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HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE 2469th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 19 July 2007, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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

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

1. The CHAIRPERSON invited members to resume consideration of draft general comment No. 32 relating to article 14 of the Covenant (CCPR/C/GC/32/CRP.1/Rev.5).

2. Mr. KÄLIN, Rapporteur on draft general comment No. 32, reminded the Committee that it had so far adopted paragraphs 1 to 21 of the draft and had started discussing paragraph 22.

Paragraph 22

3. Mr. KÄLIN said that the crucial question was whether the Committee wished to review its decision relating to the Madani v. Algeria case and amend the paragraph accordingly, or reflect the contents of that decision in the present paragraph, or reflect the idea that while there was no prohibition on the trial of civilians in military courts, the impartiality of the courts concerned might be called into question. In any event, it should be recalled that the issue under consideration was not military courts per se, but the trial of civilians in such courts and the guarantees provided in that situation.

4. Ms. MOTOC said that in the light of developments in relation to military courts in recent years, it was important to provide a detailed comment on the issue in order to show progress achieved since the previous related general comment (No. 13). The Committee should place emphasis on the principle, enshrined in international law, that civilians should not be judged by the military in situations of enforced disappearance, as reflected in particular in article 16 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. Beyond that, cases of mass violations of human rights should never be tried by military courts, and in many cases in which that had occurred, the conditions set forth in article 14 of the Covenant had not been respected.

5. Pursuant to the spirit of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the Convention on the Rights of the Child, she highlighted the importance of ending the practice of trying juveniles in military courts.

6. Ms. PALM said she was not in favour of reconsidering Madani v. Algeria because it had already been debated at length and confirmed the recent view of the Committee. She suggested indicating that even though military courts were not prohibited from trying civilians, doubts might arise as to their impartiality. In her view, the beginning of the proposal introduced by Mr. Amor at the previous meeting was unsuitable since it almost appeared to treat the practice of trying civilians in military courts as normal. She suggested that the text should reflect the language used in Madani v. Algeria, although it could be toned down somewhat.

7. The CHAIRPERSON said that caution was required in extending the article 14 guarantees to areas not covered under the article, such as juvenile justice or enforced disappearance. In that regard, he fully agreed with the Rapporteur’s comment on the purpose of the paragraph under discussion. In addition, a consensus should be sought on the appropriateness of referring specifically to special courts as well as military courts.

8. Mr. LALLAH said it was his understanding that article 14 dealt not only with the guarantees that should be provided but also with the notion of equality before the courts. He suggested that in the penultimate sentence the words “including the category of offences at issue” should be added after “the specific class of individuals at issue”.

9. Mr. AMOR, referring to his proposal, pointed out that the Committee was not determining the rules in accordance with which civilians should be tried in military or special courts. The trial of civilians in such courts must remain exceptional, as had been rightly mentioned in general comment No. 13. He considered it equally important to mention special courts alongside military courts since both were equally dangerous. While recourse to such courts generally reflected a desire to circumvent the guarantees provided by ordinary courts, that practice could not be prohibited, as the Committee could not substitute its judgement for that of States parties. Emphasis must therefore be placed on securing all the relevant guarantees under article 14, notwithstanding the Committee’s ability and desire to invoke other provisions of the Covenant in order to discourage such trials. He would welcome a reference to general comment No. 13 in the revised text of the paragraph.

10. Sir Nigel RODLEY, while acknowledging that the Committee could not dictate its views to military and special courts in States parties, said he also believed that it was the task of the Committee to assess the likelihood of a court ensuring a fair and impartial hearing. Mr. Amor had said that military and special courts were equally dangerous, but he considered that all courts, including civilian courts, should be treated with wariness. His approach was based on a series of presumptions - which had also underpinned Madani v. Algeria: first, civilian courts should be holding the trials; second, in cases where civilian courts could not be relied on, other courts should be considered, which might include special courts; and third, the last resort should be military courts. He was indeed familiar with jurisdictions where special courts had been able to deliver justice more effectively and transparently than military courts. He was in favour of maintaining a graduated approach based on those three rebuttable presumptions, and would welcome suggestions on appropriate choice of language.

11. Mr. KÄLIN said he had a proposal that would take general comment No. 13 a step further: in the third sentence the words “or special” should be inserted between “military” and “courts”. He had taken note of Sir Nigel Rodley’s preference, but military and special courts had been treated equally in general comment No. 13, and while military courts were more reliable than special courts in some countries, the opposite applied in others, thereby precluding the possibility of general presumptions. He therefore proposed amending the third sentence to read: “While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14; its guarantees cannot be limited or modified because of the military or special character of the court concerned.”

12. The next sentence, taken from the previous general comment, would read: “The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.” That would be followed by: “Therefore such trials should be very exceptional and take place under conditions which genuinely afford the full guarantees as stipulated in article 14. It is incumbent on the State party to demonstrate with regard to the specific class of individuals and offences at

issue that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate to the task, and that recourse to military courts is unavoidable."

13. It was regrettable that in Madani v. Algeria the Committee had not clearly affirmed that the State party's system was in violation of the Covenant: in fact, no justification had been provided concerning the reason for referral of the case to a military court. He did not suggest reviewing the case, but stressed the importance of demanding that States parties explain why they resorted to a form of trial that was highly problematic. The amended paragraph that he had just proposed was, in any case, in full conformity with the Madani v. Algeria decision. He would submit a written text to the Committee as soon as possible.

14. Mr. SHEARER said he fully supported the proposal by the Rapporteur and looked forward to receiving the written text.

15. Mr. AMOR commended the Rapporteur's efforts to produce a compromise text, although he would need to refer to the written text in order to discuss the issue more fully. He was willing to endorse Sir Nigel Rodley's proposal for an approach based on three presumptions. With regard to the justification to be provided by the State party, he felt the requests were excessive. In Madani v. Algeria, for instance, the State had in fact provided justification which the Committee had not discussed. It was not within the remit of the Committee to determine the appropriateness or otherwise of what were deemed by a State party to be exceptional circumstances. It was within its mandate, however, to ensure that recourse to military or special courts was exceptional, and that when that was done, all the provisions of article 14 were fully observed.

16. Sir Nigel RODLEY said he did not wish to re-argue the Madani v. Algeria case, but Mr. Amor and Mr. Khalil had expressed their dissent in a very effective and eloquent manner which gave grounds for reflection. He wished to explain that the three presumptions which formed the basis of the approach he had set out were intended not to be binding on States but rather as a means of ensuring a minimum level of scrutiny in each situation. He looked forward to the incorporation of that approach into the text of the general comment, as a means of reconciling the general comment with the reasoning in Madani v. Algeria, from which he would be reluctant to depart.

17. The CHAIRPERSON said that the Rapporteur would redraft paragraph 22 for consideration by the Committee.

18. Ms. WEDGWOOD asked the Rapporteur, in doing so, to ensure the text was consistent with the requirements and provisions of Geneva Convention (III) relative to the Treatment of Prisoners of War and Convention (IV) relative to the Protection of Civilian Persons in Time of War.

19. The CHAIRPERSON said he took it that the Committee wished to defer further consideration of paragraph 22.

20. It was so decided.

Paragraph 23

21. Mr. KÄLIN said that Mr. Amor had proposed deleting the phrase “and be seen to be” from the last sentence. In her written remarks, Ms. Wedgwood had made an editing suggestion to add the word “persons” after “accused”, which occurred twice in the second sentence.

22. Mr. AMOR, supported by Mr. SHEARER, proposed that the phrase “and be seen to be” should be deleted since it was not clear by whom the tribunal must be seen to be independent and impartial.

23. Mr. SHEARER proposed replacing the words “and if ” by “even if” in the last sentence to avoid conveying the opposite meaning to that intended. In the same sentence he would prefer the word “verified” to “ascertained”.

24. Sir Nigel RODLEY said that that each of the irregularities listed in the paragraph would constitute a violation of article 14. The wording of the last sentence therefore tended either to make the reference to “faceless judges” redundant or to undermine the importance of the irregularities listed earlier.

25. Ms. MOTOC considered that the phrase “and be seen to be” should be maintained since it was inextricably linked with the impartiality of justice. It had frequently been used, for example, in the context of the European Convention on Human Rights.

26. Mr. LALLAH said the concept that justice must be seen to be done was inherent in common law, so he supported the maintenance of the phrase “and be seen to be”. He suggested that a solution to the problem raised by Sir Nigel Rodley might be to replace the phrase “in circumstances such as these” by “in any of the circumstances such as these” in the last sentence.

27. Mr. KÄLIN said it was understood that the tribunal must be seen to be independent and impartial by a reasonable observer, as was the norm in such texts. Opinions differed, however, as to who that reasonable observer was.

28. He wondered whether Sir Nigel Rodley would be happier if the phrase “and if the identity and status of such judges has not been ascertained by an independent authority” were moved to the second sentence, or if the phrase “Tribunals of ‘faceless judges’” were replaced by “Tribunals with or without ‘faceless judges’”.

29. Sir Nigel RODLEY said that Mr. Kälin’s suggestions were ingenious but he was not sure if they solved the problem. He questioned the very notion that the “facelessness” of judges had to be addressed together with the other irregularities listed in the paragraph, even if the Committee had traditionally addressed the issue in that way. He asked for more time to consider the new wording suggested by Mr. Kälin.

30. The CHAIRPERSON said that the Committee would continue its consideration of paragraph 23 as soon as a new text was presented in written form. Special tribunals of “faceless judges” tended by their nature to be exceptional or temporary, and a separate paragraph was undoubtedly necessary.

31. Mr. AMOR requested that the new draft of paragraph 23 be submitted to the Committee in all its working languages.

Paragraph 24

32. Mr. KÄLIN stated that there was no intention in the paragraph to extend application of article 14 to courts administered by outlawed organizations such as the Mafia. Courts based on customary law or religious courts seldom distinguished between civil and criminal law, and in any case they should not examine major criminal matters. In his written comments, Sir Nigel Rodley had questioned the reference to the validation of judgements by State courts. He pointed out that it was the practice in India and Nepal, for example, for a State court to be called upon to validate the judgement of a village council known as "panchayat".

33. Sir Nigel RODLEY said that he was uncertain of the exact meaning of the word "validated" in the context of paragraph 24. He requested further explanation of the concept and suggested that the wording might need to be changed. He recalled that the issue of whether judgements delivered under customary law were challengeable had arisen during the current session. It was important that anyone concerned by such decisions should have access to State courts but there should be no obligation to go before the State courts involuntarily.

34. Mr. KÄLIN said that, in practice, those concerned by judgements delivered under customary law failed to challenge those judgements because they did not wish to break with tradition. Many were women and the judgements were often totally discriminatory. Such judgements therefore needed to be validated by a State court in accordance with the principles of the Covenant. He agreed that, in order to accommodate Sir Nigel Rodley's desire to ensure that anyone concerned by such decisions should have access to State courts, the text of paragraph 24 would need to be clarified.

35. Ms. MOTOC said that it was important to exclude Mafia courts, and also courts set up in favelas, from the customary courts covered in paragraph 24. The wording of the first sentence was therefore satisfactory. The Committee should also take into account the prevalence of courts based on customary law, especially in Africa. She wished to know what was meant by the phrase "meet the basic requirements of fair trial", in view of the fact that such courts were seldom independent and impartial. In the light of Mr. Kälin's explanation, she had no objection to the word "validated", which was in fact frequently used in the literature on the subject.

36. Ms. WEDGWOOD said that the paragraph addressed a sensitive and worrying issue, which had arisen during the current session when the Committee had considered the third periodic report of Zambia. It was a fact that courts based on customary law often delivered judgements on serious matters involving vulnerable, illiterate women whose rights were severely violated as a consequence. Furthermore, attendance at most courts based on customary law was not voluntary. Marriage and divorce were matters for religious courts alone in many societies. In her opinion, the paragraph should contain a reference to the requirement that courts based on customary law and religious courts should comply with article 26 of the Covenant.

37. She had made two proposals in writing. The first was to replace the words "entrusts courts" by "permits courts to exercise power" in the first sentence, in order to cover cases where the State did not explicitly delegate judicial power to such courts. Second, the phrase "recognized by

the State" should be deleted from the second sentence since it could be used as an escape clause by the State concerned. Moreover, she proposed deleting the word "relevant" from the phrase "and other relevant guarantees" as it weakened the text.

38. The CHAIRPERSON supported the proposal to replace the words "entrusts courts" by "permits courts to exercise power".

39. Mr. AMOR agreed with Ms. Wedgwood that the first sentence needed to be reworded but found her proposal equally problematic. Courts based on customary law might also be religious courts, a fact which should be reflected in the text. It was important to maintain the notion that the judgements of such courts should be validated by State courts.

40. Ms. MOTOC said that she would prefer to maintain the words "entrusts courts", in order to exclude Mafia and favela courts.

41. Ms. MAJODINA questioned the inclusion of the phrase "are limited to civil matters [and minor criminal matters]". In practice, some States had set up courts based on customary law to address major criminal matters such as genocide. Courts of that kind had been known to hand down death sentences, for example, in cases of adultery. The text should take into account the actual situation in States parties.

42. Sir Nigel RODLEY expressed doubt about demanding consistency with the Covenant of the procedures and content of the law applied by customary courts, and insisting on the validation of their decisions before a State court at the same time. Customary courts, by their very nature, were inconsistent with certain fair-trial principles such as access to a lawyer. Rather than seeking to ensure compliance with article 14 at the level of customary court proceedings and laws, it might suffice to demand validation by a State court.

43. Mr. SANCHEZ CERRO said that even if a State had acceded to a given international convention, not all ethnic groups under that State's jurisdiction necessarily felt bound by such an instrument when administering customary forms of justice. Recognizing customary court rulings directly, without validation by a State court, could thus be problematic. In the context of terrorist activities in countries like Peru and Colombia, for example, popular tribunals had handed down death sentences on the basis of laws they themselves had created. The recognition of sentences handed down by bodies other than the State judiciary could be misinterpreted as endorsing self-administered justice. Requesting validation of customary justice was crucial to ensuring that the State upheld the rights guaranteed in the Covenant.

44. Mr. O'FLAHERTY said that, given the extent and scope of parallel justice systems around the world, issues of customary law and procedures were highly relevant. However, the draft general comment concerning article 14 might not be the appropriate place to establish criteria for the proper functioning of customary systems of justice; Sir Nigel Rodley's proposal to call for validation seemed more fitting. It might be useful to provide that validation could be sought by the affected individual, rather than given automatically, so as to avoid overburdening States parties.

45. Unlike the remainder of the draft general comment, paragraph 24 was not based on the Committee's jurisprudence. The language used should thus be general so as to avoid anticipating

the way in which the Committee would handle relevant individual communications in the future. The word “courts” should be replaced by “entities”, because the institutions administering customary law did not always identify themselves as customary courts. He was not convinced that those entities should be entitled to handle all civil matters, which sometimes had far-reaching implications. It might be best to refrain from taking a position on the competence of customary courts.

46. Mr. BHAGWATI said that customary courts were not established by law and thus did not fall within the scope of article 14, which exclusively concerned courts established by States parties. He agreed that the Committee should limit itself to requesting validation of customary rulings by State courts.

47. Ms. WEDGWOOD said that, in many countries, the capacity of official justice systems was limited and, consequently, customary courts represented public power at the village level. In the Velázques Rodríguez case, the Inter-American Court of Human Rights had ruled that the State’s non-involvement in the events did not abrogate its responsibility, since it had failed to comply with its duty to ensure the full enjoyment of rights by the persons under its jurisdiction. The protection afforded by the Covenant must extend to persons in remote villages whose lives were governed by private administration of justice. The notion that the adjudicated person could simply appeal to another instance was entirely unrealistic. Subjecting powerless people to effective power at the local level, on the understanding that there was a theoretical right of appeal, was inconsistent with the principles underlying the Covenant. The Committee must refrain from using ambiguous language that might serve as justification for States parties’ continuing tolerance of unacceptable customary practices.

48. Mr. O’FLAHERTY said that, while he agreed with Ms. Wedgwood in principle, it was important to bear in mind that the issue at stake was the application of article 14, and not the relationship between the Covenant and customary law. In order to accommodate her concerns, he suggested adding a reference to the range of obligations of the State party under the Covenant, so as to prevent paragraph 24 from being used as carte blanche for customary law-based abuses. Also, customary administration of justice should not be rejected categorically since it performed a useful social role in many contexts.

49. Mr. LALLAH said that, in the light of the extensive jurisdiction of customary courts in many parts of the world, the Committee’s discussion of the issue had been rather limited. Prior to a meeting on the application of Covenant norms in the customary administration of justice in June 2007 in Namibia, he himself had been largely unaware of the problems relating to the functioning of those “entities”. Countries which had gained independence only recently often lacked the capacity to establish a functioning justice system throughout their territory. Consequently, customary courts exercised real judicial power at the local level. It was thus important that certain notions of fairness prevailed and persons adjudicated by those entities were protected under the Covenant. He proposed amending the first sentence of paragraph 24 to read: “The general applicability of article 14 also becomes important where a State continues to allow entities based on customary or religious law to exercise judicial functions.” The absence of any pertinent communications before the Committee was clearly related to the absence of any form of legal counsel at the village level. The task of reporting violations fell exclusively on NGOs. Although paragraph 24 might require editing, the underlying principle was highly relevant.

50. The CHAIRPERSON said that customary courts were a social phenomenon rather than a product of State action. Unless the word "entrusts" in the first sentence were replaced by "permits" or "accepts", most customary court proceedings would not fall within the scope of paragraph 24.

51. Mr. KÄLIN proposed amending the first sentence to read: "… article 14 is also important where a State, in its legal order, recognizes courts based on customary law or religious courts or entrusts them with judicial tasks". The second sentence should be amended to read: "… that proceedings before such courts are limited to minor civil and criminal matters […] validated by State courts in the light of the guarantees set out in the Covenant …".

52. He preferred the term "courts" to "entities" because it was widely understood. While he agreed that customary courts sometimes fulfilled a valuable social role, more often their actions were harmful. Such courts worked well in disputes concerning two parties with similar social status, but in the presence of entrenched inequality the outcome of proceedings often exacerbated discrimination. Unfortunately, holding Governments responsible for ensuring that customary court proceedings complied with the principles established in article 14 was not a viable option. In order to make article 14 relevant to customary courts that had been entrusted with adjudicating certain matters by the State, their jurisdiction should be limited to minor matters and they should be requested to comply with basic fair-trial requirements. Permitting the adjudication of serious matters, with the sole requirement of validation by a State court, would be incompatible with the Covenant, since validation did not constitute a full public hearing within the meaning of article 14.

53. States had an obligation to protect persons under their jurisdiction against human rights violations by customary courts. That duty should be stated clearly in an additional sentence.

54. Ms. WEDGWOOD endorsed that proposal, which might cover many of the concerns raised. The word "entrust" in the amended version of the first sentence should be replaced by "accepts" for the reasons discussed earlier.

55. Mr. O'FLAHERTY proposed adding the following sentence: "These provisions are notwithstanding the general obligation of the State to protect the Covenant rights of any persons affected by the operation of such courts and procedures."

56. Paragraph 24, as amended, was adopted, subject to further editorial changes.

Paragraphs 25 and 26

57. Paragraphs 25 and 26 were adopted.

Paragraph 27

58. Mr. KÄLIN said that the second sentence should be amended to read: "… parties do not detract from the principle of a fair hearing …", following a proposal by Ms. Wedgwood, and the word "sufficient" in the last sentence should be replaced by "complementary", as suggested by Mr. Amor.

59. Paragraph 27, as amended, was adopted.

Paragraph 28

60. Paragraph 28 was adopted.

Paragraph 29

61. Mr. KÄLIN said that Ms. Wedgwood had proposed the deletion of the words “key evidence” from the last sentence to take account of cases where some of the evidence was kept secret.

62. Sir Nigel RODLEY said that, while he had no objection to deleting the word “key”, a reference to evidence was crucial; proceedings based entirely on secret evidence did not fulfil fair-trial requirements as enunciated in the Covenant.

63. Paragraph 29, as amended, was adopted.

Paragraph 30

64. Ms. WEDGWOOD said that State policy on media coverage of judicial proceedings differed greatly. While it was important to ensure that juries were not influenced by tendentious coverage of a given case, limiting the right to freedom of expression of private media concerning court cases was incompatible with article 19 of the Covenant. The word “private” in the fifth sentence should therefore be deleted.

65. Mr. IWASAWA associated himself with the points made by Ms. Wedgwood.

66. Mr. SHEARER said that, in the fifth sentence, it would be highly undesirable to delete the word “private” since that would imply that the private media had the right to express views that were prejudicial to the presumption of innocence. Instead, he proposed deleting the words “whether State-owned, State-controlled or private”. The sentence was directory, not mandatory, and in his country at least, the courts could hold the media in contempt of court if they overstepped the boundaries of reasonable reporting. He also proposed deleting the words “e.g. by portraying defendants in handcuffs or with their face covered or”, given that it was difficult to prevent such portrayals by the media, and that many defendants chose to cover their own faces.

67. Sir Nigel RODLEY agreed that the Committee should guard against giving the private media carte blanche regarding reporting on court cases. Article 19, as formulated in the Covenant (as opposed to the interpretation of that article implicit in several reservations against it by States parties), was not at issue in that context. Clearly, the jury element of the common law system made it more difficult to protect people accused of crime than in a totally judicial system, since it was practically impossible to find jury members who had not been exposed to pretrial media coverage. Wording was needed which kept the essence of the current paragraph while clarifying the key issue, namely, the extent to which media coverage would in fact impinge negatively on the presumption of innocence in the determination process.

68. Ms. MAJODINA asked whether the last sentence could be interpreted as encouraging prolonged detention.

69. Mr. KÄLIN supported Mr. Shearer's proposed amendment. In response to Ms. Majodina, he said that pretrial detention was sometimes long, whether for good reason or not. Whichever the case, neither the media nor judges should deduce that length of detention indicated that a defendant was guilty.

70. Ms. WEDGWOOD agreed that the fifth sentence should focus on the link between media coverage and coverage which made a fair trial impossible. However, the first part of the sentence went too far, implying that the presumption of innocence was not simply applied in court, but by all individuals, including the media. She therefore suggested wording such as "The media should avoid inflammatory news coverage that would make a fair trial impossible."

71. Sir Nigel RODLEY suggested taking that approach further, and proposed the following text: "The media should be required to avoid news coverage that would make a fair trial impossible."

72. Ms. WEDGWOOD said she could not agree to that wording since saying that the State was obliged to forbid some media action constituted a denial of free speech. And that paved the way for manipulation by the State.

73. Mr. BHAGWATI suggested the following wording: "which would prejudice a fair trial".

74. Mr. LALLAH said that, since the paragraph focused on the presumption of innocence, the sentence should include that element, possibly with a mention of a fair trial. He agreed that Sir Nigel Rodley's suggested wording might be open to abuse.

75. The CHAIRPERSON said that the Committee appeared to favour the phrase "should avoid". The Rapporteur would find the final wording.

76. Mr. KÄLIN agreed to keep the phrase "should avoid". He would strive to find language that made it clear that the Committee's concern was the effect of media coverage on the presumption of innocence. As a compromise, he proposed: "The media should avoid news coverage undermining the presumption of innocence or presenting the facts in a manner contrary to such presumption."

77. Ms. WEDGWOOD asked whether the second part of that sentence was necessary, as it could be interpreted to mean that a columnist could not present a particular point of view in the media.

78. Mr. KÄLIN agreed to delete the second part beginning "or presenting the facts" if that would facilitate consensus.

79. Paragraph 30, as amended, was adopted.

Paragraph 31

80. Mr. KÄLIN proposed, in the first sentence, replacing "The right of all" by "The right of all accused persons".

81. At the end of the fourth sentence, Ms. Wedgwood had proposed replacing “publicly names the individual as such” by “publicly names the individual as subject to arrest”. He could not agree with that proposal since in some States people could be charged with a crime without being arrested.

82. Ms. Wedgwood had also proposed deleting the phrase “i.e. when, in the course of an investigation, a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime”, since the meaning of the term “procedural steps” was not defined. He agreed with that proposal.

83. Paragraph 31, as amended, was adopted subject to editorial changes.

Paragraph 32

84. Ms. MOTOC proposed that, at the end of the third sentence, the words “during the pretrial and trial process” should be added, since that clarification had been made in Harward v. Norway, which was cited in the footnote to that sentence.

85. Mr. KÄLIN said he would verify the Harward v. Norway text and include the proposed amendment, provided it was consistent with the Committee’s conclusions in that case.

86. Paragraph 32 was adopted on that understanding.

Paragraph 33

87. Sir Nigel RODLEY said that the last sentence should be amended to clarify its meaning. The words “and unless the accused is not” should be replaced by “but is”.

88. Mr. KÄLIN noted that Ms. Wedgwood had proposed some amendments. In the first sentence, the word “that” should be inserted before “are exculpatory”; and at the end of the third sentence, the phrase “done in a manner compatible with Article 7” should be replaced by “obtained in violation of Article 7”.

89. Ms. WEDGWOOD said that in some legal systems prosecutors were not obliged to disclose how they had obtained all their evidence, since the life of an informant or undercover agent could be endangered as a result of such disclosure. The third sentence appeared not to allow for that provision. The wording should be amended to indicate that it was only when there was a suspicion of a violation of article 7 that the manner in which evidence had been obtained should be made explicit.

90. Mr. KÄLIN agreed to amend the sentence in line with that concern.

91. Paragraph 33, as amended, was adopted subject to editorial changes.

Paragraph 34

92. Paragraph 34 was adopted.

Paragraph 35

93. Mr. KÄLIN said Mr. Amor had proposed that, in the third sentence, the word “usually” should be inserted. However, the phrase “as expeditiously as possible” already implied that the length of pretrial detention was context-specific. Moreover, the paragraph was about people who had been denied bail by a court and had been kept in detention. To indicate that the obligation to try them without delay applied only “usually” was not fully compatible with the Covenant.

94. Mr. AMOR said that, since many cases of criminal commercial law were often highly complex, bail had to be denied and judgements could not be handed down until a relatively long time had elapsed. Courts required significant leeway in such proceedings, and releasing defendants on bail generated problems.

95. The CHAIRPERSON suggested that further discussion of the paragraph should be deferred until the following meeting.

96. It was so decided.

Paragraph 36

97. Sir Nigel RODLEY requested clarification of whether the content of the third sentence truly reflected normal practice. It appeared questionable, particularly in countries where appeals were conducted by the State, that an appeal could take place in the absence of the accused and a conviction be replaced by an acquittal. He asked if there was evidence of State practice or Committee jurisprudence to substantiate that sentence.

98. Mr. KÄLIN said that the Committee’s jurisprudence contained extremely varied State practices. However, since article 14, paragraph 5, established the right to have one’s case reviewed by a higher instance, and the issue of which article 14 guarantees applied at that level had not previously been addressed, he proposed that the sentence should be deleted.

99. The CHAIRPERSON suggested that further discussion of the paragraph should be deferred until the following meeting.

The meeting rose at 1.05 p.m.