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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March to 3 April 2009

VIEWS

Communication No. 1406/2005

Submitted by:	Mr. Anura Weerawansa (represented by his brother, Mr. Ron. Pat. Sarath Weerawansa)
Alleged victim:	Mr. Anura Weerawansa
State party:	Sri Lanka
Date of communication:	10 March 2005 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 9 June 2005 (not issued in document form)
Date of adoption of Views:	17 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Imposition of the death penalty following alleged unfair trial

Procedural issues: Inadmissibility for non-substantiation - evaluation of facts and evidence, incompatibility

Substantive issues: Mandatory death penalty; notion of "most serious crime"; least possible suffering with regard to the method of execution (hanging); conditions of detention; unfair trial

Articles of the Covenant: 6, 7, 10, paragraph 1, 14

Articles of the Optional Protocol: 2 and 3

On 17 March 2009 the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1406/2005.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights
Ninety-fifth session

concerning

Communication No. 1406/2005[**]

Submitted by:	Mr. Anura Weerawansa (represented by his brother, Mr. Ron. Pat. Sarath Weerawansa)
Alleged victim:	Mr. Anura Weerawansa
State party:	Sri Lanka
Date of communication:	10 March 2005 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 March 2009,

Having concluded its consideration of communication No. 1406/2005, submitted to the Human Rights Committee by Mr. Anura Weerawansa under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms.Ruth Wedgwood.

The text of an individual opinion signed by Committee member Mr. Fabian Omar Salvioli is appended to the present Views.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Anura Weerawansa, a Sri Lankan citizen, currently under sentence of death in a prison in Sri Lanka[1]. He claims to be a victim of violations by the State party of his right to life under article 6 of the International Covenant on Civil and Political Rights. The communication also appears to raise issues under article 7; article 10, paragraph 1; and article 14 of the Covenant. He is represented by his brother, Mr. Ron. Pat. Sarath Weerawansa.

Factual background

2.1 On 8 March 2002, the author was arrested and his statement was recorded, which he alleges was given under duress. On 4 April 2002, he was charged with the crime of conspiracy to commit the murder of Sujith Prasanna Perera, a customs officer, during the period between 21 and 24 March 2001, and for abetting the second and third accused to commit the murder of the officer on 24 March 2001. He was not allowed any contact with family members while held in custody. He was represented by a lawyer of his own choice from the stage of the preliminary hearing until the appeal.

2.2 The author's trial began on 8 May 2002, and judgement was delivered on 1 October 2002, in which the author was convicted as charged and sentenced to death by hanging. On 24 November 2004, the Supreme Court, composed of five judges, dismissed his appeal and affirmed the author's conviction and sentence. It is not clear whether the author requested a Presidential pardon.

2.3 The author explains that, prior to his conviction, as a customs officer, he had to prosecute cases against government officials, as a result of which he was on an earlier occasion victim of a conspiracy and accused of involvement with the LTTE (Liberation Tigers of Tamil Eelam**)** and detained for 8 months in 1996. He was subsequently compensated for unlawful arrest and detention. He claims that his conviction in the current case was also the result of a conspiracy, as he had initiated actions to apprehend a number of "key figures" involved in money laundering.

2.4 According to the author, the judiciary was biased, not impartial and under the influence of the President. The judges of both the first and second instance courts unjustly accepted the evidence of an individual, on which his conviction was largely based, who it was acknowledged was supposed to have been an accomplice to the crime but who had been pardoned. The author claims that after giving evidence at his trial, this witness was immediately re-employed by the customs department, thereby demonstrating the link between him and the authorities. The author provides a detailed report of his own analysis of the evidence at trial, which he claims further demonstrates his claim that he received an unfair trial including: the suppression of witness statements relating to the identity of the motorcycle used during the commission of the crime; contradictions in witness evidence; amendment of the indictment during the trial; failure to summon certain witnesses; failure to make available to the defense certain eye-witness statements; the detention of witnesses for up to

[1] According to the State party, Sri Lanka has had a moratorium on the death penalty for nearly thirty years. No date for the commencement of the moratorium is provided.

72 hours under the Prevention of Terrorism Act rather than the normal 24 hour period under the Criminal Procedure Act for the purpose, it is implied, of fabricating evidence.

2.5 According to the author, his conditions of detention are inhuman and are contributing to his "mental breakdown". He is incarcerated in a filthy cell, measuring eight by six feet, where he is kept twenty three and a half hours a day with "scanty food". Since the registration of his case before the Committee, the author claims that his brother has received threats from the police and unidentified forces are trying to prevent him from pursuing the present communication.

The complaint

3.1 The author claims that he was denied a fair trial for the reasons set out in paragraph 2.4 above. He claims that although he was legally represented he suspects that his counsel was under pressure from the executive to "double-cross" him, and he complains that he was not allowed a jury trial.

3.2 The author claims that the offences of which he was convicted were not the "most serious crimes" under article 6, paragraph 2, and that capital punishment by hanging is contrary to the Covenant, as it has been proven that it will take 20 minutes for the person to die. The author claims that the death penalty was reintroduced after the assassination of a Colombo High Court judge, but does not provide the date or further information in this regard. According to newspaper clippings provided by the author, no death sentences had been commuted to life imprisonment since March 1999, which had been the practice since 1977. He also claims that in recent media reports the executive and administrative authorities have referred to plans to execute the author, thus aggravating the deterioration of his mental health.

3.3 The author claims that his conditions of detention also amount to a violation of the Covenant, although he does not specifically invoke article 10.

The State party's submission on admissibility and merits and the author's comment thereon

4.1 On 9 December 2005, the State party contests the admissibility and merits of the communication on the ground of non-substantiation. On the facts, it submits that the author was indicted by the Attorney General on a charge of conspiracy to murder and for aiding and abetting the commission of the murder along with two other accused. Both the author and the deceased were customs officers attached to the Sri Lanka Customs. On 24 March 2001, the deceased died due to close range firearm injuries received on his head and chest. Due to the serious nature of the offence, it was decided to conduct the trial of all the accused before a Bench consisting of three judges of the High Court. All three accused chose their own lawyer to defend them. The prosecution decided to grant pardon to an accomplice, in order to strengthen its case against the accused. The evidence of the accomplice was corroborated by other witnesses on material points. All three accused chose to testify.

4.2 On the basis of an evaluation of all of the evidence, the Court convicted all three accused of the respective charges in their indictment. According to the State party, its law provides that the

offence of murder carries a mandatory sentence of death. Conspiracy to murder and abatement of the offence of murder also carry a mandatory death sentence and it was on this basis that the author was sentenced to death upon conviction. On 11 October 2004, the Supreme Court, consisting of five judges, considered the appeal of the three accused. On 24 November 2004, it dismissed the appeals and affirmed the convictions and sentences. The judgement was unanimous. The author was represented by senior counsel in his appeal, all of the arguments made by the accused were considered and reasons were provided by the court for the dismissal of the appeal.

4.3 The State party denies that the author did not have a fair trial due to the President's alleged control over the judiciary and argues that the earlier judgement in the author's favour, in which he was awarded financial compensation following a successful fundamental rights claim, belies his claim that the President controls the judiciary. The State party considers that murder is a "most serious" crime within the terms of the Covenant and is one of the few crimes where the law provides for a mandatory death sentence. In any event, there has been a moratorium on the execution of the death sentence for nearly 30 years.

4.4 The State party submits that at no stage did the author complain about his counsel, neither during the trial, nor during the appeal or thereafter. He chose his own lawyers and if he was dissatisfied with them, he could have retained others. He could also have complained of any improper conduct to the Supreme Court, which has control over disciplinary matters concerning lawyers, or to the Bar Association which is the professional body for lawyers. The State party denies that the author was not allowed to communicate with his family members and claims that he received the same treatment as any other detained person. As to the author's conviction, the State party submits that as demonstrated in the Supreme Court judgement, the evidence of the witness who was granted a conditional pardon was corroborated on the material facts by independent evidence. The State party dismisses as unsubstantiated the claim that the trial and appeal courts were prejudiced and refers to the decisions themselves as evidence that they were unbiased.

4.5 As to the arguments relating to the death penalty, including the method of execution, the State party reiterates that the death penalty is mandatory for murder. However, it argues that there is a statutory right of appeal. Thus, the notes made by the trial judge and the comments of the Attorney General are considered prior to the President considering whether the death sentence should be carried out or whether it should be replaced by an alternative sentence. The State party refers to its moratorium on the death penalty, but argues that in any event the imposition of the death sentence for a serious offence, after a trial by a competent court, by a State party that has not abolished the death penalty, is not a violation of any Covenant rights.

4.6 Finally, the State party reiterates that by ratifying the Optional Protocol, it never intended to recognise the competence of the Committee to consider communications involving decisions handed down by a competent court in Sri Lanka. The government has no control over judicial decisions and a decision of a competent court may only be reviewed by a Superior Court. Any interference by the Government of Sri Lanka with regard to any decision of a competent court would be construed as an interference of the independence of the judiciary, which is guaranteed under the Sri Lankan Constitution.

5. The author provided several responses, dated 18 January, 6 October 2006, and 17 May 2008, and 28 July 2008, to the State party's submission. In these, he reiterates claims previously made on the evaluation of the facts and evidence by the trial court and also provides translations of the trial proceedings, which he claims proves the conspiracy of the executive, administrative and judicial branches of the State party. In particular, he highlights inconsistencies in the main prosecutions' witness evidence which he claims should not have been accepted by the court, including contradictory evidence on the witness's whereabouts prior to murder, and failure to establish that a motor bike had been used for the purposes of the crime.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The State party maintains that it never intended by its ratification of the Optional Protocol to recognize the competence of the Committee to consider decisions of its courts. The Committee recalls its General Comment No. 31 on The Nature of the General Legal Obligation imposed on States Parties[2]. In particular, paragraph 4, which codifies the Committee's consistent practice, includes the following: "The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial)…are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility." Accordingly, the Committee cannot refrain from proceeding with the issues of admissibility and merits.

6.3 The Committee notes that a number of the author's allegations relate to the evaluation of facts and evidence by the State party's courts, which appear to raise issues under article 14 of the Covenant. The Committee refers to its jurisprudence[3] and reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that it was clearly arbitrary or amounted to a denial of justice. The material before the Committee does not reveal that the conduct of the trial suffered from any such defects. Accordingly, the author has not substantiated this part of the communication for purposes of admissible and these claims are thus considered inadmissible pursuant to article 2 of the Optional Protocol.

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[2] CCPR/C/21/Rev.1/Add.13

[3] Communication no. 541/1993, *Errol Simms v. Jamaica*, Decision adopted on 3 April 2005, para. 6.2.

6.4 As to the claim that the author did not have the option to be tried by a jury, which it would appear raises issues under article 14 of the Covenant, the Committee recalls its jurisprudence that "the Covenant does not confer the right to trial by jury in either civil or criminal proceedings, rather the touchstone is that all judicial proceedings, with or without a jury, comport with the guarantees of fair trial"[4]. This claim is therefore inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.5 The Committee considers that the author has failed to substantiate his claim that his lawyers "double-crossed" him, which appears to raise issues under article 14. As argued by the State party and uncontested by the author, the author was represented throughout the proceedings by lawyers he chose himself. He never filed any formal complaint against them during the proceedings themselves and, apart from making a vague claim that they "double-crossed" him, he has not provided any further arguments or substantiation of this claim for the purposes of admissibility. For these reasons, the Committee considers that this claim is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee finds that the other claims relating to: the mandatory nature of the death penalty; the question of whether the crime for which he was convicted was a "most serious crime"; the author's conditions of detention; and his possible mode of any execution are admissible.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes that the author was convicted of conspiracy to commit murder and of abetting murder, on the basis of which he received a mandatory death sentence. The State party does not contest that the death sentence is mandatory for the offence of which he was convicted, but argues that it has applied a moratorium on the death penalty for nearly 30 years. The Committee recalls its jurisprudence that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence[5]. Thus, while observing the fact that the State party has imposed a moratorium on executions, the Committee finds that the imposition of the death penalty itself, in the circumstances, violated the author's right under article 6, paragraph 1, of the Covenant.

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[4] For example, Communication no, 818/1998, *Kavanagh v Ireland* (No.1), Views adopted on 4 April 2001 and Communication no. 1239/2004, *Wilson v. Australia*, Decision adopted on 1 April 2004.

[5] Communication No. 806/1998, *Thompson v. St. Vincent and The Grenadines*, Views adopted on 18 October 2000; Communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002; and Communication No. 1077/2002, *Carpo v. The Philippines*, Views adopted on 28 March 2003.

7.3 In the light of the finding that the death penalty imposed on the author is in violation of article 6 in respect of his right to life, the Committee considers that it is not necessary to address the issue of the method of execution, that may be imposed on the author if the State party were to recommence executions, under article 7 of the Covenant.

7.4 The Committee notes that the State party has not contested the information provided by the author on his deplorable conditions of detention, such as that he is incarcerated in a small and filthy cell, in which he is kept for twenty three and a half hours a day with inadequate food. Nor has the State party contested the claim that these conditions have an effect on the author's physical and mental health. The Committee considers, as it has repeatedly found in respect of similar substantiated claims[6], that the author's conditions of detention as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider any possible claims arising under article 7 in this regard.[7] For these reasons, the Committee finds that the State party has violated article 10, paragraph 1, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 6, paragraph 1; and article 10, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including commutation of his death sentence and compensation. As long as the author is in prison, he should be treated with humanity and with respect for the inherent dignity of the human person. The State party is under an obligation to take measures to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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[6] For example Communication 908/2000, *Xavier Evans v. Trinidad and Tobago*, Views adopted on 21 March 2003.

[7] Communication No. 818/1998, *Sextus v. Trinidad and Tobago*, Views adopted on 16 July 2001, paragraph 7.4.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX

Individual opinion by Committee member Mr. Fabian Omar Salvioli (partially dissenting)

1. I fully concur with the decision by the Human Rights Committee finding violations of article 6, paragraph 1, and article 10, paragraph 1, of the International Covenant on Civil and Political Rights in the case of *Anura Weerawansa* v. *Sri Lanka*, communication No. 1406/2005. The Committee has correctly determined that the established facts reveal violations both of the right of all persons to life and of the right of any person deprived of his or her liberty to humane treatment and due respect.

2. I nonetheless consider, for reasons explained below, that in this case the Committee ought to have concluded that the State Party is also responsible for violations of article 2, paragraph 2, and article 7 of the Covenant.

A. Competence of the Committee to find violations of articles not referred to in the complaint

3. The Committee should not, in the absence of a specific allegation by the author of a communication that one or more articles has been violated, restrict its own competence to find other possible violations of the Covenant that are supported by the established facts. Under the Committee's rules of procedure,[8] a requested State can submit statements relating to both the admissibility and the merits of the complaint set forth in the communication; if the adversarial principle in the procedure established by the first Optional Protocol for dealing with individual communications is to be fully respected, neither party should be left without a proper defence.

4. The principle of *iura novit curia*, universally and uncontroversially followed in general international jurisprudence,[9] especially where human rights are concerned,[10] gives the Human Rights Committee scope not to restrict itself to the legal claims made in a complaint when the facts disclosed and established in adversarial proceedings clearly reveal the violation of a provision not cited by the complainant. Should this be the case, the Committee ought to document the violation in proper legal form.

5. Likewise, to ensure that all the purposes of the Covenant are complied with, the Committee's protective powers authorize it to rule that the State Party found to be at fault must put a stop to all

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[8] Rule 97.2 [in the Sept 2005 version, at least - tr.]

[9] Permanent Court of International Justice: "Lotus", Judgment No. 9, 1927, P.C.I.J., Series A No. 10.

[10] European Court of Human Rights, Handyside Case, Judgment of 7 December 1976, Series A No. 24, para. 41; Inter-American Court of Human Rights, *Godínez-Cruz* v. *Honduras*; Series C N, para. 172; Judgment of 20 January 1989.

the effects of the violation, guarantee that such a thing will not recur, and make reparation for the damage caused in the particular incident concerned.

B. Violation of article 2, paragraph 2, of the Covenant

6. A State may incur international responsibility, inter alia, through the action or omission of any of its authorities, including, naturally, the legislature, or any other body having legislative authority under the constitution.

7. Article 2, paragraph 2, of the Covenant states: "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." While the obligation laid down in article 2, paragraph 2, is a general one, failure to comply with it may render the State internationally responsible. The provision is a self-executing rule. The Committee has rightly pointed out that: "...the obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local) are in a position to engage the responsibility of the State Party."[11]

8. The Committee has also pointed out that "...article 2 is couched in terms of the obligations of State parties towards individuals as the right-holders under the Covenant...".[12] The obligations set forth in article 2, paragraph 2, supplement those set forth in paragraphs 1 and 3 of the same article which, to my mind, are independent provisions of equal rank, in no way subordinate one to another. The *travaux préparatoires* for the Covenant do not admit of any other conclusion, and in keeping with the *pro persona* postulate, precedence in human rights matters must be given to the broadest interpretation when the issue is one of safeguarding rights, to the narrowest when the issue is that of determining the scope of restrictions, and in any event to an interpretation that makes sense of the rule or provision concerned.

9. Just as States Parties to the Covenant cannot order action which violates established rights and freedoms, failure to bring their domestic legislation into line with the provisions of the Covenant constitutes, in my estimation, a violation in and of itself of the obligations set out in article 2, paragraph 2, of the Covenant.

10. To maintain that a violation of article 2 of the Covenant cannot be found in the context of an individual complaint is an unacceptable restriction and curtailment of the Committee's own powers of protection under the International Covenant on Civil and Political Rights and the first Optional Protocol thereto.

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[11] General comment No. 31: *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, adopted at the 2187th meeting on 29 March 2004, para.4.
[12] *Ibid,* para. 2.

11. In the present case, furthermore, we have an instance of the actual application, to the detriment of Mr. Anura Weerawansa, of legislation requiring the death penalty for individuals found guilty of the offences of murder, conspiracy to murder or aiding and abetting a murder; this is not only in breach of article 6 of the Covenant, as the Committee has found, but also a violation of article 2, paragraph 2. The legislation itself, irrespective of its application, breaches article 2, paragraph 2, of the Covenant inasmuch as Sri Lanka has not taken the requisite action under its domestic law to give effect to the right covered by article 6 of the Covenant.

C. The mandatory death penalty and its incompatibility with the Covenant

12. The rule making the death penalty mandatory is fundamentally incompatible with the International Covenant as a whole, and some parts of it in particular. When a State Party has a rule making the death penalty mandatory and the penalty is applied, at trial, to one or more individuals, there is to my mind not only a violation of article 6 of the Covenant but also a violation of article 7, which prohibits cruel, inhuman or degrading treatment or punishment.

13. The thrust of article 6 of the Covenant is the abolition of capital punishment, as the wording of paragraph 6 makes clear. Against this background, the article imposes certain restrictions on countries which have not yet resolved to abolish the death penalty: they must comply with strictly observed and scrutinized procedural standards; they must restrict the application of the death penalty to the most serious crimes, and they must take account of some of the personal circumstances of the individual on trial, which may definitely lead to the sentence or execution of the sentence being set aside. The penal legislation applied to Mr. Anura Weerawansa. requires the death penalty to be applied automatically and generically for the offences of murder, conspiracy to murder and aiding and abetting a murder, disregarding the fact that those offences may indicate different levels of seriousness; it thus prevents the judge or court from taking the circumstances into account in establishing the level of guilt and tailoring the penalty to the individual, since it constrains them to impose the same punishment indiscriminately on what may be very different forms of behaviour. This, by virtue of article 6 of the Covenant, is unacceptable when a human life is at stake and amounts, in the terms of article 6, paragraph 1, to arbitrariness. The penal legislation whose compatibility with the Covenant is under discussion prevents account being taken of personal circumstances or the particular circumstances of the crime, automatically imposing the application of the death penalty across the board on anyone found guilty.

14. Besides this, an individual brought to trial knowing that, if found guilty, the only outcome is that he or she will be sentenced to death experiences suffering which amounts to cruel treatment and is, accordingly, incompatible with article 7 of the Covenant.

D. Consequences of finding a violation of article 2, paragraph 2

15. Far from being a purely academic exercise, the finding of a violation of article 2, paragraph 2, in a specific case has practical consequences in terms of reparation, especially as regards the prevention of any recurrence. The fact that in the present case there is indeed a victim of the

application of a legal standard incompatible with the Covenant vitiates any interpretation relating to a possible ruling *in abstracto* by the Human Rights Committee.

16. The Committee has also pointed out that "article 2 defines the scope of the legal obligations undertaken by States parties to the Covenant. A general obligation is imposed on States parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction ..."[13] Paragraph 2 of that article assumes all the more importance when one considers that the Committee has stated in a general comment that any reservation to it would be utterly incompatible with the aims and objectives of the Covenant.[14]

17. In its general comment No. 31, the Human Rights Committee argues that "where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees".[15] Correctly interpreted, this implies that a change in domestic practice can be considered only when a rule allows for different possibilities, one or more of which are incompatible with the Covenant while others are not, and the incompatible options are applied in one or more specific instances: then the State can change its practice and apply a different option, one that is compatible with the Covenant. When, on the other hand, a rule offers only one possibility, as in the present case of legislation that establishes a mandatory death penalty, the only course is to rescind the rule itself. And it must be remembered, "the requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect".[16]

18. I thus consider that the Committee ought to have concluded:

(a) That the Sri Lankan legislation discussed in this case that makes the death penalty mandatory for the offences of murder, conspiracy to murder and aiding and abetting a murder is itself incompatible with the International Covenant on Civil and Political Rights.

(b) That the facts of the case reveal a violation of article 2, paragraph 2, of the Covenant and that, the rule requiring the death penalty having been applied to the victim, the violation was committed in relation to articles 6 and 7 of the Covenant, to Mr. Anura Weerawansa's detriment.

(c) That the State must, as a guarantee of non-recurrence, rescind the provision in criminal law stipulating the death penalty for the offences of murder, conspiracy to murder and aiding

[13] *Ibid*, para. 3.
[14] "Equally, a reservation to the obligation to respect and ensure the rights, and to do so on a non-discriminatory basis (art. 2 (1)) would not be acceptable. Nor may a State reserve an entitlement not to take the necessary steps at the domestic level to give effect to the rights of the Covenant (art. 2 (2)) …" General comment No. 24, fifty-second session, 1994, para. 9.
[15] General comment No. 31, para. 13.
[16] *Ibid*, para. 14.

and abetting a murder that was applied to Mr. Anura Weerawansa, as being incompatible with the International Covenant on Civil and Political Rights.

[*Signed*] Fabián Salvioli

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
