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Folder Title:

Human Rights Treaty Implementation [2]

Staff Office-Individual:

Multilateral & Humanitarian Affairs-Stromseth, Jane/Feldman, Daniel/Shea, Dorothy

Original OA/ID Number:

2975

Row:	Section:	Shelf:	Position:	Stack:
40	4	6	3	V

Jamie:

7/29/99

All we are left with
are the last two comments.
Up to you whether to
even make the second to
last one. (See my ~~ed~~ note
in margin.)

Should be a quick
conversation. Caroline

POINTS ON DOMINGUEZ BRIEF

we confirmed
President
did not
need to
see this

- Page 13, Section 2(a): block quote from Paquete Havana states that we resort to international custom when there is "no treaty, and no controlling executive or legislative act" to follow. Here, the President proposed and the Senate accepted a reservation that does seem to be controlling as a matter of law. Why not just make that point and stop there?

- Pages 16-20, Section 2(b): We and Beth agree that this "persistent objector" section should be deleted. This section of the brief cites to objections lodged by previous administrations but also suggests that the Executive Branch currently objects to such a norm.

Grand
Faulder
ethical
reminiscent
to object
object
exists

-- See, e.g., page 16 "the courts should defer to the position of the Executive Branch as to whether a rule of customary international law is presently binding on the United States;"

-- page 17: "The United States has also persistently objected to the development and application of such a principle [that customary international law prohibits the execution of 16-year-old offenders]."

6
weeds
go
full
a
brief

- Because we have no evidence that this President has adopted a position either way on this issue, we and Beth feel strongly that this section of the brief should be deleted. [The cites are to a 1986 US position before the Inter-American Commission on Human Rights, the 1991 Reservation to the Int'l Convention on Civil and Political Rights.]

object
have
a point

- Pages 20-23, Section 3: We note that this section distinguishes a *jus cogens* norm from customary international law by explaining that a *jus cogens* norm does not depend on the consent of the State. However, this section of the brief goes on to contradict that explanation. (See, e.g., page 21 - urging the Court not to put itself in the position of deciding whether "the United States must be bound by [a *jus cogens*] norm despite its persistent objection to it up to this point in international fora") ~~In any event, we think this point should be deleted for the reasons explained above.~~

- Specific edit: On page 22, first sentence of first full paragraph: replace "an international legal obligation" with "a particular treaty provision." As currently written, this sentence suggests that there is an international legal

o. let
down
or not
endemic
No one talks
How reasonable

Seth
probably will
say that
negotiable
not binding
jus cogens
the Court
would still
have to
decide
this
issue.

obligation not to execute someone for offenses committed when they were 16. We should not be taking a position in this brief one way or another on whether there is such an international legal obligation.

- Page 10 - delete "only" 9 out of 11 ✓

Krass, Caroline D. (LEGAL)

From: Krass, Caroline D. (LEGAL)
Sent: Tuesday, September 28, 1999 9:06 PM
To: @NSA - Natl Security Advisor
Cc: @LEGAL - Legal Advisor; Leavy, David C. (PRESS)
Subject: Solicitor General's Brief in Death Penalty/International Law Case [UNCLASSIFIED]

Please pass to Sandy and Jim FYI (Multilat concurs)

We wanted to let you know that tomorrow the Solicitor General (SG) plans to file a brief for the USG in Domingues v. Nevada, which may draw attention to the USG's views on international law and the death penalty. The petitioner in that case is arguing that Nevada is prohibited from imposing capital punishment on him for a capital offense committed when he was 16 years old because such punishment would violate the International Covenant on Civil and Political Rights (ICCPR), customary international law, and/or a *jus cogens* peremptory norm of international law. The Supreme Court specifically asked the SG for his views on the case.

The primary argument in the government's brief is that although the ICCPR prohibits the imposition of a death sentence for a crime committed by a person who is under 18, the United States entered a reservation to that provision when it deposited its instrument of ratification in 1992. That reservation, proposed by President Bush and adopted by the Senate, reserves the right "to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age." The brief argues that the reservation is constitutionally valid and controlling as a matter of domestic law.

The brief also argues that the case does not present an appropriate vehicle for the Court to determine whether the execution of persons for crimes committed when they were under 18 violates customary international law or a *jus cogens* norm. The Nevada Supreme Court did not address these issues and no record was compiled in either of the lower courts.

We are in the process of steering the brief away from an argument that, regardless of whether the imposition of capital punishment on minors is in violation of a norm of customary international law, we would not be bound by such a norm because the Executive Branch has persistently objected to it. The current draft of the brief cites to objections lodged by previous administrations but also suggests that the Executive Branch currently objects to such a norm. Because we have no evidence that this President has adopted a position either way on this issue, we and the WH Counsel are recommending to the SG the deletion of this section of the brief. In addition, State warns against the negative diplomatic repercussions, particularly with our EU counterparts, of any indication that our current view is that customary international law does not prohibit the execution of 16-year-old offenders.



U.S. DEPARTMENT OF STATE
THE LEGAL ADVISER
Washington, D. C. 20520-6310

Date: September 29, 1999

TO: Caroline Krass - NSC

FAX # 456-9110 Phone # 456-9111

FROM: L – William Kissinger, Legal Adviser's Office

FAX #: 202 647-7096 Phone #: 202 647-9598

SUBJECT: Please see attached

SPECIAL INSTRUCTIONS/MESSAGE: This is the explanation and change that our office sought in the SG's brief

Number of Pages: 2 (plus this cover sheet)

United States Department of State

Office of the Legal Adviser

Washington, D.C. 20520

FAX COVER SHEET

DATE: SEPTEMBER 29, 1999

TO: SETH WAXMAN

FAX: (202) 514-9769

PHONE:

FROM: DAVID ANDREWS

PHONE: (202) 647-9598

FAX: (202) 647-7096

SUBJECT: Final State Revisions

Number of pages including cover sheet: 2

Message:

Seth,

We are very pleased with the latest version of the brief. Although there are a few points that DRL might in the ordinary course want to raise or revisit, my office has advised Harold's shop that the one change we would seek is on page 21 (attached). As currently drafted, the text in question indicates that it is the USG's position that slavery, torture and genocide are all *jus cogens* norms. In the last draft we expressed concern at including torture in this group. If you believe that it needs to be included, we would strongly prefer that the text in question not state a USG view on whether it is or is not. (This is unnecessary to the brief.) We would prefer that the language in question adheres to the formulation in footnote 11 ("that it has been suggested that . . ."). The revision we attach does this. Call if you have any question. Thanks again for your responsiveness.

Dave

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application of Nevada's death penalty statute to petitioner, the Court would have to decide that the asserted legal prohibition against capital punishment for 16-year-old offenders has similar force under international law to the prohibitions ^{that are commonly cited as ius cogens, such as} against slavery, ^{those} torture, and genocide; ~~such that it has the status of a peremptory norm~~; that the United States must be bound by such a norm despite its persistent objection to it up to this point in international fora; and that domestic courts must give effect to that norm to preempt the application of a state criminal statute, notwithstanding the contrary intentions of the political Branches (including the reservation to a treaty to which the United States is a party).

Such contentions, if accepted by this Court, would obviously have profound significance. For the reasons we have given above in discussing petitioner's claim based on customary international law, we submit this case does not present an appropriate vehicle for addressing those far-reaching contentions. Neither the record nor the decision below illuminates in any way the question whether a ius cogens norm against capital punishment for 16-year-old offenders has developed. Nor is there any conflict among lower courts on the question; indeed, we are not aware of any lower court decision that has addressed the question. In addition, no source of decisional law that this Court might find helpful in resolving the question whether the execution of a 16-year-old offender violates ius cogens (such as decisions of the International Court



United States Department of State

Washington, D.C. 20520

F A C S I M I L E T R A N S M I S S I O N
BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABORDATE: 9/27/99FROM: Rosa EhrenreichNO. OF PAGES: 6
(including cover)FAX NO. 456-9110TO: Caroline Cross - NSC Legal
Office -

MESSAGE: Harold Koh asked me to get in touch (I'm
got a number of his former students - now working as
his special assistant). We've been working with
the Legal Advisors' office here to produce a joint
memo summarizing DRL + L concerns over the
9/23 draft of the Dominguez brief. Since the
clock is ticking, & it's taking longer than we
thought to combine all comments into one
memo, Harold suggested that I fax you a copy
of the original DRL memo (it was sent
yesterday to David Andrews), to give you
a sense our main concerns. When the
final L/DRL memo is done, I'll fax that too;
we thought you might be able to pass this fax
along to Tammie Baker. Give me a call if
you have a chance. Thanks! -Rosa

September 25, 1999

MEMORANDUM

TO: L- David Andrews

FROM: DRL-Harold Hongju Koh

SUBJECT: Domingues brief

You asked for DRL's views on the latest (Sept. 22) draft of the Domingues brief, to add to the comments that Andre Surena has already made. We agree with Andre's specific comments, as far as they go (with some exceptions noted below), and we think that this draft contains many improvements. Nonetheless, we see serious problems in addition to Andre's points that go to the very purpose of this brief.

I. General comment:

As you know, it is our view that this brief should above all, be narrowly argued, the only necessary point being that Domingues presents no cert-worthy issues. The brief need not reaffirm past U.S. positions on international human rights law that have been widely criticized by many of our allies and that might be rethought if subjected to full intergovernmental political review. If cert is granted, we may well have to get into some of these points in any merits brief. But in this CVSG brief, there are only two goals: to get cert denied on the ground that the case is a poor vehicle for deciding these complex human rights issues, and not to generate a document that will itself be cited as evidence of explicit Clinton Administration endorsement of the execution of juveniles by a few states.

At the moment, however, the brief fails the second goal. In its current form, the Domingues brief would be read as the Clinton Administration adopting as its own controversial positions of past administrations that are widely perceived as retrograde. (Specifically, it reads like an express reaffirmation of the pro-juvenile death penalty position taken by the Reagan Administration in Roach thirteen years ago). This will further damage our credibility at the United Nations and with crucial bilateral partners, at a time when the US is already taking heavy fire over the International Criminal Court, child soldiers, the landmines

convention, our unpaid UN dues, and so on. Most of our allies and our critics alike strongly oppose the U.S. practice of executing individuals for crimes they committed as minors. This criticism is building. I have been asked about the brief by a number of European interlocutors, most recently last week by the Finnish Foreign Minister (the coordinator of the EU's common human rights positions) who raised the issue with me at the UN General Assembly.

To do the job, the main thrust of the brief should be that the Nevada Supreme Court's decision is correct, as a matter of treaty law, and thus does not require the Court's review. The brief makes this point effectively, in pages 1 to 13. With a few exceptions noted below, we think that the Brief's first thirteen pages are fine. Starting at the bottom of that page, however, the draft runs into serious problems. Discussion of customary international law and jus cogens norms is far longer than the two or three paragraphs necessary. To chart these arguments in such detail implies that the U.S. federal government has a strong stake in supporting a juvenile death penalty, which we do not.

To do the job, this brief need do no more than concisely make the following points about customary international law and jus cogens: first, customary international law is complex and difficult to determine, and the record below is inadequate to permit the court to accurately determine the current status of customary international law with regard to the execution of sixteen-year-olds. Second, a fortiori, the identification of jus cogens norms is fraught with even greater difficulties, and the issue was not raised at all below. For those reasons, this case would be a poor vehicle for a thoroughgoing determination of the status of international law with regard to the execution of sixteen-year-olds, and since the decision was correct as matter of treaty law, granting cert is, in any event, wholly unnecessary.

II. Specific comments:

We concur in many of the specific comments Andre Surena has already made in the attached memo, with a few minor exceptions.

Andre's comment #6, to page 12: we think that the wording already in the brief is superior to Andre's suggested change. In our view, there is a strong, albeit imperfect,

no

correlation between non-derogable rights and rights that go to the ICCPR's object and purpose.

Andre's comment # 9, to page 13: stick with original *no*

Andre's comment #10, to page 15: stick with original *"compromise" - Jordan reflects split*

Andre's comment #15, to page 23: we do not share Andre's view here. The brief correctly notes that the Court might "find helpful" decisions of the ICJ, other country's courts, the IACHR, the European Court of Human Rights, and UNGA resolutions. On a question of determining customary international law or jus cogens norms, it is entirely appropriate to take note of what other national and international judicial and political bodies have stated as evidence of what customary international law or jus cogens might be.

Our own specific comments are as follows:

P. 11- second full sentence. Stating that "only 11" states have objected to the US reservation to Article 6(5) is needlessly provocative: see comments in our previous memo of Aug 23. In this context, eleven is a significant number of objectors. We suggest changing the sentence to read, "Of the 149 states that are parties to the ICCPR, 11 have objected to the US reservation to Article 6(5), and nine of the 11 have objected on the grounds that the reservation violated the ICCPR's object and purpose.... But not one of the objecting states has stated that, because of the US reservation, it does not recognize the ICCPR as being in force between itself and the US." That last bit is the key point-given that no one claims that the ICCPR is not in force, the number of objectors is irrelevant.

P. 13, Para 1 (nonselfexecuting): We would prefer this paragraph to be in a note, dropping fn. 5.

P. 17, last para (b). (customary international law). The main point about customary international law is that there is no adequate record below, and that point has already been made on pages 16-17. After the first sentence in this paragraph, we think the remainder of the paragraph should be cut, or if not, toned down significantly. We don't need to state that there is

no customary international law prohibition on executing 16 year olds--the fundamental point is that we're persistent objectors, so the existence of a customary international law norm is not relevant. But stating that there is no norm goes further than necessary and will provoke a firestorm of criticism--and, in fact, if an international body were to rule on this today, they might well say that there is now a customary international law norm against executing sixteen-year-olds.

Footnotes 8, 10, 12: Throughout, we think it is a serious mistake to rely upon or continue to bring up Roach and Pinkerton. The Reagan administration's position was seen as exceedingly retrograde even at that time. In 1986, the IACHR stated that there was a jus cogens norm against the execution of children, with debate remaining only over the precise age of majority, and noted that a customary international law norm against executing sixteen-year-olds was in the process of emerging. The Commission also concluded that there was a general norm among OAS states prohibiting execution of children. Thirteen years is a long time in the evolution of international human rights law. Since then we have had the Second Optional Protocol to the ICCPR, various rulings and protocols from the European system, the South African Constitutional Court decision in *State v. Makwanyane*, the 1990 decision of the Hungarian Constitutional Court invalidating capital punishment and the Inter-American Court's own rulings on right to life in the *Velasquez Rodriguez* case. If the case were to be reexamined today, the IACHR might well conclude that there now is a global customary international law norm against executing sixteen-year-olds.

P. 19, note 9: we suggest cutting/significantly altering this note. Since the Clinton Administration's official position on these two conventions is that we are seeking ratification, relying on this is of dubious value, and in fact arguably undercuts the administration's position. As is, this opens us to charges of hypocrisy: on one hand, we are claiming to seek ratification of these conventions, and at the same time, the brief as it now stands cites their still-unratified status as proof of unified political branch opposition to the norms therein.

P 22-24: (jus cogens) this whole discussion contains assertions that are both irrelevant and incorrect. As noted above, we think this section should be cut significantly; it places a disproportionate amount of emphasis on jus cogens, which was not even raised below. It should be, at most, a one page discussion--with the incorrect assertions eliminated.

P. 22: the brief notes, correctly, that "the binding nature of jus cogens does not depend on the consent of the state." But later on, the brief several times states (middle of p. 22, twice on p. 24) that the US has persistently objected to such a jus cogens norm. But as the brief notes, with a jus cogens norm, our persistent objection is beside the point--we're still bound by it, from an international law point of view.

P. 23: the brief states, "there is no foundation in our view for concluding at this time that a jus cogens norm prohibits a state .. from imposing CP on a 16 year old". Stating that there is "no foundation" is far too strong: as noted above, the IACHR found that in 1986, there was a jus cogens norm against executing "children," and there was an emerging customary international law norm against executing 16 year olds. This surely provides some foundation for the view that 13 years later, a jus cogens norm could well have emerged; indeed, many commentators would argue that such a norm has emerged. Once again, why overstate the case when doing so is not necessary to the main argument, and will only provoke anger and hostility from both allies and adversaries.

P. 24: first sentence: no "definitive pronouncements." This is just wrong: plenty has been written on this (see Roger Hood, William Schabas, Bacre Ndialye, Ernest van den Haag & John Congrad, Welsh White, other reports by special rapporteurs). The third sentence, "we are not aware of any authority in domestic law..." is, similarly, somewhat disingenuous: there is plenty of precedent surrounding this point. even if not directly

TOTAL P.06

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convention, our unpaid UN dues, and so on. Most of our allies and our critics alike strongly oppose the U.S. practice of executing individuals for crimes they committed as minors. This criticism is building. I have been asked about the brief by a number of European interlocutors, most recently last week by the Finnish Foreign Minister (the coordinator of the EU's common human rights positions) who raised the issue with me at the UN General Assembly.

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one count of burglary, one count of robbery with the use of a deadly weapon, one count of first degree murder, and one count of first degree murder with the use of a deadly weapon. At seventeen years of age, Domingues was sentenced to death for each of the two murder convictions. On May 30, 1996, this court upheld Domingues' convictions and sentence. *Domingues v. State*, 112 Nev. 683, 917 P.2d 1364 (1996), cert. denied, ___ U.S. ___, 117 S. Ct. 396 (1996).¹

On November 7, 1996, Domingues filed a motion for correction of illegal sentence, arguing that "execution of a juvenile offender violates an international treaty ratified by the United States and violates customary international law." Article 6, paragraph 5 of the International Covenant on Civil and Political Rights (ICCPR) provides that: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." ICCPR, Dec. 19, 1966, art. 6, S. Treaty Doc. No. 95-2, 999 U.N.T.S. 171, 175.

In 1992, the United States Senate ratified the ICCPR, with the following pertinent reservation and declaration:

That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

That the United States declares that the provisions of Articles 1 through 27 of the [ICCPR] are not self-executing.

¹According to the State, Domingues' petition for writ of certiorari to the United States Supreme Court raised the issues of whether this court's statutory review of his sentence violated due process and whether this court's review of his sentence violated the Eighth Amendment.

138 Cong. Rec. S4781-01, S4783-84 (daily ed. April 2, 1992) (emphasis added).

At a hearing on Domingues' motion to correct the illegal sentence, the district court concluded that the sentence was not facially illegal and, thus, it lacked jurisdiction to correct the sentence; on March 7, 1997, the district court issued an order denying Domingues' motion. Domingues appeals from this order.

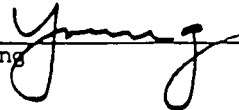
DISCUSSION

Domingues contends that pursuant to the ICCPR, imposition of the death sentence on one who committed a capital offense while under the age of eighteen is illegal. ICCPR, 999 U.N.T.S. at 175. Although the United States Senate ratified the ICCPR with a reservation allowing juvenile offenders to be sentenced to death, Domingues asserts that this reservation was invalid and thus this capital sentencing prohibition set forth in the treaty is the supreme law of the land. See 138 Cong. Rec. S4781-01, S4783-84 (daily ed. April 2, 1992). Domingues contends that his death sentence, imposed for crimes he committed when he was sixteen years old, is thereby facially illegal. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (recognizing the inherent power of the district court to correct a facially illegal sentence); *Anderson v. State*, 90 Nev. 385, 528 P.2d 1023 (1974). We disagree.

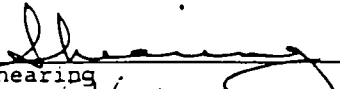
We conclude that the Senate's express reservation of the United States' right to impose a penalty of death on juvenile offenders negates Domingues' claim that he was illegally sentenced. Many of our sister jurisdictions have laws authorizing the death penalty for criminal offenders under the age of eighteen, and such laws have withstood Constitutional scrutiny. See *Stanford v. Kentucky*, 492 U.S. 361 (1989); *Ved P. Nanda, The United States Reservation to the Ban on the Death*

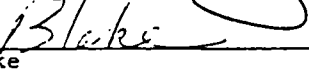
Penalty for Juvenile Offenders: An Appraisal Under the International Covenant on Civil and Political Rights, 42 DePaul L. Rev. 1311, 1312-13 (1995).

NRS 176.025 provides that the death penalty shall not be imposed upon individuals who were under sixteen years of age at the time that the offense was committed. Because Domingues was sixteen at the time he committed a capital offense, we conclude that the death penalty was legally imposed upon him. Accordingly, we affirm the decision of the district court denying Domingues' motion to correct the sentence.²

 , J.
Young

We concur:

 , J.
Shearing

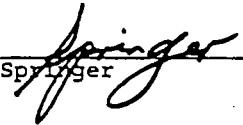
 , D.J.³
Blake

²The Honorable A. William Maupin, Justice, did not participate in the decision of this matter.

³The Governor appointed the Honorable Archie E. Blake, Judge of the Third Judicial District Court, to sit in place of the Honorable A. William Maupin, Justice, who recused himself. Nev. Const. art. 6, §4.

SPRINGER, C.J., dissenting:

The International Covenant on Civil and Political Rights, to which the United States is a "party," forbids imposing the death penalty on children under the age of eighteen. International treaties of this kind ordinarily become the "supreme law of the land." Under the majority's interpretation of the treaty, the United States, at least with regard to executing children, is a "party" to the treaty, while at the same time rejecting one of its most vital terms. Under Nevada's interpretation of the treaty, the United States will be joining hands with such countries as Iran, Iraq, Bangladesh, Nigeria and Pakistan in approving death sentences for children. I withhold my approval of the court's judgment in this regard.


Springer, C.J.

ROSE, J., dissenting:

Following a brief hearing, the district court summarily concluded that the death sentence was facially valid in spite of an international treaty signed by the United States which prohibits the execution of individuals who were under eighteen years of age when the crime was committed. I believe this complicated issue deserved a full hearing, evidentiary if necessary, on the effect of our nation's ratification of the ICCPR and the reservation by the United States Senate to that treaty's provision prohibiting the execution of anyone who committed a capital crime while under eighteen years of age.

The penultimate issue that the district court should have considered is whether the Senate's reservation was valid. Article 4(2) of the treaty states that there shall be no derogation from Article 6 which includes the prohibition on the execution of juvenile offenders. ICCPR, 999 U.N.T.S. at 174. Furthermore, there is authority to support the proposition that the Senate's reservation was invalid. See, e.g., Restatement (Third) of the Foreign Relations Law of the United States § 313 (1987); Ved P. Nanda, The United States Reservation to the Ban on the Death Penalty for Juvenile Offenders: An Appraisal Under the International Covenant on Civil and Political Rights, 42 DePaul L. Rev. 1311, 1331-32 (1993).

If the reservation was not valid, then the district court should determine whether the United States is still a party to the treaty. If the reservation was a "sine qua non" of the acceptance of the whole treaty by the United States, then the United State's ratification of the treaty could be considered a nullity. See William A. Schabas, Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?, 21 Brook. J. Int'l. L. 277, 318-19 (1995). But, if the United States has shown an intent to accept the treaty as a whole, the

result could be that the United States is bound by all of the provisions of the treaty, notwithstanding the reservation. Id.

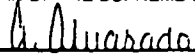
These are not easy questions and testimony about the international conduct of the United States concerning the subjects contained in the treaty, in addition to expert testimony on the effect of the Senate's reservation may be necessary. A federal court that deals with federal law on a daily basis might be better equipped to address these issues; however, the motion is before the state court and it should do its best to resolve the matter. Accordingly, I would reverse the district court's denial of Domingues' motion and remand the case for a full hearing on the effect of the ICCPR on Domingues' sentence.

_____, J.
Rose

2

ATTEST: A FULL, TRUE AND
CORRECT COPY.

CLERK OF THE SUPREME COURT

By _____
Deputy Clerk

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DOMINGUES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 29896

FILED

DEC 01 1998

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹

[Signature] C.J.
Springer
[Signature] J.
Shearing
[Signature] J.
Rose
[Signature] J.
Young
[Signature] D.J.
Blake

cc: Hon. Mark W. Gibbons, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Stewart L. Bell, District Attorney
Morgan D. Harris, Public Defender
Loretta Bowman, Clerk

¹The Governor appointed the Honorable Archie E. Blake, Judge of the Third Judicial District Court, to sit in place of the Honorable A. William Maupin, Justice, who recused himself. Nev. Const. art. 6, § 4.

APPENDIX C

International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) (entered into force for U.S. 8 Sept. 1992)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present

Covenant,

Agree upon the following articles:

PART I

Article 1

APPENDIX C

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other

competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant

does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

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

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) Paragraph 3 (a) 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 civil obligations.

Article 9

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 that 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

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

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

Article 12

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

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

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

necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

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

Article 13

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

Article 14

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

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

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

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

- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
- 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 - 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 - 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 - 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

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

Article 16

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

Article 17

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

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or

the fundamental rights and freedoms of others.

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

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 paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

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 21

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 22

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 which are 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 Organisation Convention of 1948 concerning 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 23

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 the present 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 24

1. Every child shall have, without any discrimination as to race, colour sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the 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 27

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.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall

consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters

of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports,

unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration

and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is

has been received by the Secretary-General, unless the State Party concerned had made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized

of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter.

This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations .

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of

the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party

to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the

conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.