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***New York***

CONTENTS



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

AGENDA ITEM 49 *(continued)*

## Report of the International Law Commission on the work of its sixth session (except chapter III) (A/2693) (*continued*)

### *Chapter II: Nationality, including statelessness* (continued)

GENERAL DEBATE (*continued*)

1. The CHAIRMAN invited Mr. Sandström, Chairman of the International Law Commission, to answer certain questions asked at the previous meeting by the Swedish representative.

2. Mr. SANDSTROM (Chairman of the International Law Commission) said the first question concerned the available statistics on statelessness. According to *A Study of Statelessness*[1], a document published by the United Nations that was the most useful source of data, after the First World War statelessness had assumed unprecedented proportions. After the Second World War the situation had become truly menacing. As far as the actual figures were concerned, it was not possible to give any data regarding stateless persons who were not refugees. As to stateless refugees, the only complete and reliable statistics related solely to persons who were the responsibility of the International Refugee Organization. Those appeared to number approximately one and a half million.

3. The second question raised by the Swedish representative concerned the extent of common ground covered by the instruments signed at The Hague on 12 April 1930 and the two draft conventions now before the Committee. In that connexion, The Hague Protocol relating to a Certain Case of Statelessness referred only to the case of a State whose nationality was not conferred by the mere fact of birth in its territory. The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws provided against statelessness to some extent, but its scope was much narrower than that of the Commission's drafts. Only articles 1, 2, 5, 6 and 7 of the texts before the Committee had some partial counterpart in The Hague Convention. No provision had been made in 1930 to remedy the deep causes of statelessness that articles 8, 9 and 10 of the Commission's drafts endeavoured to eliminate or reduce.

4. In preparing the drafts, the International Law Commission had been fully aware of the difficulties of the task. Those difficulties originated mainly in political considerations. States generally attached great importance to those considerations and were reluctant to make concessions. Yet an individual could make his full contribution to society only as a citizen of a particular State.

5. The International Law Commission, mindful of the statement in the Universal Declaration of Human Rights that everyone had the right to a nationality, had at its first session, selected the topic of nationality as suitable for codification. That decision had subsequently been endorsed by the Economic and Social Council. It was now for the States to assess the work of the Commission and to decide whether they wished to contribute towards making the Declaration a reality. In his personal view, the concessions that the Commission's drafts expected States to make were in no way excessive. It was at least worthy of note that the Economic and Social Council, by its resolution 526 B (XVII) of 26 April 1954, had endorsed the principles underlying the work of the International Law Commission and had requested it to continue its work.

6. Mr. ROLING (Netherlands) pointed out that the Netherlands Government's interest in the question of statelessness was best evidenced by the fact that its comments, reproduced in the annex to the report of the International Law Commission (A/2693), were the result of a study by a special committee appointed for that purpose.

7. It was because of that deep concern with the matter that his delegation wished to join in the tributes paid by previous speakers to the International Law Commission, whose Chairman deserved special congratulations for his clear and impartial explanations.

8. The time was not yet ripe for an examination of the substance of the draft conventions. The first question was how the Committee proposed to proceed. And, although his delegation would be ready to discuss the draft provisions and to support the reduction convention, subject to certain amendments, the Committee did not seem disposed to take any immediate decision in the matter.

9. At the previous meeting, the Byelorussian representative had strongly opposed the drafts, especially the provisions relating to the proposed tribunal, with the argument that nationality was exclusively within the domestic jurisdiction of States and that the provisions consequently violated the principles of international law, in that they sought to derogate from national sovereignty. That point of view appeared incomprehensible. National sovereignty was a fact, but

[1] United Nations Publication, sales No.: 1949.XIV.2.

it was limited in its scope by the precepts of international law, of which treaties remained the principal source. Indeed, it was one of the prerogatives of sovereignty voluntarily to recognize supranational organs, to which the sovereign State might transfer certain powers for the sake of the greater community. The Netherlands Government would have no objections to the establishment of such a tribunal and would indeed support such an institution. Sooner or later the nations and peoples of the world would need supranational justice, and every opportunity to become accustomed to that new concept was in itself welcome. The tribunal merely adumbrated the shape of things to come.

10. As the Israel representative had pointed out at the 398th meeting, the International Law Commission, in its single-minded efforts to eliminate or reduce statelessness, had tended to overlook certain other ideals and also certain facts of life.

11. For example, the categorical wording of article 1 might deter a State from admitting refugees into its territory, for fear that any child born of such a refugee parent might be entitled to its nationality. Thus the humanitarian aim of eliminating future statelessness by international agreement might produce negative results.

12. Another instance of the way in which the Commission seemed to have approached the problem *in abstracto* was that it seemed to have disregarded the fact that there was a relationship between the quality of a convention and the quantity of its signatories. The more rigid the convention, the fewer the States that would be willing to depart from national legislation for the general good.

13. For those reasons, if any choice had to be made at all, the Netherlands Government would prefer the reduction convention. But it was highly reluctant to recommend any outright adoption. Some of the provisions, such as the controversial article 13, were not devoid of risk. In the elimination convention, that provision had apparently been influenced (A/CN.4/SR.271, p. 15) by "considerations of logical arrangement". Logic alone, however, did not make a treaty perfect. Moreover, in the drafting stage of the reduction convention, a special provision had been prepared (A/CN.4/SR.274, p. 16) to allow for reservations, but the Commission had subsequently excluded it, not only on logical and legal, but also on political grounds.

14. On that question of reservations, as on certain others, it was apparent that the International Law Commission had demonstrated a lack of flexibility that might be fatal to the desired result. It might be more prudent to adopt a gradual approach, and to allow for specified reservations in the light of special national circumstances. If so, more States would be likely to support the convention.

15. If statelessness was to be reduced and, finally, eliminated, States would have to make sacrifices in their domestic legislation. And, as the United Kingdom representative had said (397th meeting), States would contemplate such a course only if they were confident that other States would do likewise. What was needed, therefore, was a multilateral convention supported by a considerable number of States. That objective was hardly likely to be attained if a draft convention were adopted by a resolution, coupled with a recommendation to States to ratify it.

16. For those reasons, his delegation felt that any choice between the two drafts would, for the time being, be premature. It would be inadvisable to discuss the substance or to attempt any detailed redrafting of the texts. The drafts should be circulated to all Member States of the United Nations and of the specialized agencies, with a request for their views on the possibility of calling together a conference of plenipotentiaries. If, say, twenty States favoured such a conference, it should be duly summoned. Moreover, in order to ensure that the General Assembly maintained a measure of control, provision should be made for the matter to be referred back for the Assembly's consideration.

17. With that course in mind, his delegation submitted the draft resolution contained in document A/C.6/L.329.

18. Mr. TARAZI (Syria) noted that, while it was generally agreed that the International Law Commission had made a clear and thorough study of the problem of statelessness, many doubts had been expressed concerning the two proposed conventions. The question now was what procedure the Committee should follow.

19. His delegation, like many others, questioned the appropriateness of the draft conventions and doubted that anything would be gained from discussing them article by article. It was also opposed to calling an international conference at the present stage. He had not been convinced by the arguments put forward by the Netherlands representative in reply to the Byelorussian representative's objections to the conventions, and did not share the former's views concerning the supremacy of international law. It would be as difficult to set up the organs provided for in article 11 of the two drafts as it would be to permit such organs to deal with claims by individuals against States.

20. Consequently, because statelessness was a social problem, and because the topic had originally been referred to the Commission by the Economic and Social Council, he proposed that the draft conventions, in accordance with article 17 of the Commission's statute, should be transmitted to the Council for consideration and action. His delegation was submitting a draft resolution to that effect (A/C.6/L.330).

21. Mr. SANDSTROM (Chairman of the International Law Commission) replied that the International Law Commission had not acted under article 17 of its statute, as the Syrian representative had suggested, but strictly in accordance with article 16. The topic had first been selected by the International Law Commission, which had proceeded ever since on its own initiative. Even if article 17 had been applicable, however, there would have been no default on the part of the Commission. The draft had been communicated to the Economic and Social Council within a reasonable time.

22. Mr. ROBERTS (Liberia) said that the report of the International Law Commission was merely a set of recommendations for the scrutiny of the General Assembly. He advised the utmost caution in any attempt to interfere in any manner, by amendment or otherwise, with the rules of existing international law.

23. While no one would underestimate the authority of the International Law Commission, the fact remained that its draft provisions concerning stateless-

ness contained many inconsistencies. Articles 1, 2, 3, 4 and 5 seemed ambiguous and contradictory, and of little legal benefit to any stateless person.

24. Among the reasons for which he would be unable to support the Commission's draft conventions was the fact that they tended to abrogate the *lex loci* and conflicted with the Liberian legislation concerning the qualifications for citizenship and the rights of natural-born citizens in so far as their children were concerned.

25. Mr. GEBARA (Lebanon) associated himself with previous speakers who had praised the International Law Commission for its valuable work and its efforts to develop international law.

26. From the course taken by the general debate, it would seem that most Governments were unwilling to accept either of the draft conventions submitted by the Commission because their provisions conflicted with domestic legislation. The Commission had foreseen that objection and had replied to it in its report. The crucial question was whether Governments were prepared to solve the problem of nationality, including statelessness, on the international rather than the national plane. If they were, they would agree to amend their laws.

27. The Byelorussian representative had said at the previous meeting that only States were the subjects of international law; but nothing prevented States from agreeing to deal by international action with what had hitherto been a domestic problem. Such a development would be in line with the modern tendency for States to limit their sovereignty voluntarily in the general interest. Nothing was to be gained by postponing the study of the problem, as it was not to be expected that either international relations or domestic laws would undergo significant changes in the near future.

28. Mr. Amado, the Brazilian representative, had said at the previous meeting that, although the draft conventions—on which Mr. Amado had collaborated in his capacity as a member of the International Law Commission—were theoretically perfect, they were unacceptable to his Government for practical reasons. But the Commission had not been asked, nor had it attempted, to do an academic piece of work. In the Lebanese delegation's view, the drafts were at least practical enough to serve as a basis for multilateral conventions, provided that States were really desirous of solving the thorny problem of nationality, including statelessness.

29. Complete elimination of statelessness was a goal at which the international community should aim; but in existing circumstances, and because the complete elimination of statelessness would involve drastic changes in domestic legislation, his delegation preferred the more easily applicable draft convention on the reduction of future statelessness, which, moreover, was in line with Lebanese nationality laws. Those laws, based partly on such international instruments as the Lausanne Peace Treaty of 1923, were designed to safeguard the interests of the Lebanese people, were extremely liberal, and not only seldom gave rise to cases of statelessness but tended to eliminate the few existing cases.

30. For that reason, and in a humanitarian spirit, his delegation was, for its part, ready to consider in detail the reduction convention and to comment on the various articles thereof. As the Committee did not, however, seem inclined to adopt that course, his delegation proposed that the Secretary-General should request Member States for their views on the desirability of international action to deal with the problem of nationality, including statelessness, and for their comments on the draft conventions; they should also be asked whether they would be prepared to make the changes in their domestic legislation necessitated by those drafts.

31. Mr. KATZ-SUCHY (Poland) said that in preparing the two draft conventions the International Law Commission had greatly exceeded its competence, for it was plainly not its task to seek to impose on States provisions having no basis in the existing principles of international law and at variance with its course of development.

32. He was quite unable to accept the assumption, which was at the root of both draft conventions and was evidently taken for granted in paragraph 12 of the Commission's report, that internal law could be subordinated to international law. The two draft conventions encroached on the domestic jurisdiction of States, which alone were competent to regulate the relations between themselves and individuals and to accord, deny, or take away nationality. Article 11 of the draft conventions would actually make the individual a subject of international law, by permitting him to enter complaints against a State—a suggestion entirely inconsistent with the whole tradition of that law. In fact, under the draft conventions the individual would be in a privileged position as compared with the State, because he would be able to surrender his nationality at will, whereas the State would be unable to deprive him of it. All those provisions were unacceptable to his delegation.

33. He did not agree with the Netherlands representative that the International Law Commission was but foreshadowing a new concept that was bound to be accepted sooner or later; rather, the concept of supranational law was steadily losing ground. That did not mean that there was any conflict between international law and State sovereignty; on the contrary, only if all States were sovereign and equal could the rule of international law prevail. Disputes between States could, of course, be settled according to international law or even be submitted before some form of international judiciary system. But that could not cover differences between States and their own subjects.

34. He noted in passing that the Commission's suggestions concerning the elimination of present statelessness were also unacceptable, as they were tantamount to establishing groups of second-rate citizens who had civil duties but did not enjoy corresponding political rights.

35. The Commission had shown remarkable persistence both in forcing the acceptance of their personal views, even if in contrast with established principles of international law, and in disregarding the adverse comments of Governments. It was not surprising that most speakers, while praising the Commission for its work, let it be understood that they were not prepared to accept the draft conventions and sought to pass on to other bodies the responsibility for rejecting them. However, simply to refer the drafts to the Economic and Social Council, which had recommended their preparation, might give the impression that the Committee thought the drafts ready for final approval and supported by many States. That was not so. Only

fifteen out of the sixty Member States had commented on the draft conventions, and most of those had made important reservations and objections. They had done more than merely compare the drafts with their own nationality laws—they had indicated their unwillingness to accede to those instruments. The silence of the remaining forty-five Member States could be rightly interpreted a disapproval and not consent.

36. He urged the Committee to face the truth that the draft conventions were not fit for approval. Because of their basic faults and because they encroached on the province of domestic legislation, the Committee should inform the Economic and Social Council that it saw no possibility of their adoption.

37. He was opposed on the same grounds to calling a conference of plenipotentiaries; such a conference should be asked to work on drafts ready for final editing and likely to meet with general acceptance, which the Commission's drafts manifestly were not. The two years' delay proposed by the Netherlands representative would not alter the situation in any way.

38. Lastly, a detailed discussion of the provisions of the draft conventions by the Committee would only waste precious time that the Committee needed for the consideration of other items.

39. In his view, the problem of statelessness was one to be dealt with by appropriate legislation in each country. Poland, for its part, had passed a Nationality Act in January 1951, whose provisions eliminate and prevent statelessness. The Act accorded Polish nationality to persons whose nationality was undefined or unknown, to children found or born in Poland who would otherwise be stateless, and to persons who applied for it; it solved quite satisfactorily the problems of the nationality of children of marriages between persons of different nationality, the loss of nationality through marriage, and other nationality questions. At the same time, like many other States, Poland reserved the right to deprive traitors and enemies of their Polish nationality. Consequently, statelessness was not a problem in Poland, and such stateless persons as were resident in the country enjoyed full civil rights.

40. During the period between the two World Wars, statelessness had been the result of conflicting national laws; modern statelessness, on the other hand, had its origins in the actions of some States that, for their own reasons, had discouraged displaced persons from returning to their own countries. In order to eliminate statelessness, the United Nations, instead of wasting its time on the preparation of conventions doomed to failure, should concentrate on preventing such unlawful actions.

41. Mr. HOLMBACK (Sweden) thanked the Chairman of the International Law Commission for his replies, which had shed light on the draft conventions before the Committee.

42. There were two proposals before the Committee for deferring action on the draft conventions and affording governments time for further reflection. He would therefore not comment on the substance of the draft conventions beyond saying that some of the criticism levelled against the International Law Commission seemed to him excessive. He could certainly not agree with much of what was stated by the Polish representative and also not, for example, with the Netherlands representative that the provisions of article 1 of the draft conventions might prompt States to refuse admission to refugees. The nationality laws of the United Kingdom, for instance, provided that every child born in the territory of the United Kingdom acquired the country's nationality; yet that provision had not prevented the United Kingdom from generously giving asylum to hundreds of thousands of refugees.

43. Mr. AYCINENA SALAZAR (Guatemala) said that although his country, like most countries of Latin America, was not immediately concerned with statelessness, it took a profound interest in that great social problem. In a spirit of international solidarity, and because the problem might arise anywhere at any time, his country had recently signed the convention adopted by the Conference on the Status of Stateless Persons held in New York in September 1954.

44. In considering action with respect to the two draft conventions proposed by the International Law Commission, it might be useful to recall the experience of that conference. Originally called with a view to extending to stateless persons some of the provisions of the Convention relating to the Status of Refugees, 1951, the Conference had gradually gone beyond the narrow limits of that convention and had finally adopted a much broader instrument, which reflected the views of many countries. Its independent stand seemed to belie the customary view that international conferences were by their very nature rigid and limited in their action.

45. The question was, however, whether States were sufficiently advanced in their outlook to agree to international action on a subject traditionally reserved to the domestic jurisdiction of States. His own view was that they were.

46. At the same time, full importance should be given, from a realistic point of view, to statements like that of the representative of Sweden to the effect that so long as there was no serious criticism of legislation being applied with practical and effective results, they would not be inclined to alter it, especially if it was recently promulgated. Another very realistic observation was that of the United Kingdom—one of the few countries that had thus far supported the draft convention on the elimination of statelessness—to the effect that that Government would be prepared to revise its legislation if a sufficient number of States did likewise. A conference of plenipotentiaries seemed to offer the best chance of a compromise.

47. Another conceivable objection to calling such a conference might be that since only States immediately concerned would attend it, any instrument that it adopted would be limited in scope and applicability. The answer to that objection was that the applicability of the instrument could be extended by subsequent accessions, and that States could be invited to the conference even if they were not immediately concerned and were not certain of being able to ratify the instrument adopted. The recent Conference on the Status of Stateless Persons had been faced with the same situation and had coped with it successfully. Seven Latin American countries, which certainly were not immediately concerned, had participated in the work of the Conference. A further advantage of a conference was that it could be attended by interested countries even if they were not Members of the United Nations.

48. The drafts of the International Law Commission naturally contained no reference to the convention recently adopted by the Conference on the Status of Stateless Persons, since they had been prepared before that conference was held. A reference to that convention in the preamble would, however, be most desirable and would be one of the many matters that the proposed conference might take up.

49. In view of those considerations, his delegation was in favour of calling a conference, as the French representative had suggested at the 398th meeting.

50. Lastly, Guatemala was considering the revision of its laws and would gladly be guided by any international action with regard to statelessness. Guatemala intended to maintain the *jus soli* rule, while attenuating it by the partial application of the *jus sanguinis* rule, thereby minimizing the possibility of statelessness.

51. Mr. GALLEGOS (Ecuador) reviewed the actions taken in Latin America, and in particular in Ecuador, with a view to extending to foreigners the same civil rights as were enjoyed by citizens. In accordance with that traditional approach, Ecuador had signed the convention adopted by the recently held United Nations Conference on the Status of Stateless Persons.

52. Many countries had not, however, signed the Convention. In the circumstances, the best course would be for the United Nations first to call upon States that had not yet done so to become parties to that convention. In the meantime, the draft conventions prepared by the International Law Commission could be referred to States for further study and comment—only a few comments had as yet been received—and on the basis of those views provisions might subsequently be drafted that would not conflict with national legislation.

53. Mr. TREJOS (Costa Rica) said his Government believed that the International Law Commission's drafts should be examined on their own merits and not from the point of view of their compatibility with municipal law. No advances could be made in the codification of international law, as called for in the United Nations Charter, if countries were not prepared to co-operate, to accept uniform principles, and in consequence to amend their own laws, if necessary. For that reason he could not agree that it was a valid objection to the draft conventions to say that they did not conform to national legislation.

54. Another objection, mentioned by the Byelorussian representative, was the nationality, in accordance with recognized principles of international law, fell within the domestic jurisdiction of States, and that any attempt to regulate it internationally would constitute a violation of those principles. Yet it was precisely in order to safeguard the rights of States that international action in the matter would be governed by conventions, applicable only to those States which voluntarily acceded to them. His delegation therefore did not feel that any violation of international principles was implied in the Commission's drafts.

55. Commenting on the procedure to be followed, he said the Committee was hardly qualified to go into the substance of the problem, and accordingly he agreed with the French and Venezuelan representatives that the General Assembly or the Economic and Social Council should consult Governments on the desirability of holding a conference of plenipotentiaries to adopt a convention on the basis of the Commission's drafts.

The meeting rose at 5.10 p.m.

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