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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Third Committee

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1. At its 881st plenary meeting on 1 October 1960, the General Assembly decided to allocate to the Third Committee for consideration and report item 34 of the agenda of the fifteenth session: "Draft International Covenants on Human Rights".
2. The draft Covenants have been under discussion in the General Assembly since its ninth session. So far, the Third Committee has adopted: the preamble and article 1 of each Covenant; all the substantive articles (article 6 to 16) of the draft Covenant on Economic, Social and Cultural Rights; and articles 6 to 14 of the draft Covenant on Civil and Political Rights.^{1/}
3. The Third Committee, at its 1007th to 1028th meetings, from 31 October to 21 November 1960, discussed and adopted the texts of articles 15, 16, 17 and 18 of the draft Covenant on Civil and Political Rights. The proceedings of the Committee are briefly described below.

^{1/} See, 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; ibid., Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1; ibid., Thirteenth Session, Annexes, agenda item 32, document A/4045; ibid., Fourteenth Session, Annexes, agenda item 34, document A/4299.

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

ARTICLE 15

4. Article 15 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights,^{2/} read as follows:

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

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

5. The Committee discussed this article at its 1007th to 1014th meetings.

Amendments submitted

6. Amendments were submitted by Argentina (A/C.3/L.865), the Philippines (A/C.3/L.867), Japan (A/C.3/L.869), Norway (A/C.3/L.866), the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.793 and A/C.3/L.870) and the Ukrainian Soviet Socialist Republic (A/C.3/L.868).

7. The first part of the amendment of Argentina (A/C.3/L.865) was to replace the first sentence of paragraph 1 by the following:

"No one shall be held guilty of any criminal offence on account of any act or omission which, at the time it was committed, did not constitute a criminal offence under the applicable law."

The second part of the amendment of Argentina was to delete paragraph 2.

8. The amendment of the Philippines (A/C.3/L.867) was to replace the words "held guilty of", in the first sentence of paragraph 1, by the words "tried or punished for". This amendment was withdrawn at the 1012th meeting.

^{2/} Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), annex IB.

9. The amendment of Japan (A/C.3/L.869) was to add the following to the end of the first sentence of paragraph 1: "or which no longer constitutes such an offence at the time when the judgement is rendered". The amendment was withdrawn at the 1012th meeting.
10. The amendment of Norway (A/C.3/L.866) was to delete the last sentence of paragraph 1. The representative of Norway stated at the 1011th meeting that he would not press his amendment to a vote.
11. The original amendment of the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.795) was to replace the last sentence of paragraph 1 by the following:

"If the maximum penalty under the law in force at the time when the sentence is passed is less than was provided by the law in force at the time when the offence was committed, the offender shall benefit thereby."

The representative of the United Kingdom later revised this text to read (A/C.3/L.870):

"If the law in force at the time when the sentence is passed is more favourable to the offender than the law in force at the time when the offence was committed, the offender shall benefit thereby."

After some discussion the representative of the United Kingdom withdrew this amendment (1013th meeting), and orally proposed instead that the words "and before the sentence is passed" be inserted after the words "commission of the offence" in the last sentence of paragraph 1. This text was eventually put to a vote.

12. The amendment of the Ukrainian Soviet Socialist Republic (A/C.3/L.868) was to insert between "provision is made by law" and "for the imposition of a lighter penalty", in the last sentence of paragraph 1, the following: "for the removal of the act from the category of punishable offences or". This amendment was withdrawn at the 1012th meeting.

Issues discussed

13. Many representatives were in favour of the text submitted by the Commission on Human Rights. The draft article embodied the principle nullum crimen sine lege, and prohibited the retroactive application of criminal law. It was pointed out that there could be no offences other than those specified by law, either national or international.

14. Some representatives thought that the words "under national or international law" in the first sentence of paragraph 1 should be replaced by the words "under the applicable law". They suggested that explicit reference to international law was undesirable since the notion of international criminal law was at a developing stage, its substance was still uncertain, and embodiment of this concept in the article might prevent States from becoming parties to the Covenants. They preferred the term "applicable law" which meant the law actually in force; it was a more flexible term in that it would cover both national and international law. Other delegations maintained that the amendment would weaken the text and lead to confusion. Although much remained to be done with regard to the formulation and codification of international penal law, its existence could not be denied, and customary international law, as well as numerous international conventions, condemned certain acts as crimes against humanity or against peace and security of mankind.

15. The deletion of paragraph 2 was supported by several representatives, who stated that the expression "criminal according to the general principles of law recognized by the community of nations" had no precise legal meaning. Offences could not be defined on the basis of principles, much less on the basis of "general" principles. Any penal provision should first define the offence and secondly lay down the penalty. No court should be allowed to convict an individual by applying vague general principles. It was pointed out in this connexion that the Nürnberg principles defined certain categories of acts regarded as criminal, but did not lay down definite penalties.

16. Other representatives expressed the view that the draft Covenants were intended to be more than merely legal instruments. They were a proclamation of fundamental rights and freedoms and should not simply reflect the present situation but be an instrument of progress. Moreover, retention of paragraph 2 would eliminate any doubts regarding the legality of the judgements rendered by the Nürnberg and the Tokyo tribunals. It was also pointed out that the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgements of that Tribunal were affirmed by the General Assembly in resolution 95 (I). The provision of paragraph 2 would confirm and strengthen those principles, and would ensure that if in the future crimes should be perpetrated similar to those punished at Nürnberg, they would be punished in accordance with the same principles.

17. Regarding the last sentence of paragraph 1, some delegations, while in agreement with its underlying principle, felt that the wording did not express the meaning which the Commission on Human Rights had intended to convey. In their view the provision as worded could be interpreted to mean that an offender who was already serving a sentence was automatically entitled to have it reduced if the law were revised to specify a lighter penalty for the same offence. It was pointed out that in some legal systems all cases were reviewed at regular intervals and sentences were often reduced. The reduction of the penalty, however, was not and should not be automatic. The judge should decide on such questions on the merits of each case. Moreover, the wording of the provision seemed to indicate that the one applicable penalty should be replaced by another and lighter penalty. In some countries, however, there was not a single penalty, but a scale of penalties for each offence, the actual term of imprisonment being decided by the judge.

18. Some representatives, on the other hand, considered that the operation of the principle underlying the last sentence of paragraph 1 should not be limited to the time when sentence was passed. A milder penal law should apply retroactively to all offenders whether or not they had been sentenced.

19. Certain representatives thought that, to ensure the maximum protection for the accused, the scope of paragraph 1 should be enlarged. Individuals should be protected not only against being held criminally responsible for an act or omission not punishable as an offence at the time when it was committed but also against the possibility of being brought to trial for such act or omission. Several members of the Committee felt, however, that the question of whether or not an act or omission constituted a criminal offence was to be decided by the court and the accused should therefore be brought to trial.

Voting on article 15

20. At its 1013th meeting, the Committee voted as follows:

Paragraph 1:

(a) The amendment of Argentina (A/C.3/L.865 and Corr.1) was rejected by a roll-call vote of 47 to 23, with 10 abstentions. The voting was as follows:

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In favour: Argentina, Bolivia, Brazil, Cambodia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Italy, Japan, Lebanon, Paraguay, Peru, Portugal, Saudi Arabia, Spain, United States of America, Uruguay, Venezuela.

Against: Albania, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Cuba, Czechoslovakia, Denmark, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Jordan, Liberia, Libya, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Somalia, Sudan, Sweden, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.

Abstaining: Afghanistan, China, Cyprus, Ecuador, Mexico, Thailand, Tunisia, Turkey, Union of South Africa, Yemen.

(b) The oral amendment of the United Kingdom to insert the words "and before the sentence is passed" after the words "commission of the offence" in the last sentence of paragraph 1 was rejected by a roll-call vote of 34 to 26, with 18 abstentions. The voting was as follows:

In favour: Australia, Austria, Belgium, Canada, Chile, China, Cyprus, Denmark, Federation of Malaya, Finland, France, Ghana, Haiti, Israel, Italy, Japan, Lebanon, Netherlands, New Zealand, Norway, Pakistan, Portugal, Saudi Arabia, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Albania, Argentina, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Chad, Costa Rica, Cuba, Czechoslovakia, El Salvador, Greece, Guatemala, Hungary, India, Iraq, Ireland, Jordan, Liberia, Libya, Nigeria, Peru, Philippines, Poland, Romania, Somalia, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela.

Abstaining: Afghanistan, Colombia, Dominican Republic, Ecuador, Ethiopia, Indonesia, Iran, Mexico, Morocco, Nepal, Paraguay, Sudan, Thailand, Tunisia, Union of South Africa, United Arab Republic, Yemen, Yugoslavia.

(c) Paragraph 1 as a whole was adopted by a roll-call vote of 56 to none, with 24 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Chile, China, Colombia, Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Federation of Malaya, France, Ghana, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Japan, Jordan, Liberia, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Pakistan, Philippines, Poland, Portugal, Romania, Somalia, Sudan, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Yemen, Yugoslavia.

Against: None.

Abstaining: Argentina, Bolivia, Brazil, Cambodia, Canada, Costa Rica, Denmark, Dominican Republic, El Salvador, Finland, Guatemala, Italy, Lebanon, Norway, Paraguay, Peru, Saudi Arabia, Spain, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

Paragraph 2:

(d) The amendment of Argentina (A/C.3/L.865 and Corr.1, item 2) was rejected by a roll-call vote of 51 to 19, with 10 abstentions. The voting was as follows:

In favour: Argentina, Brazil, Chile, China, Colombia, Costa Rica, El Salvador, Guatemala, Haiti, Italy, Japan, Lebanon, Paraguay, Peru, Portugal, Saudi Arabia, Spain, Uruguay, Venezuela.

Against: Afghanistan, Albania, Australia, Austria, Belgium, Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Cuba, Cyprus, Czechoslovakia, Denmark, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Hungary, India, Indonesia, Iran, Iraq, Israel, Jordan, Liberia, Libya, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Romania, Somalia, Sudan, Sweden, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, Yugoslavia.

Abstaining: Cambodia, Canada, Dominican Republic, Ecuador, Ireland, Mexico, Pakistan, Thailand, Turkey, Union of South Africa.

(e) Paragraph 2 of the original text was adopted by a roll-call vote of 53 to 4, with 22 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Australia, Austria, Belgium, Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Hungary, India, Indonesia, Iran, Iraq, Israel, Jordan, Liberia, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Romania, Somalia, Sudan, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, Yugoslavia.

Against: Argentina, Brazil, Japan, Lebanon.

Abstaining: Cambodia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Ireland, Italy, Pakistan, Paraguay, Peru, Portugal, Saudi Arabia, Spain, Thailand, Union of South Africa, Uruguay, Venezuela.

Article 15 as a whole

(f) Article 15, as a whole, as submitted by the Commission on Human Rights, was adopted by a roll-call vote of 56 to none, with 23 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chad, Chile, China, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Jordan, Liberia, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Somalia, Sudan, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Yemen, Yugoslavia.

Against: None.

Abstaining: Argentina, Bolivia, Brazil, Cambodia, Canada, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Italy, Japan, Lebanon, Paraguay, Peru, Portugal, Saudi Arabia, Spain, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

21. The text of article 15 adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 16

22. Article 16 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I F), read as follows:

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

23. The Committee discussed this article at its 1014th meeting.

24. No amendments were submitted.

Issues discussed

25. There was some discussion concerning the distinction between being a person before the law and having legal capacity to act. There was general agreement that article 16 was intended to ensure that every person would be a subject, and not an object, of the law; but that it was not intended to deal with the question of a person's legal capacity to act, which might be restricted for such reasons as minority or insanity.

26. One member of the Committee questioned whether the word "everywhere" should be deleted; not only was the matter to be dealt with in article 2, which specified that rights recognized in the Covenant applied to all individuals within the territory and subject to the jurisdiction of the respective Parties, but the Parties could accept responsibility for implementing the Covenant only within their respective jurisdictions. It was generally considered that the word "everywhere" was not superfluous. The Committee noted that the text of the article followed that of article 6 of the Universal Declaration of Human Rights.

27. One member of the Committee suggested that article 16 should precede article 14. It was agreed, however, that the order of the articles should be determined after consideration of all the articles had been completed.

Voting on article 16

28. Article 16 as proposed by the Commission on Human Rights was adopted by 74 votes to none, with 1 abstention.

29. The text of the article as adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 17

30. Article 17 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I B), reads as follows:

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

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

31. The Committee discussed the article at its 1014th to 1021st meetings.

Amendments submitted

32. Amendments were submitted by Cuba (A/C.3/L.872), India (A/C.3/L.873), Denmark and the Netherlands (A/C.3/L.874 and Corr.1), and Denmark, Ireland and the Netherlands (A/C.3/L.874/Rev.1 and Rev.2).

33. The amendment of Cuba (A/C.3/L.872) was to replace the text of article 17 by the following:

"No one shall be subjected arbitrarily or unlawfully to interference with his privacy, home or correspondence, nor to attacks to his reputation."

This amendment was withdrawn at the 1017th meeting.

34. The amendment of India (A/C.3/L.873) was to replace article 17 by the following:

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. Everyone has the right to the protection of the law against such interference.

"2. No one shall be subjected to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such attacks."

This amendment was withdrawn at the 1019th meeting and, at the suggestion of the Philippines, the delegation of India orally proposed that the word "family" be inserted after the word "privacy" in paragraph 1 of the original text.

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35. The amendment of Denmark and the Netherlands (A/C.3/L.874 and Corr.1) was to substitute "private life, his family" for the word "privacy" in paragraph 1, and to add a new paragraph 3 to the article, to read as follows:

"3. There shall be no interference by a public authority with the exercise of everyone's right to respect for his private life, his family, his home and correspondence, except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

This amendment was replaced by an amendment submitted by Denmark, Ireland and the Netherlands (A/C.3/L.874/Rev.1), which incorporated the Indian amendment (A/C.3/L.873) and would replace the text of article 17 by the following:

"1. (a) No one shall be subjected to arbitrary interference in his privacy, family, home or correspondence. No one shall interfere unlawfully in the privacy, family, home or correspondence of another.

" (b) Everyone has the right to the protection of the law against all such interference.

"2. There shall be no interference by a public authority with the right of everyone to respect for his privacy, family, home or correspondence, except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country or public order (ordre public), for the protection of health or morals, or for the protection of the rights and freedoms of others.

"3. No one shall be subjected to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such attacks."

After the Indian amendment was withdrawn, the sponsors of the three-Power amendment submitted a revised text (A/C.3/L.874/Rev.2) which would add the following paragraph to the original text of article 17:

"3. There shall be no interference by a public authority with the right of everyone to respect for his privacy, family, home or correspondence, except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country or public order (ordre public), for the protection of health or morals, or for the protection of the rights and freedoms of others."

Issues discussed

36. While in agreement with the substance of the article as proposed by the Commission on Human Rights, some members of the Committee felt that its drafting could be improved. Some discussion took place regarding the necessity of retaining both the words "arbitrary" and "unlawful" in paragraph 1. Certain representatives thought that the word "arbitrary" should be omitted from the text, since what was arbitrary was at the same time unlawful. In their view the word "arbitrary" was not precise and might not be appropriate in a legal text. Other representatives stated that the word "arbitrary" did not convey the same meaning as the word "unlawful", and that its retention was not only appropriate, but necessary. There could be lawful measures which were nevertheless arbitrary. One representative emphasized that the terms "arbitrary" and "unlawful" referred to two different concepts: "arbitrary" implied abuse of power by public bodies, while "unlawful" meant action contrary to the law. Another representative pointed out that "arbitrary" related to procedure, whereas "unlawful" related to substance. That representative further suggested that to act in an arbitrary manner meant to act unreasonably where reasonable behaviour was required.

37. Some representatives stated it was desirable to make express provision in the article for the protection of the family, and pointed out that article 12 of the Universal Declaration of Human Rights, on which the present article was based, contained a reference to the "family". The addition of the word "family" was deemed desirable, particularly since in some countries "home", in the strict sense of the term, did not refer to the family home and all persons living in it, but merely to the dwelling-place. Several members, on the other hand, considered that the addition of the word "family" in paragraph 1 was unnecessary since the words "home" and "privacy" indicated also the idea of the family. It was pointed out that the article protected the individual and, since the family was composed of individuals, the protection necessarily extended to the family.

38. Certain members of the Committee felt that the notion of honour varied from one country to another and that this word should be deleted. In their view, the word "reputation" had a broader meaning than the word "honour" and the latter was therefore superfluous. Others thought that honour and reputation were two different concepts and that both should be retained. It was pointed out that a slur on an

individual's honour involved a judgement of his moral conduct, whereas a slur on his reputation might concern merely an alleged failure to conform to professional or social standards. Moreover, both words were used in article 12 of the Universal Declaration of Human Rights and in many, if not all, legal systems.

39. Some discussion took place on whether or not this article should contain a paragraph limiting the cases in which a public authority might properly interfere with one's privacy, family, home or correspondence. Some representatives felt that the only protection offered by the article, as drafted by the Commission on Human Rights, was that any interference should be authorized by law and that it should not be arbitrary. They suggested that this was insufficient and that a new paragraph should be added indicating the extent to which a State would be allowed, by law, to authorize interference by a public authority. Those who opposed the amendment held that in its original form the article envisaged the protection of the individual against interference both by public authorities and by private individuals and organizations. The proposed new paragraph would tend to restrict the scope of the article, for it would refer only to possible interference by a public authority. They also stated that the Committee could not adopt a text which contemplated intervention in matters coming essentially within the domestic jurisdiction of Member States; hence it could not limit the extent to which the State might interfere with the individual's right to privacy, family, home and correspondence. Article 17 should merely enunciate principles, leaving each State free to determine how those principles should be put into effect.

Voting on article 17

40. At its 1020th meeting the Committee voted as follows:

(a) The Indian oral amendment to insert the word "family" after the words "his privacy" in paragraph 1 was adopted unanimously.

(b) Paragraph 1, as amended, was adopted by 68 votes to none, with 5 abstentions.

(c) Paragraph 2 was adopted by 69 votes to none, with 4 abstentions.

(d) A motion by the representative of Uruguay for a separate vote on the first part of the three-Power amendment (A/C.3/L.874/Rev.2) up to and including the words "... in accordance with the law" and on the remaining part was rejected by 42 votes to 10, with 21 abstentions. The three-Power amendment (A/C.3/L.874/Rev.2) was rejected by a roll-call vote of 38 to 20, with 16 abstentions. The voting was as follows:

In favour: Afghanistan, Austria, Belgium, Cambodia, China, Cyprus, Denmark, Federation of Malaya, Finland, France, Greece, Iceland, Ireland, Israel, Italy, Japan, Netherlands, Pakistan, Turkey, United Kingdom of Great Britain and Northern Ireland.

Against: Albania, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Costa Rica, Cuba, Czechoslovakia, Ethiopia, Ghana, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Libya, Morocco, Nepal, Nigeria, Peru, Poland, Portugal, Romania, Saudi Arabia, Somalia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia.

Abstaining: Argentina, Australia, Burma, Canada, Colombia, Dominican Republic, Mexico, New Zealand, Norway, Paraguay, Philippines, Spain, Sweden, Thailand, United States of America, Uruguay.

(e) Article 17 as a whole, as amended, was adopted by a roll-call vote of 70 to none, with 3 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Israel, Italy, Japan, Lebanon, Liberia, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Somalia, Spain, Sudan, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: None.

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

41. The text of article 17 as adopted by the Committee is contained in the annex to the present report.

ARTICLE 16

42. Article 16 of the draft Covenant as submitted by the Commission on Human Rights (E/2573, annex I B) read as follows:

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

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

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

43. The Committee discussed the article at its 1021st to 1027th meetings. The attention of the Committee was drawn (by virtue of Economic and Social Council resolution 772 C (XXX)) to a study of discrimination in the matter of religious rights and practices prepared by Mr. Arcot Krishnaswami and to draft Principles on Freedom and Non-Discrimination in the Matter of Religious Rights and Practices which the Sub-Commission on Prevention of Discrimination and Protection of Minorities prepared on the basis of that study. The Principles have been submitted to Governments for their observation.

Amendments submitted

44. Amendments were submitted by Greece (A/C.3/L.875), by Saudi Arabia (A/C.3/L.876) and by Brazil and the Philippines (A/C.3/L.877).

45. The amendment of Greece (A/C.3/L.875) was to add a new paragraph based on provisions contained in article 14, paragraph 3 of the draft Covenant on Economic, Social and Cultural Rights as approved by the Third Committee at the twelfth session.^{3/} It read as follows:

"4. The States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions."

^{3/} See Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, para. 50.

46. The amendment of Saudi Arabia (A/C.3/L.876) was to delete the words "to maintain or to change his religion or belief, and freedom" in paragraph 1, and to replace paragraph 2 by the following: "No one shall be subject to coercion which would deprive him of his right to freedom of religion or belief". This amendment was withdrawn at the 1026th meeting in favour of the text submitted by Brazil and the Philippines (A/C.3/L.877).

47. The amendment submitted by Brazil and the Philippines (A/C.3/L.877) was to replace in both paragraphs 1 and 2 the words "to maintain or to change his religion or belief" by the words "to have a religion or belief of his choice". At the 1027th meeting, the sponsors accepted a suggestion by the representative of the United Kingdom to add the words "or to adopt" after the words "to have" in their amendments to paragraphs 1 and 2.

Issues discussed

Scope of the right

48. Much of the discussion centred on whether the article should contain explicit reference to the right of everyone to change his religion or belief. Some members of the Committee held that this right was already implicit in the first sentence of paragraph 1, reading "Everyone shall have the right to freedom of thought, conscience and religion". Concern was expressed that specific mention of the right to "change" one's religion or belief might be interpreted as unduly favouring missionary activities or concerted efforts to propagate anti-religious beliefs or as encouraging doubts in the minds of believers. The Saudi Arabian amendment (A/C.3/L.876) was intended to meet this objection. In this connexion, the representative of Saudi Arabia emphasized that the Holy Places of Islam which each year attracted pilgrims from many countries were situated in his country and his delegation was therefore in a favourable position to interpret Muslim opinion on the question. Islam spread primarily by example rather than by organized missionary work. However, the delegation of Pakistan stated that Islam was a missionary religion and would not wish to deny other faiths the free right of conversion. The view was also expressed that the list of freedoms enumerated in the second sentence was, in any case, not complete, and that the general principles enunciated in the first sentence was not only sufficient but, in fact, afforded a better protection to the rights of the individual.

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49. Many members, on the other hand, preferred the text prepared by the Commission on Human Rights. They stressed that the paramount issue was the protection of the individual's freedom of choice in matters of thought, conscience and religion. The detailed provisions, including recognition of the right not only to maintain but, equally, to change one's religion or belief, were necessary to give legal content to that freedom. It was also pointed out that the article dealt only with the right to change one's own religion or belief, not that of other persons.

50. The amendment submitted by Brazil and the Philippines (A/C.3/L.877), to replace the words "freedom to maintain or to change his religion or belief" by the words "freedom to have a religion or belief of his choice", was welcomed as a compromise text. Concern was, however, expressed by some delegations that the words "to have" might be interpreted in a static manner, barring a change of religion or belief once a choice had been made; the addition after "freedom to have" of the words "or to adopt" was intended to clarify this point.

51. Questions were raised as to the scope of the words "religion" and "belief". It was asked whether the word "religion" might not be interpreted as referring only to such faiths as had scriptures or prophets and whether the word "belief" covered also secular beliefs. Some representatives thought that "religion" covered all belief in a divinity, irrespective of the existence of scriptures or prophets; others said it would not be desirable for the Committee to attempt to define "religion". As regards "belief", while some members held that only religious beliefs should be dealt with in article 18, others stated that the article was intended to provide for complete freedom of thought, conscience and religion, and thus, of necessity, covered non-religious beliefs. Requested by one delegation to state whether the word "belief" was meant to have a religious connotation, or whether it referred also to secular convictions, the representative of the Secretary-General said that he would not presume to give any personal interpretation to the Committee of the term "belief" or even to indicate what interpretation might currently be held in the Secretariat. He however drew the Committee's attention to the foot-note on page 8 of the study on discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/200), which read:

"In view of the difficulty of defining 'religion', the term religion or belief is used in this study to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism."

On the basis of that study, the Sub-Commission had prepared draft Principles on freedom and non-discrimination in the matter of religious rights and practices, which the Economic and Social Council had requested the Secretariat to send to Governments for their comments. Part I, article 4, of those draft Principles read as follows:

"Anyone professing any religious or non-religious belief shall be free to do so openly without suffering any discrimination on account of his religion or belief."

The draft Principles were still before Governments.

52. Regarding paragraph 2 it was also stated that the words "coercion which would impair his freedom ..." were broader in scope and therefore preferable to "coercion which would deprive him of his freedom ...", since the former covered also indirect pressures. One representative pointed out that the word "coercion", in her interpretation, covered physical as well as more indirect forms of coercion, including improper inducements.

Limitations clause

53. Although no separate discussion took place on paragraph 3, several delegations expressed a preference for having the limitations clauses of the various articles of the Covenant drafted mutatis mutandis, in identical terms.

Addition of a new paragraph

54. With regard to the Greek amendment (A/C.3/L.875), some delegations expressed the view that the Covenant was intended to protect the rights of the individual and not the rights of third parties. A number of delegations while not opposed to the substance of the amendment, pointed out that the same provisions were already contained in article 14, paragraph 3 of the draft Covenant on Economic, Social and Cultural Rights, and moreover that they had no place in a Covenant on Civil and Political Rights. It was held on the other hand, that the provisions should be repeated in article 18, since some States might become Parties to the Covenant on Civil and Political Rights only. It was agreed that any such provisions should be expressed in terms identical with those of the above-mentioned article 14, paragraph 3.

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55. The question was asked, specifically, whether under the amendment States would be obliged to provide instruction in the religion of the parents' choice. The sponsor replied in the negative and explained that States would not be committed to doing anything other than to respect the wish of parents that their children be brought up in their own religion. Reference was also made in this connexion to the report of the Third Committee on article 14, paragraph 5 of the Covenant on Economic, Social and Cultural Rights.^{4/}

56. The view was expressed that the religious and moral upbringing of children who were deprived of their parents should follow the expressed or presumed wish of their parents. Some representatives referred in this connexion to the provision of the Declaration of the Rights of the Child,^{5/} according to which "the best interests of the child shall be the paramount consideration".

Voting on article 18

57. At the 1027th meeting, the Committee voted as follows on the text submitted by the Commission on Human Rights and the amendments thereto:

Paragraph 1

At the request of the representative of Afghanistan, a separate vote was taken on the words "or to adopt" appearing in the part of the amendment of Brazil and the Philippines (A/C.3/L.877), as orally amended, which related to paragraph 1. The words were adopted by 54 votes to none, with 15 abstentions.

The remainder of the amendment to paragraph 1 was adopted by 67 votes to none, with 4 abstentions.

Paragraph 1, as amended, was adopted by 70 votes to none, with 2 abstentions.

Paragraph 2

In view of the result of the separate vote taken in paragraph 1, above, the representative of Afghanistan did not request a separate vote on the words "or to adopt".

^{4/} Ibid., para. 47.

^{5/} adopted by resolution 1386 (XIV) of the General Assembly.

The part of the Brazilian-Philippine amendment which related to paragraph 2
was adopted by 67 votes to none, with 6 abstentions.

Paragraph 2, as amended, was adopted by 72 votes to none, with 2 abstentions.

Paragraph 3

Paragraph 3 as drafted by the Commission on Human Rights was adopted
unanimously.

New paragraph 4

The Greek amendment (A/C.3/L.875) was adopted by a roll-call vote of
30 to 17, with 27 abstentions and became paragraph 4 of article 18. The voting
was as follows:

In favour: Afghanistan, Argentina, Austria, Brazil, Canada, China,
Costa Rica, Cyprus, Denmark, Dominican Republic, Finland,
France, Ghana, Greece, Guatemala, Haiti, Iran, Ireland,
Israel, Italy, Lebanon, Liberia, Nepal, Norway, Portugal,
Spain, Sweden, Turkey, United Kingdom of Great Britain and
Northern Ireland, United States of America.

Against: Albania, Bulgaria, Byelorussian Soviet Socialist Republic,
Ceylon, Chile, Cuba, Czechoslovakia, Hungary, India, Mexico,
Nigeria, Poland, Romania, Sudan, Ukrainian Soviet Socialist
Republic, Union of Soviet Socialist Republics, Yugoslavia.

Abstaining: Australia, Bolivia, Burma, Cambodia, Colombia, Dahomey,
El Salvador, Federation of Malaya, Indonesia, Iraq,
Japan, Jordan, Libya, Morocco, Netherlands, New Zealand,
Pakistan, Paraguay, Peru, Philippines, Saudi Arabia,
Somalia, Thailand, Tunisia, United Arab Republic,
Venezuela, Yemen.

Article 18, as a whole

Article 18 as a whole, as amended, was adopted unanimously.

58. The text of article 18, as adopted by the Committee, is contained in the
annex to the present report.

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ANNEX

Text of articles 15, 16, 17 and 18 of the Draft Covenant
on Civil and Political Rights as adopted by the Third
Committee at the fifteenth session of the General Assembly

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

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

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

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Article 18

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

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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

4. The States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.
