



International Covenant on Civil and Political Rights

Distr.: General
5 November 2015

Original: English

Human Rights Committee 115th session

Summary record (partial)* of the 3222nd meeting**

Held at the Palais Wilson, Geneva, on Friday, 30 October 2015, at 3 p.m.

Chairperson: Mr. Salvioli

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** No summary records were issued for the 3219th to 3221st meetings.

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The discussion covered in the summary record began at 4.20 p.m.

Organizational and other matters, including the adoption of the report of the working group on individual communications (continued)

Draft general comment No. 36 on article 6 of the Covenant (Right to life)
(continued) (CCPR/C/GC/R.36/Rev.2)

1. **The Chairperson** invited the rapporteurs for the draft general comment to resume their introduction to the draft text.

Paragraph 2 (continued)

2. **Mr. Shany** (Rapporteur for the draft general comment) said that paragraph 2 had been revised to accommodate a request to include a link between the right to life and other rights. Specifically, another clause had been added to the last sentence in the paragraph, which, in its current provisional state, concluded that the right to life “[can be/is] informed and infused by other human rights”.

3. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that the alternatives “can be” and “is” had been put in square brackets in an attempt to reflect Committee members’ diverging views of the extent to which other human rights could be read into the right to life.

4. **Mr. de Frouville** said that the rapporteurs’ proposal had gone some way towards responding to the concerns voiced by several Committee members. He nonetheless wished to stress that it might be advisable to underscore the interdependence of the right to life and other human rights. For example, a State that, in the midst of a deadly epidemic, failed to take the necessary steps to provide its people with the means to achieve the highest attainable standard of health could be said to be denying them the right to life.

5. **Ms. Seibert-Fohr** said that, according to her understanding, the paragraph was meant to serve largely as a general introduction. Specific examples could be introduced in later paragraphs.

6. **Ms. Waterval** proposed that the word “war” in the second sentence of the revised paragraph should be replaced by the term “armed conflict”.

7. **Mr. Politi**, supporting Ms. Waterval’s proposal, said that he would appreciate an explanation of the difference between the words “informed” and “infused”.

8. **Mr. Shany** said that he and Sir Nigel accepted Ms. Waterval’s proposal to change the word “war” to the words “armed conflict” and that they were comfortable with using the verb “can be” rather than “is”. As for Mr. Politi’s question, he said that the rapporteurs had used the word “informed” to convey a more technical notion, delineating the scope of the right, whereas their reason for choosing “infused”, a more substantive term, had been to intimate that other rights, as Mr. de Frouville had suggested, gave meaning to the right to life.

9. **Mr. Muhumuza** said that the phrase “in times of armed conflict” could be amended to read “in situations of armed conflict”.

10. **The Chairperson** suggested that paragraph 2, using the modal verb “can be” rather than “is”, should, subject to minor editorial changes, be adopted on first reading.

11. *Paragraph 2 was adopted on that understanding.*

Paragraph 3 (continued)

12. **Mr. Shany** said that the revised version of paragraph 3 reflected the points raised during the discussion of the paragraph at the 3218th meeting. Nonetheless, the rapporteurs had later received requests from Committee members to reopen the discussion on the concepts referred to in the paragraph.

13. **Ms. Cleveland** said that she had reiterated to the rapporteurs her preference for replacing the word “expected” in the second sentence of the paragraph with the words “reasonably foreseeable”, as that phrase would echo the wording of paragraph 5 of the draft general comment. It was unclear to her what the rapporteurs had thought about her proposal.

14. **Ms. Seibert-Fohr** asked whether the right to life might not be described as the obligation to provide protection for individuals from the acts and omissions referred to in the second sentence of the paragraph rather than “entitlement” to freedom from such acts and omissions.

15. **Mr. de Frouville** said that the word “*escompté*” should be removed from the French phrase “*ayant pour but ou résultat escompté*”. He was unsure of the advisability of using the phrase “reasonably foreseeable”, since determining what was and was not reasonably foreseeable could become a complex undertaking. As for the right to life it was an entitlement; it did not simply entail an obligation to provide protection. He therefore disagreed with Ms. Seibert-Fohr’s proposal to replace the word “entitlement” with the word “protection”.

16. **Mr. Politi** said that he, too, preferred the use of the word “entitlement” to that of the word “protection”. The final line of the paragraph could be revised to remove the word “even” from the phrase “including for persons suspected of or convicted of even the most serious crimes”.

17. **Mr. Seetulsingh** said that the words “suspected of” should be deleted from the final sentence of the paragraph. As currently worded, the sentence could give the impression that the death penalty could be imposed on persons suspected of having committed the most serious crimes.

18. **The Chairperson** said he took it that the paragraph referred to the right to life in general, not simply to the issue of the death penalty.

19. **Mr. Bouzid** said that, when he had asked whether States had obligations to provide the basic conditions for life with dignity, he had been told that those obligations had been addressed in later paragraphs. He had not found any mention of such obligations, however.

20. **Mr. Shany** said that paragraph 28 of the draft general comment dealt extensively with States’ positive obligations with regard to providing for life with dignity. The rapporteurs were willing to accept Mr. Politi’s recommendation to delete the “even” from the last sentence of the paragraph. The concept of the right to life, as introduced in the paragraph, referred to the right to life in general. Committee members should not be distracted by the addition of the phrase “the most serious crimes”.

21. Turning to comments made by other Committee members, he said that he preferred the word “expected” to the phrase “reasonably foreseeable”, as it was less legalistic. He also sensed some resistance to Ms. Seibert-Fohr’s recommendation to refer to “protection” rather than “entitlement”.

22. **The Chairperson** said that, if there were no objections, he would take it that the Committee wished to adopt paragraph 3 on first reading as currently worded.

23. *Paragraph 3 was adopted.*

Paragraph 3 bis

24. **Mr. Shany** said that the first sentence of paragraph 3 bis drew directly on the language of article 6, paragraph 1, of the Covenant, as several Committee members had requested. The second sentence was extrapolated from article 2. The paragraph would read in full:

“Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. It lays the foundation for the obligation of States parties to respect and ensure the right to life, to give effect to it through legislative and other measures and to provide effective remedies and reparation to victims whose right to life had been violated.”

25. **Sir Nigel Rodley** said that the aim of paragraph 3 bis was to make use of the rather strong and forceful language of the Covenant itself to lay the foundation for the discussion of issues such as the death penalty in subsequent paragraphs.

26. **Ms. Waterval** proposed adding the word “full” before the word “reparation” in the second sentence.

27. **Mr. Seetulsingh** asked whether the phrase “had been violated” at the end of the second sentence should not read “has been violated”. In any case, he proposed ending the sentence after the word “victims”, since victims were not limited to those whose lives had been taken.

28. **Mr. de Frouville**, supported by **Mr. Bouzid**, proposed adding the word “protect” after “respect” in the second sentence. He also supported the proposals made by Ms. Waterval and Mr. Seetulsingh.

29. **Mr. Ben Achour** said that, in his view, it was important to retain the reference to victims whose right to life had been violated. He asked whether paragraph 3 bis would remain as a separate paragraph or whether it would be joined with paragraph 3.

30. **The Chairperson** said that, if he understood correctly, paragraph 3 bis would be a separate paragraph and would thus be renumbered as paragraph 4. The Committee would continue to use the current numbering in its discussions, however, so as not to confuse matters.

31. **Ms. Seibert-Fohr** said she believed that the text should remain as currently worded, since the concepts of respecting and ensuring the right to life necessarily included protecting that right.

32. **Sir Nigel Rodley** confirmed that paragraph 3 bis would stand on its own as a strong statement of principle. Protection of the right to life was covered extensively elsewhere in the draft general comment; he therefore believed that it would be unnecessary and potentially confusing to add it to paragraph 3 bis. While he did not object in principle to the addition of the word “full”, he thought that it might sound odd, as if something other than full reparation could be contemplated for violations of other rights.

33. Pointing out that the first sentence had been taken directly from article 6, paragraph 1, of the Covenant and that the second sentence drew heavily on the language of article 2 of the Covenant, he proposed that the Committee should adopt the current wording, with the exception of the last phrase of the second sentence, which could be amended to read “victims of violations of the right to life”.

34. **Mr. de Frouville** said that the concept of victim should not be restricted to those who had lost their lives but should include also their family members.

35. **Sir Nigel Rodley**, supported by **Ms. Waterval**, said that, while the current wording did technically cover the family members of victims of unlawful killing, he understood that it might lead to confusion and therefore suggested ending the sentence after the word “victims”.
36. **Ms. Seibert-Fohr** said that deleting the last phrase of the paragraph might give the wrong impression. She therefore suggested retaining the phrase, on the understanding that “victims” referred to all persons whom the Committee had recognized as such in its jurisprudence, including family members.
37. **Mr. Iwasawa** said that the Committee was not disputing the scope of the right to life but merely debating how best to express it; and that debate would be reflected in the summary record. The phrase “victims of violations of the right to life” would be most easily understood by the reader and the record would indicate that the Committee was not narrowing its interpretation of the word “victims” by using that phrase.
38. **Ms. Cleveland** said that, in her view, it was unnecessary to reiterate that “victims” referred to victims whose right to life had been violated. Moreover, doing so could be incorrectly construed to mean that those whose lives had been taken were the only victims of violations of the right to life.
39. **Mr. Vardzelashvili** said that the Committee might include a footnote referring to its jurisprudence so as to avoid any misunderstanding.
40. **Mr. Politi** said that he was not in favour of adding a footnote. He instead proposed adding the word “all” to the wording previously proposed by Sir Nigel, so that the last phrase would read “all victims of violations of the right to life”.
41. **Mr. Seetulsingh** said that, while he approved of the English wording suggested by Sir Nigel, he believed that it might sound ambiguous when translated into French.
42. **Mr. Ben Achour** said that the current discussion, and in particular the comments made by Mr. de Frouville, had led him to revise his view. He therefore supported Mr. Politi’s proposal to add the word “all” to Sir Nigel’s proposed wording.
43. **Mr. de Frouville** said that the wording of the phrase sounded problematic and even contradictory if translated into French as “*aux victimes dont le droit à la vie a été violé*”. He therefore proposed that it should be translated as “*aux personnes qui ont subi un préjudice du fait de la violation du droit à la vie*”.
44. **Ms. Pazartzis** said that, in the interests of keeping the paragraph as concise and forceful as possible, she was in favour of either adopting Sir Nigel Rodley’s proposed wording or ending the sentence after the word “victims”.
45. **The Chairperson**, speaking in his capacity as a member of the Committee, said that reparation was awarded to direct victims whose life had been taken and that their family members then received the reparation on the victims’ behalf as their inheritors. There were also cases in which the family members themselves were considered to be victims of violations of different provisions of the Covenant — generally of article 7. In his view, there would be no harm in ending the sentence after the word “victims”.
46. **Mr. Shany** said that paragraph 29 of the draft stated that families should receive reparation, so further detail in that regard was not required in paragraph 3 bis.
47. **Sir Nigel Rodley** said that the wording that best reconciled the Committee’s different positions was the amendment proposed by Mr. Politi, which read “reparation to all victims of violations of the right to life” and he commended it to the Committee.
48. *It was so decided.*
49. *Paragraph 3 bis, as amended, was adopted.*

Paragraph 4

50. **Mr. Shany** said that a number of changes had been made to the paragraph in response to issues raised by members. The phrase “in countries which have not yet abolished” had been included in the first sentence of paragraph 4, the word “applied” had replaced the word “exercised” and the second sentence had been redrafted so as to highlight the concept of arbitrary deprivation of life. The Committee should decide whether to retain the words “for the most serious crimes”, which had been placed in square brackets.

51. **Mr. Bouzid** said that the text should refer to “States parties”, rather than “countries”, given that the general comment addressed only those countries that had ratified the Covenant.

52. **Mr. Ben Achour** concurred. The fact that the Committee’s general comment was intended only for States parties should be made explicit. Furthermore, responsibility for the abolition of the death penalty, for example, lay with States.

53. **The Chairperson** said that the Covenant itself referred to “countries”.

54. **Mr. Seetulsingh** said that the phrase “for the most serious crimes” should be retained. The words “the most” in the phrase “the most exceptional cases” should be deleted, given that they were repeated shortly afterwards. The word “further” in the second sentence should be deleted, because it implied that article 6, paragraph 1, of the Covenant was less important than the other paragraphs, when in fact it was fundamental.

55. **Mr. de Frouville** said that the phrase “for the most serious crimes” should be removed, because “the most exceptional cases” better reflected the Committee’s jurisprudence. It was important to include the idea that the death penalty sometimes constituted arbitrary deprivation of life and thus fell under article 6, paragraph 1, of the Covenant.

56. **Ms. Cleveland** said that the phrase “for the most serious crimes” should be retained. She suggested moving the word “further” to the first sentence, so that it read “Paragraphs 2, 4, 5 and 6 of article 6 of the Covenant further set out ...”, and then reversing the order of the first and second sentences.

57. **Mr. Politi** said that he had proposed the text in square brackets in the interests of consistency with paragraph 20 of the draft, although he did not feel strongly about its inclusion. He supported Ms. Cleveland’s proposal, particularly given that the use of the word “further” implied that article 6, paragraph 1, of the Covenant was less significant than the other paragraphs.

58. **Ms. Waterval** said that the wording of the paragraph did not require amendment and the text in square brackets should be retained. She suggested including a reference to mandatory death penalties.

59. **Ms. Seibert-Fohr**, supported by **Mr. Iwasawa**, said that reversing the order of the sentences would weaken the text. It was, however, necessary to find an alternative to the word “further”, such as “additionally”.

60. **Sir Nigel Rodley** said that the general comment should respect the Covenant’s use of the word “countries” so as to avoid misunderstandings and because there might be a legal significance behind its use of that term. The text in square brackets — “for the most serious crimes” — was superfluous because it appeared several times in the draft and represented just one element of article 6. If it were to be included, that should not be at the expense of “the most exceptional cases”. Similarly, mandatory

death penalties were addressed elsewhere in the text and should not be mentioned in paragraph 4, in order to avoid placing disproportionate emphasis on them.

61. The word “further” had been used to reflect the fact that article 6, paragraph 1, of the Covenant was both overarching and residual; alternatives such as “additional” and “also” did not reflect that fact. It was also important that the sentence order should be maintained. Therefore, he believed that the paragraph should not be altered, apart from the removal of the text in square brackets.

62. **Mr. Shany** said that changes to the sentence order would disrupt the draft’s editorial structure.

63. **Mr. Seetulsingh** said that the words “overarching” and “residual” were diametrically opposed in meaning. The word “further” applied only to the residual aspect and should therefore be deleted.

64. **Ms. Pazartzis** said that the text in square brackets should be deleted, in the light of the draft’s repeated references to the most serious crimes.

65. *It was so decided.*

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

The meeting rose at 6 p.m.