

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/2807
26 November 1954

ORIGINAL: ENGLISH

Ninth session
Agenda item 49

REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SIXTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. F. ADAMIYAT (Iran)

1. The General Assembly, at its 477th plenary meeting, held on 24 September 1954, decided to place on the agenda of its ninth session the item "Report of the International Law Commission on the work of its sixth session". At its 478th plenary meeting, held on 25 September 1954, the General Assembly referred the item to the Sixth Committee for consideration.
2. The Sixth Committee considered the item at its 396th to 402nd meetings held between 28 September and 13 October and at its 420th to 425th meetings held between 10 and 18 November 1954.
3. In the course of its consideration of the item, the Committee prepared draft resolutions for adoption by the General Assembly regarding those parts of the report of the International Law Commission^{1/} which required action on the part of the Assembly, namely part one of chapter II, on the elimination or reduction of future statelessness, and chapter III, on the draft code of offences against the peace and security of mankind. The proceedings on these subjects are briefly summarized in sections I and II below. The relevant draft resolutions recommended to the General Assembly by the Sixth Committee are contained in section III.

^{1/} See Official Records of the General Assembly, Ninth Session, Supplement No. 9, document A/2693.

4. The Committee noted the other parts of report of the International Law Commission without considering it necessary to formulate recommendations with respect to them.

I

Elimination or reduction of future statelessness

5. At its first session, in 1949, the International Law Commission selected "nationality including statelessness" as a topic for codification without, however, including it in the list of topics to which it gave priority.^{2/} During its third session, in 1951, the Commission was notified of resolution 319 B III (XI) adopted by the Economic and Social Council on 11 August 1950, in which the Council requested the Commission to "prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness".^{3/} In response to this request, the Commission, at the same session, decided to initiate work on the topic of nationality including statelessness.^{4/} In the course of its fifth session, in 1953, the Commission adopted two provisional drafts of conventions, namely, a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness, which were submitted to the Governments of Member States for comment, and were also transmitted to the Economic and Social Council.^{5/} Observations were subsequently

^{2/} See the report of the Commission on the work of its first session, Official Records of the General Assembly, Fourth Session, Supplement No. 10, document A/925, paragraphs 16 and 20.

^{3/} See Official Records of the Economic and Social Council, Fifth Year, Eleventh Session, Supplement No. 1, document E/1849.

^{4/} See the report of the Commission on the work of its third session, Official Records of the General Assembly, Sixth Session, Supplement No. 9, document A/1858, paragraph 85.

^{5/} See the report of the Commission on the work of its fifth session, Ibid., Eighth Session, Supplement No. 9, document A/2456, chapter IV.

received from fifteen Governments (A/CN.4/82 and Addenda 1 to 8). The Economic and Social Council, in its resolution 526 B (XVII) of 26 April 1954, endorsed the principles underlying the work of the International Law Commission in this matter and requested it to continue its work with a view to the adoption of effective international instruments for the reduction and elimination of statelessness.^{6/} Taking into account the comments of Governments, the Commission at its sixth session revised the provisional drafts and in chapter II, part one, of its report on the work of that session (A/2693) submitted to the General Assembly final texts of a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness. In paragraph 14 of its report the Commission stated that it would be for the General Assembly to consider to which of the draft conventions preference should be given. Article 12 of each draft convention envisaged a procedure by which the convention, after its approval by the General Assembly, would be open for signature and ratification or accession by Members of the United Nations and non-member States invited by the Assembly.

6. The Sixth Committee considered the matter at its 397th to 402nd meetings. The Chairman of the International Law Commission, Judge A.E.F. Sandström, attended these meetings and made statements in explanation of the Commission's report.

7. There was general agreement within the Sixth Committee that the elimination or, at least, the reduction of future statelessness was desirable. Different opinions were, on the other hand, expressed regarding the methods by which this object was to be accomplished.

8. According to some representatives, the draft conventions were unacceptable because they violated one of the basic principles of international law - that nationality matters were within the exclusive jurisdiction of each State. By attempting to regulate the national legislation of States relating to nationality and by subjecting actions of a State in nationality matters to supervision by an international tribunal, the draft conventions, in their view, opened the way to intervention in the domestic affairs of States, and infringed upon their sovereignty. In the opinion of those representatives, the

^{6/} See Official Records of the Economic and Social Council, Seventeenth Session, Supplement No. 1, document E/2596.

elimination or reduction of future statelessness should not be sought by the means proposed by the International Law Commission but by appropriate legislation within each State concerned.

9. Other representatives stated that, while nationality questions came within the domestic jurisdiction of each State, these questions might also have international aspects. Moreover, a State in the exercise of its sovereignty could by convention voluntarily accept international obligations in this field. The draft conventions were therefore not in conflict with the domestic jurisdiction of States or with State sovereignty.

10. Some representatives declared that they were prepared to discuss the draft conventions in detail during the current session. The majority, however, expressed the opinion that the time was not yet ripe for a consideration of the substance of the drafts. In support of the latter view it was argued that the positions of Member States with respect to the drafts had not yet been sufficiently ascertained. Comparatively few Governments had submitted their observations on the provisional drafts prepared in 1953 by the International Law Commission and, in general, those which had done so had limited themselves to a comparison between their legislation and the drafts. They had in most cases failed to indicate whether, in their opinion, the drafts would serve the purpose of eliminating or reducing statelessness and whether they were prepared to pursue that purpose by means of concluding an international convention and to amend their domestic legislation in order to bring it into line with such a convention.

11. Several representatives stressed the importance of ensuring that a substantial number of States would be willing to accept a convention dealing with this matter. They emphasized that their countries could not contemplate amendments to their nationality laws merely for the sake of principles which might not be internationally applied. In that connexion, some members suggested that, with a view to facilitating its acceptance by States, a future convention might be less restrictive in regard to reservations than the drafts prepared by the International Law Commission.

12. In the course of the debates, various suggestions were made regarding the action to be taken with respect to the draft conventions. Some representatives

expressed the opinion that consideration of the drafts should be postponed until the next session and that, in the meantime, those Governments which had not already done so should be invited to communicate their comments. Others thought that, as statelessness was a social problem and the Economic and Social Council had requested the International Law Commission to prepare conventions for its elimination, the drafts should be transmitted to the Council for consideration and action. Against this proposal it was pointed out by several members that the provisional drafts had been communicated to the Council and that that body had already endorsed the principles incorporated in them. In the view of these representatives it would be preferable to submit the drafts to a conference of plenipotentiaries, provided a substantial number of States signified their willingness to attend such a conference.

13. The Netherlands submitted a draft resolution (A/C.6/L.329) which after referring, in its preamble, to the history of the drafts, provided, in its operative part, that the General Assembly would:

(1) Express its appreciation for the work of the International Law Commission in regard to the elimination or reduction of statelessness;

(2) Express its desire that an international conference of plenipotentiaries should be convened to conclude a convention for the reduction or elimination of future statelessness "in case twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference";

(3) Request the Secretary-General:

(a) To communicate the resolution and the draft Conventions to Member States and to each non-member State being or becoming a member of a specialized agency of the United Nations or a party to the Statute of the International Court of Justice;

(b) To make arrangements for the convening of a conference when the condition referred to above had been met;

(c) To report on the matter to the eleventh session of the General Assembly;

(4) Request "Governments concerned to give early consideration to the merits of a multilateral convention on the elimination or reduction of future statelessness".

14. A number of amendments were submitted by Israel (A/C.6/L.331) to the Netherlands draft resolution. Three of the amendments concerned the preamble and were intended to complete the account given there of the history of the drafts. The fourth amendment was to replace, in paragraph 2 of the operative part, the words "in case" by the words "as soon as at least". The fifth amendment was a modification of the wording of operative paragraph 3, sub-paragraph (b). The sixth amendment was to replace, in operative paragraph 4, the word "concerned" by the words "to whom the draft Conventions have been communicated". The third amendment, relating to the preamble, was subsequently withdrawn. The other amendments were accepted by the representative of the Netherlands.

15. The representative of El Salvador submitted an oral amendment according to which operative paragraph 4 of the Netherlands draft resolution (A/C.6/L.329) would be placed immediately after operative paragraph 1.

16. The representative of Israel proposed orally that, in operative paragraph 4, the words "Governments concerned" should be replaced by the words "Governments of States to which reference is made in paragraph 3, sub-paragraph (a)". This oral amendment, which modified the amendment earlier submitted by Israel (A/C.6/L.331, paragraph 6), was accepted by the representative of the Netherlands.

17. The Committee had also before it a draft resolution submitted by Syria (A/C.6/L.330) according to which the General Assembly would transmit to the Economic and Social Council the text of chapter II of the report of the International Law Commission on the work of its sixth session, together with the summary records of the discussions in the Sixth Committee on the question.

18. At its 402nd meeting, on 13 October 1954, the Committee proceeded to vote upon the draft resolutions and amendments before it. The representative of Syria proposed that the Committee should first vote on the draft resolution submitted by his delegation (A/C.6/L.330). This proposal was rejected by 20 votes to 16, with 3 abstentions.

19. The Committee thereafter voted, in parts, on the Netherlands draft resolution (A/C.6/L.329) and the amendments thereto as follows:

(a) The preamble, as amended by the first two amendments submitted by Israel (A/C.6/L.331, paragraphs 1 and 2), was adopted by 25 votes to 5, with 19 abstentions.

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

(c) Paragraph 2, as amended by Israel (A/C.6/L.331, paragraph 4) was adopted by 28 votes to 13, with 12 abstentions.

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

(e) Paragraph 3, sub-paragraph (b), as amended by Israel (A/C.6/L.331, paragraph 5), was adopted by 27 votes to 12, with 12 abstentions.

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

(g) Paragraph 4, as amended by the oral amendment proposed by the representative of Israel, was adopted by 26 votes to 11, with 15 abstentions.

(h) The amendment submitted orally by the representative of El Salvador to place paragraph 4 of the operative part immediately after paragraph 1 was not adopted, 8 votes being cast in favour and 8 against, with 32 abstentions.

(i) The draft resolution as a whole, as amended, was approved by 30 votes to 9, with 12 abstentions.

20. In view of the approval of the draft resolution submitted by the Netherlands, as amended, the Committee did not vote on the draft resolution proposed by Syria (A/C.6/L.330).

21. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution I contained in section III of the present report.

II

Draft code of offences against the peace and security of mankind

22. By its resolution 177 (II) of 21 November 1947 the General Assembly directed the International Law Commission (a) to formulate the principles of international law recognized in the charter and judgment of the Nurnberg Tribunal; and (b) to prepare a draft code of offences against the peace and security of mankind,

indicating clearly the place to be accorded therein to the Nürnberg principles. The International Law Commission fulfilled the first of those assignments by submitting to the General Assembly, at the latter's fifth session in 1950, a formulation of the Nürnberg principles.^{7/} In its resolution 488 (V) of 12 December 1950, the General Assembly invited the Members of the United Nations to furnish their observations on this formulation and also requested the International Law Commission to take the views of the Members into consideration when preparing the draft code. At the sixth session of the General Assembly, in 1951, the Commission submitted a draft code of offences against the peace and security of mankind.^{8/} By a decision of the Assembly at its 342nd plenary meeting on 13 November 1951 consideration of the draft was postponed until the seventh session in 1952. The matter was included in the provisional agenda of that session but by a decision taken by the General Assembly at its 382nd plenary meeting on 17 October 1952 the item was omitted from the final agenda, on the understanding that the draft code would again be considered by the International Law Commission. That body undertook a further study of the question and submitted to the General Assembly, at its current, ninth session, a revised draft code of offences against the peace and security of mankind, included in chapter III of the Commission's report on the work of its sixth session (A/2693).

23. The Sixth Committee considered the matter at its 420th to 425th meetings. In the course of the debates several representatives expressed the opinion that a discussion of the substance of the draft code was premature at the present time, in particular since the draft code included acts of aggression among the offences against the peace and security of mankind and the Sixth Committee had recommended that the question of defining aggression should be referred to a special committee which would meet in 1956 and report to the General Assembly at its eleventh

^{7/} See the report of the Commission on the work of its second session, Official Records of the General Assembly, Fifth Session, Supplement No. 12, document A/1316, part III.

^{8/} See the report of the Commission on the work of its third session, Ibid., Sixth Session, Supplement No. 9, document A/1858, chapter IV.

session.^{9/} Other members considered however that although it would not be possible to reach any final decision concerning the draft code at the current session, a general exchange of views regarding its provisions was timely and useful. While, therefore, some of the representatives limited their observations to the question of the procedure to be followed, others also discussed certain substantive aspects of the draft code.

24. Some doubts were expressed concerning the structure of the code. It was pointed out that the text consisted of two kinds of provisions, namely, those containing general principles of international criminal law and those defining crimes against the peace and security of mankind. This fact, it was suggested, should be more clearly reflected in the organization of the code which, for that purpose, might be divided into two parts, one dealing with the principles governing responsibility under international criminal law and one containing descriptions of the particular offences.

25. Certain members regretted that the authors of the draft code had omitted any reference to the question of the implementation of the code. They considered that the Convention on the Prevention and Punishment of the Crime of Genocide might have been used as a model for the solution of this problem as well as of certain other practical questions not covered in the draft, such as extradition and disputes regarding the interpretation of the text. Other representatives held a different opinion and stated that the International Law Commission had acted wisely in excluding from the draft code provisions regarding its implementation. Although conceding that the question of the substance of the code and the problem of measures for its application were closely related, they contended that it was more practical to deal with these problems in separate instruments, especially as a draft statute for an international criminal court now was under consideration by the General Assembly.^{10/}

^{9/} See the report of the Sixth Committee on item 51 of the agenda: Question of defining aggression: report of the Special Committee on the Question of Defining Aggression, document A/2806.

^{10/} Item 50 of the agenda: International criminal jurisdiction: report of the 1953 Committee on International Criminal Jurisdiction (A/2645).

26. Some representatives found it regrettable that the Nurnberg principles had not been given adequate prominence in the draft code. The fear was expressed that if these principles were disregarded in the draft code a conflict might arise between them and the law embodied in the code. In this connexion it was pointed out that the General Assembly, in its resolution 177 (II), had requested the International Law Commission to indicate clearly the place to be accorded to the Nurnberg principles in the draft code, but that the Commission had failed to do so.

27. In the discussion, the problem was also raised whether the code should be limited to the three crimes mentioned in the charters of the Nurnberg and Tokyo tribunals, namely crimes against peace, war crimes and crimes against humanity, or whether, as in the draft, other crimes should be included. According to one opinion, the former alternative should be adopted. In view of article 4 of the draft code regarding superior orders, the individual citizen would be obliged to refuse to obey orders given by his national authorities to perform acts which in the code were declared to be international crimes. Only acts which constituted a grave offence against the peace and security of mankind should therefore be listed among these crimes, as only in such grave cases the individual could be expected to place his loyalty to the international community above his loyalty to his national Government. From this point of view, it was contended, the existing text of the draft code, in going beyond the three above-mentioned crimes, seemed to extend unduly the scope of international criminal law. On the other hand, it was argued that it was clear from the terms of reference that the General Assembly had not intended to confine the code to the Nurnberg principles. The formulation of these principles was one assignment given to the International Law Commission in resolution 177 (II), another and wider task was the preparation of the draft code of offences against the peace and security of mankind. Moreover, to restrict the code to the three crimes listed in the Nurnberg and Tokyo charters would be to disregard the developments in the international situation which had taken place after the drafting of those charters.

28. Doubts were expressed regarding the wisdom of including the crime of genocide among the offences enumerated in the draft code. A convention for

the punishment of genocide was already in force among a considerable number of States and, as the provisions of the draft code concerning this crime differed in some respects from those of the convention, unnecessary confusion might ensue if States became parties to both instruments.

29. Several representatives expressed satisfaction with the paragraph in the revised draft code dealing with crimes against humanity, in particular because the revised draft omitted the provision, included in the previous draft, that inhuman acts were international crimes only when committed in execution of or in connexion with other offences defined in the code. On the contrary, other members criticized the new formulation of the paragraph because, in their opinion, it would have as a consequence that offences normally punishable under national law would become international crimes.

30. With regard to the question what action should be recommended to the General Assembly in respect to the draft code, there was wide agreement within the Sixth Committee that no final decision could be taken on the code at the present time. The Committee had before it a joint draft resolution submitted by Brazil, Canada, Denmark and India (A/C.6/L.338), according to which the General Assembly would (1) express its appreciation of the work done by the International Law Commission; and (2) decide to postpone further consideration of the draft code until the special committee on the question of defining aggression^{11/} had submitted its report. In view of the fact that no final decision regarding the draft code was recommended in the draft resolution, the sponsors later agreed to omit the paragraph regarding the expression of appreciation of the work of the International Law Commission.

31. The representative of Peru proposed orally that the operative part of the draft resolution should be amended to read as follows: "Decides to postpone further consideration of the draft code until a definition of aggression is ready for insertion in the draft code of offences against the peace and security of mankind".

32. At its 425th meeting, on 18 November 1954, the Sixth Committee proceeded to vote on the joint draft resolution and the amendment thereto.

The Peruvian amendment was rejected by 22 votes to 3, with 16 abstentions.

^{11/} See the report of the Sixth Committee on item 51 of the agenda, document A/2806.

The Committee thereafter voted, in parts, on the joint draft resolution (A/C.6/L.338) as follows:

(a) The preamble was adopted by 43 votes to one, with one abstention.

(b) The operative paragraph was adopted by 46 votes to one, with 3 abstentions.

(c) The draft resolution as a whole was approved by 46 votes to none, with 3 abstentions.

33. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution II contained in section III of the present report.

III

Recommendations of the Sixth Committee

34. The Sixth Committee recommends to the General Assembly the adoption of the following two draft resolutions.

Resolution I

ELIMINATION OR REDUCTION OF FUTURE STATELESSNESS

The General Assembly,

Considering that the International Law Commission included the topic "Nationality including statelessness" in its list of topics of international law provisionally selected for codification,

Considering that at the request of the Economic and Social Council the International Law Commission has given priority to this item,

Noting that the International Law Commission, at its fifth session in 1953,^{1/} proposed a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness, and invited Governments to submit their comments thereon,

Considering that comments were received from fifteen Governments, which comments were published in an annex to the report of the International Law Commission on the work of its sixth session,^{2/}

^{1/} See Official Records of the General Assembly, Eighth Session, Supplement No. 9 document A/2456, chapter IV.

^{2/} Ibid., Ninth Session, Supplement No. 9, document A/2693.

Considering that the Economic and Social Council has approved the principles of the two draft conventions,

Considering that the International Law Commission in the light of the comments received from Governments revised the above-mentioned draft conventions, and submitted the revised drafts to the General Assembly,

Recognizing the importance of reducing, and if possible eliminating, future statelessness by international agreement,

1. Expresses its appreciation for the work of the International Law Commission in this field;

2. Expresses its desire that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference;

3. Requests the Secretary-General:

(a) To communicate, together with the present resolution, the revised draft conventions to Member States and to each non-member State which is or hereafter becomes a member of one or more of the specialized agencies of the United Nations or which is or hereafter becomes a party to the Statute of the International Court of Justice;

(b) To fix the exact time and place for the conference, to issue invitations to those States to which the draft conventions have been communicated and to take all other measures for the convening of the conference and for its operation in case the condition stated in paragraph 2 is met;

(c) To report on the matter to the General Assembly at its eleventh session;

4. Requests Governments of States to which reference is made in paragraph 3, sub-paragraph (a), to give early consideration to the merits of a multilateral convention on the elimination or reduction of future statelessness.

Resolution II

DRAFT CODE OF OFFENCES AGAINST THE PEACE
AND SECURITY OF MANKIND

The General Assembly,

Considering that the draft code of offences against the peace and security of mankind as formulated in chapter III of the report of the International Law Commission on the work of its sixth session^{1/} raises problems closely related to that of the definition of aggression,

Considering that by its resolution _____ (IX) of _____ 1954, the General Assembly decided to entrust to a special committee of nineteen Member States the task of preparing and submitting to the General Assembly at its eleventh session a detailed report on the question of defining aggression and a draft definition of aggression,

Decides to postpone further consideration of the draft code until the said special committee on the question of defining aggression has submitted its report.

^{1/} See Official Records of the General Assembly, Ninth Session, Supplement No. 9, document A/2693.