United Nations CCPR/C/SR.2788

International Covenant on Civil and Political Rights

Distr.: General
7 September 2011

Original: English

Human Rights Committee
101st session

Summary record of the 2788th meeting*
Held at Headquarters, New York, on Wednesday, 23 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

Contents

* No summary records were issued for the 2786th and 2787th meetings.

11-27614 (E)

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

General comments of the Committee (*continued*)

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

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

Paragraph 11 (*continued*)

2. **Mr. O'Flaherty**, speaking as rapporteur for the draft general comment on article 19, said that there was one outstanding issue concerning paragraph 11 of the draft general comment, namely the proposed inclusion of a reference to expression related to sexual orientation and gender identity.

3. **Sir Nigel Rodley** said that he was uncertain as to whether expression related to sexual orientation and gender identity had the same generic quality as the other forms of expression enumerated in paragraph 11. While it was undoubtedly a form of expression that merited protection, perhaps it was too specific to be included in that paragraph.

4. **Mr. Flinterman**, noting that citations of relevant cases or concluding observations had been provided for all the forms of expression listed in paragraph 11, asked the rapporteur whether a reference to sexual orientation had been mentioned in any of the Committee's concluding observations. If so, he would be in favour of including sexual orientation in that paragraph, together with a citation in the footnotes.

5. **Mr. O'Flaherty** said that he was not aware of any practice of the Committee in which gender identity had been addressed within the context of freedom of expression. Sexual orientation had generally arisen in the context of privacy, non-discrimination and freedom of association, assembly and movement, but he did not recall its being directly associated with freedom of expression in concluding observations. It would be more suitable to insert the proposed reference to "forms of dress and other manners of expression of sexual orientation and gender identity" in paragraph 12, which dealt with forms and means of expression.

6. **Mr. Flinterman** suggested that the first sentence of paragraph 11 should read: "Paragraph 2 requires guarantees of the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers." The current wording gave the impression that freedom of expression was restricted to three rights whereas the formulation in article 19, paragraph 2, was non-restrictive.

7. **Mr. Thelin** said that it was his understanding that the import of paragraph 11 was determined by the title of the section in which it appeared, namely, "Freedom of expression".

8. **Sir Nigel Rodley** proposed that the first sentence of paragraph 11 should begin with the phrase "Paragraph 2 requires States parties to guarantee".

9. **The Chairperson** said she took it that the Committee assented to Sir Nigel Rodley's proposal.

10. *It was so decided*.

11. **Mr. Neuman** said that the right to receive information, particularly voluntary communications, was extremely important and should be given more prominence in the general comment. He proposed that the second sentence of paragraph 11 should read: "This right extends to the expression and to the receipt of voluntary communication of every form of subjective idea." That right, as it applied to journalists, found its corollary in the right of readers to receive the expression of journalists. Moreover, the Committee might choose to specify that the recipients of information had the right to receive information from, for example, sources in other States and from writers who were no longer living.

12. **Ms. Chanet**, evoking the case of WikiLeaks, said that the term "voluntary" in Mr. Neuman's proposed wording would represent a serious restriction of the right to receive information. One should be able to receive all forms of information and any restrictions of that right should not be inserted into that part of the text. Later, when restrictions on freedom of information were addressed, the Committee could discuss information that was not provided voluntarily.

13. **Mr. Iwasawa** proposed that Mr. Neuman's suggested wording of the first sentence of paragraph 11 should be adopted, but that the word "subjective" should be deleted.

14. **The Chairperson** said she took it that the Committee accepted the wording proposed by Mr. Neuman, with the change suggested by Mr. Iwasawa.

15. *It was so decided*.

16. **Ms. Motoc** said that she approved of Mr. Neuman's proposed wording and asked whether in the Committee's practice, there had been actual cases involving access to information. If not, she wondered whether wording that was not supported by the Committee's practice or precedent should be included under the "Access to information" heading.

17. **Mr. O'Flaherty** said that it was very important to distinguish between the issue of access to information and the right to receive information freely. He was not opposed to Mr. Neuman's proposed modification, which reinforced article 19 while making it more comprehensible. The right of access to information, as described in paragraphs 18 et seqq., was not determined by the "seeking and receiving" of information but rather was derived primarily from suggested paragraph 2 bis, which had to do with the context in which freedom of expression promoted accountability and transparency.

18. **Mr. Neuman** cited an example of a case involving the receipt of communications: in *Mavlonov et al. v. Uzbekistan*, the banning of a Tajik-language newspaper had been found to be a violation of the rights of both the producers and the readers of the newspaper.

19. If it was viewed as being restrictive, the term "voluntary" could be removed from the wording he had suggested for the second sentence of paragraph 11. The resulting phrase would be somewhat vague but would not preclude the guarantee of the rights in question.

20. The beginning of the second sentence of paragraph 11 could be amended to read: "This right includes the expression and the receipt of communication of every form of idea".

21. **Sir Nigel Rodley** said that, while he did consent to the proposed amendment, he wished to note that in the *Mavlonov* case, some members of the Committee had considered that suppressing a newspaper did not automatically violate the rights of all its potential readers under article 19.

22. *Paragraph 11, as amended, was adopted*.

Paragraph 12

23. **Mr. O'Flaherty** said that he had received a suggestion, which he considered reasonable, to include sign language in paragraph 12. He proposed that the Committee should amend the beginning of the second sentence of paragraph 12 to read: "Such forms include, but are not limited to, spoken, written and signed language".

24. *It was so decided*.

25. Concerning the question of sexual orientation and gender identity, he recalled that, in the Committee's first reading, dress had been given as an example of a form of expression. That example was not limited to cases involving sexual orientation or gender identity. Although the language relating to dress had been removed during the first reading, he and a number of Committee members had stated that the list in paragraph 12 was open-ended and that dress could be a form of expression in a given set of circumstances. It had been suggested that the following language should be inserted into the paragraph: "dress, as well as forms of expression of sexual orientation and gender identity".

26. **Mr. Iwasawa** said that, in view of the emergence of new communication technologies, the word "publication" in the first sentence should be replaced by "dissemination". For the sake of consistency, the words "but are not limited to" in the second sentence should be deleted. Lastly, he noted that some States parties had expressed concern regarding the concluding sentence of paragraph 12.

27. **Mr. Fathalla** agreed that the word "dissemination" should replace the word "publication". He did not see how the issue of sexual orientation was related to paragraph 12, which addressed the forms, rather than the subjects, of expression.

28. **Mr. Thelin** said that he, too, felt it was unsuitable to introduce a matter of substance in a paragraph devoted to form. He proposed that the reference suggested by the rapporteur should be limited to dress, which was understood to entail both religious manifestations and sexual orientation.

29. **Ms. Chanet** said that she agreed with Mr. Fathalla and Mr. Thelin, adding that it was very reductive and counterproductive to limit sexual orientation to certain forms of expression. The Covenant had no provisions concerning dress, while general comment No. 28 only discussed dress in relation to women. If language were to be introduced, it would need to apply to both genders.

30. **Mr. O'Flaherty** said that in his view as well, the only mention of dress should occur in paragraph 12. He noted, however, that in his proposed language, the phrase "expression of sexual orientation and gender identity" was preceded by the words "forms of" and therefore referred to a mode of expression. Notwithstanding, if the members of the Committee found that wording to be inadequate or misleading, he had no problem with limiting the reference to dress, even though gender identity clearly encompassed much more than forms of dress alone.

31. **The Chairperson** said she took it that the Committee wished to include a reference to dress only.

32. *It was so decided.*

33. **Mr. O'Flaherty** said that it had been suggested that the use of the word "media" in the penultimate sentence was misleading because it was the plural of "medium" and therefore did not refer exclusively to the mass media. He was in favour of replacing that word with "modes of expression".

34. **The Chairperson** said she took it that the Committee wished to accept that change.

35. *It was so decided.*

36. **Mr. O'Flaherty** said that multiple commentators had raised concerns about the final sentence of paragraph 12. Some had said that its meaning was unclear. Others had questioned the jurisprudence on which it was based, namely, *Zundel v. Canada*. Still others had said that, taken out of context, it could encourage location-specific limitations. Moreover, a commentator had discovered that the wrong *Zundel* case had been referenced in the footnote. He proposed that the sentence should be deleted.

37. **Sir Nigel Rodley** said that, while he agreed to the proposed deletion, the Committee's findings in the original *Zundel* case had been entirely appropriate. That case had involved a denial of a right to hold a racist meeting in the legislature of the State party in question, Canada. The problem with the final sentence of paragraph 12 was that some States parties might use it as a justification to limit expression to locations where few people would hear it.

38. *Paragraph 12, as amended, was adopted.*

Paragraph 12 bis

39. **Mr. O'Flaherty** said that a text on the subject of new media had been proposed by Professor R. Weber of the University of Zurich for inclusion as a new paragraph, which would potentially be numbered as "12 bis" and read: "Developments in information and communications technologies have substantially changed communication practices. The Internet and mobile phone technologies are driving the development of a global network for the sharing of ideas and information, such as in the form of social media. As a consequence, global information exchange increasingly occurs without intervention by the traditional mass media."

40. **Mr. Thelin** approved of the proposed paragraph, but suggested amending its second sentence to read: "Modern information dissemination systems, such as websites, blogs or any other Internet-based electronic media, are driving the development of a global network for the sharing of ideas and information." He also proposed that, if the suggested paragraph was adopted, paragraph 45 should be brought into alignment with it.

41. **Sir Nigel Rodley** said that the utility of the proposed text was unclear because it was not normative in terms of freedom of expression and merely described technological evolutions.

42. **Mr. Iwasawa**, supported by **Mr. Fathalla**, proposed that the modes of expression enumerated in the suggested paragraph should be included in the penultimate sentence of paragraph 12 rather than a separate paragraph.

43. **Mr. O'Flaherty** noted that he had removed a clarifying sentence ("Thereby freedom of expression is gaining a much more individualistic nature, since information exchanges no longer require traditional intermediaries in the mass media [...].") which Professor R. Weber had included at the end of the suggested paragraph. Perhaps elements of that sentence could be reintroduced. It might also be possible to integrate the text of the suggested paragraph into the penultimate sentence of paragraph 12.

44. **The Chairperson** noted that the Committee agreed to the proposed integration of the two paragraphs and proposed that Mr. Thelin should draft and propose an amendment to paragraph 12.

45. **Mr. Thelin** said that he would not draft such an amendment. The matter required further reflection and he still hoped to include the proposed text in a stand-alone paragraph.

46. **Mr. Neuman** wondered whether the contents of the suggested new paragraph should be moved to the end of the section entitled “Freedom of expression and the media”.

47. **Mr. O’Flaherty** said that many elements of the suggested new paragraph could indeed be integrated into the section on the media.

48. **The Chairperson** said she took it that all the Committee members wished to defer consideration of the suggested new paragraph until the reading of the section entitled “Freedom of expression and the media”.

49. *It was so decided*.

Paragraph 13

50. **Mr. O’Flaherty** said that a suggestion had been made to include the wording “including sign language” following the words “one’s own choice”.

51. **Sir Nigel Rodley** said that he was not aware of specific examples of restrictions being placed on the use of sign language and saw no reason to include the proposed addition in either the current or the preceding paragraphs.

52. **Mr. O’Flaherty** said that the inclusion of a reference to sign language was useful in paragraph 12, which set out a typology of forms of expression, but its addition in paragraph 13 was not necessary.

53. **Ms. Motoc** said that, in practice, the Committee had also recognized the right of minorities to use their own language outside of their community. She proposed deleting the words “in community with other members of their group”, even though the phrase was taken directly from article 27.

54. **Mr. Fathalla** said that paragraph 13 should remain unchanged. While members of a group had the right to use their own language to communicate among themselves, their words would still need to be interpreted into one of the official languages of the United Nations if, for example, they appeared before the Committee.

55. **Mr. Neuman** said that the proposed deletion would undermine the latitude given to States to insist on the use of their official languages in public life, as set out in the first part of the paragraph.

56. **Mr. O’Flaherty** said that paragraph 13 was not essential, especially given that the second half of it contained a reference to another article of the Covenant, and could be removed without affecting the thrust of the general comment.

57. *Paragraph 13 was deleted*.

Paragraph 14

58. **Mr. O’Flaherty** said that a suggestion had been received to add “including new media” following the words “other media” in the first sentence.

59. **Mr. Fathalla** said that the proposed addition was redundant.

60. **The Chairperson** said she took it that the Committee did not wish to make the addition.

61. *It was so decided*.

62. **Mr. O’Flaherty** said that it had been pointed out that it was incorrect in English to say that the media had rights. “Media actors” had been proposed to replace the word “media” in the third sentence.

63. **Sir Nigel Rodley** proposed changing the third sentence to read: “The Covenant embraces the right to have the media receive information on the basis of which they can carry out their function”.

64. **The Chairperson** said she took it that the Committee wished to accept the suggestion.

65. *It was so decided*.

66. **Mr. O’Flaherty** said that Professor Rolf H. Weber of the University of Zurich had suggested a revision of the fifth sentence, which read: “This implies a free press and other media as well as the free and unrestricted access by individuals to the Internet, which enables information intermediaries and members of civil society to comment on public issues without censorship or restraint and to inform public opinion”.

67. **Sir Nigel Rodley** said that the phrase “members of civil society” was redundant, since the sentence already concerned civil society. Drafting separate sentences on the media, through which people had the right to receive information, and the people, who had the right to receive the information, would eliminate confusion.

68. **Mr. Thelin** said that the most important element of paragraph 14 was that States parties should not restrict access to new media. The addition proposed by Professor Weber might be more appropriately placed in paragraph 15, where it would be preceded by the

paragraph submitted earlier as 12 bis. That would underscore the modern aspect of communication and the development that drove it, at which point States parties could be reminded not to inhibit that development.

69. **Mr. O'Flaherty** said that the section on the media was out of date and an addition was needed regardless of where it was made. The reference to members of civil society in the proposed addition referred to the role of human rights defenders in monitoring and disseminating information on human rights abuses.

70. He did not support the addition of new text to paragraph 15 and would instead propose a new paragraph that would convey the core values of the various ideas put forward regarding the new media. The new paragraph would be included in the section on the media to be discussed at the following meeting.

71. **The Chairperson** said she took it that the Committee did not wish to include the proposed addition to the paragraph.

72. *It was so decided*.

73. **Mr. O'Flaherty** said that Greenpeace had proposed the following new sentence to be added at the end of paragraph 14: "Where the activities of NGOs contribute to inform public debate on matters of public interest, the protections they and their members enjoy should be analogous to those of the media and journalists".

74. **Mr. Thelin** said that he was of the view that the privileges being discussed concerned everyone and was uncomfortable with privilege being given to journalists and, by extension, to human rights defenders. The Committee should not entrench the notion that journalists had special privileges with regard to the freedom of expression.

75. **Mr. Neuman** said that the definition of media had been broadened earlier in the discussion to include NGOs and their communications. He was hesitant to accept the proposed addition on granting special privileges, such as the non-disclosure of sources to journalists, because NGOs might feel entitled to claim the same privileges if the Committee equated them with journalists.

76. **Mr. Fathalla** agreed and said that the proposed text focused on protection whereas the subject of paragraph 14 was the freedom of expression.

77. **The Chairperson** said she took it that the Committee did not wish to make the addition proposed by Greenpeace.

78. *It was so decided*.

79. **Mr. Neuman**, referring to the final sentence of the paragraph, said that the right to receive information was directly guaranteed by article 19 of the Covenant, and was not "a corollary". He proposed the following new wording for the sentence: "The public also has a corresponding right to receive information imparted by the media".

80. **The Chairperson** said she took it that the Committee wished to accept Mr. Neuman's suggestion.

81. *It was so decided*.

82. **Mr. Iwasawa** said that the fourth and fifth sentences of paragraph 14 were taken from paragraph 25 of general comment No. 25 and appeared again in paragraph 21, and that it might be more appropriate to include those two sentences in paragraph 21 on political rights, given that general comment No. 25 dealt with article 25 of the Covenant on participation in public affairs and the right to vote.

83. **The Chairperson** said that the Committee would defer further consideration of the issue until its discussion of paragraph 21.

84. *Paragraph 14, as amended, was adopted, subject to agreed redrafting*.

Paragraph 15

85. **Mr. O'Flaherty** said that United Nations commentators wished to replace the word "encourage" with "guarantee". In addition, Japan had asked to replace "must" with "should" and Germany had requested the deletion of the final sentence of the paragraph, saying that there was no basis for it in the Covenant. In the view of another commentator, the first sentence lacked justification and the phrase "since this is a means to protect the rights of media consumers to receive a range of information and ideas" should be inserted at the end. His own preference would be to retain the verb "encourage".

86. **Ms. Motoc** said that "encourage" would be consistent with the Committee's past usage in similar contexts. With regard to the second sentence, she proposed replacing "minority groups" with "ethnic, religious and linguistic minorities", the language used in article 27 of the Covenant. Access to media was a fundamental right of those minority groups and there was a strong legal basis for including that wording.

87. **Sir Nigel Rodley** said that the proposed addition should be placed at the beginning of the first sentence instead of the end. He was not in favour of the proposal to delete the final sentence of the paragraph but remained open to replacing "must" with "should" and expressed support for the suggestion made by Ms. Motoc.

88. **Mr. Fathalla** said that a government might not always be in a position to guarantee an independent and diverse media, while still being able to encourage it, and suggested including both verbs.

89. **Mr. Iwasawa** said that he would prefer to keep "encourage".

90. The choice of "should", "must", "are obliged to", and "are under the obligation to" in respect of the obligations of States parties seemed to depend on context, and their use had varied greatly in previous general comments of the Committee. In concluding observations, in contrast, the word "should" was always used. Actions flowed from the obligations established in the Covenant, and States parties had a legal obligation to perform them, whereas the concluding observations contained recommendations only. It seemed more appropriate to use "should" rather than "must" in paragraph 15.

91. **Mr. Bouzid** said that he preferred "encourage" in paragraph 15 and agreed with Ms. Motoc that some mention needed to be made of article 27 in order for the Committee to understand what was meant by "minority groups".

92. **Mr. Neuman** expressed uncertainty about the meaning of the second sentence, and specifically, the meaning of the term "the media". Did it refer to access to the media in the aggregate, or to access to particular media organizations and means? Was the message that minority groups ought to have some organ for self-expression in diverse media or that a certain amount of air time should be set aside for them on public or private stations? He did not understand what was at issue in that sentence because it was ambiguous.

93. **Mr. O'Flaherty** suggested that the final sentence should begin with "In this regard, they must also take account of the right of ethnic, religious, and linguistic minorities to ...," in order to marry it to the preceding sentence as a reminder that entitlement to that right included minorities.

94. **Mr. Neuman** said that the question of whether the State was obligated, or was merely encouraged to give those groups access to the media might depend on whether "encouraging" or "guaranteeing" was being used in connection with protection. If the idea was to strengthen their rights, the words "should" and "encourage" would be less problematic. However, additions to the sentence did not answer the question of what was meant by the phrase "the media".

95. **Ms. Keller** asked if "encourage" should be replaced by "guarantee", or if "guarantee" should be added, as proposed by Mr. Fathalla. There was no legal basis in article 19 for obliging States to guarantee media diversity. In many countries, concentration of media was driven by economic forces, and she did not see that the State had to guarantee diversity of media.

96. **Ms. Motoc** questioned the use of the word "consumers", which she understood to imply purchase of merchandise provided by the media. Since, in many cases, access to the media was free, "consumers" was an incorrect term; moreover, it was not a human rights term. Use of a different term might therefore be necessary.

97. **Mr. O'Flaherty** noted that the language had originated with suggestions from information lawyers. He agreed that it had an unhelpfully commercial ring to it, and suggested "media users" instead.

98. Noting the Chairperson's request that he distinguish among the numerous proposals, he said that there seemed to be no objection to Sir Nigel Rodley's proposed changes to the first sentence. He saw no reason not to accept Mr. Iwasawa's proposal concerning "should". He sensed that the prevailing sentiment was to keep the word "encourage" and avoid the word "guarantee". Either the final sentence should be deleted, or an effort should be made to integrate it into — or append it to — the first sentence in a way that avoided the confusions and ambiguities noted by Mr. Neuman. He suggested, "As a means of protecting

the rights of media users to receive a range of information and ideas, the States parties should take care to encourage an independent and diverse media, including for the benefit of ethnic, linguistic, and religious minorities." Such wording would capture the minority issue using the language of article 27 as proposed by Ms. Motoc, while avoiding the ambiguities referred to by Mr. Neuman.

99. **Mr. Fathalla** said that the concept of "without interference" set out in article 19, paragraph 1, had more to do with guaranteeing than encouraging, because the absence of interference constituted a guarantee.

100. **Ms. Keller** said that she disagreed with Mr. Fathalla. The concept of guaranteeing media diversity was not embodied in article 19.

101. **Mr. Thelin** said that imposing an obligation or guarantee on the State would be going too far, and that "encourage" was enough.

102. **Mr. Iwasawa** said that after hearing the discussion, he was becoming more inclined to suggest that the second sentence should be deleted.

103. **Sir Nigel Rodley** asked about the linkage between the beginning and end of the sentence suggested by Mr. O'Flaherty. He preferred either "should take care to encourage and guarantee" or "must take care to encourage", because he found "should encourage" alone too weak.

104. **Mr. O'Flaherty** proposed the following version of paragraph 15: "States parties should, as a means to protect the rights of media users, including members of ethnic, religious, or linguistic minorities, to receive a range of information and ideas, take particular care to encourage an independent and diverse media."

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

Paragraph 16

106. **Mr. O'Flaherty** said that paragraph 16 had triggered numerous reactions. Ireland and four national human rights institutions had asked that it be retained, thereby raising the question of its survival or elimination. An unnamed United Nations source had asked that it be not only retained but also strengthened by adding a sentence that read: "Bodies established to implement such laws must be independent and free from any political, commercial, or other unwarranted interferences in a manner that is neither arbitrary nor discriminatory and includes adequate safeguards against abuse."

107. **The Chairperson** asked if comments had been received from other States parties.

108. **Mr. O'Flaherty** said that, as far as he knew, no States parties other than Ireland had asked for paragraph 16 to be retained.

109. **The Chairperson** said she believed that Sudan was also interested in retaining the paragraph.

110. **Mr. Rivas Posada** enquired about the justification for limiting paragraph 16 to public broadcasters and leaving out independent broadcasting media. He did not understand that limitation, given that the Committee had always spoken about the media in general.

111. **Ms. Motoc** said that paragraph 16 was a fundamental paragraph and should be retained as originally drafted by the rapporteur.

112. **Mr. Thelin** said that he was not in favour of retaining paragraph 16. The concept of independent media could encourage the existence of State-controlled media operating under the guise of independence, because the media market was so diverse, and the preceding paragraph encouraged even more diversity. In a free market and a democratic society, media could develop in different ways, and paragraph 16 would not dovetail with the paragraph to be drafted on the newest forms of the media. Apart from that, the attempt by a United Nations body to maintain secrecy of its submission was surprising, puzzling, and extraordinary.

113. **Mr. O'Flaherty** pointed out that the authors were identified in the document, which the Committee members had before them. The authors had asked merely that the document not be disclosed outside the Committee.

114. **Ms. Chanet** agreed with Mr. Thelin that setting out detailed instructions on how to achieve such independence was too restrictive and could have the opposite effect. However, she was not suggesting deletion of the entire paragraph, as she thought that States parties had a responsibility under the Covenant to guarantee the independence of the press.

115. **Mr. Bouzid** concurred. While paragraph 15 was about "encouraging" independence without indicating

ways of doing so, paragraph 16 set out actions that guaranteed the independence of the media. The second part was therefore unnecessary.

116. **Mr. Neuman** noted that while paragraph 15 addressed the issue of an independent and diverse media, paragraph 16 was about public broadcasting, not about independence of the press or the media in general, and described a model of how State-owned broadcasting should be structured. The additions suggested by the anonymous United Nations body addressed the question of independence as it pertained to both private and government stations. It was a complex problem, and to specify details would be to treat it in too rigid a manner. He wondered what benefits paragraph 16 added to the previously stated principle of independence of the media, other than to impose a single model based on the operation of State-owned broadcasting in certain countries.

117. **Sir Nigel Rodley** said that he would be amenable to the elimination of paragraph 16 were it not for the fact that paragraph 15 was hortatory and expressive of the idea of "should", not "must". Under those circumstances, deleting paragraph 16 would amount to legitimizing State monopoly control of public broadcasting systems.

118. **Mr. Rivas Posada** reiterated his earlier question on why the paragraph focused so narrowly on radio broadcasting. He wondered if the omission of other public broadcasting services, such as television, had been intentional.

119. **The Chairperson** noted that it could be a matter of translation, since the term in the English version was "public broadcasting", not "radio broadcasting".

120. **Mr. Rivas Posada** expressed his appreciation for the clarification, and noted that the Spanish version used the term *radiodifusión*, which meant "radio broadcasting". That was a translation problem that limited the scope covered by the paragraph.

121. **Mr. O'Flaherty** said that paragraph 15 was originally about encouraging diverse media, and that it could not go further because it addressed both public and private media. Paragraph 16 spoke to the issue of government-controlled media, where such encouragement was inappropriate. The Committee had repeatedly encountered situations, in all regions of the world, where the media were misused as a government mouthpiece. Concerning the second paragraph, "may include" was the weakest possible language, and showed that no particular model was being imposed. Commentators from various regions had asked that it be retained. Given the extent of the controversy, it might be wise to retain paragraph 16 without the additional language, which just added detail.

122. **The Chairperson** said that given the situation and the existence of government-controlled media in so many countries, the paragraph should be retained.

123. **Mr. Thelin** said that it would be preferable to retain only the first, more substantive, sentence in paragraph 16.

124. **Sir Nigel Rodley** said that he supported the view that the second sentence in paragraph 16 was not peremptory, but rather aimed to help States parties to ensure the independence of the media. He therefore suggested that the paragraph, as a whole, should be retained.

125. **Ms. Chanet** expressed concern that the second sentence in paragraph 16 could be interpreted as encouraging State control of the media. Moreover, absolute directives were to be avoided, as they were not applicable in every State. She was therefore in favour of retaining the first sentence of the paragraph as drafted and reformulating the second sentence.

126. **Ms. Motoc** said that she supported the proposal to retain a revised version of the second sentence of paragraph 16. Furthermore, reference should be made to all types of media, not just public broadcasting services. It was important to emphasize that States should not have monopoly control over media.

127. **Mr. Thelin** said that he continued to be concerned that the Committee was giving guidance on how States parties might ensure the independence of public broadcasting services, given its lack of jurisprudence in the matter. He was therefore in favour of deleting the second sentence of paragraph 16. The first sentence of the paragraph, furthermore, should be strengthened by replacing the word "should" with "must" and should be appended to the end of paragraph 15.

128. **Mr. O'Flaherty**, while regretting that there was not sufficient support from Committee members to retain the second sentence of paragraph 16, said that the proposal by Mr. Thelin should be acceptable to all. Furthermore, the words "public broadcasting" should

be replaced with the words “public media” to broaden the paragraph’s scope of application.

129. **Sir Nigel Rodley** said that if the second sentence of paragraph 16 was to be deleted, the first sentence should be strengthened as suggested by Mr. Thelin.

130. **Mr. Rivas Posada** said that while he was not opposed to merging paragraphs 15 and 16, a distinction must be made between public and private media, not least because it was the reference to public media in the concluding observations on the Republic of Moldova that justified the footnote to the paragraph. He could also agree to deleting the reference to specific laws; however, the paragraph must state clearly that public media must be independent, as well as regulated and provided with funding with a view to ensuring that independence.

131. **Mr. Neuman** said that the issue of public broadcasting, as opposed to public media in general, raised particular problems. Governments owned a variety of means with which to communicate with citizens, including websites and publications. The draft general comment should not be understood to mean that independent editors must be hired to manage State-owned printing offices. Lastly, concerns on State monopoly control over media were dealt with specifically in paragraph 42 of the draft general comment and therefore did not need to be addressed in the paragraph currently under consideration.

132. **Mr. O’Flaherty** supported the statement made by Mr. Neuman and withdrew his suggestion to replace the words “public broadcasting” with the words “public media”.

133. **The Chairperson**, speaking in her capacity as an expert, said that she supported the proposal by Mr. Rivas Posada.

134. **Mr. O’Flaherty** suggested that paragraph 16 should be deleted and that two new sentences should be inserted at the end of paragraph 15. Those sentences would read “States parties must ensure that public broadcasting services operate in an independent manner. In this regard, they must guarantee the independence and editorial freedom of these services, and the provision of funding to them in a manner that does not undermine independence.”

135. **The Chairperson** said she took it that the Committee wished to make the changes to paragraphs 15 and 16 as proposed by Mr. O’Flaherty.

136. *It was so decided*.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

Paragraph 17

137. *Paragraph 17 was adopted*.

Paragraphs 18 to 20

138. **Mr. O’Flaherty** said that Germany and Norway had requested the deletion of the entire section, comprising paragraphs 18 to 20. One non-governmental organization, entitled Article 19, had suggested replacing the title of the section — currently “Access to information” — by “Right to information”, which he agreed was a more descriptively accurate title.

139. **The Chairperson** suggested that the Committee should first decide whether or not to retain the section comprising paragraphs 18 to 20.

140. **Mr. Fathalla** said that he was in favour of retaining the section. He suggested changing the title to “Right of access to information” to reflect the wording used in the first sentence of paragraph 18.

141. **Mr. Flinterman** said that he was also in favour of retaining the section, given that the right of access to information was crucial to such freedoms as freedom of expression.

142. **Sir Nigel Rodley** said he, too, would favour retaining the section, as access to information was indispensable to formulating an opinion, and therefore to freedom of opinion.

143. **Mr. Neuman** said that while he was not opposed to retaining the section, he did have concerns as to its length and complexity, especially given the Committee’s meagre jurisprudence in the area of access to information. He also wondered whether some of the concerns he had expressed previously in respect of the appropriate limitations on freedom of expression were better addressed in the current section or in a later section of the general comment. If access to information was defined as an element of freedom of expression, he would like to know if every sentence in which freedom of expression appeared necessarily included the right of access to information or whether there were some such sentences that were not meant to be applicable to that right.

144. **Mr. O'Flaherty** said that the draft general comment was split into three parts: the first part attempted to detail the rights contained in article 19, the second analysed limitations on those rights, and the third part described specific scenarios involving those rights and limitations.

145. **The Chairperson** said she took it that the Committee wished to retain the section currently entitled "Access to information" and to change the title to "Right of access to information".

146. *It was so decided*.

147. **Mr. O'Flaherty**, referring specifically to paragraph 18, said that Canada had suggested that the phrase "subject to the provisions of article 19, paragraph 3" should be inserted at the end of the first sentence.

148. **Mr. Iwasawa** said that he would like to support the proposal by Canada in order to allay the State party's concerns.

149. **Mr. Fathalla** said that he was opposed to the proposed amendment, as the draft general comment already contained an entire section on the application of article 19, paragraph 3.

150. **Mr. Thelin**, supported by **Mr. O'Flaherty** and **Mr. Rivas Posada**, said that he did not see any harm in adopting the proposed amendment, especially since there were similar references to article 19, paragraph 3, in earlier sections of the draft general comment.

151. **Sir Nigel Rodley** also supported adoption of the proposed amendment. In addition, he suggested that the Secretariat should in future group comments according to paragraph, rather than according to organization, to facilitate the Committee's work. Lastly, it would be helpful if the rapporteur could state all relevant proposals regarding paragraph 18 to give the Committee a more comprehensive view of the paragraph and related concerns.

152. **Mr. O'Flaherty** said that the only other relevant proposal, which took account of numerous comments submitted, was to replace the words "include all levels of State bodies and organs, including the judiciary" in the final sentence of paragraph 18 with the words "all State institutions, including parliamentary bodies". The rationale given was that without a reference to parliamentary bodies, they might be overlooked and that the phrase "all State institutions" was more eloquent than the original and at the same time would be understood to embrace the judiciary.

153. **Mr. Thelin**, recalling that reference had been made to "all levels" of government to account for the distinction that existed in some countries between local, regional and national bodies, said that if that reference were deleted, the sentence might be used to restrict access for local administrations. For that and other reasons, he was opposed to the proposed amendment to the final sentence of the paragraph.

154. **Mr. Neuman** said that the inclusion of the word "all" before the word "records" in the second sentence of paragraph 18 merited careful thought, as the Committee's prior work did not provide a broad basis for concluding that the public had an interest in accessing all records produced by any government body. Many executive bodies deliberated in closed meetings and the records of such meetings should not necessarily be accessible to the public as a matter of respect for the rights of others or national security. Furthermore, freedom of information acts in many States had a variety of exceptions for internally held government information, to which limitations under article 19, paragraph 3, did not necessarily apply.

155. **Mr. Iwasawa** suggested that a reference to "all government institutions", rather than "all State institutions", might satisfy Mr. Thelin's concerns regarding the various levels of government in some countries. Furthermore, while he would be willing to accept a reference to parliamentary bodies, he was opposed to deleting the reference to the judiciary, since restrictions in conformity with article 19, paragraph 3, applied differently to the judiciary and other government institutions.

156. **The Chairperson** said she took it that the Committee wished to leave paragraph 18 in abeyance for the time being.

157. *It was so decided*.

The meeting rose at 6 p.m.