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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS
AND MEASURES OF IMPLEMENTATION

THE GENERAL ADEQUACY OF THE PROVISIONS CONCERNING
CIVIL AND POLITICAL RIGHTS

(Memorandum by the Secretary-General)

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I. INTRODUCTION

1. It is the purpose of this memorandum to give a detailed account of the comments and proposals made by representatives to the twelfth and thirteenth sessions of the Economic and Social Council and to the sixth session of the General Assembly on the general adequacy of Parts I and II of the present Draft Covenant. For the convenience of members of the Commission this memorandum also contains an account of the comments of Governments, of observations and proposals made by representatives at the seventh session of the Commission (Annex III, A and Annex IV, A, of the Report of the seventh session of the Commission), of comments made by specialized agencies, and of the decisions of various organs of the United Nations.

2. The arrangement of this memorandum is based upon the arrangement of document E/CN.4/528 which it supplements and with which it should be read. As in the earlier document this memorandum deals first with the general adequacy of the catalogue of the rights provided for in the first eighteen articles of the present draft covenant; it then deals with the adequacy of the drafting of these last-mentioned articles to protect the rights to which they refer.

/II. ADEQUACY

II. ADEQUACY OF THE CATALOGUE OF RIGHTS IN THE FIRST
EIGHTEEN ARTICLES (PARTS I AND II OF THE
PRESENT COVENANT)

A. General Considerations

3. By resolution 421 B (V) the General Assembly declared that it considered that the list of rights in the first eighteen articles of the Draft Covenant on Human Rights did not contain certain of the most elementary rights.

4. During the eleventh session of the Economic and Social Council and the fifth session of the General Assembly various rights, other than those of an economic, social or cultural nature, were suggested for inclusion in the Covenant. These suggestions were renewed and further additional rights were proposed by various governments in their comments on the Draft Covenant presented to the seventh session of the Commission and by representatives in the Economic and Social Council at its thirteenth session and in the General Assembly at its sixth session.

5. During the debate in the Third Committee of the General Assembly, the representative of Denmark asked the Secretariat whether all the rights set forth in the Universal Declaration of Human Rights were covered by the articles of the Draft Covenant under discussion (A/C.3/SR.390, paragraph 42). In response to this request the Secretary-General submitted to the Third Committee a memorandum (document A/C.3/566) showing which of the rights proclaimed in the Universal Declaration of Human Rights were not provided for in the Draft Covenant. The rights of a civil or political nature enumerated by the Secretary-General and the rights of a similar nature suggested by governments or their representatives for inclusion in the Draft Covenant, are set out below together with references where possible to the corresponding articles of the Universal Declaration on Human Rights:

<u>Additional Rights</u>	<u>Corresponding articles of the Universal Declaration</u>
Right of women to equality with men	Article 2
Right of minorities	
Right of persons in detention	Article 9
Right to freedom from double jeopardy	
Right to protection of privacy	Article 12

/Right to protection

<u>Additional Rights</u>	<u>Corresponding articles of the Universal Declaration</u>
Right to protection against arbitrary interference with one's family	Article 12
Right to the inviolability of the home	Article 12
Right to the secrecy of correspondence	Article 12
Right to protection against attacks upon one's honour and reputation	Article 12
Right of asylum	Article 14
Right to a nationality and to protection against arbitrary deprivation of one's nationality	Article 15
Right to change one's nationality	Article 15
Right to marriage	Article 16 (1) and (2)
Right of the family to protection of society and the State	Article 16 (3)
Right to property and to protection against arbitrary deprivation of one's property	Article 17
Right not to be compelled to belong to an association	Article 20 (2)
Right to participate in government	Article 21 (1)
Right of equal access to public service	Article 21 (2)
Right to vote	Article 21 (2)
Right of parents to choose the education that shall be given to their children	Article 26 (3)
Right to petition national authorities	
Right to self-determination	

6. Some representatives in the Economic and Social Council and in the General Assembly considered that the catalogue of rights recognized in the first eighteen articles of the Draft Covenant should be extended. In particular, the representative of Iran in the General Assembly expressed his regret that a place could not be found in the Covenant for all the rights which were included in the Declaration (A/C.3/SR.399, paragraph 50).

7. Satisfaction with the existing catalogue of rights provided for in the first eighteen articles of the Draft Covenant was, on the other hand, expressed by certain governments. The Canadian Government thought that it would not

/appear

appear to be wise to attempt to add at the present stage to the basic principles embodied in the first eighteen articles of the present draft covenant, as any endeavour to do this might well result in lengthy delays in establishing the text and might also limit substantially the number of States prepared to ratify it (E/CN.4/515/Add.13, paragraph 4). The Governments of New Zealand and of the United Kingdom did not consider that the scope of Parts I and II of the Draft Covenant should be extended by the introduction of new articles dealing with additional rights, these Parts being already sufficiently inclusive (E/CN.4/515/Add.12, page 1 and E/CN.4/515/Add.8, page 3). Approval of the existing catalogue of rights was also expressed in the General Assembly by the representatives of Denmark (A/C.3/SR.362, paragraph 2) and of Ecuador (A/C.3/SR.366, paragraph 52).

8. The Canadian Government has stated (E/CN.4/515/Add.13, pages 2-3) that, rather than add to the first eighteen articles, it might be advisable to consider the deletion of certain secondary provisions, such as the provision to grant free legal aid (Article 10 (2) (b)), and to accord compensation in the case of unlawful arrest or of a miscarriage of justice in the courts (Article 6 (c) and Article 10 (3)).

B. Individual Rights

1. Right of Women to Equality with Men

9. The representative of the Dominican Republic stated in the General Assembly that the principle of equal rights for men and women must be explicitly stated in the Covenant or Covenants finally adopted. In her view the first point of any covenant must be the recognition of the equal right of men and women to all the rights set forth therein (A/C.3/SR.367, paragraph 27 and 28).

2. Right of Minorities

10. At its third session the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution (E/CN.4/358, paragraph 47, Resolution E) - which was re-affirmed at its fourth session - declaring its opinion that the most effective means of securing the protection of minorities by the United Nations would be the inclusion in the Covenant of the following article: "persons belonging to ethnic, religious or linguistic minorities shall

/not be

not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion or to use their own language".

11. The Government of the Ukrainian Soviet Socialist Republic considered that the Covenant should contain the following provision: "The State shall ensure to national minorities the right to use their native tongue and to possess their national schools, libraries, museums and other cultural and educational institutions" (E/CN.4/515/Add.11, page 2).

12. The Yugoslav representative at the seventh session of the Commission, submitted the following proposal for an additional article on the right of minorities:

"Every person shall have the right to show freely his membership of an ethnic or cultural group, to use without hindrance the name of his national group, to learn the language of this group and to use it in public or private life, to be taught in this language, as well as the right to cultural development together with other members of this national group without being 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." (E/1992, Annex IV, A).

3. Right to Physical Integrity

13. The right to physical integrity was mentioned by the Belgian representative in the Economic and Social Council among the rights which had not yet been inserted in the Draft Covenant and for the inclusion of which his delegation had repeatedly asked (E/SR.523, paragraph 13).

4. Right of Asylum

14. The Yugoslav representative at the seventh session of the Commission submitted the following proposal for including in the Draft Covenant an article on the right of asylum (E/1992, Annex IV, A.1):

"Any person persecuted for his political or scientific convictions, for his activities in the struggle for national or political liberation or by reason of his race, nationality or religion or his efforts in support of the realization of the principles of the Charter of the United Nations and the Universal Declaration of Human Rights shall have the right of asylum."

15. The Belgian representative in the Economic and Social Council regretted that an article on the right of asylum had not been inserted in the Draft

/Covenant

Covenant, although it had been repeatedly asked for by his delegation (E/SR.523, paragraph 13).

16. In its consideration of this topic the Commission may wish to refer to the note submitted to it by the Secretary-General on the activities of various organs of the United Nations in connexion with the right of asylum (E/CN.4/520/Add.1).

5. Right of Persons in Detention

17. The Government of Chile suggested that the Covenant should contain a provision in the following words:

"All persons deprived of their liberty shall be treated with humanity. Accused persons shall be preserved from any corrupting influence.

"The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners" (E/CN.4/515/Add.4, page 6).

6. Right to Protection against Double Jeopardy

18. The Government of the Philippines observed with regret that the right against double jeopardy had been twice forgotten. In Philippine law, it stated, this right was so important that it was guaranteed by a constitutional provision which declared that if an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. The Government of the Philippines was of the opinion that governments should not be allowed to split a cause of action and to deluge an accused by putting him in jeopardy for every incident included in his crime; in this way his penalty could be compounded far beyond that prescribed for the one crime he is guilty of. Nor should an accused be harassed by prosecutions starting from the gravest crime followed by a chain of accusations for every crime necessarily included therein or vice versa. In its view such a procedure could be prevented only by a guarantee against double jeopardy, so that any conviction or acquittal of an accused would constitute res adjudicata and therefore a bar to any other prosecution for the same offense or for any offense which necessarily included it or is included therein (E/CN.4/515/Add.2, page 5).

/7. Right to

7. Right to Inviolability of the Home

19. The Government of Israel proposed that an article corresponding to Article 12 of the Universal Declaration of Human Rights should be inserted after Article 7 in Part II of the present Draft Covenant. The relevant parts of the proposed new article would read as follows: "the dwelling of every person is inviolable and shall not be entered or searched except in accordance with the law and in the manner therein prescribed...". The Government of Israel further proposed that this article should not be included among those provisions enumerated in Article 2 (2) of the Covenant from which there may be no derogation in a state of emergency (E/CN.4/515/Add.6, paragraph 6).

8. Right to the Secrecy of Correspondence

20. The Government of Israel also proposed that the new article mentioned in the preceding paragraph should contain provisions dealing with the guarantee of the secrecy of correspondence. This guarantee was phrased as follows: "...private correspondence as well as telegraphic and telephonic communications shall not be intercepted, except when authorised by law in the interests of national security, public safety and the economic well-being of the country". Like the provision dealing with the inviolability of the home this guarantee would, in accordance with the terms of Article 2, be susceptible of derogation in a state of emergency (E/CN.4/515/Add.6, paragraph 6).

9. Right to Protection against Attacks on Honour and Reputation

21. In its explanation why its suggested article dealing with the guarantee of the inviolability of the home and the secrecy of correspondence did not contain provisions relating to the prohibition of attacks upon a person's honour and reputation contained in Article 12 of the Universal Declaration of Human Rights on which its proposal had been based, the Government of Israel stated that it was not the object of the Covenant to protect the individual against attacks by his fellow citizens but against incursions into the private sphere by organs of the state. In its view the ordinary civil law afforded sufficient protection against the former attacks. The Government of Israel considered that if this view were not accepted every conceivable rule of civil law might have to be inserted in the Covenant (E/CN.4/515/Add.6, paragraph 6).

10. Right to Protection against Arbitrary Interference with One's Privacy

22. The representative of the United Kingdom at the seventh session of the Commission suggested an exception to the requirement contained in Article 10 (1) that trials should be held in public which may be relevant to the right of persons to protection against interference with their privacy. The text of the proposed amendment to Article 10 (1) of the Covenant was adopted from the Rome Convention for the protection of human rights and fundamental freedoms (see E/CN.4/524, paragraph 31). It reads as follows:

"...the press or public may be excluded from all or part of the trial... where...the protection of the private life of the parties so require..."
(E/1992, Annex III, A).

11. Right to Marriage

23. The Government of the Philippines has invited attention to the fact that the Universal Declaration of Human Rights contains provisions on the right to marry, the right to found a family, and the importance of the family. In its view the right to marry is a natural right; one among the first given to man without which there could be no family. Without the family there could be no state and society, and without the state and society there could be no need for the Covenant itself. Since this right should not be omitted from any enumeration of civil rights which was intended to be comprehensive, the Government of the Philippines proposed that an article be drafted along the lines of Article 16 of the Universal Declaration of Human Rights for inclusion in the Covenant (E/CN.4/515/Add.2, pages 4 and 5).

24. In the Economic and Social Council the Belgian representative pointed out that, although repeated requests had been made by his delegation for the inclusion of an article on the right to marriage in the Draft Covenant, such an article was still lacking (E/SR.523, paragraph 13).

25. During the consideration of the Draft Covenant by the Third Committee of the General Assembly at its sixth session, the Lebanese delegation submitted a draft resolution (A/C.3/L.198) containing a recommendation that the Economic and Social Council request the Commission on Human Rights to include in Part II of the Draft Covenant an article devoted to rights relating to marriage and the family corresponding to Article 16 of the Universal Declaration. In subsequent revisions of that draft resolution, however, this proposal was omitted.

/12. Right to Property

12. Right to Property

26. Recalling that at the fifth session of the General Assembly the Netherlands delegation had expressed the view that an article on the right to property should be added to the list of civil and political rights, the representative of the Netherlands at the sixth session of the Assembly stated that, although the right to property might be regarded as an economic right, it was inherent in the human personality and had therefore to be regarded as indispensable to any basic enumeration. For that reason his delegation was disappointed by the decision of the Commission at its seventh session not to include such an article in the Covenant (A/C.3/SR.363, paragraph 9).

13. Right of Parents in relation to their Children's Education

27. The Netherlands representative in the General Assembly stated that although Article 28 of the Draft Covenant contained a provision concerning the right of parents with regard to the education of their children, it was possible that, if there were a separate covenant on civil and political rights, there might be no reference in it to that primordial right of parents. In his opinion the omission of such an important article from a covenant on civil and political rights would make it extremely difficult for certain states to sign and ratify such an instrument (A/C.3/SR.363, paragraphs 9 and 10).

14. The Right to Participate in Government

28. The Belgian representative in the Economic and Social Council drew attention to the rights included in the Universal Declaration which were still not to be found in the Draft Covenant. In his opinion it would be desirable to have them inserted. He made particular reference to Article 21 of the Universal Declaration concerning the right to take part in the government of one's country (E/SR.523, paragraph 13). The Yugoslav representative at the seventh session of the Commission submitted the following draft article: "Every citizen shall have the right to take part in the government of the state by means of a democratic ballot..." (E/1992, Annex IV, A.3).

/15. Right of Equal

15. Right of Equal Access to Public Service

29. At the seventh session of the Commission the Yugoslav representative proposed the following article on this subject, with the intention that it should follow the article on the right to participate in government mentioned above in paragraph 28:

"Every citizen shall likewise have the same right of access to any state or public office" (E/1992, Annex IV, A.3).

30. The right of equal access to public office was mentioned by the Belgian representative in the Economic and Social Council as an example of a right included in the Universal Declaration of Human Rights but still not to be found in the Draft Covenant. It was a right which, in his opinion, it would be desirable to have inserted in the latter instrument (E/SR.523, paragraph 13).

16. Right to Vote, etc.

31. The proposal on this subject submitted by the Yugoslav representative at the seventh session of the Commission was as follows: "Every citizen shall have the right to take part in the government of the State by means of a democratic ballot which shall ensure absolute secrecy and complete freedom of expression of the will of individuals without any discrimination whatsoever" (E/1992, Annex IV, A, (3)).

32. Mentioning that there were rights in the Universal Declaration which were still not to be found in the Draft Covenant and which it would be desirable to have inserted in it, the Belgian representative in the Economic and Social Council stated that his remarks applied, for example, to Article 21 of the Universal Declaration of Human Rights concerning the right (inter alia) to universal and equal suffrage and to the secret vote (E/SR.523, paragraph 13). The Greek representative in the General Assembly stated that the task of the United Nations was not to fill gaps in national constitutions but to guarantee the application of those instruments and that therefore the Commission should draft an article on the functioning of democracy to oblige states to carry out free elections by secret ballot at regular intervals (A/C.3/SR.369, paragraph 9).

17. Right to Self-Determination

33. The question of the right of peoples to self-determination is dealt with in resolution 545 (VI) of the General Assembly. The Secretary-General has submitted memoranda (E/CN.4/516 and E/CN.4/649) on this subject for the information of the Commission.

III. ADEQUACY OF THE DRAFTING OF THE FIRST
EIGHTEEN ARTICLES OF THE
PRESENT COVENANT.

A. General observations on the adequacy of the drafting of Parts I and II of the Covenant

34. General satisfaction with the drafting of Parts I and II of the Covenant was expressed by various representatives in the Economic and Social Council at its thirteenth session and in the General Assembly at its sixth session. The representative of China in the Economic and Social Council considered that the provisions of the first eighteen articles were, generally speaking, adequate. His delegation felt that any attempt to expand those articles would upset the balance of the Draft Covenant (E/SR.524, paragraph 21). In the General Assembly the representative of Ecuador stated that his delegation was prepared to accept the first eighteen articles as drafted by the Commission (A/C.3/SR.366, paragraph 52).

35. The representatives of New Zealand (A/C.3/SR.367, paragraph 10) and United Kingdom (A/C.3/SR.361, paragraph 46) thought that the articles dealing with civil and political rights were more effectively drafted than the articles in Part III of the present Covenant dealing with economic and social rights.

36. On the other hand, several representatives both in the Economic and Social Council and in the General Assembly expressed their dissatisfaction with the drafting of the first eighteen articles in general. Thus, the representative of Czechoslovakia in the General Assembly, noting that the Commission had not revised the first eighteen articles, expressed his deep regret that the organs of the United Nations entrusted with the task of drafting the Covenant had been guided by a spirit of individualism which was divorced from reality and had forgotten that human society was not composed of inanimate particles and that individual freedom could exist only within the framework of society (A/C.3/SR.366, paragraph 55). The Government of India expressed the opinion that the first eighteen articles of the Covenant were inadequate and needed modifications in places to achieve the greatest common measure of agreement (E/CN.4/515/Add.14, page 2). Although the representative of New Zealand in the General Assembly thought that the work of the Commission and the Economic and Social Council on

/the first eighteen

the first eighteen articles of the draft Covenant had been particularly successful (A/C.3/SR.367, paragraph 10), he stated that this was not to be interpreted as an expression of approval of the drafting of these articles. The Government of New Zealand did not regard the wording or form of some of the articles as satisfactory or adequate to protect the rights to which they referred (E/CN.4/515/Add.12, page 1). The representative of the Ukrainian Soviet Socialist Republic considered that the first eighteen articles of the Draft Covenant were unsatisfactory and hoped that the Commission would take the necessary measures to improve them (A/C.3/SR.367, paragraph 37). Similar views were expressed by the representatives of the Union of Soviet Socialist Republics in the Economic and Social Council (E/SR.524, paragraph 31) and in the General Assembly (A/C.3/SR.359, paragraph 8). These representatives thought that some of the work of the Commission still to be completed, particularly the revision of the first eighteen articles of the draft Covenant, was of outstanding importance and if the General Assembly resolution (resolution 421 (V)) were to be properly implemented the Council would have to try to improve the drafting of these articles. This would entail much work, since both the drafting and the substance of those articles could be greatly improved. The representative of Uruguay thought that the Draft Covenant contained too many detailed provisions and that it should be couched in as brief as general and as flexible terms as possible (E/SR.524, paragraph 45).

37. The Government of Canada observed that the criticisms made of the text of the first eighteen articles by different governments had been of a conflicting nature, as some governments had wished to secure more detailed provisions with lengthy enumerations of exceptions to, or limitations on, the basic rights as defined in the Covenant, while others had expressed a desire to confine the text to general provisions without spelling out restrictions and exceptions in detail. Since it was necessary for the purpose of a general international convention to find some common ground between the various legal systems in existence, technical terms and detailed provisions should be eliminated as far as possible and the definitions of rights in the Covenant should be expressed in general terms while at the same time avoiding ambiguity or vagueness. It was the view of the Government of Canada that in form and quality of drafting the first eighteen articles needed substantial revision. They were very unevenly formed, since

/some contained

some contained detailed provisions while others were expressed in terms of general principles (E/CN.4/515/Add.13, paragraph 6).

38. Although the French Government was in general agreement with the text of the first eighteen articles of the Covenant, it made certain observations about differences of method and about the two most important modifications which would follow, if the method it advocated were adopted. It was the view of the French Government that, in general, the synthetic method was imperative for the preparation of a Covenant on Human Rights which, if ideal became fact, would one day cover all points where friction might occur between man and the state. To attempt by a method of exhaustive enumeration to draft a Covenant so exact that it would allow no loophole for a state wishing to contravene it would be to commit the Commission to a task for which it had neither the time nor the technical resources and one which moreover had not been assigned to it. Such a covenant, which would not be a covenant but an aggregation of individual conventions, might well become not so much a covenant on the rights of man as a systematic catalogue of all the rights denied to man. In the view of the French Government the Covenant should be an instrument sufficiently clear to ensure that its meaning was always beyond doubt, sufficiently concise to be at once striking and easily manageable, and sufficiently general to make it possible for the rights or groups of rights defined therein to be embodied subsequently in a special convention without having to undergo constant delicate amendments which might be difficult to obtain (E/CN.4/515/Add.15, page 3).

B. Comments and Observations on the Drafting of the Preamble and Individual Articles

Preamble

39. The Government of Chile proposed the following text for the preamble as being a more detailed statement of the intention to legislate on human rights on the basis of the United Nations Charter and the Universal Declaration of Human Rights than that of the present text:

"The States parties hereto, determined to conform to the United Nations Charter and bearing in mind the general principles proclaimed in the Declaration of Human Rights, agree upon the following articles with respect to certain human rights and fundamental freedoms."
(E/CN.4/515/Add.4, page 1).

Article 1, paragraph 1

40. The Canadian Government has pointed out that the provisions of Article 1, paragraph 1 and of Article 17, though expressed in similar language are apparently intended to convey different meanings. The Canadian Government considered that if this were so, the difference should be made clear by the use of more precise language in each article (E/CN.4/515/Add.13, Annex 1, paragraph 1).

41. Reference was made by the representative of Liberia to the use of the word "recognized" in Articles 20-28 of the Draft Covenant as prepared by the Commission at its seventh session. His remarks may be applicable to the use of the word "recognized" in Article 1, paragraph 1 of the Draft Covenant. In his view it might seem strange that the representatives of countries whose constitutions contained provisions similar to those stated in the Draft Covenant had needed so much time and effort merely to restate those principles in a Covenant (A/C.3/SR.366, paragraph 20).^{1/}

42. In deciding whether to retain the phrase "within its territory", which appears in paragraph 1 of Article 1, the Commission may wish to refer to the decisions of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons in preparing a convention relating to the status of refugees. A committee was appointed by that Conference to study the draft text of Article 3 of the Convention. The English version of that article had read as follows: "No Contracting State shall discriminate against a refugee within its territory on account of his race, religion or country of origin". The French text had read as follows: "Aucun Etat contractant ne prendra de mesures discriminatoires sur son territoire, contre un réfugié en raison de sa race, de sa religion ou de son pays d'origine". It had been thought that the words "within its territory" might by their position in the English text be interpreted as permitting discrimination against a refugee outside the territory of the Contracting State and it was felt that a document drawn up

^{1/} Certain problems, some being of a similar nature, arising out of the use of the word "recognize" in the present Part III of the draft Covenant are dealt with in a memorandum by the Secretary-General on provisions concerning economic, social and cultural rights (E/CN.4/650, Part II).

/under the

under the auspices of the United Nations ought not to be susceptible of such an interpretation. The final version of Article 3 as settled by the Conference on the advice of the Committee (A/Conf.2/72) omits the controversial phrase "within its territory" and reads as follows: "The Contracting States shall apply the provisions of the Convention to refugees without discrimination as to race, religion or country of origin" (A/Conf.2/108, page 17).

43. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has recommended that the Commission amend paragraph 1 of Article 1 by inserting the word "legitimacy" after the word "birth" (E/CN.4/641, page 53).

Article 1, paragraph 2

44. The Government of the Philippines stated that paragraph 2 was unnecessary because under Philippine law a treaty to which the Government was a party automatically became incorporated in the municipal law and this might apply to other States with similar constitutional provisions. The Government of the Philippines has pointed out that the expression "undertakes to take the necessary steps to adopt" is infelicitous and has suggested that it be replaced by the expression "undertakes to adopt". In explaining this change it stated that the expression "to take the necessary steps" might include a number of actions which would not be helpful to the implementation of the Covenant; on the other hand the expression "adopt" is more precise and explicit (E/CN.4/515/Add.2, page 1 and E/CN.4/515/Add.2/Corr.1).

45. The representative of the United Kingdom at the seventh session of the Commission suggested that the present text of paragraph 2 be replaced by a text which would allow the making of reservations on ratification of the Covenant. The suggested text, which follows closely paragraph 1 of Article 64 of the Rome Convention on the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 141), reads as follows:

"2. Any State may, when signing this Covenant or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Covenant to the extent that any law then in force in its territory is not in conformity with this provision. Reservations of a general character are not permitted under this Article. Any reservation under this Article shall contain a brief statement of the law concerned.

/"3. Everyone

"3. Everyone whose rights and freedoms as set forth in this Covenant are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." (E/1992, Annex III, A)

46. The Government of the Union of South Africa expressed its opinion that, because of the complex difficulties in finding formulae and words to cover all circumstances, earnest consideration should be given to arrangements whereby it would be possible for Member States to accede to the Covenant with reservations as to particular articles. The Union Government believed that on this basis more articles would be effectively applied in a larger number of states than if there were no provisions for reservations. If a state, it said were not permitted to accede to the Covenant with reservations to one or more articles, it would in practice not be able to accede to the Covenant at all (E/CN.4/515/Add.1, page 2).

47. The question of drafting provisions on the admissibility or non-admissibility of reservations to the Covenant is dealt with by resolution 546 (VI) of the General Assembly.

Article 1, paragraph 3

48. The Government of Israel has proposed that the words "competent authorities, political, administrative or judicial" be replaced by the following: "A court of law or by a tribunal whose decisions have the force of law". The Government of Israel considered that the function of determining any claim of alleged violations of human rights was essentially judicial and should be exercised exclusively by a judicial body. It was not thought desirable that any such claim, which in the nature of things would normally be directed against political and administrative authorities, should be determined by other political or administrative agencies of that state (E/CN.4/515/Add.6; paragraph 1). A not dissimilar view was expressed by the Government of New Zealand which considered that sub-paragraph (b) of paragraph 3 could be held to justify action by political or administrative authorities in cases where, in the spirit of the Universal Declaration, it was a judicial remedy that should be available. Preference for the following text was accordingly expressed by the New Zealand Government: "That any person claiming such a remedy shall have his right thereto determined by national tribunals whose independence is secured". (E/CN.4/515/Add.12, pages 1 and 2).

/49. The United Kingdom

49. The United Kingdom representative at the seventh session of the Commission suggested that paragraph 3 be replaced by the following provisions, which reproduce, mutatis mutandis, the provisions of Article 13 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 52):

"Everyone whose rights and freedoms as set forth in this Covenant are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in official capacity." (E/1992, Annex III, A)

Article 2, paragraph 1

50. The Government of Chile considered that the word "derogating" was inappropriate and that the word "suspending" should be used in its place (E/CN.4/515/Add.4, page 2).

51. The Government of the Philippines has stressed the importance of stating explicitly that the term of a derogation under paragraph 1 should be strictly limited to the exigencies of the situation. The word "extent" in the present text of paragraph 1 referred to the degree of the measure of derogation, which might be either partial or full; the duration of the application of the measures is another thing and might without some restriction be unduly prolonged. The Government of the Philippines therefore suggested the following text:

"1. In the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster, a State may take measures derogating, to the extent and for a period strictly limited by the exigencies of the situation, from its obligations under Article 1, paragraph 1, and Part II of this Covenant." (E/CN.4/515/Add.2, page 2)

52. The representative of the United Kingdom at the seventh session of the Commission proposed in substitution for the present text of paragraph 1 a text which closely follows that of paragraph 1 of Article 15 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 47):

"In time of war or other public emergency threatening the life of the nation 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." (E/1992, Annex III, A)

/Article 2,

Article 2, paragraph 2

53. The Government of Israel has proposed that the Covenant should not permit any derogation in times of emergency from the obligation of States set out in Articles 1, 10 and 17. With regard to Article 10 the Government of Israel observed that there was no reason why even during a state of emergency accused persons should not receive a fair hearing by an independent and impartial tribunal established by law. Article 10 itself moreover provided that in the interest of public order or national security the press and public might be excluded from all or part of the trial. There was therefore no justification or need for any derogation from the rights of accused persons on the ground that a public hearing of the case might be to the detriment of national security or public order. All the other safeguards secured in Article 10 for the protection of accused persons in criminal proceedings might be fully maintained even during a state of emergency without any risk to national security or public order. For similar reasons the requirement of compensation in case of a miscarriage of justice provided for in paragraph 3 of Article 10 need not be set aside during a state of emergency. With regard to its proposal that Articles 1 and 17 should not be susceptible of derogation in times of emergency the Government of Israel observed that any derogation from the principle of non-discrimination on the grounds of race, sex, language, or religion would be repugnant to the express terms of Articles 1 (3), 55 (c), 56, 62 (2), and 76 (c) of the Charter of the United Nations. The Government of Israel conceded that there might be need in time of war for suspending the principle of non-discrimination on grounds of "political or other opinion, national or social origin, property, birth and other status" but asserted that there could be no justification even in a state of war for the suspension of freedom of religion and language or for measures of discrimination on grounds of race or sex. The Government of Israel also proposed that the bar against derogation from Article 3 (Right to Life) should be subject to an exception in respect of deaths resulting from lawful acts of war (E/CN.4/515/Add.6, paragraphs 2 and 3, E/CN.4/515/Add.6/Corr.1). This amendment, which was based upon paragraph (2) of Article 15 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (See E/CN.4/524, paragraph 57), was also proposed by the representative of the United Kingdom at the seventh session of the Commission (E/1992, Annex III, A).

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54. The representative of Yugoslavia at the seventh session of the Commission suggested that after the words "international law" in paragraph 2 of Article 2 there be inserted the following words: "and in particular with the principles of the Charter of the United Nations and the Universal Declaration of Human Rights" (E/1992, Annex III, A).

Article 2, paragraph 3

55. The representative of India at the seventh session of the Commission suggested that the words "as soon as may be" should be substituted for the word "immediately" and that after the words "the Secretary-General" there be added the clause "who shall inform the General Assembly of the United Nations" (E/1992, Annex III, A).

56. The Government of the Philippines considered that it should be necessary that States Parties to the Covenant who wished to derogate from some of its provisions in accordance with Article 2 should be under an obligation to satisfy the other Contracting States of the validity of their action. An emergency even officially proclaimed might be interpreted variously: it was always better therefore that the reasons for derogation should be stated unequivocally. The Government of the Philippines proposed the following text:

"Any State Party hereto 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 therefor, and the date on which it has terminated such derogation." (E/CN.4/515/Add.2, page 2)

A similar suggestion was made by the representative of Yugoslavia at the seventh session of the Commission who proposed that the words "the reason by which it was actuated" be inserted after the words "the provisions from which it has derogated" appearing in the present text (E/1992, Annex III, A).

Article 3

57. During the debate in the Third Committee a joint resolution was submitted by the delegations of Chile, China and Colombia (A/C.3/L.197, replaced by A/C.3/L.234 and Rev.1) calling upon the General Assembly to recommend that members of the United Nations redouble their efforts to rectify past injustices and to stop denials of human rights especially the right to life. The Chinese representative pointed out that the right to life was the first of all rights

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and consequently deserved particular stress (A/C.3/SR.411, paragraph 5), but that the joint proposal did not mean that the sponsors were seeking to deprive states of the right to impose capital punishment in their territories if they so wished. Any country had a right to make its own penal legislation and it was hardly arguable that the proposal would hamper the punishment of criminals (A/C.3/SR.411, paragraph 30). The representative of Saudi Arabia in the General Assembly equated denial of the right to life with murder (A/C.3/SR.410, paragraph 63). However, he also thought that since some states retained capital punishment for criminals while others had abolished it, the second group of states might, if the proposal were adopted, see a violation of human rights in the use of capital punishment by the first group (A/C.3/SR.411, paragraph 13).

58. Two proposals for completely redrafting Article 3 have been submitted by the Governments of Israel and the United Kingdom. The text of the amendment suggested by the Government of Israel was designed to meet the criticism expressed by several delegations concerning the drafting of Article 3 and reads as follows:

- "1. Everyone's right to life shall be protected by law.
2. Capital punishment may be inflicted only as a penalty for the most serious crimes, pursuant to the sentence of a competent court of law pronounced in accordance with law not contrary to the Universal Declaration of Human Rights.
3. Anyone sentenced to death shall have the right to appeal and to seek amnesty, or pardon, or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
4. To take life shall be a crime save when it results from:
 - (a) the execution of a sentence of death pronounced by a competent court in accordance with law not contrary to the Universal Declaration of Human Rights;
 - (b) the use of force which is no more than absolutely necessary
 - (i) for the defence of any person or group of persons from unlawful violence; or
 - (ii) for effecting a lawful arrest or preventing the escape of a person lawfully detained; or
 - (iii) for any action lawfully taken for the purpose of quelling a riot or insurrection; or

/(iv) for preventing

- (iv) for preventing unlawful entry to a clearly defined place or area to which access is forbidden on grounds of national security and in respect of which a public and clearly discernible warning has been issued." (E/CN.4/515/Add.6, paragraph 4)

59. The proposal of the United Kingdom consists of an exact reproduction of Article 2 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms concluded by members of the Council of Europe (for a comparison of that article with Article 3 of the Draft Covenant see (E/CN.4/524, paragraph 13). It reads as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which the penalty is provided by law.

"2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results in the use of force which is no more than absolutely necessary:

"(a) In defence of any person from unlawful violence;

"(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

"(c) In action lawfully taken for the purpose of quelling insurrection." (E/1992, Annex III, A)

Article 3, paragraph 2

60. The Government of New Zealand has stated that the text of paragraph 2 of Article 3 was unsatisfactory. In its view, it would be preferable to redraft the article so as to state more precisely the category in which the taking of life should not be a crime (E/CN.4/515/Add.12, page 2).

61. The Government of Canada pointed out that several phrases have been used in various articles which may be given different meanings under different legal systems or when expressed in different languages. The term "self-defence" in paragraph 2 of Article 3 in the English text came within this category. It was an expression which should be avoided and the conceptions involved should be stated in other terminology (E/CN.4/515/Add.13, Annex I, paragraph 5).

62. At the seventh session of the Commission the Indian representative proposed that the word "self-defence" should be deleted and replaced by the words "in defence of persons, property or state or in circumstances of grave civil commotion". (E/1992, Annex III, A)

Article 3, paragraph 4

63. The Government of Israel, commenting on its amendment to Article 3 as a whole (see above, paragraph 58), pointed out that it had thought it advisable to add the right of appeal to the right to seek amnesty or pardon or commutation of the death sentence, which were dealt with in paragraph 4 of Article 3 of the Covenant as at present drafted (E/CN.4/515/Add.6, page 3).

64. The Yugoslav representative at the seventh session of the Commission proposed that at the end of paragraph 4 the following provision should be added: "In no case shall sentence of death be put into effect where the sentence concerns a pregnant woman" (E/1992, Annex III, A).

Article 4

65. The Government of Canada in its observations on the Draft Covenant (E/CN.4/515/Add.13, Annex I, paragraph 2) stated that the second sentence in Article 4, particularly in the final phrase, suggests a dangerous exception which might be abused, although without this exception the sentence might be interpreted to stand in the way of genuine medical progress. In its view the first sentence of the article appeared to cover adequately the prohibition of torture or cruel punishment and therefore the second sentence should be deleted. The Canadian Government pointed out that with this change the article would be similar to Article 3 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms concluded by the Council of Europe (see E/CN.4/524, paragraphs 18-20). A similar proposal was made by the United Kingdom representative to the seventh session of the Commission (E/1992, Annex III, A).

66. The Government of the Philippines has suggested that the term "unusual treatment or punishment" be substituted for "inhuman punishment" in Article 4. It stated that the concept of cruelty covered what was inhuman and that therefore the latter term was unnecessary. The term "unusual", which appeared in the Philippine Bill of Rights (Section 1, sub-section 19), would cover new devices calculated to punish an accused person such as the use of drugs to induce confession, although these devices might be neither cruel nor degrading. Since the term "unusual punishment" had definite connotations in the law of many countries, including the Philippines, the use of the term "inhuman punishment"

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in its place would introduce certain difficulties of interpretation. The Government of the Philippines conceded that the term "unusual punishment" might not be susceptible of accurate, literal translation into other languages, as for instance, French and Spanish, but thought that the remedy would seem to lie in using for the French text a word of equivalent meaning (E/CN.4/515/Add.2, pages 2 and 3 and Corr.1).

67. The Yugoslav representative at the second session of the Commission, suggested the addition to Article 4 of the following text: "In addition to the consent of the person in question, the approval of a higher medical institution designated by law (faculty, institute, supreme medical council, etc.) shall be required before the experimentation referred to in the previous paragraph is carried out. Such approval may be required even in the case of experimentation of a general nature" (E/1992, Annex III, A).

68. The Secretary-General draws the attention of the Commission to the possibility that in its present form Article 4 may be interpreted as condoning medical or scientific experimentation not involving risk against the will of a person.

Article 5

69. The Government of Israel has proposed the deletion of sub-section 3 (c) (ii) and the substitution therefor of the following phrase: "Any service of a military character or any work or service imposed by law as part of or as an alternative to military service". The purpose of this amendment was expressed to be the extension of the scope of the exception dealing with compulsory national service exacted in lieu of military service to include other forms of national service imposed as part of military service. Reference was made by the Government of Israel to the Israeli Security Service Act of 1949, Section 6 of which required that part of the period of military service should be devoted to agricultural training (E/CN.4/515/Add.6, paragraph 5).

70. In its observations on the Draft Covenant, the Governing Body of the International Labour Office stated that it did not think it would be profitable to refer again to its recommendation for the drafting of paragraph 3 (c) (iv) which had not been accepted in the present draft of the Covenant. The workers' members of the Governing Body, however, wished to place on record their view that the present draft of sub-paragraph (c) (iv) was not sufficiently clear

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and that the meaning of "normal civic obligations" should be more specifically defined (E/2057/Add.2, pages 4 and 5).

Article 6

71. The representative of the United Kingdom (E/1992, Annex III, A) has suggested that the specific limitations to the general principle that no one is to be deprived of his liberty should be enumerated in detail. To that end he proposed the replacement of the present provisions of Article 6 by the following text, which adheres closely to Article 5 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (See E/CN.4/534, paragraphs 25-30):

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases, and in accordance with a procedure prescribed by law:

"(a) The lawful detention of a person after conviction by a competent court:

"(b) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law:

"(c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so:

"(d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority:

"(e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants:

"(f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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 pending trial. Release may be conditioned by guarantees to appear for trial.

/"4. Everyone

"4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

"5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 6, paragraph 1

72. The term "arbitrary arrest" in this paragraph was criticized by the Canadian Government in its observations on the Draft Covenant as an expression which might be given different meanings by different legal systems or when expressed in different languages. The conception involved should, in its view, be stated in other terminology (E/CN.4/515/Add.13, Annex 1, paragraph 5).

Article 6, paragraphs 1 and 2

73. It was the opinion of the New Zealand Government that the general limitations in paragraphs 1 and 2 expressed by the use of the words "arbitrary" and "except on such grounds and in accordance with such procedures as are established by law" were not sufficiently precise. The New Zealand Government would prefer a statement of specific limitations to the general principle that no one was to be deprived of his liberty (E/CN.4/515/Add.4, page 2).

74. Under the assumption that as at present drafted paragraphs 1 and 2 said the same thing since any deprivation of liberty which was not "on such grounds and in accordance with such procedure as are established by law" (paragraph 1) must necessarily be arbitrary, the Government of the Philippines proposed that the two paragraphs should be combined so that the present paragraph 2 would amplify paragraph 1 as follows: "(1). No one shall be subject to arbitrary arrest or detention or shall in any manner be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law" (E/CN.4/515/Add.2, page 3).

Article 6, paragraph 3

75. The Indian representative at the seventh session of the Commission proposed that after the words "at the time of arrest" there should be added the phrase "or as soon as may be" (E/1992, Annex III, A).

Article 6, paragraph 4

76. The Chilean Government considered that as the object of the words "within a reasonable time" was to bring the accused before a judicial authority in the shortest possible time in order to avoid arbitrary action or indefinite imprisonment without trial, the meaning of that phrase should be defined. In the same paragraph it suggested that a stipulation should be inserted making the grant of conditional release "in accordance with national law". Thus in Chile, for instance, release would take place only in accordance with and in the cases prescribed by Chilean legislation (E/CN.4/515/Add.4, page 3).

77. The representative of India at the seventh session suggested the addition after the words "pending trial" of the phrase "in cases which are bailable" (E/1992, Annex III, A).

Article 6, paragraph 5

78. The Government of the Philippines interpreted paragraph 5 as providing a remedy similar to habeas corpus by which a person unlawfully detained may test the validity of his detention. In view of the present wording of the paragraph, which seemed to limit the right to persons deprived of their liberty "by arrest or detention", it appeared to contemplate only such arrests or detentions as might be effected by public officers. There was thought to be no reason for such a limitation and therefore the Government of the Philippines suggested the following text for paragraph 5: "Any one who is deprived of his liberty in any manner, whether by public officers or private individuals shall be entitled, etc." Under this proposed wording, it was explained, any one held under peonage or in involuntary servitude might also avail himself of the remedy. Likewise a woman wrongfully held by her parents from her husband would be protected by the new text (E/CN.4/515/Add.2, page 3).

Article 7

79. The Government of Iraq has suggested that the phrase "unless otherwise provided by law" should be added to this article. This addition would eliminate the rigidity inherent in this article. Unforeseen circumstances arising out of the failure to fulfil a contractual obligation should be adequately dealt with by law (E/2059/Add.6).

/Article 8

Article 8

80. The Government of the United Kingdom was in favour of the deletion of the whole article (E/1992, Annex III, A).

Article 8, paragraph 1

81. The Government of Canada considered that the provisions of paragraph 1 constituted a satisfactory defence of freedom of movement, but that it was introduced by the vague phrase "subject to any general law consistent with the rights recognized in this Covenant". While such a proviso was necessary it should be more precisely formulated, as the phrase had already given rise to different interpretations (E/CN.4/515/Add.3, Annex 1, paragraph 3). Referring to the opening phrase of paragraph 1, the Government of Israel pointed out that, if the intention was to limit the rights and freedoms secured by sub-paragraphs (a) and (b), they should not be subject to any "general law consistent with the rights recognized in this covenant" but to such "restrictions as are not inconsistent with the covenant". In its view such re-phrasing would make the legal import of the provision more clear (E/CN.4/515/Add.6, paragraph 7).

82. The Government of New Zealand considered that a fuller statement of the limitations to the right enumerated in paragraph 1 was needed and suggested the following text:

"(a) Every person legally within the territory of a State shall be free to move and choose his place of residence within the borders of that State, subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of national defence or in the general interest.

"(b) Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service or taxation shall be free to leave any country, including his own." (E/CN.4/515/Add.12, page 2)

Article 8, paragraph 2

83. The Government of Israel has proposed that sub-section (2) (b) should be amended to read as follows: "Any one not lawfully exiled shall be free to enter the country of which he is a national". The sub-paragraph was designed to secure the right of entry to the country of which one was a national. The introductory words, it was pointed out, were intended to permit some restriction
/of this right,

of this right, but that restriction could not be found in the preceding sub-paragraph which in its turn secured a right by prohibiting arbitrary exile. The Government of Israel considered that the right should, instead, be made subject to a lawful derogation from the right secured in sub-paragraph (a). This was brought out in the proposed amendment (E/CN.4/515/Add.6, paragraph 8).

Article 9

84. The United Kingdom representative at the seventh session of the Commission proposed the deletion of the whole of Article 9 (E/1992, Annex III, A). The representative of India suggested that the words "on established legal grounds and" should be deleted (E/1992, Annex III, A).

85. The Yugoslav Delegation on the other hand submitted a proposal for the addition of a new paragraph reading as follows:

"Persons charged with political or military offences shall not be subject to extradition except where the alleged acts are regarded as crimes under international law, in respect of which compulsory extradition is stipulated in accordance with the resolutions of the United Nations General Assembly or conventions concluded under United Nations auspices." (E/1992, Annex III, A).

Article 10

86. The Commission may wish to take into consideration the provisions of the draft Statute for an International Criminal Court prepared by the Committee on International Criminal Jurisdiction (A/AC.48/4, Annex I). Articles 36 (2), 38, 39, 41 and 53, which are set out below, establish the rights of persons indicted under the terms of the Statute for offences coming within the jurisdiction of the International Criminal Court.

"Article 36

"Notice of the Indictment

.....

"2. The Court shall not proceed with the trial unless satisfied that the accused has had the indictment or any amendment thereof, as the case may be, served upon him and has had sufficient time to prepare his defence."

"Article 38

"Rights of the Accused

"1. The accused shall be presumed innocent until proved guilty.

/"2. The accused

- "2. The accused shall have a fair trial and, in particular:
- (a) the right to be present at all stages of the proceedings,
 - (b) the right to conduct his own defence or to be defended by counsel of his own choice, and to have his counsel present at all stages of the proceedings;
 - (c) the right to have the expenses of his defence charged to the fund referred to in Article 23 in case the Court is satisfied that the accused is financially unable to engage the services of counsel;
 - (d) the right to have the proceedings of the Court, including documentary evidence, translated into his own language;
 - (e) the right to interrogate, in person or by his counsel, any witness and to inspect any document or other evidence introduced during the trial;
 - (f) the right to adduce oral and other evidence in his defence;
 - (g) the right to the assistance of the Court in obtaining access to material which the Court is satisfied may be relevant to the issues before the Court.

"3. The accused shall have the right to be heard by the Court but shall not be compelled to speak. His refusal to speak shall not be relevant to the determination of his guilt. Should he elect to speak, he shall be liable to questioning by the Court and by counsel."

"Article 39

"Publicity of Hearings

"1. The Court shall sit in public unless there are exceptional circumstances in which the Court finds that public sittings might prejudice the interests of justice.

"2. The deliberations of the Court shall take place in private and shall not be disclosed."

"Article 41

"Provisional Liberty of Accused

"The Court shall decide whether the accused shall remain in custody during the trial or be provisionally set at liberty, and the conditions under which such provisional liberty shall be granted."

/"Article 53

"Article 53

"Revision of Judgment

"1. An accused who has been found guilty may apply to the Court for revision of the judgment.

"2. An application for revision shall not be entertained unless the Court is satisfied:

(a) that a fact was discovered of such a nature to be a decisive factor; and

(b) that that fact was, when the judgment was given, unknown to the Court and the applicant.

"3. Revision proceedings shall be opened by a judgment of the Court expressly recording the existence of the new fact and recognizing that it has such a character as to lay the case open to revision."

Article 10, paragraph 1

87. For the first sentence of paragraph 1, the Chilean Government has recommended the adoption of the idea and wording of articles 11 and 12 of the political constitution of Chile, but without any indication of their origin. The proposed text would accordingly be as follows:

"No one may be sentenced unless he be legally tried in accordance with a law promulgated prior to the act for which he is tried, and no one may be tried by special commission, or otherwise than by the tribunal designated and previously constituted by law." (E/CN.4/515/Add.4, page 3).

The present wording of paragraph 1 would continue from "judgment shall be pronounced..." (E/CN.4/515/Add.4, page 3).

88. The Government of Israel has proposed an amendment to exclude the possibility of any doubt as to the meaning of the term "tribunal" which, it noted, had been defined in the Convention on the Declaration of Death of Missing Persons as including administrative authorities. The proposal of the Government of Israel therefore was to insert the word "judicial" before the word "tribunal" in the first sentence of paragraph 1 (E/CN.4/515/Add.6, paragraph 9). The Government of the Philippines suggested the insertion of the word "only" between the words "trial" and "for" in the second sentence of paragraph 1 (E/CN.4/515/Add.2, page 4).

/89. The

89. The representative of the United Kingdom at the seventh session of the Commission proposed the substitution of the following text for the present text of paragraph 1:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." (E/1992, Annex III, A).

This text is identical with that of Article 6 of the Rome Convention for the Protection of Human Rights and Fundamental Freedom (see E/CN.4/524, paragraphs 31-35).

90. The Delegation of Yugoslavia at the seventh session of the Commission has suggested that the tribunal mentioned in the first sentence of paragraph 1 should be one having jurisdiction over the case and it therefore proposed the insertion of the adjective "competent" before the phrase "independent and impartial tribunal" (E/1992, Annex III, A).

Article 10, paragraph 2

91. The Indian Delegation at the seventh session of the Commission suggested that for the words "where the interest of justice so require" in sub-paragraph (b) there be substituted the clause "where the offence is punishable with death". It also suggested the addition of the words "whose attendance the tribunal considers necessary" after the word "tribunal" in sub-paragraph (c) (E/1992, Annex III, A).

92. The Government of the Philippines pointed out that the right of a defendant to obtain compulsory attendance of witnesses should also cover the compulsory production of evidence. Accordingly, it suggested that the semi-colon in the last line of sub-paragraph (c) be changed to a comma and that the following be added thereafter: "as well as compulsory production of evidence which he may need in his defence" (E/CN.4/515/Add.2, page 4).

93. At the seventh session of the Commission the Representative of the United Kingdom suggested the following text, which reproduces exactly the text of

paragraph 3 of Article 6 of the Rome Convention on the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 31):

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

"2a. Everyone charged with a criminal offence has the following minimum rights:

"(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 or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

"(d) To examine or have examined 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."
(E/1992, Annex III, A).

Article 10, paragraph 3

94. The Government of Israel considered that it would appear that prior to the payment of compensation the "new or newly discovered fact", mentioned in paragraph 3 of Article 10, would have to be established by legal proceedings in a retrial of the case in which such new material was taken into consideration. It therefore proposed that the first sentence of the paragraph should be amended to read as follows: "In any case where by a final decision a person has been convicted of a criminal offence and where subsequently a retrial of the case, based on a new or newly discovered fact, has proved conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated" (E/CN.4/515/Add.6, paragraph 10).

95. The Government of the Philippines has pointed out that, although the purpose of paragraph 3 was to compensate any person who being innocent had been erroneously convicted of an offence, it failed to provide for relief from the sentence or punishment. If this interpretation were sustained, the innocent

/person

person would have to serve the remainder of his sentence, if one had been imposed upon him, and to wait for his release before he could claim compensation. In order to rectify this apparent anomaly the following text was suggested:

"3. 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 provided with relief from the remainder of his sentence, if any, and shall be compensated. This compensation shall be awarded to the heirs of a person executed by virtue of an erroneous sentence." (E/CN.4/515/Add.2, page 4)

Article 11

96. The Government of Israel has suggested an amendment of the first paragraph of Article 11 with the purpose of extending the benefit of the prohibition of retrospective legislation to all offences and not merely to those which were of a criminal nature in the technical sense of that term. The proposed amendment was also designed to prevent the position of an accused person from being changed for the worse by an alteration ex post facto of the rules of evidence. The amendment reads as follows:

"No one shall be convicted of any infringement of the law which did not constitute an offence, under national or international law, at the time when it was committed. Nor shall any amendment of the law increasing the penalty for any offence or altering the rules of evidence to the detriment of the accused have retrospective effect. 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." (E/CN.4/515/Add.6, paragraph 11).

97. The representative of the United Kingdom at the seventh session of the Commission suggested the omission in paragraph 1 of the last sentence and also suggested the substitution in paragraph 2 of the words "any act or omission" for the phrase "the commission of any act" and of the phrase "the general principles of law recognized by civilized nations" for the term "the generally recognized principles of law" (E/1992, Annex III, A).

Article 12

98. The Government of New Zealand has expressed the view that the usefulness of an article stating merely that everyone should have the right to recognition everywhere as a person before the law was doubtful. It maintained its preference

/for the text

for the text proposed to the third session of the Commission. The right of access to the courts and the right to enter into legal relationships was enunciated in that text as follows:

"No person shall be prevented from having access to the courts to obtain redress for any infringement of his civil rights, nor shall any person, unless he is one of a class of generally recognized incapacity, such as minors, persons of unsound mind, and persons undergoing imprisonment, be deprived in whole or in part of his legal capacity to enter into lawful contracts or other legal relationships." (E/CN.4/515/Add.12, pages 2 and 3).

99. The representative of the United Kingdom at the seventh session of the Commission considered that the whole article should be deleted (E/1992, Annex III, A).

Article 13, paragraph 1

100. The Government of Egypt has commented on the advisability of retaining in paragraph 1 explicit reference to the freedom to change one's religion or belief. The Egyptian Government pointed out that in many countries the provisions relating to civil status and the rules of public or private morality were based on rigid concepts of a religious or traditional nature. Thus while those countries would recognize the principle of freedom of religion they would refuse to sign a document explicitly stating the freedom to choose one's religion notwithstanding that the latter might be implicit in the first concept. Therefore in order to make the Covenant more universally acceptable the Egyptian Government preferred to see the reference to freedom to change one's religion or belief deleted from paragraph 1 (E/CN.4/515/Add.16, paragraph 4). The Government of Iraq has also associated itself with this view (E/2059/Add.6, paragraph 2). Speaking with reference to the explicit recognition in Article 13 of the freedom to change one's religion or belief, the representative of Saudi Arabia in the General Assembly admitted that freedom of thought, conscience and religion in itself implied the individual's right to change his belief of his own free will without compulsion. However, he thought that to single out the right to change beliefs might not only ruffle religious susceptibilities but also might be interpreted as giving missionaries and proselytizers free rein (A/C.3/SR.367, paragraph 41).

101. The representative of France on the other hand expressed regret that exception had been taken to the specific mention of the liberty to change one's religion. It seemed to him quite incomprehensible that that should be in any way interpreted as a threat to a particular religion; as befitted an impartial organization such as the United Nations it was natural to state that conversion to and from any religion could be freely practised as a right (A/C.3/SR.371, paragraph 18).

Article 13, paragraph 2, Article 14, paragraph 3, Article 15 and Article 16, paragraph 2 - Limitations on rights specified therein

102. The Government of Canada has pointed out that the formula employed in Articles 13, 14, 15 and 16 providing for limitations on the rights defined therein was uniform. In the interests of good drafting and ease of interpretation the Government of Canada has suggested that the limitation clause should be expressed in the same way in these four articles, except where a difference in substance was intended. Furthermore, the expressions "order" or "public order", which appeared in these articles, might be given different meanings under different legal systems or when expressed in different languages. They should therefore be avoided and the ideas expressed therein should be stated in other terminology (E/CN.4/515/Add.13, Annex 1, paragraph 4).

Article 13, paragraph 2

103. The representative of the United Kingdom at the seventh session of the Commission made certain suggestions for the amendment of paragraph 2 of Article 13 so that it would follow the text of Article 9 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 41). The proposed text reads as follows:

"(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."
(E/1992, Annex III, A).

104. The Government of New Zealand expressed its support for any proposal which would replace the expression "for the protection of...public order" used in Articles 13, 14 15 and 16 by the wording "for the prevention of disorder or crime" (E/CN.4/515/Add.12, page 3).

/Article 14

Article 14

105. The representative of the United Kingdom at the seventh session of the Commission proposed the following provision relating to the right to freedom of expression: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises" (E/1992, Annex III, A).

Article 14, paragraph 3

106. The Government of Chile considered that it was necessary to indicate those restrictions to the right of freedom of information which were essential for safeguarding the interests of society and the democratic system of government. It accordingly proposed the following text:

"The freedoms referred to in the preceding paragraphs carry with them corresponding duties and consequently the exercise of these freedoms may be regulated and restricted by statute for the purpose of preventing abuses of those rights, such as offences against morality, public order, national security, public decency and especially for the defence of democratic principles in relation to the human rights proclaimed by the United Nations in the Universal Declaration of Human Rights" (E/CN.4/515/Add.4, page 4).

107. The representative of Egypt at the seventh session of the Commission suggested that there should be added at the end of paragraph 3 the following phrase: "and for the maintenance of peace and good relations between States" (E/1992, Annex III, A). The reasons for this proposal had been earlier elaborated by the Egyptian Government in its comments on the Draft Covenant. That Government pointed out that the main objective of the United Nations was the maintenance of peace which in turn implied the maintenance of friendly relations between States. It noted that daily events in recent years had demonstrated the harmful effect of defamatory and slanderous press and radio campaigns on relations between States and consequently on the maintenance of peace. The Egyptian Government stated that it was aware of the distinction between restricting freedom of information and restricting the abuses of that freedom. In proposing this further limitation it was not guided by any desire to impose the first kind

/of restriction,

of restriction, which it considered pointless and calling for condemnation; its proposal was based rather on the desire to impose the second kind of restriction, which it found helpful and essential (E/CN.4/515/Add.16, paragraph 5).

108. The Government of New Zealand considered that the limitations in paragraph 3 were so wide that it was doubtful whether the article could afford any guarantee of the freedom to which it referred (E/CN.4/515/Add.12, page 3). The Government of India on the other hand felt that the principles relating to freedom of information set out in Article 14 were in order and should not be altered. The Government of India considered that the existence of the phrase "public order" was necessary (E/CN.4/515/Add.14, page 2).

109. The representative of the United Kingdom at the seventh session of the Commission proposed that the rights enunciated in paragraphs 1 and 2 should be amalgamated and both made subject, with additional limitations, to the restrictions set out in paragraph 3. The text suggested by the representative of the United Kingdom is an exact reproduction of paragraph 2 of Article 10 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (see E/CN.4/524, paragraph 45) and read as follows:

"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary". (E/1992, Annex III, A).

110. Introducing a proposal (A/C.3/L.243) prohibiting the exploitation of freedom of speech and of the press for war propaganda, for the incitement of hatred among peoples, for racial discrimination and for the dissemination of slanderous rumours, the representative of the Union of Soviet Socialist Republics at the sixth session of the General Assembly stated that while freedom of information was valuable and necessary it must not be confused with freedom to lie and slander (A/C.3/SR.415, paragraph 62). The representative of Uruguay explained that he would vote against this proposal since it vitiated the principle which it was proposed to reaffirm. In his view the proposal would

only lead to censorship which was the very reverse of freedom of information. The only corrective to abuses of freedom was greater freedom; any limitation of freedom was therefore dangerous (A/C.3/SR.416, paragraph 32).

111. The representative of Yugoslavia at the seventh session of the Commission proposed the following text in substitution for paragraph 3:

"The right to seek, receive and impart information and ideas carries with it special duties and responsibilities and may therefore be subject to certain penalties, liabilities and restrictions, but these shall be only as are provided by law and are necessary for the protection of the purposes of the Charter of the United Nations and the principles of the Universal Declaration of Human Rights and especially for the protection of the independence and security of the State, the suppression of propaganda in favour of national, racial or other discrimination, the fermenting of hatred between peoples, the establishment of unequal relations between peoples and the propagation of aggressive principles or incitement to war."
(E/1992, Annex III, A).

112. The Commission may wish to take into consideration the provisions of Article 2 of the Draft Convention on Freedom of Information as drawn up by the Committee on the Draft Convention on Freedom of Information (A/AC.42/7, page 71). This article reads as follows:

"The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. It may therefore be subject to limitations, but only to such as are clearly defined by law; applied in accordance with the law and necessary with regard to:

"(a) The protection of national security;

"(b) Expressions which incite persons to alter by violence the system of government or which promote disorder;

"(c) Expressions which incite persons to commit criminal acts;

"(d) Expressions which are obscene or which are dangerous for youth and intended for them;

"(e) Expressions which are injurious to the fair conduct of legal proceedings;

"(f) Expressions which infringe literary or artistic rights;

"(g) Expressions about other persons, natural or legal, which defame their reputations;

/"(h) Legal

"(h) Legal obligations resulting from professional, contractual or other legal relationships including disclosure of information received in confidence in a professional or official capacity;
or

"(i) The prevention of fraud."

113. The International Telecommunications Union submitted its observations on Article 14 to the Economic and Social Council at its thirteenth session. The Union drew the Council's attention to the provisions of Articles 29 and 30 of the International Telecommunications Convention signed at Atlantic City in 1947. That Union stated that it was not certain whether there might be some conflict between these provisions and the present provisions of Article 14 (E/2057/Add.3). Articles 29 and 30 of the International Telecommunications Convention are as follows:

"Article 29

"Stoppage of Telecommunications

"1. Members and Associate Members reserve the right to stop the transmission of any private telegram which may appear dangerous to the security of the state or contrary to their laws, to public order or to decency, provided that they immediately notify the office of origin of the stoppage of any such telegram or any part thereof, except when such notification may appear dangerous to the security of the state.

"2. Members and Associate Members also reserve the right to cut off any private telephone or telegraph communication which may appear dangerous to the security of the state or contrary to their laws, to public order or to decency."

"Article 30

"Suspension of Services

"Each Member or Associate Member reserves the right to suspend the international telecommunication service for an indefinite time, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that it immediately notifies such action to each of the other Members and Associate Members through the medium of the General Secretariat."

Article 15

114. The representative of India at the seventh session of the Commission suggested the following provision for the present first sentence of Article 15:

/"Everyone

"Everyone shall have the right to assemble peaceably and without arms" (E/1992, Annex III, A).

115. In considering whether Article 15 has been adequately drafted and in particular whether the word "recognized" is appropriate, the Commission may wish to take into account the views expressed by various representatives in the Third Committee of the General Assembly about that same expression in some of the later articles of the present Draft Covenant. The representative of Liberia expressed his disappointment that some of the articles in the Draft Covenant merely recognized the existence of certain rights. Many of these rights appeared in one form or another in the constitutions of most democratic countries and in those circumstances it might seem strange that the representatives of those same countries had needed so much time and effort merely to restate those principles in a Covenant (A/C.3/SR.366, paragraph 20). A similar view was expressed by the representative of Lebanon who thought that it was not sufficient merely to recognize certain rights; he maintained this view in spite of the contention of the French representative that recognition of a right implied a commitment in most cases (A/C.3/SR.410, paragraph 34, 39 and 42).^{1/}

Article 16

116. The representative of India at the seventh session of the Commission suggested that the substitution of the following text for paragraph 1: "Everyone shall have the right to form associations or unions" (E/1992, Annex III, A).

117. The considerations which have been set out above in paragraph 115 are also relevant to the use of the expression "recognized" in this article.

Article 16, paragraph 3

118. The Governing Body of the International Labour Office has expressed its satisfaction with the present draft of Article 16, paragraph 3 to which it attached particular importance (E/2057/Add.2, page 5).

Article 17

119. The Government of Chile has suggested the following text to take the place of Article 17:

^{1/} Certain problems, some being of a similar nature, arising out of the use of the word "recognize" in Part III of the present draft Covenant are dealt with in a memorandum by the Secretary-General on provisions concerning economic, social and cultural rights (E/CN.4/650, Part II).

"The propagation of totalitarian ideas or the commission of totalitarian actions in any form whatsoever, and the propagation of racial and national superiority, hatred and contempt shall be prohibited by law". (E/CN.4/515/Add.4, page 5).

120. The French Government was of the opinion that all that part of Article 17 which dealt with non-discrimination should be omitted, because this question was covered satisfactorily by Article 1, which was its proper context. If this suggestion were adopted, it was said, the omission would remove the ambiguity in the text which in its present form was open to the objection of being redundant or of seeking to extend, to all rights and to all cases - which was impossible - the requirement that the law must not discriminate, a requirement initially (in Article 1) contemplated with reference to the "rights recognized in this Covenant" (E/CN.4/515/Add.15, page 4). The representative of the United Kingdom at the seventh session of the Commission suggested, on the other hand, that the whole article should be deleted (E/1992, Annex III, A).

121. The representative of Yugoslavia at the seventh session of the Commission proposed the substitution of the following provisions for the present text:

"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" (E/1992, Annex III, A).

122. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has recommended that the Commission take into consideration in its future work the following text which falls within the ambit of the ideas expressed in Article 17:

"Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State." (E/CN.4/641, page 54).