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OBSERVATIONS ON THE DRAFT ADDITIONAL PROTOCOL
TO THE AMERICAN CONVENTION ON HUMAN RIGHTS
ON ABOLITION OF THE DEATH PENALTY

Argentina

OBSERVATIONS OF THE ARGENTINE GOVERNMENT ON THE
DRAFT ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION
ON HUMAN RIGHTS ON ABOLITION OF THE DEATH PENALTY

Although there are still domestic legal problems with it, the Argentine Government has firmly supported the initiative of adopting an Additional Protocol to abolish the death penalty that will supplement and advance the provisions of the American Convention on Human Rights, because the government believes that there is a trend, both in the hemisphere and worldwide, toward reaffirming the inviolability of the right to life.

The intent of the constitutional government has been and is to promote, both regionally and worldwide, the drafting and adoption of instruments to promote the gradual abolition of the death penalty.

Accordingly, the government feels that if the draft under review were adopted, even though with its present wording it could not be ratified immediately by some American countries--Argentina among them--it would constitute an extremely important normative reference to encourage the reform of domestic law in all countries of the region.

For these reasons, the Committee on Juridical and Political Affairs should evaluate beforehand whether or not it should propose the adoption of an inflexible text that does not permit any reservations, or whether to propose, in light of the present features of the existing normative systems, a clause that provides for some type of exception, preferably temporary, in strictly limited situations.

In this regard, it would be useful to compare both the European experience, especially Protocol 6 of the European Convention on Human Rights, as well as the efforts undertaken globally, such as the Draft Optional Protocol to the International Covenant on Civil and Political Rights, designed to achieve the abolition of the death penalty (which is contained in United Nations Document E/CN/4?Sub.2/1987/20.

Both instruments differ from the present working of article 2.1 of the Additional Protocol to the American Convention on Human Rights. Of course, if that approach is accepted, the Argentine Government believes that any clauses introduced in any reservations that might be admitted should in no case:

- a) Weaken the protection given the right to life in article 4 of the American Convention on Human Rights.

- b) Likewise, the right to life--whose inviolability it is sought to strengthen--could not be subject to any suspension by virtue of article 27 of that Convention.
- c) In no case could the new proposal weaken the protection given to that right in other international instruments, both on human rights and in international humanitarian law.

Finally, on the assumption that the present wording of article 2.1 will be amended to permit reservations to be made, the clause should provide that such reservations may be made only at the time of ratification or adhesion, and the countries should report at the same time any of their domestic laws that provide the grounds for possible application of the death penalty.

It should also be an essential requirement that the death penalty should be imposed for conviction of a highly serious crime and should be applied only to military personnel. The latter requirement will probably be more effective for protection than the use of other formulas employed or suggested in other international instruments dealing with the military character of the crime and the existence of a state of war.