

Document Symbol:

A/4045

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Thirteenth session
Agenda item 32

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Third Committee

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INTRODUCTION

1. At its 752nd plenary meeting on 22 September 1958, the General Assembly allocated to the Third Committee item 32 of the agenda of its thirteenth session: "Draft International Covenants on Human Rights". The Committee decided at its 841st meeting on 3 October 1958 to devote thirty-five meetings to this item.
2. In accordance with a procedural decision taken at the tenth session, the Committee continued^{1/} the consideration of the substantive articles of the draft Covenant on Civil and Political Rights. It discussed and adopted the texts of articles 7, 8, 9, 10 and 11 at its 847th to 885th and 904th meetings. The proceedings of the Committee are described briefly below.

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

ARTICLE 7

3. Article 7 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights^{2/} read as follows:

1/ See reports of the Third Committee, Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28, document A/3077; Ibid., Eleventh Session, Annexes, agenda item 31, document A/3525; Ibid., Twelfth Session, Annexes, agenda item 33, document A/3764.

2/ Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573) annex I B.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health."

4. The Committee discussed this article at its 847th to 856th meetings.

Amendments submitted

5. Amendments were submitted by the Netherlands (A/C.3/L.673), Pakistan (A/C.3/L.674), the Philippines (A/C.3/L.675), Ecuador (A/C.3/L.676), Guatemala (A/C.3/L.677), Australia (A/C.3/L.678) and Greece and Italy (A/C.3/L.679 and Rev.1). Sub-amendments to the revised amendment of Greece and Italy (A/C.3/L.679/Rev.1) were submitted by Canada (A/C.3/L.680) and Mexico (see para. 14).
6. The amendment of the Netherlands (A/C.3/L.673) was to delete from the second sentence the words: "involving risk, where such is not required by his state of physical or mental health."
7. The amendment of Pakistan (A/C.3/L.674) was to substitute a comma for the full-stop after the words "treatment or punishment", and substitute the words "or even" for "In particular, no one shall be". At the 854th meeting, the representative of Pakistan withdrew the amendment.
8. The Philippine amendment (A/C.3/L.675) was to insert the word "unusual" between the words "inhuman" and "or degrading" in the first sentence. The representative of the Philippines withdrew this amendment at the 653rd meeting.
9. The Ecuadorian amendment (A/C.3/L.676) was to delete the words "involving risk" in the second sentence. The representative of Ecuador withdrew this amendment at the 853rd meeting, on the understanding that a separate vote would be taken on the words "involving risk" in the Netherlands amendment (A/C.3/L.673).
10. The amendments of Guatemala (A/C.3/L.677) were:
- (1) To amend article 7 to read:
"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
 - (2) To insert an additional article as follows:
"Article 8. No person shall be subjected without his free and spontaneous consent to medical or scientific experimentation. Medical experimentation shall not be permitted in the case of a person who is

incapable of giving his free and spontaneous consent, unless the main and essential purpose of the experimentation is the restoration of the physical and mental health of the said person and in that case the consent shall be obtained from those persons who in accordance with the law of the country concerned are the legal representatives of the person who is incapacitated from giving his consent."

(3) To renumber the subsequent articles accordingly.

At the 853rd meeting, the representative of Guatemala withdrew these amendments.

11. The Australian amendment (A/C.3/L.678) was to substitute a comma for a full-stop after the word "punishment" and to replace the text thereafter by the following words: "and in particular no one shall be subjected to such treatment in the form of medical or scientific experimentation".

12. The revised amendment of Greece and Italy (A/C.3/L.679/Rev.1) was to replace the second sentence by the following: "No one shall, inter alia, be subjected without his free consent to medical or scientific experimentation".

13. Canada submitted a sub-amendment (A/C.3/L.680) to the revised amendment of Greece and Italy (A/C.3/L.679/Rev.1) which would replace the words "No one shall, inter alia, be subjected" by the following: "Inter alia, no one shall be made to undergo any form of torture or cruel treatment by being subjected".

A suggestion by the representative of Ireland to insert the words "inhuman or degrading" between the words "cruel" and "treatment" was accepted by the Canadian representative.

14. The representative of Mexico re-introduced the original amendment of Greece and Italy (A/C.3/L.679), submitting it as a sub-amendment to the revised text (A/C.3/L.679/Rev.1). The original Greek-Italian amendment was as follows:

No one shall be made to undergo any other form of torture or cruel treatment by being subjected without his free consent to medical or scientific experimentation when such experimentation is not required by his state of physical or mental health". At the 855th meeting, the Mexican representative withdrew this sub-amendment.

Issues discussed

15. The word "unusual" as proposed in the Philippine amendment (A/C.3/L.675), gave rise to some discussion. It was argued that while cruel, degrading and inhuman treatment or punishment might be "unusual", the converse was not

necessarily true. The amendment was supported by some representatives who felt that it might be applicable to certain actual practices which, although not intentionally cruel, inhuman or degrading, nevertheless affected the physical or moral integrity of the human person. On the other hand, it was objected that the term "unusual" was vague. What was "unusual" in one country might not be so in other countries.

16. Most of the discussion centred on the second sentence. Some felt that this sentence was unnecessary, since what it sought to prohibit was already covered by the first sentence. Moreover, it weakened the article in that it directed attention to but one of the many forms of cruel, inhuman or degrading treatment, thereby lessening the importance of the general prohibition laid down in the first sentence. On the other hand, most representatives attached special importance to the second sentence which, they pointed out, was intended to prevent the recurrence of atrocities such as those which had been committed in nazi concentration camps during the Second World War. In their view the second sentence, far from being superfluous, served to complement the provisions of the first.

17. Several suggestions were made with a view to meeting the objection that the second part of the article was emphasized at the expense of the first. One was, as proposed by Greece and Italy (A/C.3/L.679/Rev.1), to replace the words "in particular" in the second sentence by the words "inter alia". Others thought that the substance of the second sentence might be embodied in a separate paragraph or as proposed by Guatemala (A/C.3/L.677), in a separate article. However, these proposals were opposed by those who regarded the first and second sentences as closely linked and wished, therefore, to preserve the unity of the article. The amendment of Pakistan (A/C.3/L.674) sought to resolve the difficulty by combining the two clauses of the article in a single sentence, thereby making the act covered in the second clause an addition to that covered in the first. The main objection to this amendment was that it weakened the second clause. As the debate developed, it became apparent that there was wide agreement that the second sentence should be retained. Some representatives, however, felt that, as drafted, it lacked precision and clarity. The main problem was how to find a formulation which, while outlawing criminal experimentation, would not hinder

legitimate scientific or medical practices. There was general agreement that the Covenant should not attempt to lay down rules concerning medical treatment, as this was a matter which should be left to national legislation and the medical profession.

18. One approach to the problem, exemplified by the Australian amendment (A/C.3/L.678) was to limit explicitly the scope of the provision to scientific and medical experimentation which constituted torture or cruel, inhuman or degrading treatment. However, the Australian proposal was opposed on the grounds that, by not referring to "free consent", it failed to provide a satisfactory criterion for determining whether a given experiment was of the prohibited type or not. It was also pointed out that the proposed text sought to cover only experiments of a cruel, inhuman or degrading nature, while permitting other experiments conducted without the consent, or even the knowledge, of the subject.

19. Another approach, proposed by the Netherlands (A/C.3/L.673), was simply to eliminate from the text any references to legitimate medical practices. It was pointed out that the term "experimentation" did not cover medical treatment required in the interest of the patient's health. Hence, the clause "where such is not required by his state of physical or mental health" should be deleted, as it only served to confuse the meaning and intent of the provision by raising the implication that medical or scientific practices having the welfare of the patient in view came within its scope. A similar approach was proposed by Greece and Italy in their revised amendment (A/C.3/L.679/Rev.1), except that the words "in particular" were to be replaced by "inter alia". However, several representatives preferred the term "in particular", since it linked the second sentence to the first more closely, making it clear that what was referred to was medical or scientific experimentation which amounted to torture or cruel, inhuman or degrading treatment.

20. Some doubts were raised as to the desirability of retaining the words "without his free consent" if the intention of the provision was solely to prohibit criminal experimentation. It was argued that the words were not only redundant, but might open the door to abuses in that it would be possible to justify experimentation of a criminal nature on the pretext that the subject had his "consent". Such practices should be forbidden even if undertaken with the consent of the subject. In reply, it was argued that consent given under /...

pressure could never be regarded as "free" consent. It was unthinkable that anyone would freely submit himself to torture or cruel, inhuman or degrading practices. The introduction of the notion of "free consent" provided not only a safeguard, but also a criterion for determining whether an experiment was legitimate or not. Certain kinds of treatment became cruel, inhuman or degrading only because they were administered without the subject's free consent.

Voting on article 7

21. The voting on article 7 and on the amendments thereto took place at the 855th meeting, as follows:

(a) The Canadian sub-amendment (A/C.3/L.680), as orally amended, was rejected by 40 votes to 12, with 15 abstentions.

(b) After a request by the representative of the Philippines for a separate vote on the words "without his free consent" had been rejected by 46 votes to 4, with 14 abstentions, the revised amendment of Greece and Italy (A/C.3/L.679/Rev.1) was rejected by 37 votes to 18, with 10 abstentions.

(c) The Australian amendment (A/C.3/L.678) was rejected by 40 votes to 15, with 11 abstentions.

(d) At the request of the representative of Ecuador, the Netherlands amendment (A/C.3/L.673) was put to the vote in parts. The words "involving risk" were deleted from the text of article 7 by 41 votes to 8, with 16 abstentions. The remaining words "where such is not required by his state of physical and mental health" were also deleted, by 25 votes to 21, with 8 abstentions.

(e) Article 7, as amended, was voted on in parts, as follows:

(i) The first sentence was adopted unanimously.

(ii) The second sentence, as amended, was voted on by roll-call at the request of the USSR. It was adopted by 39 votes to none, with 29 abstentions, as follows:

In favour: Albania, Argentina, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ethiopia, Finland, France, Ghana, Haiti, Hungary, India, Israel, Japan, Lebanon, Mexico, Netherlands, Nicaragua, Norway, Pakistan, Panama,

/...

Peru, Poland, Romania, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Yemen.

Against: None.

Abstaining: Afghanistan, Australia, Belgium, Brazil, Burma, Cambodia, Canada, China, Ecuador, Federation of Malaya, Greece, Guatemala, Indonesia, Iran, Iraq, Ireland, Italy, Liberia, Libya, Morocco, New Zealand, Philippines, Portugal, Saudi Arabia, Spain, Sudan, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

(iii) At the request of the Ukrainian Soviet Socialist Republic, article 7 as a whole, as amended, was voted on by roll-call.

It was adopted by 64 votes to none, with 4 abstentions, as follows:

In favour: Afghanistan, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Venezuela, Yemen, Yugoslavia.

Against: None.

Abstaining: Australia, Liberia, Libya, United Kingdom of Great Britain and Northern Ireland.

Text as adopted

22. Article 7, as adopted by the Committee, reads as follows:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

ARTICLE 8

23. Article 8 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. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

"2. No one shall be held in servitude.

"3. (a) No one shall be required to perform forced or compulsory labour;

"(b) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

"(c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:

"(i) Any work or service, not referred to in sub-paragraph (b) normally required of a person who is under detention in consequence of a lawful order of a court;

"(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

"(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

"(iv) Any work or service which forms part of normal civic obligations."

24. The Committee discussed this article at its 856th to 861st meetings.

Amendments submitted

25. Amendments were submitted by the Netherlands (A/C.3/L.682) and Cuba, France, Guatemala, Italy, Mexico, Panama, Peru, Spain and the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.683 and Rev.1).

26. The Netherlands amendment (A/C.3/L.682) was to add the following words at the end of paragraph 3, sub-paragraph (c) (i): "or of a person during conditional release from such detention".

27. The revised amendment of Cuba, France, Guatemala, Italy, Mexico, Panama, Peru, Spain and the United Kingdom (A/C.3/L.683/Rev.1) was to add a fourth paragraph at the end of the article, as follows:

"Nothing in this article may be interpreted as diminishing the obligations resulting from the conventions of the International Labour Organisation concerning forced labour and its abolition or the international Conventions on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery."

Issues discussed

28. The representative of the Netherlands, in introducing his amendment (A/C.3/L.682), explained that paragraph 3 (c) (i) of article 8, while satisfactory in itself, did not cover the institution of conditional release, which permitted the release of the convicted person before the end of his sentence, on certain conditions, with a view to his rehabilitation and preparation for normal life. The work required of such persons should not be considered "forced or compulsory labour" within the meaning of the article, and it was to make this point clear that the amendment was introduced.
29. The nine-Power amendment (A/C.3/L.683/Rev.1) led to discussion of the question whether or not a reference should be made in article 8 to international conventions on slavery and forced labour. In support of the proposal, it was pointed out that, after the preparation of the text of the article by the Commission on Human Rights, two international conventions dealing with slavery and with forced labour were adopted - the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, and the Abolition of Forced Labour Convention, 1957 (A/C.3/L.681). A reference to these conventions and other existing conventions on the subject would, it was argued, strengthen and improve the text of the article, which was drafted in general terms. Some representatives attached particular importance to the fact that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery covered explicitly certain practices which were prejudicial to the physical and moral integrity of women. However, other representatives, while stressing that they were not opposed to the substances of the nine-Power amendment, questioned the desirability of including the reference to existing conventions in the article. The idea underlying the proposal was already covered by paragraph 2 of article 5 of the draft Covenant. Moreover, doubts were expressed regarding the value of the amendment which, in the view of some, might weaken the scope of the article.

Several representatives looked forward to the adoption of a general article which would define the relationship between the Covenants and other international conventions.

Voting on article 8

30. At the 860th meeting, the Committee voted as follows:

(a) The Netherlands amendment (A/C.3/L.682) was adopted by 36 votes to 3, with 31 abstentions.

(b) The nine-Power revised amendment (A/C.3/L.683/Rev.1) was not put to the vote, the Committee having adopted, by 30 votes to 26, with 16 abstentions, a proposal by Bulgaria to postpone action on the amendment until part II of the draft Covenant was considered.

(c) At the request of the Philippines, paragraph 3 (c) (ii) was voted on by parts. The words "any service of a military character" were adopted by 68 votes to none, with 1 abstention. The remaining words were adopted by 61 votes to none, with 11 abstentions.

(d) At the request of Mexico, a roll-call vote was taken on article 8 as a whole, as amended. The article was adopted by 70 votes to none, with 3 abstentions, as follows:

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

Against: None.

Abstaining: Iraq, Lebanon, Union of South Africa.

Text as adopted

31. Article 8, as adopted by the Committee, reads as follows:

- "1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
- "2. No one shall be held in servitude.
- "3. (a) No one shall be required to perform forced or compulsory labour;
- "(b) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- "(c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:
- "(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - "(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - "(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - "(iv) Any work or service which forms part of normal civic obligations."

ARTICLE 9

32. Article 9 of the Draft Covenant on Civil and Political Rights as submitted by the Commission on Human Rights read as follows:

- "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- "2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- "3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

"4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

"5. Anyone who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation."

Amendments submitted

33. Amendments were submitted by Costa Rica (A/C.3/L.685 and Rev.1), the United Kingdom of Great Britain and Northern Ireland (A/C.3/L.686), the Netherlands (A/C.3/L.687), Liberia (A/C.3/L.688) and Israel (A/C.3/L.689).

Paragraph 1

34. The United Kingdom proposed (A/C.3/L.686) the deletion of the second sentence, and the addition at the end of the paragraph of the words "and as are not in themselves incompatible with respect for the right to liberty and security of persons."

Paragraph 2

35. The Netherlands amendment (A/C.3/L.687) was to substitute the following paragraph:

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

36. Israel proposed (A/C.3/L.689) that the paragraph should be amended to read as follows:

"2. Everyone who is arrested has the right to be promptly informed of the reasons for his arrest. Such information shall be given him at the time of his arrest or as soon thereafter as circumstances permit."

The amendment was withdrawn at the 866th meeting.

37. The amendment of Liberia (A/C.3/L.688) was to replace the period at the end of the paragraph by a comma and to add the following words:

"and promptly thereafter, and within a reasonable time, furnished with a document issued by an authorized person or authority setting forth such charges".

Paragraph 3

38. Israel proposed (A/C.3/L.689) that the paragraph should be amended to read as follows:

"3. Anyone arrested or detained on a criminal charge shall have the right to be brought before a judge or other judicial officer as soon after his arrest as reasonably practicable, and to have such judge or judicial officer determine whether he should be remanded in custody pending his trial or be released, with or without bail."

Paragraph 4

39. Costa Rica proposed (A/C.3/L.685) that the paragraph be amended to read as follows:

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to have a decision taken without delay by a court of justice on the lawfulness of his detention and an order made for his release if the detention is not lawful. Any person may lodge the appropriate application on behalf of the person detained."

40. Costa Rica changed its amendment to take into account suggestions made by Greece and the revised amendment (A/C.3/L.685/Rev.1) read as follows:

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court of justice, in order that such court may decide without delay on the lawfulness of the detention and order his release if the detention is not lawful. The appropriate proceedings may be instituted by any person on behalf and as the representative of the person detained."

Paragraph 5

41. The amendment of the United Kingdom (A/C.3/L.686) was to replace the words "deprivation of liberty" by the word "detention".

Issues discussed

42. Article 9 was generally regarded as one of the most important articles in the draft Covenants. It was recalled that in 1958 two regional seminars, in the Philippines and Chile respectively, were devoted to the subject of the article (E/CN.4/765 and E/AC.7/L.310). There was a consensus of opinion that the provisions on the fundamental right to liberty and security of the person should be drafted with precision while taking into account the diversity of national

laws and procedures. Most members of the Committee supported the text submitted by the Commission on Human Rights. Amendments were moved to all the paragraphs of the article, but the final text of the article adopted by the Committee contains only a minor change in paragraph 5.

Paragraph 1

43. The discussion on paragraph 1 revolved around the meaning to be attributed to the second and third sentences and their relationship to each other and to the first sentence.

44. In the Committee the opinion was expressed that to replace the second and third sentences by an enumeration of the cases in which arrest and detention would be permissible, as suggested by the Netherlands Government (A/2910/Add.3), might make the article more precise and realistic and would perhaps avoid difficulties of interpretation. It was doubted, however, whether any such enumeration could be complete, or acceptable to all countries. Nor was there much support in the Committee for the view that it was preferable either to delete the second sentence or to use the term "illegal" instead of "arbitrary" in that sentence because the term "arbitrary" was too wide and indefinite in meaning.

45. Most of the discussion was related to the amendment of the United Kingdom (A/C.3/L.686), which proposed the deletion of the second sentence and the addition to the end of the third sentence of the words "and as are not in themselves incompatible with respect for the right to liberty and security of person".

46. The representative of the United Kingdom stated that the amendment would bring greater precision to paragraph 1. States could not sign an important instrument like the Covenant without being reasonably sure of what they were undertaking; and since under the proposed machinery of implementation the final decision on a complaint of violation of a provision of the Covenant would rest with the Human Rights Committee, the members of that Committee and States parties should be fully aware of the grounds on which such decisions could be made. The reason for introducing the criterion of arbitrariness in the second sentence was that legal grounds and procedures or the criterion of legality set out in the

third sentence might themselves be open to question on the grounds of arbitrariness. Unfortunately, the term "arbitrary" in the second sentence was too vague as a criterion. Moreover, the use of the term "arbitrary" in certain articles of the Universal Declaration of Human Rights and in various legal texts or works in English was of a general character. It was, therefore, necessary to clarify the intention underlying the use of the term "arbitrary" and the fact that the right to liberty and security of the person was also proclaimed in the first sentence was not an overwhelming argument against invoking that right as a criterion in the proposed amendment. If the interpretation which led to the submission of the amendment was wrong and the word "arbitrary" meant contrary to the national legislation, then not only was the second sentence of paragraph 1 superfluous, but the amendment would be withdrawn.

47. The United Kingdom amendment was opposed, not only by those who wished to retain the second sentence of paragraph 1, but also by others who were of the view that its purpose was covered by the first sentence of the paragraph. It was also pointed out that the provisions of article 9 were complemented by the general provisions of articles 2 and 5 in part II of the Covenant. The laws referred to in the third sentence of paragraph 1 would be the same as those which States would undertake to provide under article 2, paragraph 1, which according to the first sentence of paragraph 1 of article 9 had to give effect to the right to liberty and security of the person. Moreover, even if article 2 did not exist, under article 5, States parties could not take any action aimed at the destruction of any of the rights and freedoms recognized in the Covenant. If it was desired to make those safeguards stronger, it would be better to state that the law must not be incompatible with the Charter, the Universal Declaration or the provisions of the Covenant. It was pointed out, however, that the provisions in part II of the draft Covenant were only of value to the extent that the rights laid down in part III were clearly expressed and legally valid.

48. Some representatives suggested that the addition to the third sentence proposed in the amendment should be accepted without deleting the second sentence, as this would have the effect of adding a prohibition against the law itself being unjust or being applied in an unjust manner. However, some representatives wondered whether this would really add anything to the article, and such a course was also opposed by those who were against the United Kingdom amendment as a whole.

49. The majority in the Committee felt that the retention of the second sentence with the notion of "arbitrariness" was basic to the article. Some thought that the word "arbitrary" in the second sentence obviously meant "without legal grounds", or contrary to law, and the third sentence repeated that idea, but with additional particulars. A few representatives were of the opinion that the second sentence referred to cases where the liberty and security of the person declared in the first sentence were infringed on before a court had passed a sentence or without any judicial proceedings; the intention was to ensure that the executive and the police, which in all countries were endowed with discretionary powers in the public interest, did not exercise those powers without due regard for the rights of the individual. Others considered that "arbitrary" meant not only "illegal" but also "unjust", and incompatible with the principles of justice or with the dignity of the human person. It was a safeguard against the injustices of States, because it not only applied to laws but also to statutory regulations and to all acts performed by the executive. An arbitrary act was any act which violated justice, reason or legislation, or was done according to some one's will or discretion, or which was capricious, despotic, imperious, tyrannical or uncontrolled. The Committee should not reject a term which was legally valid and commonly used in many countries and their courts. The word had been included in articles 9, 12, 15 and 17 of the Universal Declaration of Human Rights. Its retention in article 6 of the draft Covenant on Civil and Political Rights had been accepted the year before by a large majority in the Committee, and it was also to be found in articles 12 and 17 of the draft Covenant.

Paragraph 2

50. The Israeli proposal (A/C.3/L.689) was to rephrase paragraph 2 in such a manner as to set forth the right of the individual rather than the duties of authorities, as the purpose of the Covenant was to guarantee rights and not to emphasize duties. It was opposed on the ground that paragraph 2 should not only be concerned with the right but should also contain the more important guarantee that the authorities were under an obligation to make it effective.

51. Nor was it deemed desirable to omit the reference to "charges" from the paragraph. The representative of Israel justified the omission of that reference

from his amendment on the basis that it scarcely differed from "reasons". Most representatives, however, wished to distinguish between "reasons" and "charges" which were to be furnished to the arrested or detained person, "charges" being considered of a more exact and serious nature.

52. Some representatives alluded to the practical difficulties that might arise if the stringent time-limits contemplated in the paragraph remained, and some scepticism was voiced concerning the ability of an arrested person always to know, or be in a position to give, the reasons for the arrest at the time of arrest. The Netherlands proposed (A/C.3/L.687) that the arrested person should be informed "promptly" of the reasons and of any charges against him. The amendment of Israel (A/C.3/L.689) specified that "promptly" meant "at the time of his arrest or as soon thereafter as circumstances permit". It was felt, however, that the separate and more exact time-limits provided for in the existing text were essential and that it was better to avoid phraseology which might be vague, or be open to different interpretations or provide too many loopholes.

53. The part of the Netherlands amendment which would require the reasons and charges to be furnished to the arrested or detained person "in a language which he understands" was supported as an important safeguard for foreign residents and for persons using different languages in a country. There was no opposition in principle to this amendment, but it was felt that the amendment was implicit in the existing text, and that in any case, the Covenant provided that its articles were to be applied without any discrimination.

54. The amendment of Liberia (A/C.3/L.688) was to add to paragraph 2 a further requirement that the arrested person should promptly and within a reasonable time be "furnished with a document issued by an authorized person or authority setting forth such charges". Charges against a person, it was contended, should be written and incorporated in a document which should be issued by authorized bodies or persons in order to avoid persons being detained indefinitely on vague, questionable or non-existent grounds. The amendment was supported in principle by many representatives, but incorporation in the Covenant of detailed provisions on procedure which might not meet the situations existing in a number of countries was not favoured.

Paragraph 3

55. The amendment of Israel (A/C.3/L.689) to paragraph 3 provided that anyone arrested or detained on a criminal charge should have "the right to be brought before a judge or other judicial officer as soon after his arrest as reasonably practicable, and to have such judge or judicial officer determine whether he should be remanded in custody pending his trial or be released, with or without bail".

56. It was stated that the object of the amendment was to make a clear distinction between the right of a person to be brought before a judicial officer to have the lawfulness of his arrest and detention verified, and his right to be brought to trial without delay. The latter was thought to be fully safeguarded by paragraph 1 of the article together with the provisions of article 11. As regards provisional release, it was said to be undesirable to go beyond the suggested amendment, since there was no universally recognized right that a person charged with an offence should be released on bail, as was implicitly conceded in the text of the second sentence of paragraph 3 itself. The omission of that second sentence was also justified because conditions for granting provisional release were in most countries left to the discretion of the judge or court and, if the question was not left to be determined by national legislation, the sentence would have to be reworded in more detailed and specific terms.

57. The amendment did not receive much support. Amongst the grounds for opposition to it were that it placed emphasis on detention rather than on release, that it might encourage dilatoriness, that the determination of the questions involved might be by competent authorities other than a judge or judicial officer, and that the scope of the existing text was wider. The second sentence of the existing text should be maintained because it did not regulate the system of provisional release but simply indicated that it should not be the general rule to hold an accused person in custody.

Paragraph 4

58. The amendment of Costa Rica (A/C.3/L.685/Rev.1) to paragraph 4 was submitted to meet what some representatives considered to be the two weaknesses in the draft of the Commission on Human Rights.

59. In the first place, it was thought essential to specify in the text the type of court qualified to determine the lawfulness of a person's detention and to

signify that such a court should not be an administrative court or a special tribunal which did not offer adequate guarantees of impartiality or due process. The amendment accordingly proposed to replace the word "court" by "court of justice". However, many representatives felt that the existing text was more appropriate as it took into account differences in national systems.

5. In the second place, it was contended that, as it stood, paragraph 4 did not cover the position of persons who might be unable for one reason or another to initiate proceedings personally. The possibility had to be borne in mind that detained persons might be held incommunicado, or might be prevented from communicating with the outside, or might be removed to distant places, or might have no relatives or legal representatives. The amendment, therefore, proposed to add the following sentence to the paragraph: "The appropriate proceedings may be instituted by any person on behalf and as the representative of the person concerned." The purpose of the amendment was simply to bring the case to the attention of a court in order that the court might inquire into the lawfulness of the arrest and detention.

6. Some representatives thought that the amendment might open the door to the unbridled zeal of any ill-advised person or group who wished to exploit a given occasion to make an application in which they had no legitimate interest. A limitation of applications or any provision which might give rise to multifarious and inappropriate proceedings could paralyse the courts and delay all the procedures and, in the end, be prejudicial to the interests of the detained persons.

62. Other representatives wanted it clearly specified that persons making applications on behalf of a detained individual should prove or give evidence of a legitimate interest or claim or right in the matter or should show that they had proper and lawful reasons for doing so.

63. One view was that it was more important to ensure that the detained person had the right to communicate with a lawyer or with any other person able to act on his behalf. Such a right was guaranteed in part by article 14 for persons involved in court proceedings, but it could be made more specific by laying down that arrested or detained persons should not be held incommunicado.

64. Notwithstanding the contention that experience of countries having similar provisions as that proposed did not show that there was any real danger of abuse,

it was felt that it would be difficult to find a formula for the amendment which would be suitable for all countries.

Paragraph 5

65. The United Kingdom amendment (A/C.3/L.686) proposed that the words "deprivation of liberty" in paragraph 5 should be replaced by "detention" so that the right to compensation would appertain to "victims of unlawful arrest and detention". The amendment was explained to be one of form only, intended to make the draft clearer and to align it with the rest of the article. Although it was pointed out that the amendment was not intended to narrow the scope of the paragraph and that the expression "deprivation of liberty" could be used alternatively to "arrest and detention", some doubt was expressed whether the amendment was not restrictive. Some expressed the opinion that the present might mean that "deprivation of liberty" referred not only to "arrest and detention" but also to liberties dealt with in other articles of the Covenant.

Voting on article 9

66. At the 866th meeting, the Committee voted as follows:

Paragraph 1

(a) At the request of the United States representative, the United Kingdom amendment (A/C.3/L.686) to delete the second sentence was voted on separately and rejected by 44 votes to 11, with 14 abstentions.

(b) The rest of the United Kingdom amendment (A/C.3/L.686) was rejected by 40 votes to 17, with 14 abstentions.

(c) The original text of paragraph 1 was adopted by 67 votes to none, with 5 abstentions.

Paragraph 2

(d) The amendment of the Netherlands (A/C.3/L.687) was rejected by 30 votes to 16, with 23 abstentions.

(e) The amendment of Liberia (A/C.3/L.688) was rejected by 32 votes to 5, with 4 abstentions.

(f) The original text of paragraph 2 was adopted by 68 votes to none, with 4 abstentions.

Paragraph 3

(g) The amendment of Israel (A/C.3/L.689) was rejected by 49 votes to 4, with 19 abstentions.

(h) The original text of paragraph 3 was adopted by 67 votes to 1, with 4 abstentions.

Paragraph 4

(i) The first sentence of the revised amendment of Costa Rica (A/C.3/L.685/Rev.1) was rejected by 35 votes to 22, with 15 abstentions.

(j) The second sentence of the revised amendment of Costa Rica (A/C.3/L.685/Rev.1) was rejected by 38 votes to 19, with 14 abstentions.

(k) The original text of paragraph 4 was adopted by 67 votes to none, with 4 abstentions.

Paragraph 5

(l) The amendment of the United Kingdom (A/C.3/L.686) was adopted by 30 votes to 27, with 19 abstentions.

(m) The text of paragraph 5 as amended was adopted by 67 votes to none, with 5 abstentions.

Article as a whole

(n) The text of article 9 as a whole, as amended, was adopted by a roll-call vote of 70 to none, with 3 abstentions, 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, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Japan, Jordan, Lebanon, Liberia, Libya, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: None.

Abstaining: Israel, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Text as adopted

67. Article 9, as adopted by the Committee, reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

"2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

"3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

"4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

"5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

ARTICLE 10

68. Article 10 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights, read as follows:

"1. All persons deprived of their liberty shall be treated with humanity.

"2. Accused persons shall be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

"3. The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners."

The Committee discussed this article at its 867th to 869th and 880th to 883rd meetings.

Amendments submitted

69. Amendments were submitted by Ceylon (A/C.3/L.684 and Rev.1), the Netherlands (A/C.3/L.691 and Rev.1), Tunisia (A/C.3/L.692 and Rev.1 and 2), and by Belgium, Cuba, France, Spain and Tunisia (A/C.3/L.693 and Rev.1 and 2). A sub-amendment to the first revised amendment of Tunisia (A/C.3/L.692/Rev.1) was submitted by Greece, Saudi Arabia and Spain (A/C.3/L.700).

Paragraph 1

70. The original amendment of Tunisia (A/C.3/L.692) was to add to the end of the paragraph the words, "and with respect for their dignity". This text was revised first (A/C.3/L.692/Rev.1) to "in accordance with the dignity of the human person", and then (A/C.3/L.692/Rev.2) to "and with respect for the inherent dignity of the human person".

71. The sub-amendment by Greece, Saudi Arabia and Spain (A/C.3/L.700) to replace the first revised text of the Tunisian amendment by "with humanity and respect for their personal dignity", was withdrawn at the 882nd meeting after submission of the second revision of the Tunisian amendment.

Paragraph 2

72. The original Netherlands amendment (A/C.3/L.691) to insert the word "normally" between "shall" and "be" was later revised (A/C.3/L.691/Rev.1) to insert within commas after the word "shall" the phrase "save in exceptional circumstances".

73. The amendment of Ceylon in its original form (A/C.3/L.684) was to add a sub-paragraph reading: "Juveniles charged with delinquency shall be segregated from all other adult detainees and convicted persons and shall be subject, while detained, to separate treatment appropriate to their age and legal status and shall be brought as speedily as possible for judicial examination and adjudication."

74. This text was revised (A/C.3/L.684/Rev.1) to read: "(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication".

Paragraph 3

75. The original amendment of Belgium, Cuba, France, Spain and Tunisia (A/C.3/L.693) was submitted to the French and Spanish texts only. The first

revision of the amendment (A/C.3/L.693/Rev.1) was to replace the paragraph in the English, French and Spanish texts by: "3. The penitentiary system shall be essentially directed towards the reformation and social rehabilitation of prisoners".

76. The text of the second revision (A/C.3/L.693/Rev.2), applying to all languages, was as follows: "3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".

77. The amendment of Ceylon (A/C.3/L.684) originally proposed to add to the paragraph the following: "and separate and distinct treatment facilities shall be provided for juveniles committed by the court wherein their re-education might be undertaken in accordance with the accepted principles of correctional treatment for juveniles".

78. This text was revised (A/C.3/L.684/Rev.1) to read as follows: "Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status".

Issues discussed

79. The consensus of opinion was that while a person deprived of his liberty was not exactly in the same position as any other person and that in exceptional circumstances he might be subjected to special treatment, he should not be regarded as unworthy merely because he was accused or convicted of an offence, since the basic aim was his reformation and rehabilitation. Such a person was entitled to respect for his physical and moral dignity, to material conditions and treatment befitting that dignity and to sympathy and kindness. Some representatives were of the view that the words "treated with humanity" in paragraph 1 of the article fully expressed these objectives and the amendment moved by Tunisia (A/C.3/L.692/Rev.1 and 2) and the sub-amendment by Greece, Saudi Arabia, and Spain (A/C.3/L.700), proposing to refer to "dignity" as well, would not add anything to the meaning of the paragraph. It was also recalled that the preamble to the Covenant explicitly referred to the recognition of the "respect for the inherent dignity of the human person", which was proposed in the second revised amendment of Tunisia. However, it was contended that, since the term "humanity"

did not carry the same connotation in all languages, it was preferable to make the meaning of the paragraph clearer by including the Tunisian amendment (A/C.3/L.692/Rev.2).

80. Doubt was expressed by some representatives about the practical possibility in many countries of always segregating accused persons from convicted persons as required in paragraph 2 of the article. The Netherlands amendment (A/C.3/L.691) proposed to insert the word "normally" so that the pertinent part of the paragraph would specify that accused persons "shall normally be segregated from convicted persons". As many members of the Committee thought that the amendment might unduly weaken the paragraph, the word "normally" was later replaced by "save in exceptional circumstances" (A/C.3/L.691/Rev.1). Nevertheless, some members believed that even these words might open the door to unjustified abuses and practices.

81. The majority of members of the Committee supported the amendment of Belgium, Cuba, France, Spain, and Tunisia (A/C.3/L.693/Rev.2) on the ground that it expressed in more appropriate terms the objective of the penitentiary system provided for in paragraph 3 than did the original text, which, it was pointed out, was worded differently in the English, French and Spanish versions. The amendment did not go as far as to state that the sole purpose of the penitentiary system should be the reformation and social rehabilitation of prisoners, as some wished to do in keeping with what they described as the contemporary trend and modern idea of the basic purpose of detention of offenders. Nor did the amendment disregard the views of those who referred to the deterrent aspect attached to punishments and penitentiary systems.

82. Ceylon introduced amendments (A/C.3/L.684) to paragraphs 2 and 3 dealing with the application of the article to juvenile delinquents. The representative of Ceylon stated that the problem of juvenile delinquency was not a new one, but it had become particularly acute in several countries and the number of juvenile delinquents was constantly growing everywhere. He referred to the special attention which was being given to the problem both nationally and internationally, and to the United Nations efforts in that field. Although the Covenant could not provide for the detailed measures, it should embody provisions covering the special needs of juvenile delinquents in regard to such matters as conditions and

duration of their provisional detention, their segregation from adults and particularly from convicted persons, and the nature of the treatment to be accorded to such offenders, which should conform to accepted principles of correctional treatment for juveniles and be adapted to the individual nature of each delinquent. The amendment dealt with these matters in broad terms, leaving each country to adopt appropriate definitions, detailed measures and programmes corresponding to their needs.

83. Many representatives referred to the problem of juvenile delinquency, either generally or in relation to their own countries, and spoke of the various causes and factors involved, as well as of the steps being undertaken to meet the problem. They supported, in general, the initiative of Ceylon and made some drafting suggestions, most of which were reflected in the revised amendment of Ceylon (A/C.3/L.684/Rev.1). On a few points, however, there were differences of opinion. For instance, some were of the view that article 9 provided for speedy judicial examination and trial of all persons, and special reference to speedy adjudication for juveniles might adversely affect the position of adults and cast doubt on article 9. Others thought that article 9 was concerned basically with criminal offences, while juveniles were often brought before a court for bad behaviour, and that, in any case, it was necessary to include a special provision for juvenile persons, in particular to avoid remands in custody over any period of time. Another issue concerned the segregation of juvenile persons or offenders from adults and convicted persons. One view was that a rigid and strict requirement for their separation would be difficult to comply with in many countries and it might be better to allow some flexibility by including similar phraseology to that of the Netherlands amendment to paragraph 2. But it was felt that, on moral and physical grounds, juveniles must be separated from adults, especially from convicted adults.

84. The Committee agreed to include in the report an indication of the discussion on the relationship between the provisions of article 10 and the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders (A/CONF.6/1, annex I A) and approved by the Economic and Social Council in resolution 663 C I (XXIV) of 31 July 1957. During the discussion it was pointed out that the Rules set out in greater detail than article 10 provisions concerning

the treatment of prisoners, including persons detained under arrest or awaiting trial, who were to be governed by a special regime. A number of representatives thought it desirable to mention in the report of the Committee that while the Rules were not referred to in article 10 they should be taken into account in the application of article 10 by States Parties to the Covenant and that nothing in the article should prejudice the application of the Rules. It was noted by some that the Rules had been approved by the United Nations through the Economic and Social Council and that the Council had already recommended that Governments give favourable consideration to the application of the Rules in the administration of penal and correctional institutions, and report on such application to the Secretary-General every five years. Some representatives were of the view that the Minimum Rules were of a practical nature which might become out of date in time or be revised. Any decision formally linking the Rules to the article was undesirable because the Committee had not discussed or studied them in detail and some of its provisions might be contrary to the spirit and letter of the draft Covenants.

Voting on article 10

85. At the 882nd meeting, the Committee voted as follows:

Paragraph 1

- (a) The amendment of Tunisia (A/C.3/L.692/Rev.2) was adopted by 28 votes to 11, with 29 abstentions.
- (b) Paragraph 1, as amended, was adopted by 63 votes to 1, with 5 abstentions.

Paragraph 2

- (c) The Netherlands amendment (A/C.3/L.691/Rev.1) was adopted by 27 votes to 25, with 16 abstentions.
- (d) At the request of the United Kingdom, the amendment of Ceylon (A/C.3/L.684/Rev.1) was voted on in parts. The words "Accused juvenile persons shall be separated from adults", was adopted by 65 votes to none, with 4 abstentions. The remaining words, "and brought as speedily as possible for adjudication", were adopted by 45 votes to 8, with 16 abstentions.

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

Paragraph 3

(f) The amendment of Belgium, Cuba, France, Spain and Tunisia (A/C.3/L.693/Rev.2) was adopted by 44 votes to 1, with 23 abstentions.

(g) The amendment of Ceylon (A/C.3/L.684/Rev.1) was adopted by 63 votes to none, with 5 abstentions.

(h) Paragraph 3 as amended was adopted by 67 votes to none, with 2 abstentions.

Article as a whole

(i) Article 10 as a whole, as amended, was adopted by 67 votes to none, with 2 abstentions.

Text as adopted

86. Article 10, as adopted by the Committee, reads as follows:

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

ARTICLE 11

87. Article 11 of the draft Covenant on Civil and Political Rights, as submitted by the Commission on Human Rights, read as follows:

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."

The Committee discussed this article at its 883rd to 885th meetings.

Amendment submitted

88. Colombia submitted an amendment (A/C.3/L.701) to replace the word "contractual" by the word "civil".

Issues discussed

89. There was general agreement with the text of the article, which was to be understood in the light of the discussions in the Commission on Human Rights as indicated in the annotation (A/2929), but some representatives were of the view that the term "contractual obligation" did not go far enough. The term did not cover obligations which, although not contractual, were nevertheless binding upon the person concerned. It was thought desirable to prohibit imprisonment from being used as an instrument by one individual against another in non-criminal cases and in cases such as those arising out of commercial and labour laws and civil obligations in general. The amendment of Colombia (A/C.3/L.701) to replace "contractual obligation" by "civil obligation", reflected this point of view; other suggestions were "obligation under private law" or "obligation of a private nature". However, it was doubted whether the term "civil" had the same meaning in all languages and in all legal systems. For example, in some countries "civil obligations" was used to mean essentially "non-military obligations", in others the term did not cover commercial transactions, and in still others it might cover taxation cases or cases of non-compliance with court orders. It was, therefore, felt undesirable to accept an amendment which might broaden or restrict the scope of the article, depending upon the different national systems, but which would make a provision of an international instrument indefinite in meaning.

Voting on article 11

90. At the 885th meeting, the Committee voted as follows:

(a) The amendment of Colombia (A/C.3/L.701) was rejected by 39 votes to 15, with 8 abstentions.

(b) The text of the article as submitted by the Commission on Human Rights was adopted unanimously.

Text as adopted

91. Article 11, as adopted by the Committee, reads as follows:

"No person shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."

RECOMMENDATIONS OF THE THIRD COMMITTEE

92. The Third Committee, not having been able this year to complete consideration of the draft International Covenants on Human Rights, recommends that the General Assembly give priority to this item at its fourteenth session.
