recommendation to States.

35. He agreed with the remarks of the representatives of Argentina and Venezuela. The Argentine suggestion made it possible for States to draw the attention of the Secretary-General and the

² *Ibid.*, paragraph 93.

General Assembly to the fact that the problem had not been settled, since a convention had not been adopted, and would prepare the way for the negotiation of a final document. The Belgian delegation would support the Argentinian and Venezuelan amendments.

36. Mr. LOUTFI (Egypt) felt that the idea contained in the Argentine and Venezuelan suggestions already appeared in the text of the joint draft resolution. In the sixth paragraph the phrase "conventional measures" should satisfy their objections. Under those terms States would inform the Secretary-General of their ideas regarding the appropriate conventional measures to be taken.

37. Mr. CHAUMONT (France) pointed out with regard to the Argentine and Venezuelan suggestions, that under the General Assembly's rules of procedure a Member State always had the power to propose items for the agenda of the Organization and that it was therefore unnecessary to amend the joint draft resolution in the way suggested.

38. Mr. ABDOH (Iran) associated himself with the remarks of the representatives of Egypt and France. He thought that it was unnecessary to amend the draft resolution since the Argentine and Venezuelan proposals were already included therein.

39. He felt that the Danish proposal, supported by the representative of Belgium, that an international conference should be called was premature. It would be wiser to await the replies of Governments and then decide whether such a conference was necessary. Under the rules for the calling of international conferences which the Sixth Committee had discussed earlier, the Economic and Social Council would always be empowered to call an international conference on the subject whenever it was deemed necessary. For those reasons he felt that it was unnecessary to amend the joint draft resolution.

40. Mr. ZIAUDDIN (Pakistan) wished to submit amendments to the sixth and seventh paragraphs of the proposed draft resolution. The following phrase should be added at the end of the sixth paragraph: "or other disturbances of peace during the post-war years until the present time" (A/C.6/L.105). He wished thereby to widen the scope of the draft convention so that it would apply to his own country, which had been faced with many cases of missing persons during and after the disturbances which had occurred in Pakistan during the previous year, and to any similar cases.

41. The *ad hoc* Committee in its report emphasized the acuteness of the problem when it said that "for many of these survivors" of missing persons "the ability to establish their relatives' death and thus to validate their claims as heirs, to recover identifiable possessions confiscated from the missing persons, or to claim damages under restitution laws, is a matter of dire necessity" (E/1368, section E). For that reason the resolution should be broadened to cover all possible cases. While he found the geographic scope of the problem had been well covered, the problem should not be limited in time to the war years only.

42. Since he felt that the problem was urgent he had proposed that the words "at the next session"

should be added at the end of the seventh paragraph (A/C.6/L.105). In view of the fact that the General Assembly could not deal with the question at its current session it should be made possible for the Organization to consider the pressing question at its meetings in 1950.

43. Mr. PÉREZ PERÓZO (Venezuela) had moved his amendments in the light of the explanation of the proposed joint resolution made by the representative of France the preceding day.¹ Under that draft resolution it appeared that the purpose of referring the convention to Governments was to enable them either to alter their domestic legislation in order to solve the problem or to permit them to conclude bilateral agreements for that purpose. The Spanish text as it was then worded did not make it clear that all sorts of international agreements would be permitted, but rather re-enforced the idea of bilateral arrangements. It was for that reason that he had moved his first amendment. If, however, the phrase "conventional measures" was to be interpreted in its broadest sense the Venezuelan amendments were superfluous, and the necessary improvements could be made in the Spanish text.

44. Mr. TRUJILLO (Ecuador) thought that the concern which had prompted the Venezuelan suggestion was already implicit in the joint draft resolution. He felt that the text clearly referred to either bilateral or multilateral agreements.

45. He thought that the Danish amendment proposing that an international conference should be convened to conclude a multilateral convention on the declaration of death of missing persons rather forced the decision, whereas the authors of the joint draft resolution had hoped to leave that question for Governments to decide. For that reason he could not accept the Danish amendment.

46. The CHAIRMAN inquired whether, in view of the explanations given by the authors of the joint draft resolution, the representatives of Argentina and Venezuela maintained their amendments.

47. Mr. FERRER VIEYRA (Argentina) felt that the text of the joint draft resolution was not clear. As it was then worded he thought it could be interpreted to mean only bilateral agreements. For that reason he had presented an amendment which would make it possible for States to say clearly and unequivocally whether or not they wished the problem to be settled by means of a multilateral convention.²

48. Mr. CHAUMONT (France) observed that the term "conventional" had only one possible interpretation in international law, namely, that it referred to all types of instruments concluded between States whether bilateral or multilateral. He could therefore not understand the objections raised by the representative of Argentina.

49. Mr. FERRER VIEYRA (Argentina) said that in common with the representative of Venezuela, after the explanation of the joint draft resolution given the preceding day by the representative of France,³ he had doubted that under its provisions it would be possible to envisage multilateral conventions to solve the problem.

50. Mr. RIVERA HERNÁNDEZ (Honduras) supported the Argentine and Venezuelan suggestions

¹ See the Summary Record of the 206th meeting, paragraphs 54 to 59.

² *Ibid.*, paragraph 93, and paragraph 30 above.

³ *Ibid.*, paragraphs 54 to 59.

because he, too, considered that the paragraph as it was then worded was unclear. The text could be improved, however, if the phrase "bilateral or multilateral conventions between States" could be inserted in the sixth paragraph in place of the words "conventional measures". In his opinion the last paragraph was also obscure and tended to exclude the possibility of multilateral agreements. If the text was clarified, States would be able to study the convention and decide whether or not they wished to adopt it.

51. He supported the remarks of the representative of Pakistan. The question of the declaration of death of missing persons was extremely important and in his opinion should be solved once and for all. The convention should not be limited merely to the years of the Second World War. He suggested, therefore, that the phrase, which the Pakistani representative proposed to add at the end of the sixth paragraph, be amended to read: "or other disturbances which have occurred or will occur".

52. Mr. SORO (Chile) felt that the explanations of the authors of the joint draft resolution should satisfy the objections raised by the Venezuelan and Argentine delegations. In his opinion the joint draft resolution incorporated their idea and if the Spanish text was not sufficiently clear on the point, the phrase "conventional measures" could be amended to read "concluding bilateral or multilateral conventions" which would make the text perfectly clear.

53. Mr. TRUJILLO (Ecuador) thought that the difficulty lay mainly with the Spanish text but that there was no disagreement among members on the substance. He felt that a suitable Spanish text could be arrived at.

54. He wondered whether the representatives of Egypt, France and Iran would permit him to consult with the representatives of Argentina and Venezuela in order to prepare a text which would be perfectly clear in Spanish.

55. Mr. ABDON (Iran) agreed that the representative of Ecuador should be empowered to draft a suitable text in Spanish to cover the point raised by the representatives of Argentina and Venezuela since, in effect, there was no disagreement among members on the substance.

56. He had already spoken on the Danish amendment when he had replied to the Belgian representative who had supported the suggestion that some provision should be made for the calling of an international conference on the matter in the near future. He felt that the proposal was premature. It would be wiser to await the replies of Governments and then call a conference if it should prove necessary.

57. He wondered, moreover, whether the Danish amendment asking that an international conference should be convened not later than 1 March 1950 was not contrary to rule 142 of the rules of procedure. Certain expenditures would be entailed, and he was not sure whether the Sixth Committee could take a decision in those circumstances without having an estimate of the costs involved and an opinion of the Administrative and Budgetary Committee on the matter, as rule 142 directed.

58. The CHAIRMAN repeated his request to the representatives of Argentina and Venezuela to state whether they maintained their amendments.

59. Mr. PÉREZ PEROZO (Venezuela) had been concerned principally with the interpretation of the phrase "conventional measures". He had already stated that if the text was clarified to indicate that multilateral agreements were not excluded, he would withdraw his amendment to the sixth paragraph. He would, however, insist on his amendment to the seventh paragraph of the joint draft resolution.

60. Mr. FERRER VIEYRA (Argentina) accepted the Chilean text "concluding bilateral or multilateral agreements" which had been suggested for the sixth paragraph. It fully satisfied his objections to the original text.

61. Mr. CHAUMONT (France) also accepted that amendment.

62. Mr. PÉREZ PEROZO (Venezuela) again stressed that it was of interest for the General Assembly to know whether Governments considered that the problem could be dealt with best by means of a multilateral convention or by other means, and whether an international conference on the subject should be called.

63. Mr. SORO (Chile) thought that the phrase "or of agreements they might conclude" could be inserted in the seventh paragraph after the phrase "they may thus adopt" to satisfy the objections raised by the representative of Venezuela. It would clarify the text and bring into harmony with the wording of the sixth paragraph.

64. Mr. PÉREZ PEROZO (Venezuela), at the request of the representative of Iran, explained that his amendment to the seventh paragraph was intended to make it possible for the General Assembly to know the opinion of Governments on the problem. He thought it was a logical amendment because otherwise he could not understand why the draft convention should be referred to States for comment. Presumably, that procedure was being recommended to permit States either to amend their domestic legislation or to consider the possibility of arriving at bilateral or multilateral agreements to deal with the problems. If, in their opinion, a multilateral convention was needed, the General Assembly should be so informed, and it could then proceed to bring about the convention either by calling an international conference to draft a new text or by asking the Sixth Committee to study the existing draft convention.

65. He did not believe that the Chilean suggestion would satisfy that point because Governments could not proceed to the immediate preparation of a convention after stating their preferences. It was for the General Assembly to prepare that instrument. As it was then worded the joint draft resolution asked States only "to keep the Secretary-General informed of any measures that they might thus adopt" and did not suggest that the opinions of Governments on whether or not a convention was necessary should be forwarded to the General Assembly. That body, however, would not have sufficient information to take the necessary action if those replies were not submitted.

66. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department), in reply to the representative of Iran, agreed that if the Danish amendment was adopted, rule 142 of the rules of procedure would have to be applied since the amendment would entail certain expenses. That did not mean, however, that at that juncture the

Sixth Committee could not take a decision on the Danish amendment.

67. With regard to the last paragraph of the joint draft resolution the Secretary-General wished to be clear on exactly what the Committee wanted. If the basic idea was that all subsequent action was to be left to the States, then no future action by the United Nations was contemplated. The Chilean amendment would mean that the General Assembly should merely be informed of steps which the States had already taken, and in that case there would be nothing further for the United Nations to do. The Venezuelan amendment, on the other hand, suggested that Member States should make it clear whether they wanted the United Nations to undertake any future action with regard to the problem. The Secretary-General, therefore, would be happy to receive a clear directive on whatever action the Sixth Committee thought should be taken in the problem, so that he would know what his duties were.

68. Mr. ABLOH (Iran) agreed with Mr. Kerno's remarks concerning the application of rule 142.

69. In view of Mr. Kerno's explanation of the difference between the Chilean and Venezuelan amendments he wished to accept, on behalf of the four delegations which had sponsored the joint draft resolution, the Venezuelan amendment to the last paragraph.

70. Mr. SVENNINGSEN (Denmark), in formally introducing his amendments to the draft resolution, pointed out that the sixth paragraph, thus amended, would still contain a reference to legislative measures; it was quite proper that States should examine the possibility of adopting proper domestic legislation, if necessary.

71. Mr. LOUTFI (Egypt) thought that, as the substance of the Danish amendments had been discussed during the preceding debate, the Committee could proceed to vote.

72. Mr. ROBINSON (Israel) said that, since the Committee had decided not to examine the draft convention at that session, he appreciated the effort of the Danish delegation to do the next best thing, and would support the Danish amendments.

73. He wished to take issue with statements made during the debate to the effect that it would be premature to call an international conference to prepare a convention on the declaration of death of missing persons. He recalled that, as early as 15 June 1948, the Secretary-General had circulated a communication dated 3 June 1948 from the Preparatory Commission of the International Refugee Organization proposing steps to be taken to co-ordinate the procedure of the declaration of death of missing persons (E/824). A comment from the Government of Norway had been received on 21 August 1948. The Secretary-General had thereupon prepared and circulated a draft Convention on the declaration of death of missing persons on 26 October 1948 (E/1071). Shortly thereafter — and consequently fully a year ago — the Secretary-General had asked Governments for comments on that draft. Such comments had been received from Canada, Denmark, Turkey, the Union of South Africa, the United States of America, Norway, Greece, Sweden, Guatemala, Belgium, Australia, Netherlands and the United Kingdom. The Economic and Social Council, in its resolution 249 (IX) of 9 August 1949 had asked

for further comments, which would no doubt be forthcoming.

74. Consequently, it might be said that the interest shown in the draft Convention on the declaration of death of missing persons by various Governments was without precedent; comments from so many of them had not been received on any other convention prepared by the General Assembly.

75. In view of that fact and of the year of work on that subject by the International Refugee Organization and by the various organs of the United Nations, it could hardly be said that it would be premature to call a conference on the subject, which clearly was regarded by various States as an international problem.

76. He therefore urged the Committee to adopt the Danish amendments.

77. Mr. WENDELEN (Belgium) said that, although rule 142 of the rules of procedure had sometimes been interpreted to mean that an estimate of expenditures should be prepared by the Secretary-General before the proposal involving such expenditures was put to the vote, Mr. Kerno's explanations had confirmed his conviction that the Danish amendments could be voted on before such an estimate was presented.

78. He remarked in passing that that estimate should be prepared by the Secretary-General on the basis of a conference attended by some twenty States — those directly interested in the matter — although all Members of the United Nations would be invited. As such States were chiefly those of Europe the conference might be held in some easily accessible spot. He hoped that representatives of States which would not wish to take part in the conference would not oppose the Danish amendments.

79. He then introduced two amendments on behalf of his delegation.

80. The third paragraph of the joint draft resolution should be replaced by the following text:

"Considering that the General Assembly should undertake a detailed study of Conventions prepared by small groups only if one of its Main Committees disposes of the necessary time; that, when the contrary is the case, it can either call a conference of plenipotentiaries for the purposes of study and of drafting the Convention or express in a general form its opinion on the principles contained therein."

81. He pointed out that the original text of the third paragraph appeared to lay blame on the Economic and Social Council for not examining the draft convention in detail. The text proposed by him, on the other hand, explained the reasons why the General Assembly, having found itself in a similar position, had been forced to take a similar step.

82. The sixth paragraph should be replaced by the following text:

"Approves the principles underlying the draft Convention and recommends them to Member States as guidance in taking the necessary legislative or conventional measures on the declaration of death of missing persons".

83. He did not think that the text suggested in his second amendment would be in any way binding on the General Assembly; it would, however,

be more definite and forceful than the original text of the sixth paragraph.

84. Mr. RENOUF (Australia) remarked that his country had no special interest in the preparation of a convention on the declaration of death of missing persons. He felt, however, that if the countries concerned with the matter wished to hold a conference at which such a convention would be prepared—and it seemed that the majority of countries directly concerned did so wish—they should be permitted to proceed in the manner they considered best. He would consequently support the Danish amendments.

85. Mr. CHAUMONT (France) wondered whether the Belgian representative might not be willing to withdraw his second amendment, which ran counter to the Committee's decision not to discuss the draft convention. He did not think the Committee could approve the principles of the convention without having first examined the convention itself.

86. Mr. WENDELEN (Belgium) replied that in view of the recommendations of the *ad hoc* Committee on the Declaration of Death of Missing Persons and of the Economic and Social Council, the Sixth Committee—and consequently the General Assembly—would be failing in its duty if it did not state its general opinion of the draft convention. If it was decided not to call a conference, the General Assembly should at least recommend the draft convention, without thereby pronouncing a judgment on its contents, to the attention of Member States.

87. The CHAIRMAN stated that the point raised by the French representative was most pertinent. The General Assembly could not make a pronouncement on the substance of any document which it had not examined.

88. Mr. DUYNSTEE (Netherlands) associated himself with the remarks of the Israeli representative and would vote in favour of the Danish amendment. While the subject might not be of great importance to countries which had not suffered from enemy occupation, the countries which, like his own, had had that experience were vitally interested. In that connexion, he wished to thank the Australian representative for his support.

89. The CHAIRMAN summarized the situation with respect to the joint draft resolution.

90. Since the sponsors of that resolution had accepted the Chilean amendments, the first paragraph had been deleted and drafting changes had been made in the second and third paragraphs.¹ There was a Belgian amendment to replace the third paragraph by a new text. The fourth and fifth paragraphs had been unaltered. There was a Danish amendment for the insertion of two new paragraphs between the fifth and sixth. The text of the sixth paragraph had been changed, in accordance with the Venezuelan amendment which had been accepted by the sponsors of the joint draft resolution, and further amendments to it had been proposed by the delegations of Denmark, Belgium and Pakistan. The representative of Honduras and also suggested a drafting change in the Pakistani amendment to the sixth paragraph. The sponsors of the joint draft resolution had ac-

cepted the Venezuelan amendment to the seventh paragraph, to which further amendments had been moved by the delegations of Denmark and Pakistan. He invited the Committee to proceed to a vote on the various amendments to the joint draft resolution and on the draft resolution itself.

The Belgian amendment to the third paragraph was rejected by 15 votes to 9, with 12 abstentions.

91. Mr. WENDELEN (Belgium) requested that a vote by roll-call should be taken on the additional paragraphs proposed in the Danish amendment.

A vote was taken by roll-call.

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United States of America, Uruguay, Australia, Belgium, Denmark, Greece, Israel, Netherlands, New Zealand, Philippines, Sweden, United Kingdom of Great Britain and Northern Ireland.

Against: Venezuela, Yugoslavia, Brazil, Byelorussian Soviet Socialist Republic, Chile, Colombia, Ecuador, Egypt, France, Iran, Lebanon, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Argentina, Canada, China, Cuba, Czechoslovakia, Dominican Republic, Mexico, Norway, Pakistan, Saudi Arabia, Turkey.

The Danish amendment was rejected by 14 votes to 12, with 11 abstentions.

92. Mr. SVENNINGSEN (Denmark) thereupon withdrew his amendments to the sixth and seventh paragraphs.

The Belgian amendment to the sixth paragraph was rejected by 13 votes to 4, with 17 abstentions.

93. Mr. ROBINSON (Israel), speaking on a point of order, drew attention to the fact that important decisions were being taken in the absence, to judge by the vote, of fully one-third of the members and with the active participation of only a small number of those present, as shown by the great number of abstentions. Such an indifference on the part of the majority to the subject under consideration appeared to him to be abnormal.

94. Mr. FITZMAURICE (United Kingdom) supported the remarks of the Israeli representative and suggested that the latter might bring up the subject in a plenary meeting. The unduly long Saturday morning meetings frequently resulted in many absences at a time when decisions were taken. Such decisions could not be said to represent fully the views of the Committee.

95. Mr. GARCÍA AMADOR (Cuba) agreed with the United Kingdom representative. He wished to point out to the Israeli representative, however, that abstention on the part of some delegations in no way meant lack of interest in the subject on which a vote was taken.

96. The CHAIRMAN replied that, under the rules of procedure, he had no choice but to put a question to the vote when a quorum was present. He urged representatives not to absent themselves from meetings of the Committee.

The Honduras amendment to the Pakistani amendment to the sixth paragraph was rejected by 8 votes to 4, with 23 abstentions.

¹ See the Summary Record of the 206th meeting, paragraphs 81, 82 and 95.

97. The CHAIRMAN then put to the vote the Pakistani amendment, which added at the end of the sixth paragraph, the words "or other disturbances of peace during the post-war years until the present time".

The Pakistani amendment to the sixth paragraph was adopted by 16 votes to none, with 20 abstentions.

98. Mr. SOTO (Chile) and Mr. FITZMAURICE (United Kingdom) felt that the word "replies" in the seventh paragraph as proposed by the Venezuelan representative and accepted by the sponsors of the joint draft resolution, was inappropriate. There was nothing in the preceding paragraph which called for an answer.

99. The CHAIRMAN suggested that the word might be replaced by "comments".

That suggestion was adopted.

The Pakistani amendment to add, at the end of the seventh paragraph, the words "at the next session" was adopted by 25 votes to none, with 11 abstentions.

Paragraph 7, as amended, was adopted by 30 votes to none, with 7 abstentions.

The joint draft resolution as a whole, as amended, was adopted by 28 votes to none, with 11 abstentions.

100. Mr. KORETSKY (Union of Soviet Socialist Republics) said, in explanation of his vote, that in the view of his delegation, the declaration of death of missing persons was a problem to be solved under the laws of the country of which those persons were nationals. As he did not think that a multilateral convention on the subject was

needed, he had refrained from voting for the various paragraphs of the draft resolution.

101. Mr. BARTOS (Yugoslavia) explained that, although he had voted in favour of the draft resolution, his delegation still held the view that the State of which the missing persons were nationals was the best and most competent judge of when they should be declared dead; there were, however, a number of related matters which might best be settled by co-operation among States, such as the international effects of such declarations of death.

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) (continued)

MEMORANDUM TO THE THIRD COMMITTEE (A/C.6/L.102)

102. The CHAIRMAN drew the Committee's attention to the memorandum (A/C.6/L.102), from the Chairman of the Sixth Committee to the Third Committee on questions referred to the Sixth Committee in connexion with the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others and asked all those representatives who had any comments to make on that memorandum to submit them to the Rapporteur not later than the morning of 28 November 1949.

The meeting rose at 2.15 p.m.