



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/3764
5 December 1957

ORIGINAL: ENGLISH

Twelfth session
Agenda item 33

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Third Committee

Rapporteur: Mr. Carlos Manuel COX (Peru)

INTRODUCTION

1. At its 682nd meeting on 20 September 1957, the General Assembly allocated to the Third Committee item 33 of the agenda of its twelfth session: "Draft International Covenants on Human Rights".
2. The discussion of the Covenants, article by article, had been begun by the Assembly at its tenth session and continued during its eleventh session.^{1/}
3. At its 764th meeting on 25 September 1957, the Third Committee decided to devote thirty-eight meetings to the discussion of the draft Covenants. At its 779th meeting on 11 October 1957, the Committee, in accordance with a procedural decision taken at the Assembly's eleventh session,^{2/} agreed to resume consideration of the substantive articles of the draft Covenant on Economic, Social and Cultural Rights (articles 14, 15 and 16) and subsequently to discuss the substantive articles of the draft Covenant on Civil and Political Rights.
4. The Committee, at its 779th to 799th meetings, discussed and adopted the texts for articles 14, 15 and 16 of the draft Covenant on Economic, Social and Cultural Rights. At its 809th to 821st meetings, it discussed and adopted the

^{1/} See reports of the Third Committee, Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28, document A/3077; Ibid., Eleventh Session, Annexes, agenda item 31, document A/3525.

^{2/} Official Records of the General Assembly, Eleventh Session, Third Committee, 707th meeting.

text for article 6 of the draft Covenant on Civil and Political Rights. The proceedings of the Committee are described briefly below.^{3/}

DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 14

5. Article 14 of the draft Covenant on Economic, Social and Cultural Rights, as submitted by the Commission on Human Rights,^{4/} reads as follows:

"1. The States Parties to the Covenant recognize the right of everyone to education, and recognize that education shall encourage the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the suppression of all incitement to racial and other hatred. It shall promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate effectively in a free society.

"2. It is understood:

"(a) That primary education shall be compulsory and available free to all;

"(b) That secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;

"(c) That higher education shall be equally accessible to all on the basis of merit and shall be made progressively free;

"(d) That fundamental education for those persons who have not received or completed the whole period of their primary education shall be encouraged as far as possible.

"3. In the exercise of any functions which they assume in the field of education, the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or

^{3/} For a fuller account, see the summary records of the Third Committee, A/C.3/SR.779-799 and 809-821.

^{4/} Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), annex IA.

approved by the State and to ensure the religious education of their children in conformity with their own convictions."

6. The Committee considered the article at its 779th to 788th meetings.

Amendments submitted

7. Amendments were submitted by Ireland (A/C.3/L.617), the Netherlands (A/C.3/L.618), Chile, Ecuador and Guatemala (A/C.3/L.619 and Corr.1), Romania (A/C.3/L.620), the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.621), the Philippines (A/C.3/L.622), Belgium (A/C.3/L.623) and Peru (A/C.3/L.624).

8. These amendments, in the order of the paragraphs of the draft article to which they were related, were as follows:

Amendments to paragraph 1

9. The amendment by Chile, Ecuador and Guatemala (A/C.3/L.619, para. 1) would replace paragraph 1 by the following:

"1. The States Parties to this Covenant recognize the right of everyone to an integral education which encourages the full development of the personality and the discharge of his personal and social obligations and duties, both national and international; promotes understanding, tolerance and friendship among all nations and social groups, without distinction as to race, creed or ideas; trains all persons to act in the common interest in a free society; and strengthens respect for human rights and fundamental freedoms".

10. The United Kingdom amendment (A/C.3/L.621, para. 1) would insert the word "and" before the word "racial" in the last sentence of paragraph 1.

11. The Philippine amendment (A/C.3/L.622) would replace the words "and recognize that education shall encourage" by the words "and agree that education shall be directed to...", and also proposed some drafting changes.

12. The Belgian amendment (A/C.3/L.623, para. 1) contained a new text for paragraph 1, with the following main changes: "The States Parties to the Covenant... recognize that education shall, on the one hand, encourage the full development of the human personality, a sense of its dignity and respect for such moral and spiritual values as human rights and the fundamental freedoms; ...".

13. The Peruvian amendment (A/C.3/L.624, para. 1) would replace paragraph 1 by the following:

"1. The States Parties to the Covenant recognize the right of everyone to education and that the purpose of education shall be the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate in a free society, exempt from racial or other hatred."

Amendments to the introductory clause of paragraph 2

14. The amendment by Chile, Ecuador and Guatemala (A/C.3/L.619, para. 2) would replace the words "it is understood" by the clause "For the purpose of ensuring the effective exercise of this right, the States Parties to the Covenant agree to promote the following measures:".

15. The United Kingdom amendment (A/C.3/L.621, para. 2) contained the following formula: "The States Parties to the Covenant recognize".

16. The Peruvian amendment (A/C.3/L.624, para. 2) would change the introductory clause to read "The States Parties to the Covenant shall ensure".

Amendments to sub-paragraphs (b) and (c) of paragraph 2

17. The amendment by the Netherlands (A/C.3/L.618) was to replace the words "and shall be made progressively free", in sub-paragraphs (b) and (c), by the words "and measures shall be taken to ensure that no one shall be deprived of [secondary or higher] education for financial reasons only".

18. The amendment by Chile, Ecuador and Guatemala (A/C.3/L.619, para. 2) would merge sub-paragraphs (b) and (c) in a single sub-paragraph, to read as follows:

"(b) Accessibility of secondary education, including technical and professional secondary education, and higher education to all persons, with no distinction other than the encouragement due personal merit; efforts being made to ensure that no person is excluded for purely financial reasons".

19. The United Kingdom amendment (A/C.3/L.621, para. 3) would substitute the word "vocational" for the word "professional" in sub-paragraph (b).

20. The Belgian amendment (A/C.3/L.623, para. 2) would replace sub-paragraphs (b) and (c) by the following:

"(b) That secondary education, in its different forms, including technical and professional secondary education, shall be made generally available and accessible to all by various methods, including the progressive introduction of free education".

Amendment to sub-paragraph (d) of paragraph 2

21. The amendment by Chile, Ecuador and Guatemala (A/C.3/L.619, para. 2) would replace sub-paragraph (d) (which would become (c)) by the following:

"(c) Encouragement of fundamental education, with particular reference to its extension to, and intensification among, those persons who have not received or completed their primary education."

Amendments to paragraph 3

22. The Irish amendment (A/C.3/L.617, para. 1) would substitute the word "right" for the word "liberty", and the words "means toward education" for the word "schools".

23. The amendment by Chile, Ecuador and Guatemala (A/C.3/L.619, para. 3) called for some stylistic changes and for the substitution of the words "private schools" for the words "schools other than those established by the public authorities".

24. The Belgian amendment (A/C.3/L.623, para. 3) would replace the words "to ensure the religious education of their children in conformity with their own convictions" by the words "to ensure the education of their children in conformity with their religious and philosophical convictions".

Proposals concerning the inclusion of additional paragraphs

25. The Irish amendment (A/C.3/L.617, para. 2) proposed the following additional paragraph:

"4. No part of this article shall be construed so as to interfere with the right of individuals and/or bodies to establish and control educational institutions, subject always to the requirement that every child shall receive that minimum of education established in the preceding paragraphs."

26. The Romanian amendment (A/C.3/L.620) proposed the following additional paragraph:

"4. The States Parties to this Covenant undertake to ensure enjoyment of the right to education by such measures as the development of a

system of schools at all levels, an adequate fellowship system and the continuous improvement of the material conditions of the teaching staff so as to enable them properly to discharge their functions."

Working Party on article 14

27. At its 781st meeting on 15 October 1957, the Committee decided to establish a Working Party on article 14, to reconcile the various amendments. The Working Party was to be composed of all members who had submitted amendments.

28. The Working Party, which was composed of the representatives of Belgium, Ecuador, Guatemala, Ireland, the Netherlands, Peru, the Philippines and Romania, held three meetings on 17 and 18 October 1957 under the chairmanship of the Vice-Chairman of the Third Committee. The representative of UNESCO also participated in the Working Party's deliberations. The Working Party reported to the Committee (A/C.3/L.625) and submitted the following text for its consideration:

"1. The States Parties to the Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; to this end it shall suppress all incitement to racial and other hatred and further the activities of the United Nations for the maintenance of peace.

"2. The States Parties to the Covenant recognize:

"(a) That primary education shall be compulsory and available free to all;

"(b) That secondary education, in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular the progressive introduction of free education;

"(c) That higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular the progressive introduction of free education;

"(d) That fundamental education shall be encouraged or intensified for those persons who have not received or completed the whole period of their primary education;

"(e) That, to achieve these objectives, the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

/...

"3. The States Parties to the Covenant undertake to have respect for the right of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

"4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

Amendments to the text of the Working Party

29. Amendments to the text proposed by the Working Party were submitted by Panama (A/C.3/L.626), Canada (A/C.3/L.627), Costa Rica and Greece (A/C.3/L.628) and Bolivia (A/C.3/L.629). Oral amendments were submitted by the representatives of Saudi Arabia (A/C.3/SR.785), El Salvador (A/C.3/SR.785), Tunisia (A/C.3/SR.786) and Uruguay (A/C.3/SR.786).

30. These amendments, in the order of the paragraphs of the Working Party's text to which they were related, were as follows:

Amendments to paragraph 1

31. The first part of the amendment by Panama (A/C.3/L.626, para. 1) called for the retention of paragraph 1 as submitted by the Commission on Human Rights. At the 787th meeting, the representative of Panama withdrew this amendment.

32. The amendment by Costa Rica and Greece (A/C.3/L.628) called for the deletion of the words "to this end it shall suppress all incitement to racial and other hatred".

Amendments to paragraph 2

33. The first part of the Canadian amendment (A/C.3/L.627, para. 1), as orally revised, was to add after the word "recognize" the words "that, with a view to achieving the full realization of this right" in the introductory clause to paragraph 2.

34. The Tunisian oral amendment (A/C.3/SR.786, p. 7) called for the retention of sub-paragraphs (b) and (c) of paragraph 2 as submitted by the Commission on Human Rights. At the 787th meeting, the representative of Tunisia withdrew his amendment.

35. The oral amendment by Saudi Arabia (A/C.3/SR.787, p. 13) was to insert the words "as far as possible" after the word "intensified" in paragraph 2 (d).

/...

36. The second part of the Canadian amendment (A/C.3/L.627, para. 2) was to delete the phrase "that, to achieve these objectives" from the first line of paragraph 2 (e).

Amendments to paragraph 3

37. The oral amendment by El Salvador (A/C.3/SR.785, p. 12) was to substitute the word "liberty" for the word "right".

38. The oral amendment by Uruguay (A/C.3/SR.786, p. 12) was to insert the words "in those schools" after the words "to ensure". At the 788th meeting the representative of Uruguay withdrew his amendment, having taken note of the understanding recorded in the last sentence of paragraph 46 below under "Issues discussed".

Amendment to paragraph 4

39. The Bolivian amendment (A/C.3/L.629) was to replace paragraph 4 by the following:

"4. Private bodies and persons have the right to establish and direct educational institutions, in accordance with the law on such matters in the States concerned and the principles laid down in this article."

Issues discussed

40. It was considered necessary to lay down the objectives of education at the beginning of article 14, although the view was expressed that paragraph 1, mainly declaratory in character, was out of place in a legal instrument. The main debate took place on the advisability of retaining the words "and the suppression of all incitements to racial and other hatred". Certain representatives stressed the importance of this phrase in view of the harmful effects of discrimination, especially in the field of education. Others felt that the words were repetitious in the context of paragraph 1; and that the proper rule of education was to encourage positive feelings, rather than to suppress incitements to hatred.

41. It was agreed that the introductory clause of paragraph 2 should make it clear that the measures enumerated thereunder were to be taken progressively, in accordance with article 2 of the draft Covenant. In this respect, the phrase "The States Parties to the Covenant recognize that, with a view to achieving the full realization of this right..." was considered more adequate than the words "it is understood" contained in the Commission's draft.

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42. After some debate on the second part of the amendment by Panama (A/C.3/L.626, para. 2), it was agreed that paragraph 2(a) of the article obliged the States Parties to provide free primary education in public schools only.
43. The purpose of paragraphs 2 (b) and 2 (c) of the text submitted by the Working Party (A/C.3/L.625), as compared with the Commission's draft, was to give to the States Parties a certain latitude in the choice of methods of making secondary and higher education accessible to all.
44. The notion of fundamental education, referred to in paragraph 2 (d), gave rise to some debate. It was regarded as an important factor in raising the standards of living in under-developed areas. Some representatives pointed out that fundamental education should not be taken as a substitute for children's primary education, which remained the most desirable way to eradicate illiteracy. It was agreed to retain the words "as far as possible" in paragraph 2 (d), since commitments relating to fundamental education might have considerable financial implications for the States Parties.
45. The Romanian amendment (A/C.3/L.620) stressed the necessity of developing a system of schools at all levels, establishing an adequate fellowship system and improving the material conditions of teaching staff. Some representatives opposed this amendment as being too detailed and merely repeating what was implicit in the rest of article 14. Other representatives maintained that such measures ought to be specifically mentioned in order to give to the right of education its full practical meaning. The substance of that amendment was incorporated in paragraph 2 (e) of the text submitted by the Working Party (A/C.3/L.625).
46. Paragraph 3 of the article dealt with the liberty of parents to choose, under certain conditions, the kind of education they wished for their children. The majority of the representatives preferred the word "liberty" to the word "right", since in their view, the latter word might imply an obligation for the States Parties to grant material assistance to private schools. Much stress was laid upon the minimum educational standards to which those schools should conform. Some fears were expressed that too large a measure of freedom granted to parents with regard to curricula might result in teachings contrary to the principles set forth in paragraph 1. The majority of the representatives were prepared to recognize such freedom as far as "religious and moral education" was concerned (A/C.3/L.625), but it was agreed that paragraph 3 should not be

understood as imposing upon States Parties the obligation to provide religious education in public schools.

47. The view was expressed that, while paragraph 3 acknowledged the existence of private schools, the article should explicitly recognize, in a new paragraph, the liberty of individuals and bodies to establish and direct educational institutions. This was the purpose of the second part of the Irish amendment (A/C.3/L.617, para. 2), which was incorporated in an amended form in the text submitted by the Working Party (A/C.3/L.625, para. 4). Other representatives felt that such liberty might be abused, in particular by foreign bodies spreading harmful propaganda under the guise of education. It was therefore proposed in the Bolivian amendment (A/C.3/L.629) to make the establishment of private schools subject to "the law on such matters in the States concerned". The majority of the representatives preferred the formula according to which private institutions should always observe the principles set forth in paragraph 1 and conform their teaching to such minimum standards as may be laid down by the State (A/C.3/L.625, para. 4).

Voting on article 14^{5/}

48. At its 787th and 788th meetings, the Committee voted on the text of article 14 as prepared by the Working Party (A/C.3/L.625) and the amendments thereto as follows:

Paragraph 1

(a) The first part of the amendment by Costa Rica and Greece (A/C.3/L.628), to delete the words "it shall suppress all incitements to racial and other hatred" was adopted by 35 votes to 22, with 8 abstentions.

(b) At the request of the representative of Haiti, a vote was taken by roll call on paragraph 1, as amended. The Committee adopted this paragraph by 70 votes to none, with 2 abstentions, as follows:

5/ Some changes of a purely linguistic character in the French and Spanish texts have also been made by the Third Committee. They are recorded in the text as adopted by the Committee, which is reproduced below.

In favour: Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Liberia, Malaya (Federation of), Mexico, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Syria, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: None.

Abstaining: Australia, United States of America.

Paragraph 2

(c) The first part of the Canadian amendment, as orally revised (A/C.3/L.627), namely, the addition of the words "that, with a view to achieving the full realization of this right" in the introductory sentence of paragraph 2, was adopted by 64 votes to 1, with 4 abstentions.

(d) The second part of the amendment by Panama (A/C.3/L.626, para. 2), namely, the replacement in paragraph 2 (a) of the words "and available free" by the words "and shall be available free in public schools", was rejected by 30 votes to 20, with 17 abstentions.^{6/}

(e) Paragraph 2 (a), as submitted by the Working Party, was adopted by 64 votes to none, with 1 abstention.

(f) Paragraph 2 (b) was adopted by 64 votes to none, with 1 abstention.

(g) At the request of the representative of Portugal, a separate vote was taken on the retention of the word "equally" in paragraph 2 (c). The Committee decided to retain this word by 28 votes to 16, with 18 abstentions.

(h) Paragraph 2 (c) was adopted by 65 votes to none, with 3 abstentions.

(i) The Saudi Arabian oral amendment, to insert the words "as far as possible" after the word "intensified" in paragraph 2 (d), was adopted by 23 votes to 5, with 39 abstentions.

(j) Paragraph 2 (d), as amended, was adopted by 66 votes to none, with 3 abstentions.

^{6/} See under para. 42 under "Issues discussed".

(k) The second part of the Canadian amendment (A/C.3/L.627, para. 2), namely, to delete the words "that, to achieve these objectives" in paragraph 2 (e), was adopted by 62 votes to none, with 5 abstentions.

(l) A separate vote was taken on the retention of the phrase "and the material conditions of teaching staff shall be continuously improved" at the end of paragraph 2 (e). The Committee decided to retain this phrase, by 25 votes to 19, with 21 abstentions.

(m) Paragraph 2 (e), as amended, was adopted by 35 votes to 17, with 18 abstentions.

(n) At the request of the representative of Haiti, a vote was taken by roll call on paragraph 2 as a whole, as amended. The paragraph was adopted by 64 votes to none, with 6 abstentions, as follows:

In favour: Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Liberia, Malaya (Federation of), Mexico, Morocco, Nepal, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Sudan, Sweden, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia.

Against: None.

Abstaining: Australia, Japan, Netherlands, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

Paragraph 3

(o) The Salvadorian oral amendment, to substitute the word "liberty" for the word "right" was adopted by 34 votes to 19, with 15 abstentions.

(p) The Committee, by 37 votes to 6, with 25 abstentions, agreed to take a separate vote on the retention of the words "and moral", which had been requested by the representative of Saudi Arabia and objected to by the representative of Greece. The Committee decided to retain those words by 39 votes to 9, with 21 abstentions.

(q) At the request of the representative of Haiti, a vote was taken by roll call on paragraph 3, as amended. The paragraph was adopted by 72 votes to none, with 2 abstentions, as follows:

In favour: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Liberia, Malaya (Federation of), Mexico, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yugoslavia.

Against: None.

Abstaining: Ceylon, United States of America.

Paragraph 4

(r) The Bolivian amendment (A/C.3/L.629), to replace paragraph 4 by a text containing the phrase "in accordance with the law on such matters in the States concerned", was rejected by 22 votes to 17, with 35 abstentions.

(s) At the request of the representative of Haiti, a vote was taken by roll call on paragraph 4. The Committee adopted this paragraph by 27 votes to 23, with 25 abstentions, as follows:

In favour: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Guatemala, Honduras, India, Ireland, Israel, Italy, Malaya (Federation of), Nepal, Netherlands, Panama, Peru, Spain, Thailand, Uruguay, Venezuela.

Against: Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Finland, Hungary, Iceland, Indonesia, Iraq, Jordan, Morocco, Poland, Romania, Saudi Arabia, Sudan, Sweden, Syria, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia.

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Abstaining: Australia, Austria, Belgium, Burma, Cambodia, Canada, Ceylon, China, Egypt, Ethiopia, France, Ghana, Haiti, Iran, Japan, Liberia, Mexico, New Zealand, Norway, Pakistan, Philippines, Portugal, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Article 14 as a whole, as amended

(t) At the request of the representative of the USSR, a vote was taken by roll call on article 14 as a whole, as amended. The Committee adopted this article by 71 votes to none, with 4 abstentions, as follows:

In favour: Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Liberia, Malaya (Federation of), Mexico, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Syria, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: None.

Abstaining: Australia, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

Text as adopted

49. Article 14, as adopted by the Committee, reads as follows:

"1. The States Parties to the Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

"2. The States Parties to the Covenant recognize that, with a view to achieving the full realization of this right:

"(a) Primary education shall be compulsory and available free to all;

"(b) Secondary education, in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

"(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

"(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

"(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

"3. The States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

"4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

Article 15

50. Article 15 of the draft Covenant on Economic, Social and Cultural Rights, as submitted by the Commission on Human Rights (E/2573, annex I A), reads as follows:

"Each State Party to the Covenant which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all."

51. The article was discussed at the 789th to 794th meetings of the Committee.

Amendments submitted

52. The Committee had before it amendments submitted by the United Kingdom (A/2910/Add.1),^{7/} Australia (A/2910/Add.2),^{7/} the Netherlands (A/2910/Add.3),^{7/} Bulgaria (A/C.3/L.630), Peru (A/C.3/L.631) and Iraq and Ireland (A/C.3/L.632 and Rev.1 and 2). Two oral amendments were submitted by the representative of Israel at the 792nd meeting.

53. The United Kingdom and Australian amendments (A/2910/Add.1 and Add.2), to delete article 15, had been submitted in response to General Assembly resolution 833 (IX) and were formally maintained at the 789th meeting of the Committee.

54. The Netherlands amendment (A/2910/Add.3), also submitted in response to resolution 833 (IX), was to delete the words "or other territories under its jurisdiction". At the 789th meeting the representative of the Netherlands withdrew his amendment.

55. The Peruvian amendment (A/C.3/L.631) was to replace article 15 by the following:

"Each State Party to the Covenant which, at the time of its entry into force, has not been able to secure in its metropolitan territory or other territories under its

^{7/} Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28.

jurisdiction observance of the principle of compulsory and free primary education for all, undertakes:

"(a) Within the shortest time possible, to work out and adopt a detailed plan of action for carrying into effect the principle of compulsory and free primary education; and

"(b) To fix a reasonable number of years, consistent with the true situation in each country or territory, for the progressive application of that plan."

56. At the 792nd and 793rd meetings the representative of Peru orally revised his amendment as follows: in paragraph (a), replace the words "within the shortest possible time" by the words "within two years", and the words "for carrying into effect" by the words "for the progressive application of"; in paragraph (b), insert the words "To this end" at the beginning of the sentence; insert the words "in the plan" between the words "to fix" and the words "a reasonable number of years", and delete the words "for the progressive application of that plan".

57. The Bulgarian amendment (A/C.3/L.630) was to add the words "and conditions of general literacy" between the words "free of charge" and "undertakes"; and to add the words "and general literacy" at the end of the article.

58. At the 792nd meeting, the representative of Israel orally proposed to replace the words "fixed in the plan" by the words "mentioned in the plan".

59. The amendment by Iraq and Ireland (A/C.3/L.632/Rev.2) was to transfer to article 15 certain provisions of article 14, so that article 15 would read as follows:

"With a view to implementing fully paragraph 2 of the preceding article:

"1. The States Parties to the Covenant undertake that the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

"2. Each State Party to the Covenant, which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education free

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of charge, undertakes within two years to work out and adopt a detailed plan of action for the progressive implementation within a reasonable number of years to be fixed in the plan of the principle of compulsory primary education free of charge for all;

"3. The States Parties to the Covenant undertake that fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."

60. At the 792nd meeting, the representative of Israel orally proposed that articles 14 and 15 should be merged in an appropriate manner. She withdrew this proposal at the 794th meeting.

Issues discussed

61. The majority of the representatives agreed that the fundamental character of the right to primary education justified the inclusion of a special implementation clause, even though similar provisions were not made with regard to other rights. Extending the scope of article 15 to adult education, as suggested in the Bulgarian amendment (A/C.3/L.630), was considered likely to exceed the resources of many States.

62. One opinion was that article 15 imposed an immediate obligation upon States Parties; it conflicted thereby with the principle of progressive implementation laid down in article 2 of the Covenant and did not take into account the difficulties existing in certain territories. On the other hand, several representatives expressed the view that article 15 merely aimed at securing the progressive implementation of a particular right in an effective and orderly manner. The article could be applied in all countries and territories, even under difficult conditions, it being understood that the plan might always be amended by the States as circumstances required; however, the amendment by Peru (A/C.3/L.631) and the oral proposal by Israel (A/C.3/SR.792), which emphasized the flexible character of the plan, were deemed to weaken the text unduly.

63. The reference to "other territories under [the States'] jurisdiction" was opposed by some representatives on the grounds that the States Parties to the Covenant would not be constitutionally empowered to bind the authorities of

certain autonomous territories without their consent. This difficulty was not considered to be insurmountable, and the view was expressed that the Committee, when examining the final clauses, might consider the territorial application clauses contained in the Supplementary Convention on Slavery and in the Convention on the Nationality of Married Women.

64. The amendment by Iraq and Ireland (A/C.3/L.632 and Rev.1 and 2) was presented by its sponsors as an attempt to transfer to article 15 provisions contained in paragraphs 2 (d) and 2 (e) of article 14, without altering the substance of the articles. The view was expressed that such a rearrangement would not necessarily improve the form of the draft Covenant. Certain representatives further expressed the opinion that the amendment by Iraq and Ireland might alter the substance of article 14, already adopted.

Voting on article 15

65. The voting on article 15 and on the amendments thereto took place at the 793rd and 794th meetings, as follows:

(a) At the request of the United Kingdom, the words "in its metropolitan territory or other territories under its jurisdiction", contained in the introductory paragraph of the Peruvian amendment (A/C.3/L.631) were voted on separately. The Committee decided to retain these words by 51 votes to 8, with 11 abstentions.

(b) The introductory paragraph of the Peruvian amendment (A/C.3/L.631) was rejected by 46 votes to 15, with 10 abstentions. Consequently, the rest of the Peruvian amendment was not put to the vote.

(c) The first part of the Bulgarian amendment (A/C.3/L.630, para. 1), namely, the addition of the words "and conditions of general literacy" after the words "free of charge" was rejected by 29 votes to 15, with 26 abstentions.

(d) The second part of the Bulgarian amendment (A/C.3/L.630, para. 2), namely, the addition of the words "and general literacy" at the end of the article, was rejected by 29 votes to 12, with 30 abstentions.

(e) The oral amendment by Israel, namely, the substitution of the word "mentioned" for the word "fixed", was rejected by 30 votes to 9, with 30 abstentions.

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(f) At the request of the Dominican Republic, the words "within a reasonable number of years, to be fixed in the plan", contained in the draft article, were voted upon separately. The Committee decided to retain these words by 55 votes to 9, with 5 abstentions.

(g) Article 15 as a whole, and as submitted by the Commission on Human Rights, was adopted by 60 votes to 3, with 8 abstentions.

(h) The amendment by Iraq and Ireland (A/C.3/L.631/Rev.1) concerning the rearrangement of articles 14 and 15 was adopted by 26 votes to 19, with 23 abstentions. Subsequently, the Committee, in accordance with rule 124 of its rules of procedure, decided, by 63 votes to none, with 2 abstentions, to reconsider that decision. Iraq and Ireland submitted a new revision of their amendment (A/C.3/L.632/Rev.2). After a further debate on that amendment (summarized above under the heading "issues discussed"), the Committee, in application of rule 117 of its rules of procedure, decided, by 37 votes to 4, with 27 abstentions, to adjourn sine die the debate on the proposal.

Text as adopted

66. Article 15, as adopted by the Committee, reads as follows:

"Each State Party to the Covenant which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

Article 16

67. Article 16 of the draft Covenant on Economic, Social and Cultural Rights, as submitted by the Commission on Human Rights (E/2573, annex I A), reads as follows:

"1. The States Parties to the Covenant recognize the right of everyone:

"(a) To take part in cultural life;

"(b) To enjoy the benefits of scientific progress and its applications.

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"2. The steps to be taken by the States Parties to this Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

"3. The States Parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity."

The Committee discussed this article at its 795th to 799th meetings.

Amendments submitted

68. Amendments were submitted by Czechoslovakia (A/C.3/L.633), Greece (A/C.3/L.635), and Costa Rica and Uruguay (A/C.3/L.636 and Add.1, A/C.3/L.636/Rev.1, English only). Saudi Arabia submitted a sub-amendment (A/C.3/L.634 and Rev.1) to the second part of the Czechoslovak amendment (A/C.3/L.633, para. 2), and Czechoslovakia submitted a sub-amendment (A/C.3/L.637) to the Greek amendment (A/C.3/L.635).

69. Those amendments, in the order of the paragraphs of the draft article to which they were related, were as follows:

70. The amendment by Costa Rica and Uruguay (A/C.3/L.636 and Add.1, A/C.3/L.636/Rev.1, English only) called for the inclusion in paragraph 1 of an additional sub-paragraph (c), which read:

"(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

71. The first part of the Czechoslovak amendment (A/C.3/L.633, para. 1) was to add the following words at the end of paragraph 2: "in the interest of the maintenance of peace and co-operation between nations". At the 797th meeting, the representative of Czechoslovakia orally revised the amendment by inserting the words "in particular" before the words "in the interests of".

72. The Greek amendment (A/C.3/L.635) called for the addition at the end of paragraph 3 of the words "and to give particular encouragement to such creative activity as tends to the healthy development of the human personality". The Czechoslovak sub-amendment (A/C.3/L.637) would add to the Greek amendment the words "and to the maintenance of peace and co-operation among nations which is one of the essential conditions for such a development". The representative of

Greece did not accept the Czechoslovak sub-amendment and, at the 799th meeting, withdrew his amendment (A/C.3/L.635).

73. The second part of the Czechoslovak amendment (A/C.3/L.633, para.2) was to add a new paragraph as follows:

"4. The States Parties to the Covenant will encourage all-round development of international scientific and cultural co-operation and of mutual contacts between scientific and cultural experts."

At the 798th meeting the representative of Czechoslovakia accepted the Saudi Arabian sub-amendment (A/C.3/L.634/Rev.1), as a consequence of which the paragraph read:

"4. The States Parties to the Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

Issues discussed

74. It was generally agreed that article 16 dealt with important human rights and should be retained in substance although certain concepts or notions contained therein might still be in the process of evolution.

75. With regard to paragraph 1, setting forth the contents of the rights, a suggestion was made to specify that everyone had the right to take part in the cultural life "of the communities to which he belongs". However, sub-paragraphs (a) and (b) of paragraph 1 did not give rise to extensive discussion.

76. It was proposed to include in paragraph 1 an additional sub-paragraph, based on article 27, paragraph 2, of the Universal Declaration, which would recognize the right of everyone "to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" (amendment by Costa Rica and Uruguay, A/C.3/L.636 and Add.1, A/C.3/L.636/Rev.1, English only). It was pointed out, on the one hand, that the adoption of such a clause would not only protect authors against improper action on the part of publishers, but also ensure the right of the public to obtain authentic versions of artistic works, and that the clause would thus contribute to the development of culture throughout the world. The provision was in the nature of a principle of law to be implemented

in detail by UNESCO and the States Parties to the Covenant. On the other hand, the opinion was expressed that the complexities of the matter, linked in particular with the whole problem of the right of property, called for further consideration; and that, contrary to the relevant international instruments in force, the proposed clause did not take into account the special conditions existing in different countries. It was also submitted that the proposed clause might affect existing international conventions in the field of copyright.

77. Much discussion was devoted to the questions whether certain goals of scientific and cultural development should be set out in the article, and to what extent any statement of goals would be compatible with the principle of freedom laid down in paragraph 3 of article 16.

78. The view was expressed by certain representatives that, while scientific research and cultural activities should remain free, it was the duty of the States, in accordance with the Charter of the United Nations and the Constitution of UNESCO, to promote the development of culture and science "in the interest of the maintenance of peace and of co-operation among nations" (Czechoslovak amendment to paragraph 2 of the article (A/C.3/L.633, para. 1)). Other representatives felt that international understanding and peace were best promoted by ensuring the greatest possible scientific and cultural freedoms. They stressed that a statement of aims such as was proposed might provide the States with a pretext for abusive control and orientation of scientific and cultural activities. The inclusion of the words "in particular" before the words "in the interest of" did not allay those fears.

79. The arguments opposed to the Czechoslovak amendment were restated in substance against the Greek amendment to paragraph 3 of the article, whereby States should "give particular encouragement to such creative activity as tends to the healthy development of the human personality" (A/C.3/L.635). In support of the proposal, it was said that States should not remain passive while various artistic productions ministered to the lowest instincts of man, and that the encouragement of certain artistic undertakings would not necessarily bring limitations on other activities in that field. Several representatives felt, however, that the clause was so vague as to permit harmful discriminatory practices.

80. Stressing the importance of freedom in the cultural and scientific fields, certain representatives found that the qualifying word "indispensable", in paragraph 3 of the article, was too restrictive. Others maintained that such a clause adequately recognized the right of the State to impose the limitations strictly required by national security, public order and morality.

81. It was recognized that one of the best ways to encourage cultural and scientific development was to promote international contacts in those fields. The Czechoslovak amendment to that effect (A/C.3/L.633, para.2) was generally agreed upon, after its author had accepted the Saudi Arabian sub-amendment (A/C.3/L.634/Rev.1) which did not impose any binding obligations on States and did not restrict "international contacts" to "contacts between experts" only. Some representatives maintained, however, that any such clause was superfluous in view of the adoption by the General Assembly of resolution 1043 (XI).

Voting on article 16

82. The voting on article 16 and on amendments thereto took place at the 799th meeting, as follows:

(a) At the request of the Dominican Republic, a roll-call vote was taken on the amendment by Costa Rica and Uruguay (A/C.3/L.636 and Add.1, A/C.3/L.636/Rev.1, English only), namely the inclusion of a sub-paragraph on the protection of authors' rights in paragraph 1. The Committee adopted this amendment by 39 votes to 9, with 24 abstentions, as follows:

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Finland, France, Ghana, Guatemala, Haiti, Honduras, Ireland, Israel, Italy, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

Against: Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Iraq, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Afghanistan, Burma, Cambodia, Egypt, Ethiopia, Greece, India, Indonesia, Iran, Japan, Jordan, Liberia, Malaya (Federation of), Nepal, Poland, Saudi Arabia, Sudan, Syria, Thailand, Tunisia, Turkey, United States of America, Yemen, Yugoslavia.

(b) Paragraph 1, as amended, was adopted by 68 votes to none, with 2 abstentions.

(c) At the request of Czechoslovakia, a vote was taken by roll-call on the first part of the Czechoslovak amendment (A/C.3/L.633, para.1) calling for the addition at the end of paragraph 2 of the words "in particular in the interest of the maintenance of peace and of co-operation among nations". The Committee rejected this amendment by 35 votes to 21, with 16 abstentions, as follows:

In favour: Afghanistan, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Egypt, Hungary, Indonesia, Liberia, Nepal, Poland, Romania, Saudi Arabia, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, France, Greece, Guatemala, Haiti, Honduras, Iraq, Ireland, Israel, Italy, Japan, Jordan, Malaya (Federation of), Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, Uruguay.

Abstaining: Austria, Ceylon, Cuba, Dominican Republic, Ethiopia, Finland, Ghana, India, Iran, Mexico, Morocco, Spain, Tunisia, Turkey, United States of America, Venezuela.

(d) Paragraph 2, in its original text, was adopted by 71 votes to none, with 1 abstention.

(e) A separate vote, requested by the Philippines, took place on the retention of the word "indispensable" in paragraph 3 of article 16. The Committee decided to retain this word, by 41 votes to 9, with 23 abstentions.

(f) Paragraph 3 in its original text, was adopted by 71 votes to none, with 1 abstention.

(g) The second part of the Czechoslovak amendment (A/C.3/L.633, para.2) as revised by acceptance of the Saudi Arabian sub-amendment (A/C.3/L.634/Rev.1), namely, the inclusion of an additional paragraph on the development of international contacts in the scientific and cultural fields, was adopted by 47 votes to 9, with 16 abstentions.

(h) Article 16 as a whole, as amended, was adopted by 71 votes to none, with 1 abstention.

Text as adopted

83. Article 16, as adopted by the Committee, reads as follows:

"1. The States Parties to the Covenant recognize the right of everyone:

"(a) To take part in cultural life;

"(b) To enjoy the benefits of scientific progress and its applications;

"(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

"2. The step to be taken by the States Parties to the Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

"3. The States Parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

"4. The States Parties to the Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 6

84. Article 6 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I A) reads as follows:

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

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

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

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

The Committee discussed this article at its 809th to 821st meetings.

Amendments submitted

85. Amendments were submitted by Colombia and Uruguay (A/C.3/L.644), France (A/C.3/L.645), the Philippines (A/C.3/L.646), Guatemala (A/C.3/L.647), Costa Rica (A/C.3/L.648), Brazil, Panama, Peru and Poland (A/C.3/L.649/Rev.1), Japan (A/C.3/L.650), the Netherlands (A/C.3/L.651), Australia (A/C.3/L.652 and Rev.1, Russian only), Panama (A/C.3/L.653) and Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654).

86. The amendment of Colombia and Uruguay (A/C.3/L.644) was to substitute the following text for article 6:

"Article 6. Every human being has the inherent right to life. The death penalty shall not be imposed on any person."

87. The French amendments (A/C.3/L.645) were as follows:

- (1) To delete the first sentence of paragraph 1.
- (2) To replace paragraph 2 by the following:

"2. If the law provides for capital punishment, such penalty shall be prescribed only for the most serious crimes and in accordance with the principles of the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide. The death penalty shall not be imposed except in pursuance of the sentence of a competent court."

(3) To delete the first sentence of paragraph 3 and to add in the second sentence, after the word "granted", the words "to a sentenced person".

These amendments were withdrawn by the French representative in the Working Party (see paras. 97 et seq. below).

88. The Philippine amendments (A/C.3/L.646) were to insert in paragraph 2 the word "final" before the word "sentence" and the words "in force at the time of the commission of the crime and" after the word "law". These amendments were withdrawn in favour of the text suggested by the Working Party for paragraph 2 (see para. 101 below).

89. The amendment of Guatemala (A/C.3/L.647) was to replace paragraph 4 by the following:

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

In the working Party, the representative of Guatemala withdrew this amendment in favour of the Japanese amendment (A/C.3/L.650).

90. The Costa Rican amendment (A/C.3/L.648) was to replace article 6 by the following:

"Article 6. Every human being shall have the inalienable right to his life and to the security of his person."

91. The amendment of Brazil, Panama, Peru and Poland (A/C.3/L.649/Rev.1) was to insert a new paragraph 3 as follows:

"3. When deprivation of life constitutes the crime of genocide, the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide shall apply fully."

92. The Japanese amendments (A/C.3/L.650) were to insert in paragraph 4, between the words "be" and "carried", the following: "imposed for crimes committed by minors, and shall not be", and to replace the words "a pregnant woman" by "pregnant women". At the 815th meeting, the Japanese representative accepted a suggestion to replace the word "minors" by "children and young persons".

93. The Netherlands amendment (A/C.3/L.651) was to replace paragraphs 1 and 2 by the following:

"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 this penalty is provided by law.

"2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from 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 a riot or insurrection."

94. The Australian amendment (A/C.3/L.652) was to replace in paragraph 2 the following phrase "not contrary to the principles of the Universal Declaration of Human Rights" by "that is not contrary to the provisions of this Covenant". This amendment was withdrawn by the representative of Australia in favour of the Working Party's suggested text for paragraph 2.

95. The amendment of Panama (A/C.3/L.653) was to replace paragraph 1 by the following:

"1. The right to life is inherent in the human person. The States Parties to the Covenant recognize the propriety of promoting the abolition of the death penalty."

The representative of Panama withdrew his amendment in the Working Party.

96. The amendment of Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654) was to replace paragraph 1 by the following:

"1. The right to life is inherent in the human person. From the moment of conception, this right shall be protected by law."

Working Party on Article 6

97. At its 813th meeting on 18 November 1957, the Third Committee decided to establish a Working Party on article 6 to try to bring together in harmonized form the amendments and suggestions which had been put forward in the Committee.
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98. The Working Party, which was composed of the representatives of Australia, Belgium, Brazil, El Salvador, France, Guatemala, Ireland, Israel, Japan, Mexico, the Netherlands, Panama, Peru, the Philippines and Poland, held three meetings on 19, 20 and 21 November 1957 under the chairmanship of the Vice-Chairman of the Committee.

99. In its report (A/C.3/L.655/Corr.1 and 2), the Working Party stated that the draft prepared by the Commission on Human Rights should be taken as the basic text. The amendments of Colombia and Uruguay (A/C.3/L.644) and Costa Rica (A/C.3/L.648) were not discussed by the Working Party and it was suggested that that should be acted upon first by the Third Committee.

100. For paragraph 1 of the draft article, the Working Party did not propose a commonly agreed text, but suggested an order of voting as follows:

(a) The Netherlands amendment (A/C.3/L.651) proposing substitute texts for paragraphs 1 and 2.

(b) The following three clauses in paragraph 1, in the order indicated below:

(i) "Every human being has the inherent right to life."

Note: This clause was common to the amendments of Colombia and Uruguay (A/C.3/L.644), Panama (A/C.3/L.653) and Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654)7;

(ii) "Everyone's right to life shall be protected by law."

Note: Before this text was voted on, the following amendment by Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654) should be put to the vote:

"From the moment of conception, this right shall be protected by law".7;

(iii) "No one shall be arbitrarily deprived of his life." (text of the Commission on Human Rights").

The French amendment (A/C.3/L.645) to delete paragraph 1 was withdrawn on the understanding that those opposed to the paragraph would simply vote against it.

101. For paragraph 2, the Working Party suggested the following text:

"2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance

with law which is in force at the time of the commission of the crime and that is not contrary to the provisions of this Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

102. For a new paragraph 3, the Working Party transmitted to the Committee the following texts:

(a) The text proposed by Brazil, Panama, Peru and Poland (A/C.3/L.649/Rev.1) which, as further revised, read as follows:

"3. When deprivation of life constitutes the crime of genocide, the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide shall apply fully in the States that are Parties thereto."

(b) An amendment to this four-Power text was submitted by Australia as follows:

"3. Nothing in this article shall authorize any States Parties to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

103. There was no amendment to the original text of paragraph 3 of the draft of the Commission on Human Rights, the French amendment (A/C.3/L.645) having been withdrawn by its sponsor at the third meeting of the Working Party.

104. For paragraph 4, the Working Party was unable to agree on a common text. The only amendment to that paragraph was the Japanese amendment (see para. 92 above), since the Guatemalan amendment (see para. 89 above) had been withdrawn. The Working Party suggested, as alternatives to the words "children and young persons" in the Japanese amendment (A/C.3/L.650), the following words: "minors", "persons below eighteen years of age" or "juveniles".

105. The Working Party suggested the following text as a new paragraph instead of the amendment of Panama (A/C.3/L.653) (see para. 95 above) which was withdrawn by its sponsor:

"Nothing in this article shall be invoked to retard or to prevent any State Party to the Covenant from abolishing capital punishment."

The above text was orally revised at the 819th meeting as follows:

"Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the Covenant."

Amendments to the proposals of the Working Party

106. Amendments were submitted by the United Kingdom (A/C.3/L.656), Brazil, Panama, Peru and Poland (A/C.3/L.657) and Ceylon (A/C.3/L.658).

107. The United Kingdom amendments (A/C.3/L.656) were (1) to delete, in the first sentence of paragraph 2, the words "which is" after the word "law", and the words "that is" before the word "contrary"; and (2) to substitute, in the text proposed by Japan for paragraph 4 (A/C.3/L.650), see paras. 92 and 104 above), the words "for crimes committed by" the word "on".

At the 819th meeting, the United Kingdom amendments to paragraph 2 of article 6 were incorporated in the text suggested by the Working Party.

108. The amendment of Brazil, Panama, Peru and Poland (A/C.3/L.657) was to replace the texts transmitted by the Working Party for a new paragraph 3 (see para. 102 above) by the following:

"3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

109. The amendment of Ceylon (A/C.3/L.658) was to replace the above four-Power text by the following:

"When deprivation of life constitutes the crime of genocide due regard shall be paid to the principles and purposes of the Convention on the Prevention and Punishment of the Crime of Genocide, the provisions of which shall apply to the States that are Parties thereto."

This amendment was withdrawn by the representative of Ceylon at the 820th meeting.

Issues discussed

110. One issue discussed was whether or not article 6 should provide for the abolition of capital punishment. The question arose in connexion with the second part of the amendment of Colombia and Uruguay (A/C.3/L.644) which provided that "the death penalty shall not be imposed on any person". Those supporting the clause maintained that article 6, which guaranteed the right to life, should not in any way sanction the taking of life, but should prohibit the death penalty. The existence of capital punishment could not be justified and was contrary to the modern concept of penalty, which was to bring about the

rehabilitation of the offender. Moreover, it was always possible that an innocent person might be convicted; rectification of any error would be precluded if the convicted person were executed. It was also pointed out that capital punishment had no deterrent effect on crimes, as a comparison of criminal statistics of various countries would show. On the other hand, a majority of representatives, while appreciating the humanitarian motives inspiring the amendment, felt that its adoption would create difficulties for countries where capital punishment existed. The abolition of capital punishment was a highly controversial question; it was better to leave the problem to each State concerned to resolve. However, in order to avoid the impression that the Covenant sanctioned capital punishment, it was agreed to add a clause to the effect that nothing in the article should be invoked to delay or prevent the abolition of capital punishment by any State Party. Some representatives preferred a more positive text such as that originally proposed by Panama (A/C.3/L.653) by which States Parties would "recognize the propriety of promoting the abolition of the death penalty". It was suggested that concrete measures designed to promote the abolition of the death penalty should be taken. For example, seminars might be organized or studies made on the subject by the United Nations.

111. A majority of the Committee felt that the article should start by affirming the inherent right of everyone to life. They therefore supported the clause "Every human being has the inherent right to life", as proposed in the amendments submitted by Colombia and Uruguay (A/C.3/L.644), Panama (A/C.3/L.653) and Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654). It was held that the right to life was not a right conferred on the individual by society. Society, in fact, owed a duty to the individual - that of protecting his right to life. Those opposing the clause did not disagree with the principle it enunciated; they objected to its inclusion, since it was a declaratory statement and, therefore, out of place in a legal instrument.

112. The amendment submitted by Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654) led to discussion as to whether the right to life should be protected by law "from the moment of conception". Those supporting the amendment maintained that it was only logical to guarantee the right to life

from the moment life began. The provisions of paragraph 4 of the draft article aimed at the protection of the life of the unborn child whose mother was sentenced to death; that protection should be extended to all unborn children. It was pointed out that the legislation of many countries accorded protection to the unborn child. On the other hand, the amendment was opposed on the grounds that it was impossible for the State to determine the moment of conception and, hence, to undertake to protect life from that moment. Moreover, the proposed clause would involve the question of the rights and duties of the medical profession. Legislation on the subject was based on different principles in different countries and it was, therefore, inappropriate to include such a provision in an international instrument.

113. There was discussion concerning the clause "No one shall be arbitrarily deprived of his life"; this was objected to as vague, since the meaning of "arbitrarily" was not clear. It was recalled that the members of the Commission on Human Rights had not been able to reach agreement on the meaning of the term, some holding that it meant "illegally" while others interpreted it to mean "unjustly", and still others understood it to mean both. It could also be said, as one delegation pointed out, that a person who suffered an accidental death was deprived of his life arbitrarily. Since the term had no precise legal meaning, its use in a legal instrument should be avoided. States subscribing to the Covenant should know the exact scope of their obligations. However, other representatives saw no difficulty, as far as their countries were concerned, in applying the clause. A number of representatives maintained that the clause meant that no person might be deprived of his life except "in accordance with law", and that nothing in the clause would entitle the international community to judge whether the law of a particular country was just or unjust. Some stated that the term "arbitrarily" presupposed intention or the act of a conscious will, hence death by accident was not covered by the clause. The word "arbitrarily" should be taken to mean "fixed or done capriciously or at pleasure; without adequate determining principle; depending on the will alone; tyrannical; despotic; without cause based upon law; not governed by any fixed rule or standard". The term was synonymous with the expression "without due process of law". It implied such guarantees as the right to fair trial, protection against false arrest, etc. Others felt that the term "arbitrarily" had ethical implications; it meant not only "illegally" but "unjustly".

114. Some representatives preferred the formulation proposed by the Netherlands (A/C.3/L.651), which was based on article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950. The amendment would specify the cases in which deprivation of life would be deemed lawful. The majority, however, did not favour such a formulation, as any enumeration would necessarily be incomplete and would, moreover, tend to convey the impression that more importance was being given to the exceptions than to the right itself. A number of representatives felt that the clause providing that no one should be deprived of his life "arbitrarily" would indicate that the right to life was no absolute and would obviate the necessity of setting out the possible exceptions in detail.

115. The clause in paragraph 2 to the effect that the death sentence might not be imposed except in accordance with law "in force at the time of the commission of the offence" also gave rise to some discussion. It was pointed out that such a clause was intended to ensure that no law imposing the death penalty could be made retroactive. However, it was maintained that the clause was unnecessary since the question of non-retroactivity of penal laws was fully covered in article 15 of the draft Covenant. Moreover, article 15 not only prohibited the imposition of a heavier penalty than that applicable at the time of the commission of the offence, but also entitled the offender to benefit from any subsequent law providing for a lighter penalty.

116. The question whether reference should be made to the Convention on the Prevention and Punishment of the Crime of Genocide was also discussed. The question arose in connexion with paragraph 2 of the article and the amendment submitted by Brazil, Panama, Peru and Poland (A/C.3/L.657). It was pointed out, on the one hand, that it was not necessary to include a safeguarding clause in favour of the Genocide Convention, since there was no conflict or overlapping between that Convention and the draft Covenant. Moreover, a sufficient safeguard would be provided under article 5, which contained a saving clause prohibiting any restriction upon or derogation from rights recognized or existing pursuant to any law, conventions, regulations or custom on the pretext that the Covenant did not recognize such rights or recognized them to a lesser extent. On the other hand, in support of the four-Power amendment, it was argued that a reference

to the Genocide Convention was necessary, since an individual's right to life could not be safeguarded adequately if the group to which he belonged was threatened with extinction. The reference to the Genocide Convention in paragraph 2 was also deemed essential as it would be a further limitation on the imposition of the death penalty.

117. There was some discussion regarding the meaning of paragraph 4 of the draft of the Commission on Human Rights, which provided that sentence of death shall not be carried out on pregnant women. A number of representatives were of the opinion that the clause sought to prevent the sentence of death being carried out before the child was born. However, others thought that the death sentence should not be carried out at all if it concerned a pregnant woman. The normal development of the unborn child might be affected if the mother were to live in constant fear that, after the birth of her child, the death sentence would be carried out.

118. Another question was whether protection against the death penalty should be extended to minors, as proposed in the Japanese amendment (A/C.3/L.650). Those favouring the amendment explained that minors were usually accorded preferential treatment under the criminal legislation of most countries. Under firm moral and intellectual guidance, the delinquent minor could become a useful member of society. On the other hand, those opposing the amendment pointed out that it was for the legislation of each State to specify the classes of persons not liable to the death penalty. The principal reason for providing in paragraph 4 of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child. If for humanitarian reasons the provisions of that paragraph were to be broadened, it would not be sufficient to speak simply of minors, but other classes of persons should also be mentioned, such as, for example, the insane and the aged. Objection was also made to the Japanese amendment on the ground that it would create difficulties for countries where the offender's age at the time of conviction rather than his age at the time of the commission of the offence was taken into account in passing sentence upon him. It was suggested that the clause should read "Sentence of death shall not be imposed on children and young persons" (A/C.3/L.656). In reply, it was pointed out that this

formulation would not prevent the imposition of the death penalty on a person who had committed an offence while still a minor, but whose arrest or conviction did not take place until after he had become of age. Some dissatisfaction was expressed in the Committee over the use of the term "children and young persons". The words "minors", "persons below eighteen years of age" and "juveniles" were suggested as alternatives. The Committee decided to adopt the words "persons below eighteen years of age".

Voting on article 6

119. At the 820th meeting, the Committee voted as follows:

(a) At the request of the representative of Uruguay, a vote by roll call was taken on the amendment of Colombia and Uruguay (A/C.3/L.644). The amendment was rejected by 51 votes to 9, with 12 abstentions, as follows:

In favour: Brazil, Colombia, Dominican Republic, Ecuador, Finland, Italy, Panama, Uruguay, Venezuela.

Against: Afghanistan, Albania, Australia, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Czechoslovakia, Denmark, Egypt, France, Ghana, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Japan, Jordan, Liberia, Luxembourg, Malaya (Federation of), Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Sudan, Syria, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Argentina, Austria, Cuba, Ethiopia, Greece, Guatemala, Peru, Portugal, Spain, Sweden, Thailand, United States of America.

(b) The Costa Rican amendment (A/C.3/L.648) was rejected by 58 votes to 4, with 10 abstentions.

(c) The Netherlands amendment (A/C.3/L.651) was rejected by 50 votes to 9, with 11 abstentions.

(d) The clause "Every human being has the inherent right to life" (see report of the Working Party, A/C.3/L.655, para. 6 (b) (i)) was adopted by 65 votes to 3, with 4 abstentions.

(e) The amendment of Belgium, Brazil, El Salvador, Mexico and Morocco (A/C.3/L.654), "From the moment of conception, this right shall be protected by law" (A/C.3/L.655, para. 6 (b) (ii)) was rejected by 31 votes to 20, with 17 abstentions.

(f) The clause "This right shall be protected by law" (A/C.3/L.655, para. 6 (b) (ii)) was adopted by 69 votes to none, with 1 abstention.

(g) The clause "No one shall be arbitrarily deprived of his life" (A/C.3/L.655, para. 6 (b) (iii)) was voted on by roll call at the request of the representative of Syria, and adopted by 46 votes to 12, with 14 abstentions, as follows:

/...

- In favour: Afghanistan, Albania, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Ghana, Greece, Haiti, Hungary, Indonesia, Iraq, Ireland, Jordan, Liberia, Malaya (Federation of), Mexico, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Sudan, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia.
- Against: Argentina, Australia, Canada, Colombia, France, Israel, Morocco, Netherlands, New Zealand, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay.
- Abstaining: Ceylon, China, Finland, Guatemala, India, Iran, Italy, Japan, Luxembourg, Nepal, Pakistan, Portugal, United States of America, Venezuela.

Paragraph 2

(h) At the request of the representative of Poland, a separate vote was taken on the words "in force at the time of the commission of the crime and" in the text submitted by the Working Party for paragraph 2 (A/C.3/L.655, para. 8) as orally revised. These words were retained by 29 votes to 25, with 16 abstentions.

(i) Paragraph 2 was voted on by roll call at the request of the representative of Colombia and adopted by 46 votes to 7, with 19 abstentions, as follows:

- In favour: Albania, Argentina, Australia, Austria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Iran, Italy, Japan, Liberia, Malaya (Federation of), Morocco, Norway, Pakistan, Panama, Peru, Philippines, Poland, Romania, Spain, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.
- Against: Colombia, Denmark, Iraq, Ireland, New Zealand, Uruguay, Venezuela.
- Abstaining: Afghanistan, Belgium, Cambodia, Egypt, Indonesia, Israel, Jordan, Luxembourg, Mexico, Nepal, Netherlands, Nicaragua, Portugal, Saudi Arabia, Sudan, Sweden, Syria, United States of America, Yemen.

Paragraph 3

(j) The words "When deprivation of life constitutes the crime of genocide, it is understood that" in the text for new paragraph 3 proposed by Brazil, Panama, Peru and Poland (A/C.3/L.657) were voted on separately at the request of the representative of Canada and adopted by 37 votes to 14, with 19 abstentions. The four-Power amendment as a whole was adopted by 49 votes to 5, with 18 abstentions.

Paragraph 4

(k) At the request of the representative of Belgium, the words "in all cases" in the second sentence of paragraph 4 (former para. 3 of the draft) of the Commission on Human Rights were voted on separately and adopted by 57 votes to 1, with 13 abstentions. Paragraph 4 as a whole was adopted by 69 votes to none, with 2 abstentions.

Paragraph 5

(l) The United Kingdom amendment (A/C.3/L.656) to the text proposed by Japan (A/C.3/L.650) for paragraph 5 (former para. 4 of the Commission's draft) was rejected by 41 votes to 12, with 19 abstentions.

(m) By 21 votes to 19, with 28 abstentions, the phrase "persons below eighteen years of age" was adopted in substitution for the words "children and young persons" in the Japanese amendment (A/C.3/L.650). In view of the adoption of the phrase, the other alternative terms suggested by the Working Party were not put to the vote.

(n) A request by the representative of China and of Canada for a separate vote on the words "shall not be imposed for crimes committed by persons below eighteen years of age, and" was rejected by 29 votes to 21, with 16 abstentions.

(o) Paragraph 5 as a whole, as amended, was adopted by 53 votes to 5, with 14 abstentions.

Paragraph 6

(p) The text of paragraph 6 suggested by the Working Party (A/C.3/L.655, para. 13), as revised, was adopted by 54 votes to 4, with 14 abstentions.

(q) Article 6 as a whole, as amended, was voted on by roll call at the request of the representative of Colombia, and adopted by 55 votes to none, with 17 abstentions, as follows:

In favour: Afghanistan, Albania, Argentina, Austria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Chile, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Israel, Ireland, Japan, Jordan, Liberia, Mexico, Morocco, Nepal, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Sudan, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia.

Against: None

Abstaining: Australia, Belgium, Canada, China, Colombia, Denmark, Italy, Luxembourg, Malaya (Federation of), Netherlands, New Zealand, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Text as adopted

120. Article 6, as adopted by the Committee, reads as follows:

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

"2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of this Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

"3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

"4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

"5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

"6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the Covenant."
