



International Covenant on Civil and Political Rights

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Summary record of the second part (public)** of the 2678th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 27 October 2009, at 10 a.m.

Chairperson: Mr. Iwasawa

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- * No summary records were prepared for the 2675th, 2676th and 2677th meetings.
 - ** No summary record was prepared for the first part (closed) of the meeting.

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The second part (public) of the meeting was called to order at 11.45 a.m.

General comments of the Committee (agenda item 8) *(continued)*

Draft general comment No. 34 on article 19 of the Covenant (continued)
(CCPR/C/GC/34/CRP.1)

1. **The Chairperson** invited Committee members to resume their consideration of the draft general comment.
2. **Mr. O'Flaherty**, Rapporteur for the general comment, introduced paragraphs 5 to 8 of the draft text. Paragraph 5, based on general comment No. 24 (Reservations to the Covenant), established that it would not be possible to make a general reservation to article 19, paragraph 2, on freedom of expression; it followed on from paragraph 4 of the draft, on freedom of opinion. Paragraphs 6 and 7, broadly based on general comment No. 31 (Nature of the general legal obligation imposed on States parties to the Covenant), concerned State party obligations. Paragraph 8, taken from general comment No. 27 (freedom of movement), concerned report preparation requirements.
3. **Ms. Majodina** said that, in order to make paragraph 4 easier to read, the reference to the general comment on reservations made in note 6, at the end of paragraph 5, should be placed at the end of the first sentence of paragraph 4.
4. *The proposal was adopted.*
5. **Ms. Motoc**, raising a general question, asked whether reference could be made to current affairs in the general comment, even if the Committee had no precedents on the subject. She considered that the issue of freedom of artistic expression, in which the Committee had had occasion to take an interest, especially after the controversy caused by the publication of the cartoons of the Prophet Muhammad in a Danish newspaper, was a serious problem, deserving a paragraph of its own.
6. **Mr. Amor** said that two important issues deserved a mention under "General remarks". First, senior officials in the private and public sectors were obliged by some States to record political or religious beliefs in employee files. Second, in some countries religious affiliation was mentioned on national identity cards. He proposed that a paragraph on those two very sensitive issues should be added between paragraphs 4 and 5.
7. **Sir Nigel Rodley** said that the issues raised by Mr. Amor and Ms. Motoc were important and deserved to be reflected in the text, but in another place, as the general remarks focused on the general notions of opinion and expression and not on their tangible manifestation.
8. **Mr. O'Flaherty** agreed. The Committee could revert to Mr. Amor's proposal when considering the section on freedom of opinion and to Ms. Motoc's suggestion when considering the section on the scope of the right to freedom of expression.
9. **Ms. Wedgwood** said that the Committee was not justified in stating that, as noted in paragraph 4, a reservation to article 19, paragraph 1, was not permitted. It would be advisable just to say that the provision was fundamental to the object and purpose of the Covenant and to leave aside the issue of whether a reservation could or could not be made to that provision. In addition, the text should not be based on general comment No. 24, which had been written in unusual circumstances. General comment No. 19 should be founded on non-controversial elements.
10. **Mr. O'Flaherty** said that all of the Committee's general comments had the same status and that there was therefore nothing to prevent reference to general comment No. 24. In order meet Ms. Wedgwood's concern, however, he proposed that the end of the first

sentence of paragraph 4 should be rewritten, based on the wording used in paragraph 5, which had been taken from general comment No. 32.

11. **Ms. Wedgwood** proposed that the second clause of the first sentence of paragraph 4 should read: "... a general reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant".

12. **Mr. O'Flaherty** said that he agreed to making reference to the object and purpose of the Covenant but without using the qualifying word "general" in the paragraph, which dealt exclusively with freedom of opinion, as no State could make any reservation whatsoever on the absolute right to freedom of opinion.

13. **Ms. Wedgwood** disagreed, saying that, even if it were true that freedom of opinion was absolute, States should be able to make a reservation to article 19, paragraph 1, to cover certain situations. For example, a State might well decide to prohibit the recruitment of Nazis into the police because belonging to an organization that advocated the use of physical violence against a group of citizens was incompatible with the duties of office. That State would no doubt wish to make a reservation to paragraph 1 and the general comment should allow it to do so.

14. **Mr. Salvioli** recalled that article 19, paragraph 1, provided that "Everyone shall have the right to hold opinions without interference." A paragraph thus worded could not possibly allow for restrictions. Paragraph 4 should therefore remain as drafted.

15. **Sir Nigel Rodley** said that discussions should not be re-opened on an issue that the Committee had already considered and that he was opposed to amending the first sentence of paragraph 4. The example given by Ms. Wedgwood concerned the exercise of freedom of expression and not freedom of opinion, which was the subject of paragraph 4.

16. **Ms. Chanet** said that she fully endorsed Sir Nigel Rodley's comments. Article 19, paragraph 1, was not aimed at persons who expressed their opinion but cases where a third party sought to find out a person's opinion. The right to hold opinions without interference was absolute and the text should remain as drafted.

17. **Mr. O'Flaherty** said that, pursuant to general comment No. 24, article 18 (freedom of thought, conscience and religion), as relating to an issue of customary international law, could not be the subject of reservations. Since opinion was inseparable from thought, by extension article 19, paragraph 1, should have the same status as article 18.

18. **The Chairperson** took it that the Committee was in favour of the text of the first sentence of paragraph 4 as drafted, with Mr. O'Flaherty's amendment ("... a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant").

19. *Paragraph 4, as amended, was adopted.*

20. *Paragraph 5 was provisionally adopted without amendment.*

Paragraph 6

21. **Mr. O'Flaherty** proposed that the last sentence of the paragraph should be expanded to include the whole of the quotation from paragraph 8 of general comment No. 31. The last sentence should read: "The State party must also ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of the freedoms of opinion and expression *insofar as they are amenable to application between private persons or entities.*"

22. **Ms. Wedgwood** supported the addition proposed by Mr. O'Flaherty, except for the use of the personal pronoun "they", since the reader might not realize that it referred to the freedoms of opinion and expression; that point should therefore be made explicit. In

addition, in order to be faithful to the wording used in paragraph 8 of general comment No. 31, the phrase “Covenant rights” should be incorporated in the text.

23. **Mr. O’Flaherty** said that the exact wording of paragraph 8 of general comment No. 31 would be incorporated in the text.

24. **The Chairperson** said he did not agree with the statement made in the second sentence of the paragraph that semi-State enterprises were in a position to engage the responsibility of the State party. Neither traditional doctrine with respect to State responsibility nor the Committee’s general comment No. 31 referred to semi-State enterprises.

25. **Mr. Amor** said that the concept of semi-State enterprises was open to interpretation as it did not have the same meaning everywhere; it would be better to refer to enterprises partly or wholly in public ownership. Moreover, in many countries there were independent administrative authorities that were not accountable either to the executive or to the legislature but which were autonomous and responsible for discharging certain functions. Mention should be made of them by adding the words “... including enterprises partly or wholly in public ownership and independent administrative authorities ...”.

26. **Mr. Salvioli** said that it was essential to maintain the idea that States parties could be held responsible for human rights violations committed by persons other than their officials or authorities.

27. **Mr. O’Flaherty** said he had no objection to calling “semi-State enterprises” by any other term that the Committee might deem more appropriate. What mattered was that such entities, which were neither wholly public nor wholly private, should be specifically mentioned.

28. **Sir Nigel Rodley** said that if it was decided to maintain a reference to such entities, a separate sentence should be added to the end of the second sentence, which might read: “Such responsibility may also, under certain circumstances, be engaged by the activities of ...”; the ellipsis would be replaced by the term traditionally used to denote that type of entity.

29. *The proposal was adopted.*

Paragraph 7

30. **The Chairperson** said that he was not convinced of the need to keep the paragraph, which simply recalled the general principles of general comment No. 31. In order to be useful, the general comment on article 19 should be as short as possible.

31. **Mr. O’Flaherty** expressed the view that, on the contrary, the shortest was not always the best. The Committee’s most recent general comments were very exhaustive and that made them all the more binding. Thus, it might be useful to remind States of their obligations.

32. **Mr. Lallah** said he shared that view.

33. **Sir Nigel Rodley** proposed that the reminder be less peremptory, for example by saying that “it is incumbent upon States parties” to ensure that the rights contained in article 19 of the Covenant were enshrined in their domestic law, rather than saying that States parties “must” ensure that those rights were so incorporated.

34. *Paragraph 7, as amended, was adopted.*

Paragraph 8

35. **Ms. Majodina** asked whether that paragraph was also a reminder. It seemed to be more of a suggestion, since it indicated that States “should” provide information.

36. **The Chairperson** asked whether there was any need to keep the paragraph, which recalled a rule applicable to all the rights of the Covenant.

37. **Mr. O’Flaherty** said that almost all of the Committee’s general comments contained such a reminder, precisely because their main aim was “to assist States parties in fulfilling their reporting obligations”. It was therefore a classic paragraph that should be kept. There was no particular reason for the use of the conditional; it was a choice that had been made in general comment No. 27 on article 12. A more neutral formula could be adopted, as in the preceding paragraph, such as: “It is recalled that States parties should ...” The conditional could also be used in the last sentence.

38. **Mr. Amor** proposed that the expression “other programmatic practices” should be replaced by “sectoral practices”.

39. **Mr. Bhagwati** added that “administrative and judicial practices” should be replaced by “administrative practices and judicial decisions”.

40. **Mr. O’Flaherty** agreed with the proposals. The new paragraph 8 would therefore read: “It may be recalled that States parties should provide the Committee in their periodic reports with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy-level and sectoral practices, relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated.”

41. *Paragraph 8, as amended, was adopted.*

Paragraph 9

42. **Mr. O’Flaherty** said that the paragraph focused exclusively on freedom of opinion. It was therefore an appropriate place for Mr. Amor’s proposals concerning political or religious beliefs. The section on freedom of opinion was based on the fundamental principles of general comment No. 10 and on the implications of communications on the matter. The Committee’s case law on freedom of opinion was very limited. In paragraph 9, reference was made mainly to the Kang and Faurisson cases.

43. **Ms. Chanet** proposed that the paragraph should be rearranged more logically, including by changing around the fourth and fifth sentences so as to begin by defining freedom of opinion, then indicating the types of opinion to be protected, and coming finally to violations of the right. She also proposed that, in the penultimate sentence, “arrest, detention, trial or imprisonment” should be mentioned first, and “*as well as harassment or intimidation*” should be added — in order to establish a hierarchy, the last two types of violation being less serious than the first — and that a reference to “stigmatization” should also be included.

44. **Mr. Rivas Posada** said that it should be made clear that the reference in the first sentence was to paragraph 1 of article 19.

45. **Mr. Bouzid** proposed that the third sentence should include the word “freely”: “Freedom of opinion extends to the right to change an opinion whenever and however a person freely so chooses.”

46. **Mr. Bhagwati** proposed that “whenever and however” should be replaced by “*whenever and for whatever reason*”.

47. **Mr. Amor** agreed with the rearrangement proposed by Ms. Chanet. He would like the fourth sentence to refer to “actual, perceived *or implied* opinions”. He also wondered if the paragraph might be divided in two.

48. **Mr. O’Flaherty** agreed with Ms. Chanet’s proposal and all the suggested drafting changes. However, he was not in favour of dividing the paragraph in two parts, as they would then be too short.

49. *Paragraph 9, as amended, was adopted.*

The meeting rose at 1.10 p.m.