

competence to which its application might give rise.

96. The CHAIRMAN explained that article 4 was in fact simply a procedural clause designed to co-ordinate action by States, so that accomplices could not escape punishment by being in a country other than that in which the offence was committed. To emphasize the procedural character of article 4, it would be preferable to substitute the

word "prosecuted" for "brought to trial" in the text.

97. Mr. NORIEGA (Mexico) suggested that the Secretariat should prepare a new text for the following meeting, eliminating all the obscurities that had been pointed out in the course of the discussion.

The meeting rose at 5.45 p.m.

TWO HUNDRED AND THIRTY-NINTH MEETING

Held at Lake Success, New York, on Monday, 3 October 1949, at 10.45 a.m.

Chairman: Mr. Carlos E. STOLK (Venezuela).

Draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/977 and A/C.3/520) (continued)

DISCUSSION ON PROCEDURE

1. Mrs. CASTLE (United Kingdom), speaking on a point of order, said that the Committee should clear up any misunderstanding concerning the procedure for referring certain articles of the draft convention to the Sixth Committee, which dealt with legal questions.

2. Indeed, on the one hand, the *Journal of the General Assembly* for Saturday, 1 October, indicated that the Third Committee had decided to examine the draft convention article by article but did not note the decision to refer to the Sixth Committee, before any preliminary examination, certain articles of a legal nature. On the other hand, according to the summary record of the 237th meeting, the Chairman had said that "his intention had been to transmit the entire draft convention to the Sixth Committee, with particular emphasis on those articles which . . . required expert legal study. The Sixth Committee would, moreover, be able to examine any other articles on which it felt that a legal opinion might be desirable."

3. In her opinion, difficulties would arise if two committees were dealing simultaneously with the whole draft convention. At all events, the decision which appeared in the *Journal of the General Assembly* was inexact, and she asked that it should be clearly established that the Committee would not examine articles 8, 12, 25, 26, 28, 29, 30, 31 and 32 before asking the opinion of the Sixth Committee.

4. After a more careful reading of the draft convention, she had reached the conclusion that other articles also raised complex legal questions and that the Committee would lose time by undertaking a preliminary examination of those articles. She therefore suggested that articles 5, 7, 9, 10, 11, 13, 14, 23, 24 and 27 should also be referred to the Sixth Committee. She drew particular attention to articles 8 to 11, which dealt with the extradition of offenders, and thought that a decision on the principle governing those articles should be taken by jurists.

5. She asked the Chairman to submit her suggestion to the Committee and decide on the procedure to be adopted.

6. The CHAIRMAN proposed that that question should be settled first and asked members of the Committee to limit their remarks to it.

7. Mrs. ROOSEVELT (United States of America) said that after further study of the draft convention she had reached practically the same conclusions as the United Kingdom representative.

8. The Committee should first of all take a decision on the articles which would be referred to the Sixth Committee and which, in her opinion, were those enumerated by the United Kingdom representative, together with article 4. She considered, moreover, that the Committee should undertake an examination of articles 15 to 22 and of the final protocol before referring them to the Sixth Committee. The draft convention as a whole would of course be referred to it ultimately. However, it was the Third Committee itself which would in the end transmit to the General Assembly as final text of the draft convention.

9. She concluded by saying that the Committee could carry out its work more efficiently if it referred to the Sixth Committee before or after examination, the articles which raised very delicate legal questions.

10. The CHAIRMAN, in reply to the request of the United Kingdom representative, recalled that the Committee had previously decided to refer to the Sixth Committee articles 8, 12, 25, 26, 28, 29, 30, 31 and 32, asking it to study their legal aspects. The Committee had also decided that it could request the opinion of the Sixth Committee on any legal difficulty which might arise. The draft convention as a whole would, moreover, be referred to the Sixth Committee, which could only settle certain difficulties if it had the full context.

11. He thought that no member would have any objections to the Committee's referring to the Sixth Committee, without previous examination, the articles he had just mentioned. Moreover, the United Kingdom representative had enumerated the articles which, in her opinion, were legal in character and should also be referred to the Sixth Committee. That procedure would perhaps shorten the discussion. In any case, the Committee must now decide whether the latter articles were to be submitted to the Sixth Committee before or after examination.

12. Mr. RAMADAN (Egypt) wished to stress the legal nature of some of the articles mentioned by

the United Kingdom and United States representatives. That was particularly true of articles 8 to 11, since the majority of extradition cases were based on reciprocal treaties and thus were subject to international law. Moreover, the provision of article 9: "... even in a case where the offender has acquired his nationality after the commission of the offence" was incompatible with the principle that no law could be retroactive in effect. He thought that it was absolutely necessary to refer that article to the Sixth Committee. Being a party to proceedings, a matter dealt with in article 5, was also a very delicate question, since certain countries admitted it *ipso facto* in penal cases and others did not admit it. Therefore that article must also be referred to the Sixth Committee.

13. The CHAIRMAN invited Mr. Sutch, Chairman of the Social Commission, to explain the genesis of the draft convention.

14. Mr. SUTCH (New Zealand), speaking as Chairman of the Social Commission, recalled that the latter had undertaken to draw up the draft convention at the request of the Economic and Social Council; it had been asked by the Council to establish a text representing a minimum acceptable to all States Members of the United Nations. Consequently, the document under study contained very few new elements; it was, on the other hand, a synthesis of principles generally recognized and internationally applied.

15. He emphasized that the Social Commission, and later the Economic and Social Council, had discussed at length the social aspect of the problem of prostitution; but neither of those bodies had felt itself competent to discuss its legal aspects. They had preferred to have recourse to the Sixth Committee, and the Council had limited itself to making a general recommendation approving the draft as a whole.

16. Giving a historical survey of the previous conventions, Mr. Sutch retraced the different legal stages which had marked the suppression of the traffic in persons on an international plane: the Agreement of 1904 and the Convention of 1910 for the Suppression of the White Slave Traffic, the Convention of 1921 for the Suppression of the Traffic in Women and Children, and that of 1933 for the Suppression of the Traffic in Women of Full Age.

17. He pointed out that those four instruments were separate acts, each applying to a specific category of offences. Thus, 42 States had adhered to the 1904 Agreement, 41 to that of 1910, 51 to that of 1921, and only 28 to that of 1933.

18. The machinery for applying the first two conventions had been entrusted to France. After the war of 1914-1918, the League of Nations had turned its attention to the problem, and it was under the League's auspices that the conventions of 1921 and 1933 had been drawn up. In 1937, the League of Nations had recognized the need for a new instrument of wider scope, and one more closely in harmony with the evolution of social thought. It prepared the 1937 draft convention, to which most Members of the League of Nations had given their assent in principle, but which had never been signed.

19. After the Second World War, the United Nations had given up the text of the 1937 draft

convention and had consulted the Governments of the Member States thereon, as well as the non-governmental organizations concerned. It was on the basis of the observations obtained that the Social Commission had prepared the draft convention then before the Third Committee, a draft which embodied the essential provisions of the four conventions currently in force, as well as the main provisions of the 1937 draft convention.

20. It could therefore be said that the draft under study really represented what might be called the lowest common denominator of international legislation relating to the suppression of the traffic in persons.

21. He pointed out how delicate was the task confided to the Social Commission. Any modification introduced into a provision included in one of the four conventions in force was liable to make it more difficult for one or more of the parties to those conventions to accept the new instrument. The main thing, however, according to the very terms of the instructions given by the Economic and Social Council, had been to prepare a draft which would be acceptable to the greatest possible number.

22. If it wished to secure general accession to the new convention, the Third Committee should also conform to the rule of prudence which had guided the work of the Social Commission. It had, however, already failed to observe that rule. Thus, for example, by deleting (238th meeting) the expression "subject to the requirements of domestic law" from the original text of article 3, it had removed from that article an essential element.

23. As representative of NEW ZEALAND, Mr. Stuch was obliged, as a result of that decision, to reserve his position with regard to article 3 pending the receipt of instructions from his Government. Again, by removing (238th meeting) the motive of gain from article 1, the Committee had made the application of that provision extremely difficult for States which did not wish to grant excessive powers to the police, and it had therefore jeopardized the adoption of the document as a whole.

24. That did not mean that the draft convention, drawn upon by the Social Commission did not, from the social point of view, represent progress over the previous conventions. The 1937 draft by which it took pattern had been prepared as the result of an extensive enquiry into regulated prostitution undertaken by the League of Nations. The enquiry had resulted in the conclusion that it was necessary to close brothels and to abolish the police registration of prostitutes: hence article

6. Some people had wished to go still further and make provision for a social programme for the rehabilitation of young women of loose morals. Without going so far, the Commission had adopted the more general provisions of article 17.

25. Thus, articles 6 and 17 represented the two new elements from the social point of view, and they were consequently the two matters which would lead to controversy. The Social Commission had given much time to the discussion of those questions, which were within its competence; and it had not given much thought to the articles of application, which, for the most part, were already included in the conventions in force. It had considered that the opinion of the Sixth

Committee was more authoritative than its own on all matters within the field of international law.

26. He urged the members of the Third Committee to follow the example of the Social Commission, whose attitude had been the result of mature reflection. He thought the Committee should adopt the proposal submitted by the representatives of the United Kingdom and the United States and concern itself only with questions of an essentially social character.

27. As representative of NEW ZEALAND, he would for his part conform to the instructions of his Government, which advised him to refer consideration of legal problems, as far as possible, to the competent committee of the General Assembly.

28. Mr. BOKHARI (Pakistan) thanked the Chairman of the Social Commission for his statement. It appeared from that statement that the Commission had not confined itself to a mechanical task of compilation, but had done constructive work on the social level. That should also be the task of the Third Committee, which should carry out the instructions it had been given and prepare the draft convention which seemed to it most likely to secure the suppression of the traffic in persons and the exploitation of the prostitution of others without concerning itself at that stage with the reception with which the draft would meet. In his opinion they should avoid speaking of the lowest common denominator as they had in connexion with the convention on freedom of information. They must not, either, exaggerate the difficulties of applying an instrument intended to combat a scourge as to the seriousness of which all nations were agreed. He did not think, for example, that article 1 had been rendered inapplicable by the removal of reference to the purpose of gain, since the initial draft had provided for three categories of offences in connexion with which it had been readily agreed that the motive of gain should not be maintained.

29. The Committee should adhere to the decision on principle that it had taken and refer to the Sixth Committee only articles which were considered essentially legal. As for the others, it should discuss them in order, and only in the light of such discussion should it decide, if need be, to refer them to the Sixth Committee.

30. The draft as a whole would of course be communicated to the Sixth Committee, not for detailed discussion, but in order that that Committee should be able to examine in their context the articles that had been referred to it. The Third Committee was undeniably the body instructed by the General Assembly to frame a draft convention on the suppression of the traffic in persons and of the exploitation of the prostitution of others, and it was for the Third Committee, in the last resort, to decide on the text to be submitted to the General Assembly.

31. Mr. KAYSER (France) stated that numerous articles had legal implications and it would therefore be indispensable to establish liaison between the Third and Sixth Committees. He would like to know the general trend so far of the conversations that had taken place between the Chairmen of those two Committees. Would the Sixth Committee, which had a fairly heavy agenda,

interrupt its work to consider the difficult texts that the Third Committee would submit to it, or would it only consider them when it had exhausted its own agenda? It was to be feared that the opinions it would give would arrive too late to make it possible to submit the draft convention to the General Assembly at its current session.

32. The existing difficulties were the result of certain methods in force in the United Nations whereby a question was submitted from a Committee to a Council, from a Council to the Assembly and from the Assembly to a Committee. Those difficulties might in the future lead to an improvement in the methods of work and in the output.

33. In the opinion of Mr. CONTOUMAS (Greece), it would appear from Mr. Sutch's statement that the Third Committee should concern itself only with controversial questions, that is, articles 6 and 17. It was doubtless important to take account of the recommendations formulated by the Social Commission, which had dealt with the question at length, but he thought the Third Committee's field of action was not so restricted, since the General Assembly had given it the task of considering the draft convention in its entirety.

34. Mr. Sutch had stated that certain provisions that had entered into international law and been adopted by numerous Governments should not be modified, in order to avoid creating difficulties for those Governments. That point of view was perhaps reasonable, but the Committee should not on that account refuse to introduce improvements into certain articles. Mr. Contoumas was of the opinion that the Third Committee would be failing in its task if it dealt only with articles 6 and 17 and referred the others to the Sixth Committee. Such a procedure would jeopardize the possibility of submitting the draft convention to the vote in the General Assembly at the current session. He thought that among the members of the Third Committee there were competent jurists who could give their opinion in doubtful cases.

35. He shared the opinion of the representative of Pakistan and considered the Committee should abide by the decision it had already taken in connexion with the reference of articles to the Sixth Committee, and that it should begin its consideration of the other articles immediately.

36. Mr. NORIEGA (Mexico) also regretted that the Committee had not had the opportunity of hearing the explanations given by the Chairman of the Social Commission before it began to consider the draft convention.

37. In the matter in question, social and legal problems were closely linked; it was the relationship between the means and the end. Mr. Noriega quoted the precedent of the Convention on the International Transmission of News and the Right of Correction which the Third Committee had drafted without flinching before the legal difficulties it had encountered. It was not necessary to be a specialist in legal affairs in order to undertake such a task. A knowledge of the fundamental principles of law, together with common sense, should be sufficient. Delegations had, moreover, had time to request the opinion of their own experts or jurists of international repute.

38. The wisest procedure was to continue consideration of the draft convention article by article,

deciding in each case whether it was necessary to seek the opinion of the Sixth Committee.

39. Mr. KAYSER (France) thought that, before taking a decision on the joint proposal by the United Kingdom and the United States, it would be advisable to know from an authoritative source whether the Sixth Committee could accept the extra work which consideration of an additional number of articles would involve. The Committee should therefore await the result of the conversations which the Chairman would have on the subject with the Chairman of the Sixth Committee.

40. It would perhaps also be useful to set up an informal joint working group of the Third and Sixth Committees, which would be in a position to arrange a logical division of the work between these two Committees.

41. Mr. FREYRE (Brazil) supported the representative of Mexico in his proposal that consideration of the draft convention be continued article by article.

42. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) also supported the Mexican representative's proposal. He pointed out that, if the Sixth Committee were to consider almost the entire draft convention, as the representatives of the United Kingdom and the United States proposed, it would be confronted with social problems which it would not feel competent to solve. It would eventually have to refer them back to the Third Committee.

43. The Third Committee had in any case taken a decision that only certain articles would be referred without discussion to the Sixth Committee. According to rule 112 of the rules of procedure, a two-thirds majority would be necessary to reverse that decision.

44. The CHAIRMAN thought there was no need to insist on a strict application of rule 112 of the rules of procedure, for the list of clauses referred to the Sixth Committee under the previous decision was not restrictive.

45. While awaiting the opinion of the Chairman of the Sixth Committee, it could already be affirmed that the agenda of that Committee was a very heavy one. That was doubtless what the General Committee of the Assembly had had in mind when, without debating the question in detail, it had decided not to refer consideration of the entire draft convention to the Sixth Committee.

46. The Chairman proposed that a vote be taken on the following resolution:

"The Third Committee"

"Recommends to the President of the General Assembly to request the Sixth Committee to give as early consideration as possible to articles 8, 12, 25, 26, 28, 29, 30, 31 and 32 of the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others and any other article in relation with which a legal problem may arise that the Third Committee does not feel competent to decide, together with the text of other articles as approved by the Third Committee, and to forward back to the Third Committee approved texts for the articles submitted to its consideration, together with any comments it deems essential to submit on any other legal problem arising from the draft convention."

47. The Committee first had to vote, as an amendment to that draft resolution, on the list of articles which the United Kingdom and the United States delegations proposed also to refer to the Sixth Committee, namely articles 5, 7, 9, 10, 11, 13, 14, 23, 24, 27 and 4.

48. In reply to questions by Mr. JOCKEL (Australia) and Mr. EREN (Turkey), the CHAIRMAN said that, if the Committee rejected the United Kingdom and United States amendment, it would be no less free to refer to the Sixth Committee later any other article the drafting of which presented particular legal difficulties. After having finished consideration of the clauses it retained, the Committee could proceed to the next item on its agenda. As soon as the Sixth Committee communicated the results of its debates on the articles referred to it, the Third Committee would in its turn begin consideration of those articles from the social point of view.

49. The Chairman put to the vote the joint amendment by the United Kingdom and the United States to the effect that consideration of articles 4, 5, 7, 9, 10, 11, 13, 14, 23, 24 and 27 should also be referred to the Sixth Committee.

The amendment was rejected by 22 votes to 15, with 9 abstentions.

50. The CHAIRMAN put the draft resolution he had submitted to the vote.

The draft resolution was adopted unanimously.

The meeting rose at 12.55 p.m.

TWO HUNDRED AND FORTIETH MEETING

Held at Lake Success, New York, on Tuesday, 4 October 1949, at 11.10 a.m.

Chairman: Mr. Carlos E. STOLK (Venezuela).

Draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/977 and A/C.3/520) (continued)

ARTICLE 4 (continued)

1. The CHAIRMAN requested the Committee to continue its consideration of article 4, as redrafted by the Secretariat (A/C.3/L.8).

2. Mr. SCHACHTER (Secretariat) explained that the new text had been drawn up with a view to avoiding the paradoxical interpretation which it was possible to give to the text submitted by the Social Commission. The earlier text had not clearly established the international obligation to punish acts of participation carried out in the same country as the main offence, but the new draft provided that participation should be punishable. In a separate paragraph the new text