UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/2929
1 July 1955

ORIGINAL: ENGLISH

Tenth session

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Annotation

prepared by the Secretary-General

55-17302

EXPLANATORY NOTE

In resolution 833 (IX), paragraph 2 (a), the General Assembly requested the Secretary-General to prepare a concise annotation of the text of the draft international covenants on human rights. The present document has been prepared pursuant to this resolution.

It is divided into ten chapters. Chapter I gives an outline of the history of the draft covenants and Chapter II indicates briefly certain general problems relating to the draft covenants. The preambles, the article on the right of peoples and nations to self-determination and the articles on general provisions, which are either identical or very similar in both draft covenants, are dealt with in Chapters III, IV, and V respectively. Chapters VI and VII cover the articles on civil and political rights and the measures of implementation for such rights. Chapters VIII and IX cover the articles on economic, social and cultural rights and the measures of implementation for such rights. The final clauses, which are common to both draft covenants, are dealt with in Chapter X.

An attempt has been made to present analytical summaries of the debates on all the articles, setting out the main points of substance and important questions of drafting which have been raised. These summaries are condensed and generalized statements and do not necessarily reflect in every detail the views expressed by particular governments. At the end of each summary, relevant documents are listed.

TABLE OF CONTENTS[1/]

1/ A detailed table of contents is given at the beginning of each chapter (except Chapter I).

ABBREVIATIONS

a.i.	agenda item
art.	article
CHR	Commission on Human Rights
com.	committee
CSW	Commission on the Status of Women
DC	Drafting Committee
ESC	Economic and Social Council
GA	General Assembly
mtg.	meeting
para.	paragraph
plen.	plenary
suppl.	supplement

CHAPTER I

AN OUTLINE OF THE HISTORY OF THE DRAFT COVENANTS

1. In pursuance of Article 68 of the Charter the Economic and Social Council, by resolution 5 (I) of 16 February 1946, established a Commission on Human Rights and instructed it to submit proposals, recommendations and reports regarding, inter alia, an international bill of human rights. By resolution 9 (II) of 21 June 1946 the Council further requested the Commission to submit "suggestions regarding ways and means for the effective implementation of human rights and fundamental freedoms".

2. The Commission held its first session from 27 January to 10 February 1947. It studied a number of draft bills on human rights and proposals on implementation[1/] and had a general discussion on the form and content of an international bill of human rights.[2/]

3. Upon the request of the Chairman of the Commission, the Economic and Social Council, in resolution 46 (IV) approved the appointment of a drafting committee, consisting of eight members of the Commission, which was to prepare, on the basis of documentation supplied by the Secretariat, a preliminary draft of an international bill of human rights.

4. The Drafting Committee held its first session from 9 to 25 June 1947 and had before it a draft outline of an international bill of human rights prepared by the Secretariat, a draft international bill of human rights submitted by the United Kingdom of Great Britain and Northern Ireland, draft articles of an international bill of human rights submitted by the United States of America and draft articles of an international declaration of human rights submitted by the representative of France.[3/]

5. Concerning the form which the draft of an international bill might take, two views were put forward in the Drafting Committee. One was that the draft, in the first instance, should take the form of a declaration, the other that it should be in the form of a convention. It was agreed, however, by those who

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1/ E/CN.4/W.4.

2/ ESC (IV), suppl. 3.

3/ E/CN.4/21, annexes A, B, C and D.

favoured the declaration form that it should be accompanied or followed by a convention or conventions on specific groups of rights. It was also agreed by those who favoured the convention form that the General Assembly, in recommending a convention to Member States, might make a declaration wider in content and more general in expression. The Drafting Committee, therefore, decided to attempt to prepare two documents, a working paper in the form of a declaration which would set forth general principles or general standards of human rights; and a working paper in the form of a convention which would define specific rights and the limitations or restrictions in the exercise thereof. The Committee prepared and submitted to the Commission draft articles of an international declaration of human rights and draft articles of an international convention on human rights.[4/] The Committee also considered the question of implementation and transmitted to the Commission a memorandum on the subject prepared by the Secretariat.[5/]

5. At its second session (2 - 17 December 1947) the Commission on Human Rights decided that the term "international bill of human rights" should be applied to the entire series of documents in preparation, namely, a declaration of human rights, a convention or covenant on human rights and measures of implementation. It established three working groups: one on the declaration, one on the covenant and a third on implementation. On the basis of the reports of the first two working groups[6/] the Commission drafted a declaration of human rights and a covenant on human rights.[7/] These drafts, together with the report of the working group on implementation,[8/] were transmitted to governments for observations, suggestions and proposals.

6. The Drafting Committee, at its second session (3 - 21 May 1948), revised the declaration and the covenant,[9/] taking into consideration the comments and proposals of governments.[10/]

4/ E/CN.4/21, annexes F and G.

5/ E/CN.4/21, annex H.

6/ E/CN.4/57 and E/CN.4/56.

7/ ESC (VI), suppl. 1, annexes A and B.

8/ ESC (VI), suppl. 1, annex C.

9/ E/CN.4/95, annexes A and B.

10/ E/CN.4/82/Rev.1 and 82/Add.1 - 12.

8. At its third session (24 May - 16 June 1948) the Commission once more redrafted the declaration but did not have time to consider the covenant and the question of implementation. The declaration thus redrafted, together with the draft covenant as prepared by the Drafting Committee and several proposals on implementation, was submitted to the Economic and Social Council;[11/] and was, in turn, transmitted by the Council, in resolution 151 (VII), to the General Assembly.

9. The draft declaration was placed on the agenda of the third session (21 September - 12 December 1948) of the General Assembly and was discussed first in the Third Committee and then in the plenary.[12/] On 10 December 1948 the General Assembly adopted and proclaimed the Universal Declaration of Human Rights as "a common standard of achievement for all peoples and all nations". At the same time, in resolutions 217 E and B (III), it requested the Council to ask the Commission to prepare, as a matter of priority, a draft covenant on human rights and draft measures of implementation, and to examine further the question of the right of petition. In resolution 191 (VIII) the Council transmitted these two resolutions to the Commission for the action contemplated therein.

10. During its fifth session (9 May - 20 June 1949) the Commission examined the draft covenant, article by article, but did not consider additional articles which were proposed including articles on economic and social rights. It decided to transmit the draft covenant and the additional articles to governments for comments.[13/] It also requested the Secretary-General to prepare a survey of the activities of United Nations organs and specialized agencies in matters falling within the scope of Articles 22 - 27 of the Universal Declaration.

11. On the question of implementation there were proposals regarding the establishment of an international court of human rights, of ad hoc committees or permanent organs, which would settle disputes arising out of the interpretation

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11/ ESC (VII), suppl. 2, annexes A, B and C.

12/ GA (III), 3rd Com., 89th - 116th, 119th - 167th and 174th - 179th mtgs.; plen. 180th - 183rd mtgs.

13/ ESC (IX), suppl. 10, annexes I and II.

or application of the covenant or otherwise supervise the observance of its provisions, and to which either States alone, or individuals and groups, as well as States, might submit petitions or applications. Such proposals, according to one school of thought, would tend to undermine the sovereignty and independence of States, and were in conflict with the whole system of international public law regulating the relations between States. A majority of the Commission, however, was in favour of some system of implementation. There was general agreement that if a system of implementation was established States should have the right to initiate proceedings. Opinion was evenly divided as to whether individuals and groups should have the right of petition. In view of the complexity of the matter, the Commission requested the Secretary-General to prepare a methodical questionnaire on implementation on the basis of the proposals. It decided to transmit all proposals and statements as well as the questionnaire (which was amended by the Commission) to governments for comment.[14/]

12. In the course of its sixth session (27 March - 19 May 1950) the Commission re-examined the draft covenant and formulated measures of implementation, taking into consideration the comments and observations of governments[15/] and the survey of the activities of United Nations organs and specialized agencies in matters within the scope of articles 22 - 27 of the Universal Declaration.[16/]

13. The Commission first revised the existing articles (first eighteen articles) of the draft covenant which were related "to some of the fundamental rights of the individual and to certain essential civil freedoms". Then it considered the question of implementation. It decided that a permanent body, a human rights committee, should be established, which would receive any complaint by any State party to the covenant that another State party was not giving effect to any provision thereof, and which would offer its good offices to the States concerned

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14/ ESC (IX), suppl. 10, annex III.

15/ E/CN.4/353 and Add.1 - 11.

16/ E/CN.4/364.

with a view to a friendly solution of the matter. The Commission drafted articles on the establishment, composition and competence of the human rights committee.[17]

14. Next the Commission turned its attention to proposals on economic and social rights. After a general debate it decided that the covenant and measures of implementation that had been drafted should be considered as "the first of a series of covenants and measures", and that it would proceed at its next session to consider "additional covenants and measures dealing with economic, social, cultural, political and other categories of human rights". It also de.ided to secure the co-operation of specialized agencies in the drafting of articles on economic, social and cultural rights.[18]

15. Finally, the Commission decided to transmit to the Council for its consideration draft articles on the application of the covenant to federal States and to non-self-governing and trust territories, and it requested the Secretary-General to prepare a report on federal and territorial application clauses.[19]

16. The Council considered[20] the draft covenant at its eleventh session (3 July - 16 August 1950). It had before it a memorandum containing observations on the draft covenant [21] and a report on federal and territorial application clauses[22] both by the Secretary-General, and a report of UNESCO on regulations concerning economic and social rights.[23]

17. In resolution 303 C (XI) the Council approved the decision of the Commission to consider "additional covenants and measures dealing with economic, social, cultural, political and other categories of human rights"; and in resolution 303 D (XI) it requested the Secretary-General to consult specialized

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17/ ESC (XI), suppl. 5, paras. 34-46 and annex I.

18/ ESC (XI), suppl. 5, paras. 29-33.

19/ ESC (XI), suppl. 5, paras, 25-26 and annex I, arts. 43 and 44.

20/ ESC (XI), plen. 377th-379th mtgs.; E/AC.7/SR.139-157 and 159.

21/ E/L.68.

22/ E/1732.

23/ E/1752.

agencies on matters relating to economic, social and cultural rights. Furthermore, the Council adopted resolution 303 I (XI) by which the General Assembly was requested to make policy decisions regarding:

(a) The general adequacy of the first eighteen articles;

(b) The desirability of including special articles on the application of the covenant to federal States and to non-self-governing and trust territories;

(c) The desirability of including articles on economic, social and cultural rights; and

(d) The adequacy of the articles relating to implementation.

In the same resolution the Council requested Member States to submit their observations on the draft covenant.

18. At its fifth session (19 September - 15 December 1950) the General Assembly studied the questions of policy relating to the draft covenant[24] and made the following decisions.

19. With respect to the "general adequacy of the first eighteen articles", the Assembly in resolution 421 B (V), after expressing the opinion that the list of rights in these articles "does not contain certain of the most elementary rights" and that the wording of those articles "should be improved in order to protect more effectively the rights to which they refer", called upon the Council to request the Commission to revise the draft covenant "with a view to the addition in the draft covenant of other rights" and with a view to defining "the rights set forth in the covenant and the limitations thereto with the greatest possible precision".

20. Regarding the federal and territorial application clauses, the Assembly, in resolutions 421 C (V) and 422 (V) respectively, called upon the Council to request the Commission to study a federal State article and to prepare recommendations "which will have as their purpose the securing of the maximum extension of the covenant to the constituent units of federal States and the meeting of the constitutional problems of federal States"; and to include the following article in the covenant:

24/ GA (V), 3rd Com., 287th-316th and 318th mtgs.; plen. 317th mtg.

"The provisions of the present covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State".

21. On the question of economic, social and cultural rights, the Assembly, in resolution 421 E (V), declared that "the enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent" and that "when deprived of economic, social and cultural rights man does not represent the human person whom the Universal Declaration regards as the ideal of the free man"; and decided "to include in the covenant on human rights economic, social and cultural rights and an explicit recognition of equality of man and woman in related rights as set forth in the Charter of the United Nations", and requested the Commission through the Council "to include in the draft covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civic and political freedoms proclaimed by the draft covenant".

22. Finally, the Assembly discussed the question of implementation. In resolution 421 F (V) it called upon the Council to request the Commission "to proceed with the consideration of provisions, to be inserted in the draft covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the covenant", and to take into consideration a number of proposals[25] on measures of implementation.

23. In addition to the policy questions on which the Council had requested decisions, the Assembly took up the right of self-determination and, in resolution 421 D (V), called upon the Council to request the Commission "to study ways and means which would ensure the right of peoples and nations to self-determination and to prepare recommendations" thereon.

24. At its twelfth session (20 February - 21 March 1951) the Economic and Social Council considered General Assembly resolutions 421 (V) and 422 (V) on the draft covenant as well as communications from ILO and UNESCO[26] concerning

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25/ A/C.3/L.78, 81, 91 (Rev.1) and 93.

26/ ESC (XII), annexes, a.i. 12, E/1880/Add.1 and 7.

co-operation between the Commission and the specialized agencies with regard to economic, social and cultural rights. In resolution 349 (XII) the Council transmitted the Assembly resolutions to the Commission and invited the specialized agencies to participate in the work of the Commission relating to economic, social and cultural rights.

25. The Secretary-General presented to the Commission at its seventh session (16 April - 19 May 1951) a compilation of observations on the draft covenant[27] submitted by governments in pursuance of Council resolution 303 I (XI) and Assembly resolution 421 H (V), an analysis of the policy decisions of the Assembly,[28] a memorandum on the general adequacy of the first eighteen articles,[29] a memorandum on economic, social and cultural rights,[30] a memorandum on measures of implementation[31] and a memorandum on co-operation between the Commission and the specialized agencies in matters relating to economic, social and cultural rights.[32]

26. The Commission devoted itself first to the drafting of articles on economic, social and cultural rights, then to formulating provisions on a system of periodic reports, and finally to reconsidering the provisions of the human rights committee.[33] The representatives of ILO, UNESCO and WHO participated in the Commission's deliberations.

27. On the basis of the proposals of governments and suggestions of specialized agencies,[34] the Commission drafted fourteen articles on economic, social and cultural rights. It then formulated ten articles on measures of implementation, under which States parties to the covenant would submit periodic reports concerning the progress made in achieving the observance of human rights. Finally, the Commission revised the provisions concerning the human rights committee, but did not consider a proposal concerning a "protocol on petitions

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27/ E/CN.4/552.
28/ E/CN.4/513.
29/ E/CN.4/528.
30/ E/CN.4/529.
31/ E/CN.4/530.
32/ E/CN.4/534 and Add. 1-3.
33/ ESC (XIII), suppl. 9, paras. 29-90 and annex I.
34/ E/CN.4/AC.14/2 and Add. 1-5.

from individuals and organizations" and a "proposal relating to the establishment of an office of the United Nations high commissioner for human rights".[35/]

28. The Commission did not decide whether the articles on the human rights committee should be applied to economic, social and cultural rights as well as civil and political rights, nor did it decide whether the articles on the reporting procedure should be applied to civil and political rights as well as economic, social and cultural rights.

29. Although it was generally agreed that economic, social and cultural rights on the one hand, and civil and political rights on the other, were equally important, the opinion was expressed that the former were not justiciable rights and the method of their implementation was therefore different. A proposal was made which would recommend to the Council that the General Assembly be requested to reconsider its decision to include economic, social and cultural rights in the same covenant with civil and political rights.[36/] This proposal, however, was not adopted.

30. The draft covenant was discussed by the Economic and Social Council at its thirteenth session (30 July - 21 September 1951). The question was raised whether the human rights committee procedure and the periodic reporting procedure, respectively, should be applied to civil and political rights, or economic, social and cultural rights, or both categories of rights. Conscious of the difficulties which might flow from embodying in one covenant two different categories of rights, and at the same time aware of the importance of both, the Council, in resolution 384 (XIII) invited "the General Assembly to reconsider its decision in resolution 421 E (V) to include in one covenant articles on economic, social and cultural rights, together with articles on civil and political rights".

35/ ESC (XIII), suppl. 9, annexes V and VI.

36/ E/CN.4/619/Rev.1.

31. The draft covenant was the subject of a long debate at the sixth session (6 November 1951 - 5 February 1952) of the General Assembly.[37]

32. In resolution 543 (VI) the Assembly decided to request the Economic and Social Council to ask the Commission on Human Rights:

> "To draft two covenants on human rights ..., one to contain civil and political rights and the other to contain economic, social and cultural rights, in order that the General Assembly may approve the two covenants simultaneously and open them at the same time for signature, the two covenants to contain, in order to emphasize the unity of the aim in view and to ensure respect for and observance of human rights, as many similar provisions as possible ..."

It also requested Member States and specialized agencies to submit drafts or memoranda on the form and contents of the proposed covenant on economic, social and cultural rights. Further, in resolution 544 (VI), the Assembly called upon the Council to ask the Commission to revise the draft articles on economic, social and cultural rights and to take into consideration the views of governments, specialized agencies and non-governmental organizations.

33. With respect to the question of implementation, the Assembly in resolution 547 (VI) forwarded to the Commission a number of additional proposals[38] as working papers.

34. The question of reservations was brought up in connexion with the draft covenants. In resolution 546 (VI) the Assembly through the Council instructed the Commission to prepare "one or more clauses relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them". Finally, in resolution 545 (VI) the Assembly decided to include in the covenants an article which should provide that "all peoples shall have the right to self-determination", and should "stipulate that all States, including those having responsibility for the administration of non-self-governing territories, should promote the realization of that right, in conformity with the purposes and

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37/ GA (VI), 3rd. Com., 358th-372nd and 387th-411th mtgs.; plen. 374th-375th mtgs.; annexes a.i. 29, A/C.3/559 and A/2112.

38/ A/C.3/L.191/Rev.2 and 3, 193, 195 and 195/Rev.2, 196 and 196/Rev.2 and 198/Rev.2.

principles of the United Nations, and that States having responsibility for the administration of non-self-governing territories should promote the realization of that right in relation to the peoples of such territories".

35. The Economic and Social Council, in resolution 415 (S-1), transmitted to the Commission the Assembly resolutions on the draft covenants and requested it to prepare two covenants along the lines indicated by the Assembly.

36. The Secretary-General presented to the Commission at its eighth session (14 April - 14 June 1952), a memorandum on the Assembly and Council resolutions concerning the draft covenants,[39] a memorandum on the "general adequacy of the first eighteen articles",[40] a memorandum on economic, social and cultural rights,[41] observations of Member States and specialized agencies on the proposed covenant on economic, social and cultural rights,[42] a memorandum on measures of implementation[43] and a report on the federal clause.[44]

37. The Commission started to work on two covenants, one on economic, social and cultural rights and one on civil and political rights.[45] First it drafted an article on the right of peoples and nations to self-determination and decided that the article should be article 1 of each covenant. Then it proceeded to revise the articles on economic, social and cultural rights and the articles on civil and political rights, on the basis of previous drafts and taking into consideration the instructions of the Assembly and the Council and the observations of governments and specialized agencies. Eventually, it adopted a preamble and fifteen articles for the covenant on economic, social and cultural rights and a preamble and eighteen articles for the covenant on civil and political rights. A proposal[46] was made that the Commission should request the General

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39/ E/CN.4/643.

40/ E/CN.4/528/Add.1.

41/ E/CN.4/650.

42/ E/CN.4/654 and Add.1-9 and E/CN.4/655 and Add.1-4.

43/ E/CN.4/530/Add.1.

44/ E/CN.4/651.

45/ ESC (XIV), suppl. 4, paras. 92-289 and annexes I, II and III.

46/ E/CN.4/L.195.

Assembly, through the Economic and Social Council, to revise its decision in resolution 543 (VI) to prepare two separate covenants. This proposal was not adopted.

38. During this session the Commission was not able to complete the drafting of the covenants and, in particular, to consider questions of implementation, provisions on reservations and a federal State clause. In a draft resolution it requested the authorization of the Council to complete its work on the covenants at its next session in order that they might be submitted simultaneously in 1953.

39. In resolution 440 (XIV) the Economic and Social Council instructed the Commission to complete its work on the covenants at its next session.

40. The Commission devoted the major part of its ninth session (7 April - 30 May 1953) to the consideration of the draft covenants.[47] It adopted seven additional articles dealing with civil and political rights. It revised the provisions relating to the establishment, composition and jurisdiction of the human rights committee in connexion with the covenant on civil and political rights, but it did not decide whether such provisions were to be applied to the covenant on economic, social and cultural rights. It did not have time to re-examine the provisions relating to the system of periodic reports in connexion with the covenant on economic, social and cultural rights or with the covenant on civil and political rights. Nor did it reconsider the final clauses, including federal and reservations clauses. A proposal[48] which would request the Council to ask the General Assembly to reconsider its decision that two covenants, instead of one, should be drafted was rejected.

41. Noting the progress made in the drafting of the covenants, the Economic and Social Council, in resolution 501 B (XVI), requested the Commission to complete its work at its tenth session in 1954, transmitted the report of the Commission to the General Assembly and invited Member States, specialized agencies and non-governmental organizations to submit observations on the draft covenants.

47/ ESC (XVI), suppl. 8, paras. 24-214 and annexes I and II.

48/ E/CN.4/L.272.

42. The General Assembly at its eighth session (15 September - 9 December 1953) discussed two questions relating to the draft covenants: the question of a federal clause and the question of the right of petition.[49] It did not make any policy decision on either question, but in resolution 737 (VIII) it transmitted draft resolutions on a federal clause[50] and on the right of petition[51] to the Commission. The Assembly resolution was forwarded to the Commission by the Council in resolution 510 (XVI).

43. It was during its tenth session (23 February - 16 April 1954) that the Commission concluded its work on the draft covenants.[52] Before it were observations of governments,[53] of specialized agencies[54] and of non-governmental organizations[55] on the draft covenants. Also before it were the Secretary-General's memoranda on civil and political rights,[56] on economic, social and cultural rights,[57] on measures of implementation,[58] on the question of reservations[59] and on final clauses.[60]

44. At its tenth session the Commission proceeded to redraft the articles relating to the system of periodic reports for the implementation of the covenant on economic, social and cultural rights. It adopted an article concerning reports on civil and political rights for the implementation of the covenant on civil and political rights, but it decided not to apply the human rights committee procedure to the covenant on economic, social and cultural rights.

49/ GA (VIII) 3rd Com. 518th-521st and 523rd-524th mtgs.; plen. 460th mtg.

50/ A/C.3/L.366, 374 and 388.

51/ A/C.3/L.372/Rev.1.

52/ ESC (XVIII), suppl. 7, paras. 24-321 and annexes I, II and III.

53/ E/CN.4/694 and Add.1-7.

54/ E/CN.4/692 and Add. 1-2.

55/ E/CN.4/702 and Add. 1-6.

56/ E/CN.4/674.

57/ E/CN.4/673.

58/ E/CN.4/675.

59/ E/CN.4/677.

60/ E/CN.4/678 and Corr. 1.

It discussed, but did not adopt, provisions on the right of petition of individuals, groups or non-governmental organizations in respect of either civil and political rights or economic, social and cultural rights.

45. The Commission adopted a federal clause stipulating that the provisions of each covenant "shall extend to all parts of federal States without limitations or exceptions". Previously it had embodied in each covenant a territorial application clause, adopted by the General Assembly in resolution 422 (V), which stated that the provisions of the covenant "shall extend to and be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State". The Commission was unable to reach an agreement on the formulation of a clause on reservations, and it decided to request the Council to transmit a number of proposals[61/] to the General Assembly.

46. The Commission also discussed proposals on the right to own property but it adjourned sine die consideration of the question.

47. The draft covenants, as thus prepared by the Commission, contain the following parts:

Draft covenant on civil and political rights

Preamble		
Part I	Article 1	The right of self-determination
Part II	Articles 2 - 5	General provisions
Part III	Articles 6 - 26	Civil and political rights
Part IV	Articles 27- 48	Measures of implementation (human rights committee)
Part V	Articles 49- 50	Measures of implementation (reports)
Part VI	Articles 51- 54	Final clauses

Draft covenent on economic, social and cultural rights

Preamble		
Part I	Article 1	The right of self-determination
Part II	Articles 2- 5	General provisions
Part III	Articles 6- 16	Economic social and cultural rights
Part IV	Articles 17- 25	Measures of implementation (system of periodic reports)
Part V	Articles 26- 29	Final clauses.

61/ E/CN.4/L.345 and Add.1, 349, 351, 352, 353 and 354.

48. In submitting its report to the Council the Commission included a suggestion that the General Assembly should give the draft covenants, not a single reading, but two separate readings at two consecutive sessions.

49. By resolution 545 B (XVIII) the Council transmitted the draft covenants to the General Assembly and drew its attention to the suggestion that they should be given two readings.

50. The General Assembly considered the draft covenants at its ninth session.62/ A first reading of the draft covenants, beginning with a general discussion, took place in the Third Committee. Upon the recommendation of the Committee the General Assembly adopted resolution 833 (IX) on the draft covenants. In this resolution, after expressing its gratitude to the Commission for the work it had accomplished, the Assembly:

1. Invites:

(a) Governments of States Members and non-members of the United Nations to communicate to the Secretary-General, within six months after the end of the present session of the General Assembly, any amendments or additions to the draft international covenants on human rights or any observations thereon;

(b) The specialized agencies to communicate to the Secretary-General, within six months after the end of the present session, any observations they may wish to make with regard to the draft international covenants;

(c) The non-governmental organizations concerned with the promotion of human rights, including those in the non-self-governing and trust territories, to stimulate public interest in the draft international covenants on human rights by all possible means in their respective countries;

2. Requests the Secretary-General:

(a) To prepare and distribute to Governments, as early as possible, a concise annotation of the text of the draft international covenants, taking account of the observations made before and during the ninth session of the General Assembly, including those made in the Economic and Social Council and in the Commission on Human Rights;

62/ GA (IX), 3rd Com., 557th-586th mtgs.; plen. 504th mtg.

(b) To distribute to Governments, as soon as they are received, the communications which may be made by Governments and by the specialized agencies during the next six months;

(c) To prepare as a working paper a compilation of all the amendments and proposed new articles which may be submitted by Governments during that period;

3. Requests the Secretary-General to give the draft international covenants on human rights the widest possible publicity through all the media of information available to him, and within the limits of his budget;

4. Recommends that, during the tenth session of the General Assembly, the Third Committee give priority and devote itself mainly to the discussion, article by article, in an agreed order, of the draft international covenants on human rights with a view to their adoption at the earliest possible date. The discussion shall also cover any new articles which may be proposed.

CHAPTER II

GENERAL PROBLEMS RELATING TO THE DRAFT COVENANTS

Table of Contents

1. While the present document is primarily an annotation of the text of each article of both draft covenants, there are a number of general problems relating to the covenants as a whole, which may be noted at the outset.

2. The first is whether there should be one or two covenants. A second is whether substantive articles should be drafted in general terms or in elaborate clauses. A third is whether the covenants should contain any international measures or implementation and, if so, what types or systems of implementation. These problems are briefly set forth in this chapter.

3. There are three other general problems: Should the provisions of the covenants extend to all parts of federal States without any limitations or exceptions? Should they be equally applicable to metropolitan powers and to non-self-governing and trust territories? Should there be one or more clauses relating to the admissibility or inadmissibility of reservations and the effect to be attributed to them? These problems, though relating to the covenants as a whole, are discussed in the chapter on the final clauses of the draft covenants in relation to actual texts adopted or proposed.

One or two covenants[1/]

4. At its sixth session in 1950, the Commission on Human Rights decided that the draft covenant covering certain essential civil rights, which it had prepared, should be the first of a series of covenants and that it would consider additional covenants dealing with economic, social, cultural, political and other categories of human rights.

5. In resolution 303 I (XI), the Economic and Social Council requested the General Assembly, inter alia, to make a policy decision regarding "the desirability of including articles on economic, social and cultural rights" in the covenant. The General Assembly, in resolution 421 E (V), decided "to include in the draft covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civil and political freedoms proclaimed by the draft covenant".

6. At its seventh session in 1951 the Commission drafted articles on economic, social and cultural rights. The Council, in resolution 384 (XIII), invited the General Assembly "to reconsider its decision ... to include in one covenant articles on economic, social and cultural rights, together with articles on civil and political rights". The General Assembly, in resolution 543 (VI), eventually decided that there should be two covenants on human rights, "one to contain civil and political rights and the other to contain economic, social and cultural rights", the two covenants to contain "as many similar provisions as possible" and to be approved and opened for signature simultaneously, in order to emphasize the unity of purpose

7. It was clear that the opinion of United Nations Members was divided as to whether there should be one or two covenants. It should be noted, however, that those in favour of having two covenants as well as those in favour of a single

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1/ The question of whether one or two covenants should be drafted was discussed on many occasions. Reference may be made especially to the following documents: CHR (VI), E/CN.4/SR.184 - 187; CHR (VII), E/CN.4/SR.203-208; ESC (XI), E/AC.7/SR.139-155 and 157; ESC (XIII), 522nd-525th mtgs.; GA (V), 3rd Com., 297th-299th and 312th-313th mtgs.; a.i. 63, annexes, A/1559; GA (VI), 3rd Com., 360th-372nd and 387th-396th mtgs., and a.i. 29, annexes, A/2112 and A/C.3/565.

covenant were generally agreed that "the enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent" and that "when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man".[2/] The divergence of opinion appeared to arise from a difference of approach rather than of purpose.

8. Those who were in favour of drafting a single covenant maintained that human rights could not be clearly divided into different categories, nor could they be so classified as to represent a hierarchy of values. All rights should be promoted and protected at the same time. Without economic, social and cultural rights, civil and political rights might be purely nominal in character; without civil and political rights, economic, social and cultural rights could not be long ensured. There should therefore, be a single covenant which would embrace all human rights and by which States would solemnly undertake to promote and guarantee them all.

9. Those in favour of drafting two separate covenants argued that civil and political rights were enforceable, or justiciable, or of an "absolute" character, while economic, social and cultural rights were not or might not be; that the former were immediately applicable, while the latter were to be progressively implemented; and that, generally speaking, the former were rights of the individual "against" the State, i.e., against unlawful and unjust action of the State, while the latter were rights which the State would have to take positive action to promote. Since the nature of civil and political rights and that of economic, social and cultural rights, and the obligations of the State in respect thereof, were different, it was desirable that two separate instruments should be prepared.

10. The question of drafting one or two covenants was intimately related to the question of implementation. If no measures of implementation were to be

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2/ These two clauses were used both in the preamble of General Assembly resolution 421 E (V), in which it was decided that there should be a single covenant, and in the preamble of resolution 543 (VI), in which it was decided that there should be two separate covenants.

formulated, it would make little difference whether one or two covenants were to be drafted. Generally speaking, civil and political rights were thought to be "legal" rights and could best be implemented by the creation of a good offices committee, while economic, social and cultural rights were thought to be "programme" rights and could best be implemented by the establishment of a system of periodic reports. Since the rights could be divided into two broad categories, which should be subject to different procedures of implementation, it would be both logical and convenient to formulate two separate covenants.

11. However, it was argued that, not in all countries and territories, were all civil and political rights "legal" rights, nor all economic, social and cultural rights "programme" rights. A civil or political right might well be a "programme" right under one regime, an economic, social or cultural right a "legal" right under another. A covenant could be drafted in such a manner as would enable States, upon ratification or accession, to announce, each in so far as it was concerned, which civil, political, economic, social and cultural rights were "legal" rights, and which "programme" rights, and by which procedures the rights would be implemented.

12. Besides these main lines of argument, attention may be drawn to two other views. One view was that there should be only one covenant on civil and political rights, and that economic, social and cultural rights, which could only be promoted progressively, should not be embodied in a legal instrument at all. Another view was that the right or the principle of self-determination, being a very broad right or a very general principle, might be the subject of a separate covenant or a special declaration.

Brief clauses or elaborate provisions[3/]

13. There were two schools of thought regarding the manner in which articles on substantive rights should be drafted. One school held that each article

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3/ This problem was discussed in connexion with many substantive articles. Reference may be made especially to the following documents: CHR (V), E/CN.4/SR.90-132; E/CN.4/528 and Add.1, 529 and 650; GA (V), 3rd Com., 288th-291st and 305th-307th mtgs.; and a.i. 63, annexes, A/1559; GA (VI), 3rd Com., 396th mtg.; and a.i. 29, annexes, A/2112.

should be a brief clause of a general character; another school was of the opinion that each right, its scope and substance, its limitations, as well as the obligations of the State in respect thereof, should be drafted with the greatest possible precision.

14. The first school maintained that, in general instruments of such a comprehensive character as the covenants, it was impossible to set forth the scope and substance of each right in great detail. While there were concepts of rights which might be generally acceptable, there were also concepts which varied a great deal from one legal system to another and might not be universally applicable. It would be better to provide that "no one shall be held in slavery or in servitude" than to define exactly what slavery or servitude was. It would be better to provide that "the States parties to the covenant recognize the right of everyone to social security" than to attempt to define the precise content of that right. The covenants could only contain general provisions, and the precise scope and substance of each right should be left to national legislation.

15. The limitations to the exercise of each right were even more difficult to specify.[4/] Take "the right to liberty and security of person" as an example. During the discussion on this right some thirty limitations[5/] were suggested. It was better to provide that "no one shall be subjected to arbitrary arrest or detention," the word "arbitrary" being understood to mean both "illegal" and "unjust", than to include a catalogue of some thirty limitations. With respect to freedom of information, some thirty limitations were also suggested.[6/] It was better to formulate a simple limitations clause than to prepare an inventory of thirty limitations.

4/ Attention is drawn to the fact that in the draft covenant on economic, social and cultural rights substantive articles do not themselves contain limitations clauses but are subject to a general limitations clause in article 4, while in the draft covenant on civil and political rights a number of substantive articles contain special limitations clauses, apart from the provisions on derogations in article 4.

5/ E/CN.4/95, Annex B, part II.

6/ ESC (IX), suppl. 10, Annex I, art. 17.

16. As to the obligations of States, according to this school of thought, the covenants could provide in a general manner that the States parties should guarantee civil and political rights in accordance with law, and should recognize and progressively promote economic, social and cultural rights. To enumerate the specific acts that States might perform in respect of civil or political rights, or to determine in advance the particular measures they should take in respect of economic, social or cultural rights, would be going far beyond the scope of the covenants. Furthermore no directory of specific obligations could be exhaustive.

17. Finally, the covenants were not the only or the final instruments on human rights. The rights set forth in the covenants could be elaborated - individually or severally - in a series of international conventions, should the community of nations so desire. For instance, a convention on slavery and servitude, or a convention on freedom of information, or a convention on social security or on political rights could be drawn up with more precision and in greater detail than individual articles on such subjects in the covenants. As a matter of fact, conventions on specific rights have been and are being drawn up under the auspices of the United Nations and the specialized agencies.

18. The other school held the view that the covenants on human rights should not be a second edition of the Universal Declaration of Human Rights, where general principles regarding human rights and fundamental freedoms had already been set forth. It would serve little useful purpose were articles of the Declaration to be reproduced verbatim or in substantially the same form in the covenants.

19. This school maintained that, in the first place, the scope and substance of each right should be precisely defined. It was not sufficient to declare that "everyone shall be entitled to a fair and public hearing"; it was far more important to specify minimum guarantees under which that right could be fully protected. It was not sufficient to declare that everyone shall have the "right to education"; it was far more important to set forth the legal standards in respect of each level of education. To declare the existence of a right, without indicating its content, would leave much to be desired.

20. The exercise of many rights, it was granted, was subject to limitations. If limitations were not clearly defined, but couched in general terms, there was

little guarantee that rights would not be violated. If freedom of worship and freedom of information might be abridged on the basis of such vague expressions as "public order" and "national security", such freedoms were in great jeopardy indeed. In the name of "public order" many a saintly character had been crucified, in the name of "national security" many a patriot guillotined. Better no covenant than that it should be an instrument to suppress human liberty!

21. The obligations of the State should also be stated in unequivocal terms. There were areas of human life which the State might not invade and areas in which it might take positive action - both in order fully to ensure human rights. It should be made clear, for instance, that freedom of "conscience" and freedom of "thought", as distinguished from freedom of "worship" and freedom of "information", were absolute freedoms which permitted of no State interference. It was not enough to declare that the States parties should "recognize", for instance, the right of everyone to adequate food, clothing and housing; their obligations, beyond the mere recognition of the right, should be clearly determined.

22. The Universal Declaration of Human Rights having been proclaimed, what was the purpose of drafting covenants on human rights if not to define the scope and substance of each right, its limitations, and the obligations of the State in respect thereof, as precisely as possible, and thereby to set up international legal standards and rules whereby a State would abide?

23. It was clear that each of the two schools had exerted its influence on the drafting of the substantive articles. Some articles were formulated in a very general manner, while others were drawn up in elaborate terms. It was realized, of course, that the logic of neither school could be carried to its extreme: the covenants should not be a second edition of the Universal Declaration of Human Rights, nor could they be a compendium of all civil and criminal codes and all social and educational laws.

Measures of implementation [7]

24. There was general agreement that the provisions of the covenant should be implemented, on the national level, by States parties through appropriate legislative, administrative and other measures. As to whether there should be any international measures of inplementation and, if so, what types or systems of implementation, there were considerable differences of opinion.

25. With regard to civil and political rights, broadly speaking, three views were advanced.[8] One was that violations of civil and political rights were basically legal matters which should be settled by a judicial body. Accordingly, it was proposed that an international court of human rights should be established, which would settle disputes arising out of the interpretation and application of the covenant and before which States, individuals, groups of individuals and non-governmental organizations might be parties. Another view was that violations of the covenant should be settled by diplomatic negotiations between States concerned, and in the event of a failure of such negotiations, they should be submitted to ad hoc fact-finding committees. A third view was in favour of the establishment of a permanent, independent body, with fact-finding and conciliation powers, to consider complaints from States only, or from individuals and non-governmental organizations as well as States.

26. It was decided that for the implementation of the covenant on civil and political rights a human rights committee - a permanent body - should be established,[9] which would receive any complaint by a State party that another

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7/ The problem of implementation was discussed on numerous occasions. Reference may be made especially to the following documents: E/CN.4/SR.38-39, 110-111, 114-115, 118-119, 132-135, 167-169, 209-214; E/CN.4/530, 530/Add.1; ESC (VI), suppl. 1, annex C; ESC (IX), suppl. 10, annexes II and III.

8/ ESC (IX), suppl. 10, annex III.

9/ See art. 27-48 of the draft covenant on civil and political rights.

State party was not giving effect to a provision of the covenant, and which would make available its good offices to the States concerned with a view to a friendly solution of the matter. The Committee, however, could not consider any petitions submitted by individuals, groups or non-governmental organizations.[10/]

27. As to the implementation of the covenant on economic, social and cultural rights, it was decided to establish a system of periodic reports,[11/] to be submitted by States parties to the Economic and Social Council, on the progress made in achieving the observance of the rights recognized therein.

28. It was generally agreed that the procedure of the human rights committee should be applicable only to civil and political rights, and not to economic, social and cultural rights, as the provisions on civil and political rights were to be put into effect immediately while the provisions on economic, social and cultural rights were to be realized progressively. On the other hand, it was thought that, while a system of periodic reports should be established for the implementation of economic, social and cultural rights, some form of a reporting procedure should also be adopted in respect of civil and political rights.[12/]

29. A suggestion was made that measures of implementation might be embodied in a separate instrument. This would encourage States to ratify the covenants, and would allow them to subscribe to the instrument on measures of implementation at such time as they might wish. The opinion prevailed, however, that measures of implementation should be integral parts of the covenants.

30. In the course of the debates on measures of implementation, a difference of opinion existed as to whether there should be any international measures of implementation at all.

31. According to one school of thought all international measures of implementation - whether the establishment of a good offices committee, or of a system of periodic reports, or of any other institution - were contrary

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10/ For the discussion on the right of petition, see the annotation on art. 40 of draft covenant on civil and political rights.

11/ See articles 17-25 of the draft covenant on economic, social and cultural rights.

12/ See article 49 of the draft covenant on civil and political rights.

to the principle of "domestic jurisdiction" as set forth in Article 2, paragraph 7, of the Charter, and would undermine the sovereignty and independence of States.

32. The creation of a good offices committee, it was argued, would be in conflict with "the whole system of international public law regulating the relations between States". Such a committee, if established, would have the effect of transforming a dispute between a private individual and his government "into an international dispute, thereby substantially enlarging the area of international differences, frictions and incidents, unnecessarily burdening and aggravating international relations and undermining the foundations of peace.[13/]

33. The establishment of a system of periodic reports, it was contended, would also violate Article 2, paragraph 7, of the Charter. In the first place, States should be under no obligation to submit periodic reports to the United Nations. Secondly, measures which States might take from year to year in order progressively to realize economic, social and cultural rights should not be subject to review and criticism by the Commission on Human Rights, or by the Economic and Social Council, or even by the General Assembly.

34. The other school of thought maintained that measures of implementation, such as a good offices committee and a system of periodic reports, were not intended to undermine the principle of "domestic jurisdiction" as set forth in Article 2, paragraph 7, of the Charter. That principle could not be so interpreted as to preclude any sovereign State from entering into international agreements or treaties such as the covenants on human rights. Ratification of or accession to the covenants was an act which any sovereign State could take.

35. It was pointed out that international public law had made considerable progress in recent times. One of the purposes of the United Nations was "to achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Indeed, under Article 56 of the Charter, all

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13/ ESC (IX), suppl. 10, annex III.

Members of the United Nations "pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes," inter alia, of promoting universal respect for and observance of human rights and fundamental freedoms.

36. The mere fact that international covenants on human rights were being drawn up indicated that human rights were matters of international concern. By accepting the covenants, States parties would have entered into obligations of an international character and could hardly then claim that the provisions of the covenants were matters of exclusively domestic jurisdiction. Even if the covenants did not contain any measures of implementation, the customary machinery for the enforcement of treaties, such as arbitration or diplomatic negotiation, could be set in motion if any provisions of the covenants were violated.

37. It was emphasized that implementation was the heart of the covenants and without measures of implementation, the covenants would have little practical value. The Universal Declaration having been proclaimed, the primary purpose of drafting the covenants was to organize international co-operation for the effective observance of human rights.

38. The creation of a good offices committee, it was stated, would be purely a voluntary act on the part of ratifying or acceding States. Having committed themselves to guarantee the rights set forth in the covenant on civil and political rights, States parties should have little hesitation in submitting any disputes over the application of the covenant to a good offices committee.[14/]

39. As to periodic reports, it was emphasized, the purpose was not to criticize or condemn any particular governments; it was rather to review from time to time the progress made in achieving the observance of economic, social and cultural rights and to devise means of international co-operation in furthering or expediting the progress. This would be in complete harmony with the spirit of the Charter of the United Nations.

14/ The General Assembly, at its fifth session in 1950, rejected two proposals. The first was that the General Assembly should recognize that implementation of the covenant fell entirely within the domestic jurisdiction of States. The second called for the deletion of the provisions relating to the human rights committee on the grounds that these constituted an attempt at intervention in the domestic affairs of States and an encroachment on their sovereignty. See GA (V), 317th mtg. and annexes, a.i. 63, A/1576. At its seventh session in 1951 the Commission on Human Rights rejected a proposal by which it would resolve to omit from the draft covenant the provisions relating to the human rights committee on the grounds that they envisaged forms of control which constituted an attempt to intervene in the internal affairs of States and violated their sovereignty. SEE ESC (XIII), suppl. 9, para. 72.

CHAPTER III

THE PREAMBLES OF BOTH DRAFT COVENANTS

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Draft Covenant on Civil and Political Rights

The States Parties hereto,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free man enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in Covenant,

Have agreed upon the following articles:

Draft Covenant on Economic, Social and Cultural Rights

The States Parties hereto,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free man enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in this Covenant,

Have agreed upon the following articles:

1. The preamble of each covenant serves as an "introduction" to the articles which follow. It sets forth general principles relating to the inherent dignity of the human person, portrays the ideal of the free man in accordance with the Universal Declaration of Human Rights, reiterates the obligation of States under the Charter of the United Nations to promote human rights and reminds the individual of his responsibility to strive for the observance of human rights.

2. In the course of the drafting of the covenants two separate preambles were prepared. However, pursuant to General Assembly resolution 543 (VI) it was decided that, in order to underline the unity of purpose, the two preambles should contain as many similar clauses as possible and appropriate, one giving prominence to civil and political rights, the other to economic, social and cultural rights.

Foundation of freedom, justice and peace[1/]

3. The first paragraph of each preamble is a statement of a general principle that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". This clause was taken from the first paragraph of the preamble of the Universal Declaration.

4. It will be noted that the first paragraph of the preamble of each covenant contains the phrase "in accordance with the principles proclaimed in the Charter of the United Nations" whereas that of the Declaration does not. When the Declaration was being drafted the view was expressed that the clause "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" was a statement of a general principle, which was independent of the existence of the United Nations and had an intrinsic value of its own.

5. The expression "principles of the Charter", according to one opinion was too indefinite. It could be interpreted so broadly as to encompass the entire Charter. It could be construed narrowly to refer to the "principles" set forth in Article 2 of the Charter and to exclude the "purposes" in Article 1, among which was the achievement of "international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

Origin of human rights[2/]

6. A proposition was advanced that human rights "are founded on the general principles of law recognized by civilized nations". Against this it was argued that the rights of man appertained to him as a human being and could not be alienated and that they constituted a law anterior and superior to the positive law of civil society. It was proposed, therefore, that the preamble should recognize that the rights set forth in the covenants "are inalienable and derive from the inherent dignity of the human person". While there was general

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1/ E/CN.4/SR.75, 308, 331, 333; E/CN.4/353/Add.10; E/CN.4/L.167.

2/ E/CN.4/SR.138, 331, 333; E/CN.4/353/Add.10; E/CN.4/L.208.

acceptance of the idea that the rights recognized in the covenants "derive from the inherent dignity of the human person", there was no agreement as to whether such rights were "inalienable".

Ideal of the free man[3/]

7. The third paragraph of each preamble was based upon the Universal Declaration as interpreted by the General Assembly in resolution 421 E (V) and reaffirmed in resolution 543 (VI). In these resolutions the General Assembly declared that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent" and that "when deprived of economic, social and cultural rights man does not represent the human person whom the Universal Declaration regards as the ideal of the free man".

8. It is in the two third paragraphs of the preambles that a difference in emphasis and hence in wording exists. In the draft covenant on civil and political rights the third paragraph states that "the ideal of free men enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights as well as economic, social and cultural rights". In the draft covenant on economic, social and cultural rights it is declared that "the ideal of free men enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights". These paragraphs were intended to underline the unity of the two covenants while at the same time maintaining the distinctive character of each.

Charter obligation[4/]

9. Under Article 56 of the Charter all Members of the United Nations "pledge themselves to take joint and separate action in co-operation with the Organisation" for the purposes of promoting "universal respect for and observance of human

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3/ E/CN.4/SR.331, 333; E/CN.4/L.167.

4/ E/CN.4/SR.137, 138, 193.

rights and fundamental freedoms for all without distinction as to race, sex, language or religion". The fourth paragraph of each preamble reaffirms this obligation.

10. A question was raised whether a State party to the covenants but non-member of the United Nations would be bound by the obligation under the Charter. One view was that any non-member State which became a party to the covenants would be bound by the Charter provisions in so far as they concerned human rights. Another view was that such a State would be bound only by the covenants and, by subscribing to the fourth considerandum, could not be deemed to be ipso facto bound by the obligation under Article 56 of the Charter.

Responsibility of the individual[5/]

11. It was generally agreed that rights and duties were correlative and every right carried with it a corresponding duty.

12. Article 29 of the Universal Declaration provides that "everyone has duties to the community in which alone the free and full development of his personality is possible" and that in the exercise of his rights and freedoms everyone shall be subject to limitations determined by law for the purpose of "securing due recognition and respect for the rights and freedoms of others". The fifth paragraph of the preamble of each covenant reaffirms such duties.

13. Furthermore, in proclaiming the Universal Declaration the General Assembly stated that every individual "shall strive ... to promote respect for these rights and freedoms ... and to secure their universally effective recognition and observance". In the fifth premabular clause of each covenant the responsibility of the individual is once more emphasized.

14. While the covenants were intended to protect human rights and freedoms it was thought appropriate that the duties and responsibilities of the individual should be mentioned in the preambles.

5/ E/CN.4/AC.5/2; E/CN.4/SR.137, 138, 193, 308; E/CN.4/L.171.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR, DC (I)	E/CN.4/AC.1/SR.10	E/CN.4/AC.1/4; E/CN.4/21, annex G	Preamble and Article 1
CHR (II)	E/CN.4/AC.3/SR.5	E/CN.4/AC.5/2; ESC (VI); suppl.1, annex B	"
CHR, DC (II)	E/CN.4/AC.1/SR.26	E/CN.4/AC.1/19,33,35; E/CN.4/95, annex B	"
CHR (III)	E/CN.4/SR.75	ESC (VII), suppl.2, annex B	"
CHR (V)	E/CN.4/SR.124	E/CN.4/323; ESC (IX), suppl.10, annex I	"
CHR (VI)	E/CN.4/SR.137, 138, 193, 199	E/CN.4/353/Add.10, 365, 370, 376, 377, 379, 491; E/CN.4/L.11; ESC (XI), suppl.5, annex I, preamble	"
CHR (VII)		E/CN.4/528; ESC (XIII), suppl.9, annex I	Preamble
CHR (VIII)	E/CN.4/SR.308, 331, 333	E/CN.4/528/Add.1, 666/Add.15, 668/Add.18; E/CN.4/L.148,167,171,208; ESC (XIV), suppl.4, paras. 161-62 and 286-89, annex I, A and B, preambles	Preamble

CHAPTER IV

THE RIGHT OF PEOPLES AND NATIONS TO SELF-DETERMINATION

Part I, Article 1, of both draft covenants

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1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

2. All States, including those having responsibility for the administration of non-self-governing and trust territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

3. The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.

1. By resolution 545 (VI) the General Assembly decided that the covenant or covenants on human rights should include an article on the right of all peoples and nations to self-determination. It further stipulated that the article

"shall be drafted in the following terms: 'All peoples shall have the right of self-determination', and shall stipulate that all States, including those having responsibility for the administration of non-self-governing territories, should promote the realization of that right, in conformity with the purposes and principles of the United Nations, and that States having responsibility for the administration of non-self-governing territories should promote the realization of that right in relation to the peoples of such territories".

Political principle or legal right[1/]

2. During the consideration of an article on self-determination, a preliminary question was raised whether "self-determination" was a political principle or a legal right. If it were a right, it might be an appropriate subject of an article in the covenants on human rights; if not, it should have no place in such legal instruments.

3. One school of thought maintained that self-determination was a political principle of the highest importance, but not a right in the strict legal sense, not a human right or an individual right. Articles 1 and 55 of the Charter, it was pointed out, spoke of the "principle", not of the "right", of self-determination. It was argued that "self-determination" was a nebulous term; that if it were to denote a right that term should be defined as precisely as possible in order that there might be no misunderstanding of its substance or content. As commonly used, the expression "the right of self-determination" meant different things to different persons: it might mean the right to "local autonomy", to "self-government", to "secession or association", to "independent and sovereign statehood". Furthermore, the concepts of a "people" and a "nation" were also extremely vague. There were no scientific definitions of such terms. It was asked: Was a "minority" to be considered as a "people"? Were the "inhabitants" of a non-self-governing or trust territory necessarily a

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1/ GA (VI), 3rd Com., 361st, 363rd, 366th, 371st mtgs.; E/CN.4/SR.252-258; GA (IX), 3rd Com., 562nd-573rd and 575th-580th mtgs. For proposals submitted during the first reading of the draft covenants at the ninth session of the General Assembly, see A/C.3/L.412 and 427.

"nation"? Until such concepts were agreed upon, it would be premature to write into an international legal instrument an article on the "right" of "peoples" and "nations" to "self-determination".

4. Another school of thought maintained that self-determination was a "right" as well as a "principle", and was indeed the most fundamental of all human rights. It was stated that, as a right, self-determination was a collective right appertaining to all peoples and all nations, and that, denied that right no peoples or nations were free, let alone individual members thereof. It was essential therefore that the right of peoples and nations to self-determination should be written into the covenants on human rights, as that right was a prerequisite for the enjoyment of all the rights and freedoms of the individual. Admittedly it was difficult to define a "people" or "nation", but it was questioned whether it would ever be possible to arrive at a definition of any such term that would be universally applicable and acceptable. The General Assembly, the highest organ in international community, had already recognized the right of peoples and nations to self-determination; the next step was to formulate an appropriate article by which States would undertake a solemn obligation to promote and respect that right.

5. A third trend of thought was that self-determination could be the subject of a special declaration or a separate covenant, depending upon whether it was to be considered as a principle or a right. The two covenants under preparation would then be confined to civil and political rights and economic, social and cultural rights respectively, and would thus be less controversial and more generally acceptable. Another suggestion was that the principle or the right of self-determination might be the subject of a clause in the preamble to each covenant; this would signify the over-all importance of self-determination without creating any possible legal uncertainty as to its precise meaning.

Charter provisions[2/]

6. Comments were made in respect of Articles 1 and 55 of the Charter on the one hand and Articles 73(b) and 76(b) on the other. It was suggested that there was

2/ GA (VI), 3rd Com., 370th, 397th mtgs;
E/CN.4/SR.252, 253, 254;
E/CN.4/649, 662;
GA (IX), 3rd Com., 569th-570th mtgs.

a distinction between the principle of self-determination of peoples as referred to in Articles 1 and 55 and the reference to "self-government" or "independence" in Articles 73(b) and 76(b). The principle of self-determination, it was said, referred to sovereign States, and according to Articles 1 and 55, the relations between such States should be based upon "respect for the principle of equal rights and self-determination of peoples". Under Articles 73(b) the metropolitan powers should endeavour to "develop self-government" in non-self-governing territories, and under Article 76(b) the administering authorities should promote the development of the inhabitants of trust territories toward "self-government or independence". (It was noted that the term "independence" was deliberately omitted from Article 73(b)). The expression "self-determination" in Articles 1 and 55 should not therefore be loosely identified with the expressions "self-government" in Article 73(b) and "self-government or independence" in Article 76(b).

7. On the other hand it was thought that, while there was a difference in wording and in context, the principle of self-determination and the right to self-government or independence were not different in essence. The United Nations could not promote the principle of self-determination of peoples in accordance with Articles 1 and 55 without promoting the right of the peoples of non-self-governing and trust territories to self-government or independence in accordance with Articles 73(b) and 76(b), or vice versa. It would be an absurd interpretation that under the Charter the peoples of non-self-governing and trust territories should have the right to self-government or independence, but not the right to self-determination. The right of self-determination was a universal right; it was a right of all peoples and all nations.

All peoples and all nations[3/]

8. The first clause in paragraph 1 of the article read: "All peoples and all nations shall have the right of self-determination". The clause affirmed the principle that the right of self-determination was universal.

3/ GA (VI), 3rd Com., 397th mtg.;
E/CN.4/SR.252-258;
E/CN.4/L.21, 23, 27.

9. The word "peoples" was understood to mean peoples in all countries and territories, whether independent, trust or non-self-governing. Suggestions were made to the effect that "peoples" should apply to "large compact national groups," to "ethnic, religious or linguistic minorities," to "racial units inhabiting well-defined territories," etc. It was thought, however, that the term "peoples" should be understood in its most general sense and that no definition was necessary. Furthermore, the right of minorities was a separate problem of great complexity.

10. The text of the clause, as it appeared in General Assembly resolution 545 (VI), read: "All peoples shall have the right of self-determination." The words "all nations" were added in order to emphasize the universal character of the right. There were nations which were erstwhile sovereign but were no longer masters of their own destinies; and nations, now independent, which might lose their right of self-determination.

Meaning of self-determination[4/]

11. The right of self-determination was defined in paragraph 1 of the article as the right of all peoples and nations "freely to determine their political, economic, social and cultural status".

12. This definition, it was said, was a very comprehensive conception of the right of self-determination. Every people or nation should be free to establish its own political institutions, to develop its own economic resources, and to direct its own social and cultural evolution, without the interference of other peoples or nations.

13. Against this proposal, it was said, that the definition was too broad in that it might sanction the burning of foreign books and the confiscation of foreign investments. Furthermore, the definition was not self-explanatory or self-sufficient, and the meaning of the word "status" was far from being clear.

14. A suggestion was made that the right of a people or nation to determine its "political status" should be written in the article to be included in the covenant on civil and political rights, and that the right to determine its "economic,

4/ E/CN.4/SR.252-258;
E/CN.4/L.22, 22/Rev.1, 23/Rev.1, 25.

social and cultural status" in the article to be included in the covenant on economic, social and cultural rights. However, this suggestion was thought to be based upon an artificial distinction between political status and economic, social and cultural status. Every people or nation was or should be an integrated entity. A people or nation that could not freely determine its political status could hardly determine its economic, social and cultural status and vice versa.

15. Suggestions were made which would indicate the substance of the right of self-determination in a concrete form. For instance, the right of self-determination should include the right of every people or nation "to establish an independent State", to "choose its own form of government", to "secede from or unite with another people or nation," etc. These suggestions were not adopted, for it was thought that any enumeration of the components of the right of self-determination was likely to be incomplete. A statement of the right in an abstract form, as in the first paragraph of the article, was thought to be preferable.

Obligations of all States[5/]

16. Under paragraph 2 of the article, all States should undertake two obligations: "to promote the realization of that right /of self-determination/ in all their territories," and to "respect the maintenance of that right in other States."

17. It was proposed originally that this paragraph should set forth the obligation of States, which were responsible for the administration of non-self-governing and trust territories, to promote the realization of the right of self-determination. The proposal was amended to include all States, whether or not they administered any non-self-governing or trust territories.

18. It was generally agreed that all States should "promote" and "respect" the right of self-determination, and that they should do so "in conformity with the provisions of the United Nations Charter." There were two qualifying clauses which were not adopted: that the States should promote the right of self-determination "in accordance with constitutional processes" and "with proper regard for the rights of other States and peoples." While the clause "in accordance with

5/ E/CN.4/SR.252-258;
E/CN.4/L.21,23/Rev.1, 25, 25/Rev.1, 28/Rev.1-2, 29, 30, 31.

constitutional processes" was intended to mean that the right of self-determination should be promoted "by legal and peaceful means," it might become an insurmountable obstacle to the realization of that right if it meant, for instance, that, before the right was granted to a non-self-governing or trust territory, the constitution of the metropolitan power had to be amended. The clause "with proper regard for the rights of other States and peoples" was opposed on the grounds that it permitted the exercise of a basic right on the condition that all the rights of other States and peoples - and possibly secondary or acquired rights - were not injured thereby.

Permanent sovereignty over natural wealth and resources[6/]

19. The third paragraph read: "The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States."

20. Against this text it was suggested that "permanent sovereignty" was not a tenable concept as any State could voluntarily limit its own sovereignty at any time. Furthermore, the proposition was considered dangerous in that it would sanction unwarranted expropriation or confiscation of foreign property and would subject international agreements and arrangements to unilateral renunciation.

21. On the other hand, it was stated that the right of self-determination certainly included the simple and elementary principle that a nation or people should be master of its own natural wealth or resources. The proposal, it was emphasized, was not intended to frighten off foreign investment by a threat of expropriation or confiscation; it was intended rather to warn against such foreign exploitation as might result in depriving the local population of its own means of subsistence.

6/ E/CN.4/SR.256, 257;
E/CN.4/L.24;
GA (IX), 3rd Com., 567th, 568th, 575th, 576th.

The problem of minorities[7]

22. A proposal was made that "the State shall ensure to national minorities the right to use the native tongue and to have the national schools, libraries, museums and other cultural and educational institutions." This was not adopted. One view was that such a proposal would retard the process of assimilation of immigrants to a new country and prevent the formation of a homogeneous society. Another view was that it might encourage separatist or irredentist movements and might bring about a multiplication of barriers and frontiers. (It may be noted that the rights of minorities are dealt with in article 25 of the draft covenant on civil and political rights).

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (V)		ESC(IX), suppl.10, annex I	
CHR (VI)		E/CN.4/365, part II, H; ESC (XI), suppl.5, annex III.	
GA (V)	3rd Com., 309th-311th mtgs.	Annexes, a.i. 63, A/C.3/L.88 and Rev.1; A/1559	
CHR (VII)		E/CN.4/516; ESC (XIII), suppl.9, annex IV.	
GA (VI)	3rd Com., 358th-372nd and 397th-403rd mtgs.	Annexes, a.i. 29, A/C.3/L.186 and Add.1, 204, 205, 205/Rev.1, 206, 209, 209/Rev.1, 216, 217, 217/Rev.1, 221, 222, 224, 225; A/2112.	
CHR (VIII)	E/CN.4/SR.252-261	E/CN.4/649, 657, 662, 663; E/CN.4/L.21, 22, 22/Rev.1, 23, 23/Rev.1, 24, 25, 25/Rev.1, 27, 28, 28/Rev.1-2, 29, 30, 31; ESC (XIV), suppl.4, paras.20-91 and annex I.	1
CHR (X)		E/CN.4/694/Add.2, 694/Add.2/Corr.1 (Eng.only), 694/Add.5, 694/Add.6	
GA (IX)	3rd Com. 562nd, 573rd and 575th-580th mtgs.	A/C.3/L.412 and 427.	1

7/ E/CN.4/SR.252, 254, 256, 257; E/CN.4/L.21, 23.

CHAPTER V

GENERAL PROVISIONS

(Part II, Articles 2-5, of both draft covenants)

Table of Contents

ARTICLE 2 of the draft covenant
on civil and political rights

General obligations of States

1. Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant.

3. Each State Party hereto undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To develop the possibilities of judicial remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

1. This article sets forth the general obligations to be undertaken by each State which becomes a party to the covenant. Paragraph 1 stipulates that each State party is to undertake to respect and ensure to all persons specified therein without any distinction the rights recognized in the covenant. Paragraph 2 deals with the steps to be undertaken by a State to give effect to the rights recognized in the covenant. Paragraph 3 obligates each State party to ensure an effective remedy to any person whose rights are violated.

2. The importance of article 2 from the point of view of implementing the covenant was stressed. In resolution 421 (V) the General Assembly considered "it essential that the covenant should include provisions rendering it obligatory for States to promote the implementation of the human rights and fundamental freedoms proclaimed in the covenant and to take the necessary steps, including legislation, to guarantee to everyone the real opportunity of enjoying those rights and freedoms."

Obligation to respect and ensure civil and political rights without discrimination

3. In accordance with paragraph 1 of article 2, a State party would undertake to respect and ensure the rights recognized in the covenant, first, to "all individuals within its territory and subject to its jurisdiction", and second, to all such individuals "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

4. There was some discussion on the desirability of retaining the words "within its territory". It was thought that a State should not be relieved of its obligations under the covenant to persons who remained within its jurisdiction merely because they were not within its territory. For example, States parties would have to recognize the right of their nationals to join associations within their territories even while they were abroad. There might also be a contradiction between the obligation laid down in paragraph 1 and that laid down in some of the other articles, particularly article 12, paragraph 2 (b), which provided that anyone should be free to enter his own country. On the other hand, it was contended that it was not possible for a State to protect the rights of persons subject to its jurisdiction when they were outside its territory; in such cases, action would be possible only through diplomatic channels.

5. The non-discrimination clause of paragraph 1 follows that of article 2 of the Universal Declaration of Human Rights.[1/] It was thought appropriate

1/ For the discussion on the formulation of the non-discrimination clause in article 2 of the Universal Declaration of Human Rights, see GA (III/1) 180th-183rd mtgs; 3rd Com., 100th-103rd and 176th-177th mtgs. See also the annotation on article 24 of the draft covenant on civil and political rights.

to include this non-discrimination clause in article 2, which dealt with the general obligations of the States parties.

6. There was general agreement that, notwithstanding the provisions of article 2, paragraph 1, restrictions placed in certain substantive articles of part III of the covenant, such as article 23 on political rights which refers to "every citizen", would apply.

Obligations to adopt legislative or other measures

7. There were differences of opinion concerning the obligation to be assumed by a State to give effect to the rights recognized in the covenant when ratifying or acceding to the covenant.[2/] Those opposed to the present text of paragraph 2 contended that the general rule of international law was that provisions of an international instrument should be in force immediately upon ratification. The normal practice was that accession was effected only after or simultaneously with the taking of the necessary constitutional measures of execution. Consequently, there was no need for the provisions of paragraph 2, which were exceptional. A proposal that "every deposit of instrument of accession shall be accompanied by a solemn declaration made by the government of the State concerned, that full and complete effect is given by the law of the State to the provisions of the covenant" was, however, rejected.

8. On the other hand, the view was expressed that the adoption of legislative or other measures was not a condition precedent to a State binding itself internationally, unless the treaty concerned so provided. A State might properly undertake an international obligation and then subsequently take the necessary legislative or other measures to ensure the fulfilment of those obligations. It was observed that this view was supported expressly or by implication in several cases by the Permanent Court of International Justice.

2/ Attention may be drawn to an opinion on the adaptation of municipal law to international convention submitted by the Secretary-General in document E/CN.4/116 at the request of the Drafting Committee of the Commission on Human Rights.

Thus, there was no inconsistency between international law and the provisions of paragraph 2. At the same time the need for paragraph 2 arose because it was essential to permit a certain degree of elasticity to the obligations imposed on States by the covenant, since all States would not be in a position immediately to take the necessary legislative or other measures for the implementation of its provisions. The covenant, it was pointed out, unlike ordinary conventions, concerned a vast field so that no State could claim its legislation to be in complete harmony with all its provisions. Paragraph 2 would also take into account the constitutional processes of various countries which differed as regards the implications of an act of ratification of an international instrument.

9. States should, therefore, undertake to take the necessary steps, in accordance with their constitutional processes and with the provisions of the covenant, to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the covenant, where such measures had not already been provided for. Suggestions were put forward for setting some time limit on the adoption by States of these measures. Definite time limits, such as one or three years, were found unacceptable because of the difficulty of foreseeing the exact period needed to give effect to the provisions of the covenant. It was also considered that to allow each State to fix its own time limit in its instrument of ratification would leave too much freedom to the States. It was decided that States should adopt legislative or other measures "within a reasonable time", since that would provide a suitable check to excessive delays. The expression "within a reasonable time" was, however, subsequently deleted. Later, it was decided to incorporate in article 49 a provision to the effect that States parties undertake to submit reports[3/] on legislative or other measures which give effect to the rights recognized in the covenant.

10. The provisions of paragraph 2 were criticized on the grounds that they introduced into the covenant on civil and political rights the notion of progressiveness and that they might result in the act of ratification being no

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3/ See under article 49.

more than a vague promise to be fulfilled by some unspecified date. It was considered that the idea of progressiveness implicit in paragraph 2 and in article 49 was most inappropriate for civil and political rights which were capable of immediate implementation. It might be impossible to determine at any time which of the provisions of the covenant were enforced in the territory of any State party. Paragraph 2 might also give rise to unequal obligations between the States parties; some States would take the necessary measures immediately, to bring their domestic law into conformity with the covenant, while others might not. Even if the requirement of "reasonable time" was included, it would be impossible to forecast with any degree of certainty what a reasonable period of time would be in a particular instance. It was recognized that disparities between the legislation of some States and the provisions of the covenant might present difficulties, but it was suggested that the best way to meet that problem was by including in the covenant an article permitting reservations within appropriate limits.

11. It was considered by others that paragraph 2 had the advantage, unlike a system of reservations, of not perpetuating the law of any State that did not conform to the obligations set out in the covenant. The question of reservations should be considered separately, and it should not be confused with the obligation which States should assume to take steps to adopt the necessary legislative or other measures to give effect to the provisions of the covenant.[4/] While it was regrettable that the words "within a reasonable time" had been deleted, it was nevertheless to be recognized that under article 49 reports on action taken by States pursuant to article 2, paragraph 2, would be required, and that would serve as a curb on excessive delays and on any abuse to which paragraph 2 might lend itself.

12. A proposal to insert in paragraph 2 the phrase, "the provisions of this covenant shall not themselves become effective as domestic law," was rejected. In favour of this proposal, it was contended that in some States a ratified treaty became the supreme law of the country in accordance with its constitution.

4/ On the question of reservations, see Chapter X, paragraphs 25-39 below.

In others, a treaty was not automatically incorporated in the national legislation, but its provisions had to be included in legislation in order that they might become enforceable within the country. The text proposed would place all countries on an equal footing. It was, however, felt that the proposal related to the constitutional laws and practices of States, and there was no reason to include provisions in the covenant which might interfere with the application of constitutional processes. Paragraph 2, moreover, made it clear that the obligation to give effect to the rights recognized in the covenant would be carried out by States through the adoption of legislative or other measures.

Obligation to ensure remedies

13. States parties are to undertake three specific obligations, laid down in paragraph 3, to ensure remedies to any person whose rights are violated. First, they are to ensure that any person whose rights or freedoms as recognized in the covenant are violated "shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Secondly, they are to ensure that "any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial." Thirdly, they are to ensure that the "competent authorities shall enforce such remedies when granted." It is also provided that the States parties are to undertake "to develop the possibilities of judicial remedy."

14. An opinion was expressed that there was no need to specify the obligations of States parties in the event of a violation of the covenant, since it was obvious that if the States undertook to abide by the covenant, they would have to provide for effective remedies against infringements. It was also likely that provisions of that kind might be too broad and sweeping to be of much value. The view was accepted, however, that the proper enforcement of the provisions of the covenant depended on guarantees of the individual's rights against abuse, which comprised the following elements: the possession of a legal remedy, the granting of this remedy by national authorities and the enforcement of the remedy by the competent authorities.

15. Although an opinion was expressed that the strict application of paragraph 3 (a) in cases when officials had acted in good faith might seriously hamper the course of justice and administration as a whole, it was argued that it should be made clear that no one could avoid responsibility for violating a person's freedom, especially by claiming that he was acting on higher authority. Some were even of the view that the victim of a violation might not always be in a position to act and that it would be better if governments were specifically held responsible for bringing violators swiftly to justice. However, a proposal that "violators shall swiftly be brought to the law, especially when they are public officials" was rejected.

16. Paragraph 3 (b) provides that any person claiming a remedy under article 2 is to have his right thereto determined by competent authorities "political, administrative or judicial." In the opinion of some, all remedy should be provided through recourse to independent judicial authorities, which would include, where that was the case, administrative tribunals. It was considered particularly undesirable that a person whose freedoms had been violated, in all probability by the political authorities of the State, should have his right to a remedy determined by a political organ, since the very same organ that had violated his right might be the one that was adjudicating on his claim for a remedy. But it was contended that the omission of reference to political authorities would preclude the granting of remedies by the legislature or the executive in cases where they might be the only, or the most effective, agencies for that purpose. At the same time, it was observed that, while judicial remedy was preferable, it might be impossible to impose upon States the immediate obligation to provide such remedies. In order to meet that objective, however, it was decided to provide, in paragraph 3 (b), that each State party undertake

"to develop the possibilities of judicial remedy."[5/] Another opinion was that paragraph 3 (b) failed to provide any guarantee for the independence of the authorities which might be empowered to decide whether a remedy should be granted.

17. The reference in paragraph 3 (c) to "competent authorities" was thought to be more comprehensive and apposite than a reference to "police and executive authorities."

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.3, 11	E/CN.4/AC.1/4, art.2, 11; E/CN.4/21, annex B, art. 2, annex G	
CHR (II)	E/CN.4/SR.41; E/CN.4/AC.3/SR.8	E/CN.4/37, 51, 56, 73, 79; ESC (VI), suppl. 1, art. 2	2
DC(II)	E/CN.4/AC.1/SR.33, 43	E/CN.4/AC.1/19,26; E/CN.4/95, annex B, art. 2	2
CHR (III)		E/CN.4/82, 82/Rev.1, 82/Add.2, 4, 7, 8 and 12, 85; ESC (VII), suppl.2, annex 8, art. 2	2
ESC (VII)		E/C.2/94	
CHR (V)	E/CN.4/SR.125	E/CN.4/224, 232, 258, 264, 318, 319, 322; ESC (IX), suppl. 10, annex I, art. 2, and annex II	

5/ The present text of paragraph 3 (b) is somewhat ambiguous. The paragraph reads: "to develop the possibilities of judicial remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial." The original text did not include the phrase "to develop the possibilities of judicial remedy", and the words "such a remedy" clearly referred to the "effective remedy" mentioned in paragraph 3 (a), but in the present text the words "such a remedy" might be construed as referring to "judicial remedy". It is suggested, therefore, that the order of the two clauses of this paragraph "to develop..." and "to ensure..." might be reversed so that what each State party undertakes to ensure immediately would precede what it undertakes to develop in the future.

DOCUMENTATION

(continued)

Organ and session	Records of discussion	Other documents	Article number
ESC (X)		E/C.2/2/241	
CHR (VI)	E/CN.4/SR.138, 193, 194, 195, 199	E/CN.4/353/Add.1-3, 6, 8 and 10; 365, 374, 384, 495, NGO/4, 7, 8; ESC (XI), suppl. 5, annex I, art. 1, and annex II	
ESC (XI)	E/AC.7/SR.147-149, 151, 153	E/L.68, paras. 14-22, E/C.2/254/Add.1, 259/Add.1	1
GA (V)	317th mtg; 3rd Com., 288th-291st, 300th-301st and 314th mtgs.	Annexes, a.i. 63, A/1559, para.26 and A/C.3/534, paras. 11-12	1
CHR (VII)		E/CN.4/515/Add.1, 2, 6, 12, 13, 515/Add.2/Corr.1, 528, paras. 58-62 and 67-77, 552, 641, paras. 51, 53 and annex II, 628, NGO/21, 25; ESC (XIII), suppl. 9, annex I, art. 1, and annex III A	1
GA (VI)	3rd Com., 366th, 367th mtgs.		1
CHR (VIII)	E/CN.4/SR.328, 329	E/CN.4/528/Add.1, paras. 40-49, 660, L.129, 138, 161, NGO/36, 39; ESC (XIV), suppl. 4, paras. 269-276, annex I B, art. 2	1
ESC (XIV)	665th mtg.		
CHR (IX)		E/CN.4/674, paras. 22, 26-29	2
CHR (X)		E/CN.4/694/Add.2, 702, No. XIII	
GA (X)	3rd Com. 562nd, 564th-567th, 571st-573rd, 575th and 580th mtgs.		

ARTICLE 2 of the draft covenant on economic, social and cultural rights

General obligations of States

1. Each State Party hereto undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means.

2. The State Parties hereto undertake to guarantee that the rights enunciated in this Covenant will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

18. There were several schools of thought on the drafting of provisions governing the obligations of States for implementing, on the national level, the economic, social and cultural rights treated in the covenant.

19. One view was that each article should specify in detail the steps which States parties should take to implement the right recognized in the article. The particular steps to be taken would be elaborated and would vary according to the right concerned. The claim was made that the only effective way of implementing the covenant was to place such obligations on States.

20. The opinion was also expressed that since all categories of rights were of equal importance, States could and should assume equal obligations for their implementation. It was proposed that obligations similar to those laid down in article 2 of the draft covenant on civil and political rights should be written into the covenant on economic, social and cultural rights.

21. Another view was that it would be realistic to limit the terms of each individual article to a recognition of the particular right by the State and to add an "umbrella" article imposing a general obligation on States which would be applicable to all the rights recognized in the covenant. In view of the nature of economic, social and cultural rights, and the relationship between the realization of those rights and the economic and social conditions of the countries concerned, however, it would be unrealistic to require each

State party to the covenant to do more than "undertake to take steps", "to the maximum of its available resources", with a view to "achieving progressively" the full realization of the rights recognized in the covenant.

22. The view prevailed that there should be a general article (article 2) containing what was felt to be the firmest commitment which could reasonably be undertaken in relation to all the rights treated in the covenant, but that its inclusion would not prevent the elaboration of what the obligation of the general article would signify in relation to any selected right, or even the imposition of stricter obligations in connexion with such a right. Article 6, paragraph 2, article 13, paragraph 2, and article 16, paragraph 2, thus elaborate upon the obligation of article 2 in relation to, respectively, the right to work, the right to health and rights relating to culture and science, while separate and additional obligations are included in article 8 on trade union rights, article 14, paragraph 3 relating to respect for certain rights of parents and guardians in relation to the education of their children or wards, article 15 on a plan for implementing compulsory primary education and article 16, paragraph 3, on respect for the freedom indispensable for scientific research and creative activity.

23. Paragraph 1 of article 2 was criticised on the grounds that it provided too many loopholes for States parties wishing to evade their obligations: to undertake "to take steps" for the realization of rights was not to guarantee those rights; secondly, if such steps were only taken by a State "to the maximum of its available resources", lack of resources could always be pleaded; thirdly, the commitment to achieve the realization of the rights "progressively" permitted indefinite delays and was in any case not necessary to safeguard the position of States unable to implement rights immediately.

24. On the other hand, it was observed that the enjoyment of economic, social and cultural rights depended in part upon available resources and upon domestic and international economic and social conditions over which the State exercised only incomplete control and which not only varied from country to country but were also liable to sudden change. It was argued that countries could not progress faster than such resources and conditions would allow and that the use of the term "progressively" was particularly valuable to under-developed

countries. It was also claimed that the use of the word "progressively" in fact placed upon signatories a duty to achieve ever higher and higher levels of fulfilment of rights. It was pointed out also that the text gave due recognition to the need for international financial and technical assistance and co-operation in providing the basis for the realization of economic, social and cultural rights, and that the reference to "available resources" contemplated not only the national resources of a country but also the resources which it might receive from abroad.[6/]

25. Another argument in favour of the solution adopted was that the articles on economic, social and cultural rights should be short and general in nature, leaving it to the specialized agencies to elaborate more detailed international instruments. In an instrument consisting mainly of such short general statements, however, the setting of fixed and precise standards for many economic, social or cultural rights was felt by some not to be feasible. The result has been the use of phrases such as "just and favourable conditions of work", "fair wages", "a decent living" and "reasonable limitation of working hours" in article 7, "adequate food, clothing and housing" in article 11, "an adequate standard of living" in article 12 and "the highest attainable standard of health" in article 13. The requirement of continuous progress is specifically reflected in "the continuous improvement of living conditions" in article 12 and "the reduction of infant mortality" and "the improvement of nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene" in article 13.

26. Article 2, paragraph 1, must also be considered in conjunction with part IV of the draft covenant on economic, social and cultural rights, which provides, not for a procedure of examination of complaints of non-observance of fixed and precise standards relating to particular rights, but for a system for the submission and examination of periodic reports on progress made in achieving the observance of rights. Attention is also drawn to the provision

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6/ Compare article 23 of the draft covenant on economic, social and cultural rights and the comment thereon (Chapter IX).

of article 18, paragraph 2, of the draft covenant that reports of States parties may indicate factors and difficulties affecting the degree of fulfilment of obligations under the covenant.

27. The inclusion of paragraph 2 in Article 2 reflects the prevalence of the view that, whatever the level reached in the realization of rights in a country at any given time, the benefits thereof would be accorded to all equally. The paragraph was opposed on the grounds that it would be unrealistic for States to undertake such a guarantee; for instance, equality of pay between the sexes might be impossible to achieve immediately in some countries.

28. A recommendation to add "legitimacy" after "birth" was not adopted; it was felt that the words "birth or other status" would protect the position of persons born out of wedlock.

29. The paragraph was intended to apply to all the rights enunciated in the covenant, including those in relation to which the above-mentioned additional and separate obligations were laid down.

30. The question was raised whether it would be desirable to add to the covenant a provision to ensure to the individual a domestic remedy for the enforcement in particular cases of any standard recognized in accordance with the covenant on economic, social and cultural rights by a State party thereto.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (X)		E/C.2/241	
CHR (VI)		E/CN.4/364, paras. 5-8, E/CN.4/403 and ESC (XI), suppl. 5, annex III	
ESC (XI)	E/AC.7/SR.151		
GA (VI)	3rd Com., 288th mtg., para. 29		
ESC (XII)		E/1880/Add.7	

DOCUMENTATION

(continued)

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.14/SR.1-3 and E/CN.4/SR.203, 204, 205, 206, 207, 208, 217, 218, 231-4 and 236-7	E/CN.4/364/Add.1, para.5, E/CN.4/364/Add.3, paras 2-9, E/CN.4/529, paras. 15-24 and 30-50, E/CN.4/538/Rev.1, 539/Rev.1, 542, 543, 544. 552, 562, 574 and Corr.1, 609 and Rev.1, 610 and Add.1, 612, 615, 616 and 618, E/CN.4/NGO/26 and 28 and ESC (XIII), suppl. 9, paras. 50-4, annex I, article 19, para. 4 and annex II.	
ESC (XIII)		E/2057/Add.2, E/2059/Add.8, E/2085/Add.1 and E/C.2/299	19, para. 4
GA (VI)	3rd Com., 360th mtg. paras. 25-27, 363rd, paras. 15-16 and 364th para. 12	A.i. 29, A/2112, para. 23	19, para. 4
CHR (VIII)	E/CN.4/SR.268-75 and 303	E/CN.4/364/Rev.1, paras. 6-9, E/CN.4/641, annex II, E/CN.4/650, paras 9, 10. 14-19, 54 and 58 (b) and (c) and Corr.2, E/CN.4/654/Add.1, para. 5 and Add.2, E/CN.4/655/Add.2, 3 and 4, E/CN.4/660, para. 47, E/CN.4/NGO/36, E/CN.4/L.54 and Add.1 and Rev. 1-2, L.55, L.56 and Rev.1, L.65 and Rev.1 and L.69-73 and ESC (XIV), suppl. 4, paras. 106-109, annex I, A, art.2 and annex IV.	
ESC (XIV)		E/C.2/335	2
CHR (IX)		E/CN.4/673, paras. 54-6	2
GA (VIII)	3rd Com., 509th mtg., para. 4		2
CHR (X)		E/CN.4/694/Add.2 and E/CN.4/702, No. XIII	2

DOCUMENTATION

(continued)

Organ and session	Records of discussion	Other documents	Article number
GA (IX)	3rd Com., 562nd mtg., paras.5-7, 565th, paras. 20 and 28, 566th, paras. 11 and 24, 567th, para. 10, 568th, para.25, 569th, para.28, 570th, paras. 3 and 11, 571st, paras.8, 21-2 and 30, 572nd, para.23, 573rd, paras. 15 and 23, 575th, paras.6, 15 and 31-2, 576th, para.31 and 580th, paras. 7 and 10	A.i.58, A/2808, para. 38	2

ARTICLE 3 of both draft covenants

Equal rights of men and women

Draft covenant on civil and political rights

The States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in this Covenant.

Draft covenant on economic, social and cultural rights

The States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in this Covenant.

31. Under these two articles States parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights and economic, social and cultural rights set forth in the respective covenants. A previous text of the article for the draft covenant on economic, social and cultural rights provided for "the enjoyment of all economic, social and cultural rights and particularly those set forth" in that covenant, and the initial proposal for the draft covenant on civil and political rights provided for "the enjoyment of all civil and political rights".

32. In the opinion of some, it was necessary to provide for the equal right of men and women to the enjoyment of all civil and political rights and all economic, social and cultural rights, regardless of whether they were included in the covenants. That principle, it was argued, was in itself a statement of a basic right and should find a place in any international instrument on human rights. The negation of that concept would only perpetuate a state of affairs which unjustifiably distinguished between human beings on grounds of sex. Others were of the view that it was one thing to prohibit discrimination, and in particular to provide for equality of men and women in the enjoyment of such rights as were "set forth in the covenants", but quite another to oblige States to undertake a commitment, the scope of which was not clearly defined. It was difficult to share the assumption that legal systems and traditions could be overridden, that conditions which were inherent in the nature and growth of families and organized societies could be immediately changed, or that articles of faith and religion could be altered, merely by treaty legislations. The

result might be that most States would find it impossible to ratify the covenants. It was also doubted whether the reiteration of the principle of equality of men and women would serve any purpose or lend any additional force to that principle which was clearly laid down in the Charter. It was felt that the United Nations was already engaged in work in the field of equality of the sexes, and it was best to await the result of those activities.

33. Opinions varied on the inclusion of the present text of the two articles of the covenants. On the one hand, the view was expressed that the articles were redundant, inasmuch as article 2 of both covenants already provided that each State should undertake to respect and to ensure to all persons the rights recognized in the covenants without any distinction as to sex, while article 24 of the draft covenant on civil and political rights stipulated that the law should prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination on grounds of sex. Inclusion of provisions relating to women alone would only weaken those articles and, in particular, cast doubt on the form, meaning and application of article 2. If the principle of non-discrimination on grounds of sex required article 3 to make it effective, then logically the question arose as to the necessity of including special provisions to make the ban on discrimination on all the other grounds enumerated in article 2 equally effective. Moreover, the use of such expressions as "no one", "everyone" and "all persons" in the covenants was quite unequivocal.

34. On the other hand, it was contended that article 3 did not merely state the principle of equality but enjoined States to make equality an effective reality, that it would in no way be prejudicial to article 2 of the covenants or to article 24 of the draft covenant on civil and political rights, and that every effort should be made to do away with all prejudice in that field, even though it meant the repetition of so essential a provision as that of equality between men and women. The articles enshrined a principle of elementary justice, namely, equality of rights in a world where, even in the most advanced countries, women were still denied many rights. It was also recalled that the General Assembly had decided in resolution 421 E (V) to include in the covenant "an explicit recognition of equality of men and women" to the enjoyment of human rights, and that in resolution 543 (VI), the Assembly had instructed that the two covenants should contain "as many similar provisions as possible" in order to emphasize their unity of purpose.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
GA (V)	3rd Com., 291st, 299th, 315th mtgs.	Annexes, a.i. 63, A/1559, para. 50	
CHR (VII)	E/CN.4/SR.230	E/CN.4/513, para. 22, 515/Add.11, 528, para. 11-15, 529, para. 29, 592, 597, NGL/25; ESC (XIII), suppl.9, para. 48, annex I, art. 31	
ESC (XIII)		E/C.2/299	31 of draft cov. on eco., soc. and cul. rts.
GA (VI)	3rd Com., 360th, 367th, 371st mtgs.		
CHR (VIII)	E/CN.4/SR.301,302	E/CN.4/528/Add.1, 650, paras.21, 42-44, NGO/38; ESC (XIV) suppl.4, paras.98, 142-143, annex I A, art.3, and annex II A	31 of draft cov. on eco., soc. and cul. rts.
ESC (XIV)	E/C.2/SR.121	E/C.2/335	
CHR (IX)	E/CN.4/SR.371-373, 409	E/CN.4/674, para. 5, L.263, 289; ESC (XVI), suppl.8, paras. 59-64, annex I A, art.3, annex I B, art.3, and annex III, paras. 26-28	3 of both draft covenants
CHR (X)		E/CN.4/694/Add.2, 702, nos. IV and XIII, 702/Add.2, no. XXIX, 702/Add.6, no. XXXIV	3 of both draft covenants
GA (X)	3rd Com., 565th, 569th, 571st, 573rd, 575th mtgs.		3 of both draft covenants

ARTICLE 4 of the draft covenant
on civil and political rights

Emergency powers

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties hereto may take measures derogating from their obligations under this Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party of the Covenant availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated, the reasons by which it was actuated and the date on which it has terminated such derogation.

35. This article specifies the circumstances under which an emergency may arise which would entitle a State party to derogate from its obligations under the covenant, the conditions under which measures derogating from its obligations may be taken, and the kind of notifications that are to be submitted thereon.

36. At one time such an article was considered unnecessary by those who favoured a general limitations clause governing all the rights recognized in the covenant and by those who considered that the eventualities for which the article was proposed and the rights to which it might apply were sufficiently covered by the permissive limitations set forth in several articles of the covenant. It was also thought that such an article might produce complicated problems of interpretation and give rise to considerable abuse. The concept of "national security" or of "public order" set forth in a number of articles of the covenant would take care of situations which might arise in time of war or national emergency. Moreover, those specific limitations had the advantage of appearing only in the articles in which they had been considered indispensable, and a general clause might be used to justify more far-reaching limitations.

37. The opinion was expressed, however, that it was necessary to envisage possible conditions of emergency in which States would be compelled to impose limitations upon certain human rights. In time of war, for example, States could not be strictly bound by obligations assumed under a convention unless the convention contained provisions to the contrary. There might also be instances of extraordinary peril or crisis, not in time of war, when derogation from obligations assumed under a convention became essential for the safety of the people and the existence of the nation. These situations would not fall within the scope of the limitations provided for in the various articles of the covenant, nor could they be adequately covered by a general limitations clause. It was also important that States parties should not be left free to decide for themselves when and how they would exercise emergency powers because it was necessary to guard against States abusing their obligations under the convenant. Reference was made to the history of the past epoch during which emergency powers had been invoked to suppress human rights and to set up dictatorial régimes.

Existence of public emergency

38. The only kind of emergency envisaged in the article is a "public emergency", and according to paragraph 1, such an emergency can occur only when "the life of the nation" is threatened and only when its existence has been "officially proclaimed" by the State party concerned.

39. This formula was evolved after many alternative suggestions and proposals had been considered. Previous drafts contained such expressions as "in time of war or other public emergency", "in time of war or other public emergency threatening the interests of the people", and "in the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster". Among the suggestions made were "public emergency threatening the security, safety and general welfare of the people", and "in case of exceptional danger made evident by a public act or public disaster". The main concern was to provide for a qualification of the kind of public emergency in which a State would be entitled to make derogations from the rights contained in the covenant which would not be open to abuse. The present wording is based on the view that public emergency should be of such a magnitude as to threaten the life of the nation as a whole. While it was recognized that one of the most important

public emergencies was the outbreak of war, it was felt that the covenant should not envisage, even by implication, the possibility of war, as the United Nations was established with the object of preventing war. It was contended, however, that "public emergency" was too restrictive a term; it would not, for example, cover natural disasters, which almost always justified a State in derogating from some, at least, of the rights recognized in the covenant.

40. It was thought that the reference to a public emergency "which threatens the life of the nation" would avoid any doubt as to whether the intention was to refer to all or some of the people, although it was suggested that a reference to "the interests of the people" was more appropriate in a covenant which dealt with the rights of individuals and that such a phrase would also prohibit governments from acting contrary to the interests and welfare of their people.

41. The provision that the existence of a public emergency should be "officially proclaimed" by the State concerned was also considered essential in order to prevent States from derogating arbitrarily from their obligations where such an action was not warranted by events. Reference was made to the fact that in most countries a public emergency could be declared only under conditions defined by law, and that that guarantee would be lost unless a requirement of public proclamation was maintained. It was emphasized that the article should in no way imply that constitutional and legal limits imposed upon the powers of governments during an emergency could be derogated from or that the executive power was not responsible for taking measures which might conflict with national guarantees.

Scope of measures of derogations

42. The measures which a State party may take in derogation of its obligations under the covenant after a public emergency has been proclaimed are subject to three conditions which are specified in paragraph 1 of the article. First, they must be "to the extent strictly required by the exigencies of the situation". Second, they must not be "inconsistent with /the State party's/ other obligations under international law". Third, they must "not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

43. There was general agreement on the first condition. As regards the second, it was proposed, unsuccessfully, that in order to avoid any possible misinterpretation of the words "international law", there should be in addition to these words a reference to the "principles of the Charter and the Universal Declaration of Human Rights". The opinion was expressed that reference to the Charter would also make it clear that war was recognized only in case of self-defense or for other reasons consonant with the Charter. It was pointed out, however, that the principles of the Charter were part of international law and that the provisions of the Universal Declaration might not be considered as such.

44. The third condition concerning non-discrimination also met with general approval, although there was some debate on the inclusion of the word "solely". For the retention of that word, it was argued that a State might take measures derogating from the rights recognized in the covenant that could be construed as discriminatory merely because the persons concerned belonged to a certain race, religion, etc., but that the actual reason for the derogation might be otherwise. It was therefore important to emphasize that the evil to be avoided was discrimination based solely on the grounds mentioned. Further, it was considered that reference to the various grounds for non-discrimination set forth in article 2, paragraph 2, of the Universal Declaration of Human Rights would not be appropriate, since legitimate restriction might in some cases be imposed on certain categories mentioned therein.

Limitation on derogations

45. Paragraph 2 of the article enumerates the provisions of the covenant from which no derogations may be made. The consensus of opinion was that certain provisions could not be derogated from even in times of public emergency, but there was much discussion on what those provisions should be. Some expressed their satisfaction with the present specifications, although it was pointed out that the reference to article 18, paragraph 3, relating to manifestation of religion or belief might have to be subject to the same degree of derogation as articles 19 and 20, derogations from which were not excluded. Others thought that it would be necessary, before the drafting of the covenant was completed, to make a thorough study of the articles that allowed of no derogation, and in this connexion, reference was made to such articles of the covenant as 5, 9, 12, 13, 14, 19, 20 and 21, as wholly or in part enunciating rights that should

appropriately be listed in paragraph 2. Another opinion expressed was that, while there was to be no derogation from certain provisions, derogations could be made from the rest of the covenant, including the measures of implementation, which might have far-reaching consequences.

Notifications in case of derogations

46. When a State party avails itself of the right of derogation in time of public emergency, it is required by paragraph 3 to comply with three steps concerning notifications of its actions. It shall in each case "inform immediately" the other States parties, through the intermediary of the Secretary-General, first, of the provisions of the covenant from which it has derogated; second, of the reasons by which it was actuated; and third, of the date on which it has terminated such derogation.

47. It was generally agreed that the proclamation of a public emergency and consequential derogation from the provisions of the covenant was a matter of the gravest concern and the States parties had the right to be notified of such action. It was further agreed that since the use of emergency powers had often been abused in the past, a mere notification would not be enough. The derogating State should also furnish the reason by which it was actuated, although this might not include every detail of each particular measure taken. Moreover, notification should be furnished of the date on which the derogation was terminated. The opinion was expressed that the notifications should be made also to the United Nations and be published by the Secretary-General because of the importance of the matter. It was felt, however, that it might be dangerous to allow to States which were not parties the opportunity to express opinions on how the States parties were fulfilling their obligations under the covenant. Another opinion was that an additional guarantee containing a strict procedure for cases of derogations was necessary and that this might be done by requiring States to submit to the human rights committee or to another suitable authority information on all the circumstances which had led to the suspension of any of the provisions of the covenant, and the body concerned would immediately decide whether the derogation was legitimate or not. The view was also expressed that the implementation provisions of the covenant would apply to article 4.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.11	E/CN.4/AC.1/4, art. 4, 11; E/CN.4/21, annex B, art. 4	
CHR (II)	E/CN.4/AC.3/SR.8, E/CN.4/SR.42	E/CN.4/37, 68; ESC (VI), suppl.1, annex B I, art. 4	4
DC (II)	E/CN.4/AC.1/SR.22, 34, 43	E/CN.4/AC.1/19, E/CN.4/95, annex B, art. 4	4
CHR (III)		E/CN.4/82/Add.2, 4, 8 and 12, 85; ESC (VII), suppl.2, annex B, art. 4	4
ESC (VII)		E/CN.2/88, 94, 98	4
CHR (V)	E/CN.4/SR.88, 89, 126, 126/Corr.1, 127	E/CN.4/170, 170/Add.1, 187, 188, 319, 324, 325, 335; ESC (IX), suppl. 10, annex I, art. 4, and annex II	4
ESC (IX)		E/C.2/194	4
CHR (VI)	E/CN.4/SR.138, 195, 196, 199	E/CN.4/353/Add.1, 2, 3, 6, 8, 9 and 10, 365, 497, 498, L.10, NGO/4, 7, 10, 14; ESC (XI), suppl.5, annex I, art.2 and annex II	4
ESC (XI)	E/AC.7/SR.148, 149, 150; E/C.2/SR.79	E/L.68, E/C.2/254/Add.1, 259/Add.1	2
GA (V)	3rd Com., 290th mtg.	Annexes, a.i. 63, A/C.3/534, para. 11	2
CHR (VII)		E/CN.4/515/Add.2, 4, 6 and 13, 528, paras. 79-86, 552, 562, 562/Rev.1, 573, 628, NGO/21; ESC (XIII); suppl.9, annex I, art.2, and annex III A	2
CHR (VIII)	E/CN.4/SR.330,331	E/CN.4/528/Add.1, paras. 50-56, 660, 668/Add.17, L.121, 136, 139, 139/Rev.1, 211, 212, 213, NGO/39; ESC (XIV), suppl. 4; paras. 277-285, and annex I B art. 3	2
CHR (IX)		E/CN.4/674, paras. 30-32, NGO/47; ESC (XVI), suppl. 8, annex I B, art. 4	3
CHR (X)		E/CN.4/702, no. XIII	4
GA (IX)			4

ARTICLE 4 of the draft covenant on economic, social and cultural rights

General Limitations

> The State Parties to this Covenant recognize that in the enjoyment of those rights provided by the State in conformity with this Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

48. Much of the discussion of Article 4 centred around the question whether there was any need to include a general limitations article in the covenant and, if so, whether article 4 was adequate.

49. Those opposed to the inclusion of such an article, or to the expansion of article 4, pointed out that an article on general limitations was superfluous since the provisions of the draft covenant on economic, social and cultural rights were already limited by article 2 of that covenant. General limitations would be open to varying interpretations and would tend to weaken or destroy the binding force of the provisions of the covenant. The articles as drafted did not guarantee rights but merely recognized them in broad terms. The nature of the obligations imposed and the manner of enunciating the rights made limitations generally unnecessary except in a case such as that of the article on trade union rights (article 8).

50. Those who supported article 4 admitted that article 2 provided only for the progressive achievement of the rights recognized in the covenant. However, the various substantive articles were drafted in broad general terms and States would themselves have to regulate and determine the scope of the rights within that general framework; nevertheless some indication was required of the limitations which might be imposed so that States would not be free to limit the rights arbitrarily in any manner they might choose. Such a limitation clause should not be drafted too generally nor too restrictively. The provisions of article 2 should relate only to the general level of attainment of rights and should not be invoked by States as grounds for imposing numerous limitations

on them. Article 2 did not indicate when limitations could be legitimate and it was necessary to state clearly that limitations would be permissible only in certain circumstances and under certain conditions. With respect to articles on civil and political rights the case was different; some of those articles contained no limitations while others contained specific limitations. It was not feasible to treat economic, social and cultural rights in the same way, since the manner in which the articles were drafted was different.

51. At the same time, the opinion was expressed that article 4 ought to be expanded so as to contain a reference to respect for the rights and freedoms of others and the just requirements of morality and public order. There was, it was said, an absolute necessity for harmonizing the rights of the individual on the one hand and the requirements of the community on the other.

52. In reply it was observed that the covenant established merely the necessary minimum and such considerations as morality, public order and rights and freedom of others were more relevant to civil and political rights than to economic, social and cultural rights. Moreover, the question of the rights and freedoms of others was fully covered in paragraph 1 of article 5. It was feared that States might invoke allegedly acquired rights in order to thwart the implementation of the right of peoples to self-determination and to the control of their natural resources. Concepts such as public order or prevention of disorder, which were open to broad interpretations, might easily nullify the whole concept of self-determination. Against this view, it was said that the difficulty arising out of a possible conflict between such limitations and the provisions of paragraph 3 of article 1 on the right of all peoples and nations to self-determination, was an argument not so much against a general limitations clause as against the article on the right to self-determination.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (XI)		E/L.68, para. 83	
GA (V)		A.i. 63, A/C.3/534, para. 15	
CHR (VII)	E/CN.4/SR.234-6	E/CN.4/528, paras.187-97, E/CN.4/554 and 610/Add.2 and ESC (XIII), suppl.9 para.55 and annex I, art.32 (French text in E/CN.4/635/Add.5, art.47) and annex II	
CHR (VIII)	E/CN.4/SR.306-8	E/CN.4/L.76, 115, 175; ESC (XIV), suppl.4 paras. 155-160 and Annex I, A, art. 4.	32

ARTICLE 5 of both draft covenants

Saving clauses

Draft covenant on civil and political rights

1. Nothing in this Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in this Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any Contracting State pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.7/

Draft covenant on economic, social and cultural rights

1. Nothing in this Covenant may be interpreted as implying for any State, group or person, any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in this Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.8/

53. This article concerns questions relating to the destruction or limitation of the rights and freedoms recognized in the covenants and the safeguarding of rights recognized independently of the covenants.

7/ Although there are variations in the texts of paragraph 2 of the article in the two draft covenants, the discussions do not indicate any difference in interpretation.

8/ See also under article 50 of the draft covenant on civil and political rights and article 25 of the draft covenant on economic, social and cultural rights.

54. A proposal for the addition of a paragraph to the article in the draft covenant on civil and political rights stating that "nothing in this covenant may be regarded as in any way detracting from the powers and functions of the organs of the United Nations as laid down in the Charter", was rejected as being unnecessary in view of Article 103 of the Charter.

Paragraph 1

55. It was stated that the purpose of paragraph 1, which was derived from article 30 of the Universal Declaration of Human Rights,[9/] was to provide protection against any misinterpretation of any provision of the covenants which might be used to justify infringement of any rights and freedom recognized in the covenants or the restriction of any such right or freedom to a greater extent than was provided for therein. The paragraph was also aimed at checking the growth of nascent nazi, fascist or other totalitarian ideologies; groups with such tendencies could not invoke the covenants to justify their activities. It was pointed out that paragraph 1 would in no way restrict the right of criticism, since it related only to the destruction of rights or to their limitation to a greater extent than was provided in the covenant.

56. Opposition to paragraph 1 was expressed on the grounds that it was vague, unnecessary and open to abuse. It was thought that, widely interpreted, the paragraph might permit a State, which so desired, to curtail very considerably the exercise of certain rights. In particular, a State might place undesirable restrictions on the freedom of expression guaranteed in the draft covenant on civil and political rights. The view was further expressed that the paragraph might be used to qualify every provision in the covenants. It might even permit dangerous inroads into the provisions of the covenants as a whole. Moreover,

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9/ Article 30 of the Declaration reads: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

it would be difficult to know exactly what actions could be considered as being aimed at the destruction of the rights.

57. Although it was proposed that since the substance of paragraph 1 was closely related to freedom of speech, it should be included in article 19 of the draft covenant on civil and political rights, this proposal was rejected because it was felt that paragraph 1 also affected other articles of the covenants such as the articles relating to assembly and association.

58. The opinion was expressed that States were hardly likely to undertake the obligations unders the covenant and then attempt to destroy or limit the rights to a greater extent than provided in the covenant, but a proposal to delete the reference to "States" was rejected. It was observed that States were already empowered to limit many rights, for such reasons as the protection of "public order" or "national security" and that they should not be encouraged to restrict further the provisions of the covenants;

59. Another proposal, which was also rejected, aimed at excluding any restriction of rights and freedoms which would be incompatible with the purposes and principles of the United Nations Charter and of the Universal Declaration of Human Rights. In support of this proposal it was argued that such a provision was consonant with the Charter, particularly with Article 103, and necessary in view of the fact that not all human rights were included in the covenants. However, it was considered that the purposes and principles of the Charter and the provisions of the Declaration were more general than were the particular stipulations of the covenants and that no conclusions could be drawn from them concering other rights and freedoms which were not specifically set forth in the covenants.

Paragraph 2

60. Paragraph 2 was opposed on the ground that it might allow States to continue to derive benefit from inequitable laws or treaties, that it was superfluous because its principles were fully recognized in international law, and that it might give rise to misunderstanding and possibly allow States which did not agree with certain provisions of the covenant to avoid any obligations

imposed on them. It was thought inconceivable that any State ratifying the covenant would use it as a pretext to abridge the rights and freedoms already exercised or guaranteed within its territory, if the covenant should impose lesser obligations in a particular sphere.

61. It was agreed, however, that the covenant ought to include a provision which would cover possible conflicts between the covenant and the laws, regulations, and customs of contracting States and of agreements other than the covenants binding upon them. It was also necessary to prevent States from limiting rights already enoyed by persons within their territories on the grounds that such rights were not recognized in the covenants or were recognized to a lesser extent. It was considered that the proposed rule, whereby in case of conflict the provisions giving the maximum protection should apply, provided a sound basis for the protection of human rights.

62. A proposal to exlude from paragraph 2 such existing laws, conventions, regulations or customs as were contradictory to the provisions and spirit of the covenant and the Charter was not adopted. In support of the proposal the view was expressed that in no circumstances should existing provisions take precedence over the provisions of the covenant and the Charter and thus prevent progress towards greater enjoyment of human rights. Those opposed held the view that laws and conventions which guaranteed a fundamental human right could not possibly be in contradiction either to the covenants or the Charter, since paragraph 2 could not be invoked in support of any provisions directed at the limitation or suppression of the rights dealt with in the covenants.

DOCUMENTATION

Draft covenant on civil and political rights

Organ and session	Records of discussion	Other documentation	Article number
CHR (II)	E/CN.4/SR.42	E/CN.4/75; ESC (VI), suppl.1, annex B I, art. 22	
DC (II)	E/CN.4/AC.1/SR.28, 44	E/CN.4/AC.1/19; E/CN.4/95, annex B, art.22 and proposal for an additional article	22
CHR (III)		E/CN.4/82/Add.2, 4, 8 and 12, 85; ESC (VII), suppl.2, annex B, art.22 and proposal for an additional article	22
CHR(V)	E/CN.4/SR.123,124, 130	E/CN.4/170,188, 236, 264, 296, 315, 317, 326; ESC (IX), suppl.10, annex I, art. 22	22
CHR (VI)	E/CN.4/SR.175, 181, 200	E/CN.4/353/Add.1, 10 and 11, 365, 416, 454, 461, 468, L.10 and Corr.1 (Eng.), paras. 77-78; ESC (XI), suppl. 5, annex I, art.18	22
ESC (XI)	E/AC.7/SR.148,149	E/L.68, para. 98	18
CHR (VII)		E/CN.4/515/Add.4, 528, paras. 222-223, 573; ESC (XIII), suppl.9, annex I, art.18, and annex III A	18
CHR (VIII)	E/CN.4/SR.328	E/CN.4/668/Add.15, L.134, 198, 198/Rev.1, 206, 207, NGO/36; ESC (XIV), suppl.4, paras. 263-268, annex I B, art. 4	18
CHR (IX)		ESC (XVI), suppl.8, annex I B, art.5	4
GA (IX)			5

Draft covenant on economic, social and cultural rights

ESC (XIII)		E/2057/Add.2	
CHR (VIII)	E/CN.4/SR.303, 304 305, 306	E/CN.4/650, paras. 58 (v)(e), 655/Add.2, L.67, 67/Corr.1, 2 (E only) 67/Rev.1, 114, 114/Rev.1, 114/Rev.2, 168, 168/Rev.1, 169, 170, 172, 173, 174, NGO/36; ESC (XIV), suppl.4, paras. 149-154, annex I A, art. 5	
GA (IX)			5

CHAPTER VI

CIVIL AND POLITICAL RIGHTS

(Part III, Articles 6-26 of the Draft Covenant on civil and political rights)

Table of Contents

ARTICLE 6

Right to Life

1. No one shall be arbitrarily deprived of his life. Everyone's right to life shall be protected by law.

2. In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

3. Any one sentences to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

4. Sentence of death shall not be carried out on a pregnant woman.

Formulation of the right

1. There was general agreement regarding the importance of safeguarding the right of everyone to life through the covenant although various opinions were held as to how the right should be formulated. One view was that the covenant should enunciate the principle that no one should be deprived of life under any circumstances. It was maintained that in drafting an article on the right to life, which was the most fundamental of all rights, no mention should be made of circumstances under which the taking of life might seem to be condoned. Against this view, it was contended that the covenant must be realistic, that circumstances existed under which the taking of life was justified.

2. A second view was that in a covenant which would not admit of progressive implementation of its provisions, it was desirable to define as precisely as possible the exact scope of the right and the limitations thereto in order that contracting States would be under no uncertainty about their obligations. The proper method of drafting the article was to spell out specifically the circumstances in which the taking of life would not be deemed a violation of the general obligation to protect life. Among the exceptions proposed were: (a) execution of death sentence imposed in accordance with law; (b) killing

in self-defense or defense of another; (c) death resulting from action lawfully taken to suppress insurrection, rebellion or riots; (d) killing in attempting to effect lawful arrest or preventing the escape of a person in lawful custody; (e) killing in the case of enforcement measures authorized by the Charter; (f) killing in defense of persons, property or state or in circumstances of grave civil commotion; (g) killing for violation of honour. Against this view, it was maintained that any enumeration of limitations would necessarily be incomplete and would, moreover, tend to convey the impression that greater importance was being given to the exceptions than to the right. An article drafted in such terms would seem to authorize killing rather than safeguard the right to life.

3. A third view was that a general formulation which did not list exceptions was preferable. The article should simply but categorically affirm that "no one shall be arbitrarily deprived of his life" and that "everyone's right to life shall be protected by law". It was explained that a clause providing that no one should be deprived of his life "arbitrarily" would indicate that the right was not absolute and obviate the necessity of setting out the possible exceptions in detail. The use of the term "arbitrarily" was criticized, however, on the ground that it did not express a generally recognized idea and that it was ambiguous and open to several interpretations. A suggestion was made that the use of the term "intentionally" would be preferable. In reply it was stated that the term "arbitrarily" had been used in several articles of the Universal Declaration of Human Rights and in certain articles of the draft covenant. It was explained that the term "arbitrarily" meant both "illegally" and "unjustly".

4. The provision that "everyone's right to life shall be protected by law" was intended to emphasize the duty of States to protect life. While the view was expressed that the article should concern itself only with protection of the individual from unwarranted actions by the State, the majority thought that States should be called upon to protect human life against unwarranted actions by public authorities as well as by private persons.

Laws imposing capital punishment

5. Some opposition was expressed to the inclusion in the article of provisions dealing with capital punishment since it might give the impression that the

practice was sanctioned by the international community. The opinion was expressed that respect for human life required that a covenant on human rights should, as one of its main principles, provide for the abolition of capital punishment. On the other hand, it was pointed out that capital punishment existed in certain countries. It was recognized, however, that adequate safeguards should be provided in order that the death penalty would not be imposed unjustly or capriciously in disregard of human rights. It was agreed that the death sentence should be imposed only (a) as a penalty for the most serious crimes, (b) pursuant to the sentence of a competent court and (c) in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

6. The phrase "most serious crimes" was criticized as lacking precision, since the concept of "serious crimes" differed from one country to another. It was therefore suggested that the term should be more clearly defined. A suggestion was also made that "political crimes" should not entail the death penalty.

7. There was agreement that the death penalty should be imposed by a "competent court". A suggestion that the court should also be "independent" was opposed on the ground that the "independence" of tribunals was already provided for in another article of the covenant.1/

8. The clause providing that a death sentence must be imposed in accordance with law "not contrary to the principles of the Universal Declaration of Human Rights" was intended to ensure that no person would be deprived of life pursuant to unjust laws. The law invoked must not be contrary to the spirit of the Universal Declaration. However, the reference to the Universal Declaration was opposed on the ground that the Declaration was a statement of ideals, necessarily broad and vague and lacking in legal precision. Mere reference to that document could not prevent the adoption or execution of unjust laws. The reference to the Convention on the Prevention and Punishment of the Crime of Genocide was intended to provide a further yardstick to which national laws authorizing the imposition of the death sentence should conform.

1/ See article 14, paragraph 1.

Amnesty, pardon or commutation of death sentence

9. The inclusion of the provision of paragraph 3 was supported for humanitarian reasons. It was thought essential to mitigate the death penalty in countries where it was still imposed by giving persons sentenced to death the right to seek pardon or commutation of the sentence. In an earlier draft it was stipulated that "anyone sentenced to death shall have the right to seek amnesty, or pardon, or commutation of the sentence." The reference to the right to seek "amnesty" was deleted, since it was felt that, amnesty being a measure decided propio motu by the executive and being in the nature of a collective pardon, it was inappropriate to envisage that an individual should seek it. It was generally agreed, however, that it was appropriate to retain the reference to amnesty in the second sentence of paragraph 3, dealing with the granting of amnesty, pardon or commutation of death in all cases.

Prohibition of the execution of death sentence on a pregnant woman[2/]

10. It would seem that the intention of paragraph 4, which was inspired by humanitarian considerations and by consideration for the interests of the unborn child, was that the death sentence, if it concerned a pregnant woman, should not be carried out at all. It was pointed out, however, that the provision, in its present formulation, might be interpreted as applying solely to the period preceding childbirth.

2/ E/CN.4/SR.309-311; ESC (XIII), suppl.9, annex 3, article 3, para. 4.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)		E/CN.4/AC.1/4, annex I, art.8; 6; 11; E/CN.4/21, annex G, art. I	
CHR (II)	E/CN.4/AC.3/SR.1,2, and 9; E/CN.4/SR.35	E/CN.4/56, chap.II, art.4; ESC (VI), suppl.1, annex B, part I, art. 5; part II, art.4	1 4
DC (II)	E/CN.4/AC.1/SR.22,29	E/CN.4/AC.1/19, art.5; 38; E/CN.4/95	4
CHR (III)		E/CN.4/85	5
ESC (VII)		E/C.2/88	5
CHR (V)	E/CN.4/SR.90, 91, 93, 94, 97, 98, 101, 135	E/CN.4/170/Add.5; 188, 193, 195, 204, 239, 241, 251, 273; E/CN.4/W.21, 22, 23; ESC (IX), suppl.10, annex I, art.5, and annex II	5
CHR (VI)	E/CN.4/SR.139, 140, 144, 149, 150, 152, 153, 199	E/CN.4/353/Add.1,2,3,6,7,8,9,10,11; 365; 371; 378; 383; 384; 385; 386; 387; 393; 398; 413; 417; E/CN.4/L.1, 16; ESC (XI), suppl.5, annex I, art. 3 and annex II	5
ESC (XI)	E/AC.7/SR.147, 148, 149	E/L.68; E/C.2/259	3
GA (V)	3rd Com., 288th-291st mtgs.	GA (V), annexes, a.i. 63, A/C.3/534	3
CHR (VII)		ESC (XIII), suppl.9, annex III, art.3; E/CN.4/515/Add.4,6,12; 528, paras. 87-94	3
ESC (XIII)	E/C.2/SR.106		3
CHR (VIII)	E/CN.4/SR.309-311	E/CN.4/528/Add.1, para. 57-64; 660, para.28; 668 and corr.1; E/CN.4/L.122, 130, 140, 160 and corr.1, 176, 177, 178, 179, 180, 181, 182; ESC (XIV), suppl.4, para. 167-174 and annex I B, art. 5	3
CHR (X)		E/CN.4/694/Add.2,6;702, p.32; 702/Add.2, pp.4-5	6
ESC (XVIII)	E/C.2/SR.145		6
GA (IX)	3rd Com., 562, 566, 571, 573		6

ARTICLE 7

Inhuman or degrading treatment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health.

11. The purpose of this article is to protect bodily integrity and human dignity.

Inhuman or degrading treatment or punishment[3/]

12. The first clause reproduces the text of article 5 of the Universal Declaration on Human Rights.

The opening words of article 5 of the Declaration "No one shall be subjected" were chosen in preference to "It shall be unlawful to subject" to emphasize the right of the individual rather than the obligation of States.

13. The word "torture" in this article was understood to mean both mental and physical torture. The clause prohibits not only "inhuman" but also "degrading" treatment or punishment. It was generally agreed that the word "treatment" was broader in scope than the word "punishment"; however, it was observed that the word "treatment" should not apply to degrading situations which might be due to general economic and social factors.

Medical or scientific experimentation[4/]

14. The second clause of the article was intended to prevent the recurrence of atrocities such as those committed in concentration camps during World War II. One opinion was that improper medical or scientific experimentation was

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3/ E/CN.4/AC.1/SR.3, 23, 30; E/CN.4/AC.3/SR.2; E/CN.4/SR.37, 56, 92, 141; E/CN.4/170, 193, 353/Add.1, and 10.

4/ E/CN.4/AC.1/SR.23, 30; E/CN.4/AC.3/SR.2; E/CN.4/SR.91, 92, 142, 182, 183, 311, 312; E/CN.4/82/Add.2, E/CN.4/192, 197, 359, 372, 389, 471, 473, 573; E/CN.4/L.159.

implicitly prohibited in the first clause, but another view was that the text of that clause was not sufficiently precise to prevent such experiments. It was finally agreed that the matter was so important as to require a specific provision, even at the risk of repetition.

15. It was clear that experiments involving risk should not, in principle, be carried out without the free consent of the person concerned. However, it was said that there might be exceptions to this principle where the interests of the health of the individual or the community were involved. The extent of such exceptions gave rise to some discussion. On the one hand it was thought that it should not be left entirely to national laws to define them. On the other hand it was realized that it would be difficult to draw up a complete list of criteria for permitting experimentation without the free consent of the individual concerned. There was general agreement that failure to obtain the consent of a sick, sometimes unconscious, person should not make any dangerous experimentation illegal where "such was required by his state of physical or mental health". A proposal that compulsory measures might be taken "in the interest of community health" was rejected on the grounds that it might lead to abuse.

16. A proposal that "in addition to the consent of the person in question, the approval of a higher medical institution designated by law shall be required before /such/ experimentation is carried out" was not adopted. Such a clause was considered to be more in the nature of a regulation than an appropriate provision for inclusion in the covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.3, 10, 16	E/CN.4/AC.1/4/Add.1; E/CN.4/21, annex A, art.4, annex C, arts.9 and 10, annex G, art.2	
CHR (II)	E/CN.4/AC.3/SR.2; E/CN.4/SR.37, 42	E/CN.4/37, 39, 56, arts. 5 and 6; ESC (VI), suppl.1, annex B, arts. 6 and 7	2
DC (II)	E/CN.4/AC.1/SR.23, 30	E/CN.4/82/Add.2, 4, 8, 9, 11; E/CN.4/95, annex B, arts. 6 and 7	6, 7
CHR (III)		E/CN.4/89	6, 7
CHR (V)	E/CN.4/SR.91, 92	E/CN.4/170 and Add.2 and 4, E/CN.4/188, 192, 193, 197; ESC (IX), suppl.10, annex I arts. 6 and 7	6, 7
CHR (VI)	E/CN.4/SR.141, 142, 182, 183, 199	E/CN.4/353/Add.1, 3, 7, 10, 11; E/CN.4/359, 372, 381, 389, 471, 472, 473; E/CN.4/NGO/9; ESC (XI), suppl.5, annex I, art. 4, annex II, art. 4	6, 7
ESC (XI)	E/AC.7/SR.148, 149	E/C.2/268	4
GA (V)	3rd com., 290th, 296th mtgs.		4
ESC (XII)		E/C.2/285	4
CHR (VII)		E/CN.4/515/Add.2, 13; E/CN.4/523, 528, paras. 95-100, E/CN.4/563 and Add.1, E/CN.4/573; E/CN.4/NGO/17, 20, 30; ESC (XIII), suppl.9, annex III, art. 4	4
ESC (XIII)	E/C.2/SR.106		4

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (VIII)	E/CN.4/SR.311, 312	E/CN.4/528/Add.1, paras. 65-68; E/CN.4/L.159; E/CN.4/NGO/34, 39; ESC (XIV) suppl.4, paras. 175-177, annex IB, art. 6	4
CHR (X)		E/CN.4/694/Add.6, E/CN.4/702, sections III, VII, XIII, XVI, XXI	7
GA (IX)	3rd com., 565th, 569th mtgs.		7

ARTICLE 8

Prohibition of slavery, servitude and forced labour

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civic obligations.

Slavery

17. It may be noted that article 4 of the Universal Declaration of Human Rights provides that "no one shall be held in slavery and servitude," while the first paragraph of this article deals only with slavery. In drafting the covenant, the point was made and accepted that "slavery" and "servitude" were two different concepts and should be dealt with in two separate paragraphs. A

suggestion was made to substitute "trade in human beings" for "slave trade" in order that paragraph 1 would cover traffic in women as well; it was not accepted, for it was thought that the clause should deal only with slave trade as such.

Servitude

18. In discussing paragraph 2 it was pointed out that slavery, which implied the destruction of the juridical personality, was a relatively limited and technical notion, whereas servitude was a more general idea covering all possible forms of man's domination of man. While slavery was the best known and the worst form of bondage, other forms existed in modern society which tended to reduce the dignity of man. A suggestion to substitute the words "peonage and serfdom" for "servitude" was rejected as those words were too limited in scope and had no precise meaning. A proposal was also made to insert the word "involuntary" before "servitude" in order to make it clear that the clause dealt with compulsory servitude and did not apply to normal contractual obligations between persons competent to enter into such obligations. The proposal was opposed on the ground that servitude in any form, whether involuntary or not, should be prohibited. It should not be made possible for any person to contract himself into bondage.

Forced or compulsory labour[5/]

19. The question was raised whether the term "forced or compulsory labour" in sub-paragraph (a) of paragraph 3 should be defined. Reference was made to article 2 of the International Labour Convention on Forced or Compulsory Labour of 28 June 1930.[6/] Paragraph 1 of that article defined the term "forced or compulsory labour" as meaning "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Paragraph 2 listed a number of exceptions. This definition, especially when read in the light of the exceptions, was not considered entirely satisfactory for inclusion in the covenant.

20. In a first draft, it was provided that "no one shall be required to perform forced or compulsory labour except pursuant to a sentence to such punishment for a crime by a competent court". The proviso "except pursuant to a sentence to such punishment for a crime by a competent court" was deleted, for it implied that forced or compulsory labour could be imposed upon a person pursuant to a court sentence. It was feared that such a clause might provide a loophole and would render the guarantee ineffective. However, it was recognized that

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5/ It will be recalled that in accordance with resolution 350 (XII) of 19 March 1951 of the Economic and Social Council, an Ad Hoc Committee on Forced Labour was established "to study the nature and extent of the problem raised by the existence in the world of systems of forced or 'corrective' labour". The Ad Hoc Committee submitted its report (E/2431) to the Economic and Social Council and the ILO in 1953. In resolution 524 (XVII) of 27 April 1954, the Council, inter alia, condemned "systems of forced labour which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country" and appealed to "all Governments to re-examine their laws and administrative practices in the light of present conditions and the increasing desire of the peoples of the world to reaffirm faith in fundamental human rights and in the dignity and worth of the human person". The General Assembly, in resolution 842 (IX) of 17 December 1954, endorsed the condemnation by the Council of the existence of systems of forced labour and expressed its support of the Council's appeal to governments.

6/ E/CN.4/234.

imprisonment with "hard labour" existed as a form of penalty under the penal systems of some countries. It was therefore thought necessary to include a suitable provision which would take such systems into account.

21. Thus, under sub-paragraph (b), it is provided that the prohibition of forced or compulsory labour "shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court". The words "in pursuance of a sentence to such punishment by a competent court" were intended to indicate that the performance of hard labour could be required only if explicitly stated in the sentence of the court. In an earlier draft the words "hard labour" were in quotation marks, but it was subsequently decided to delete the quotation marks, for the expression "hard labour" when used between quotation marks might imply some special punishment. Objection was raised to the use of the term "punishment". It was maintained that the concept of "punishment" was outmoded and was no longer recognized in modern criminology. It was also suggested that the clause should indicate that persons found guilty of "political" crimes should not be sentenced to "hard labour". The suggestion was opposed, however, on the ground that there was no exact definition of the term "political crime", and its interpretation varied from one country to another.

22. Sub-paragraph (c) enumerates, in four sub-paragraphs, the kinds of work or service not deemed included within the term "forced or compulsory labour". Sub-paragraph (i) was intended to cover ordinary prison work which persons under detention pursuant to a court order might be required to do. This would include routine work performed in the course of detention and work done to promote the delinquent's rehabilitation. The clause specifically excluded performance of "hard labour" as the term was used in sub-paragraph (b). The phrase "normally required of a person who is under detention" was intended to bring out the fact that the clause was intended to refer to work ordinarily done by prisoners and not to hard labour. It was also explained that the inclusion of the word "normally" provided a safeguard against arbitrary decisions by prison authorities with

regard to the work which might be required of persons under detention. On the other hand, it was pointed out that the insertion of the word "normally" was useless and restrictive. In some special circumstances prison authorities might find it necessary to give persons under detention work that was different from their customary labour. There was some question also regarding the meaning of the term "detention". It was explained that the term covered all forms of compulsory residence in institutions in consequence of a court order.

23. In sub-paragraph (ii) the clause relating to conscientious objectors was intended to indicate that any national service required of them by law would not fall within the scope of forced or compulsory labour. As the concept of conscientious objection was not recognized in many countries, the phrase "in countries where conscientious objection is recognized" was inserted. Proposals to the effect that services of conscientious objectors "be carried out in conditions equal to those accorded to all other citizens subjected thereto" and that such services "be compensated with maintenance and pay not inferior to what a soldier of the lowest rank receives" were rejected. Those who supported the proposals pointed out that in certain countries where conscientious objectors were released from military obligations, they were subjected to treatment inconsistent with human dignity; hence it was essential to provide some minimum safeguards. On the other hand, those who opposed the proposals argued that it was inappropriate to go into details concerning the treatment of conscientious objectors.

24. Sub-paragraph (iii) did not give rise to debate.

25. There was considerable discussion as to whether "minor communal services" should not also be included in the provisions of sub-paragraph (iv). It was pointed out that the International Labour Convention on Forced or Compulsory Labour included provisions concerning "normal civic obligations" and "minor communal services". The provision concerning "minor communal services" was meant to apply to non-self-governing territories, while that relating to "normal civic obligations" applied to sovereign States. It was contended, however, that the distinction was unacceptable and should not be perpetuated in the covenant.

Furthermore, it was pointed out that the ILO itself, in a proposed text which it had communicated to the Commission,[7] had suggested that "minor communal services" should be abolished in the shortest time possible. The opinion was also expressed that it was not necessary to mention "minor communal services" since the term "normal civic obligations" was a much broader term and would include the former.

7/ E/CN.4/158.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.2, 4, 8, 10, 13	E/CN.4/AC.1/8 and Rev.1; 11; E/CN.4/21, annex B, part II, art. 8, and annex G, art. 3	
CHR (II)	E/CN.4/AC.3/SR.2, 7; E/CN.4/SR.37	E/CN.4/56, art. 7; E/C.2/2; ESC (VI), suppl.1, annex B, parts I and II, art. 8	4 7
DC (II)	E/CN.4/AC.1/SR.24, 28, 30	E/CN.4/AC.1/19; 22, 25 and Add.1; E/CN.4/95	8
CHR (III)		E/CN.4/82/Add. 7, 8, 11, 12; 85	8
CHR (V)	E/CN.4/92, 93, 94, 103, 104, 135	E/CN.4/158; 170/Add. 3, 4; 202; 202/Rev.1; 205-208; 210; 234; 239; 254; 256; 257; 261; 262; 269; 270; 273; ESC (IV), suppl.10, annex I, art. 8	8
CHR (VI)	E/CN.4/SR.142,145, 148, 149, 154, 199	E/CN.4/353/Add. 1, 2, 3, 10; 365; 388; 390; 391; 404; 408; E/CN.4/L.2/Rev.1; L.10; L.16; E/CN.4/NGO.1; ESC (XI), suppl. 5, annex I, art. 5	8
ESC (XI)	E/AC.7/SR.148	E/L.68	5
GA (V)	3rd Com., 289th-291st mtgs.		5
CHR (VII)		E/CN.4/515/Add.6; 528, paras. 101-108	5
CHR (VIII)	E/CN.4/SR.312, 313	E/CN.4/528/Add.1, paras. 69-70; 668/Add.2; E/CN.4/L.158 and Rev.1; ESC (XIV), suppl.4, paras. 178-179; annex IB, art. 7	5
ESC (XVI)		E/C.2/365	8
CHR (X)		E/CN.4/694/Add.5; 702/Add.3	8
GA (IX)	3rd Com., 565th; 569th mtgs.		8

ARTICLE 9

Liberty and security of person

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

26. This article begins by setting forth in positive terms, borrowed from article 3 of the Universal Declaration of Human Rights, the right of everyone to liberty and security of person.[8/] There was some objection that the declaratory character of this clause made it inappropriate for inclusion in a legal instrument.

8/ ESC (XIII), suppl.9, annex III, art. 6; E/CN.4/SR.314.

Limitations clause[9/]

27. It was generally admitted that the right to liberty and security of person might be subject to restrictions, but the terms in which such restrictions should be drafted gave rise to discussion.

28. Proposals were made listing the possible grounds on which deprivation of liberty might be justified. However, it seemed unlikely that any list proposed, whether restricted to some twelve grounds as in certain proposals or expanded to include about forty grounds suggested could cover all possible cases of legitimate arrest or detention. On the other hand, it was said that even if such a list could be made complete, its adoption might not be considered desirable: the covenant should not give the impression of being a catalogue of restrictions to the rights which it set forth.

29. The meaning of the general restrictive clause, incorporated in the last two sentences of paragraph 1, would seem to depend largely on the interpretation to be given to the word "arbitrary". It was understood, according to different schools of thought, to mean either "illegal", or "unjust", or "both illegal and unjust".

30. One opinion was that "arbitrary" was synonymous with "contrary to the national legislation"; if such were the case, it was emphasized, the third sentence in paragraph 1, "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law", would seem to be a repetition of the second sentence.

31. On the other hand, it was argued that by using the word "arbitrary" all legislation would have to conform to the principle of justice. On the basis of such an interpretation, the third sentence of the first paragraph would qualify the fundamental idea set forth in the second sentence: the deprivation of liberty should not only conform to the principle of justice, it should also be on such grounds and in accordance with such procedure as are established by law

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9/ E/CN.4/AC.1/SR.23, 32; E/CN.4/AC.3/SR.3; E/CN.4/SR.95, 96, 144, 146, 147, 314; E/CN.4/95, annex B, art. 9, E/CN.4/170/Add.1, E/CN.4/188, 231, 235, 401, 402, 405/Rev.1, E/CN.4/523; E/CN.4/L.137, 183; ESC (IX), suppl.10, annex II, art. 9; ESC (XI), suppl.5, annex II, art. 6; E/AC.7/SR.148; GA, 3rd Com., 288th, 289th, 290th, 291st and 562nd mtgs.

32. In the course of the debate it was said that national legislation might at times be arbitrary; it was said therefore that the third sentence in paragraph 1 should be read and understood in the light of the second sentence.

Guarantee of personal liberty in connexion with any arrest or detention

33. The purpose of paragraphs 2, 4 and 5 of this article is to define certain guarantees which must apply in case of any arrest or detention.

34. With regard to paragraph 2,[10] it was admitted on the one hand, that, in the interest of the arrested person, competent authorities should have sufficient time to prepare a detailed brief of the charges against him; this period of time, however, should be as short as possible. On the other hand, the person concerned should be informed of the reasons for his arrest at the time he was arrested.

35. The principle enunciated in paragraph 4,[11] according to which anyone who is deprived of his liberty shall be entitled to take proceedings before a court in order that such court may decide on the lawfulness of his detention, did not give rise to much discussion. The words "in the nature of habeas corpus" which appeared in earlier drafts were deleted in order to specify that States must be free to allow for such a right of appeal within the framework of their own legal systems.

36. The discussion on paragraph 5[12] revealed a desire to establish an effective right to compensation for illegal arrest or deprivation of liberty. The right to

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10/ E/CN.4/AC.3/SR.3; E/CN.4/SR.98, 99, 145, 314; E/CN.4/399, 406; ESC (XIII) suppl.9, annex III, art. 6.

11/ E/CN.4/AC.1/SR.23; E/CN.4/AC.3/SR.6; E/CN.4/SR.100, 147, 314; E/CN.4/170, 188, 353/Add.1, 515/Add.2; E/CN.4/L.151; GA, 3rd Com., 289th mtg.

12/ E/CN.4/AC.1/SR.2; E/CN.4/AC.3/SR.4; E/CN.4/SR.102, 147, 148, 314; E/CN.4/353/Add.1; E/CN.4/394; E/CN.4/L.131; E/AC.7/SR.149.

compensation, set forth in general terms, would seem likely to be invoked against individuals as well as against the State as a legal person. It was noted that in certain countries the civil responsibility of individuals alone for malicious or grossly negligent conduct was legally recognized. However, the words proposed in order to adapt paragraph 5 to such legal systems "... a right of action for compensation against any individual who by his malicious or grossly negligent conduct directly caused the unlawful arrest or detention", were not accepted.

Guarantees in favour of persons arrested or detained on a criminal charge[13/]

37. Paragraph 3 of this article establishes special guarantees in favour of persons arrested or detained on a criminal charge. The accused shall be brought to trial "within a reasonable time"; it was considered necessary to adopt this wording in order to allow the competent authorities to examine the charge seriously, without, however, any unjustified delay.

38. The last sentence of paragraph 3 states that "it shall not be the general rule that persons awaiting trial shall be detained in custody". It was admitted that release might be subject to certain guarantees. The objection was raised that in certain serious cases, release, even under guarantees, should not be allowed; a proposal to insert such an exception in paragraph 3 was, however, rejected. It was made clear that the article allows States parties to provide for guarantees other than those of a purely financial character. It was stipulated that release subject to guarantees might apply at any stage of the judicial proceedings.

13/ E/CN.4/AC.3/SR.3; E/CN.4/SR.99, 100, 101, 147, 154, 314; E/CN.4/170, 188, 250, 260, 353/Add.8, 515/Add.4; E/CN.4/L.137, L.151; ESC (XIII), suppl.9, annex III, art. 6.

DOCUMENTATION

Organs and sessions	Records of discussions	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.2	E/CN.4/21 annex A, art. 7, annex B, art. 10, annex G, art. 4	
CHR (II)	E/CN.4/AC.3/SR.3, 4, 6, 9; E/CN.4/SR.36	E/CN.4/37, 39; E/CN.4/56, art. 8; ESC (VI) suppl.1, annex BII, art. 9	4
DC (II)	E/CN.4/AC.1/SR.23, 32	E/CN.4/AC.1/19, 23 and Add.1 and 2; E/CN.4/AC.1/31; E/CN.4/82 and Add.2, 3, 4, 5, 7, 8, 11, 12; E/CN.4/95, annex B, art. 9	9
CHR (III)		E/CN.4/89	9
CHR (V)	E/CN.4/SR.95, 96, 98, 99, 100, 101, 102	E/CN.4/170 and Add.4, E/CN.4/188, 198, 200, 201, 203, 206, 231, 235, 250, 252, 259, 260, 266; ESC (IX), suppl.10, annex I, art. 9, annex II, art. 9	9
CHR (VI)	E/CN.4/SR.144, 145, 146, 147, 148, 154, 199	E/CN.4/353/Add.1, 2, 3, 6, 7, 8, 9, 10, 11; E/CN.4/394, 397, 399, 400, 401, 402, 405 and Rev.1, 406, 409, 410, 411, 421; ESC (XI) suppl.5, annex I, art. 6, annex II, art. 6	9
ESC (XI)	E/AC.7/SR.147, 148, 149, 153	E/C.2/259 and Add.1	6
GA (V)	3rd Com., 288th, 289th, 290th, 291st, 296th mtgs.		6
CHR (VII)		E/CN.4/515/Add.2, 4, 13; E/CN.4/523, 528, paras. 109-124, E/CN.4/563 and Rev.1; E/CN.4/NGO/21; ESC (XIII), suppl.9, annex I, art. 6, annex III, art. 6	6

DOCUMENTATION (cont'd)

Organs and sessions	Records of discussions	Other documents	Article number
ESC (XIII)		E/2059/Add.8	6
CHR (VIII)	E/CN.4/SR.313, 314	E/CN.4/528/Add.1, paras. 71-78; E/CN.4/L.131, 137, 151, 183; E/CN.4/NGO/39; ESC (XIV) suppl.4, paras. 180-188, annex IB, art. 8	6
CHR (IX)		E/CN.4/674, paras. 34-37; ESC (XVI), suppl.8, annex IB, art. 9	6
CHR (X)		E/CN.4/694/Add.2, 5, 6; E/CN.4/702, sections IX, XV	9
GA (IX)	3rd Com., 562nd, 565th, 568th, 569th mtgs		9

ARTICLE 10

Treatment of Persons Deprived of Their Liberty

1. All persons deprived of their liberty shall be treated with humanity.

2. Accused persons shall be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

3. The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners.

39. During the discussion on this article, it was unanimously agreed that every person deprived of his liberty, both an accused person, regardless of the charge against him, and a convicted person, should be treated with humanity.

Treatment of accused persons[14/]

40. A proposal was made that "accused persons shall not be subjected to the same treatment as convicted persons".

41. It was thought that this wording did not make it clear that the former should not be subjected to harsher treatment than the latter. The wording "shall be subject to separate treatment appropriate to their status as unconvicted persons" was considered a better formulation.

42. It was agreed that accused persons should be segregated from convicted persons, although the view was expressed that there might be reasons for not doing so in special cases. It was pointed out that segregation in the routine of prison life and work could be achieved, though all prisoners might be detained in the same buildings. A proposal that accused persons should be placed "in separate quarters" was considered to raise serious practical problems; if adopted, States parties might be obliged to construct new prisons.

14/ E/CN.4/SR.371; E/CN.4/523; E/CN.4/L.262; ESC(XI), suppl.5, Annex III.

Orientation of the Penitentiary System towards the Reformation and Social Rehabilitation of Prisoners

43. It was acknowledged that this principle was winning increased recognition among criminologists and jurists. Attention was called to some difficult problems of application, and in particular to the necessity of taking into account such factors as the nature of the offence and the age of the offender. It was considered difficult, however, to provide for detailed measures of application in an international instrument such as the draft covenant on civil and political rights.

44. It may be noted[15/] that while the original French text of article 10, paragraph 3, contains the words, "l'amendement et le reclassement social du condamné", the English translation reads: "the reformation and social rehabilitation of prisoners".

DOCUMENTATION

Organ and Session	Records of discussion	Other Documents	Article No.
CHR (V)		E/CN.4/309; ESC(IX),suppl.10, Annex I	
CHR (VI)		E/CN.4/353/Add.8; ESC(IX),suppl.5, Annex III	
CHR (VII)		E/CN.4/515/Add.4; E/CN.4/523,528, Paras.20, 21	
CHR (IX)	E/CN.4/SR.371, 409	E/CN.4/674; E/CN.4/L.262,289; ESC(XVI), suppl.8, paras.57-53, Annex I,art.10, and Annex III, paras. 23-25	
CHR (X)		E/CN.4/694/Add.5	10
GA (IX)	3rd Ccm.,572nd mtg.		10

15/ E/CN.4/SR.409; E/CN.4/289.

ARTICLE 11

Contractual Obligations

No one shall be imprisoned merely on the grounds of inability to fulfil a contractual obligation.

45. It was agreed that the article did not cover crimes committed through the non-fulfilment of obligations of public interest, which were imposed by statute or court order, such as the payment of maintenance allowances.

46. With regard to contractual obligations, various opinions were expressed. A proposal to restrict the scope of the article to "inability to pay a contractual debt" was not accepted. It was agreed that the article should cover any contractual obligations, namely, the payment of debts, performance of services or the delivery of goods. One opinion was, however, that contractual obligations undertaken by the individual towards the State were sometimes so vital in nature - such as the delivery of essential foodstuffs for the population - that inability to fulfil them should justify imprisonment.

47. It was pointed out that, in practically all countries persons who were able but unwilling to fulfil contractual obligations might be punished by imprisonment. Reference was also made to statutes which provided for the arrest of persons with outstanding debts who were about to leave the country for an indefinite period. A proposal to add the words "unless he is guilty of fraud" at the end of the article was, however, rejected. The words "merely on the grounds of inability", it was agreed, made it sufficiently clear that all cases of fraud were excluded from the scope of the article.

48. The words "or held in servitude", which appeared after the word "imprisoned" in the first drafts of this article, were subsequently deleted. It may be noted in this connexion that article 8 of the draft covenant on civil and political rights contains an unqualified prohibition of servitude.

49. A proposal to add a new paragraph "no one shall be subjected to excessive fines", was rejected.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.4	E/CN.4/AC.1/8/Rev.1; E/CN.4/21, annex G, Art. 3	
CHR (II)	E/CN.4/AC.3/SR.7; E/CN.4/SR.36	E/CN.4/37, E/CN.4/56, Art. 9; ESC (VI), Suppl. 1, Annex B, Art. 10	3
DC (II)	E/CN.4/AC.1/SR.23	E/CN.4/AC.1/19; E/CN.4/82 and Add.2, 4, 7, 8, 12; E/CN.4/95, annex B, Art. 10	10
CHR (V)	E/CN.4/SR.102	E/CN.4/170 and Add.4, E/CN.4/211, 216; ESC (IX), Suppl. 10, annex I, Art. 10	10
CHR (VI)	E/CN.4/SR.150, 199	E/CN.4/353/Add.3, 7, 10, 11; E/CN.4/407; ESC (XI), Suppl. 5, annex I, Art. 7	10
ESC (XI)	E/AC.7/SR.148		7
CHR (VII)		E/CN.4/528, para. 125	7
ESC (XIII)		E/2059/Add.6	7
CHR (VIII)	E/CN.4/SR.314	E/CN.4/528/Add.1, para. 79; ESC (XIV) Suppl. 4, annex IB, Art. 9	7
GA (IX)	3rd Com., 568th and 572nd mtgs.		11

ARTICLE 12

Freedcm of Movement

1. Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect national security, public safety, health or morals or the rights and freedcms of others, consistent with the other rights recognized in this Covenant:

(a) Everyone legally within the territory of a State shall, within that terrritory, have the right to (i) liberty of movement and (ii) freedcm to choose his residence;

(b) Everyone shall be free to leave any country, including his own.

2. (a) No one shall be subjected to arbitrary exile;

(b) Subject to the preceding sub-paragraph, anyone shall be free to enter his own country.

50. The first drafts of this article dealt only with the right of the individual to leave any country, including his own, subject to certain restrictions. Provisions on freedcm of movement and free choice of residence were added later, and most of the discussion of the article, which arose frcm this addition, was concerned with the nature of the limitations clause to be inserted. There was scme exchange of views also on the provisions of the second paragraph under which arbitrary exile is prohibited and the right to enter one's country affirmed.

Limitations Clause[16/]

51. It was recognized that freedcm of movement and free choice of residence were subject to certain legitimate restrictions. Opinions differed on the scope of permissible limitations. Long lists of exceptions to the exercise of this

16/ E/CN.4/AC.1/SR.30 and 32; E/CN.4/AC.1/19; E/CN.4/AC.3/SR.5; E/CN.4/SR.37, 106, 150, 151, 199, 315, 316; E/CN.4/82/Add.7, 8 and 12; E/CN.4/85, 170, 170/Add.4, 199, 214, 215, 215/Rev.1, 217, 353/Add.10 and 11, 365, 412, 515/Add.6 and 12; E/CN.4/L.132, L.132/Rev.1; L.132/Rev.2, L.149, L/149/Rev.1, L.152, L.185; E/AC.7/SR.147, 148, 149, 153; E/C.2/259/Add.1; GA (V), 3rd Ccm. 288th-290th and 305th mtgs.

right were included in the earlier drafts of the article[17] but later a more general formula was sought, which aimed at giving protection to the individual while safeguarding the interests of States.

52. One view regarding this article was that, since it was not possible to include an exhaustive list of all the restrictions applicable in different States, and since any general wording might be so broad as to render the article of little practical value, the best course would be to delete it from the Covenant. Freedom of movement was not a fundamental, but rather a secondary right. Against this it was argued that freedom of movement constituted an important human right and one which was an essential part of the right to personal liberty. It had been included in the Universal Declaration of Human Rights and should find its place in the covenant. Moreover, the fact that it had been denied in recent times made its inclusion all the more important.

53. Among the restrictions which various representatives mentioned as being legitimate or necessary were those which might be imposed in a national emergency, in epidemics, for the control of prostitution, on immigrants as a temporary measure, on migrant workers in certain cases, and on indigenous populations in certain circumstances for their own protection. The limitations might vary greatly from State to State. It was agreed that the right to leave the country could not be claimed in order to escape legal proceedings or to avoid such obligations as national service, and the payment of fines, taxes or maintenance allowances.

54. Restrictions on freedom of movement should be provided by the law of the State concerned. The majority agreed that the article should specify that such law must be just, otherwise it could be interpreted as authorizing States to impose any limitations they wished. To meet this point, it was suggested that the article should state that the law must be in accordance with the principles of the Charter and the Universal Declaration of Human Rights. A proposal that it should be "consistent with the other rights recognized in the Covenant" was, however, preferred. In this connexion attention was drawn to the importance of the provisions on non-discrimination as applied to this article.

17/ ESC (VII), Suppl. 2, annex B, art. 11.

55. Some considered such a general formula unsatisfactory, although others were of the opinion that it provided sufficient restriction of the right. One view was that it was too broad and required further qualification, another that it provided no real protection against the enactment of arbitrary legislation. It was pointed out also that the limitations clause in this article should be in line with other similar clauses in articles 18, 19, 20 and 21.

56. Some accepted the view that the right might be curtailed by domestic law "consistent with the other rights recognized in the covenant" in order to protect "national security, public safety, health, morals, or the rights and freedoms of others", although there was objection that such phrases, and especially the latter, could lead to abuse. The addition of such words as "general welfare", "economic and social well-being", "prevention of disorder or crime" and "public order" was also proposed but not adopted. They were considered to be too far-reaching.

57. In discussing the application of the limitations clause, some were of the view that it should cover the provisions of both paragraphs of the article. The majority, however, thought that the second paragraph and, in particular, the right to enter one's country should not be subject to restriction.

Prohibition of exile[18/]

58. The proposal that this article include a provision prohibiting arbitrary exile, based on Article 9 of the Universal Declaration of Human Rights, was criticized on the grounds that a liberal and democratic society should not permit exile and, therefore, no such provision should appear in the covenant. If it were inserted, it should prohibit exile completely. The question was also linked with the right of asylum.

59. In support of the proposal it was explained that, while in most countries exile no longer existed as a penalty, in some circumstances it might be more humane to exile a person than inflict on him more severe punishment, such as detention in a concentration camp or complete deprivation of liberty. Some doubt

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18/ E/CN.4/SR.150, 199, 315, 316; E/CN.4/365, 515/Add.16; E/CN.4/L.189, L.189/Rev.1.

was expressed regarding the use of the word "arbitrary", but it was thought that if a provision on exile were inserted in the covenant at all it should deal only with arbitrary exile.

Right to enter one's country[19/]

60. Difficulties arose in connexion with this provision for States in which the right to return to one's country was governed, not by rules of nationality or citizenship, but by the idea of a permanent home. The early drafts dealt only with the right of nationals to "enter" their country. It was intended to cover cases such as those of persons born abroad who had never been to the country of their nationality. Such a formula was not satisfactory for a State which granted the right of "return" to persons who were not nationals but who had established their home in the country. A compromise was reached, based on paragraph 2 of Article 13 of the Universal Declaration of Human Rights, by replacing the reference to "country of which he is a national" by the words: "his own country". The right to "enter" the country was retained.

19/ E/CN.4/SR.106, 151, 199, 315, 316; E/CN.4/215, 215/Rev.1, 353/Add.10, 365.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/ SR.4	E/CN.4/AC.1/8, 8/Rev.1, 9 and 11; E/CN.4/2, annex A, arts. 9 and 10, annex B, Pt. II, art. 11, and annex G, art. 5	9 and 10
CHR (II)	E/CN.4/AC.3/ SR.5, E/CN.4/ SR.37	E/CN.4/37, 41/Rev.1, 56, art. 10; ESC (VI), Suppl. 1, annex B, art. 11	5 and 10
DC (II)	E/CN.4/AC.1/ SR.30 and 32	E/CN.4/AC.1/19; E/CN.4/82/Rev.1, 82/Add.4, Add. 7, Add. 8, Add. 12, 85 and 95, annex B, art. 11	11
CHR (III)		ESC (VII), Suppl. 2, annex B, art. 11	
CHR (V)	E/CN.4/SR.105 and 106	E/CN.4/170, 170/Add.4, 199, 214, 215, 215/Rev.1, 217, and 219; ESC (IX), Suppl. 10, annex I, art. 11	11
CHR (VI)	E/CN.4/SR.150 151 and 199	E/CN.4/353/Add. 10 and 11, 365, 412; E/CN.4/L.1, L.10, L. 16; ESC (XI), Suppl. 5, annexes I and 2, art. 8	11
ESC (XI)	E/AC.7/SR.147 148, 149 and 153	E/L.68, E/C.2/259/Add.1	8
GA (VI)	3rd Com. 288th, 289th, 290th, 305th mtgs.		
CHR (VII)		E/CN.4/515/Add.3, Add.6, Add.12; E/CN.4/528; ESC (XIII), Suppl. 9, annex I, art. 8, annex III, A and B	
CHR (VIII)	E/CN.4/SR.315, 316	E/CN.4/528/Add.1, E/CN.4/L.123, L.123/Corr.1, L.132, L.132/Rev.2, L.149, L.149/Rev.1, L.152, L.185, L.186, L.189, L.189/Rev.1; ESC (XIV), Suppl.4, paras. 190-197, and annex I B, art. 10	8
CHR (X)		E/CN.4/702 (VII), (IX), (XII)	

ARTICLE 13

Expulsion of Aliens

An alien lawfully in the Territory of a State Party to the Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority.

61. Discussion of this article has centred on the nature and extent of the protection which should be accorded aliens against expulsion, having regard to the desire of States to safeguard themselves against undesirable aliens in their territories.

62. Provisions covering the right of asylum and extradition have also been discussed in connexion with this article but the various proposals submitted were all rejected.

Protection of aliens against arbitrary expulsion[20/]

63. It was proposed that the article should state that the grounds for expulsion of aliens lawfully in the territory of a State must have a legal basis; it should also provide that the procedure to be followed in cases of expulsion must be prescribed by law. The principle that the grounds for expulsion must be in accordance with the law was not questioned, but there was some objection that such a provision might be difficult to apply and might, in some cases, even be inadvisable for reasons of national security. It was agreed that a decision to expel an alien was a most serious matter and should not be taken arbitrarily. Aliens must be afforded some protection against arbitrary action.

20/ E/CN.4/AC.3/SR.9; E/CN.4/SR.106, 153, 154, 154/Corr.1 (Eng. only), 155, Pt.II, 316, 317, 318; E/CN.4/41/Rev.1, 56, art. II, 82/Add.7, 8 and 12, 85, 213; E/CN.4/L.141; E/AC.7/SR.149; E/C.2/259/Add.1.

64. The nature of the safeguards which should be provided for the individual was discussed, and it was said that the article should be so drafted as to make countries which did not already provide for appeal against a decision of expulsion, adopt legislation to that effect. Some were opposed to including any specific provisions in the article, being of the view that States could in their own discretion expel aliens and decide on the procedures and safeguards which they wished to establish. The majority, however, believed that the article should strike a proper balance between the interests of the State and the protection of the individual. Article 32 of the Convention relating to the Status of Refugees[21] of 28 July 1951 was considered to provide the proper basis for action by the authorities with adequate and specific safeguards in respect of the exercise of such action. Article 13, as adopted, was based on this article of the Convention.

Right of Asylum[22]

65. In discussing the inclusion of a provision on the right of asylum in this article or in a separate article, it was said that States should be generous in extending asylum to persecuted individuals. The advisability of attempting to translate this principle into a positive obligation in the covenant, however, was questioned.

21/ A/Conf.2/108. An identical provision was also included in the convention relating to the Status of Stateless Persons of 28 September 1954. (E/Conf.17/5, art.31).

22/ E/CN.4/AC.3/SR.9; E/CN.4/SR.153, 154, 154/Corr.1 (Eng. only), 155, Pt. II, 199, 316, 317, 318; E/CN.4/41/Rev.1, 56, Chap. III, 341, 365, 392, 396, 423, 573, 660, 702 (XVI), 702/Add.1 (XXVII), (XXVIII); E/CN.4/L.184, L.190, L.190/Rev.1 and 2; L.191; E/CN.4/NGO.37, 39; E/AC.7/SR.147, 148 149; ESC (VI), suppl. 1, para. 48, ESC (IX), suppl. 10, para.33, ESC (XI), suppl. 5, annex III, ESC (XIV), suppl. 4, annex IV; GA (V), 3rd Com. 291st, 304th, 305th, 307th mtgs.; GA (V), annexes, a.i. 63, A/C.3/L.92, GA (IX), 3rd Com. 565th and 566th mtgs. Attention is also drawn to the views expressed on this question by the High Commissioner for Refugees (E/CN.4/659; E/2085/Add.1).

66. One view was that States alone should decide whether or not they would grant asylum to particular individuals. The danger of infiltration by foreign agents or agitators who might seek asylum under false pretenses was cited, and it was claimed that most States would be reluctant to commit themselves in advance to granting the right of asylum, especially if they could not later expel undesirable aliens. The opposite view was that the right of asylum was a fundamental right of the individual and the natural corollary of the other rights and freedoms set forth in the covenant. An article on this right was included in the Universal Declaration of Human Rights and its omission from the covenant would constitute a serious gap.

67. It was pointed out that the influx of large numbers of refugees into a particular State might cause material and economic problems for that State. In order to overcome such practical difficulties, the United Nations or a group of States acting collectively might assume the responsibility for granting the right of asylum. Against this suggestion it was said that, as yet, no machinery for such international co-operation existed, especially in cases where a particular State decided to refuse asylum.

68. In proposals submitted to the Commission on Human Rights attempts were made to specify the categories of persons who should be guaranteed asylum. No one considered that the right should be conferred on all persons desiring it. The following were among those for whom it was suggested asylum should be provided: political offenders, persons accused or persecuted for participation in the struggle for national independence or political freedom, for activities for the achievement of the purposes and principles of the Charter and of the Universal Declaration of Human Rights, for activities in defence of democratic interests and for scientific work. These were criticized as being too vague and difficult to define. In particular, it was said that the concept of political offenders and political crimes varied greatly from country to country and would give rise to different interpretations.

69. It was proposed that the right of asylum should not be granted to war criminals or to persons convicted of "non-political crimes", such as murder and arson, or of acts contrary to the purposes and principles of the United Nations.

Extradition[23/]

70. Opinions differed on the advisability of including a provision on extradition in this article. Some considered that the covenant should lay down certain general principles, while others were of the view that extradition was not appropriate for inclusion in the covenant which should be limited to laying down fundamental human rights and not rights which were corollaries thereof. They also considered that the matter was too complicated to be included in a single article or provision.

71. The categories of persons who, it was suggested, should be exempt from extradition were the same as those proposed in connexion with the right of asylum. The same criticisms were also raised concerning the difficulties of interpretation.

72. It was argued that the inclusion of a provision on extradition in the covenant would cause difficulties regarding the relationship of the covenant to existing treaties and bilaterial agreements. It was suggested that a separate convention on extradition might be drawn up.

23/ E/CN.4/365, 423; E/CN.4/L.184, L.190, L.190/Rev.1 and 2, E/CN.4/SR.153, 154, 154/Corr.1 (Eng. only), 155, Pt. II, 316, 317, 318.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.4	E/CN.4/21, annex A, arts. 33 and 34	33 and 34
CHR (II)	E/CN.4/AC.3/SR.9, E/CN.4/SR.37	E/CN.4/41/Rev.1, 56, art. 11 and chap. III; ESC (VI), suppl.1, para. 48 and annex B, art. 12	11
DC (II)	E/CN.4/AC.1/SR.30	E/CN.4/82/Rev.1, 82/Adds.2, 3, 4, 7, 8, 12; 85, 95 annex B, art. 12	12
CHR (III)		ESC (VII), suppl. 2, annex B, art. 11	
CHR (V)	E/CN.4/SR.106, 133	E/CN.4/213, 219, 341, ESC (IX), suppl. 10, para. 33, and annex I, art. 12	12
CHR (VI)	E/CN.4/SR.153, 154, 154/Corr.1 (Eng. only) 155, Pt. II, and 199	E/CN.4/353/Add.10, 365, 392, 392/Corr.1, 396, 420, 423; E/CN.4/L.3, L.10, E/CN.4/NGO.2, 4, 7; ESC (XI), suppl.5, annex I, art. 9, and annex III	12
ESC (XI)	E/AC.7/SR.147, 148, 149	E/C.2/254, 254/Add.1, 259/Add.1	9
GA (V)	3rd Com., 291st, 304th, 305th, 307th mtgs.	GA (V), annexes, a.i. 63, A/C.3/L.79, L.92	9
CHR (VII)		E/CN.4/528, 573; ESC (XIII), suppl.9, annex I, art.9, annex II, annex III A, annex IV	9
ESC (XIII)		E/2085/Add.1	9
CHR (VIII)	E/CN.4/SR.316-318	E/CN.4/528/Add.1, 659, 660, E/CN.4/L.141, L.150, L.153, L.184, L.188, L.190, L.190/Rev.1, L.191; E/CN.4/NGO.37, 39; ESC (XIV), suppl.4, paras.198-204, annex I B, art. 11 and annex IV	9
CHR (X)		E/CN.4/702 (XVI), 702/Add.1 (XXVII), (XXVIII), E/CN.4/L.311	12
GA (IX)	3rd Com. 565th, 566th mtgs.	A/2808	

ARTICLE 14

Fair Trial

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interest of justice; but any judgment rendered in a criminal case or in a suit at law shall be pronounced publicly except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly in a language which he understands and in detail of the nature and cause of the accusation against him;

(b) To have adequate time and facilities for the preparation of his defence;

(c) To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case where he does not have sufficient means to pay for it;

(d) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(f) Not to be compelled to testify against himself, or to confess guilt.

3. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

4. In any case where by a final decision a person has been convicted of a criminal offence and where subsequently his conviction has been reversed or he has been pardoned on the gound that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

73. The importance of article 14 was emphasized since, in the last analysis, the implementation of all the rights in the Covenant depended upon the proper administration of justice.[24]

74. While paragraphs 2, 3 and 4 were meant to relate to criminal proceedings, all the provisions of paragraph 1 were intended to apply to both criminal and civil proceedings.[25]

Equality before the Courts and Tribunals[26]

75. The inclusion of the provision that all persons shall be equal before the courts and tribunals was supported on the ground that arbitrary distinctions especially those based on race or wealth should be prohibited. It was opposed in the light of the fact that article 24 of the draft covenant contained the principle of equality before the law.

24/ E/CN.4/SR.153 and 323.

25/ See especially E/CN.4/SR.155, Part II, and E/CN.4/SR.156.

26/ E/CN.4/SR.107, 109, 110, 318 and 323, E/CN.4/L.124, E/CN.4/253 and 284 and GA (IX), 3rd Com., 580th mtg., para. 13.

76. It was proposed to add a provision aimed at ensuring that legal proceedings would be based on democratic principles, in order to guarantee that justice would not be administered on lines of social privilege, chauvinism and racial inequality. This proposal was rejected after it had been argued that it might weaken the more precise guarantees provided for the accused later in the article.

Right to a fair and public hearing[27/]

77. The use of the word "competent" before "independent and impartial tribunal" in paragraph 1 was intended to ensure that all persons were tried in courts whose jurisdiction had been previously established by law, and arbitrary action so avoided.

78. There was some discussion of the extent to which secrecy was permissible or desirable in judicial proceedings. It was observed that, in most countries, publicity had been introduced as a safeguard against arbitrary action by the courts. The text adopted reflects the view that some of the factors which might justify a secret hearing would not justify delivery of judgment in private.

79. It was argued, unsuccessfuly, that the words "public order" should be replaced by "the prevention of disorder" because the latter represented what was intended, whereas the English expression "public order" and the French "ordre public" did not have the same meaning.[28/] The words "in a democratic society" taken from article 29, paragraph 2, of the Universal Declaration of Human Rights were regarded as representing a salutary safeguard; their inclusion was unsuccessfully opposed on the grounds that they were ambiguous and might be differently interpreted.

80. When the inclusion of the words "or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice" was under consideration, reference was made to the

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27/ E/CN.4/SR.106, 107, 109, 110, 153, 155, Part II, 156, 199, 318 and 323, E/CN.4/L.142 and L.154, E/CN.4/170, 232 and Corr.1, 253, 279, 281, 282, 283, 286, 353/Adda.10 and 11, 365, 414, 426 and 694/Add.7, ESC (XIII), suppl. 9, Annex III, Section A and GA (IX) 3rd Com., 566th mtg., para.20, 568th mtg., para. 8, 570th, para. 3 and 571st, para. 38.

28/ See also annotation under article 18, paras. 112-114.

desirability in some instances of keeping the subject matter of litigation secret, for instance where secret industrial processes were involved, and to the special position of legally incapable persons and first offenders.

81. When, at a later point, the use of the words "the interest of the private lives of the parties" was being discussed, reference was made to proceedings involving matrimonial disputes or the guardianship of children and to the requirements of the interests of juveniles; the view was expressed that it would have been safer to refer to the interest of juveniles instead of the interest of the private lives of the parties.

82. When the inclusion of the words "or the proceedings concern matrimonial disputes or the guardianship of children" was being discussed it was observed that this would signify that judgment would be pronounced in the presence of the family and friends of the parties and in the presence of the press, but that the general public would be excluded. It was also pointed out that the reasons for excluding the public from the judgements in cases involving guardianship of children were not limited to the interests of juveniles.[29/]

Rights of the Accused[30/]

83. In justification of the retention of both article 9, paragraph 2, and article 14, paragraph 2 (a), in the covenant, it was observed that the former did not protect a person charged of an offence but not arrested, or cover wrongfully inflicted punishment other than deprivation of liberty.

84. It was argued that the statement in paragraph 2 (c), that the accused had not only the right to defend himself in person or through legal assistance of his own choosing, but also the right, if he did not have legal assistance, to be informed of that right, was self-evident and, because of its unsatisfactory formulation, illusory, since it conferred no worthwhile substantive right on an

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29/ E/CN.4/SR.323.

30/ E/CN.4/SR.106, 107, 109, 110, 155, Part II, 156, 157, 159, 167, 199, 318, and 323, E/CN.4/L.124 and L.142, E/CN.4/232 and Corr.1, 253, 279, 281, 284, 286, 365, 422/Rev.1, 428 and 528, para. 151 and ESC (XIII), suppl. 9, Annex III, Section A.

accused person. On the other hand, the view was expressed that in many countries the right of an accused person to be informed that he could defend himself or be represented by counsel was a valuable procedural right, if not a substantive right, and constituted a surer guarantee for the safeguarding of other rights connected with criminal proceedings.

85. It was recognized that it might be difficult in practice to inform an accused of his right, under this paragraph, to have legal assistance of his own choosing assigned to him free of charge if he did not have the means to pay for it.

86. In sub-paragraph (d), the statement that an accused person should have the right "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him," was preferred to the granting of the right "to obtain compulsory attendance of witnesses in his behalf who are within the jurisdiction and subject to the process of the tribunal." It was said that the latter wording (which was proposed with a view to safeguarding the special rights and privilges of certain categories of persons in foreign territories, for example, members of the diplomatic corps) appeared to guarantee what was not always possible. All that could properly be expected was that both the prosecution and the defence should have equal access to the process of the court to obtain the attendance and examination of such witnesses as each desired. There was disagreement as to whether or not the formulation adopted might have the effect of making the exercise of the right by the accused in a particular case dependent upon its exercise by the prosecution in that case.

87. The view was expressed that the wording of sub-paragraph (e) did not adequately provide for the rights of accused persons who did not understand the language used by the court. It was not sufficient that the accused should be entitled to the free assistance of an interpreter during the proceedings in court; it was necessary that he should also have that assistance in acquainting himself with all the documentary evidance that might exist in the case.

88. When sub-paragraph (f) was originally adopted in the form of the provision "No one shall be compelled to testify against himself or to confess guilt," the following additional words were rejected: "or be induced to make such a confession by a promise of reward or immunity."

The position of juveniles[31/]

89. While there was no objection to the principle contained in paragraph 3, some doubt was expressed as to whether it should appear in the covenant, or at least in article 14.

Compensation for miscarriage of justice[32/]

90. There was a difference of opinion as to whether the principle of compensation for miscarriage of justice should be included in the covenant. It was argued on the one hand that the payment of compensation was a matter for the exclusive discretion of the executive and that national approaches varied considerably; and on the other hand that the right to compensation of a person having suffered miscarriage of justice was basic and should be made enforceable against the State, as was the right dealt with in article 9, paragraph 5, of the covenant.

91. The question was asked whether paragraph 4 had successfully excluded the possibility that the States parties might be obliged to grant compensation in cases where decisions had been reversed on appeal.[33/]

92. A further provision that the compensation mentioned in paragraph 4 shall be awarded to the heirs of a person executed by virtue of an erroneous sentence was excluded from the paragraph since, at least in some legal systems, the expression "heirs" would not necessarily refer to the person who suffered because of the death of the victim of a miscarriage of justice. On the other hand, it was argued that if the provision were not included injustice would be caused since the children of a person wrongfully executed would not be legally entitled to compensation for their parent's death.

31/ E/CN.4/SR.157, 166, 167, 199, 318 and 323, E/CN.4/L.142 and E/CN.4/363, 441, 445, 448 and 449.

32/ E/CN.4/SR.106, 107, 109, 110, 157, 158, 159, 199, 318, 323 and 324, E/CN.4/L.133 and L.154 and Rev.1 and 2 and E/CN.4/232 and Corr.1, 253, 365, 430, 431 and 694/Add.6, para. 9, ESC (IX), suppl.10, annex II and ESC (XI), suppl.5, annex II.

33/ At an earlier stage it was agreed to regard the words "final decision" as signifying that all ordinary methods of review and appeal must have been exhausted and that all waiting periods must have expired (E/CN.4/SR.158 paragraphs 51 and 54 and E/CN.4/SR.159, paragraph 7). This interpretation was given, however, in relation to the following text:

"In any case where by a final decision a person has been convicted of a criminal offence and where subsequently a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated."

DOCUMENTATION

Organ and Session	Records of Discussion	Other documents	Article number
CHR (II)	E/CN.4/AC.1/SR.3, 4 and 10, E/CN.4/AC.3/SR.5 and 9 and E/CN.4/SR.36	E/CN.4/AC.1/4, Annex I, Article 12, E/CN.4/AC.1/9, E/CN.4/21, paragraphs 11 and 18, Annex A, Articles 26-7, Annex C, Articles 9-10 and Annex G, Article 6, E/CN.4/37, Article 10, E/CN.4/56, paragraph 7 and Chapter II, Article 12 and ESC (VI) suppl. 1, paragraphs 23-4, and Annex B, part I article 13 and part II	
DC (II)	E/CN.4/AC.1/SR.25, 30, 32, 33 and 43	E/CN.4/AC.1/24/Rev.1, E/CN.4/AC.1/24/Rev.1/Add.1, E/CN.4/85 and E/CN.4/95, paragraph 10 and Annex B, Article 13	13
CHR (III)		E/CN.4/82/Adda.7, 8 and 12, E/CN.4/85 and 170 and ESC (VII), suppl. 2, paragraph 14 and Annex B, Article 13	13
CHR (V)	E/CN.4/SR.106, 107, 109 and 110	E/CN.4/170, 232 and Corr.1, 253, 279, 281, 282, 283, 284 and 286 and ESC (IX), suppl. 10, Annex I, Article 13 and annex II	13
CHR (VI)	E/CN.4/SR.153, 155, Part II, 156, 157, 158, 159, 166, 167 and 199	E/CN.4/L.4/Rev.1, L.10, paras. 38-55, and L.16, E/CN.4/353/Add.10 and 11, 365, 414, 422/Rev.1, 426, 428, 430, 431, 441, 445, 448 and 449, E/CN.4/NGO/7, para. 5, and ESC (XI) suppl. 5, para. 51 and Annex I, Article 10 and annex II	13
ESC (VI)	E/AC.7/SR.148, 149 and 153	E/L.68, paras. 58-73	10
GA (V)	3rd Com., 290th mtg., paras. 43 and 67 and 291st mtg., paras. 4, 56 and 62	Annexes, a.i. 63, A/C.3/534, para. 15	10
ESC (XII)		E/C.2/285	10

Organ and Session	Records of Discussion	Other documents	Article number
CHR (VII)		E/CN.4/523, para. 7, 524, paras. 31-5, 528, paras. 138-60 and 552, E/CN.4/NGO.21, section III and ESC (XIII), suppl. 9, Annex III, Section A	10
CHR (VIII)	E/CN.4/SR.318, 323 and 324	E/CN.4/528/Add.1, paras. 86-95, E/CN.4/660, paras. 34-5 E/CN.4/L.124, L.133, L.142 and L.154 and Rev.1 and 2, E/CN.4/NGO/39 and ESC (XIV), suppl. 4, paras. 205-23 and Annex I, Part B, Article 12.	10
CHR (IX)		E/CN.4/674, paras. 38-46	12
CHR (X)		E/CN.4/694/Add.6, para. 9 and Add.7 and E/CN.4/702, Communication Nos. IX and XV	14
GA (IX)	3rd. Com., 565th mtg., para. 28, 566th, para. 20, 568th, paras 8 and 10 and 580th, para. 13.		14

ARTICLE 15

Prohibition of retroactive application of criminal law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations.

93. Article 15 which prohibits the retroactive application of criminal law applies both to the definition of offences and to the severity of their punishment.

94. The reference in paragraph 1 to international law is intended to secure that no one shall escape punishment for a criminal offence under international law by pleading that his act was legal under his own national law. It was observed that, conversely, the reference to international law constituted an additional guarantee of security to the individual, whom it protected from possible arbitrary action even by an international organization.

95. It was argued that the third sentence of paragraph 1 contradicted the assumption underlying the second sentence, namely that a penalty must be that which was authorized by the law in force at the time of its imposition. It was also said that, notwithstanding the praiseworthiness of the goal at which the third sentence aimed, it was not appropriate to make provision for it in the covenant, since it would seem to mean that convicted persons would be enabled as of right to demand that they should benefit from any change made in the law after their conviction. It was asserted that the executive authority of States parties to the covenant should retain an absolute discretion in applying the benefits of subsequently enacted legislation to such persons.

In opposition to these views it was observed that the tendency in modern criminal law was to allow a person to enjoy the benefit of such lighter penalties as might be imposed after the commission of the offence with which he was charged; the laws imposing new and lighter penalties were often the concrete expression of some change in the attitude of the community towards the offence in question.

96. It was argued that the second paragraph of the article was superfluous: if, as was claimed, it was intended as a confirmation of the principles applied by the war crimes tribunals after the Second World War, it might have the opposite effect of calling into question the validity of the judgments of those tribunals; and if it was intended as a guarantee that no alleged war criminal in the future would be able to argue that there were no positive principles of international law or of relevant national law qualifying his acts as crimes, it merely reiterated what was already contained in the expression "international law" in the first paragraph, since that term included "the generally recognized principles of law" mentioned at the end of the second paragraph. On the other hand, the view was heard that the saving provision set forth in paragraph 2 had no application to past convictions for war crimes, nor was it fully covered by the term "international law" contained in the first paragraph.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article Number
CHR (II)	E/CN.4/AC.1/SR.3, 4, 8 and 10, E/CN.4/AC.3/SR.5 and 9 and E/CN.4/SR.36-37	E/CN.4/21, paras. 11 and 14, Annex A, art. 26, annex B, art. 12, annex C, arts. 9-10 and annex G, art. 6, E/CN.4/37, art. 10, E/CN.4/56, chap. II, art. 13 and ESC (VI), suppl. 1, paras. 23-4 and annex B, article 14	
DC (II)	E/CN.4/AC.1/SR.25 and 30-31	E/CN.4/85, E/CN.4/95, para. 10 and annex B, article 14	14
CHR (III)		E/CN.4/82/Adda. 7, 8 and 11, E/CN.4/85 and ESC (VII), suppl. 2, para. 14 and annex B, article 14	14
CHR (V)	E/CN.4/SR.112 and Corr.1	E/CN.4/170, 188, 199, 228, 233 and 253 and ESC (IX), suppl. 10, annex I, article 14	14
CHR (VI)	E/CN.4/SR.159 and 199	E/CN.4/353/Add.10, 365 and 425, E/CN.4/L.3, L.10, paras. 56-62, L.10/Corr.1 and L.16 and ESC (XI), suppl. 5, para. 51 and Annex I, article 11	14
ESC (XI)	E/AC.7/SR.148 and 153	E/L.68, paras. 74-5 and E/C.2/259/Add.1, section I (2)(C)	11
GA (V)	A/C.3/SR.290, para. 68	Annexes, i.a. 63, A/C.3/534, para. 9	11
CHR (VII)		E/CN.4/524, paras. 36-8, E/CN.4/528, paras. 161-4, E/CN.4/552, chapter II, section II and ESC (XIII), suppl. 9, annex III, section A.	11
CHR (VIII)	E/CN.4/SR.324	E/CN.4/528/Add.1, paras. 96-7, E/CN.4/L.196 and L.197, E/CN.4/NGO/39 and ESC (XIV) suppl. 4, paras. 224-29 and annex I, part B, article 13	11

DOCUMENTATION (cont'd)

Organ and Session	Records of discussion	Other documents	Article Number
CHR (X)		E/CN.4/694/Add.7	15
ESC (SVIII)	E/AC.7/SR.289		15
GA (IX)	3rd Comm., 571st mtg., para. 39.		15

ARTICLE 16

Recognition as a person before the law

Everyone shall have the right to recognition everywhere as a person before the law.

97. The present text is based on Article 6 of the Universal Declaration of Human Rights. That article was understood to apply to human beings, not to "juridical persons", and the expression "as a person before the law" was meant to assure recognition of the legal status of every individual and of his capacity to exercise rights and enter into contractual obligations.[34/]

98. Orignally a draft article providing that "no person shall be deprived of his juridical personality" was proposed. However, such a text was not considered sufficiently clear and precise, particularly since "deprivation of juridical personality" did not have a well-defined meaning in some systems of law.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)		E/CN.4/AC.1/4/Add.1; E/CN.4/21, annex G, art. 7	
CHR (II)	E/CN.4/AC.3/SR.5; E/CN.4/SR.37	E/CN.4/39; 56; chapt. II, art. 14; ESC (VI), suppl. 1, annex B, parts I and II, art. 15	7 14
DC (II)	E/CN.4/AC.1/SR.25	E/CN.4/AC.1/19, art. 15; E/CN.4/82/Rev.1, 82/Add.8, 12; 85; 95	15
CHR (V)	E/CN.4/SR.113	E/CN.4/170; 232; 253; 278; ESC (IX), suppl. 10, annex I, art. 15	15
CHR (VI)	E/CN.4/SR.159, 199	E/CN.4/353/Add.10; 365; E/CN.4/L.3, 16: ESC (XI), suppl. 5, annex I, art. 12	15
ESC (XI)	E/AC.7/SR.147, 148		12
GA (V)	3rd Com., 289th, 290th, 291st mtgs.		12

34/ GA (III), 3rd Com., 111th mtg.

DOCUMENTATION (cont'd)

Organ and session	Record of discussion	Other documents	Article number
CHR (VII)		E/CN.4/515/Add.12; 528, paras.165-167	15
CHR (VIII)	E/CN.4/SR.324	E/CN.4/528/Add.1, paras. 98-99, 668/Add.10; ESC (XIV), suppl. 4, para. 230, and annex I B, art. 14	15

ARTICLE 17

Privacy, home, correspondence, honour and reputation

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

99. In the discussion of this article, no difference of opinion arose as to the principle involved. It was pointed out that privacy, the sanctity of the home, the secrecy of correspondence and the honour and reputation of persons were protected under the constitutions or laws of most, if not all, countries. Moreover, the right of everyone to protection from "arbitrary interference with his privacy, family, home or correspondence" and from "attacks upon his honour and reputation" was proclaimed in Article 12 of the Universal Declaration of Human Rights. However, the view was expressed that it would be very difficult to translate the general principles enunciated in Article 12 of the Declaration into precise legal terms, especially in the form of a brief article in the covenant which would be applicable to all legal systems of the world. Against this view, it was argued that the covenant would suffer a serious omission if it failed to include an article on such an elementary right as the right to privacy, home, correspondence, honour and reputation. Such an article could lay down a general rule, leaving the exceptions thereto and the methods of application to the legislation of each contracting State.

100. The first clause of the article, guaranteeing to every person the right to protection from "arbitrary or unlawful interference with his privacy, home or correspondence" and from "unlawful attacks on his honour and reputation" seeks to protect the individual not only against acts of public authorities, but also of private persons. The view was expressed that the article should be confined to imposing restraints on governmental action and should not deal with acts of private individuals which were a matter for municipal legislation. It was feared that the article as formulated might be construed as requiring changes to be made in existing rules of private law and this would raise considerable

difficulties particularly for countries with Anglo-Saxon legal traditions. On the other hand, it was pointed out that the article, which was couched in general terms, merely enunciated principles, leaving each State free to decide how those principles were to be put into effect.

101. There was some discussion of the meaning and scope of the expression "arbitrary or unlawful interference". Some thought that a distinction should be made between "arbitrary" interference by public authorities and "unlawful" interference by private persons. Interference by public authorities could be lawful and yet "arbitrary"; interference by a private person would be "unlawful". Others thought that the article should protect the individual against "arbitrary" and "unlawful" interference by private persons as well as by public authorities.

102. The use of the terms "privacy, home or correspondence" was criticized on the ground that their precise legal implications were not clear. Objections to the use of the term "arbitrary" were also raised. It was suggested that the term "unreasonable" was preferable to "arbitrary or unlawful". A proposal was also made to add "unreasonable" to the words "arbitrary" and "unlawful" in qualifying "interference", but the proposal was rejected. In support of the proposal it was maintained that the term "arbitrary" conveyed merely the notion of capriciousness, while the word "unreasonable" had a much broader meaning. An action or a law might not be arbitrary and yet could be unreasonable. On the other hand, it was pointed out that the term "unreasonable" did not have a precise legal meaning itself. It was recalled that when Article 12 of the Universal Declaration was adopted, the General Assembly had preferred the term "arbitrary" to "unreasonable" as conveying both the notion of illegality and of unreasonableness.

103. The second part of the first clause guarantees protection against "unlawful attacks" on the honour and reputation of an individual. The insertion of "unlawful" before "attacks" was intended to meet the objection that, unless qualified, the clause might be construed in such a way as to stifle free expression of public opinion. It was thought that the law could protect the individual only against "unlawful" or "abusive" or "unwarranted" attacks on his honour and reputation, and that fair comments or truthful statements which might affect an individual's honour or reputation should not be considered as "attacks on his honour and reputation." An objection was raised to the use

of the term "attacks" which was thought to be unsuitable in an international treaty.

104. The second clause provides that "everyone has the right to protection of the law against such interference or attacks." The need for such a clause was questioned since article 2 of the draft covenant already provided that each State party would undertake "to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in this covenant." On the other hand, it was contended that the addition of the clause would not be superfluous. It was not enough to recognize the right of everyone not to be subjected to arbitrary or unlawful interference with his privacy, home or correspondence or to unlawful attacks on his honour and reputation; his right to be protected by the law against such interference or attacks must also be expressly recognized. Misgivings were raised concerning the use of the term "protection" since it might be understood to imply that States were bound to suppress, or censor in advance, views thought to be unlawful. The expression "protection of the law" however could not be interpreted as authorizing censorship, since that would violate the provisions concerning freedom of opinion and expression set forth in article 19 of the draft covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (II)		E/CN.4/AC.1/21	
CHR (VI)		E/CN.4/353/Add.3; ESC (XI), suppl.5, annex III	
ESC (XI)	E/AC.7/SR.149	E/C.2/254/Add.1; E/L.68, para. 99	
GA (V)	3rd Com., 291st mtg.	GA (V), annexes, a.i. 63, A/C.3/534, para. 6	
CHR (VII)		E/CN.4/515/Add.6; 528, para. 23-27	
CHR (VIII)		E/CN.4/528/Add.1; 660, para. 12; ESC (XIV), suppl. 4, annex II, sect.A, part VI, and annex IV	

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.373-376	E/CN.4/674, paras. 14-16; L.265; ESC (XVI), suppl. 8, paras. 65-71, annex I B, art. 17, and annex III, paras. 29-34	
CHR (X)		E/CN.4/694/Add.2, 6	17
GA (IX)	3rd Com., 562nd, 565th, 567th mtgs.		17

ARTICLE 18

Freedom of Thought, Conscience and Religion

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion or belief, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

105. The debate on this article seemed to focus on three main issues: the nature or concept of "freedom of thought, conscience and religion", the right "to change" or "to maintain" one's religion or belief, and the scope of legitimate limitations of "freedom to manifest one's religion or belief".

Freedom of thought, conscience and religion:[35/]

106. During the debate on this article, freedom of thought, conscience and religion was frequently characterized as "absolute", "sacred" and "inviolable" The first clause of the article therefore declared in clear and simple terms, and without qualifications, that "everyone shall have the right to freedom of thought, conscience and religion". No restrictions of a legal character, it was generally agreed, could be imposed upon man's inner thought or moral consciousness, or his attitude towards the universe or its creator; only external manifestations of religion or belief might be subject to legitimate limitations.

35/ E/CN.4/AC.1/SR.10, 26; E/CN.4/SR.116, 117, 319; E/CN.4/82/Rev.1, 82/Add.2, 85, 528; E/L.68; A/C.3/SR.289.

107. The question was raised whether the words "thought" and "belief" in this article were intended to be different concepts. The question was also raised whether there was any clear-cut distinction between "the right to freedom of thought" in this article and "the right to hold opinions without interference" in the next article.

Freedom to maintain or to change one's religion [36]

108. The first drafts of the article contained a provision to the effect that everyone should have "freedom to change his religion or belief". Against this provision, it was argued that the right to change one's religion was already implicit in the concept of "freedom of religion" and therefore need not be mentioned specifically. It was also argued that the covenant should not lend its support to any religious body in its proselytising or missionary enterprise, nor should it be instrumental in creating any doubt in the mind of any believer of the truth of his belief. Furthermore, a provision in the covenant on the right to change one's religion, it was contended, would create uncertainty and difficulty for those States whose constitutions or basic laws were religious in origin or in character. It was also thought that, since the article as a whole dealt with freedom of "thought", "conscience" and "religion", any elaboration of freedom of "religion" without a corresponding elaboration of freedom of "thought" and"conscience" would make the article somewhat unbalanced.

109. On the other hand, the opinion was expressed that the right to change one's religion should be specially emphasized in view of the fact that there were religious bodies which discouraged religious conversions, and laws which recognized State religions and discriminated against non-believers of such

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36/ E/CN.4/AC.3/SR.5; E/CN.4/SR.116, 117, 161, 319; E/CN.4/82/Rev.1, 85, 233, 272, 300, 382, 515/Add.16, 528, 528/Add.1; E/CN.4/L.187; E/2059/Add.6; A/C.3/SR.288-290, 302, 306, 367, 371, 563, 565, 566, 571, 576; A/C.3/L.75/Rev.1. Amendments on this point were submitted during the first reading of the draft covenants at the ninth session of the General Assembly (GA (IX), a.i. 58, A/C.3/L.422).

religions. Failure to recognize the right to change one's religion, it was maintained, would be tantamount to a denial of that right, and would by implication tend to abridge the right of any religious body to carry its message to any corner of the earth.

110. As a compromise it was agreed that freedom "to maintain" as well as freedom "to change" one's religion, two facets of freedom of religion, should both be written into the article. A further provision was added that "no one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief". It was understood that the word "coercion" in this context should not be construed as applying to moral or intellectual persuasion, or to any legitimate limitation of freedom to manifest one's religion or belief.

111. There was another proposal that "any change of religion made unlawfully or to evade obligations under the law governing the personal status of the person concerned shall be declared null and void". This proposal was not adopted, for it was thought that the question of religious conversion as such should be distinguished from the question of personal status, the former being spiritual in character, the latter being a legal matter.

Limitations clause [37]

112. The limitations clause of article 18 on freedom of thought, conscience and religion, and those of article 19 on freedom of opinion and expression, article 20 on the right of peaceful assembly and article 21 on freedom of association were drafted, revised and adopted at different times and were consequently couched in varying terms as regards such expressions as "national security", "public order", "public health or morals", etc. It was urged that

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37/ E/CN.4/NGO/10, 21, 26; E/CN.4/AC.3/SR.5; E/CN.4/AC.1/SR.26; E/CN.4/SR.116, 117, 119, 160, 319; E/CN.4/82/Add.2, 85, 170, 272, 301, 365, 515/Add.12, 13, 524, 528; E/L.68.

these clauses should be drawn up in a uniform manner, except where a difference in substance was intended, in order that no serious issues of interpretation and application would arise in the future. However, no action on this matter was taken.

113. The English expression "public order" and the French expression "l'ordre public" gave rise to considerable discussion. It was observed that the English expression "public order" was not equivalent to - and indeed was substantially different from - the French expression "l'ordre public" (or the Spanish expression "orden publico"). In civil law countries "l'ordre public" is a legal concept used principally as a basis for negating or restricting private agreements, the exercise of police power or the application of foreign law. In common law countries the expression "public order" is not a recognized legal concept and is ordinarily used to mean the absence of public disorder. The common law counterpart of "l'ordre public" is "public policy" rather than "public order". The use of the expression "public order" or "l'ordre public" in the limitations clause would create uncertainty and might constitute a basis for far-reaching derogations from the rights guaranteed. One proposal was made to change the "protection of public order" to the "prevention of public disorder". Another proposal was to add after the expression "public order" a modifying clause "in a democratic society".

114. The limitations clause of article 18 contains the expression "public safety", that of article 19 the expression "national security", and those of articles 20 and 21 the expression "national security or public safety". It was noted that these expressions were not consistent. It was also observed that the terms "national security" and "public safety" were not sufficiently precise to be used as a basis for the limitation of the exercise of the rights guaranteed.

The right of parents [38]

115. There were several proposals to the effect that in the case of a minor the parent or guardian should have the right to determine what form of religious

38/ E/CN.4/NGO/10, 12; E/CN.4/SR.116, 117, 160, 161; E/CN.4/226, 272, 300, 429.

education he should receive. Against these proposals, it was stated that the age at which a minor ceased to be a minor varied in different countries. It was further stated that if the right of the parent to determine what form of religious education the minor should receive were written into the article, the right of the parent to give the minor a purely secular education should also be guaranteed. While there was general agreement that religious education should not be imposed upon the minor against the will of the parent, it was thought that the proper place for such a provision would be in an article on education.[39/]

Rights of religious bodies [40/]

116. Proposals were made that freedom of religion should include freedom of religious denominations or communities to organize themselves, to perform missionary, educational and medical work, to enjoy civil or civic rights, etc. Two attitudes regarding such proposals were evident. On the one hand, it was emphasized that any religious sect or order, as a corporate body, should have an inherent right to perpetuate its own mode of life and to propagate its doctrine. On the other hand, it was argued that the missionary society of one religion often tended to undermine the fundamental faith of another religion and might therefore constitute a source of inter-religious misunderstanding or friction. No decision was made on the proposals and the article did not contain any provision on rights of religious bodies. Another proposal was made that "every person of full age and sound mind" should be free "to endeavour to persuade other persons of full age and sound mind of the truth of his beliefs". This proposal, once accepted, was eventually rejected.

Acts contrary to religious observance or practice [41/]

117. A proposal that no one should be required to do any act which was contrary to his religious observance or practice was not adopted. Although there was no

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39/ See para. 3 of article 14 of the draft covenant on economic, social and cultural rights.

40/ E/CN.4/AC.3/SR.5; E/CN.4/AC.1/SR.10, 26; E/CN.4/SR.37, 116, 117; E/CN.4/82/Rev.1.

41/ E/CN.4/NGO/1 and Add.1, 11; E/CN.4/AC.3/SR.5; E/CN.4/SR.116, 117, 161; E/CN.4/365.

objection in principle to the proposal it was thought that it might not always be possible to apply such a provision especially in countries where many different religions were practised. Another proposal which was not adopted was that "persons who conscientiously object to war as being contrary to their religion shall be exempt from military service".[42]

A proposal for a briefer article [43]

118. A briefer article was proposed which read as follows: "Every person shall have the right to freedom of thought and freedom to practice religious observance in accordance with the laws of the country and the dictates of public morality". This text was considered too brief and the clauses "laws of the country" and "dictates of public morality" were thought to be too general.

42/ See article 8 of the draft covenant on civil and political rights for a provision on conscientious objectors.

43/ E/CN.4/SR.117; E/CN.4/95, 272.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Art. No.
CHR, DC (I)	E/CN.4/AC.1/SR.10	E/CN.4/AC.1/4; E/CN.4/21, annex G, art.8	
CHR (II)	E/CN.4/AC.3/SR.5	E/CN.4/37, 56; ESC (VI), suppl.1, annex B, part II, art.16	8 15
CHR, DC (II)	E/CN.4/AC.1/SR.26	E/CN.4/AC.1/19, 33, 35; E/CN.4/95, annex B	16
CHR (III)	E/CN.4/SR.37	E/CN.4/82/Rev.1, 82/Add.2, 85; ESC (VII), suppl.2, annex B	16
CHR (V)	E/CN.4/SR.116, 117, 119	E/CN.4/170,226,229,233,272,300, 301; ESC (IX), suppl.10, annexes I and II	16
CHR (VI)	E/CN.4/SR.160,161	E/CN.4/353/Add.1,3;358,365, 382,429; E/CN.4/L.5; E/CN.4/NGO.1 and Add.1, 10-12; ESC (XI), suppl.5, annexes I and II, art.13	16
ESC (XI)	E/AC.7/SR.147 and 148	E/L.68	13
GA (V)	3rd.Ccm.,288th-91st, 301st, 302nd, 305th, and 306th mtgs.	A/C.3/L.75/Rev.1,99	13
CHR (VII)		E/CN.4/515/Add.12,13.16; 524 528, paras.168-199;ESC (XIII), suppl.9, annexes I and III	13
ESC (XIII)		E/2059/Add.6	13
GA (VI)	3rd. Com., 367th and 371st mtgs.		13
CHR (VIII)	E/CN.4/SR.319	E/CN.4/528/Add.1, paras.100-104; 660; E/CN.4/668/Add.7, E/CN.4/L.143, 155, 187; ESC (XIV), suppl.4, paras. 231-37, annex I.B,art.15	13
CHR (IX)		674; ESC (XVI), suppl.8, annex I.B, art.18	15

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Art. No.
CHR (X)		E/CN.4/694/Add.5; ESC (XVIII), suppl.7, annex I.B, art.18	18
GA (X)	3rd. Com., 563rd, 565th, 566th, 571st and 576th mtgs.		18

ARTICLE 19

Freedom of Opinion and Information

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary,
(1) for respect of the rights or reputations of others,
(2) for the protection of national security or of public order, or of public health or morals.

119. While the Commission on Human Rights was drafting this article the United Nations was also engaged in drafting a convention on freedom of information, a convention on the gathering and international transmission of news and a convention concerning the institution of an international right of correction.[44/] The question was raised whether, since a separate convention on freedom of

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44/ The United Nations Conference on Freedom of Information, which met in 1948, prepared a draft convention on freedom of information, a draft convention on the gathering and international transmission of news and a draft convention concerning the institution of an international right of correction (see the Final Act of the Conference, E/Conf.6/79).

At its third session the General Assembly in resolution 277 (III) of 13 May 1949, approved a draft convention on the international transmission of news and the right of correction, but resolved that the draft convention should not be open for signature until the General Assembly had taken definite action on the draft convention on freedom of information. At its fourth session the General Assembly, in resolution 313 (IV) of 20 October 1949, decided to postpone further action on the draft convention on freedom of information pending receipt of the draft international covenant on human rights. By resolution 426 (V) of 14 December 1950 the General Assembly appointed a Committee to prepare a draft convention on freedom of information, taking into consideration the draft approved by

(footnote continued on following page)

information was being drafted, the covenant on human rights should include an article on freedom of expression and information at all. The consensus of opinion[45] was that the covenant could not ignore freedom of information which the General Assembly, in resolution 59 (I), had declared to be "a fundamental human right" and the "touchstone of all the freedoms to which the United Nations is consecrated". Furthermore, the observation was made that the covenant, as a general instrument on human rights, could serve as a legal foundation on the basis of which a series of conventions on particular rights could be formulated.

Freedom of opinion [46]

120. The first drafts of the article contained a clause to the effect that every person should have the right to freedom of opinion and expression without interference by governmental action. As the debate on this clause progressed, it became clear that freedom of opinion and freedom of expression were not of the same character: the former was purely a private matter, belonging as it did to the realm of the mind, while the latter was a public matter, or a matter of human relationship, which should be subject to legal as well as moral restraint.

44/ (footnote continued from preceding page)
the United Nations Conference on Freedom of Information and the article on freedom of expression and information in the draft covenant on human rights and recommended that the Economic and Social Council consider the report of the Committee and, if it thought fit, convene a conference of plenipotentiaries with a view to the framing and signature of the convention. The Committee met in early 1951 and prepared a draft convention on freedom of information (A/AC.42/7). In resolution 387 A (XIII) of 1 September 1951 the Economic and Social Council transmitted to the General Assembly its decision not to convene a plenipotentiary conference. At its 6th, 7th and 8th sessions the General Assembly did not study the draft convention on freedom of information article by article (see resolutions 541 B (VI) of 4 February 1952, 631 (VII) of 16 December 1952 and 736 A (VIII) of 28 November 1953). However, at its 7th session it adopted a Convention on the International Right of Correction and opened it for signature (resolution 630 (VII) of 16 December 1952). In resolution 840 (IX) of 17 December 1954, the General Assembly requested the Economic and Social Council to formulate recommendations concerning the draft convention on freedom of information. On 25 May 1955 the Council adopted resolution 574 C (XIX) recommending that the General Assembly "consider the draft convention at its twelfth session in the hope that conditions will be more favourable at that time."

45/ E/CN.4/SR.37, 120, 170, 171.

46/ E/CN.4/SR.162-67, 200, 320-22; E/2256, para. 239; A/C.3/SR.300, 415.

Although it was recognized that a person was invariably conditioned or influenced by the external world, it was generally agreed that no law could regulate his opinion and no power could dictate what opinion he should or should not entertain. The decision was made, therefore, to treat the right to freedom of opinion separately from the right to freedom of expression.

121. Originally, the English version of the first paragraph read: "Everyone shall have the right to freedom of opinion without interference"; this was later changed to read: "Everyone shall have the right to hold opinions without interference". The French version was "nul ne peut être inquiété pour ses opinions". It was pointed out that the English and French texts corresponded neither in substance nor in style.

122. As originally proposed, the phrase "without interference" was followed by the phrase "by governmental action". There were two views regarding this point. One was that the article was intended to protect the individual only against governmental interference. The other view was that the article should protect the individual against all kinds of interference.

123. The question was raised whether there was any distinction between "freedom of opinion" in this article and "freedom of thought" in the preceding article and, if so, in what respect or to what extent. One comment was to the effect that the words "thought" and "opinion", though not identical, were very close to each other in meaning; another that the two words were not mutually exclusive but complementary to each other; a third that "freedom to hold any opinions without interference" was a truism and therefore superfluous.

Freedom of expression [47]

124. The general principle that "everyone shall have the right to freedom of expression" was not in itself a controversial issue. Differences of opinion arose on the precise scope and substance of freedom of expression.

125. The first question concerned the elements which constituted freedom of expression. In paragraph 2 of the article it was provided that freedom of expression "shall include freedom to seek, receive and impart information and

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47/ E/CN.4/SR.162-67, 320-22; E/2256, para. 239-41.

ideas of all kinds....". Whether the act of seeking or receiving information was an act of "expression" did not appear to have been carefully examined. As to the objects of the verbs "to seek, receive and impart", various formulations were proposed: "information and ideas", "facts and ideas", "information of all kinds including facts, critical comment and ideas". A compromise formulation "information and ideas of all kinds" was adopted. Furthermore, the right to freedom of expression was not to be limited within the confines of any political or territorial entity; it was to be exercised "regardless of frontiers".

126. The question of the media through which the right to freedom of expression might be exercised was essentially a question of drafting although one point of substance was involved. Various wordings were suggested: "Either orally, by written or printed matter, in the form of art, or by legally operated visual and auditory devices"; "either orally, in writing or in print, in the form of art, or by duly licensed visual or auditory devices"; "through speech, press, art or any other media". The clause "duly licensed visual or auditory devices" and, to a lesser extent, the clause "legally operated visual or auditory devices" were objected to on the grounds that they were susceptible of arbitrary interpretation and application which might throttle channels of communication. The text eventually adopted was a compromise of the several versions. It read: "Either orally, in writing or in print, in the form of art, or through any other media of his choice".

Limitations clause [48]

127. Proposals were made to stipulate that the right to freedom of expression "carries with it duties and responsibilities....". Those who opposed the proposals contended that the general purpose of the covenants was to set forth civil and political rights and to guarantee and protect them rather than to lay down "duties and responsibilities" and to impose them upon individuals. Furthermore, they contended that, since each right carried with it a corresponding

48/ E/CN.4/AC.1/SR.26; E/CN.4/SR.162-167, 320-322; E/CN.4/82/Add.4, 8; 220, 528 and Add.1, 532; E/CN.4/L.125, 144/Rev.1, 156/Rev.1, 192, 193; E/CONF.6/79, Annex B; E/2256, para. 242, 243; E/L.68; A/C.3/SR.290.

duty and since in no other article was the corresponding duty of any right set out, the present article should not be an exception. Those supporting the proposals were of the opinion that freedom of expression was a precious heritage as well as a dangerous instrument, and they maintained that, in view of the powerful influence the modern media of expression exerted upon the minds of men and upon national and international affairs, the "duties and responsibilities" in the exercise of the right to freedom of expression should be specially emphasized. The clause that the right to freedom of expression "carries with it duties and responsibilities" was adopted, with the addition of the word "special" before "duties and responsibilities".

128. There were two schools of thought on the question of how the limitations or restrictions should be written. One school was of the opinion that the limitations clause should be a brief statement of general limitations, the other school maintained that it should be a full catalogue of specific limitations. Consequently, several texts of a general clause were proposed while at the same time more than 30 specific limitations were suggested.

129. One proposal was that the right to freedom of expression might be subject to restrictions with regard to:

(a) Matters which must remain secret in the interest of national safety;
(b) Expressions which invite persons to alter by violence the system of government;
(c) Expressions which directly incite persons to commit criminal acts;
(d) Expressions which are obscene;
(e) Expressions injurious to the fair conduct of legal proceedings;
(f) Infringements of literary or artistic rights;
(g) Expressions about other persons, natural or legal, which defame their reputations or are otherwise injurious to them without benefiting the public;
(h) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and States.

Other suggestions included: disclosure of professional secrets; disclosure arising out of marital or professional relations; expressions about public authorities and high personages; communications with foreign Governments; blasphemous or treasonable statements; etc.

130. The advocates of a brief clause argued that a catalogue of specific limitations might perhaps be included in a convention on freedom of information[49] but would certainly be too long to be included in an article in the covenant; that no catalogue could ever be sufficiently exhaustive to cover all situations, in view of the divergent political and legal systems existing in the world today; and that the only way to draft a limitations clause was to find a workable common formula. Those in favour of specific limitations insisted that a general formula was susceptible of arbitrary interpretation and application; that if the covenant were to be a satisfactory legal instrument permissible restrictions on freedom of expression should be set forth in precise unequivocal language; and that a wider degree of freedom would be ensured where limitations were enumerated carefully and in detail.

131. In the course of debate several texts of a general clause were proposed, to which several series of amendments containing specific limitations were submitted. A general clause was adopted which provided that the exercise of the right to freedom of expression "may be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights and reputations of others, (2) for the protection of national security, or of public order, or of public health or morals". The words "penalties" and "liabilities" which were originally placed before the word "restrictions" were deleted.

132. The debate on the "public order" clause of this article paralleled that of the preceding article. One proposal was to replace the "protection of public order" by the "prevention of public disorder"; another proposal was to modify "public order" by "in a democratic society". Neither was accepted. It might be noted that during the debate the term "public order" was interpreted as covering the rights of a State to license media of information and to regulate the importation of information material.[50]

49/ See Article 2 of the draft convention on freedom of information prepared by the United Nations Conference on Freedom of Information (E/CONF.6/79) and Article 2 of the draft convention on freedom of information prepared by the General Assembly Committee on the Draft Convention on Freedom of Information (A/AC.42/7).

50/ For general comments on such expressions as "public order", "national security" or "public safety" and on the desirability of adopting a uniform limitations clause for articles 18, 19, 20 and 21, see paragraphs 112-114 of the annotation under article 18 above.

133. In addition to the general clause certain restrictions of a specific character were considered. For instance, it was proposed that freedom of expression should be subject to such restrictions as were necessary "for preventing the disclosure of information received in confidence" and "for ensuring the fair and proper conduct of judicial proceedings". Although there was little objection in principle to these proposals, they were not adopted because there was no majority in favour of listing specific limitations.

134. It was further proposed that freedom of expression should not be "exploited for war propaganda, for incitement to hatred among peoples, for racial discrimination and for the dissemination of slanderous rumours".[51/] Again it was proposed that freedom of expression should be subject to such restrictions as were necessary "for the maintenance of peace and good relations among States". These and other similar proposals were rejected on the grounds that they were not susceptible of precise interpretation and that, furthermore, they might justify the establishment of a system of censorship.

135. The question was raised whether freedom to seek and freedom to receive information should be subject to the same restrictions as freedom to impart information, and whether they should be subject to any restrictions at all. On this point, however, no definite understanding appeared to have been established.

The question of censorship [52/]

136. Proposals were made that "prior censorship of the press should be explicitly banned" and that "previous censorship of written and printed matter, the radio and news reels should not exist".[53/] No such proposals were adopted, for it was

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51/ An amendment was submitted during the first reading of the draft covenants at the ninth session of the General Assembly proposing the deletion of article 26 on prohibition of advocacy of national, racial or religious hostility and the insertion in this article of a provision on the question (GA (IX), a.i.58, A/C.3/L.413).

52/ E/CN.4/SR.320; E/CN.4/82/Add.2; E/600, Annex B, Part II; A/C.3/SR.416.

53/ Attention is drawn to Article VII of the draft convention on the International transmission of news and the right of correction as approved by GA res 277 C (III). This article, which was based on Article 4 of the draft convention on the gathering and international transmission of news, prepared by the United Nations Conference, dealt with the question of censorship in peacetime.

thought that paragraph 2 of the article already guaranteed the right to seek, receive and impart information, regardless of frontiers, through all media of communication, and that the restrictions in paragraph 3 were not to be understood as authorizing censorship. There was all the difference in the world, it was said, between a system of censorship and a reminder to the journalist of his duties and responsibilities and of the limitations which might be placed upon him in the exercise of the right to freedom of expression.

Obstacles to the free flow of information [54]

137. There were two proposals relating to economic, financial and other aspects of the problem of freedom of information. One proposal was that "measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information". Another proposal was that "nothing in this article shall affect the right of any State party to this covenant to take measures which it deems necessary in order to bring its balance of payments into equilibrium". These proposals were rejected mainly on the grounds that they dealt with temporary situations or technical problems, rather than the right to freedom of expression itself, and should not, therefore, be included in a universal instrument of a lasting character.[55]

Other proposals [56]

138. There were other proposals relating to freedom of information, which were not adopted. One proposal was that "nothing in this article shall prevent a State

54/ E/CN.4/SR.163, 165; E/CN.4/80, 432, 438/Rev.1, 440; E/Conf.6/79, Annex B.

55/ The question of balance of payment and the question of restrictive or monopolistic practices in restraint of the free flow of information were dealt with respectively in Article 4 of the draft convention on freedom of information as prepared by the United Nations Conference (E/Conf.6/79), and in articles 6 and 7 of the draft convention on freedom of information as prepared by the General Assembly Committee (A/AC.42/7).

56/ E/CN.4/SR.165; E/CN.4/80; E/Conf.6/79, Annex B.

from establishing on reasonable terms a right of reply or a similar corrective remedy". Another proposal was that "nothing in this article shall be deemed to affect the right of any State to control the entry of persons into its territory or the period of residence therein". It was generally thought that such provisions might be included in special conventions in the field of freedom of information.57/

57/ The right of reply was the subject of the Convention on the International Right of Correction adopted by the General Assembly in resolution 630 (VII) and was also dealt with in paragraph 2 of article 2 of the draft convention on freedom of information prepared by the United Nations Conference (E/Conf.6/79) and in article 4 of the draft convention on freedom of information prepared by the General Assembly Committee (A/AC.42/7). The question of the entry of any person into a territory and of his residence therein was dealt with in article 6 of the draft convention on freedom of information, as prepared by the United Nations Conference (E/Conf.6/79) and in article 9 of the draft convention on freedom of information as prepared by the General Assembly Committee (A/AC.42/7).

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR, DC (I)	E/CN.4/AC.1/SR.10	E/CN.4/21, annex G, art.9	
UN Conf. on Freedom of Inf.		E/Conf.6/79, annex B	
CHR (II)	E/CN.4/SR.37; E/CN.4/AC.3/SR.6	E/CN.4/37,56; ESC(VI), suppl.1, annex B, part II, art.17	8 16
Sub-Comm. on Freedom of Inf. and of the Press (II)		E/CN.4/80	17
CHR, DC (II)	E/CN.4/AC.1/SR.26	E/CN.4/AC.1/19; E/CN.4/95, annex B	17
CHR (III)		E/CN.4/82/Rev.1, Add.2,4,8,12; ESC (VII), suppl.2, annex B	17
CHR (V)	E/CN.4/SR.120	E/CN.4/220, 272; ESC (IX), suppl. 10, annexes I and II.	17
CHR (VI)	E/CN.4/SR.162-67, 170, 171, 200	E/CN.4/353/Add.1-3, 7,8,10; 360, 365, 424, 432, 433/Rev.2, 434, 438/Rev.1, 440; ESC (XI), suppl. 5, annexes I and II, art.14	17
ESC (XI)	E/AC.7/SR.147	E/L.68	14
GA (V)	3rd Com. 289th-300th and 305th mtgs.	A/C.3/L.96	14
GA Comm. on Freedom of Inf.		A/AC.42/7	

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)		E/CN.4/515/Add.4,12, 14,16; 524, 528, 532; ESC (XIII), suppl.9, annex I	14
ESC (XIII)		E/2057/Add.3	
GA (VI)	3rd Com. 415th and 416th mtgs.		
CHR (VIII)	E/CN.4/SR.320-322	E/CN.4/528/Add.1; E/CN.4/L.125, 144/Rev.1, 156/Rev.1, 192, 193; ESC (XIV) suppl.4, paras.238-247, annex I.B, art.16	14
CHR (IX)		E/CN.4/674; ESC (XVI), suppl.8, annex I.B, art.19	16
CHR (X)		ESC (XVIII), suppl.7, annex I.B	19

ARTICLE 20

Right of peaceful assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Formulation of the right

139. There was general agreement on the desirability of including an article on the right of peaceful assembly in the draft covenant on civil and political rights but there was some discussion on the elements which constituted that right.[58] On the one hand, a proposal was made that the right should include "freedom to hold assemblies, meetings, street processions and demonstrations". On the other hand, the view was expressed that the right of peaceful assembly might not necessarily include freedom to hold pageants or processions in streets or public places. The majority was in favour of a general formulation. Although a suggestion was made that freedom of peaceful assembly should be protected only against "governmental interference", it was generally understood that the individual should be protected against all kinds of interference in the exercise of this right.

140. Various opinions were expressed as to how the right of peaceful assembly should be enunciated in the article.[59] A proposal that this right "shall be guaranteed by law" was rejected, on the ground that the general provisions of article 2 of the draft covenant on civil and political rights laid down the necessary guarantees for all the rights recognized in this instrument. One

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58/ E/CN.4/SR.121, 325; E/CN.4/82, 353/Add.1; E/CN.4/L.126.

59/ E/CN.4/SR.120, 169, 200, 325; E/CN.4/353/Add.8; E/CN.4/L.126; ESC (IX), suppl. 10, annex I, art.18; ESC (XI), suppl. 5, annex I, art.15.

opinion was that the right should be enunciated as in Article 20 of the Universal Declaration and in various other articles of the draft covenant: "Everyone shall have the right to freedom of peaceful assembly". Such a formulation, it was thought, would make it clear that the right belongs to every person. Another opinion was that the right should be "recognized" as a fundamental human right, rather than granted under the covenant. The formulation, "The right of peaceful assembly shall be recognized", was finally accepted.

Limitations clause[60/]

141. It was generally agreed that the exercise of this right might be subject to restrictions. In the second sentence, the word "may" was used, instead of "shall", in order to make it clear that States parties would in no way be obliged to impose restrictions. Earlier drafts provided that all restrictions of freedom of peaceful assembly should be "prescribed by law". The words "imposed in conformity with the law" were subsequently preferred as allowing for legitimate administrative action. The objection was raised, however, that such a formula was inconsistent with the wording used in other articles of the draft covenant on civil and political rights.

142. Various opinions were expressed on the nature and scope of the necessary limitations. Some thought that only one fundamental restriction should be included in the article, namely: "all the activities of societies, unions and other organizations of a fascist or anti-democratic nature shall be forbidden by law, subject to penalty". The supporters of this proposal emphasized that the right of peaceful assembly should be recognized "in the interest of democracy". It was argued that, should the right of peaceful assembly be exercised by anti-democratic groups, all the rights recognized in the covenants might be jeopardized. On the other hand, it was said that, as a matter of principle, to deny certain groups freedom of assembly merely on account of their opinions would be contrary to the principles of freedom of opinion and expression recognized in the

60/ E/CN.4/AC.1/SR.26; E/CN.4/AC.3/SR.6; E/CN.4/SR.120, 169, 325; E/CN.4/82, 272/Corr.1, E/CN.4/307, 308; E/CN.4/L.126, 145, 201.

Universal Declaration and the draft covenant on civil and political rights. It was also observed that terms such as "fascist" or "anti-democratic" were not clearly defined and could lead to abuse. If the activities of any group became a public danger the laws for the protection of "public order", "national security" or "the rights and freedoms of others" could be applied.

143. The proposed grounds for restrictions - "in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" - gave rise to criticisms similar to those which were expressed during the debates concerning articles 18 and 19 of the draft covenant.61/ Proposals were made to replace the term "public order" by "prevention of disorder"; to include in the list of limitations an additional ground "in the general interest". Both were rejected. There was a feeling that the use of vague concepts such as "public order" and "national security" might give rise to abuse, unless those concepts were properly qualified. The words "reasonable and" were proposed for inclusion before the word "necessary", but were not adopted. Another proposal was that all the limitations listed in the article be qualified by the words "necessary in a democratic society". The supporters of this proposal expressed the opinion that freedom of assembly could not be effectively protected if the States parties did not apply the limitations clause according to the principles recognized in a democratic society. To the objection that the word "democracy" might be interpreted differently in various countries, one answer was that a democratic society might be distinguished by its respect for the principles of the Charter, the Universal Declaration and the covenants on human rights. The words "necessary in a democratic society" were finally adopted.62/

61/ See paras. 112-114 of the annotation under article 18, and para. 132 of the annotation under article 19.

62/ For general comments on such expressions as "national security", "Public order", and on the desirability of adopting a uniform limitations clause for articles 18, 19, 20 and 21, see paragraphs 112-114 of the annotation under article 18 above.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article Number
DC (I)	E/CN.4/AC.1/SR.3	E/CN.4/21, annex A,art.19, Annex B, art.15, annex C, art.23, annex G, art. 10	
CHR (II)	E/CN.4/AC.3/SR.6; E/CN.4/SR.39	E/CN.4/37, 56, art.17; ESC (VI), suppl.1, annex B, art.18	10
DC (II)	E/CN.4/AC.1/SR.26,31	E/CN.4/AC.1/19, 34; E/CN.4/82 and Add.4, 8, 12; E/CN.4/95, annex B, art.18	18
CHR (III)		E/CN.4/89	18
CHR (V)	E/CN.4/SR.120, 121	E/CN.4/170 and Adds.1 and 4; E/CN.4/188, 222, 272/Corr.1, E/CN.4/306, 307, 308; ESC (IX), suppl.10, annex 1, art.18, annex II, art.18	18
CHR (VI)	E/CN.4/SR.169, 200	E/CN.4/353/Add.1, 3, 8, 10; E/CN.4/NGO/7; ESC (XI), suppl.5, annex I, art.15, annex II, art.15	18
ESC (XI)	E/AC.7/SR.147		15
GA (V)	3rd com., 288th, 289th, 290th, 291st mtgs.	A/C.3/L.77 and Rev.1, A/C.3/L.96	15
CHR (VII)		E/CN.4/515/Add.11, 13, 15; E/CN.4/528, paras.179-198 and 208; E/CN.4/563 and Rev.1; E/CN.4/NGO.21; ESC (XIII), suppl.9, annex III, art.15	15
CHR (VIII)	E/CN.4/SR.325	E/CN.4/528/Add.1, paras.102,114-115; E/CN.4/L.126, 145, 201; E/CN.4/NGO/39; ESC (XIV), suppl.4, paras.248-250, annex I B, art.17	15

DOCUMENTATION (cont'd)

Organ and Session	Records of discussion	Other documents	Article Number
CHR (IX)		E/CN.4/674 para.47; ESC (XVI), suppl.8, annex I B, art.20	17
CHR (X)		E/CN.4/694/Add.6; E/CN.4/702, sect.II; ESC (XVIII), suppl.7, annex I B, art.20	20
GA (IX)	3rd com., 569th mtg.		20

ARTICLE 21

Right of Association

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police.

3. Nothing in this article shall authorize States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organize, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

144. It was agreed that the right of association should be included in the draft covenant on civil and political rights. Although it was recognized that this right and the right of peaceful assembly were closely related, a proposal to deal with both of them in a single article was rejected. The majority opinion was that there were substantial differences justifying separate treatment.63/

Formulation of the right64/

145. It was generally agreed that the right of association included the right to form as well as the right to join associations. A proposal to add a sentence, "No one may be compelled to join an association", was not accepted. It was

63/ E/CN.4/SR.121, 325; E/CN.4/L.126; ESC (XIII), suppl.9, annex III, art.16.

64/ E/CN.4/AC.1/SR.26; E/CN.4/SR.171, 172, 325, 326; E/CN.4/164 and Add.1, E/CN.4/263, 353/Add.1, 8; E/CN.4/L.126, 146, 202, 203; E/C.2/410.

recognized that this sentence, taken from article 20 of the Universal Declaration, stressed an important aspect of freedom of association, but the opinion was expressed that its application might not always be in the interest of trade unions.

146. There was some debate on whether the right to form and to join trade unions should be specifically mentioned in the article. It was recalled that trade union rights were dealt with in article 8 of the draft covenant on economic, social and cultural rights; should trade union rights also be mentioned in the draft covenant on civil and political rights, the right to form and to join trade unions would be subject to two different sets of limitations, i.e., the general limitations clause in article 4 of the draft covenant on economic, social and cultural rights and the limitations clause contained in paragraph 2 of this article.

On the other hand, it was emphasized that failure to mention trade union rights in the draft covenant on civil and political rights could lead to an erroneous interpretation that these rights were not civil rights as well as economic or social rights. It was decided that the right to form and to join trade unions should be mentioned in the article.

147. With regard to the expression, "for the protection of his interests", one view was that such a clause, couched in general terms, was better than the formula used in article 8 of the draft covenant on economic, social and cultural rights: "for the protection of his economic and social interests". It was observed that trade union organizations must often struggle for the protection of the civil rights as well as the economic and social interests of their members.

148. As was the case during the debates concerning the right of peaceful assembly, a proposal that the right of association, including trade union rights, should be protected only against "governmental interference" was rejected.

149. There was some discussion on the question whether the right of association should be "recognized", or whether the article should specify that "everyone shall have the right to freedom of association". The latter formulation was accepted. Attention was drawn, in this connexion, to a discrepancy between the opening sentences of articles 20 and 21.

Limitations clause[65]

150. The general limitations on the right of association were the same as those on the right of peaceful assembly, excepting that, while the words "imposed in conformity with the law" had been included in article 20, the words "prescribed by law" were used in article 21.[66]

151. A proposal was made that nothing in the article should prevent the imposition of lawful restrictions on the exercise of the right of association by members of the armed forces, of the police, or of the administration of the State. Some argued that there was no ground for further restrictions to the prejudice of such persons, except perhaps with respect to the right to strike. At any rate, general limitations in the interest of "national security" and "public order" seemed to afford sufficient safeguards to States. On the other hand, it was observed that the necessity of such a provision was recognized in the laws of many States. The proposal was not intended to deny the enjoyment and exercise of the right of association to certain persons, but merely to limit their choice of associations and particularly the extent to which they might engage in trade union activities. This additional limitations clause was adopted with respect to members of the armed forces or of the police, but not with respect to other members of the administration of the State.

International Labour Convention on Freedom of Association and Protection of the Right to Organize [67]

152. It was proposed that "Nothing in this article shall authorize States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organize, to take legislative measures which

65/ E/CN.4/AC.1/SR.31; E/CN.4/SR.39, 121, 171, 172, 325, 326; E/CN.4/170, 227, 353/Add.2, 3, 8, 10; E/CN.4/L.126, 146, 202.

66/ With regard to the suggested prohibition of "societies, unions or other organizations of a fascist or anti-democratic nature", the meaning of the word "may" and of such terms as "public order", "national security", "reasonable", "necessary in a democratic society", reference is made to paragraphs 142-143 of the annotation under article 20 above. General comments on the terms "public order", "national security", etc. and the desirability of a uniform limitations clause for articles 18, 19, 20 and 21 are summarized in paragraphs 112-114 of the annotation under article 18 above.

67/ E/CN.4/SR.121, 171; E/CN.4/230, 453.

would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that convention". According to one opinion, there was no point in adopting such a proposal, since well established principles of international law would prevent any conflict arising between the two treaties. When ratifying the covenant, the States parties to the 1948 convention would still be bound by the obligations laid down in that convention. They would not be at liberty to apply Article 21 of the covenant in such a manner as to prejudice the guarantees provided for in the convention. The view was also expressed that cross-references to special conventions were not appropriate in a general legal instrument. In support of the proposal, it was emphasized that failure to make the suggested cross-reference could be interpreted as an indication that the United Nations overlooked or underestimated the progress achieved in safeguarding trade union rights in international law. The proposal was finally adopted as paragraph 3 of the article.

DOCUMENTATION

Organs and Sessions	Records of Discussion	Other documents	Article Number
DC (I)	E/CN.4/AC.1/SR.3	E/CN.4/AC.1/10; E/CN.4/21, annex A, art.20, annex B, art.16, annex C, art.23, annex G, art.11	
CHR (II)	E/CN.4/AC.3/SR.6; E/CN.4/SR.39	E/CN.4/23 and Add.1, E/CN.4/31, 37, 45, 56, art.18, ESC (VI), suppl.I, annex B, art.19	11
DC (II)	E/CN.4/AC.1/SR.26, 31	E/CN.4/AC.1/19, E/CN.4/82/Add.2,4,8,12; E/CN.4/95, annex B, art.19	19
CHR (III)		E/CN.4/89, 100	19
CHR (V)	E/CN.4/SR.121	E/CN.4/156, 164 and Add.1; E/CN.4/170 and Add.4, E/CN.4/222, 227, 230, 263, 296/Corr.1, ESC (IX), suppl.10, annex I, art.19, annex II, art.19	19
CHR (VI)	E/CN.4/SR.171, 172	E/CN.4/353/Add.1, 2, 3, 8, 10; E/CN.4/453; E/CN.4/NGO.7; ESC (XI), suppl.5, annex I, art.16, annex II, art.16	19
ESC (XI)	E/AC.7/SR.147, 148		16
GA (V)	3rd com., 288th, 289th, 290th, 291st mtgs.	A/C.3/L.77 and Rev.1, A/C.3/L.96	16
CHR (VII)		E/CN.4/515/Add.11, 13, 15; E/CN.4/528, paras. 179-198, 208-213; E/CN.4/563 and Rev.1; E/CN.4/NGO/21; ESC (XIII), suppl.9, annex III, art.16	16
ESC (XIII)		E/2057/Add.2	16

DOCUMENTATION (cont'd)

Organs and Sessions	Records of Discussion	Other documents	Article Number
CHR (VIII)	E/CN.4/SR.325, 326	E/CN.4/528/Add.1, paras.102, 116, 118; E/CN.4/L.126, 146, 202, 203; E/CN.4/NGO/39; ESC (XIV), suppl.4, paras.245-297, 251-257, and annex 1, art.18	16
CHR (IX)		E/CN.4/674, para.47, ESC (XVI), suppl.8, annex IB, art.21	18
ESC (XVI)	E/C.2/365		21
CHR (X)		E/CN.4/694/Add.6; E/CN.4/702, section IX, E/CN.4/702/Add.1, section XXV; ESC (XVIII), suppl.7, annex IB, art.21	21
ESC (XVIII)		E/C.2/410	21
GA (IX)	3rd com., 565th, 568th, 575th mtgs.		21

ARTICLE 22

Rights relating to marriage

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The legislation of the States Parties to this Covenant shall be directed towards equality of rights and responsibilities for the spouses as to marriage, during marriage and at its dissolution. In the last-mentioned case the law shall lay down special measures for the protection of any children of the marriage.

153. This article was included in the draft covenant as a result of the request by the Commission on the Status of Women that article 16 of the Universal Declaration of Human Rights be incorporated in the draft covenant.[68/]

154. Most of the discussion has been concerned with paragraph 4 of the article and, in particular, with the provision concerning equal rights for spouses. Paragraph 1 is identical with para. 3 of article 16 of the Declaration, while paragraphs 2 and 3 are based, with certain amendments, on the first sentence of paragraph 1 and on paragraph 2 of article 16 respectively.

68/ ESC (XVI), suppl. 2, paras. 29-30; E/CN.6/SR.128-130.
Article 16 of the Declaration reads as follows:

(1) Men and women of full age, without any limitations due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Equal Rights for Spouses "as to marriage, during marriage and at its dissolution" 69/

155. Opinion was sharply divided over the inclusion in the draft covenant on civil and political rights of a provision concerning equal rights for men and women relating to marriage. Inequalities between husband and wife were admitted. It was said that in matters relating to domicile, nationality, parental control of children, the right to own property and the right to work, women were frequently discriminated against.

156. It was claimed, on one side, that many inequalities arose from ancient traditions and religious beliefs and practices which could not be changed overnight. Moreover, governments had not always direct control over such matters. Article 16 of the Declaration laid down certain standards which peoples should strive to attain. Any attempt to put into effect immediately the principle of equal rights for spouses would require radical changes in the civil laws and customs of most countries. The question must also be considered in relation to the respective responsibilities of the spouses. Equality could only be acquired over a period of time. To include in the draft covenant on civil and political rights a provision stating that men and women shall have equal rights relating to marriage would be inappropriate, since it was intended that States should implement the provisions of this draft covenant without delay, and most States would be unable to give such an undertaking.

157. Attention was drawn to article 10 of the draft covenant on economic, social and cultural rights on protection of marriage, motherhood and the family. Some considered that this article went far enough for an instrument which would be legally binding and might be imcorporated in the draft covenant on civil and political rights. Another suggestion was that, since implementation

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69/ E/CN.4/SR.380, 382-385, 409; E/CN.4/686; E/CN.4/L.273; E/CN.6/SR.164-166, 168; E/CN.6/234; E/CN.6/L.138; ESC (XVIII), suppl. 6, paras, 61-62; E/AC.7/SR.241-242, 277-278; GA (IX), 3rd Com. 571st, 575th, 579th and 581st mtgs.

of the draft covenant on economic, social and cultural rights was expected to be progressive, it might be appropriate to insert in it the text of article 16 of the Declaration.

158. It was pointed out, further, that since article 3 proclaimed the equal right of men and women to the enjoyment of all civil and political rights set forth in the covenant, it was unnecessary to reiterate the principle in the article on marriage.

159. On the other side it was argued that the right to marry and to found a family was an elementary right of every person and should be included in the covenant on civil and political rights. That was the logical place for an article on marriage. Since inequalities between the rights of husband and wife obviously existed, the inclusion of a provision based on para. 1 of article 16 of the Declaration was all the more justified. Equality of rights for the spouses should be put on the same legal footing as the other human rights recognized in the covenant. It was not sufficient to insert an article in the covenant on economic, social and cultural rights since the implementation of the provisions of that covenant would not be immediate, but progressive. States should change their legislation, if necessary, to give equal rights to men and women relating to marriage. If they could not undertake such obligations immediately they could make reservations to the article when ratifying the covenant.

160. In an attempt to find a compromise it was proposed that the legislation of States parties "shall be directed towards equality of rights and responsibilities for the spouses as to marriage, during marriage and at its dissolution". It was argued that such a text was the maximum which could be generally accepted at the present time. It was said, however, that this wording was too far removed from the terms of article 16 of the Declaration, although it might represent a step in the right direction. The text was criticized also as lacking the clarity necessary for a legal instrument.

161. The Commission on the Status of Women asked that the substance of para. 1 of article 16 of the Declaration be substituted for the above text,[70] and the

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70/ ESC (XVIII), suppl. 6, paras. 61-62.

Economic and Social Council, in resolution 547 G (XVIII), transmitted this proposal to the General Assembly to be considered at the same time as the draft covenant on civil and political rights.[71]

162. It may be noted that in article 49 which lays down a procedure for reporting on the provisions of the draft covenant on civil and political rights, article 22 is singled out as being different from the other articles in that its implementation is expected to be progressive.[72]

Dissolution of marriage[73]

163. There was criticism of the inclusion in this article of any reference to dissolution of marriage. It was pointed out however, that this referred to dissolution of marriage by the death of one of the partners as well as by divorce. It was not intended to imply that divorce was favourably regarded as a means of dissolving the marriage contract. It was important to ensure that, in countries where divorce was recognized, both spouses should enjoy equal rights in all matters relating thereto.

Protection of children of the marriage[74]

164. Some considered that the article should provide for the protection of illegitimate as well as legitimate children. Others were of the view that an article on marriage should refer only to children of the marriage; any provision on illegitimate children should be covered in a separate article.

71/ During the first reading of the draft covenants at the ninth session of the General Assembly two amendments were submitted, one of which was based on the proposal by the Commission on the Status of Women (GA(IX), Annexes, a.i. 58, A/C.3/L.414, L.418 and Add.1).

72/ See article 49, paragraph 2.

73/ E/CN.4/SR.380, 383, 384.

74/ E/CN.4/SR.382-384; E/CN.4/L.275; A/C.3/SR.581; A/C.3/L.414; A/2808, para. 47.

165. It was pointed out that the article provided special measures for the protection of children only in the case of dissolution of the marriage. Some parents did not always fulfil their duties to their children during marriage. The scope of this provision should be extended.[75]

The inclusion of a non-discrimination clause[76]

166. Some emphasized the importance of including in the article on marriage a clause prohibiting any discrimination due to "race, nationality or religion" as in article 16 of the Declaration. Some considered that the clause should be extended; the inclusion of a reference to "social origin or wealth" was proposed; another suggestion was that the entire enumeration contained in article 2 of the draft covenant should be repeated.

167. Others were of the view that any enumeration was dangerous since important elements might be omitted. In view of the provisions of article 2 which governed all the articles in the draft covenant no specific provision prohibiting discrimination was needed.

"Marriageable age"[77]

168. It was said that the terms "marriageable age" or "full age" used in article 16 of the Declaration were interpreted differently in various countries. They could refer to the age of legal majority or of physical maturity. It was agreed that it should be left to States to determine the marriageable age.

Consent of the intending spouses[78]

169. Emphasis was laid on the fact that both partners to a marriage must give their consent. It was pointed out however, that para. 2 of article 16 of the Declaration might preclude the imposition of such requirements as parental consent to marriage in cases where persons were under age. This was prevalent in many countries. Paragraph 3 was amended to meet this objection.

75/ An amendment to this effect was submitted during the first reading of the draft covenants at the ninth session of the General Assembly (GA (IX), Annexes, a.i.58, A/C.3/L.414).

76/ E/CN.4/SR.382-384; E/CN.4/L.273, L.275.

77/ E/CN.4/SR.382-384; E/CN.4/L.273, L.275, L.276.

78/ E/CN.4/SR.383; E/CN.4/L.276.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (VI)		E/CN.4/353/Add.3.	
CHR (VII)		E/CN.4/515/Add.2, 528, para.34; E/CN.4/NGO.16, 17, 23-25, 29, 30, 33, 34	
CHR (VIII)		E/CN.4/528/Add.1, paras.23-25, E/CN.4/660, paras.13-14	
CSW (VII)	E/CN.6/SR.128-130	E/CN.6/L.91, L.91/Rev.1; E/CN.6/NGO.10; ESC (XVI), suppl.2, paras.29-30	
CHR (IX)	E/CN.4/SR.380, 382-385, 409	E/CN.4/674, para.19, 686; E/CN.4/L.273-276, L.289; E/CN.4/NGO.43, 51; ESC (XVI), suppl.8, paras.78-86, and annex III, paras.39-55	22
ESC (XVI)	736th mtg.; E/AC.7/SR.241, 242, 244	E/AC.7/L.162; E/2486	22
CSW (VIII)	E/CN.6/SR.164-166, 168	E/CN.6/234; E/CN.6/L.138; E/CN.6/NGO.19; ESC (XVIII), suppl.6, paras.61-62	22
CHR (X)		E/CN.4/702 (III, IV, VII, (VIII), IX, XIII, XVII, XXI), 702/Add.2 (XXIX, XXX), 702/Add.6 (XXXIV)	22
ESC (XVIII)	805th mtg.; E/AC.7/SR.277-278	E/AC.7/L.218	22
GA (IX)	3rd Com. 567th, 571st, 575th, 579th and 581st mtgs.	Annexes, a.i.58, A/2808, A/C.3/L.414, 418 and Add.1	22

ARTICLE 23

Political Rights

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 of this Covenant and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteed the free expression of the will of the electors;

(c) Of access, on general terms of equality, to public service in his country.

Formulation of political rights

170. The majority agreed that the draft covenant should include an article on certain political rights. There was some discussion however on the manner in which the principles enunciated in Article 21 of the Universal Declaration should be translated into legal obligations in the covenant.

171. Two formulae were proposed: "Every citizen ... shall be guaranteed by the State the right and the opportunity ...", and "Every citizen shall have the right and the opportunity ....",[79] the former emphasizing the obligations of the State, the latter the rights of the citizen. The latter wording was adopted.

172. Paragraph (a) of the article[80] states, in general terms, that every citizen should have the right to take part in the conduct of public affairs. A more specific formula, "to take part in the government of the State", was not retained. The right to take part in the conduct of public affairs should be exercised "either directly or through freely chosen representatives". A proposal was made that direct suffrage should be the general rule, but the majority thought that both direct suffrage and indirect suffrage were admissible.

79/ E/CN.4/SR.364, 367; E/CN.4/L.221, 224.

80/ E/CN.4/SR.365; E/CN.4/L.221, 224/Rev.1; GA (VIII), 3rd Com., 506th mtg.

173. Paragraph (b), concerning the right to vote and to be elected, was an application of the general rule laid down in paragraph (a). A more specific proposal that "every citizen shall have the right to vote and to be elected to all organs of authority" was rejected, on the grounds that in most countries not all organs of authority were elective.[81]

174. The various requirements of the article that elections must be "genuine", "periodic", "by universal and equal suffrage" and "by secret ballot" did not give rise to much discussion, except for the words "universal and equal suffrage".[82] The opinion was expressed that the word "universal" was redundant in the light of the introductory clause, "Every citizen shall have the right"; so was the word "equal", in view of the reference to the non-discrimination clause of article 2. The majority, however, considered that the principle of "universal and equal suffrage" was a most fundamental one, and decided to include it in the article. This provision, it was thought, would leave States parties to the covenant free to regulate their own electoral systems, provided each vote carried equal weight.

175. The provisions of paragraph (c) on the right of access to public service, on general terms of equality did not give rise to much debate save for the question of the qualifications required.

Non-discrimination clause[83]

176. A proposal was made that every citizen should have political rights "irrespective of race, colour, national origin, social position, property status, social origin, language, religion or sex". The view was expressed that "political or other opinions" should be added to this enumeration. The words "national origin" also gave rise to some discussion; it was observed that in

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81/ E/CN.4/SR.364; E/CN.4/L.221, 256.

82/ E/CN.4/SR.365, 367; E/CN.4/L.221, 224/Rev.4, 257, 258; GA(VI), 3rd Com., 369th mtg.

83/ E/CN.4/SR.364, 365, 366; E/CN.4/L.221, 224 and Rev.4; E/CN.4/L.255 and Rev.1, E/CN.4/L.258; GA (IX), 3rd Com., 569th mtg.

various countries a person who had been naturalized was required to wait a certain period before exercising political rights. It was generally thought that the non-discrimination clause contained in paragraph 1 of article 2 of the draft covenant on civil and political rights was applicable to all articles in this instrument and that unnecessary repetitions should be avoided in legal texts. The following clause was finally adopted: "without any of the distinctions mentioned in article 2 of this covenant."[84]

Limitations clause[85]

177. A proposal was made that "property, educational or other qualifications" which restricted electoral rights should be abolished. While it was considered necessary to prohibit restrictions which amounted to discrimination, it was observed that in most countries the right to vote was denied to certain categories of persons, such as minors and lunatics, and that the right to be elected to public office and the right of access to public service were generally subjected to certain qualifications. The clause "without unreasonable restrictions" was adopted to qualify the exercise of all the rights defined in the article.[84]

84/ Amendments to the non-discrimination and limitations clauses were submitted during the first reading of the draft covenants at the ninth session of the General Assembly (GA (IX) a.i.58, A/C.3/L.413).

85/ E/CN.4/SR.363, 365, 367; E/CN.4/82/Add.12, E/CN.4/L.221, 224/Rev.2, 3, 4; ESC (XIII), 524th mtg; GA (VI), 3rd Com., 366th mtg; GA (VII), 3rd Com., 506th mtg.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.4	E/CN.4/21, annex A, art. 30 and 31, annex C, art. 26, 27 and 28	
CHR (II)	E/CN.4/SR.40	E/CN.4/35; E/CN.4/57, art. 28	
DC (II)		E/CN.4/AC.1/21, art. 21 and 22 E/CN.4/82 and Add.12	
CHR (III)		E/CN.4/89	
CHR (V)	E/CN.4/SR.133	E/CN.4/218	
CHR (VI)		E/CN.4/353/Add.2, 6, E/CN.4/395 E/CN.4/NGO/4	
ESC (XI)	E/AC.7/SR.147, 148	E/C.2/254 and Add.1, E/C.2/259 and Add.1	
GA (V)	3rd. Com., 289th, 290th, 291st, 298th, 305th mtgs.	A/C.3/1. 79, 92	
ESC (XII)	438th mtg.		
CHR (VII)		E/CN.4/515/Add.11, E/CN.4/528, paras. 38-49, E/CN.4/573; E/CN.4/NGO/20, 24, 30	
ESC (XIII)	E/C.2/SR.106; 523rd, 524th mtgs.		
GA (VI)	3rd Com., 366th, 368th 369th, 399th mtgs.		
CHR (VIII)		E/CN.4/528/Add.1, paras. 28-32; E/CN.4/NGO/39	
ESC (XIV)	665th mtg.	E/C.2/335	
CHR (IX)	E/CN.4/SR.363-367, 393, 409	E/CN.4/674, paras. 21, 22, E/CN.4/L.221, 224 and Rev.1-4, E/CN.4/L.255 and Rev.1, E/CN.4/L.256, 257, 258, ESC (XVI), suppl. 8, paras. 44-50, annex 1 B, art. 23, annex III, paras. 1-12	

DOCUMENTATION
(continued)

Organ and session	Records of discussion	Other documents	Article number
GA (VIII)	3rd Com., 506th mtg		23
CHR (X)		E/CN.4/694/Add.5, 6; E/CN.4/702/Add.6, section XXXIV	23
GA (IX)	3rd Com., 565th, 569th, 580th mtgs.	A/C.3/L.413, para. 1	23

ARTICLE 24

Equality before the law

All persons are equal before the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

178. The article contains two clauses, the first affirming the principle of equality before the law and the second enunciating the principle of non-discrimination. The article formerly included a clause which would ensure non-discrimination in the enjoyment of all the rights recognized in the covenant, but it was thought more appropriate to embody such a clause under article 2.86/

Equality before the law

179. In discussing the first clause of the article, "all persons are equal before the law", it was pointed out on the one hand that Article 7 of the Universal Declaration of Human Rights proclaimed the fundamental principle of equality before the law, and that it was important to restate that principle in the covenant. Some misgivings were expressed on the other hand concerning its inclusion. The expression "all persons are equal before the law" might be held to mean that the law should be the same for everyone, or to preclude the imposition of reasonable legal disabilities upon certain categories of individuals such as minors or persons of unsound mind. In reply, it was explained that the expression did not refer to the substance of the law itself, but to the conditions under which the law was to be applied. The provision was intended to ensure equality, not identity, of treatment, and would not preclude reasonable differentiations between individuals or groups of individuals.

86/ See under article 2.

Prohibition of discrimination

180. The second clause would require the law to "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". There was some discussion as to the necessity and desirability of including a clause on non-discrimination in the article. The view was expressed that it would be adequate if the article simply contained a provision relating to equality before the law, since article 2 of the covenant already provided that the rights recognized in the covenant should be accorded to all without distinction of any kind. On the other hand, it was maintained that freedom from discrimination should be established in the covenant as a right and not merely as a general principle governing the enjoyment of the rights recognized therein. It was not enough to affirm that all were equal before the law; the article should also lay down a definite principle that there should be no discrimination on any ground such as race, colour, sex, etc. That principle should not be limited to the rights included in the covenant, but should extend to all rights, whether or not they were so included. Against this view, it was contended that the best-intentioned government might find it difficult to agree to extend the principle of non-discrimination to all rights and freedoms. A general clause on non-discrimination might entail considerable difficulties in connexion with treatment of such persons as aliens. It might also cover discrimination in private or social relationship which might not fall within the realm of law. States would find it difficult to accept a provision which would impose unduly vague and unlimited obligations upon them.

181. The grounds of discrimination set out in the article, namely, "race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status", are the same as those enumerated in Article 2 of the Universal Declaration of Human Rights. A suggestion was made to substitute "ethnic origin" for the words "race" and "colour", which were considered to be unscientific and unprecise. However, it was pointed out that the words "race" and "colour" were used in the Universal Declaration and were more popularly

understood than the term "ethnic origin". Proposals to add "association with minority groups", "economic or other opinion" and "educational attainment" to the enumeration were thought to be unnecessary since they were deemed adequately covered by the expressions "discrimination on any ground" and "other status". The view was expressed that the prohibition of all discrimination on grounds of "national origin" would mean the abolition of all control over foreigners; and the prohibition of discrimination on grounds of "birth" would require changes in existing legal provisions about inheritance. This interpretation, however, was challenged by certain representatives who maintained that the application of the principle of non-discrimination had to be considered in the light of the other provisions of the covenant. Article 1 of the draft covenant enunciated the right of peoples to permanent sovereignty over their natural wealth and resources; a non-discrimination clause should not, therefore, be construed as prohibiting measures to control aliens and their enterprises. Neither should the prohibition of discrimination on grounds of birth be interpreted to mean the abolition of distinction between legitimate and illegitimate children in matters relating to inheritance, since under article 22 the institution of the family was recognized as the natural and fundamental unit of society.

182. In a first draft, a clause providing that "everyone shall be accorded equal protection against any incitement to such discrimination" was included. It was subsequently decided to delete the clause, since it was felt that such clause might give rise to interpretations which would be dangerous to human freedoms. The view was also expressed that it might be more appropriate to deal with the matter in a separate article. A proposal to include a clause which would require States parties to prohibit by law any form of propaganda in favour of fascist or nazi views or of racial and national exclusiveness was also rejected. It was pointed out that the terms "fascist" and "nazi" could not be precisely defined in a manner that would be universally acceptable; moreover, the proposal was in the nature of a limitation on freedom of opinion, as set forth in article 19, and a similar proposal in connexion with that article had been rejected.[87/]

87/ See annotation under article 19 of the draft covenant on civil and political rights, paragraph 134.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)		E/CN.4/AC.1/11; 21, annex G, p.86; 52	
CHR (II)	E/CN.4/AC.3/SR.8, 9; E/CN.4/SR.34, 35	E/CN.4/56, chapt. II, art. 19; ESC (VI), suppl. 1, annex B, art. 20	19
DC (II)	E/CN.4/AC.1/26, 27,28,31	E/CN.4/AC.1/19; 30; E/CN.4/82/Rev.1; 82/Add.8; 95	20
ESC (VII)		E/C.2/94	
CHR (V)	E/CN.4/SR.121, 122,123	E/CN.4/170; 232; 237; 244 and Corr.1; 311, 312, 314; ESC (IX), suppl.10, annexes I and II, art. 20	20
CHR (VI)	E/CN.4/SR.172, 173,174,175,200	E/CN.4/353/Add.10,11; 358; 365; 418; 447; 451; 455 and Rev.1; 456; 458; E/CN.4/L.7; ESC (XI), suppl.5, annexes I and II, art. 17	20
ESC (XI)	E/AC.7/SR.147, 148,149	E/L.68; E/C.2/259/Add.1	17
GA (V)	3rd Com., 289th, 290th mtgs.		17
CHR (VII)		ESC (XIII), suppl.9, annex III, art. 17	17
GA (VI)	3rd Com., 362nd mtg.		
CHR (VIII)	E/CN.4/SR.326, 327,328	E/CN.4/528, paras. 214-221; 528/Add.1, paras. 119-122; 668/Add.14; E/CN.4/L.127, 147,157,204,205; ESC (XIV), suppl. 4, paras. 258-262, and annex I B, art. 19	17
CHR (IX)		E/CN.4/694/Add.2, 5, 6	19
GA (IX)	3rd Com., 562nd, 565th, 567th, 570th, 571st, 576th, 580th mtgs.		24

ARTICLE 25

Rights of Minorities

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

183. It was agreed that, while article 2, paragraph 1, and article 24 of the draft covenant on civil and political rights contained a general prohibition of discrimination, differential treatment might be granted to minorities in order to ensure them real equality of status with the other elements of the population. It was felt that an article on this question should be included in the draft covenant on civil and political rights.[88]

Meaning of the word "minorities"[89]

184. There was some discussion of the meaning of the word "minorities". It was agreed that the article should cover only separate or distinct groups, well-defined and long-established on the territory of a State. This appeared to be the meaning of the opening clause, "in those States in which ethnic, religious or linguistic minorities exist,...". According to one opinion, the draft covenant should deal with "national minorities"; according to another opinion, "ethnic, religious or linguistic groups"; according to a third suggestion, "national, ethnic, religious or linguistic minorities". The expression, "ethnic, religious or linguistic minorities", was adopted.

Nature and scope of the rights of minorities[90]

185. It was agreed that persons belong to ethnic, religious or linguistic minorities should have the right "to enjoy their own culture, to profess and

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88/ E/CN.4/SR.303, 368. Attention is drawn to the text proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/358, para.47)

89/ E/CN.4/SR.369, 370; E/CN.4/358, para.47, res. E; E/CN.4/L.222, 225, 261.

90/ E/CN.4/SR.257, 368, 369, 370; E/CN.4/358, para.47, res. E; E/CN.4/L.222, 225, 260; GA (V), 3rd Com., 305th mtg., GA (IX), 3rd Com., 580th mtg.

practice their own religion or to use their own language". A proposal of a more specific character, "... to possess their national schools, libraries, museums and other cultural and educational institutions", was not accepted.

186. The provisions concerning the rights of minorities, it was understood, should not be applied in such a manner as to encourage the creation of new minorities or to obstruct the process of assimilation. It was felt that such tendencies could be dangerous for the unity of the State. In view of the clarification given on those points, it was thought unnecessary to specify in the article that "such rights may not be interpreted as entitling any group settled in the territory of a State, particularly under the terms of its immigration laws, to form within that State separate communities which might impair its national unity or security". Also rejected was a proposal that "every person shall have the right to show freely his membership of an ethnic or linguistic group, to use without hindrance the name of his group, to learn the language of this group and to use it in public or private life,...". It was thought that disruptive tendencies might result if "every person" were to claim the benefit of the rights of minorities. For this reason, it was decided to qualify the exercise of minorities' rights with the clause "in community with the other members of their group".

187. Although it was generally agreed that no member of a minority group should be "subjected on that account to any discrimination whatsoever and particularly such discrimination as might deprive him of the rights enjoyed by other citizens of the same State", it was not thought necessary to include such a clause in the article, for the general provisions of article 2, paragraph 1, of the draft covenant on civil and political rights should provide adequate safeguards in that respect.

Obligations of States Parties[91/]

188. There was also some discussion on the extent of the obligations of States towards minorities. A proposal that "the State shall ensure to national

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91/ E/CN.4/SR.256, 257, 369; E/CN.4/358, para.47, res. E; E/CN.4/L.222.

minorities the right..." was rejected. It was argued that, under such a text which imposed a positive obligation on States, minority consciousness could be artificially awakened or stimulated. The formula "the persons belonging to such minorities shall not be denied the right...", which was adopted, seemed to imply that the obligations of States would be limited to permitting the free exercise of the rights of minorities.

DOCUMENTATION

Organs and session	Records of discussion	Other documents	Article number
DC (I)		E/CN.4/21, annex A, art. 46	
CHR (II)		E/CN.4/35	
CHR (III)		E/CN.4/89	
CHR (V)	E/CN.4/SR.133	E/CN.4/237	
ESC (X)		E/C.2/239	
CHR (VI)		E/CN.4/353/Add.2, 6; E/CN.4/358, para. 47, res. E; E/CN.4/427, 435; E/CN.4/NGO/4	
ESC (XI)		E/C.2/254	
GA (V)	3rd Com., 289th, 290th, 291th, 305th mtgs.	A/C.3/L.79, 92	
ESC (XII)	438th mtg.		
CHR (VII)		E/CN.4/515/Add.11; E/CN.4/528, paras. 16-19; E/CN.4/573, 641 annex II, res. II	
ESC (XIII)	524th mtg.		
GA (VI)	3rd Com., 366th, 400th, 401st mtgs.		
CHR (VIII)	E/CN.4/SR.256, 257, 303	E/CN.4/528/Add.1, paras. 10-12; E/CN.4/655/Add.4	
CHR (IX)	E/CN.4/SR.368-371	E/CN.4/674, paras. 6-8; E/CN.4/L.222, 225, 260, 261; ESC (XVI) suppl. 8, paras. 51-56, annex IB, art. 25, annex III, paras. 13-22	
CHR (X)		E/CN.4/702, section II	25
GA (IX)	3rd Com., 571st and 580th mtgs.		25

ARTICLE 26

Prohibition of advocacy of national, racial or religious hostility

> Any advocacy of national, racial or religious hostility that constitutes an incitement to hatred and violence shall be prohibited by the law of the State.

189. The question was debated[92] whether the covenant should include an article prohibiting "any advocacy of national, racial or religious hostility".[93] On the one hand, the opinion was expressed that legislation was not the most effective means to deal with the matter, and that if propaganda should constitute a menace to public peace, article 19, paragraph 3, of the draft covenant on civil and political rights would be applicable.[94] On the other hand, it was emphasized that the strong influence of modern propaganda on the minds of men rendered legislative intervention necessary and that the general provisions of article 19, paragraph 3, were not adequate, as they did not impose upon States parties any obligation to prohibit the advocacy of national, racial or religious hostility.

190. Fears were expressed that an article prohibiting such advocacy might lead to abuse and would be detrimental to freedom of expression. It was proposed that only such advocacy of national, racial or religious hostility as "constitutes an incitement to violence" should be prohibited by the law of the State.[95]

92/ E/CN.4/AC.1/SR.28; E/CN.4/SR.377, 378; GA (IX), 3rd Com., 570th, 575th, 576th mtgs.

93/ The matter arose as the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended the inclusion of such an article (see E/CN.4/641, para. 43, annex II, res. V).

94/ During the first reading of the draft covenants at the ninth session of the General Assembly an amendment was submitted proposing the deletion of this article and the insertion of a provision in art. 19 (GA (IX), a.i. 58, A/C.3/L.413).

95/ E/CN.4/SR.174, 379; E/CN.4/82/Rev.1; GA (IX), 3rd Com., 568th mtg.

191. In discussing this proposal the view was expressed that no law would be effective if it did not go to the root of the evil. It was therefore proposed to prohibit "any advocacy of national or racial exclusiveness, hatred and contempt, or religious hostility, particularly of such a nature as to constitute an incitement to violence" as well as the propaganda "of Fascist-Nazi views". However, such expressions as "exclusiveness", "contempt", "Fascist-Nazi views" were considered too vague; and the proposal was not adopted.96/

192. Another proposal would prohibit any advocacy of national, racial or religious hostility that constituted "an incitement to hatred" as "an incitement to violence". The opinion was expressed that "an incitement to hatred" was no less serious than "an incitement to violence", and that both should be prohibited. It was argued, however, that "an incitement to violence" was a definable legal concept while "an incitement to hatred" was a subjective notion that could not easily lend itself to legal action. It was suggested that the expression "an incitement to hatred and violence", interpreted cumulatively, might be an appropriate formula.97/

193. As to the groups of persons who should be protected under the article it was proposed to prohibit further "every act which tends to stir up hatred or violence against any person or group of persons by reason of race, colour, sex, language, religion, political, economic or other opinion, national or social origin, property, educational attainment, birth or other status", but such a clause was not included in the text of the article.98/

194. The words "shall be prohibited by the law of the State" were chosen in preference to the words "constitutes a crime and shall be punished under the law of the State". It was feared by some that the words "shall be prohibited by the law of the State" might encourage the establishment of governmental censorship.99/

96/ E/CN.4/SR.123, 377; E/CN.4/223, E/CN.4/L.269.

97/ E/CN.4/SR.123, 379; E/CN.4/358, para. 53; E/CN.4/L.270; GA (IX), 3rd Com., 570th mtg.

98/ E/CN.4/353/Add.3.

99/ E/CN.4/SR.174, 379; E/CN.4/52, 694/Add.7.

Another opinion was that the article could not be interpreted as suggesting that States should impose censorship. The view was expressed that States parties would be free to enact whatever legislation they deemed appropriate to put the article into effect.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (II)	E/CN.4/SR.34, 35	E/CN.4/41, 51, 52; ESC (VI), suppl.I, annex B, art. 21	
DC (II)	E/CN.4/AC.1/SR.28	E/CN.4/82 and Rev.1, E/CN.4/82/Add.4, 12	21
ESC (VII)		E/C.2/94	
CHR (V)	E/CN.4/SR.123	E/CN.4/223; ESC (IX), suppl.10, annex I, art. 21, annex II, art. 21	
ESC (X)		E/C.2/241	21
CHR (VI)	E/CN.4/SR.174, 175	E/CN.4/353/Add.1, 2, 3, 6, 8, 10, 11; E/CN.4/358, para. 53; E/CN.4/NGO/7	21
GA (V)	3rd Com., 289th, 291st mtgs.	A/C.3/L.96	
ESC (XII)	438th mtg.		
CHR (VII)		E/CN.4/515/Add.4, 11; E/CN.4/528, para. 219; E/CN.4/641, para. 43, annex II, res. V; E/CN.4/NGO/21	
ESC (XIII)	524th mtg.		
CHR (VIII)		E/CN.4/528/Add.1, paras. 119-122; E/CN.4/NGO/39	
CHR (IX)	E/CN.4/SR.377-379	E/CN.4/674, para. 9; E/CN.4/L.269, 270, 271; ESC (XVI), suppl.8, paras. 72-77, annex IB, art. 26, annex III, paras. 35-38	
CHR (X)		E/CN.4/694/Add.2, 5, 6, 7; E/CN.4/702, Sect. XXII, E/CN.4/703, paras. 145-146	26
GA (IX)	3rd Com., 565th, 568-571st, 575th, 576th, 580th mtgs.	A/C.3/L.413, paras. 2 and 3	26

RIGHT OF PROPERTY

195. The question of including an article on the right of property in the draft covenants was the subject of considerable discussion. No agreement was reached on a text[100] or on whether the right should be included in the covenant on civil and political rights, or in the covenant on economic, social and cultural rights or in both.

196. The principal issues raised related to: (1) the inclusion or non-inclusion of an article on the right of property in the draft covenants; (2) the formulation of the right; (3) limitations on the right; (4) restrictions on State action.

Inclusion or non-inclusion in the draft covenants

197. While no one questioned the right of the individual to own property, some doubted the advisability of including an article on the right of property in the covenants. It was stated that there were considerable differences of opinion with regard to the concept of property and the restrictions to which the right of property should be subject. In view of such divergencies it would be very difficult to draft a text which would find common acceptance. The view was also expressed that it would seem inappropriate to include such a right as that of property in a covenant dealing with inherent rights of the human person. It was sufficient that the right to own property was proclaimed in the Universal Declaration of Human Rights. States should be left free to work out detailed regulation of the right.

198. On the other hand, a large number of representatives felt that an article on the right of property should be included in the covenants. To omit it might create the impression that it was not a fundamental human right. Moreover, the

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100/ The Commission on Human Rights considered various drafts at its seventh, eighth and tenth sessions, but was unable to adopt any text. Realizing the difficulty of drafting an article that would command the support of the majority, the Commission, at its tenth session, adjourned consideration of the question sine die. (See ESC (XVIII), suppl.7, paras. 40-71).

right to own property was recognized in the constitutions and laws of most countries.

Formulation of the right

199. One view was that the article should be drafted in broad and general terms. Any attempt to be elaborate and precise would be likely to accentuate the differences of views regarding property rights embodied in the social and political systems of various States, thus making any agreement on the subject extremely difficult, if not impossible, to achieve. A text based on article 17 of the Universal Declaration of Human Rights was proposed. Under this proposal States parties would recognize that "everyone has the right to own property alone as well as in association with others", and that "no one shall be arbitrarily deprived of his property".

200. A second view was that the article should be drafted in precise legal terms and should spell out the necessary qualifications and limitations to which the right of property would be subject. It was necessary to emphasize the duty of States to fulfil their obligations in respect of the right, as well as to take into account the restrictions and limitations which might be imposed on the right. Various texts were proposed which would not only provide that States parties should undertake to respect the right of property, but would indicate that the right was not absolute and would specify the conditions under which a person might be deprived of his property.

201. A third view was that the article on the right of property should not attempt to indicate the limits within which the right should enjoy international protection, but should simply define the scope which should be given to the right in order to make it a human right, and, as such, fundamental and inalienable. It was pointed out that the concept of fundamental right of property might cover the right to a minimum amount of property necessary for decent living and for maintaining the dignity of the individual and the home. Only to that extent could the right of property be regarded as fundamental and inviolable. A text was proposed which would stipulate that "every person has a right to own such private property, as meets the essential needs of decent living and helps to

maintain the dignity of the individual and the home". This text was based on article 23 of the Inter-American Declaration of the Rights and Duties of Man adopted at Bogcta in 1948.

Limitations of the right

202. It was generally admitted that the right to own property was not absolute. At the same time it was recognized that the limitations on the right varied from time to time and from country to country. Consequently, it was difficult to reach agreement not only on the extent of the limitations to be included in the article, but also on the manner in which such limitations were to be defined.

203. Various limitations on the right of property were mentioned. It was proposed that the right should be "subject to such limitations and restrictions as are imposed by law in the public interest and in the interest of social progress in the country concerned". A suggestion was made that the text should make it clear that the limitations imposed must be "reasonable".

204. Others favoured a limitations clause which would safeguard domestic laws relating to property. To this end it was proposed that the right should be "subject to the laws of the country in which the property is owned". Such a clause would allow for the divergencies in the legislation of various countries relating to property. On the other hand, it was pointed out that it was not enough to take account of domestic laws in the matter of property rights. A standard of reasonableness and justice, to which domestic legislation should conform, must be provided; otherwise, an international enunciation of the right would become meaningless.

205. Other forms of limitations mentioned or suggested related to (a) general regulations in the interest of public health, safety or welfare imposed by the State under its police power; (b) limitations arising from the State's power of taxation; (c) death duties; (d) confiscation of property of persons committing criminal offenses; (e) confiscation or limitation of property of enemy aliens in time of war; (f) expropriation. It was also pointed out that the right to own property was subject to the provisions of article 1, paragraph 3, of the covenants concerning the right of peoples and nations to permanent sovereignty over their natural wealth and resources.

Restrictions on State action

206. While there was wide agreement that the right to own property was subject to some degree of control by the State, it was felt that certain safeguards against abuse must be provided. However, there was considerable difficulty in reaching agreement on such safeguards.

207. One view was that it was sufficient to incorporate the text of paragraph 2 of article 17 of the Universal Declaration which provided that "no one shall be arbitrarily deprived of his property". The clause would ensure the right of the individual to enjoyment of ownership without unreasonable interference, and would prohibit taking of property without compensation. On the other hand, it was contended that the text of the Declaration was not suitable for use in the covenants since it lacked legal precision. The term "arbitrarily" carried different connotations in European and Anglo-Saxon jurisprudence and had no legal connotation at all in international law, or in the jurisprudence of some countries. Some thought that in order to clarify its meaning, the words "or illegally" or "or unlawfully" might be added to "arbitrarily". Another suggestion was to add after "arbitrarily" the words "that is to say, unlawfully". Others felt that the expression "without due process of law" should be used instead of "arbitrarily". However, it was pointed out that the expression "due process of law" had no precise meaning. Only in certain countries did the expression carry both a procedural and substantive meaning. In its substantive context it was intended to prevent arbitrary law and to limit the State's legislative powers. Unless the expression was understood in that sense, laws enacted according to proper procedures might satisfy the requirements of "due process", but might nevertheless be "arbitrary"; hence, the use of the term "arbitrarily" was to be preferred, especially since it had been employed both in the Universal Declaration and in the draft covenant on civil and political rights.

208. Another view was that the article should prescribe the conditions under which property could be expropriated and the amount of compensation to be paid to its owner. It was held that expropriation might take place only for considerations of public necessity or utility or in the interest of social progress, and, as a general rule, subject to compensation.

209. Opinion differed as to whether the article should contain an explicit reference to the question of compensation, and regarding the amount of compensation to be paid. One view on the first question was that it was not necessary to make express provision concerning the payment of compensation. The concept of just compensation was implicit in the clause prohibiting arbitrary deprivation of property. The opinion was also expressed that a clause stipulating that expropriation should not take place except in accordance with the provisions of the law would be sufficient, since the law would lay down all the conditions under which expropriation would be carried out. On the other hand, it was maintained that compensation must be explicitly mentioned in order to emphasize that no expropriation of property should take place without the owner being compensated.

210. As to the amount of compensation to be paid in case of expropriation, various proposals and suggestions were made. Some members held that there should be "just compensation", "fair or equitable compensation", "due compensation", or "prior or fair indemnity". There was no general agreement as to the meaning of the expressions "just compensation" and "fair compensation". The expression "due compensation", it was thought, would imply that the compensation to be paid should be equivalent to the value of the property taken.

211. Other members favoured a clause stipulating that compensation should be paid "as prescribed by law". The formula was preferred, since it would obviate difficulties arising out of divergencies in the concept of compensation which existed in various countries. The question of what constituted "just" or "fair" compensation would be avoided.

212. Some members would prefer the formula that compensation should be "as prescribed by law and by the general principles of international law". In support of this wording, it was argued that while domestic laws would ordinarily apply to all persons within the jurisdiction of a State, aliens would, in addition, enjoy the protection of international law. Aside from a feeling that the term "general principles of international law" was not sufficiently precise, other members thought that the clause might in practice justify interference in the activities of States in the name of alleged international standards. Moreover, the clause would be incompatible with the right of peoples to self-determination.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (XI)	E/AC.7/SR.148	E/C.2/254/Add.1	
GA (V)	3rd Com., 291st mtg., paras. 18, 34; 297th mtg., paras. 27-28; 304th mtg., para. 46; 314th mtg., para. 7	A/C.3/534, para. 6 (e)	
CHR (VII)	E/CN.4/SR.230-232	E/CN.4/528, paras. 35-37; 599; 603; 614; ESC (XIII), suppl.10, para. 49 and annex II	
ESC (XIII)	E/C.2/SR.106		
CHR (VIII)	E/CN.4/SR.302, 303	E/CN.4/528/Add.1, para. 26; E/CN.4/L.66 and Rev.1; L.165, ESC (XIV), suppl.4, paras. 144-149	
CHR (IX)		ESC (XVI), suppl.8, annex II, part A	
CHR (X)	E/CN.4/SR.413-418	E/CN.4/694/Add.3; 702, p.32; E/CN.4/L.313 and Rev.1; L.314, L.316-319; L.320 and Corr.1; L.321-323; ESC (XVIII), suppl.7, paras. 40-71	
ESC (XVIII)	E/AC.7/SR.289; E/C.2/SR.145		
GA (IX)	3rd Com., 557th mtg., para. 9; 563rd mtg., paras. 23-25. 566th mtg., paras. 8, 16; 568th mtg., para. 17; 570th mtg., paras. 12, 43; 571st mtg., para. 19; 573rd mtg., paras. 8, 26; 576th mtg., paras. 7, 18-19; 580 mtg., para. 15	A/2808, para. 38	

CHAPTER VII

MEASURES OF IMPLEMENTATION: CIVIL AND POLITICAL RIGHTS

(Part IV, articles 27-48, and Part V, articles 49-50, of the Draft Covenant on Civil and Political Rights)

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ARTICLE 27

Establishment and composition of the human rights committee

1. There shall be established a Human Rights Committee (hereinafter referred to as "the Committee"). It shall consist of nine members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the Covenant who shall be persons of high moral standing and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having a judicial or legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

1. Discussion on this article related chiefly to the number of members of the committee and to the necessity of referring in paragraph 2 to particular qualifications, especially to judicial and legal experience. Paragraph 3 was included to emphasize the non-political nature of the committee and the independency of its members, who were to be elected to serve in their personal capacities and not as representatives of governments.

Name of the committee[1/]

2. Although there were no proposals or decisions for an alternative to the name "human rights committee", other names were suggested, and it was thought that the matter should be discussed before the final adoption of the covenant, so that a more appropriate designation might be adopted in conformity with the dignity and importance of the proposed body. Designations such as "human rights council" and "human rights committee" were said to be somewhat confusing in the light of the names of the various organs of the United Nations; they might also give rise to undesirable notions of hierarchy. Suggestions like "human rights tribunal" or "human rights forum" were thought of as inappropriate for a body which was not of a judicial or arbitrative character, nor confined to deliberative functions. Other suggestions were "human rights board" and "high commission for human rights".

1/ E/CN.4/SR.190, 210, 212, 214, 215; GA (V), 3rd Com., 301st mtg.

Size of the committee[2/]

3. The original provision for seven members of the committee was changed to nine and thereafter a proposal to revert to seven was rejected. It was stated that it was necessary to have as large a number as possible, since the committee would have many tasks to perform, including fact-finding which would require a larger number than conciliation proper. There might also be some division of work among the members of the committee, and working groups and sub-committees might be established. Moreover, it would be inadvisable to leave decisions affecting the actions of States to a majority of a small committee, with provision for a quorum of only five members.[3/] A smaller number would also make it difficult to give consideration to equitable geographical distribution and to the representation of the various forms of civilization, as provided in article 30, paragraph 2. On the other hand, it was contended that experience showed that the delicate task of conciliation was best performed by a small body, and that, so long as the functions of the committee continued to be those defined by the existing articles, it was not necessary to have more than seven members at the most. Another point of view was that the number should be sufficiently large so that, in the event that nationals of all the five permanent members of the Security Council were elected, there would still be places for representation of the other countries, but it was pointed out that there was no question of representation of States but only of members serving in their individual capacities.

Qualifications of members of the committee[4/]

4. There was some discussion concerning that part of the second paragraph which provides that consideration should be given to the usefulness of the

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2/ E/CN.4/SR.214, 215, 344, 346; E/CN.4/530, para. 25, 530/Add.1, para. 14, 566, L.226 (Corr.1, French only); E/AC.7/SR.150, ESC (XVI), suppl.8, paras.89-91, and annex III, paras. 56-59, GA (V), 3rd Com., 301st mtg.; GA (VI), 3rd Com., 371st mtg.

3/ See article 39, paragraph 2 (a), which for a membership of nine, provides for a quorum of seven.

4/ E/CN.4/SR.187, 211, 214, 215, 346, E/CN.4/474, art.1, 530, paras. 27-29, 560, 568; E/AC.7/SR.150, ESC (XVI), suppl.8, paras. 92-95; GA (V), 3rd Com., 300th and 301st mtgs.

participation of some persons having a judicial or legal experience. This phrase was included as a compromise text, proposals tending to incorporate the idea in more direct form having been rejected. The main argument against the inclusion of such phrases was that if reference were to be made to particular qualifications, then not only should enumeration of other qualifications be included, but stress should be laid not so much on judicial qualifications as on other capabilities which would emphasize the particular familiarity with questions relating to human rights. It was also said to be necessary to avoid the impression that the intention was to set up a judicial organ when in fact that was not the case Moreover, persons of high moral standing and recognized competence in the field of human rights would inevitably include persons with judicial and legal qualifications and States, when considering candidates for nomination, were hardly likely to overlook the nomination of jurists.

5. In support of some reference to judicial and legal qualifications, it was emphasized that, besides collection of information, ascertaining of facts and making available its good offices, the committee would be concerned most often with matters involving violations of legal provisions and, in such cases, the committee would have to investigate and settle disputes, for which legal experience would be invaluable. Another view was that if an element of judicial experience was thought desirable and indispensable, it would be better to require that a definite proportion of the persons elected should possess such experience. Other maintained that in order to avoid any kind of misunderstanding, it would be better to have a paragraph which did not make reference to any particular qualification.

6. It was generally recognized, however, that the scope of appointments to the committee should include a wide range of persons, such as statesmen, historians, philosophers, jurists, etc.; the text simply drew the attention to the usefulness of judicial and legal experience, and taken as a whole, the paragraph would leave the International Court of Justice sufficient latitude in the choice of membership for the committee.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.168, 177, 187, 190	E/CN.4/474/art.1; ESC (XI), suppl.5, annex I, art. 19	
ESC (XI)	E/AC.7/SR.150	E/L.68, para. 105	19
GA (V)	3rd Comm., 300-301st mtgs.	Annexes, a.i. 63, A/C.3/534, para. 20	19
CHR (VII)	E/CN.4/SR.209, 210, 211, 212, 214, 215	E/CN.4/530, paras. 25-29, 560, 566, 568; ESC (XIII), suppl.9, annex I, art. 33	19
GA (VI)	3rd Com, 371st mtg.		33
CHR (VIII)		E/CN.4/530/Add.1, para. 14	33
CHR (IX)	E/CN.4/SR.344, 346, 409	E/CN.4/L.226 (Corr.1, French only), 264; ESC (XVI), suppl. 8, paras. 89-95, annex I, art. 27, and annex III, paras. 56-59	33

ARTICLE 28

Nomination of candidates for election to the committee

1. The members of the Committee shall be elected from a list of persons possessing the qualifications prescribed in article 27 and nominated for the purpose by the States Parties to the Covenant.

2. Each State Party to the Covenant shall nominate at least two and not more than four persons. These persons may be nationals of the nominating State or of any other State Party to the Covenant.

3. A person shall be eligible to be renominated.

7. Paragraph 1 of this article did not give rise to much discussion. With respect to paragraph 2, a suggestion was made that, while the maximum number of persons each State party might nominate should be not more than four persons, the minimum number should not be specified. This suggestion was not pressed in the light of the observation that the choice of candidates might be unduly restricted if several States should jointly nominate a candidate.

8. Paragraph 3 provides simply that "a person shall be eligible for renomination". In connexion with this paragraph there was a discussion on the question of establishing a permanent or semi-permanent panel of nominations. In a previous text of this paragraph a sentence was included which specified that "nominations shall remain valid until new nominations are made for the purpose of the next election". This was subject to a provision of another article which stipulated that States parties were entitled, "if they have not already submitted their nominations", to submit them within the specified period for each regular election. From the discussion it appeared that the intention was that nominations would remain valid for the regular election unless new nominations were made. Thus, there would be a kind of continuing panel of nominations although States would be free to submit completely new nominations for a regular election. At the same time, it was intended that casual vacancies would be filled from the continuing panel. Moreover, a State party

to a case before the Committee, which did not include one of its nationals, could designate a national from the panel as a member. A provision to this effect, however, is no longer included in the draft covenant.5/

9. The system outlined above was supported in particular as providing a measure of continuity and permanence, and thereby contributing a stabilizing factor and ensuring the election of independent persons. It was criticized by those who favoured a more permanent panel on the grounds that it would permit short-term nominations and constant changes which would make the system unwieldy and that governments might be guided by their own interests or by political considerations in changing the list of nominees. It was also opposed by those who felt that it did not take account of the fact that a candidate on the old list might no longer be available or that there might be good reason for putting forward new names. Moreover, as new nominations were not excluded, it was more appropriate to follow the usual procedure, common in the United Nations and other international practice, whereby new nominations were required for each election. The latter view was accepted and the passage relating to the continuing panel was deleted from paragraph 3.

10. The present procedure under articles 28 and 29 envisages that, with the exception of elections to fill casual vacancies, new nominations are to be made for every election. Even in the case of elections to fill casual vacancies, it was suggested that the principle of new nominations should now apply since the idea of a continuing panel was rejected.6/

5/ See under article 39.

6/ See under article 33.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.188, 200	E/CN.4/474, art. 2; ESC (XI), Suppl. 5, annex I, art. 20	
ESC (XI)		E/L.68, paras. 106-108	20
GA (V)	3rd Com., 300th mtg.		20
CHR (VII)	E/CN.4/SR.214, 215	E/CN.4/530, paras. 26 and 31-33, 560/Rev.1; ESC (XIII), Suppl. 9, annex I, art. 34	20
CHR (IX)	E/CN.4/SR.346, 351, 352, 409	E/CN.4/675, para. 14, L.228, 229, 243, 264; ESC (XVI), Suppl. 8, annex I, art. 28, and annex III, paras. 60-64	34

ARTICLE 29

Election of members of the committee

1. At least three months before the date of each election of the Committee, other than an election to fill a vacancy declared in accordance with article 33, the Secretary-General of the United Nations shall address a written request to the States Parties to the Covenant inviting them to submit their nominations within two months.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, and shall submit it to the International Court of Justice and to the States Parties to the Covenant.

3. The Secretary-General of the United Nations shall request the International Court of Justice to fix the time of elections for members of the Committee and to elect such members from the list referred to in the preceding paragraph and in accordance with the conditions set out in this part of the Covenant.

11. The present text of paragraph 1 is based upon the principle that new nominations are to be submitted each time that an election of the committee is to be held, with the exception of elections to fill casual vacancies which is dealt with in article 33. The previous text of this paragraph was drafted in the light of the provision envisaging a continuing panel of nominations.7/

12. Various views were advanced concerning the question of what was the most competent and appropriate body to elect the members of the committee. Proposals were made that the committee should be elected by the States parties to the covenant or by the International Court of Justice, or by the General Assembly of the United Nations. The present text entrusts the election to the International Court of Justice. A previous text provided for election by the States parties to the covenant. A proposal for election of the committee by the General Assembly was rejected.

13. Those in favour of the proposal that the committee should be elected by the States parties to the covenant were of the opinion that only those States which had ratified or acceded to the covenant should have the right not only to

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7/ See under article 28.

nominate candidates but also to elect members of the committee. Since a fact-finding and conciliation committee, and not a court, was to be set up, it was undesirable to overemphasize any judicial aspects of the competence of the committee by entrusting the election to the International Court of Justice, and it was doubtful whether the Court could perform a task which was alien to its functions. It would also be unwise to request the General Assembly to elect the committee since that organ would include States which would not be parties to the covenant and would therefore have no rights or obligations thereunder.

14. It was felt, however, that it would be unwise to leave the final choice of the members of the committee to the States parties alone. The rights of States parties were safeguarded because the choice would be restricted to their nationals nominated by those States themselves. It was contended that elections should not take place in an essentially political atmosphere of a meeting of representatives of States. It was most important that the committee should command the confidence of the individual victims of infractions of the covenant. Election by the Court, it was argued, would guarantee objectivity and impartiality and contribute to the prestige and importance of the committee. The Court was the highest non-political organ of the United Nations, and there could be no question of its independence.

15. Another view was that elections of the members of the committee should be carried out by a representative body of a universal character, such as the General Assembly, rather than by the States parties or the Court, since the promotion of and respect for human rights was a collective responsibility of the United Nations. There was no question about the impartiality of the General Assembly, which elected members of the principal organs of the United Nations, and also - together with the Security Council - the judges of the International Court of Justice. This procedure was opposed, however, on the grounds that considerations of universality and impartiality were taken fully into account when it was decided that elections should not be the monopoly of a group of States, however directly interested, but should be entrusted to the Court. The Court was also more removed from political considerations than the General Assembly.

16. Other suggestions were that the method of election might be the same as that for the election of the judges of the International Court of Justice or

of the members of the International Law Commission, or that the committee should be elected jointly by the General Assembly and the Economic and Social Council.

17. During the discussion doubt was expressed whether the Court could be legally entrusted with the task of elections, and it was even contended that it was outside the jurisdiction of the Court. It was said, however, that although there was no legal obligation or duty on the part of the Court to elect members of the committee, there were no constitutional barriers to its carrying out the task if it so wished. In this connexion references were made to the practice of the Permanent Court of International Justice and the International Court of Justice or the President of these bodies in the appointment of members of arbitration tribunals, conciliation commissions, and other nominations. The opinion was also expressed that difficulties might arise if the Court were to refuse to undertake the task, and it was suggested that this could be avoided by ascertaining the views of the Court beforehand.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article numbers
CHR (VI)	E/CN.4/SR.168, 177, 178, 187, 188, 189, 200	E/CN.4/474, arts. 3, 4, 5; ESC (XI) Suppl. 5, annex I, arts. 21, 22, 23, and annex II	
ESC (XI)	E/AC.7/SR.149, 150	E/L.68, paras. 102, 109	21, 22, 23
GA (V)	3rd Com., 300th mtg.		21, 22, 23
CHR (VII)	E/CN.4/SR.210, 212, 214, 215	E/CN.4/515/Add.15, 530, paras. 34 and 35, 552, 556, 560/Rev.1, 568; 584; ESC (XIII), Suppl.9, paras. 75-76, and annex I, arts. 35, 36, 37	
ESC (XIII)	E/C.2/SR.106		
GA (VI)	3rd Com., 360th mtg.	Annexes, a.i. 29, A/2112, para. 30	35, 36 37
CHR (VIII)		E/CN.4/530/Add.1, para. 15	
CHR (IX)	E/CN.4/SR.343, 344, 347, 348, 352, 409	E/CN.4/675, paras. 4, 15-16, L.227, 232, 264, NGO 47; ESC (XVI), Suppl.8, paras. 96-100, annex I B, art. 29, and annex III, paras. 65-74	35, 36 37
CHR (X)		E/CN.4/694/Add.6	29
GA (IX)	3rd Com., 570th and 571st mtgs.		29

ARTICLE 30

Conditions relating to the election of the members of the committee

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization.

3. The quorum laid down in article 25, paragraph 3, of the Statute of the International Court of Justice shall apply for the holding of the elections.

4. The persons elected shall be those who obtain the largest number of votes and an absolute majority of the votes of all the members of the International Court of Justice.

18. The debate on this article was directed to two points: the representation of the "main" or the "different" forms of civilization, and the majority required for the election of the members of the committee.

19. It was generally agreed that in the election of the committee consideration should be given to equitable geographical distribution, but there was some discussion as to the representation of the "main" or the "different" forms of civilization. The opinion was expressed that reference to "main forms of civilization", though taken from article 9 of the Statute of the International Court of Justice, implied a classification of civilization into principal and secondary, or major and minor, categories, which might not be well-founded. It was suggested that "main forms of civilization" should be changed to "different forms and degrees of civilization". While the expression "different forms of civilization" was considered appropriate, objection was raised against the expression "different degrees of civilization" on the ground that it implied a hierarchy of cultural levels which should not be introduced in the covenant.

20. The opinion was advanced that it was illogical to insist, on the one hand, that members of the committee should be elected by an absolute majority of the votes of all the fifteen members of the Court, and to provide, on the other hand, that the quorum of nine prescribed in article 25, paragraph 3, of

the Statute of the Court should apply for the holding of elections. This would mean that, if only a bare quorum was present, the election of a member would have to be virtually by a unanimous vote. It was proposed that either the words "present and voting" or "present" should be added to the end of paragraph 4. The latter word, which followed the provision of article 55, paragraph 1, of the Statute of the Court, was preferred, since it would avoid any ambiguity concerning the interpretation of abstentions. Another suggestion was that it might be better to specify the number of affirmative votes required for the election of a member of the committee.

21. Those supporting the present text of paragraph 4 argued that the requirement mentioned in that paragraph would be in keeping with the importance of the elections to the committee.

It was appropriate that members should be elected by as large a majority as possible.

22. Originally, it had been contemplated that members of the committee were to be elected by a majority of the representatives of the States parties present and voting and that a quorum for such election was to consist of two-thirds of the States parties.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189, 200	E/CN.4/474, art.6, 488; ESC (XI), suppl.5, annex I, art.24	
ESC (XI)	E/AC.7/SR.150	E/L.68, para.110	24
CHR (VII)	E/CN.4/SR.215	E/CN.4/515/Add.13, 530, para.36, 552, 556, 560/Rev.1, 567; ESC (XIII), suppl.9, art.38	24
CHR (IX)	E/CN.4/SR.348, 409	E/CN.4/675, para.17, L.227, 232, 237, 264; ESC (XVI), suppl.8, paras. 101-106, annex I B, art.30, and annex III, paras. 75-79	38

ARTICLE 31

Term of office of members of the committee

1. The members of the Committee shall be elected for a term of five years. They shall be eligible for re-election if renominated. However, the terms of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the President of the International Court of Justice.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of this Covenant.

23. The provisions on the term of office, on the rotation of office and elections at the expiry of office did not give rise to much discussion. The main question discussed was the eligibility of members of the committee for renomination and re-election.

24. It was advocated that a retiring member of the committee should not be immediately eligible for re-election, unless he was renominated by a State other than the State which had nominated him previously. Such a procedure would enhance the independence and impartiality of the members of the committee. It would also give greater emphasis to the principle of equitable geographical distribution and representation of different forms of civilization, and afford a greater chance of election to persons nominated by small Powers.

25. It was thought, however, that such a procedure might have far-reaching consequences. It was better to rely on the system of rotation of membership and on the good sense of the International Court of Justice. While periodic inductions of new persons in the committee might be desirable, they might also result in lack of continuity in the work of the committee and in the loss of persons having acquired valuable experience and knowledge.

26. A proposal to omit the reference to eligibility for re-election and to add a provision that "candidates nominated by States from whose list the retiring members have been selected may not be elected for the succeeding five-year period at the elections held to fill seats vacated by members of the committee whose terms of office have duly expired" was rejected.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189	E/CN.4/474, art.7; ESC (XI), suppl.5, annex I, art.25	
ESC (XI)	E/AC.7/SR.150		25
CHR (VII)	E/CN.4/SR.215	E/CN.4/530, para.37, 560/Rev.1; ESC (XIII), suppl.9, annex I, art.39	25
CHR (IX)	E/CN.4/SR.349, 352, 409	E/CN.4/L.227, 232, 232/Rev.1, 241, 264; ESC (XVI), suppl.8, paras.113-116, annex I B, art.31, and annex III, paras.80-83	39

ARTICLE 32

Casual Vacancies

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations who shall then declare the seat of such member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

27. Previous to the adoption of the present text of the article, only the case of resignation had been dealt with. The opinion was expressed, however, that vacancies might arise in circumstances other than resignation and that such circumstances ought to be covered if the committee was to function properly. Accordingly, a proposal was submitted that "if by reason of death, illness or any other cause, other than the absence of a temporary character, a member of the committee ceases to carry out his duties, the chairman of the committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of such member vacant".

28. There was general agreement on the undesirability of granting the discretionary power to the chairman of the committee. It was suggested that, if such power were to be granted, it should be vested in the committee and be subject either to a vote of two-thirds of its members or a unanimous vote of all the members except the one concerned.

29. It was decided that the questions of death and resignation should be dealt with in a separate paragraph, since vacancies arising out of such events were not dependent upon any action of the committee. Although illness might make a member unable to fulfil his duties, or might permanently incapacitate him, it was thought unnecessary to make a specific reference to illness. Reference was made, in this connexion, to article 23,

paragraph 3, of the Statute of the International Court of Justice which made illness an excusable ground of absence, and it was contended that the matter would be adequately covered by the power of the committee to determine when a member was to be regarded as having ceased to carry out his functions. It was also felt that the interpretation of the phrase "absence of a temporary character" could be left to the committee. Specific provisions on that question might be considered arbitrary and give rise to practical difficulties.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189, 200	E/CN.4/474, art. 10; ESC (XI), suppl. 5, annex I, art. 28	
ESC (XI)		E/L.68, para. 112	28
CHR (VII)	E/CN.4/SR.239	E/CN.4/560/Rev.1, 617; ESC (XIII), suppl.9, annex I, art. 42	28
CHR (IX)	E/CN.4/SR.352, 409	E/CN.4/675, para. 19, L.227, 232, 264; ESC (XVI), suppl. 8, paras. 120-125, annex I B, art. 32, and annex III, paras. 95-99	42

ARTICLE 33

Filling of Casual Vacancies

1. When a vacancy is declared in accordance with article 32 the Secretary-General of the United Nations shall notify each State Party to the Covenant, which may, if it is necessary, within one month, with a view to election to the vacant seat on the Committee, complete its list of available nominees to four persons.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the International Court of Justice and the States Parties to the Covenant. The election for the vacancy shall then proceed in accordance with articles 29 and 30.

3. A member of the Committee elected to replace a member whose term of office has not expired, shall hold office for the remainder of that term. Provided that if such term of office will expire within six months after declaration of the vacancy in accordance with article 32, no nomination shall be requested and no election shall be held to fill that vacancy.

30. At the time when this article was agreed upon the provisions of articles 28 and 29 had not been completed. Under the present text of articles 28, 29 and article 31, paragraph 2, for each regular election, i.e. the first election and each subsequent election upon the expiry of office, each State party shall nominate at least two and not more than four persons. However, in the case of an election to fill a casual vacancy, under article 33, each State party is not requested to nominate "at least two persons and not more than four persons", but it may, if it is necessary, "complete its list of available nominees to four persons".

31. This procedure was based on the assumption that the list of nominations for the regular election would remain valid for the election to fill a casual vacancy[8/], except that a State party might add new nominees provided that the total was not more than four, and might substitute new nominees for previous nominees who might no longer be available.

8/ See under article 28.

32. It was subsequently observed that article 33 was not in conformity with articles 28 and 29 and it was suggested that, except for paragraph 3 of the article, the rest should be replaced by a provision for the nomination of candidates to fill a casual vacancy in the same way as for the ordinary election, but with the proviso that nominations should be submitted by the States parties within one month of the receipt of the request for nominations from the Secretary-General, instead of two months as provided for in the case of regular elections.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189	E/CN.4/474, art.8; ESC (XI), suppl.5, annex I, art.26	
ESC (XI)		E/L.68, para.111	26
CHR (VII)	E/CN.4/SR.239	E/CN.4/560/Rev.1, 617; ESC (XIII), suppl.9, annex I, art.40	26
CHR (IX)	E/CN.4/SR.349, 351, 459	E/CN.4/675, para.18; L.227, 242, 264; ESC (XVI), suppl.8, paras.117-119, annex IB, art.33, and annex III, paras.84-89	40
CHR (X)		E/CN.4/694/Add.2	33

ARTICLE 34

Participation of members in cases before the Committee

1. Subject to the provisions of article 32, a member of the Committee shall remain in office until a successor has been elected. But if the Committee has, prior to the election of his successor, begun to consider a case, he shall continue to act in that case, and his successor shall not act in it.

2. A member of the Committee elected to fill a vacancy declared in accordance with article 32 shall not act in any case in which his predecessor had acted, unless the quorum provided in article 39 cannot be obtained.

33. This article has three features. First a member of the committee is to remain in office until a successor is elected, except in the case of a vacancy arising under article 32, namely, as a result of death, resignation or removal from office. Secondly, an outgoing member, and not his successor, is to continue to act in a case begun by the committee prior to the election of the successor. Thirdly, a member elected to fill a vacancy arising out of article 32 might act in such a case if the quorum provided for in article 39 could not otherwise be obtained. Discussion centered mainly on the second aspect of the article.

34. One proposal, which was rejected, was that, if a member ceased to hold office when a case was pending, the case should be continued by the remaining members of the committee and the successor of the member who had ceased to be a member. In support of this proposal it was argued that otherwise there might be an indeterminate number of members of the committee with consequent budgetary and other complications, such as the duration of their office, especially as it would be difficult to determine how long a case might continue. There was also no reason for preventing new members from bringing their knowledge and experience to bear upon a case that had already begun as they would be chosen for their special competence and could study the case. The committee, moreover, was not to be regarded as a judicial body. There was, therefore, no need to follow the principles of Article 13, paragraph 3, of the Statute of the International Court of Justice, according to which a member, though replaced, was to finish any cases which he might have begun.

35. The view was expressed, however, that the provision contained in the Statute of the Court was of great value for the committee. Although the committee was not a court, it would have fact-finding functions, and it would therefore be inadvisable to depart from the existing practice of international bodies of a judicial or quasi-judicial character under which the knowledge of the facts of a case acquired by an outgoing member was as far as possible made use of, and the danger of admitting new members unacquainted with the former proceedings during the examination of a case was obviated. Moreover, the confusion which might arise from a change would not favour conciliation. Whatever might be the advantages from the logical or budgetary standpoint, it was essential to provide for a guarantee of complete freedom, which was indispensable to the members of the committee, and to prevent any possibility of the election of members being influenced by current events.

36. Another suggestion was that members succeeding those whose terms of office had expired should not act in a case which had already begun, but those elected to fill vacancies arising under article 32 should be permitted to do so, irrespective of whether or not their participation was necessary in order to make a quorum.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189	E/CN.4/474, art.9; ESC (XI), suppl.5, annex I, art.27	
ESC (XI)	E/AC.7/SR.149		27
CHR (VII)	E/CN.4/SR.239	E/CN.4/530, paras.39-40, 556, 617; ESC (XIII), suppl.9, annex I, art.42	27
CHR (IX)	E/CN.4/SR.352, 353, 409	E/CN.4/L.227, 234/Rev.1, 264; ESC (XVI), suppl.8, paras.126-128, annex I B, art.34, and annex III, paras.90-94	42

ARTICLE 35

Emoluments of the members of the committee

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide having regard to the importance of the Committee's responsibilities.

37. The previous draft of the article had provided that the members and the secretary of the committee were to "receive emoluments commensurate with the importance and the responsibilities of their office." There was no indication whether the emoluments would be defrayed by the United Nations or by the States parties to the covenant, although the discussion had pointed to the former. The present text stipulates that the emoluments of the members of the committee are to be met from United Nations resources. Reference to the emoluments of the secretary of the committee was omitted because it was considered that there was no need to provide separately for his emoluments since under article 36 he would be elected from among the high officials of the United Nations Secretariat.

38. As to the question of advisability of using United Nations funds for the payment of the committee members, opinions varied. On the one hand, the opinion was expressed that the establishment of the human rights committee was contrary to Article 2, paragraph 7 of the Charter and that, further, the spreading of the financial burden on all States Members of the United Nations, irrespective of whether they would all be parties to the covenant or not, would be contrary to the terms of the Charter. On the other hand, it was contended that the covenant was not intended for the benefit of a small group of States, that its aims were to further the purposes of the United Nations and to promote increased international collaboration, and that, therefore, the proposal was entirely in keeping with the terms of the Charter.

39. The need for inclusion of such words as "commensurate with the importance and the responsibilities of their office" or "having regard to the importance of the committee's responsibilities" was questioned on the grounds that the General Assembly could be relied upon to take into account the special features and circumstances involving the establishment of the proposed committee. Reference was made to the fact that article 33 of the Statute of the International Court of Justice contained no equivalent phraseology and simply provided that "the expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly". However, it was felt that some indication should be given to the General Assembly concerning the special significance attached to the establishment of the proposed committee, which should not necessarily be subject to the existing financial regulations of the United Nations.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
GA (V)	3rd Com., 300th mtg.	Annexes, a.i. 63, A/C.3/534, para.22	
CHR (VII)	E/CN.4/SR.215, 240, 243	E/CN.4/530, paras. 26, 52, 560/Rev.1, 617, 627, 627/Add.1; ESC (XIII), Suppl. 9, para. 81, and annex I, art.50	
CHR (IX)	E/CN.4/SR.354, 355, 409	E/CN.4/L.232, 240, 264; ESC (XVI), Supp. 8, paras. 140-142, annex I B, art. 35, and annex III, paras. 120-122	50

ARTICLE 36

Secretary and staff of the committee

1. The Secretary of the Committee shall be a high official of the United Nations, elected by the Committee from a list of three names submitted by the Secretary-General of the United Nations.

2. The candidate obtaining the largest number of votes and an absolute majority of the votes of all the members of the Committee shall be declared elected.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the Committee and its members; the staff shall be part of the United Nations Secretariat.

40. The discussion on this article related to the method of appointment of a secretary of the committee and to the provision of staff and facilities for it. A provision that the secretary of the committee "shall attend its meetings, make all necessary arrangements, in accordance with the committee's instructions, for the preparation and conduct of the work, and carry out any other duties assigned to him by the committee", was deleted, because it was considered that these purely administrative matters could be left to be worked out between the committee and its secretary.

Appointment of the secretary[9/]

41. It had been envisaged that the secretary would be appointed by the Secretary-General of the United Nations with the approval of the committee. When it was decided to have the members of the committee elected by the International Court of Justice, it was also decided to have the secretary appointed by the

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9/ E/CN.4/SR.190, 200, 212, 239, 354, 409; E/CN.4/474, art. 12, 530/Add.1, para.16, 560/Rev.1, 620, 675, paras. 5-7; E/CN.4/L.227, 232, 264; E/1992/Add.1; ESC (XVI), Suppl.8, paras. 131-136, and annex III, paras. 100-106; GA (VI), 3rd Com., 360th mtg.

Court from a list of three names submitted by the committee. This was replaced by the present text under which the secretary of the committee is to be a high official of the United Nations elected by the committee from a list of three names submitted by the Secretary-General.

42. The opinion was expressed that the committee would be set up under the auspices of the United Nations and it was proper that its secretary should be a person nominated by the Secretary-General from persons occupying senior posts in the Secretariat. Reference was made to the opinion of the Secretary-General, who had stated that, while the committee would have full independence of action in dealing with the substantive and technical matters in which it was engaged, the appointment of the secretary should be made from among the senior staff of the United Nations Secretariat, and that, for all administrative purposes, the committee's secretary should be subject to the authority of the Secretary-General and governed by the staff rules and regulations of the Organization. It was felt, however, that in view of the important duties which would devolve upon the secretary, it was necessary that the committee itself should have a voice regarding the choice of its secretary. While a proposal for the appointment of the secretary by the Secretary-General was rejected in favour of the election by the committee, preference for election by the Court was still voiced, on the grounds that the secretary would play an important part in preparing and examining cases coming before the committee and that, therefore, the procedure in respect of his election should be similar to those laid down for election of the committee members. It was also stated that the present text did not offer an absolute guarantee of independence because it restricted the committee's choice to the three candidates proposed by the Secretary-General.

43. Paragraph 2 of the article requires that election of the Secretary should be by "an absolute majority of the votes of all the members of the committee". It was considered that a matter of such importance should not be decided by a small majority, which might be the case, if only a bare quorum of the committee were present.

Staff and facilities for the committee[10/]

44. The provision that "the staff shall be part of the United Nations Secretariat" was added at the end of paragraph 3 of the article in order to make it clear that the staff would be part of the United Nations Secretariat. This wording was preferred to "drawn from the United Nations Secretariat," as being less ambiguous. Reference was made, in this connexion, to the observation of the Secretary-General that the creation of new small autonomous units would not be consistent with the wishes of the General Assembly to provide a centralized Secretariat. The provision was opposed on the grounds that it was wrong in principle to prescribe that expenditure, which would affect only certain Member States, should be met out of the United Nations budget as a whole, unless all Members were to become parties to the covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.190, 200	E/CN.4/474, arts. 12, 18, 19; ESC (XI), Suppl. 5, annex I, arts. 30, 36, 37	
CHR (VII)	E/CN.4/SR.212, 239, 240, 243, 249	E/CN.4/560/Rev.1, 617, 620, 627, 627/Add.1; ESC (XIII), Suppl.9, paras.79, 82, and annex I, arts. 44, 49, 51	30, 36, 37
ESC (XIII)		E/1992/Add.1	44, 49, 51
GA (VI)	3rd Com., 360th mtg.		44, 49, 51
CHR (VIII)		E/CN.4/530/Add.1, para. 16	44, 49, 51
CHR (IX)	E/CN.4/SR.354, 355, 409	E/CN.4/675, paras. 5-7, L.227, 232, 264; ESC (XVI), Suppl.8, paras.131-139, annex I B, art.36, annex III, paras.100-106, 123-124, 166-167, and annex VII A	44, 49, 51

10/ E/CN.4/SR.190, 200, 243, 249, 355; E/CN.4/474, art.19, 560/Rev.1, 627, 627/Add.1, 675, paras. 5-7; E/CN.4/L.232; E/1992/Add.1; ESC (XVI), Supp.8, paras. 137-139, and annex III, paras. 123-125.

ARTICLE 37

Meetings of the committee

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet:

(a) At such times as it deems necessary;

(b) When any matter is referred to it under article 40;

(c) When convened by its Chairman or at the request of not less than five of its members.

3. The Committee shall meet at the Headquarters of the United Nations or at Geneva.

45. This article lays down the methods for convening the committee. Questions were raised whether the article should not contain a specific provision whereby the committee, if so empowered, could be convened to deal with other matters than those contemplated, and whether paragraph 3 was intended to provide for a fixed place of meeting.

46. The view was expressed that it was desirable to include an explicit provision for convening the committee in case the latter were empowered to deal with matters other than those contemplated in the covenant, for example, by a protocol which mi ht provide for the consideration by the committee of petitions from individuals and non-governmental organizations. It was felt, however , that the initiative given to the Chairman in paragraph 2 (c) would take care of such eventualities.

47. Varying opinions were expressed concerning the meeting place of the committee. Proposals aimed at changing paragraph 3 of the article to provide that the committee shall "normally" meet at Headquarters or at Geneva, or that the committee shall meet at these places "unless it is impossible", were rejected. According to one view the committee could only meet at the Headquarters of the United Nations or at Geneva. Another opinion was that paragraph 3 did not specifically prohibit the committee from meeting elsewhere.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR. 190, 200	E/CN.4/474, arts. 13 and 17; ESC (XI), Suppl. 5, annex I, arts. 31, 35	
CHR (VII)	E/CN.4/SR.239	E/CN.4/560/Rev.1, 617, 620; ESC (XIII), Suppl. 9, annex I, arts. 45, 48	31 35
CHR (IX)	E/CN.4/SR. 354, 409	E/CN.4/675, para. 23, L. 264; ESC (XVI), Suppl. 8, annex I B, art. 37, and annex III, paras. 107-108, 118-119	45 48

ARTICLE 38

Solemn declaration by members of the committee

Every member of the committee shall, before taking up his duties, make a solemn declaration in open committee that he will exercise his powers impartially and conscientiously.

This article was included to stress, both for the members themselves and for public opinion, the importance and seriousness of the committee's responsibilities. The text of the article follows closely that of article 20 of the Statute of the International Court of Justice

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.354	E/CN.4/L.238; ESC (XVI), suppl.8, paras. 129-130, annex I B, art. 38 and annex III, paras. 109-110	

ARTICLE 39

Election of officers and rules of procedure

1. The Committee shall elect its Chairman and Vice-Chairman for the period of one year. They may be re-elected. The first Chairman and the first Vice-Chairman shall be elected at the initial meeting of the Committee.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Seven members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present; if the votes are equally divided the Chairman shall have a casting vote;

(c) If a State refers a matter to the Committee under article 40,

(i) Such State, the State complained against, and any State Party to this Covenant whose national is concerned in such matter may make submissions in writing to the Committee;

(ii) Such State and the State complained against shall have the right to be represented at the hearing of the matter and to make submissions orally;

(d) The Committee shall hold hearings and other meetings in closed session.

Election of officers[11]

49. It was suggested that paragraph 1, the first two sentences of which were based on article 21, paragraph 1 of the Statute of the International Court of Justice, might be confined to stating that the committee shall elect its chairman and vice-chairman. A provision concerning rotation of these offices amongst the members of the committee was considered inappropriate, but a

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11/ E/CN.4/SR.239, 354; E/CN.4/530, para. 45, 560/Rev.1, L.227; ESC (XIII), Suppl. 9, annex III, paras. 111-113; GA (V), annexes, a.i. 63, A/C.3/534, para. 21.

provision concerning eligibility for re-election was included. It was also thought necessary to maintain the provision concerning the election of the first officers at the "initial meeting" of the committee, in order that the organization of the committee could proceed smoothly.

Method of voting[12/]

50. A proposal was submitted that decisions of the committee should be made by a majority vote of "the members present and voting". It was pointed out, however, that in the General Assembly decisions were sometimes taken by very small majorities, owing to large numbers of abstentions. In order to provide against such an occurrence in the case of the committee, the words "and voting" were deleted.

Oral and written submissions by States to the committee[13/]

51. There was no opposition to the inclusion of provisions that States concerned in a matter referred to the committee under article 40 should have the rights of being represented at the hearings and to make submissions orally and in writing. Opinion, however, varied as to whether other States parties to the covenant should have the right to make written submissions. Among the suggestions were that all States parties to the covenant should be permitted to exercise this right, that the right should be restricted to States parties "having an interest in the case", that the right should be granted only to a State party "whose national is concerned" in a dispute, and that no provision at all should be included. Paragraph 2 (c) of the present draft provides that written submissions may be made only by a State party "whose national is concerned in a dispute".

52. In support of allowing all States parties to make written submissions, it was contended that, although indiscriminate intervention was not to be encouraged, all States parties would have an interest in matters referred to the committee

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12/ E/CN.4/SR.190, E/CN.4/474, art. 15.

13/ E/CN.4/SR.190, 200, 239, 354, 387; E/CN.4/474, art. 15, 560/Rev.1, 620, T..227; ESC (XI), suppl. 5, annex I, art. 33, (XIII), annex I, art. 47,

and they should not be prevented from giving their views on the meaning of the covenant which might help the process of conciliation. Furthermore, for fact-finding purposes, information furnished by other States parties would be of material benefit to the committee. It was most unlikely that such a procedure would lead either to undue publicity or make the task of the committee more difficult.

53. Restrictions on the provision were felt advisable by those who considered that it was undesirable to give undue publicity to cases, or to subject the committee to undue pressure, or to jeopardize the position of the committee as a conciliation body. It was thought, therefore, that the right should be restricted to States parties submitting a claim that they had an interest in a case. Such a procedure would also leave the committee free to decide which States parties had an interest in each case. Those favouring the present text felt, however, that this would leave too much discretion to a State party and would not allow the committee to fulfil its functions in the conditions best fitted to achieve successful results. Moreover, there was no reason why a State party which merely took an interest in a dispute but had not followed all the prescribed procedures should be allowed to intervene in the proceedings at a stage that might be crucial.

54. Another opinion favoured the omission of all such provisions. The committee should be left to decide whether a State party that was not directly concerned in a dispute could intervene. It was also pointed out that it would be preferable that any State which considered that it had an interest in a case should lodge a complaint and thus become a party to the dispute. Otherwise political considerations might be introduced into the handling of the case. Moreover, it was dangerous to specify that a third State whose national was involved in a dispute between other States could intervene, as this might be in favour of one of the parties to the dispute. The latter view was objected to, however, as restricting the right of a State to protect its nationals.

Participation of a national of a State in a dispute before the committee[14/]

55. The opinion was expressed that it would be desirable to include a provision, similar to that of Article 31 of the Statute of the International Court of Justice, that if the committee included no person of the nationality of the parties to a dispute, each of them should proceed to choose a person to sit in the committee with the right to vote, such person being chosen from those nominated as candidates for regular election. If there were several parties concerned, they were, for the purpose of the provision, to be reckoned as one only, any doubt being resolved by the committee. It was claimed that, if such provisions were made in judicial matters, there was all the more reason for making it in connexion with a body that would essentially be concerned with conciliation. Although the members of the committee would no doubt perform their work with absolute integrity, some inequality as between sovereign States might result in a case where a national of one party to the dispute was a member of the committee and no national of the other was a member. The committee should have every assistance in examining facts and reaching conclusions. There was thus much to be said for the presence in the committee of a person able to gauge the situation in the country whose case was under consideration, especially as the choice of the national would be limited to those nominated for regular elections to the committee.

56. It was considered, on the other hand, that violations of human rights, and international concern therein, should not be subject to national interests and considerations. Members of the committee, once elected, were expected to act as independent and impartial individuals, not as national representatives. It did not seem proper to allow a State which had violated a human right to sit as its own judge and to provide for the possibility that his vote might decide the issue. There was also a difference between the functions of the International Court of Justice and the committee, the latter being merely a conciliation body having no power to deliver judgments. It was not necessary to have in a conciliation body persons of the same nationality as the parties

14/ E/CN.4/SR.190, 239, 387; E/CN.4/474, art. 16, 530, para. 49, 530/Add.1, para. 27, 556, L.228; E/AC.7/SR.149, E/2059/Add.2 and Add.5; ESC (XI) suppl. 5, art. 34, (XIII), suppl. 9, para. 78 and annex II, (XVI), suppl. 8, paras. 181-184, annex III, paras. 175-176; GA (VI), 3rd Com., 371st mtg.

to a dispute, so long as the latter were represented and allowed to make oral and written submissions as had been provided under article 39, paragraph 2 (c), of the covenant. Besides, the proposals envisaged inclusion of representatives in the committee whose appointment would be entirely different from that followed for members of the committee; in such a case political elements might be introduced into the committee, thereby destroying the balance of its composition and affecting its spirit. Moreover, when a dispute involved a number of States there would be danger of the committee being considerably enlarged, possibly giving rise to situations where it would include as many additional members as the regular members. On the other hand, if several interested States were to nominate only one person, they might justifiably object to the curtailment of their rights, once the idea of participation of national members was accepted.

57. Another point of view was that article 39, paragraph 2 (c), should satisfy the legitimate concern of States, and any fears should be allayed by the fact that under articles 28 and 38 the members of the committee were sworn to independence and impartiality of action. Indeed, if there were any doubt, it would be better and more appropriate to prescribe that a member of the committee who was a national of a State concerned in a dispute should not participate in the committee's deliberations on that matter.

58. The present draft does not include any provision relating to the participation in the committee of a national of a State party to a dispute before the committee.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.190-200	E/CN.4/474, arts. 14, 15 and 16; ESC (XI), suppl. 5, annex I, arts. 32, 33, 34	
ESC (XI)	E/AC.7/SR.149, 150	E/L.68, paras. 113-117	32,33,34
GA (V)	3rd Com., 301st mtg.	Annexes a.i. 63, A/C.3/534, para. 21	32, 33
CHR (VII)	E/CN.4/SR.210, 214, 239	E/CN.4/530, paras. 44-51, 550, 556, 560/Rev.1, 566, 617, 620; ESC (XIII), suppl. 9, para. 78, annex I, arts. 46, 47, and annex II	32, 33, 34
ESC (XIII)		E/2059/Add.2 and Add.5, E/C.2/299	
GA (VI)	3rd Com., 371st mtg.		
CHR (VIII)		E/CN.4/530/Add.1, para. 27	
CHR (IX)	E/CN.4/SR.354, 387, 409	E/CN.4/675, paras. 21-22, L.227, 228, 245, 264, 264/Add.1; ESC (XVI), suppl. 8, paras. 177-184, annex I B, art. 39, and annex III, paras. 111-117, 175-176	46, 47

ARTICLE 40

Jurisdiction of the human rights committee

1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, or pending, or available in the matter.

2. If the matter is not adjusted to the satisfaction of both Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Secretary of the Committee, and to the other State.

3. Subject to the provisions of article 41 below, in serious and urgent cases the Committee may, at the request of the complaining State, deal expeditiously with the matter on receipt of that request in accordance with the powers conferred on it by this part of the Covenant and after notifying the States concerned.

59. This article prescribes the procedure which is to be followed in the event of a violation of a provision of the covenant. Discussion centred mainly on the question whether the right to initiate proceedings before the committee should be confined to States parties or whether the committee should be empowered to act on its own initiative or to receive petitions or communications from individuals, groups of individuals and non-governmental organizations.

60. Other questions discussed concerned recourse to the committee on matters arising out of article 1 of the draft covenant and the procedure to be followed in serious and urgent cases.

Initiation of proceedings

61. Opinion was deeply divided concerning the right to initiate proceedings before the committee. Some held that only States should be allowed to appeal to the committee. Others proposed various ways of enlarging the right to initiate proceedings. In resolution 421 F (V) the General Assembly requested the

Commission on Human Rights to consider provisions "to be inserted in the draft covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the covenant". Again, by resolution 737 B (VIII), the Assembly transmitted to the Commission a proposal requesting it to draft "provisions recognizing the right of petition of every natural person, every duly constituted group of individuals and every recognized non-governmental organization", for inclusion in the covenant in accordance with the decision of the General Assembly in its resolution 421 F (V) mentioned above. All proposals, which would extend the right to initiate proceedings, were either rejected or withdrawn. These included a proposal for a separate protocol[15] on petitions from non-governmental organizations, groups of individuals and individuals. A proposal for the appointment of a high commissioner (attorney-general) for human rights[16] was not discussed in any detail.

62. Those who considered the procedure of the human rights committee contrary to national sovereignty, to international law and to Article 2, paragraph 7, of the Charter opposed all procedures concerning complaints. In their view, each State party should make every effort to fulfil its oblightions under the covenant, but no State party should set itself up as a judge of the domestic actions of another. The right of individuals and groups to complain against violations or their rights at the national level and the duty of States parties to ensure remedies for such violations were fully recognized in article 2 of the draft covenant. The Charter permitted petitions only in the case of trust territories, which did not relate to Sovereign States. Nor could the minorities system of the League of Nations be cited as a precedent, because that system had been imposed unilaterally on certain States.

15/ See 81-83 below.

16/ See 84-86 below.

Complaints by States and the right of petition

63. Opposition to any extension of the right to initiate proceedings beyond that provided in article 40 was raised on a number of grounds. In the first place, it was contended that only States were subjects of international law. Secondly, it was considered that the provisions of the covenant would be fully safeguarded by a system of State-to-State complaints. Thirdly, it was argued that international responsibility for the promotion of human rights was relatively a recent development, and it would be unwise to allow other means of initiating proceedings which might not be acceptable to many countries.

64. The opinion was expressed that the unit of international organization was the State, and international law was basically inter-State law. International law also recognized the sovereign equality of States. There was no general acceptance of any theory of supra-national authority. The position of individuals and non-governmental organizations in international law was not yet established. While the legitimate interests of the United Nations arising out of Charter provisions on human rights could not be questioned, the obligations of States to co-operate under the Charter in no way implied, apart from the trusteeship system, the automatic recognition of the right of petition of individuals and non-governmental organizations. The covenant would be an international treaty imposing reciprocal obligations on States; responsibility for the observance of its provisions should rest with States. Other methods of initiating proceedings would go beyond what was commonly recognized by international law. These methods might violate the sovereignty of States. They might also infringe the principle of sovereign equality of States, since States not parties to the covenant might invite individuals or non-governmental organizations to submit complaints against State parties.

65. There were also no reasons for doubting that States parties would fulfil their obligations. There was nothing to prevent them from taking up cases of violations of the provisions of the covenant. In most cases, States parties would be able to settle disputes by direct diplomatic negotiations, and they could be relied upon to see to it that any charges brought before the committee were strictly confined to a violation of the covenant.

66. Ideally, the right of individuals, and at least of non-governmental organizations, ought to be recognized internationally as it was done nationally. However, the international community was not sufficiently developed that the right of petition could be granted immediately without fear of its being abused. Great harm might be done to States and even to the United Nations by a mass of irresponsible and mischievous allegations made for political or propaganda purposes. All persons suffering from a sense of injustice were likely to submit complaints, thereby paralyzing the entire machinery of implementation, and it was doubtful whether adequate safeguards could be provided. Any disappointment which the public might feel as a consequence of the omission of the right of petition would not equal the failure, which might come about as a consequence of the inclusion of such a provision, in securing ratifications by many States. This failure might, in effect, prevent the entry into force of the covenant. Consequently, it was necessary to examine the operation of the covenant in practice and to consider at some future time the desirability of permitting the right of petition within certain well-defined limits.

67. On the other hand, the opinion was expressed that international law was not as restrictive as was claimed, that the problem of implementation had to be examined not only from the point of view of the rights of States but also from that of the individual whose rights were being guaranteed, and that complaints from States only would not ensure effective enforcement of the provisions of the covenant.

68. It was contended that the theory that international law was concerned only with States was not unchallenged. Member States of the United Nations, themselves, had recognized the position of the individual in signing the Charter. The League of Nations procedure for protection of minorities and the Upper Silesian system were examples which showed that individuals enjoyed some standing before international bodies. The unit of international organization was not always the State. For instance, the International Labour Organisation membership comprised representatives of governments, employers and employees. There were the Nüremberg trials, the recent attempts at drafting a statute for an international criminal court, and the two draft conventions on the elimination and reduction of statelessness proposed by the International Law Commission. Regional organizations

and agreements, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognized the position of the individual. Moreover, several authors of distinction had abandoned the view that international law was exclusively inter-State law. Apart from other examples, in the very terms of the covenant the individual was plainly a subject of international law, and its purpose was to protect him against abuse of power by the State.

69. The view was expressed that restriction on national sovereignty was an unavoidable concomitant of the covenant, but each State would be free to accept the covenant or not. What was involved was a voluntary relinquishment of some national sovereignty and not an invasion of it. Of course, every precaution should be taken in drafting the covenant in order to avoid adverse repercussions on the judicial and administrative processes of individual States. In fact, article 41 of the draft covenant, requiring prior exhaustion of domestic remedies before action by the human rights committee, was motivated by that consideration.

70. The covenant was unique in that States parties were to undertake specific obligations toward their own nationals. Violations of those obligations would not be the same as in the case of other types of conventions which were self-regulating in the matter of implementation and where a breach of any commitment by a State party adversely affected other States parties and impelled them to take retaliatory measures. A violation of the covenant by a State party would not cause immediate and direct injury to other States parties. The damage would be mainly moral, and States were unlikely, therefore, to intervene. Past experience, especially of the minorities system of the League of Nations and the complaints procedure under the ILO constitution, demonstrated that intervention of States to redress violations of human rights, even under treaty obligations, had been negligible and rarely fruitful. It might also be argued that since States could already bring cases of violations of human rights to the United Nations, there was no need for any implementation measures at all unless they included other means of initiating proceedings.

71. It was observed that, without provision for additional machinery going beyond State-to-State complaints, the covenants would not be effectively implemented. States would be unwilling to interfere in matters which did not concern them or

their own citizens, and they would, in general, be reluctant to lay charges against other States, especially against those with whom they were in friendly relations or bound by political, economic or other ties and agreements. A State might also be chary of accusing another State either because of a desire to remain on good terms with that State or for fear of retaliation. In other cases, States might sponsor complaints for propaganda purposes to stir up trouble in other States, and if the relations between two States were strained, any complaint made by one against the other might be viewed with some skepticism. The unlikelihood of States taking the initiative had been borne out by the fact that the atmosphere had not been favourable to a proposal put forward for insertion in the covenant of a special article to the effect that States parties would not consider any steps taken by another State party under article 40 as an unfriendly act.

72. A system based solely on State complaints might, moreover, endanger international peace and understanding, raise difficulties for aggrieved citizens by requiring them to secure the assistance of foreign governments, and result in tension and conflicts. Political factors and considerations of national prestige might also be introduced into disputes. In this connexion, mention was made of minorities, who might be compelled, if dissatisfied, to seek the support of a foreign State with all the grave consequences of such action. In some cases, such complaints might be used in order to encourage irredenta among the heterogeneous part of a population, which might turn the covenant into an instrument of international strife and controversy.

73. The view was expressed that a covenant which recognized that the rights contained therein derived from the inherent dignity of the human person must give the individual human being the basic right to protest when his dignity was impaired. A special plea was made to allow non-governmental organizations having consultative status with the Economic and Social Council the right of petition. Non-governmental organizations had played a valuable part in the promotion of human rights, both nationally and internationally. They would of necessity be very cautious in lodging a complaint, because they would be exposed to the criticism not only of their own members but also of the Economic and Social Council, which could deprive them of their consultative status. There were also certain

advantages in granting the right of petition to such organizations. Citizens of a State which infringed the covenant would rarely be in a position to lodge petitions for fear of being charged with betraying and indicting their own governments. If they would only complain through foreign governments, they might expose themselves to the charge of treason and to grave personal danger in their own country. In such cases, international non-governmental organizations, which owed no allegiance to a particular State and which were bound to defend the interests of humanity as a whole, could make a valuable contribution.

Proposals on the right of petition and other means of initiating proceedings

74. Various procedures for extending the right to initiate proceedings before the human rights committee were suggested. Some unconditionally favoured the right of individuals, groups and non-governmental organizations to petition. Some thought that only aggrieved persons directly affected by a violation should have the right. Others felt that the right of petition should be granted to non-governmental organizations or only to certain selected non-governmental organizations, especially those having consultative status with the Economic and Social Council. Another view favoured empowering the committee to act on its own motion. Some advocated that only the right of communicating to the committee should be recognized and that action thereafter be left either to the initiative of the committee or the States parties. One view was that a high commissioner (attorney-general) should be appointed whose duties would be to receive charges from any source with authority to institute proceedings before the committee.[17/]

75. The three proposals mentioned below were rejected, while the fourth, which was the last proposal submitted, was withdrawn. The first text was as follows:[18/]

> The committee may initiate an enquiry on receipt of complaints received either from individuals, or from groups, or from non-governmental organizations.

17/ See also paragraphs 28-30 below.

18/ ESC (XIII), suppl. 9, para. 84.

76. The second proposal was to add the following paragraphs to article 40:[19]

> The committee shall also have the right to take the initiative in cases where it recognizes that non-observance of any provisions of this covenant is serious enough.
>
> The committee shall have the right to receive and consider communications concerning the non-observance of any provision by States parties to the covenant from:
>
> (a) Non-governmental organizations in consultative relationship with the Economic and Social Council;
>
> (b) Groups of individuals and individuals, who are injured parties, through one of the non-governmental organizations referred to in sub-paragraph (a) above.
>
> The committee shall determine the rules concerning the receivability of communications referred to /above/ and obtain the approval of the States parties to the covenant regarding these rules.

77. The third proposal, mainly beaed on the experience of the minorities system of the League of Nations, was as follows:[20]

> The Committee may receive, for information, petitions from persons who complain that they are victims of violations by a State party to the covenant of the provisions of this covenant.
>
> The Committee may, if it sees fit, approach the impugned State in order to clarify the issue and may endeavour to reach a settlement it considers reasonable by semi-official negotiations with the government of that State.
>
> When the issue has been clarified and the results of the committee's intervention communicated to the States parties to the covenant, if one or more of those States considers that it should make a formal charge of violation of the covenant, the committee shall act as a conciliatory organ.

78. The fourth proposal, which was based on the idea that the initiation of proceedings would still be left to States parties, read as follows:[21]

19/ ESC (XVI), suppl. 8, annex III, paras. 132-134.

20/ ESC (XVI), suppl. 8, annex III, paras. 131, 136.

21/ ESC (XVIII), suppl. 7, paras. 229-230.

1. The human rights committee may receive petitions addressed to the Secretary-General of the United Nations from:

(a) Any individual or group of individuals alleging violation of any right recognized in the covenant by the State Party of which the individual or the group are nationals;

(b) Any recognized non-governmental organization alleging violation by any State Party of any of the rights recognized in the covenant.

2. The committee may, if it considers the petitions serious enough to justify the exercise of its conciliatory functions, approach the State concerned with a view to a clarification and settlement of the issue.

3. The committee shall communicate to the States Parties a report on the results of its action taken under paragraph 2.

79. Besides the reasons given against any extension of the right to initiate proceedings, these proposals were criticized on the grounds that they did not cover precisely the question of the rights to be accorded to the individual or the organization, on the one hand, and to the States impugned against, on the other; nor did they deal adequately with questions of procedure and machinery. There were no criteria by which the committee could determine whether a matter was serious enough to justify the exercise of its conciliatory functions. Nothing would be more dangerous than that ex parte statements involving questions of international obligations and responsibilities of States should lead to action by the committee. It was also most undesirable that States parties should receive, in the form of a report by the committee, information which they could use as a basis for making complaints to the committee. Moreover, the proposals by-passed prior diplomatic exchange between the States concerned, which might in most cases lead to settlements of disputes without recourse to the committee, and invited the intervention of the committee from the start.

80. On the other hand, it was considered that there was no real substance in the various arguments advanced against the right of petition. The fear that the right of petition would release a flood of malicious and groundless complaints which might overwhelm the committee and paralyze its actions was not borne out either by the experience of the Trusteeship Council or of the International Labour Organisation. The real objection which could be levelled against the

proposals was the possibility of abuse. While it was impossible to guarantee any right against abuse, there was no reason why adequate safeguards could not be provided. For example, rules governing admissibility and screening of petitions would be provided and, in the view of some, these rules should be approved by the States parties, as well as the committee. Moreover, under the existing provisions of the covenant, a matter could not be brought before the committee until all possible methods of redress within a State had been exhausted. The committee was to be composed of highly qualified and distinguished persons who could be relied upon to show their good sense and independence.

Protocol on the right of individuals, groups and non-governmental organizations to petition

81. The suggestion that any extension of the right to initiate proceedings should be included in a protocol or protocols to the covenant was considered by some to be the most appropriate solution in view of the wide divergencies of opinions. This would make it possible for States which desired to subscribe to a system of individual and non-governmental petitions to do so by becoming parties to the protocol or protocols. At the same time, States which did not wish to go as far as that, but nevertheless wanted to undertake the obligations under the covenant would be free to do so. In that way, advancement in the international protection of human rights would not be unduly postponed.

82. Others doubted whether the proposed procedure would serve any useful purpose. If most Member States refused to recognize the right of petition in the covenant, it was hardly likely that they would change their minds when it came to inserting that right in a separate protocol or that they would be inclined to become parties to such an instrument. Such a procedure was also opposed by those who desired the inclusion of the right in the covenant and by those who considered that right indispensable to the proper implementation of the covenant.

83. A draft protocol[22/] which was submitted, but subsequently withdrawn, was not discussed in any detail.

22/ For text see ESC (XIV), suppl. 4, annex lll A.

High Commissioner (Attorney-General) for Human Rights

84. The proposal for the establishment of a permanent organ known as "the United Nations High Commissioner (Attorney-General) for Human Rights" has been submitted as a separate means of implementing the covenant, as further measures of implementation for inclusion in the draft covenant and as amendments to the draft proposal for a protocol on petitions. The latest proposal was to include the provisions in the covenant and was based, inter alia, on the following principles:[23]

(a) The high commissioner shall be appointed by the General Assembly from nominations made by States parties to the covenant.

(b) He shall collect and examine information with regard to all matters relevant to the observance and enforcement of the covenant by States parties and ask for periodic reports from them on the implementation of the covenant.

(c) He may, with the agreement of States parties concerned, conduct on the spot studies and inquiries.

(d) He may initiate consultation with and make suggestions and recommendations for implementation to States parties.

(e) He may receive and examine complaints of alleged violations of human rights from individuals, national and international non-governmental organizations and inter-governmental organizations under certain conditions, and conduct preliminary investigations on complaints with a view to deciding whether further action was justified.

(f) He may decide to take action on complaints under the procedures prescribed either by negotiation with States parties or by referral of a matter to the human rights committee, if in his opinion negotiations are not likely to result in a satisfactory solution or where negotiations have not resulted in such a solution.

(g) He is to pay due attention to domestic remedies and diplomatic and United Nations procedures.

23/ For text see ESC (XVIII), suppl. 7, annex III. During the second part of the first reading of the draft covenants at the ninth session of the General Assembly the delegation of Uruguay submitted an amendment for the insertion of this proposal in part IV of the draft covenant on civil and political rights. See GA (IX), annexes a.i. 58, A/C.3/L.424.

(h) He is to appoint his own staff and, with the consent of the States parties concerned, he may appoint regional commissioners who shall, under his direction and supervision, assist him in the performance of his functions.

(i) He is to submit annual and, if necessary, special reports to the General Assembly.

85. The opinion was expressed that it was essential to provide for an effective system of implementing the covenant. It was evident that complaints by States would not adequately meet this objective. Nor was there any general agreement on allowing petitions from individuals, groups and non-governmental organizations. Moreover, under the covenant the organized international community assumed certain responsibilities, and in order to carry out that responsibility, the international community should exercise some supervisory functions. Since that could not be done adequately by existing United Nations organs, it seemed appropriate to provide for an international representative who would undertake that task. A practical solution would be to appoint a special representative of the highest standing and independence who would seek satisfactory settlements through negotiations with States concerned and, where sufficient grounds for so doing existed, he would present the case before the human rights committee. Like the public prosecutor in national legal systems, the high commissioner would represent the international community, not the aggrieved persons; however, the latter would submit complaints regarding violations of the covenant through him and not through foreign States. It would allay any legitimate fears concerning the receipt of petitions from other sources than States. While the committee's function was to consider complaints, it could do so satisfactorily only if it were not inundated by complaints and if complaints had been subjected to a preliminary screening and procedure. The proposed procedure would eliminate the difficulties, both political and practical, which had so beset the implementation procedure.[24/]

24/ Attention is drawn to the memorandum submitted by the delegation of Uruguay to the Third Committee of the General Assembly entitled the "Basis of the Proposal to establish a United Nations Attorney-General for Human Rights", in GA (VI), annexes a.i. 29, A/C.3/564.

86. Apart from the objections mentioned above concerning any proposals going beyond State complaints, a number of objections raised against this proposal may be mentioned. One point of view was that the proposal was premature; it was not practical in view of the existing political situation. Some considered that the proposal was both ambiguous and too ambitious. It was ambiguous because it was not clear whether the attorney-general would detract from the position of the human rights committee or strengthen the committee. It was ambitious because it vested in the attorney-general certain extremely important functions, some of which belonged to the Commission on Human Rights, while others would come within the competence of the human rights committee. It was thought that the attorney-general's functions should merely be to prepare the committee's work, to receive complaints and sift them so as to prevent the committee from receiving complaints not within its competence or not in keeping with the general interest. Others felt that petitions could be screened just as impartially by the committee with the assistance, if required, of the United Nations Secretariat. Some thought that in practice the attorney-general would never be able to consider all the complaints, which because of the existence of his office would be received in large numbers, many of them being probably devoid of any true basis. Another opinion was that it was doubtful whether any individual could be found to fill the post adequately. Such a person might also be vested with too much authority. It was preferable to rely on a committee on which all the areas and the different judicial and cultural systems of the world would be represented.

Collection of information and action thereon by the committee[25/]

87. The following proposal, which was rejected, was submitted:

> The committee shall supervise the observance of the provisions of the covenant. In this purpose it shall collect information with regard to all matters relevant to the observance and enforcement of human rights as defined in the covenant within the States parties to the covenant. Such information will include legislation and judicial decisions.
>
> On receipt of information the committee can initiate an enquiry if it thinks necessary.

25/ E/CN.4/SR.191; E/CN.4/474, art. 22 A; ESC (XI), suppl. 5, para. 43 and annex II.

88. In support of the proposal it was pointed out that the functions of the committee under article 40 were extremely limited, and it was doubtful whether the provisions of the covenant would thereby be properly implemented. The proposal would allow the committee to supervise the way in which various States fulfilled the provisions of the covenant. On receipt of information the committee might initiate an enquiry and inform the State concerned that there had been a violation. It was better in that way to prevent a violation of human rights than to repair the damage once a violation had already been committed. It was contended that the information obtainable in the Yearbook on Human Rights was insufficient and that the Commission on Human Rights did not enjoy the necessary power to supervise the observance of the provisions of the covenant.

89. The proposed text was opposed on the grounds that the supervisory functions provided for were too extensive, that the committee's functions should be co-ordinated with the other activities of the United Nations and that it was better to wait until the committee had gained a certain amount of experience and not to jeopardize its chances of working successfully, which would largely depend on the goodwill of States parties. The view was expressed that the committee's limited functions and procedures were incompatible with the proposed power of control. If the committee's tasks were not co-ordinated with the activities of the organs of the United Nations and the Secretariat, it would prejudice the work of all. It was pointed out that the Yearbook on Human Rights included all the necessary information, and its contents could be changed to include such further material as was thought necessary or useful. The responsibility of the Commission on Human Rights, by virtue of Article 68 of the Charter, which related to all Member States and not only to States parties to the covenant, should also be taken into account. States were unlikely to accept a provision empowering the committee to initiate enquiry without knowing the conditions under which it was to be exercised. Moreover, to authorize the committee to initiate enquiries would prevent it from satisfactorily fulfilling its mission of conciliation.

Provisions concerning future extension of the functions of the committee[26/]

90. On various occasions it was proposed that no provision in the covenant should be construed as preventing the committee from dealing with any matter concerning alleged violations of human rights by a State party to an international instrument, other than the covenant, which recognized the competence of the committee to examine complaints from other States parties to the said instrument or from sources other than States. Such a provision would have recognized the competence of the committee to deal with matters arising out of other international instruments. However, no such proposals were adopted.

91. The possibility of recourse to the good offices of the committee should not be ruled out, it was urged, in cases where States felt that the committee, though unconnected with other instruments to which they were parties, would provide them with guarantees of independence. Since, moreover, provisions relating to petitions from individuals, groups and non-governmental organizations were not likely to be approved now or ratified by any substantial number of States, the door should at least be left open for a possible future recognition of the competence of the committee to consider complaints from such sources to the extent that States would so agree in other instruments.

92. On the other hand, the opinion was expressed that there was no reason for including such a provision, since there were no obstacles to bar future agreements, such as a protocol to the covenant concerning petitions and because the United Nations, which in any event would have to authorize the extension of the committee's functions, would always be free to take such steps as it deemed feasible and appropriate. There was also the possibility that general provisions along the lines contemplated might be misconstrued and there might be possible conflicts in interpretation. Moreover, it would be necessary to specify the manner in which the committee would exercise its new functions and the scope of the competence with which it would thus be invested.

26/ E/CN.4/SR.243, 245, 249, 344, 357, 360, 385, 386, 434-437; E/CN.4/560/Rev.1, 617, 633, 634, 634/Rev.1; E/CN.4/L.235/Rev.3, 278, 342, 342/Rev.1; ESC (XIII), suppl. 9, para. 85 and annex II; ESC (XVI), suppl. 8, para. 175 and annex III, paras. 169, 173; ESC (XVIII), suppl. 7, paras. 231-232, 241-242.

Matters relating to the right of self-determination[27/]

93. Opinion was divided on the question whether the committee should be empowered under article 40 to consider matters arising out of article 1 of the draft covenant which relates to the right of self-determination. A proposal to exclude matters arising out of article 1 from being submitted to the committee was, however, rejected.

94. In support of the exclusion of article 1 from the purview of article 40, it was urged that a distinction should be made between rights of individuals concerning their relations with their own government or with another government, and collective rights involving grave international political problems, such as the right of self-determination. It was pointed out that a conciliation committee of a non-political nature composed of members specializing in questions of individual rights would possess neither the qualifications nor the means to deal with disputes arising out of the right of self-determination. It was emphasized that in the past such disputes had led to many upheavals and annexations by other than peaceful means, and questions relating to national unity and even the continued existence of States might be involved. The committee could hardly deal with such questions as the secession and the reunion of peoples, such questions being of a different nature from those relating, for example, to matters arising out of the right to a fair trial or to non-discrimination. Moreover, implementation of the principle of self-determination had to be considered in the light of the Charter provisions, including the powers of other United Nations organs, and attempts should not be made indirectly to revise the obligations assumed under the Charter. Those who were opposed to the inclusion of the fight of self-determination in the draft covenant reiterated their view that, while they supported the principle of self-determination, neither article 1 nor the provisions for its implementation laid down in article 40 belonged properly in the covenant.

27/ E/CN.4/SR.355, 356, 357, 358, 359, 360, 361; E/CN.4/L.235/Rev.1, 244; ESC (XVI), suppl. 8, paras. 157-164, and annex III, paras. 126, 128, 137. See also under article 48.

95. On the other hand, the view was expressed that there was no reason why a distinction should be made between the right of self-determination and other rights of a political nature included in the covenant. It was contended that the members of the committee were to be persons of the highest impartiality and distinction, and there was no reason why the committee should not be entrusted with the implementation of one of the most fundamental human rights in the covenant. Attention was drawn in particular to article 1, paragraph 3, providing for permanent sovereignty of peoples over their natural wealth and resources, which stipulated that "in no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States". It was considered that the committee should certainly be empowered to consider breaches of that provision. It was pointed out that, in any case, under the proposed procedure the committee's activities were limited to ascertaining facts and drawing conclusions. It did not include the carrying out of any investigations or the making of any recommendations.

Serious and urgent cases[28/]

96. It was suggested that in cases of grave urgency where lives, liberties and other rights of persons were directly threatened and it was necessary to stop an infringement of the covenant, the committee should be enabled to take speedy and effective action and it should be permitted to deviate from the procedure envisaged in articles 40 to 43. It was pointed out that by the time the procedure under these articles was fully applied two years might elapse and the harm done by the infringement might be beyond repair and redress. While the view was expressed that article 41 concerning the exhaustion of domestic remedies should not be applicable in such cases, since it might prevent the committee

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28/ E/CN.4/SR.209, 210, 211, 212, 214, 240, 355, 356, 358, 359, 361; E/CN.4/515/Add.6, 530, para. 71, 530/Add.1, para. 28; 552, 569, 617/Corr.1, 702 no. XIX; E/CN.4/L.227, 235/Rev.1, 246; E/CN.4/NGO 21, 24, 49; ESC (XIII), suppl. 9, para. 83, ESC (XVI), suppl. 8, para. 165-167, and annex III, paras. 126, 130, 137; GA (V), annexes a.i. 63, A/1559, paras. 17, 54; GA (VI), 3rd Com., 360th mtg.

from giving immediate effect to the provisions of the covenant, it was pointed out that much harm might result if the committee were asked to invervene in a dispute which was still before the courts on the country immediately concerned and that nothing should be done to undermine the various systems of national justice.

97. As a result of these opinions a text was adopted whereby, subject to the provisions of article 41, "in serious cases where human life was endangered", the committee was, at the request of a State party, to "deal forthwith with the case on receipt of the initial communication and after notifying the States concerned". The phrase "in serious cases where human life was endangered" was subsequently replaced by "in serious and urgent cases", which is contained in paragraph 3 of the present text. The provision identifying serious cases with cases in which human life was endangered was considered too restrictive. It was suggested that the procedure should be resorted to immediately whenever human rights were seriously menaced. It was pointed out, on the other hand, that the kind of special procedure contemplated should apply only to the exceptional case where there was a grave threat to human life, since any violation of the covenant could be considered a serious and urgent matter. Besides, the committee would find itself in an impossible position if States could, on the sole plea of urgency, disregard the normal procedure of diplomatic negotiations envisaged in article 40.

98. The phrase "in accordance with the powers conferred on it /the committed/ by this part of the covenant" was included in order to avoid any interpretation empowering the committee to take summary action on an ex parte allegation by one State. While the matter was to be dealt with expeditiously, it was to be dealt with according to the powers conferred upon the committee in the draft covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (II)	E/CN.4/SR.38, 39; E/CN.4/AC.4/SR.3, 5-7	E/CN.4/37, 51, 53, 53/Corr.1, E/CN.4/AC.4/1; ESC (VI), suppl. 1, annex C	
DC (II)	E/CN.4/AC.1/SR.20	E/CN.4/AC.1/19, 27	
CHR (III)	E/CN.4/SR.73, 81	E/CN.4/82/Adds. 2, 3, 6, 7, 12, 85, 89, 92, 93, 145, 147, 151, 153, 154, 154/Corr.1; ESC (VII), suppl. 2, annex C	
ESC (VII)		E/C.2/88, 98	
CHR (V)	E/CN.4/SR.90, 105, 110, 110/Corr. 1-2, 114, 115, 118, 118/Corr.1, 119, 132, 133, 135	E/CN.4/168, 170, 274/Rev.1, 276, 292, 293, 299, 327; ESC (IX), suppl. 10, paras. 21, 22, annexes II and III	
ESC (IX)		E/C.2/185, 190, 202, 211	
ESC (X)		E/C.2/239	
CHR (VI)	E/CN.4/SR.168, 169, 176-178, 190, 191, 200	E/CN.4/353/Adds. 1-9 and 11, 358, paras. 55-59, 366, 419, 444, 452, 457, 462, 469, 474, NGO/4-8, 13; ESC (XI), suppl. 5, paras. 35, 37, 43, 52, 53, annex I, art. 38, and annex II	
ESC (XI)	404th mtg.; E/AC.7/SR.147, 149, 150; E/C.2/SR.79, 80, 83, 95	E/L.68, paras. 102, 118-119; E/C.2/254/Add.1, 259/Add.1, 276	38

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Article number
GA (V)	317th mtg.; 3rd Com., 290th, 291st, 300th, 301st, 314th, 315th, 318th mtgs.	Annexes, a.i. 63, A/1559, paras. 16 and 54-60; A/C.3/534, para. 19; A/C.3/L.81, 91, 91/Rev.1, 93	38
ESC (XII)	439th, 440th mtgs.		38
CHR (VII)	E/CN.4/SR.209-212, 214-215, 240, 243, 245, 248	E/CN.4/515/Add.6, 8 and 12-16, 530 paras. 53-58, 64, 67, 71, 76, 85-105, 552, 555-557, 559, 559/Rev.1, 560, 560/Rev.1, 561, 561/Rev.1, 564, 569, 606, 606/Rev.1, 617, 617/Corr.1, 621, 632-634, 634/Rev.1, NGO/17, 20, 21, 23-27, 29, 31, 32; ESC (XIII) suppl. 9, paras. 26, 28, 70, 83, 84, 85, annex I, art. 52, and annexes II, V and VII	
ESC (XIII)	523rd-525th mtgs. E/C.2/SR.104, 106	E/C.2/299, 315-317	52
GA (VI)	3rd Com., 360th-361st, 363rd-370th, 405th-409th mtgs.	Annexes, a.i. 29, A/2112, paras. 30-33, 74-89, A/C.3/564, A/C.3/L.195, 195/Rev.1-2, 196, 196/Rev.1-2	52
CHR (VIII)		E/CN.4/530/Add.1, paras. 17-22, 28, 50-64, 641, annex II, 660, paras. 50-70, 72-74, NGO/34, 35	52
ESC (XIV)	665th mtg., E/C.2/SR.121		52

DOCUMENTATION (cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.343-345, 355-362, 385, 386 409	E/CN.4/670, para. 63, 675, L.227, 231, 235, 235/Rev.1, 244, 246, 252, 252/Rev.1, 254, 264, 278, NGO/45, 47-49; ESC (XVI), suppl. 8, paras. 28, 143-167, 175, annex I B, art. 40, annex II D, and annex III, paras. 126-137, 169, 173	52
ESC (XVI)	E/C.2/SR.131	E/C.2/354, 365	40
GA (VIII)	3rd Com., 503rd-506th, 508th-509th, 523rd-524th mtgs.	Annexes, a.i. 12, A/C.3/L.366, 374, 388, A/2573, paras. 81-84	40
CHR (X)	E/CN.4/SR.434-437, 479	E/CN.4/694/Add.3, 694/Add.6, 696, 702 nos. III, VI, VII, XII, XIV, XVI, XVII, XVIII, XIX, XX, XXI, XXIII, 702/Add.1, nos. XXVII, XXVIII, 702/Add.2 no. XXIX, 702/Add.6 no. XXXIV, L.311, 341, 341/Rev.1, 342, 342/Rev.1, NGO/54; ESC (XVIII), suppl. 7, paras. 36, 38, 226-242, annex I B, art. 40, and annex III	40
ESC (XVIII)	E/C.2/SR.144, 145	E/C.2/410	40
GA (IX)	3rd Com., 562nd, 563rd, 565th-573rd, 575th-576th, 578th-579th mtgs.	Annexes, a.i. 58, A/2808, paras. 32-33, 51	40

ARTICLE 41

Exhaustion of domestic remedies[29/]

"Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case. This shall not be the rule where the application of the remedies is unreasonably prolonged."

99. The phrase "only if domestic judicial and administrative remedies have been invoked and exhausted," was changed to read "only if available domestic remedies have been invoked and exhausted", in order to take account of the fact that there might be remedies other than "judicial and administrative", and cases where there were no available remedies. The word "normally" would also take care of cases in which a State might have failed to act upon complaints, in which domestic remedies, never having been applied, could not be said to have been exhausted. Amendments for substituting the words "resorted to" or "utilized" for the word "invoked" were rejected. The words "unreasonably prolonged", it was explained, should be understood to mean "prolonged beyond the time actually necessary in practice for the investigation of a complaint". It was also explained that the human rights committee would determine, before taking action on a matter, whether available remedies had been exhausted.

100. The importance of careful drafting of this article was emphasized. On the one hand, reference was made to the advisability of reconciling the requirements of domestic legislation and practices with the covenants on the grounds that, if all countries were to maintain that their domestic legislation and practices had prior validity, the covenants would never be properly implemented. On the other hand, it was pointed out that the authority of national courts and institutions might be prejudiced, if the committee were to act on a matter which could be regarded as legally settled when all available remedies had not only been invoked but exhausted, and if the committee were to intervene in some cases without taking proper account of the actions of national organs.

29/ See also paras. 96-97 above.

101. The view was also expressed that, apart from the exception provided for in the article, the basic idea, which was in conformity with general international practice, was to prevent undue interference by an international authority before domestic remedies, in particular as provided in article 2, paragraph 3, of the covenant, had been applied. This would mean in practice that the international authority could not interfere with or circumvent regular domestic remedies. Moreover, national remedies would not necessarily be by-passed in cases taken up by the committee where the application of the remedies was unreasonably prolonged, because consideration by the committee of such cases might result in the application of domestic remedies, and the committee might not need, consequently, to proceed any further. A suggestion was made, however, that in order to provide a more effective safeguard against undue delay, a maximum time limit for national remedies should be specified in the article.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.190	E/CN.4/474 and Corr.1; ESC (XI), suppl.5, annex I, art. 39	
ESC (XI)		E/L.68, paras. 120-121, E/C.2/259/Add.1	39
GA (V)	3rd Com., 300th-301st mtgs.		39
CHR (VII)	E/CN.4/SR.211, 212, 249	E/CN.4/530, paras. 59-62; ESC (XIII), suppl.9, annex I, art. 54	39
ESC (XIII)	Plen. 523rd mtg.		54
CHR (VIII)		E/CN.4/530/Add.1, para. 25	54
CHR (IX)	E/CN.4/SR.387	ESC (XVI), suppl.8, annex I, art. 41, and annex III, paras. 138-139	54
GA (IX)	3rd Com., 570th mtg.		41

ARTICLE 42

Obtaining of information from States

In any matter referred to it the committee may call upon the States concerned to supply any relevant information.

Obtaining of information from States

102. Discussion on this article was mainly concerned with the question of including a provision concerning the right of the committee to conduct inquiries or investigations. On the existing text itself, there was little discussion, except for the observation that the provision would lead to intervention by the human rights committee in matters which fell exclusively within national jurisdiction.

Inquiries or investigations

103. A proposal was made that, if the committee considered that the information supplied was not sufficient, it might, by a vote of two-thirds of all its members, conduct an inquiry within the metropolitan area or non-self-governing territories in any State against which a complaint was made, and that the State thus complained against should afford full facilities necessary for the efficient conduct of the investigation; it was rejected.

104. In support of the proposal, it was said that the committee should have adequate means to carry out its function of fact-finding and conciliation and that, therefore, it should not only receive information but also verify and supplement it when necessary. It was pointed out that past experience in the United Nations, such as that of the Ad Hoc Committee on Slavery which had sent questionnaires to governments and received inadequate replies, demonstrated that, without an inquiry on the spot, it was impossible to find out the real situation in regard to a particular matter within any country. The proposal, which was of universal application, took account of criticisms made against suggestions for confining inquiries to Non-Self-Governing and Trust Territories, namely, that such a procedure would be discriminatory and might be contrary to Charter obligations. The proposal was permissive and not mandatory. An inquiry

would be instituted only after the Committee considered that a State complained against had not supplied the necessary information and after a decision had been taken by a two-thirds majority of all the members of the committee.

105. The adoption of such procedures was opposed on the grounds that they would infringe upon national sovereignty, would run counter to Article 2, paragraph 7, of the Charter, and might even be contrary to Article 87 of the Charter, which provided for visiting missions to Trust Territories. In the present circumstances, and without some guarantee of reciprocity and universal acceptance, it was not feasible to institute such a new procedure. It might deter ratification of the covenant by States, especially as it did not require the prior consent of the State concerned. Moreover, it was unlikely that such an investigation would be successful in eliciting the facts which a State had refused to disclose. A country which had failed to supply sufficient information would hardly vest the committee by its domestic law with the powers necessary for a successful outcome of the inquiry.

106. The view was expressed, however, that when States ratified the covenant they did so freely and willingly and were presumed to have agreed to such restrictions of their sovereignty as might be implied in the covenant. There was, therefore, no reason to exclude effective methods for international protection of human rights. It was also claimed that general criteria of international law in matters of national sovereignty were not endorsed at San Francisco when Article 2, paragraph 7, of the Charter was adopted. It had been held on many occasions by United Nations organs that matters pertaining to human rights were not essentially within the domestic jurisdiction of States. To the objection that the proposal did not specify the detailed conditions under which inquiries would be conducted, including the manner in which evidence would be taken, it was replied that the committee was not intended to function like a court of law. In any case, the committee was empowered to prescribe its own rules of procedure[30/] and, since its members would be chosen from persons possessing the highest qualifications, it could be relied upon to exercise its powers with complete independence and impartiality.

30/ Article 39, paragraph 2.

107. A suggestion that the decision to conduct an inquiry should be made by a unanimous vote of all the members of the committee was withdrawn for the reason that it would permit any member of the committee to determine the fate of a decision. It was also suggested that inquiries could be conducted with as much success by the States themselves, at the request of the committee, thereby avoiding any encroachment on their sovereignty. But it was doubted whether that method would result in adequate guarantees of impartiality. Another point of view was that it might be better to leave the matter to the State complained against, which would itself have the option, under the existing provisions of the covenant, of asking the committee to arrange to have the allegations investigated on the spot.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.191	E/CN.4/474, art.23; ESC (XI), suppl.5, annex I, art.40	
GA (V)	3rd Com., 300th and 301st mtgs.		40
CHR (VII)	E/CN.4/SR.249	E/CN.4/530, paras.70 and 75; ESC (XIII), suppl.9, annex I, art.55	
GA (VI)	3rd Com. 364th, 369th, 371st, 406th, 407th, 408th, 409th mtgs.	Annexes a.i.29, A/C.3/L.191, 191/Rev.1-Rev.3, and A/2112, para.34	55
CHR (VIII)		E/CN.4/530/Add.1, paras.37-46	55
CHR (IX)	E/CN.4/SR.388, 409	E/CN.4/675, para.28; L.248, 269/Add.1, 280; ESC (XVI), suppl.8, paras.185-189, annex I, art.42, and annex III, paras.185-189	55

ARTICLE 43

Consideration by and report of the committee on a matter referred to it

1. Subject to the provisions of article 41, the Committee shall ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in this Covenant.

2. The Committee shall in every case, and in no event later than eighteen months after the date of receipt of the notice under article 40, draw up a report which will be sent to the States concerned and then communicated to the Secretary-General of the United Nations for publication.

3. If a solution within the terms of paragraph 1 of this article is reached the Committee shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached the Committee shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Covenant. If the report does not represent in whole or in part the unanimous opinion of the members of the Committee, any member of the Committee shall be entitled to attach to it a separate opinion. The written and oral submissions made by the Parties to the case in accordance with article 39, paragraph 2 (c), shall be attached to the report.

108. This article deals with the functions and procedures of the committee in respect of a matter referred to it under article 40. Discussion on the article centred mainly on that part of paragraph 1 which provides that the committee shall make available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in the covenant, and on paragraph 3 which deals with the nature of the report.

Functions of the committee

109. The functions of the committee are to be those of fact-finding and conciliation. Generally, it was emphasized that the work of the committee should not be of a judicial or compulsory character; rather, it should consist in the impartial establishment of facts and the lending of its good offices. A report

on the findings of the committee and the publicity given to it would be an effective means of enforcement, since States might not accept any decision of the committee as mandatory. The opinion was expressed, however, that for the effective implementation of the covenant, the decision of the committee should be mandatory and that it should be authorized to make recommendations or to suggest possible solutions.

110. The last phrase of paragraph 1 provides that the committee shall make available its good offices to the States concerned "with a view to a friendly solution of the matter on the basis of respect of human rights as recognized in this covenant". The chief consideration was to provide for an expression which would give rise neither to uncertainty nor to possible abuse, and would further the observance of human rights. A proposal containing the expression "with a view to a friendly settlement of the matter" was objected to on the grounds that it might permit States concerned to arrive at a friendly agreement, which might not necessarily be based upon the observance of human rights, but which might, for example, be based on their own interests or might be the result of a bargain. Moreover, such a settlement might disregard the individuals whose rights were violated. Other texts, such as "in order to achieve in a friendly spirit a solution of the question in conformity with the human rights defined in the covenant" or "for the determination of the issue of human rights in a spirit of conciliation", were rejected on the grounds that they did not adequately deal with the conciliation functions of the committee or meet the requirement that a solution should be based on respect for the rights and freedoms defined in the covenant.

Reports of the committee

111. According to paragraphs 2 and 3 of article 43 the committee is to draw up a report on a matter referred to it not later than eighteen months after such referral, the kind of report being dependent upon whether "a solution within the terms of paragraph 1" of the article is reached or not, and the report is to be sent to the States concerned and then communicated to the Secretary-General for publication. An additional provision in paragraph 2 requiring the committee to complete its report "as promptly as possible, particularly when requested

by one of the States parties where human life is endangered" was deleted as a consequence of the omission of the words "where human life is endangered" in article 40, paragraph 3, and because the present text of the latter provision was considered as sufficiently covering the objective of prompt consideration of "serious and urgent cases".[31]

112. Where a solution is reached, the committee is to "confine its report to a brief statement of the facts and of the solution reached". Although it was suggested that the committee need not report where an agreement or solution was reached, it was felt that reference to the solution would not only help other States parties but might prevent any future controversy on the precise scope of the solution. A proposal to delete the word "brief" was rejected. It was pointed out that after a question had been settled, there was no need to dwell on all the facts, which might have adverse repercussions on international relations and on the work of the committee. Agreements were very often possible only because of mutual concessions. Undue publicity might make it difficult for governments to make concessions, especially if the details of the matter were to become publicly known in their own countries. Some States might also claim that the facts cited against them were matters within their domestic jurisdiction; but they might be induced, nevertheless, to make concessions, provided the matter did not receive widespread publicity. However, it was contended that all States, and not only those immediately concerned, had the right to be apprised in detail of the facts, especially where there had been an amicable settlement, in order to judge the solution and to know what was and was not a violation of human rights. Nor should the importance which public opinion would attach to any report on the facts concerning violations of human rights be minimized. Without details there might be danger of the spreading of false, distorted or unfair information about the proceedings and conclusions of the committee. Moreover, reliance could be placed on the good sense of the committee which would undoubtedly prevent it from publishing a report likely to harm international relations or to have any adverse effects.

31/ See under article 40.

113. It was originally envisaged that when a solution was not reached, the committee should simply "state in its report its conclusions on the facts". The inclusion in the report of the statements made by the parties to the case was added in order to emphasize the need and importance of a full report on the facts of such cases. It was also felt desirable to make it clear that the committee was required to state in the report its opinion as to whether the facts established a breach of the covenant and, where there was disagreement on that point, to permit, but not to oblige, the inclusion in the report of the minority views, on the lines of Article 57 of the Statute of the International Court of Justice.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.168, 177, 191, 200	E/CN.4/474, art. 24; ESC (XI), suppl. 5, annex I, art. 41, and annex II	
ESC (XI)	E/AC.7/SR.149, 150	E/L.68, paras. 102, 122	41
GA (V)	3rd Com., 300th, 301st mtgs.		41
CHR (VII)	E/CN.4/SR.209, 210, 249	E/CN.4/515/Add.4, 530, paras. 64, 65, 67-74, 556, 565, 617, 617/Corr.1; ESC (XIII), suppl. 9, para. 88, annex I, art. 57	41
ESC (XIV)	665th mtg.		57
CHR (IX)	E/CN.4/SR.388, 409,	E/CN.4/675, L.227, 236, 245, 264/Add.1; ESC (XVI), paras. 190-191, annex I B, art. 43, and annex III, paras. 145-148	57
CHR (X)		E/CN.4/702, No. XIX, 702/Add.1, No. XXIV	43

ARTICLE 44

Advisory opinions from the International Court of Justice

The Commitee may recommend to the Economic and Social Council that the Council request the International Court of Justice to give an advisory opinion on any legal question connected with a matter of which the Committee is seized.

114. Discussion on this article related to the advisability of obtaining advisory opinions from the International Court of Justice and the procedure by which the committee could request such opinions.

115. It was pointed out that, as the human rights committee was not intended to be a judicial body, it should have the possibility of consulting the International Court of Justice on legal questions. This would not institute a system of higher appeal, but would permit the committee to seek the advice of the Court on legal questions, including questions relating to its own competence. However, the view was expressed that such provisions would be unsuited to the committee's purposes. Member States and States parties to the Statute of the International Court of Justice could always approach the Court, if they so wished and agreed, in the event of their being fundamental differences on legal questions. The procedure of the Court was also hardly appropriate for resolving, without undue delay, matters likely to come up in the course of the committee's work. Moreover, should there be a difference between the committee and the Court, it would be undesirable that the opinion of the Court should be in any way subordinated to that of the committee. One suggested solution was that there should be adequate representation on the committee of members with judicial qualifications.

116. Although the question of the committee itself asking advisory opinions from the International Court of Justice was touched upon, it was considered that this would not be possible under the Charter and discussion was concentrated on finding the appropriate channel in the United Nations through which the committee might seek such opinions from the Court. In this connexion, the

Secretary-General was requested to submit a report which, inter alia, contained the following statement of conclusions:[32]

> "(1) The proposed human rights committee would not be an organ of the United Nations or a specialized agency and, therefore, it could not be authorized by the General Assembly to request advisory opinions under Article 96 (2) of the Charter.
>
> (2) It would be contrary to the intent and policy of Article 96 to provide that an organ shall act as a mere intermediary for transmitting to the Court requests for advisory opinions made by the proposed human rights committee.
>
> (3) It would, however, be legally permissible to provide that the proposed human rights committee may make suggestions to a competent organ to the effect that that organ submit a request for an advisory opinion on a legal question arising out of the work of the committee. The organ would in that case retain responsibility as to whether the question shall be presented and the manner of presenting it.
>
> (4) If the proposal in the preceding paragraph is adopted, there would be several United Nations organs which might be empowered to receive the suggestions of the human rights committee and, after considering such suggestions, to submit requests for advisory opinions on legal questions arising out of the committee's work.
>
> (5) The General Assembly and the Economic and Social Council are two such organs, since they are already authorized to request advisory opinions and since they have competence in the field of human rights. In addition, the Commission on Human Rights, which is not presently authorized to request advisory opinions, could be so authorized ... Finally, it would be possible for the General Assembly to entrust the Secretary-General, pursuant to Article 98, with the function of making requests for advisory opinions on questions arising out of the work of the proposed human rights committee, after he takes into account considerations and suggestions made to him by the committee with respect to such requests."

117. The present text of the article designates the Economic and Social Council as the authority to whom the committee is to forward its recommendation for asking advisory opinions from the Court. One view was that to permit the Committee to ask the Economic and Social Council to secure from the Court

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32/ See E/1732. This statement was submitted on the basis of the draft covenant prepared at the sixth session of the Commission on Human Rights, which did not contain, among other provisions, the present article 46.

advisory opinions on matters other than those under consideration by the Council would be contrary to General Assembly resolution 89 (I), which empowered the Council to request such opinions on matters within the scope of its activities.

118. The possibility of approaching the Court through the General Assembly and the Commission on Human Rights was also mentioned and a previous proposal had envisaged that the request might be made through the Secretary-General. The reasons given in support of the latter were that in the case of other organs there might be serious delays owing to the fact that they were not in continuous session, and there might be undue publicity of disputes before decisions were taken. To the objection that the Secretary-General could, under the Charter, only request advisory opinions on matters falling within the scope of his activities, it was replied that the Secretary-General would be fulfilling important duties with regard to the organization and functioning of the committee and there was no obstacle to the General Assembly specifically empowering him to request such opinions from the Court.

119. Another point of view was that any system that might be provided would prove ineffective. Whichever organ was requested to consult the Court could not be bound by any decision of the committee. The organ concerned would have to exercise its own authority and would have to decide itself whether and on what terms questions were to be addressed to the Court.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.192	E/CN.4/487; ESC (XI), suppl. 5, para. 45	
ESC (XI)	E/AC.7/SR.149, 150	E/1732	
GA (V)	3rd Com., 300th mtg.	Annexes, a.i.63, A/1559, para. 16	
CHR (VII)	E/CN.4/SR.210,249	E/CN.4/515/Add.4, Add.13, 530, paras. 78-79, 552, 558/Rev.1, NGO 24; ESC (XIII), suppl. 9, para. 86, annex I, art. 56	
CHR (IX)	E/CN.4/SR.388	ESC (XVI), suppl. 8, annex I B, art. 44 and annex III, paras. 143-144	56

ARTICLE 45

Report of the committee to the General Assembly

The committee shall submit to the General Assembly, through the Secretary-General of the United Nations, an annual report on its activities.

120. This article was included principally with a view to strengthening the link between the covenant, the human rights committee and the United Nations.
121. The article was objected to on the grounds that it would be improper for the committee to report directly to the General Assembly since it did not appear that the committee was intended to be a subsidiary organ of the Assembly. Furthermore, the role of the General Assembly was not defined, nor was it stated whether the reports would be transmitted to the General Assembly for information or examination. Moreover, the article was considered unnecessary in view of the provisions of article 43. The view was also expressed that the committee was not barred from making comments or reporting on special matters to the United Nations if it so wished.
122. It was felt, however, that the annual report would not necessarily be drawn up on the lines of the report concerning a particular case envisaged in article 43. An annual report would present an appraisal of the work done by the committee from year to year, which would form an important contribution to the protection and promotion of human rights. The opinion was also expressed that, since the committee had no power to make recommendations, it was only proper that it should report on its work to the General Assembly which, under the Charter, could make recommendations to all Members of the United Nations.

DOCUMENTATION

Organ and session	Records of discussion	Documentation	Article number
GA (V)	3rd Com., 300th mtg.	Annexes, a.i. 63, A/C.3/534, para. 23	
CHR (VII)	E/CN.4/SR.249	E/CN.4/530, paras. 83-84; 556, 617; ESC (XIII), suppl. 9, para. 89, and annex I, art. 58	
CHR (IX)	E/CN.4/SR.389, 409	E/CN.4/L.227, 264/Add.1; ESC (XVI), suppl. 8, paras. 195-197, annex I, art. 45, and annex III, paras. 149-151	58
GA (IX)			45

ARTICLE 46

Recourse to the International Court of Justice in the event of the failure of the committee to reach a solution

The States Parties to this Covenant agree that any State Party complained of or lodging a complaint may, if no solution has been reached within the terms of article 43, paragraph 1, bring the case before the International Court of Justice after the report provided for in article 43, paragraph 3, has been drawn up.

123. The principle underlying this article was welcomed, particularly as it would allay the concern of many States about the committee doing what was tantamount to passing judgment on States, possibly over their highest national tribunals. The main question discussed was whether the right should be restricted, as initially proposed, to the accused State against whom an adverse opinion had been reported by the committee, or granted equally to all the States concerned in a dispute, as provided in the present text.

124. Reference was made to the provision of article 43, paragraph 3, whereby the human rights committee, in case of failure to reach a solution in a matter referred to it, would state in its report its opinion as to whether the facts found disclosed a breach by the State concerned of its obligations under the covenant. Such a finding, it was pointed out, would affect the honour and reputation of a State, which would stand convicted before the international community. Since the committee would be performing what was tantamount to a judicial function without being an entirely judicial body, and as it was desirable that the opinion of the committee should not be final and conclusive on issues which might have grave consequences for the State concerned, the latter should have an assurance that it could obtain judicial remedy through recourse to the highest international judicial body. Under article 47 of the covenant a State might bring any dispute relating to the interpretation or application of the covenant before the International Court of Justice, either by unilateral application or by special agreement with the other State party to a dispute, depending on whether or not the parties had accepted the compulsory jurisdiction of the Court. In the instance envisaged in article 46, the recourse

to the Court should not be made dependent on the agreement of the complaining State. While the accused State would be free to decide whether or not to appeal against the adverse report of the committee, once the appeal was made the complaining State would be automatically subjected to the compulsory jurisdiction of the Court. The position of the complaining State could hardly be affected since, if it had acted in good faith in making the complaint in the first instance, it should be prepared to uphold its complaint before any organ. Moreover, the competence of the committee would remain as the appeal to the Court would take place only after the committee had made its report.

125. It was thought desirable, however, to recognize the right of appeal on an equal basis for both the State complained against and the complaining State. Reference was made to the recognition of this principle in the constitution of the International Labour Organisation. It was argued that it was just as important to allow a complaining State to appeal in the event that the committee's conclusions amounted to a dismissal of its complaint. The committee was not to be a judicial body but would be often required to act judicially, and though article 44 provided for the possibility of its seeking advisory opinions from the International Court of Justice on legal questions, it might not always do so. Therefore, a complaining State might also want to have recourse to the Court out of concern at what it might consider an erroneous interpretation by the committee of the covenant which might involve important consequences for the protection of human rights.

126. Although recognition of the equal right of appeal was thought to be in the right direction, it was felt that it might deter many States from ratifying the covenant. There was every reason for offering redress and allowing a right of appeal to a State publicly accused by a non-judicial body of a breach of the covenant, but it was a different thing to impose upon it the compulsory jurisdiction of the Court. It was also desirable to avoid disputes being brought up a second time, especially against an accused State which had been exonerated by the committee.

127. Another point of view was that the General Assembly was the proper body of last instance or the final arbitrar regarding the non-application of the covenant. Violations of the covenant were likely to give rise to political

rather than judicial issues, and the International Court of Justice was not the best qualified body for considering such matters. It was pointed out, however, that the competence of the General Assembly was clearly recognized under article 45 of the covenant which required the committee to submit annual reports to the General Assembly, and the Assembly could also intervene, if necessary, after the Court had rendered judgment. At the same time, recourse to the International Court of Justice provided a more effective method, since judgments of the Court would be legally binding and could give rise to enforcement measures under Article 94 of the Charter.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.390, 409	E/CN.4/L.249, 264/Add.1, 279; ESC (XVI), Suppl. 8, paras. 201-205, annex I B, art. 46, and annex III, paras. 155-157	
ESC (XVI)	E/C.2/SR.131		

ARTICLE 47

Jurisdiction of the International Court of Justice

The provisions of this Covenant shall not prevent the States Parties to the Covenant from submitting to the International Court of Justice any dispute arising out of the interpretation or application of the Covenant in a matter within the competence of the Committee.

128. A previous text provided that States parties should agree not to submit by way of written application to the Court, except by special agreement, any dispute arising out of the interpretation or application of the covenant in a matter within the competence of the human rights committee. Another proposal would have specified that a matter before the committee might not be referred to the Court while it was still under consideration by the committee or at any time before the expiration of three months after the publication of the report of the committee; and that, even after the expiration of that period, the Court might be seized of a point of law concerning the interpretation of the covenant only by virtue of a special agreement between the States concerned.

129. It was observed that the basic aim was to create an international body with fact-finding and conciliatory powers, which entailed some restrictions on the recourse to the Court. It was desirable to define clearly under what circumstances recourse to the Court would be permitted, particularly on a complaint of which the human rights committee was already seized. It was also pointed out that many States had made declarations under the "optional clause" of Article 36 of the Statute of the Court, accepting the compulsory jurisdiction of the Court on any legal disputes arising out of the interpretation of a treaty. Furthermore, certain States had accepted that clause with reservations. It was essential, therefore, to stipulate that the Court should not be competent, under the optional clause, to deal with matters at the request of only one of the States parties to the covenant concerned in a matter within the competence of the committee, but to provide that such States would be free to refer the matter to the Court by special agreement. Moreover, without some restrictions there might be danger of conflicts of jurisdiction, and States might also be deterred from ratifying the covenant.

130. In favour of the present text of article 47, the view was expressed that the jurisdiction of the Court should not be unduly restricted. It was inadvisable and inappropriate to take away from the Court its competence recognized by international instruments or to deprive States of the rights and obligations arising from their acceptance of the compulsory jurisdiction of the Court. It was, consequently, necessary to preserve the competence of the Court and to provide that the States parties to the covenant, including those bound by the acceptance of the compulsory jurisdiction clause, would not be prevented from agreeing jointly to submit their dispute to the committee.

131. The opinion was, nevertheless, expressed that the present article would amount to circumscribing the competence of the committee. While the committee should not deal with a matter if the Court was seized of it, there was no reason why the committee should not deal with a matter of which the Court was not seized; the existing text tended to encourage the by-passing of the committee.

132. In this connexion, reference is made to a provision, which was accepted but which does not appear in the present draft covenant because the article of which it formed a part was rejected.[33/] That provision stipulated that the human rights committee should not take any action with regard to any matter "with which the International Court of Justice is already seized". It was based on the opinion that it was necessary to avoid overlapping of jurisdiction and any possible prejudice in the consideration of a dispute by the principal judicial organ of the United Nations. At the same time the committee would be able to act in a matter which, though within the competence of the Court, had not been in fact submitted to the Court.

33/ See paragraph 147 below.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.191	E/CN.4/474, art. 25; ESC (XI), Suppl. 5, para. 44, annex II	
ESC (XI)	E/AC.7/SR.147, 149, 150	E/L.68, paras. 101, 103	
GA (V)	3rd Com., 300th mtg.		
CHR (VII)	E/CN.4/SR.249	E/CN.4/515/Add.4, Add.13, 530, para. 80, 552, 560/Rev.1, 617, 620; ESC (XIII), Suppl. 9, para. 90, annex I, art. 59	
ESC (XIII)	E/C.2/SR.106	E/C.2/299	
GA (VI)	3rd Com., 370th mtg.	Annexes, a.i. 29, A/2112, para. 30	
CHR (VIII)		E/CN.4/530/Add.1, para. 26, 660, para. 71	
CHR (IX)	E/CN.4/SR.344, 389	E/CN.4/675, paras. 8-10, 30, L.245, NGO 49; ESC (XVI), Suppl. 8, paras. 198-200, annex I B, art. 47, and annex III, paras. 152-154	

ARTICLE 48

Implementation of article 1 on self-determination[34/]

1. The States Parties to this Covenant, including those who are responsible for the administration of any Non-Self-Governing Territory undertake to submit reports annually to the Committee on the measures taken by them to meet the obligations set forth in article 1 of this Covenant.

2. The States Parties to this Covenant who are responsible for the administration of any Non-Self-Governing Territory, undertake, through elections, plebiscites or other recognized democratic means, preferably under the auspices of the United Nations, to determine the political status of such territory, should the Committee make a proposal to that effect and such proposal be adopted by the General Assembly. Such decision shall be based on evidence of the desire of the inhabitants of such territory as expressed through their political institutions or parties.

3. The States Parties to this Covenant shall report to the Committee any violation of the right laid down in paragraph 3 of article 1.

133. Discussion on this article related to the provisions concerning annual reports on the application of article 1 of the covenant and the procedures for determining the political status of non-self-governing territories. During the discussion views were expressed on the general question of self-determination and on article 1 of the covenant, and, in particular, opposition to the whole of article 48 was voiced by those who opposed the inclusion of article 1 in the covenant. An account of such views will be found under article 1.

Reports on article 1

134. Reporting to the human rights committee on the implementation of article 1 on a universal basis was considered by some to be essential.

34/ See also paras. 93-95 above.

It was pointed out that although Article 73 e of the Charter did not require submission of information to the United Nations of a political nature relating to Non-Self-Governing Territories, the United Nations had gradually affirmed its interest in political as well as economic and social matters of such territories. Reference was made to General Assembly recommendations inviting reports from Administering Authorities on political and human rights matters in those territories, and to the fact that such information was being increasingly supplied and published by a number of such authorities. It was also contended that there would be no duplication with the work of the Committee on Information from Non-Self-Governing Territories, which was in any case not a permanent body, because that committee and the human rights committee would have different terms of reference. The human rights committee would not be a political but a neutral and impartial body of persons of highest qualifications acting in their personal capacity, which would guarantee that they would not abuse any information submitted to them.

135. It was pointed out, however, that the proposal went beyond the provisions of the Charter, that duplication with existing systems of reporting under the Charter would be inevitable, and that it would deter States from ratifying the covenant. Moreover, the human rights committee by its nature and functions was not the appropriate body to discuss reports on self-determination; were it to study such reports, it would run the risk of losing that objectivity of approach which was basic to its task of seeking peaceful settlement of disputes. It was also said that, if the obligations under article 1 were absolute and immediate, reporting would serve no useful purpose.

136. Another opinion expressed was that to call for reports from all governments would infringe domestic jurisdiction and go beyond the terms of the Charter, which provided for reports only from Administering Authorities of Non-Self-Governing and Trust Territories. Furthermore, the reports, if they were to be submitted, should be submitted to the General Assembly, which was the appropriate and competent organ. Amendments to substitute the General Assembly for the committee and to confine the submission of reports to Administering Authorities were rejected.

137. The present text of paragraph 3 of article 48 was based on the view that it was necessary to allow States to report to the human rights committee on any violation of article 1, paragraph 3. It was contended that, although complaints of violations of the latter provision might be submitted to the committee under article 40, that procedure would be useless in cases of violation of sovereignty over natural wealth and resources by other than States. The proposal was opposed not only on the general grounds indicated above but, in particular, on the grounds that it would only exacerbate international relations and obstruct mutual trade and economic relations.

Determination of the political status of non-self-governing territories

138. Paragraph 2 of article 48 was criticized on the grounds that it was discriminatory and inconsistent with the obligations imposed on Member States by the Charter, and likely to hinder the ratification of the covenant. Besides non-self-governing territories, there were other areas and peoples for whom the same right of self-determination should be recognized. While Chapters XI and XII of the Charter placed special obligations on Administering States, it was not proper or advisable to ask governments to enter into undertakings that went beyond them. Any new obligations should be undertaken equally by all. A differential treatment should not be introduced into a covenant on human rights, where it was essential to observe the principles of universality and uniformity. Administering authorities would not be prepared to abandon their responsibility for determining whether a particular territory had reached such a stage of development as to enable it satisfactorily to determine its own status. Nor were they likely to undertake to conduct plebiscites or otherwise determine a territory's status on the adoption by the General Assembly of a proposal by the human rights committee.

139. The proposal was also considered impractical. It was observed that a quasi-judicial body, which was set up for conciliation and fact-finding, could not exercise political powers without destroying the confidence of States in it. The committee could not, in any case, evaluate the evidence before it without being provided with adequate means and procedures to do so. Moreover, it was paradoxical that the proposed procedure sanctioned the right of petition for a

political and collective right, involving the fate of millions of people, while such a recourse was rejected for individual rights. Furthermore, the methods prescribed for ascertaining the wishes of the people seemed to ignore reality. Plebiscites and elections were not always the best means, and they had not always proved successful. Abcve all, each case had to be considered on its own merits, according to its own circumstances, together with a wide range of poltical and other considerations, particularly the maintenance of peace.

140. In support of the provisions of paragraph 2 of the article, it was stated that there was no question of depriving any people of the right to express their opinions concerning their political status. Sovereign States provided many procedures for ascertaining their people's desires. However, special responsibilities had been laid upon governments responsible for the administration of non-self-governing and trust territories. Those Governments had certain clearly prescribed duties to perform, being pledged to develop self-government and to assist their territories in the progressive development of their free political institutions. Moreover, the proposal would apply only to those dependent territories which had achieved a sufficiently advanced standard and possessed political institutions enabling their people to govern themselves.

141. The human rights committee would not take the initiative. It could only endorse or reject demands put forward on the basis of ample evidence provided by political institutions and parties in the territory concerned, after considering the genuineness of their evidence and to what extent they were representative of public opinion and of the aspirations of the people. Such a procedure, which was in itself a limitation on the right of self-determination, was designed to meet the argument that self-determination could not be given to primitive societies where it might lead to chaos and savagery, and would indeed be contrary to the interests of the inhabitants. The aim was effective international action to elicit the will of the people and to avoid conflict. The conciliatory activities of the human rights committee would be to the advantage of both administering authorities and non-self-governing territories, and, as a non-political body of the highest standing, it could be relied upon to discharge that duty with all due objectivity.

142. Another point of view was that, while the principles underlying the proposal were acceptable, the procedure was not, because the establishment of the human rights committee itself constituted an infraction of the United Nations Charter. An amendment to delete the reference to the committee was, however, rejected.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.344, 391, 392, 393, 409	E/CN.4/L.259, 259/Rev.1, 264/Add.1, 281, 282, 283; ESC (XVI), Suppl.8, paras. 208-214, annex I B, art. 48, and annex III, paras. 158-162	
CHR (X)		E/CN.4/694/Add.2, 5, 6	48
ESC (XVIII)		E/C.2/410	
GA (IX)	3rd Com., 562nd, 563rd, 564th, 566th, 570th, 571st, 572nd mtgs.		48

PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE COMMITTEE

143. The present draft covenant does not contain an article on the privileges and the immunities of members of the committee, although two texts of such an article were accepted at different times. The first text provided that "the members of the committee and the secretary, when engaged in the business of the committee, shall enjoy diplomatic privileges and immunities". The second text was to the effect that "the members of the committee shall, when engaged upon the business of the committee, enjoy in the territory of each State party to this covenant such privileges and immunities as may be agreed between such States and the Secretary-General of the United Nations". Stipulations such as privileges and immunities "similar to those of the United Nations" or to those of "government representatives accredited to the United Nations" were considered as open to ambiguous interpretations.

144. Those in favour of the first text expressed the view that the importance of the proposed committee, which would consist of eminent persons elected by the highest judicial organ of the United Nations, should not be disregarded. While traditional diplomatic privileges and immunities might be of wide scope, the inclusion of the words "when engaged in the business of the committee" would furnish governments with sufficient safeguards. The text, it was stressed, was the same as that of article 19 of the Statute of the International Court of Justice, which had not given rise to complications. Moreover, in order to insure uniformity and to cover various eventualities, such as committee meetings outside Headquarters or in countries not parties to the covenant, it was essential to adopt a general text.

145. On the other hand, the first text was considered by some to be too wide. It was felt that in international law diplomatic privileges and immunities covered an extensive field, wider for example than the United Nations Convention on Privileges and Immunities of 13 February 1946. It was contended that national legislatures were becoming increasingly reluctant to extend privileges and immunities to members and officials of an increasing number of international bodies. It would, therefore, be preferable to adopt a flexible

text whereby the privileges and immunities of the committee members would be settled by agreement between the Secretary-General and the States concerned. This would also avoid a general commitment by States parties to the covenant which might never receive the members of the committee within their territory.

146. Another point of view was that it might be better to provide for a reference to the United Nations Convention on Privileges and Immunities with particular emphasis on its articles V and VI, which dealt with the privileges and immunities of "experts" and of "officials" of the United Nations. It was, however, doubted whether the provisions of another international instrument could be automatically applied to the members of the committee. It was questioned whether it was correct, and even advisable in view of the high qualifications of the members of the committee, to refer to them as "experts" within the meaning of that convention. It was also suggested that agreements to be concluded by the Secretary-General with different States should be such as to confer on the members of the committee at least the status of "experts" recognized in that Convention.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.189	E/CN.4/474, art.11; ESC (XI), suppl. 5, art. 29	
ESC (XI)	E/AC.7/SR.149		29
CHR (VII)	E/CN.4/SR.239	E/CN.4/530, para. 43, 556, 560/Rev.1, 617; ESC (XIII), suppl. 9, annex I, art. 43	29
CHR (IX)	E/CN.4/SR.350	E/CN.4/L.239; ESC (XVI), suppl. 8, paras. 107-112, and annex III, paras. 163-165	43

THE FUNCTIONS OF THE COMMITTEE IN RELATION TO SPECIAL PROCEDURES ESTABLISHED BY THE UNITED NATIONS, SPECIALIZED AGENCIES AND REGIONAL ORGANIZATIONS

147. The question of the delimitation of the powers and functions of the human rights committee in relation to procedures established by the United Nations and specialized agencies, and regional organizations, was the subject of considerable discussion. In so far as the International Court of Justice was concerned, decisions were taken which reflected the view that the competence of the Court was not to be affected by the provisions relating to the human rights committee.35/ Opinions concerning the delimitation of the functions of the committee in relation to other procedures, however, varied.

148. The present text of the draft covenant does not include a provision on this matter. There was a draft, however, which provided that the human rights committee was "to take no action with regard to any matter for which any organ or specialized agency of the United Nations or any organ established under the auspices of the United Nations or one of its specialized agencies competent to do so, had established a special procedure by which the States concerned were governed."36/

149. The view was advanced that there should be no duplication of existing machinery or of functions, that the competence of existing organs of the United Nations and the specialized agencies should be recognized and safeguarded, and that the committee should have the duty to protect human rights in general in all cases which were not covered by other provisions. The committee should not, for example, encroach upon the power exercised under the Charter by the Trusteeship Council or upon the functions of certain specialized agencies, such as the ILO, which was already dealing with questions arising out of international labour conventions. It was thought that the aim should be to

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35/ See under article 47.

36/ ESC (XVI), suppl. 8, para.169.

avoid overlapping, to utilize technical and expert knowledge to the fullest and to employ methods of proved efficacy. It was desirable to utilize the best methods in each case and to prevent differences that could effectively be dealt with on the technical plane from deteriorating into disputes between States. The Fact-Finding and Conciliation Commission on Freedom of Association, established by the Governing Body of the International Labour Office on behalf of the ILO and the Economic and Social Council, was cited as an example of effective collaboration between the United Nations and the specialized agencies. It was pointed out that the specialized agencies had long experience in the promotion of the rights falling within their competence, and their expert knowledge and special procedures could in most cases produce better results. It did not seem wise to insist that the committee should act on all cases, if better results could be achieved in other ways. This was also the view of some of the specialized agencies, such as ILO, UNESCO and WHO, who favoured the inclusion of the provision mentioned above.

150. Others, however, considered the provision too restrictive. The valuable work of other bodies of the United Nations, such as the Trusteeship Council, and specialized agencies, such as ILO, was recognized, but it was felt that the committee, consisting of outstanding and qualified persons and reporting to the General Assembly, should not be debarred from acting because present or future organs of the United Nations and the specialized agencies could be seized by States of disputes relating to human rights. There was no wish to hamper or obstruct the use of other methods and the committee should certainly pay due heed to them and should make the fullest use of the findings and investigations of other bodies, but a delimitation of functions could only take place where the respective functions coincided or were equally effective; otherwise, there was danger that the greater competence of one organ might be excluded in favour of the lesser competence of another organ. Further, it might even be maintained that, because human rights were within the purview of the Charter, States parties to a dispute involving alleged violation of the covenant should ignore the committee altogether and take the case direct to the General Assembly. The only procedure comparable to the human rights committee procedure, it was submitted, was that established by the ILO constitution relating to ILO conventions. It

was pointed out that the procedure established by the Economic and Social Council and the ILO for fact-finding and conciliation as regards freedom of association was not binding upon States, since the consent of the State concerned was required before the procedure could be set in motion, whereas the procedure contemplated in the covenant was different and would, therefore, lead to no duplication or difficulties. It was also thought that the proposal as drafted did not specify as to who was to decide whether a special procedure was applicable to a particular case and whether the organ concerned was competent to deal with it.

151. As regards the Trusteeship Council, the view was expressed, on the one hand, that all violations of human rights in Trust Territories were clearly within the scope of the special provisions of the Charter dealing with the trusteeship system and the Trusteeship Council could not be divested of its supreme competence in all matters affecting Trust Territories. On the other hand, the opinion was voiced that the Trusteeship Council was a political body which was not specifically concerned with human rights and their protection per se, but with the general administration of Trust Territories. Under those circumstances, it could hardly be said that the Trusteeship Council provided an adequate special procedure. At the same time, there was no reason why both procedures should not be regarded as mutually compatible and equally necessary.

152. Another proposal provided: "The committee shall deal with any matter referred to it under article 40. Its competence shall not be impaired by the fact that any given matter falls within the competence of another organ or specialized agency of the United Nations. The committee shall decide how far it should make use of the findings and investigations carried out by such bodies."37/ This proposal was considered to be more in line with the objective of those who opposed the other text.

153. This proposal was, however, considered by some to be somewhat inflexible. It was pointed out that, as drafted, the provision would oblige the committee to act in every matter referred to it. The committee's competence would remain

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37/ ESC (XVI), suppl. 8, para. 169.

fully effective, and would not be diminished or affected by whatever competence other United Nations organs or specialized agencies had. The committee would thus become a sort of court of appeal from decisions taken by other bodies, and whatever the findings and investigations of other bodies might be, the committee would enjoy freedom to make use of them or to ignore them altogether at its choice. Such a provision would have grave repercussions on the specialized agencies and on their relationship with the United Nations.

154. Others, on the contrary, thought these arguments to be based on a misapprehension. The committee would not be obliged to deal with every case referred to it, but it would not be excluded from dealing with a case merely because it might fall within some procedure of another organ, irrespective of the adequacy of that procedure. It gave the committee a discretion that was made necessary by the risk that the procedures and remedies of other bodies might prove less effective than that of the committee. There was no question of automatically encroaching on the competence of other bodies. There was also no intention of making the committee into a court of appeal from decisions taken by specialized agencies or other organs of the United Nations, and reversal of such decisions was not contemplated. At the same time, it was both logical and practical to utilize findings, experience, technical knowledge and data of other bodies.

155. In the opinion of some, the exclusion from the purview of the committee of matters "with which any organ or a specialized agency is dealing under a special procedure by which the States concerned are governed,"[38/] was more appropriate in order to provide against excessive restriction of the committee's sphere of competence. It was contended that situations might arise where an organ or a specialized agency of the United Nations, though competent to deal with a particular matter, might fail to take it up, or that the States concerned might prefer to place the matter before the committee. In such eventualities, the committee should be free to act, although it would not deal with a matter which was actually being handled by another organ. This proposal was, however,

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38/ E/CN.4/SR.249.

objected to as it provided for the setting-up of alternative procedures for dealing with one and the same subject. It was contended that it was essential to avoid the overlapping of jurisdictions and that the institution of a kind of competitive system between various organs and specialized agencies would have adverse effects on all of them.

156. Another opinion favoured the right of regional organizations to settle their problems at the regional level. It was noted that within the framework of the Council of Europe, special procedures were being set up for the protection of human rights and that a similar trend existed in the Americas. The European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, for example, laid down provisions for dealing with complaints of violations of that convention, including the establishment of a commission and a court of human rights. It also provided in article 62 that parties to the convention agreed that "except by special agreement, they will not avail themselves of treaties, conventions or declarations enforced between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention." The idea of excluding special procedures established by regional organizations from the competence of the committee was, however, thought of as unduly limiting the work of the committee, and a proposal[39/] on the subject was rejected.

157. The view was also expressed that there was no need to provide for any provisions concerning other procedures because of Article 103 of the Charter, according to which, in the event of a conflict between the obligations under any other international agreement, the obligations of Members under the Charter shall prevail. Another opinion was that, rather than include a general provision on the matter, it would be better to specify the special procedures which were to be excluded from the competence of the committee under article 40 of the covenant, if such procedures were as effective as and comparable to those of the committee.

39/ ESC (XIII), suppl. 9, para. 85.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)	E/CN.4/SR.176, 190, 191	E/CN.4/474, art. 21; ESC (XI), suppl. 5, para. 42, annex II	
ESC (XI)	E/AC.7/SR.147, 149 150	E/L.68, paras. 101 and 103	
GA (V)	3rd Com., 300th, 301st mtgs.	Annexes, a.i. 63, A/1559, para. 16	
CHR (VII)	E/CN.4/SR.209, 210, 211, 212, 249	E/CN.4/515/Add.4, 13 and 15, 530, paras. 63, 64, 66 and 71, 552, 560/Rev.1, 617, 620, 634/Rev.1; ESC (XIII), suppl.4, para. 85, annex I, art. 53	
ESC (XIII)	523rd mtg.	E/2057/Add.2	53
GA (VI)	3rd Com., 363rd, 371st mtgs.		53
CHR (VIII)		E/CN.4/530/Add.1, para. 24	53
CHR (IX)	E/CN.4/SR.344, 385, 386	E/CN.4/675, paras. 8-10, L.232, 235/Rev.2, 245, 277, 278, NGO/49; ESC (XVI), suppl.8, paras.168-176, and annex III, paras. 168-174	53
ESC (XVI)		E/2484	
CHR (X)		E/CN.4/692, 692/Add.1, 694/Add.2, 702 no.I	
ESC (XVIII)		E/2621	
GA (IX)	3rd Com., 562nd, 566th, 568th, 576th mtgs.		

REQUESTS TO THE COMMITTEE FOR INFORMATION, ASSISTANCE AND ADVICE

158. The following draft article, which was subsequently withdrawn, was proposed:

> It shall be the duty of the committee to consider any request for information or assistance, and any proposal or project which any State Party to the present covenant may wish to submit, with a view to promoting the application of the present covenant, without reference to the provisions of article 40.

159. The view was expressed that implementation should have both a negative and a positive purpose, the first being to prevent violations of the covenant, and the second to furnish all the assistance which States might need in fully realizing its objectives. The second aspect, which was covered in the draft covenant on economic, social and cultural rights, was nowhere provided for in the draft covenant on civil and political rights. The need could be met by investing the committee, whose members would be persons qualified to assemble a corpus of information and jurisprudence, with the necessary powers to act as an organ for the centralization of information and interpretation of the covenant. The committee could furnish information and advice on the ways and means by which a State could best observe and fulfil its obligations under the covenant. Moreover, in order to reduce conflicts and disputes, States should be allowed to consult with the committee, especially as to whether any fact or situation constituted a violation of the covenant or not.

160. Those opposed to the proposal referred to the fact that the task of the committee was limited to that of fact-finding and conciliation. For the time being, it was unlikely that States would be willing to restrict further their sovereignty. In the view of some, the proposal, like the whole system of international implementation, would be an infringement of the sovereignty of States. It was also felt that the committee should not be a reference centre, a source for disseminating information or an advisory agency. There were other bodies better qualified and equipped to perform such functions. The United Nations Secretariat, for example, could and should be utilized for such purposes. Besides, the Commission on Human Rights could not divest itself of its responsibilities which were derived from the Charter and which related to all

Member States. It was mentioned further that there was no instance of a quasi-judicial body being empowered to advise beforehand on a matter that might subsequently be referred to it.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (IX)	E/CN.4/SR.344, 389	E/CN.4/L.247; ESC (XVI), suppl.8, paras. 192-194, and annex III, paras. 177-178	

ARTICLE 49

Reporting procedure

1. The States Parties to this Covenant undertake to submit a report on the legislative or other measures, including judicial remedies, which they have adopted and which give effect to the rights recognized herein (a) within one year of the entry into force of the Covenant for the State concerned and (b) thereafter whenever the Economic and Social Council so requests upon recommendation of the Commission on Human Rights and after consultation with the States Parties.

2. Reports shall indicate factors and difficulties, if any, affecting the progressive implementation of Article 22, paragraph 4, of this Covenant.

3. All reports shall be submitted to the Secretary-General of the United Nations for the Economic and Social Council which may transmit them to the Commission on Human Rights for information, study and, if necessary, general recommendations.

4. The specialized agencies shall receive such parts of the reports concerning the rights as fall within their respective fields of activity.

5. The States Parties directly concerned, and the above agencies, may submit to the Economic and Social Council observations on any general recommendation that may be made in accordance with paragraph 3 of this article.

The inclusion of a reporting procedure in the Covenant[40/]

161. Objection was raised to the inclusion of any reporting procedure in the covenant on civil and political rights on the grounds that any such procedures was contrary to the United Nations Charter, in particular to Article 2, paragraph 7, and constituted a violation of national sovereignty. Such inclusion could not assist in the realization of rights and would only lead to tensions between States.

40/ E/CN.4/SR.241, 249, 355, 390 and 426-30, E/CN.4/530/Add.1, para. 29, E/CN.4/637, E/CN.4/694/Add.3, E/CN.4/L.229 and L.315, ESC (XIII), suppl.9, annex II, E/2621, E/CN.4/NGO.24 and 36, GA (VI), 3rd Com., 360th mtg. paras. 58-59, 361st, para. 25, 363rd, paras. 28-29, 370th, para. 26, 371st., para. 9 and 388th para. 41, GA (IX), 3rd Com., 562nd mtg. para. 12, 564th, para. 15, 565th, paras. 29-30, 571st para. 22, 573rd, paras. 10 and 23 and 567th, para. 14, GA (VI), annexes, a.i. 29, A/C.3/565 and A/2112, para. 36 and GA (IX), annexes, a.i. 58, A/C.3/574 and A/2808, para. 32.

162. Another objection to the inclusion of a reporting procedure in the covenant on civil and political rights arose from an essential difference between the two covenants. Whereas the rights in the covenant on economic, social and cultural rights were drafted in general terms and were intended to be progressively realized, the rights in the covenant on civil and political rights were drafted in precise terms and were intended, in the main, to be applied immediately. That being so, there was no evident purpose in including a reporting procedure, and to do so would inevitably detract from the immediacy of these obligations. A more appropriate implementation machinery in the form of the human rights committee procedure had already been provided for in the covenant on civil and political rights.

163. In support of the inclusion of some form of reporting procedure in the covenant it was observed that reporting would constitute a useful exchange of information between States parties, would make governments more conscious of their obligations and would emphasize the constructive approach to the promotion of human rights, based on international co-operation. Reporting would also allow a stock-taking of the standards applied in the various parts of the world, thus facilitating the codification and development of international law. The information supplied would also be valuable to the human rights committee in cases of disputes and it would keep the committee informed of the "available domestic remedies" referred to in Article 41 of the draft covenant. It was pointed out that one provision of the covenant, namely, Article 22, paragraph 4, relating to equality of rights between spouses as to marriage, during marriage and at its dissolution, was not intended to be implemented immediately. Attention was drawn to the fact that a reporting procedure was provided for under Article 48 of the covenant concerning the implementation of the article on the right of self-determination.

164. On the other hand, it was doubted whether the human rights committee would be able to utilize the information made available through any reporting procedure, and it was felt that the kind of information envisaged was always available in published form and in such publications as the United Nations Yearbook on Human Rights.

165. The disagreement as to the desirability of including a reporting procedure was due partly to the differences of opinion concerning the construction to be placed on Article 2, paragraph 2 of the draft covenant. The opinion was expressed that action by a State needed to implement an international treaty must be completed by the time of ratification, and that Article 2, paragraph 2, was not intended to make an exception to this principle. Another view expressed was that, before ratification, the constitutional procedures necessary to bring domestic law into harmony with the covenant must be set in motion. In this connexion, reference was made to the previous deletion (E/2556, paragraph 273) of the words "within a reasonable time" from Article 2, paragraph 2 and to the unsatisfactory nature of the present wording of that provision. There was some feeling that even the present wording of the provision left doubt as regards the immediate undertaking of the obligations. It was also argued that, since the covenant would include provisions relating to a much wider range of subject matter than did the average treaty, it was impossible to apply to it as strict a rule as would normally apply to the implementation of a treaty. The protagonists of the view that some time might legitimately elapse between ratification and complete implementation argued that it was desirable to make provisions for reporting upon progress made. It was said, on the other hand, that to allow time after ratification for necessary measures to be taken would make it difficult ever to determine when the obligations under the covenant had been fully accepted and consequently whether the covenant had been violated. If it were desired to alter the rule of immediate applicability then it would be better to deal with that matter in a reservations clause.

166. The view was expressed that the system of periodic reports included in the draft covenant on economic, social and cultural rights could be adapted to the draft covenant on civil and political rights in order to emphasize the link between the covenants and meet the wishes of the General Assembly as expressed in resolution 543 (VI) directing the inclusion in the two covenants of as many similar provisions on measures of implementation as possible, particularly in so far as the reports to be submitted by States were concerned, and with a view to preventing duplication with reporting to specialized agencies. The view

prevailed, however, that it was undesirable to transfer that system of periodic reports to the draft covenant on civil and political rights in toto.

The specific procedure included in the covenant[41/]

167. Some objections were raised to the specific procedure which was eventually approved for inclusion in the draft covenant.

168. It was thought that to permit a year to pass between entry into force and submission of reports would encourage the dangerous presumption that the obligations under the covenant on civil and political rights called only for progressive implementation. This concept of progressivity was seen to be implied even more in clause (b) of paragraph 1 since action under that clause would presumably take place two years or more after the coming into force of the covenant for the State concerned.

169. The article, it was observed, would make it obligatory for contracting States to report to the Council, membership of which would include States that had not assumed the obligations embodied in the Covenant. The latter would occupy a privileged position in that, without having assumed any obligation themselves, they would be able to supervise the conduct of States parties to the Covenant and to direct criticism and recommendations to them. That inequality would affect nearly all matters within the sovereignty of the States parties to the Covenant. The extent to which reports should be submitted by the States parties to the Covenant would be determined by the same Council, in which there were Member States which would not have contracted any obligation but would nevertheless be entitled to vote and take decisions. The inclusion in the Covenant of such a system would prevent many States from becoming parties to it.

170. It was on the other hand pointed out that the Council on the recommendation of the Commission on Human Rights would be empowered to require reports from States parties only after consultation with those States.

171. It was stated that the words "which they have adopted" referred to all relevant measures taken in the past by the State concerned as well as measures taken at the time of ratification.

41/ E/CN.4/SR.427-30 and E/CN.4/L.332-4.

The reference to article 22, paragraph 4 of the covenant[42/]

172. The second paragraph of the article was adopted in order to give recognition to the fact that Article 22, paragraph 4 of the covenant was different from the other provisions of the covenant, in that it implied only progressive implementation. It was not intended that the paragraph should have the effect of excepting Article 22, paragraph 4 from the general obligation of reporting contained in paragraph 1 of the article.

The determination of the organ to which reports should be sent[43/]

173. The view was expressed that the human rights committee should receive reports and, in this connexion, attention was drawn to Article 48 of the covenant which provided for reports to that committee on the implementation of Article 1, relating to the right of self-determination.

174. Another opinion was that the Commission on Human Rights would be a more appropriate body to receive the reports. It was considered that the human rights committee would be a quasi-judicial organ set up for the very specific purpose of receiving complaints alleging non-observance of the covenant and having a membership carefully selected for this task, and that to transmit reports to the committee might be to invite it to pass judgment without being seized of a complaint by a State party, and would harm its autonomy and independence. It was also pointed out that the Committee would, in any case, have access to the reports received by the Commission.

175. Paragraph 3, however, reflects the prevailing feeling that reports should be submitted to the Economic and Social Council, for possible transmission to the Commission on Human Rights.

176. It was explained that the words "general recommendations" had been taken from the system of periodic reports adopted for inclusion in the draft covenant on economic, social and cultural rights. Some doubt was however expressed whether the reports could be used for purposes other than information and study.

42/ E/CN.4/SR.427 and 429-30 and E/CN.4/L.333.

43/ E/CN.4/SR.427-30 and E/CN.4/L.332-3.

The reference to specialized agencies[44/]

177. In support of paragraph 4 it was argued that, whereas most rights dealt with in the draft covenant did not fall within the purview of any specialized agency, there were some exceptions, for instance, forced labour and freedom of association. Paragraph 5 was derived from the system of periodic reports included in the draft covenant on economic, social and cultural rights. It was urged, however, that the latter system should be more closely followed, in order to prevent duplication.

178. It was proposed to have paragraphs 4 and 5 refer not only to specialized agencies but also to "the organs of the United Nations or the organs placed under their auspices", and it was observed that there were organs which were already studying such subjects as slavery, forced labour, freedom of information and penal and penitentiary questions, which might become permanent in the future. It was felt, however, that to make reference to indeterminate organs was inadmissible and possibly dangerous for the future of the covenant.

44/ E/CN.4/SR.429-30, E/CN.4/L.334, E/2621 and GA (IX), 3rd Com., 576th mtg., paras. 14-16.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (II)	E/CN.4/AC.3/SR.8 and E/CN.4/SR.41	E/CN.4/56,Chapter II, Article 3	
CHR (VI)	E/CN.4/SR.195	ESC (IX),suppl.10, Annex I,part I, Article 3	3
CHR (VII)	E/CN.4/SR.241 and 249	E/CN.4/637 and ESC (XIII),suppl.9, para.66 and Annex II	
GA (VI)	3rd Com., 360th mtg., paras. 58-9; 361st, para. 25; 362nd, para. 6; 363rd, paras. 23, 28-9 and 41; 364th, para. 9; 365th, paras.6 and 9; 367th, para. 5; 369th, paras. 11 and 12; 370th, para. 26; 371st, paras. 9 and 22; 388th, para. 41; 389th, para. 21; 390th, paras. 8 and 21; 393rd, paras. 31 and 43; and 396th, para. 15	Annexes, a.i. 29, A/C.3/565 and A/2112, para. 36	
CHR (VIII)		E/CN.4/530/Add.1, paras. 11-13 and 29, and E/CN.4/NGO/36	
CHR (IX)	E/CN.4/SR.355 and 390	E/CN.4/L.229 and ESC (XVI),suppl.8, paras.206-7 and Annex III, paras.27-8 and 179-80	
CHR (X)	E/CN.4/SR.426-30	E/CN.4/L.315,L.332, L.333 and L.334, E/CN.4/694/Add.3 and ESC (XVIII) Suppl.7, paras 171-205	
ESC (XVIII)		E/2621	49
GA (IX)	3rd Com., 562nd mtg., para. 12; 564th, para. 15, 565th, paras.29-30; 566th,paras.25 and 29;571st,para.53; 572nd, para.14;573rd,para.10;575th, para.30 and 576th,paras.14-16	Annexes, a.i. 58, A/C.3/574 and A/2808, para. 32	49

ARTICLE 50

Relations between the United Nations and Specialized Agencies

Nothing in this Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this Covenant.

179. This article contains the same text as that of Article 25 of the draft covenant on economic, social and cultural rights,[45/] and the views expressed on the two provisions were in general similar. One opinion was that the adoption of article 50 was made necessary by that of article 49.

180. An amendment was proposed which would have added the following:

"Similarly, it shall not be interpreted in such a way as to impair the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

181. In support of the proposed amendment it was pointed out that the Convention on Genocide was of relevance to three provisions of the draft covenant, namely, Articles 6, 7 and 26. If it was thought necessary to stipulate that nothing in the draft covenant should be interpreted as impairing the provisions of the Charter of the United Nations, the same protection should be extended to the Convention, particularly since the latter did not contain any clause similar to Article 103 of the Charter to ensure that its provisions should take precedence over those of other international agreements. Furthermore, in article 21, paragraph 3, of the draft covenant on civil and political rights, there was a specific provision safeguarding the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organize, and article 50 contained a reference to the constitutions of the specialized agencies. The Convention on Genocide possessed at least as great a significance in the field of human rights as those instruments and was entitled to the same protection in the Covenant.

45/ See Chapter IX, para. 33, below.

182. Against the proposed amendment, it was argued that the primary purpose of the article was to safeguard not the Charter or the constitutions of the specialized agencies, but the distribution of responsibilities between the United Nations and the specialized agencies. Therefore, any mention of the Convention on Genocide would be irrelevant. It would in any case be inappropriate to mention the Convention and yet omit other relevant international instruments, such as the conventions on slavery, forced labour, the political rights of women and the status of refugees. The criterion should be the legal relevance, not the importance, of the convention cited, and, that being so, considerable research would be needed to ensure a full listing of all the existing conventions which had a direct bearing on the rights enunicated in the draft covenant. Otherwise, it might be argued that they were not to be equally respected. It was added that, after the covenant had come into force, other relevant instruments might be elaborated, and no listing of coventions could therefore be regarded as final. Again, if the amendment were adopted, it would be necessary to add to article 25 of the draft covenant on economic, social and cultural rights a clause listing the numerous conventions which were relevant to the implementation of economic, social and cultural rights. The reference to the International Labour Convention in Article 21 of the Covenant was justified on the grounds that there was a definite possibility of a discrepancy between the guarantees offered in the draft covenant and those extended by the Convention and that it had therefore been necessary to ensure that the provisions of the former were not used to evade obligations assumed under the latter. No such danger existed with regard to the Convention on Genocide, since it was unthinkable that any provision of the draft covenant would impair or in any way conflict with an instrument which defined and provided for the punishment of an international crime. It was also pointed out that the Genocide Convention was specifically mentioned in Article 6, paragraph 2 of the draft covenant and was also protected by the more general provisions of its Article 5, paragraph 2.

183. The amendment was withdrawn by its sponsors, in view of the possible unfavourable political consequences of a rejection of the amendment or its adoption by only a small majority.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VIII)		E/CN.4/655, Add.2	69
CHR (X)	E/CN.4/SR.430-1	E/CN.4/L.315 and L.336-7 and ESC (XVIII) suppl.7, paras. 206-14	69

CHAPTER VIII

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(Part III, Articles 6-16, of the Draft Covenant on Economic, Social and Cultural Rights)

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ARTICLE 6

Right to Work

1. Work being at the basis of all human endeavour, the States Parties to the Covenant recognize the right to work, that is to say, the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts.

2. The steps to be taken by a State Party to this Covenant to achieve the full realization of this right shall include programmes, policies and techniques to achieve steady economic development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

1. Article 6 is one of those articles of the covenant which contain an elaboration of the steps to be taken by States parties additional to what is said in article 2. The wording contained in paragraph 2 was preferred to various proposed formulas according to which States parties would "ensure" or "guarantee" the right to work or would be required to adopt measures "to implement concretely" the enjoyment of the right.

2. From the presence in the article of paragraph 2, phrased as it is, the right to work seemed to include the right to be provided with work, in addition to the right not to be prevented from working. On the other hand, the right in question was defined in paragraph 1 in such a way as not to permit the introduction of forced labour.

3. It was proposed that the right to work be guaranteed with the object of creating conditions precluding the threat of death from hunger or inanition, but it was felt that this would represent too low a standard in respect of the right to work.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (VII)		E/C.2/88	
CHR (V)	E/CN.4/SR.130 and 131	E/CN.4/196/Rev.1, 285 and 313 and ESC (IX), suppl.10, annex I	
ESC (IX)		E/C.2/196	
CHR (VI)	E/CN.4/SR.184	E/CN.4/353/Add.10, E/CN.4/364, paras.10-56 and Corra.1 and 2, E/CN.4/365, 436 and 470 and ESC (XI), suppl.5, annex III	
ESC (XI)	E/AC.7/SR.151	E/C.2/259/Add.1	
GA (V)	3rd Com., 289th mtg., para.32, 290th, para.59, 291st, paras.8 and 53, 297th, para.54, 298th, paras.51 and 64, and 299th, paras.33 and 55 and A/PV.317, paras.63 and 73	Annexes, a.i.63, A/C.3/L.77/Rev.1 and L.96, A/1559, paras.25 and 49 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para.60	E/L.137 and E/1880	
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3 and E/CN.4/SR.203, 204, 205, 206, 207, 209 and 216-18	E/CN.4/AC.14/2 and Add.1, E/CN.4/364/Add.1, paras.6-16, E/CN.4/364/Add.3, paras. 27-8, E/CN.4/529, para.26, E/CN.4/537, 538/Rev.1, 539/Rev.1, 542, 543, 547, 552, 562 and 571, 572, 574-6, E/CN.4/NGO/20, 23 and 28 and ESC (XIII), suppl.9, para.39 and Annex I, Art.20 (French text in E/CN.4/635/Add.5, article 20)	
ESC (XIII)		E/2059/Add.8 and E/C.2/316	20
GA (VI)	3rd Com., 360th mtg., paras.25-7, 366th, para. 20 and 369th, para.6		20

DOCUMENTATION (continued)

Organ and session	Records of discussion	Other documents	Article number
CHR (VIII)	E/CN.4/SR.268-9 and 275-9 and 281	E/CN.4/364/Rev.1, paras.11-61, E/CN.4/650, paras.9, 11, 13 and 22-3, E/CN.4/660, para.48, E/CN.4/L.45, 53 and Rev.1, 58 and Rev.1, 82, 90, 91, 92 and 93 and ESC (XIV), suppl.4, paras.110-11 and Annex I, A, Art.6	20
CHR (IX)		E/CN.4/673, para.7	6
CHR (X)		E/CN.4/702, Nos. XI, XVI and XVIII	6
ESC (XVIII)	E/C.2/SR.145		6
GA (IX)	3rd Com., 565th mtg., para. 28, 567th, para.13, 569th, para.18, 571st, paras.16 and 32, 572nd, para.23 and 575th, para.28		6

ARTICLE 7

Just and Favourable Conditions of Work

The States Parties to the Covenant recognize the right of everyone to just and favourable conditions of work, including:

(a) Safe and healthy working conditions;

(b) Remuneration which provides all workers as a minimum with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and

(ii) A decent living for themselves and their families; and

(c) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

4. Consideration of this article concerned principally the question of remuneration dealt with in paragraph (b).

5. Regarding the term "minimum" in relation to remuneration, it was stated that while a minimum standard was being laid down - a provision of particular value to under-developed countries - it could not be taken to mean that efforts for improvement of wage standards should stop at that point.

6. Paragraph (b) would guarantee to women the same pay as to men for equal work. The inclusion of such a provision was necessary, it was urged, because the principle of equal pay for equal work for men and women workers was not observed in some countries at the present time. On the other hand it was argued that the position of women was safeguarded by a guarantee of minimum or fair wages to "everyone" and by the non-discrimination provision contained in paragraph 2 of article 2; a special reference to the rights of women here would weaken the protection afforded women elsewhere in the covenant, where their rights were intended to be protected by the use of "everyone" and by paragraph 2 of article 2. The article moreover should not prejudice the right of equal remuneration in cases other than those of women.

7. A proposal that due allowance be made for family responsibilities in applying the principle of equal pay for equal work for men and women workers was discussed but withdrawn.

8. Paragraph (b)(i) is not limited to the question of equal pay for equal work as between men and women workers. It expressly excludes "distinction of any kind"; reference was made to the rights of people of different races and to equality as between nationals and non-nationals.

9. It was urged that workers should have the right to share in increased profits of undertakings and that their wages should be fixed in relation to increases in the cost of living, but it was decided not to incorporate these principles in the article.

10. The view was put forward that the obligations of States in respect of the whole subject matter of the article should be reinforced; it was felt, however, to be impracticable to supplement the terms of the general article as applied to this right. In particular, there was some doubt as to whether it was possible immediately to implement the principle of equal remuneration for equal work for men and women workers.

11. It was recognized that not only legislation and governmental intervention, but also collective agreements, played an important part in the realization of the right to just and favourable conditions of work.

DOCMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (IV)		E/C.2/32, para.2	
ESC (VI)		E/C.2/67	
CHR (V)	E/CN.4/SR.130 and 131	E/CN.4/221/Corr.1, 224 and Corr.1, 285 and 313 and ESC (IX), suppl. 10, annex I	
ESC (IX)		E/C.2/196	
CHR (VI)	E/CN.4/SR.184	E/CN.4/353/Add.10, E/CN.4/364, paras.57-85 and 96-109 and Corr.1, E/CN.4/365, 403 and 436 and ESC (XI), suppl.5, annex III	
ESC (XI)	E/AC.7/SR.151		
GA (V)	3rd Com., 289th mtg., para. 37, 291st, paras.19, 53,54 and 81, 299th, para.33 and 313th, para.13 and A/PV.317, paras.13, 63 and 73	Annexes, a.i. 63, A/C.3/L.77/Rev.1 and L.96, A/1559, paras.29 and 49 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para.60 and E/SR.439, para.48	E/L.137 and E/1880	
CHR (VII)	E/CN.4/SR.203, 204, 206, 207, 208 and 218-20, 222 and 224	E/CN.4/AC.14/2/Add.2 and Add.3, Section V, E/CN.4/364/Add.1, paras.17-25 and 28-30, E/CN.4/364/Add.3, paras.29-37 and 39-40, E/CN.4/529, para.26, E/CN.4/537, 538/Rev.1, 539/Rev.1, 542, 543, 547, 552, 562, 577/Rev.1 and 578-80, E/CN.4/NGO/20, 23, 25 and 28 and ESC (XIII), suppl.9, para.40 and Annex I,Art.21 (French text in E/CN.4/635/Add.5, article 50)	
ESC (XIII)		E/2057/Add.2 and E/2059/Adda.4 and 8	21
ESC (XIV)		E/C.2/335	21
GA (VI)	3rd Com., 360th mtg., paras. 25-7, 366th, para.20 and 371st, para.1		21

DOCUMENTATION (continued)

Organ and session	Record of discussion	Other documents	Article number
CHR (VIII)	E/CN.4/SR.268-9, 277 and 279-81	E/CN.4/364/Rev.1, paras.62-91 and 102-15, E/CN.4/650, paras. 9, 11, 13 and 24-8, E/CN.4/661, E/CN.4/L.46, 59, 60, 62/Rev.1-2, 63/Rev.1, 94 and ESC (XIV), suppl.4, paras.112-115 and Annex I, A, Article 7 and annex IV	
CHR (IX)		E/CN.4/673, paras.8-12	7
CHR (X)		E/CN.4/694/Add.2 and Add.6, para.14, E/CN.4/702, Nos.XI, XIII, XVI and XVIII and E/CN.4/702/Add.5	7
GA (IX)	3rd Com., 563rd mtg., para.8, 565th, paras.20, 28 and 44, 566th, para.23, 569th, para.11, 570th, para.3, 571st, paras.16 and 33, 572nd, para.24 and 575th, paras.15 and 31		

ARTICLE 8

Trade Union Rights

The States Parties to the Covenant undertake to ensure the free exercise of the right of everyone to form and join local, national and international trade unions of his choice for the protection of his economic and social interests.

12. There was some discussion as to whether trade union rights should be treated in the present covenant or in that on civil and political rights: on the one hand, it was claimed that they were an aspect of the right of association, which is the subject of article 21 of the draft covenant on civil and political rights; and, on the other hand, the direct relevance of article 8 to economic and social matters was pointed out.

13. The view prevailed that it was possible to require States parties to "ensure" the free exercise of the right to form and join trade unions, it being argued that that right could not be made subject to the "progressive" principle enunciated in article 2 since non-interference by States with trade unions was alone needed to grant the right.

14. Stress was placed on the importance of ensuring the "free" exercise of the right without State interference. It was observed, however, that the use of the words "of his choice" might limit the rights of unions to control their internal organization, particularly in relation to qualification for membership.

15. A number of provisions were proposed elaborating the ways in which trade union rights could be protected by the covenant; these were subjected to some criticism, on the grounds, among others, that they fell within the competence of the ILO and overlapped with its work and that some related to the rights of unions rather than to those of the individual. Included among the proposals were provisions relating to the right to strike, which was said to be vital for the protection of the economic and social rights of workers. It was pointed out that striking was only one method among many whereby trade unions could pursue their interests, stress being placed upon its character as a last resort, to be used only when the usual conciliation procedures had failed to secure a solution; and it was urged that any provision relating to striking should permit the possibility of its limitation in the case of public or essential services.

16. The question of the limitations of trade union rights was discussed. The words "in conformity with article 16" (now article 21 of the draft covenant on civil and political rights) had appeared after the words "the right of everyone" in article 8 at an earlier stage, and it was urged that this cross reference should be preserved, in view of the valuable definition of the limitation of the right of association contained in paragraphs 2 and 3 of article 21. On the other hand, it was argued that it was not advisable to make a reference in one covenant to a provision in another and that the present covenant would in any case contain a general limitations article (article 4) applicable to the entire covenant.

17. Article 8 was not intended to govern the rights of employers. It was stated that independent professional workers should be entitled to form professional organizations and that the rights of co-operative associations would not be prejudiced by their not being mentioned in the covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (IV)		E/C.2/32, para.2	
CHR (II)		E/CN.4/AC.1/9	
ESC (VI)		E/C.2/67	
CHR (V)		E/CN.4/263 and 313 and ESC (IX), suppl.10, annex I	
ESC (IX)		E/C.2/196	
CHR (VI)	E/CN.4/SR.184	E/CN.4/364,paras.86-95 and Corr.1, E/CN.4/365 and 403 and ESC (XI), Suppl.5, annex III	
ESC (XI)	E/SR.376, paras.32-5,36,37, 38-41,42,43,44 and 45		
GA (V)	3rd Com.,290th mtg.,para.11, 291st,paras.8,19 and 81, 297th para.59,298th para.13, 299th para.33,306th para 2 and 312th para.41 and A/PV.317 paras.16 and 63	Annexes, a.i.63, A/C.3/ L.77/Rev.1 and L.96, A/1559,para.49 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para.61	E/L.137	
CHR (VII)	E/CN.4/AC.14/SR.1 and 2, E/CN.4/SR.203,204,206,207, 208,218 and 224-6	E/CN.4/AC.14/2/Add.4, section X, E/CN.4/364/ Add.1,paras.26-7, E/CN.4/ 364/Add.3,para.38, E/CN.4/529,para.26, E/CN.4/537,538/Rev.1,539/ Rev.1,547,552,591 and Rev.1,594,595 and Rev.1 and 596, E/CN.4/NGO.20,23, 25 and 28 and ESC (XIII), suppl.9,para.46 and annex I,art.27 (French text in E/CN.4/635/Add.5, article 56).	
GA (VI)	3rd Com., 363rd mtg. paras.15-16, 366th, para.20 and 371st para.3		

DOCUMENTATION

(continued)

Organ and session	Records of discussion	Other documents	Article number
CHR (VIII)	E/CN.4/SR.268 and 298-300	E/CN.4/364/Rev.1, paras.92-101, E/CN.4/650,paras.10,13,34-5 and 58 (F), E/CN.4/654/Add.6, E/CN.4/655/Add.3, E/CN.4/L.50,50/Rev.1, 78,110,111,118,119,162, 162/Rev.1,163, and ESC (XIV) suppl.4, paras.140-141 and Annex I,A,Article 8	27
ESC (XVI)		E/C.2/365	8
CHR (X)		E/CN.4/694/Add.2 and E/CN.4/702, No.XVIII and Add.1, No.XXV	8
ESC (XVIII)		E/C.2/410	8
GA (IX)	3rd Com., 565th mtg. paras.20 and 33, 566th para.11, 572nd para.24 and 575th paras.9 and 31		8

ARTICLE 9

Social security

The States Parties to the Covenant recognize the right of everyone to social security.

18. During the drafting of this article, among others, the view was expressed that the covenant should include short general statements in view of the fact that detailed provisions on the rights in question had been, were being or should be drafted by the specialized agencies concerned.

19. Much of the discussion turned upon whether it was desirable to elaborate various aspects of social security. The question was, for instance, debated whether "social security" was as wide in scope as "social welfare" and whether it included "social insurance". Texts were proposed which would have specified certain eventualities in which, in particular, social insurance should be accorded. At an earlier stage the term "social security" had been interpreted broadly so as to include not only social insurance but also family allowances and other means of social protection.[1/] It was said that to elaborate various aspects of social security would have a limiting effect.

20. It was also feared that to elaborate exhaustively upon the meaning of "social security" might deny to States the necessary freedom in approaching the problem of social security.

21. The present wording was preferred to another which would have spoken of the right to social security not of everyone but more specifically of workers and salaried employees.

22. The question of the cost of social security schemes was discussed and a proposal was rejected according to which the cost would have been borne by the State or the employer, without contribution by the person benefited.

1/ E/CN.4/SR.220-1

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (IV)		E/C.2/32, para. 2	
CHR (V)	E/CN.4/SR.130 and 131	E/CN.4/245, 285 and 313 and ESC (IX), suppl. 10, annex I	
CHR (VI)	E/CN.4/SR.184	E/CN.4/353/Add.10, E/CN.4/364, paras.132-87, E/CN.4/365 and 436 and ESC (XI), suppl.5, annex III	
ESC (XI)	E/AC.7/SR.151		
GA (V)	3rd Com. 289th mtg. para.32, 290th para.56, 291st, paras. 8, 19 and 54, 298th para.13 and 299th paras.18 and 33 and A/PV.317, paras.63 and 73	Annexes a.i. 63, A/C.3/L.77/Rev.1 and L.96, A/1559, paras.25 and 49 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para. 60	E/L.137 and E/1880	
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3 and E/CN.4/SR.203, 204, 206, 207, 218 and 220-1	E/CN.4/AC.14/2/Add.3, section IV, E/CN.4/364/Add.1, paras. 42-5, E/CN.4/364/Add.3, para.26, E/CN.4/529, para.26, E/CN.4/537, 538/Rev.1, 539/Rev.1, 542, 543, 552, 562 and 581, E/CN.4/NGO.20, 23 and 28 and ESC (XIII), Suppl.9, para. 41 and annex I, article 22 (French text in E/CN.4/635/Add.5, article 51)	
GA (VI)	3rd Com. 360th mtg., paras. 25-7 and 366th para. 20		22
CHR (VIII)	E/CN.4/SR.268-9, 281, 282 and 284	E/CN.4/364/Rev.1, paras.141-97, E/CN.4/650, paras.11 and 13, E/CN.4/654/Add.6, E/CN.4/L.47, 64, 64/Rev.1-2, 68, and ESC (XIV) Suppl.4, paras. 117-118 and Annex I,A, article 9	22
CHR (X)		E/CN.4/702, No.XVIII and Add.1, No. XXV	9
GA (IX)	3rd Com., 569th mtg., para.18, 572nd para. 24 and 575th para. 7		9

ARTICLE 10

Rights relating to motherhood and childhood and to marriage and the family

The States Parties to the Covenant recognize that:

1. Special protection should be accorded to motherhood and particularly to maternity during reasonable periods before and after childbirth; and

2. Special measures of protection, to be applied in all appropriate cases within and with the help of the family, should be taken on behalf of children and young persons, and in particular they should not be required to do work likely to hamper their normal development. To protect children from exploitation, the unlawful use of child labour and the employment of young persons in work harmful to health or dangerous to life should be made legally actionable; and

3. The family, which is the basis of society, is entitled to the widest possible protection. It is based on marriage, which must be entered into with the free consent of the intending spouses.

23. The according of special protection to "motherhood", not exclusively to "maternity", was meant to signify that protection should extend over the whole period of the mother's responsibility for the development of the child during its early years. There was some feeling that the expression "motherhood" was too vague and that the general rights of mothers were covered by article 9 on social security.

24. The provision that special measures of protection taken on behalf of children and young persons should be applied in all appropriate cases "within and with the help of the family", gave rise to some debate as to the extent to which the State on the one hand and the family on the other should have responsibility in such matters. The proposer of the text observed that the family would constitute the medium through which the proposed protection would be given, the State being exclusively responsible for providing that

protection.[2] On the other hand, a proposal to refer to special measures of protection to be taken "by the States Parties to the Covenant" was rejected.[3]

25. The provisions of the final sentence of paragraph 2 were supported on the grounds of the persistence of exploitation of child labour; it was added that not all types of unlawful use of child labour were at present necessarily also penal offences. Attention was drawn, on the other hand, to the difficulties arising from the varying interpretations of the word "child" in different countries and to the difficulty of deciding what types of labour to declare unlawful.

26. Measures on behalf of maternity and motherhood which, under one proposal, would be obligatory on States parties, included the granting to gainfully employed women of paid holidays before and after confinement, and special State assistance to mothers of large families and to unmarried mothers. The opinion was expressed on the other hand that such measures were neither the only nor the most essential measures in that field; that they fell within the sphere of social security which had been treated in article 9; and that the obligations of States under article 10 should be those provided for in article 2.

27. The opinion was expressed that the contents of paragraph 3 were out of place in the present article and that the provisions relating to marriage should be included in the covenant on civil and political rights.

28. It was claimed that unlike paragraphs 2 and 3 of Article 16 of the Universal Declaration of Human Rights, paragraph 3 was open to the interpretation that a family not based upon marriage entered into with the free consent of the intending spouses was not entitled to the same protection as a family based upon a marriage freely entered into.

2/ E/CN.4/SR.297.

3/ E/CN.4/SR.298.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (VI)		E/C.2/67	
CHR (VI)	E/CN.4/SR.184	E/CN.4/364, paras.188-222, E/CN.4/365 and 436, E/CN.4/NGO/9 and ESC (XI), suppl.5, annex III	
GA (V)	3rd Com., 291st mtg. para.19 and 299th, para.33	Annexes, a.i.63, A/C.3/534, para.6 (k)	
ESC (XII)	E/SR.439		
CHR (VII)	E/CN.4/AC.14/SR.3, E/CN.4/SR.205, 206, 218, 222 and 224	E/CN.4/AC.14/2/Add.3, section V, E/CN.4/364/Add.1, paras.46-53, E/CN.4/364/Add.3, para.61, E/CN.4/529, para.26, E/CN.4/538/Rev.1, 539/Rev.1, 582 and 585-8, E/CN.4/NGO/15,17,18,29,30 and 33 and ESC (XIII), suppl.9, para.42 and annex I, article 26 (French text in E/CN.4/635/Add.5, article 55)	
GA (VI)	3rd Com., 360th mtg., paras. 25-7, 363rd, para.33 and 366th, para.20	Annexes, a.i. 29, A/C.3/566	26
CHR (VIII)	E/CN.4/SR.268 and 296-8	E/CN.4/364/Rev.1, paras.198-235, E/CN.4/650, paras.11,13,33 and 48, E/CN.4/655/Add.3, E/CN.4/660,paras. 13-14, E/CN.4/L.49 and Corr.1 (English only),74,74/Rev.1-2,77, 77/Rev.1,87,112,113,116,117,and ESC (XIV) Suppl.4,paras.135-139 and Annex I, A, Article 10	26
CHR (IX)		E/CN.4/673, paras.13-15 and E/CN.4/NGO.43	10

DOCUMENTATION (continued)

Organ and session	Records of discussion	Other documents	Article number
CHR (X)		E/CN.4/702,Nos.VII,IX,XI,XIII, XVI and XVIII,Add.2, No.XXIX and Add.4	10
GA (IX)	3rd Com.,562nd mtg.para.7, 563rd para.9,569th para.17, 571st para.34,572nd paras. 12 and 25-6, 575th para.16 and 576th para.30		10

ARTICLE 11

Right to adequate food, clothing and housing

The States Parties to the Covenant recognize the right of everyone to adequate food, clothing and housing.

29. While the relationship between food, clothing and housing and the adequate standard of living referred to in article 12 was recognized, these three elements were considered of sufficient importance to warrant their specific mention in a separate article.

30. Opposition to a separate article on adequate housing (expressed before reference to food and clothing had been added) was based on the grounds that to make special provision for housing would throw doubt on the scope of article 12 and that housing was dealt with already also in article 13.

31. The adoption was urged of a text whereby States parties would undertake all necessary measures, partly by legislation, to ensure to everyone a dwelling consistent with human dignity, on the grounds that article 2 was insufficient to cover the needs of the situation. It was pointed out that "all necessary measures" did not imply only the building of houses, but such measures as subsidies, tax exemptions, loans and the provision of materials on favourable terms. It was maintained, on the other hand, that such a text would rule out initiative on the part of community and private enterprise, that the obligations of article 2 were all that could be reasonably insisted upon in this connexion and that States should not be compelled to give priority to housing in their over-all implementation of the covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (VI)		E/C.2/67	
CHR (V)		E/CN.4/246 and 313 and ESC (IX), Suppl.10, annex I	
CHR (VI)		E/CN.4/364,paras.110-120,E/CN.4/365 and ESC (XI), Suppl.5, annex III	
ESC (XI)	E/SR.439		
GA (V)	3rd Com.,291st mtg.,para.54 and 299th para.18 and A/PV. 317, para.63	Annexes a.i. 63, A/C.3/L.77/Rev.1 and L.96 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para.60 and E/SR. 439, paras. 35-41	E/L.137	
CHR (VII)	E/CN.4/SR.203,204,218 and 222-3	E/CN.4/AC.14/2/Add.3,section VI, E/CN.4/364/Add.1,paras.31-8, E/CN.4/364/Add.3,para.48, E/CN.4/529,para.26,E/CN.4/537,552 and 582, E/CN.4/NGO/28 and ESC (XIII), Suppl.9,para.43 and annex I, article 23 (French text in E/CN.4/635/Add.5,art.52)	
GA (VI)	3rd Com.,360th mtg.paras.25-7, 363rd paras.15-16, 366th para.20, 369th para. 6 and 371st para.1		23
CHR (VIII)	E/CN.4/SR.269 and 294-5	E/CN.4/364/Rev.1,paras.116-29, E/CN.4/650,paras.10,11,13 and 52-3, E/CN.4/654/Add.6 and 655/Add.3, E/CN.4/L.48,57,83 and ESC (XIV) Suppl.4,paras.129-130 and Annex I, A, article 11	23
CHR (IX)		E/CN.4/673, para.16	11
GA (VIII)	3rd Com., 509th mtg.,para.21		11
CHR (X)		E/CN.4/694/Add.6,para.14 and E/CN.4/702, Nos. VI and XVIII	11
GA (IX)	3rd Com.,569th mtg.,para.18, 570th para.3 and 571st. para.35		11

ARTICLE 12

Right to an adequate standard of living

The States Parties to the Covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions.

32. Article 12 contains no definition of an adequate standard of living; it was thought that any attempt at such definition would be restrictive in its effect. The words "and the continuous improvement of living conditions" were added in order to ensure the recognition of the principle of continuous progress in this sphere.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (VI)		E/C.2/67	
CHR (VI)		ESC (XI), Suppl.5, annex III	
CHR (VII)	E/CN.4/SR.204, 218 and 222-3	E/CN.4/AC.14/2/Add.3,section VII, E/CN.4/364/Add.3,paras.41-7, E/CN.4/539/Rev.1 and 543 and ESC (XIII) suppl.9,para.44 and annex I, article 24 (French text in E/CN.4/635/Add.5, art.53)	
ESC (XIII)		E/2057/Add.2 and E/2059/Add.8	24
GA (VI)	3rd Com.,360th mtg. paras.25-7, 366th para. 20 and 371st para.1		24
CHR (VIII)	E/CN.4/SR.295	E/CN.4/650 paras.11,13 and 29-30 and ESC (XIV) Suppl.4, para.131 and Annex I, A, Article 12	24
CHR (IX)		E/CN.4/673, para.16	12
GA (VIII)	3rd Com., 509th mtg. para.21		12
CHR (X)		E/CN.4/694/Add.6,para.14 and E/CN.4/702, No.VI	12
ESC (XVIII)		E/C.2/410	12
GA (IX)	3rd Com.,569th mtg. para.7, 570th para.3 and 571st, para.35		12

ARTICLE 13

Right to health

1. The States Parties to the Covenant, realizing that health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, recognize the right of everyone to the enjoyment of the highest attainable standard of health.

2. The steps to be taken by the States Parties to the Covenant to achieve the full realization of this right shall include those necessary for:

(a) The reduction of infant mortality and the provision for healthy development of the child;

(b) The improvement of nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;

(c) The prevention, treatment and control of epidemic, endemic and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

33. In the drafting of this text, which is more detailed than the preceding articles, consideration was given to the attitude of the World Health Organization, which favoured the inclusion in the article of a certain degree of detail.

34. The definition of health contained in paragraph 1 was derived from the Constitution of the World Health Organization. Its introduction into the text was opposed on the grounds that such definitions were unusual in the articles of the covenant and that the reference to "social well-being" was out of place in the present article. It was defended on the grounds both of its origin and of its intrinsic worth as representing a new and valuable idea.

35. The introductory clause "The steps to be taken by the States Parties to the Covenant to achieve the full realization of this right shall include those necessary for" was intended to make the article subject to article 2, it being argued that the inclusion of separate statements of obligations in the articles dealing with specific rights was unnecessary and would weaken article 2 and so the entire covenant. The opinion was expressed, on the other hand, that the wording just

quoted was weaker than the undertaking contained in another proposal, according to which the statement of provisions to be taken by States would have been introduced by the following: "With a view to implementating and safeguarding this right each State Party hereto undertakes to provide legislative measures to promote and protect health and, in particular:".

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)		E/CN.4/364,paras.121-31 and Corr.3	
GA (V)	3rd Com.,298th mtg., para.64 and 299th, para.33		
ESC (XII)		E/1880/Add.2	
CHR (VII)	E/CN.4/AC.14/SR.1, E/CN.4/SR.203,204, 207,209,222 and 223	E/CN.4/AC.14/2/Add.4,section VIII, E/CN.4/364/Add.1,paras.39-41,E/CN.4/364/Add.3,paras.49-60,E/CN.4/529, para.26, E/CN.4/539/Rev.1, 542, 543, 544 and Add.1,547,562,583 and 589 and ESC (XIII), suppl.9,para.45 and Annex I, art.25 (French text in E/CN.4/635/Add.5, article 54)	
ESC (XIII)	E/SR.523,para.31	E/C.2/323	25
GA (VI)	3rd Com.,363rd mtg.,paras. 15-16 and 33 and 366th para.20		25
CHR (VIII)	E/CN.4/SR.268 and 295-6	E/CN.4/364/Rev.1,paras.130-40,E/CN.4/650, paras.10,12,13 and 31-2, E/CN.4/660, para.49, E/CN.4/L.79, 79/Rev.1,84,86, 109, and ESC (XIV),Suppl. 4,paras.132-134 and Annex I, A, Article 13	25
CHR (IX)		E/CN.4/673, para.17	13
GA (VIII)	3rd Com.,509th mtg.para.21		13
CHR (X)		E/CN.4/694/Add.2 and Add.6,para.14 and E/CN.4/702,No.XVIII and Add.4	13
GA (IX)	3rd Com.565th mtg.,para.28, 566th,para.11, 567th para.10 570th,para.3, 571st para.16, 572nd,paras.13 and 26, 575th para.6 and 576th para.30		13

ARTICLE 14

Right to education

1. The States Parties to the Covenant recognize the right of everyone to education, and recognize that education shall encourage the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the suppression of all incitement to racial and other hatred. It shall promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate effectively in a free society.

2. It is understood:

(a) That primary education shall be compulsory and available free to all;

(b) That secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;

(c) That higher education shall be equally accessible to all on the basis of merit and shall be made progressively free;

(d) That fundamental education for those persons who have not received or completed the whole period of their primary education shall be encouraged as far as possible.

3. In the exercise of any functions which they assume in the field of education, the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious education of their children in conformity with their own convictions.

36. The relatively detailed nature of this article, and of articles 14-16 on educational and cultural rights taken together, is the result partly of the fact that UNESCO favoured articles on those rights containing a degree of detail.

37. Some doubt was expressed as to the desirability of including the definition of the aims of education which appears in paragraph 1. It was argued that that

definition confused elements which were not all of equal importance and that no similar definition appeared in other articles. It was felt, however, that, in the light of the widely differing ends to which education could be used, it was important to state what those ends ought to be. There was some opposition to the reference to supression of incitement to racial and other hatred, it being felt in particular that it was unnecessary in the light of the wording of the more positive statement that followed. Anxiety was expressed concerning the reference to racial groups, it being claimed that the word "racial" was devoid of scientific basis and that its use might perpetuate or appear to give approval to undesirable attitudes.

38. Some doubt was voiced as to the legal significance of the words "it is understood" in paragraph 2.

39. It was recognized that the meanings of some of the terms used in paragraph 2, and of primary and secondary education in particular, differed from country to country.

40. Provisions were proposed according to which "the State must ensure" the rights to primary, secondary and higher education, in particular by providing the necessary systems of schools, scholarships and higher educational institutions. It was stressed that the obligation of States to create all the conditions necessary to enable every person, without any discrimination whatever, to acquire an education was particularly important inasmuch as more than half of the population of the world was illiterate. The provisions in question were subjected to criticism on the grounds that the methods needing to be applied were not the same for all States, which should not therefore be bound in their policies, and because the full realization of the right to education did not depend solely upon State action.

41. The intention of the wording of paragraph 2 (a) was that, while primary education was to be compulsory, a parent need not necessarily make use of the free State-provided facilities.

42. A proposal to add reference in paragraph 2 (b) to artistic secondary education was not adopted, it being felt that technical and professional education included artistic education. There was some discussion of the precision of the words

"generally available" in the English text, one interpretation being that the State must, according to paragraph 2 (b), provide all the schools required for secondary education.

43. It was felt that separate reference need not be made in paragraph 2 to physical education, since this would be understood as being included in the general concept of education.

44. A provision was eliminated from the article prohibiting discrimination in educational matters after the argument had been heard that to include such a provision was unnecessary in the light of paragraph 2 of article 2. The retention of the provision had been urged on the grounds that there were special reasons for providing against discrimination in the present context in view of the prevalence of discrimination and segregation in the provision of educational facilities.

45. It was felt impossible to provide that parents should be given the right to determine the curriculum of their children's education, and paragraph 3 of article 14 represents what was felt to be the most realistic and equitable way of expressing the content of article 26, paragraph 3, of the Universal Declaration of Human Rights, according to which "parents have a prior right to choose the kind of education that shall be given to their children."

46. Paragraph 3 speaks of "public authorities" because schools or types of schools are often the responsibility of local authorities and not of the State.

47. There was some discussion of the possibility of making reference to philosophical as well as religious education in the final wording of the paragraph. One observation made was that complete freedom in this respect might result in teaching contrary to the aims set out in paragraph 1.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
ESC (VII)		E/C.2/88	
CHR (V)	E/CN.4/SR.131	E/CN.4/247, 285, 304 and 313 and ESC (IX), suppl. 10, annex I	
CHR (VI)	E/CN.4/SR.184	E/CN.4/353/Add.10, E/CN.4/364, paras. 223-93, E/CN.4/365, 436 and 477, E/CN.4/NGO/12 and ESC (XI), suppl. 5, annex III	
ESC (XI)	E/C.2/SR.79	E/1752 and Corr.1 and E/C.2/259 and Add.1	
GA (V)	3rd Com., 290th mtg., para. 18, 291st, paras. 19, 54 and 59, 297th, paras. 65-6, 298th, paras. 25 and 64, 299th paras. 18 and 25 and 312th, para. 41 and A/PV.317, paras. 63 and 73	Annexes, a.i. 63, A/C.3/L.77/Rev.1 and L.96 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para. 60 and E/SR.439, para. 48	E/L.137 and E/1880	
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3, E/CN.4/SR.203, 204, 205, 206, 208, 209 and 226-30	E/CN.4/AC.14/2/Add.4, section IX, E/CN.4/364, Add.1, paras. 54-79, E/CN.4/364/Add.2 and Add.3, paras. 62-74, E/CN.4/529, para. 26, E/CN.4/537, 538/Rev.1, 539/Rev.1, 541/Rev.1, 542, 543, 547, 552, 593 and Rev.1 and 2, 598, 601-2, 605, 611 and 613/Rev.1, E/CN.4/NGO/20, 21, 23, 25, 28, 29 and 30 and ESC (XIII) Suppl. 9, para. 47 and Annex I, article 28 (French text in E/CN.4/635/Add.5, article 57)	
ESC (XIII)	E/C.2/SR.106	E/2059/Add.8 and E/C.2/316	28

DOCUMENTATION
(cont'd)

Organ and session	Records of discussion	Other documents	Article number
GA (VI)	3rd Com., 360th mtg., paras. 25-7, 363rd paras. 15-16, 366th para. 20 and 367th	Annexes, a.i. 29, A/C.3/566 and A/2112, para. 39	28
CHR (VIII)	E/CN.4/SR.285-91	E/CN.4/364/Rev.1, paras. 236-315, E/CN.4/650, paras. 10, 11, 13 and 36-9, E/CN.4/655/Add.4, 660, para. 16, and 667, E/CN.4/NGO/36, E/CN.4/L.51, 51/Corr.1 (English only), 61, 61/Rev.1, 80, 80/Rev.1-2, 85, 85/Rev.1, 89, 95, 96, 96/Rev.1, 97, 98, 99, 100, 101, 102, 102/Rev.1 and ESC (XIV), suppl. 4, paras. 119-123 and Annex I, A, Article 14	28
CHR (IX)		E/CN.4/673, paras. 18-19	14
GA (VIII)	3rd Com., 509th mtg., para. 21		14
CHR (X)		E/CN.4/694/Add.7 and E/CN.4/702, No. XI and XIII and Add.2, No. XXIX	14
GA (IX)	3rd Com., 565th mtg., paras. 28 and 44, 567th, para. 10, 568th, para. 15, 569th, para. 17, 571st, para. 16, 572nd, paras. 13 and 27, 575th, paras. 6 and 31 and 576th, paras. 30 and 31		14

ARTICLE 15

Plan for implementing compulsory primary education

Each State Party to the Covenant which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

48. Article 15 was criticized from various, and sometimes opposing, points of view.

49. On the one hand, it was said that the article would enable governments to postpone indefinitely the introduction of free compulsory primary education for all.

50. On the other hand, it was argued that the article accentuated the lack of balance existing between the drafting of the provisions on educational rights and the drafting of the articles on economic and social rights, which might have the effect of detracting from the importance of planning in fields relating to the latter. It was also maintained that the article provided in reality for a special measure of implementation on the national level for one aspect of one right, whereas such implementation should be the subject-matter of article 2 exclusively. The articles being drafted should merely set out general objectives which States should seek to attain. Many States would find difficulty in specifying the number of years within which free and compulsory primary education could be provided, and it would be impossible to bind States to implement plans within the time limit specified by them. The matter was said, furthermore, to be for UNESCO to deal with.

51. In support of the article, it was argued that education, particularly primary education, should not be made subject only to a general obligation to take steps to achieve progressive development. On the other hand, the article did not lay down any unrealistic obligations. It was added that UNESCO itself favoured the adoption of the article.

52. There is no evidence that the expression, used in article 15, "compulsory primary education free of charge for all," was intended to mean something different from the "primary education ..... compulsory and available free to all" of paragraph 2 (a) of article 14.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VI)		E/CN.4/477	
ESC (XI)		E/1752 and Corr.1	
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3, and E/CN.4/SR.203, 204, 205, 206 and 226-30	E/CN.4/AC.14/2/Add.4, section X, E/CN.4/541/Rev.1, 542, 547 and 613/Rev.1 and ESC (XIII), suppl. 9, para. 47 and annex I, article 29 (French text in E/CN.4/635/Add.5, article 58)	
ESC (XIII)	E/C.2/SR.106	E/2059/Add.4 and E/C.2/316	29
GA (VI)	3rd Com., 366th mtg., para. 20 and 367th	Annexes, a.i. 29, A/2112, para. 39	29
CHR (VIII)	E/CN.4/SR.291, 292 and 295	E/CN.4/650, paras. 13 and 40, E/CN.4/655/Add.4, E/CN.4/667, E/CN.4/L.88, and ESC (XIV) Suppl. 4, paras. 124-5 and Annex I, A, Article 15	29
CHR (X)		E/CN.4/694/Add.2	15
GA (IX)	3rd Com., 562nd mtg., para. 7, 563rd, para. 10, 571st, para. 36 and 575th, para. 31		15

ARTICLE 16

Rights relating to culture and science

1. The States Parties to the Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications.

2. The steps to be taken by the States Parties to this Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

53. The view was expressed that a provision should be added to article 16 to the effect that States should undertake to ensure the development of science and culture in the interests of progress and democracy and of ensuring peace and co-operation among nations. In support of the provision the desirability of placing a binding obligation on States was stressed, particularly in the light of the development of destructive weapons. Opposition was, however, expressed to including a statement of the ends which scientific research should serve, on the grounds that scientific research by its nature was independent of any external criterion and that a statement of aims such as that envisaged might provide a pretext for State control of scientific research and creative activity.

54. A proposal for the addition of a provision for the protection of rights deriving from scientific, literary or artistic productions was opposed on the grounds that the matter could not adequately be treated in a short provision, that it was properly being dealt with by UNESCO, and more adequately, and that authors' rights had to be considered in the light of the claims of the community and of the world at large.

55. The adoption of paragraph 3 was proposed on the grounds that it contained an essential element not covered by the previous provisions of the article.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (V)		E/CN.4/248 and 313 and ESC (IX), suppl. 10, annex I	
CHR (VI)	E/CN.4/184	E/CN.4/364, paras. 223-64 and 294-9 and Corr.1, E/CN.4/365 and 477 and ESC (XI), Suppl. 5, annex III	
ESC (XI)		E/1752 and Corr.1	
GA (V)	3rd Com., 289th mtg., para. 32 and 299th, paras. 33 and 55	Annexes a.i. 63, A/C.3/L.77/Rev.1 and L.96 and A/1576 and Corr.1	
ESC (XII)	E/SR.438, para. 60	E/L.137 and E/1880	
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3 and E/CN.4/SR.203, 204, 205, 206, 209 and 226-30	E/CN.4/AC.14/Add.4, section IX, E/CN.4/364/Add.1, paras. 54-77 and 80-4, E/CN.4/364/Add.2, E/CN.4/529, para. 26, E/CN.4/537, 539/Rev.1, 541/Rev.1, 542, 543, 547, 552 and 613/Rev.1, E/CN.4/NGO/23 and 28 and ESC (XIII), suppl. 9, para. 47 and annex I, article 30 (French text in E/CN.4/635/Add.5, article 59)	
GA (VI)	3rd Com., 360th mtg., paras. 25-7, 366th, para. 20, 367th and 371st, para. 4	Annexes, a.i. 29, A/C.3/566 and A/2112, para. 39	30
CHR (VIII)	E/CN.4/SR.269 and 292-4	E/CN.4/364/Rev.1, paras. 236-78 and 316-322, E/CN.4/650, paras. 11, 13 and 41, E/CN.4/654/Add.6, E/CN.4/655/Add.4, E/CN.4/L.52, 75, 81, 81/Rev.1, 104, 105, 105/Rev.1, 106, 106/Rev.1, 107, 108 and ESC (XIV), Suppl. 4, paras. 126-128 and Annex I, A, Article 16	30
CHR (IX)		E/CN.4/673, para. 20	16

DOCUMENTATION
(cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (X)		E/CN.4/694/Add.6, para. 14 and E/CN.4/702, No. XVI, Add.1, No. XXVII and Add.5	16
GA (IX)	3rd Com., 565th mtg., paras. 20 and 32, 566th, paras. 16 and 22, 570th, para. 3, 572nd, para. 16 and 575th paras. 10 and 31		16

RIGHT OF PROPERTY

56. Proposals were made for an article on the right of property to be included either in the covenant on economic, social and cultural rights or in the covenant on civil and political rights or in both covenants. No text of such an article was adopted. For a discussion of the proposals, see paragraphs 195 - 212 of Chapter VI.

CHAPTER IX

MEASURES OF IMPLEMENTATION: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(Part IV, Articles 17-25, of the Draft Covenant on Economic, Social and Cultural Rights)

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PART IV OF THE DRAFT COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

ARTICLE 17

Reporting Obligation

1. The States Parties to this Covenant undertake to submit in conformity with this part of the Covenant reports concerning the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations for the Economic and Social Council;

(b) Any State Party which is also a member of a specialized agency shall at the same time transmit, in respect of matters falling within the purview of that agency, a copy of its report, or relevant extracts therefrom, as appropriate, to that agency.

1. Article 17 contains the kernel of the reporting procedure of the draft covenant on economic, social and cultural rights.

The extent of the obligation to report[1/]

2. It was proposed that the article should provide for an obligation to submit reports in conformity not only with part IV of the draft covenant but also with "the recommendations which the General Assembly and the Economic and Social Council, in the exercise of their general responsibility, may make to all the Members of the United Nations."

1/ E/CN.4/AC.15/SR.2, E/CN.4/AC.15/R.1, E/CN.4/SR.241, 243, 246 and 420-3, E/CN.4/L.325, E/CN.4/530/Add.1, para. 29, E/CN.4/623, 625 and 629 and E/2059/Add.2, para. 4.

3. In support of the proposal, it was pointed out that the General Assembly and the Economic and Social Council were entrusted by the United Nations Charter with a continuing responsibility in relation to human rights, and that the Council might make arrangements with Member States to obtain reports on the steps taken to give effect to its own recommendations and recommendations of the General Assembly. Furthermore, since the Council, as well as the Assembly, would consider reports submitted by States parties to the covenant and might make recommendations to them, it was essential that such States should accept the recommendations and undertake to report in conformity with such recommendations. Again, it was to be assumed that a large number of Member States of the United Nations would ratify the covenant and they would exercise a considerable influence in the General Assembly when it adopted relevant recommendations.

4. On the other hand, it was said that the words proposed did not lay down a precise obligation, but required States parties to submit themselves to undefined future decisions and recommendations of the General Assembly and of the Council. If the words in question were intended to minimize the difference between the position of States parties and that of non-parties, they had not achieved that object because they would create an obligation only for the States parties. The omission of the words would not deprive the recommendations of the General Assembly and of the Council of their existing force, but would ensure that they would have the same force for both parties and non-parties to the covenant.

5. As is observed in the treatment of article 2 above,[2/] while most of the articles of part III of the covenant recognize rights and while article 2, paragraph 1, of the covenant places an obligation on States parties in relation to the rights so recognized separate and additional obligations are laid down in some articles of part III, namely in article 8, article 14, paragraph 3, article 15, and article 16, paragraph 3. Furthermore, article 2, paragraph 2, contains a separate undertaking that the rights enunciated in the covenant shall be exercised without distinction of any kind. While the relationship between article 17 and article 2, paragraph 1, is clear, it may be that a more

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2/ See Chapter V.

clear definition should be given to the relationship between article 17 and the obligations laid down in article 2, paragraph 2, article 8, article 14, paragraph 3, article 15, and article 16, paragraph 3.

The destination of reports[3/]

6. Since many of the rights which were the subject matter of the draft covenant were also within the jurisdiction of one or more specialized agencies, and since some were already the subject of reporting obligations binding upon some States which could become parties to the Covenant, there was discussion of the question of the destination of the reports required by paragraph 1 of the article. Paragraph 2 represents a compromise between various points of view.

7. On the one hand it was proposed that any State party which is also a member of a specialized agency should, in respect of any provision of this covenant falling within the competence of that agency, submit its report to that agency, and that all other reports should be submitted to the Secretary-General of the United Nations for the Economic and Social Council.

8. This proposed procedure, it was argued, would ensure that within the fields of activities of the specialized agencies reports furnished by their members would go to those agencies, while two types of reports would be submitted to the Secretary-General of the United Nations for the Economic and Social Council: reports dealing with matters not within the competence of any specialized agency and reports of States not members of the competent specialized agency. It was observed that the covenant on economic, social and cultural rights had been drafted so as to contain, in the main, general statements of obligations,

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3/ E/CN.4/AC.14/SR.1, 2 and 3, E/CN.4/AC.14/2/Add.5, E/CN.4/AC.15/SR.2, E/CN.4/AC.15/R.1, E/CN.4/SR.203, 205, 206, 207, 218, 237-8, 241-3, 246-7 and 420-3, E/CN.4/L.325, L.326 and Rev.1, L.327 and L.329, E/CN.4/530/Add.1, paras. 30-3, E/CN.4/529, paras. 54-5, 539/Rev.1, 542, 543, 544/Add.1, E/CN.4/622, 625, 629, 631/Rev.2, 654/Add.2 and 655/Add.4, E/CN.4/659, ESC (XIII), 523 mtg., para. 17, E/2048/Add.1, para. 7 and Annex III, E/2057/Add.1, 2 and 4 and GA (VI), 3rd Com., 360th mtg., para. 58, 361st mtg., para. 47, 362nd mtg., para. 6, 363rd mtg., para. 41, 367th mtg., paras. 33-4 and 371st mtg., para. 10.

on the understanding that it would, in general, be for the competent specialized agencies to elaborate the detailed obligations required for the realization of the rights. The proposal would save work for national authorities which would be responsible for reporting, and would obviate duplication of functions as between the United Nations and the specialized agencies as well as the establishment of unnecessary new machinery.

9. On the other hand, there were proposals according to which all reports would be submitted to the Secretary-General of the United Nations for the Economic and Social Council and relevant reports or extracts therefrom would be forwarded to the specialized agencies concerned either by the Council or by the Secretary-General. The feeling was expressed that the general responsibilities of the United Nations in respect of human rights were clearly laid down in the Charter of the United Nations and that any impression of derogating from them or delegating some of them should be avoided.

10. It was pointed out that, under the system of periodic reports, Member States which acceded to the covenant would be obliged to report their actions over a wide field to the United Nations, which would include States that had not ratified the covenant. States Parties would have to justify their actions before other States and suffer their criticism. The establishment of such a disparity would not encourage accessions to the Covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.14/SR.1, 2 and 3 E/CN.4/AC.15/SR.2, E/CN.4/ SR.203, 205, 206, 207, 218, 237-8, 241-3 and 246-7	E/CN.4/AC.14/1 and 2/Add.5, E/CN.4/AC.15/R.1, E/CN.4/529, paras. 54-5, 539/Rev.1, 542, 543, 544/Add.1, 570 and Rev.1 and 2, 622, 623, 625, 629 and 631/Rev.2 and ESC (XIII), suppl. 9, paras. 59-60 and annex 1, part V, Art. 60	A
ESC (XIII)	ESC (XIII), 523rd mtg., para. 17	E/2048/Add.1, para. 7 and Annex III, E/2057/Add.1, 2 and 4 and E/2059/Add.2, para. 4	60
GA (VI)	3rd Ccm., 360th mtg., para. 58, 361st mtg., para. 47, 362nd mtg., para. 6, 363rd mtg., para. 41, 367th mtg., paras. 33-4 and 371st mtg., para. 10		
CHR (VIII)		E/CN.4/530/Add.1, paras. 29-33, E/CN.4/654/Add.2 and E/CN.4/ 655/Add.4, E/CN.4/659	60
CHR (X)	E/CN.4/SR.420 and 426	E/CN.4/L.325, L.326 and Rev.1, L. 327 and L.329 and ESC (XVIII), suppl. 7, paras. 77-97 and annex I, section A, part IV, art. 17	60
GA (IX)	3rd Com., 571st mtg., para. 11 and 572nd paras. 28 and 42		17

ARTICLE 18

Timing and contents of reports

1. The States Parties shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council after consultation with the States Parties to this Covenant and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under this Covenant.

3. Where relevant information has already previously been furnished to the United Nations or to any specialized agency by any State Party it will not be necessary to reproduce that information but a precise reference to the information so furnished will suffice.

The Programme of Reporting[4/]

11. Paragraph 1 of article 18 does not contain details regarding the contents of the reports which States parties are to furnish. The feeling was expressed that to set out such details was not essential, particularly since the covenant, once it had been adopted and had entered into force, would not be easily amendable. It was thought that it would be more logical to specify that the body empowered to receive the reports should also decide what form those reports should take.

12. The Working Group on whose proposal the paragraph was adopted agreed that the word "programme" used in the paragraph was intended to signify a programme for the "timing, form and substance of the reports." [5/]

4/ E/CN.4/AC.15/SR 2, E/CN.4/AC.15/R.1, E/CN.4/AC.14/2/Add.5, E/CN.4/SR.241, 243, 246 and 423, E/CN.4/530/Add.1, para. 33, E/CN.4/570 and Rev.1 and 2, E/CN.4/622, 623, 625, 629, 630 and 675, para. 11 and E/2057/Add.2.

5/ E/CN.4/AC.15/SR.2, p. 33.

Indication of factors and difficulties affecting the degree of fulfilment of obligations 6/

13. The concept underlying paragraph 2 was accepted on the grounds that it emphasized the fact that the reporting procedure was intended to represent a system of mutual aid and progressive promotion of human rights rather than a machinery of enforcement. Attention was drawn to a similar provision contained in the Constitution of the International Labour Organisation.

Reference to information previously furnished to the United Nations or to a specialized agency 7/

14. The concept underlying paragraph 3 was accepted on the grounds of administrative convenience. It was explained, however, that the precise wording adopted was intended to make it clear that a State party which had already submitted certain information was not thereby absolved from reporting upon matters not covered by that information or from completing or bringing up to date information already given.

6/ E/CN.4/AC.15/SR.2, E/CN.4/AC.15/R.1, E/CN.4/AC.14/2/Rev.5, E/CN.4/SR.241, 246 and 423, E/CN.4/570 and Rev.1 and 2 and E/CN.4/622, 625 and 629.

7/ E/CN.4/AC.15/SR.2, E/CN.4/AC.15/R.1, E/CN.4/AC.14/2/Add.5, E/CN.4/SR.238, 246 and 423, E/CN.4/570 and Rev.1 and 2, 622, 625 and 629.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.2, E/CN.4/SR.238, 241, 243 and 246	E/CN.4/AC.14/2/Add.5, E/CN.4/AC.15/R.1, E/CN.4/570 and Rev.1 and 2, 622, 623, 625, 629 and 630 and ESC (XIII), suppl. 9, para. 59 and Annex I, part V, art. 61	B
ESC (XIII)		E/2057/Add.2	61
CHR (VIII)		E/CN.4/530/Add.1, para. 33	61
CHR (IX)		E/CN.4/675, para. 11	61
CHR (X)	E/CN.4/SR.423	ESC (XVIII), suppl. 7, paras. 98-106 and annex I, section A, part IV, art. 18	61

ARTICLE 19

Arrangements with specialized agencies

Pursuant to its responsibilities under the Charter in the field of human rights, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of this Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

15. During the drafting of this article stress was again placed upon the general responsibilities of the Economic and Social Council in respect of human rights, and one intention of its authors was that, whatever might be decided on the question of the destination of the reports of States parties, the Council would in due time be seized of information on the observance by all States parties of all the provisions of the covenant on economic, social and cultural rights. A thesis put forward and not contested was that the arrangements to be made by the Council with the specialized agencies "should relate both to the manner of the reporting and to the substance of the reports" to be made by the latter.8/

16. The choice of the word "may" instead of "shall" was defended on the grounds that, while there was no doubt that the Council would agree to make the arrangements envisaged, it was legally impossible for a multilateral treaty to impose obligations on the Council; and (ii) on the grounds that the covenant could not impose obligations on the specialized agencies and that such agencies should be left free to decide which decisions and recommendations they wished to forward to the Council.

17. The choice of words "within the scope of their activities" instead of "within their competence" was defended on the grounds that to speak of competence would raise constitutional and jurisdictional questions.

8/ E/CN.4/AC.15/SR.2, p. 29.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.2, E/CN.4/SR.243, 246 and 247	E/CN.4/AC.15/R.1, E/CN.4/570 and Rev.1 and 2, 629 and 631/Rev.2 and ESC (XIII) suppl. 9, para. 60 and annex I, part V, Art. 62	C
CHR (IX)		E/CN.4/675, para. 31	62
CHR (X)	E/CN.4/SR.424	E/CN.4/L.325 and ESC (XVIII), suppl. 7, paras. 110-21	62
GA (IX)	3rd. Com., 572nd mtg., para. 42		19

ARTICLE 20

Function of the Commission on Human Rights

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States, and those concerning human rights submitted by the specialized agencies.

Reference to the Commission on Human Rights[9/]

18. When it was decided that article 20 should mention the Commission on Human Rights, two other alternatives discussed were rejected: (i) that the Council should alone be mentioned, and so be left entirely free to decide on the procedure for dealing with reports, and (ii) that the Council should be required to establish every year a Committee, of persons serving in their individual capacities but restricted to nationals of State Parties, to examine the reports and to report to the Council. The text adopted reflects a predominance of support for the view that the interest of the Commission on Human Rights in the matter should be expressly recognized, even though States which did not adhere to the covenant might so be enabled to comment on the performance of those which did adhere. At a stage subsequent to this decision to mention the Commission, it was pointed out that the covenant could not and should not attempt to bind the actions of the Council, and consequently the word "may" was substituted for "must".

Possible action by the Commission[10/]

19. It was maintained that to insert before the word "recommendation" the word "general" would be in keeping with a widely held view that the reports should not

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9/ E/CN.4/AC.15/SR.3, E/CN.4/SR.237, 238, 241, 242, 243, 247 and 424, E/CN.4/L.325, E/CN.4/530/Add.1, para. 34, E/CN.4/570 and Rev.1 and 2, 623, 624, 625, 629 and 630, E/2059/Add.2, para. 4 and GA (IX) 3rd. Com., 575th mtg., para. 32

10/ E/CN.4/SR.424, E/CN.4/530/Add.1, para. 35, E/CN.4/675, paras. 12-13, E/CN.4/L.325 and E/2057/Add.2.

give rise to particular recommendations to individual States, since, in the view of some, that would be contrary to Article 2, paragraph 7, of the Charter. The purpose of the Commission's general recommendations would be to draw attention to obstacles encountered by States in attaining the full realization of the rights enumerated in the covenant and to ascertain what the United Nations could do to help them to overcome those obstacles. The inclusion of the word "general" was opposed on the grounds that, apart from the fact that the General Assembly and the Council were empowered to make specific recommendations to particular States, any State acceding to the covenant would thereby implicitly accept the Council's right to make such recommendations, so that the question of violation of Article 2, paragraph 7, of the Charter would not arise.

20. The inclusion of the words "or as appropriate for information" was urged on the grounds that the specialized agencies might well submit voluminous and highly technical reports, on which the Commission, as at present constituted, might find it difficult to make studies and recommendations. It should therefore be made clear that it was not necessary for all reports to be the subject of discussion and recommendation by the Commission. On the other hand, it was claimed that if the words in question were not included the Commission would not be obliged to study and make recommendations on all reports which it might receive. The hope was expressed that the inclusion of the wording in question would not preclude the establishment by the Commission of a committee of experts to carry out a preliminary examination of materials received.

21. As one argument against the reporting procedure as a whole, it was said that the system would confer new powers on the Commission on Human Rights exceeding in some respects those of the Economic and Social Council, and even those of the General Assembly.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3, E/CN.4/SR.237,238,241, 242, 243 and 247	E/CN.4/570 and Rev.1 and 2, 623, 624, 625, 629 and 630 and ESC (XIII), suppl.9, para.61 and annex I, part V, art.63	D
ESC (XIII)		E/2059/Add.2 para. 4	63
CHR (VIII)		E/CN.4/530/Add.1, paras.34-35	63
CHR (IX)		E/CN.4/675, paras.12-13	63
CHR (X)	E/CN.4/SR.421 and 424	E/CN.4/L.325 and ESC (XVIII), suppl.7, paras. 76 and 122-32	63
GA (IX)	3rd Com., 575th mtg., para. 32		20

ARTICLE 21

Submission of comments concerning general recommendations of the Commission on Human Rights

The States Parties directly concerned and the specialized agencies may submit comments to the Economic and Social Council on any general recommendation under article 20 or reference to such general recommendation in any report of the Commission or any documentation referred to therein.

22. There was some feeling that this article was redundant and that it would be difficult to determine what were the States directly concerned. It was observed, on the other hand, that States parties might wish to submit additional information and that the Commission or the Council might wish to obtain such information.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3 and E/CN.4/SR.243 and 247	E/CN.4/570 and Rev.1 and 2, E/CN.4/629 and ESC (XIII), suppl.9, para.61 and annex I, part V, Art. 64	E
CHR (X)	E/CN.4/SR.424	E/CN.4/L.325 and ESC (XVIII), suppl.7, paras.133-139	64

ARTICLE 22

Reporting by the Economic and Social Council to the General Assembly

> The Economic and Social Council may submit from time to time to the General Assembly, with its own reports, reports summarizing the information made available by the States Parties to the Covenant directly to the Secretary-General and by the specialized agencies under Article ... indicating the progress made in achieving general observance of these rights.

23. This article was adopted despite some feeling that it was either superfluous or constituted an attempt to control the actions of higher United Nations organs. The inclusion in the text of the words "with its own reports" was intended to signify that the Council could submit to the General Assembly its own comments and recommendations on the reports received by it.

24. The cross-reference made in this article is probably intended to refer to the reports of States parties and specialized agencies made in accordance with article 17.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3 and E/CN.4/SR.243 and 247	E/CN.4/622, 625, 629 and 630 and ESC (XIII), suppl.9, para.61 and annex I, part V, art.65	F
CHR (IX)		E/CN.4/675, para.32	65
CHR (X)	E/CN.4/SR.424	ESC (XVIII), suppl.7, para.140	65
GA (IX)	3rd Com., 572nd mtg., para.42		22

ARTICLE 23

Technical assistance

The Economic and Social Council may bring to the attention of the international organs concerned with technical assistance or of any other appropriate international organ any matters arising out of the reports referred to in this part of the Covenant which may assist such organs in deciding, each within its competence, on the advisability of international measures likely to contribute to the progressive implementation of this Covenant.

25. There was some opposition to the inclusion of this article in the draft covenant on the grounds, on the one hand, that it purported to regulate the conduct of the Economic and Social Council, whose functions were laid down in the Charter, and, on the other hand, that such a provision was superfluous. The article does, however, reflect the prevailing view that the promotion of economic, social and cultural rights depends, to a considerable extent, upon economic conditions and that the possibility of the provision of technical assistance has a particular relevance to the implementation of the covenant. Stress was placed in this connexion also upon the character of the reporting procedure as a means of mutual assistance rather than as a procedure involving the application of sanctions.

26. It was intended that "matters arising out of the reports referred to in this part of the Covenant" would include, but not be limited to, relevant findings of the Commission on Human Rights. The words "the international organs concerned with technical assistance" were preferred to a reference to the Technical Assistance Board because of the need to take account of possible future changes in the designation of the organ or emergence of other organs.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.14/SR.2, E/CN.4/AC.15/SR.3, E/CN.4/SR.237,238,241, 242, 243 and 247	E/CN.4/529, paras. 62-65, E/CN.4/570 and Rev.1 and 2, 622, 623, 625 and 629 and ESC (XIII), suppl.9, para.62 and annex I, part V, art.66	G
ESC (XIII)	523rd mtg., para.32		66
GA (VI)	3rd Com., 363rd mtg., para.41 and 371st mtg., para.22		
CHR (VIII)		E/CN.4/530/Add.1, paras.30 and 32	66
CHR (IX)		E/CN.4/675, para.33	66
CHR (X)	E/CN.4/SR.424	E/CN.4/L.325 and ESC (XVIII), suppl.7, paras. 141-147	66

ARTICLE 24

Types of international action

The States Parties to the Covenant agree that international action for the achievement of these rights includes such methods as conventions, recommendations, technical assistance, regional meetings and technical meetings and studies with governments.

27. While it was observed that such a statement as that contained in this article was self-evident, this provision was accepted as providing a conception of the range of possible international action for the implementation of the rights dealt with in the draft covenant on economic, social and cultural rights; it was observed in particular that it left the door open for the provision of assistance other than technical assistance in the strict sense.

28. It was proposed to replace the article by the following:

"The States Parties to the Covenant agree that international action for the achievement of these rights includes such methods as conventions and recommendations in accordance with the Charter of the United Nations."

29. In support of this proposal it was argued that it was essential to safeguard the authority of the Charter. By specifying that conventions and recommendations were to be in accordance with the Charter, the article would be brought into line with Article 62 of the Charter, which concerned the terms of reference of the Economic and Social Council, and would also bring into operation Article 2, paragraph 7 of the Charter relating to the domestic jurisdiction of States.

30. Against the proposal it was argued that article 25 sufficiently safeguarded the Charter of the United Nations and that repetition in the present article of a reference to the Charter might impair the effect of that article and lead to difficulties of interpretation. On the other hand it was insisted that a separate mention of the Charter in the present article was justified because article 25 was a more generally worded provision. Moreover, article 25 concerned the provisions of the Covenant whereas the present article concerned types of international action which might be taken in addition to those specifically provided in the Covenant.

31. It was pointed out that article 25 was drafted in order to recognize the responsibilities of the United Nations and the specialized agencies and the wording proposed for the present article by referring only to the Charter might give the impression that the constitutions of the specialized agencies were not to be similarly respected. On the other hand, it was maintained that the amendment would not prejudice the position of the specialized agencies, since the reference to the Charter would bring into operation its Articles 57 and 63 concerning the relationship between the United Nations and the specialized agencies and would safeguard all agreements between the United Nations and those agencies.

32. The proposal also involved the deletion of all references to types of international action other than conventions and recommendations, on the ground that the words used to describe them were not precise in their meaning. On the other hand, it was maintained that the enumeration of further types of international action was useful, and that the methods indicated might in fact be preparatory to the conclusion of conventions or to the making of recommendations.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3 and E/CN.4/SR.247	E/CN.4/622, 625 and 629 and ESC (XIII) suppl.9, para. 63 and annex I, part V, art. 67	H
CHR (IX)		E/CN.4/675, para. 34	67
CHR (X)	E/CN.4/SR.424-6	E/CN.4/L.330 and ESC (XVIII) suppl. 7, paras. 148-62	67
GA (IX)	3rd. Com., 572nd mtg., para. 42 and 573rd, para. 24		24

ARTICLE 25

Relations between the United Nations and the Specialized Agencies

Nothing in this Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this Covenant.

33. The opinion was expressed that this article should end at the words "Charter of the United Nations", since the remaining words were superfluous in view of the existence of agreements defining the relations between the United Nations and the specialized agencies. The text was, however, adopted as representing what appeared to be a proper allocation of responsibilities between the United Nations and the specialized agencies.

34. This article is identical with article 50 of the draft covenant on civil and political rights. For further views on the text, see Chapter VII.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3 and E/CN.4/SR.203, 205, 206, 207, 218, 237, 241 and 247	E/CN.4/AC.14/1 and 2/Add.5, E/CN.4/529, paras.54-5, E/CN.4/543, E/CN.4/622 and 629 and ESC (XIII), suppl.9, para. 64 and annex I, part V, art. 69	J
ESC (XIII)	523rd mtg., para. 15	E/2057/Add.1 and 2	69
CHR (VIII)		E/CN.4/530/Add.1, para. 36 and E/CN.4/655/Add.2	69
CHR (X)	E/CN.4/SR.426	ESC (XVIII) Suppl. 7, paras. 167-70	69

PUBLICATION OF REPORTS

35. At one stage the following article appeared between articles 24 and 25:

> "Unless otherwise decided by the Commission on Human Rights or by the Economic and Social Council or requested by the State directly concerned, the Secretary-General of the United Nations shall arrange for the publication of the report of the Commission on Human Rights, or reports presented to the Council by specialized agencies, as well as all decisions and recommendations reached by the Economic and Social Council."

36. The article was however deleted from the draft covenant. In favour of deletion it was pointed out that the provision would apparently permit either the Commission on Human Rights or the Economic and Social Council or the State directly concerned to prevent the publication of any of the reports, decisions or recommendations specified in the Article. Should a State submit information of a confidential nature, it could ask for a closed discussion, but if it allowed the matter to be openly discussed, it would clearly be too late afterwards to ask that there should be no publicity. Again, if a State disapproved of certain aspects of the reports, that State could demonstrate publicly that certain statements or conclusions had been groundless; moreover, under article 21, it could submit comments to the Economic and Social Council. Furthermore, it was not clear what report of the Commission on Human Rights and what reports presented to the Council by specialized agencies were referred to.

37. In favour of the Article, it was argued that it was important to give States parties the right to prevent publication, and that the article, by providing the possibility of a kind of reservation, would encourage States to supply the necessary information.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (VII)	E/CN.4/AC.15/SR.3 and E/CN.4/SR.243 and 247	E/CN.4/570 and Rev.1 and 2 and 629 and ESC (XIII), suppl. 9, para. 63 and annex I, part V, art. 68	1
CHR (IX)		E/CN.4/675, para. 35	68
CHR (X)	E/CN.4/SR.420 and 426	E/CN.4/L.325 and ESC (XVIII), suppl. 7, paras. 163-6	68

THE APPLICABILITY OF THE HUMAN RIGHTS COMMITTEE PROCEDURE TO THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

38. Although it was emphasized that civil and political rights and economic, social and cultural rights were interdependent and that the measures for their implementation should be similar, no proposals were submitted for the automatic or unconditional application of the human rights committee procedure to the draft covenant on economic, social and cultural rights.

39. It was pointed out that the system of periodic reports, as evolved in collaboration with the specialized agencies, was the best method of implementing economic, social and cultural rights, while the human rights committee was conceived as the most appropriate way to safeguard civil and political rights. The nature of the rights and obligations laid down in each covenant, and the fact that civil and political rights were to be applied forthwith, while economic, social and cultural rights were to be achieved progressively, justified two distinct methods of implementation, nothwithstanding General Assembly resolution 543 (VI), which referred to the inclusion in the two covenants of as many similar provisions as possible.

40. The specialized agencies, such as the ILO, UNESCO and WHO, were of the opinion that the human rights committee procedure should be applicable only to the civil and political rights. It was contended that specialized agencies were technically better qualified to implement economic, social and cultural rights, and the experience and procedures which they had evolved in connexion with those rights should not be disregarded. The constitution of the ILO, for example, included procedures for the handling of complaints, and any referral of matters coming within its purview to the human rights committee would lead only to duplication and overlapping and affect the authority and efficiency of both the committee and the ILO.

41. Doubt was also expressed whether the committee, which was to be a fact-finding and conciliation body, concerned with obligations the breach of which was ascertainable, could handle commitments of the type prescribed in the draft covenant on economic, social and cultural rights. The committee would have quasi-judicial functions, and in the case of the covenant on economic,

social and cultural rights, there was no criterion capable of providing the basis for semi-judicial decisions. Complaints relating to that covenant could only refer to insufficient programmes in the attainment of certain goals and it would be impossible for the committee to determine what the rate of progress in any particular case should be. Moreover, the committee's membership would have to be changed in order to include experts in the economic, social and cultural fields and representatives of specialized agencies concerned.

42. These views were not accepted by those who thought that certain rights, such as trade union rights and rights relating to primary education, could be subjected to the human rights committee procedure and, in time, most of the rights might become enforceable. Accordingly, a provision should be included to afford States the opportunity to accept the jurisdiction of the committee in respect of certain rights. It was felt that such a provision would in no way impair the work of the specialized agencies. A State member of a specialized agency which had established a procedure concerning complaints in respect of any of the rights laid down would be bound by that procedure. Moreover, not all the rights in the covenant came within the purview of the specialized agencies and not all the States parties to the covenant would be members of the agencies; in such cases, the human rights committee procedure would be the only one which could be utilized for the effective implementation of the draft covenant on economic, social and cultural rights.

43. Two proposals, which were later withdrawn, were submitted. The first proposal[11/] read as follows:

> "The States Parties to this Covenant may, at the time of ratification or at any subsequent time, indicate in respect of which rights laid down in the present Covenant they agree, or will agree subject to reciprocity, that complaints of violations lodged by another State Party shall be submitted to the procedure for bringing complaints before the Human Rights Committee, as established by articles 27 et seq. of the Covenant on Civil and Political Rights."

11/ ESC (XVIII), suppl. 7, para. 216.

44. The second proposal[12] read as follows:

"The States Parties to this Covenant may, at the time of ratification, indicate the rights with respect to which they undertake to accept the jurisdiction of the Human Rights Committee with regard to the implementation of such rights.

"Similarly, the Secretary-General of the United Nations may:

(a) At the request of one-third of the States Parties to the Covenant, or,

(b) Upon the recommendation of the Commission on Human Rights, approved by the Economic and Social Council, convene a conference or conferences of the States Parties to this Covenant to determine the possibility of adapting the procedures provided in article 27 and subsequent articles of the Covenant on Civil and Political Rights to the provisions of the Covenant on Economic, Social and Cultural Rights."

45. It was suggested that the second proposal should provide for the acceptance of jurisdiction of the committee by the States parties subject to reciprocity, and that the conference envisaged in sub-paragraph (a) should be called at the request of one-half of the States parties to the covenant. The opinion was also expressed that the two paragraphs of this proposal were contradictory. It was pointed out that conferences might come to the conclusion that it was not possible to adapt the procedures in which case the recognition of the jurisdiction of the committee by States at the time of ratification would have no value. Another view was that the provisions relating to conferences were unrealistic since a conference could be called by a majority of the Economic and Social Council even without the consent of one-third of the States Parties.

12/ Ibid., para. 218.

DOCUMENTATION

Organ and session	Records of discussion	Other documents
CHR (VII)	E/CN.4/SR.211, 212, 249, 251	E/CN.4/637; ESC (XIII), suppl.9, para. 66, and annex II
ESC (XIII)	Pl. 523rd, 525th mtgs.	E/2057/Add.2
GA (VI)	3rd Com., 360th-371st, 388th, 389th and 393rd mtgs.	Annexes, a.i. 29, A/2112, para. 35
CHR (VIII)		E/CN.4/530/Add.1, paras. 8-9, 654/Add.2, 655/Add.2 and 4
CHR (IX)	E/CN.4/SR.343, 344, 345	ESC (XVI), suppl.8, para. 28
GA (VIII)	3rd Com., 505th mtg.	
CHR (X)	E/CN.4/SR.431, 432, 433	E/CN.4/692/Add.2, L.315, 339, 339/Rev.1, 388; ESC (XVIII), suppl.7, paras. 215-225
GA (IX)	3rd Com., 564th, 568th mtgs.	Annexes, a.i. 58, A/2808, para. 32

PETITIONS PROCEDURE CONCERNING ECONOMIC, SOCIAL AND CULTURAL RIGHTS 13/

46. A draft resolution (A/C.3/L.372) which the General Assembly transmitted to the Commission on Human Rights by resolution 737 B (VIII) proposed that the General Assembly should request the Commission to draft "provisions recognizing the right of petition of every natural person, every duly constituted group of individuals and every recognized non-governmental organization", for inclusion in the draft international covenants on human rights in accordance with the decision of the General Assembly contained in its resolution 421 F (V) and in the light of the discussion at the eighth session of the Assembly. In resolution 421 F (V) the General Assembly had requested the Commission to consider provisions "to be inserted in the draft Covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant".

47. A proposal was made in the Commission on Human Rights, but was withdrawn after debate, to insert between Articles 18 and 19 of the draft covenant on economic, social and cultural rights an article reading as follows:

> "The Economic and Social Council shall also be authorized to receive from individuals, groups of individuals and non-governmental organizations communications relating to the fulfilment of obligations under this Covenant.
>
> "The Economic and Social Council shall transmit such communications to the Commission on Human Rights for study and recommendations."

48. It was stated that this proposal was submitted in the light of General Assembly resolution 737 B (VIII) on the right of petition. It was supported on the grounds that the rights which were conferred on the individual in the draft covenants not only made him a subject of international law, but enetitled him to have an opportunity to defend his rights by communicating to the United Nations.

13/ For a discussion on the right of petition, see the annotation on article 40 of the draft covenant on civil and political rights, in Chapter VII above.

Furthermore, there were precedents for the proposed procedure, such as communications concerning violations of trade union rights which could be sent to the Economic and Social Council by employers' and workers' organizations.[14/]

14/ E/CN.4/SR.423, E/CN.4/L.324, E/CN.4/694/Add.3, E/CN.4/702, Nos. XIV and XVIII, ESC (XVIII), Suppl. 7, paras. 107-9 and 227 and annex III and GA (IX), 3rd Com., 566th mtg., para. 12, 567th, para. 17, 569th, para. 25, 570th, para. 20, 571st, para. 7, 572nd, para. 36 and 573rd, para. 17.

CHAPTER X

FINAL CLAUSES

(Part VI, articles 51-54, of the draft covenant on civil and political rights, and Part V, articles 26-29, of the draft covenant on economic, social and cultural rights)

Table of Contents

ARTICLE 51, draft covenant on civil and political rights, and ARTICLE 26, draft covenant on economic, social and cultural rights

Signature and ratification or accession

"1. This covenant shall be open for signature and ratification or accession on behalf of any State Member of the United Nations or of any non-member State to which an invitation has been extended by the General Assembly.

2. Ratification of or accession to this covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as twenty States have deposited such instruments, the covenant shall come into force among them. As regards any State which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations, and other States which have signed or acceded, of the deposit of each instrument of ratification or accession."

1. The text of this article was adopted without prejudice to such consequential changes as might have to be made in the event an article on reservations were adopted.[1/]

2. Discussion on the article centred mainly on three questions: the procedure by which States might become parties to the covenants, the States entitled to become parties thereto, and the number of ratifications or accessions required for the entry into force of the covenants.

Procedure

3. Originally the text provided for accession only, but it was subsequently modified to provide also for signature and ratification. It was contended that States attached some importance to the ceremony of signature and that its value, especially in stimulating States to ratify the covenants, should not be overlooked.

1/ ESC(XVIII), suppl. 7, para. 311, and annex II, section B.

The act of signature would have considerable weight as a moral commitment which in the case of the covenants would be of great value. On the other hand, the view was expressed that the psychological value of the act of signature was doubtful. The process of acceptance of the obligations of the covenants should not be lengthened by requiring signature before ratification.

States entitled to become parties

4. One view was that the covenants should be open for ratification or accession to all States, whether Members or non-members of the United Nations. Acceptance of the covenants was not a privilege but an undertaking which no State should be prevented from assuming. It was in the interest of humanity that the rights and obligations enunciated in the covenants should be universally accepted. On the other hand, the view was held that it was advisable for the United Nations to exercise some control over the selection of non-member States which would be entitled to become parties to the covenants. The normal practice was for the General Assembly to extend an invitation to non-member States and there should be no departure from such procedure. There was no reason to believe that invitation would be withheld by the General Assembly without good reasons. As adopted, the text provides that the States Members of the United Nations, as well as non-member States to which an invitation has been extended by the General Assembly may become parties to the covenants.

Entry into force

5. Under the present article, the covenants would enter into force as soon as twenty States deposited their instruments of ratification or accession. The discussion revealed a divergence of opinion on the question as to how many ratifications or accessions were necessary for the entry into force of the covenants. One view was that any number, no matter how few, should be sufficient. It was contended that the acceptance of the covenants, even by a few States, would represent some progress. In this connexion, reference was made to international labour conventions which came into force on ratification by two States.

6. A second view was that ratification or accession by two-thirds or, at least, a majority of the Member States should be required. It was argued that the covenants would have little value or importance before the world unless they were accepted by a large number of Member States. The covenants were instruments of far-reaching significance and were linked closely with the Charter and the Universal Declaration of Human Rights; they could not be compared to other international instruments. Unless large and influential States were parties, the covenants would not become a real force. It was proposed, therefore, that the entry into force of the covenants should be contingent on ratification or accession by a majority of the Members of the United Nations, "including the permanent members of the Security Council". This view met with considerable opposition chiefly on the grounds that human rights should not be linked with problems of security and that the so-called right of veto should not apply to the covenants.

7. A third view was that the number of ratifications or accessions required should neither be too small nor too large. Among the numbers proposed or suggested were "ten", "twelve", "fifteen", "twenty", and "twenty-five". It was thought that a fairly large number of ratifications or accessions was needed to give the covenants international significance and to create a body which could guarantee effectively the rights enunciated therein.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.11	E/CN.4/AC.1/4, annex I, art. 17; E/CN.4/21, annex B, art. 17	
CHR (II)	E/CN.4/AC.3/SR.8; E/CN.4/SR.42	E/CN.4/37, 56, art. 21; ESC (VI), suppl. 1, annex B, art. 23	17 21
DC (II)	E/CN.4/AC.1/SR.28, 34	E/CN.4/82/Add.10, 12; 85; ESC (VII), suppl. 2, annex B, art. 23	23
CHR (V)	E/CN.4/SR.127-129	E/CN.4/170, 337; ESC (IX), suppl. 10, annex I, art. 23	23
CHR (VI)	E/CN.4/SR.196, 200	E/CN.4/353/Add.1, 2, 5, 8, 10; 365; 500; 502; E/CN.4/L.3; ESC (XI), suppl. 5, annex I, art. 42	23
ESC(XI)	E/AC.7/SR.147	E/L.68; E/C.2/254/Add.1	42
GA (V)	3rd Com., 301st mtg.		42
CHR (IX)		ESC (XVI), suppl. 8, annex I E, art. 70; E/CN.4/678	70
CHR (X)	E/CN.4/SR.450	E/CN.4/L.347; ESC (XVIII), suppl. 7, annex I	70
GA (IX)	3rd. Com., 566th, 576th mtg.		51, cov. on civ. and pol.rts., and 26, cov. on eco., soc. and cul. rts.

ARTICLE 52, draft covenant on civil and political rights, and ARTICLE 27, draft covenant on economic, social and cultural rights

Federal State application clause

The provisions of the Covenant shall extend to all parts of federal States without any limitations or exceptions.

8. The discussion on this article turned chiefly on the question whether the covenants should include special provisions designed to meet the constitutional problems of federal States. It was pointed out that some federal States would be faced with constitutional difficulties in applying the provisions of the covenants since most of the matters covered by the covenants were within the jurisdiction of the constituent units of such States. Under the constitutions of certain federal States the federal government could not, by its action, bind the constituent units of the federation in matters which came within their jurisdiction. It was therefore contended that it would be impossible for certain federal States to become parties to the covenants unless a suitable federal clause was adopted. Various texts of a federal clause were proposed.2/ In substance the clause would provide that as regards provisions of the covenant which related to matters within the jurisdiction of the federal authority, the federal State would be bound to the same extent as non-federal States; and as regards those relating to matters which were within the jurisdiction of the constituent units of the federation the federal government would bring such provisions with favourable recommendations to the attention of the constituent units.

2/ E/CN.4/37; 56; 85; ESC (XI), Suppl. 5, annex I; ESC (XVI), Suppl.8, annex II, section B; for proposal submitted during the first reading of the draft covenant see GA (IX), annexes a.i. 58, A/C.3/L.421.

9. On the other hand, it was maintained that the inclusion of a federal clause was not necessary since federal States could always secure the agreement of their constituent units before signing or ratifying the covenants. Such a clause would be at variance with both theory and practice in the matter of accession to international agreements. Hitherto, federal States had been responsible in respect of their territories as a whole for international obligations which they assumed. It was also pointed out that the clause would be contrary to the spirit of the Charter and the Universal Declaration of Human Rights which recognized the principle of the universality of human rights. Moreover, the inclusion of a federal clause would result in inequality between federal and non-federal States as regards the obligations which they would assume under the covenants. Federal States would be placed in a privileged position and would assume fewer and less clear-cut obligations than unitary States. Draft articles providing for the extension of the application of the covenants to all parts of federal States were proposed.3/

10. In reply it was contended that federal States were not trying to gain any advantage in seeking the inclusion of a federal clause; their sole purpose was to overcome real difficulties. With a view to safeguarding the principle of equality of the contracting parties, it was proposed4/ that the clause should include the proviso that "a contracting State shall not be entitled to avail itself of the present Covenant against other contracting States except to the extent that it is bound by the Covenant". In order that States parties would be apprised of the developments in the constituent units of a federation, it was proposed5/ to add a provision by which the federal government would notify the Secretary-General, for communication to States parties, of the legislative or other measures which the constituent units of the federation might subsequently take to implement the covenants.

11. A suggestion was made that the constitutional difficulties of federal States might be overcome in a more suitable manner by the use of reservations. A draft

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3/ E/CN.4/82/Add.10/Rev.1; L.343.

4/ E/CN.4/L.344.

5/ E/CN.4/L.346

article was proposed[6/] which would allow a federal State to make a reservation in respect of any particular provision of the covenant to the extent that the application of such provision, under the constitution of the federal State, fell within the exclusive jurisdiction of the constituent units of the federation. It was explained that limitations of the obligations of federal States under the covenant would result only from express reservations in respect of particular provisions, not from the automatic application of a federal clause.

12. The text adopted provides for the extension of the provisions of each covenant to all parts of federal States without any limitations or exceptions. The view was expressed that this text was in accord with the principles and practice of international law and guaranteed universality in the application of the covenants. On the other hand, it was contended that it implied complete lack of understanding of the special position of federal States and was at variance with the decision taken by the General Assembly in resolution 421 C (V). Not only did the article in question prevent inclusion of a federal clause in the covenants, but it denied States with federal constitutions the possibility of making reservations to meet their particular constitutional difficulties.

6/ ESC (XVI), Suppl. 8, annex II, section B, No.2.

DOCUMENTATION

Organ and Session	Records of discussion	Other documents	Article number
CHR (II)	E/CN.4/AC.3/SR.3	E/CN.4/37; 56; ESC (VI), suppl.1, annex B, art. 24	
DC (II)	E/CN.4/AC.1/SR.34,42	E/CN.4/82/Add.7, 10; 85; 95; annex B; E/CN.4/AC.1/42	
CHR (III)		ESC (VII), suppl. 2, annex B, art.24	24
CHR (V)	E/CN.4/SR.129	E/CN.4/225; 240, 296; 320; 328; ESC (IX), suppl. 10, annex I, art. 24	24
CHR (VI)	E/CN.4/SR.197	E/CN.4/353/Add.1, 2, 3, 6, 8, 10; 365, 437; ESC (XI), suppl. 5, annex I, art.43	24
ESC (XI)	377th-379th mtgs.; E/AC.7/SR.147, 148, 151-153; E/C.2/SR.83	E/1721 and corr.1; ESC (XI), annexes a.i.19, E/1808; E/L.68; E/C.2/254/Add.1	43
GA (V)	317th mtg.; 3rd Com., 292nd, 294th, 298th, 303rd, 308th, 309th mtgs.	GA (V), annexes a.i. 63, A/1384; 1559, A/C.3/534, A/C.3/L.76, 86, 89/Rev.1, 96; A/C.3/535	43
ESC (XII)	438th and 439th mtgs.	ESC (XII), annexes a.i. 12, E/1880	43
CHR (VII)		E/CN.4/515/Add.4, 8, 13, 14, 16; ESC (XIII), suppl. 9, annex VI	71
ESC (XIII)		E/2059 and Add.4	
GA (VI)	3rd Com., 360th-363rd, 366th, 368th mtgs.	GA (VI), annexes a.i. 29, A/C.3/559	71
CHR (VIII)		E/CN.4/651, 660	71
CHR (IX)		E/CN.4/684/Add.3, 6; ESC (XVI), suppl.8, annex II, section B	71
GA (VIII)	3rd Com., 503rd-509th, 518th-521st mtgs.	GA (VIII), annexes a.i. 12, A/C.3/L.366, 374, 387, 388, 389	71

DOCUMENTATION (Cont'd)

Organ and session	Records of discussion	Other documents	Article number
CHR (X)	E/CN.4/SR.437-441, 450	E/CN.4/694, Add.3, 6; 696; 702, p.46; L.340 and corr.1, 343, 344, 358, 378; ESC (XVIII), suppl.7, paras. 243, 244-261; annex I, section A, art. 27 and Section B, art. 52	71
GA (IX)	3rd Com., 562nd-564th, 566th-571st mtgs.	GA (IX), annexes a.i. 58, A/C.3/L.421	52,cov. on civ. and pol. rts., and 27, cov. on eco., soc. and cul.rts.

ARTICLE 53, draft covenant on civil and political rights, and ARTICLE 28, draft covenant on economic, social and cultural rights

Territorial application clause

The provisions of the present covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust, or colonial territories, which are being administered or governed by such metropolitan State.

13. The debate on this article has brought into sharp focus two main opposing views on the question of the applicability of the covenants to Non-Gelf-Governing, Trust or colonial territories administered or governed by States which might become parties to the covenants.

14. One view was that the covenants should not be made to apply automatically to such territories. A clause should be inserted which would make it possible for a State party to either covenant to determine to what extent the covenant should apply to its dependent territories. Various proposals[7] were submitted which would permit a metropolitan State, upon its becoming a party to either covenant, to declare to which of its territories the provisions of the covenant would or would not extend. It was argued that a clause of this nature would enable metropolitan States to meet constitutional and other difficulties which would otherwise prevent them from or delay their becoming parties to the covenant. It was neither realistic nor reasonable to expect a metropolitan State immediately to apply all the provisions of the covenant to Non-Self-Governing, Trust or colonial territories. Some of those territories already enjoyed a certain amount of autonomy, and many of the provisions of the covenants related to matters which came within the purview of their respective governments. In the absence of a

7/ E/CN.4/95, 170, 242; ESC (XI), Suppl. 5, annex I.

suitable territorial application clause in the covenant, consultation with the territories on the question of their acceptance of the obligations imposed by the covenant, particularly in respect of matters within their domestic competence, would be necessary before metropolitan States could accede on their behalf. This might delay for a considerable time, or even indefinitely, the adherence of administering Powers to the covenant.

15. It was further pointed out that all the territories administered or governed by metropolitan States had not reached the same stage of development, consequently the provisions of the covenant could not be made effective immediately in all those territories. To apply provisions of the covenant prematurely to peoples who had not yet reached a sufficiently advanced stage of development would be undesirable. Reference was also made to Chapters XI and XII of the Charter under which, it was claimed, the administering Powers had to take into account the particular circumstances of each territory and its peoples and their varying stage of development. Hence, a clause should be adopted which would make it possible for a metropolitan State to apply the covenants immediately to its territories whenever that was practicable and to apply them by degress in other cases.

16. It was emphasized that such a clause was in no way designed to prevent application of the provisions of the covenant to dependent territories but was, on the contrary, intended to facilitate such application. The clause would moreover provide that the States concerned would undertake, with respect to those territories to which the covenant did not apply, to take as soon as possible the necessary steps to extend its application to such territories.

17. On the other hand, it was asserted that the provisions of the covenant should be applicable equally to a metropolitan State as well as to all the territories administered or governed by it. It should not be left to the discretion of the metropolitan State to decide whether or not the covenants should apply to its dependent territories. The benefits of the covenants should be extended to human beings everywhere. It was recalled that according to the Universal Declaration of Human Rights "no distinction shall be made on the basis of the political, jurisdictional or international status of the territory or territories to which a person belongs, whether this territory be an independent, Trust, Non-Self-Governing territory, or under any other limitation of sovereignty". The

administering Powers cannot plead constitutional difficulties as a ground for opposing the automatic extension of the provisions of the covenants to territories administered or governed by them. It was not a question of imposing obligations on a territory without the previous consent of its people, but of granting the rights which were due them. What was to be feared was not that the peoples of the territories would not want to accept the covenants but that the administering Powers would refuse to apply them to those territories.

18. Neither could it be argued that the covenants could not be made to apply to all the territories immediately since some of them were not sufficiently advanced in their stage of development. The application of the covenants to such territories would assist their development. Moreover, Chapters XI and XII of the Charter placed on the administering Powers the responsibility of promoting the development of the Non-Self-Governing and Trust Territories, and in particular Article 76 made it one of the objectives of the trusteeship system "to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". The guaranteeing of human rights in Non-Self-Governing and Trust Territories was one of the prerequisites for the development of those territories towards full self-government and independence.

19. The text of the present article was drafted by the General Assembly at its fifth session for inclusion in the draft international covenant.[8/] The Economic and Social Council, in resolution 303 I (XI), had asked the General Assembly for a policy decision on the question of the desirability of including a special article on the application of the covenant to Non-Self-Governing and Trust Territories, as the Commission was unable to reach a decision on the matter.[9/]

20. It may be noted that in connexion with the consideration of the question of reservations, a draft article[10/] was proposed which would allow reservations

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8/ GA 422 (V) of 4 December 1950. It may be noted that article IX of the Convention on the International Right of Correction, which was adopted by the General Assembly in resolution 630 (VII), reads as follows: "The provisions of the present Convention shall extent to or be applicable equally to a contracting metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial territories, which are being administered or governed by such metropolitan State."

9/ E/CN.4/SR.197.

10/ E/CN.4/L.348.

to be made to the territorial application clause. Under the proposed text, a metropolitan State could make a declaration at the time of signature, ratification or accession that it did not assume any obligation in respect of all or any of its Non-Self-Governing, Trust or colonial territories, and the covenant would not apply to any of the territories named in the declaration. The reserving State might subsequently extend the application of the covenant to all or any of such territories by giving notice to the Secretary-General. In the discussion[11/] it was pointed out that the text of the proposed article was contrary to the provisions of the territorial application clause which had been adopted by the General Assembly. On the other hand, it was maintained that the General Assembly in adopting the territorial application clause had not excluded the possibility of permitting reservations to it.

11/ E/CN.4/SR.342, 343, 344, 345, 348, 349.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (II)	E/CN.4/AC.3/SR.8; E/CN.4/SR.42	E/CN.4/56; ESC (VI), suppl.1, annex B, art. 25	
DC (II)	E/CN.4/AC.1/SR.34, 43	E/CN.4/82/Rev.1; Add.10/Rev.1; E/CN.4/AC.1/19; 42; ESC (VII), suppl. 2, annex B, art. 25	25
CHR (V)	E/CN.4/SR.129	E/CN.4/170; 242, 271, 296; ESC (IV), suppl. 10, annex I, art. 25	25
CHR (VI)	E/CN.4/SR.197	E/CN.4/353/Add.1, 2, 3, 6, 8, 10; 365; 494; ESC (XI), suppl. 5, annex I, art. 44	25
ESC (XI)	377th, 378th, 379th, mtgs; E/AC.7/SR.152-154; E/C.2/SR.83	E/1721 and corr.1; 1808; E/L.68; E/C.2/254/Add.1	44
GA (V)	316th, 317th mtgs; 3rd Com. 292nd, 294th, 295th, 296th, 298th 302nd, 308th, 318th mtgs.	GA (V), annexes a.i. 63, A/1384, 1559, A/C.3/534, A/C.3/L.71/Rev.1, 76, 78; A/C.3/535	44
ESC (XII)	438th-440th mtgs.		
CHR (VII)	E/CN.4/SR.242, 251	E/CN.4/515/Add.4, 8, 13, 14, 16; ESC (XIII), suppl.9, annex I, art.72, and annex II	44
ESC (XIII)		E/2059/Add.2, 4	
CHR (IX)	E/CN.4/SR.391	E/CN.4/678; ESC (XVI), suppl. 8, annex I, art. 72	72
CHR (X)	E/CN.4/SR.450	E/CN.4/694/Add.2, 6; 702, p.46; ESC (XVIII), suppl.7, annex I	72
GA (IX)	3rd Com., 562nd, 568th-573rd, 575th, 576th, 578th mtgs.		53,cov. on civ. and pol. rts.and 26,cov. on eco., soc.and cul.rts

ARTICLE 54, draft covenant on civil and political rights, and ARTICLE 29, draft covenant on economic, social and cultural rights

Amendment

1. Any State Party to the Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendments to the States Parties to the Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States favours such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other Parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.

21. This article provides that an amendment may be proposed by any State party to either covenant. There was some discussion[12/] on the question whether it should not be open to any Member of the United Nations, although not a party to the covenant, to propose amendments thereto. It was contended, on the one hand, that a prospective party should not be precluded from submitting amendments. A Member State which was not a party to the covenant might be willing to adhere to it if an amendment it proposed were accepted. On the other hand, it was maintained that only States parties should be given the right to initiate amendments; non-parties which might be hostile to the covenant should be prevented from undermining its development.

12/ E/CN.4/SR.130, 197; E/CN.4/365, page 69.

22. There were two schools of thought on the question as to who should determine whether a proposed amendment should be adopted or not.[13/] One school held the view that it was up to the contracting parties alone to decide on changes to be made in the covenant, while the other maintained that the General Assembly should be given control over amendments. It was contended, on one hand, that the revision of the covenant should be left exclusively to the contracting parties since amendments would have to be considered on the basis of actual experience gained in the application of the covenant. Moreover, the intervention of the General Assembly in the amending process would create inequality between the States parties which were Members of the United Nations and those which were non-Members, inasmuch as the latter would have no opportunity of participating in the discussions in the General Assembly. On the other hand, it was maintained that the General Assembly should have the right to approve or reject amendments to covenants which were drawn up under its auspices and which had its moral authority. Furthermore, the General Assembly under the Charter was given wide responsibilities in the field of human rights; it could not accept a limitation on its powers. It was also pointed out that the provision requiring approval of proposed amendments by the General Assembly was in accord with current practice of the United Nations in the matter of amendments to multilaterial conventions adopted under its auspices. Reference was also made to similar provisions in international labour conventions.

23. The procedure agreed upon envisages the consideration and adoption of proposed amendments by a conference of States parties to be convened under the auspices of the United Nations, provided that at least one-third of the contracting States were in favour of holding such conference. But any amendment adopted by the conference has to be submitted to the General Assembly for approval. The amendment comes into force only when approved by the General Assembly and accepted by a two-thirds majority of the States parties in accordance with their respective constitutional processes. A proposal was made

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13/ E/CN.4/SR.130, 197; E/CN.4/296; 339; L.15.

to ensure participation by States parties which were not members of the United Nations in the discussions in the General Assembly, but the proposal was subsequently withdrawn.[14/]

24. Under paragraph 3 of the present article, amendments which have come into force are binding only on the States parties which have accepted them. A proposal for the deletion of this paragraph was made, but after an exchange of views the proposal was withdrawn.[15/] In support of the proposal it was pointed out that the article already provided an elaborate and lengthy procedure for the consideration, adoption and entry into force of an amendment. Under those circumstances an amendment should become binding on all States parties, not merely on those which accepted it. It was doubtful that any amendment liable to prejudice the interests of a State party would ever succeed in passing through the three successive stages contemplated in the article. It was also pointed out that the proposal was not novel, since it would not make the majority rule prevail to a larger extent in the case of an amendment to the covenants than was already provided in the case of an amendment to the United Nations Charter. On the other hand, those who opposed the proposal maintained that it would infringe upon the sovereignty of States and, if approved, would discourage many a State from becoming a party to the covenants. The procedure proposed was objectionable in that States parties would be signing a blank cheque in advance to accept unknown amendments.

14/ E/CN.4/SR.197.

15/ ESC (XVI), Suppl. 8, annex II, section C; ESC (XVIII), Suppl.7, paras.317-319; E/CN.4/SR.450, 451.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
DC (I)	E/CN.4/AC.1/SR.11	E/CN.4/AC.1/4, annex I, art.18; E/CN.4/21, annex B, art.18	
CHR (II)	E/CN.4/AC.3/SR.8; E/CN.4/SR.42	E/CN.4/37; 56; ESC (VI) Suppl.1, annex B, art.26	18 24
DC (II)	E/CN.4/AC.1/SR.34	E/CN.4/AC.1/19; E/CN.4/95, annex II, art. 26	26
CHR (V)	E/CN.4/SR.130	E/CN.4/255; 396; 339; ESC (IX), Suppl.10, annex I, art.26	26
CHR (VI)	E/CN.4/SR.197	E/CN.4/353/Add.1, 2, 3, 8, 10; 365; E/CN.4/L.15; ESC (XI), Suppl.5, annex I, art. 45	26
ESC (XI)		E/L.68; E/C.2/254/Add.1	45
CHR (VII)		E/CN.4/515/Add.13	45
CHR (IX)		E/CN.4/678; ESC (XVI), Suppl.8, annex I, art.73, and annex II, section C	
CHR (X)	E/CN.4/SR.450, 451	E/CN.4/L.358, 378; ESC (XVIII), Suppl.7, paras.316-321; annex I, section A, art.29 and section B, art.54	73

RESERVATIONS

25. Various proposals concerning admissibility of reservations were considered by the Commission at its fifth and sixth sessions, but it did not adopt any text. The General Assembly at its sixth session requested the Commission, in resolution 546 (VI), to prepare for inclusion in the two draft covenants "one or more clauses relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them". The Commission considered[16/] proposed texts of a reservations clause at its tenth session. One proposal would allow no reservations to be made to the covenant. Another proposal would allow reservations to be made only to Part III of the draft covenant on civil and political rights, subject to the consent of two-thirds of the States parties. A third proposal would permit reservations to be made provided they were compatible with the object and purpose of the covenant. A proposal providing for reservations to the territorial clause was also submitted.[17/] Except as regards the last-named proposal, the discussion in the Commission centered on the question of reservations to the draft covenant on civil and political rights. The question of reservations to the other draft covenant was not considered. The Commission was unable to agree on a text and decided to transmit to the General Assembly, through the Council, the proposals and amendments before it, with the exception of the proposal concerning reservations to the territorial clause.

26. The main issues raised in the discussion on the question of reservations related to: (a) the admissibility or non-admissibility of reservations; (b) the scope of admissible reservations; and (c) the legal effect to be attributed to reservations.

Admissibility or non-admissibility

27. One view was that no reservations of any kind should be allowed. If reservations were admitted, the covenants would cease to be universal in character. Reservations might also open the way for evasion of responsibility.

16/ ESC (XVIII), Suppl.7, paras.266-305.

17/ This proposal is dealt with under the territorial application clause.

It was unacceptable that the United Nations itself, after proclaiming that human rights were inherent in the human person and therefore inalienable, should at the same time admit that any rights could be legitimately disregarded by means of reservations. Moreover, it would be improper to allow reservations to the covenants since they were not instruments by which one State granted to another certain benefits on a reciprocal basis or in exchange for some other benefits; the covenants granted rights to individuals, and not to the States parties themselves. A suggestion was made that the articles of the covenants might be drafted in such a way as to make them acceptable without reservations. It was also suggested that instead of allowing reservations to be made, countries whose laws were inconsistent with any of the provisions of the covenants might be given time within which to bring their laws into conformity with such provisions.

28. Another view was that the right of a State to make its acceptance of treaty obligations subject to such reservations as it deemed necessary was an accepted principle of international law. A refusual to allow the exercise of that right would be contrary to international law and, in particular, to the principle of sovereign equality of States enshrined in the Charter.

29. A third view was that reservations should be admitted as a matter of practical necessity. Unless provision was made for some form of reservations, few States would be able to ratify the covenants. Because of the diversity of the existing juridical systems the provisions of the covenants could not be expected to fit exactly to the laws and legal institutions of all countries, even of those which had achieved a high level of respect for human rights. Changes in domestic legislation to bring it into harmony with the provisions of the covenants would have to be made, and such process required time. Furthermore, since many of the articles of the draft covenants had been adopted by a majority vote, provision would have to be made for the admissibility of reservations if the covenants were to be ratified by as many States as possible. The admission of reservations would also, in the case of the draft covenant on civil and political rights, preclude the possible interpretation of article 2, paragraph 2, as permitting progressive implementation of the covenant[18/], since

18/ See under article 2.

reservations having in view the progressive implementation of any particular provision of the covenant could only be based on the assumption that the provisions of the covenant as a whole were of immediate application.

Scope of admissible reservations

30. Opinion was divided concerning the extent and nature of the reservations to be admitted. One view was that every State had the sovereign right to make such reservations as it deemed necessary, and that right should not be impaired by any kind of restrictions. There was no reason to fear that States would not honour their obligations or that they would abuse the right to make reservations, since experience had shown that the number of reservations to conventions had not hitherto been unduly numerous.

31. The other view was that the right to make reservations to the covenants should not be unlimited. A general right of reservation could render the covenants nugatory. Moreover, to permit reservations to be made without any restrictions whatsoever would result in a multiplicity of texts which would be different for various parties, each State party being bound only by the clauses which suited it. The covenants would thus be deprived of their effectiveness. To limit the scope of reservations would not be incompatible with the doctrine of State sovereignty since by becoming a party to the covenants a State would voluntarily restrict its sovereignty. Various ways of limiting the scope of reservations were proposed or suggested.

32. One proposal, which was discussed mainly in relation to the draft covenant on civil and political rights, would limit the scope of permissible reservations by providing that reservations might be made to the extent that the domestic laws of a State were in conflict with or did not give effect to a particular provision of Part III of the covenant. It further provided that the reservations had to be accepted by not less than two-thirds of the States parties to the covenant. It was contended that the proposal provided adequate safeguards against possible abuse of the right to make reservations, firstly, because reservations could be made only to Part III of the covenant, and, secondly,

because responsibility for deciding whether or not a particular reservation should be admitted was placed in the hands of a community of States bound by common concern for human rights. On the other hand, it was maintained that to allow reservations to Part III of the covenant alone could not be justified in principle. The view was also expressed that Part III constituted the most important part of the covenant and that to allow reservations thereto would run counter to the object of the covenant. Moreover, the provision whereby a State might make a reservation to the extent that its laws were in conflict with or did not give effect to a particular provision of Part III of the covenant would in effect permit the progressive implementation of the covenant, contrary to what was intended under paragraph 2 of article 2.

33. Another proposal was that reservations, to be admissible, should be compatible with the object and purpose of the covenant. Any difficulties which might arise in the application of the criterion of compatibility would be resolved by special agreement between the States concerned, or, as a last resort, by the International Court of Justice. It was explained that the proposal was based on the principles laid down in the advisory opinion of the International Court of Justice concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. Those who opposed the proposal maintained that the criterion of compatibility on which the Court relied in its advisory opinion was not suitable for application to the draft covenants. It would be extremely difficult to define the object and purpose of such far-reaching and detailed multilateral conventions as the covenants on human rights and, therefore, to make the admissibility of reservations contingent on such criterion was most undesirable.

34. A suggestion was made regarding the possibility of combining elements of the two proposals mentioned above: firstly, reservations could be permitted to any article of the covenants, not only to Part III, and, secondly, reservations would not be admitted unless they were compatible with the object and purpose of the covenants and were accepted by at least two-thirds of the States parties. Another compromise suggestion was that only reservations compatible with the aims and object of the covenants should be permitted and

that such reservations should relate solely to the third part of the covenants and should be accepted by at least two-thirds of the States parties thereto.

35. The following propositions were also advanced: (a) that no reservations should be permitted to those parts of the covenants which contained provisions on the right of self-determination, the general obligations of States, or the final clauses; (b) that reservations to substantive articles should be allowed, but not to the implementation articles which constituted a carefully elaborated system liable to be upset by any reservations; (c) that no reservations to substantive articles which set forth fundamental and universal rights should be permitted; (d) that reservations should be allowed only to measures of implementation; (e) that the articles to which reservations would be permitted should be specified; (f) that not only should the right to make reservations be limited in a general way, but it should be expressly precluded with reference to certain articles; (g) that the right to make reservations should be subject to three conditions, namely, that no reservations should be allowed with respect to civil and political rights, that reservations should be temporary and that they should be justified; (h) that reservations to both covenants should be allowed subject to limitations as to the article to which reservations could be made and as to the duration of the reservations. The view was also expressed that it was desirable to allow reservations to the covenant on economic, social and cultural rights, but not to the covenant on civil and political rights, since the former dealt with matters the implementation of which would involve heavy expenditures and would entail serious financial difficulty on the part of States concerned. On the other hand, it was held that no reservations should be allowed to the covenant on economic, social and cultural rights. Reservation to that covenant was hardly necessary since implementation of its provisions was to be accomplished progressively.

Legal effect to be attributed to reservations

36. Reference was made to various views on the effect of a reservation as between the reserving State and the other States parties to a convention if an objection or objections were made to the reservations. It was stated that under the practice followed by the League of Nations and until recently

by the United Nations, an instrument of ratification or accession offered with a reservation would not be regarded as definitively deposited until the reservation was accepted by all the contracting parties. Under what was called the Pan-American practice, on the other hand, when a State made a reservation and a State party objected, the treaty would not enter into force as between them, but the reserving State would be deemed a party to the treaty with respect to the other States parties which did not object to the reservation. Another view was that a treaty to which reservations were made would, in relation to the States making the reservations and all the other States parties, be considered in force in respect of all its provisions except those in regard to which the reservation had been made. Mention was also made of the rule laid down in the advisory opinion of the International Court of Justice on the question of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.

37. It was pointed out that the unanimity rule was open to the criticism that the right to object might be used as a form of veto which would result in the complete exclusion of a reserving State from the covenant. Objections were also raised to the adoption of what was known as the Pan-American practice since it would tend to convert the covenants from instruments of universal character to a series of bilateral agreements.

38. The view was held that the system envisaged in one of the proposals whereby reservations had to be accepted by two-thirds of the States parties was more suitable to the covenants than the other systems. Since the covenants would be adopted by majority vote, it was reasonable that any proposed modification, by way of a reservation, to the obligations to be assumed by a party should also be put to the test of a vote. On the other hand, the proposal was criticized as being unrealistic. Since many of the controversial articles of the draft covenants might be adopted by small majorities, the result of the proposal might well be to delay indefinitely the entry into force of the covenants.

39. Another view was that a reserving State should not be considered a party to the covenant if the reservation it made was incompatible with the object and purpose of the covenant. Unless a settlement was reached concerning the

compatibility or incompatibility of a reservation with the object and purpose of the covenant, any State party objecting to the reservation could refuse to consider the reserving State a party to the covenant, but a State accepting the reservation could consider the reserving State as a party to the covenant. It was explained that the situation would only be temporary, since the parties concerned could settle the dispute as to whether a reservation was or was not compatible with the covenant by special agreement or by reference to the International Court of Justice. The proposition was criticized on the ground that it would lead to fragmentation of the covenant, since one State could consider a reserving State not a party to the covenant, yet they could both be parties in regard to the remaining States. The result could well be utter confusion. It was further contended that if an objecting State referred a dispute as to the effect of a reservation to the Court and the Court decided that the reservation was incompatible with the object and purposes of the covenant, the reserving State and the States which had accepted the reservation but which were not parties to the dispute would be bound to a reservation which had been pronounced incompatible with the covenant. In reply to this objection, however, it was pointed out that all States parties would have to yield to the opinion of the Court as to the compatibility or incompatibility of a reservation to the object or purpose of the covenant.

DOCUMENTATION

Organ and session	Records of discussion	Other documents	Article number
CHR (V)	E/CN.4/SR.125	E/CN.4/258 and 331; ESC (IX), Suppl.10, annex I, p.31	
CHR (VI)	E/CN.4/SR.138, 153, 192-194, 197	E/CN.4/353/Add.2, 6, 7, 11; 365, part II, Section J; 375; 486; ESC (XI), Suppl.5, para.27	
GA (V)	3rd Com., 288th meeting		
CHR (VII)		E/CN.4/515/Add.1	
ESC (XIII)	523rd meeting	E/2059/Add.7	
GA (VI)	3rd Com., 360th, 362nd, 404th, 405th mtgs.	GA (VI), annexes, a.1.29, A/C.3/L.190/Rev.1; A/C.3/559; A/2112	
CHR (VIII)		E/CN.4/654/Add.9; 655/Add.4; 660	
ESC (XVI)	E/AC.7/SR.237		
GA (VIII)	3rd Com., 503rd-505th, 508th, 509th mtgs.	GA (VIII), annexes, a.1.12, A/2573 and Corr.1	
CHR (IX)		E/CN.4/677	
CHR (X)	E/CN.4/SR.442-449	E/CN.4/694/Add.3; 702, p.46; E/CN.4/L.345 and Add.1; L.348; L.349; L.351; L.352; L.353; L.354; L.355; L.356; L.357; ESC (XVIII), Suppl.7, paras. 262-305; annex II, section	
ESC (XVIII)		E/C.2/410	
GA (IX)	3rd Com., 562nd-564th, 566th-573rd, 575th, 576th mtgs.		
