TWO HUNDRED AND THIRD MEETING

Held at Lake Success, New York, on Wednesday, 23 November 1949, at 3 p.m.

Chairman: Mr. E MAUNG (Burma).

Consideration at the request of the Third Committee, of certain articles of the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/C.6/329 and A/C.6/329/Add.1) (*continued*)

FEDERAL CLAUSE (*concluded*)

1. Mr. RENOUF (Australia) said that, as a result of the debate at the 202nd meeting, his delegation had agreed with the delegations of Argentina and India, the latter of which was withdrawing its own amendment,[1] to draft a joint amendment to the article relating to federal or non-unitary States which had been proposed by the delegations of the United States and France, and was included in part II of the Sub-Committee's report (A/C.6/L.88). The joint amendment to that proposed article would alter the text to read as follows (A/C.6/L.97):

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

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

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

2. The CHAIRMAN considered that, since the question had been discussed at length at the 202nd meeting, a vote should be taken immediately on that amendment, unless there were any urgent reasons for more extensive debates.

3. Mr. KORETSKY (Union of Soviet Socialist Republics) pointed out that the Committee now had before it two texts of a federal clause, both of which had individual characteristics. It would be impossible to take a vote on those texts immediately, for the Committee first had to decide whether or not a federal clause was to be included in the convention. The Committee might take a negative view on that point, and it was therefore obvious that such a preliminary vote might have the desirable effect of simplifying the discussions.

4. Mr. RENOUF (Australia) did not object to the substance of the USSR representative's views. At the same time, he felt that the procedure proposed by that representative was neither practical nor in conformity with the rules of procedure. The Committee had to take a decision on a concrete proposal, and not on an abstract principle. The joint draft amendment was the only concrete suggestion before the Committee on the subject of the proposal of the delegations of France and the United States.

5. Mrs. BASTID (France) suggested that, in the circumstances, the Committee might be called upon to answer the question whether it should vote first on a text or on a principle.

6. The CHAIRMAN stated that the Australian representative's views were correct from the procedural point of view. He therefore proposed that the Committee should vote on the joint draft amendment. If that draft were not adopted, the Committee might vote on the proposal of the delegations of France and the United States (A/C.6/L.88, part II).

7. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that such a procedure might give rise to difficulties, for it was important for the Committee first to decide upon the question of principle. If the Committee were to take an affirmative decision, and any delegation considered that the federal clause was unnecessary, that delegation might move an amendment to the proposed clause. He could not see why the Australian representative should oppose a procedure which had often proved useful in the Committee.

8. The CHAIRMAN upheld his decision first to put to the vote the amendment proposed by India, Argentina and Australia.

9. Mrs. BASTID (France) drew the Committee's attention to the paradoxical nature of the Chairman's decision. The Third Committee had referred certain legal problems to the Sixth Committee. In the case at issue, the Sixth Committee had to decide upon the conditions in which a convention providing for certain modifications in the legislation of the signatory States was to be applied by States with multiple legislations, such as a federal State, or the system of the French Union. It was questionable whether the Sixth Committee would fulfil its functions of giving legal advice to the Third Committee if it confined itself to considering the problem from the point of view of the classical federal State, and ignored other State systems the existence of which could not be denied.

10. It had been alleged that the formula proposed by the delegations of France and the United States was liable to involve the application of a colonial clause. The French delegation had already pointed out that the intention had been to provide for the case of States, such as France, whose structure, although comparable to that of federal States, was different.

11. The joint amendment of India, Argentina and Australia was illogical, because it deliberately ignored a concrete aspect of the problem. It was based upon anti-colonial concepts, and not upon a wish to conduct a serious and complete study of the juridical problem raised by the Third Committee.

12. The proposal made by France and the United States might not provide the best possible solution,

[1] See the summary record of the 202nd meeting, paragraph 26.

but the problem as a whole was worthy of special and separate consideration.

13. The French delegation considered that such a problem should be referred to the International Law Commission. That body was best qualified to provide, after consultation with Governments, an appropriate formula for the effective and universal application of that kind of convention by all the signatory States.

14. Mr. FERRER VIEYRA (Argentina) recalled that he had had an opportunity at the 202nd meeting[1] to give his delegation's views on the proposal of the delegations of France and the United States. He now wished to raise the question of the competence of the Sixth Committee to discuss the colonial clause. He pointed out that the question had given rise to political discussions in the Third Committee, and that it had been decided to delete the colonial clause. That decision was final. The reference of the question to the Sixth Committee, therefore, only involved the federal clause. Nevertheless, in the French and United States proposal reference was made to both the colonial clause and the federal clause. The Argentine delegation did not consider that the Sixth Committee was competent to re-insert the colonial clause in the draft convention, for the Committee was not competent to revise a decision of substance taken by the Third Committee.

15. With regard to the joint draft amendment, the Argentine delegation was concerned about the extent of the obligations that its country would undertake in signing the convention, which dealt with questions that fell within the internal competence of provinces. The provinces of Argentina made their own laws, but the existence of a federal clause would enable the central Government of the country to recommend that the provinces should modify their legislation in accordance with the provisions of the convention. In the absence of such a clause, no federal government would be able to make such recommendations; and it would be difficult to achieve the purposes of the convention.

16. Mr. FITZMAURICE (United Kingdom) considered that the first question to be settled was that of competence, which had been raised by the Argentine representative. A perusal of the terms of reference given to the Sixth Committee (A/C.6/329) showed that it was called upon to refer back to the Third Committee approved texts for the articles submitted to the Sixth Committee for its consideration, "together with any comments it deems necessary to submit on any other legal problem arising from the draft convention".

17. The representative of France had been right in saying that the juridical study of the problem under discussion fell within the competence of the Sixth Committee, since it arose out of the federal clause that was included in the Committee's terms of reference.

18. Mr. KORETSKY (Union of Soviet Socialist Republics) stated that the United Kingdom representative's interpretation was inadequate, since, under its terms of reference, the Sixth Committee was only called upon to deal with juridical problems which the Third Committee did not consider itself competent to solve. With regard to the question under discussion, however, the Third Committee had considered itself to be competent, since it had decided to delete the colonial clause. It was useless to question the decision of another Committee at that stage; the delegations of France and the United Kingdom were free to raise the question in the General Assembly.

19. He supported the point of view of the Argentine delegation.

20. The CHAIRMAN remarked that the Argentine representative had not formally raised the preliminary question of the Committee's competence. In his opinion, the Committee's terms of reference covered not only the proposed articles, but also "any comments it deems necessary to submit on any other legal problem arising from the draft convention". Those terms of reference were sufficiently wide to include the question whether or not the colonial clause envisaged in the French and United States proposal should be adopted. That question was more juridical than political in character, so that it was fully within the competence of the Sixth Committee.

21. Mr. SOTO (Chile) thought that the arguments of the Chairman and of the United Kingdom representative rested on the last part of the Committee's terms of reference requesting the Committee to forward "comments". For the time being, however, the problem was not one of comments but of concrete proposals for the drafting of an article of the convention. There was nothing to prevent the Sixth Committee from forwarding comments to the Third Committee; the Sixth Committee, however, could not reverse a decision of the Third Committee.

22. Mr. GARCÍA AMADOR (Cuba) endorsed the views of the Argentine and Chilean representatives. He wondered whether the Chairman would not agree to change his ruling, for it was essential not to trespass on the competence of the Third Committee by reversing one of its decisions.

23. He suggested that the Chairman should, by way of compromise, call for a vote on the question of principle asked by the USSR representative to decide whether the draft convention should include a federal clause.

24. The CHAIRMAN said that he maintained his former ruling. Under rule 102 of the rules of procedure, that ruling could be overruled by the Committee.

25. Mr. BARTOS (Yugoslavia) pointed out that, under the rules of procedure, any representative could raise the question of competence, which was settled by the Committee itself and not by the Chairman.

26. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that both rule 102 dealing with points of order and rule 110 dealing with decisions on competence could be invoked in the circumstances. Rule 110, however, dealt only with the competence of the General Assembly and could not, therefore, be invoked in that case. Consequently, a decision had to be taken under rule 102, which laid down that the Chairman's ruling on a point of order could be either overruled or maintained by a vote of the Committee.

27. Mr. BARTOS (Yugoslavia) emphasized that the issue at stake involved not only the competence

[1] See the summary record of the 202nd meeting, paragraphs 29 to 31.

of the Committees but also that of the General Assembly regarding the domestic affairs of States. The amendments before the Committee requested the General Assembly to take a decision concerning the internal difficulties of some States. The Yugoslav delegation, however, believed that the General Assembly was not competent to settle questions relating to the internal affairs of States.

28. Mr. FERRER VIEYRA (Argentina) made it clear that he had not asked the Committee to take a decision on the question of its own competence. He had merely said in his previous statement that, in the opinion of the Argentine delegation, the matter under discussion was not within the competence of the Sixth Committee.

29. He also believed that the question, put as the Yugoslav representative had put it, was not well founded because the competence of the General Assembly was a matter for the General Assembly itself, and not for the Committee, to decide.

30. Mr. KORETSKY (Union of Soviet Socialist Republics) felt that the Committee should not invoke rule 110 but rather rule 89 which, in his opinion, provided an adequate solution to the problem. The rule laid down that "Committees shall not introduce new items on their own initiative". As the problem in question had already been settled, there was no need to reopen discussion on it.

31. Mr. BARTOS (Yugoslavia) reminded the Committee that he had formally raised the question of competence.

32. The CHAIRMAN called for a vote on the following proposal: "The Committee is not competent to discuss the question of the colonial clause".

The proposal was adopted by 19 votes to 15, with 4 abstentions.

33. Mr. SPIROPOULOS (Greece) believed that rule 110 dealt mainly with questions which, in general, were within the competence of the General Assembly; the only questions excluded from that competence were those relating to the internal affairs of States.

34. The Committee, however, was faced with a different issue: was the question of the colonial clause on the agenda of the Committee? As the United Kingdom representative had pointed out, it could be held that the Committee was competent, under its terms of reference, to discuss that question.

35. Mr. MELENCIO (Philippines) wondered whether for the sake of greater certainty it might not be better to call for a new vote on the issue just settled.

36. The CHAIRMAN replied that a decision having been taken, a fresh vote could not be taken on the matter unless the representative of the Philippines so requested under rule 112.

37. He then asked the Committee to express an opinion on the joint amendment of Argentina, Australia and India.

38. Mr. LOUTFI (Egypt) remarked that the USSR and Cuban representatives had asked that the Committee should first settle the preliminary question, namely, whether the convention should include a federal clause.

39. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) pointed out that, in some exceptional cases, it might be advisable to vote first on principles. There were precedents for such procedure, such as Mr. Alfaro's decision at the third session of the General Assembly to refer the question of reparations to the International Court of Justice.[1] The Chairman could, if he thought it advisable, ask the Committee to settle a question of principle. It was for him to decide whether the situation required such a procedure.

40. Mr. DUYNSTEE (Netherlands) said that the vote which had just been taken had not been in order. He recalled that there had been only one proposal before the Committee, to wit, the Yugoslav proposal that the General Assembly was not competent to examine the question under discussion. The vote, however, had been taken on an entirely different question.

41. Mr. LOUTFI (Egypt) believed that, in view of the statement made by the Assistant Secretary-General, it might be advisable to call for a vote on the question of principle. The Egyptian delegation supported the suggestions of the representatives of the USSR and Cuba to that effect.

42. Mr. GARCÍA AMADOR (Cuba) said that it followed from the indications given by the Assistant Secretary-General that members of the Committee could alter the situation only by appealing against the ruling of the Chairman. It was the established tradition to adopt that course only in extreme cases, and the Cuban and USSR representatives had no intention of doing so. They believed, however, that their request was fully logical from the procedural point of view. Members could ask the Chairman to rule that a vote should be called on a preliminary question. In the circumstances, that could only facilitate the discussion since, should the vote be in the negative, the Committee would be spared the examination of pointless amendments.

43. The CHAIRMAN said that he had himself raised the question of the Committee's competence to deal with the colonial clause, and the matter had been clearly settled by a negative vote. That vote could not be cancelled.

44. The next point to be settled was that raised by the representative of Yugoslavia, who did not think the Assembly was competent to discuss the way in which sovereign States should carry out their international obligations in accordance with their constitutional structure.

45. Mr. DUYNSTEE (Netherlands) considered that priority should have been given to the question raised by the representative of Yugoslavia and that, consequently, the vote taken on the point raised by the Chairman should be cancelled.

46. Mr. COHEN (United States of America) said that there had been a great deal of confusion at the time of the vote, and some delegations might have thought that it had been taken on the Yugoslav proposal. Since that proposal was now to be put to the vote, the previous vote should be cancelled and erased from the record.

[1] See *Official Records of the third session of the General Assembly, Part I,* Sixth Committee, 118th meeting, pages 582 to 584.

47. Mr. GARCÍA AMADOR (Cuba) considered that, on the contrary, the Committee had decided quite clearly and with full knowledge of the facts that it was not competent to discuss the colonial clause. The vote on that point was therefore final. The Yugoslav proposal raised an entirely different issue, that of the Assembly's competence to discuss the federal clause.

48. Mr. FERRER VIEYRA (Argentina) agreed with the representative of Cuba. Having recognized that it was not competent to discuss the colonial clause, a question which had already been settled by the Third Committee and had not therefore been submitted to the Sixth Committee, the latter could quite well proceed to take a decision on the Yugoslav proposal concerning the Assembly's competence to deal with the federal clause.

49. The CHAIRMAN put the Yugoslav proposal to the vote.

The Committee decided, by 24 votes to 1, with 11 abstentions, that the General Assembly and the Sixth Committee were competent to discuss the problem of the federal clause.

50. Mr. COHEN (United States of America) wondered whether, after the vote on the colonial clause, the joint United States and French proposal (A/C.6/L.88, part II) was still before the Committee, since it contained some elements of the colonial clause as well as the federal clause.

51. The CHAIRMAN replied that he had the intention to put the proposal to the vote because, although some delegations considered that it contained some elements of the colonial clause, at least in their formative stage, others might well argue that it did not.

52. Mr. ZIAUDDIN (Pakistan) pointed out that the vote just taken on the Yugoslav proposal did not in any way alter the Committee's decision that it was not competent to discuss the colonial clause. That decision remained final.

53. Mr. LOUTFI (Egypt) considered that the result of the vote concerning the colonial clause was perfectly clear and that, in consequence, the part of the French and United States proposal which concerned the colonial clause was out of order. Only the part concerning the federal clause should remain before the Committee.

54. The CHAIRMAN admitted that, in principle, the Egyptian representative was quite right. Nevertheless, as it was extremely difficult to decide which parts of the proposal concerned the colonial clause and which parts the federal clause, and as there might well be a variety of interpretations, he thought it would be better to put the whole proposal to the vote. As for the order of voting, he thought it would be easier to vote immediately on the joint proposal. In that way the Committee would, at the same time, decide on the principle of including a federal clause in the convention, a principle which the delegations of Cuba, Egypt and the USSR thought should be settled as a preliminary question.

55. Mr. GARCÍA AMADOR (Cuba) insisted that a vote should be taken on the preliminary question. The problem of the colonial clause had already been settled, and so had the point raised by the Yugoslav delegation. In his opinion, the question to be settled next was the principle of the inclusion of a federal clause, which, because of the shades of meaning some delegations wished to introduce, might at the same time incorporate the already rejected colonial clause.

56. Mrs. BASTID (France) considered that the Committee should vote on the texts before it and not on questions of principle.

57. She saw no reason why it should be maintained *a priori* that parts of the United States and French proposal related to the colonial clause. There was actually no definition of the federal clause as such. The deletion of the word "territory" from the text of the proposal would not suffice to exclude the French Union from the application of the article because the component parts of the Union could quite well be designated by the word "State". It would be impossible to divide the text in order to separate the parts concerning the classical type of federal State from those which dealt with a constitutional system such as that of the French Union. The Committee should therefore take a decision on the proposal as a whole.

58. Mr. KORETSKY (Union of Soviet Socialist Republics) said that, out of courtesy, he would refrain from challenging the Chairman's ruling. If, however, the Chairman decided not to take a vote first on the principle of the inclusion of a federal clause in the convention, his delegation would reserve the right to request a discussion on the joint amendment (A/C.6/L.97).

59. Mr. FERRER VIEYRA (Argentina) said that the USSR proposal that the question of principle should be put to the vote first was out of order. The only thing the USSR delegation could do was to challenge the Chairman's ruling to the effect that the joint amendment would be put to the vote first.

60. The CHAIRMAN said that, in order to avoid a discussion on the points raised in the joint amendment, points which had already been discussed at length by the Committee, he would agree to the request made by the representatives of Cuba, Egypt and the USSR and take a vote on the question whether the convention should contain a federal clause.

The Committee decided by 13 votes to 12, with 11 abstentions, in favour of the inclusion of a federal clause.

61. The CHAIRMAN called for a vote on the joint amendment submitted by Argentina, Australia and India (A/C.6/L.97) to the article proposed by the delegations of France and the United States (A/C.6/L.88, part II).

62. Mr. DUYNSTEE (Netherlands) requested a separate vote on the deletion of the words "or non-unitary", which appeared in the first sentence of the proposed article and were omitted from the joint amendment.

63. Mr. KORETSKY (Union of Soviet Socialist Republics) wished briefly to criticize sub-paragraph (*b*) of the joint amendment before it was put to the vote. There were a number of important questions which remained unanswered in that text.

64. He asked what was the exact meaning of the first change proposed in that sub-paragraph. Did it mean that no article of the convention could be applied until it had been referred to the authorities of the provinces for a decision?

65. Should it also be inferred from that sub-paragraph that it was for the federal State to allocate fields of competence, to decide which articles should be applied on a federal basis and which fell within the exclusive competence of the provincial authorities? In that latter case, was it for the federal State to tell the local authorities what steps they should take to ensure the application of the article on their territory?

66. If the application of an article was considered to be within the jurisdiction of a provincial unit, would that article remain without effect for both the federal State and the unit concerned until that unit had decided that it should apply?

67. It was stipulated in sub-paragraph (*b*) of the joint amendment that when the federal State decided that an article was within the jurisdiction of the provincial unit, it must bring that to the knowledge of the competent authorities of that unit. The need for such a communication did not seem to arise, because, once the convention had been promulgated by the federal State, the local authorities could not remain in ignorance of it, since they, more than anyone else, were supposed to know the law and consequently ought, of their own accord, to adopt the measures required for the application of the convention in the unit under their jurisdiction.

68. Furthermore, it was stated in the amendment that the federal State should recommend to the provincial authority the adoption of the article concerned. That might be regarded as a new system for the adoption of multilateral conventions, in which not only the federal State but also each provincial unit would have to adhere separately to certain provisions in such conventions. If that were so, the accepted rule of the reciprocity of international obligations would be violated, because the federal States signatories to the convention would enjoy the privilege of being able to evade certain of its stipulations. From the point of view of doctrine, that would imply the creation, side by side with the body recognized in international law — the federal State — of semi-bodies in its constituent units. That the various States which made up a Commonwealth should adhere to a convention separately was conceivable; but that the same could hold good for provinces, cantons or territories would be contrary to the most elementary concepts of international law.

69. Finally, the text of the joint amendment was not clear enough; and, above all, it would enable the federal State to adhere to the convention but release certain of its constituent units from the obligation to apply it. The USSR delegation therefore had no desire to attempt to improve in any way the amendment submitted jointly by the Argentine, Australian and Indian delegations and would simply vote against it.,

70. Mr. FERRER VIEYRA (Argentina) felt that it made little difference in what manner the articles requiring local action were brought to the knowledge of provincial units. The essential thing was that the federal State should recommend to those units that they should revise their legislation to bring it into conformity with the provisions of such articles. That was the real meaning and the purpose of sub-paragraph (*b*) of the amendment. It was indeed obvious that the federal Government would not be able to take any action with respect to such articles and could only transmit them to the provincial authorities for the requisite revision of legislation It would be incorrect, however, to conclude that the provincial units must adhere individually to the convention.

71. With respect to the articles whose application was a matter for federal action, it was clear that it was the federal State alone which would itself assume direct responsibility for them in adopting the convention; such was the meaning of sub-paragraph (*a*) of the amendment.

72. Mr. MATTAR (Lebanon) said that if the federal clause was adopted by the Committee, either in the form of the joint amendment or in that of the original proposal, his delegation would request the addition of a third sub-paragraph enabling States parties to the convention to be kept informed of the measures taken by the provincial units for the purpose of making the various articles of the convention applicable to their territories. That paragraph would read as follows:

"Every federal State Party to the present Convention shall, at the request of any State Party to the Convention, report what action has been taken by the governments of its constituent States, provinves or cantons to put into effect the provisions of the present Convention, in conformity with the recommendations referred to in the preceding sub-paragraph."

73. Mr. Mattar said that the United Kingdom delegation had proposed the insertion of a similar text in the draft covenant on human rights.

74. The CHAIRMAN called upon the Committee to vote on the text submitted by the Argentine, Australian and Indian delegations (A/C.6/L.97). In view of the fact that that text might be considered to embody a number of amendments to the article on federal or non-unitary States proposed by the United States and French delegations (A/C.6/L.88, part II), the Chairman first put to the vote the first of those amendments, proposing the deletion, from the first phrase of the words "or non-unitary".

That amendment was adopted by 15 votes to 10, with 8 abstentions.

75. Mr. RENOUF (Australia) observed that opinions had been divided mainly about the first amendment to the joint text of the United States and France. As that first change had been accepted, he proposed that the remainder of that text (A/C.6/L.97) should be put to the vote as a whole.

Sub-paragraphs (a) *and* (b) *of the joint Argentine-Australian-Indian amendment were rejected by 17 votes to 11, with 8 abstentions.*

76. The CHAIRMAN put to the vote the text of the article on federal or non-unitary States proposed by the United States and French delegations (A/C.6/L.88, part II).

That text was rejected by 14 votes to 12, with 8 abstentions.

77. Mr. WENDELEN (Belgium) noted that the only positive decision which the Committee had taken in the course of its last three meetings had been to recognize the necessity of including a federal clause in the draft convention under discussion. As a result of the rejection of the two proposed versions of that clause, however, the Committee was not in a position to submit the draft of a federal clause to the Third Committee. Since that was the case, he requested the Rappor-

teur to lay particular emphasis in his report to the Third Committee on the fact that the Sixth Committee had considered that it was necessary to insert a federal clause in the convention.

CLAUSE ON DOMESTIC LAW (*continued*)

78. The CHAIRMAN invited the Committee to examine part III of the Sub-Committee's report (A/C.6/L.88).

79. Mr. BARTOS (Yugoslavia) pointed out that, at least as far as the French text of the draft convention was concerned, it was not possible to insert, as the Sub-Committee had recommended, the words "to the extent permitted by domestic law", in articles 3, 4 and 7, because it was nowhere specifically stated what law was intended, whether that of the accused or that of the place where he was tried.

80. Mr. RENOUF (Australia) thought that no ambiguity was possible in the English text. The effect of the insertion of the words "to the extent permitted by domestic law" in draft articles 3 and 4 would be to give prior validity to the provisions of the domestic law of the States which adhered to the convention when those provisions conflicted with those of the articles in question.

81. It must not be forgotten that draft articles 3 and 4 introduced concepts unknown to certain penal codes which, like Australian legislation, took no cognizance of acts preparatory to an offence. The absence of a provision such as that proposed by the Sub-Committee would prevent Australia from adhering to the convention, because it was impossible to ask States to alter the basic structure of their penal codes in the interests of a convention dealing with a particular category of offences.

82. The same was true with regard to draft article 7, which dealt with disqualification from the exercise of civil rights, a matter which was, in Australia, a purely constitutional question.

83. The somewhat different formula which the Sub-Committee recommended for insertion in draft articles 19 and 20 would not permit parties to the convention to elude completely the obligations deriving from those articles in cases where the provisions of their domestic law were not entirely in consonance with the convention.

84. Mr. BARTOS (Yugoslavia) thought that if "domestic law" was intended to mean the law of the place where the accused was tried, it would be more advisable so to specify. He therefore proposed that the words "to the extent permitted by the domestic law of the court trying the offence" should be substituted for the expression "to the extent permitted by domestic law".

85. Mr. KORETSKY (Union of Soviet Socialist Republics), although he fully shared the Australian representative's views on the need for introducing into some articles of the draft convention a reservation on the domestic law of the parties to that convention, wondered whether it was really necessary to change the wording of the text submitted by the Third Committee: "subject to the requirements of domestic law". There had been no suggestion that the wording of the new text proposed by the Sub-Committee was more satisfactory than the old.

86. In Mr. Koretsky's personal opinion, international conventions should be couched in standardized terms, and a terminology sanctified by use should not be changed except for serious reasons.

87. Mr. MELENCIO (Philippines) drew attention to the fact that the chief question asked by the Third Committee was whether the retention of the wording "subject to the requirements of domestic law" would allow the States parties to the convention the liberty to refrain from punishing any of the acts which were punishable under the terms of the draft convention. He inquired of the Rapporteur of the Sub-Committee whether the Sub-Committee had thought it had really answered the question by suggesting an alternative wording which hardly differed substantially from that of the Third Committee.

88. Mr. RENOUF (Australia) explained that the Third Committee's wording had been abandoned because it was open to different interpretations. The Sub-Committee had concentrated on finding terms which were free from that drawback and had therefore suggested two alternative formulae depending on whether it was desired to emphasize the obligation assumed by the parties to the convention or the procedure by which that obligation would be fulfilled.

89. He drew Mr. Melencio's attention to the fact that the reply to the Third Committee's question emerged clearly from the considerations set forth at length in part III of the Sub-Committee's report.

90. In the opinion of Mr. LOUTFI (Egypt), the problem did not lie in a choice among the various texts proposed, but in the Third Committee's request for information on the legal effects of deleting or retaining the clause "subject to the requirements of domestic law" which figured in several articles of the draft convention.

91. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that the Sub-Committee had not answered the questions put by the Third Committee. The latter had not asked the Sixth Committee to suggest formulae by which to express reservations on the domestic law of the signatories to the convention, but to inform the Third Committee whether the clause "subject to the requirements of domestic law" might weaken the convention by leaving States free to refrain from punishing any of the acts punishable under the terms of the draft convention, on the grounds that their domestic law did not provide for the suppression of those acts. In other words, the Third Committee had consulted the Sixth Committee on the advisability of retaining that clause and on its meaning in certain articles of the draft convention.

92. In the opinion of the USSR delegation, it was the duty of the Sub-Committee to reply to the Third Committee that the reservations relating to domestic law were essential, since, owing to the fact that there neither existed an international legislative body nor an international legal system, the enforcement of the convention could be ensured only through the legislative and judiciary bodies of the States which were parties to the convention.

93. Mr. Koretsky considered that, within the compass of a single convention, it would be a mistake to employ different formulae to express reservations in respect of the domestic law of signatories, since legal experts entrusted with the

interpretation of that convention might derive, from the many alternative expressions used, meanings wholly different from those originally intended by its authors.

94. Mr. COHEN (United States of America) admitted that, in its report, the Sub-Committee had not confined itself to giving direct answers to the questions formally put to it by the Third Committee. The Sub-Committee had expounded all the considerations raised by a study of the various aspects of the problem, but it was clearly empowered to do so since, by its resolution of 3 October 1949 (A/C.6/329), the Third Committee had requested the Sixth Committee to forward any comments it deemed necessary to submit to the Third Committee on any other legal problem arising from the draft convention.

95. Part III of the Sub-Committee's report (A/C.6/L.88) set forth the problem with great clarity, stating that the formula used in some articles of the draft convention was ambiguous and susceptible of different interpretations. Some considered that the formula covered the provisions of both substance and procedure in the domestic laws of the States parties to the convention; others considered that it related only to matters of procedure. Because of the ambiguity of the formula, the Sub-Committee had recommended the use of two different expressions: one, "to the extent permitted by domestic law" when the emphasis was on the obligation itself; and the other, "in accordance with the conditions laid down by domestic law", when only the fulfilment of the obligation was in question. After thus defining the scope of the two formulae, the Sub-Committee had pointed out in which articles of the draft convention it would be appropriate to embody the first, and in which the second. Clearly, however, it was for the Third Committee to decide on the formula it preferred for each article.

96. The Sub-Committee obviously considered that the retention of the Third Committee's wording would leave the States which became parties to the convention free to refrain from punishing any of the acts punishable under the terms of the draft convention unless their domestic law made provision for the punishment of those acts. Thus, for instance, it was for the States parties to the convention to define the "attempts" referred to in draft article 3 and to lay down the conditions regarding their prosecution and punishment.

97. Mr. MELENCIO (Philippines) asked, in reference to the explanations given by the representative of the United States, whether it might not be expedient to specify in the text of the Third Committee's formula that, in some instances, provisions relating to both the substance and procedure of national legislation were involved, whereas other provisions related to legal procedure only.

98. Mr. COHEN (United States of America) said that he, personally, preferred the two formulae worked out by the Sub-Committee after consultation with legal experts in the Secretariat.

99. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) explained that the formula "subject to the requirements of domestic law" had been inserted in the articles of the draft convention concerned at the request of the Social Commission. There had followed, in the Third Committee, a lively discussion on the legal meaning and effects of the presence of that clause in the aforesaid articles. Two conflicting interpretations had been given to it and each had gained about equal support. The Third Committee had then decided to take the Sixth Committee's opinion on the legal considerations involved.

100. The Sub-Committee had decided that the legal effects of the retention or deletion of the clause could not be stated with certainty because of its ambiguous nature. The wording certainly lent itself to the two possible interpretations shown in the report. The Sub-Committee had therefore decided that the wording was unsatisfactory and had proposed that it be replaced by two alternative formulae, which the Sub-Committee regarded as more specific. It was for the Third Committee to define the precise aim it had in view and to approve accordingly one formula or the other. The responsibility of the Sixth Committee lay in approving or disapproving the Sub-Committee's recommendations in the matter.

101. Mr. KORETSKY (Union of Soviet Socialist Republics) asked the Chairman to request the Assistant Secretary-General to find out the formula employed in existing international conventions to express the reservation relating to the requirements of domestic law and the interpretation which had been given to that wording.

The meeting rose at 6.10 p.m.