United Nations CCPR/C/SR.2760

International Covenant on Civil and Political Rights

Distr.: General
10 November 2010

Original: English

Human Rights Committee
100th session

Summary record of the 2760th meeting*
Held at the Palais Wilson, Geneva, on Thursday, 21 October 2010, at 3 p.m.

Chairperson: Mr. Iwasawa

Contents

* No summary record was issued for the 2759th meeting.

The meeting was called to order at 3.10 p.m.

General comments of the Committee (*continued*)

Draft general comment No. 34 (continued) (CCPR/C/GC/34/CRP.4)

1. **The Chairperson** invited the Committee to resume its consideration of its draft general comment No. 34 (CCPR/C/GC/34/CRP.4).

Paragraph 50

2. **Mr. O'Flaherty**, Rapporteur for the draft general comment, introduced paragraph 50 and said that the last sentence of the paragraph, "The assessment of compatibility with paragraph 3 is one that must be made in the specific context of the actual exercise of freedom of expression by an individual", should have been deleted, since the assessment of compatibility related to consideration of cases under the Optional Protocol.

3. **Sir Nigel Rodley** proposed the reincorporation of that sentence. It was particularly important since there was a real danger of the abuse of memory laws, which constituted part of the heading preceding paragraph 50. It was necessary to remember that in some contexts words could mean more than they seemed to. During the genocide in Rwanda, for example, those engaged in exterminating the Tutsi had referred to the extermination of the "locusts". In reality, historical research could be used as a guise for incitement to various kinds of hatred, as had been shown in the case of *Faurisson v. France* (communication No. 550/1993), in which so-called historical research, placed in the context of a number of other statements made by Mr. Faurisson, had in fact been a whole campaign against a particular group that he associated with the traditional truth. It was crucial that the contextual element should be a key part of the legitimacy of memory laws.

4. **Mr. Rivas Posada** said that the question of possible restrictions on freedom of expression was a particularly difficult issue, which was evolving over time. He expressed concern about the concept of "necessary and proportionate" limitations, since that would enable States to justify restricting freedom of expression with regard to the interpretation of history. He wondered whether the penultimate sentence, "As such they must be necessary and proportionate in pursuit of the permissible grounds", could be deleted. Turning to the second sentence, he said that the Committee should send a stronger message to States that legislation for the restriction of freedom of expression must be in line with article 20. A direct reference to the principles of article 20 should therefore be mentioned. While he conceded that there should be certain restrictions on freedom of expression in relation to historical truths, those restrictions must be specific. The issue should be discussed in detail with States parties.

5. **Mr. Thelin** said he shared the concerns expressed by Mr. Rivas Posada regarding the necessity to restrict freedom of expression. He proposed reordering the paragraph by deleting the penultimate sentence as proposed by Mr. Rivas Posada. The paragraph would thus read:

> "Laws that penalize the promulgation of specific views about past events, so-called 'memory laws', must be reviewed to ensure they violate neither freedom of opinion nor expression. Limitations must never be imposed on the right of freedom of opinion and, with regard to freedom of expression they may not go beyond what is permitted in paragraph 3. The assessment of compatibility with paragraph 3 is one that must be made in the specific context of the actual exercise of freedom of expression by an individual. The Covenant does not permit general prohibitions on expression of historical views, nor does it prohibit a person's entitlement to be wrong or to incorrectly interpret past events."

6. **Mr. O'Flaherty** said that while he agreed with Sir Nigel Rodley with regard to the sensitivities and concerns that must be considered with regard to restrictions and memory laws, he was concerned about the use of certain language in paragraph 50. The paragraph was intended to guide States with regard to their legislative activity. He was unsure what benefits the final sentence would have for States considering legislating on the issues concerned. Removing the sentence would not signify a change of rules, approach or methodology. The sentence distracted from the primary intent of the paragraph.

7. **Mr. Lallah** said he was uncomfortable with the content of paragraph 50, in particular the final sentence. In the case of *Faurisson v. France* he had appended an individual opinion relating to the Committee's decision, since he had found it particularly difficult to determine the case on the basis of article 19; he had therefore justified his agreement with the Committee's conclusion by referring to article 20. That article should be specifically mentioned in paragraph 50.

8. **Mr. Salvioli** said he supported Mr. Lallah and shared the concerns expressed by Mr. Rivas Posada. While he would prefer to refer to article 20, that would require taking a more radical stand and stating that memory laws must not affect freedom of expression. The reference to article 19, paragraph 3, should be replaced by a reference to article 20, recalling that memory laws could in no way affect freedom of expression and any later expression contrary to article 20 should be penalized by law. That approach would, however, mean that the Committee was taking a more radical position on freedom of expression and memory laws than it was in the draft in its original form.

9. **Ms. Chanet** said that in *Faurisson v. France* there had been no recognized violation of article 19 because the Gayssot Act had been recognized as necessary by the European Court of Human Rights. She agreed with Mr. Rivas Posada that necessity and proportionality should not be invoked to give a legal basis to restrictions on freedom of expression, since examples of specific contexts were required, such as incitement to racial hatred. She agreed with Mr. O'Flaherty that the final sentence should be deleted.

10. **Mr. Amor** pointed out that the offences covered by article 20 were not necessarily related to historical memory. Other provisions might be more appropriately applied in the case of those offences. The Committee should restrict itself to article 19, paragraph 3, in the present case. Memory laws were legitimate and understandable, but could be dangerous if history was manipulated or used as an instrument. States should not impose certain interpretations of history. Any historical analysis presupposed the observation of facts, on the one hand, and their interpretation, on the other. The observation of those facts was a scientific and objective exercise. There was a considerable gap between the observation and changing of those facts. Historians had the right to interpret history, but not to distort the facts. The interpretation of historical opinions must remain in the context of article 19. He would therefore prefer to draw a distinction in the final sentence between the examination and the interpretation of historical facts.

11. **Mr. Fathalla** said that while he understood Mr. Lallah's concerns with regard to the introduction of a reference to article 20, he did not think that reference would be appropriate, since article 20 concerned prohibitions that should be imposed by law. The provisions of article 19 should be subject to the limitations of article 20, not vice versa.

12. **The Chairperson** proposed replacing "limitations" by "restrictions" in the third sentence. The statement that restrictions must never be imposed on the right of freedom of opinion was stronger than the statement made in paragraph 9 of the draft general comment. If that statement was to be included in paragraph 50, it should also be included in paragraph 9 for the sake of consistency. The order of the sentences should remain unchanged so as not to alter the meaning of the paragraph.

13. He asked what was the source of the phrase “prohibit a person’s entitlement to be wrong or to incorrectly interpret past events”.

14. **Mr. O’Flaherty** said that if the question of memory laws was moved to the section on article 20, the implication would be that such laws, in order to be compatible with the Covenant, would have to meet the requirements of that article, a position which was not shared by all Committee members. If some members felt that memory laws could fall outside the scope of article 20, their content should be regulated by article 19 and a paragraph to that effect should be retained. He would be willing to go along with either approach.

15. If the article 19 approach was retained, all the Chairperson’s suggestions could be accommodated. For instance, the first sentence of paragraph 9 could be aligned with the third sentence of paragraph 50. The sentence concerning the tests of necessity and proportionality could be deleted by way of compromise, although he was convinced that such tests were relevant in the context. It was important not to countenance any limitations on freedom of opinion, and not just on freedom of expression.

16. **Sir Nigel Rodley** said that he was inclined to support the deletion of paragraph 50 but he would not press the point. While memory laws were highly susceptible to abuse, they could nonetheless be valid in a particular society to address covert encouragement of the type of behaviour contemplated by article 20. That was why he wished to preserve the notion of context in the existing draft. If memory laws were deemed to be acceptable under certain circumstances, the values to be invoked were those set forth in article 20.

17. With regard to historical research, he pointed out that there was not always a solid basis for making a clear distinction between fact and opinion.

18. He agreed with Mr. Fathalla that article 20 differed from article 19 in that it imposed an obligation on the State party to prohibit certain activities. A memory law such as the Gayssot Act in France might be a means of complying with that obligation. He was therefore inclined to support Mr. Lallah’s advice to approach the matter in terms of the link between articles 19 and 20.

19. **Mr. Lallah** said it was regrettable that there were apparently no precedents under article 19, paragraph 3, other than cases concerning racism that might be invoked as the basis for the general comment. It was important to avoid providing guidance to States parties that could be used to justify unwarranted legislation.

20. He agreed with Sir Nigel Rodley that it was difficult to establish a distinction between fact and opinion. The right that article 19 sought to preserve was an extremely delicate one and a prime target for repressive legislation. The Covenant referred in general terms to legal restrictions that were necessary to protect, for instance, public order (*ordre public*) and public morals, but both of those terms were difficult to define.

21. **Mr. Thelin** said that there was a strong link between freedom of opinion and freedom of expression, as noted in paragraph 2 of the draft general comment. If paragraph 50 were to be deleted, the important implications of that link for memory laws, as demonstrated by the *Faurisson v. France* case, would be overlooked. He was therefore in favour of retaining the paragraph. Moreover, he felt that there was never any justification for memory laws.

22. **Ms. Chanet** said that she was opposed to the exclusive application of article 20 to memory laws, since article 19, paragraph 3, concerning respect for the rights and reputations of others was also applicable. A State party might also invoke national security, public order and public morals in support of memory laws but would then be required to demonstrate that they were necessary and proportionate.

23. She proposed deferring the Committee's discussion of paragraph 50, since the content of the following section concerning the relationship between articles 19 and 20 might shed some light on the matter. The individual opinions of Committee members appended to the Views on the *Faurisson v. France* case were also quite enlightening.

24. **Mr. Fathalla** expressed support for Ms. Chanet's proposal. A reference to memory laws might also be inserted in paragraph 53 or 54.

25. **Ms. Keller** said that she was strongly in favour of dealing with memory laws under article 19 and not just under article 20. Such legislation tended to be exaggerated and misleading.

26. She noted that it would be difficult to link general comment No. 11 on article 20, which had been adopted in 1983, with draft general comment No. 34.

27. **Mr. El-Haiba** expressed support for Ms. Chanet's proposal.

28. He had reservations about the last three sentences of paragraph 50 and shared Mr. Thelin's aversion to memory laws. However, the issue should be discussed in depth and he wondered whether the *Faurisson v. France* case was the only relevant precedent. The question to be addressed was how freedom of expression and freedom of opinion regarding history could be reconciled with the imperative of fighting against advocacy of hatred and incitement to discrimination.

29. **Mr. O'Flaherty** suggested a shorter version of paragraph 50. The first two sentences would remain unchanged and the third sentence would be split in two to read: "Limitations must never be imposed on the right of freedom of opinion. With regard to freedom of expression, they may not go beyond what is permitted in paragraph 3 or what may be required under article 20." The last two sentences would be deleted.

30. **Ms. Majodina** expressed support for Mr. O'Flaherty's suggestion, particularly the reference to article 20. Articles 19 and 20 were so closely related that the Committee had no option but to address the issue of memory laws under both articles.

31. **Sir Nigel Rodley** said that he also found Mr. O'Flaherty's suggestion acceptable. However, he agreed with Ms. Chanet that further consideration of paragraph 50 should be deferred until the next section of the draft general comment had been discussed.

32. **Mr. Rivas Posada**, referring to Mr. O'Flaherty's proposal, pointed out that article 20 made no mention of restrictions. It was quite categorical and imposed an obligation on States parties to enact laws prohibiting propaganda for war, advocacy of hatred and incitement to discrimination.

33. **Ms. Chanet** agreed that the link with article 20 might be questionable under some circumstances. However, a State might invoke article 20 to enact a memory law that imposed a ban on freedom of speech on the pretext that any statement would constitute propaganda for war, advocacy of hatred or incitement to discrimination. She therefore felt that the notions of necessity and proportionality were of great importance.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

34. **Mr. O'Flaherty** said that he had included a section on the relationship between articles 19 and 20 in the draft general comment because he felt that it would be somewhat artificial to ignore the link between the two articles. It also offered an opportunity to engage with contemporary discourse. Draft paragraph 54 encroached furthest on an area that might belong in another general comment. As Ms. Keller had suggested, general comment No. 11 on article 20 was now of limited utility.

Paragraph 51

35. **Ms. Chanet** said that general comment No. 11 belonged to the cold war era. The Committee should not give the impression that it was seeking to revive it through draft general comment No. 34. She proposed that the paragraph should be deleted.

36. *Paragraph 51 was deleted.*

Paragraph 52

37. **Mr. Thelin** noted that, according to the last sentence of paragraph 52, legislative prohibitions enacted by means of customary, traditional or religious law did not meet the requirements of article 20. He enquired about the status of case law or judge-made law under such regimes.

38. **Mr. O'Flaherty** said that the last sentence took account of the position expressed by the Committee in general comment No. 32 on article 14, which stated that customary, traditional or religious law should not encroach on human rights. There was no intention, however, to exclude the legitimate role of case law. He suggested amending the third sentence to read: "It requires legislative action on the part of States parties and might also be appropriately addressed in case law." With regard to the term "case law", the Committee had recently agreed on an alternative formulation that was acceptable to all its members. It could be used in the sentence he had just proposed in place of "case law".

39. **Mr. El-Haiba** said that he had reservations about the last sentence. The status of a jurisprudential rule was different from that of a customary rule. He therefore proposed replacing the words "by means of" with "on the basis of".

40. **Sir Nigel Rodley** said that he was not aware of any State party whose customary, traditional or religious law prohibited propaganda for war or advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence. If such a State party existed, then the last sentence was necessary; if not, he proposed that it be deleted.

41. **Mr. Bhagwati** said that, as he understood it, the purpose of the last sentence was to convey the idea that it was not sufficient for the prohibition of specified forms of extreme speech to be enshrined in customary, traditional or religious law. Rather, they should be embodied in the State party's legislation.

42. **Ms. Chanet** said that she took issue with paragraph 52 as it seemed to relate more to article 20 than to the relationship between articles 19 and 20. Moreover, its wording was problematic inasmuch as it required the Committee to provide a definition that it would subsequently be required to maintain.

43. **Mr. Fathalla** expressed support for the proposal to delete the last sentence, since the third sentence already covered, in a more general manner, the concerns reflected in the last sentence.

44. **Mr. Amor**, supported by **the Chairperson**, said that, if the Committee wished to retain paragraph 52, he was in favour of deleting the last sentence, which seemed to pose more problems than it solved. With regard to the usefulness of paragraph 52 as a whole, he shared the view that it failed to reflect the relationship between articles 19 and 20, contrary to what was indicated by the section title under which it had been placed. He was therefore in favour of deleting the entire paragraph.

45. **Mr. Thelin** said that he was in favour of deleting the last sentence. Regarding paragraph 52 as a whole, its purpose was to provide clarification for paragraph 53. Given the reference in paragraph 53 to the extreme nature of the acts addressed in article 20, and

the fact that those acts were explained in paragraph 52, consideration might perhaps be given to placing paragraph 53 before paragraph 52.

46. **Mr. O'Flaherty**, acknowledging the views expressed by members, said that he was not opposed to the deletion of paragraph 52.

47. *Paragraph 52 was deleted.*

Paragraph 53

48. **Mr. Lallah** proposed that part of the text from deleted paragraph 52 could be inserted in paragraph 53. For example, the words "in that article 20 is designed to protect persons from discrimination, hostility or attack because of their national, racial or religious identity" could be added to the end of the first sentence.

49. **Mr. Rivas Posada** said that, in the last sentence, the reference to "a restriction that is justified on the basis of article 20" was misleading inasmuch as it seemed to indicate that article 20 provided for certain restrictions, which was not the case.

50. **Mr. O'Flaherty** suggested that the word "restriction" could be replaced by "prohibition", which mirrored the language used in article 20.

51. **The Chairperson** reminded the Committee that it had agreed at its ninety-ninth session to replace the term "limitations" by "restrictions".

52. **Ms. Chanet** said that what was referred to in paragraph 53 was definitely a restriction, not a prohibition, and that the former was justified by the prohibition contained in article 20. The term "restriction" was thus the correct choice of term. She proposed that, in order to avoid confusion, the phrase "comply with" should be replaced by "be consistent with the provisions of".

53. **Mr. O'Flaherty** said that, since the word "restriction" was being used with the technical meaning ascribed to it in article 19, paragraph 3, perhaps it would be confusing to the reader if the word "restriction" was used in relation to article 20 as well. For that reason, in the English text, it might be preferable to replace the word "restriction" by "prohibition". If, on the other hand, it was felt that the word "restriction" was indispensable, he suggested that, in the last sentence, the phrase "a prohibition pursuant to" should be inserted before "article 20".

54. **Mr. Thelin** proposed that, if the word "restriction" was being used in a technical sense, and if "prohibition" was unacceptable, the term "limitation" might be used to replace "restriction" in the last sentence.

55. **Sir Nigel Rodley**, elaborating on Mr. Thelin's proposal, proposed that, in the last sentence, the phrase "on speech" should be inserted after "limitation". He agreed with the proposal to replace the word "restriction" with "prohibition" in the English version of the text. It would not be the first time that the Committee had drafted divergent language versions that did not use cognates for key terms. Such an approach should be adopted only when there was a genuine identity of view about the agreed meaning of the text in question, as was currently the case.

56. **Mr. O'Flaherty** said that the limitation referred to was not exclusively in relation to speech; it was a limitation on expression, which was much broader. He could accept the use of the term "limitation" alone. Since English was the original version for the purpose of drafting the document, once the English text had been finalized, the other versions could be adapted accordingly.

57. **The Chairperson** said he took it that the Committee wished to replace the word "restriction" in the last sentence with "limitation".

58. *It was so decided*.

59. **Mr. O'Flaherty** suggested that, in order to address Mr. Lallah's proposal, the first three sentences of paragraph 52 could be inserted at the beginning of paragraph 53.

60. **Ms. Chanet** said that the Committee had failed to include in paragraph 53 any reference to article 20, paragraph 1, which concerned the issue of propaganda for war. Instead, it had focused entirely on paragraph 2. If portions of deleted paragraph 52 were going to be incorporated in paragraph 53, including an enumeration of extreme acts, then that enumeration should include propaganda for war.

61. **The Chairperson** said that he was inclined to abandon the idea of incorporating elements from deleted paragraph 52 into paragraph 53 owing to the complications that it would create.

62. **Mr. Thelin** said that, if the Committee agreed that the crux of the interplay between articles 19 and 20 was between article 19 and article 20, paragraph 2, then that should be made explicit. It would then be possible to incorporate the first three sentences of deleted paragraph 52, as had been suggested by Mr. O'Flaherty.

63. **Mr. O'Flaherty** said that it might be useful in the future to consider drafting a general comment on article 20, paragraph 1, given that the manner in which it should be applied remained unclear. Since the prohibition of propaganda was a freedom of expression issue, it would not be technically correct for the Committee to state that the relationship between articles 19 and 20 concerned only paragraph 2 of article 20. Given the inadequacy of the first three sentences of deleted paragraph 52, it might be preferable not to incorporate them in paragraph 53 after all.

64. **Sir Nigel Rodley** said that he would regret not including the first three sentences of deleted paragraph 52 in paragraph 53 because he had found them to be a very sensible parsing of what was a difficult provision, in terms of its grammatical construction and varied content. At the same time, he could only agree that they would be better placed in a new general comment on article 20 than in the current one. If the Rapporteur agreed to their deletion, he would not press for their retention.

65. *Paragraph 53, as amended, was adopted*.

Paragraph 54

66. **Mr. Fathalla** proposed that, in the first sentence, the phrase "under article 19" should be inserted after "limitations", so as to avoid implying that what was meant was limitations in general.

67. **Mr. Thelin** pointed out that paragraph 54, like paragraph 53, referred only to paragraph 2 of article 20, ignoring paragraph 1.

68. **Ms. Chanet** said that, as far as she could tell, article 20 did not embody restrictions, nor were the acts addressed in article 20 subject to limitations, as was suggested in the first sentence. There was less justification still for saying that article 20 could be considered as *lex specialis* with regard to article 19. In her view, the Committee should not embark on an exercise of legal labelling, the results of which were debatable. The important point to convey was that the prohibitions set out in article 20 could not be used to limit the freedom of expression provided for in article 19, paragraph 3.

69. **Mr. Amor** questioned the need for paragraph 54, given that the definitions it contained belonged in a general comment, but not in a section on the relationship of articles 19 and 20. Moreover, paragraph 54 made inaccurate comparisons between articles 19 and 20, whose provisions were based on distinct mechanisms. Both the first and second paragraphs of article 20 provided for prohibitions; article 19, paragraph 3, on the other

hand, provided for restrictions. The only aspect that must be borne in mind in terms of the relationship between the two articles was that article 20 could possibly be applied without sufficient grounds and thus have repercussions on article 19. That aspect could be conveyed in paragraph 53.

70. He questioned whether including an entire section on the relationship between articles 19 and 20 was justified, given that the Committee was not saying anything particularly important about their relationship and that reference was made to only certain parts of the articles.

71. **Mr. Fathalla** proposed that, in the first sentence, in order to address the concern expressed by Ms. Chanet, the word "also" should be deleted.

72. **Mr. Amor** said that, in paragraphs 53 and 54, the Committee was addressing the relationship between article 19, paragraph 3, and article 20, paragraph 2 – a fact that should be reflected in the title of the section. Article 20, paragraph 1, should also be considered as relevant in observations regarding the relationship between the two articles.

73. **Mr. O'Flaherty** said that the second sentence, concerning *lex specialis*, had been included in the paragraph in response to the strong element in the contemporary debate on freedom of opinion and freedom of expression claiming that some types of hate speech did not constitute a violation of article 19, but did violate the provisions of article 20. The Committee had always held the opposite view, that any acts that constituted a violation of article 20 would already have violated article 19 because they constituted such an egregious form of abuse. If the Committee decided to delete the second sentence, it should at least maintain that message.

74. He proposed that the paragraph could be shortened and slightly amended to read: "What distinguishes the acts addressed in article 20 from other acts that may be subject to limitation under article 19 is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19."

75. **Mr. Fathalla** and **the Chairperson** supported that proposal.

76. *Paragraph 54, as amended, was adopted.*

Paragraph 55

77. **The Chairperson** suggested that, at the beginning of the second sentence, the word "It" should be replaced by "The Committee" for the sake of clarity. He suggested, in the third sentence, that the phrase "it recalls that" should be deleted as it was redundant.

78. **Mr. Thelin** proposed that, in the first sentence, "article 20" should be replaced by "article 20, paragraph 2"; in the third sentence, "enact legal prohibitions" should be replaced by "have prohibitions"; and in the last sentence, "enacting" should be replaced by "having".

79. **Ms. Chanet** suggested that it might be more logical to move paragraph 55 and add it to the end of paragraph 53. That would form a single paragraph which took account of acts of an extreme nature, followed by acts of a less serious nature.

80. **Mr. Fathalla**, supported by **Sir Nigel Rodley**, said that at least the third and fourth sentences of paragraph 55 should be maintained at the end of the general comment, since together with paragraph 54, they summarized the whole issue and formed a fitting conclusion to the text.

81. **Mr. O'Flaherty** said that the whole paragraph had been written specifically to deal with outstanding issues and round off the entire general comment. The first sentence was

important as it was designed to indicate that the Committee was not oblivious to the levels of disgraceful speech that were occurring in society. It was an attempt to prevent the Committee from being accused of erecting requirements of freedom of expression that disregarded those outrages. He agreed with the Chairperson's and Mr. Thelin's proposals.

82. *Paragraph 55, as amended, was adopted.*

Paragraph 50

83. **The Chairperson** recalled that the Committee had suspended its consideration of paragraph 50 pending its adoption of the rest of the text.

84. **Mr. O'Flaherty** proposed that the first two sentences should remain unchanged. The third sentence should end after the words "freedom of opinion". The fourth sentence should read: "With regard to freedom of expression, they may not go beyond what is permitted under paragraph 3 and what may be required in the circumstances indicated in article 20." The remaining two sentences should be deleted.

85. **Mr. Lallah** suggested that the paragraph should be placed after paragraph 53, since it concerned the relationship between articles 19 and 20 of the Covenant.

86. **Ms. Chanet** said that it would be somewhat illogical to place the paragraph, with the fourth sentence proposed by Mr. O'Flaherty, after paragraph 53 since paragraph 53 clearly indicated that the acts addressed in article 20 would all be subject to limitations pursuant to article 19, paragraph 3.

87. **Mr. El-Haiba** said that he did not agree with devoting a whole section to memory laws. He could, however, agree if the paragraph was placed under the section on the relationship of articles 19 and 20.

88. **Sir Nigel Rodley** said that, on reflection, it seemed unwise to deal with memory laws under the issue of the relationship of articles 19 and 20. To do so might be interpreted as inviting States to legislate memory laws under the argument of article 20. He agreed with most of Mr. O'Flaherty's proposals, but failed to understand why it was necessary to delete the last sentence of the paragraph.

89. **Mr. O'Flaherty** said that memory laws were a significant issue worldwide. Moreover, the Committee had addressed it, notably in the *Faurisson v. France* case, which was one of the Committee's most widely discussed pieces of jurisprudence. It would therefore seem odd not to give due consideration to the subject in the general comment. He proposed leaving the paragraph in its current location as it introduced the issue of article 20, and more importantly, if it were the only example in the section on the relationship of articles 19 and 20, it would give the impression that the whole relationship of the two articles was about memory laws, which would be highly misleading.

90. **Mr. Fathalla** said that, while he could endorse the amendments proposed by Mr. O'Flaherty, he preferred the version of the fourth sentence that had been suggested previously, ending with "permitted in paragraph 3 or required under article 20". He supported adding the paragraph to the end of the existing paragraph 53.

91. **Mr. Thelin** supported maintaining a reference to the *Faurisson v. France* case and leaving the paragraph in its current location.

92. **Mr. O'Flaherty** proposed including that reference in the first sentence, as a footnote to the first mention of memory laws.

93. **Sir Nigel Rodley** proposed deleting all the headings before paragraphs 47 to 50 and replacing them with a single heading, "Restrictions in specific areas", before paragraph 47. Paragraph 50 should remain in its current location; it should not be moved to paragraph 53

because, while it was pertinent to the relationship of articles 19 and 20, it was not solely relevant to that relationship.

94. **Mr. O'Flaherty** welcomed that proposal, but suggested that the heading "Restrictions in specific areas" should be included before paragraph 38, which was the beginning of the section containing examples of how the restrictions might operate in various contexts. In previous drafts, the headings before paragraphs 38 and 40 had also begun with the words "Restrictions and", but had been amended at the Committee's behest.

95. **Ms. Keller** supported the proposal to maintain the paragraph in its current location and use the version of the fourth sentence that Mr. Fathalla had suggested.

96. **Mr. Bhagwati** supported the deletion of the last sentence.

97. **Sir Nigel Rodley** said that it would be somewhat strange, from a presentational point of view, to have all the paragraphs from 38 to 50 under one heading, particularly as paragraphs 40 to 46 clearly formed a single subsection. He recalled that, at the Committee's ninety-eighth session, he had indicated his intention to introduce one or two paragraphs on the principles of transparency and accountability in the text. He hoped to be able to do so during the second reading of the draft general comment.

98. **Mr. Amor** said that he would also make proposals for additional paragraphs during the second reading.

99. **The Chairperson** said he took it that the Committee wished to leave the issue of the headings to the Rapporteur's discretion.

100. *It was so decided*.

101. *Paragraph 50, as amended, was adopted*.

102. *The draft general comment as a whole, as amended, was adopted at first reading*.

The meeting rose at 6.05 p.m.