

provisions, but he objected to the second part of sub-paragraph *a*. Indeed, his Government could not agree to abide by the terms of agreements to which it had not been a party.

38. Mr. TEJERA (Uruguay) said he had supported the resolution because it represented an important step forward in the field of freedom of information.

39. Referring to the point raised by the representative of Pakistan during the voting, he expressed the opinion that common sense should apply whenever any situation was not explicitly covered by the existing rules of procedure. He felt that when any text was being voted on paragraph by paragraph, representatives should be allowed to clarify various points during the intervals between the separate votes.

40. Mr. KAYSER (France) observed that the word "public", which had given rise to so much discussion, was not included in the French version of sub-paragraph *b* of the resolution just adopted by the Committee. In view of the discussion which had taken place, that omission seemed to constitute a difference of substance.

41. Mr. HESSEL (Secretary of the Committee) having pointed out that the English expression "public information" was usually translated into French merely by the word *information*, Mr. KAYSER (France) said he would leave that matter to the discretion of the Secretariat of the United Nations.

The meeting rose at 12.35 p.m.

## TWO HUNDRED AND THIRTY-SEVENTH MEETING

*Held at Lake Success, New York, on Friday, 30 September 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)<sup>1</sup>**

1. The CHAIRMAN called for examination of two notes by the Secretary-General on the 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).

2. Mr. DELIERNEUX (Secretariat) summarized the background of the text of the draft convention, which had been transmitted to the General Assembly by the Economic and Social Council under its resolution 243 (IX) B. A summary account of the action taken on the subject was contained in the two documents before the Committee. At its ninth session the Economic and Social Council had discussed the draft convention in general terms, article by article, but had not voted on it. The principal articles on which there had been disagreement had been articles 1, 6, 8, 12, 17, 23, 24, 27 and 30. The Secretariat had subsequently introduced a number of drafting changes which had in no case affected the substance of the original text (A/C.3/520, annex I).

3. In view of the somewhat complex juridical questions involved, it might be desirable to transmit articles 8, 12, 25, 26, 28, 29, 30, 31 and 32 to the Sixth Committee for exhaustive examination.

4. The CHAIRMAN observed that a general debate would be unnecessary, since the substance of the draft convention had been amply discussed by the Social Commission and the Economic and Social Council.

5. He therefore proposed that the discussion should be taken article by article.

*It was so decided.*

6. The CHAIRMAN said that the Economic and Social Council's text as revised by the Secretariat

(A/C.3/520, annex I) would be taken as the basic working paper.

7. Replying to Mr. DEMCHENKO (Ukrainian Soviet Socialist Republic), the CHAIRMAN said that amendments to any of the articles should be submitted before 6 p.m. on Monday, 3 October 1949.

8. In accordance with the suggestion of Mr. REEDY (New Zealand), the CHAIRMAN said that the examination of the preamble should follow the discussion of the articles.

9. Mr. REEDY (New Zealand) emphasized that the Economic and Social Council had requested its Social Commission to exclude from its draft, based on the draft convention prepared by the League of Nations in 1937, any changes which did not meet with general approval. The draft convention before the Committee, therefore, contained little that was new but was in the nature of a consolidation of previous agreements and conventions. There could no longer be grounds for any wide divergences of opinion on the substance of the draft convention submitted to the Committee, but certain articles, such as article 6, might still be open to disagreement. His own delegation, however, believed that the existing text was satisfactory.

10. Articles 24 and 27 involved the so-called colonial application clause. That clause had been fully explained and discussed in another context at the third session. It was to be hoped that it would be regarded as a standard form, at least provisionally, for inclusion in international instruments.

11. Mr. Reedy supported the proposal of the representative of the Secretariat that the articles mentioned by him should be transmitted to the Sixth Committee for examination. The Social Commission and the Economic and Social Council had taken a similar view.

12. Mrs. CASTLE (United Kingdom) suggested that all articles except articles 1 to 6 inclusive should be referred to the Sixth Committee, as the legal experts might wish to raise points on

<sup>1</sup> See *Official Records of the Economic and Social Council*, Fourth Year, Ninth Session, *Supplement No. 1*, resolution 243 (IX) B.

articles other than those mentioned by Mr. Delierneux, the representative of the Social Activities Division, such as article 14.

13. Mr. CONTOUMAS (Greece) suggested that the Secretary-General should act as an intermediary through whom the Third Committee might transmit to the Sixth Committee its views on the articles referred to the latter.

14. The CHAIRMAN said that the liaison between the Third and Sixth Committees would be maintained by their presiding officers. The Secretariat could perform a useful function in supplying the previous history of matters under joint discussion. His intention had been to transmit the entire draft convention to the Sixth Committee, with particular emphasis on those articles which in the opinion of the Third Committee 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. He would take the suggestions of the representatives of New Zealand, the United Kingdom and Greece as guidance in co-operating with the Chairman of the Sixth Committee.

#### ARTICLE 1

15. The CHAIRMAN called for discussion of article 1.

16. Mr. CONTOUMAS (Greece) supported the text before the Committee.

17. Mr. OTAÑO VILANOVA (Argentina) wondered why the age-limit mentioned in paragraph 2, sub-paragraph *a* had been fixed at 21 years. The age at which majority was recognized differed in different countries; in his own it was 22. To fix the age at 21 might bring the convention into conflict with existing law in some countries.

18. Mr. DELIERNEUX (Secretariat) explained that the Social Commission had decided on the age-limit of 21 years precisely because the differences between existing law in many countries made it advisable to avoid any attempt to give an internationally valid definition of minority.

19. Mr. NORIEGA (Mexico) observed that conflict with existing law would be inevitable if the age-limit were fixed at 21 — whatever the practical advantage of such a step — since in certain countries application of the convention would fall under statutes against the corruption of minors, whereas, in others, minors had the right to marry with the consent of their parents. It might therefore be advisable to substitute for the fixed age-limit some phrase referring to minority within the meaning of the existing law in each country concerned.

20. Mr. RAMADAN (Egypt) felt that it was not clear whether the words "for purposes of gain" excluded any other purpose. The phrase in paragraph 2, sub-paragraph *b* "for the purpose of being sent abroad" needed explanation.

21. Mrs. ROOSEVELT (United States of America) said that her delegation wished to record its understanding that paragraph 1 was aimed at the traffic in persons for the purpose of prostitution and did not, and was not intended to, provide for the punishment of prostitutes.

22. Mr. DE MARCHENA (Dominican Republic) agreed with the view of the United States representative. The law in his country was based on that principle. He also agreed with the represen-

tative of Mexico; in his own country, the age or the offender was a deciding factor in the prosecution of various offences. The mention of the age of 21 should therefore be deleted, in order that the provisions of the convention might be made compatible with laws of different countries.

23. Mr. FREYRE (Brazil) felt that the existing text of article 1 was unsatisfactory and required more exhaustive examination. The tendency to regard the motive of gain as essential was dangerous. The application of the article in his own country would be weakened if that view prevailed, as it was extremely difficult for prosecutors to prove the motive of gain.

24. Mr. BAROODY (Saudi Arabia) pointed out that while the parties to the convention would agree to punish any person guilty of certain specific actions, the punishment itself would vary greatly as the sentences would be passed in accordance with the domestic legislation of each country concerned. He felt, therefore, that article 1 should make reference to the domestic legislation of the signatories to the convention.

25. Mr. Vos (Belgium) supported the views expressed by the Brazilian representative. It was true that motives of gain made the offences in question even more reprehensible, but they remained offences even when not committed for purposes of gain. It was equally true that motives of gain were usually at the root of such offences, but they were often extremely difficult to prove. He believed, therefore, that the convention would only benefit from the deletion of the words "provided these offences are committed for purposes of gain".

26. Mr. BOKHARI (Pakistan) formally moved the deletion of the words "provided these offences are committed for purposes of gain", and all the words following. Since he supposed there was general agreement that the offences mentioned in article 1 should not take place at all, the purposes for which they might so take place became immaterial. The offence was constituted by the action itself and not by the motives underlying that action.

27. Mr. CONTOUMAS (Greece) felt that members of the Committee should remember that they were drafting an international convention and that they should in no way interfere with the right of Member States freely to enact their own legislation. The aim of the convention was to provide certain minimum provisions for all Member States. If, however, some countries felt that they wished to go further and punish the offences in question regardless of the purpose of gain, they were perfectly free to do so. He knew full well that such offences might at times be motivated by other considerations than those of gain, but prostitution for purposes of gain was a typical case and as such should be punished by all Member States.

28. He also realized that to define the exact age at which a person reached his or her majority was extremely difficult in view of the varied, and at times conflicting, provisions of various legislations. He felt, however, that the age of 21 years was on the whole a good choice, for it was generally agreed that below that age a person's mind or character was not yet sufficiently developed to resist pressure or enticement.

29. Mr. KATZNELSON (Israel) said that his delegation would prefer not to change a text which had already been thoroughly examined by various competent and technical bodies. He also supported the view that majority was reached at the age of 21. He wondered, however, whether the Secretariat might not be able to supply more information on the question of motives of gain, which had proved so highly controversial in the past.

30. Mr. ORTIZ MANCÍA (El Salvador) believed that it would often be extremely difficult to prove that a particular offence had been committed for purposes of gain. Furthermore, he agreed with the representatives of Mexico and the Dominican Republic that it would be better to avoid any reference to a definite age of majority and leave the matter to be settled in accordance with the various existing domestic legislations.

31. Mr. RAMADAN (Egypt) supported the views expressed by the representative of El Salvador. Pointing out that identical sentences could not be passed on criminals and accomplices, he wondered whether the Sixth Committee might not be asked to prepare different scales of punishments for criminals and their accomplices.

32. The CHAIRMAN observed that any attempt to draw up a scale of punishments might be considered as interference with the domestic legislations of Member States.

33. Mr. MENESES PALLARES (Ecuador) thought there was no need to delete the reference to purposes of gain since it was clearly stated in the final protocol to the draft convention that the provisions of that convention should be regarded as a minimum in the sense that the parties to the convention remained free to punish the offences in question regardless of the purpose of gain.

34. Mr. OTAÑO VILANOVA (Argentina) believed it was extremely difficult to determine the exact intent of any offence. Hence, he agreed with the suggestions made that the words "provided these offences are committed for the purposes of gain" should be deleted. The reference to persons being enticed for the purpose of being sent abroad again raised the difficulty of determining the exact motive of a given offence; he therefore supported the Brazilian and Pakistan suggestion that it also should be deleted. Furthermore, there was no real need for the words "to gratify the passions of another" as that was the generally accepted aim of prostitution. He also wished to emphasize that the deletion of the reference to purposes of gain would render unnecessary any distinction between adults and minors and thus obviate many legal difficulties.

35. Mr. PITTALUGA (Uruguay) supported the text which the Social Commission had drafted after thorough consideration of all the problems involved. It was obvious that gain was one of the main motives underlying prostitution. He wished to support the view expressed by the United States representative that the purpose of the convention was not to punish prostitutes, but those who derived profit from prostitution.

36. Mr. PAJVAK (Afghanistan) taking up the suggestion originally made by the representative of Saudi Arabia, formally proposed that the words "in accordance with their domestic legislation" should be inserted after the words "The Parties to this Convention agree to punish". He

realized that the point in question was already covered by article 13 but wished to have it stressed in the first article of the convention.

37. Mrs. CASTLE (United Kingdom) could not agree with the amendment proposed by the representative of Pakistan although she fully sympathized with his views. It was widely held that the most efficient way of dealing with prostitution was to tackle the very root of the evil, namely the *souteneurs* and the *procurers*. Hence, the convention was directly aimed at the commercial aspect of prostitution. It had been argued that it would be very difficult to produce concrete evidence of the motives of gain. She felt, on the contrary, that it was essential to retain some factual element which could be proved in any court of law, and in her opinion motives of gain would constitute such a factual element. Without any reference to motives of gain, the convention would render liable to punishment many acts which, however reprehensible from a moral point of view, could not easily be given a statutory definition. As the representative of Ecuador had rightly remarked, there was nothing to prevent any country from punishing the offences in question regardless of the purpose of gain if they wished to do so.

38. Mr. DE MARCHENA (Dominican Republic) referred to paragraph 2 of article 1 and pointed out that the Spanish expressions *ánimo lucrativo* or *ánimo de lucro* did not convey the same meaning as the French expression *but lucratif*, which was usually translated into Spanish as *fin lucrativo*, and was a generally accepted legal definition in all Latin-American countries.

39. The CHAIRMAN said he would refer that matter to the Secretariat.

40. Mr. BOKHARI (Pakistan) was glad that the representatives of El Salvador, Egypt, Brazil and Argentina shared his view that it was unnecessary to mention the motive of gain. At the same time, however, those representatives had discussed the merits of sub-paragraphs *a*, *b* and *c*. He therefore wished to emphasize that the whole of the second part of the article would become unnecessary if the reference to the motive of gain were deleted. It was only because of the insertion of the concept that the offences should only be punishable when committed for purposes of gain that it had become necessary to list the exceptions.

41. The representative of Greece had quite reasonably pointed out that if the mention of the motive of gain were deleted, the provisions of the convention would go beyond those contained in the legislation of various countries. Mr. Kokhari recognized that fact, but pointed out that it was the purpose of international conventions to encourage countries to improve their existing legislation. In his opinion, the drafters of international agreements should take the lead in advocating advanced measures instead of basing their drafts on the minimum provisions of existing legislations.

42. The preamble to the draft convention stated that prostitution was incompatible with the dignity and worth of the human person and endangered the welfare of the individual, the family and the community. That statement remained equally true no matter what the motives for the offence were and it would therefore give a false impression if undue emphasis were laid on the motive

of gain. It would seem, in fact, as though it was only by making money out of the prostitution of others that the dignity and worth of the human person could be impaired. Some representatives had stated that if the draft convention contained the minimum provisions acceptable to all, it would not prevent certain countries from applying stricter legislation, or from punishing the offence even when it was not committed for purposes of gain. Mr. Bokhari pointed out that the reverse was also true. If the draft convention stated that the offence was punishable in any circumstances, States would still be able to punish those who committed it for purposes of gain. It seemed almost as though those who objected to his amendment were attempting to protect a certain category of offenders.

43. The United Kingdom representative had argued that the retention of the reference to the motive of gain would provide a concrete element which would make it easier to convict the offenders, but Mr. Bokhari emphasized that, in any event, the actual offence would still have to be proved. Thus the retention of the reference to the motive of gain would simply mean that two things would have to be proved instead of one.

44. In conclusion, he strongly urged the Committee to adopt his amendment and to refrain from placing such undue emphasis on the profit motive when the question at issue was so much more far-reaching in scope.

45. Mr. NORIEGA (Mexico) felt that some mention of the motive of gain should be retained. He suggested, however, that it might be possible to reach a compromise between the two divergent points of view by saying "for gain or any other purpose".

46. Mr. AQUINO (Philippines) pointed out that there were two essential motives mentioned in the existing draft of the article, to wit, the gratification of the passions of another and the purposes of gain. The phrase "to gratify the passions of another" appeared at the very beginning of the article and thus governed all the other provisions. It would therefore be necessary to prove that motive as well as the motive of gain when attempting to convict anyone under sub-paragraphs 1 and 2. In his opinion, it was more important, for the purposes of the convention, to emphasize the motive of gain and he therefore suggested that the first part of the article should be amended to read as follows:

"The Parties to this Convention agree to punish any person who, for purposes of gain . . .".  
The reference later in the article to the purposes of gain would then be unnecessary.

47. Mrs. VIAL DE SEÑORET (Chile) pointed out that, according to *The Oxford Dictionary*, the motive of gain was implicit in the meaning of the word "prostitution". It might therefore simplify the discussion if the Committee were to decide to delete from article 1 the reference to the motive of gain. Since many tricky legal points

had already arisen during the discussion, she suggested that it might be better to refer the article to the Sixth Committee.

48. Mr. CONTOUMAS (Greece) thought it would be better for the Third Committee to decide the question of principle involved in article 1, as the discussion thus far had shown that members had sufficient knowledge of legal matters to do so. If necessary, the Sixth Committee could review the drafting afterwards.

49. He supported the retention of the reference to the motive of gain since the basic purpose of the convention was to prevent the exploitation of the prostitution of others as a commercial enterprise. If that much could be achieved on an international level, it would already be a step forward. As the representative of Ecuador had stated, countries would be free to enact stricter legislation than that provided for in the convention if they wished.

50. He supported the Philippine representative's suggestion that the reference to the purpose of gain should be transferred to the beginning of the article.

51. Mr. NORIEGA (Mexico) agreed with the representative of Greece that the Third Committee itself should settle the question. The Committee would gain experience in legal matters in the course of its discussion of the draft convention and in the end it might not prove necessary to refer any of the articles to the Sixth Committee.

52. Replying to the point raised by the representative of Chile, the CHAIRMAN said he thought it would be better for the Third Committee to continue studying the draft convention itself. If the legal problems became too involved, it would always be possible to refer them to the Sixth Committee in the last resort.

53. Mr. OTAÑO VILANOVA (Argentina) reaffirmed his opinion that the reference to the motive of gain should be deleted. Nevertheless, he was prepared to support the Mexican compromise proposal in order to facilitate agreement.

54. Mr. BOKHARI (Pakistan) said that if the Mexican amendment were put to the vote he would be prepared to support it because, in his opinion, its adoption would have the same effect as he had wished to achieve in proposing the deletion of the last part of the article.

55. The CHAIRMAN suggested that the Committee might decide in principle whether it wished to retain or delete the reference to the motive of gain, without prejudice to the final drafting.

56. Mrs. ROOSEVELT (United States of America) said that she would prefer to vote on the actual texts of amendments rather than on the question of principle.

57. The CHAIRMAN agreed to postpone the vote until the following meeting when the texts of amendments would be circulated.

The meeting rose at 1.10 p.m.