

84. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) was surprised to hear that his delegation's amendment excluded the jurisdiction of the International Court of Justice. Nothing in that amendment lent itself to such an interpretation. It was a question of calling upon an arbiter whom the parties were to choose by mutual agreement. Nothing prevented the parties from designating the International Court of Justice as an arbiter. Far from being restrictive in character, as the representative of the Philippines had stated, the amendment aimed at broadening the scope of article 23.

85. The representative of the Ukrainian SSR was opposed to the United States amendment. Moreover, he warned the Committee that certain countries would hesitate to sign the convention should the obligation to have recourse to the International Court of Justice be maintained.

86. Mr. CHA (China) was opposed to referring article 23 to the Sixth Committee.

87. Mr. CONTOUMAS (Greece) wished to know what the Committee proposed asking the Sixth Committee. Was it a new text of article 23, or an opinion concerning the legal implications of the existing text and the amendments submitted to it? But the problems arising with regard to that article were perfectly simple, and the Third Committee should decide them. In the first place, the question was whether the International Court of Justice should take cognizance of disputes concerning the interpretation of the convention. In the second place, it had to be decided whether it sufficed for one of the parties to lodge a complaint to that effect before the Court.

88. Mrs. ROOSEVELT (United States of America) recalled the fact that the Committee had asked the Sixth Committee to examine the whole draft convention and to state its opinion concerning all the articles which had legal implications. In the circumstance, that should be enough. There was

no reason to postpone the decision concerning article 23 any further.

89. The CHAIRMAN put to the vote the proposal of the delegation of Peru to refer article 23 to the Sixth Committee.

That proposal was rejected by 30 votes to 4, with 16 abstentions.

90. The CHAIRMAN put to the vote the Ukrainian amendment, which consisted in replacing the words: "to the International Court of Justice" by the words: "for settlement to an arbiter to be chosen by mutual agreement between them".

That amendment was rejected by 28 votes to 9, with 11 abstentions.

91. The CHAIRMAN put to the vote the United States amendment to replace article 23 by the following text (A/C.3/L.13):

"If any dispute shall arise between the Parties to this Convention relating to its interpretation or application and if such dispute cannot be satisfactorily settled by other means, the dispute shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice."

That amendment was adopted by 21 votes to 17, with 10 abstentions.

92. Since the adopted text was substituted for the original text of article 23, the CHAIRMAN stated that it was not necessary to vote again on the whole article.

ARTICLES 24 AND 27

93. Mrs. CASTLE (United Kingdom) proposed postponing the discussion on article 24 until the Committee had begun the examination of article 27, since the Ukrainian amendment concerning article 24 logically implied the deletion of article 27.

That proposal was adopted by 30 votes to 5, with 10 abstentions.

The meeting rose at 5.55 p.m.

TWO HUNDRED AND FORTY-SIXTH MEETING

Held at Lake Success, New York, on Tuesday, 11 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)

ARTICLES 24 AND 27 (continued)

1. The CHAIRMAN reminded the Committee that it had been decided at the previous meeting that article 27 should be examined before article 24. He placed before the Committee the United States amendment to article 27 (A/C.3/L.13) and the amendments to articles 24 and 27 submitted by the delegation of the Ukrainian Soviet Socialist Republic (A/C.3/L.10).

2. Replying to the representative of PAKISTAN, the CHAIRMAN said that representatives could refer to the substance of article 24 when they spoke on article 27, as the Committee had decided that those articles were closely interrelated.

3. Mr. NORIEGA (Mexico) said that experience had shown that the Powers administering Non-Self-Governing and Trust Territories did not fulfil their obligations, under Chapters XI, XII and XIII of the Charter of the United Nations, to encourage political and social development in such territories. At the previous meeting, representatives of the Administering Authorities had stated that the provisions of the draft convention could not be extended automatically to non-metropolitan territories owing to the existence of organs of local self-government there. That argument could not possibly be valid for Trust Territories because they were not colonies and could not, therefore, be subject to a colonial application clause. At least seventeen million persons lived under the Trusteeship System; the Third Committee of the General Assembly was directly responsible for them as far as social affairs were concerned. Furthermore, nowhere in the Trust Territories were there responsible legislative bodies of local self-govern-

ment; the Territories were administered by ordinances approved by the metropolitan Authority. It was hard to see what objection could be raised to the automatic application to Trust Territories of instruments adopted by the United Nations, the body directly responsible for their welfare.

4. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic), introducing his proposal for the deletion of article 27 (A/C.3/L.10), said that retention of the article would reduce the effectiveness of the convention as a whole because it would tend to promote, or at least not to check, the traffic in persons in the very areas in which conditions particularly favoured its existence. The General Assembly at its second session had decided in resolution 126 (II) that the colonial application clause should be removed from the conventions of 1921 and 1933. To revive that clause would have a deplorable effect on public opinion and would, moreover, be in flagrant contradiction to the relevant provisions of the Charter. Under article 27 the metropolitan Powers would be absolved from the obligation to combat the traffic in persons in the territories administered by them.

5. If article 27 were deleted, certain changes would have to be made in article 24, as proposed in his amendment (A/C.3/L.10). In its existing form, that article called for discrimination, as under it, the convention would apply to Trust Territories under the administration of the United Nations, but not to other Non-Self-Governing Territories. Such a restriction could not be justified. The Ukrainian amendment extended the scope of application to include all the territories for which a State signatory to or accepting the convention was internationally responsible. Such a conception was fully in accord with Article 76 *b* of the Charter and with the spirit of resolution 126 (II) of the General Assembly.

6. Mr. SUTCH (New Zealand) explained that the Social Commission had based its version of the colonial application clause on that adopted by a considerable majority of the Third Committee in connexion with the Convention on the International Transmission of News and the Right of Correction. The Commission had been in session at the time when the Third Committee had taken that decision and had adopted that text by an almost equally large majority. The Social Commission, like the Third Committee during its third session, had been anxious to adopt the most progressive and strongest clause on which a wide measure of agreement was possible. It had been generally agreed that the existing text fulfilled that intention as adequately as was possible in view of the fact that certain of the metropolitan Powers possessed Non-Self-Governing Territories which had legislative assemblies in the process of attaining complete self-government. Those metropolitan Powers had felt themselves unable to sign a convention on behalf of such territories. That had precluded them from agreeing with arguments, such as that of the Ukrainian representative, that the deletion of the clause would be more advisable since, if it were so deleted, the metropolitan Powers would be unable to sign the convention on behalf of all the territories for which they were internationally responsible. The Social Commission had believed that some statement of the colonial application clause was particularly necessary with regard to a question involving criminal

law, because a number of territories had powers of domestic jurisdiction in that respect.

7. In its efforts to obtain the widest possible application of the article, the Social Commission had laid emphasis on the phrase "as soon as possible" in the second paragraph. The phrase might be open to objection as unduly vague, but it did at least take into account the necessity for the consent of the Non-Self-Governing Territories.

8. Moreover, by providing for the transmission of the convention to the territories in question, the Social Commission had ensured that they should be aware that such an opportunity was open to them. The procedure might be regarded as cumbersome, but it reflected the contemporary practice of the United Nations.

9. The Social Commission had felt the need for uniformity in the wording of a colonial application clause, but had found that no such uniform wording existed in the international instruments of the United Nations and had therefore decided to adopt the form approved by the Third Committee at the third session.

10. With regard to his own country, it felt very strongly that the convention should be applied universally and would certainly apply it to the Trust Territory under its own administration.

11. Mr. BOKHARI (Pakistan) regretted the Committee's decision that article 27 should be examined before article 24, because he would have wished to vote for the Ukrainian amendment to the former article (A/C.3/L.10). He was however precluded from doing so: his delegation felt very strongly that a constitutional responsibility to extend the application of the convention to their colonies should be laid upon the colonial Powers, as the Ukrainian amendment to article 24 sought to do. Article 27 contained only a moral obligation. If article 24, as amended by the Ukrainian proposal, had been adopted before article 27, the latter, as the weaker statement of obligation, would have become redundant. If, however, the Ukrainian proposal for the deletion of article 27 were rejected as well as that delegation's amendment to article 24, something at least would have been retained—the moral obligation imposed upon the Administering Powers. Such a decision would, however, be less desirable than the amendment of article 24.

12. The imposition of a constitutional obligation was in his opinion essential, because any claim that a colonial country was independent was always open to doubt and should be most carefully examined. A very exact definition of any such asserted independence must be demanded. A colonial country might be close to self-government in many respects, but in practice, the metropolitan country invariably retained some control over measures adopted locally which might be unwelcome to its wider interests. Local legislative bodies varied widely in quality, powers and the degree of representativeness. The metropolitan Power might encourage the adoption by local legislatures of very admirable measures; it might aid them to pass unpopular but beneficial laws; invariably, however, it retained an overriding power of veto. The metropolitan Powers therefore, could not escape their constitutional responsibilities.

13. Mrs. KALINOWSKA (Poland) said that the exclusion of the dependent territories from the application of the convention would tend to per-

petuate backward conditions there, in violation of Articles 73 and 76 of the Charter. Such conditions would impede the political, economic, social and educational advancement of the inhabitants, whereas the Members of the United Nations which had responsibilities for the administration of such territories had pledged themselves to promote their well-being. The draft convention for the suppression of the traffic in persons should be enforced most particularly in the backward areas because it was precisely there that the traffic flourished most vigorously, especially in the form of child prostitution.

14. The *Summaries and Analyses of Information transmitted to the Secretary-General during 1948*, concerning Non-Self-Governing Territories, contained details of such child prostitution in Nigeria (page 642). Of 838 cases of girls dealt with by social welfare workers, about one-fifth had, according to that report, been cases of prostitution or had bordered on prostitution and sexual exploitation. Those details were taken from the analyses dealing with only one of the very many Non-Self-Governing Territories. Such examples were self-explanatory. The moral responsibility incumbent upon the Committee was a very serious one. She would therefore vote for the Ukrainian amendments.

15. Mr. JOCKEL (Australia) did not think it served any useful purpose to discuss the same subject over and over again. In his opinion, the article which had been adopted for the Convention on the International Transmission of News and the Right of Correction represented a successful compromise solution.

16. The representative of Mexico had stated that there was a tendency for the metropolitan Powers to prevent social and political progress from reaching the Non-Self-Governing Territories. Mr. Jockel replied to that statement by illustrations from his own Government's record in extending the application of international conventions to the Non-Self-Governing Territories in its charge. Both the 1948 Protocol bringing under international control drugs outside the scope of the Convention of 1931 and the Convention on the Prevention and Punishment of the Crime of Genocide had been signed by his Government and their application had been immediately extended to the colonial territories. As Australia was one of the few countries to have ratified the convention on genocide, the colonial territories for whose international relations it was responsible were in advance of many independent sovereign States in that respect. He felt that article 27 should be retained, since it was necessary for constitutional procedure, and the metropolitan Powers could be trusted to implement its provisions in good faith.

17. Mrs. CASTLE (United Kingdom) referring to the speech of the representative of Mexico, said that she too supported the reference to Trust Territories in article 24. She was, however, opposed to the deletion of article 27 proposed by the Ukrainian representative. As the representative of New Zealand had clearly shown, the article represented the widest area of agreement which it had so far been possible to achieve concerning the colonial application clause. In her opinion, it would be a retrograde step to abandon that measure of agreement.

18. Her delegation, however, did not base its opposition to the Ukrainian proposal solely on the

grounds of historical precedent. Its attitude was based on the actual merits of the case. The Ukrainian representative had quoted the United Nations Charter and reminded the metropolitan Powers of their obligations. Mrs. Castle stated that the metropolitan Powers took their obligation to develop self-government in the dependent territories seriously and it would be totally incompatible with that obligation, set forth in Article 73 of the Charter, to enforce adherence to an international convention without consulting the local organs of self-government.

19. The representative of Pakistan had interpreted the responsibilities of the metropolitan Powers as meaning that they should enforce adherence to international conventions, while the metropolitan Powers themselves interpreted their responsibility as meaning that they should promote development towards self-government in their dependent territories. The metropolitan Powers were attempting to give the Non-Self-Governing Territories as much responsibility as possible over their internal affairs and it would be incompatible with that policy to compel the territories to adhere to a convention without consulting the local legislative council. If the United Kingdom itself ratified a convention it would naturally recommend that the territories in its charge should do likewise, but it would never compel them to do so. The adoption of the Ukrainian amendment would make such compulsion necessary and she therefore urged its rejection as it would be contrary to the principles of the Charter.

20. As for the allegations made by the representative of Poland, she did not think it was necessary to discuss them in detail, but emphasized that the territories administered by the United Kingdom were always open to inspection and that her Government was justly proud of its achievements in promoting the political advancement of Non-Self-Governing Territories.

21. Mrs. KRIPALANI (India) said that the discussion seemed to show an irreconcilable gulf between the two opposing viewpoints. The question had been frequently discussed in the past and would arise again in the future. Some satisfactory compromise solution should therefore be sought in order to obtain the widest possible application of the convention. Her delegation was very anxious that the application of the convention should be extended to the Non-Self-Governing Territories because, if large areas remained outside the scope of the convention, they would naturally attract all the illicit traffic and the purposes of the convention would be defeated.

22. So long as the metropolitan Powers maintained their attitude, it would not seem possible to ensure the automatic application of the convention to the colonial territories. She therefore suggested, as a compromise solution, that the following paragraph should be added to the end of article 27 (A/C.3/L.16):

“(d) Any such State as is referred to in this Article shall within a year of the date of signature or of deposit of its formal instrument of acceptance and thereafter at the end of every succeeding year notify to the Secretary-General the territories mentioned in sub-paragraphs *a*, *b*, *c* of the third paragraph of this article, to which the provisions of this Convention have not yet been applied, stating the reasons therefor.”

23. The CHAIRMAN said that, strictly speaking, the Indian amendment was out of order, but in view of the importance of the question he hoped the Committee would agree to consider it. In accordance with rule 112 of the rules of procedure a two-thirds majority would be needed to reverse the Committee's previous decision concerning the time limit for the submission of substantive amendments.

24. Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic) said that he would prefer to have the Russian text of the amendment before deciding whether or not the Committee should discuss it. He therefore requested that the vote on the subject should be postponed.

25. The CHAIRMAN decided to postpone the vote on the Indian amendment.

26. Mr. AQUINO (Philippines) said that it was the usual practice, when discussing the colonial application clause, to rely on the precedents established by earlier conventions. It could not, however, be contended that the United Nations had yet succeeded in drafting an ideal colonial application clause. The reference to precedents was therefore not very valuable. Several representatives had argued in favour of retaining article 27 in its existing form on the grounds that it was based on the article adopted for the Convention on the International Transmission of News and the Right of Correction. The comparison was not very convincing because the provisions of that convention had affected the metropolitan Powers far more than the colonies, while it could not be held that prostitution was of little concern to colonial territories. Indeed the representative of Poland had shown very clearly that prostitution was a chronic social evil in such territories and Mr. Aquino urged the members of the Committee not to lose sight of that fact.

27. As the metropolitan Powers were responsible for the international relations of their colonial territories, he thought they should also assume the responsibility for the enforcement of an international convention in such territories. Much had been said about the measure of self-government that had already been granted to the colonial peoples, but the fact remained that they did not have any constitutional means at their disposal to enable them to enforce the convention. It was clearly and undeniably the responsibility of the metropolitan Powers to enforce the convention and to see that prostitution was eradicated from their colonies. Under Article 73 of the Charter they had undertaken to promote the social advancement of Non-Self-Governing Territories and the eradication of prostitution was a part of that undertaking.

28. The metropolitan Powers had stated that they could not force dependent territories to become parties to the convention because the territories were themselves responsible for their own internal affairs. Mr. Aquino pointed out that there were various military bases in the Non-Self-Governing Territories which would not come within their domestic jurisdiction. Thus, if the metropolitan Powers did not undertake the responsibility in the matter, prostitution would continue to flourish in such areas.

29. If it had been possible to consider articles 24 and 27 together, he would have supported the Ukrainian amendment to article 24. As the

Committee had decided to take article 27 first, he would support the Indian amendment, which would provide an additional safeguard if article 27 were retained.

30. Mrs. ROOSEVELT (United States of America) said that her delegation supported the first and second paragraphs of the existing text of article 27. Her Government naturally agreed that prostitution should be eradicated from Non-Self-Governing Territories, together with all other social evils. Yet it seemed necessary, at the same time, to take into consideration the various stages of the constitutional development reached by the territories in question. In some cases, for instance, it would be impossible to apply the convention automatically.

31. In connexion with all the arguments both for and against the so-called colonial clause, she believed that the main problem before the Committee was to decide whether, as a primary step towards self-government in the Non-Self-Governing Territories, the peoples concerned should be encouraged to assume a certain measure of responsibility in some fields. She would not deny that such a system did not always work perfectly, or that the metropolitan Powers did not, at times, use their influence. She felt, however, that the principle itself should not be discarded lightly because the gradual transfer of responsibility to non-self-governing peoples was an essential step in their development towards the ultimate goal of freedom and independence.

32. It was, of course, possible to cite cases when the imposition of beneficial measures by force might lead to better results. That was the main argument advanced by the upholders of a system of benevolent dictatorship. When people believed in real democracy, however, they preferred to advance slowly and even to make mistakes rather than to jeopardize the essential foundation of democracy itself.

33. She then proposed that the words "the notification" in the last sentence of the first paragraph should be changed into "such notification" and that the third paragraph should be deleted altogether. Indeed, there was no reason whatever to doubt that the metropolitan Powers would, as a matter of course, transmit the convention to the responsible authorities of any territory for the international relations of which they were responsible.

34. In conclusion, she wished to point out that any convention signed by her Government extended automatically to all territories under its jurisdiction unless exceptions were specifically mentioned. The convention would, therefore, automatically extend to all areas administered by the United States.

35. Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) said that article 27 was nothing but the well-known "colonial clause" reintroduced under the pretext of safeguarding the rights of non-self-governing peoples. His delegation had always upheld the principle of equality among all peoples and could not, therefore, condone any discrimination in the matter.

36. The question was all the more important as the Polish representative had rightly pointed out that prostitution flourished particularly in the colonies and Non-Self-Governing Territories. It had

been argued that each colony should be allowed to decide for itself. Yet the representative of Pakistan had proved how illusory and fictitious was the autonomy of any of those Non-Self-Governing Territories. The United States representative had laid much stress on the need to preserve the basis of real democracy. Remembering how the same representative had in the past voted against the principle of equal pay for equal work for men and women, he felt that her conception of democracy was somewhat different from his.

37. The representatives of the United Kingdom and the United States were prolific in their protestations of good faith concerning the administration of Non-Self-Governing Territories, but when it came to deeds, they always found some reason or other for not fulfilling their promises.

38. It had also been argued that the convention on the international transmission of news contained a similar clause; the fact that a mistake had been made once did not mean that it should be repeated *ad infinitum*. He would therefore support the Ukrainian proposal to delete article 27.

39. Mr. CONTOUMAS (Greece) said that the loftiest plans, when not based upon wisdom, often came to naught. Long endeavour had been needed to set up an effective system for the suppression of the traffic in persons and of prostitution in independent and civilized countries. Hence, at a time when the possibility of extending the benefits of that convention to less-developed nations was under discussion, it would be rash to assume that the provisions of that convention could be put into practice immediately in all independent and civilized countries. The extremely animated discussion on the French amendment to article 6 of the draft had been sufficient proof to the contrary. It was useless to imagine that by a stroke of the pen nations less advanced in social reforms could be brought to achieve perfection such as the other nations themselves often found difficulty in attaining.

40. Moreover, there was no cause for concern over the effects of applying article 27. By the fact of signing the United Nations Charter, Powers responsible for the administration of Non-Self-Governing Territories (colonies) or Trust Territories had admitted, in principle, that the interests of the inhabitants of those territories should predominate, and the action of those Powers was controlled and supervised by the Trusteeship Council. In the circumstances, the best thing to do was to leave to those Powers the responsibility of deciding, in the light of the conditions prevailing in each individual territory, to what extent it might prove possible and desirable to extend the operation of the convention in specific cases.

41. Referring to the Indian amendment, he said that in his opinion the Administering Powers would never find it difficult to explain, should the case arise, why the provisions of the conventions had not been applied to any territory, as their decision either way could only be governed by the soundest reasons.

42. Mr. NORIEGA (Mexico) believed that the United States representative had displayed a certain lack of perspective when she had argued that

democracy meant freedom for people to decide their own fate. That was true of sovereign and independent peoples, but not of the inhabitants of territories euphemistically designated as non-self-governing. The views expounded by the United States representative were inconsistent with the provisions of Chapter XI of the Charter. Indeed, had her argument been correct, there would have been no need for Abraham Lincoln to emancipate the slaves in the United States — they should have been left free to decide the question for themselves.

43. Furthermore, while he agreed with the United States representative that the Administering Authorities did not fail to carry out their obligations, he could not follow her so far as to agree that there was no need for the third paragraph of article 27. Indeed, the visiting mission sent by the Trusteeship Council to various West African territories the previous year had met there officials who had been most surprised to learn that the territories they administered were not colonies but Trust Territories of the United Nations. It was somewhat difficult, in such circumstances, to be quite certain that the convention would be transmitted to the responsible authorities of Non-Self-Governing Territories as a matter of course.

44. The Greek representative had laid much emphasis on the need to take existing circumstances and facts into account. It might be argued, therefore, that Administering Authorities should respect all existing tribal customs, even cannibalism, and that they were powerless to intervene in the matter.

45. The representative of New Zealand had, no doubt, had most cogent reasons for describing article 27 as a progressive clause. Unfortunately, however, he failed to see the progressive aspect of the colonial clause. With the exception, perhaps, of the French Union, it was a well known fact that all legislative bodies set up in Non-Self-Governing Territories were composed of members appointed by the governor of the territory and that no elections took place. Furthermore, their powers were restricted to purely local and municipal affairs, and the governor always enjoyed the right of veto over any decision taken by such bodies. It was difficult, therefore, to follow the arguments of those who maintained that article 27 was a progressive clause and that they could not extend the convention to the territories under their jurisdiction without first consulting the inhabitants themselves. During the discussion on article 6, the French amendment had been rejected on the ground that the convention should be universal in character — yet exactly the reverse was being argued in the Committee, namely, that the convention could not be universally applied.

46. He strongly believed that the convention should extend to all territories. Indeed, the unsatisfactory labour conditions in Non-Self-Governing Territories were mainly due to the fact that the provisions of various labour conventions did not apply in those territories. He therefore appealed to all members of the Committee to heed the voice of their conscience and vote for the deletion of article 27.

The meeting rose at 1.15 p.m.