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Summary record of the 2818th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 20 July 2011, at 3 p.m.

Chairperson: Mr. Majodina

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Draft general comment No. 34 (continued)

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

General comments of the Committee (*continued*)

Draft general comment No. 34 (continued) (CCPR/C/GC/34/CRP.6)

Paragraph 33 (continued)

1. **Mr. O'Flaherty**, Rapporteur for the general comment, invited the Committee to consider a new draft of paragraph 33 (available in the meeting room in English only) and to bear in mind the text submitted by the French National Consultative Commission on Human Rights (available in the meeting room in French only).

2. **Mr. Bouzid** said that, while it was important to recognize the diversity of the concept of public morals in different societies, that consideration must not be allowed to affect the universality of human rights.

3. **Mr. Lallah**, responding to a point raised by **Ms. Chanet**, said that the general comment should use the same terms as the Covenant, namely "public morals" ("*moralité publique*" in French). He would prefer wording along the lines of that suggested by the French National Consultative Commission, which emphasized the universality of human rights and the values of the Covenant.

4. **Ms. Motoc** said that the universality of human rights could be respected even if there were differences in the concept of public morals endorsed by different societies. The two were not mutually exclusive.

5. **Mr. Salvioli** said that the paragraph was intended to define the term "public morals", as used in the Covenant, in the context of universality of human rights.

6. **Mr. Rivas Posada** supported the new version of the paragraph proposed by Mr. O'Flaherty.

7. **Sir Nigel Rodley** suggested the deletion of the phrase "there is no universally applicable common standard" in order to give more emphasis to the aspect of universality of human rights.

8. **Mr. Iwasawa** said he preferred the original version proposed by Mr. O'Flaherty. The phrase "there is no universally applicable common standard" helped to balance a quotation from the Committee's jurisprudence, which emphasized the diversity of sources of public morals.

9. **Mr. Lallah** suggested the following wording: "Public morality must be understood in the light of the universality of human rights, consistent with the rights and principles recognized in the Covenant." Alternatively, the phrase "there is no universally applicable common standard" could be deleted, as suggested by Sir Nigel Rodley, the second sentence including the quotation could be retained, and a reference to the rights and principles recognized in the Covenant could be added at the end.

10. **Mr. Salvioli** noted that the quotation from the Committee's jurisprudence came from its Views on the *Hertzberg et al. v. Finland* case, which dated back to 1982 and, in particular, pre-dated the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, which had confirmed the universality of human rights.

11. **Ms. Chanet** said that the various elements of the paragraph should be rearranged: the text should begin by emphasizing the universality of human rights, continue with the quotation describing the diversity of public morals, and then state strongly that public

morals should be understood in the light of the universality of human rights and should not be used as a reason to derogate from the provisions of the Covenant.

12. **Mr. Neuman** said that Mr. O'Flaherty's version contained a potential source of misunderstanding: in the current wording "Public morals must be understood in the light of the universality of human rights, albeit the content of the term might differ from society to society, since there is no universally applicable common standard", the phrase "the term" might be understood to refer to "human rights" rather than "public morals".

13. **Mr. Thelin** suggested that the paragraph should start with the quotation from the Committee's jurisprudence and then go on to emphasize the universality of human rights, incorporating the reference to the rights and principles recognized in the Covenant as suggested by Mr. Lallah.

14. **Mr. O'Flaherty** agreed that the quotation from the Views on *Hertzberg et al. v. Finland* had been superseded by the Committee's subsequent jurisprudence. Perhaps the text should include the statement that no one source could be relied upon to identify public morals. He suggested the wording: "The Committee observed in general comment No. 22 ... Any such limitations must be understood in the light of the universality of human rights and the principle of non-discrimination."

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

Paragraph 38

16. **Mr. Iwasawa**, supported by **Mr. O'Flaherty**, noted that paragraph 38 formed an introduction to the section of the general comment entitled "Limitative scope of restrictions on freedom of expression in certain specific areas", and reiterated the conditions under which freedom of expression might legitimately be restricted in accordance with article 19 (3) of the Covenant. However, he felt that the paragraph was repetitive, as the conditions had been discussed in detail in the preceding section, and suggested that the entire paragraph should be deleted.

17. *Paragraph 38 was deleted.*

Paragraph 39

18. **Mr. O'Flaherty** noted that one State party, Japan, had challenged the Committee's concerns about restrictions on door-to-door canvassing and the number and type of written materials which could be distributed during election campaigns.

19. Another State party, New Zealand, had suggested the following sentence, to replace the final sentence: "For instance, reasonable restrictions may be warranted to safeguard due exercise of electoral rights, as elaborated in general comment No. 25."

20. **Mr. Iwasawa** said the State party's concern had been that the original example given had been too specific, and that a more general example was needed.

21. **Mr. Flinterman** said that he had reservations about qualifying restrictions as "reasonable", since all restrictions should be compatible with the requirements of article 19 (3).

22. **Ms. Motoc** said that since the Committee's jurisprudence had addressed specific examples in great detail in the past, it was appropriate that the Rapporteur should want to take into account all the relevant jurisprudence in the present case as well.

23. **Sir Nigel Rodley** said that it would be useful to identify which part of general comment No. 25 the Government of New Zealand was referring to in order to follow its argument.

24. **Mr. Lallah** said that while he endorsed the whole paragraph, he suggested finding alternative wording to “in the days preceding” the election, as the number of days might vary depending on national legislation.

25. **Mr. Rivas Posada** endorsed the idea of not setting a specific timeline for polling carried out prior to an election.

26. **Mr. Neuman** said that he fully supported the view expressed by Mr. Flinterman: the proposal by New Zealand, which referred to reasonable restrictions as a generality, seemed to dilute the protection of article 19. Any changes to the paragraph should be worded differently.

27. **Mr. O’Flaherty** said that the Committee had two options: it could either amend the sentence by replacing “in the days” with “imminently”, for example, to take into account Mr. Lallah’s concern; or it could delete that sentence and adapt the proposal by New Zealand to take into account the views expressed by Mr. Flinterman and Mr. Neuman on the issue of reasonableness. The text might read, for example: “Restrictions may be warranted, subject to the requirements of article 19 (3) in order to safeguard due exercise of electoral rights.”

28. **Mr. Thelin** said that he would prefer to retain the present sentence as amended by the Rapporteur.

29. **Mr. Iwasawa** said that he favoured the alternative text proposed by New Zealand, as long as the Committee could specify that only restrictions consistent with article 19 (3) were allowed. However, he would not stand in the way of consensus if most members preferred the current version.

30. **Mr. Flinterman** said that the negative formulation in the sentence “Not every restriction is incompatible with paragraph 3” was problematic since every restriction on the freedom of expression should be tested against the strict requirements of that paragraph. He thus suggested the positive formulation: “Every restriction should be compatible with paragraph 3.”

31. **The Chairperson** said that, if there was no objection, she would take it that members of the Committee preferred the text as amended by the Rapporteur, replacing the words “in the days” by “imminently”, and with the amendment suggested by Mr. Flinterman.

32. *Paragraph 39, as amended, was adopted.*

Paragraph 40

33. **Mr. O’Flaherty** informed the Committee that an NGO had wished to see specific reference in paragraph 40 to the effect that the criminalization of insults to public officials or the State or its symbols was not permissible unless it was likely to incite imminent violence. In his view, the text as it stood adequately addressed the matter.

34. A second suggestion, also from an NGO, was to replace the word “penalties” in the second sentence with “measures limiting freedom of expression”. While that was no longer a direct citation from jurisprudence, it was still in line with the Committee’s views.

35. A third proposal, which he recommended should be adopted, came from a confidential United Nations source and was to add “disrespect for flags or symbols” after “defamation of the head of state”.

36. **Mr. Flinterman**, referring to the third proposal, suggested adding the qualifier “national” before “symbols”.

37. **Mr. O'Flaherty** said that he had reservations about that qualification since religious symbols might also be affected.

38. **Mr. Lallah** also had reservations about inclusion of the word "national" since some political parties were designated by symbols in many parts of Africa and elsewhere. It would thus be best to keep the general notion of symbols.

39. **Mr. Iwasawa** said he wondered whether the issue of symbols did not widen the scope of the paragraph beyond public figures, which was the focus of the paragraph. Consistency should be ensured.

40. **Mr. Salvioli** said that although the paragraph placed emphasis on people, the last sentence referred to institutions and it was appropriate to include mention of symbols. He endorsed the Rapporteur's views.

41. **Mr. Rivas Posada** said that if the Committee wished to extend the discussion beyond public figures to institutions, then it needed to change the language to reflect that approach, since the term *desacato* at least, as used in Spanish, referred to persons rather than to symbols or institutions. The meaning of *lese majesty* should also be examined in that regard.

42. **Mr. O'Flaherty**, referring to members' concern about persons and institutions, suggested adding "and public institutions" following "debate concerning public figures in the public domain" in the first sentence. Many symbols, such as the crown, were associated with individuals.

43. **Mr. Iwasawa** explained that he was not opposed to the idea of addressing disrespect for flags and symbols, but had only raised the issue as a matter of consistency. He wondered whether "national flags and symbols" might be acceptable to the Committee.

44. **Mr. O'Flaherty** said he did not wish to see the term narrowed down so much, as there were many different types of flags which caused problems and which States might wish to ban. He would thus prefer to keep to the general term "flags and symbols".

45. **Mr. Neuman** said that the statement "the Committee has expressed concern" in the penultimate sentence implied past action; the proposed amendment thus seemed inconsistent.

46. **Mr. O'Flaherty** said that converting the tense from past to present, saying "the Committee expresses concern" would meet that point.

47. **The Chairperson** said she took it that, if there was no objection, the Committee wished to adopt the addition of "and institutions" in the first sentence, and "flags and symbols" in the penultimate sentence.

48. *Paragraph 40, as amended, was adopted.*

Paragraph 41

49. **Mr. O'Flaherty** said the Government of Japan had made a general observation to the effect that refusal to permit the publication of newspapers and other print media (third sentence) might in fact be compatible with article 19, but did not necessarily support an amendment.

50. The second proposal was from the Government of Spain, which considered that the fourth sentence was too sweeping since it would prohibit the closure of a newspaper that was closely associated with what the Government considered to be a delinquent group.

51. The third proposal, by the Government of Ireland, related to the fifth sentence and was useful in that it replaced the negative statement "States parties must avoid" with the

positive statement “Whilst States parties are entitled to put in place a system of licensing of broadcasting enterprises, they must avoid ...”.

52. **Mr. Rivas Posada** said that in the Spanish version of the text the word “*onerosos*” in the fifth sentence needed to be qualified by the addition of an adverb such as “*excesivamente*” since the idea was to limit excessive use of licensing rights.

53. **Mr. O’Flaherty** said that the use of “onerous” in the English version was clear; the issue Mr. Rivas Posada had raised might be one of translation.

54. **Ms. Motoc** said she did not see why the Committee should adopt State party proposals that were not reflected in the Committee’s concluding observations or jurisprudence. It was important to take that into account when reviewing comments from States parties.

55. **Mr. Thelin**, responding to Ms. Motoc’s comment, said that while comments tended to be based on the Committee’s jurisprudence, including concluding observations, there was no reason why other comments could not be considered as long as they did not deviate from the substance of the jurisprudence. Since the text of paragraph 41 as it stood covered the points that the Government of Ireland wished to see highlighted, it was not necessary to make any changes.

56. **Mr. Lallah** agreed with Ms. Motoc that the Committee should follow its own jurisprudence when States parties or NGOs made suggestions that were contrary to or inconsistent with the Committee’s case law or concluding observations. Nevertheless, other suggestions should be considered; otherwise, there was no point in inviting those entities to assist the Committee with its work. Although he agreed that the paragraph already covered the Irish Government’s concern, its contribution was a useful one that he would like to see included.

57. **Ms. Motoc** agreed that some comments from State parties and NGOs should be taken into account but others could not, for reasons already mentioned. Since the proposal by the Government of Ireland changed the meaning of the paragraph, she would rather keep the text as it stood.

58. **Mr. O’Flaherty** said that in the interest of moving forward, he could agree to drop the proposal by the Government of Ireland.

59. He added that one NGO had suggested a new first sentence “States parties should take steps to ensure that diversity is available on all media distribution platforms” in order to capture the element of diversity, which seemed to be missing from the general comment. That would be a useful sentence to include.

60. **Mr. Thelin** said he feared that States could interpret that sentence as advocating the regulation of certain parts of the media in order to introduce the public broadcasting system model into the private market.

61. **Sir Nigel Rodley** requested clarification of the term “media distribution platform”. He asked why the references to plurality and diversity had been removed from the text.

62. **Mr. Iwasawa** said that the Committee should exercise caution when introducing into its general comments new elements that were not based on its jurisprudence from individual communications and concluding observations.

63. **Mr. Bouzid** requested clarification of the term “commercial and community broadcasters” in the penultimate sentence.

64. **The Chairperson** drew the Committee’s attention to the reference to diversity at the end of paragraph 42.

65. **Mr. O'Flaherty** said that there was also a reference to diverse media in paragraph 13. He withdrew the proposal he had made as it added little to the text. The Committee had debated the use of the term "commercial and community broadcasters" at length at its first reading. The term had been used to refer to various types of broadcasters that had great importance in developing countries. He proposed that, at the end of the fourth sentence, the phrase "offends paragraph 3" should be replaced by "can be legitimately prohibited under paragraph 3".

66. **Mr. Flinterman** proposed that the first sentence should be reformulated in the active rather than the passive voice, to read: "States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3."

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

The meeting was suspended at 4.30 p.m. and resumed at 4.45 p.m.

Paragraph 42

68. **Mr. O'Flaherty** said that, in over 300 comments the Committee had received from stakeholders, none had made reference to paragraphs 42, 43 or 44, which indicated that they supported the current wording of those paragraphs.

69. **Mr. Rivas Posada** proposed that, in the second sentence, the phrase "or seeking to have" should be deleted; the point was that States parties should not have monopoly control, regardless of their intentions.

70. **Mr. O'Flaherty** agreed and proposed that the sentence should begin "States parties should not have monopoly control".

71. **Mr. Salvioli** suggested that the last sentence should be reworded to read: "States parties should ensure plurality of the media. Consequently, they should take appropriate action." That would strengthen the paragraph, since in many countries a small number of private groups dominated the media.

72. **Mr. O'Flaherty** recalled that the third sentence had been debated at length at first reading owing to the diversity of views in the Committee, particularly on the role of the State in regulating the private media. The formula in the current draft had met with consensus. If the beginning of the sentence was to be amended, he suggested that agreement might more easily be reached if it read: "The State should promote plurality of the media."

73. **Mr. Salvioli** said that he would endorse that wording in order to avoid delaying adoption of the general comment. In his opinion, however, if a State did not ensure access to different sources of information in a pluralistic way, it was violating people's freedom of expression.

74. **Mr. Thelin** said that, for him, any reference to plurality brought to mind an unacceptable form of Government intervention. If Mr. Salvioli could agree to the suggestion made by Mr. O'Flaherty, he would do likewise on the understanding that there had been compromise in both directions.

75. *Paragraph 42, as amended, was adopted.*

Paragraph 43

76. *Paragraph 43 was adopted.*

Paragraph 44

77. **Mr. Flinterman** said that the paragraph should be amended in order to render the message more direct and accessible to all readers. He proposed the following formulation: "The penalization of a media outlet, publishers or a journalist solely for being critical of the Government or the political social system espoused by the Government can never be considered to be a necessary restriction of the freedom of expression."

78. *Paragraph 44, as amended, was adopted*.

Paragraph 45

79. **Mr. Neuman** said that the paragraph addressed the complex matter of modern technology, with reference to websites, blogs, or Internet-based, electronic or other such information dissemination systems, including Internet service providers and search engines, all of which raised different problems. A literal reading of the second sentence could imply that there could be no regulation of Internet service providers except for regulation that was content-specific. Surely Internet service providers should be subject to significant regulation of a technical and commercial nature in areas such as technological compatibility and contracting. While the Committee was not focusing on those elements in the general comment and did not view them as limitations of freedom of expression as such, the wording of the second sentence was too broad in such a complex context and could be misleading.

80. **Mr. O'Flaherty** suggested inserting the word "generally" into the sentence in order to clarify its meaning. Alternatively, it could be replaced with the proposal by the Government of Poland: "Any restrictions must be compatible with paragraph 3."

81. **Mr. Thelin** said that the environment addressed in the paragraph was constantly evolving, which was why the phrase "or other such information dissemination system" had been included in the first sentence. Since the reference to content-specific restrictions was important, he supported the suggestion to introduce the word "generally" in the second sentence.

82. **Mr. Lallah** suggested that, in that sentence, the word "permissible" should be inserted before "restrictions" in order to avoid misunderstanding.

83. **Mr. O'Flaherty** proposed amending the second sentence to read "Permissible restrictions generally should be content-specific". On the third sentence, the Government of the United States had raised the concern that, while generic bans on websites were usually unlikely to be compatible with article 19 (3) in some circumstances, websites could be banned in their entirety, such as those that were solely devoted to criminal activity or child pornography. He therefore proposed that the sentence should read "Generic bans on the operation of certain sites and systems are not generally compatible with paragraph 3."

84. **Mr. Neuman** proposed combining the second and third sentences by means of a semicolon, which would clarify the relationship between them.

85. **Mr. O'Flaherty** supported that proposal, which would also avoid the need to repeat the word "generally".

86. **Ms. Chanet** said that since the Committee had not considered any communications on that subject or referred to it in any concluding observations, it was improvising law, which was not its customary practice.

87. **Ms. Motoc** said that caution was required. If the Committee agreed that it was necessary to include a paragraph on those restrictions, any reference to banning sites devoted to criminal activity or child pornography should be extended to include banning that subject matter from the press and television.

88. **Mr. O'Flaherty** said that, rather than inventing new law, the Committee was making a logical extrapolation from the principles detailed in the preceding paragraphs in the context of new technology. While the Committee did not generally refer to such sources, the special rapporteurs on freedom of expression of the United Nations, the Organization for Security and Cooperation in Europe and the Inter-American Commission on Human Rights had repeatedly stated that the relevant international instruments, including the Covenant, provided a sound basis for such conclusions concerning Internet-based communication.

89. **Mr. Thelin** said that, given the rapidly-changing nature of the area in question, it would be difficult for the Committee to wait to develop case law in that regard before it addressed the subject matter. He drew Ms. Motoc's attention to the second sentence of paragraph 41, which noted the manner in which print, broadcast and Internet media were converging.

90. **Ms. Motoc** said that, if the Committee began using the statements of special rapporteurs as the basis for its general comments, it would be changing its method of work. In any case, it should reference the special rapporteurs' statements in the same way as it referenced its own concluding observations and Views on communications.

91. **Ms. Chanet** said that, before including references to certain types of websites at the behest of States parties, the Committee should take the time to discuss the substantive issues involved.

92. **Ms. Keller** reminded the Committee that it had decided, during its discussion at the previous session, that the general comment should be applicable to technological developments and the evolution of the social media, which had played a major role, for instance, in recent events in the Arab world.

93. The Rapporteur had adopted a cautious approach, bearing in mind all elements of the Committee's jurisprudence, with a view to consolidating the legitimacy of the general comment. However, it was also clearly essential to address current developments in the light of the Committee's experience with more traditional media. The international community was eagerly awaiting the general comment because the media environment was changing so rapidly. She strongly supported paragraph 45 as it stood and as presented by the Rapporteur.

94. **Mr. Neuman** pointed out that the proposed amendments had not explicitly mentioned that States could ban Internet sites engaging in child pornography or criminal activity. The text simply applied the terms of paragraph 41 to new media based on evolving technology, especially the sentence in that paragraph which read: "Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, offends paragraph 3." The content of that sentence faithfully reflected the Committee's concluding observations and case law.

95. **Mr. Salvioli** agreed with Ms. Keller. Paragraph 45 was carefully worded and was not unduly innovative. A general comment was not just a summary of jurisprudence. It was intended to assist States parties in complying with their obligations.

96. **Mr. Iwasawa** agreed with the points made by Ms. Keller and Mr. Neuman. The media were rapidly evolving, and States parties and NGOs were looking forward to reading the Committee's views on the subject. He supported the paragraph with the addition of the word "generally" and pointed out that the second and third sentences had already been discussed at first reading.

97. **Sir Nigel Rodley** said that he had initially had doubts about the draft general comment precisely because it would inevitably take the Committee into areas on which no standard position had been developed.

98. He proposed linking paragraph 45 with the preceding paragraphs by inserting the word “also” in the final phrase of the first sentence, which would then read: “must also be compatible with paragraph 3”. It would thus be clear that the Committee was seeking to apply general principles to the circumstances created by modern technology. He supported the addition of the word “generally” and the proposal to combine the second and third sentences. He was opposed to the introduction of references to particular sites that might be shut down.

99. **Ms. Motoc** said that she was basically against the introduction of new elements that did not form part of the Committee’s jurisprudence. If a general comment addressed new issues, the Committee should determine how far it could venture beyond the limits set by its jurisprudence.

100. She supported Sir Nigel Rodley’s proposal to link paragraph 45 with the preceding paragraphs in order to make it clear that the Committee’s comments on the Internet were based on its normal approach to comparable issues.

101. **Mr. O’Flaherty** drew attention to the fact that not a single State party had objected to the approach adopted in paragraph 45. He took that as a compelling endorsement of the content.

102. **Ms. Chanet** expressed support for the amendment proposed by Sir Nigel Rodley.

103. She joined other members in opposing the inclusion of specific examples.

104. **Mr. O’Flaherty** said that one NGO had suggested inserting a sentence concerning the role of the State in ensuring that Internet service providers respected freedom of expression. However, he queried whether any State could be required to enforce pluralism. Moreover, the proposed addition had not been submitted to States parties for comment. He therefore suggested that it should be omitted.

105. *It was so agreed.*

106. **The Chairperson** said she took it that the Committee wished to combine the second and third sentences, inserting the word “generally”, and to adopt the amendment to the first sentence proposed by Sir Nigel Rodley.

107. *Paragraph 45, as amended, was adopted.*

Paragraph 46

108. **Mr. O’Flaherty** said that some commentators had found the link between the first and second parts of the first sentence to be too prescriptive. He therefore suggested deleting the word “Since” at the beginning of the sentence and inserting the word “and” before the final phrase “general systems of registration or licensing of journalists are incompatible with paragraph 3”.

109. **Mr. Rivas Posada** said that the purpose of the paragraph was clearly to prevent arbitrary or discriminatory measures aimed at restricting journalistic activity. However, most countries applied some system of recognition of the professional status of journalists. It seemed unreasonable to imply that they were all in breach of article 19 (3).

110. He asked the Rapporteur to clarify the reference to “Limited accreditation schemes” in the second sentence.

111. **Mr. O’Flaherty** said there was broad agreement that general systems of accreditation or licensing were inappropriate for journalists as opposed to the broadcasting media, which needed to manage a limited broadcasting space. Moreover, the definition of a journalist was constantly evolving and now incorporated a whole range of actors who had not been included in the traditional definition.

112. The second sentence referred to the fact that it was reasonable for States under certain circumstances to limit access by means of an accreditation system to specific categories of journalists, for instance on account of constraints of space or security concerns. Relevant examples would be the pool of journalists admitted to parliament or to a court of law. However, such restrictions must be non-discriminatory.

113. **Mr. Thelin** pointed out that the words “general systems” in the first sentence did not refer to associations or societies established by journalists themselves.

114. **Mr. O’Flaherty** suggested inserting the world “State” between “general” and “systems” to make that point clear.

115. Some NGOs had invited the Committee to add a phrase at the end of the paragraph aimed at strengthening the criteria whereby the acceptability of accreditation schemes should be measured. The phrase would read: “based on objective criteria and takes into account that journalism is a function shared by a wide range of actors”.

116. *Paragraph 46, as amended, was adopted.*

Paragraph 47

117. **Mr. O’Flaherty** said that the United States was concerned about the statement in the first sentence that it was incompatible with paragraph 3 “to restrict the entry into the State party of foreign journalists to those from specified countries”. It argued that States had a sovereign right to decide who could be permitted to enter their jurisdiction.

118. **Mr. Thelin** said that the word “normally” before “incompatible with paragraph 3” at the beginning of the sentence should take care of that concern.

119. **Mr. O’Flaherty** agreed.

120. The second sentence about the journalistic privilege not to disclose information sources had also elicited a vigorous response. The United States considered that no such privilege could be deduced from article 19, while all other commentators held the contrary view and felt that the sentence should be rendered more robust by introducing rights-based language. He suggested that their concerns could be accommodated by amending the sentence to read: “States parties should recognize and respect that element of the right of freedom of expression that embraces a limited journalistic privilege not to disclose information sources.”

121. *Paragraph 47, as amended, was adopted.*

Paragraph 48

122. **Mr. O’Flaherty** said the Committee had agreed that references to proportionality should be combined with references to necessity. He therefore suggested that the end of the second sentence should be amended to read: “to an unnecessary or disproportionate interference with freedom of expression”.

123. *It was so agreed.*

124. **Mr. O’Flaherty** said that an NGO had proposed adding the following sentence at the end of the paragraph to deal with a dimension of counter-terrorism that had not been fully covered: “Expanded use of surveillance techniques and reduced oversight of surveillance operations may exert a chilling effect on freedom of expression and also undermine the right of journalists to protect their confidential sources.” He had reservations about the proposal. Expanded use of surveillance techniques could be permissible under certain circumstances. In its discussion on article 14, for instance, the Committee had

recommended the use of alternatives to detention, such as surveillance techniques, in combating terrorism.

125. **Mr. Thelin** said that he was opposed to the inclusion of the new sentence.

126. **Mr. Neuman**, referring to the third sentence, asked whether “freedom of information” referred to the freedom of the media to inform people about terrorism or freedom of access to information held by Governments. The Committee generally referred to a right of access to information rather than freedom of information.

127. **Mr. O’Flaherty** suggested that the words “freedom of information:” should be replaced with “access to information”.

128. *It was so agreed*.

129. *Paragraph 48, as amended, was adopted*.

The meeting rose at 5.55 p.m.