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Summary record of the 2790th meeting*
Held at Headquarters, New York, on Thursday, 24 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

Contents

* No summary record was issued for the 2789th meeting.

11-30818 (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 16 bis

2. **The Chairperson** recalled that at the Committee's 2788th meeting, the discussion of a new paragraph on new media and technological advances had been deferred pending a proposal from the rapporteur.

3. **Mr. O'Flaherty**, speaking as rapporteur for the draft general comment on article 19, said that a revised paragraph 16 bis had been drafted for inclusion in the section entitled "Freedom of expression and the media". The new paragraph, which incorporated a drafting change proposed by Mr. Thelin, would read: "States parties should take account of the extent to which developments in information and communication technologies, such as Internet and mobile phone-based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto".

4. **The Chairperson** said she took it that the Committee wished to adopt the new paragraph 16 bis.

5. *It was so decided.*

6. *A new paragraph 16 bis was adopted*.

Paragraph 18 (*continued*)

7. **Mr. O'Flaherty**, recalling the Committee's discussion of paragraph 18 at its 2788th meeting, suggested that it should adopt the proposal by Canada to insert the phrase "subject to the provisions of article 19, paragraph 3" at the end of the first sentence, and that the third sentence should stand as originally drafted. As for the reference to "all records" in the second sentence, it seemed clear that any restriction on access to information was subject to article 19, paragraph 3. An appropriate level of protection could thus be determined for public information, just as for commercial and other types of speech, without it being necessary to remove any category of information from the purview of article 19, paragraph 3. Nonetheless, additional language could be introduced in the section on the application of the proportionality test in order to make that even more explicit. He would be in favour of retaining the word "all" in the second sentence of paragraph 18.

8. **Sir Nigel Rodley** said that the decision to retain or delete the word "all" in the second sentence depended in part on whether the word "general" in the first sentence meant "comprehensive". The Committee would not be well advised to adopt a general comment on the basis of very limited practice, in effect calling for an all-embracing freedom of information act, subject to whatever restrictions might legitimately be introduced on the basis of article 19, paragraph 3. Governments had a right to a certain amount of internal information, for instance, with regard to their decision-making processes; that information was not necessarily covered by the clawback clauses in article 19, paragraph 3, which were relatively narrow in scope. He would therefore be in favour of retaining the word "general" if it was not comprehensive.

9. **Ms. Chanet** said that she was opposed to the amendment proposed by Canada, as it would require making similar changes throughout the document. As for the phrase "all records", the addition or subtraction of the word "all" made no difference in the French version of the draft general comment. Regarding the third sentence, she said that the phrase "public bodies" was surely understood to comprise all levels of government, including the judiciary; in that connection, she referred to the Committee's general comment No. 13, which covered the right to a fair and public hearing by an independent court. It was not necessary to include the phrase "including the judiciary" in the third sentence and any further explanation would be better provided under the section on limitations.

10. **Mr. Neuman** suggested deleting the word "general" and inserting the phrase "of public interest" after the word "information", in order to address the concerns regarding the scope of the first sentence.

11. **Mr. Thelin** said that working documents such as those used by Governments to reach decisions internally did not, in his view, qualify as "records"; on

that understanding, he would prefer to retain the word "all". He furthermore disagreed with the suggestion to add the phrase "of public interest" after the word "information" in the first sentence, as it gave Governments too much power in deciding whether or not to share information publicly. Lastly, he suggested changing the third sentence to read "Public bodies include all levels and branches of government and with regard to the carrying out of public functions, it may include other bodies."

12. **Mr. Iwasawa**, recalling that States parties had expressed concerns about paragraph 18, said that he supported retaining the word "all", on the same understanding as that expressed by Mr. Thelin, as well as Mr. Thelin's proposed changes to the third sentence of the paragraph.

13. **Sir Nigel Rodley** said that he was opposed to adding the phrase "of public interest" after the word "information" in the first sentence for the same reasons given by Mr. Thelin.

14. **Ms. Motoc** said that it was important to consider records that were sensitive by nature, such as genetic records, and also the ways in which records would be stored by States. She suggested introducing a new sentence, to read "Certain types of information cannot have the same status as that recognized by customary law". She also found the amendment proposed by Canada unnecessary.

15. **Mr. Fathalla** said that he was opposed to adding the phrase "of public interest" after the word "information" in the first sentence, because it ran counter to article 19, which referred broadly to "information and ideas of all kinds". He continued to oppose the amendment to the first sentence proposed by Canada. Lastly, he was not in favour of the proposal to refer to "all branches of the Government" rather than "all levels of State bodies and organs, including the judiciary" in the third sentence, as the new phrase would exclude the judiciary and the parliament. He suggested either letting the third sentence stand as originally drafted, or including a specific reference to the judiciary and parliament, so as to cover all three branches of government.

16. **Mr. O'Flaherty** suggested adopting the Canadian proposal in order to allay that State party's concerns. The ambiguous word "general" in the first sentence and the word "all" in the second sentence should be deleted. As for the third sentence, he would prefer to revert to the original language proposed by Mr. Thelin, as the word "government" might cause some confusion. Lastly, he would prefer not to add further detail in paragraph 18 on the basis of the Committee's very limited practice thus far.

17. **Mr. Fathalla**, while supporting the deletion of the word "general" and the suggestion not to add the words "of public interest" in the first sentence, said that he still did not support Canada's proposed amendment, given that there was an entire section on the application of article 19, paragraph 3, later in the draft general comment. If the Committee wished to be consistent throughout the draft general comment, it might opt to delete similar references to it in other paragraphs. As for the third sentence of the paragraph, he still wished to retain the reference to "State bodies and organs".

18. **Sir Nigel Rodley** said that the phrase "all branches of government" was consistent with the language used by the Committee in paragraph 4 of the Committee's general comment No. 31, and therefore would also be appropriate in the current draft. In English, the word "Government" did not refer only to the Administration, but rather to the three branches — judiciary, legislative and executive. Regarding the proposed addition of the words "of public interest" in the first sentence, it was important to take account of the fact that not all States had achieved the same level of access to information. Including such phrasing did not, however, give Governments the power to decide what was or was not of public interest.

19. **Mr. Thelin** said that the deletion of the words "general" and "all" in the first and second sentences, respectively, made the right of access to information appear open to selection. Given that the Committee was still discussing the broad scope of the right of access to information, rather than the restrictions thereon, a qualifier was needed; he would prefer to retain the word "all". As for the suggestion to delete the words "all levels of" in the third sentence, he was concerned that the regional and local levels of government might not be represented. He proposed referring to the three branches of government as the clearest option.

20. **Mr. Bouzid** requested clarification regarding the reference, in the final sentence, to "other bodies".

21. **Ms. Chanet**, responding to Mr. Bouzid's question, said that there were independent bodies that

provided public services, for instance, committees on freedom of information. It was useful to highlight such bodies, as they did not belong to any branch of government.

22. **Mr. O'Flaherty** suggested that the proposed reference to article 19, paragraph 3, should be dropped, since so many Committee members were against it. He hoped that the Committee could agree to delete the words "general" and "all" in the first and second sentences, respectively. The word "record" in his view did not have the narrow meaning it did for Mr. Thelin. Moreover, if the paragraph was read in its entirety without the word "all", the emphasis remained that such records must become available no matter what kind they were, rather than that someone had to decide what kinds of records should become available. As for the third sentence, he pointed out that, in addition to paragraph 4 of general comment No. 31, paragraph 6 of the current draft general comment also referred to "all branches of the State"; he therefore suggested replacing the words "include all levels of State bodies and organs, including the judiciary" with "include public bodies as indicated in paragraph 6 of this general comment".

23. **Mr. Thelin** said that he would not be opposed to the deletion of the word "all", on the understanding that the word "records" covered everything discussed within the public bodies, subject to the interpretation of the word "record" as discussed.

24. **Mr. Bouzid** suggested that the word "public" should be inserted before the word "bodies" in the final sentence of the paragraph.

25. **Mr. O'Flaherty** said that the other bodies referred to in the final sentence were not necessarily public or private, but carried out a public function.

26. **Sir Nigel Rodley** said that he could agree to not include the amendment proposed by Canada in the first sentence, on the understanding that other paragraphs containing references to article 19, paragraph 3, would also be changed accordingly. He also supported deletion of the word "all" so long as the word "records" had the same definition as that mentioned by Mr. Thelin.

27. **Mr. O'Flaherty** said that other references to article 19, paragraph 3, would be raised at the Committee's continued second reading of the draft general comment at its 102nd session.

28. *Paragraph 18, as amended, was adopted.*

Paragraph 19

29. **Mr. O'Flaherty** said that a number of representatives of non-governmental organizations had commented that the language of paragraph 19 confused a general right of access to information in the public interest with access to one's own private records. It had been suggested that paragraph 19 should either be moved to the end of the "Access to information" section or be thoroughly amended. He noted that the former solution would be easier to implement than the latter.

30. **Mr. Thelin** said that paragraph 19 served a purpose and should be retained with its current placement. It was very difficult to distinguish between access to public records and access to one's own private records. Amendments to the wording of the paragraph would undoubtedly be proposed.

31. **Mr. Neuman** said that he was essentially indifferent about paragraph 19 but that he had a slight preference for retaining it insofar as it clarified that the right of access to information derived from a variety of sources.

32. **Mr. O'Flaherty** suggested that, on the basis of Mr. Thelin's and Mr. Neuman's comments, the paragraph should be retained and not moved to another section.

33. **Mr. Rivas Posada** noted that the phrase "right of the mass media" had been called into question by some commentators. He wished to know what decision had been made regarding the avoidance of that phrase.

34. **Mr. O'Flaherty** said that the phrase "right of the mass media" had been changed to "right of mass media actors".

35. He welcomed a proposed amendment to the following sentence: "If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification". The amended sentence would end with the phrase "every individual should have the right to insist on rectification".

36. He did not agree with Japan's suggestion that the following sentence should be eliminated: "Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records." The jurisprudence and practice of the Committee were clear with regard to that right.

37. He approved of Japan's suggestion that the word "must" should be changed to "should" in the following

phrase from the final sentence: “must be undertaken in a process of information-sharing and consultation”.

38. **Ms. Chanet** said that, despite her protests, the reference to article 17 of the Covenant had been removed from paragraph 3 of the general comment. The Committee was now confronted with another reference to article 17. Like Mr. Neuman, she felt largely indifferent about the inclusion or removal of the paragraph. If it was retained, its wording should make it clear that the rights enumerated were only examples and did not include all the rights protected by the Covenant.

39. **Mr. Fathalla** said that the phrase “every individual should have the right to request rectification” should be changed to “every individual should have the right to get rectification”.

40. **Mr. Iwasawa** proposed changing that phrase so that it would read “every individual should have the right to request and obtain rectification”. Regarding the first sentence of the paragraph, it had been agreed that the word “actor” was not fitting. He proposed new wording along the lines of “the right of access to information includes a right to have the mass media get access to information”. Lastly, the reference in footnote 38 was to a concluding observation rather than to a legal case and could therefore be deleted if found to be unnecessary.

41. **Mr. Neuman** noted that the last several proposed amendments had concerned a direct quotation from a document that could no longer be edited: general comment No. 16. Perhaps the Committee should describe that past practice rather than quoting from it.

42. He took it that the phrase “the right of the public to receive mass media output” referred to the public’s right to receive information that the mass media wished to provide, without hindrance from the State. In order to avoid the implication that the mass media had an obligation to communicate such information to the public, he suggested amending the end of the first sentence to read: “the right of access to information includes a right of the mass media to have access to information on public affairs and thereafter the general public has the right to receive what the mass media disseminates”.

43. **Mr. Flinterman** said that he agreed with Mr. Neuman’s and Mr. Iwasawa’s proposals. Noting that the definition of the term “mass media” was unclear and that the paragraph was meant to encompass all forms of media, he suggested that the word “mass” should be deleted.

44. **Ms. Keller** said that, regarding the quotation in the paragraph, she was in favour of making reference to the general comment while removing the quotation marks.

45. **Mr. Rivas Posada** suggested that the word “request” in the phrase “every individual should have the right to request rectification or elimination” was unnecessary. The phrase could instead be expressed as “every individual has the right to rectification or elimination”.

46. **Ms. Chanet**, noting the seemingly odd juxtaposition between the first and second parts of the first sentence of the paragraph, asked the rapporteur to confirm whether the first sentence had been quoted from the *Gauthier v. Canada* case and the second part of the sentence had been quoted from the *Mavlonov et al. v. Uzbekistan* case.

47. **Mr. O’Flaherty**, taking note of Ms. Chanet’s suggestion that the paragraph should be indicative and not exhaustive, proposed the insertion of a new phrase at the beginning of the paragraph which would read: “Elements of the right of access to information may be identified in various articles of the Covenant. For instance,” to be followed by the words currently forming the first sentence.

48. **Ms. Chanet** had also noted that the paragraph contained a legitimate reference to article 17 and that article should therefore be restored to the list in paragraph 3.

49. Concerning the phrase “the right to request rectification”, she preferred Mr. Rivas Posada’s suggested wording, to the effect that every individual had a right to have his records rectified. In addition, the quotation marks would need to be removed from the middle part of the paragraph.

50. She agreed with Mr. Iwasawa’s suggestion that footnote 38 should be eliminated.

51. Concerning the phrase “a right of the mass media to have access,” she agreed with Sir Nigel Rodley’s suggested wording, namely “a right to have the mass media” perform certain actions.

52. Concerning Mr. Neuman’s comment on the last part of the first sentence, she said that the footnote

provided a clear reference and that an ordinary reader would not construe it to mean that the media were obligated to provide information to the public. However, in the interest of clarity, she proposed changing that phrase to read "the right to receive what the media disseminates". Additionally, the other instance of the word "mass" should be deleted from the first sentence.

53. There was no support for deleting the sentence that referred to the right of prisoners to have access to their medical records, so it would remain.

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

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

Paragraph 20

55. **Mr. O'Flaherty** said that a proposal had been received to replace "such as" with "preferably" in the first sentence. Pointing out that the current wording had been selected to show that legislation was not a requirement under the Covenant, he said that the proposed change did not reflect the Committee's position. In his view, the Committee should disregard the proposed change.

56. *It was so decided*.

57. **Mr. O'Flaherty** said that a proposal had been received to begin paragraph 20 with a reminder that Governments should put information in the public domain and foster a culture of openness by inserting the words "proactively put in the public domain information about government functioning as well as other information of public interest and should" following "States parties should" in the first sentence.

58. Both Canada and Australia had asked that the word "rapid" be replaced by "timely" in the second sentence.

59. A non-governmental organization (NGO) had proposed adding the words "as well as in cases of failure to respond to the request" at the end of the third sentence to reflect the need for an appeal when a request was ignored.

60. Several commentators had proposed replacing "fees for the processing of requests of information" in the fourth sentence with "fees for the receipt of information" to show that a Government could only collect fees for services rendered.

61. **Mr. Thelin** proposed removing the words "processing of" from the fourth sentence to keep the wording from being manipulated.

62. **Mr. Neuman** proposed placing the third sentence concerning appeals to logically follow the fifth sentence on the need of the authorities to provide reasons for refusal.

63. **Mr. Iwasawa** proposed adding "prompt" in the sixth sentence of the paragraph following "easy".

64. **Ms. Motoc** wondered what had led to the inclusion of the issue of fees in the document.

65. **Mr. O'Flaherty** said that the issue of fees had been included during the first reading to address the fact that the fees for the delivery of information were so high in many States that citizens effectively did not have access to it.

66. *Paragraph 20, as amended, was adopted*.

Additional paragraph on whistle-blowers

67. **Mr. O'Flaherty** said that a number of commentators had asked to include an additional paragraph on whistle-blowers that applied to civil servants and soldiers, among others. While he was sympathetic to the proposal, he believed that the Committee did not have sufficient basis in its practice and the Covenant to elaborate language on that topic.

68. **Mr. Thelin** agreed that the Committee should not make law on such an important issue if it had no basis for it.

69. **The Chairperson** said she took it that the Committee did not wish to include an additional paragraph on whistle-blowers.

70. *It was so decided*.

Paragraphs 14 (continued) and 21

71. **Mr. Iwasawa** said that, as he had mentioned in an earlier meeting (CCPR/C/SR.2788), the same two sentences appeared in paragraphs 14 and 21 and asked how the repetition could be addressed.

72. **Mr. O'Flaherty** supported by **Mr. Flinterman**, said that the repetition would do no harm and that paragraph 21 would have little content if the two sentences were removed.

73. **The Chairperson** said she took it that the Committee wished to let the two sentences replicated in paragraphs 14 and 21 stand.

74. *It was so decided*.

75. **Mr. O'Flaherty** said that a proposal had been received regarding an addition to paragraph 21 that sought to broaden the definition of media. In his view, the change had been made redundant by the Committee's earlier decision with regard to paragraph 16 bis. He therefore proposed that the Committee should disregard it.

76. *It was so decided*.

77. **Mr. Iwasawa** proposed deleting the words "of States parties" in the final sentence of paragraph 21.

78. **Mr. O'Flaherty** enquired about the reason for the deletion, given that general comments were historically addressed to States parties.

79. **Ms. Chanet** said that the Committee's general comments were not an academic exercise and were issued in accordance with article 40 of the Covenant expressly to draw the attention of States parties to what should be included in their reports. Further, general comment No. 25, referred to in the paragraph, was addressed directly to States parties. She proposed leaving paragraph 21 unchanged.

80. *It was so decided*.

81. **Mr. Flinterman** proposed moving the words "without censorship or restraint" in the third sentence to the end of the sentence.

82. *Paragraphs 14 and 21, as amended, were adopted.*

Paragraph 22

83. **Mr. Iwasawa** said that the final sentence should actually come after the second sentence of the paragraph, since those two sentences were related. Noting that the first sentence of the paragraph was very long, he proposed dividing it in two and starting the new second sentence with the words "for this reason".

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

Paragraph 23

85. **Mr. O'Flaherty** said that Canada had expressed concern that citing public safety as an example of a ground might cause confusion because the types of situations that could arise under public safety might also arise under public order. He did not support that suggestion, as he thought it was already clear that the ground invoked, not the de facto situation, was the main issue.

86. The second suggestion by Canada, which he did support, concerned the fact that since the paragraph anticipated material that would be examined in detail later, it needed to make a specific reference to the proportionality principle, which was implied in "justification", but which should be made explicit. He suggested insertion of a new sentence, following the word "justification" that would read: "Restrictions must also conform to the principle of proportionality."

87. **Mr. Iwasawa**, supported by **Mr. Neuman** and **Ms. Chanet**, noted that under the Constitutions of some countries, freedom of expression could be restricted on the grounds of public safety. While that was not necessarily incompatible with the Covenant, the example provided was not a good one. He therefore supported the suggestion that "such as public safety" be deleted and that no example be given.

88. **Mr. O'Flaherty** noted the existence of a consensus on deleting the words "such as public safety" and ending the sentence at the word "Covenant".

89. **Mr. Neuman** said that while he did not object to adding a reference to proportionality, placing it immediately after the reference to the strict test of justification would give the misleading impression that there were two tests. The word "also" in a sentence on proportionality could cause confusion as well. Earlier, the Committee had decided to include commercial advertising as one of the protected forms of freedom of expression, on the understanding that it would be more vulnerable to limitations than political discourse. He wondered what form limitations on access to information might take. Freedom of expression as defined in the draft general comment included everything contained in article 19. Perhaps the sentence should be moved to paragraph 35 on the principle of proportionality. The final sentence containing the words "and must be directly related" raised similar concerns.

90. **Mr. Thelin** said that the addition of a sentence on the principle of proportionality would be valuable, as it would help to emphasize that restrictions must be justified as being necessary.

91. **Mr. O'Flaherty** noted that paragraph 23 was part of an introduction to a lengthy exploration of limitations that would ultimately address each of the elements of article 19, paragraph 3. The absence of any reference to proportionality in paragraph 23 might cause the reader to overlook a detail that was dealt with later in the draft general comment. He suggested replacing the sentence on the strict test of justification by: "Restrictions must conform to the principle of proportionality."

92. **Sir Nigel Rodley** suggested that the concepts could be combined into one sentence: "Restrictions must be strictly justified under the principles of necessity and proportionality", in the fourth line of paragraph 23, and that the sentences describing the tests of justification could be deleted.

93. **Ms. Chanet** agreed with Sir Nigel Rodley's proposal. Restrictions as to content and motivation should mirror those laid down in paragraph 3, and in more subjective situations, the principle of proportionality must be applied. A reference to proportionality was needed at that point, because paragraph 35 was too far away.

94. **Mr. Neuman** expressed concern that the term "strict test of justification" might imply the need to go beyond the ordinary proportionality test. While some might regard greater strictness than usual as appropriate in the context of political discourse, its blanket application across all forms of subjective idea and opinion included under the heading of freedom of expression would not be desirable.

95. **Sir Nigel Rodley** said that he was under the impression that the Committee had already eased the restrictions on commercial advertising with the phrasing "it may also include [...]". The tests of necessity and proportionality could serve to justify restrictions as well as impede them. The Committee had always invoked concepts of necessity (the need for action) and proportionality (the need for the particular action to be measured against the objective in context) in its case law to try to ensure that the exception did not swallow up the rule, as had been the case in so many countries. That was what the Committee had had in mind in using the term "strict test".

96. **Mr. Iwasawa** said that the concept of "level of scrutiny" existed in Japan as well as in the United States of America, and he therefore understood Mr. Neuman's concern about the words "strict test". Given that restrictions had to be commensurate with the interests they protected, a distinction could indeed be drawn between commercial advertising and political discourse. Since proportionality embodied the idea of gradation, he was not particularly concerned about introducing the concept of a strict test of proportionality.

97. **Mr. O'Flaherty** agreed with Mr. Iwasawa, and noted that when the Committee discussed paragraph 35, a sentence could be added regarding less sensitive forms of expression. In his view, it could be useful to do away with the reference to "justification" and thus, the sentence on the strict test of justification, since it added another layer of complexity to the test, and instead refer to the requirement to conform to strict tests of necessity and proportionality.

98. **The Chairperson** said she took it that the Committee members wished to accept the formulation suggested by Mr. O'Flaherty.

99. *It was so decided.*

100. **Ms. Chanet**, noting that States frequently seized upon a minor pretext in order to restrict freedom of expression, proposed that they should be required to enumerate such restrictive situations in their reports to the Committee.

101. **Sir Nigel Rodley** said that Ms. Chanet's suggestion lent itself perfectly to periodic reporting but not to replies to the list of issues.

102. **Mr. O'Flaherty** said that paragraph 8 already served as a reminder that in honouring their reporting obligations under article 40, States parties had to take into account all elements of the general comments. If necessary, a sentence could be inserted in that paragraph requiring States parties to indicate any general restrictions on freedom of expression under their laws in the reports they submitted under article 40. Perhaps it would be useful to repeat that obligation in paragraph 23, as proposed by Ms. Chanet. He asked the Secretary of the Committee to ready out paragraph 8.

103. **Ms. Fox** (Secretary of the Committee) read out the amended version of paragraph 8.

104. **Mr. O'Flaherty** said that "reasons" made no sense and that "issues" or a similar word was needed. He suggested adding an autonomous sentence along the lines suggested earlier.

105. **Mr. Iwasawa** said that the phrasing "they must be justified as being necessary for the State" was somewhat awkward.

106. **Mr. O'Flaherty** noted that the entire paragraph had now been reworked, and that after "paragraph 3;" the text would now read "they must conform to the strict tests of necessity and proportionality". The next sentence would be deleted.

107. **Mr. Iwasawa** suggested that the sentence following the one on the "strict tests of necessity and proportionality" should read: "The restrictions are not allowed on grounds not specified in paragraph 3, even if they would justify restrictions of other rights protected in the Covenant."

108. **Mr. O'Flaherty** said that "even if such grounds would justify restriction of other rights ..." would convey the idea more clearly.

109. *Paragraph 23, as amended, was adopted*.

Paragraph 24

110. **Mr. O'Flaherty** said that the Committee had forgotten to include a reference to preventive strategies by the State, consistent with article 19 of the Covenant, and that he had received a suggestion to add a sentence reading: "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression." The International Commission of Jurists (ICJ) had suggested adding "as well as judges and lawyers" at the end of the fourth sentence.

111. In addition, Canada wished to see the phrase "... and, where appropriate," inserted before "the perpetrators prosecuted, ..." in the final sentence. Although it was his view that if perpetrators were identified, prosecution would follow as a matter of course, Canada felt differently. Another commentator had suggested that the words "and other information intermediaries" should be added after "journalists" in the third sentence.

112. **Mr. Thelin** said that he supported the addition of a sentence on a preventive mechanism as well as the ICJ proposal on inserting "as well as judges and lawyers".

113. **Mr. Iwasawa** said that he favoured the phrase "preventive strategies".

114. **Mr. O'Flaherty** suggested that the paragraph could open with a sentence on preventive strategies. The wording proposed by the NGO was "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression."

115. **Mr. Salvioli** said that he supported the proposal by the International Council of Jurists concerning article 19. He did not think it would be appropriate to follow the suggestion of Canada, because it left too broad a margin, and the inclusion of a text of that nature in the general comment would not be relevant.

116. **Ms. Chanet** said that she supported the proposal relating to article 19 and the ICJ proposal to add "judges and lawyers", noting that some Italian and Spanish colleagues had already paid a high price for releasing human rights information.

117. **Sir Nigel Rodley** said that there was a problem in the drafting of the sentence that preoccupied the Government of Canada. The word "attack" could have many meanings, not all of which were violent. Other forms of intimidation, including the examples given by Ms. Chanet, did not necessarily entail criminal liability, and therefore the Government of Canada might have a point. It might be just a question of clarifying when "prosecution" was applicable.

118. **Mr. O'Flaherty** noted the consensus on adding a reference to a preventive strategy, consistent with article 19, in the beginning of the paragraph; on adding the phrase "judges and lawyers"; on not introducing the phrase "information intermediaries"; and on the redrafting suggested by Canada.

119. **Ms. Chanet** said that she understood what the Government of Canada was trying to say, and that the wording should not be watered down. It seemed that in certain cases, it was not appropriate to prosecute those responsible. The matter should not be limited to a question of prosecution or non-prosecution. As Sir Nigel Rodley had said, it was necessary to find the right formula. It should be possible to identify and investigate the parties responsible without bringing in the idea of prosecution.

120. **Ms. Keller** wondered whether a time element should also be integrated into the sentence. She suggested the wording, "should be vigorously and without undue delay investigated", as timing was a major problem in some States.

121. **Mr. O'Flaherty** noted that the language of the current Canadian proposal could imply selective prosecution, to which the Committee would also object. Not every form of attack was properly dealt with through the criminal law. A possible solution could be the wording, "vigorously and in a timely fashion investigated, and, where appropriate, dealt with through the judicial system".

122. **Mr. Flinterman** suggested that the final sentence should begin with the words, "All allegations of violence or other forms of physical intimidation or harassment ...".

123. **Mr. O'Flaherty**, noting that attacks took different forms, and could include threats of violence against family members, suggested the wording "of criminal attacks, intimidation, or harassment".

124. **The Chairperson** stressed the need for clarity with regard to cases in which attacks were not of a violent or criminal nature.

125. **Mr. Neuman** expressed concern that the word "attacks" could be construed differently in different parts of the paragraph, which would not only cause confusion but also have an effect on the consequences that derived from it.

126. **Mr. O'Flaherty** said that if the final sentence contained the phrase "all such attacks", it would be clear that the types of attacks in question were limited to the instances cited earlier in the paragraph, namely, arbitrary arrest, torture, threats to life, and killing.

127. **The Chairperson** suggested that, to allay any lingering uncertainties among Committee members, that formulation should be used.

128. **Mr. O'Flaherty** said that, in that case, the point that Canada wished to make became obvious and its suggested wording was no longer necessary.

129. *Paragraph 24, as amended, was adopted.*

The meeting rose at 5.55 p.m.