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Summary record of the 3391st meeting*

Held at the Palais des Nations, Geneva, on Friday, 14 July 2017, at 10 a.m.

Chair: Mr. Iwasawa

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* No summary records were issued for the 3389th and 3390th meetings.

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The meeting was called to order at 10.10 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Individual Communications

Draft general comment No. 36 on article 6 of the Covenant (Right to life)
(CCPR/C/GC/R.36/Rev.2 and Rev.6)

1. **Mr. Shany** (Rapporteur for the general comment) said that there were three texts before the Committee: the original draft general comment No. 36 on article 6 of the Covenant (Right to life) (CCPR/C/GC/R.36/Rev.2); a revised version of the draft (CCPR/C/GC/R.36/Rev.6); and a document without a symbol containing the revised version of paragraphs 36-51 of the draft general comment, as amended on the basis of the Committee's discussion at its 3353rd, 3355th and 3362nd meetings. Although the discussions of paragraphs 50 and 51 had not been concluded, the amendments proposed at the time were reflected in the document.

2. **The Chair** invited the Committee to consider the revised versions of paragraphs 50 and 51, which were based on the original draft general comment as contained in document CCPR/C/GC/R.36/Rev.2.

Paragraph 50

3. **Mr. Shany** (Rapporteur for the general comment) drew attention to the revised version of paragraph 50, which read:

“Article 6 (5) prohibits the application of the death penalty for crimes committed by persons below the age of 18 and on pregnant women. The prohibition against imposing the death penalty on persons below the age of 18 at the time of the offence, necessarily implies that they can never face the death penalty for that offence, regardless of their age at the time of sentencing or carrying out the sentence, whereas for pregnant women, the prohibition pertains only to the time of carrying out the sentence. If there is no reliable and conclusive proof that the person was not below the age of 18 at the time in which the crime was committed, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed on him or her.”

4. The Committee had considered it unnecessary to explain the rationale for the protection of minors and pregnant women, since both those groups were mentioned explicitly in article 6 (5) of the Covenant, and had agreed on the deletion of the last three sentences of the previous version of the paragraph. The term “minor” had been replaced by the words “persons below the age of 18”. The revised version also reflected more clearly the principle whereby the death penalty could never be imposed on persons who had been minors at the time of their offence. The concept of entitlement to the benefit of the doubt for minors, as reflected in general comment No. 10 of the Committee on the Rights of the Child on children's rights in juvenile justice, had also been included.

5. **Ms. Cleveland** said that the words “on him or her” at the end of the paragraph were superfluous and should be deleted.

6. **Mr. Heyns**, supported by Mr. Politi, said that, although the phrase “whereas for pregnant women, the prohibition pertains only to the time of carrying out the sentence” was factually correct, it would be unwise to draw States' attention to that circumstance. The phrase should be deleted.

7. **Mr. Shany** said that he agreed with both proposals but would consult on the deletion of “him or her”, with a view to ensuring that the Committee's general comments adhered to the standards of political correctness.

8. **Mr. Muhumuza** said that the phrase “at the time of carrying out the sentence” implied a *fait accompli*; it might be preferable to refer to the intention of carrying out the sentence.

9. *Paragraph 50, as amended, was provisionally adopted.*

Paragraph 51

10. **Mr. Shany** drew attention to the revised version of paragraph 51, which read:

“State parties must refrain from imposing the death penalty on individuals that had limited ability to defend themselves on an equal basis with others, such as persons with serious psycho-social and intellectual disabilities, and on persons with or without disability that have reduced moral culpability. They should also refrain from executing persons that have diminished ability to understand the reasons for their sentence, and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as parents to very young and dependent children persons at a very advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims. The execution of such individuals could constitute an arbitrary deprivation of life, contrary to article 6 (1).”

11. The paragraph extended the application of article 6 (5) of the Covenant to other categories of persons not mentioned explicitly in that article. The prohibition on imposing the death penalty was absolute with regard to persons with limited ability to defend themselves, whereas the problem for the category of persons listed in the second sentence arose at the execution stage. Given that those groups were not covered explicitly in the Covenant, the Committee had been of the view that a more detailed explanation was warranted.

12. **Ms. Brands Kehris** proposed replacing the word “and” in the phrase “parents of very young and dependent children” with “or”, for the sake of clarity.

13. **Mr. Fathalla** said that he was unconvinced that all cases involving the categories of persons referred to in paragraph 51 could constitute arbitrary deprivation of life.

14. **Ms. Cleveland** said that it was important to draw a clear distinction between those categories of persons to whom the application of the death sentence unequivocally constituted a violation of article 6 and those whose execution could constitute an arbitrary deprivation of life. The use of the word “must” in connection with the first category and the word “could” in connection with the second might appropriately clarify the difference.

15. **Mr. Heyns** questioned the rationale behind using the word “had” when referring to individuals’ limited ability to defend themselves; the word “have” would be more accurate in that context. He also had reservations about the term “very advanced age”. The notion of advanced age was open to interpretation and the word “very” should be removed. Supporting Mr. Fathalla’s concerns, he proposed removing the final sentence altogether.

16. **Mr. Koita** shared Mr. Heyns’ concern regarding the reference to age, as the notion of age varied from one country to another. It might be necessary to be more specific, otherwise the Committee could be hard pressed to assess States’ compliance with article 6 of the Covenant.

17. **The Chair** said that, in order to ensure that outsiders did not perceive the Committee’s general comments as wishful thinking, the draft general comment must be based on case law. While he agreed that the words “must” and “could” drew a useful distinction between the different categories of persons, he was uncertain whether the Committee’s case law substantiated the prohibition of the death penalty for persons who had suffered serious human rights violations.

18. **Mr. Shany** said, in response to members’ comments, that the last sentence should be deleted; the word “had” in the first sentence should be replaced with “have”, and the word “and” in the penultimate sentence should be replaced with “or”. However, the current wording of the reference to age should be retained. A simple reference to “advanced age” could easily be misinterpreted as implying that persons of advanced age had reduced mental capacity. In response to the Chair’s concern, he confirmed that the Committee’s case law included several examples of persons who had been exempted from application of the death penalty on grounds of human rights violations.

19. **Mr. Santos Pais** expressed concern that drawing a distinction between persons of “advanced age” and “very advanced age” might place the former at a particular risk.

20. **The Chair** said he took it that the Committee agreed that further amendments to the paragraph would be considered at the Committee's second reading of the draft general comment.

21. *It was so decided.*

22. *Paragraph 51, as amended, was provisionally adopted.*

23. **The Chair** drew the Committee's attention to the original version of the draft general comment (CCPR/C/GC/R.36/Rev.2), which contained the remaining paragraphs to be considered by the Committee for adoption on first reading.

Paragraph 52

24. **Mr. Shany** said that paragraphs 52 and 53 played a central role in the draft general comment, as they underscored the fact that the Covenant was abolitionist in spirit, even though it did not prohibit the application of the death penalty per se.

25. **Mr. Ben Achour** said that he objected to the phrase "it would appear to run contrary" at the beginning of the last sentence. There could be no doubt that a de facto increase in the rate and extent to which States resorted to the death penalty ran contrary to the object and purpose of article 6. The phrase should therefore be reworded to read: "does run contrary to the object and purpose of article 6".

26. **Mr. de Frouville** concurred. It might also be unnecessary to refer to specific paragraphs of article 6, since an increase in the rate and extent of recourse to the death penalty was contrary to article 6 as a whole. In the spirit of the article, the death penalty was viewed as an exceptional measure and a residual practice that should be eliminated in the long run.

27. **Mr. Heyns** asked whether the word "reflects", in the first line of the paragraph, could be changed to "reaffirms". He agreed that it would be better to state that greater use of the death penalty ran contrary to article 6 (6) of the Covenant than that it merely appeared to do so.

28. **Mr. Politi** said that he supported the proposal to change the words "it would appear to run contrary" to "it runs contrary". The references to paragraph 6 could be omitted. References to the article alone would suffice.

29. **Mr. Fathalla** said that, as paragraph 52 of the draft general comment was clearly linked to article 6 (6) of the Covenant, the references to paragraph 6 should remain. A reference to article 6 as a whole would be inappropriate. In addition, he proposed omitting the words stating that the death penalty could not be reconciled with full respect for human dignity, as it was unclear why the death penalty but not other forms of punishment — imprisonment, for example — was incompatible with respect for human dignity.

30. **Ms. Cleveland** said that she wondered whether the paragraph might note that States that had ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, had abrogated their ability to proceed with the death penalty under article 6 (2)-(5) of the Covenant or that such States could not denounce the Optional Protocol.

31. **Mr. Ben Achour** said that the death penalty was irreconcilable not only with full respect for human dignity but also with something much more profound: namely, the mystery of life. He therefore wondered whether that assertion could be reworded to convey more forcefully the notion that the death penalty was incompatible with the right to life.

32. **The Chair** said that he would prefer to retain the references to paragraph 6.

33. **Mr. de Frouville** said that the mention of article 6 (6) in the first line of the paragraph should be retained. The death penalty was clearly incompatible with respect for human dignity. It was, however, excessive to mention human dignity twice in the same paragraph. The first mention should remain, but the second was not entirely necessary and could be deleted, particularly since the idea that it conveyed — that human dignity would be enhanced by the abolition of the death penalty — was formulated somewhat oddly.

34. **Mr. Shany** said that it would be inadvisable to delete the reference to paragraph 6 in the first line of paragraph 52, not least because the general comment was structured in such a way as to address each paragraph of article 6 in turn. He accepted the proposal to change “reflects” to “reaffirms”. In view of the support for stating unconditionally that expanding the use of the death penalty was contrary to the object and purpose of article 6, he stressed that careful language had been chosen to avoid giving the impression that any ordinary fluctuation in the number of people sentenced to death was a *prima facie* violation of the Covenant. He would welcome reactions from Committee members on that point.

35. It was not necessary to refer again to the Second Optional Protocol, as it had been addressed in paragraph 36 of the draft. The words “enhancement of human dignity”, which had struck Mr. de Frouville as somewhat odd, had been lifted directly from the preamble to the Second Optional Protocol and should therefore remain as they were. The two references to human dignity did, however, make for unnecessary repetition. The second sentence of the paragraph could therefore be amended so that it began: “The death penalty cannot be reconciled with full respect for the right to life”.

36. **Mr. Muhumuza** asked whether a formulation such as “sanctity of life” could be considered.

37. **Mr. Heyns** said that he would still prefer that the paragraph should state unequivocally that expanding the use of the death penalty was contrary to the object and purpose of article 6. Otherwise, the entire paragraph was weakened. The sentence could be revised to make it clearer that what was incompatible with article 6 was not every slight rise in the number of people sentenced to death, at least not when such rises occurred in the context of ordinary fluctuations, but a sustained or long-term expansion of the use of the death penalty.

38. **The Chair** suggested deleting the words “appear to” from the last sentence of the paragraph, so that it began: “It would run contrary to the object and purpose of article 6”.

39. **Mr. Politi** said that referring to a long-term expansion of the death penalty would heighten the ambiguity of the paragraph.

40. **Mr. Fathalla**, joined by **Mr. Politi** and **Mr. Santos Pais**, said that he agreed with Mr. Shany’s proposal to change the words “human dignity” to “right to life”.

41. **Mr. de Frouville** said that he, too, supported that proposal. It would be preferable not to use the conditional “would appear” in the last sentence of the paragraph, even if only to echo the clear, unconditional language used in paragraph 36 of the current draft.

42. **Ms. Cleveland** said that, although she, too, would like to retain the unconditional formulation favoured by Mr. de Frouville and other Committee members, the concerns expressed by the Rapporteur had to be acknowledged. A proposal along the lines of Mr. Heyns’ could allay them.

43. **The Chair** suggested that the Committee should resume consideration of paragraph 52 once it had been revised by the Rapporteur.

44. *It was so decided.*

Paragraph 53

45. **Mr. Shany** said that the paragraph addressed progress, *de facto* or *de jure*, towards the abolition of the death penalty. It also raised the possibility that, as more and more States acceded to the Second Optional Protocol or placed moratoriums on the use of the death penalty, the Committee could at some point conclude that the death penalty was a violation of article 7 of the Covenant in all circumstances. In brief, the paragraph drew attention to the idea that interpretations of the Covenant could change over time.

46. **Mr. Ben Achour** said that, although he would like to share the Rapporteur’s apparent belief that progress towards the abolition of the death penalty was being made, it seemed to him that the paragraph did not reflect recent developments altogether accurately. As Committee members were well placed to know, for example, a number of States that had placed moratoriums on the use of the death penalty had recently lifted them.

47. **Mr. Santos Pais**, supported by **Mr. de Frouville** and **Ms. Pazartzis**, said that the first sentence of the paragraph could be revised to express with greater certainty the Committee's belief that ongoing developments would lead to the conclusion that to impose the death sentence on a person would be to subject him or her to cruel, inhuman or degrading treatment or punishment. The second sentence of the paragraph should state not, as currently drafted, that progress towards the view that the death penalty was a violation of article 7 "may have been made" but that it had in fact been made. The beginning of the last sentence could be revised to read: "Such a legal development is consistent with the pro-abolitionist spirit of the Covenant".

48. **Mr. Heyns** said that the first sentence of the paragraph, which suggested that States had not regarded the death penalty as a cruel, inhuman or degrading punishment per se when the Covenant had been drafted, could be revised to represent more fully the range of clashing views expressed at the drafting meetings. Even at that time, a number of States had considered the death penalty a form of cruel, inhuman or degrading punishment. The compromise that had been reached had been to permit the death penalty for the most serious crimes.

49. Only some 20 States currently carried out death sentences, far fewer than in the past, and the number of executions carried out in the People's Republic of China, which carried out more death sentences than any other country in the world, had fallen by half in recent years. It was thus not unreasonable to think that States were moving away from the death penalty.

50. **Ms. Cleveland** said that she endorsed Mr. Heyns' view that the facts warranted optimism. In view of his account of the drafting meetings, she proposed that the word "uniformly" should be added to the first sentence of the paragraph, which would thus read as followed: "when drafting the Covenant, the States parties did not uniformly regard the death penalty as a cruel, inhuman or degrading punishment". The words "may lead at some point in time", also in the first sentence, could be replaced by the words "may ultimately lead". She agreed with Mr. Santos Pais' proposal to state that progress had been made.

51. **Ms. Pazartzis** said that she supported the proposal to replace "may have been made" with "has been made" in the penultimate sentence. She proposed replacing the words "ought to be welcomed" in the last sentence with "is welcome".

52. **Mr. Politi** said that he endorsed the proposal to insert the word "uniformly", "universally" or "unanimously" before the word "regard" in the first sentence. The wording "may lead to the conclusion" in the same sentence was, in his view, preferable to "may ultimately lead to the conclusion". He endorsed the previous speaker's proposed amendment to the last sentence.

53. **The Chair** noted that many States still voted against the periodic General Assembly resolutions concerning a moratorium on the death penalty, or else abstained. He was therefore less optimistic than other members of the Committee, but he would not oppose the proposed amendments.

54. **Ms. Brands Kehris** said that she expected the trend to be positive, notwithstanding the current setbacks, and therefore supported most of the proposed amendments. However, she proposed replacing the words "ought to be welcomed" in the last sentence with "should be welcomed" because it constituted pertinent advice to States.

55. **Mr. Shany** said that his preference would be to insert the word "universally" before "regard" in the first sentence. He also preferred the wording "may ultimately lead to the conclusion" in the same sentence. He agreed that "has been made" should replace "may have been made" in the penultimate sentence and that the last sentence should begin with the words "Such a legal development is consistent".

56. *Paragraph 53 was provisionally adopted, subject to drafting changes.*

The meeting was suspended at 11.35 a.m. and resumed at 11.55 a.m.

Part V

57. **Mr. Shany** said that part V, which dealt with the relationship of article 6 with other articles of the Covenant, was broadly based on the structure of section VII of general comment No. 35 on article 9. It sought to clarify the frequent interaction between the application of the right to life and the application of other fundamental rights. In the light of the previous discussion, a new set of paragraphs had been distributed for the Committee's consideration in a separate document.

Paragraph 54

58. **Mr. Shany** said that the paragraph closely followed paragraph 53 of general comment No. 35. The basic point was that some acts constituted a violation of two articles of the Covenant. Sometimes the violation of another article led to arbitrary deprivation of life under article 6. Two examples were provided: application of the death penalty for a crime that did not constitute one of the most serious crimes violated both article 6 and article 7; and application of the death penalty for exercising the right to freedom of expression violated both article 6 and article 19.

59. **Mr. Santos Pais** proposed replacing the phrase "Some forms of conduct amount independently to a violation of article 6 and another article" in the second sentence with the phrase "Some forms of conduct amount simultaneously to a violation of article 6 and another article".

60. **Ms. Cleveland** proposed, as alternative wording: "Some forms of conduct violate both article 6 and another article".

61. It would be useful to clarify the relationship between paragraph 54 and earlier discussions on section IV concerning imposition of the death penalty in a manner consistent with article 7 of the Covenant, with fair trial guarantees, with the prohibition of discrimination and with sanctions whose criminalization separately violated the Covenant. The relevant passages should perhaps be cross-referenced.

62. **Mr. Shany** concurred with the proposal to replace "independently" with "simultaneously" and the proposal to cross-reference relevant previous paragraphs.

63. *Paragraph 54, as amended, was provisionally adopted.*

Paragraph 55

64. **Mr. Shany** said that the paragraph closely followed paragraph 54 of general comment No. 35 in emphasizing the obligation of States parties to protect individuals against reprisals. It highlighted the need to provide adequate protection for human rights defenders.

65. **Mr. de Frouville** proposed that footnote 221 should be moved to the end of the phrase "reprisals for having cooperated or communicated with the Committee" because the paragraph of general comment No. 33, and also the communication and the concluding observations, cited in the footnote pertained to cooperation with the Committee. He also proposed that footnote 222 concerning General Assembly resolution 53/144 should be amended to include the title of the resolution, namely "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms". A reference to articles 9 (4) and 12 (2) of the Declaration should be added in the same footnote.

66. **Mr. Santos Pais** proposed amending the second sentence to read: "Such measures reflect the importance attributed to the work of human rights defenders in promoting human rights."

67. **Mr. Politi**, after expressing his support for the proposals made by the previous two speakers, proposed amending the phrase "to protect individuals against reprisals for having cooperated or communicated with the Committee" to read: "to protect individuals against reprisals, in particular for having cooperated or communicated with the Committee".

68. **Mr. Shany** said that he accepted Mr. de Frouville's proposals. The intention of the word "should" in the phrase "Such measures should reflect, inter alia, the importance attributed to the work of human rights defenders" was prescriptive. He would therefore prefer to retain it, but he was willing to delete the words "inter alia". Meanwhile, the phrase "to protect individuals against reprisals for having cooperated or communicated with the Committee" reflected that contained in general comment No. 35. However, he agreed that its scope should be broadened to include other activities. He would reflect on the matter and propose new wording.

69. **Mr. Santos Pais** proposed that the second sentence should be amended to read: "Such measures should reflect the importance of the work of human rights defenders in promoting human rights."

70. **The Chair** suggested that the Rapporteur should produce a revised version of the paragraph for consideration later in the session.

71. *It was so decided.*

Paragraph 56

72. **Mr. Shany** said that the paragraph dealt with two key dimensions in which articles 6 and 7 of the Covenant could interact: torture and ill-treatment entailing deprivation of life; and criminal convictions entailing the death penalty that were based on information procured through torture or ill-treatment. Relevant paragraphs of section IV would be cross-referenced in the second sentence.

73. **Mr. Heyns** proposed replacing the phrase "criminal convictions entailing the death penalty" with "criminal convictions resulting in the death penalty".

74. **Mr. Shany** concurred.

75. *Paragraph 56 was provisionally adopted, subject to drafting changes.*

Paragraph 57

76. **Mr. Shany** said that the paragraph reflected the Committee's Views on two communications and paragraph 12 of general comment No. 31. The sentencing of individuals or their placement in a location where deprivation of life was anticipated, causing severe mental suffering, could in certain circumstances violate both articles 6 and 7. Three examples were provided: refoulement; misinformation concerning commutation of a death sentence; and placement on death row pursuant to an invalid death sentence.

77. **Mr. Fathalla** proposed inserting the word "respectively" after "articles 6 and 7" in the first sentence, because article 6 was related to "a real risk to their lives" and article 7 to "severe mental suffering".

78. **The Chair** said that the Committee had found violations of articles 6 and 7 in non-refoulement cases but had not used the words "severe mental suffering" in such cases or in general comment No. 31. Returning individuals to countries where there were substantial grounds for believing that they faced a real risk to their lives constituted cruel and inhuman treatment and hence violated article 7. He therefore suggested amending the first sentence to read: "Returning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives violates articles 6 and 7".

79. **Mr. Santos Pais** said that the phrase "a death sentence that is void ab initio" required clarification. He asked whether it referred to cases where the individual was aware that he or she had been wrongly sentenced to death or, more broadly, to cases where legal procedures had not been followed or the rule of law had been flouted.

80. **Mr. Shany** said that he accepted the Chair's suggestion to remove the reference to severe mental suffering from the first sentence. Moreover, doing so would mean that it was no longer necessary to insert the word "respectively", as proposed by Mr. Fathalla.

81. The phrase "a death sentence that is void ab initio" referred to cases in which an individual had been wrongly sentenced to death, whether or not he or she was aware of that

fact. The unjustified placement of an individual on death row resulted in mental suffering and therefore constituted a violation of article 7 of the Covenant.

82. *Paragraph 57, as amended, was provisionally adopted.*

Paragraph 58

83. **Mr. Shany** said that paragraph 58 dealt with violations under article 7 of the Covenant of the rights of relatives of persons arbitrarily deprived of their life. For example, failure to provide relatives with information on the date of the execution or the location of the body might cause them severe mental suffering and thus constitute a violation of their rights under article 7.

84. **Mr. Heyns** said that the beginning of the paragraph seemed to refer to all arbitrary deprivation of life, whereas the end of the paragraph focused specifically on the death penalty. If the broad wording of the opening line was intentional, the end of the paragraph should be rephrased for the sake of consistency.

85. **Mr. Fathalla** proposed replacing the general term “relatives” with the more specific term “families”, in order to avoid ambiguity.

86. **Mr. de Frouville**, pointing out that those most affected by the death of the individual concerned might not be family members, said that the word “relatives” was broader and therefore more appropriate. It was also the term used in the International Convention for the Protection of All Persons from Enforced Disappearance.

87. He proposed removing the word “arbitrary” from the first sentence, since any deprivation of life, whether arbitrary or not, might cause severe mental suffering to the relatives of the individual concerned.

88. He agreed with Mr. Heyns’ observation and proposed splitting the paragraph into two sentences by inserting a full stop after the words “deprivation of life” and drafting a second sentence on States’ obligations towards the relatives of persons sentenced to death, including the obligation to provide information on the date of execution and the location of the body.

89. **Ms. Cleveland** said that she was in favour of keeping the term “relatives”. The words “severe mental suffering, which could amount to a violation”, were problematic, inasmuch as the infliction of severe suffering amounted to torture and thus, by definition, constituted a violation of article 7. She proposed either removing the word “severe” or replacing the word “could” with “would”. Lastly, she proposed amending the words “their body” to “the body” or “the remains”.

90. **Mr. Santos Pais**, noting that the paragraph referred first to the provision of information after the deprivation of life and then to the anticipated date of execution, said that the various components of the paragraph should be rearranged chronologically.

91. **Ms. Abdo Rocholl**, referring to the Spanish version of the text, proposed replacing the word “*debería*” with “*deberá*” in the final sentence of paragraph 58, to account for the fact that, in some cases, the body was not returned to the relatives because the individual had been tortured.

92. **Mr. Fathalla** said that the second reference to “relatives” within the paragraph required clarification, as it was unclear who would determine which persons constituted relatives who were entitled to information and on what grounds that decision would be reached.

93. **Mr. Politi** said that the word “arbitrary” should indeed be removed, to avoid the misleading implication that failure to provide information to relatives was a violation of article 7 only in cases of arbitrary deprivation of life. He also agreed with Ms. Cleveland’s proposal to remove the word “severe”.

94. **The Chair** said that it was important to consider the subtle connections between the words “arbitrary”, “severe” and “could” before amending the sentence.

95. **Mr. Shany** said that it was important to keep the word “arbitrary” because that section of the general comment dealt with the relationship between article 6 and other articles of the Covenant. A violation that was not arbitrary might not constitute a violation of article 6. Although every deprivation of life caused severe mental suffering to relatives, not every deprivation of life entailed legal responsibilities for the State party.

96. The Committee had used the word “relatives” in much of its jurisprudence. He was reluctant to replace it with a more abstract phrase, such as “any persons with a legitimate interest”, which had been used in the Convention on Enforced Disappearance, for fear of introducing further ambiguity.

97. He would draft a revised version of the paragraph for consideration later in the session, taking into account the comments made by members.

98. *It was so decided.*

Paragraph 59

99. **Mr. Shany** said that paragraph 59 demonstrated that articles 6 and 9 of the Covenant overlapped in two ways: firstly, deprivation of life could be considered an extreme violation of the right to security of person; secondly, guarantees against arbitrary detention were designed to create conditions that were not conducive to violations of the right to life.

100. **Mr. Santos Pais** proposed rephrasing the first part of the second sentence to reflect the fact that enforced disappearance did not always involve a period of arbitrary detention.

101. **The Chair** said that it was unclear whether “failure to respect the important procedural guarantees” was a second example of an extreme form of arbitrary detention or a second situation that might constitute a violation of the rights in question. The latter interpretation raised some doubts, since failure to respect procedural guarantees would not necessarily constitute a violation of article 6 of the Covenant. In certain cases where the victim’s fate or whereabouts remained unknown, the Committee had found violations of articles 7 and 16, for example, but not of article 6.

102. He suggested amending the wording based on the language used in paragraph 55 of the Committee’s general comment No. 35, by replacing “such as” with “in particular”; he further noted that there was no mention of failure to respect procedural guarantees in that paragraph.

103. **Mr. Shany** said that he would harmonize the wording of the paragraph with the language used in general comment No. 35. The phrase starting with the words “failure to respect the important procedural guarantees” did indeed denote a second situation that might constitute a violation of the rights in question, rather than a second example of an extreme form of arbitrary detention. While it could be argued that failure to respect procedural guarantees did not, in itself, constitute a violation of the right to life, it was important to note that it was possible to violate a person’s right to life simply by placing that person’s life at risk; in other words, a violation of that right could occur without deprivation of life. He would draft a revised version of the paragraph for consideration later in the session, taking into account the comments made by members.

104. *It was so decided.*

Paragraph 60

105. **Mr. Shany** said that paragraph 60 dealt with the relationship between articles 6 and 20 of the Covenant. It stated that failure to prohibit propaganda for war and various forms of incitement to violence, as required by article 20, might also constitute a failure to take the protective measures required under article 6. It had not been possible to include citations because there was a lack of jurisprudence in that area.

106. **Mr. Heyns** proposed amending the second sentence by replacing the word “ensure” with the word “protect”, in line with the language used in article 6 of the Covenant.

107. **Mr. de Frouville** said that the phrase “incitement to violence” should be replaced with the phrase “incitement to discrimination, hostility or violence”, to reflect the wording

used in article 20 of the Covenant. He proposed including references to cases of genocide heard by international tribunals.

108. **Ms. Cleveland** said that it made sense to keep the wording used in the first sentence, because incitement to discrimination or hostility were not as clearly linked to the right to life as incitement to violence. She proposed replacing the words “the obligations under article 20” with the words “these obligations”, in order to maintain a degree of ambiguity.

109. **Mr. Shany** said that he would redraft the paragraph, taking into account the members’ comments.

110. *It was so decided.*

The meeting rose at 1 p.m.