United Nations CCPR/C/SR.2782

International Covenant on Civil and Political Rights

Distr.: General
24 August 2011

Original: English

Human Rights Committee
101st session

Summary record of the 2782nd meeting
Held at Headquarters, New York, on Friday, 18 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

Contents

11-27133 (E)

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

General comments of the Committee

Draft general comment No. 34 on article 19 of the Covenant (CCPR/C/GC/34/CRP.5)

1. **The Chairperson** invited the Committee to begin its second reading of draft general comment No. 34 (CCPT/C/GC/34/CRP.5) on article 19 of the Covenant.

2. **Mr. O'Flaherty**, speaking as rapporteur for the draft general comment on article 19, said that States parties, national human rights institutions, non-governmental organizations (NGOs), Special Rapporteurs of the Human Rights Council and members of academia had responded to the Committee's request for comments. Over 300 specific drafting suggestions had been received, which was unprecedented in the Committee's history. The majority of the commentaries indicated broad satisfaction with the draft and were extremely helpful.

3. **Mr. Iwasawa**, recalling the informal consultation the Committee had held with States parties in July 2009, said that he had expected more of them to submit comments. He was pleased with the number of comments that had been submitted by NGOs and international human rights institutions.

4. **Mr. O'Flaherty** said that he would introduce each paragraph and provide the third-party commentary and proposals received for that paragraph before the Committee began its discussion.

Paragraph 1

5. *Paragraph 1 was adopted*.

Paragraph 2

6. **Mr. O'Flaherty** said that two suggestions had been received for additions at the end of the third sentence. An organization associated with the University of Fribourg had asked for the phrase "and for the consolidation and promotion of peace" to be added, while Professor Rolf H. Weber, an electronic media expert at the University of Zurich, had proposed the addition of the phrase "and for the digital information society".

7. **Ms. Chanet**, supported by **Mr. Thelin** and **Mr. Iwasawa** said that she did not support the proposed changes, objecting in particular, to the use of the word "peace", which was a very political and ambiguous term. Its inclusion might also be seen as a move to interpret article 20 of the Covenant, which talked about propaganda and war.

8. **Mr. Rivas Posada** said that the addition of the word "peace" in paragraph 2 would be difficult to justify as it was but one of many aspects of the freedom of expression.

9. **Mr. Fathalla**, supported by **Mr. Bouzid**, proposed adding the words "are essential to any society and contribute positively to its national stability" at the end of the second sentence. The change sought to reflect the events taking place in the Arab world, which stemmed partly from the lack of freedom of opinion there, and to link the right to freedom of expression to its contribution to stability in society.

10. **Mr. Thelin** wished to know the rationale behind the inclusion of the word "national", which could lead to inadvertent interpretation effects.

11. **Mr. Fathalla**, supported by **the Chairperson**, speaking in her personal capacity, proposed removing the word "national". He reiterated that the disorders taking place in the South Mediterranean countries had occurred because of the absence of the freedom of opinion.

12. **Ms. Chanet** said that the notion of "stability" did not exist in the Covenant and an inverse interpretation was possible, whereby the freedom of expression might be permitted only once stability was achieved. Political and philosophical concepts that did not tie in with article 19 of the Covenant should not be introduced into the text. She was not in favour of any changes to the paragraph.

13. **Mr. Rivas Posada** said that he did not support the addition because it evoked a political concept and could be interpreted as being prejudicial to reform movements.

14. **Mr. Iwasawa** and **Mr. O'Flaherty** said that paragraph 2 should be adopted as it stood.

15. *Paragraph 2 was adopted*.

New paragraph 2 bis

16. **Sir Nigel Rodley**, supported by **Mr. Thelin, Ms. Chanet, Mr. Rivas Posada, Mr. Iwasawa** and **Mr. Fathalla**, proposed a new paragraph 2 bis, to take account of the principles of transparency and

accountability, that would read: "Freedom of expression is a necessary condition for realizing the principles of transparency and accountability that are in turn essential for the promotion and protection of human rights".

17. *New paragraph 2 bis was adopted.*

Paragraph 3

18. **Mr. O'Flaherty** said that the initial draft of the general comment had included a reference to "economic, social and cultural rights" as being among those rights that depended, to a large extent, on the freedom of expression. Many commentators had asked for the restoration of that phrase. The revised second sentence would thus read: "The freedom of opinion and expression form a basis for the full enjoyment of a wide range of civil, political, economic, social and cultural rights".

19. **Mr. Bouzid** said that the Committee had pointed out in general comment 17 that the rights provided for in article 24 of the Covenant were not the only recognized rights of children who, as individuals, benefited from all of the rights stated in the Covenant. He reiterated the request he had made at a previous meeting (CCPR/C/SR.2674) to include a reference to article 24 along with the other articles already listed.

20. **Mr. O'Flaherty**, speaking in his personal capacity, said that he welcomed both changes.

21. **Mr. Flinterman** said that it should be made explicit that civil, political, economic, social and cultural rights were at issue.

22. **Mr. Thelin** said that the text would gain nothing from the inclusion of the phrase "social, economic and cultural rights"; the existing reference to human rights was sufficient. While not opposed to the idea of expanding the enumeration of articles, he wondered if doing so would cause commentators to ask why other articles were not also mentioned.

23. **Ms. Chanet** said that the reference to social, economic and cultural rights, if included, would need to be placed in a separate sentence at the end, rather than in the middle, of the paragraph, so that the list of articles could be kept together with the references to the freedom of expression and the rights to freedom of assembly and association.

24. She expressed reservations with regard to the inclusion of a reference to article 24, because its provisions were not directly related to article 19. Article 24 also included the right to "measures of protection" that was somewhat antinomic to the right to freedom of expression because the child had a lesser freedom of expression by virtue of being protected. While the Convention on the Rights of the Child stipulated the right of the child to be heard in the context of divorce proceedings, the Committee had yet to examine how article 24 of the Covenant pertained to the right of the child to freedom of opinion or expression.

25. **Sir Nigel Rodley** said that articles 18 and 25 inherently required freedom of expression and opinion and freedom to participate in government, but the connection to article 17 was less obvious, and it was not clear why it was particularly relevant for minorities. Mr. Bouzid's suggestion was that those other Covenant rights also inherently contained article 19 values, but article 24 did not reflect that. He preferred Ms. Chanet's proposed wording "other human rights".

26. **Mr. Iwasawa** said that he saw the link with articles 18 and 25, but had difficulty with articles 17 and 24. With regard to article 27, the words "the right to profess and practise their own religion" might be the link, but it was not very strong. With respect to the second sentence, the civil and political rights dimension was very significant. Freedom of expression and opinion formed the basis for article 25, as a necessary condition for the exercise of political rights. The right to vote ensured the existence of a democratic society in which other civil and political rights were guaranteed. In that sense, freedom of opinion and expression formed the basis for full enjoyment of civil and political rights but also of economic, social and cultural rights. Thus "economic and social rights" should not be excluded, but "freedom of expression as the basis for a democratic society" should be retained.

27. **Mr. Fathalla** said that he would prefer to leave paragraph 3 as it stood, but with the deletion of the reference to article 17, which had nothing to do with guaranteeing freedom of opinion or expression. He preferred to leave the wording "other human rights", without specifying economic and social rights.

28. **Mr. Thelin** said that there was a link between articles 17 and 18, dealing with privacy and belief.

29. **Mr. Neuman** said that he agreed with Mr. Thelin with respect to article 17. There were contradictory pressures to make the draft increasingly specific while at the same time keeping it concise and general. By replacing "economic and social rights" by "other human rights", the Committee had expressed itself inclusively if not precisely.

30. **Mr. Salvioli** said that a reference to economic, cultural, and social rights would go hand in hand with the trends in freedom of expression demonstrated by special bodies that had used those rights as a basis for the further enjoyment of all other human rights and would not go beyond the provisions of the Covenant.

31. **Mr. O'Flaherty** said that he agreed with Mr. Iwasawa on the need to retain the reference to the essential freedom of civil and political rights, as those rights were foundational. Referring to the second sentence, he suggested the following formula: "The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of civil and political rights, as well as of economic, social, and cultural rights."

32. **Mr. Rivas Posada** said that the proposal made by Mr. O'Flaherty would satisfy all the viewpoints expressed, albeit not completely. He saw no justification for including the reference to article 17, as it was not in the same category as freedom of opinion or freedom of religion, electoral freedom and other rights. While all the articles were interrelated, it was his view that the reference should be taken out, and that minimalist language was preferable to expansive language.

33. **Mr. Fathalla** supported by **Mr. Thelin**, said that he saw the proposal as too limited, because it involved eliminating the more general aspect, namely, human rights in general, and restricting it to two groups of rights, namely, civil and political rights and economic and social rights.

34. **Sir Nigel Rodley** said that he saw a problem with the words "as well as", because they could make "economic, social, and cultural rights" sound subsidiary or prior. He liked the idea of having "civil rights" in the text as a basis not only for civil and political rights but also for economic and cultural rights.

35. **Ms. Waterval** said that she supported leaving the wording as it stood as "other human rights" covered economic and cultural rights.

36. **Ms. Keller** said that she could go along with the rapporteur's proposal. She was in favour of including social and economic rights and deleting the reference to article 17.

37. **The Chairperson**, noting the need to keep the draft as concise as possible, said that she also preferred to leave paragraph 3 as drafted; "other human rights" would seem to include everything.

38. **Mr. O'Flaherty** said that there seemed to be general agreement to remove the reference to article 17 and there did not seem to be strong support for the idea of adding a reference to article 24. The first sentence would therefore remain unchanged, with the deletion of the reference to article 17.

39. **Ms. Chanet** said that much of article 17 related to freedom of expression, especially modern forms of expression, and therefore it would not be reasonable to delete the reference.

40. **The Chairperson** said that, in her opinion, the retention of the article 17 reference did not detract in any way from the paragraph.

41. **Sir Nigel Rodley** said that he agreed with Ms. Chanet that a connection did indeed exist, but the basic problem with article 17 was that it was a counterweight to, rather than a possessor of, article 19 rights.

42. **Mr. O'Flaherty** said that he saw no great harm in the deletion of the article 17 reference. Its deletion did not exclude "expression" from article 17, because the list was indicative rather than limitative.

43. **Mr. Iwasawa**, turning to the third sentence, said that there was a need to show that there was a link between freedom of expression and the right to vote. He therefore proposed adding at the end, "integral to the right of freedom of association and assembly and the exercise of the right to vote".

44. **Mr. O'Flaherty** said that it was his understanding that the article 17 reference would be removed from the first sentence, the second sentence would remain unchanged, and the words "the exercise of the right to vote" would be added to the end of the third sentence.

45. *Paragraph 3 was adopted as amended.*

Paragraph 4

46. **Mr. O'Flaherty** said that three States, namely, Japan, Canada, and Australia, had asked for the deletion of paragraph 3. He was opposed to that deletion because, in his view, it was based on straightforward practice deriving from general comments 24 and 29.

47. **Mr. Neuman** said that he was comfortable with paragraph 4. It had been asserted that paragraph 1 of article 19 was non-derogable, one of the major reasons being that a derogation could never be necessary, given the nature of the right to freedom of opinion. He was nevertheless concerned that the Committee might be engaging in expansive interpretations of the meaning of that right. In calling it a non-derogable right the Committee might be expanding it into fields beyond the area under discussion, namely, the right to hold opinions, which was the non-derogable right. It did not necessarily extend to other issues, such as, for example, the right never to disclose one's opinions. As long as the right was defined in such a way that the statements in paragraph 4 were true, however, he did not object to its inclusion.

48. **Mr. Flinterman** asked for clarification why, in the second line of paragraph 4, the words "would be incompatible" were used instead of "is incompatible", and why in the first sentence the words "and thus impermissible" had been added.

49. **Mr. O'Flaherty** said that that the words "would be" referred to the conditionality of whether such a reservation existed, not to the content or form of the reservation.

50. **Sir Nigel Rodley** said that the concerns of Japan, Canada, and Australia merited attention. He posed the case of a person who in the past had expressed opinions that were, for example, genocidal or racist, had never retracted those opinions, but was not continuing to express them. Questions might arise about such a person playing certain roles in society, and the person might therefore be denied access to certain types of employment. That situation could well fall within articles of the Covenant. The subject at issue there was restrictions, but the same principle might apply to derogations, particularly in an emergency threatening the life of the nation. Public perception of such persons performing certain roles while no longer explicitly expressing those opinions could be a problem for States.

51. **Mr. Iwasawa** said, in response to Mr. Flinterman, that the wording in the original text was, "the reservation was not permitted". To avoid discussion of the type that had surrounded article 24, the language "would be incompatible" had been chosen.

52. **Mr. Thelin** said he felt the paragraph should remain as it stood, with addition of the wording suggested by Mr. Flinterman.

53. **Mr. O'Flaherty** said that he found it clear that if there were to be such a reservation, it would be incompatible.

54. *Paragraph 4 was adopted as amended.*

Paragraph 5

55. **Mr. O'Flaherty** said that Japan would like paragraph 5 deleted, while the National Centre for Human Rights in Jordan would like it retained and strengthened by means of the addition of a phrase at the end of the sentence, which would then read, "..., a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant, and States should review any such reservations with a view to their withdrawal".

56. **Sir Nigel Rodley** said he was not in favour of the proposal. That was basically the Committee's recommendation to States most of the time in respect of most of their reservations, and he felt that the Committee did not need to be so specific. The addition did not strengthen the text.

57. **Ms. Chanet** said that she would like clarification on the need to refer, in paragraph 5, to other rights guaranteed under the Covenant.

58. **Mr. O'Flaherty**, supported by **Sir Nigel Rodley**, said that the reference to other rights guaranteed under the Covenant had been included in order to recall the infrastructural nature of the freedom of expression vis-à-vis other rights, as established in paragraph 3 of the draft general comment.

59. *Paragraph 5 was adopted.*

Paragraph 6

60. **Mr. O'Flaherty** said that Japan had suggested replacing the word "must" with the word "should" in

the last sentence of the paragraph. Canada had proposed adding the phrase "in a manner consistent with the Covenant" after the word "ensure", which, as the rapporteur, he understood to be an expression of concern regarding the application of the Covenant in the private sphere. Speaking in his capacity as an expert, he said that while he did not see a need for the proposed amendments, he was not opposed to either one.

61. **Mr. Iwasawa** said that he supported both proposed amendments.

62. **Sir Nigel Rodley** said that he was not in favour of replacing the word "must" with the word "should" in paragraph 6; he suggested changing the beginning of the last sentence of that paragraph to read "The obligation also involves States parties ensuring".

63. **Mr. Thelin** said that should the Committee decide to replace the word "must" with "should" in paragraph 6, it would have to make similar changes throughout the draft general comment for the sake of consistency. Moreover, the ensuring of such rights was a duty of States parties under the Covenant; he was therefore against the amendment proposed by Japan. He failed to see the value in the additional language proposed by Canada and was therefore also against that amendment.

64. **Mr. Neuman** said that he would like to be sure that the phrase "in so far as" in paragraph 6 meant "to the extent that" and not "because".

65. **Sir Nigel Rodley** suggested modifying the last sentence of the paragraph to read "The obligation also requires States parties to ensure", so that it would be understood as relating to the previous sentence, rather than as the introduction of an additional obligation.

66. **Mr. O'Flaherty** said that he understood "in so far as" to mean "to the extent that" in paragraph 6 and suggested replacing the former wording with the latter for clarity.

67. **The Chairperson** said she took it that the Committee wished to amend the last sentence of paragraph 6 to read "The obligation also requires States parties to ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities."

68. *It was so decided.*

69. *Paragraph 6, as amended, was adopted.*

Paragraph 7

70. **Mr. O'Flaherty** said that Australia had expressed concern that the word "enshrined" might convey a monist view and thus pose a problem for dualist States.

71. **Mr. Iwasawa** proposed replacing the word "enshrined" with the phrase "are given effect".

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

Paragraph 8

73. **Mr. O'Flaherty** said that Australia had suggested that the first sentence of paragraph 8 should reflect the Committee's recent decision regarding focused reports based on replies to lists of issues prior to reporting. Japan had proposed replacing the word "must" with the verb "should" in the last sentence, an amendment he himself supported, for the sake of consistency within the paragraph.

74. **Mr. Iwasawa**, referring to the suggestion by Australia, proposed replacing the phrase "in their periodic reports" with the phrase "in their initial report and, where applicable, subsequent periodic reports".

75. **Ms. Chanet** said that she had understood Australia to be referring to the new reporting procedure under which periodic reports would no longer be required. In that case, it seemed most appropriate to refer to reports, where applicable and where the Committee requested them.

76. **Ms. Keller** said that specific reference should not be made to focused reports in the first sentence of paragraph 8, as they related to a separate mechanism.

77. **Mr. Rivas Posada** said that while focused reports should be taken into account in the first sentence, the word "reports", specifically mentioned in article 40 of the Covenant, should not be eliminated.

78. **Mr. Fathalla** proposed replacing the words "in their periodic reports" with "in accordance with its procedure", the latter of which would be understood to refer to any reporting procedure of the Committee.

79. **Mr. Thelin** said it was important not to deviate from article 40 of the Covenant, which clearly referred to reports. He therefore proposed replacing the words "in their periodic reports" with the words "in their

reports within the obligation under article 40", without referring specifically to the various reporting procedures.

80. **Mr. O'Flaherty** suggested replacing the words "in their periodic reports" with the words "in their reports pursuant to article 40 of the Covenant".

81. *Paragraph 8 was adopted as amended.*

82. **Ms. Chanet** suggested that paragraphs 7 and 8 might be combined if the number of paragraphs in the final draft made it necessary to do so.

83. **The Chairperson** said she took it that the Committee wished to combine paragraphs 7 and 8.

84. *It was so decided.*

85. *The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.*

Paragraph 9

86. **Mr. O'Flaherty** said that the Norwegian Centre for Human Rights had suggested replacing the word "including" with the phrase "including but not limited to", a proposal he was in favour of applying throughout the draft general comment.

87. **Mr. Neuman** said that he would like clarification regarding the third sentence of the paragraph. Specifically, he would like to be sure that the reference to "discrimination" simply meant that any differential treatment had to be justified, rather than that there should be no differential treatment on the basis of opinion despite an asserted justification.

88. **Mr. O'Flaherty** said that an immediate solution to the concerns raised by Mr. Neuman was simply to delete the reference to discrimination. The beginning of the third sentence would thus read, "No person may be subjected to the impairment of any rights under the Covenant". Requiring someone to disclose his or her opinion did not necessarily impair that person's right so long as it was a legitimate action. Moreover "any rights under the Covenant" included the right to non-discrimination.

89. **Mr. Rivas Posada** said that he supported the suggestion by Mr. O'Flaherty. The reference to discrimination in the paragraph was indeed ambiguous and unnecessary.

90. **Mr. Iwasawa** said that he also supported that amendment. As for the suggestion by the Norwegian Centre for Human Rights, the word "including" was by definition not limiting; he therefore suggested leaving only the word "including" throughout the draft.

91. **Mr. Thelin** said he did not support that amendment for reasons of succinctness.

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

93. **Mr. O'Flaherty** said that both Australia and Poland had raised concerns regarding the wording of paragraph 10, since there could be occasions when it might be necessary to compel the disclosure of an opinion. Poland had said that the prohibition referred to therein should be without prejudice to measures undertaken for statistical research or other justified public purposes, a viewpoint which he did not find compelling. Australia had evoked a scenario wherein persons in certain professions might have a well-founded suspicion of imminent or current harm to a child or where there were requirements for medical practitioners to disclose any objection to providing a medical service to a patient. To him, that prefigured the possibility of policing conscientious objections to military service. Nevertheless, as rapporteur, his view was that the wording of paragraph 10 should not be changed because, in the case of the issues mentioned by Australia, it would be easy to distinguish between professional judgement and *forum internum*.

94. **The Chairperson**, speaking in her personal capacity, said that she was not convinced by the Australian argument, insofar as the example given concerned the disclosure of facts rather than opinions. She had not read Poland's objection to the word "coerced", but was nonetheless in favour of keeping that word.

95. **Mr. Neuman** said that in his view, there were some circumstances when compulsion of the disclosure of an opinion could be appropriate, such as when an expert witness refused to give an opinion related to a subject within his or her area of testimony. The word "opinion" was extremely broad and there were certain circumstances, involving subjects and regulatory concepts outside the realm of religious and political opinions, in which compelling someone to express an opinion might be appropriate. He also took issue with the logic of the sentence, which read "Since freedom to express one's opinion necessarily includes freedom not to express one's opinions, article 19, paragraph 1, prohibits any action to compel the disclosure of an opinion." Freedom to express one's opinion was not

absolute but rather subject to restriction under article 19, paragraph 2. That contradicted the prohibition on any action to restrict the freedom not to disclose one's opinion and it was not logical for a converse right to be more protected than the right from which it seemed to have been derived. The freedom to express or not to express one's opinion was covered under article 19, paragraph 2, subject to restriction under article 19, paragraph 3, and that freedom was not necessarily non-derogable, while in article 19, paragraph 1, it was. He was therefore concerned by the overly expansive interpretation of article 19, paragraph 1. The right in question did exist but would be more properly located in article 19, paragraph 2, rather than in article 19, paragraph 1, subject to restriction and possibly non-derogable.

96. **Mr. Iwasawa** said that he shared the concerns expressed. The wording of the last part of paragraph 10 should be more nuanced.

97. **Sir Nigel Rodley** said that the wording "coerced effort" lacked cogency. The Committee routinely asked States to shape opinion in matters of discrimination, for example, and it was presumably the element of coercion that was problematic. An example elucidating the meaning of coercion in that context would be welcome. He proposed that the beginning of the second sentence of paragraph 10 should be phrased: "Since freedom of opinion necessarily includes freedom not to express one's opinion". He noted that expert witnesses were free to refuse to testify, albeit at the risk of undermining their credibility. In his view, a better example of coercion would be a capital case in which persons who had been compelled to serve as jurors were then compelled to state their opinion on the death penalty.

98. **Mr. O'Flaherty** said that the first sentence of paragraph 10 had been quoted from a case involving brainwashing in prison. It could be reworded to read: "Any form of effort to coercively shape opinion is prohibited." He supported Sir Nigel Rodley's proposed rewording of the second sentence of paragraph 10.

99. **Ms. Chanet** said that the first sentence of paragraph 10 was useful in preventing the criminal prosecution of persons for their opinions and that its current wording should be retained. She was aware that the second sentence referred more to paragraph 2 than to paragraph 1 of article 19. In the example of the jury cited by Sir Nigel Rodley, article 19, paragraph 1, could not apply without the restrictions in paragraph 3.

100. **Mr. Rivas Posada** said that article 19, paragraph 1, referred exclusively to holding an opinion and not to the expression thereof. The example of a campaign to change prison inmates' opinions had nothing to do with the expression of their opinions but rather the changing of the opinions held by them. The question was whether the second sentence of paragraph 10, concerning the freedom not to express one's opinions, should be expressed in a less emphatic way.

101. **Mr. O'Flaherty** proposed eliminating the second part of the second sentence of paragraph 10 and adopting the following new wording: "Freedom to express one's opinion necessarily includes freedom not to express one's opinion."

102. **Mr. Iwasawa** suggested modifying Mr. O'Flaherty's proposed wording to read "Freedom of opinion necessarily includes freedom not to express one's opinion."

103. **Ms. Chanet** said that the wording of article 19, paragraph 1 ("Everyone shall have the right to hold opinions without interference") was valid both in the negative and the affirmative and there was therefore no need to speak of "freedom of expression". She proposed retaining the current wording, except that the rest of paragraph 10 of the draft general comment should be applied to article 19, paragraph 2.

104. **Mr. Neuman** proposed either accepting Mr. O'Flaherty's suggestion or moving the second sentence of paragraph 10 to the "Freedom of expression" section.

105. **Mr. Fathalla**, supported by **Mr. Thelin**, said that Mr. O'Flaherty's wording should be adopted because it was the clearest wording proposed thus far.

106. **Mr. O'Flaherty** said that the wording that had received majority support was "Freedom to express one's opinion necessarily includes freedom not to express one's opinion."

107. **Ms. Chanet** said that the expression of an opinion, referred to in article 19, paragraph 2, should not be confused with the fact of holding an opinion. She proposed the wording "Any form of effort to force someone to hold an opinion or not to hold an opinion is contrary to article 19, paragraph 1." Without such

language, individuals would be forced to express their opinions.

108. **Mr. O'Flaherty** said that the proposal was to retain the first sentence of paragraph 10 while widening its scope in order to address Ms. Chanet's concern. The proposed wording was "Any form of effort to coerce the holding, the not holding or the shaping of opinion is prohibited."

109. A non-governmental organization had raised the concern that paragraph 10 appeared to refer only to coercive action by the State. Citing the example of religious leaders, it had wondered about the responsibility of the State to ensure that non-State actors did not coerce. In view of that concern, he asked whether any Committee member wished to further modify the first sentence of paragraph 10.

110. **Mr. Thelin** said that, while that concern was important, the inclusion of wording about the responsibility of States parties to prevent coercion by third parties could lead to a counter-interpretation unless that wording were also included in other parts of the general comment. He proposed that the text should be adopted with the wording last proposed by the rapporteur.

111. **The Chairperson** noted that there was no support for amending paragraph 10 to take into account the responsibility of State parties to prevent coercion by third parties.

112. *Paragraph 10 was adopted, as amended.*

Paragraph 11

113. **Mr. O'Flaherty** said that there had been multiple requests to retain the reference to commercial advertising, although New Zealand had asked that it should be accorded a lower level of protection than other forms of expression. The proposed amendment would be to remove the square brackets from the words "and commercial advertising".

114. **Ms. Chanet** said that the square brackets should indeed be removed.

115. **Mr. Iwasawa** said that he agreed that the level of protection for commercial advertising could be lower than for other forms of expression.

116. **Sir Nigel Rodley** said that he shared the concern of New Zealand. Although he believed that the Committee had arrived at the right conclusion regarding the case of *Ballantyne et al. v. Canada*, involving the use of the English language in commercial advertising in Quebec, it had done so on the basis of a right to expression through commercial advertising that did not necessarily appear adequate to the issue at hand. The abuse of commercial advertising was a problem, especially when it metamorphosed into political advertising. He proposed slightly attenuating the right to commercial advertising by ending the third sentence of paragraph 11 with the words: "teaching and religious discourse", to be followed by a deliberately vague sentence that would read "It may also include commercial advertising."

117. **Mr. Neuman** said that using the decision in *Ballantyne* as a supporting citation in paragraph 11 was problematic insofar as that decision had explicitly stated that commercial advertising was judged by a standard no lower than that applying to other forms of speech. If the proportionality analysis conducted by the Committee under article 19, paragraph 3, were to involve different levels of protection for different kinds of speech, then the general comment should note that fact. He shared the view that commercial advertising should not be protected as strongly as any other form of speech. Citing *Ballantyne* as support, however, raised the expectation that commercial advertising was protected just as strongly. He wondered whether temporarily omitting the reference to commercial advertising would be advisable. Since the Committee's lists were inclusive, omitting commercial advertising would not deny the right to expression through that medium. Alternatively, the Committee could explain the standard to be applied to that form of expression, perhaps when it was addressing the proportionality standard at a later date. At the very least, it might be advisable to omit the *Ballantyne* citation in order to avoid endorsing the level of protection that that decision had accorded to commercial advertising.

118. **The Chairperson** said that if the Committee wished to accord a lower level of protection to commercial advertising, then deleting the *Ballantyne* citation might provide a solution. The Committee could also adopt the wording proposed by Sir Nigel Rodley, namely: ending the third sentence of paragraph 11 with the words: "teaching and religious discourse", to be followed by the sentence "It may also include commercial advertising", without square brackets.

119. **Mr. O'Flaherty** said that Japan had requested that canvassing should be removed from the list of

protected types of expression, commenting that some restrictions on canvassing were warranted in an electoral context. The list in paragraph 11 consisted only of typologies of expression, however, and all forms of expression could be limited pursuant to paragraph 3 of article 19. Consequently, he recommended that the term “canvassing” should be retained.

120. Further, an academic had suggested that the word “views” should be replaced by the word “expression” in the phrase “The scope of paragraph 2 embraces even views that may be regarded as deeply offensive”. A confidential commentator had proposed an amendment to the phrase that currently read: “although such expression may be restricted in accordance with the provisions of article 19, paragraph 3, and article 20”. The amended phrase would be placed in a separate sentence beginning with “Such expression may only be restricted in accordance with”.

121. A final amendment, suggested by a number of commentators, would be to include in the typology of the paragraph a reference to “expression regarding one’s sexual orientation and gender identity”. That proposal concerned an important human rights issue and should be thoroughly discussed.

The meeting rose at 6 p.m.