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SUMMARY RECORD OF THE 2463rd MEETING*

Held at the Palais Wilson, Geneva,
on Monday, 16 July 2007, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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* No summary record was issued for the 2461st and 2462nd meetings.

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The meeting was called to order at 10.05 a.m.

GENERAL COMMENTS OF THE COMMITTEE (CCPR/C/GC/32/CRP.1/Rev.5)

1. The CHAIRPERSON invited members to resume consideration of draft general comment No. 32 (CCPR/C/GC/32/CRP.1/Rev.5).

Paragraphs 42 to 44

2. Mr. KÄLIN, Rapporteur on draft general comment No. 32 relating to article 14 of the Covenant, recalled that the Committee had begun the second reading of the draft general comment at its previous session, and had reached paragraph 41. Since then Mr. Shearer had edited the amended text, ensuring, in particular, that it was gender-neutral. A new text, in English only, had been sent to all Committee members and they had been invited to make their comments in writing. Only Ms. Wedgwood and Sir Nigel Rodley had responded to that invitation and their written comments, also in English only, had been distributed to members. He suggested that it would be useful to complete the second reading of the text before examining the whole text from the beginning in an informal third reading, which would mostly entail cleaning up the text and gaining a comprehensive overview.

3. Introducing paragraphs 42 to 44 on juvenile persons, he noted that all the footnotes, originally included for information, referred to the Convention on the Rights of the Child, and had therefore been deleted. In her written comments, Ms. Wedgwood had suggested that, in the phrase “legal or other appropriate assistance” in the penultimate sentence of paragraph 42, the word “or” should be replaced by “and”. For the sake of consistency, she had suggested that in the same sentence the phrase “his or her parents or legal guardians” be replaced by “their parents or legal guardians”. In view of Ms. Wedgwood’s remark that the word “mediation” contained in paragraph 44 needed to be made more specific, he proposed the wording “mediation between the perpetrator and the victim”.

4. Mr. LALLAH said that he would like to see the paragraphs contain a reference to public hearings and a definition of “juvenile”.

5. Mr. O’FLAHERTY said that it might be advisable to state, in paragraph 44, that 12 years was the minimum acceptable age of criminal responsibility, as had finally been decided by the Committee on the Rights of the Child.

6. Ms. CHANET, supported by Mr. AMOR, said that, strictly speaking, the minimum age of criminal responsibility came under article 24, not article 14, where procedural matters alone were under consideration.

7. Mr. SHEARER said he agreed with the new wording in paragraph 44 proposed by Mr. Kälin: “mediation between the perpetrator and the victim”. He proposed the inclusion in the list of “measures other than criminal proceedings” of the practice of “family conferencing”, which had been successfully introduced in New Zealand and Australia as a successful technique for reducing recidivism.

8. Mr. AMOR said that he agreed with Ms. Wedgwood's proposal to define mediation in paragraph 44, but not with her proposal that the word "or" be replaced by "and" in the phrase "legal or other appropriate assistance" in the penultimate sentence of paragraph 42.

9. Ms. WEDGWOOD, referring to her proposal that the word "or" be replaced by "and" in the phrase "legal or other appropriate assistance", said her concern was that, in some countries, the authorities might decide, even in criminal proceedings, that a child did not require a lawyer. Children needed a lawyer as much as anyone else in criminal proceedings and the word "or" could provide a loophole for authorities to provide them with a psychologist, for example, instead of a lawyer. Her point was a matter of principle, in keeping with the doctrine of the Covenant, and was not merely a minor detail of linguistic editing. The general comment should not be restricted by the wording used by the Committee on the Rights of the Child.

10. Turning to paragraph 44, she expressed doubts as to the advisability of including a list of practices among the alternative measures, however desirable they might be. In her view, the general comments had a quasi-mandatory quality and should be restricted to a summary of the Committee's case law and its possible lacunae.

11. Sir Nigel RODLEY said that the term "restorative justice" might be used to avoid a long list of specific alternative practices in paragraph 44. It was an acceptable, well-established term that was widely understood. He did not, however, agree that the Committee's general comments somehow codified its case law or were quasi-mandatory. Although persuasive, they primarily enabled the Committee to express its views on the scope and nature of States parties' obligations.

12. Mr. IWASAWA said that the general comments enabled the Committee to restate the principles established in its concluding observations. Paragraphs 42 to 44 were unusual in that they reproduced the principles set forth in the Convention on the Rights of the Child. Therefore, while the minor editing changes suggested were acceptable, he would have difficulty in agreeing to major changes to the wording if the very principles of the Convention on the Rights of the Child were called into question.

13. Mr. KÄLIN said that the matter of public hearings had been addressed under paragraph 29. Accordingly further discussion of the matter should take place at the next reading.

14. Agreeing with Ms. Wedgwood that children were entitled to have access to a lawyer in criminal proceedings, regardless of the wording used in the Convention on the Rights of the Child, he suggested rewording the penultimate sentence of paragraph 42. The new wording should take account of the three categories of person who needed to be present at hearings: a lawyer or legal counsel; a person who could provide other appropriate assistance (such as a psychologist); and the child's parents or legal guardians. He therefore proposed the following wording: "in the presence of a legal counsel, other appropriate assistance and, unless it is considered not to be in the best interest of the child, their parents or legal guardians".

15. To his regret, the Committee had overwhelmingly rejected the reference made in the first draft of the text to the minimum age of criminal responsibility. Although it was true that article 14 referred to procedural matters, that did not necessarily rule out the possibility that it should contain a reference to age or a definition of juvenile persons. Otherwise it could be

logically argued that the whole second sentence in paragraph 43 should be deleted. He would prefer a reference to age or a definition of juvenile persons to be included in the paragraph, with a new wording that emphasized the procedural aspect of article 14. With regard to a reference to the minimum acceptable age of criminal responsibility - 12 years according to the Committee on the Rights of the Child - he had no strong feelings and invited the Committee to discuss Mr. O'Flaherty's proposal.

16. Turning to paragraph 44, he voiced his support for the proposals made by Ms. Wedgwood and Mr. Shearer. However, if too many changes to the text made Mr. Iwasawa uncomfortable, the Committee might contemplate changing the phrase "should be resorted to" to the milder "should be considered". He would be equally happy with spelling out the alternative measures in a list, which might result in a text that was easier to read, or with using the expression "restorative justice", although it might prove difficult to translate into certain languages. He called on the Committee to decide.

17. Mr. AMOR supported Mr. Kälin's proposal for a rewording of the penultimate sentence of paragraph 42. He repeated his opinion that article 24, and not article 14, was the appropriate place to discuss a definition of juvenile persons or the minimum age of criminal responsibility. He would prefer the inclusion of examples of alternative measures in paragraph 44 to use of the term "restorative justice".

18. Sir Nigel RODLEY said that, by proposing to refer to restorative justice, he had merely wished to facilitate better understanding of paragraph 44. The term made no substantive difference and did not warrant lengthy debate. Unless it met with broad approval, it was best omitted.

19. Mr. LALLAH agreed with Mr. Kälin that the procedural aspects concerning the age of the child should be taken into account. Thus far, the Committee had refrained from specifying a minimum age of criminal responsibility and he concurred with Mr. Kälin's earlier proposal to set that age at 18, unless State party legislation provided otherwise. He was unaware of the experience that had compelled the Committee on the Rights of the Child to set the minimum age of criminal responsibility at 12, but felt uncomfortable about adopting the same approach. Prior to taking a position, the Committee should engage in substantive debate on the issue, on the basis of individual members' experience and relevant information in State party reports. Establishing a minimum age of criminal responsibility in a somewhat ad hoc fashion seemed unwise.

20. Notwithstanding Sir Nigel Rodley's most recent comment, he supported the proposal to refer to restorative justice; including a reference to rehabilitation would also be useful.

21. Ms. CHANET said that, while the inclusion of a reference to restorative justice was attractive, it should be made clear that the concept should not be limited to juveniles.

22. Article 14, paragraph 4, was concerned with matters of procedure, and not the age of criminal responsibility. Paragraph 43 should therefore simply state the need for juveniles to be treated in a manner commensurate with their age, taking into account their physical and mental immaturity. The first part of the second sentence, i.e. "It is important to establish … penal law", should be deleted.

23. Mr. O'FLAHERTY proposed inserting the phrase "in particular, taking into account his or her age or situation" after "best interest of the child" in the third sentence of paragraph 42, in accordance with the Convention on the Rights of the Child. He agreed that, pending a substantive discussion on the matter, the Committee should desist from specifying a minimum age of criminal responsibility.

24. Mr. KÄLIN accepted the proposal to bring the text of paragraph 42 into line with the language contained in the Convention.

25. Paragraph 44 would be amended to include a reference to rehabilitation.

26. The phrase "shall be presumed not to have the capacity to infringe the penal law" in the second sentence of paragraph 43 should be replaced by "shall not be put to trial for criminal offences". He agreed that the minimum age of criminal responsibility did not fall within the scope of article 14, but it was important to state that young children should not be subjected to the potentially traumatic experience of criminal proceedings.

27. Ms. CHANET concurred.

28. Mr. AMOR said paragraph 43 should make it clear that children's perceived physical and mental maturity must not be used as justification for trying them as adults.

29. Paragraphs 42 to 44, as amended, were adopted subject to editorial changes.

Paragraph 45

30. Mr. KÄLIN said that he agreed with Ms. Wedgwood's proposal to replace the word "everyone" by "anyone" in the first sentence.

31. Paragraph 45, as amended, was adopted.

Paragraph 46

32. Paragraph 46 was adopted.

Paragraph 47

33. Ms. WEDGWOOD said that the Committee's case law on de novo findings of guilt on appeal was inconsistent with the practice of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, and might pose a problem for the International Criminal Court. In order to avoid possible conflict, it might be best to avoid excessively prescriptive language. Although the Committee must naturally be consistent with its own jurisprudence, a footnote should be included referring to the contrary practice of international tribunals. The scope of paragraph 47 should be expressly limited to domestic courts.

34. Mr. SHEARER said that he saw no need for the Committee to align its case law with the practice of international tribunals, whose jurisprudence had no implications for domestic law. Although he had taken it as read that paragraph 47 would apply to domestic courts only, the inclusion of an explicit reference might enhance clarity.

35. The CHAIRPERSON said that the Committee's competence was limited to States parties' obligations under the Covenant and the limited applicability of paragraph 47 was thus self-evident. The scope and purpose of international tribunals were naturally different from those of the Covenant. However, additional clarification might not go amiss.

36. Ms. WEDGWOOD pointed out that the Committee's jurisprudence in respect of article 14, paragraph 5, had been invoked before the International Criminal Tribunal for the former Yugoslavia. The Covenant was promoted as a set of minimum standards, not an idiosyncratic law for individual States. Unless it was clearly specified that the Committee's interpretation of article 14, paragraph 5, applied only to domestic courts, its jurisprudence would invariably be invoked before international tribunals to contest guilty verdicts handed down on appeal.

37. Mr. KÄLIN suggested inserting the phrase "according to domestic law" after "acquittal by a lower court" in the first sentence to accommodate Ms. Wedgwood's concern.

38. Paragraph 47, as amended, was adopted.

Paragraph 48

39. Mr. KÄLIN said that the term "right of appeal" in the first sentence could be understood as creating a right to go to an appellate court, and should be replaced by "right to have one's conviction and sentence reviewed by a higher tribunal".

40. He concurred with Ms. Wedgwood that in many legal systems the higher court was only competent to review the legality of a judgement, but not to reassess the facts. Also, the Committee had never called for a de novo evaluation of the facts by the higher court. He therefore suggested deleting the words "or legal" in the second sentence, following Ms. Wedgwood's proposal, and inserting the phrase "without any consideration whatsoever of the facts" after "conviction".

41. Ms. Wedgwood had further pointed out that, in the common law system, the weighing of evidence fell to the jury, and not the reviewing court. The phrase "to rule out errors in weighing the evidence" in the last sentence should therefore be deleted.

42. Mr. SHEARER said that, while he agreed in principle, it might be preferable to replace that phrase by "to justify a finding of guilt". The term "the author's case" in the last sentence established an inadvertent link with individual communications and should be replaced by a more general term.

43. Mr. LALLAH said that the word "substantially" in the first sentence should be replaced by "substantively".

44. Paragraph 48, as amended, was adopted subject to editorial changes.

Paragraph 49

45. Mr. KÄLIN said that Ms. Wedgwood's proposal to replace "affected" in the last sentence by "impaired" would be reflected in the revised draft.

46. Paragraph 49, as amended, was adopted.

Paragraph 50

47. Ms. WEDGWOOD said that, in the common law system, the notion of "already executory" was unclear.

48. Ms. CHANET, supported by the CHAIRPERSON, said that the notion of recourse to supervisory review of sentences other than those that were already being executed was crucial in civil law systems.

49. Ms. WEDGWOOD said that the two issues were whether it should be permitted to take interlocutory appeal before a final judgement was handed down, and whether a final judgement could be appealed prior to its execution, with suspensive effect. In the common law system, it would not be useful to authorize interlocutory appeals per se, since such appeals would cause significant delays in trials. Also, the term "executory" might be misread as implying that the execution of the sentence remained pending. In order to eliminate any ambiguity, the beginning of the sentence should be amended to read: "A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5 …".

50. Paragraph 50, as amended, was adopted.

Paragraph 51

51. Mr. KÄLIN said that the content of the second sentence was based on a case that had come under the Committee's jurisprudence, in which counsel had informed the court that he was not ready to appeal the case, but the defendant had not been informed of that decision. In order to broaden the scope of the paragraph, as requested by Ms. Wedgwood, he proposed that in the last sentence the phrase "if the appellate court in a capital case does not inform convicted persons" should be replaced by "if defendants are not informed". While that would exclude the reference to capital cases, the general principle stated in the sentence would apply to all cases.

52. Paragraph 51, as amended, was adopted.

Paragraph 52

53. Paragraph 52 was adopted.

Paragraph 53

54. Mr. KÄLIN said that, in the second sentence, the word "political" should be replaced by "discretionary".

55. Paragraph 53, as amended, was adopted.

Paragraph 54

56. Mr. AMOR proposed that the end of the second sentence should be amended to read "military or exceptional tribunal".

57. Paragraph 54, as amended, was adopted.

Paragraph 55

58. Ms. WEDGWOOD said that, while she did not question the Committee's stance on conscientious objection, she failed to understand why that issue had been singled out in the section on ne bis in idem. The paragraph could be misinterpreted as implying that any repetitive enforcement of a civil obligation was forbidden. If the paragraph was not deleted, a phrase should be added to make it clear that conscientious objection was a special case.

59. Sir Nigel RODLEY said that the current wording of the paragraph did make it clear that conscientious objection was a special case. Repeated punishment of conscientious objectors was a problem in several States parties. It would be interesting to learn whether the Special Working Group on Arbitrary Detention had invoked article 14, paragraph 7, of the Covenant as part of its justification for a finding of violations. The specific mention of conscientious objection in that paragraph was relevant since there was no other way for a conscientious objector to object, other than not performing military service. Moreover, it was insufficient to consider conscientious objection under article 18 on freedom of conscience only, since some States had good systems of non-discriminatory alternative service. In order to establish that the repeated imprisonment of conscientious objectors was a violation of the Covenant, it was necessary to invoke article 14, paragraph 7.

60. Ms. WEDGWOOD suggested adding the phrase "In the particular case of conscientious objection" at the beginning of the paragraph.

61. Mr. O'FLAHERTY, supported by Mr. LALLAH, disagreed with that suggestion since it would exclude the possibility of applying the paragraph to other areas. As it stood, the paragraph was perfectly clear.

62. Mr. KÄLIN said that, while he understood Ms. Wedgwood's concerns, it made no syntactic sense to introduce the paragraph with her suggested phrase. He emphasized that, since he had left the issue open by using the phrase "**may** amount to punishment" and adding the qualifier "if such subsequent refusal is based on the same constant resolve", there was no danger of the text being misapplied.

63. Paragraph 55 was adopted.

Paragraph 56

64. Paragraph 56 was adopted.

Paragraph 57

65. Ms. WEDGWOOD asked whether the second sentence could be amended to take account of the problem of two separate sovereigns inhabiting the same territory in federal States. In some important race cases, the federal authorities had retried cases that had already been tried at State level.

66. Mr. KÄLIN said that he had used the word "national" before "jurisdictions" in an attempt to clarify that issue.

67. Ms. WEDGWOOD said that she had interpreted that as meaning that two different national States could try different aspects of a multinational case. From a common law perspective, the issue remained somewhat unclear. She therefore proposed that the phrase "or to two different sovereigns within the same State" should be added after the words "with respect to the national jurisdictions of two or more States".

68. Sir Nigel RODLEY agreed that the paragraph did not clarify that point. He suggested using the following formula: "with respect to the jurisdictions within a federal State or of two or more States".

69. Ms. CHANET said that the issue of federal States could be resolved with different wording. The reference to national jurisdictions should not be deleted, given the Committee's decision in the A.P. v. Italy case, cited in footnote 124. The reference in the last sentence to the application of the rule of speciality in the context of extradition law, however, appeared not to fit in the context of ne bis in idem. She proposed deleting the second half of the last sentence, as from the words "or by strict application".

70. Mr. KÄLIN said that the rule of speciality was a complex issue. He endorsed Ms. Chanet's proposal since that issue was already covered by international conventions.

71. He could not agree with Sir Nigel Rodley's suggested reference to federal States. Most federal States had a ne bis in idem principle. Only in exceptional cases did different states protect different legal values or goods. The second sentence did not exclude the possibility of trying an offence in two separate states within a federal State; hence the need for the words "national jurisdiction".

72. Ms. WEDGWOOD said that the same logic that applied to two or more national States could apply to two states within a federal State. She had interpreted the second half of the second sentence as purporting to forbid federal State prosecutions and state prosecutions within the same country, which would truncate an important, delicate area of law.

73. Mr. KÄLIN agreed that there was a problem. He proposed deleting the second part of the second sentence, from the words "but only prohibits double jeopardy", in order to avoid misunderstanding.

74. Paragraph 57, as amended, was adopted.

Paragraph 58

75. Mr. KÄLIN proposed deleting the paragraph, as suggested by Sir Nigel Rodley, since it essentially repeated the content of paragraph 54.

76. It was so decided.

Paragraph 59

77. Mr. KÄLIN said Sir Nigel Rodley had suggested that the last sentence of the paragraph was unclear.

78. Ms. CHANET suggested that the Committee should examine paragraph 6.6 of the Terrón v. Spain case cited in the footnote to that sentence.

79. Sir Nigel RODLEY said that, since so many articles of the Covenant provided for particular remedies, the content of the last sentence seemed to add little to the paragraph.

80. Ms. WEDGWOOD read out paragraph 6.6 of Terrón v. Spain: “The Committee’s established jurisprudence states that article 14, paragraph 5, of the Covenant is a lex specialis in relation to article 2, paragraph 3 (a), of the Covenant, such that, since the Committee has decided that the alleged violation of article 14, paragraph 5, is admissible, it is unnecessary for it to take a decision on the alleged violation of article 2, paragraph 3, of the Covenant.” However, she agreed that the last sentence of paragraph 59 added little for the ordinary reader.

81. Mr. KÄLIN said that he had included the last sentence in the light of the penultimate sentence. If the last sentence was deleted, the paragraph would say that the Committee expected the authors of communications to invoke article 2, paragraph 3 (a), which was not the case.

82. Paragraph 59 was adopted.

Paragraph 60

83. Mr. KÄLIN said that Sir Nigel Rodley had questioned the inclusion in the second sentence of an incomplete list of the provisions that would constitute a violation of article 6. He suggested replacing the words “in particular” by “for instance” to make it clear that the list reflected some of the Committee’s case law. Another option was to delete the part of the sentence that began with the words “in particular” and ended with the phrase “to testify against oneself (paragraph 3 [g])”.

84. The CHAIRPERSON noted that, while concluding observations often included examples in order to illustrate a point, an incomplete list in that context could create confusion. He therefore took it that the Committee wished to delete the part of the second mentioned by Mr. Kälin.

85. Sir Nigel RODLEY proposed that brief explanations of the cases cited in the footnote could be included in square brackets in the footnote rather than in the text itself.

86. Paragraph 60, as amended, was adopted.

Paragraph 61

87. Mr. AMOR considered that the use of the conditional tense in the second sentence was inappropriate; “would be incompatible” should be replaced by “is incompatible”.

88. Mr. KÄLIN said that that point would be addressed later by the Committee when it reconsidered paragraphs 1 to 5. It related to the extent to which material obtained through methods in violation of article 7 of the Covenant could be used as evidence. He suggested putting the sentence in square brackets pending a consensus on the issue.

89. He acknowledged that that sentence repeated what had been stated in paragraph 41, but felt that it was necessary for information purposes, since the relationship between article 14 and other substantive guarantees, including those provided under article 7, was being discussed. In addition, some readers might refer directly to that section of the general comment rather than reading the whole document. In those circumstances he suggested that consideration of the paragraph should be deferred.

90. It was so decided.

Paragraph 62

91. Ms. CHANET stressed the importance of adhering to the wording of article 9, paragraph 3: the words “for a prolonged period of time” should therefore be replaced by “within a reasonable time”.

92. The CHAIRPERSON agreed that the terminology of the Covenant should be used in each working language in order to prevent confusion.

93. Paragraph 62, as amended, was adopted.

Paragraph 63

94. Ms. MAJODINA wondered why the Committee wished to limit the scope of consideration of expulsion proceedings to article 14, paragraph 1. She felt that article 14 as a whole should apply to such proceedings and that that should strengthen the provisions of article 13. In fact, those guarantees had been recognized under South African law in a number of cases, resulting in fair and public hearings in expulsion and deportation cases.

95. Mr. KÄLIN said that that issue had already been debated. Referring to article 14, paragraph 1, he emphasized that expulsion was not a criminal sanction and that expulsion proceedings did not constitute a suit at law. The Committee had had lengthy discussions on standards and significant progress had been achieved in case law, e.g. in the recent Everett v. Spain case. If under domestic law a person had access to a judicial body, all the principles of impartiality, fairness and equality of arms applied.

96. Ms. MAJODINA said she understood that deportation was not a criminal sanction, although it was linked to crime in many countries. It was unclear to her why the other paragraphs of article 14 should not apply where appropriate.

97. Mr. KÄLIN pointed out that article 14, paragraph 2, referred to persons charged with a criminal offence, and therefore did not relate to expulsion; paragraph 3 referred to the determination of criminal charges, which likewise did not apply to expulsion; paragraph 4 related to juvenile persons who had committed a criminal offence; paragraph 5 stated that everyone convicted of a crime should have the right to his conviction and sentence being reviewed, while expulsion was a decision, not a conviction or a sentence; paragraph 6 referred to the final decision regarding a conviction for a criminal offence; and paragraph 7 concerned criminal cases. Consequently, only paragraph 1 was applicable to expulsion proceedings, as illustrated in the second sentence of paragraph 63. If members wished to take the discussion further, he suggested doing so in the context of an individual case rather than the general comment. The new version of the general comment to be adopted should not be inconsistent with recent case law.

98. The CHAIRPERSON said that the main difficulty arose from the interpretation of the words "as such" in the first sentence, since not all the procedural guarantees covered in article 14 applied to expulsion proceedings.

99. Ms. CHANET agreed since article 14 could not apply "as such" to expulsion proceedings. The provisions of article 13 were binding, in accordance with the wish of the authors of the Covenant to treat the subject of the article as a specific, separate issue. It could be added that from the moment an expulsion case became a criminal case, the entire content of article 14 became applicable.

100. Mr. IWASAWA said it was his understanding that the principles of impartiality, fairness and equality of arms were applicable by virtue of the concept of equality of all persons before the courts and tribunals. He therefore proposed the deletion of "directly" in the second sentence.

101. Mr. KÄLIN endorsed that proposal. Although he was not convinced that that was absolutely necessary, he suggested adding a sentence along the following lines: "All relevant guarantees of article 14 apply where expulsion takes the form of a penal sanction or where non-observance of an expulsion order is punished."

102. Mr. LALLAH wondered whether it would be beneficial to replace the words "as such" by "in express terms".

103. Sir Nigel RODLEY said that the use of "in express terms" would cause further problems since its implication was that article 14 did apply to expulsion proceedings.

104. Mr. KÄLIN said that the problems entailed by the use of "as such" and "in express terms" could be avoided by deleting the first part of the sentence altogether. The paragraph would thus begin: "The procedural guarantees of article 13 of the Covenant … ."

105. Sir Nigel RODLEY endorsed the intention of the proposal but drew attention to the resulting grammatical problem. The sentence as currently worded suggested that article 13 should be interpreted in the light of article 14. He suggested that the words "and thus" should be replaced by "which".

106. Mr. KÄLIN said the wording proposed by Sir Nigel Rodley would suggest that article 14 was fully applicable to expulsion proceedings. Since the purpose was to highlight the relationship between article 14 and other Covenant guarantees, it was preferable to leave the paragraph as it stood.

107. Sir Nigel RODLEY stressed that it was unclear what provision was being referred to at the end of the first sentence and that clarification was required in the English version at least.

108. Paragraph 63 was adopted subject to editorial amendment.

Paragraph 64

109. Paragraph 64 was adopted.

Paragraph 65

110. Sir Nigel RODLEY said that, as far as he recalled, in the context of the communications referred to in footnote 137 there had been no finding of a violation based solely on article 14 and that it had been necessary to relate it to article 25 (c). That should be reflected in the wording of the paragraph.

111. Paragraph 65 was adopted subject to editorial amendment.

Paragraph 66

112. Paragraph 66 was adopted.

113. Mr. KÄLIN said that a number of issues remained pending and suggested starting to reconsider those paragraphs which required further amendment. While paragraphs 1 to 4 required only editorial amendments, the penultimate sentence of paragraph 5 had raised substantive concerns.

114. Ms. WEDGWOOD referred to the exclusionary rule that prevented the use of coerced statements, including statements obtained without a warrant, in the course of criminal proceedings. She drew particular attention to the concept of the “fruit of the poisonous tree”, as referred to in United States common law, relating to the fear that any subject covered in a coerced statement might subsequently lead to the discovery of a physical item or witness and that the evidence thereby obtained might be tainted. She asked the Committee whether it wished to go beyond the scope of the Convention against Torture in order to address the issue of the exclusionary rule, which, to her knowledge, had never been discussed. In fact, the Convention required that no statement obtained under torture should ever be admitted, and the Committee’s general comment No. 7 relating to the prohibition of torture had referred to the problem without placing any obligation on States parties.

115. Another problem that had not been addressed by the Convention against Torture was that of exculpatory statements. The wording of the Convention did not allow for the admission of exculpatory statements in defence of an accused.

116. Mr. O'FLAHERTY, referring to the question of the "fruit of the poisonous tree", said that any acknowledgement by the Committee of the value of statements obtained under torture would be unacceptable and inappropriate, particularly in the present climate, where the absolute prohibition of torture was under threat. He thus endorsed Ms. Wedgwood's view that it should be made clear that no use of "fruit of the poisonous tree" was to be tolerated.

117. Mr. AMOR considered that the issue rightly raised by Ms. Wedgwood deserved in-depth discussion so as to enable the Committee to reach a clear decision. It was all the more important since not all countries observed a policy of open monitoring of police interviews. Accordingly, he suggested discussing that issue further, together with all outstanding issues, at the next reading of the draft general comment.

118. Sir Nigel RODLEY supported the view expressed by Mr. O'Flaherty. He drew attention to a discrepancy between paragraph 1 of general comment No. 7 and paragraph 12 of general comment No. 20. He wondered why the "other evidence" referred to in the former had not been mentioned in the latter, and whether that was intentional or inadvertent. Although the issue of the "fruit of the poisonous tree" had not been addressed by the Convention against Torture, that did not necessarily mean that the Committee, with its own experience and practice, should not decide on an effective way of implementing article 14 and the obligation not to compel testimony. He looked forward to a conclusive discussion of the issue.

119. Ms. WEDGWOOD said that she would make available to all interested members a work co-written by her, entitled "Law and Torture", in which she presented her views on the issue.

The meeting rose at 1 p.m.