



International Covenant on Civil and Political Rights

Distr.: General
27 July 2017

Original: English

Human Rights Committee 120th session

Summary record (partial)* of the 3401st meeting

Held at the Palais Wilson, Geneva, on Friday, 21 July 2017, at 10 a.m.

Chair: Mr. Iwasawa

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

Organizational and other matters, including the adoption of the report of the Working Group on Individual Communications (*continued*)

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

1. **The Chair** invited the Committee to consider proposed amendments to paragraphs 62, 66 and 67 of draft general comment No. 36.

Paragraph 62

2. **Mr. Shany** (Rapporteur for the draft general comment) said that, as a result of the Committee's previous discussions, paragraph 62 had been amended to read:

"In the light of article 2 (1) of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are found within its territory and all persons subject to its jurisdiction, over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside of the territory of the State who are nonetheless impacted by its military and other activities in a [direct,] significant and foreseeable manner. Furthermore, States parties must respect and protect the lives of individuals residing in territories, which are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. They are also required to respect and protect the lives of all individuals located on marine vessels or aircrafts registered by them, and of those individuals who owing to a situation of distress at sea found themselves in an area of the high seas over which particular States parties have assumed de facto responsibility, including pursuant to the relevant international norms governing rescue at sea. Given that the act of arrest or detention brings a person within a State's effective control, States parties must respect and protect the right to life of all individuals arrested or detained by them inside or outside their territory."

3. **Mr. Heyns** proposed replacing the word "residing" in the third sentence with "situated", which was the language used in general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant; the word "located" would also be acceptable. The word "territory" in the second sentence should be replaced with "all territories under the State's authority", in order to emphasize the applicability of States parties' obligations in situations where they exercised no territorial control. Otherwise, States might use the absence of territorial control as grounds for abdicating their jurisdiction over persons targeted by military action. Footnote 6, which related to the phrase "direct, significant and foreseeable manner", cited the Committee's concluding observations on the fourth periodic report of the United States of America (CCPR/C/USA/CO/4, para. 9), which, however, did not contain those words. It would be preferable to cite a different source.

4. **Mr. de Frouville** endorsed Mr. Heyns' proposals.

5. **Ms. Cleveland** proposed replacing the phrase in the second sentence "This includes persons located outside the territory of the State" with the phrase "This includes persons located in any territory controlled by the State".

6. She was concerned that the proposed new wording — "all persons subject to its jurisdiction, over whose enjoyment of the right to life it exercises power or effective control" — might be interpreted as establishing an additional test for jurisdiction; it should be amended to clarify its purpose. With regard to the last sentence, she said that there was no need to specify that States had jurisdiction over persons detained inside their territory; the words "inside or" could be deleted.

7. **Mr. Shany** proposed inserting the term "i.e." before the words "over whose enjoyment of the right to life" in the first sentence, so as to clarify the relationship between jurisdiction, power and control. The word "territory" should be replaced with "any territory effectively controlled by the State". With regard to footnote 6, he acknowledged that the

Committee's concluding observations on the fourth periodic report of the United States of America did not specifically use the phrase "direct, significant and foreseeable manner". The only other place where that phrase was used was in paragraph 24 of the draft general comment; a cross reference would be included. The word "residing" in the third sentence could be replaced with "located". He was opposed to the deletion of "inside or" and proposed its replacement with the words "even if they are held".

8. *Paragraph 62, as amended, was provisionally adopted.*

Paragraph 66

9. **Mr. Shany** said that paragraph 66 had been amended to read:

"Wars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of innocent human beings every year. Efforts to avert the risks of war and any other armed conflict, and to strengthen international peace and security, would count among the most important conditions and guarantees for safeguarding the right to life."

10. **Ms. Pazartzis** said that the reference to "war" in the second sentence was redundant; war was a form of armed conflict.

11. **Mr. Shany** said that general comments were read by a wide audience, not all of whom were familiar with the terminology of international humanitarian law. Unlike "armed conflict", the term "war" found resonance in public discourse and should be retained.

12. **Mr. Muhumuza** proposed inserting a comma after "risks of war", in order to clarify that the two were not intrinsically linked.

13. *Paragraph 66, as amended, was provisionally adopted.*

Paragraph 67

14. **Mr. Shany** said that paragraph 67 had been amended to read:

"States parties engaged in acts of aggression contrary to the United Nations Charter violate ipso facto article 6 of the Covenant. Moreover, States parties that fail to take measures to peacefully resolve their international disputes so as to avoid resort to the use of force do not comply in full with their positive obligation to ensure the right to life. At the same time, all States comprising the international community are reminded of their responsibility to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression, international terrorism and crimes against humanity, while respecting all their obligations under the United Nations Charter."

15. **Mr. de Frouville** said that the word "comprising" in the last sentence implied that the international community was solely composed of States, which was not the case. He would prefer to use the word "members".

16. **Mr. Politi** proposed referring to "States and other members of the international community".

17. **The Chair**, supported by **Mr. Fathalla**, said that the paragraph addressed obligations under the Charter of the United Nations, which applied only to States.

18. **Ms. Brands Kehris** proposed the following wording: "all States parties are reminded of their responsibility as members of the international community".

19. **Mr. Santos Pais** said that it would be better still to state simply that States were reminded of their responsibility.

20. **Mr. Shany** said that Mr. de Frouville's reservations about the words "States comprising the international community" were justified and that he would use the wording proposed by Ms. Brands Kehris.

21. **The Chair** suggested that the words "peacefully resolve their international disputes", which appeared in the second sentence of the paragraph, should be replaced by the words

“settle their international disputes by peaceful means”, as the latter wording tracked that of article 2 (3) of the Charter of the United Nations. In addition, he suggested rearranging the sentence so that it read: “States that resort to the use of force without exhausting measures to settle their international disputes by peaceful means do not comply in full with their positive obligation to ensure the right to life.”

22. After an exchange of views in which **Mr. de Frouville, the Chair, Mr. Fathalla, Mr. Politi, Ms. Pazartzis, Ms. Brands Kehris** and he took part, **Mr. Shany** said that the order of the elements of the second sentence should remain as it was. Rearranging them as suggested by the Chair would introduce unnecessary complications. He agreed with the suggestion to use the wording from the Charter, however, and the qualifier “all reasonable” would be inserted before the word “measures”. The revised sentence would thus read: “Moreover, States parties that fail to take all reasonable measures to resolve their international disputes by peaceful means so as to avoid resort to the use of force do not comply in full with their obligation to ensure the right to life.”

23. **The Chair** said he took it that the Committee wished to adopt paragraph 67.

24. *Paragraph 67, as amended, was provisionally adopted.*

25. **The Chair** said that, if the Rapporteur and other Committee members had no further comments, he took it that the Committee wished to adopt the draft general comment as a whole on first reading.

26. **Mr. Shany** said that the draft had been read and commented on in its entirety. The process had been difficult, but the result was a vast improvement on the draft that he and Sir Nigel Rodley, his fellow Rapporteur, had submitted initially.

27. *Draft general comment No. 36 on article 6 of the Covenant (Right to life) as a whole, as amended, was provisionally adopted.*

28. **Ms. Cleveland**, joined by **Mr. Heyns, Ms. Kran** and **Mr. Politi**, thanked **Mr. Shany** for his meticulous work on the draft. She was also grateful for the contributions to the draft made by the late Sir Nigel.

29. **Mr. Ben Achour**, after expressing gratitude for the work done by **Mr. Shany** and Sir Nigel, said that he would welcome an indication of the steps that were still to be taken before the final version of the general comment was adopted.

30. **Mr. Shany** said that the Committee was not yet halfway to the adoption of the final version of the general comment. The next steps were to post the draft on the Committee’s website and to have it translated into two languages. The members of the Bureau would discuss how long States parties and other stakeholders would have to submit comments on the draft. The commenting period chosen by the Bureau — in the past it had been 60 days — was subject to approval by the full Committee. Once the commenting period had elapsed, the Committee would begin a second reading of the draft, discussing each of the paragraphs to which States or other interested parties had proposed changes. The second reading could take two sessions, if all went smoothly.

31. **The Chair** said that States parties and other stakeholders should be asked to submit their comments within the commenting period, since late submissions, which were frequent, greatly complicated the Committee’s work. If resources permitted, the comments would be compiled in a single document that made it easy to see what comments had been made on what paragraphs.

32. **Ms. Kran** said that it was not too early to begin developing a communication strategy that would ensure that all the efforts that had been and would continue to be made to draft the general comment bore the best possible fruit.

33. **The Chair** said that he spoke on behalf of the Committee as a whole in thanking **Mr. Shany**, who had a marvellous way of summarizing Committee members’ comments and incorporating them into his revisions. He paid tribute to the memory of Sir Nigel Rodley, whose contributions to the initial draft had greatly facilitated the Committee’s later work.

The discussion covered in the summary record ended at 11.15 a.m.