

representatives considered that there was no basis for the distinction made in the text between reasons justifying exclusion of the public and the press during the trial and those, less numerous, justifying exclusion of the public at the time of pronouncement of judgements. The Commission's text, however, received the support of most Members of the Committee.

The principle of the presumption of innocence was considered so important that it was thought advisable to express it in a separate paragraph. As to minimum guarantees to which an accused was entitled, most Committee Members thought it desirable to add the following guarantees proposed by Israel: the right "to be tried without undue delay," the right "to communicate with counsel of his own choosing," and the right "to be tried in his presence."

The right of everyone convicted of a crime to have his conviction and sentence reviewed by a higher tribunal, which was dealt with in a new paragraph proposed by Israel, was considered important by the majority of representatives. It was pointed out that it expressed a principle which should be applied by States according to methods they considered appropriate.

Several speakers found difficulty in accepting the idea of awarding compensation in cases of miscarriage of justice in which the authorities had not been at fault. They considered that it was contrary to the interests of society to allow compensation to persons who were clearly guilty but whose conviction had been annulled for reasons of form or procedure. It was better, they thought, to leave the task of evaluating each specific case to the competent authority in each country.

Others, however, felt that controversies over the basis of responsibility—which could indeed be solved by invoking the notion of social risk—should not prevent the victim of a miscarriage of justice from obtaining compensation; an essential guarantee was involved, completing that afforded to victims of unlawful arrest by article 9 of the draft Covenant on Civil and Political Rights. Since the cases covered by the provision concerning payment of compensation for miscarriage of justice were rare, the financial implications of that provision would be very small.

Some representatives, while sharing these

ideas, thought that it would perhaps be excessive to make the payment of compensation obligatory in every case of a miscarriage of justice. Most Members of the Committee agreed that only adequate legislation could solve the technical difficulties involved in the problem of compensation for a miscarriage of justice.

Proposals for the insertion of a new paragraph concerning prohibition of "double jeopardy" (*non bis in idem*) gave rise to lengthy discussion.

Seven Members—Canada, Ceylon, Iran, Italy, Japan, Jordan and Pakistan—proposed an amendment to the effect that "no one shall be liable to be tried or punished again for the same offence for which he has been finally convicted or acquitted." Several representatives considered that this text was necessary to protect the individual, not only against the imposition of further punishments, but also against the dangers and distress of further prosecution for the same offence.

Some representatives preferred the adoption of a wider formula prohibiting several trials, not only for the same "offence," but also for the same "actions." Others, however, thought it necessary to take into account the laws of some countries which allowed a person to be tried for the same actions, but on "charges" different from those for which he had previously been acquitted. They maintained that the term "charge" in the text was more appropriate than "offence" or "actions." Still other representatives felt that the seven-power amendment, particularly the word "finally," might hinder the ends of justice by preventing the retrial of criminals acquitted in error. Trials of that nature, under certain conditions and within certain time-limits, were provided for by the laws of various countries.

In order to take into account this last objection, an effort was made to qualify or define the word "finally." The Committee eventually accepted an oral amendment by Ecuador to state that no one should be liable or punished again for an offence for which he had already been finally convicted or acquitted "in accordance with the law and procedure of each country." The representative of Ecuador explained that the words quoted were intended to apply only to the expression "finally convicted or acquitted."