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SLAVERY

CONSULTATIONS CONCERNING THE DESIRABILITY OF A SUPPLEMENTARY
CONVENTION ON SLAVERY AND ITS POSSIBLE CONTENTS

The Secretary-General of the United Nations has the honour to communicate to the Economic and Social Council herewith his report on consultations concerning the desirability of a supplementary convention on slavery and its possible contents, submitted pursuant to paragraph 4 of the operative part of the Council's resolution 475 (XV) of 27 April 1953.

54-04030

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CONSULTATIONS CONCERNING THE DESIRABILITY OF A SUPPLEMENTARY
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Report by the Secretary-General

INTRODUCTION

1. On 27 April 1953 the Economic and Social Council adopted resolution 475 (XV), the fourth operative paragraph of which reads as follows:

"Requests the Secretary-General to consult the Governments of all States, both Members and non-members of the United Nations, concerning the desirability of a supplementary convention and its possible contents, at the same time communicating to them the proposals of the Committee of Experts contained in its recommendation B (E/1988) and to report to the Council, if possible at its first regular session in 1954."

2. In accordance with the Council's request, the Secretary-General addressed a communication on 18 June 1953 to the Governments of all States, both Members and non-members, drawing their attention to the part of the resolution reproduced in paragraph 1 and requesting them to submit their comments.

3. Two annexes were attached to the above-mentioned communication: the text of the International Slavery Convention of 1926 and the text of Recommendation B of the Ad Hoc Committee on Slavery. ^{1/}

The Secretary-General also enclosed a copy of his Report to the fifteenth session of the Council on Slavery, the Slave Trade, and Other Forms of Servitude (E/2357), paragraphs 31 to 51, 70 and 71 of which contain the Secretary-General's comments on Recommendation B and his supplementary suggestions as to methods of dealing with the problems referred to in that recommendation.

4. By 25 January 1954, the Secretary-General had received replies from the following nineteen Governments:

States Members of the United Nations

1. Burma (reply dated 6 November 1953)
2. Canada (reply dated 18 January 1954)
3. Chile (reply dated 2 September 1953)
4. China (reply dated 17 November 1953)

^{1/} The text of the International Slavery Convention of 1926 is contained in League of Nations document No. C.586.M.223.1926.VI. The text of Recommendation B of the Ad Hoc Committee is contained in document E/1988.

5. Denmark (reply dated 3 October 1953)
6. El Salvador (reply dated 14 July 1954)
7. Haiti (reply dated 18 August 1953)
8. Iran (reply dated 21 August 1953)
9. Luxembourg (reply dated 30 June 1953)
10. New Zealand (reply dated 29 December 1953)
11. Norway (reply dated 6 August 1953)
12. Pakistan (replies dated 6 and 12 January 1954)
13. Philippines (reply dated 27 July 1953)
14. Sweden (reply dated 12 November 1953)
15. United States of America (reply dated 3 November 1953)

Non-Member States

16. Cambodia (reply dated 1 August 1953)
17. Ceylon (reply dated 14 November 1953)
18. Federal Republic of Germany (reply dated 12 November 1953)
19. Monaco (reply dated 19 August 1953)

5. The replies of the following four governments, however, contained no comments on the substance of the problem in question but merely reserved the right to submit comments at a later date:

Member States

1. China
2. El Salvador
3. New Zealand
4. Philippines

One Government, in submitting its comments on the substance of the problem, reserved the right to submit additional comments when it had completed a thorough comparative study of the Slavery Convention and the proposed supplementary convention.

Member State

Pakistan

6. One Government merely stated in its reply that as the problem in question was of no direct concern to its country, it did not wish to submit comments:

Member State

Luxembourg

7. The replies of the following two Governments contain no comments on the questions raised by the Council in operative paragraph 4 of resolution 475 (XV) but contain certain comments concerning other aspects of the problem:

Member State

1. Iran

Non-Member State

2. Cambodia

8. It will be noted that the Council requested the Secretary-General to consult the Governments on two separate points: (a) "the desirability of a supplementary convention" to the International Slavery Convention of 1926, and (b) the "... possible contents of such a convention". The comments contained in the replies concerning each of the questions raised by the Council are analysed in sections I and II, respectively, of this report. Section III provides an analysis of the comments contained in the replies which are not concerned directly with either of the questions raised by the Council but refer to certain other relevant aspects of the problem.

SECTION I

DESIRABILITY OF A SUPPLEMENTARY CONVENTION

9. The replies of twelve Governments contain comments on the first question raised by the Council: the desirability of a supplementary convention to the International Slavery Convention of 1926. These comments can be classified as follows:

10. (a) Government which considers that the desirability of a supplementary convention can be decided only after further studies have been made and additional information obtained on the practices which it is proposed to eliminate.

Member State

United States of America

" . . . the United States believes that before considering the drafting of a supplementary convention on the subject of slavery, further efforts should first be made in appropriate organs of the United Nations to delineate the specific practices which fall within the scope of slavery, and conditions resembling slavery, and means by which these can be effectively abolished, and to seek the co-operation of governments to eliminate these practices and conditions in areas where they still exist.

"The United States agrees with the observation in the resolution adopted by the Economic and Social Council on 27 April 1953, that more information should be obtained on slavery and practices which give rise to conditions similar to slavery. The United States urges that immediate attention be given to the implementation of this observation."

11. (b) Governments which favour the drafting of a supplementary convention or express no objection thereto.

Member States

1. Burma

Note: See the part of the Burmese Government's reply reproduced in paragraph 15 below.

2. Canada

Note: See the part of the Canadian Government's reply reproduced in paragraph 16 below.

3. Chile

Note: See the part of the Chilean Government's reply reproduced in paragraph 15 below.

4. Denmark

Note: See the Danish Government's reply reproduced in paragraph 15 below.

5. Haiti

Note: The Haitian Government's reply refers to another reply by that Government on the question of transferring to the United Nations, by means of a protocol, the functions undertaken by the League of Nations under the International Slavery Convention (operative paragraphs 1 and 2 of Council resolution 475 (XV)). The latter reply states, inter alia, that "it is to be hoped that the majority of the States will favour the adoption of a revised convention on slavery, the slave trade and other forms of servitude".

Another passage of the same reply refers to the supplementary convention in the following terms: "...if it should be decided to adopt a supplementary convention to the 1926 Convention the Haitian Government believes that the transfer to the United Nations of the relevant functions of the League of Nations should be deferred until that time".

6. Norway

Note: See the Norwegian Government's reply reproduced in paragraph 15 below.

Non-Member States

7. Federal Republic of Germany

Note: See the reply of the Government of the Federal Republic of Germany reproduced in paragraph 15 below.

8. Ceylon

Note: See the Ceylon Government's reply reproduced in paragraph 16 below.

9. Monaco

Note: See the reply of the Government of Monaco reproduced in paragraph 15 below.

12. (c) Government which doubts the value of a supplementary convention but expresses its willingness to participate in an international instrument designed to combat and extirpate involuntary servitude.

Member State

Sweden

"The Swedish Government are . . . prepared to participate in an international agreement designed to combat and extirpate involuntary servitude. As the various types of bondage referred to appear to have little or no connection with the notion of slavery, the government are inclined to feel doubtful about the convenience of giving such agreement the form of a Supplementary Convention to the Slavery Convention of 1926."

13. (d) Government which considers that the simultaneous operation of the International Slavery Convention of 1926 and the proposed supplementary convention is undesirable.

Member State

Pakistan

". . . the Government of Pakistan is of the view that the simultaneous operation of two separate conventions, viz. the International Slavery Convention, 1926, and the proposed Supplementary Convention on Slavery, with so large a common scope of application, is undesirable."

SECTION II

POSSIBLE CONTENTS OF A SUPPLEMENTARY CONVENTION

14. The replies of ten Governments contain observations concerning the second question raised by the Council: the possible contents of a supplementary convention to the International Slavery Convention of 1926. These comments can be classified as follows:

15. (a) Governments which accept all the principles set forth in Recommendation B of the Ad Hoc Committee on Slavery or express no objections thereto

Member States

1. Burma

"The Government of the Union of Burma do not see anything objectionable in the Supplementary Convention. The Union Constitution respects the dignity of the human person and the rights bestowed on the citizen by Article 16 and 19, reproduced below, are fundamental rights:

'Article 16 - Rights of Freedom

No citizen shall be deprived of his personal liberty, nor his dwelling entered, nor his property confiscated, save in accordance with law.

Article 19 - (i) Traffic in human beings, and

(ii) forced labour in any form and involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall be prohibited.

Explanation: Nothing in this section shall prevent the State from imposing compulsory service for public purposes without any discrimination on grounds of birth, race, religion or class.'

There are also specific penal and other statutory provisions which may be invoked in support of the Convention, a detailed study of which is given below.

Recommendation 1 of the Ad Hoc Committee (Annex B)

Principle I - (a) Debt bondage is neither practised, nor legal. It contravenes Article 16 of the Union Constitution and would also be hit by the provisions of Section 370 of the Penal Code or of Sections 341, 342, 343 and 344 thereof.

(b) and (c) - The same remarks apply. Serfdom, individual or collective, has no legal status.

(d) Consent is of the very essence of the Burmese Buddhist marriage. In that and other marriages, where the parties lack capacity to contract a valid marriage, that lack of capacity has to be made up with the consent of the parents or guardians.

(e) This practice would be caught in Article 19 of the Union Constitution and Section 370 of the Penal Code. Even in the appointment of a guardian for a minor, his welfare is the paramount consideration, and the same applies to adoption.

- II. This would not cast any onerous burden on the Union Government. The Union Government has occasionally furnished the United Nations with information on human rights in Burma.
- III. This also would not throw any onerous burden on the Union Government. International co-ordination to suppress slavery is desirable.
- IV. As stated above, the Union Government is still associated with the 1926 Convention and there would be therefore no difficulty in re-affirming it.

Recommendation 2.

Citizens of Burma who commit the crimes of slave raiding and slave trading on the high seas can be punished under Section 367 or Section 370 of the Penal Code read with Section 4. Foreigners committing those crimes on the high seas will be outside the jurisdiction of the Union courts. But the principles of International Law are recognized vide Article 211 of the Union Constitution reproduced below:

International Relations

'Article 211. The Union of Burma renounces war as an instrument of national policy, and accepts the generally recognized principles of international law as its rule of conduct in its relation with foreign States'.

and the Courts will abide by them so long as they do not run contrary to municipal laws. The Union Government would therefore be prepared to declare that slave raiding and slave trading on the high seas will be treated as similar to piracy.

3. The Penal Code provides adequately against these offences which would amount to causing hurt or grievous hurt.

4. The early stages of dealing in slaves, e.g. conspiracy to enslave, can be prevented by the Penal Code. Thus conspiracy to enslave is punishable under Section 367 or 370 of the Penal Code read with Section 120 B.

5. Suitable arrangements can be made to have such information as is available furnished.

6. Marriage laws are already in force which provide for contracting a valid marriage before an easily accessible marriage officer. Burmese Buddhist marriages are consensual contracts which have no hint of servile status. The Buddhist Women's Special Marriage and Succession Act

encourages registration of marriages between Burmese Buddhist women and non-Buddhist men in the interest of the women's inheritance and property rights. Under the Act all village headmen are Registrars of Marriages.

7. The marriage law in force in the Union sets the age of consent higher than 16 for males and 14 for females. Under the Child Marriage Restraint Act, a male adult marrying a child, or parents concerned in a child marriage, or whoever solemnizes a child marriage, may be punished. A 'child' is defined as a male under 18 years or a female below 14 years, and a 'child marriage' is a marriage to which either of the contracting parties is a child.

The above detailed study of the proposed Supplementary Convention would show that adequate constitutional and statutory provisions are in force in the Union of Burma to give the Convention the necessary support and sanction. The Union Government therefore considers that no new legislative measures would be called for if it accedes to the Convention."

2. Chile

"Chile considers that slavery, which still persists in certain regions and territories, is a serious problem which demands immediate action to eradicate it. Our Government therefore attaches great importance to the proposal to draw up a supplementary convention containing provisions to give effect to existing protocols, with a view to giving new expression and meaning to established principles, further developing the methods of preventing slavery and establishing standards which correspond to the world situation of today."

3. Denmark

". . . the Danish Government has no objections to a Supplementary Convention being concluded as proposed by the Committee of Experts."

4. Norway

" . . . the Norwegian Government considers it desirable that a Supplementary Convention on Slavery be agreed upon, but as the problem of slavery does not exist in Norway it does not feel called upon to present any views as to its possible contents."

Non-Member States

5. Federal Republic of Germany

"The Federal Government does not object in principle to the conclusion of a supplementary agreement to the Slavery Convention, particularly since the principles set forth in Recommendation B of the Ad Hoc Committee are already embodied in German legislation."

6. Monaco

" . . . The Government of his serene Highness the Prince . . . is prepared to participate in an instrument designed to further the efforts of the United Nations to suppress slavery in all its forms . . ."

"The documents attached to the above-mentioned note of 18 June 1953 do not call for any comment on the part of the Government of the Principality."

16. (b) Governments which accept some of the principles set forth in Recommendation B of the Ad Hoc Committee on Slavery but express objections to certain others.

Member States

1. Canada

"In view of the findings of the Ad Hoc Committee on Slavery that the slave trade, slavery and other forms of servitude still exist in parts of the world, the Government of Canada sees benefit in the proposal to conclude a Supplementary International Convention on Slavery based on Recommendation B (E/1988) of the Ad Hoc Committee on Slavery, which will extend the principles of the International Slavery Convention of 1926 to include various institutions and practices analogous to slavery or resembling slavery in some of their effects . . ."

"The Government of Canada believes that in countries, like Canada, where no slavery exists, the governments concerned should not be required to take positive action to implement the provisions of the proposed Supplementary Convention, since such action would accomplish nothing. Moreover, in Canada, the implementation of some of the provisions of the proposed Supplementary Convention - for example those in recommendations 6 and 7 concerning marriage customs and consent in marriage - would not only serve no useful purpose but would create constitutional difficulties for the Government of Canada arising out of the distribution of legislative power in this country. It is suggested, therefore, that one of the following alternatives be adopted:

(a) that there be included in the Supplementary Convention an article or clause which would ensure that the provisions concerning the enactment of implementing legislation and the filing of annual returns should not be binding on countries which have already eliminated slavery and analogous practices from within their territories; or (b) that such countries should be permitted to make a reservation, when signing the Supplementary Convention, with respect to the enactment of legislation and the filing of returns. In the absence of both of these alternatives, the Government of Canada, although it strongly desires the abolition of the slave trade and slavery in all its forms, would find it difficult to participate in a Supplementary Convention along the lines recommended by the Ad Hoc Committee on Slavery."

2. Pakistan

Note: See the part of the Pakistan Government's reply reproduced in paragraph 13 above. The reply continues as follows:

". . . in case the Economic and Social Council decides in favour of a Supplementary Convention, the Government of Pakistan would have the following comments to make on Recommendation B of the Ad Hoc Committee on Slavery of the Economic and Social Council:

Recommendations regarding proposed supplementary
International Convention on Slavery

Recommendation 1

- I(a) The practice of debt bondage is non-existent in Pakistan. The Government of Pakistan has no objection to the recommendation.
- I(b) The Government of Pakistan has no objection to the recommendation for the same reason as stated against Recommendation 1 I(a).
- I(c) The Government of Pakistan will not be able to implement the recommendation, if adopted, in times of emergency or in regard to services which are essential to the maintenance of the life of the community.
- I(d) No such practices exist in Pakistan. The
I(e) Government of Pakistan has no objection to the recommendation.
- II. The Government of Pakistan has no objection to the recommendation.
- III. The Government of Pakistan agrees with the Secretary-General's views on this recommendation that, in taking the action recommended therein, it would be necessary for the Council to define precisely the obligations which States would undertake, and also to state clearly the nature, power and functions of the contemplated agency.
- IV. The Government of Pakistan subscribes to the views of the Secretary-General that the Council may consider this recommendation unnecessary, as the binding character of the International Slavery Convention of 1926 for parties thereto has never been questioned.

Recommendation 2.^{1/}

. . . the Government of Pakistan has no objection to recommendation 2 . . .

Recommendation 3.

No such practice exists in Pakistan. The Government of Pakistan has no objection to the recommendation.

Recommendation 4.

The Government of Pakistan has no objection to the recommendation. Slavery does not exist in Pakistan in any form; hence the occasion for committing such offences as those enumerated in this recommendation does not arise.

Recommendation 5.

The Government of Pakistan has no objection to communicate to the United Nations information on any laws and regulations which it may enact to apply the provisions of the conventions on Slavery.

Recommendations 6 and 7.

The Government of Pakistan is of the view that the problems enunciated in these recommendations may be appropriately dealt with by the Commission on the Status of Women, to which they should be referred for consideration. These recommendations should not form part of the proposed Supplementary Convention on Slavery. If

^{1/} The original observation on Recommendation 2 contained in the first reply of Pakistan of 6 January 1954 has been replaced in accordance with a further note of the Minister of Foreign Affairs and Commonwealth Relations of Pakistan of 12 January 1954.

the ECOSOC were to decide to adopt them, the Government of Pakistan could not be a party to them, as in Pakistan each community is governed by its personal laws in so far as marriage customs are concerned."

3. Sweden

Note: See the part of the Swedish Government's reply reproduced in paragraph 12 above. The reply continues as follows:

"A detailed examination of the text of Recommendation B of the Ad Hoc Committee on Slavery . . . does not appear to be required at this stage."

Non-Member States

4. Ceylon

"The Minister of External Affairs, Ceylon . . . has the honour to state . . . concerning a new Supplementary Convention on Slavery, that he has no objection to the acceptance of the recommendations 1 to 6 of the Ad Hoc Committee on Slavery, but is unable to give unqualified assent to recommendation 7, regarding the age of consent in marriage.

"In Ceylon, the General Marriages Ordinance has provided for the same ages of consent (Section 14 of Chapter 95). A similar provision exists in the Kandyan Marriages Ordinance (Cap. 96). But the Muslim Marriage Act 13 of 1951 (which is not yet in operation) authorizes the marriage of a girl who has not attained the age of 12, provided the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of the marriage. For the purposes of marriage a Muslim in Ceylon attains 'majority' on reaching' the age of puberty - 54 N 201 at 203 (Privy Council). Thus there will be a few cases of Muslim girls below 12, who have obtained the authorization of the Quazi, being able at present to contract a legal marriage, the penal provision in Section 363 of the Penal Code notwithstanding".

SECTION III

OTHER COMMENTS CONTAINED IN THE REPLIES OF THE GOVERNMENTS

17. The replies of nine Governments contain certain relevant comments on the problem under consideration but do not refer directly to the points raised by the Council in operative paragraph 4 of resolution 475 (XV). These comments can be classified as follows:

18. (a) Governments which propose the adoption of certain other national or international measures for the elimination of slavery and similar institutions and practices.

Member States

1. Canada

"The Government of Canada considers . . . that these institutions and practices, which are largely the results of long-standing customs in certain areas of the world, will not be eradicated without effective action by the governments of these areas. Without this the International Slavery Convention of 1926 and any supplementary agreement will not avail to eliminate slavery and the slave trade in all their forms."

2. United States of America

Note: See the part of the United States Government's reply reproduced in paragraph 10.

3. Sweden

"In the Swedish Government's opinion there exists a general desire that institutions and practices analogous to or resembling slavery should be abolished at the earliest possible date. The Government believe that, in the first place, international measures against such institutions and practices should be taken with a view to improving social and economic conditions in countries concerned. Slavery and analogous practices would, it is deemed, in that case gradually cease to exist."

19. (b) Governments which request that the work of certain functional Commissions of the Economic and Social Council should be taken into consideration in drafting the new international instrument.

Member States

1. Chile

"The Chilean Government ... believes that it would be advisable, in preparing the new protocol, to bear in mind the activities of some of the functional commissions of the Economic and Social Council. The Commission on Human Rights, the Commission on the Status of Women, the Ad Hoc Committee on Forced Labour and other bodies have carried out studies on other aspects of the general problem and have recommended measures for eradicating the causes of slavery.

"On the other hand, since this complex problem does not exist in our country, our Government is unable to make any practical comments as a constructive contribution towards the desired objectives. It will, however, support any suggestion made, encourage any action recommended and co-operate in putting into practice any ideas for eradicating slavery in all its forms and manifestations."

2. Pakistan

Note: See the part of the Pakistan Government's reply reproduced in paragraph 16.

20. (c) Governments which state that the legislation of their country conforms with the principles set forth in Recommendation B.

Member States

1. Burma

Note: See the Burmese Government's reply reproduced in paragraph 15.

2. Iran

"... Iranian legislation as a whole is in conformity with the basic principles set forth in the report of the Committee of Experts and the report by the Secretary-General."

Non-Member States

3. The Federal Republic of Germany

Note: See the reply of the Government of the Federal Republic of Germany reproduced in paragraph 15 above.

4. Cambodia

" . . . The Royal Government of Cambodia has no comment to make, and hereby expresses its adherence, without reservation, to the terms of resolution 475 (XV) on slavery adopted by the Economic and Social Council on 27 April 1953.

"The relevant legislation in force in the Kingdom of Cambodia is consonant with the principles stated by the Economic and Social Council.