

TWO HUNDRED AND SECOND MEETING

Held at Lake Success, New York, on Wednesday, 23 November 1949, at 11.20 a.m.

Chairman: Mr. E MAUNG (Burma).

Consideration, at the request of the Third Committee, of 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) (continued)

1. The CHAIRMAN recalled that the Committee had begun the discussion of the article relating to federal or non-unitary States (A/C.6/L.88) at the 201st meeting.

2. Mr. KRAJEWSKI (Poland) stated that the so-called federal clause covered a variety of subjects. In particular, paragraph (b) of the draft article created the possibility that "the constituent States, provinces, cantons or territories" might not implement the convention at all. If such a clause were adopted, it would destroy the practical value of the convention as a whole. The only obligation which its signatories would assume was that of bringing the articles of the convention to the notice of those States, provinces, cantons or territories, with a favourable recommendation. The States and territories which did not wish to enforce the convention would be shielded by that fact. That did not imply bad faith, but the article should not be put on such a vague basis.

3. In international law, States must fulfil their international obligations regardless of whether their territory was divided into cantons, departments or provinces. The convention was designed to create definite obligations. He thought all delegations wishing to see it adopted and enforced should vote against the federal clause. The representative of France had said, at the preceding meeting, that the clause was necessary since the colonial clause had been rejected in the Third Committee. It might have been expected that the colonial Powers would have yielded to the decision of the majority and would not have tried to re-introduce the colonial clause in a substitute form; to include the federal clause in the article under

consideration would be equivalent to re-introducing the colonial clause with all its implications. It would mean that the Sixth Committee, was in effect, reversing the decision of the Third Committee. The Sixth Committee had heard much talk of the supremacy of international law and the subordination of domestic legislation to its provisions. However, in the case under consideration, it was seen how reluctant the States were to create an instrument of international law which would be binding on all the signatories in their struggle against one of the great evils of contemporary times.

4. If the convention was to be really effective, the clause should not be included for two reasons: first, it had all the elements of the colonial clause and secondly, it weakened the convention as a whole.

5. Mr. SUTCH (New Zealand) stated that when the subject had been considered by the Social Commission, that Commission had been under the impression that the draft convention on prostitution did contain a colonial application clause. The clause was a liberal one; the delegation of New Zealand had introduced it. At the same time, the United States delegation had introduced a federal application clause which was similar to the one under consideration. It had been opposed because its provisions were not as extensive as those of the colonial application clause. The United States had withdrawn its proposal and, in the Economic and Social Council, it had reserved its position in order to re-introduce the clause in the present article.

6. The New Zealand delegation had deemed that the federal application clause, as worded at that time, was not acceptable being less liberal than the colonial application clause; however, the latter had been rejected by the Third Committee. The federal clause under consideration was even less acceptable. A metropolitan State, when signing the convention, would be signing in the name of all its territories. It was obvious that States like the United Kingdom must canvass their territories

before signing a convention; similarly, it was advisable for federal States to canvass their constituent parts before signing.

7. It had been pointed out that the clause recommended by the Sub-Committee was a combination of the federal clause and the colonial clause. The representative of New Zealand was not sure that that was so; if it were true, the colonial clause should be formally re-introduced and reconsidered.

8. The New Zealand delegation was opposed to the federal clause as worded in the Sub-Committee's text.

9. Mr. RENOUF (Australia), referring to the addition of the words "non-unitary State" and "territories" in the federal application clause, said that the proposal had originally related to federal States alone. The insertion of those words combined the federal clause with the so-called colonial clause. The words were so vague that they would probably enable the Government of Australia, for instance, to use the clause in the application of the convention to the territory of Papua. His Government had been in favour of the inclusion of a colonial clause in the convention, and it therefore welcomed the introduction of those words from that point of view. But the fact that it was in favour of the article in so far as it concerned the application of the convention to Non-Self-Governing Territories did not mean that it could accept the clause as a whole. It objected to the wording used in so far as the article concerned federal States specifically. Although it approved the basic principle of the provision, and its use for the application of the convention to Non-Self-Governing Territories, the Australian delegation could not vote for the article because it did not consider that its wording was adequate to provide for the application of the convention to federal States.

10. Mr. SOTO (Chile) explained that his delegation considered the introduction of the federal application clause to be tantamount to the inclusion of a reservation in the convention. He thought it would therefore be advisable for States having problems of the kind referred to in the clause to express reservations when signing or ratifying the convention. Many members of the Committee considered that the clause was contrary to the principle of the reciprocity of obligations on the part of the contracting States. The delegation of Chile, as a matter of courtesy, wished to accept such a clause in order to enable the States having problems in that respect to overcome them; however, as presently worded the clause was so indefinite in regard to the action to be taken by federal or non-unitary States that it would be impossible for them to determine whether or not they could accept the obligations contained in the convention. From a practical point of view, the wording of the clause was not acceptable; if it were accepted, it would destroy the effectiveness of the convention as a whole. Thus the delegation of Chile would have to abstain from voting on the clause.

11. Mr. FITZMAURICE (United Kingdom) explained that his delegation's attitude towards the proposal was similar to that of the New Zealand delegation. If the clause had remained a federal clause, his delegation would have supported it, subject to a few drafting changes, because the special position of federal States should be recognized and because he thought it useless to draw up a convention in a form that would prevent some

States from adhering to it, or to become a party to it until long after it was drawn up. It was inconsistent to include the federal clause in the convention and, yet to exclude the colonial clause. The colonial Powers were, in practice, in the same position as federal States. They argued that, under their constitutions, certain matters fell within the jurisdiction of their constituent territories, and that it was consequently impossible to accept conventions pertaining to those matters before having consulted the territories so as to ascertain if they would accept the convention. That would delay indefinitely their becoming parties to conventions, unless some provision were made to enable them to become parties pending the decisions of their constituent territories. Some States had territories which were completely self-governing locally and others which were self-governing merely in respect of certain matters connected with international conventions or of certain local customs. The metropolitan Power could not intervene in such local fields without the consent of the local authorities. Without such provision, the Government of the United Kingdom, for instance, would not be able to adhere to a convention until it had obtained the consent of its territories and until the necessary measures had been taken for the implementation of the convention in the various territories.

12. The deletion of the colonial clause did not facilitate the application of the convention; it prejudiced the cause of the suppression of prostitution, because it delayed the entry of the convention into force in many States and territories.

13. It was not true that the United Kingdom wished to use the colonial clause to exclude its territories from the conventions which it accepted; on the contrary, it made every effort to induce its territories to adhere to any convention it accepted.

14. He pointed out that if one or two overseas territories of the United Kingdom refused to accept the convention, if the clause were included, that would not affect the other territories; the latter could still adhere to the convention. Without the clause, however, all overseas territories of the United Kingdom and the metropolitan Power itself would be unable to accept the convention if one single of its territories were to refuse to adhere to it. The provision contained in the last sentence of the first paragraph of draft article 24 made that even more certain.

15. Thus the Government of the United Kingdom had always requested the inclusion of a colonial clause in any international agreement which it signed. It could not compel its territories to become Parties to a convention on prostitution any more than it could compel them to enter into trade or other agreements. It must consult them and allow them to pass the necessary legislation.

16. The United Kingdom delegation preferred the inclusion of a colonial clause as had been originally proposed in the draft convention submitted to the Third Committee. Now that that clause had been eliminated, however, it would accept a federal clause similar to the one proposed by the United States and French delegations and which the Sub-Committee's report had referred to. The representative of France had explained that she considered that the clause was applicable to the overseas territories of countries like France and the United Kingdom. The position of the United Kingdom was essentially the same as that of

France. On the basis of the article under consideration, the United Kingdom would consider itself a non-unitary State, and the clause would therefore be applicable to it. He would have preferred a straightforward colonial clause and did not understand why that clause had been eliminated. As that had been done, however, he would vote for the federal clause.

17. Mr. KORETSKY (Union of Soviet Socialist Republics) took issue with the United Kingdom representative who had felt that the suppression of the colonial application clause and failure to accept the federal clause would make it more difficult for such States as the United Kingdom to adhere to the draft convention. Mr. Koretsky failed to see that any great advantage would result if the United Kingdom were to adhere to the convention on its own behalf only and to bring it, with favourable recommendation, to the notice of its overseas territories. What mattered most was that the convention should apply not to the United Kingdom but to all its dependent territories, especially in view of the fact that in the United Kingdom itself laws for the suppression of prostitution already existed. It was common knowledge that the evil of prostitution was rife particularly in overseas territories, where young girls—indeed children—were sold to be trained for the most ancient profession in the world. If therefore, there were a choice between immediate acceptance of the draft convention by the United Kingdom under the proposed federal clause and waiting until the United Kingdom had obtained the consent of all its territories and accepted the draft convention on behalf of them all, Mr. Koretsky would not hesitate to choose the second alternative. He stressed that it was important to make it obligatory on the greatest number of States to apply the convention as soon as possible, rather than to collect the greatest possible number of signatures to the convention.

18. He welcomed the action taken by the Third Committee in suppressing the colonial application clause. In view of that suppression, it was necessary to reject the federal clause, which would also enable States to accept the convention without obligating themselves to apply it. While he realized that the Governments of federal States could not accept the convention without first consulting the constituent States, he felt that it would be better for those Governments to take all the preliminary steps first and to accept the convention only when they were able to accept all the obligations imposed by it. Acceptance of the draft convention by a State under the federal clause would be an empty gesture; the Government of any civilized country could undertake to recommend favourably the draft convention to its various States or provinces without thereby assuming any obligation for its application, yet creating the false impression that it was bound by the convention. Mr. Koretsky urged the Committee to eliminate the federal clause in order not to delude either itself or public opinion.

19. He wished to make it clear that he had not intended any reflection upon the system of federal States; the working of that system, however, should be taken into account and federal States should not adhere to the convention until all the constituent States had taken the necessary preliminary action. Only then would the convention

be an effective international instrument rather than a collection of autographs.

20. Mr. WENDELEN (Belgium) observed that the Polish and other representatives who had indicated that the draft convention would not be effective if it contained the federal clause, even while denying any imputation of bad faith, had implied that those who supported that clause wanted to evade their obligations under the convention. He wished to deny that implication; international co-operation could not be based on bad faith.

21. The attitude of delegations which had opposed the colonial application clause in the Third Committee and were opposing the federal clause in the Sixth Committee struck him as being paradoxical. While professing a fervent desire for the realization of the aims of the draft convention, at the same time, by rejecting the federal clause, they wished to make it extremely difficult or impossible for colonial Powers and federal States to adhere to the convention. Those delegations said that they had the welfare of dependent territories in mind, yet wished to impose the draft convention on them without previous consultation with their representatives. The colonial Powers could hardly extend the application of the draft convention to their various territories without taking into account local customs and conditions and without consulting local authorities.

22. He wished to make it clear that Belgium would find no difficulty in applying the provisions of the draft convention in its various territories; it had already done a great deal towards the suppression of prostitution there.

23. Mr. GARCÍA AMADOR (Cuba), speaking on a point of order, drew attention to the fact that the Third Committee had considered and rejected the colonial application clause.¹ The federal clause before the Sixth Committee contained a reference to constituent territories and therefore also constituted a colonial application clause, as had been recognized by many of its supporters. He questioned the competence of the Sixth Committee to deal with that clause, as its adoption would amount to the revocation of a decision taken by the Third Committee which was the Committee empowered to deal with the substance of the question.

24. The CHAIRMAN replied that there had been no re-introduction of a colonial application clause as such. The view that the federal clause might apply to dependent territories was that of certain delegations and not of the Committee as a whole. Furthermore, the question was a purely legal one and the Sixth Committee was therefore competent to discuss it.

25. Mr. CHAUDHURI (India) agreed with the Cuban representative that the Sixth Committee should not introduce a provision running counter to the intentions of the Third Committee. The fact that the Third Committee had adopted article 24 in its current form² and had rejected the colonial application clause showed clearly that it wished nothing in the nature of such a clause to appear in the draft convention. He also agreed with the United Kingdom representative that the proposed federal clause would apply to colonies; as the evil of prostitution flourished in dependent territories far more than in metropolitan areas, he thought that the possibility of application of the clause to colonies should be eliminated. He would be pre-

¹ See *Official Records of the fourth session of the General Assembly, Third Committee, 248th meeting.*

² *Ibid.*, 203rd meeting, paragraph 1.

pared to accept a federal clause which applied exclusively to federal States.

26. He therefore suggested that the words "or non-unitary" in the first sentence of the proposed article should be deleted, and that paragraph (b) should be replaced by the following text:

(b) For each article of this Convention whose implementation in accordance with the constitution of a federal State is wholly or partly within the jurisdiction of the units which constitute the federal States (whether designated as States, provinces or cantons) the federal Government concerned shall bring this to the knowledge of the competent authorities of those units and shall recommend its adoption.

27. He would submit that amendment in writing.¹

28. With reference to the remarks of the USSR representative he observed that, while federal States could, of course, wait for appropriate action by their constituent States before adhering to the convention, if the central Government of such a State accepted the convention first, such action would undoubtedly be taken more quickly. It would therefore be to the general advantage to insert the federal clause, as re-drafted by him, in the draft convention. He urged the Committee to adopt that text.

29. Mr. FERRER VIEYRA (Argentina), in view of some of the statements made during the debate, wished to make clear his Government's position in the matter.

30. A clear distinction should be drawn between a colonial application clause and a federal clause. They had an entirely different legal meaning, and he could not agree with the United Kingdom representative that it was inconsistent to reject one and to adopt the other. A number of States, like his own, were constituted under the federal system, under which the constituent States or provinces reserved for themselves a number of rights and delegated others to the central Government. The latter thus disposed of rights explicitly delegated to it by means of a constitution, and rights delegated implicitly because they were required for the application of the explicitly delegated rights. The federal clause should apply to those territories of the colonial Powers which found themselves in the same position as the component parts of federal States. Many of those territories were, however, directly dependent upon the colonial Power. Consequently, it was theoretically possible for such a Power, under the colonial application clause, to accept the draft convention on its own behalf and not to extend its application to its various dependent territories. The Argentine delegation was of the opinion that the draft convention should have the widest possible application, which should by no means be restricted to the metropolitan territory of a colonial Power.

31. Argentina—and, he thought, many other federal States—did not need a federal State clause in the draft convention under consideration, as the central Government was itself competent to take measures for the suppression of prostitution. Moreover, the proposed article had been interpreted as constituting a colonial clause, and he feared that even the Indian amendment might be so construed. Consequently, since, on the one hand, the Argentine delegation recognized the

need for a federal clause on the part of some federal States, and on the other was opposed to the interpretation of such a clause as constituting a colonial application clause as well, it would abstain in the vote.

32. Mr. FITZMAURICE (United Kingdom) protested that the USSR representative's remark that prostitution was rife in United Kingdom overseas territories was unfounded. With regard to the Indian representative's remarks, he denied that prostitution was a characteristic of under-developed countries; it was a human problem which arose under the most diverse conditions and afflicted even the most highly civilized countries.

33. In connexion with the Argentine representative's remarks that colonial Powers had attempted to use the colonial clause to evade the application of the convention to their overseas territories, he pointed out that if that representative had examined past conventions to ascertain which colonial and non-colonial Powers had become parties to them, he would have discovered that the colonial application clause had in fact been used by colonial Powers to facilitate the application of the conventions in dependent territories.

34. In the case under discussion, the position of colonial Powers was similar to that of federal States. The USSR representative had maintained that it would be preferable for a colonial Power to wait for the consent of its dependent territories before adhering to the convention; while such a course might, in itself, be more desirable, it would delay the application of the convention to other territories which might be ready to accept it immediately. He also recalled, in that connexion, the United States representative's remark at the preceding meeting that there would be a better chance that various constituent States would take the necessary constitutional measures if the federal Government had already become a Party to the convention. Without the colonial application clause, a colonial Power would not be in a position to adhere formally to the convention until all its territories had accepted its provisions. Such a situation would not encourage acceptance of the convention by those Powers.

35. Mr. FERRER VIEYRA (Argentina), in reply to the United Kingdom representative, pointed out that what he had said was that a colonial or federal clause "might be", and not "had been", interpreted by colonial Powers as applying to the metropolitan State only.

36. Mr. GARCÍA AMADOR (Cuba) noted that he had not received a reply to the second point which he had raised at the preceding meeting with regard to the problem of a unitary State which was a Party to a convention containing a federal clause. As he had pointed out on that occasion, a unitary State would have to grant a request for extradition made by another State, but if the former should in turn demand the extradition of a person from a federal State, such a request might be refused under the pretext that the offender had fled to a constituent State where the convention was not being applied. That situation would put the unitary State, as against the colonial Power or federal State, at a disadvantage which it could never overcome since the clause would remain permanently in the convention.

37. The CHAIRMAN ruled that the general debate on the question was closed. As the Indian

¹ See *Official Records of the fourth session of the General Assembly, Third Committee, 203rd meeting, paragraph 1.*

amendment had not yet been circulated, he proposed that it should be considered and put to the vote at the following meeting together with the draft article proposed by the United States and France, as referred to in the report of the Sub-Committee.

38. Mr. RENOUF (Australia) reserved the right of his delegation to submit an amendment to the Indian amendment if necessary.

CLAUSE ON DOMESTIC LAW

39. The CHAIRMAN then opened for discussion part III of the Sub-Committee's report (A/C.6/L.88) in which it was recommended that in draft articles 3, 4, 7 and 16 the clause "subject to the requirements of domestic law" should be replaced by the words "to the extent permitted by domestic law", and in draft articles 19 and 20, by the words "in accordance with the conditions laid down by domestic law".

40. Mr. KORETSKY (Union of Soviet Socialist Republics) was opposed, as he had previously stated, to altering without very good and valid reasons a formulation which was contained in other conventions which States had already signed and ratified.

41. He first examined the implication of the change recommended by the Sub-Committee in respect of draft articles 3, 4, 7 and 16 of the draft convention.

42. Draft article 3 extended punishable offences to include attempts and preparatory acts. The criminal codes in various countries differed, however; not all of them punished attempts or preparatory acts, nor did they punish them in the same way. The old formulation "subject to the requirements of domestic law" and the phrase proposed by the Sub-Committee "to the extent permitted by domestic law", would have the same practical results; if the offence was not punishable under domestic law, it would not be punished. Theoretically, however, the new wording might lead to embarrassing circumstances. The old formulation implied that punishment should be inflicted in accordance with the existing penal law of the country concerned, while the new one seemed to allude also to a non-existing international penal code. Consequently, in the case of draft article 3, the proposed formulation was practically unnecessary, and theoretically and politically undesirable.

43. Draft article 4 dealt with persons participating in the acts referred to in articles 1 and 2, and established the international obligation to punish their intentional participation in those acts to the

extent permitted by domestic law. The point there was not, as the insertion of the proposed phrase would imply, the extent to which the offenders could be punished under domestic law, but that all offenders should be punished under the laws of the States in which they were brought to trial. The new formulation implied that some outside authority would bring the offenders to trial, to be punished to the extent permitted by domestic law. They would, however, be brought to trial by the local authorities provided for under domestic law. Therefore, the old formula, which stressed the need to ensure punishment of the offenders, was preferable not only politically and practically, but also legally.

44. Draft article 7 laid down the conditions for establishing recidivism or for disqualifying the offender from the exercise of civil rights. The requirements of domestic law, as made clear in the old formulation, would determine under what conditions, and through what organs recidivism could be established and the offender deprived of his civil rights. That action would not be taken by an organ of a super-State, but by the courts of the States concerned, subject to the requirements of domestic law.

45. Draft article 16 provided for co-operation between countries in transmitting to each other the information regarding particulars of any offences or attempts to commit offences under the convention, or of any police records or legal status of guilty persons. To include the phrase "to the extent permitted by domestic law" in that draft article would imply that some international law was being enforced within the limits of domestic law. That was absurd, because in each territory or State it was the responsibility of the local authorities and institutions to take the necessary action in accordance with domestic law.

46. In view of those considerations, he felt that the proposed change in the draft articles mentioned would be unnecessary in practice, and dangerous politically and theoretically.

47. With regard to draft articles 19 and 20, the Sub-Committee had proposed that the words "in accordance with the conditions laid down by domestic law" should be used. That proposal might have been acceptable; however, he saw no need for saying the same thing in different words.

48. In view of those considerations he was opposed to modifying the present formulation of the articles of the draft convention which was completely satisfactory.

The meeting rose at 1 p.m.