

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 re-drafted 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

stated that participation should be treated as a separate offence "whenever this is necessary to prevent impunity".

3. It was recognized by most juridical systems that participation was a punishable offence; the difficulty was that complicity was not always considered as a separate offence, and the object of the second paragraph was to ensure the punishment of an accomplice, even in countries whose domestic law did not allow proceedings to be taken separately against such a person.

4. In its essence the second paragraph of the new draft differed very little from the text submitted by the Social Commission, which had simply repeated a provision contained in the 1937 draft convention and in other international instruments. It had the advantage, however, of being more flexible in its application, in that it did not provide that participation should be treated as a separate offence solely in cases where the accomplices could be brought to trial only in different countries or territories.

5. Mr. CONTOUMAS (Greece) thanked the representative of the Legal Department for his lucid explanation. He, for his part, considered the new draft most satisfactory.

6. Mr. SUTCH (New Zealand) noted that the Secretariat had not maintained the phrase "subject to the requirements of domestic law" which had been included in the original draft of article 4. He wondered whether that omission would strengthen the obligation which signatory States would undertake under the article and whether the general restrictive clause in article 13 was adequate protection for the free will of signatory States in that respect.

7. He would like to know the Secretariat's views on the subject and why it had thought fit to omit the reservation originally contained in article 4.

8. The CHAIRMAN recalled that the New Zealand representative's questions had been discussed by the Committee in connexion with article 3 (238th meeting). The Committee had then decided that the provisions of article 13 would apply to the whole draft convention, and that the inclusion of a special reservation in any other article would only give rise to doubts concerning the scope of article 13.

9. Mr. BOKHARI (Pakistan) thought that no reservation relating to the requirements of domestic law could be interpreted as limiting or cancelling the obligation assumed by States who signed the convention of punishing the offences described in articles 1 and 2. Under that obligation, States would be bound, regardless of any reservations that might be included in article 13 or elsewhere, to enact the necessary laws to ensure the application of the convention. There remained one legal matter to be settled, namely, the definition of the exact scope of the general restrictive clause in article 13.

10. The CHAIRMAN said that the Committee had discussed that matter also in connexion with article 3. It had decided that the provisions of article 13 could not be interpreted as relieving signatory States of the obligation to punish the offences described in articles 1 and 2, but that those provisions did allow them to qualify, prosecute and pass judgment on such offences in ac-

cordance with domestic law. Article 13 was stated in very clear terms which admitted of no ambiguity.

11. Mr. SCHACHTER (Secretariat) fully confirmed the Chairman's interpretation. The latitude left to signatory States only related, in fact, to the application of the principles to which those States subscribed in signing the convention.

12. He admitted that the deletion of the phrase "subject to the requirements of domestic law" strengthened the provisions of article 4. It had been deleted intentionally, so that the article could not be interpreted in a way which would defeat its very purpose.

13. According to Mr. AZKOUL (Lebanon), the same difficulty would arise in connexion with each of the articles of the draft convention with regard to which a more particular reservation than the general reservation contained in article 13 would seem to be necessary. The Committee had admitted that the provisions of article 13 applied to the whole draft convention; he would like to know, however, to what extent they applied. Was article 13 a precise substitute for the phrase "subject to the requirements of domestic law", or was it, as Mr. Azkoul was inclined to think, more limited in scope?

14. To take a hasty decision on that point might create difficulties of application which would compromise the acceptance of the draft convention. It was therefore necessary to have an authoritative opinion on the question whether article 13 limited in any way the obligation to inflict punishment assumed by the signatory States under the first articles of the convention, and to what extent the application of the convention was subordinated to the requirements of domestic law under article 13.

15. Mr. NORIEGA (Mexico) pointed out that the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs contained provisions similar to those of article 13 and articles 1, 2, and 3 of the draft convention. Article 15 of the said convention was, in fact, a general restrictive clause and sub-paragraph *b* of article 2 provided for the punishment of acts of international participation. That convention had been signed and ratified, and its application did not seem to give rise to any difficulty. The Commission should take past experience into consideration and should not revert to a discussion of questions of principle which had already been settled. The work of the Committee would be facilitated if the Secretariat would draw up a memorandum indicating which articles of the draft convention reproduced provisions of earlier conventions.

16. Mr. CONTOUMAS (Greece) was of the opinion that the explanations given by the Chairman and the representative of the Legal Department of the Secretariat left no doubt concerning the interpretation which should be given to the articles under discussion. It was clear that there could be no question of exempting signatory States from the obligation of punishing acts which the draft convention was designed to suppress.

17. Mr. AQUINO (Philippines) was also of the opinion that the general restrictive clause in article 13 applied only to the methods of application of the convention. The phrase "subject to the requirements of domestic law" would undoubtedly increase that restriction. There was no disputing

the fact that the act of acceding to an international convention imposed on the signatory State the obligation of ensuring the full and complete application of that convention, even if the State had to amend its own legislation. No reservation which would limit or annul that obligation could be accepted.

18. Mr. AZKOUL (Lebanon) recalled that when article 3 had been examined, the Committee had concluded that the provisions of article 13 adequately replaced the reservation in article 3 which it had been proposed to delete and that it was on the strength of that conclusion that certain delegations had consented to that deletion.

19. The discussion had shown quite clearly that article 13 did not replace the phrase "subject to the requirements of domestic law". It was therefore evident that the Committee was called upon to take a decision of principle with regard to article 4, and that it would have to take the same decision with regard to each of the articles of the draft convention in which that restrictive clause appeared. It could not take that decision of principle with full knowledge of the facts until it had eliminated every doubt concerning the scope of the debated reservation.

20. That reservation seemed, at first sight, to annul the force of the provision in which it was contained. Mr. Azkoul did not think that such had been the intention of the authors of the draft convention. That was a point that must certainly be elucidated, and the Legal Committee was the competent body to decide it.

21. He therefore proposed that the Third Committee should ask for the opinion of the Sixth Committee on the question.

22. Mrs. ROOSEVELT (United States of America) supported the suggestion made by the Lebanese representative. It was apparent from the discussion that article 4 was clearly one on which a legal advisory opinion was required, and the United States delegation was whole-heartedly in favour of its being referred to the Sixth Committee.

23. The CHAIRMAN pointed out that all the articles contained certain legal difficulties. The main thing was to know whether States did in actual fact intend to undertake the obligations defined in articles 1, 2 and 3 of the draft convention. He personally did not think that the phrase "subject to the requirements of domestic law" expressed any intention of cancelling the obligations in question.

24. It would, however, be well to ask for the opinion of the Sixth Committee, without prejudice to the decision on principle which would be taken by the Third Committee.

25. Mr. RAMADAN (Egypt) proposed that the difficulty should be solved by redrafting article 13 in such a way as to invite States to bring their legislation into line with the provisions of the preceding articles.

26. The CHAIRMAN said that it would be better to wait until article 13 was discussed before submitting such proposals.

27. Mr. CONTOUMAS (Greece) considered that the Committee should first decide what the offences to be punished were. The only question which might usefully be put to the Sixth Committee was whether the phrase "subject to the require-

ments of domestic law" duplicated the provisions of article 13. If it did, the obvious thing would be to delete those words. If, on the other hand, it was possible to give them a specific meaning of their own, particularly one which amounted to the right to refrain from punishing certain of the offences referred to, that would raise a question of principle, which came within the competence of the Third Committee.

28. Mrs. ROOSEVELT (United States of America) stated that her delegation would be unable to take a final decision on article 4 until it heard the opinion of the Sixth Committee. Although the United States delegation preferred the original text of the article, it might be that the light thrown upon the matter by the Sixth Committee would lead to a change of opinion.

29. Mr. SUTCH (New Zealand) recalled that articles 3, 4 and 13 of the original draft reproduced the corresponding clauses of the 1937 draft convention, the text of which had been agreed upon by experts of the League of Nations and of the Governments. The New Zealand Government preferred the original version of the articles in question. It had itself gone very far in the suppression of prostitution. It was not, therefore, in order to escape the obligations laid down by the draft convention that it wished the phrase "subject to the requirements of domestic law" to be retained. The reasons governing its attitude were of a purely legal character. The charge of preparing or participating in an offence depended on the individual concept of each legal system. In the United States, for example, the idea of conspiracy had to be present before a person could be accused of such an act.

30. He felt, therefore, that the exact significance of the question to be put to the Sixth Committee by the Third Committee should be specified by an explicit reference to the phrase contained in the original version of article 4.

31. The CHAIRMAN, speaking as the representative of VENEZUELA, thought that article 13 was sufficiently clear. So long as each State was free to define preparatory acts or acts of participation, or, in other words, to determine all the elements of the offence, the sovereignty of the State would be safeguarded. That did not mean, however, that signatories could escape the obligation of punishing the acts in question.

32. Mr. SCHACHTER (Secretariat) did not think that the Sixth Committee would take a decision of principle on the question, unless it were explicitly requested to do so. It was for the Third Committee to settle the question of principle. The request for the Sixth Committee's opinion might, for example, be couched in the following terms:

"Assuming that it is desired to give States certain discretion as to the procedure regarding participation in an offence, what would be the appropriate method of dealing with it?"

33. Mr. PAJVAK (Afghanistan) proposed that discussion on article 4 should be suspended and that article 13 should be considered forthwith, with a view to determining to what extent its provisions applied to other articles in which the decision of all mention of domestic law was contemplated.

34. Mr. BOKHARI (Pakistan) agreed with the representative of Greece with regard to the necessity of taking a decision on principle first.

The Lebanese proposal might be expressed in the following terms:

"Some members of the Committee are inclined to retain the phrase 'subject to the requirements of domestic law' on the understanding that this gives the States discretion with regard to the legal procedure without giving them the discretion not to treat participation as an offence. The Legal Committee is required to advise whether the retention of the said phrase would achieve this purpose."

35. In reply to a question by the CHAIRMAN, Mr. AZKOUL (Lebanon) worded his proposal as follows:

"The Third Committee requests the Sixth Committee to inform it what would be the legal effects of deleting or retaining the phrase 'subject to the requirements of domestic law' in article 4 of the draft convention."

36. At the CHAIRMAN's request, Mr. AZKOUL (Lebanon) agreed to add the following words to his text: "having due regard, likewise, to the provisions of article 13 of this draft convention."

37. Mr. KATZNELSON (Israel) pointed out that the restrictive clause in question did not appear only in article 4. In his opinion, it would be better for the Committee to continue its consideration of the draft convention and to decide the exact significance of article 13 when that article came up for discussion.

38. If that procedure was not adopted, the text suggested by the Lebanese representative should be amended to include a request to the Sixth Committee to give an opinion also on the effects of the deletion of the restrictive clause in regard to the other articles in which it appeared.

39. Mr. BOKHARI (Pakistan) agreed to the formula proposed by the Lebanese representative, together with the Israeli representative's amendment. He therefore withdrew the text he had suggested.

40. Mr. KAYSER (France) pointed out that the restrictive clause appeared also in article 3 and that that should be taken into account in the text to be sent to the Sixth Committee. Article 3 had already been adopted and it would perhaps be necessary to go back on the decision taken.

41. The CHAIRMAN replied that the point mentioned by the representative of France would not raise any difficulty. When the legal opinion of the Sixth Committee was known, it would always be possible to consider article 3 if the Committee so decided by a two-thirds majority.

42. Mr. RIVERA HERNÁNDEZ (Honduras) thought that the questions on which the Sixth Committee's opinion was requested should be very precisely defined. A country that was a party to the convention must not be allowed to take advantage of the restrictive clause in order not to punish the offences referred to in the convention.

43. He therefore proposed that the Sixth Committee should be especially asked whether a country that had acceded to the convention would be free not to punish all such offences.

44. Before calling for a vote, the CHAIRMAN had the text which the Lebanese representative proposed for submission to the Sixth Committee

read aloud. The text, which had the support of the representative of Pakistan and had been amended by the representatives of Israel and Honduras, was drafted as follows:

"The Third Committee"

"Requests the Sixth Committee to inform it what would be the legal effects of deleting or retaining the clause 'subject to the requirements of domestic law' in article 4 and the following articles of the draft convention for the suppression of the traffic in persons and the exploitation of prostitution of others in which this clause appears, having due regard, likewise, to the provisions of article 13 of the draft convention; and, in particular, to inform it whether the retention of this clause would leave the States parties to the convention free to refrain from punishing all the acts which are punishable under the terms of the draft convention."

45. Mr. AZKOUL (Lebanon) submitted two observations. Firstly, the text omitted mention of article 3, and he thought it should be made clear that it referred to *all* the articles in which the restrictive clause appeared.

46. Secondly, he pointed out that the amendment submitted by the Honduran representative applied solely to article 3, and he wondered whether it would not be possible to omit that amendment and to change the text to read in the following manner: "... what would be the legal effects ... article 13 of the draft convention, on the obligations referred to in these articles ..."

47. Mr. RIVERA HERNÁNDEZ (Honduras) thought that the most important question was to ascertain whether the restrictive clause gave States the discretion not to punish offences which were punishable. He therefore maintained his amendment.

48. Mr. NORIEGA (Mexico) was of the opinion that the Honduran representative's amendment was very sensible. It was indeed important to know, not what would be the legal effects of the deletion of the restrictive clause but what would be its effects on the application of the convention. A country must not be allowed to invoke its domestic law in order to evade its obligations.

49. The CHAIRMAN, having drawn his attention to the words "in particular" in the Honduran amendment, Mr. AZKOUL (Lebanon) withdrew his objection.

50. The CHAIRMAN asked the Committee to vote on the Afghan representative's motion to suspend consideration of article 4 and the following articles and to begin discussion on article 13 immediately.

The proposal was rejected by 18 votes to 2, with 26 abstentions.

51. The CHAIRMAN put to the vote the Lebanese representative's proposal that the opinion of the Sixth Committee should be requested.¹

The proposal was adopted by 40 votes to none, with 8 abstentions.

ARTICLE 5

52. The CHAIRMAN asked the Committee to begin consideration of article 5, to which no amendment had been submitted.

¹ The final text of the resolution is given in document A/C.3/523.

53. Mr. RAMADAN (Egypt) asked the representatives of the United States and the United Kingdom whether, in the English text of article 5, it would not be preferable from the legal point of view to replace the words "injured persons" by "persons who suffered prejudice".

54. Mrs. CASTLE (United Kingdom) replied that in English legal terminology the expression "injured persons" was perfectly correct.

55. Mr. RAMADAN (Egypt) proposed the addition at the end of article 5 of the following phrase: "in conformity with the rules of procedure adopted in each country". The fact was that in some countries it was possible to become a party to proceedings automatically, while in others a special procedure was required.

56. The CHAIRMAN stated that the Egyptian representative's proposal was not admissible, since the final date for the submission of amendments affecting the substance of the articles had elapsed.

57. Speaking as the representative of VENE-

ZUELA, he remarked that in his opinion that point was already covered by article 13.

58. Reverting to his role as CHAIRMAN, he put article 5 to the vote.

Article 5 was adopted by 51 votes to none, with 1 abstention.

59. Mr. NORIEGA (Mexico) said the Committee would find it extremely useful to have a document prepared by the Secretariat containing the articles of previously adopted conventions, particularly conventions on narcotic drugs, which corresponded to articles of the draft convention under study.

60. The CHAIRMAN stated that the Secretariat would prepare that document and that it would be distributed at the beginning of the next meeting.

61. He announced that he had spoken to the Chairman of the Sixth Committee, who had declared his readiness to provide the Third Committee with all the legal opinions it required.

The meeting rose at 1 p.m.

TWO HUNDRED AND FORTY-FIRST MEETING

Held at Lake Success, New York, on Wednesday, 5 October 1949, at 11.00 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 6

1. Mr. DELIERNEUX (Secretariat) retraced the genesis of article 6 as it appeared in the draft convention. In 1924 the League of Nations had asked a committee of experts to advise on the best methods for combating the traffic in persons. In 1927 the committee of experts had published its report, in which it expressed the opinion that the commercial exploitation of prostitution was the fundamental reason for the traffic in persons. Prostitution was, to a certain extent, given official sanction through registration and various measures of control. As a result of those considerations the text of article 6 had been inserted in the draft convention.

2. The majority of Governments that had been consulted had been of the opinion that the initiative was desirable. That had also been the opinion of the qualified non-governmental organizations. According to the International Abolitionist Federation, experience had shown that where the system of registration had been abolished by law, the police had generally attempted to re-establish in practice an equivalent system. The Federation emphasized that, if that legal system was to be combated, action must also be taken against uses and customs in the matter.

3. In the Social Commission the French delegation had proposed an amendment which would have made it possible to retain certain supervisory measures for the purposes of preventive hygiene. The amendment had been rejected, having obtained only 5 votes to 5, with 3 abstentions. The

article itself had been adopted in its present form by 7 votes to 4 with 3 abstentions.

4. During the discussion in the Economic and Social Council, the same delegation had presented a new amendment, but the Council had not had an opportunity of voting on it.

5. Mr. PENTEADO (Brazil) emphasized the complexity of the problem. It was only after mature consideration that his delegation had reached the conclusion that article 6 offered the best solution at that time.

6. There was a fairly widespread opinion to the effect that prostitution, even when legally abolished, never disappeared completely. Consequently, those that supported the theory considered that it was better to retain a system of supervision which made it possible to reduce visible corruption to a minimum as well as to combat venereal diseases effectively.

7. Experience however had proved how specious that theory was. Neither morality nor public health had gained anything by its application. Mr. Sutch, Chairman of the Social Commission, had even pointed out that the official registration of prostitutes was an encouragement to the commercial exploitation of vice.

8. The Social Committee of the Economic and Social Council had examined every aspect of the question. So far as public health was concerned, the overwhelming opinion had been that medical treatment could and should be given to every infected person, without having as its corollary the obligatory registration of a certain category of patients.

9. His delegation shared that opinion. It would vote for article 6 as it stood, and hoped that it