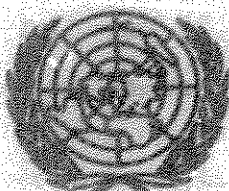


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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Third Committee

Rapporteur: Mr. Francisco CUEVAS CALCINO (Mexico)

INTRODUCTION

1. At its 803rd plenary meeting on 22 September 1959, the General Assembly allocated to the Third Committee item 34 of the agenda of its fourteenth session, "Draft International Covenants on Human Rights".
2. Having adopted at previous sessions<sup>1/</sup> the preamble and article 1, respectively, of the draft Covenant on Economic, Social and Cultural Rights and of the draft Covenant on Civil and Political Rights, all the substantive articles of the draft Covenant on Economic, Social and Cultural Rights, and articles 6 to 11 of the substantive provisions of the draft Covenant on Civil and Political Rights, the Third Committee at the present session discussed and adopted the texts of articles 12, 13 and 14 of the draft Covenant on Civil and Political Rights at its 954th to 969th meetings. At its 975th meeting, the Committee adopted drafting changes in articles 12, 13 and 14, suggested by the Rapporteur (A/C.3/L.833). The proceedings of the Committee are briefly reported below.

1/ See Official Records of the General Assembly, Tenth Session, Annexes, agenda item 25, document A/3077; ibid., Eleventh Session, Annexes, agenda item 31, document A/3525; ibid., Twelfth Session, Annexes, agenda item 33, document A/3754 and Add.1; ibid., Thirteenth Session, Annexes, agenda item 32, document A/4045.

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

ARTICLE 12

3. Article 12 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights,<sup>2/</sup> read as follows:

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

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

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

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

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

4. The Committee discussed this article at its 954th to 959th meetings.

Amendments submitted

5. Amendments were submitted by Denmark (A/C.3/L.784), Israel (A/C.3/L.789), the Netherlands (A/C.3/L.796), Canada (A/C.3/L.802), Argentina (A/C.3/L.804) and Argentina, Belgium, Iran, Italy and the Philippines (A/C.3/L.812 and Rev.1 and 2). A sub-amendment to the revised five-Power amendment (A/C.3/L.812/Rev.2) was submitted by Ireland (A/C.3/L.813).

6. The amendment of Denmark (A/C.3/L.784) would replace the clause "Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect ..." by the following: "Subject to such lawful and reasonable restrictions of the State concerned as may be necessary to protect ...". At the 955th meeting, the representative of Denmark withdrew the amendment.

<sup>2/</sup> Official Records of the Economic and Social Council Eighteenth Session, Supplement No. 7 (E/2573), annex IB.

7. The amendment of Israel (A/C.3/L.789) was as follows:

"(a) Replace paragraph 1 (b) by the following:

'Everyone shall be free to leave any country, including his own, and to return to his country.'

"(b) Delete paragraph 2 (a), and insert a new article 13 to read as follows:

'No one shall be compulsorily exiled from his own country.'

"(c) Delete paragraph 2 (b)."

The Chairman announced at the 954th meeting that the amendment had been withdrawn by the representative of Israel.

8. The amendment of the Netherlands (A/C.3/L.796) was to replace the text of paragraph 1 by the following:

"1. Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect national security, public safety, health or morals or the rights and freedoms of others, consistent with the other rights recognized in this Covenant, everyone legally within the territory of a State shall, within that territory, have the right to: (a) liberty of movement and (b) freedom to choose his residence;

"2. Everyone shall be free to leave any country, including his own, subject to the restrictions mentioned in the preceding paragraph and to any outstanding obligations with regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the Government."

Paragraph 2 would be renumbered as paragraph 3. At the 958th meeting, the representative of the Netherlands withdrew the amendment.

9. The amendment of Canada (A/C.3/L.802) was to replace the text of paragraph 2 (b) by the following:

"(b) Unless lawfully exiled, anyone shall be free to enter the country of which he is a citizen."

The amendment was withdrawn at the 957th meeting.

10. The amendment of Argentina (A/C.3/L.804) was to replace paragraph 1 by the following:

"1. Subject to the laws of the State concerned which provide for restrictions, consistent with the other rights recognized in this Covenant, to protect national security, public safety, morals and health:"

It would also delete the number 2 and designate the relevant sub-paragraphs as (c) and (d), instead of (a) and (b). At the 955th meeting, the second paragraph of the amendment was withdrawn by the representative of Argentina. At the 956th meeting, he announced that the Argentine amendment was to be considered as replaced by the five-Power amendment (A/C.3/L.812).

11. The amendment of Argentina, Belgium, Iran, Italy and the Philippines, in its revised form (A/C.3/L.812/Rev.2), would replace the text of article 12 by the following:

"1. Everyone legally within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

"2. Everyone shall be free to leave any country, including his own.

"3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Covenant.

"4. No one shall be arbitrarily deprived of the right to enter his own country."

12. The sub-amendment of Ireland (A/C.3/L.813) to the five-Power revised amendments would replace paragraph 4 by the following:

"4. Everyone shall be free to enter his own country, unless lawfully exiled."

At the 959th meeting the representative of Ireland, after a procedural discussion, agreed not to press the sub-amendment to the vote.

#### Issues discussed

13. While in agreement with the substance of the article as proposed by the Commission on Human Rights, some members felt that its drafting could be improved. It was suggested that the article should start with a statement of the rights to be enunciated, rather than with a list of permissible restrictions. This idea found general support and was reflected in the amendment proposed by Argentina, Belgium, Iran, Italy and the Philippines (A/C.3/L.812 and Rev.1 and 2).

14. The words "any general law" and "reasonable restrictions", which appeared in the Commission's draft, gave rise to some discussion. Various members raised doubts regarding the meaning of the expression "any general law". The deletion of the word "general" was suggested, since laws were necessarily of a general nature. Objections were also raised to the use of the expression "reasonable" to qualify the word "restrictions", since restrictions prescribed by law must be presumed to be reasonable. With regard to the limitations clause - as redrafted in the joint amendment (A/C.3/L.812/Rev.2) - some members pointed out that the term "law" was too broad; enough to cover not only constitutional and statutory provisions, but also measures taken by the executive branch pursuant to powers conferred upon it by the constitution or laws of the country.

15. There was considerable discussion on the inclusion of the expression ordre public in the limitations clause. The difficulty of including the concept in the English text was manifold. The English expression "public order" was not thought to be equivalent to the French expression ordre public or the Spanish version orden público. The expression ordre public, as used in some civil law countries, denoted a legal concept used as a basis for negating or restricting private agreements, for exercising police power or for voiding the application of foreign law. The Spanish term orden público referred (as some members explained) to the whole body of political, economic and moral principles considered essential to the maintenance of a given social structure. In common law countries, the term "public order" was ordinarily understood as indicating the absence of disorder. As far as common law was concerned, the counterpart of ordre public was "public policy", although some members disputed this fact. It was finally agreed to use the expression "public order (ordre public)" in the English text.

16. Some members of the Committee objected to the inclusion of the concept of "public order (ordre public)" among the grounds justifying a State in imposing restrictions on freedom of movement and residence. Far-reaching restrictions could be justified under such a vague expression. Some members preferred the term "public safety", which had been used in the text prepared by the Commission on Human Rights; this term would make it clear that the right could be limited only if its exercise involved danger to the safety of persons. A majority of the members, however, favoured the use of the expression "public order (ordre public)", believing that this expression was broad and included the idea of "public safety".

17. The clause relating to the right of the individual to enter his own country was also extensively debated. Some members were of the view that this right should not be subjected to any restrictions whatsoever. The general consensus was, however, that, while the right was not absolute, it should not be made subject to the same kind of restrictions as the other rights defined in paragraphs 1 and 2 of the same article. It was thought inconceivable, for example, that a State should prohibit one of its nationals from entering its territory for reasons of health or morality. It was pointed out that in the draft prepared by the Commission on Human Rights exile was the only permissible restriction recognized. Several members, however, were opposed to mentioning "exile" in the Covenant, as the laws of their countries either prohibited or did not recognize exile. Some doubts were raised regarding the meaning of the phrase "his own country". The view was expressed that "his own country" should be taken to mean the country of which the individual concerned was a national or a citizen; the necessity of being able to submit ample proof of the fact was also emphasized.

Voting on article 12

18. At the 959th meeting, the Committee voted as follows:

- (a) By 57 votes to 1, with 12 abstentions, the Committee decided to vote first on the revised five-Power amendment (A/C.3/L.812/Rev.2).
- (b) Paragraph 1 was adopted by 71 votes to none, with 2 abstentions.
- (c) Paragraph 2 was adopted by 70 votes to none, with 3 abstentions.
- (d) At the request of the representative of Iraq, a separate vote was taken on the words "public order (ordre public)" in paragraph 3. These words were adopted by 58 votes to none, with 15 abstentions.
- (e) Paragraph 3 as a whole was adopted by 67 votes to 1, with 3 abstentions.
- (f) At the request of the representatives of Guatemala, Iraq and Panama, the word "arbitrarily" in paragraph 4 was voted on separately. It was adopted by 29 votes to 20, with 20 abstentions.
- (g) Paragraph 4 as a whole was adopted by 44 votes to 6, with 22 abstentions.
- (h) Article 12 as a whole was adopted by 58 votes to 1, with 11 abstentions.

Text as adopted

19. Article 12, as adopted by the Committee and incorporating the drafting changes suggested by the Rapporteur, reads as follows:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

"2. Everyone shall be free to leave any country, including his own.

"3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Covenant.

"4. No one shall be arbitrarily deprived of the right to enter his own country."

ARTICLE 13

20. Article 13 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights, read as follows:

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

21. The Committee discussed the article at its 959th and 960th meetings.

Amendments submitted

22. Amendments were submitted by Belgium (A/C.3/L.786) and Israel (A/C.3/L.790).

23. The amendment of Belgium (A/C.3/L.786) would insert the word "established" after the word "lawfully".

24. The amendments of Israel (A/C.3/L.790) were (a) to replace the words "in pursuance of a decision reached in accordance with law" by the words "on such grounds and in accordance with such procedure as are established by law" and

(b) to delete the last clause beginning with the words "or a person or persons ...". The first part of the amendment was withdrawn by the representative of Israel at the 959th meeting. The second part was withdrawn at the 960th meeting.

#### Issues discussed

25. The representative of Belgium, in introducing his amendment (A/C.3/L.786), stated that, in the opinion of his Government, article 13 was designed to protect only lawfully established aliens against arbitrary expulsion. The purpose of this amendment was to make that quite clear. Several members of the Committee, however, opposed the idea of narrowing the scope of the article to a limited group of aliens. Moreover, it was pointed out that the word "established" did not have a precise meaning and was open to various interpretations.

26. Some discussion regarding the necessity of retaining the phrase "or a person or persons especially designated by the competent authority" took place. It was contended that the phrase was superfluous since it merely elaborated on the words "competent authority". It dealt, moreover, with the question of delegation of powers, which was a matter for domestic legislation. Several members explained that in some countries the expulsion of an alien was a matter for the judicial authorities, while in others it was left to the executive branch. If, under domestic law, an administrative authority had competence in the matter of expulsion, such administrative authority should have the possibility of delegating its powers.

27. Some members stated that the article, as drafted by the Commission on Human Rights, had a serious shortcoming: there was no reference to the right of asylum nor to extradition. It was suggested, however, that a provision on the right of asylum might be included as a separate article.

#### Voting on article 13

28. At the 960th meeting, the Committee voted as follows:

(a) The amendment of Belgium (A/C.3/L.786) was rejected by 52 votes to 6, with 12 abstentions.

(b) At the request of the representative of Iran, a separate vote was taken on the words "and to have his case reviewed by". These words were adopted by 20 votes to 1, with 5 abstentions.



(c) At the request of the representative of Italy, the words "or by a person or persons especially designated by the competent authority" were put to a separate vote. These words were adopted by 52 votes to 9, with 10 abstentions.

(d) Article 13 as a whole was adopted by 69 votes to none, with 3 abstentions.

Text as adopted

29. Article 13, as adopted by the Committee, reads as follows:

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

ARTICLE 14

30. Article 14 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights,<sup>2/</sup> was worded as follows:

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

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

<sup>2/</sup> Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), annex IB.

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

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

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

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

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

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

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

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

The Committee discussed this article at its 961st to 969th meetings.

#### Amendments submitted

5. Amendments were submitted by the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.792), Israel (A/C.3/L.795 and Rev.1, 2 and 3, A/C.3/L.822), the Netherlands (A/C.3/L.797), Afghanistan (A/C.3/L.801), Argentina (A/C.3/L.805 and Rev.1 to 3), Italy (A/C.3/L.815 and Rev.1) and by Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821 and Rev.1). The latter amendment replaced the amendments of Italy and Japan (A/C.3/L.803 and Rev.1), as well as the amendments to them submitted by Ceylon (A/C.3/L.817) and by Canada, Ceylon and Pakistan (A/C.3/L.817/Rev.1).

35. One of the amendments of Israel, proposing the addition of a new paragraph following paragraph 3 (A/C.3/L.795/Rev.3, point a), incorporated a sub-amendment submitted by Ceylon (A/C.3/L.818). Another amendment of Israel, dealing with article 14, paragraph 1 (A/C.3/L.795/Rev.3, point b), was the subject of a sub-amendment submitted by Italy (A/C.3/L.820). The representative of Ecuador submitted a verbal sub-amendment (969th meeting) to the amendment of Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821/Rev.1) proposing the addition of a new paragraph following paragraph 4 of the text submitted by the Commission on Human Rights.

Paragraph 1 of the text submitted by the Commission on Human Rights

34. The United Kingdom (A/C.3/L.792, point 1) and Argentina (A/C.3/L.805/Rev.2) proposed the deletion of the first sentence of paragraph 1. These amendments were withdrawn at the 966th meeting.

35. An amendment of Argentina (A/C.3/L.805/Rev.3, point 1) proposed that the words "en audiencia pública", in the second sentence of paragraph 1, be replaced by the word "públicamente" in the Spanish text only.

36. An amendment of Israel (A/C.3/L.795/Rev.3, point a) proposed that the word "legally" be inserted before the word "competent" and that the words "established by law" be deleted, in the second sentence of paragraph 1.

37. The amendment of Israel to the third sentence in paragraph 1 (A/C.3/L.795/Rev.3, point b) proposed that this sentence be replaced by the following:

"The public and Press may be excluded from a trial or any part thereof for reasons of national security, public order ("ordre public"), morals, or the interest of juveniles, or in matrimonial disputes, or to the extent necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Italy submitted a sub-amendment (A/C.3/L.820) to the effect that the amendment of Israel be drafted as follows:

"The public and Press may be excluded from a trial, or any part thereof, only when the court considers it necessary for reasons of national security, or public morals and health, or for the protection of the interest of juveniles."

The amendment of Israel was withdrawn at the 967th meeting and the sub-amendment of Italy was therefore not put to the vote.

32. Argentina (A/C.3/L.805/Rev.3, points 2, 3 and 4) submitted the following amendments to the third sentence in paragraph 1:

(a) Replace, in the Spanish text only, the words "de la totalidad o parte de las audiencias" by the words "de la totalidad o parte de los juicios".

(b) Replace the words "any judgement rendered in a criminal case or in a suit at law shall be pronounced publicly" by the words "any judgement in a criminal case or in a suit at law shall be public"; the words "and accompanied by a statement of reasons" appearing in the initial text of the amendment of Argentina (A/C.3/L.805/Rev.2) were subsequently withdrawn.

(c) Replace, in the Spanish text only, the words "custodia de menores" by the words "tutela de menores".

Paragraph 2 of the text submitted by the Commission on Human Rights

33. The amendments of Israel (A/C.3/L.795/Rev.3, points e, ec and d) were worded as follows:

(a) Add at the end of sub-paragraph (b) the words "and to communicate with counsel of his own choosing";

(b) After sub-paragraph (b) add a new sub-paragraph to read as follows: "To be tried without undue delay;";

(c) At the beginning of sub-paragraph (c) insert the words "To be tried in his presence, and ...".

34. The United Kingdom (A/C.3/L.792, point 2) proposed that paragraph 2 of article 14 should consist of the first sentence only, and that the remainder of draft paragraph 2 should form a new paragraph, to be numbered 3.

Paragraph 3 of the text submitted by the Commission on Human Rights

35. The representative of Italy, in accordance with rule 123, second sentence, of the rules of procedure, resubmitted an amendment originally submitted by Israel (A/C.3/L.795, point d) and then withdrawn by the latter country. The amendment of Italy (A/C.3/L.815/Rev.1) proposed that paragraph 3 be replaced by the following text:

"A juvenile charged with a criminal offence shall be tried according to (a) provisions designed to promote the treatment and the rehabilitation of juvenile offenders."

Insertion of a new paragraph after paragraph 3 of the text submitted by the Commission on Human Rights

42. Israel (A/C.3/L.795/Rev.3, point e) proposed the addition of the following new paragraph after paragraph 3:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

The words "according to law" had been proposed in a sub-amendment of Ceylon (A/C.3/L.818) accepted by the representative of Israel.

Paragraph 4 of the text submitted by the Commission on Human Rights

43. The amendments of Argentina (A/C.3/L.805/Rev.3, point 5), the Netherlands (A/C.3/L.797) and the United Kingdom (A/C.3/L.792, point 3) proposed the deletion of paragraph 4.

44. The amendment of Afghanistan (A/C.3/L.801) proposed the addition, after the words "shall be compensated", of the words "in accordance with the law".

45. Israel (A/C.3/L.795/Rev.3, point f) had proposed that paragraph 4 be replaced by the following:

"A person proved innocent of a crime of which he had previously been convicted in a final judgement shall have the right to compensation for any damage or punishment which he suffered through no fault of his own."

The representative of Israel afterwards revised this amendment to take account of the suggestions of the representative of France (A/C.3/L.819). The revised amendment of Israel, as it was put to the vote (A/C.3/L.822), therefore read as follows:

"The judicial recognition of the innocence of a convicted person shall confer on him the right to request the award of compensation in respect of any damage caused him by the conviction."

Insertion of a new paragraph after paragraph 4 of the text submitted by the Commission on Human Rights

46. Italy and Japan had proposed (A/C.3/L.803/Rev.1) the addition of a new paragraph worded as follows:

"No one shall be tried twice for the same offence."

47. An amendment of Ceylon (A/C.3/L.817) to the proposal of Italy and Japan (A/C.3/L.803/Rev.1) proposed that the words "tried twice for the same offence" be replaced by the words "liable to be punished twice for the same offence". This amendment was then replaced by an amendment of Canada, Ceylon and Pakistan (A/C.3/L.817/Rev.1) proposing the following wording for the proposed new paragraph:

"No one shall be liable to be tried and punished again for the same offence for which he has finally been convicted or acquitted."

48. The proposals contained in documents A/C.3/L.803/Rev.1 and A/C.3/L.817/Rev.1 were replaced by an amendment of Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821) proposing the addition of the following new paragraph:

"No one shall be liable to be tried or punished again for the same offence for which he has finally been convicted or acquitted."

49. The seven-Power amendment was revised (A/C.3/L.821/Rev.1) by the addition of a second sentence reading as follows:

"In this context 'finally convicted or acquitted' signifies that all ordinary methods of judicial review and appeal have been exhausted and that all waiting periods have expired."

The representative of Ecuador (969th meeting) verbally submitted a sub-amendment consisting in the deletion of the second sentence and the addition, after the words "finally been convicted or acquitted", of the words "in accordance with the law and procedure of each country".

#### Issues discussed

50. Several representatives pronounced in favour of the text proposed by the Commission on Human Rights; the draft article gave the most important guarantees to the individual in the sphere of penal and civil procedure, while taking into account the legitimate interests of society.

51. Some representatives considered that equality before the courts should not imply that all litigants had the same status; it was the equality of the parties with regard to the conduct of the proceedings which must be guaranteed. Most representatives considered that the greatest possible emphasis should be placed on the importance of that principle, even at the risk of repetition. It was essential

to protect the parties in a trial against any discriminatory practice, by prohibiting, inter alia, the establishment of special courts and summary procedures.

52. Some representatives considered that the terms "independent" and "impartial" as applied to tribunals were without precise legal meaning. Nevertheless, most of the Committee considered it necessary to retain those terms, which were generally used in constitutions and domestic laws. It was pointed out that the term "competent" could refer to the professional qualifications of judges, whereas the authors had in mind the legal notions of competence "ratione materiae", "ratione personae", and "ratione loci".

53. Certain representatives pointed out that some sentences of the article proposed by the Commission on Human Rights seemed to require - particularly in the Spanish text - the holding of proceedings and the pronouncing of the judgement in public. They stressed that in many countries a large number of trials took place on the basis of written documents; the parties nevertheless enjoyed sufficient guarantees, because the contents of those documents could be made public. Some representatives attached importance to the principle of publicity of judgement and considered that that principle should be expressed in the most comprehensive terms.

54. Various criticisms were expressed with regard to the text proposed by the Commission on Human Rights concerning the exceptions made to the principle of holding proceedings in public. Some representatives considered as unfounded the distinction made in the text between the reasons which might justify the exclusion of the Press and public during a trial and those, less numerous, which might justify the exclusion of the public when the judgement was rendered. In spite of those criticisms, the list of the grounds for excluding the Press and public drawn up by the Commission on Human Rights, and the distinction drawn by the original text between the situation existing during the trial and at the time of the judgement, received the support of most of the Committee.

55. Some representatives were convinced of the usefulness of the formula "in a democratic society", already contained in article 29 of the Universal Declaration of Human Rights and in article 5, paragraph 1, of the draft Covenant on Economic, Social and Cultural Rights. They felt that those words, which qualified the



notions of "public order" and "national security", afforded a precious guarantee against the risks of arbitrary treatment. For the sake of clarity, it was decided that it would be useful, in accordance with a previous decision on the drafting of article 12 of the draft Covenant on Civil and Political Rights, to insert at the appropriate point in the English and Russian texts the French words "ordre public", in parentheses.

56. The principle of the presumption of innocence was considered so important that it was thought advisable to express it in a separate paragraph. It was thought desirable by most of the Committee to insert the following supplementary guarantees in paragraph 2: the right "to be tried without undue delay", the right "to communicate with counsel of his own choosing", and the right "to be tried in his presence".

57. Some members of the Committee thought that the text proposed by the Commission on Human Rights did not express sufficiently clearly the obligation to try juveniles charged with a criminal offence "according to legal provisions designed to promote the treatment and the rehabilitation of juvenile offenders". It was suggested that it should be laid down that a juvenile should be tried "according to legal provisions attributing competence to a jurisdiction or court appropriate for dealing with juvenile offenders". One representative was not able to accept the idea of the criminal responsibility of juveniles and the expression "juvenile offenders". Another, refusing to recognize the "right" of juvenile offenders to be rehabilitated, thought it better to leave the task of solving such problems to the various countries.

58. The right of everyone convicted of a crime to have his conviction and sentence reviewed by a higher tribunal, which was dealt with in a new paragraph, was considered by most representatives as an important guarantee. It was pointed out that it expressed a principle which should be applied by States according to the methods they considered appropriate.

59. Several speakers found difficulty in accepting the idea of the award of compensation in the many cases of miscarriage of justice in which the authorities had not been at fault. They considered that it was contrary to the interests of society to allow compensation to persons who were clearly guilty but whose conviction had been annulled for reasons of form or procedure. It was better to



leave the task of evaluating each specific case to the competent authority in each country. However, other representatives felt that controversies concerning the basis of responsibility - which could indeed be solved by invoking the notion of social risk - should not prevent the victim of a miscarriage of justice from obtaining compensation; an essential guarantee was involved, completing that afforded to victims of unlawful arrest by article 9 of the draft Covenant on Civil and Political Rights. Since the cases covered by paragraph 4 were rare, the financial implications of that provision would be very small. Some representatives, while sharing those fundamental ideas, thought that it would perhaps be excessive to make the payment of compensation obligatory in every case of a miscarriage of justice. Most of the Committee agreed that only adequate legislation could solve the technical difficulties involved in the problem of compensation for a miscarriage of justice.

60. Proposals for the insertion of a new paragraph concerning the question of res judicata (rule of: "non bis in idem"; principle of the "prohibition of double jeopardy") gave rise to lengthy discussion. The amendment of Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821), replacing the previous amendments of Italy and Japan (A/C.3/L.803/Rev.1), and of Canada, Ceylon and Pakistan (A/C.3/L.817/Rev.1), provided that "No one shall be liable to be tried or punished again for the same offence for which he has been finally convicted or acquitted". Several representatives argued in favour of this text, that it was necessary to protect the individual, not only against the imposition of further punishments, but also against the dangers and distress of further prosecution for the same offence. It was pointed out that a State would be free to try, in accordance with its laws, persons already sentenced for the same offence by the courts of another country. Some representatives would have preferred the adoption of a wider formula prohibiting successive trials, not only for the same "offence", but also for the same "actions".

61. Other representatives thought it necessary to take into account on the other hand the laws of some countries which allowed a person to be tried for the same actions, but on "charges" different from those for which he had been previously acquitted. The expression "charge" in the original amendment proposed by Italy and Japan (A/C.3/L.803) seemed to them more appropriate than "offence"

or "actions". Stronger and more definite fears were expressed by other representatives, who felt that the seven-Power amendment, and in particular the word "finally", might hinder the ends of justice by preventing the retrial of criminals acquitted in error. Trials of that nature, under certain conditions and within certain time-limits, were provided for by the laws of various countries. In order to take into account this last objection, an effort was made to qualify or define the word "finally". The seven-Power amendment was revised (A/C.3/L.821/Rev.1) and the following sentence added: "In this context 'finally convicted or acquitted' signifies that all ordinary methods of judicial review and appeal have been exhausted and that all waiting periods have expired". This text reproduced, apart from the word "judicial", a passage from the Annotations on the text of the draft Covenants<sup>4/</sup> summarizing certain discussions which took place in the Commission on Human Rights.

62. Some representatives expressed the opinion that the definition should also apply to article 14, paragraph 4, concerning the right to compensation in the case of a miscarriage of justice. Others felt that the revised amendment (A/C.3/L.821/Rev.1) was not any clearer, and that, in any case, it was not generally advisable to insert such explanatory passages in the articles of the draft Covenant. The Committee preferred to adopt the text of the seven Powers, as amended by a verbal sub-amendment proposed by Ecuador, which deleted the second, explanatory, sentence of document A/C.3/L.821/Rev.1, and inserted the words "in accordance with the law and procedure of each country" to qualify the words "finally been convicted or acquitted". The author of the verbal sub-amendment explained that the words he had proposed were not intended to apply to the whole text of the seven Powers, but only to the expression "finally convicted or acquitted".

#### Voting on article 14

63. At the 967th meeting, the Committee, on the proposal of the Union of Soviet Socialist Republics, decided by 53 votes to none, with 12 abstentions, to vote on

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<sup>4/</sup> Official Records, General Assembly, Tenth session, Annexes, Agenda item 26 (Part II). Document A/2929, chapter VI, par. 31, note 33.

the text of the draft article and on the related amendments, with the exception of the draft amendment submitted by Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821) proposing the addition of a paragraph. Voting took place in the order suggested by the Chairman (A/C.3/L.816/Rev.3).

Paragraph 1 of the text submitted by the Commission on Human Rights

(a) The amendment of Argentina (A/C.3/L.805/Rev.3, point 1) for the replacement in the Spanish text of the words "en audiencia pública" by the word "publicamente" was adopted by 15 votes to none, with 49 abstentions.

(b) The amendment of Israel (A/C.3/L.795/Rev.3, point a) for the insertion of the word "legally" before the word "competent" and in the second sentence the deletion of the words "established by law" was rejected by 32 votes to 22, with 17 abstentions.

(c) The amendments of Argentina relating to the third sentence were adopted as follows:<sup>2/</sup>

The amendment (A/C.3/L.805/Rev.3, point 2) proposing the replacement of the words "de la totalidad o parte de las audiencias" in the Spanish text by the words "en la totalidad o parte de los juicios" was adopted by 18 votes to none, with 48 abstentions;

The amendment (A/C.3/L.805/Rev.3, point 3) proposing the replacement of the words "any judgement rendered in a criminal case or in a suit at law shall be pronounced publicly" by the words "any judgement in a criminal case or in a suit at law shall be public" was adopted by 28 votes to 6, with 33 abstentions.

(d) At the request of the representative of Israel, a separate vote was taken on paragraph 1 beginning with the words "but any judgment rendered ...etc.". The Committee decided to retain that clause by 56 votes to 1, with 12 abstentions.

5/ The amendment of Argentina (A/C.3/L.805/Rev.3, point 4) proposing the replacement in the Spanish text of the words "custodia de menores" by the words "tutela de menores" was not put to the vote, since the Committee considered it a purely linguistic problem which should be settled by the Rapporteur in consultation with the representatives concerned.

(e) The text of paragraph 1, as amended, was adopted by 70 votes to none, with 3 abstentions.

Paragraph 2 of the text submitted by the Commission on Human Rights

(r) An amendment of Israel (A/C.3/L.795/Rev.3, point c) proposing the addition, after sub-paragraph (b) of paragraph 2, a new sub-paragraph to read "to be tried without undue delay;" was adopted by 50 votes to 6, with 12 abstentions.

(g) An amendment of Israel (A/C.3/L.795/Rev.3, point cc) proposing the addition of the words "and to communicate with counsel of his own choosing" at the end of paragraph (b) was adopted by 44 votes to 3, with 21 abstentions.

(h) A third amendment of Israel (A/C.3/L.795/Rev.3, point d) proposing the insertion of the words "to be tried in his presence, and ..." at the beginning of paragraph (c) was adopted by 43 votes to 11, with 15 abstentions.

(i) The amendment of the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.792, point 2) proposing that the first sentence of paragraph 2 should be a separate paragraph and that the remainder of the present paragraph 2 should form a new paragraph 3, was adopted by 69 votes to none, with 3 abstentions.

(j) The text of paragraph 2, as amended, was adopted by 71 votes to none, with 2 abstentions.

Paragraph 3 of the text submitted by the Commission on Human Rights

(k) By 33 votes to 12, with 26 abstentions, the Committee rejected the new wording of that paragraph proposed by Italy (A/C.3/L.815/Rev.1), viz.:

"3. A juvenile charged with a criminal offence shall be tried according to legal provisions designed to promote the treatment and the rehabilitation of juvenile offenders."

(l) The text of paragraph 3 was adopted by 70 votes to none, with 2 abstentions.

Paragraph 4 of the text submitted by the Commission on Human Rights

(m) At the request of the representative of the United Arab Republic, a vote was taken by roll-call on the amendments of Argentina (A/C.3/L.805/Rev.3, point 5), the Netherlands (A/C.3/L.797) and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.792, item 3) proposing the deletion of paragraph 4. Those amendments were rejected by 25 votes to 19, with 29 abstentions. The voting was as follows:

In favour: Argentina, Australia, Burma, Canada, Ceylon, Federation of Malaya, India, Ireland, Liberia, Libya, Nepal, Netherlands, New Zealand, Saudi Arabia, Spain, Turkey, United Arab Republic, United Kingdom, Venezuela.

Against: Belgium, Brazil, Chile, China, Costa Rica, Ecuador, France, Greece, Haiti, Honduras, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Lebanon, Morocco, Norway, Pakistan, Peru, Philippines, Tunisia, United States, Yugoslavia.

Abstentions: Afghanistan, Albania, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Finland, Ghana, Guatemala, Guinea, Hungary, Italy, Mexico, Poland, Portugal, Romania, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, Uruguay, Yemen.

(n) In accordance with the Chairman's suggestions (A/C.3/L.816/Rev.3, foot-note on page 3), the Committee decided to vote next on the amendment of Afghanistan (A/C.3/L.801) proposing the insertion of the words "in accordance with the law" after the words "shall be compensated", it being understood that, if adopted, that amendment would apply either to the revised amendment of Israel (A/C.3/L.822) or to the text of the Commission on Human Rights. At the request of the representative of the Union of Soviet Socialist Republics, a vote was taken by roll-call on the amendment of Afghanistan (A/C.3/L.801). It was adopted by 32 votes to none, with 41 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, China, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, Greece, Guinea, Honduras, Hungary, India, Indonesia, Italy, Japan, Nepal, Peru, Poland, Portugal, Romania, Saudi Arabia, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

Against: None.

Abstentions: Argentina, Australia, Austria, Belgium, Brazil, Burma, Cambodia, Canada, Colombia, Costa Rica, Cuba, Federation of Malaya, France, Ghana, Guatemala, Haiti, Iran, Iraq, Ireland, Israel, Jordan, Lebanon, Liberia, Libya, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Spain, Sweden, Thailand, Union of South Africa, United Arab Republic, United Kingdom, United States, Uruguay, Venezuela, Yemen.

(e) At the request of the representative of Argentina, a vote was taken by roll-call on the revised amendment of Israel (A/C.3/L.822), as modified by the amendment of Afghanistan (A/C.3/L.801), proposing the replacement of paragraph 4 by the following text:

"The judicial recognition of the innocence of a convicted person shall confer on him the right to request the award of compensation in accordance with the law in respect of any damage caused him by the conviction."

That amendment was rejected by 22 votes to 11, with 40 abstentions. The voting was as follows:

In favour: Ceylon, Costa Rica, Ethiopia, Finland, France, Greece, Haiti, Honduras, Israel, Norway, Peru.

Against: Argentina, Australia, Austria, Belgium, Canada, Denmark, Ecuador, Iraq, Jordan, Lebanon, Liberia, Libya, Morocco, New Zealand, Pakistan, Saudi Arabia, Tunisia, United Arab Republic, United Kingdom, United States, Yemen, Yugoslavia.

"The General Assembly

"Invites the Economic and Social Council to request the Commission on Human Rights to study the question of repeated trial and punishment for the same offence, dealt with in documents A/C.3/L.802, A/C.3/L.803/Rev.1, A/C.3/L.817, A/C.3/L.817/Rev.1 and A/C.3/L.821, and to report to the General Assembly at its fifteenth session on the results of the study, with its recommendations on the possible inclusion of a separate article on this subject in the draft Covenant on Civil and Political Rights."

(t) That draft resolution was withdrawn at the 969th meeting, after the co-sponsors of the seven-Power amendment, in agreement with several representatives, had so revised their proposal (A/C.3/L.821/Rev.1) by the addition of the following second sentence:

"In this context 'finally convicted or acquitted' signifies that all ordinary methods of judicial review and appeal have been exhausted and that all waiting periods have expired."

(u) At the 969th meeting, the representative of Ecuador verbally submitted a sub-amendment to the revised seven-Power amendment (A/C.3/L.821/Rev.1) consisting in the deletion of the second sentence and the addition of the words "in accordance with the law and procedure of each country". That sub-amendment was adopted by 27 votes to 25, with 8 abstentions.

(v) The revised seven-Power amendment (A/C.3/L.821/Rev.1), as modified by the sub-amendment of Ecuador was adopted by 54 votes to none with 16 abstentions.

Article 14 as a whole, as amended

(w) The text of the article as a whole, as amended, was adopted by 54 votes to none, with 16 abstentions.

Adopted text

64. The text of article 14 adopted by the Third Committee, and incorporating the drafting changes suggested by the Rapporteur, reads as follows:

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and

Abstentions: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Chile, China, Colombia, Cuba, Czechoslovakia, Dominican Republic, Federation of Malaya, Ghana, Guatemala, Guinea, Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Mexico, Morocco, Netherlands, Philippines, Poland, Portugal, Romania, Spain, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republic, Uruguay, Venezuela.

(p) The text of paragraph 4, as modified by the amendment of Afghanistan (A/C.3/L.801), was adopted by 40 votes to 13, with 16 abstentions.

Insertion of a new paragraph proposed by the representative of Israel

(q) By 36 votes to 4, with 30 abstentions, the Committee adopted an amendment of Israel (A/C.3/L.795/Rev.3, point e) proposing the insertion after paragraph 3 of the text submitted by the Commission on Human Rights (i.e., after paragraph 4 of the article as revised by the Third Committee) of the following new paragraph:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Insertion of a new paragraph proposed by Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan (A/C.3/L.821, L.821/Rev.1 and verbal sub-amendment of Ecuador).

(r) The seven-Power amendment (A/C.3/L.821) provided that "No one shall be liable to be tried or punished again for the same offence for which he has finally been convicted or acquitted."

(s) At the 968th meeting, Mexico and Saudi Arabia proposed that the Third Committee should vote on those paragraphs of Article 14 which had been adopted at the previous meeting and submitted to the General Assembly the following draft resolution (A/C.3/L.823):



public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

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

"3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence, and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself, or to confess guilt.

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

"5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

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

"7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

65. At its 970th meeting the Third Committee adopted, by 57 votes to none, with 7 abstentions, a draft resolution submitted by Austria and Greece (A/C.3/L.825/Rev.2).

Recommendation of the Third Committee

66. Accordingly, the Third Committee recommends to the General Assembly the adoption of the following draft resolution:

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

The General Assembly,

Not having been able to conclude at its fourteenth session, the consideration of the draft International Covenants on Human Rights,  
Decides to give priority to this item at its fifteenth session, and to request the Third Committee at that session to devote as many meetings as possible to the consideration of the draft Covenants.