

HUNDRED AND SIXTY-NINTH MEETING

Held at Lake Success, New York, on Wednesday, 19 October 1949, at 11 a.m.

Chairman: Mr. LACHS (Poland).

Method of considering, at the request of the Third Committee, 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)

1. The CHAIRMAN explained that, by two resolutions adopted on 3 and 4 October respectively, (A/C.6/329 and A/C.6/329/Add.1) the Third Committee had asked the Sixth Committee for its legal opinion on the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, and particularly on certain articles of the draft.

2. He suggested that, in order to save time, the officers of the Sixth Committee should be asked to prepare a working paper outlining the various legal points to be considered in connexion with the matter, in order to facilitate the discussion of it.

3. Mr. CHAUMONT (France) supported the suggestion to provide the Committee with a preliminary study prepared by a small group which was thoroughly qualified for the task.

4. Mr. FITZMAURICE (United Kingdom) considered that a paper prepared by the officers of the Committee would certainly be very useful. He thought it should first be considered by a sub-committee which would report to the Sixth Committee, it being understood that the sub-committee's meetings would not prevent the Committee itself from continuing its work on the other items of the agenda.

5. The CHAIRMAN remarked that several delegations had only one representative in the Sixth Committee, which would make it impossible for them to be represented at both Committee and sub-committee meetings at the same time.

6. In any case, it would be better for the Committee not to take a decision on the United Kingdom suggestion until it had received the paper to be prepared by the Committee officers. It might then find it unnecessary to set up a sub-committee and be able to take a rapid decision itself on that purely technical question.

7. Mr. CHAUDHURI (India) supported the Chairman's remarks. He pointed out that his delegation was among those which had no alternates in the Sixth Committee.

8. Mr. LOUTFI (Egypt) also thought it was pointless to establish a sub-committee, since discussion of the articles of the draft convention referred to the Sixth Committee was not likely to give rise to serious difficulties.

9. The CHAIRMAN noted that there was general agreement that the officers of the Sixth Committee should prepare a working paper on the question.

It was so decided.

¹ See the Summary Record of the 168th meeting, paragraph 103.

Report of the International Law Commission (A/925) (continued)

PART II: DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES (A/C.6/326, A/C.6/330, A/C.6/332) (continued)

10. The CHAIRMAN asked the Committee to continue its consideration of the Polish delegation's motion¹ that part II of the International Law Commission's report should not be discussed because the draft declaration on rights and duties of States (A/925, paragraph 46) had been referred to the General Assembly without account having been taken of articles 16 and 21 of the Commission's Statute.

11. That proposal should be considered as a point of order, and the Chairman thought that it should be taken up before any other, especially since any discussion of part II of the report would become pointless if that proposal were adopted.

12. In principle, the Polish proposal should have been put to the vote without discussion. However, several representatives had already spoken on it; the discussion of it should therefore be continued.

13. Mr. ABDON (Iran) raised a point of order to the effect that the Sixth Committee had no right to discuss the Polish proposal. To adopt it would be tantamount to refusing to discuss part II of the International Law Commission's report, which had been duly placed on the agenda of the Sixth Committee in accordance with rules 19 and 89 of the rules of procedure.

14. Mr. Abdoh pointed out that the USSR delegation had already raised the objection based on articles 16 and 21 of the Statute in the Assembly's General Committee, and the latter had therefore taken its decision in full knowledge of the facts.

15. The representative of Iran asked the Chairman to rule immediately on his point of order, and announced his intention of challenging the Chairman's decision if his request were refused.

16. Mr. KORETSKY (Union of Soviet Socialist Republics) observed that rules 19 and 89 of the rules of procedure did not apply in that case because the legality of including part II of the International Law Commission's report in the agenda was not being questioned. No one disputed the fact that the General Assembly had approved both the inclusion of the question in the agenda and its reference to the Sixth Committee. Nonetheless, the inclusion of that part of the report in the agenda in no way prejudged the question whether the draft declaration should be discussed in detail or not, and in no way prevented the Sixth Committee from deciding what was to be done with the draft. In adopting the agenda, the President of the General Assembly had clearly stated that the Assembly would have to decide later what was to be done with the draft declaration on rights and duties of States.¹ For its part, the Interna-

² See the Summary Record of the 224th Plenary meeting, paragraph 30.

tional Law Commission had indicated in the next to the last sub-paragraph of paragraph 53 of its report (A/925) that "it was for the General Assembly to decide what further course of action should be taken in relation to the draft declaration, and, in particular, whether it should be transmitted to Member Governments for comments". It remained to be determined at what stage of the debate that decision was to be taken. It seemed logical that it should be taken immediately because, if the Committee were to decide to transmit the draft declaration to Member States, there would hardly be any point in considering the substance of a draft which would probably be referred back, together with the comments of Member States, to the International Law Commission, which would have either to amend it or to make recommendations in the light of those comments. Accordingly, the General Assembly and the Sixth Committee would not be in a position to take a well-founded decision on the substance of the problem until the next session.

17. The Polish delegation's proposal had therefore put the question exactly as it should be put. If the Committee decided to transmit the draft to Member States, the USSR delegation considered that it would be absolutely useless to continue discussion of the question during the present session.

18. Mr. STABELL (Norway) recalled that the Byelorussian, USSR and Polish delegations had argued at the 168th meeting that the International Law Commission had violated articles 16 and 21 of its Statute by transmitting the draft declaration directly to the General Assembly. The Polish delegation had therefore drawn the conclusion that the General Assembly should not discuss the substance of the question but should merely send the draft back to the International Law Commission, requesting the latter to adhere to its Statute. The Chairman had then stated that the Polish representative's proposal to that effect was a preliminary question, which had to be decided before the substance of part II of the report and of the Yugoslav and United States proposals was discussed. The representatives of the United Kingdom and the United States had contested that view, and the Norwegian delegation shared their opinion.

19. There seemed to be some confusion in the minds of certain representatives as to the nature of the Statute of the International Law Commission. In point of fact, the Statute was simply a permanent instruction issued to the Commission by the General Assembly, and was therefore binding on the Commission but not on the Assembly itself, which was free to alter that Statute at any time by a simple majority vote. The USSR delegation, however, apparently wished to place the Statute on the same footing as the rules of procedure, which the General Assembly was certainly bound to observe. The Chairman's decision appeared to be based on the same interpretation.

20. If the Chairman maintained his decision, the Polish proposal would certainly require the application of rule 102 of the rules of procedure. In that case, any member of the Committee could appeal against the Chairman's ruling. If, on the other hand, the Polish proposal was considered as an ordinary proposal, it should, in accordance with rule 120, be put to the vote only after all the other proposals which had been submitted in advance of it.

21. Mr. ABDOH (Iran) stated, in reply to the USSR representative, that the Polish delegation's proposal would have been receivable if it had provided for the transmission of the draft declaration to Member States after the Committee had discussed part II of the International Law Commission's report. At the present stage, however, the proposal ran counter to the General Assembly's decision, duly and authoritatively taken, to include the report as a whole in its agenda. He therefore urged that the Chairman should rule immediately on the Iranian proposal, in accordance with rule 102 of the rules of procedure.

22. The CHAIRMAN remarked that the Iranian proposal was not receivable at that point. The Committee could not deal with two points of order at the same time; it must first decide on the first of them, which was the one raised by the Polish delegation.

23. Had the Polish proposal related to substance, it should obviously only have been considered in its turn after all the proposals submitted before it. But the Polish proposal was procedural and should have priority over all other proposals.

24. As regards the objection that the proposal would nullify the General Assembly's decision in approving its agenda, the Chairman did not share the Iranian representative's opinion. Within the framework of the agenda, the Committee was fully entitled to raise the question whether the International Law Commission had scrupulously abided by the provisions of its Statute in transmitting the draft declaration direct to the General Assembly instead of communicating it to Member States.

25. The Chairman therefore proposed to put the Polish proposal to the vote first.

26. Mr. BARTOS (Yugoslavia) moved closure of the debate on the Polish proposal.

27. In application of rule 106 of the rules of procedure, the CHAIRMAN put the motion of closure to the vote after noting that no member had asked to speak against it.

The motion of closure was adopted by 40 votes to none, with 8 abstentions.

28. The CHAIRMAN called upon the Committee to express its views on the Polish proposal that the substance of part II of the International Law Commission's report should not be discussed because the Commission had infringed articles 16 and 21 of its Statute by transmitting the draft declaration on rights and duties of States directly to the General Assembly.

29. Mr. GARCÍA AMADOR (Cuba) pointed out that the Iranian point of order should have had priority over that raised by the Polish delegation because the former raised the question whether the Sixth Committee had the right to alter a decision of the General Committee approved by the General Assembly. To adopt the Polish proposal would be tantamount to ignoring the decision to include part II of the report in the agenda, which required discussion of part II in the Sixth Committee. The Committee should therefore decide first whether the Chairman's decision to put the Polish proposal to the vote was consistent with the decision to include the draft declaration in the agenda.

30. The CHAIRMAN replied that the Polish proposal was not inconsistent with the General Assembly's decision regarding the agenda, and did

not raise any question of competence. The question was not whether or not the Committee had the right to continue discussion of the draft declaration, but whether the Committee should examine the draft declaration regardless of the fact that the International Law Commission had transmitted it to the General Assembly directly, without having fulfilled the formalities provided for by articles 16 and 21 of the Commission's Statute. The point was purely procedural; that was why he had decided to put the Polish proposal to the vote first.

31. Mr. GARCÍA AMADOR (Cuba) appealed against the Chairman's ruling.

32. The CHAIRMAN called upon the Committee to decide upon the Cuban delegation's appeal.

The Chairman's decision was overruled by 12 votes to 11, with 26 abstentions.

33. The CHAIRMAN asked the representative of Iran to explain the purpose of his motion on a point of order.

34. Mr. ABDOH (Iran) said that, under articles 19 and 89 of the Assembly's rules of procedure, all Committees must adhere to the agenda adopted by the General Assembly. Part II of the International Law Commission's report, containing the draft declaration on rights and duties of States, unquestionably appeared on the agenda of the Sixth Committee. The Polish delegation's proposal that the Committee should refrain from discussing the question therefore ran counter to a valid and definitive decision of the General Assembly.

35. The CHAIRMAN put to the vote the Iranian representative's motion to declare the Polish motion not receivable on the ground that the Sixth Committee was bound to consider the draft declaration, which had been included in the agenda by the General Committee and the General Assembly.

The Iranian delegation's motion was adopted by 15 votes to 10, with 25 abstentions.

36. Mr. BARTOS (Yugoslavia) stated that he had voted against the Iranian motion because he considered that all delegations had the right to submit to the Committee any proposals they deemed useful or necessary.

37. Mr. CHAUMONT (France) had also voted against the Iranian representative's motion because it was legally invalid. The Polish motion had been fully receivable under the rules of procedure, and rules 19 and 89 had been wrongly invoked in that connexion. He emphasized, however, that his vote in no way indicated approval of the substance of the Polish motion.

38. Mr. PETREN (Sweden) shared the French representative's view. He added that, in his opinion, there was nothing to prevent the Sixth Committee from taking the position on the draft declaration which was set forth in the penultimate sub-paragraph of paragraph 53 of the International Law Commission's report, the position that it was for the General Assembly to decide whether the draft should be transmitted to Member States for comments.

39. Mr. FITZMAURICE (United Kingdom) had abstained from voting for reasons already given by the French and Swedish representatives. In his

opinion, the Polish motion should have been put to the vote in order to give the Committee an opportunity to decide directly on the question raised in that motion.

40. The CHAIRMAN called for comments on part II of the International Law Commission's report.

41. Mr. SPIROPOULOS (Greece) deplored the amount of time wasted on the procedural discussion which had just taken place. Such a discussion was not likely to raise the Committee's prestige.

42. He then stressed how difficult it was for him—a member of the International Law Commission who therefore wanted the draft declaration to be adopted—to be obliged to choose the solution proposed by the United States delegation. That solution was merely to invite Member States, international tribunals and jurists of all nations to draw inspiration from the preamble and articles of the declaration and to regard them as a source of law and a guide to its progressive development.

43. The Greek delegation particularly wished the General Assembly to adopt the very important principles laid down in the draft declaration, especially those in articles 3 and 4, since Greece had long suffered from violations of those principles by its northern neighbours. His delegation was nevertheless aware of the difficulty of formulating a declaration acceptable to all States, a difficulty which Sir Hartley Shawcross had pointed out at a previous meeting.¹ That was why the Greek delegation was unable to support the Argentine proposal (A/C.6/332) to refer the draft declaration back to the International Law Commission after receiving comments by Governments.

44. The International Law Commission had done all it could in that field; in order to obtain a sufficient majority, it had had to drop some ten articles of the original Panamanian draft (A/CN.4/2). If the Commission had been asked to meet the wishes of all the States which might present comments, the existing draft would have been reduced to a skeleton.

45. At a time when many new principles derived from the United Nations Charter, the Statute of the International Court and the Nürnberg principles were in the process of becoming positive international law, it was very difficult, if not impossible, to draft a declaration on the rights and duties of States which would satisfy everyone. That fact was not as important as had been claimed, however, because most of the principles it would be desirable to include in the declaration were already a part of positive law.

46. Mr. Spiropoulos questioned whether the International Law Commission could take a draft produced with such difficulty and revise it, taking into account a body of texts and comments and, indeed, the entirely new draft declaration submitted by the Yugoslav delegation (A/C.6/326). In the International Law Commission, Mr. Koretský had insisted that a number of his comments on, and criticisms of, the declaration, which incidentally he had not presented in the form of concrete proposals, should be inserted in the report.² Mr. Spiropoulos had been in favour of that insertion despite the objections of other members of the Commission because, in his view, those statements

¹ See the Summary Record of the 159th meeting.

² See document A/925, footnote to paragraph 46.

represented the juridical concepts held in a large part of the world. It was easy to understand why the International Law Commission had been unable to embody those comments in the articles of the draft declaration itself. Mr. Koretsky's ideas were in fact political postulates rather than legal principles. The International Law Commission, composed as it was of a small number of jurists, could hardly have been expected to accede to the wishes of one of its members and to lay down rules concerning the prohibition of atomic weapons, the suppression of the vestiges of fascism, steps to be taken for the maintenance of international peace and security, and the like. Mr. Koretsky had also held that the draft declaration might impair the principles of sovereignty and of the sovereign equality of States. Those were vague and nebulous concepts, which could be discussed endlessly. All that showed how difficult it had been, and still was, for the International Law Commission to incorporate all ideas, principles and postulates in a declaration satisfactory to everyone.

47. In the circumstances, it could well be imagined what unsurmountable difficulties the International Law Commission would have encountered if it had been asked to prepare a new draft, taking into account not only all the views expressed to date, but also proposals submitted by the various delegations, observations of Governments and the Yugoslav draft declaration.

48. Mr. Spiropoulos was somewhat surprised by the Yugoslav draft declaration, since it seemed to be designed for a specific situation, that is, the present political situation in Yugoslavia. That could be clearly seen from articles 6, 7 and 11 of the draft, among others. The Greek delegation would have been happy to see the rules set forth in those articles adopted and observed. It could not help wondering, however, why the Yugoslav delegation had not taken that initiative two years earlier, which would have spared Greece a great deal of trouble.

49. The Greek delegation was not opposed in principle to the Yugoslav draft but thought that parts of it were superfluous and that it also contained some rather serious errors. For example, there was no need to state, as did article 8 of the draft, that every State should act in a "reasonable and courteous manner"; that was obvious. Further on, the same article raised the principle of equal treatment for nationals and foreigners. The fallacy of that principle had been realized long ago. Any doubt that might have existed about it had been removed by the decision of the Permanent Court of International Justice in the *Chorzow* case.¹ It had since been admitted that a foreigner might not enjoy the same civic and political rights, for example, as a national. That did not mean that a foreigner did not sometimes enjoy a privileged position because, unlike the nationals of a country, he had certain minimum rights which were explicitly protected by international law. That was why a State could not legislate for foreigners as easily as it could for its own nationals.

50. Mr. Spiropoulos then drew attention to the fact that articles 4 and 24 of the Yugoslav draft (A/C.6/326) were contradictory.

¹See *Publications of the Permanent Court of International Justice*; Series A, No. 9; Judgment No. 8.

51. Like the Yugoslav draft, the draft drawn up by the International Law Commission (A/925, paragraph 46) set forth the principle of non-intervention. In Mr. Spiropoulos's opinion, that was a political assumption rather than a rule of law. It should not be concluded from that statement, however, that the Greek delegation thought that States had the right to intervene in the domestic or external affairs of other States; it should, nevertheless, be remembered that certain actions which some might call intervention were permitted to States under international law. The idea of intervention was liable to misconstruction and improper interpretation. In support of that statement, Mr. Spiropoulos cited the case of a State granting a loan to another State on the understanding that its foreign policy would follow specific lines. A third State might regard the action of the country granting the loan as intervention. It might also be claimed that a State had intervened by giving military or financial aid to another State to enable it to defend itself against aggression of which it had been a victim. The Greek delegation believed that States were free to enter into any treaties they considered useful for the protection of their interests. In view of the difficulty of interpreting the principle of non-intervention, that principle should be omitted from the draft declaration.

52. The considerations set forth by the Greek delegation showed that the main difficulty encountered in drawing up a declaration on the rights and duties of States lay in establishing the difference between a rule of law and a political requirement. He was fully aware of the very special importance which the Latin-American delegations attached to the draft declaration. While Greece maintained the most friendly relations with the Latin-American countries and greatly admired their peoples, it regretted that it could not recommend the adoption of the draft declaration because it felt that legal considerations should take precedence over all others. It was relatively easy for the Latin-American countries to agree on the wording of such a declaration; they shared a common ideal and had similar legal concepts. It was difficult, however, to see how the fifty-nine Member nations, some of which had diametrically opposed concepts, could agree on the principles which a universal declaration should contain.

53. For all those reasons, the Greek delegation felt that the United States proposal (A/C.6/330) offered the best solution of the problem. In fact, it was inadvisable to transmit the draft declaration to the Governments with a view to obtaining their comments and then to refer it to the International Law Commission for further consideration in the light of those comments, because, if that were done, not only would the adoption of the draft be indefinitely delayed, but a fatal blow would be dealt the International Law Commission itself. To be sure, the United States proposal might not seem perfect to all the members of the Committee. That proposal could be approved in principle, however, and its content could be improved by the adoption of certain amendments.

54. Mr. GARCÍA AMADOR (Cuba) said that his delegation considered that the question before the Committee was of prime importance in international law, and that the protection of two categories of interests which deserved to be defended—the social interests of the international com-

munity and the interests of the individual—could in fact be assured only by teleological formulation of the rights and duties of States. As the State was the organ of liaison between the individual and the international community, the limits of its competence and functions must be defined in accordance with international legal standards.

55. Subject to the remarks which the Cuban delegation wished to make concerning the draft prepared by the International Law Commission, and to amendments which the delegation might have to propose later, it was of the opinion that the draft represented the political and legal realities of the time, and took into account the rights and legitimate interests of peoples on the national and international levels. In fact, the draft declaration, in formulating the rights and duties of States, made every effort to assure adequate legal protection for the social interests of the international community and the basic interests of the individual. From the latter point of view, the draft declaration was not a strictly scientific work; in fact, it was not difficult to see that considerations foreign to legal theory, properly so called, had entered into its preparation.

56. The International Law Commission had carefully studied the scope of its draft declaration, and had decided to include in it only the principles already accepted in international law. The Cuban delegation wondered why, under the conditions, the International Law Commission had inserted after each of the articles of the draft a commentary relating to the draft submitted by Panama at the first session of the General Assembly. His delegation considered that, by so doing, the International Law Commission had narrowed the scope of the draft declaration and had given rise to misunderstanding regarding the true nature of its work. That was why some members of the Sixth Committee seemed to have had the impression that the draft declaration prepared by the International Law Commission in the main rejected the ideas of the Latin-American States.

57. Indisputably, the International Law Commission had taken the Panamanian draft declaration on the rights and duties of States as a basis for discussion. It had, none the less, as requested in General Assembly resolution 178 (II), taken account of other existing documents and drafts, as well as of the commentaries and observations submitted by sixteen Member States, that is by those States which had seen fit to reply to the two invitations sent them to express their views on the question.

58. In the opinion of the Cuban delegation, the universal character of the draft declaration derived from those factors. What other explanation could there be of the fact that after three readings every article in the draft had been adopted by a large majority of the members of the Committee, on which every legal system in the world was represented, and that the draft as a whole had been accepted by eleven of the thirteen members of the Committee?

59. In conclusion, Mr. García Amador stated that, when the time came to decide what the General Assembly should do about the International Law Commission's draft declaration, his delegation would support any initiative calculated to meet the need, which the United Nations could not escape, of finding the speediest possible solution of the problem of the rights and duties of States by adoption of a declaration.

60. While thanking the representative of Greece for his kind words about the peoples of Latin America and their striking unanimity of thought, Mr. García Amador wished to point out to him that the draft declaration compiled by the International Law Commission was not of Latin-American inspiration. Proof of that was the fact that, after long discussion, eleven members of the Committee had voted for the draft and only four of them had represented Latin-American countries.

The meeting rose at 1.5 p.m.