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REPORT OF THE COMMISSION ON HUMAN RIGHTS

Federal and Colonial Clauses

Report by the Secretary-General

1. The present report is submitted in response to a request made by the Commission on Human Rights for "a report on Articles 24 and 25 dealing with the legal aspects of the previous actions which have been taken by the United Nations and its specialized agencies in this connection" (E/1681, para.26). Articles 24 and 25 referred to in this request are usually called the Federal Clause and the Colonial Clause respectively. In the present text of the draft Covenant they have been re-numbered so that the Federal Clause may be found in Article 43 (previously Article 24) and the Colonial Clause in Article 44 (previously Article 25) (E/1681, Annex I, pp. 56 ff., 59 ff.).
2. In preparing this report, the Secretary-General was guided by the discussion which took place in the Commission at the time it decided to make the request for a report. On that occasion the Chairman of the Commission and the representative of Uruguay, who originally proposed this report, agreed that the report should be limited to the precedents and practice of the United Nations (E/CN.4/SR.17, pars. 133-138).
3. Accordingly, the Secretary-General has assumed that the report should deal with the discussions and decisions taken in United Nations bodies as well as the actual texts contained in conventions, but that it should not attempt to

consider their legal and political implications.

4. The report which follows is divided into the following sections:

Part I - Federal Clause

- A. The Federal Clause in the Constitution of the International Labour Organisation;
- B. Consideration by the General Assembly of a Federal Clause for the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- C. Consideration by the Human Rights Commission of a Federal Clause for the draft Covenant on Human Rights.

Part II - Colonial Clause

- A. Texts of Colonial Clauses contained in Conventions adopted by United Nations bodies;
- B. Conventions which do not contain Colonial Clauses or which expressly require automatic application to dependent territories.
- C. Clauses relating to dependent territories in the Constitution of the International Labour Organisation.
- D. Summary of discussions in the General Assembly regarding the Colonial Clause.
- E. References to the discussions of the Colonial Clause in connection with the draft Covenant on Human Rights.

Part I - The Federal Clause

5. Unlike the Colonial Clause, the Federal Clause has not been included in any of the Conventions adopted or approved by the General Assembly thus far. The only international Convention within the framework of the United Nations which to our knowledge has the Federal Clause is the Constitution of the International Labour Organisation of 1946. There have, however, been proposals for Federal Clauses made in connection with two Conventions considered by United Nations bodies, to wit, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the draft Covenant on Human Rights.

Accordingly, this part of the report will have the following sections:

- (a) The Federal Clause in the Constitution of the International Labour Organisation;
- (b) Consideration by the General Assembly of a Federal Clause for the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- (c) Consideration by the Drafting Committee of the Human Rights Commission of a Federal Clause for the draft Covenant on Human Rights.

A. The Federal Clause in the Constitution of the International Labour Organisation

6. The present Constitution of the International Labour Organisation includes a Federal Clause in paragraph 7 of Article 19. This clause relates to the obligation of members in respect of Conventions and Recommendations intended for ratification or legislative enactment. In order to understand the application of the Federal Clause, it is necessary to consider the system of Conventions and Recommendations provided for in the International Labour Organisation Constitution.

7. Under the International Labour Organisation Constitution, international labour standards are formulated in Conventions and Recommendations which members of the Organisation are under a constitutional obligation to refer to the competent national authorities with a view to their effective implementation. Such Conventions and Recommendations are not binding upon members merely by virtue of their adoption by the Conference, but the adoption of the Conventions and Recommendations does place all members of the Organisation under a definite legal obligation to take certain action, the object of which is to make more probable the ratification of the Conventions and the application of the Recommendations.

8. Specifically, the International Labour Organisation Constitution requires every member to submit Conventions and Recommendations to the competent national authorities; moreover, such members are required to inform the Director-General of the measures taken in accordance with this obligation and to give particulars

of the authorities regarded as competent, and of the action taken by them. If a Convention fails to obtain the consent of the competent authorities, no further obligation rests upon the member, except that it shall report at appropriate intervals the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Convention. A similar provision imposes an obligation to report in cases where Recommendations are not made effective.

9. Following these provisions, paragraph 7 of Article 19 states that "in the case of a Federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, provinces, or cantons rather than for federal action, the federal Government shall--
 - (i) make, in accordance with its Constitution and the Constitution of the States, provinces or cantons concerned effective arrangements for the reference of such Conventions and Recommendations not later than eighteen months from the closing of the session of the Conference to the appropriate federal, State, provincial or cantonal authorities for the enactment of legislation or other action;
 - (ii) arrange, subject to the concurrence of the State, provincial or cantonal Governments concerned, for periodical consultations between the federal and the State, provincial or cantonal authorities with a view to promoting within the federal State co-ordinated action to give effect to the provisions of such Conventions and Recommendations;
 - (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this Article to bring such Conventions and Recommendations before the appropriate federal, State, provincial or cantonal authorities regarded as appropriate and of the action taken by them;

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;
- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

10. It should be noted that this clause was adopted as a substitution for paragraph 9 of Article 19 of the original International Labour Organisation Constitution. This paragraph merely provided that "in the case of a Federal State the power of which to enter into Conventions on labour matters is subject to limitation, it shall be in the discretion of that government to treat a draft convention under which such limitations apply as a Recommendation only, and the provisions of this Article with respect to Recommendations shall apply in such case".

11. The present text of the Federal Clause was intended to reduce somewhat (but not eliminate) the disparity in obligations between Federal and Unitary States. A valuable discussion of the background and reasons for this change may be found in the I.L.O. "Report of the Conference Delegation on Constitutional Questions on the work of its Second Session" (International Labour Conference, 29th Session, 1946, Report II (1), pp. 173 ff.).

B. Consideration by the General Assembly of a Federal Clause for the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

12. During the Fourth Session of the General Assembly consideration was given to a federal clause proposed for inclusion in the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Federal Clause in question was originally proposed by the United States of America (A/C.3/L.13, p.3). It was subsequently referred by the Third Committee to the Sixth Committee for consideration and study (A/C.6/L.66, p.5). The Sixth Committee established a sub-committee to consider this and other legal questions and the sub-committee in turn appointed a working group to consider the problems involved. In the course of the consideration of the article by the working group, the United States accepted certain amendments proposed by France; as a result, the Article considered by the working group read as follows (the French amendments being underlined);

"In the case of a federal State or non-unitary State the following provisions shall apply:

- "(a) With respect to any articles of this Convention which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of parties which are not federal states;
- "(b) In respect of articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces, or cantons, or territories the federal government shall bring such articles, with favourable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment." (A/C.6/L.88 sec.II)

The working group in its Report on this new article set out its position in the following terms:

"The working group discussed this Article but concluded that the question of principle presented should be referred without any recommendation to the Sub-Committee. The reasons for and against this Article can be stated briefly. The Article has been proposed in order to meet

a difficulty faced by those federal States under whose constitutional systems it is considered proper that the subject matter of the Convention be left to the constituent parts of the federal State. Such federal States, it is said, cannot or will not become parties to a Convention of this kind if the Federal Government is required to undertake all of the obligations of the Convention including those obligations deemed appropriate for local action. On the other side, it is noted that the Article would enable a federal State to become a party to the Convention without assuming all of the obligations undertaken by the other parties to the Convention, and it is maintained that an international Convention should not permit certain States to be placed in a privileged position because of their special constitutional features or governmental structure.**

13. In the Report of the Sub-Committee to the Sixth Committee, Part II (A/C.6/L.88, page 5) it was stated that the Sub-Committee had not adopted a recommendation with respect to the proposed federal state clause and had merely decided to refer the clause to the Sixth Committee for its consideration.

14. At its 201st meeting of the Sixth Committee, the Chairman opened the discussion on the Sub-Committee's Report, Part II (Official Records of the General Assembly, Fourth Sess., Sixth Committee, 201st Meeting, paragraph 83). The positions taken by several of the delegations in regard to the Federal Clause are set forth in some detail below.

15. The representative of the United States explained his reasons for favouring a Federal Clause, as follows:

"that in his country the questions covered by the convention under discussion were in many respects within the competence of the legislative organs of the federated States. The Federal Government certainly exercised a large measure of control over the traffic in persons, but not complete control in so far as it involved the territories of several federated or sovereign States. But it could not claim to exercise such control in all legislative or administrative questions. The Federal Government could not dictate to the Governments of the various federated States the course of action they should take in the matter. Before the United States could sign the convention, therefore, its obligations must be clearly defined, when those obligations affected matters which were within the competence of the federated Governments and not within that of the central authority". (paragraph 84)**

* The report of the Working Group to the Sub-Committee was not given a document number.

** This paragraph reference and the others which follow are to the Official Records of the General Assembly, Fourth Session, Sixth Committee, 201st meeting.

He supported the inclusion of the phrase "non-unitary States" and said that similar problems could arise in such States as in Federal States. He referred to the fact that the Constitution of the ILO expressly provided for problems of a similar nature and then dealt with various criticisms of the clause as follows:

"Three main criticisms of the clause affecting federated or non-unitary States could be foreseen. First, it might be said that under international law it was indispensable that States should not be able to adduce their domestic legislations as an excuse for failure to carry out their international obligations. That, however, was precisely the reason why the clause in question was necessary. The United States did not promise what it could not perform, and the United States delegation wished to state in advance that there were fields in which the voluntary promulgation of legislative texts by the federated States was indispensable.

"It would also be objected that the obligations assumed were not reciprocal. A unitary State could promise everything unconditionally. A non-unitary or federal State could engage itself only to the extent to which its constitution allowed it to do so. That argument was not altogether illogical, but it must not be forgotten that the objective was a method of remedying the evil which the convention sought to combat. In the opinion of the United States delegation, the federal clause, by guaranteeing certain action on the part of the central Government and encouraging the progressive adoption of local reforms, constituted a more useful instrument than would be provided by a mere automatic execution clause, the inclusion of which would result in preventing certain States from participating in international action in that field.

"Lastly, it might be objected that the text did not stipulate in detail which provisions of the convention would be applied by the central or federal Government, and which would be the subject of recommendations to the federated States or local Governments, so that the unitary States would not know from the beginning what obligations the non-unitary States had assumed. In the case of the United States, whose legislative provisions were well known, the main role and obligations of the federal Government would hardly leave room for doubt. The recommendations to the federated States and the measures taken by their legislative organs would be published and form the subject of a report. There would be doubtful cases, but that was in the nature of things, as those who were familiar with the conditions of legal development knew very well. Nobody could expect any Government to venture to predict the precise limits and evolution of such a future development. If a Government were asked to do that, the danger would be incurred of restricting the field of federal action. In other words, they would be acting against the very intentions of the convention." (paragraphs 87-89)

16. The delegate of the USSR then recalled:

"that neither the convention on genocide nor any of the other conventions concluded under United Nations auspices contained a clause of the kind proposed by the delegations of the United States and France."

He then said that:

"In the opinion of the USSR delegation, that was sufficient reason for refusing to insert such a clause in the convention under consideration by the Committee." (paragraph 91)

The delegate of the USSR felt that whilst a federal clause might be suitable for a Convention relating to economic questions, a Convention of the particular type under discussion was not so understandable. (paragraphs 92-94).

Mr. Koretsky then recalled:

"that the United States delegation had not proposed the insertion of a federal clause in the convention on genocide. He hoped that it would not press for its inclusion in the convention under consideration." (paragraph 95)

17. The French delegate then set out the reasons why the term "non-unitary State" had been included explaining that, owing to the extremely complex constitutional political system of France and its Territories, a clause of the type proposed was necessary for the application of the Convention (paragraphs 96-101) throughout the French Union.

18. The Canadian delegate, who also supported the proposed clause, referred in particular to the complex problem of the implementation of international obligations which presented itself in Federal States, and the experience in this matter which had led to the revision of the ILO Constitution in 1946. He said that the Federal Clause contained in that Constitution, namely Article 19, paragraph 7, was the basis for the present clause before the Committee (paragraphs 102 to 106) and that:

"The Canadian delegation's support for the inclusion of the federal clause proposed by the United States and France was therefore primarily based not on Canada's constitutional requirements in that particular case, but on the hope that the clause would serve as a precedent for other social or humanitarian conventions now being prepared, and especially for the draft covenant on human rights. For constitutional reasons, the inclusion of such

a clause in the covenant would be of great importance to Canada as well as to other federal States." (paragraph 107)

19. Then the USSR delegate in reference to the stand taken by the French delegation said that:

"The Third Committee had already rejected the colonial clause, which was designed to meet situations no less complex than those to be covered by the federal clause. It would be strange, to say the least, if the one were replaced by the other, and if the federal clause were to play the part originally assigned to the colonial clause, namely, to create obstacles to the application of the convention in certain parts of non-unitary States." (paragraph 116)

He then said that for these reasons the USSR asked the Committee to reject the Federal Clause. Both the delegates of Cuba and Australia felt that the proposed clause did not offer sufficient guarantees for unitary States against possible abuses by federal States.

20. At the 202nd meeting the delegate of Poland opposed the clause on the ground that it would be a reintroduction of the Colonial Clause which had already been rejected by the Third Committee, in a substitute form. In his view to include the Federal Clause would be equivalent to the reintroduction of the Colonial Clause with all its implications. (paragraphs 2 through 5)*

21. The United Kingdom delegate felt that it was inconsistent to include a Federal Clause in the Convention and yet to exclude the Colonial Clause. He preferred the inclusion of a Colonial Clause as originally proposed in the draft convention submitted to the Third Committee; but this having been eliminated, he would support the Federal Clause on the basis that the United Kingdom would consider itself as a non-unitary State. (paragraphs 11-16).

22. On the other hand, the USSR delegate said that in view of the suppression of the Colonial Application Clause by the Third Committee, it was necessary to reject the Federal Clause.

"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."

* These paragraph references and those which follow are to the Official Records of the General Assembly, Fourth Session, Sixth Committee, 202nd meeting.

He wished to make it clear, however, 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." (paragraphs 17 to 19)

23. The Argentine representatives said inter alia that he recognized the need for a Federal Clause on the part of some federal States, but on the other hand was opposed to the interpretation of such a Clause as constituting a Colonial Clause as well. (Paragraphs 29-32).

24. At the 203rd meeting a joint amendment by India, Australia and Argentina was put forward such that the proposed article would read as follows:

"In the case of a federal State, the following provisions shall apply:

"(a) In respect of each article of this Convention whose implementation is considered by the federal State to be appropriate wholly or partly for federal action or central government action, the obligations of federal or central government shall to this extent be the same as those of Parties which are non-federal States.

"(b) In respect of each article of this Convention whose implementation is considered by the federal State to be wholly or partly within the jurisdiction of a unit of the federal State (whether designated as states, provinces or cantons), the federal Government concerned shall bring this to the knowledge of the competent authorities of that unit and will recommend its adoption." (A/C.6/L.97).

25. The further discussion which proceeded in the Committee after the introduction of this amendment centred around questions of procedure, particularly as to whether the Committee was competent to discuss the question of the Colonial Clause and the problem of the Federal Clause. It decided the former negatively and the latter affirmatively. Then the Committee decided in favour of the inclusion of the Federal State Clause by 13 votes to 12, with 11 abstentions (par. 60, 203rd meeting). However, the Committee subsequently rejected both the joint Argentine-Australian-Indian proposal and the original United States and French proposal (pars. 75, 76, 203rd meeting). Consequently, no Federal Clause was sent to the Third Committee.

26. The subject of the Federal Clause was discussed briefly by the Third Committee after it had received the report of the Sixth Committee. The representative of France raised the question, calling attention to the fact that the Sixth Committee had decided to include a Federal Clause, but had rejected the specific proposals presented to the Committee. Several delegates objected to consideration of the question on procedural grounds stating that it was too late for the Committee to consider a new proposal. The Committee then decided that the proposal of the French delegate was not in order (Off. Rec. of the General Assembly, Fourth Session, Third Committee, 269th meeting, par. 28).

C. Consideration by the Human Rights Commission of a Federal Clause for the draft Covenant on Human Rights

27. In order to complete the discussion of the Federal Clause within the United Nations, it is necessary to refer briefly to the history of this Clause, in connexion with the draft Covenant on Human Rights.

28. The proposal to include a Federal Clause in the draft Covenant was made first by the representative of the United States to the "Working Group on the Convention on Human Rights" which met during the second session of the Commission on Human Rights in December 1947 (E/CN.4/AC.3/SR.8, 10 December 1947). The United States draft was amended by a Lebanese proposal to add to the second paragraph the words "with a favourable recommendation". The Clause was then adopted by the Working Group and subsequently embodied in the draft Covenant considered by the Second Session of the Commission on Human Rights (E/600, Annex B, Article 24 of the draft Covenant).

29. The Federal Clause (now Article 24) was next considered by the Drafting Committee of the Commission at its session in May 1948 (E/CN.4/AC.1/SR.34), and was included in the draft International Covenant submitted to the Third Session of the Commission on Human Rights (E/CN.4/95, Annex B, Article 24). This was in turn forwarded to the Council by the Commission (E/800).

30. Further discussion of the Federal Clause took place during the Fifth Session

of the Commission on Human Rights held in June 1949. The Commission had before it at that time an Indian proposal concerning the same article (E/CN.4/240) and an amended text of sub-paragraph (a), proposed by the United States (E/CN.4/225). There was also a text proposed by the United Kingdom for the second sub-paragraph of the Article (E/CN.4/320). During the discussion, the Commission received an explanation of the reasons for the proposed Federal Clause by the Chairman speaking as the representative of the United States. After further discussion, the Commission voted to forward the original draft of the Article, together with amendments and the record of the discussion, to the Governments (E/CN.4/SR.129). The comments of the Governments following the submission of this text may be found in the Report of the Sixth Session of the Commission on Human Rights in connexion with Article 43 (E/1681, Annex 1).

31. The amendments to the Federal Clause proposed at the Sixth Session of the Commission will also be found in E/1681 in connexion with Article 43.

Part II. The Colonial Clause*

Introduction

32. The question of the application of conventions to dependent territories has been the subject of protracted discussions within the United Nations, and provisions in this respect have been included in a number of conventions adopted by United Nations bodies. Accordingly this part consists of a survey of the United Nations practice (Sections A, B and C) and discussions (Section D) regarding the Colonial Clause, and also a note containing the references to the discussions of the clause in connexion with the Draft Covenant on Human Rights (Section E).

33. With respect to the United Nations practice, this survey covers the conventions and protocols approved by the General Assembly, or drafted by United Nations organs and conferences, or contained in the constitutions of specialized agencies.

34. This part is divided into the following sections:

- A. Texts of Colonial Clauses contained in Conventions adopted by United Nations bodies. These clauses, under all of which a discretionary power is given to metropolitan States with regard to the application of conventions to dependent territories, are subdivided as follows:

- (1) Colonial Clauses providing for optional application of the convention to territories for the conduct of whose foreign relations the Contracting States are responsible. Under this type of clause a convention does not apply to non-self-governing territories unless the metropolitan State exercises its power to extend the application of the Convention to all or any of such territories.

Although under this clause Contracting States are under no

* For the purpose of this report by Colonial Clause is meant a clause giving a State the option to extend or not to extend the application of a convention or other international instrument of which it is a party to all or any of the territories for the conduct of whose foreign relations that State is responsible.

obligation to apply the convention to their dependent territories, it should be observed that, as a compromise between those in favour of the Colonial Clause and those opposing it, some conventions, [e.g. the Draft Convention on the International Transmission of News and the Right of Correction (Section A/⁽¹⁾5), the Draft Convention relating to the Status of Refugees (Section A/⁽¹⁾6), the Convention on Road Traffic (Section A/⁽¹⁾10)] include provisions whereby Contracting States have undertaken to take as soon as possible the necessary steps in order to extend the application of such Conventions to the territories for the international relations of which those States are responsible subject, where necessary for constitutional reasons, to the consent of the Governments of such territories. Furthermore, on several occasions the General Assembly has adopted resolutions urging Contracting States to extend the application of conventions to dependent territories and, if that is not done, to explain the reasons for not making such action (e.g. General Assembly resolution 211(III) Approving the Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931, General Assembly resolution 277(III)C approving the Draft Convention on the International Transmission of News and the Right of Correction. A similar recommendation, although the formulation is somewhat different, is also contained in General Assembly resolution 260(III)C with respect to the Convention on the Prevention and Punishment of the Crime of Genocide).

- (2) Colonial Clauses providing for optional exclusion from the application of the Convention of territories for the conduct of whose foreign relations the Contracting States are responsible. Under this type of clause a Convention applies to non-self-governing territories unless the metropolitan State exercises its power to exclude from the application of the Convention all or any of such territories.

B. Conventions which do not contain Colonial Clauses or which expressly require automatic application to dependent Territories. This section, which deals with conventions in which no discretionary power is given to metropolitan States with regard to the application of such conventions to dependent territories, is subdivided as follows:

- (1) Conventions which do not contain any reference with respect to their application to dependent territories. In this connection it may be noted that the 1921 Convention for the Suppression of the Traffic in Women and Children, the 1933 Convention for the Suppression of the Traffic of Women of Full Age, and the 1923 Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (see Section B (1), 2 and 3) originally contained Colonial Clauses enabling Contracting States to exclude dependent territories from the scope of the Conventions. These clauses were deleted by the General Assembly when the functions relating to these Conventions were transferred to the United Nations and the Conventions were amended by the Protocols approved by General Assembly resolution 126(III). The discussion in the General Assembly reveals that the representatives participating in the debate considered that the deletion of the Colonial Clauses meant that the Conventions would apply to all territories for which the Contracting States had international responsibility. (See summary of discussion in Section D, paragraph 38 (a) below).
- (2) Conventions requiring unconditional application to territories for which Contracting States have international responsibility. Under this type of Convention it is specifically provided that dependent territories are included within the scope of the Convention.

C. Clauses relating to dependent territories in the Constitution of the International Labour Organisation. No provision is made in the ILO Constitution with regard to its application to dependent territories

of Member States, and therefore in this respect the ILO Constitution should be included within Section B above. However, an elaborate clause regulates the application of Conventions ratified by Members to the non-metropolitan territories for whose international relations they are responsible.* Although the principle of the non-optional application of Conventions to such territories is enunciated, exceptions and special provisions are made in consideration of local conditions and where the subject matter is within the self-governing powers of the territory. Thus the method adopted in the ILO Constitution with respect to dependent territories may be considered as intermediate between Section A and Section B.

- D. Summary of discussions in the General Assembly regarding the Colonial Clause. This summary is not intended to be exhaustive, and is limited to the main considerations put forth by representatives of the various Member Governments in support or against the Colonial Clause.
- E. References to the discussions of the Colonial Clause in connexion with the Draft Covenant on Human Rights. This is intended to provide a guide to the discussions of the Colonial Clause which took place within the United Nations in connexion with the Draft Convention on Human Rights.

* See discussion of the system of Conventions under the ILO Constitution in Part I, paragraphs 7 and 8 above.

SECTION A

35. Texts of Colonial Clauses contained in Conventions adopted by United Nations bodies

- (1) Colonial Clauses providing for Optional Application of the Convention to Territories for the conduct of whose foreign relations the Contracting States are Responsible.*

<u>Convention</u>	<u>Text of Clause</u>
1. Protocol Bringing Under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success on 11 December 1946. (General Assembly resolution 211(III).)	<p><u>Article 8:</u></p> <p>Any State may, at the time of signature or the deposit of its formal instrument of acceptance or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present Protocol shall extend to all or any of the territories for which it has international responsibility; and this Protocol shall extend to the territory or territories named in the notification as from the thirtieth day after the date of receipt of this notification by the Secretary-General of the United Nations.</p>

* A provision analogous to this type of Colonial Clause is contained in article 8 of the Constitution of the World Health Organization, whereby territories which are not responsible for their international relations may be admitted as Associate Members upon application made by the Member having responsibility for their international relations.

2. Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic signed at Paris on 4 May 1910. (General Assembly resolution 256 (III).)

Annex to the Protocol. Amended first paragraph of Article 11 of 1910 Convention:

Should a Contracting State desire the present Convention to come into force in one or more of its colonies, possessions or areas under consular jurisdiction, it shall for this purpose notify its intention by an instrument which shall be deposited in the archives of the United Nations. The Secretary-General of the United Nations shall send a certified copy to each of the Contracting States and to all the Members of the United Nations, and shall at the same time inform them of the date of deposit.

Amended fifth paragraph of Article 11 of 1910 Convention:

The denunciation of the Convention by one of the Contracting States for one or more of such colonies, possessions or areas under consular jurisdiction shall take place in accordance with the forms and conditions laid down in the first paragraph of the present article. It shall take effect twelve months after the date of deposit of the instrument of denunciation in the archives of the United Nations.

3. Protocol Amending the Agreement for the Suppression of the Circulation of Obscene Publications signed at Paris on 4 May 1910. (General Assembly resolution 256(III).)

4. Convention on the Prevention and Punishment of the Crime of Genocide. (General Assembly resolution 260(III).)

5. Draft Convention on the International Transmission of News and the Right of Correction. 1/ (General Assembly resolution 277(III).)

Similar amendments to Article 7 of 1910 Convention, as under 2 above.

Article XII:

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XVIII:

1. Any State may, at the time of signature or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall extend to all or any of the territories for the international relations of which it is responsible. This Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the day of receipt by the Secretary-General of the United Nations of this notification.

1/ This Convention has not yet been opened for signature or accession.

2. Each Contracting State undertakes to take as soon as possible the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

"3. The Secretary-General of the United Nations shall communicate the present Convention to the States referred to in article XV (1) for transmission to the responsible authorities of:

(a) Any Non-Self-Governing Territory administered by them;

(b) Any Trust Territory administered by them;

(c) Any other non-metropolitan territory for the international relations of which they are responsible."

6. Draft Convention Relating to the Status of Refugees.^{1/} (Document E/AC.32/L.38.)

Article 35 contains provisions similar to 5 above.

^{1/} This Convention was drafted by an Ad Hoc Committee of the Economic and Social Council pursuant to Council resolution 248 B (IX). This Convention has not yet been considered by the Council or the General Assembly.

7. Universal Postal Convention, signed Article 9:

on 5 July 1947 and entered into
force on 1 July 1948.

Application of the Convention to
Colonies, Protectorates, etc.

1. Any Contracting Party may declare, either at the time of signing, of ratifying, of acceding, or later, that its acceptance of the present Convention includes all its Colonies, overseas Territories, Protectorates or Territories under suzerainty or under mandate, or certain of them only. The declaration, unless made at the time of signing the Convention, must be addressed to the Government of the Swiss Confederation.
2. The Convention will apply only to the Colonies, overseas Territories, Protectorates or Territories under suzerainty or under mandate in the name of which declarations have been made in virtue of par. 1.
3. Any Contracting Party may, at any time, forward to the Government of the Swiss Confederation a notification of the withdrawal from the Convention of any Colony, overseas Territory, Protectorate or Territory under suzerainty or under mandate in the name of which it has made a declaration in virtue of par. 1. This notification will take effect one year after the date of its receipt by the Government of the Swiss Confederation.

4. The Government of the Swiss Confederation will forward to all the Contracting Parties a copy of each declaration or notification received in virtue of pars. 1 to 3.

5. The provisions of this Article to not apply to any Colony, overseas Territory, Protectorate or Territory under suzerainty or under mandate which is mentioned in the preamble of the Convention.

8. International Telecommunication Convention, signed on 2 October 1947 and entered into force on 1 January 1949.

Article 18:

Application of the Convention to Countries or Territories for Whose Foreign Relations Members of the Union are Responsible.

1. Members of the Union may declare at any time that their acceptance of this Convention applies to all or a group or a single one of the countries or territories for whose foreign relations they are responsible.

2. A declaration made in accordance with paragraph 1 of this Article shall be communicated to the Secretary General of the Union. The Secretary General shall notify the Members and Associate Members of each such declaration.

3. The provisions of paragraphs 1 and 2 of this Article shall not be deemed to be obligatory in respect of any country, territory or group of territories listed in Annex 1 of this Convention.

Article 19:

Application of the Convention to Trust Territories of the United Nations.

The United Nations shall have the right to accede to this Convention on behalf of any territory or group of territories placed under its administration in accordance with a trusteeship agreement as provided in Article 75 of the Charter of the United Nations.

9. Convention on the Inter-Governmental Maritime Consultative Organization, prepared by the United Nations Maritime Conference and opened for signature on 6 March 1948.

Article 58. Territories:

(a) Members may make a declaration at any time that their participation in the Convention includes all or a group or a single one of the Territories for whose international relations they are responsible.

(b) The Convention does not apply to Territories for whose international relations members are responsible unless a declaration to that effect has been made on their behalf under the provisions of paragraph (a) of this article.

(c) A declaration made under paragraph (a) of this article shall be communicated to the Secretary-General of the United Nations and a copy of it will be forwarded by him to all States invited to the United Nations Maritime Conference and to such other States as may have become members.

(d) In cases where under a Trusteeship Agreement the United Nations is the administering authority, the United Nations may accept the Convention on behalf of one, several or all of the Trust Territories in accordance with the procedure set forth in article 57.

10. Convention on Road Traffic, prepared and opened for signature by the United Nations Conference on Road and Motor Transport on 19 September 1949.

Article 28:

1. Any State may, at the time of signature, ratification or accession, or at any time thereafter, declare, by notification addressed to the Secretary-General of the United Nations, that the provisions of this Convention will be applicable to all or any of the territories for the international relations of which it is responsible. These provisions shall become applicable in the territories named in the notification thirty days after date of receipt of such notification by

the Secretary-General or, if the Convention has not entered into force at that time, then upon the date of its entry into force.

2. Each Contracting State, when circumstances permit, undertakes to take as soon as possible the necessary steps in order to extend the application of this Convention to the territories for the international relations of which it is responsible, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

3. Any State which has made a declaration under paragraph 1 of this article applying this Convention to any territory for the international relations of which it is responsible may at any time thereafter ~~declare~~ by notification given to the Secretary-General that the Convention shall cease to apply to any territory named in the notification and the Convention shall, after the expiration of one year from the date of the notification, cease to apply to such territory.

(2) Colonial Clauses Providing for Optional Exclusion from the Application of the Convention of Territories for the Conduct of Whose Foreign Relations the Contracting States are Responsible.

Convention

1. Protocol Amending the International Convention Relating to Economic Statistics, signed at Geneva on 14 December 1928. (General Assembly resolution 255(III).)

Text of Clause

Amended Article 11 of 1928 Convention:

"Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or all Trust Territories for which he acts as Administering Authority; and the present Convention shall not apply to any territories named in such declaration.

"Any High Contracting Party may give notice to the Secretary-General of the United Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice one year after its receipt by the Secretary-General of the United Nations.

"Any High Contracting Party may, at any time after the expiration of the five-years period mentioned in article 16, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or all Trust Territories for which he acts as Administering Authority, and the Convention shall cease to apply to the territories named in such declaration six months after its receipt by the Secretary-General of the United Nations.

"The Secretary-General of the United Nations shall communicate to all Members of the United Nations and to non-member States to which he has communicated a copy of this Convention all declarations and notices received in virtue of this article".

2. Convention on the Declaration of Death of Missing Persons, adopted and opened for accession by the United Nations Conference on Declaration of Death of Missing Persons on 6 April 1950.

Article 13, paragraph 3:

3. The word "State" as used in the present Convention shall be understood to include the territories for which each Contracting State bears international responsibility, unless the State concerned, on acceding to the Convention, has stipulated that the Convention shall not apply to certain of its territories. Any State making

such a stipulation may at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.

SECTION B

36. Conventions which do not contain Colonial Clauses or which expressly require automatic application to dependent Territories

(1) Conventions which do not contain any Reference with Respect to their Application to Dependent Territories*

1. Convention on the Privileges and Immunities of the United Nations. (General Assembly resolution 13(I).)
2. Draft Protocol to Amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921 and the Convention for the Suppression of the Traffic in Women of Full Age concluded at Geneva on 11 October 1933. (General Assembly resolution 126(II).)
3. Draft Protocol to Amend the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications opened for signature at Geneva on 12 September 1923. (General Assembly resolution 126(II).)
4. Convention on the Privileges and Immunities of the Specialized Agencies. (General Assembly resolution 179(III).)
5. Constitution of the Food and Agriculture Organization, signed and entered into force on 16 October 1945.
6. Constitution of the United Nations Educational, Scientific and Cultural Organization, signed on 16 November 1945 and entered into force on 4 November 1946.
7. Constitution of the International Refugee Organization, Approved by General Assembly resolution 62(I) on 15 December 1946 and entered into force on 20 August 1948.

* See par. 34B above, regarding effect of deletion of Colonial Clauses

- (2) Conventions requiring automatic application to territories for which contracting States have international responsibility.

<u>Convention</u>	<u>Text of Clause</u>
1. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317(IV)).	<u>Article 23</u> For the purposes of the present Convention the word 'State' shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is internationally responsible.
2. Articles of Agreement of the International Monetary Fund, signed and entered into force on 27 December 1945.	<u>Article XX, Section 2(g):</u> By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.
3. Articles of Agreement of the International Bank for Reconstruction and Development, signed and entered into force on 27 December 1945.	<u>Article XI, Section 2(g):</u> Same provision as 2 above.

SECTION C

37. Clauses relating to Dependent Territories in the Constitution of the
International Labour Organisation

Convention

Constitution of the International
Labour Organisation, adopted on
9 October 1946 and entered into
force on 20 April 1948.

Text of Clause

Article 35:

1. The Members undertake that Conventions which they have ratified in accordance with the provisions of this Constitution shall be applied to the non-metropolitan territories for whose international relations they are responsible, including any trust territories for which they are the administering authority, except where the subject matter of the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions.
2. Each Member which ratified a Convention shall as soon as possible after ratification communicate to the Director-General of the International Labour Office a declaration stating in respect of the territories other than those referred to in paragraphs 4 and 5 below the extent to which it undertakes that the provisions of the Convention shall be applied and giving such particulars as may be prescribed by the Convention.

3. Each Member which has communicated a declaration in virtue of the preceding paragraph may from time to time, in accordance with the terms of the Convention, communicate a further declaration modifying the terms of any former declaration and stating the present position in respect of such territories.

4. Where the subject matter of the Convention is within the self-governing powers of any non-metropolitan territory the Member responsible for the international relations of that territory shall bring the Convention to the notice of the Government of the territory as soon as possible with a view to the enactment of legislation or other action by such Government. Thereafter the Member, in agreement with the Government of the territory may communicate to the Director-General of the International Labour Office a declaration accepting the obligations of the Convention on behalf of such territory.

5. A declaration accepting the obligations of any Convention may be communicated to the Director-General of the International Labour Office --

(a) by two or more Members of the Organization in respect of any territory which is under their joint authority; or (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

6. Acceptance of the obligations of a Convention in virtue of paragraph 4 or paragraph 5 shall involve the acceptance on behalf of the territory concerned of the obligations stipulated by the terms of the Convention and the obligations under the Constitution of the Organisation which apply to ratified Conventions. A declaration of acceptance may specify such modification of the provisions of the Conventions as may be necessary to adapt the Convention to local conditions.

7. Each Member or international authority which has communicated a declaration in virtue of paragraph 4 or paragraph 5 of this Article may from time to time, in accordance with the terms of the Convention, communicate a further declaration modifying the terms of any former declaration or terminating the acceptance of the obligations of the Convention on behalf of the territory concerned.

8. If the obligations of a Convention are not accepted on behalf of a territory to which paragraph 4 or paragraph 5 of this article relates, the Member or Members or international authority concerned shall report to the Director-General of the International Labour Office the position of the law and practice of that territory in regard to the matters dealt with in the Convention and the report shall show the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and shall state the difficulties which prevent or delay the acceptance of such Convention.

SECTION D

Summary of Discussions in the General Assembly Concerning the
Colonial Clause

38. The Colonial Clause has been repeatedly discussed within the various United Nations bodies. This section, however, is limited to a summary of the main considerations presented on this subject at meetings of the General Assembly in connexion with the following conventions:

- (a) Transfer to the United Nations of the functions and powers exercised by the League of Nations under the international Convention of 30 September 1921 on Traffic in Women and Children, the Convention of 11 October 1933 on Traffic in Women of Full Age and the Convention of 12 September 1923 on Traffic in Obscene Publications (General Assembly resolution 126(II).) During the consideration of this item by the Third Committee, the representative of the USSR proposed the deletion from the international Conventions under consideration of the Colonial Clauses whereby Contracting States were enabled to exclude dependent territories from the application of the conventions. The USSR proposal was adopted by the Third Committee over the objection of the representatives of the United States and the United Kingdom (GA, Off. Rec. 2nd Session, 3rd Comm. 63rd meeting). The question of the deletion of the Colonial Clause was discussed at some length at the plenary meeting of the General Assembly in October 1947 (G.A. Off. Rec. 2nd Session, 96th and 97th Plenary Meetings). The United Kingdom Representative spoke against the deletion of the Colonial Clause on the following grounds:

- (1) It was the normal and usual practice to have such a clause in non-political conventions, and there was no reason to depart from the traditional Treaty procedure in this respect.

(2) The deletion of the Colonial Clause was "inimical to the progressive development of autonomous constitutional government in the so-called colonial territories". This clause enabled colonies "by their own governments and their own legislators to notify to their parent government...that they desire to accede to the Convention and that they have made whatever adjustment in their law or administration that may have been required."

(3) Without the Colonial Clause there would be delay in adherence to international conventions on the part of the colonial powers. In other words, the Colonial Clause "enabled the colonial power to accede to Conventions" on its own behalf forthwith, and later after consultation with the colonial territories, on behalf of each of the colonies as and when these territories are in a position to accede.

(4) The position in the British colonies was that there were colonial governments in each of them which in more or less measure enjoyed local autonomy if not self-government. The Parliament in England did not legislate for the colonies though it represented the colonies in foreign relations. It would therefore ordinarily not commit the colonies to any convention or treaty without consultation with the local government. The Colonial Clause enabled such local consultation to take place subsequently to the signing of the treaty or convention on behalf of the colonial power.

(5) This procedure and the respect for the local autonomy was in keeping with the United Nations Charter.

(6) The constitution of the I.L.O. had been revised specifically to deal with this constitutional problem by incorporating a suitable Colonial Clause.

On the other hand, the USSR Delegation opposed the argument of the United Kingdom Delegate saying, among other things, that there was no doubt that the colonial powers did have the authority to commit their colonial territories with regard to any convention.

The Pakistani Representative, speaking against the Colonial Clause, said that consultation with the colonies was unnecessary since either the colonies had self-government in which case they could decide for themselves, or the colonial government was a nominee of the colonial powers in which case the consultation would be a mere sham. Since these conventions were for the benefit of humanity, there was no reason why colonial powers should not adhere to them on behalf of their colonies. It was also pointed out by this representative that the absence of the Colonial Clause did not prevent such consultation.

At the end of the discussion the General Assembly rejected the United Kingdom amendment and confirmed the deletion of the Colonial Clauses from the conventions.

- (b) Protocol bringing under international control drugs outside the scope of the Convention of 13 July 1931 for limiting the manufacture and regulating the distribution of narcotic drugs, as amended by the Protocol signed at Lake Success on 11 December 1946 (General Assembly resolution 211 (III A). During the discussion in the Third Committee (G.A. Off. Rec. 3rd Session, Part I, 3rd Comm. 86, 87, 88th meetings), the USSR Representative sought to delete the Colonial Clause appearing in the draft under consideration. On this occasion the USSR Delegation inter alia, contended that the Colonial Clause was in the nature of a loophole for the colonial powers to continue their regime in the territories outside the metropolitan area. Drug control was in fact most necessary in the colonial territories and the goodwill of the United Nations involved at least equality in the application of measures adopted by it. The United Kingdom Representative who supported the inclusion of the colonial clause, also acknowledged the importance of extending the advantages of the Protocol to the colonies, but reiterated some of the arguments summarized above. On the other hand, it was stated on behalf of the United States that it would apply the Protocol, in accordance with its usual practice to all territories for the foreign relations of which the United States was responsible.

The Representative of Argentina stated that it was not a case of forcing a decision on the colonies but of applying the Protocol to these territories in order to confer its benefits on them. The French Representative said that the French Government, in signing the Protocol, would undertake to apply it to all the territories for which it was responsible and would take steps to put its decision into effect.

The Colonial Clause was once again discussed in this connection at the plenary session of the General Assembly. (G.A. Off. Rec. 3rd Session, Part I, 149th and 150th plenary meeting.) No new arguments were presented during this discussion. The Protocol as approved by the General Assembly retained a Colonial Clause. (See Section A, (1). 1 above.)

- (c) Protocol amending the International Convention relating to economic statistics, signed at Geneva on 14 December 1928 (General Assembly resolution 255 (III).) The Colonial Clause with respect to the Convention was discussed at the Sixth Committee (G.A. Off. Rec. 3rd Session, Part I, 6th Comm. 88th, 90th and 91st meetings). In addition to the arguments previously used on this subject the following considerations were made:

In Favour of the Colonial Clause

(1) The French Representative stated that the Charter of the French Union envisaged particular statutes for each territory. France could not, therefore, sign general provisions unless it were possible to adapt them to special statutes. It was, therefore, essential that the Colonial Clause should be kept. Proposed international legislation might affect French overseas territories in a different way from metropolitan France, which must have regard to the interest of individual territories. In cases where individual territories possessed their own administration, France must proceed with care before associating those territories with international agreements entered into by her. Even in cases where France had the legal power to act, she was morally bound to take the interest of those territories into account.

(2) The United Kingdom Representative explained that it was contrary to the British system of colonial administration to use reserve powers to enforce adherence by the colonies to an international convention. Therefore, persuasion was the only possible means to that end. The United Kingdom Government would not be in a position to consult hundreds of colonial administrations with reference to adherence to an international convention until an agreed text was in existence, that was until the convention had in fact been drawn up. It was solely for that reason that the United Kingdom was anxious for the retention of the Colonial Clause, which did not rule out colonial participation, but prevented participation from becoming an automatic process. There was no reason to deprive colonial territories of the right to decide for themselves. This would indeed make way for colonial exploitation.

(3) The Representative of the United Kingdom also pointed out that it was not a case of the colonial governments having either reached the stage of full self-government or of being still non-self-governing. There were many intermediate stages. The Colonial Clause was the only means of meeting the existing situation in the British colonies. The United Kingdom also stated that the Colonial Clause was in fact in accordance with the true spirit of the Charter of the United Nations as it encouraged autonomous self-government in the colonies.

Against the Colonial Clause

(1) The Representative of Haiti stated that the Colonial Clause allowed the administering powers not to supply statistics concerning their colonial and trust territories, thus decreasing the value of the statistics which would remain incomplete.

The colonies have no other will than the will of the administering or metropolitan powers and nothing therefore should prevent those powers from undertaking international obligations on their behalf.

(2) The Representative of Haiti, supported by the Polish Representative, also stated that the Colonial Clause was contrary to the spirit of the Atlantic Charter.

(3) The Representative of Poland argued that in reality the Colonial Clause gave colonial powers and administering authorities the right to settle questions relating to colonies and trust territories by themselves.

When this item came up before the plenary session of the General Assembly (G.A. Off. Rec., 3rd Session, Part I, 160th plenary meeting), there was hardly any discussion on the Colonial Clause which was retained by the General Assembly. (See Section A (2), 1, above.)

(d) Transfer to the United Nations of the functions exercised by the French Government under the International Agreement of 18 May 1904 and the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, and the Agreement of 4 May 1910 for the Suppression of the Circulation of Obscene Publications (General Assembly resolution 256 (III).) A discussion on the Colonial Clause took place in November-December 1948 both in the Sixth Committee (G.A. Off. Rec., 3rd Session, Part I, 6th Comm., 111th meeting) and in the plenary session of the Assembly (G.A. Off. Rec., 3rd Session, Part I, 169th plenary meeting). No new points were raised for or against the Colonial Clause except that the Representative of the USSR pointed out in the plenary session that it was illogical to say that the colonies had to be consulted for admittedly no consultation was necessary when the colonial power did not wish to apply the convention to colonial territories. The Protocols as approved by the General Assembly retained a Colonial Clause. (See Section A (1), 2 and 3 above.)

(e) Prevention and Punishment of the Crime of Genocide

(General Assembly resolution 260 (III)). The question of the Colonial Clause came up for discussion in connection with the Convention on Genocide in November - December 1948. (G.A. Off. Rec., 3rd Session, Part I, 6th Comm., 107th meeting; G.A. Off. Rec., 3rd Session, Part I, 178th and 179th plenary meetings.) Most of the arguments used on the previous occasions were repeated. A Colonial Clause was included in the convention (See Section A (1), 4 above.).

- (f) Draft Convention on the Gathering and the International Transmission of News and the Right of Correction (General Assembly resolution 277 (III)). During the discussion on the Colonial Clause which took place in the Third Committee (G.A., Off.Rec., 3rd Session, Part II, 3rd Comm., 204th, 205th, 226th meetings.), the Representative of the United Kingdom stated that the Colonial Clause had been accepted by the League of Nations. The Representative of the USSR pointed out that constitutional difficulties had not been allowed to come in the way when the administering power was eager to pursue its own advantage. On the other hand, it was pointed out by the Representative of India that as long as the metropolitan powers did not alter their attitude, it seemed useless to try to adopt more radical provisions since this would only lead to the metropolitan powers not becoming parties to international conventions.

The draft convention which was approved by the General Assembly contained a Colonial Clause. (See Section A(1), 5 above.)

- (g) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly Resolution 317 (IV)). A thorough discussion of the Colonial Clause took place in the Third Committee (G.A. Off. Rec., 4th Session 3rd Comm., 246th, 247th, 248th meetings.). Several of the arguments summarized above were repeated in favour and against the inclusion of the Colonial Clause. Other points raised during the discussion were the following:

In favour of the Colonial Clause

- (1) The Representative of New Zealand pointed out that the draft convention prepared by the Social Commission included a colonial application clause which was regarded by the Commission as being particularly necessary with respect to a question involving criminal law, because a number of non-self-governing territories had powers of domestic jurisdiction in that respect.

(2) The United Kingdom Representative stated that to enforce adherence to an international convention without consulting the local organs of self-government would be incompatible with the obligation assumed by the metropolitan Powers under article 73 of the Charter, to develop self-government in the dependent territories. If the United Kingdom ratified the convention, it would naturally recommend that the territories in its charge should do likewise, but it would never compel them to do so.

(3) The Representative of the United States expressed herself in favour of the Colonial Clause because the gradual transfer of responsibility to non-self-governing peoples was an essential stage in their development towards the ultimate goal of freedom and independence.

(4) The French Representative stated that the agreements concluded between the United Nations and various Administering Authorities under article 73 of the Charter stipulated that it was for the Administering Authorities to decide whether the provisions of certain international conventions should be extended to the territories under their jurisdiction. Therefore the inclusion of the colonial clause was in accordance with the United Nations Charter.

(5) The Representative of the Netherlands thought it advisable to follow the precedent established in the Convention on the International Transmission of News and the Right of Correction which contained a colonial application clause similar to the provision included in the draft under consideration.

(6) The Belgian Representative said that one of the justifications for the retention of the Colonial Clause lay in sub-paragraph (b) of article 73 of the Charter which expressly mentioned "the particular circumstances of each territory and its peoples and their varying stages of advancement".

(7) The Representative of Lebanon in explaining his vote against the automatic application of the Convention to dependent territories, pointed out that the United Nations should try to reduce the possibilities of interference by metropolitan countries in the internal affairs of such territories,

Against the Colonial Clause

(1) The Representatives of Poland and the U.S.S.R. stated that the Convention should be enforced most particularly in dependant territories because it was there that the traffic in persons flourished most vigorously.

(2) The Representative of Poland said that the exclusion of the dependant territories from the application of the Convention would tend to perpetuate backward conditions, in violation of articles 73 and 76 of the Charter.

(3) The Representative of the Philippines stated that, notwithstanding what had been said about the measure of self-government granted to colonial peoples, they did not have any constitutional means at their disposal to enable them to enforce the convention. It was therefore the responsibility of the metropolitan Powers to enforce the convention and to see that prostitution was eradicated from their colonies.

(4) The Representative of Israel said that the United Nations represented a new form of international democracy, and the plea of democratic principles was not sufficient justification for a refusal to extend a convention adopted by the United Nations to the colonial territories.

(5) The U.S.S.R. Representative failed to see the relevance of the precedent for the retention of the colonial application clause in the Convention on the International Transmission of News and the Right of Correction. He added that the relevant precedent was provided by the deletion of that clause by the General Assembly in its resolution 126(II), which related to two previous conventions which had been incorporated in the draft before the Committee -- the Convention of 1921 for the Suppression of the Traffic in Women and Children and the Convention of 1933 for the Suppression of the Traffic in Women of Full Age.

At the end of the discussion the Third Committee adopted a Ukrainian amendment providing that "The word 'State' shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all

territories for which such State is internationally responsible".

The Colonial Clause was further discussed at the 264th plenary meeting of the General Assembly. (G.A. Off. Rec. 4th Session 264th Plenary Meeting). The main arguments presented at the Third Committee and in previous discussions on this subject were repeated by the supporters and the opponents of the Colonial Clause, but no new point was presented. An amendment proposed by the United Kingdom which would have reinstated a Colonial Clause was rejected, and the version adopted by the Third Committee with respect to the application of the convention to non-self-governing territories was approved by the General Assembly. (See Section B(2)1 above.)

SECTION E

References to the discussions of the Colonial Clause in connexion with the Draft Covenant on Human Rights

In December 1947 the representative of the United Kingdom to the "Working Group on the Convention on Human Rights" of the Second Session of the Commission on Human Rights proposed the inclusion of a Colonial Clause in the draft Convention (E/CN.4/AC.3/SR.8, 10 December 1947). The proposal was adopted with amendments and became article 23 of the "Draft International Bill of Human Rights" submitted by the Working Group to the Commission (E/CN.4/56, 11 December 1947) and article 25 of the "Draft International Covenant on Human Rights" embodied in the Report of the Second Session of the Commission to the Council (E/600).

The Colonial Clause was subsequently considered at the second session of the Drafting Committee of the Commission in May-June 1948. After some discussion the clause was referred to a drafting sub-committee (E/CN.4/AC.1/SR.34) which, as was pointed out by the representative of Australia (E/CN.4/AC.1/SR.43, p.10), amended it along the lines of the text proposed by the United Nations Conference on Freedom of Information for the conventions on that subject (E/CONF.6/79). The sub-committee's draft was adopted (E/CN.4/AC.1/SR.43, p.13) and was included in the Draft International Covenant on Human Rights prepared by the Drafting Committee (E/CN.4/95, Annex B, Article 25). The Drafting Committee decided also to transmit to the Commission an alternative text proposed by the USSR representative together with a note explaining that the Committee had voted in favour of the first text.

Further discussion of the Colonial Clause proposed by the Drafting Committee took place during the fifth session of the Commission on Human Rights in June 1949, at the end of which it was decided to postpone decision on Article 25, and to transmit to the Governments the draft which had been approved by the Drafting Committee, together with the proposals and amendments to it and the records of the meetings of the fifth session of the Commission (E/CN.4/SR.129, p.24).

During the discussion on the First International Covenant on Human Rights which took place at the sixth session of the Commission (March-May 1950), it was decided to transmit article 25 (now article 44), together with comments and amendments thereto, to the Council for its consideration without any discussion of this article in the Commission. The report of the fifth session of the Commission on the Colonial Clause, the amendments proposed at the fifth session, and the comments of Governments on the report of the fifth session of the Commission may be found in the Report of the Sixth Session of the Commission on Human Rights (E/1681, pp.59-63).