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Summary record of the 2820th meeting*
Held at the Palais Wilson, Geneva, on Thursday, 21 July 2011, at 3 p.m.

Chairperson: Ms. Majodina

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* No record was prepared for the 2819th meeting.

The meeting was called to order at 3.05 p.m.

General comments of the Committee (*continued*)

Draft general comment No. 34 on article 19 of the Covenant (continued) (CCPR/C/GC/34/CRP.6)

1. **The Chairperson** invited the members of the Committee to proceed with their discussion of the draft general comment. The Committee had adopted the text up to and including paragraph 48.

Paragraph 49

2. **Mr. O'Flaherty** (Rapporteur for the general comment) referred to the submissions he had received from States parties and NGOs concerning draft paragraph 49. Japan had expressed reservations regarding the opening phrase of the second sentence ("All such laws should include the defence of truth") because in certain circumstances the truth could be defamatory. According to an NGO, whenever the defence of truth was invoked, the burden of proof should rest with the prosecuting authority. It was an entirely new point that should preferably be omitted because it could confuse the reader.

3. **Mr. Lallah** asked whether the second sentence referred only to criminal law or to both criminal and civil law. There could actually be exceptions to freedom of expression relating to the protection of privacy.

4. **Mr. O'Flaherty** (Rapporteur for the general comment) said that it had been decided during the first reading of the draft general comment that the paragraph should address both criminal and civil dimensions, which created certain difficulties. As Mr. Lallah's comment was in line with the objection raised by Japan, he invited him to suggest a way of resolving the problem.

5. **Mr. Lallah** said that, in his view, the notion of a defence of truth did not raise problems under criminal law but it might do so under civil law. With regard to the right to privacy, recent cases of illegal telephone hacking by journalists in the United Kingdom were an obvious example of practices that should be prohibited, even if they revealed the truth. Ms. Chanet could perhaps shed light on the matter, since he believed that truth was not a defence in French civil law in cases where it damaged a person's reputation in a private matter. It was a difficult issue and the only solution he could suggest was to specify that the Committee was referring to "penal" law.

6. **Mr. Neuman**, noting that the paragraph dealt with defamation laws, argued that other laws such as those protecting privacy would thus be excluded as a matter of course. He was also interested in hearing about the situation under French law.

7. **Mr. Thelin** said that he agreed with Mr. Lallah that the best solution would be to make it clear that the paragraph referred to criminal law.

8. **Mr. O'Flaherty** (Rapporteur for the general comment) proposed amending the beginning of the second sentence to read: "All penal defamation laws".

9. **Mr. Lallah** said that such wording could also raise problems since the Committee recommended later in the paragraph that defamation should be decriminalized.

10. **Mr. O'Flaherty** (Rapporteur for the general comment) pointed out that it was a relatively mild recommendation rather than a requirement, namely: "States parties should *consider* the decriminalization of defamation".

11. **Mr. Iwasawa** said that Canada had also raised an objection to the second sentence and had proposed the following wording: “should include defences such as the defence of truth”.

12. **Mr. O’Flaherty** (Rapporteur for the general comment) said that he had not referred to the Canadian proposal because he felt that it introduced unnecessary complications. However, he was not opposed to its inclusion and proposed that the opening phrase of the second sentence should be amended to read: “All penal defamation laws should include defences such as the defence of truth”.

13. **Mr. Neuman** said that the Committee should avoid giving the contrary impression that the defence of truth was not an important factor in civil proceedings regarding defamation.

14. **Mr. Thelin**, responding to Mr. Neuman’s objection, suggested wording such as “especially penal laws”.

15. **Mr. O’Flaherty** (Rapporteur for the general comment), reviewing the different proposals, said he took it that the phrase would now read: “All such laws, but in particular penal defamation laws, should include defences, including the defence of truth”. With regard to the remainder of the sentence, Canada and Japan considered that the Committee went too far when it recommended that such laws should not be applicable to “the expression of opinions that are not, of their nature, subject to verification”. They maintained that there might be circumstances in which the expression of an opinion would need to be prosecuted. By contrast, other States considered that the Committee did not go far enough; the Committee had further been asked to clarify whether the passage referred to all opinions or just a particular subcategory of opinions. He proposed amending the phrase to read: “the expression of *those* opinions that are not, of their nature, subject to verification”.

16. **Mr. Salvioli** said that the reference to opinions that were not subject to verification implied that other opinions were subject to verification. In his view, however, no opinions fell into that category.

17. **Mr. O’Flaherty** (Rapporteur for the general comment), while acknowledging that Mr. Salvioli was right in philosophical terms, pointed out that if penal laws could only be applied to the expression of opinions that were subject to verification, and if no opinion met that condition, penal laws could not be applied to any expression of opinion whatsoever.

18. **Mr. Lallah** asked whether Mr. O’Flaherty was in fact referring to allegations or statements rather than opinions; otherwise freedom of opinion would not exist.

19. **Mr. Fathalla** said that Mr. O’Flaherty should perhaps explain what he meant by opinions that were not “of their nature” subject to verification.

20. **Mr. Thelin**, concurring with Mr. Salvioli, suggested that it might be wiser to avoid all references to opinions and to amend the phrase to read: “with regard to those forms of expression that are not, of their nature, subject to verification”.

21. **Mr. O’Flaherty** (Rapporteur for the general comment) said that Mr. Thelin’s proposal was a commendable solution. Germany and Japan had objected to the third sentence of the paragraph, expressing the view that it went too far.

22. **Mr. Salvioli** said that the sentence should remain unchanged. The possibility of expressing opinions about public figures without fear of reprisals was a core principle of the rule of law.

23. **Ms. Chanet** said that she had no objection to the sentence as it stood. However, she suggested inserting a reference to the right of reply of public figures against whom false statements had been made.

24. **Mr. Neuman** said that the right of reply was a controversial subject and was actually viewed in the United States as a violation of the freedom of the press. Some human rights instruments referred to the right of reply but the Covenant did not. Hence it might not be advisable to mention it in the general comment.

25. **Mr. O'Flaherty** (Rapporteur for the general comment) said that he would prefer, in order to avoid controversy and in view of the mildness of the current wording, to leave the third sentence of paragraph 49 unchanged.

26. *The sentence was adopted as it stood.*

27. **Mr. O'Flaherty** (Rapporteur for the general comment) said that the United States and a large number of NGOs had welcomed the recommendation in the seventh sentence that States parties should consider the decriminalization of defamation. However, other States parties held that the wording was too strong.

28. **Ms. Motoc** said that in many countries, for instance in Central and Eastern Europe, the rule of law was fragile, civil justice was inadequate and the media were manipulated by people who abused their authority and connections. If no criminal remedies were available in such countries, victims of defamation would have little prospect of securing reparations. While there were admittedly cases in which criminal justice was abused, as in the case of Professor Joseph Weiler of New York University, who had been prosecuted for defamation before the French courts for having published a negative book review and who had recently been acquitted after three years of proceedings, it was nevertheless true that the decriminalization of defamation laws, however praiseworthy as a universal principle, frequently ran up against practical realities.

29. **Sir Nigel Rodley** said he agreed that the case of Professor Weiler was a perfect example of the abusive use of criminal defamation laws. The Committee should not, in his view, base its general comments on shortcomings in the judicial system of a particular country. He pointed out that the wording which had been adopted on first reading, namely "States parties should consider the decriminalization of defamation", was already quite weak.

30. **Mr. Thelin** said he was surprised that the sentence had given rise to controversy. It flowed directly from the Committee's jurisprudence, for instance the concluding observations concerning the Russian Federation, Mongolia and Uzbekistan, to which reference could also be made in footnote 115 concerning the passage in question. He was opposed to any toning-down of the recommendation and would even have supported stronger wording.

31. **Ms. Chanet** said that France had long been seeking to strike a balance in the area of criminalization of defamation. The requisite balance had, in her view, been achieved by the European Court of Human Rights and was reflected in the text before the Committee, the wording of which she strongly supported.

32. **Mr. Flinterman** said that he shared Ms. Chanet's view. The second phrase of the sentence, which read "in any case, the application of the criminal law should only be countenanced in the most serious of cases", also ensured that the wording was balanced.

33. *Paragraph 49, as amended, was adopted.*

Paragraph 50

34. **Mr. O'Flaherty** (Rapporteur for the general comment) said that Sweden and the United States had maintained in their submissions that the notion of blasphemy was basically incompatible with the Covenant. They considered that the general comment should make that point and many NGOs had expressed similar views. Several other submissions called for a strengthening of the text. Many additional NGO comments and proposed amendments had been submitted very recently to the secretariat and had been distributed to Committee members. In the light of those contributions and taking due account of the Committee's jurisprudence, he had drafted a new paragraph that had been distributed to Committee members. He suggested that it should be considered in place of the paragraph contained in the existing draft.

35. **The Chairperson** invited Mr. O'Flaherty to read out the new draft paragraph.

36. **Mr. O'Flaherty** (Rapporteur for the general comment) read out the following text:

> "Prohibitions of displays of disrespect to a religion or other belief systems, including blasphemy laws, are generally incompatible with the Covenant. To meet the test of compatibility, they would have to comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for such laws to discriminate in a manner that prefers one or certain religions or belief systems or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such laws to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. Criminalization of displays of disrespect to a religion or other belief systems is incompatible with the Covenant other than in the specific and narrow circumstances identified in article 20, paragraph 2 (see further below)."

37. **Mr. Fathalla** said that it seemed contradictory to state in the first sentence of the paragraph that prohibitions of displays of disrespect to a religion were generally incompatible with the Covenant but to acknowledge in the last sentence that such prohibitions could be compatible with the Covenant in the circumstances identified in article 20, paragraph 2. He therefore proposed deleting the first sentence and replacing it with the last one.

38. **Mr. Thelin** said he was opposed to the deletion of the first sentence. He considered, on the contrary, that it should be strengthened by deleting the adverb "generally". The following sentences would then become superfluous and could be deleted. However, the reference to the circumstances identified in article 20, paragraph 2, of the Covenant as the sole possible exception to the incompatibility of legislation such as blasphemy laws with the Covenant should be maintained.

39. **Mr. Salvioli** expressed support for Mr. Thelin's comments, since he failed to see how legislation such as blasphemy laws could be compatible with the Covenant, as implied in the second sentence of the paragraph.

40. **Ms. Chanet** said that she shared the radical position advocated by Mr. Thelin. However, if there was no consensus on that point, she would be in favour of amending the paragraph to state that the prohibition of displays of disrespect to a religion, including blasphemy laws, were incompatible with the Covenant and that any restriction in that regard should comply with all obligations under the Covenant and not only those under the articles listed in the second sentence. The description in the third sentence of the discrimination that could result from laws such as those on blasphemy was awkward inasmuch as the discrimination in question was not reflected in preferences vis-à-vis a particular religion but in the blacklisting of certain religions. She would therefore delete the

phrase “in a manner that prefers one or certain religions or belief systems ... over another, or religious believers over non-believers”. The last sentence could remain unchanged.

41. **Mr. O’Flaherty** (Rapporteur for the general comment) said that a statement to the effect that blasphemy laws were “incompatible with the Covenant” rather than “generally incompatible with the Covenant” would constitute a radical interpretation of the Covenant that did not correspond to the Committee’s jurisprudence. He would therefore prefer to leave the first sentence of the paragraph unchanged. With regard to Mr. Fathalla’s comment, he acknowledged that there was some incongruity in the relationship between the first and last sentences and proposed moving the reference to article 20, paragraph 2, to the end of the second sentence to remedy the shortcoming. He had no objection to Ms. Chanet’s proposed amendment to the third sentence.

42. **Sir Nigel Rodley** said that he was in favour of leaving the first sentence unchanged. With regard to the third sentence, he took it that Ms. Chanet objected to the idea that preference should be given to one religion over others. Rather than deleting the phrase, he proposed rewording it to read: “... to discriminate *in favour of* one or certain religions or belief systems or their adherents”.

43. **Mr. Rivas Posada** expressed support for Sir Nigel Rodley’s proposal. However, he suggested the following amendment to cover all circumstances: “... to discriminate in favour of *or against* one or certain religions or belief systems or their adherents”.

44. *It was so agreed*.

45. **Mr. Lallah** considered that it would be preferable to refer to “lack of respect” than to “displays of disrespect”. He further proposed simplifying the beginning of the paragraph by combining the first two sentences, which would then read: “Prohibitions of lack of respect for religion or other belief systems, including blasphemy laws, must be compatible with the Covenant, especially with the strict requirements of article 19, paragraph 3, and articles 2, 5, 17, 18 and 26”. It should be left to the Rapporteur, in his view, to decide on the most appropriate place to insert the reference to article 20, paragraph 2.

46. **Mr. Thelin** said that he had no objection to the proposal to replace “displays of disrespect” with “lack of respect”. However, he was not in favour of the proposal to combine the first two sentences, since it would, in his view, weaken the text. In a spirit of compromise, he agreed to withdraw his initial proposal to strengthen the first sentence, provided that the first and second sentences were kept separate. The reference to article 20, paragraph 2, should be inserted at the end of the second sentence, as proposed by the Rapporteur.

47. **Sir Nigel Rodley** also considered that the first two sentences should be kept separate. If the provisions of article 20, paragraph 2, were mentioned in the second sentence, the beginning of the sentence should be amended to state that where blasphemy laws remained, they should comply with the strict requirements of article 19, paragraph 3, articles 2, 5, 17, 18 and 26, and article 20, paragraph 2. Such wording would have the advantage of indicating that the Committee encouraged the trend towards the abolition of blasphemy laws that was discernible in a number of countries.

48. **Mr. Fathalla** cautioned against losing sight of the fact that general comments reflected the Committee’s interpretation of the Covenant in the light of both social developments and the need to take de facto situations in different parts of the world into account. It would therefore be advisable to mention article 20, paragraph 2, in the first sentence.

49. **Mr. Bouzid** expressed support for Mr. Lallah’s proposal. He was also in favour of including a reference to article 20, paragraph 2, in the first and last sentences.

50. **Mr. Salvioli** pointed out that the purpose of a general comment was to assist States parties in meeting their obligations, thereby ensuring more effective protection of the rights set forth in the Covenant. The Committee should be careful at the same time to avoid imposing radical interpretations of Covenant provisions. In that regard, Mr. Thelin's proposal had the advantage of stating clearly the legal foundations on which the Committee relied when considering the implementation of article 19 by States parties.

51. **Mr. O'Flaherty** (Rapporteur for the general comment) said that it was clearly necessary to recast paragraph 50 in order to accommodate the different standpoints of Committee members and to incorporate points on which all agreed.

52. **Sir Nigel Rodley** drew attention to the fact that the version of paragraph 50 to be adopted should reflect the decision taken during the previous reading of the general comment to state explicitly that the criminalization of blasphemy and other displays of lack of respect for a religion or other system of belief was prohibited by the Covenant, save in the circumstances identified in article 20.

53. **Ms. Chanet** said that, as she saw it, the last sentence, far from weakening the paragraph as Mr. Fathalla seemed to believe, actually imposed strict restraints on a State party's ability to enact a blasphemy law that would not breach the Covenant, inasmuch as it stated that any law prohibiting blasphemy must be based exclusively on the prohibitions set forth in article 20 of the Covenant.

54. **Mr. Fathalla** said that he did not dispute the importance of mentioning paragraph 20 of the Covenant in the last sentence; he merely considered that it should also be mentioned in the first sentence.

55. **The Chairperson** requested the Rapporteur for the general comment to draft a new amended version of paragraph 50 and proposed a suspension of the meeting to that end.

The meeting was suspended at 4.40 p.m. and resumed at 5 p.m.

56. **Mr. O'Flaherty** (Rapporteur for the general comment) read out the following new amended version of draft paragraph 50:

> "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20 of the Covenant. Such prohibitions must comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. It is only in the specific and narrow circumstances identified in article 20 that displays of lack of respect for a religion or other belief systems may be criminalized."

57. He wished to hear the Committee's views on the possibility of deleting the last sentence, which was perhaps superfluous.

58. **Sir Nigel Rodley** said that, in his view, the last sentence added nothing to the text and could therefore be deleted. However, it would perhaps be helpful to specify in the first sentence that the relevant provisions of article 20 were those contained in paragraph 2.

59. **Mr. Lallah** said that he shared Sir Nigel Rodley's view.

60. **Mr. Salvioli** proposed amending the beginning of the second sentence to read: "Such prohibitions must *also* comply with the strict requirements of article 19, paragraph 3, ...".

61. **Mr. O'Flaherty** (Rapporteur for the general comment) said he took it that the Committee as a whole wished to mention the provisions of article 20, paragraph 2, in the first sentence, to adopt Mr. Salvioli's proposal and to delete the last sentence.

62. *The second revised draft of paragraph 50, as amended, was adopted.*

Paragraph 51

63. **Mr. O'Flaherty** (Rapporteur for the general comment) said that New Zealand and a large number of NGOs wished to have the paragraph strengthened. However, three other States parties — Germany, Japan and Lithuania — wished to have the entire paragraph deleted. Germany also considered that States parties should not be required to *review* their legislation. To address the concerns expressed by the three States parties, the Committee could delete the reference to "memory laws", which added nothing to the substance.

64. **Mr. Rivas Posada** said that he did not support the reference to "memory laws", which was a term that could cause confusion and might unduly limit the scope of paragraph 51. The purpose of a general comment was to make generally applicable points that could be deduced from an interpretation of the Covenant.

65. The Committee should also refrain from recommending that the laws in question should be reviewed, since such recommendations were generally made in the concluding observations adopted following the consideration of a State party's report. Furthermore, the recommendation in question was too weak. The Committee should state clearly that such laws were incompatible with States parties' obligation under the Covenant to ensure respect for freedom of opinion and freedom of expression. The adjective "general" in the second sentence should be deleted and the last sentence should remain unchanged.

66. **Mr. Iwasawa** said that he shared the view that the reference to "memory laws" should be deleted. He also supported Mr. Rivas Posada's proposal concerning the first sentence.

67. **Sir Nigel Rodley** said that he was uncomfortable with the proposal to delete the reference to memory laws, which clarified the issue to which the Committee was referring. He would be satisfied, however, with the retention of a footnote (currently footnote 118), which referred to the *Faurisson v. France* case (No. 550/93) and to concluding observations of the Committee in which the question of "memory laws" had been addressed.

68. **Ms. Chanet** said that memory laws created major difficulties for criminal courts. The Committee had been confronted with such an issue in the *Faurisson v. France* case, in which it had substantiated its decision to find that France had not violated the Covenant by holding that the Gayssot law was not exclusively a memory law but a law designed to combat the expression of anti-Semitism through Holocaust denial. It was therefore important to remain within the limits set by the *Faurisson v. France* case, the requirements of article 19, paragraph 3, which provided for very limited restrictions, and the obligations imposed by article 20 in order to avoid giving free rein to memory laws. The wording of paragraph 51 should be confined strictly to the Committee's experience in addressing such questions.

69. **Mr. O'Flaherty** (Rapporteur for the general comment) said that a reference to "memory laws" could be retained in a footnote citing the *Faurisson* case.

70. **Mr. Rivas Posada** proposed the following amended version of paragraph 51:

> "Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on the States parties in relation to the respect due to the freedom of opinion and expression. The Covenant does not authorize the prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the freedom of opinion should never be imposed and, with regard to restrictions on the freedom of expression, they should not go beyond what is authorized in article 19, paragraph 3, or article 20."

71. **Mr. O'Flaherty** (Rapporteur for the general comment), referring to Mr. Neuman's expression of concern regarding the risk of inconsistency between the first and last sentences of the paragraph, suggested that the last sentence should be deleted to avoid ambiguity, since it merely reiterated what had been stated throughout the general comment.

72. **Mr. Rivas Posada** said that he would prefer to keep the last sentence because it reiterated clearly and directly what was prescribed and authorized by article 19, paragraph 3, and article 20. However, he would not oppose its deletion if the Rapporteur felt it was essential.

73. **Ms. Motoc** said that she was opposed to the deletion of the sentence.

74. **Mr. O'Flaherty** (Rapporteur for the general comment) suggested that the sentence should be retained and that a footnote mentioning the *Faurisson v. France* case as well as "memory laws" should be inserted where appropriate.

75. **The Chairperson** said she took it that the members of the Committee wished to adopt the version of paragraph 51 proposed by Mr. Rivas Posada. The Rapporteur would insert an appropriate footnote.

76. *Paragraph 51, as amended, was adopted.*

Paragraph 52

77. **Mr. Iwasawa** proposed deleting the third sentence of the paragraph. Moreover, the second sentence, as currently drafted, implied that it was because acts addressed in article 20 were "extreme" that they ought to be prohibited; in point of fact, all such acts should be prohibited. He therefore proposed the following wording: "The acts that are addressed in article 20 are all subject to restrictions pursuant to article 19, paragraph 3".

78. *It was so agreed*.

79. *Paragraph 52, as amended, was adopted.*

Paragraph 54

80. **Mr. O'Flaherty** (Rapporteur for the general comment) said that Germany and several other stakeholders had found the wording of the first sentence of the paragraph unduly vague. The State party had also noted that the content of the term "hate speech" was unclear in legal terms. He proposed deleting the first sentence and the word "also" at the beginning of the second sentence.

81. **Mr. Fathalla** expressed support for the deletion of the first sentence. He also proposed that the second sentence should be deleted. The paragraph would then begin with the third sentence, without the word "However". The content would thus be very general and would cover all dimensions of the relationship between article 19 and article 20 that had been discussed by the Committee.

82. **Mr. Thelin** and **Mr. Lallah** expressed support for Mr. Fathalla's proposals.

83. **Mr. Neuman** said that if the first two sentences were deleted, it would be unclear what was meant by "such prohibitions" in the last sentence. He therefore proposed that the

last sentence should be amended to read: "In every other case *in which the State restricts freedom of expression*, it is necessary to justify the prohibitions and their provisions in strict conformity with article 19".

84. *It was so agreed*.

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

86. *Draft general comment No. 34 on article 19 (CCPR/C/GC/34) as a whole, as amended, was adopted, subject to any necessary editorial amendments*.

87. **Mr. Salvioli** warmly congratulated Mr. O'Flaherty on his work. He also commended the work undertaken by the secretariat. Over a period of two years, the members of the Committee had considered all proposals by States parties and NGOs and had engaged in lengthy discussions, thereby exercising their right to freedom of expression in a wholly satisfactory manner.

88. **Ms. Chanet** said that the text was customarily submitted to one Committee member for each of the three working languages — English, French and Spanish — so that the consistency of the three versions could be ascertained.

89. **Mr. O'Flaherty** (Rapporteur for the general comment) said that a clean copy of the English version would be distributed during the week beginning on 25 July. The members of the Committee could introduce any technical corrections they deemed necessary and the document would then be sent to the translation services. At the October session, the three language versions would be submitted to the Committee, which would designate one member for each language and would compare the three texts. The text would then be adopted in the three languages. It was not the general comment itself that would be adopted but the approved translations.

The meeting rose at 5.50 p.m.