

TWO HUNDRED AND FIFTH MEETING

Held at Lake Success, New York, on Friday, 25 November 1949, at 11.20 a.m.

Chairman: Mr. LACHS (Poland).

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)

SUGGESTED DRAFTING CHANGES (concluded)

1. The CHAIRMAN invited the Committee to continue its discussion of part IV of the report of Sub-Committee 7 on the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/C.6/L.88). In that connexion, he directed the Committee's attention to the Swedish amendment (A/C.6/L.98), which he requested the Swedish representative to explain.

2. Mr. PETREN (Sweden) proposed to add the following text (A/C.6/L.98) to part IV of the report of Sub-Committee 7:

"The Sixth Committee wishes to point out that in a number of States incitement to prostitution and similar acts are only punished if committed on a considerable scale or for gainful purposes. In view of the fact that this restriction is absent from the definitions of article I as adopted by the Third Committee, it may be anticipated that a number of States will be unable to accept the convention."

3. He explained that his proposal was intended to make it possible for countries to adhere to the

convention which might otherwise be unable to do so. In a number of countries, including his own, acts described in article 1 of that convention were not punishable unless committed on a considerable scale or for gainful purposes, and a qualification to that effect should therefore be inserted in the article. It would be quite proper for the Sixth Committee to call the attention of the Third Committee, as suggested in the Swedish proposal, to that point of law.

4. Mr. KORETSKY (Union of Soviet Socialist Republics) hoped that the Swedish representative would not insist on his proposal; the qualifications made in it constituted a limitation of punishable offences, as the offences referred to in article 1 were not always committed for gainful purposes. The evaluation of the motives of each particular crime should be left to the local authorities of each State party to the convention. There was no need to complicate the Committee's work by bringing up new and controversial questions.

5. Mr. PETREN (Sweden) replied that the Sub-Committee's report (A/C.6/L.88, part IV, paragraph 2) contained a recommendation for deleting certain words for precisely the reasons for which the Swedish proposal had been made; namely, to make it easier for a number of countries to accept the convention.

6. Mr. FITZMAURICE (United Kingdom) strongly supported the Swedish proposal. The deletion by the Third Committee of a phrase defining the element of gain as an essential factor in the offences under consideration had placed his

Government in a difficult position, because under British law an objective test of an offence which could be established by evidence in court was necessary. The element of gain provided such a test in laws on prostitution, and if the draft convention were adopted without a provision such as that contained in the Swedish proposal, the United Kingdom, in order to become a party to the convention, would have to make a change in its laws contrary to the whole spirit of its legislation.

7. Furthermore, unless the element of gain were to be regarded as an essential feature of the offence, a number of acts which might be immoral or repugnant but which were not really criminal would be punishable under the convention. The United Kingdom representative in the Third Committee had cited the example of a man who introduced a friend to a prostitute, for purposes of prostitution, but without expecting or receiving payment for his services. If the draft convention failed to make it clear that such an action constituted a criminal offence only if committed for gainful purposes, the man in question would be liable to punishment. Mr. Fitzmaurice suggested that the purpose of the convention was not to set up a strict censorship of public morals but to suppress activities clearly anti-social and criminal in character, and that therefore a number of countries would be unable to accept the draft convention as it stood.

8. In that connexion, he welcomed the remarks, at the previous meeting, of the Lebanese and United States representatives to the effect that it should not be made too difficult for States to accept the convention. The suppression of the colonial clause and the refusal to accept a federal State clause had already made it difficult; he therefore hoped that the Sixth Committee would refrain from making difficulties for still a third group of countries, and would recommend to the Third Committee that it reconsider its decision with respect to deleting mention of "gainful purposes" in the draft convention. It would little profit the General Assembly if it evolved an ideal convention to which very few States were, for one reason or another, able to adhere.

9. Mr. LOUTFI (Egypt) said that his delegation would support the Swedish proposal for reasons stated by the United Kingdom representative. Under the penal codes of many countries, the offences in question could not be punished unless it was proved that they had been committed for purposes of gain.

10. He wished, however, to know the exact meaning of the phrase in the Swedish proposal, "on a considerable scale", which did not seem sufficiently precise for legal purposes.

11. Mr. PETREN (Sweden) replied that the phrase might perhaps be replaced by the word "habitually", as the intention was to refer to repeated offences.

12. Mr. SVENNINGSSEN (Denmark) associated himself with the remarks of the United Kingdom representative in supporting the Swedish proposal.

13. He pointed out that the proposal did not contain any precise formulation to be inserted in article 1 of the draft convention, but merely called the attention of the Third Committee to the differ-

ences existing on that point between the draft convention and the penal codes of many States.

14. Mr. SOTO (Chile) agreed that the element of gain was an essential factor in the determination of such offences under most codes, and should therefore be mentioned in the draft convention.

15. The phrase "on a considerable scale", on the other hand, introduced what might at best be a secondary consideration, attenuating or aggravating the offence, but not defining it. It was, moreover, vague, and while the word "habitually", by which the Swedish representative was willing to replace it, represented some improvement from the legal point of view, neither was a primary factor in determining the crime. He therefore suggested the deletion of that reference, leaving only the one to gainful purposes; he would then be able to support the Swedish proposal.

16. Mr. DUYNSTEE (Netherlands) was not opposed to that proposal, but wished to ask for clarification on certain points.

17. As it was obvious that both the prostitution—as exercised by the prostitute—and the exploitation referred to in the second part of article 1 were carried on for gainful purposes, there would seem no need for mentioning gainful purposes at that point. In the first part of that article, it was equally obvious that the prostitute herself exercised her profession for gain, and the mention of gainful purposes would then refer only to persons procuring, enticing or leading away other persons for purposes of prostitution. He questioned the wisdom of limiting the punishability of such offences to those committed for gainful purposes.

18. Furthermore, the example cited by the United Kingdom representative fell under article 4, to which the Swedish proposal would not apply. In other words, if the Swedish proposal were adopted, the difficulty pointed out by the United Kingdom representative would still not be resolved.

19. Consequently, as the Swedish proposal was not required for the second part of article 1 and would not apply to article 4, he felt that the Sixth Committee should examine further whether any real need for that proposal existed before making a recommendation to that effect to the Third Committee.

20. Mr. BARTOS (Yugoslavia) was opposed to the Swedish proposal for both social and legal reasons. While he fully agreed that the acts covered in article 1 were generally committed for gainful purposes, he could not agree to defining them as offences only if they were committed habitually. Under European law, a habitual offender was one who had committed the same offence at least three times; to make only habitual offenders liable to punishment would be to notify them that they could commit such offences at least twice with impunity. No person who engaged in the international exploitation of prostitution should be allowed to go scot-free for even a single offence.

21. Mr. MELENCIO (Philippines) remarked that under the laws of his country gain constituted an essential element of both prostitution and exploitation of the prostitution of others; consequently, if there were no mention of gainful purposes in the convention, the Philippines might

find it difficult to amend its laws accordingly. Furthermore, as criminal laws were phrased with great precision, and contained all the essential elements of each crime, the draft convention should, in the general interest, be equally explicit on that point and should contain no loopholes.

22. He was also in favour of the Chilean amendment to the Swedish proposal, as the phrase which the Chilean representative wished to delete was vague and ambiguous and, if inserted in the convention, might be hard to enforce.

23. For those reasons, he supported the Swedish proposal with the Chilean amendment as a recommendation to the Third Committee, and would also support the insertion of the phrase "for gainful purposes" if it were moved as an amendment to article 1.

24. Mr. ZIAUDDIN (Pakistan) observed that, from the practical point of view of a lawyer pleading in court a case under article 1 of the draft convention, such terms as "procurement", "enticement", "leading away" and "exploitation" would seem self-explanatory; but the term "prostitution" itself required a clear definition. The present discussion might not have arisen if the Third Committee had provided such a definition. He therefore suggested that the Sixth Committee might recommend to the Third Committee that it should include a definition of prostitution in the draft convention, thereby making it easier for Governments and legislatures to judge the scope of the convention and to determine their position with respect to it.

25. Mr. KORETSKY (Union of Soviet Socialist Republics) said that he could see no need for the qualifying phrases contained in the Swedish proposal. No law against stealing specified that the offence must be committed for gainful purposes. Similarly, enticement to prostitution could hardly rest on noble motives, even though they might not necessarily be those of gain. He cited the case of a rejected suitor who, far from gaining financially, had in fact spent his own money to have the girl in question enticed abroad and placed in a brothel. The convention should not contain limitations which would place such offences outside its scope. Moreover, as the Netherlands representative had pointed out, the element of gain was already inherent in most of the offences listed in article 1. There was consequently no need to make such a provision explicit.

26. There was a further consideration. As the money in such cases usually changed hands secretly, it was frequently impossible to prove that an offence of that kind had in fact been committed for gainful purposes. If the convention stipulated that persons who had enticed or exploited others for purposes of prostitution or had themselves engaged in prostitution had committed no offence unless they had done so for gain, a great many real offenders would go free.

27. Unlike the United Kingdom representative, he could not put on the same footing the very real constitutional difficulties faced by some States as a result of the rejection of the federal State clause, or even those faced by colonial Powers because of the deletion of the colonial application clause,

and the alleged difficulties which would arise if the convention were to be made an effective instrument against a wide-spread social evil which undermined the family and endangered public health.

28. The Pakistan representative in the Third Committee had opposed the insertion in the draft convention of a reference to "gainful purposes"¹. He fully agreed with that stand, and opposed the Swedish proposal. Most States should find no difficulty in accepting the draft convention as it stood and in combatting international criminals by means of international co-operation.

29. Mr. E MAUNG (Burma) said that he saw no difficulty in adopting article 1 as it was worded in the Third Committee's draft.² The words "procures, entices or leads away, for purposes of prostitution" had definite legal meanings. Under the legislation of his country, the acts included in article 1 were punishable, regardless of the motives for which they were committed. The delegation of Pakistan had considered that it would be advisable to suggest that the Third Committee should define "prostitution". But all members of the legal profession knew the meaning. The convention would be implemented in the various countries adhering to it through the legal departments of those States. If their national laws were not in conformity with the provisions of the convention, the legislators would know how to amend them so as to conform with the convention.

30. In the second part of article 1, the word "exploits" was used. That implied that the offence was committed "habitually" or "on a considerable scale". If it were not committed habitually, it would not be exploitation. The word also implied the element of "gainful purposes". Persons who exploited prostitution did so because they expected gain from it.

31. The delegation of Burma did not support the idea of introducing the word "gainful purposes" into article 1, or elsewhere in the convention.

32. Mr. GARCÍA AMADOR (Cuba) pointed out that the two phrases in the Swedish proposal, "on a considerable scale" and "for gainful purposes", contained two basically different elements. He considered the first phrase contrary to the spirit and letter of the draft convention as a whole. The convention was designed to suppress the offence, whether it took place only once or on a considerable scale. Referring to the statement of the representative of Yugoslavia that in Europe an act was not considered an offence punishable by law until it had been committed at least three times, he pointed out that provisions of the draft convention must not be considered in the light of the legislation of any particular country or countries. The offences referred to in the convention should be punishable even when committed only once. He could not accept the phrase "on a considerable scale" appearing in the Swedish proposal.

33. As for the phrase "for gainful purposes", its inclusion in the text of the Swedish proposal made it an essential element in the offence. The United Kingdom representative had said that, although the acts mentioned in the first part of article 1 were repugnant, they were not criminal. He could not share that view. He thought that those acts

¹ See *Official Records of the fourth session of the General Assembly, Third Committee, 237th meeting.*

² *Ibid.*, Annex to the records of the Third Committee, document A/C.3/526.

should be punishable whether or not they were committed for gainful purposes, and pointed out that paragraph 1 of article 1 of the Third Committee's text made a provision for that purpose.

34. As the representative of the USSR had said, it was often difficult to determine whether an offender acted for gainful purposes. Persons engaged in prostitution often used bribery and other means of concealing their gainful purposes. It was therefore difficult to prove such a motive in courts. So inclusion of that motive in the Swedish proposal amounted to a limitation of the provisions of the convention and provided for the offender another means of evading punishment.

35. The delegation of Cuba would therefore not support the Swedish proposal.

36. Mr. KORETSKY (Union of Soviet Socialist Republics) on a point of order recalled that the question of the retention of the concept of gainful purposes in article 1 of the draft convention had been discussed in the Third Committee and the latter had decided to delete the words. He thought that there was some confusion as to what the Sixth Committee was trying to do. The acceptance of the Swedish proposal would amount to the revision of a Third Committee decision. He pointed out that the Sixth Committee was not competent to make such a revision and requested that the Chairman should give a ruling on that point. He also wished to know what procedure the Sixth Committee would follow if it attempted to revise a Third Committee decision, and whether a two-thirds majority vote would be required.

37. Some delegations had stated that their countries could not adhere to the convention if the words "for gainful purposes" were not included. He suggested that those delegations should bring up the matter for consideration in the General Assembly.

38. The CHAIRMAN explained that, as he understood the Swedish proposal, the Sixth Committee was asked to express its view, which would be transmitted to the Third Committee, and not to re-draft or decide on the substance of article 1 of the draft convention.

39. Mr. KORETSKY (Union of Soviet Socialist Republics) repeated that the Sixth Committee was considering a point which had already been decided by the Third Committee. The comparison of the text of the Swedish proposal with the draft adopted by the Third Committee would show that the words "for gainful purposes" constituted the issue. He considered that the statements of certain delegations that they could not accept the draft convention without the inclusion of those words amounted to a threat. The words "for gainful purposes" had been deleted by the Third Committee, which did not think that the deletion would prevent States from accepting the convention. It must be remembered that the same States were represented in both the Third and Sixth Committees. If a representative in one Committee supported a view, he committed his delegation to that view in the other Committees.

40. The USSR representative declared that only the General Assembly could reverse a decision of

the Third Committee. The Sixth Committee was not competent to do so. Whether the Swedish proposal was called a suggestion, a view, a recommendation or an amendment, it amounted to a revision of a Third Committee decision. Moreover, in accepting it, the Sixth Committee would create an obstacle to the implementation of the convention and the suppression of prostitution.

41. Mr. COHEN (United States of America) requested the representative of the USSR to withdraw his point of order. He had expressed his own views on the Swedish proposal and should give other delegations a like opportunity to express theirs.

42. Mr. KORETSKY (Union of Soviet Socialist Republics) replied that he had not moved closure of the debate nor did he wish to deprive other delegations of their right to express their views.

43. Mr. MELENCIO (Philippines) stated that the ruling of the Chairman was entirely in order, because the terms of reference drawn up by the Third Committee had recommended that the Sixth Committee should consider certain articles of the draft convention approved by the Third Committee and "forward back to the Third Committee approved texts for the articles submitted to its consideration, together with any comments it deems necessary to submit on any other legal problem arising from the draft convention".

44. The CHAIRMAN explained that he had not given a ruling, but had merely given his interpretation of the Swedish proposal.

45. Mr. PETREN (Sweden) remarked that the Chairman's interpretation of the Swedish proposal was correct. There was no question of a threat in regard to acceptance of the draft convention without the restriction mentioned in the proposal. The Swedish delegation merely wished to call to the attention of the Third Committee the fact that there was a danger in extending the scope of the convention beyond that of national law. Under many legislations the acts referred to in article 1 were not punishable unless they were committed on a considerable scale or for gainful purposes.

46. Mr. COHEN (United States of America) explained that his delegation, like the USSR delegation, had voted in the Third Committee to eliminate the element of gain from the text of the draft convention.¹ What was important was to work out some method of obtaining maximum international co-operation in suppressing the evil of prostitution. It must not be forgotten that no country had yet ratified the convention on prostitution and no representative was in a position to say whether or not his country would do so. It was important to take care not to raise obstacles to its acceptance. There was no question that the Sixth Committee was competent to call to the attention of the Third Committee any problem connected with the draft convention. The Swedish proposal did only that; it did not commit delegations to any action; it merely pointed out to the Third Committee the legal implications of its decision, and left it for that Committee to decide what action it wished to take on the matter. There were various ways in which the Third Committee could deal with it. It did not have to re-introduce the element of gain in articles 1 and

¹ See *Official Records of the fourth session of the General Assembly*, Third Committee, 238th meeting.

2; the introduction of some such qualification as "to the extent permitted by domestic law" into those articles might make it easier for some States to adhere to the convention and yet would not destroy its effectiveness.

47. The connotation of the words "procure", "entice" and "lead away", for purposes of prostitution, was different in different countries; the United States proposal might also help to solve the problem connected with the interpretation of those words. The Sixth Committee was not suggesting what language the Third Committee should adopt in the draft, but was merely calling attention to the legal implications of the Third Committee's decision. The United States representative considered that the Swedish proposal was logical and accorded with fact; he would therefore support it.

48. Mr. AMADO (Brazil) was opposed to the Swedish proposal. The representative of Brazil in the Third Committee had also opposed the inclusion of the principle of gain in the draft convention.¹ Under Brazilian law the principle of gain was an aggravating circumstance but not one of the essential factors in the crime.

49. It had been alleged that the deletion of that ingredient of the crime would make it difficult for some States to sign and ratify the convention. The Brazilian delegation, however, felt it would be easier if those countries which had laid down that requirement in their criminal law would adapt their national legislation in a progressive sense to that common to the majority of States, rather than ask the latter to take a step backwards by accepting its inclusion in the convention. The convention was meant to define and create law, just as did the Charter, of which the Sixth Committee was only the instrument.

50. For those reasons the Brazilian delegation opposed the Swedish proposal. If it were adopted, however, and forwarded to the Third Committee it should be clarified, because the phrase "and similar acts" was vague in criminal law. The Brazilian delegation considered that it would be better to add a statement that everything connected with the crime was reprehensible and not merely the procurement, the enticement or the leading away of persons for purposes of prostitution.

51. Mr. RENOUF (Australia) moved that the list of speakers should be closed, but in view of the fact that there were so few speakers still to be heard he did not press the motion.

52. Mr. GARCÍA AMADOR (Cuba) thought that the Committee was reopening debate on the substance of the question without settling the point raised by the USSR representative. He regretted that events had taken that turn, especially in view of the fact that in its 203rd meeting the Committee had expressly decided that it was not competent to reconsider decisions of the Third Committee. He recalled that that position had been adopted in connexion with the colonial application clause. At that time the Sixth Committee had declared itself competent to consider only legal questions connected with the draft convention referred to it by the Third Committee, and not points of substance which had already been decided by that body. He asked the Chairman to give a ruling on the matter.

¹ See *Official Records of the fourth session of the General Assembly, Third Committee, 237th meeting.*

53. Mr. KORETSKY (Union of Soviet Socialist Republics) agreed with the representative of Cuba that the question had already been settled by the Committee's decision concerning the colonial application clause. He felt, however, that it might be wise to settle the matter by putting the Swedish proposal to the vote.

54. Mr. GARCÍA AMADOR (Cuba) agreed to the USSR suggestion. He thought, however, that the two remaining speakers should be allowed to take the floor in view of the debate which had already ensued. He felt that thereafter the debate should be closed and that the Committee should then proceed to take a vote on the Swedish proposal.

55. Mr. KHOMUSKO (Byelorussian Soviet Socialist Republic) also believed that the Sixth Committee could not consider the Swedish proposal as it concerned a point of substance already decided by the Third Committee. The Sixth Committee had not been asked to reconsider the question. It was, after all, not a court of appeal from the Third Committee. If the Swedish delegation wished to have the matter reconsidered it could more appropriately reopen the question in the General Assembly. For those reasons the Byelorussian delegation would oppose the Swedish proposal.

56. Mr. PETREN (Sweden) understood the objections to the phrase "on a considerable scale". That was why he had suggested that the word "habitually" could be substituted. He now wished to withdraw the original phrase in view of the further objections some delegations had raised, although he pointed out that it was permissive, as the clause included the word "or". The deletion of the phrase "on a considerable scale" would narrow the convention considerably.

57. The Netherlands representative's remarks concerned the real question of the scope of the term "prostitution", especially with regard to article 1. It was not clear whether prostitution in its widest or narrowest sense was meant. As the representative of Pakistan had suggested, a clearer definition was necessary. As the Third Committee, moreover, had deleted the principle of gain, some clarification should have been given.

58. Article 4 was in reality secondary to the first three articles of the draft convention and therefore the Swedish proposal would create no difficulties in relation to that article, the provisions of which clearly applied to the acts already described, with all their implications. He therefore saw no contradiction if the Committee amended article 1 and did not alter article 4.

59. The proposed United States amendment "to the extent permitted by domestic law" was in his opinion also satisfactory.

60. He had nothing further to add to his earlier remarks regarding the competence of the Sixth Committee in the matter.

61. Mr. DUYNSTEE (Netherlands) thought that there might have been a misprint in the text of article 1 as considered by the Third Committee.² The phrase "for purposes of gain" seemed to refer only to the exploitation of the prostitution of

² *Ibid.*, Annex to the records of the Third Committee, document A/C.3/520, Annex I.

others and not to sub-paragraph 1 of the article. He requested the Secretariat to give an explanation of the original text discussed by the Third Committee which might affect the Sixth Committee's attitude towards the Swedish proposal, since the Committee would have to decide whether it wished to broaden the text of the convention by interpreting that proposal to refer to both parts of article 1 or only the second part. If in the original text before the Third Committee there had been a comma instead of a semi-colon at the end of sub-paragraph 2 of article 1 the clause "for purposes of gain" would clearly refer only to the second part, whereas if there had been a semi-colon the phrase would refer to both parts of the article.

62. Mr. PICK (Canada) thought that in spite of the fact that sub-paragraph 2 of article 1 was followed by a comma, the intent was made clear if that text was read in conjunction with the subsequent text, which referred to "the above-mentioned offences", thus clearly including both sub-paragraphs.

63. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that in document E/1458, article 1 had semi-colons in the two places in question, so that the phrase "provided these offences are committed for purposes of gain" qualified both parts.

64. Mr. DUYNSTEE (Netherlands) said that his delegation in the Third Committee had adopted its position believing that the requirement of gain had been intended to refer only to part 2. He would find it difficult to vote before this point was cleared.

65. Mr. KORETSKY (Union of Soviet Socialist Republics) asked the representative of the Netherlands not to insist on his point. He hoped it would be possible to proceed to a decision on the Swedish proposal.

66. Mr. DUYNSTEE (Netherlands) said that if a vote were taken immediately he would be forced to abstain.

67. The CHAIRMAN put to the vote the Swedish amendment, from which the phrase "on a considerable scale or" had been deleted.

The amendment as amended was adopted by 20 votes to 16, with 5 abstentions.

68. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said his impression that in the original text the principle of gain had been intended to apply to both parts of article 1 had been confirmed by the representative of the Legal Department in the Third Committee.

69. Mr. FÉREZ PEROZO (Venezuela) had voted against the Swedish proposal, but that was not to be interpreted as a vote against the substance of the point that the element of gain should be included in the draft convention. He had opposed the proposal because his delegation considered that the point had been resolved in the Third Committee after a lengthy debate in which all the pertinent arguments mentioned in the Sixth Committee had been put forward.

70. In his opinion the Swedish proposal invited the Third Committee to reopen the debate on the question, which might be prejudicial to that Committee's work. In conclusion he stated that his Government's attitude toward the Swedish proposal did not prejudice its position if the question were reopened either in the Third Committee or in the Sixth Committee.

71. Mr. MATTAR (Lebanon) had voted in favour of the Swedish proposal, which was not to be construed as an amendment to the draft convention but merely as a recommendation which the Sixth Committee was making to the Third Committee. The latter, on receipt of that opinion, would be free to reconsider, should it so desire, whether or not it wished to include the element of gain in the draft convention. He did not feel that thereby the Sixth Committee was usurping the competence of the Third Committee in the matter. Moreover, that vote did not prejudice the Lebanese position if the question was reconsidered in the Third Committee or the General Assembly.

The meeting rose at 1 p.m.