



**International Covenant on Civil and Political Rights**

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**Human Rights Committee**

**Seventy-first session**

**Summary record of the 1902nd meeting**

Held at Headquarters, New York, on Wednesday, 21 March 2001, at 10 a.m.

*Chairperson:* Mr. Bhagwati

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*The meeting was called to order at 10.20 a.m.*

**General comments of the Committee** (*continued*)

*Draft general comment on article 4 of the Covenant (continued)* (CCPR/C/71/Rev.7)

1. **Mr. Scheinin**, introducing the draft, explained that the Committee had yet to decide between two alternative versions of the fourth sentence of the new draft of paragraph 2. The first of those versions read: “When proclaiming a state of emergency with consequences that entail derogation from any provision of the Covenant, States must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers; it is the task of the Committee to monitor that the laws in question enable and secure compliance with article 4.”

2. The second version, prepared in the light of observations made at the previous meeting, ran: “Maintaining the rule of law requires that any proclamation or application of emergency powers must be governed by the domestic constitution or other laws. If domestic law potentially allows for derogation from rights protected under the Covenant it is the task of the Committee to monitor that the laws in question enable and secure compliance with article 4.”

3. **The Chairperson** invited comments on the two alternative versions.

4. **Mr. Rivas Posada** said he preferred the first version. However, the text implied that a state of emergency necessarily brought with it the enactment of measures which could breach the Covenant, whereas, in many States, the proclamation of a state of emergency stood alone and was not accompanied by any such measures. He therefore suggested replacing “consequences that entail derogation” by “consequences that could entail derogation”.

5. **Mr. Henkin** agreed. It could not be assumed that derogations would occur.

6. **Ms. Medina Quiroga** and **Mr. Amor** favoured the first alternative, with the amendment suggested by Mr. Rivas Posada.

7. **The Chairperson** suggested that the Committee should adopt that alternative.

8. *Paragraph 2, as orally amended, was adopted.*

*Paragraph 3*

9. **Mr. Scheinin**, introducing paragraph 3, recalled the observation made by Mr. Kretzmer that it contained two different ideas which should be kept separate. If the paragraph was divided into two parts, it would be possible to respond to the concern of Amnesty International to have it made clear that all derogations must be temporary. He therefore suggested the insertion of a separate sentence 3.1, to read: “Hence a state of emergency must always be of a temporary nature and should be terminated as soon as the threat to the life of the nation is over.” The first sentence of paragraph 3 would then become sentence 3.2.

10. **Sir Nigel Rodley** emphasized that specific measures adopted by a State must be confined to the exigencies of the situation. It was especially important to avoid conveying the idea that all armed conflicts were automatically emergencies within the meaning of the Covenant, and thus warranted derogation. He proposed adding, after the sentence in paragraph 3 beginning “During armed conflict ...” another sentence reading: “The Covenant, however, remains applicable and requires that even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation.”

11. **Mr. Solari Yrigoyen** said he was not happy with the linkage between armed conflict and states of emergency. Armed conflicts often did not justify proclaiming a state of emergency. The wording of the paragraph was not entirely acceptable: the Covenant did not use the term “state of emergency” and, for the sake of avoiding confusion, it was best to adhere to the language of the Covenant. Moreover, the last sentence of paragraph 3 referred to “broad application” of the Covenant; there was no such thing, and that sentence permitted the inference to be drawn that domestic law might allow different interpretations of the Covenant, either broader or more restrictive. The last sentence of paragraph 3 should be amended to avoid conferring a distinctive character on states of emergency.

12. **Sir Nigel Rodley** agreed that it was important to make clear that the suspension of any provisions of the Covenant, however valid, did not mean that every measure taken thereafter was automatically lawful. All such measures were subject to the test of proportionality and the further test of being required by

the exigencies of the situation. He recalled a judgement of the European Court of Human Rights against Turkey, which had been found to have violated article 5 (3) of the European Convention on Human Rights by waiving the domestic-law rule specifying a 15-day time limit for a person taken into custody to be brought before a judicial authority. The waiver had been unlawful even though Turkey had issued a valid notice of derogation.

13. He suggested inserting an additional passage reading: “Moreover, the mere fact that a derogation from a specific provision may, of itself, be justified by the exigencies of the situation, specific measures taken pursuant to the derogation must themselves be shown to be required by the exigencies of the situation. In practice, this will mean that it is most unlikely that any provision of the Covenant, however validly derogated from, will be totally inapplicable to the behaviour of a State party.”

14. **Mr. Shearer** said that paragraph 3 drew an interesting connection between international humanitarian law and the Covenant. It should be made clear to the reader that common article 3 of the four 1949 Geneva Conventions established basic rights in armed conflicts. As drafted, paragraph 3 stated that the rules of the Geneva Conventions applied as a minimum where the emergency was also an armed conflict, but that there might be provisions of the Covenant which would apply regardless of whether there was an armed conflict. The basic minimum rights established by the Geneva Conventions could perhaps be explained in a footnote, so that the reader could readily see what they were and in which respects the Covenant was more demanding.

15. **Mr. Ando** referred to the observation by Mr. Kretzmer that paragraph 3 should have two parts, one dealing with threats to the life of a nation, the other making clear that a mere state of armed conflict did not justify derogations from the Covenant. He approved of the text proposed by Sir Nigel Rodley, but felt it would be better placed in paragraph 4. The protection afforded by international humanitarian law in situations of armed conflict should be further discussed, because article 4 of the Covenant might have to cover situations not amounting to armed conflict.

16. **Mr. Henkin** supported the proposal by Sir Nigel Rodley, while agreeing with Mr. Ando that it should be

placed in paragraph 4. It was unnecessary to spell out that the Covenant would remain in effect.

17. **Mr. Kretzmer** said the relationship between the Covenant and international humanitarian law was very complex. He was reluctant to include in the general comment any specific reference to international humanitarian law, which might involve the Committee in matters going beyond its mandate. It was best to leave the reference to rules of international humanitarian law framed in general terms, as it was now.

18. **The Chairperson** agreed that the text proposed by Sir Nigel Rodley would be better placed in paragraph 4. As for paragraph 3, he would suggest amending the third sentence to read: “A state of emergency within the meaning of article 4 is usually only resorted to in situations of armed conflict ...” The text would then continue: “If States parties consider invoking article 4 in situations other than an armed conflict, they should carefully consider the justification why such a measure is necessary and would be legitimate in the circumstances.”

19. **Mr. Solari Yrigoyen** agreed with Mr. Kretzmer; he was not in favour of a reference to international humanitarian law and the four Geneva Conventions in paragraph 3.

20. **Ms. Chanet** said she thought it best not to emphasize situations of armed conflict, since states of emergency could occur in other situations. She also thought it would not be possible to avoid some mention of the linkage between the Covenant and international humanitarian law. However, since the Committee had not yet decided how to deal with it, the matter should perhaps be left on one side for the time being. As for Sir Nigel Rodley’s proposal, she agreed to his text provided it was placed in paragraph 4.

21. **Mr. Lallah** also felt that the linkage between the Covenant and other treaties with a bearing on article 4 could not be disregarded. Article 5 (2) of the Covenant prohibited restrictions upon and derogations from certain fundamental rights. A solution could perhaps be found by including a reference to that article, thereby indicating that not merely common article 3 of the Geneva Conventions, but also certain other rules, might apply in situations of armed conflict.

22. **Mr. Klein** thought the second sentence of paragraph 3, which stated a fundamental principle, would fit better in paragraph 1.

23. **Sir Nigel Rodley** said he was willing to move his proposed text to paragraph 4. He was also anxious to include a reference to international humanitarian law. One of the key requirements for the validity of measures taken by a State in a state of emergency was that they should be consistent with other obligations of that State under international law, as explained in article 4 (1). The Geneva Conventions were highly relevant in that respect, because of their near-universal ratification. It was however important to avoid any suggestion that there was some limit to the reach of the Covenant, which applied in all situations except where there was a legitimate derogation.

24. **Mr. Kretzmer** explained that he was not arguing against a reference to international humanitarian law, only against a detailed exposition of the application of the rules of the Geneva Conventions as compared with those of the Covenant.

25. **Mr. Rivas Posada** said that the concept of a state of emergency being exceptional was not clear in the Spanish version of paragraphs 2 and 3. He suggested deleting, in the second sentence of paragraph 3, the words “The notion of an emergency under the terms of the Covenant must be an exception and” so that the sentence would begin “The sole purpose of derogation ...”. In paragraph 3, states of emergency should not be defined as equivalent to situations of armed conflict, because they were mostly declared when there was a rebellion or an attempt to overthrow the authorities. It was important not to say that they were usually a feature of armed conflict. He therefore proposed deleting the third sentence, beginning “A state of emergency in the meaning of article 4 ...”.

26. **The Chairperson** said the Committee appeared to be in agreement that the second sentence in paragraph 3 should be placed in a separate paragraph. What was being emphasized was that states of emergency should be exceptions. A footnote could be included to cover the relevant provisions of articles 5 (2) and 4 (1). The sentence proposed by Mr. Scheinin could be placed before the sentence beginning “If States parties consider invoking article 4 ...”.

27. **Mr. Scheinin** agreed that the Spanish version of paragraph 3 should be harmonized with the English and French versions to avoid the confusion between the

meaning of the terms “emergency” and “exception”. The second sentence should be moved to paragraph 1, and the reference to international humanitarian law should not be made more specific. He also agreed with the deletion proposed by Mr. Henkin.

28. **Mr. Yalden** suggested the following wording for the second sentence: “The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of the State party.”

29. **Mr. Tawfik Khalil** said that one of the main concerns surrounding states of emergency was that they could be prolonged; therefore, the text should stress their temporary nature. Such an emphasis could strengthen the Committee’s hand when dealing with States parties which, while acting within the law, habitually renewed states of emergency.

30. **The Chairperson** requested the Secretariat to prepare a revised draft of paragraph 3, incorporating the proposed changes, before the Committee proceeded to its adoption.

#### *Paragraph 4*

31. **Mr. Scheinin**, introducing the paragraph, said that there was some overlap between paragraphs 4 and 5, but that he had separated that portion of the text into two paragraphs for the sake of clarity. The addition proposed by Sir Nigel Rodley should be inserted after the fourth sentence, which ended “limitation powers”. The text related the exigencies of the situation to the temporary nature of states of emergency. It made a distinction among derogations, restrictions and limitations, and highlighted the principle of proportionality.

32. **Mr. Kretzmer** said that in the first sentence of the proposed addition of Sir Nigel Rodley, it was unclear to him which articles could be derogated from and what was demanded by the exigencies of the situation. He could not accept that a derogation could be justified; it could only be allowed.

33. **Mr. Solari Yrigoyen** said that, once again, the Spanish version of the text of paragraph 4 did not seem to be in harmony with the French and English versions.

34. **Ms. Medina Quiroga** said that inserting the word “permissible” before “derogation” in the first line of Sir Nigel Rodley’s addition should meet the concern voiced by Mr. Kretzmer. She suggested that the

members of the Committee with Spanish as their mother tongue should meet informally to review the Spanish version and ensure that it was in harmony with the other language versions.

35. **The Chairperson** suggested that the third sentence of paragraph 4 should read: “The concept of derogation from some Covenant obligations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant.”

36. **Ms. Chanet** said that the principle of proportionality should first be distinguished, then the text should move to authorized restrictions. In the penultimate sentence, the word “legitimate” should be replaced by “justified”.

37. **Mr. Ando** said that the main point of the paragraph was to elaborate on the exigencies of the situation and the ordinary limits on measures in response, while paragraph 5 provided specific examples of such measures. If some examples could be incorporated into paragraph 4, perhaps paragraph 5 could be deleted.

38. **Sir Nigel Rodley** said that he agreed with the suggestion Mr. Ando had just made. With regard to drafting changes in his proposed addition, he agreed with Ms. Medina Quiroga that the word “permissible” should be inserted before the words “derogation from a specific provision”. The word “themselves” should be replaced by “also”. In the second sentence, “in principle” should be inserted after “derogated from”. Lastly, he agreed with the changes Mr. Lallah had proposed to the second sentence.

39. **Mr. Henkin** said that the fifth sentence of paragraph 4 would be stronger if it began: “Article 4 should not be resorted to when ...”.

40. **Mr. Scheinin** said that he would prefer to keep paragraphs 4 and 5 separate. The proposed addition would fit best in paragraph 4 and should be inserted after the fourth sentence, which ended with the word “powers”. He agreed with the other drafting changes proposed by members of the Committee.

41. **Mr. Yalden** said that, in the proposed addition, the words “does not obviate the requirement that” should be inserted before “specific measures”.

42. **Mr. Lallah** said that, in the penultimate sentence of paragraph 4, “genuinely” should be deleted.

43. **Ms. Chanet** said she feared that the fifth sentence would encourage States to strengthen restrictions during a state of emergency. Allowable restrictions were discussed within the context of articles that could be the subject of derogation, namely articles 12, 19, and 21. In her view, that sentence should be deleted.

44. **Mr. Scheinin** suggested that the fifth sentence should begin with the words, “Article 4 should not be resorted to when,” and continue as before.

45. **Mr. Solari Yrigoyen** said he agreed that that part of the paragraph should be deleted, since it could encourage States to suppress rights.

46. **Mr. Klein** said that the sentence should focus on the principle of proportionality, and should recommend that States applied the Covenant in the normal way without restrictions for as long as that was possible.

47. **Mr. Scheinin** agreed that the two sentences preceding the last sentence should be struck out, and that Sir Nigel’s proposed addition should be included.

48. **Mr. Lallah** said that, in the fourth sentence, the verb “establishes” before “a principle of proportionality” was inapt and should be changed.

49. **Sir Nigel Rodley** said that “establishes” could be replaced by the word “reflects”.

50. *Paragraph 4, as orally amended, was adopted.*

#### *Paragraph 5*

51. **Mr. Scheinin**, introducing paragraph 5, said that it provided that any derogation from rights under the Covenant should depend on the nature of the emergency in question.

52. **Mr. Kretzmer** said that, in his view, it was sufficient to state that obligations under the Covenant must be limited to the extent required by the exigencies of the situation, and he therefore preferred to strike out the sentence that began, “If States purport ...”. In his view, it was not sufficient to demonstrate a threat to the life of the nation.

53. **Mr. Ando** said he would withdraw his request to divide paragraph 5 and incorporate it into other paragraphs. However, he questioned the additions, in the last sentence, of “during such situations” and “actual”.

54. **Mr. Scheinin** said he agreed that the reference to armed conflict should be dropped. He also supported

the deletion of the two additions mentioned by Mr. Ando.

55. *Paragraph 5, as orally amended, was adopted.*

*Paragraph 6*

56. **Mr. Scheinin**, introducing paragraph 6, said that it discussed rights that were subject to derogation, and emphasized that such rights must nevertheless retain their validity during states of emergency. The reference to article 25 was in square brackets because the matter had been left undecided during the first reading.

57. **The Chairperson** suggested that, in the first sentence, the words “provided that” should be replaced by “where”. In the third sentence, the “and” that followed “Covenant” should be dropped, and the word “objective” should replace the word “separate”.

58. **Mr. Klein** said that, in his view, the reference to article 25 should be struck. The Committee should not be seen as encouraging States to hold elections during states of emergency, a course which could prove disastrous.

59. **Mr. Ando** said that paragraph 6 posited that not all rights under the Covenant were subject to limitations or restrictions. Since the principle of proportionality had already been discussed, he saw no need to provide examples of rights that could be derogated from under some circumstances.

60. **Mr. Yalden** pointed out that the second sentence of paragraph 6 was essentially a repetition of the first sentence: namely, that a State could not derogate at will from Covenant rights other than those cited in article 4 (2). He suggested that the second sentence might be reworded to read, “Provisions of the Covenant cannot simply be disregarded by a State party after the declaration of a state of emergency.”

61. **Mr. Solari Yrigoyen** said that paragraph 6 clarified the crucial point that, although the Covenant prohibited the suspension of rights referred to in certain articles, that did not mean that States could suspend rights discussed in other articles indiscriminately. He was concerned, however, that Governments might think that the rights subject to derogation cited in the last sentence were the only ones to which that consideration applied. It should be clear that no other rights could be derogated from at will during states of emergency.

62. **Mr. Klein**, supported by **Mr. Amor**, suggested that, for clarity and concision, the second and last sentences should be dropped. He agreed that the examples were unnecessary, and could lead to misunderstandings.

63. **Mr. Scheinin** said that Mr. Yalden’s revision of the second sentence showed that it was superfluous; he therefore agreed that it should be dropped. The examples contained in the last sentence were understandable only in the context of the paragraph that followed, which explained that even rights not subject to derogation contained elements that could not be derogated from. The examples might therefore be incorporated into that paragraph.

64. **Mr. Shearer** said that, since the Committee was drafting a general comment, which was meant to be read by non-specialists and not by teams of lawyers, he saw no reason why it could not be repetitive.

65. *Paragraph 6, as orally amended, was adopted.*

*Paragraph 7*

66. **Mr. Scheinin** said that paragraph 7 addressed rights that were not subject to derogation. The enumeration of Covenant articles and the summary of their contents was meant to convey the full scope of each article and to prevent a narrow understanding of the rights they were designed to protect. Amnesty International had requested that the reference to article 15 should be broader, by emphasizing that clarity was an essential principle of legality. He therefore suggested that, in the brackets following the citing of article 15, the words “clear and precise provisions in” should be inserted after the words “limited to”. Near the end of the paragraph, reference was made to article 18, which protected rights not subject to derogation but also included a limitation clause.

67. **Mr. Ando** said that the beginning of the fifth sentence should be amended to read “The reference in article 4, paragraph 2, to article 18, ...”.

68. **Ms. Chanet** said that the bracketed words relating to article 15 did not include the whole scope of the article, and therefore seemed to be suggesting that certain aspects of that article were subject to derogation.

69. **Mr. Klein** supported the reference to article 18 but suggested replacing the term “legitimate” by

“justified” in the fourth sentence, beginning “Conceptually ...” and, for that matter, in all cases.

70. **Mr. Scheinin** said that Ms. Chanet’s remarks concerning the reference to article 15 might be more relevant to the French version, as the principle of non-retroactivity was clearly included in the English version. However, he would be interested in any specific proposals Ms. Chanet wished to put forward in that regard.

71. **Mr. Lallah** suggested replacing “this instrument” in the third sentence, beginning “The same applies ...” by “States that are parties to the Second Optional Protocol to the Covenant” and deleting the reference to the Second Optional Protocol later in the sentence. That would read more clearly.

72. **Mr. Scheinin** said that Ms. Chanet had explained her remarks concerning article 15, which had had to do with the imposition of a lighter sentence. He would try to formulate the portion in brackets to cover all aspects of article 15.

73. **Mr. Ando**, referring to the fifth sentence, suggested replacing the phrase beginning “separate ...”, until the end of the sentence, by “independent of the issue of derogability or non-derogability”. That would tighten the sentence.

74. **Mr. Scheinin** replied that that would make the sentence shorter but not necessarily simpler.

75. **Mr. Klein** questioned the use of “acceptability” in that sentence. Mr. Ando’s idea could be brought out by saying that the issue of restriction should be separate or distinct from the issue of derogability.

76. **Mr. Scheinin** suggested replacing “acceptability” by “permissibility”. The end of the sentence should thus read “... permissibility of restrictions independent of the issue of derogability”.

77. *Paragraph 7, as orally amended, was adopted.*

#### *Paragraph 8*

78. **Mr. Scheinin**, introducing paragraph 8, said that it was a relatively short but vital paragraph which built on the reference to non-discrimination in article 4 (1). The language of the Covenant on derogation was stronger than that of other human rights treaties, and the paragraph was intended to highlight that the principle of non-discrimination was a built-in safeguard and to elaborate on the relationship between

the prohibition against discrimination in article 4 (1) and various non-discrimination clauses in Parts II and III of the Covenant.

79. **Mr. Amor** suggested that “justification” should replace “legitimacy” in the first sentence. The paragraph should also recognize that a state of emergency could affect part of a country’s territory, and thus, only a portion of the population, in which case discrimination would be selective.

80. **Ms. Chanet** said that she fully supported paragraph 8 but wondered if the term “dimensions of the right to non-discrimination” was really understandable and legally accurate. “Provisions” or “elements” might be more apt, since “dimensions” implied that derogations were not possible under any circumstances. In the final sentence, “in this regard” should be inserted after “must be complied with”; otherwise, the sentence could be interpreted as referring to other parts of article 4 (1) as well.

81. **Mr. Ando** said he wondered whether the paragraph should comment on the fact that the grounds for discrimination under article 4 were different from those under articles 2, 3 and 25.

82. **Mr. Scheinin** agreed to Mr. Amor’s proposals, to which Mr. Ando’s request was related. Rather than elaborating in depth on the kinds of distinctions that would be allowed under article 4 (1) during a state of emergency, the general comment should remind States parties that the basic requirement of non-discrimination remained applicable and the Committee would exercise its judgement in considering various distinctions. He therefore believed that the point made by Mr. Amor was covered in the final sentence.

83. **Mr. Amor** said that, on the basis of Mr. Scheinin’s explanation, he could accept the paragraph as it stood. He hoped that the term “dimensions” would be retained; the component elements of a law were different from its dimension and thus its scope. “Dimensions” was a broader and richer term.

84. **The Chairperson** said that the word “elements” seemed more realistic in the context.

85. **Mr. Scheinin** proposed including both “elements” and “dimensions”, in order to cover the various provisions of the Covenant.

86. *Paragraph 8, as orally amended, was adopted.*

*Paragraph 9*

87. **Mr. Scheinin**, introducing paragraph 9, said that it dealt with other aspects of article 4 (1), namely, other obligations under international law. The sequence of paragraph 8 on non-discrimination, followed by paragraph 9, was logical, since paragraph 9 was aimed at further limiting the scope of justifiable derogations from the Covenant. Paragraph 8 had made it clear that there were both treaty and custom obligations without being too specific or narrow about what they were. He wished to draw attention, in particular, to footnote 5 on the ongoing discussion on fundamental standards of humanity, an area in which the concept of non-derogable rights was flexible, depending on the interpretation of which fundamental rights were to be protected in all circumstances.

88. **Sir Nigel Rodley** expressed support for the paragraph but proposed changing “custom”, at the end of the fourth paragraph, to “general international law”, of which custom was just one aspect. He advised against the reference to “fundamental standards of humanity”, since the phrase might give rise to statements of principle that were not necessarily legal in nature.

89. **Mr. Yalden** said that the paragraph was useful and agreed with Sir Nigel Rodley on the introduction of the phrase “general international law”. He proposed consolidating the second and fourth sentences of the paragraph, which seemed repetitious, apart from the final phrase in the latter sentence.

90. **Ms. Medina Quiroga** agreed with Mr. Yalden’s proposal and suggested deleting the third sentence as well.

91. **Ms. Chanet** supported the paragraph as drafted. She was not at all sure that the fourth sentence merely echoed the second. She agreed with Sir Nigel Rodley on the use of “general international law”, and also proposed that the final sentence of the paragraph would be more effective by eliminating the negative construction “States parties should not take a narrow view”.

92. **Mr. Ando** supported **Mr. Yalden’s** and **Ms. Chanet’s** proposals concerning, respectively, the second and fourth sentences, and the final sentence. He also agreed with Sir Nigel Rodley that the reference to “fundamental standards of humanity” should be

avoided, in order to be clear about what was included under article 4.

93. **Mr. Amor** praised the current draft and said he viewed the second and fourth sentences as complementary, not repetitious. He stressed the importance of uniform terminology in referring to the state of emergency in the French version, which contained two alternatives, and, in that same spirit, proposed changing “legitimize” to “justify” once again. He welcomed Sir Nigel Rodley’s proposal concerning the use of “general international law” and Ms. Chanet’s suggestion to use a purely positive construction in the paragraph’s final sentence.

94. **Mr. Klein** supported the proposals made by Sir Nigel Rodley but wondered whether it would be more precise to say “general public international law”. He agreed that the second and third sentences could be deleted. He, too, had some problems with the phrase “fundamental standards of humanity”, which would be resolved by deleting the footnote, although he noted that, in earlier general comments, certain footnotes had been included for the Committee’s information, particularly references to communications.

95. **Ms. Medina Quiroga** suggested deleting the sixth sentence, which began “In order to exercise its functions under the Covenant ...”, since the idea was repeated in the first sentence of paragraph 10. She agreed with Ms. Chanet concerning the final sentence of paragraph 9.

96. **Sir Nigel Rodley** said that, while he was sympathetic to Mr Klein’s views, he believed that, in the specific context of the paragraph, a distinction must be made between treaty obligations, on the one hand, and obligations under other sources of international law, on the other. That cluster of other sources was referred to by the International Court of Justice and the International Law Commission as “general international law”.

97. **Mr. Klein** said that he believed the intended meaning was clearly “public” international law but would not insist on the matter.

98. **Ms. Chanet** said it was very obvious that, in states of emergency, only public international law would come into play. Moreover, the use of “public” should be specially reserved to clarify the long-standing debate on whether criminal law was public or



private, concepts which were addressed in the Statute of the International Criminal Court.

99. **Mr. Scheinin** supported **Ms. Chanet's** remarks. Summing up, he said that the second and third sentences could be deleted, provided that the reference to international humanitarian law was somehow retained, since it was very relevant in certain types of emergencies. One way to do that would be to adopt the proposal made by Amnesty International to include the phrase "particularly the rules of international humanitarian law" in the first sentence. He could also agree to deleting the penultimate sentence. If necessary, the final sentence could be moved to paragraph 10. He would expound on the need for the footnote in the discussion of that paragraph

#### **Other matters**

100. **The Chairperson** announced that Mr. Scheinin had been appointed Special Rapporteur for New Communications.

*The meeting rose at 1 p.m.*