United Nations

GENERAL ASSEMBLY

NINTH SESSION

Official Records

SIXTH COMMITTEE, 398th MEETING

Tuesday, 5 October 1954, at 3.45 p.m.

New York

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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. Mr. NANDY (Pakistan) said that, at worst, statelessness was an international crime; at best, it was an unhealthy condition, and that, in any event, it should be done away with. His delegation welcomed the remedial measures suggested by the International Law Commission in the form of the two draft conventions on future statelessness, and in particular subscribed to the two paragraphs of their preambles that said that statelessness often resulted in suffering and hardship shocking to conscience and offensive to the dignity of man and that it was frequently productive of friction between States.

2. As yet, the complete elimination of future statelessness did not seem possible; his delegation therefore preferred the type of action provided for in the draft convention on the reduction of future statelessness. That draft could, of course, be amended and improved by the Committee and the General Assembly.

3. He reserved until a later occasion his comments on the more general topic of nationality and on the special status to be given to persons who were stateless at present.

4. Mr. GARCIA OLANO (Argentina), with reference to part one of chapter II of the report, said that stateless persons in Argentina were neither so numerous nor at such a disavantage, as compared with citizens, as to constitute a problem. Under article 31 of the Argentine Constitution, and by legislation recently enacted, stateless persons, like all other aliens who entered the country lawfully, enjoyed the same civil rights as Argentine citizens. The naturalization procedure was simple, and stateless persons could acquire Argentine citizenship within a short time.

5. For those reasons, his delegation had no comment to make on the two draft conventions beyond reserving its position on article 3 of both texts, which conflicted with Argentine law. Under that law, a person born on a foreign vessel within Argentine territorial waters, or in an aircraft flying over Argentine territory, was considered an Argentine citizen.

6. With reference to chapter II, part two, he noted that the suggestion made for dealing with the problem of present statelessness were superfluous and would only give rise to confusion in view of the convention adopted by the United Nations Conference on the Status of Stateless Persons, held in New York in September 1954.

7. No comment seemed necessary concerning part three of chapter II.

8. Mr. ROBINSON (Israel) said that he would attempt a general evaluation of the draft conventions before stating his Government's attitude towards the suggestion, implied in article 12 of each of the two texts, that the General Assembly should approve the convention.

9. In the first place, he wished to pay a tribute to the International Law Commission for the manner in which it had approached and executed its task. The draft conventions offered remedies for practically all causes of statelessness. The first nine articles provided solutions for as long as the contracting parties maintained their territorial *status quo,* while article 10 was a novel expedient seeking to anticipate contingencies that might arise by reason of possible future boundary changes. Furthermore, article 2 established a special presumption in favour of foundlings.

10. Notwithstanding the difference in the titles of the two draft conventions the texts themselves were not really different in nature. The two terms "elimination" and "reduction" could not be construed, in their present context, according to their normal dictionary meaning. The International Law Commission itself had made it clear that the text of the elimination convention was not absolutely exhaustive; paragraphs 135 and 139 of the report on the Commission's fifth session (A/2456) referred to certain residual cases for which no provision had been made. Furthermore, a comparison of the two drafts showed that six out of the ten substantive articles were common to both. The difference, such as it was, consisted of adjustments necessitated by reality. Moreover, in view of the vote in the International Law Commission, the rather problematic value of article 10. and the reservation clause in article 13, the elimination convention was already doomed.

11. Strictly speaking, the terms "elimination" and "reduction" were both being used in a slightly misleading manner. Statelessness did not exist *per se,* and consequently the effort to "eliminate" or "reduce" refers to its causes.

12. For those reasons, the Israel delegation certainly preferred the more realistic reduction convention, although it was difficult to understand why the last para-

graphs of the preambles to the two drafts stated that elimination was *imperative* but reduction *desirable,* respectively. The reverse would have seemed more logical.

13. Discussing the possibility of either or both of the conventions being approved forthwith, he regretted that for certain reasons his delegation would have to oppose immediate approval.

14. In the first place, the legal perfection of the instruments constituted a drawback in itself. Similar situations often arose in national legislatures; a draft prepared by a competent ministry and approved by the executive was nearly always more perfect than the text finally agreed upon in a parliamentary assembly, yet the latter had considerably greater chances of practical success. An example of such excessive perfection in the present drafts was the common article 10. It was of no practical value in regard to any new States that might emerge in the future and therefore could not be bound even by a universal convention. And, furthermore, it was very doubtful whether the provision would be effective in the case of any States parties to the convention that came to acquire the character of new States by reason of a substantial accretion of territory. He noted in passing that the existence of article 10 had apparently been overlooked in paragraph 12 of the International Law Commissions report (A/2693), which stated categorically that "statelessness is . . . attributable precisely to . . . provisions in municipal law".

15. Secondly, the Commission seemed to have overstated its case against the "evil" of statelessness. The strong language of the third paragraph of the preamble failed to take into consideration the fact that the fate of various categories of stateless persons had been substantially improved by the 1951 Convention relating to the Status of Refugees and by the convention drawn up at the United Nations Conference on the Status of Stateless Persons held in September 1954. Similarly, the fourth paragraph of the preamble exaggerated the influence of statelessness on international relations. The suggestion, in paragraph 129 of the report on the Commission's fifth session (A/2456), that "friction" was due to the inability of States to deport denationalized persons to their country of origin, was difficult to reconcile with article 33 (1) of the 1951 Convention on Refugees, which forbade the deportation of a person if as a consequence he was likely to be persecuted and which the recent conference on the status of stateless persons had described as an expression of a general rule in international law. Clearly, it was not a serious matter for a civilized State to be unable to deport a particular person; on the contrary, it had come to be recognized as a humanitarian principle not to deport persons in danger of persecution.

16. Thirdly, the International Law Commission seemed to have largely overlooked the fact that there already existed a number of international instruments whose object was to eliminate or reduce statelessness. In fact, the Convention concerning Certain Questions relating to the Conflict of Nationality Laws, signed at The Hague in 1930, and the Convention on Nationality, which was signed in Montevideo in 1933, and which was largely an extension of the earlier Rio de Janeiro convention of 1906 (Convention establishing the status of naturalized citizens who again take up their residence in the country of their origin), offered a number of solutions. An over-abundance of treaties might set up a conflict of obligations, with results opposite to those originally intended.

17. In the fourth place, the International Law Commission had disregarded the fact that the status of married women was provided for by the draft convention on the nationality of married women. The object of the latter convention was to ensure equality between the sexes without regard to the risk of possible statelessness. Consequently, the Commission on the Status of Women and the International Law Commission were approaching the same problem from a very different angle.

18. Lastly, the Israel delegation found difficulty in accepting the price required for the elimination or reduction of statelessness. Although the preamble quoted the provision in the Universal Declaration of Human Rights that stated that everyone had the right to a nationality, the body of the draft conventions seemed animated by the spirit that everyone was obliged to have a nationality. That was most drastically evidenced by the common article 7, which in fact constituted a principle of imposition of nationality without leaving to the interested party any autonomy or choice whatsoever. The problem of the elimination of statelessness could not be divorced in such an arbitrary manner from other aspects of human rights.

19. For those reasons, the Israel delegation, despite its deep sympathy with the purposes of the draft and the lack of serious objections to the principles of the reduction convention, was unable to signify its outright acceptance. Nevertheless, certain other possibilities were still open to the Committee. In the first place, the texts might be discussed in detail and redrafted; that method had been suggested by the United Kingdom representative at the previous meeting. Secondly, a conference of plenipotentiaries could be convened for the specific purpose of adopting a convention. Finally, the General Assembly might take note of the two drafts as valuable sources on international law, within the meaning of Article 38, paragraph (*d*) of the Statute of the International Court of Justice.

20. As far as those possibilities were concerned, he reserved the right of his delegation to state its views at a later stage.

21. Mr. AKANT (Turkey) noted that while chapter II of the report was entitled "Nationality, including statelessness", the Commission had concentrated on the problem of statelessness, leaving aside the problem of nationality in general. Yet it was precisely the important and complex question of nationality, concerning which there was much conflict in internal law, that required codification. Although a number of United Nations bodies, including the Economic and Social Council, had dealt with various aspects of the problem, such as the nationality of married women, it would be desirable for the International Law Commission to deal with the subject as a whole, and at the earliest possible time.

22. With particular reference to the problem of statelessness and to the drafts prepared by the International Law Commission, while both proposed texts endeavoured to curb statelessness by the application of *jus soli* rather than *jus sanguinis,* the Turkish delegation felt that the draft convention for the reduction of statelessness should be given preference as it represented a wiser and more cautious approach to the problem.

23. Mr. TRIKUMDAS (India) said that his delegation would have to abstain in any action that might be

taken on the two draft conventions before the Committee, not because it disagreed with their basic ideas, but because of the special situation in which India found itself because of its recent accession to statehood and certain changes in its territory. While citizenship was defined in the Indian Constitution, India had as yet no law governing naturalization, although legislation to that effect was under consideration.

24. A convention to eliminate, or at least reduce, statelessness was most desirable, not only because it would help the many unfortunate persons who in recent times had lost their nationality through no fault of their own, but because it would constitute an ideal to which domestic legislation could be made to conform. As the Israel representative had pointed out, however, countries would find it difficult to adopt a uniform ideal system, in view of the different and special problems with which some of them were faced. The draft conventions dealt with some of those problems, such as the extent of the citizenship rights acquired through naturalization, liability of naturalized citizens to deprivation of nationality, and deprivation of nationality of natural-born citizens. While article 8 of the reduction convention dealt with some of the aspects of the last-mentioned problem, it did not cover all the possible grounds for deprivation of citizenship.

25. While India had no immediate problem of statelessness on any large scale, as Europe did, it might before long have to consider the position of persons of Indian origin but foreign nationality who wished to return to India. It was with that contingency in mind that the Indian Government was drafting its naturalization laws.

26. Mr. CHAUMONT (France) paid a tribute to the International Law Commission, which, in the two draft conventions on future statelessness, had given proof of both legal ability and political acumen: the first by providing for all the possible circumstances that might result in statelessness and the second by taking into account the political difficulties of States and giving them two texts to choose from.

27. The problem of statelessness was, of course, extremely complex; nevertheless, the French Government was ready to co-operate, earnestly and sincerely, in all efforts to eliminate, or at least to reduce, future statelessness and to consider the two draft conventions with a view to exploring possibilities of reaching agreement on the subject with other Governments.

28. For the moment, however, he wished to confine his remarks to a purely procedural matter—the action to be taken on the two texts at the present session. While he was ready to listen to the views and suggestions of other delegations, his own opinion was that the texts were not ready for approval by the General Assembly because the positions of Governments had not been adequately ascertained. The International Law Commission had, of course, invited the Governments to comment on the two draft conventions, but only one-fourth of the Member States had heeded the invitation. Moreover, the great majority of the Governments that had submitted comments—the United Kingdom being the one notable exception—had merely compared the provisions of the draft conventions with their domestic legislation currently in force, indicating that they were willing to accept the draft conventions only to the extent to which they were compatible with such legislation. The Governments that had replied had failed to consider the draft conventions on their own merits and to indicate whether, in their view, the texts would indeed serve the purpose of eliminating or reducing statelessness; whether they were ready to pursue that purpose by means of concluding an international convention; whether they felt that general political conditions favoured such a course; and whether they were prepared to amend their domestic legislation in order to bring it into line with a new international law that they would thus bring into being. Until the General Assembly knew the answer to those basic questions, it could not usefully proceed to adopt either of the draft conventions. The International Law Commission, in preparing the texts, had done its work and done it well. The next step was for governments to take.

29. Of course, if it saw fit, the Committee could proceed to consider the draft conventions article by article, since all Governments, whether or not they had submitted comments, had an opinion in the matter and were no doubt prepared to voice it. In view of the considerations he had explained, however, it would be wiser to delegate that task to a conference of plenipotentiaries—a course of action that commended itself to the French delegation, particularly as a similar conference on the subject of present statelessness had just been held. Alternatively, if Governments wished to have more time for reflection, the draft conventions could be referred to the Economic and Social Council, which could then call a conference of plenipotentiaries and report thereon to the General Assembly.

30. He invited other delegations to state their views on the procedural question he had raised and reserved the right to comment on the draft conventions themselves if the Committee should decide to discuss them in detail.

The meeting rose at 5.15 p.m.

Printed in U.S.A. M—42629—October 1954—1,800