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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Third Committee

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INTRODUCTION

1. At its 1018th plenary meeting, on 27 September 1961, the General Assembly allocated to the Third Committee, for consideration and report, item 35 of the agenda of its sixteenth session: "Draft International Covenants on Human Rights".
2. The draft Covenants have been under consideration in the General Assembly since its ninth session. Prior to the present session, the Third Committee had adopted the preamble and article 1 of each Covenant; all the substantive articles (articles 6 to 16) of the draft Covenant on Economic, Social and Cultural Rights; and articles 6 to 18 of the draft Covenant on Civil and Political Rights.^{1/}
3. Proposals for additional articles to be included in the draft Covenant on Civil and Political Rights were submitted by the representatives of the Union of Soviet Socialist Republics (A/C.3/L.942) and of Poland (A/C.3/L.943).
4. The Third Committee, at its 1070th to 1104th meetings, from 11 October to 14 November 1961, completed consideration of the remaining substantive articles of the draft Covenant on Civil and Political Rights proposed by the Commission on Human Rights (articles 19 to 26). 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; *ibid.*, Fifteenth Session, Annexes, agenda item 34, document A/4625.

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

ARTICLE 19

5. Article 19 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I B), read as follows:

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

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

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

6. The Committee discussed this article at its 1070th to 1078th meetings.

Amendments submitted

7. Amendments were submitted by India (A/C.3/L.919) to paragraphs 2 and 3; by Brazil (A/C.3/L.920) to paragraphs 1 and 3; by the Union of Soviet Socialist Republics (A/C.3/L.921) to paragraph 3; by Indonesia (A/C.3/L.923 and Rev.1) to paragraph 3, revised by India and Indonesia (A/C.3/L.923/Rev.2); by the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.924) to paragraphs 2 and 3; by the United States of America (A/C.3/L.925) to paragraph 3; by Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama, Peru, Uruguay and Venezuela (A/C.3/L.926 and Add.1) to paragraph 3; and by Ethiopia, Ghana, India, Libya, Nigeria, Saudi Arabia and the United Arab Republic (A/C.3/L.929 and Add.1/Corr.1) to paragraph 2.

Amendment to paragraph 1

8. The amendment of Brazil to paragraph 1 (A/C.3/L.920) was to add after the words "without interference" the sentence "Anonymity is not permitted".

Amendments to paragraph 2

9. The amendment of India to paragraph 2 (A/C.3/L.919) was to replace the paragraph by the following:

"2. Everyone shall have the right to freedom of expression; this right shall include freedom to gather, receive and impart without governmental interference, save as provided in paragraph 3, and regardless of frontiers, information and opinions orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices."

This was replaced by the seven-Power amendment (A/C.3/L.929 and Add.1/Corr.1) mentioned in paragraph 11 below.

10. The amendment of the United Kingdom of Great Britain and Northern Ireland to paragraph 2 (A/C.3/L.924) was to replace the words "or through any other media of his choice" by the words "or through the operation of any lawfully operated devices".

11. The amendment of Ethiopia, Ghana, India, Libya, Nigeria, Saudi Arabia and the United Arab Republic (A/C.3/L.929 and Add.1/Corr.1) consisted in replacing "seek" by "gather" and in replacing the phrase "or through any other media of his choice" by the phrase "or by any lawfully operated visual or auditory devices of his choice".

Amendments to paragraph 3

12. The amendment of India to paragraph 3 (A/C.3/L.919) was to replace the paragraph by the following:

"3. The exercise of the rights provided for in the foregoing paragraph carries with it duties and responsibilities. It may, however, be subject only to such necessary restrictions as are clearly defined by law and applied in accordance with the law in respect of: national security and public order (ordre public); systematic dissemination of false reports harmful to friendly relations among nations and of expressions inciting to war or to national, racial or religious hatred; attacks on founders of religions; incitement to violence and crime; public health and morals; the rights, honour and reputation of others; and the fair administration of justice."

13. The amendment of the United States of America (A/C.3/L.925) consisted in replacing the paragraph by the following:

"3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national

security, public order (ordre public), public health or morals or the rights and freedoms of others, to prevent incitement to violence by fostering national, racial or religious hatred, and are consistent with the other rights recognized in this Covenant. However, these limitations shall not be deemed to justify the imposition by any State of prior censorship on news, comments and political opinions and may not be used as grounds for restricting the right to criticize the Government."

14. The amendment of Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama, Peru, Uruguay and Venezuela (A/C.3/L.926 and Add.1) was to have a clause reading "shall not be subject to prior censorship but only to such subsequent liability as is provided by law and is ..." replace the words "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are ...".

15. The amendment of Brazil to paragraph 3 (A/C.3/L.920) was to insert in point (2) the words "including the prevention of war propaganda", between the words "public order" and the words "or of public health or morals". It furthermore would add a point (3), to read: "for preventing any manifestations of racial, religious or class prejudices"; upon approval of this third point, Brazil "would propose the deletion of article 26, since it would then become redundant".

16. The amendment of the Union of Soviet Socialist Republics (A/C.3/L.921) consisted in adding as point (1), following the words "and are necessary", a sub-paragraph reading:

"(1) for the prevention of war propaganda, incitement to enmity among nations, racial discrimination, and the dissemination of slanderous rumours".

Points (1) and (2) were to be re-numbered (2) and (3) respectively

17. The amendment of Indonesia (A/C.3/L.923) consisted in adding at the end of the paragraph: "or peaceful coexistence between nations and races". This was subsequently changed to read "for securing peaceful and neighbourly relations among nations and races (A/C.3/L.923/Rev.1). Later a revision was introduced jointly by India and Indonesia (A/C.3/L.923/Rev.2), reading "(3) for the promotion of peace and friendly relations among peoples and nations".

18. The amendment of the United Kingdom of Great Britain and Northern Ireland to paragraph 3 (A/C.3/L.924) was to add at the end of the paragraph a third point reading "(3) for the protection of official information from unauthorized disclosure".

Issues discussed

19. There was general agreement on the fundamental importance of freedom of opinion and expression. Differences arose primarily over the extent and forms of any limitations that might be allowed. A further question was the relation of article 19 to the relevant articles of the draft Convention on Freedom of Information.

20. Many delegations supported the text of article 19 elaborated by the Commission on Human Rights on the grounds that it struck a balance between the rights of the individual and the requirements of society and the State. Others, however, maintained that additional restrictions should be permitted to prevent freedom of expression from degenerating into licence.

The "anonymity" clause

21. The Brazilian amendment to add at the end of paragraph 1 the sentence "Anonymity is not permitted" (A/C.3/L.920) was supported on the grounds that anonymity might encourage abuses of freedom of information and be harmful to the general interest. It was opposed on the grounds, among others, that anonymity might at times be necessary to protect the author; that such a clause might prevent the use of pen names; and that it could, at most, relate to freedom of expression, i.e., to paragraph 2, but not to the right to hold opinion, referred to in paragraph 1.

"To seek" versus "to gather"

22. There was considerable discussion on whether to retain the expression "freedom to seek ... information" appearing in paragraph 2 as proposed by the Commission on Human Rights or to substitute for it "freedom to gather ... information" (A/C.3/L.919, L.929 and Add.1/Corr.1). Those who favoured retention of the word "seek" held that it implied the right of active inquiry while "gather" had a connotation of passively accepting news provided by Governments or news agencies. It was also pointed out that in French a phrase reading "de rassembler, de recevoir et de répandre" would present linguistic difficulties. Others argued that "seek" had come to imply unrestrained and often shameless probing into the affairs of others while "gather", far from having any passive connotations, merely lacked the aggressive connotations of "seek"; moreover, the word "gather" had been approved by the Third Committee in the text of article 1 of the draft Convention on Freedom of Information.

Licensing of certain devices

23. There was some discussion as to the desirability of specifying, in paragraph 2, that the right to freedom of expression by means of visual and auditory devices must be exercised through "lawfully operated", or "duly licensed", devices (A/C.3/L.919, L.924, L.929 and Add.1/Corr.1). Those who supported such a provision stated that it was a question of licensing not the information imparted by such devices but rather the devices themselves, such as radio and television stations, a measure which was necessary to prevent chaos in the use of frequencies. Those who opposed such a provision feared that it might be utilized to hamper free expression over such media and even be misconstrued to authorize the licensing of the printed word. It was, moreover, widely held that licensing in the sense of the above-mentioned proposals was covered by the reference to "public order" in paragraph 3.

"Without interference"

24. There was also some discussion concerning the suggestion to use in paragraph 2 the phrase "without governmental interference, save as provided in paragraph 3" (A/C.3/L.919). Those who opposed the phrase held, among other things, that private financial interests and monopoly control of media of information could be as harmful to the free flow of information as government interference, and that the latter should therefore not be singled out to the exclusion of the former.

Additional specific restrictions

25. Those who held that additional specific restrictions should be included in article 19 laid stress on the continued existence of such evils as national, racial and religious hatred or prejudices, war propaganda or the dissemination of slanderous rumours, and on the dangers these presented to peaceful and neighbourly relations among nations in the era of nuclear weapons; States should therefore be able to prohibit such activities. Attention was drawn to the terms of Assembly resolution 110 (II) dealing with measures to be taken against propaganda and the inciters of a new war, and Assembly resolutions 1236 (XII) and 1301 (XIII), concerning peaceful and neighbourly relations among States. In support of such additional restrictions (A/C.3/L.919, L.921, L.923 and Rev.1 and 2) it was also argued that small and economically less developed countries lacked the powerful media of information of the more developed States. They were thus at a competitive disadvantage in respect of the free flow of information and even had difficulties making their own problems and points of view known to the world.

26. Those who opposed such specific restrictions as mentioned above feared that they might convert article 19 into a means of limiting freedom of information. While no one could quarrel with the objective of such restrictions, they held, it would be most difficult to determine, in general and in any specific case, what constituted e.g. war propaganda or incitement to national or racial hatred and what was legitimate information; there was also the question as to what authority would be empowered to decide such issues. There was a danger that Governments might allow only such information to appear as they favoured. Propaganda, prejudice and similar evils were best overcome by giving free play to all views, thus permitting truth to prevail.

27. Among other specific restrictions proposed was a restriction on manifestations of "class prejudices" (A/C.3/L.920). Against the inclusion of such a provision it was argued by some that the meaning of the phrase was not clear and that it might lend itself to misinterpretation, thus producing undesirable results.

Relation of article 19 to the relevant articles of the draft Convention on Freedom of Information

28. Early in the discussions, attention was drawn to the provisions of article 1 and, particularly, article 2 of the draft Convention on Freedom of Information, approved by the Committee during the fourteenth and fifteenth sessions of the General Assembly.^{2/} Some representatives held that in order to avoid differences between the two instruments the relevant provisions of these articles should also be included in article 19 of the draft Covenant on Civil and Political Rights; also some Governments might not become parties to the former. The amendment to paragraph 13 submitted by India (A/C.3/L.919) was based on article 2 (1) of the draft Convention and the United States amendment (A/C.3/L.925) included the provisions of article 2 (2) of that instrument.

29. It was argued, on the other hand, that the purposes of the instruments differed; the draft Covenants on Human Rights, being in effect of a "constitutional" character, were intended to ensure respect for the basic rights of the individual while the draft Convention on Freedom of Information dealt with more "technical"

^{2/} Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 35, document A/4341, annex; *ibid.*, Fifteenth Session, Annexes, agenda item 35, document A/4636, annex.

aspects of freedom of information. The question was thus not one of making article 19 coincide with the relevant provisions of the draft Convention on Freedom of Information but merely of avoiding discrepancies.

Relation of article 19 to article 26 (see also below, under article 26, paras. 43-48)

30. During the debate on the question of additional restrictions, it was pointed out that the basic purpose of article 19 was to protect the right of the individual to freedom of opinion and expression and that the article should therefore contain as few restrictions as possible. On the other hand, article 26 as drafted by the Commission on Human Rights provided that "any advocacy of national racial or religious hostility" was to be "prohibited by the law of the State", and some of the amendments suggesting the insertion of additional restrictions in article 19 might thus preferably be considered in connexion with article 26. As to this latter suggestion, it was held by some that article 26 differed in its nature from article 19; the material contained in the amendments in question should therefore not be excluded from article 19 but might well be included in both articles. The Committee, at its 1073rd meeting, adopted a proposal by the representative of Chile that article 26 be discussed immediately after article 19 and that it henceforth be placed directly after that article.

The question of prior censorship

31. A number of delegations urged strongly that the paragraph relating to permissible restrictions, particularly if expanded by the inclusion of additional restrictions, should contain an express provision barring prior censorship (A/C.3/L.925, L.926 and Add.1); subsequent criminal liability and exercise of the right of reply so as to correct misinformation were the proper means of preventing freedom of information from degenerating into licence, without endangering the right itself. Against the insertion of such a provision it was argued, on the one hand, that prior censorship in questions of public morals was found necessary in many countries, especially with regard to the cinema and other public spectacles; and, on the other, that invoking subsequent liability might prove insufficient or too costly, especially in matters such as incitement to war or to national or racial hatred. It was further stated that censorship could take many forms, some of them not affected by the suggested prohibition, such as the deliberate withholding of information.

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Withdrawal of amendments

32. An informal Working Party of the Committee met on 17 October 1961, between the 1074th and 1075th meetings of the Committee. At the 1075th and 1076th meetings all amendments were withdrawn except for those of Ethiopia, Ghana, India, Libya, Nigeria, Saudi Arabia and the United Arab Republic (A/C.3/L.929 and Add.1/Corr.1), India and Indonesia (A/C.3/L.923/Rev.2) and the USSR (A/C.3/L.921). The representative of the USSR stated at the 1076th meeting that, should the India-Indonesia amendment be adopted, he would not insist on his own being put to the vote. The second part of the seven-Power amendment (A/C.3/L.929 and Add.1/Corr.1) was withdrawn at the 1077th meeting.

33. The representative of Peru, at the 1077th meeting, stated that the amendment regarding prior censorship (A/C.3/L.926 and Add.1) had been withdrawn by its sponsors since the text as elaborated by the Commission on Human Rights could not in any way be interpreted as authorizing prior censorship. At the same meeting, the representative of the United Kingdom and others expressed their understanding that the licensing of visual or auditory devices was covered by the concept of "public order" in paragraph 3.

Voting on article 19

34. At the 1077th meeting, the Committee voted as follows on the text drafted by the Commission on Human Rights and on the amendments thereto:

Paragraph 1: Paragraph 1 was adopted unanimously.

Paragraph 2: At the request of the representative of Ecuador, a roll-call vote was taken on the seven-Power amendment (A/C.3/L.929 and Add.1/Corr.1) to replace "seek" by "gather". The amendment was rejected by 59 votes to 25, with 6 abstentions. The voting was as follows:

In favour: Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iran, Iraq, Libya, Nigeria, Poland, Romania, Saudi Arabia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cambodia, Cameroun, Canada, Chad, Chile, China, Colombia, Congo (Leopoldville), Costa Rica, Cyprus, Denmark, Ecuador, El Salvador, Finland, France, Greece, Guatemala, Haiti, Honduras, Iceland, Ireland, Israel, Italy, Japan, Lebanon, Liberia, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Senegal, Sierra Leone, Somalia, Spain, Sweden, Togo, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela.

Abstaining: Afghanistan, Cuba, Dominican Republic, Federation of Malaya, Jordan, Thailand.

Paragraph 2 as drafted by the Commission on Human Rights was adopted by 88 votes to none, with 1 abstention.

Paragraph 3: At the request of the representative of Ecuador, a roll-call vote was taken on the India-Indonesia amendment (A/C.3/L.923/Rev.2) to add "(3) for the promotion of peace and friendly relations among peoples and nations". The amendment was rejected by 44 votes to 34, with 13 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Cuba, Czechoslovakia, Ethiopia, Federation of Malaya, Ghana, Guinea, Hungary, India, Indonesia, Iran, Iraq, Lebanon, Libya, Mali, Morocco, Nepal, Poland, Romania, Saudi Arabia, Somalia, Sudan, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Congo (Leopoldville), Costa Rica, Cyprus, Denmark, Ecuador, El Salvador, Finland, France, Greece, Guatemala, Haiti, Honduras, Iceland, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Portugal, Spain, Sweden, Togo, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstaining: Burma, Cameroun, Chad, Dominican Republic, Jordan, Mexico, Niger, Nigeria, Pakistan, Philippines, Senegal, Sierra Leone, Upper Volta.

The representative of Venezuela, having requested a separate vote on the words "and the dissemination of slanderous rumours" appearing in the Soviet amendment (A/C.3/L.921), the amendment by the Union of Soviet Socialist Republics was put to the vote up to and including the words "racial discrimination". This part of the amendment was rejected by 42 votes to 25, with 23 abstentions. As a result, the remaining words were not put to the vote.

The Committee having accepted at its 1077th session a suggestion by the representative of Ireland to insert in the English text the words "(ordre public)" after "public order", paragraph 3 as drafted by the Commission on Human Rights, with the aforementioned addition, was adopted by 71 votes to 7, with 12 abstentions.

Article 19 as a whole was adopted by 82 votes to 1, with 7 abstentions.

35. The text of article 19 as adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 26^{3/}

36. Article 26 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I B), read as follows:

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

37. The Committee discussed this article at its 1078th to 1084th meetings.

Amendments submitted

38. Amendments were submitted by Brazil (A/C.3/L.930 and Rev.1), by Brazil, Cambodia, Ghana, Guinea, Iraq, Mali, Morocco, United Arab Republic and Yugoslavia (A/C.3/L.930/Rev.2), by Lebanon, Philippines, Saudi Arabia and Thailand (A/C.3/L.932) and by Brazil, Cambodia, Congo (Leopoldville), Ghana, Guinea, Indonesia, Iraq, Lebanon, Mali, Morocco, Philippines, Poland, Saudi Arabia, Thailand, United Arab Republic and Yugoslavia (A/C.3/L.933).

^{3/} The Committee decided at its 1073rd meeting that this article should follow directly after article 19. See paragraph 30 above.

39. The amendment of Brazil (A/C.3/L.930) was to insert the phrase "including war propaganda" between the words "violence" and "shall be prohibited" so that article 26 would read as follows:

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

Later, this amendment was revised (A/C.3/L.930/Rev.1) to read as follows:

"Any advocacy of national, racial or religious hostility that constitutes an incitement to hatred and violence, including war propaganda, shall be prohibited. This prohibition shall be incorporated in the law of the State."

40. The revised amendment of Brazil was replaced by a revised joint amendment submitted by Brazil, Cambodia, Ghana, Guinea, Iraq, Mali, Morocco, United Arab Republic and Yugoslavia (A/C.3/L.930/Rev.2), which read as follows:

"Any advocacy of national, racial or religious hostility that constitutes an incitement to hatred, discrimination and violence, as well as war propaganda, shall be prohibited. This prohibition shall be incorporated in the law of the State."

41. The amendment of Lebanon, Philippines, Saudi Arabia and Thailand (A/C.3/L.932) was to replace the text of article 26 by the following:

"Any propaganda for war and any advocacy of national, racial and religious hatred inciting to violence shall be prohibited by law."

42. The amendments contained in documents A/C.3/L.930/Rev.2 and A/C.3/L.932 were replaced by a joint amendment of Brazil, Cambodia, Congo (Leopoldville), Ghana, Guinea, Indonesia, Iraq, Lebanon, Mali, Morocco, Philippines, Poland, Saudi Arabia, Thailand, United Arab Republic and Yugoslavia (A/C.3/L.933), which read as follows:

"1. Any propaganda for war shall be prohibited by law.

"2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Issues discussed

43. When the Committee began its consideration of article 26, it was recalled that the relation of article 19 to the present article had been discussed previously

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(see para. 30 above) and that a decision had been taken at the 1073rd meeting to place article 26 immediately after article 19. While article 19 set forth the standards relating to freedom of opinion and expression, article 26 was designed to prohibit specific forms of expression, namely, "any advocacy of national, racial or religious hostility that constitutes an incitement to hatred and violence".

44. Amendments were submitted to the effect that article 26 should also prohibit any "propaganda for war" or "war propaganda" (A/C.3/L.930/Rev.1 and Rev.2, A/C.3/L.932 and A/C.3/L.933). In two amendments (A/C.3/L.932 and A/C.3/L.933) the phrase "national, racial or religious hostility" was changed to read "national, racial or religious hatred". The phrase "incitement to hatred and violence" was changed to read "incitement to hatred, discrimination and violence" in one amendment (A/C.3/L.930/Rev.2), and "incitement to discrimination, hostility or violence" in another (A/C.3/L.933).

45. Views opposed to the article

There was general agreement that advocacy of national, racial or religious hatred and war propaganda were evils. However, strong doubts were expressed as to whether these evils could be prohibited by the law of a State or by an international legal instrument; further, it was feared that such a prohibition would prejudice the right to freedom of opinion and expression. A government, it was alleged, could invoke the article to impose prior censorship on all forms of expression and to suppress the opinions of opposition groups and parties. It was pointed out, moreover, that the article, whether in its original form or any of the amended versions, contained no provision setting forth any particular right or freedom; on the contrary, it could be used by any government to suppress the very rights and freedoms which the Covenant was designed to preserve.

46. Views in favour of the article

On the other hand, it was argued that, in view of the present state of the world, the international community, as well as individual Governments, should prohibit all war propaganda and all advocacy of national, racial and religious hatred. The article should contain a specific provision which would prohibit war propaganda in order to put an end to the cold war and to promote peaceful coexistence. To prohibit war propaganda and advocacy of national, racial or religious hatred could hardly be considered as a threat to freedom of opinion and expression. Indeed, such prohibition was imperative if the world and all nations were to live in peace and in harmonious relationships.

"Propaganda" and "war propaganda"

47. It was realized that these expressions were not easy to define and might create legal difficulties in the interpretation and application of the article. However, it was pointed out that the question of propaganda had been dealt with in national laws and constitutions, as well as in international instruments and documents, such as the Convention Concerning the Use of Broadcasting in the Cause of Peace, the judgement of the Nuremberg Tribunal, General Assembly resolution 110 (II) on "Measures to be taken against propaganda and the inciters of a new war" and 381 (V) on "Condemnation of propaganda against peace", and the draft Convention on Freedom of Information.

"Incitement to discrimination, hostility and violence"

48. The view was expressed that "incitement to violence" was a legally valid concept, while "incitement to discrimination" or "incitement to hostility" was not. On the other hand, it was argued that to prohibit only incitement to violence would not represent progress in international legislation. Often it was hostility or discrimination that led to violence. Any propaganda which might incite discrimination or hostility would likely incite violence and should therefore be prohibited.

Voting on article 26

49. At its 1083rd meeting the Committee voted as follows on the sixteen-Power amendment (A/C.3/L.933):

Paragraph 1

Paragraph 1 was adopted by a roll-call vote of 53 to 21, with 9 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Central African Republic, Ceylon, Chad, Chile, Congo (Brazzaville), Congo (Leopoldville), Cuba, Czechoslovakia, Dominican Republic, Ethiopia, Ghana, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Israel, Lebanon, Liberia, Libya, Mali, Mexico, Morocco, Nicaragua, Niger, Nigeria, Pakistan, Peru,

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Philippines, Poland, Romania, Saudi Arabia, Spain, Sudan, Thailand, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Canada, Denmark, Ecuador, Federation of Malaya, Finland, France, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Austria, China, Colombia, Cyprus, Greece, Iran, Panama, Portugal, South Africa.

Paragraph 2

At the request of the representative of Chile, a separate vote was taken on the phrase "discrimination, hostility or". The phrase was adopted by a roll-call vote of 43 to 21, with 19 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cuba, Czechoslovakia, Ethiopia, Ghana, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Liberia, Libya, Mali, Mexico, Morocco, Nicaragua, Niger, Nigeria, Poland, Romania, Saudi Arabia, Sudan, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yemen, Yugoslavia.

Against: Belgium, Canada, Chile, Colombia, Denmark, Federation of Malaya, Finland, France, Greece, Iceland, Ireland, Israel, Japan, Lebanon, Norway, Peru, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Argentina, Australia, Austria, China, Cyprus, Dominican Republic, Ecuador, Iran, Italy, Netherlands, New Zealand, Pakistan, Panama, Philippines, Portugal, South Africa, Spain, Thailand, Tunisia.

Paragraph 2 as a whole was adopted by a roll-call vote of 50 to 18, with 15 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cuba, Czechoslovakia, Dominican Republic, Ethiopia, Ghana, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Israel, Lebanon, Liberia, Libya, Mali, Mexico, Morocco, Nicaragua, Niger, Nigeria, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Sudan, Thailand, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yemen, Yugoslavia.

Against: Belgium, Canada, Colombia, Denmark, Ecuador, Federation of Malaya, Finland, Iceland, Ireland, Japan, Netherlands, New Zealand, Norway, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Argentina, Australia, Austria, Chile, China, Cyprus, France, Greece, Iran, Italy, Panama, Peru, Portugal, South Africa, Spain.

Article 26 as a whole was adopted by a roll-call vote of 52 to 19, with 12 abstentions. The voting was as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Central African Republic, Ceylon, Chad, Chile, Congo (Brazzaville), Congo (Leopoldville), Cuba, Czechoslovakia, Dominican Republic, Ethiopia, Ghana, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Israel, Lebanon, Liberia, Libya, Mali, Mexico, Morocco, Nicaragua, Niger, Nigeria, Pakistan, Peru, Philippines, Poland, Romania, Saudi Arabia, Sudan, Thailand, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yemen, Yugoslavia.

Against: Australia, Belgium, Canada, Denmark, Ecuador, Federation of Malaya, Finland, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Argentina, Austria, China, Colombia, Cyprus, France, Greece, Iran, Panama, Portugal, South Africa, Spain.

50. The text of article 26 as adopted by the Committee is contained in the annex to the present report.

ARTICLE 20

51. Article 20, as drafted by the Commission on Human Rights (E/2573, annex I B), read as follows:

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

52. The Committee discussed and adopted the article at its 1085th meeting.

53. There was agreement on the fundamental importance of the right in question. The text elaborated by the Commission on Human Rights was generally found satisfactory in substance and form. No amendments were submitted.

54. At the suggestion of the representative of Ireland, the Committee decided to insert in the English text the words "(ordre public)" after "public order", as had been done in paragraph 3 of article 19. The article, with this insertion, was adopted by 67 votes to none.

55. The text of article 20 as adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 21

56. Article 21 as drafted by the Commission on Human Rights (E/2573, annex I B) read as follows:

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

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

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

57. The Committee discussed this article at its 1085th to 1090th meetings, and at its 1124th meeting.

Amendments submitted

58. Amendments were submitted by the Federation of Malaya (A/C.3/L.934), by the Ukrainian Soviet Socialist Republic (A/C.3/L.935 and Rev.1), by the Federation of Malaya and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.936 and Rev.1), by Somalia (A/C.3/L.937) and by Greece, the Netherlands and Sweden (A/C.3/L.938).

Amendment to paragraph 1:

59. The amendment of the Ukrainian Soviet Socialist Republic (A/C.3/L.935) was to add to paragraph 1 the following:

"The provisions of this article shall also extend to the right to form both national and international trade union organizations. The right of all trade union organizations to discharge their functions without interference must be guaranteed."

This was subsequently revised to read (A/C.3/L.935/Rev.1):

"This right shall include the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations. The right of trade unions to function without interference must be guaranteed."

Amendments to paragraph 2:

60. The amendment of the Ukrainian Soviet Socialist Republic, consequential upon the adoption of its amendment to paragraph 1, was to substitute in the first sentence the words "these rights" for the words "this right" (A/C.3/L.935 and Rev.1).

61. The amendment of the Federation of Malaya (A/C.3/L.934) was to substitute in the last sentence of the paragraph the word "prejudice" for the word "prevent". This amendment was withdrawn at the 1086th meeting.

62. The amendment submitted by the Federation of Malaya and the United Kingdom (A/C.3/L.936) consisted in replacing the last sentence of the paragraph by the following:

"This article shall not prevent the imposition of lawful restrictions on the exercise of the right of association of members of the armed forces or of the police."

This amendment was subsequently revised to read (A/C.3/L.936/Rev.1):

"This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."

63. The amendment of Greece, the Netherlands and Sweden (A/C.3/L.938) was to delete the entire second sentence of paragraph 2.

64. The amendment of Somalia (A/C.3/L.937) was to add at the end of paragraph 2 a sentence reading:

"No one may be compelled to join an association of any kind or to belong to it."

This amendment was withdrawn at the 1087th meeting.

Issues discussed

65. Nature and scope of the article; protection of trade union rights

The Ukrainian amendment (A/C.3/L.935) relating to the right to form both national and international trade union organizations, and the right of these organizations to discharge their functions without interference and the revision of this amendment (A/C.3/L.935/Rev.1), which was based in part on the wording of article 8, paragraph 1 (b) of the draft Covenant on Economic, Social and Cultural Rights, already adopted by the Committee at a previous session,^{4/} led to a discussion on the extent to which the provisions of the latter article should be repeated in article 21 of the draft Covenant on Civil and Political Rights. Those who supported the amendment stressed that some countries might become parties to only one of the Covenants and that international trade unions should be dealt with in both, lest the absence of such provisions in the Covenant on Civil and Political Rights cast doubt on their status under that Covenant. Those who opposed the amendment held that article 21 was intended to ensure the right of the individual to join associations of every kind, be they political, civic, economic, social or cultural; that the proposed addition would change the nature of the article by placing primary stress on the rights of trade unions to the neglect of other associations such as, e.g., political parties; that trade union rights were referred to in article 21 principally because they should not be regarded exclusively as economic and social rights; and that the expression "trade unions" in the existing text covered both national and international unions.

66. The representative of Uruguay suggested omitting any special reference to trade union rights but did not insist on his suggestion in the light of the discussions in the Committee. Similarly, the representative of Belgium, who suggested omitting the words "for the protection of his interests" lest they be misinterpreted as establishing a limitation upon the right to join trade unions, withdrew her suggestion.

67. Exercise of the right by members of the armed forces and of the police

There was little discussion on the limitations clause, contained in the first sentence of paragraph 2. The representative of Iraq suggested adding

^{4/} Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 31, document A/3525, para. 75.

"(ordre public)" after "public order" as had been done in articles 19 and 20. This suggestion was accepted at the 1124th meeting. A provision authorizing limitations on the exercise of the right to freedom of association to be placed on members of the armed forces and of the police, was widely regarded as necessary, though one delegation stated that no such restrictions were in force in its country. A number of delegations held that the provision, contained in the second sentence, was covered by the concepts of "public safety" and "public order" in the first sentence and that it should therefore be deleted; some thought, moreover, that difficulties of interpretation might result from the absence of any reference to members "of the administration of the State", a phrase which was contained in the article of the draft Covenant on Economic, Social and Cultural Rights dealing with trade union rights (article 8). Those who favoured retention of the second sentence argued that, while the issue might well have been regarded as covered by the general limitations clause, deletion of the provision by the Third Committee at this stage might introduce doubts in the matter.

68. The actual wording of the second sentence having caused some misunderstanding, amendments were introduced by the Federation of Malaya and the United Kingdom (A/C.3/L.936 and Rev.1) for the purpose of clarifying the text. For the Spanish text, the wording "... cuando se trata de los miembros..." was suggested in this connexion at the 1089th meeting.

69. Freedom to join or not to join an association

Delegations supporting the Somali amendment (A/C.3/L.937) stressed, among other things, the need to ensure that no one must be compelled to join organizations, such as political parties, against his will. Those who opposed the amendment feared that its principal effect might be to hamper the effective functioning of trade unions. It was pointed out in this connexion that the existing wording of paragraph 1, i.e., "... the right to freedom of association with others" was clearly designed to permit anyone to join or to refrain from joining, according to his wishes, and that the French version reading "... le droit de s'associer librement avec d'autres" expressed this intention particularly well. The amendment was withdrawn by its sponsor in the light of the discussion in the Committee.

70. Reference to ILO Convention No. 87

Some discussion took place over paragraph 3, which referred to the Convention of 1948 on Freedom of Association and Protection of the Right to Organize.

71. The representative of Belgium suggested deletion of the paragraph and asked, at the 1086th meeting, that a separate vote be taken on it. Delegations favouring deletion held that the question of obligations under other conventions was dealt with in article 5, paragraph 2, of the draft Covenant on Civil and Political Rights and that singling out the 1948 Convention in article 21 was either superfluous or else would reflect adversely on the standing of various conventions that could have been cited in connexion with other rights. Those who favoured retaining the paragraph argued, among other things, that article 5 had not as yet been approved by the Third Committee; that the ILO Convention was far more comprehensive in the matter of trade union rights than article 21, which dealt with freedom of association generally; and that deletion of the reference might be misinterpreted as relieving Parties to that Convention of their responsibility under it.

Voting on article 21

72. At its 1089th meeting, the Committee voted, by paragraphs, on article 21 as drafted by the Commission on Human Rights and the amendments thereto. The voting was as follows:

Paragraph 1:

Iraq having requested a separate vote on the second sentence of the Ukrainian amendment (A/C.3/L.935/Rev.1), the second sentence was rejected by 33 votes to 14, with 28 abstentions.

At the request of the Ukrainian Soviet Socialist Republic, a roll-call vote was taken on the first sentence of the Ukrainian amendment. The sentence was rejected by 36 votes to 16, with 25 abstentions. The voting was as follows:

In favour: Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ghana, Guinea, Hungary, Iraq, Mali, Poland, Romania, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia.

Against: Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Cyprus, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Finland, France, Greece, Iceland, Iran, Ireland, Israel, Italy, Japan, Lebanon, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstaining: Afghanistan, Austria, Bolivia, Burma, Cambodia, Central African Republic, Ceylon, Chad, Chile, Congo (Leopoldville), Ethiopia, Haiti, India, Indonesia, Libya, Mexico, Morocco, Nepal, Nigeria, Saudi Arabia, Somalia, Thailand, Togo, United Arab Republic, Upper Volta.

Paragraph 1 as drafted by the Commission on Human Rights was adopted unanimously.

Paragraph 2:

The Ukrainian amendment to paragraph 1 having been rejected, the Ukrainian consequential amendment to paragraph 2 (A/C.3/L.935/Rev.1) was not put to the vote.

The amendment of Greece, the Netherlands and Sweden, to delete the second sentence of the paragraph (A/C.3/L.938) was rejected by 39 votes to 21, with 18 abstentions.

The drafting amendment introduced by the Federation of Malaya and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.936/Rev.1) and the Spanish wording referred to in paragraph 68 above were adopted by 51 votes to none, with 24 abstentions.

Paragraph 2, as amended, was adopted by 71 votes to none, with 5 abstentions (see also para. 67 above).

Paragraph 3:

Paragraph 3 as drafted by the Commission on Human Rights was adopted by 54 votes to 7, with 16 abstentions.

Article 21, as a whole:

Article 21 as a whole, as amended, was adopted by 74 votes to none, with 2 abstentions.

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

ARTICLE 22

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

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

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

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

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

75. The Committee discussed this article at its 1090th to 1095th meetings.

Amendments submitted

76. Amendments were submitted by Burma, Cuba, Denmark, Dominican Republic, Ethiopia, Guinea, Mali, Mexico, Norway, Panama, Peru, Poland, Sweden and Yugoslavia (A/C.3/L.939), by Ghana (A/C.3/L.940) and by Ghana, India and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.940/Rev.1). The Philippines submitted a sub-amendment (A/C.3/L.941) to the fourteen-Power amendment (A/C.3/L.939).

77. The fourteen-Power amendment (A/C.3/L.939) called for the replacement of the first sentence of paragraph 4 by the following:

"States Parties to this Covenant shall ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."

78. The amendment of Ghana (A/C.3/L.940) was to replace the second sentence of paragraph 4 by the following:

"In the case of dissolution, the law shall make provision for all necessary protection of any child."

The representatives of Ghana, India and the United Kingdom of Great Britain and Northern Ireland later revised this text to read (A/C.3/L.940/Rev.1):

"In the case of dissolution, provision shall be made for the necessary protection of any children."

79. The Philippine sub-amendment (A/C.3/L.941) to the fourteen-Power amendment (A/C.3/L.393) was to insert between the words "shall" and "ensure" the following: "take appropriate steps to". The sponsors of the fourteen-Power amendment accepted this sub-amendment at the 1093rd meeting and it was incorporated in their amendment of which the Philippines became a co-sponsor (A/C.3/L.939/Rev.1 and Rev.1/Corr.1 (Spanish only)); it would replace the first sentence of paragraph 4 of the original text by the following:

"States Parties to this Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."

80. The representative of Nicaragua orally submitted a sub-amendment to the fifteen-Power amendment (A/C.3/L.939/Rev.1) which was to add after the word "dissolution" the following: "or its annulment". This amendment was withdrawn at the 1095th meeting.

Issues discussed

81. Most of the discussion centred on paragraph 4 of article 22, which referred to the equality of rights and responsibilities of the spouses "as to marriage, during marriage and at its dissolution" and provided for the protection of children. It was pointed out that inequalities between husband and wife, both in practice and in legislation, existed in many countries. There was general agreement on the principle of equality of the spouses, but different opinions were expressed as to how this principle should be implemented.

82. Equality of spouses

Some members of the Committee held that, in any effort to modernize marriage practices, caution should be exercised so as not to offend unnecessarily those who accepted long-established customs and traditions. They believed that customs and traditions which did not meet a genuine human need would gradually fade away as a result of advances in education and that legislation should introduce necessary improvements progressively. In their view, this was the most realistic and practical way to achieve full equality for men and women in matters relating to marriage and the family and therefore they preferred the text prepared by the Commission, which would provide for progressive realization of the principle of equality. It was recalled in this connexion that the principle of progressive implementation was, with regard to the right set forth in article 22, recognized in article 49, paragraph 2, which provided that reports to be submitted by States Parties to the Covenant were to indicate "factors and difficulties, if any, affecting the progressive implementation of article 22, paragraph 4, of this Covenant". A number of delegations stated, however, that article 49 had not yet been approved by the Third Committee, and that the principle of progressive implementation should also be covered in article 22, paragraph 4.

83. Many members of the Committee stated that the text of paragraph 4 prepared by the Commission was vague and lacked the clarity and precision necessary in a legal instrument. They pointed out that the age of inequality between men and women had passed, and that national and international legislation in that matter must today be very definite. Therefore the text of paragraph 4 should be drafted for the future and be sufficiently strong so as to ensure that national legislation on marriage would be brought into line with modern trends. It was pointed out that the principle of equality of men and women was proclaimed in the Charter and in the Universal Declaration of Human Rights.

84. The fifteen-Power amendment (A/C.3/L.939/Rev.1) was welcomed as a compromise between those who wished to give an express guarantee of the equality of spouses in marriage and those who felt bound to recognize the complexity of the question and the difficulties which a categorical provision would cause to some Governments. On behalf of the fifteen sponsors the representative of the Philippines made the following declaration at the 1094th meeting of the Committee (A/C.3/SR.1094):

"The text of the joint amendment (A/C.3/L.939/Rev.1) to paragraph 4 of article 22 of the draft Covenant on Civil and Political Rights might be interpreted as permitting Contracting States to take appropriate measures progressively to assure the equality of the spouses as to marriage, during marriage and at its dissolution."

85. Protection of children where a marriage is dissolved

Certain members of the Committee stated that paragraph 4 of article 22 should provide protection for all children, including those born out of wedlock, who might be affected by the dissolution of a marriage. It was a question of fulfilling a humanitarian duty towards children. Other members, however, felt that, since article 22 dealt specifically with the question of marriage and the family, provisions designed to protect children born out of wedlock would be out of place. The subject should be dealt with in a separate article. A proposal for a new article dealing with rights of the child, including the child born out of wedlock, was submitted by the representative of Poland (A/C.3/L.943) who stressed, however, that this was not intended to replace the second sentence of article 22, paragraph 4. It was pointed out that the original text of the second sentence of paragraph 4 spoke of the "protection of any children of the marriage" while the three-Power amendment (A/C.3/L.940/Rev.1) used the words "necessary protection of any children", i.e., any children who might be affected by the dissolution of a marriage.

86. Question of a non-discrimination clause

Some discussion took place as to whether or not this article should make a reference to prohibition of discrimination in matters relating to marriage. Some representatives felt that reference to discrimination was unnecessary in this article since the question was already covered by article 2, paragraph 1, of the draft Covenant on Civil and Political Rights. Others thought that, although such a reference might be unnecessary from the legal point of view, a paragraph could be added with a view to eliminating religious and racial discrimination in the matter of marriage.

Voting on article 22

87. At its 1095th meeting, the Committee voted, by paragraphs, on article 22 as drafted by the Commission on Human Rights and the amendments thereto. The voting was as follows:

Paragraph 1 was adopted unanimously.

Paragraph 2 was adopted unanimously.

Paragraph 3 was adopted by 82 votes to none, with 2 abstentions.

Paragraph 4: the fifteen-Power amendment (A/C.3/L.939/Rev.1 and Rev.1/Corr.1 (Spanish only)) was adopted by 76 votes to 1, with 7 abstentions.

The three-Power amendment (A/C.3/L.940/Rev.1) was adopted by 53 votes to 3, with 26 abstentions.

Paragraph 4 as a whole, as amended, was adopted by 76 votes to 1, with 7 abstentions.

Article 22 as a whole, as amended, was adopted by 79 votes to 1, with 3 abstentions.

88. The text of article 22 as adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 23

89. Article 23 as drafted by the Commission on Human Rights (E/2573, annex I B) read as follows:

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

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

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

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

90. The Committee discussed the article at its 1096th and 1097th meetings.

91. No amendments were submitted.

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Issues discussed

92. The text elaborated by the Commission on Human Rights was held by most delegations to be satisfactory. It was pointed out that the article as drafted made allowance for different electoral systems in various parts of the world, and attention was drawn to the importance that all peoples, including those which had not yet attained independence and those of newly independent countries, should participate in public life.

93. Some discussion arose over the scope of the phrase "without unreasonable restrictions" appearing in the opening clause of the article. It was pointed out that this referred to such matters as the minimum age for voting, or the exclusion of mentally ill persons.

94. In connexion with point (b), there was some discussion as to the meaning of "genuine" elections. It was held by some delegations that the idea of "guaranteeing the free expression of the will of the electors" should be given prominence and that that clause should therefore be placed immediately after the words "genuine periodic elections". Others held that "genuine periodic elections", "universal and equal suffrage" and "secret ballot" were the elements of genuine elections, which in turn guaranteed the free expression of the will of the electors. These elements should therefore remain grouped together.

95. The representative of Nicaragua suggested adding "de" before the words "ser elegido" in the Spanish text, as well as adding a comma before "auténticas".

96. There was also some discussion as to the meaning, in point (c), of the words, "access, on general terms of equality". It was pointed out that this phrase permitted regulation of such matters as age or qualifications but barred situations where certain privileged groups monopolized the public service.

Voting on article 23

97. At its 1096th meeting the Committee, by 71 votes to none, with 4 abstentions, adopted article 23 as drafted by the Commission on Human Rights, with the drafting change in the Spanish text suggested by Nicaragua (see para. 95).

98. The text of article 23 as adopted by the Third Committee is contained in the annex to the present report.

ARTICLE 24

99. Article 24 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights (E/2573, annex I B), read as follows:

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

100. The Committee discussed this article at its 1097th to 1102nd meetings.

Amendments submitted

101. Amendments were submitted by India (A/C.3/L.945 and Rev.1, and Rev.1/Corr.1 (French and Spanish only)), by Greece and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.946) and by Ghana (A/C.3/L.951 and Rev.1) and a sub-amendment by Argentina and Chile (A/C.3/L.948) to the amendment of India (A/C.3/L.945).

102. The amendment of India (A/C.3/L.945) was to add at the end of the first sentence the words "and are entitled to equal protection of the law".

103. The sub-amendment of Argentina and Chile (A/C.3/L.948) to the amendment of India (A/C.3/L.945) was to insert between the words "are entitled" and "to equal protection of the law" the words "without any discrimination".

104. The representative of India accepted the amendment of Argentina and Chile (A/C.3/L.948). The revised amendment of India, incorporating the amendment of Argentina and Chile (A/C.3/L.945/Rev.1 and Rev.1/Corr.1 (French and Spanish only)), was to add at the end of the first sentence the following:

"and are entitled without any discrimination to equal protection of the law."

105. The amendments of Greece and the United Kingdom (A/C.3/L.946) to the second sentence were as follows:

(a) At the beginning of the sentence, insert "In this respect".

(b) Before the word "discrimination", where it appears for the first time, insert the word "such".

Amendment (b) was later withdrawn.

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106. The amendment of Ghana (A/C.3/L.951 and Rev.1) was to replace the text of article 24 by the following:

"All persons, without any of the distinctions mentioned in article 2 of this Covenant, are equal before the law and are entitled without any discrimination to equal protection of the law."

This amendment was later withdrawn.

Issues discussed

107. The article as drafted by the Commission on Human Rights contained two sentences relating, respectively, to the principle of equality before the law and to the prohibition of discrimination. Quite a number of delegations were in favour of the text as drafted by the Commission. However, amendments were submitted by some delegations. The discussions in the Committee centred on the relationship between the first sentence of the draft article and article 7 of the Universal Declaration of Human Rights, between the second sentence and article 2 of the draft Covenant, and between the first and the second sentences of the draft article.

108. Article 24 of the Covenant and article 7 of the Declaration

The first sentence as drafted by the Commission set forth the principle that "all persons are equal before the law". It was felt, however, that this sentence should be amended and strengthened by the addition of the clause "and are entitled without any discrimination to equal protection of the law". Thus amended, the sentence would be identical with the first sentence of article 7 of the Declaration.

109. Article 24 and article 2 of the Covenant

As to the second sentence, some delegations thought that the principle of non-discrimination had already been enunciated in article 2 of the draft Covenant and that it would be superfluous to reiterate the principle in article 24, which article should be devoted to the principles of equality before the law and equal protection by the law. Those delegations were prepared to insert at the beginning of the second sentence the words "in this respect" or to accept the Ghana amendment (see paragraphs 111-112 below). Other delegations maintained that article 2 provided that each State Party should undertake to respect and ensure

to all persons within its jurisdiction "the rights recognized in this Covenant" without distinction of any kind, while the second sentence of article 24 would cover all rights, whether they were or were not recognized in the Covenant. They were of the opinion that article 24, besides being the only article dealing directly with the problem of discrimination as a whole, was also the only article which imposed an obligation on States to take effective measures against all discrimination. It was further pointed out that article 2 had not yet been adopted by the Committee.

110. Relationship between the first and second sentences of article 24

There was some debate on the relationship between the first and the second sentences. Some members felt that if the first sentence were to provide that "all persons are equal before the law and are entitled without any discrimination to equal protection of the law", it would hardly be necessary to indicate, in the second sentence, any ground of discrimination "such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Others insisted that States had two complementary obligations: to ensure equality before the law and equal protection of the law, and to adopt laws with a view to prohibiting all forms of discrimination.

111. In connexion with the amendment of Greece and the United Kingdom (A/C.3/L.946) to insert the words "in this respect", it was maintained by the supporters of the amendment that the law should prohibit any discrimination in respect of the principle of the "equality before the law" and in respect of "equal protection of the law", if the latter clause were adopted; but that the law could not prohibit all types of discrimination, particularly discrimination in private relations. Those in favour of the amendment wished to link the first and the second sentences because they considered the second sentence an explanation and amplification of the basic principle stated in the first sentence. On the other hand, those opposed to the amendment argued that each of the two sentences contained a distinct principle; they saw in the second sentence the only provision in the whole Covenant dealing with prohibition of all discrimination. By the adoption of the amendment, the effectiveness of the second sentence would be reduced or even cancelled because the prohibition of discrimination would then only apply to the field of equality before the law.

112. The amendment of Ghana (A/C.3/L.951 and Rev.1), which would combine the two sentences into one, received some support, but it was withdrawn. There was also a suggestion that each sentence be made a separate paragraph; this was also withdrawn.

113. Views were exchanged regarding the status of aliens and the question of alien property. There were suggestions to change the word "persons" in the phrase "to guarantee to all persons ..." to "citizens", and to delete the last phrase "or other status". However, it was generally felt that neither the denial of certain civic or political rights to aliens, nor the nationalization of foreign property under certain conditions, constituted discrimination within the meaning of article 24.

Voting on Article 24

114. At its 1102nd meeting the Committee voted as follows:

The amendment of India (A/C.3/L.945/Rev.1 and Rev.1/Corr.1 (French and Spanish only)) to add "and are entitled without any discrimination to equal protection of the law" at the end of the first sentence was adopted by 68 votes to 1, with 8 abstentions.

The amendment of Greece and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.946) to insert "In this respect" at the beginning of the second sentence was adopted by a roll-call vote of 36 to 30, with 11 abstentions. The voting was as follows:

In favour: Argentina, Australia, Belgium, Brazil, Canada, Ceylon, China, Denmark, Federation of Malaya, Finland, France, Greece, Guatemala, Iceland, Iran, Ireland, Italy, Japan, Nepal, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Portugal, Saudi Arabia, Spain, Sudan, Sweden, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yemen.

Against: Afghanistan, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Colombia, Congo (Leopoldville), Cuba, Czechoslovakia, Ecuador, Ethiopia, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Lebanon, Mali, Mongolia, Morocco, Pakistan, Philippines, Poland, Romania, Senegal, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Abstaining: Chile, Cyprus, Dominican Republic, Ghana, Israel, Liberia, Libya, Mexico, Thailand, Togo, Tunisia.

The representative of Indonesia asked for separate votes to be taken on the two sentences of the article, as amended.

The first sentence, as amended, was adopted by 72 votes to none, with 4 abstentions.

The second sentence, as amended, was adopted by 57 votes to 2, with 17 abstentions.

Article 24 as a whole, as amended, was adopted by 72 votes to none, with 5 abstentions.

115. The text of article 24, as adopted by the Committee, is contained in the annex to the present report.

ARTICLE 25

116. Article 25 as drafted by the Commission on Human Rights (E/2573, annex I B) read as follows:

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

117. The Committee considered this article at its 1103rd and 1104th meetings.

118. No amendments were submitted.

Issues discussed

119. General scope of the article

There was general agreement on the basic provision that persons belonging to a minority should not be denied the right, in community with the other members

of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The text elaborated by the Commission on Human Rights was widely regarded as satisfactory.

120. Many delegations representing countries of immigration stressed, however, that persons of similar background who entered their territories voluntarily, through a gradual process of immigration, could not be regarded as minorities, as this would endanger the national integrity of the receiving States; while the newcomers were free to use their own language and follow their own religion, they were expected to become part of the national fabric. It was emphasized that the provisions of article 25 should not be invoked to justify attempts which might undermine the national unity of any State.

121. It was further stressed that the autochthonous population in Latin American countries could not be regarded as a minority. It should be treated as a vital part of the nation and should be assisted in attaining the same levels of development as the remainder of the population.

122. A certain amount of discussion took place on the general questions of integration of minorities and protection of minorities. The question was raised whether protection should be accorded to individual members of a minority group or to the group as such. It was emphasized in this connexion that any assimilation which might take place must be clearly voluntary; and that members of minority groups should not be deprived of the rights enjoyed by other citizens of the same State, so as to enable them to integrate should they so desire. Several delegations stated that existing minorities were groups which had succeeded in maintaining their separate identities and that article 25 should not be used to encourage the emergence of new minorities.

123. Several delegations pointed out that the protection of minorities was not meant to derogate from the principle of majority rule; there were regions, such as certain parts of Africa, which were dominated by privileged minorities and article 25 was not intended to protect such domination.

124. Applicability of article 18, paragraph 3

The question was raised whether there was any need to repeat, in respect of minorities, the limitations clause concerning freedom to manifest one's

religion or belief contained in article 18, paragraph 3,^{5/} namely, that "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". It was pointed out that there was no need to do so, since article 18 was of a general nature and applied to "everyone", therefore to minorities and majorities alike.

Voting on article 25

125. At its 1104th meeting the Committee, by 80 votes to none, with 1 abstention, adopted article 25 as drafted by the Commission on Human Rights.

126. The text of article 25 as adopted by the Third Committee is contained in the annex to the present report.

CONCLUDING STATEMENT BY THE CHAIRMAN^{6/}

127. The fact that the Committee gave first priority to the discussion of the Covenants at this session, and devoted to this agenda item thirty-five meetings, nearly one half of the total, reflected a growing desire to accelerate action on the draft Covenants. This desire was reflected in the concluding statement of the Chairman:

128. The Chairman pointed out that with the adoption of article 25, the Committee had concluded consideration of the substantive articles proposed by the Commission on Human Rights. There now remained for its consideration any new substantive articles that might be proposed, the general articles of both draft Covenants, and the articles of implementation. He directed attention particularly to the question of implementation, involving as it did a positive commitment by States Parties both to take the necessary measures domestically and to accept international

^{5/} Adopted by the Third Committee at the fifteenth session of the General Assembly, Official Records of the General Assembly, Fifteenth Session, Annexes, agenda item 34, document A/4625.

^{6/} Statement made by the Chairman, Mr. Salvador P. Lopez (Philippines) at the 1104th meeting of the Committee. The text of the Chairman's statement is reproduced in document A/C.3/L.952.

machinery for the protection of human rights. Stressing that the achievement and enjoyment of the rights and freedoms which the Covenants sought to secure was the professed purpose of government everywhere, he pointed out that the Committee was engaged in a revolutionary effort to lay down a suitable philosophical and juridical groundwork for the new world order.

DRAFT RESOLUTION

129. At its 1104th meeting, the Committee adopted unanimously a draft resolution submitted by the United Arab Republic (A/C.3/L.953) concerning future consideration of the draft Covenants. The text appears in paragraph 130 below.

RECOMMENDATION OF THE THIRD COMMITTEE

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

"The General Assembly, having made progress in the preparation of the draft International Covenants on Human Rights,

Not having been able, however, to complete its work relating to the Covenants at its sixteenth session,

Decides to take up this item as soon as possible at its seventeenth session and at that session to devote as many meetings as possible to the consideration of the draft International Covenants on Human Rights."

ANNEX

Text of articles 19 to 26 of the draft Covenant on Civil and Political Rights as adopted by the Third Committee at the sixteenth session of the General Assembly

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order (ordre public), or of public health or morals.

Article 26

(To follow directly after article 19)

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 20

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

Article 21

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

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

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

Article 22

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

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

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

4. States Parties to this Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 23

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

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

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

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

Article 24

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 25

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