

COUNCIL COMMITTEE ON NON-GOVERNMENTAL ORGANIZATIONS

LIST OF COMMUNICATIONS RECEIVED FROM NON-GOVERNMENTAL
ORGANIZATIONS CREATED CATEGORY (b) OR (c)
CONSULTATIVE STATUS

This list is issued in accordance with the provisions of section IV, paragraph 4, of the report of the Committee on Arrangements for Consultation with Non-Governmental Organizations, approved by the Council on 21 June 1946 (resolution 2/3 of 21 June 1946, in Official Records of the Economic and Social Council, first year, second session, pages 350-365).

World Jewish Congress (Congres juif mondial)

The Congress submits a "Memorandum submitted by the World Jewish Congress to the Ad Hoc Committee on the Preparation of a Convention on Declaration of Death of Missing Persons" for the attention of the Council and of the Ad Hoc Committee. A summary follows:

Reference is made to the relevant documents (E/1071, with addenda 1 to 3, and E/AC.30/1 to E/AC.30/4).

The Secretariat's draft (E/1071) has raised certain constitutional problems in those countries whose Governments are based on the federal system as in the United States and Canada and/or whose law and legal procedures, such as in the case of common law countries, do not ordinarily provide for a declaration of death.

The problems so raised may be solved in the following manner:

- (a) The objections of certain Governments from the constitutional standpoint stem from the assumption that ratification of the Convention would necessitate a change in laws which are within the sole competence of their component parts (states or provinces) and therefore ordinarily outside the jurisdiction of the federal government.

The Congress contends that articles 2 and 5 of the draft convention may be interpreted to mean that countries are under no unconditional obligation to change their laws. If this could be made certain by a specific provision or by an authoritative interpretation, most of the objections raised against the adoption of the

/Convention

Convention would be effectively countered. Instead of imposing on the parties with a federal system the obligation to enact new legislation, and thus involve them in insoluble problems of constitutionality, the convention should urge such enactment whenever, and to the extent that, this can be done within the existing constitutional framework.

- (b) Another objection raised by certain governments relates to the effect produced by the declaration of death in countries whose law does not provide for such declaration. The provision of article 5 (2) that in such instances a declaration would "insofar as appropriate have the same legal effect as actual death" may conflict with the general system of law operating in those countries, if the words "insofar as appropriate" are not meant to indicate that such effect is not produced when it conflicts with the system of law of the given country.

It is suggested that such conflict - to the extent that it actually exists - may be resolved by giving to the declaration the effect of a "presumption" of death in order not to make its adoption by certain countries impossible or difficult of attainment.

3. The present draft is intended to affect persons who disappeared between 1939-1945, i.e., the period of the last war. However, Nazi aggression commenced in 1938, followed by intensive persecution and violence with the result that certain individuals may have already disappeared during that year. The convention should, therefore, apply also to 1938.

4. The World Jewish Congress appeals to the ad hoc Committee to prepare a draft convention which would help alleviate some of the hardships of those who have survived the Nazi holocaust, by legally establishing the death of their kin who were the innocent victims of Hitler's program of mass murder.
