United Nations CCPR/C/SR.3283

International Covenant on Civil and Political Rights

Distr.: General
12 July 2016

Original: English

Human Rights Committee
117th session

Summary record of the 3283rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 30 June 2016, at 3 p.m.

Chair: Mr. Salvioli

Contents

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.16-11321 (E) 120716 120716

1611321

Please recycle

The meeting was called to order at 3.10 p.m.

Organizational and other matters, including the adoption of the report of the Working Group on Individual Communications (*continued*)

1. **The Chair**, recalling that, as a national of Argentina, he had not participated in the Committee's consideration of the fifth periodic report of Argentina, said that he had nevertheless been able to follow the discussion by webcast. It was regrettable that such webcasts were available only in English; if they were made available in the original language of the States parties concerned, they might be of more interest to those States parties' citizens.

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (CCPR/C/GC/R.36/Rev.2 and Rev.4)

2. **Sir Nigel Rodley** (Rapporteur for the general comment) said that there were two revised versions of draft general comment No. 36 on article 6 of the Covenant before the Committee, CCPR/C/GC/R.36/Rev.2 and CCPR/C/GC/R.36/Rev.4. The first of those texts, which had been introduced at the 116th session, contained paragraphs 1 to 67. The second text contained paragraphs 1 to 9, as revised to reflect the Committee's discussion of the first 10 paragraphs of CCPR/C/GC/R.36/Rev.2 considered at the 116th session.

3. **The Chair** said that both texts were available in the Committee's three working languages, which would greatly facilitate the discussion. He invited the Committee members to consider revised draft general comment No. 36 (CCPR/C/R.36/Rev.2), beginning with paragraph 9.

Paragraph 9

4. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the changes reflected in paragraph 9 related mainly to tone rather than content. It was clearer in the revised paragraph that personal autonomy was a matter of human dignity and that people's wishes should be respected. It was acknowledged that individuals could be in so much distress that they wished to end their lives; and that such crises were often temporary. The State was encouraged to create conditions for ensuring that that a temporary crisis should not become permanent. It was also acknowledged in the paragraph that some individuals had personal circumstances that led them to wish to terminate their lives. The role of the State vis-à-vis the medical professionals who helped such individuals to terminate their lives required further discussion. The phrases "may allow" and "should not prevent" thus had been left in brackets for the Committee's consideration.

5. **Mr. de Frouville** said that he had worked on the basis of the English version of the revised draft general comment, since he not been aware of the existence of the French translation. Noting that there were only two cases of suicide in the Committee's concluding observations referenced in the footnotes to paragraph 9, he said that the Committee might not have sufficient experience or case law to deal with the difficult issues raised in the paragraph. Moreover, the case law of the European Court of Human Rights, which involved a number of cases dealing with assisted suicide, made it clear that there was no European consensus; he doubted, therefore, that there was a universal consensus.

6. He proposed that the first sentence of the paragraph, which suggested why a person might wish to commit suicide, should be deleted. The paragraph should simply begin with the second sentence, and assert that States had the power to take measures to protect life and prevent violations of the right to life. Accordingly, the second sentence of the paragraph should begin, "States parties should take adequate measures", instead of "They should therefore take adequate measures".

7. As for the second part of the paragraph, he said that assisted suicide and the interruption of medical treatment were two quite different but related matters. Assisted suicide involved a person who took a conscious decision to end his or her life, and asked for help in doing so. The interruption of medical treatment involved a person who was not conscious and could not take such a decision. The European Court of Human Rights had found, in *Lambert and Others v. France*, that the discontinuation of medical treatment was not a violation of the right to life, provided that the domestic legislative framework and the decisional process was in conformity with article 2 of the European Convention on Human Rights. Paragraph 9 should clearly indicate that article 6 of the Covenant did not provide the right to die or the right to die with dignity but also that a State did not violate the right to life when authorizing a person's death.

8. **Mr. Ben Achour** said that he preferred the phrase "should not prevent" to the phrase "may allow." He believed that, as a matter of personal autonomy, an individual had the right to end his or her life without needing to provide justification. He therefore proposed that the description of reasons for wanting to die, contained in the phrase " catastrophically afflicted adults, such as the mortally wounded or terminally ill, who experience severe pain and suffering and wish to die in dignity", should be deleted; that same phrase would then read, "adults who wish to die with dignity".

9. **Mr. Seetulsingh**, supported by **Ms. Seibert-Fohr**, said that it was not clear that the Committee was in a position to choose between the phrases "should not prevent" or "may allow"; States parties should perhaps be given that choice to make for themselves. Observing that footnote 20 quoted the language from general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights, he said that the Committee might consider incorporating that wording into the third sentence of paragraph 9. In addition, the words "medical treatment" generally implied that the purpose was to return a person to health; he therefore proposed deleting those words in the phrase "to provide medical treatment or the medical means designed to facilitate the termination of life". In the final sentence, he proposed replacing the word "wishes" with the word "decision", since it was the patient who was making the request to end his or her life.

10. **Ms. Cleveland** supported the proposal made by Mr. de Frouville to delete the first sentence and modify the beginning of the second sentence accordingly. In the third sentence, she too preferred the phrase "should not prevent" over the phrase "may allow". By indicating to States that they "may allow" doctors to assist individuals in terminating their lives, the paragraph might be understood as allowing States also to deny individuals that choice. There were certainly circumstances under which the human dignity of individuals was violated when they were not allowed to choose death. She understood paragraph 9 to be drawing a contrast between an individual who made a conscious decision to end his or her life, and an individual who was so afflicted as to be unable to make such a decision. States parties should not conclude that a physician-assisted suicide could occur only in cases in which prior, free and informed consent had been obtained.

11. **Mr. Fathalla** said that the paragraph had two elements, the right to live and the right to die. He had no issues with the right to live as it was dealt with in the paragraph either as it stood or as amended by Mr. de Frouville. The right to die, however, was a more complicated matter. The text proposed the provision of medical means to terminate life. It was much easier for him to accept a scenario in which medical treatment was discontinued and thus allowed a person to die, than to condone assisted suicide. He agreed that the word "wishes" should be replaced with the word "decision", since the word "wishes" implied hesitation.

12. **Mr. Politi** said that he was in favour of retaining the first sentence in the text, although he would not insist if the other members wished to delete it. He also preferred the phrase "should not prevent" over the phrase "may allow". "Medical treatments" and

"medical means" should be clearly distinguished from one another. He had doubts about the term "catastrophically afflicted." He wondered if it would be useful simply to remove the phrase "who experience severe pain and suffering", as some terminally ill people did not suffer and yet still wished to die. He supported the last sentence, in particular the emphasis on protecting patients from pressure and abuse.

13. **Mr. Bouzid** said that he agreed that States should protect the right to life, and also take measures to prevent suicide. However, in order to protect the right to life, suicide attempts must be criminalized. In his view, there was no right to die; the views of States parties should be sought on that matter. In the third sentence, he preferred the phrase "may allow" over the phrase "should not prevent", as the former amplified the choices available to States; in any event, States were under no obligation to provide the medical treatment or means designed to facilitate the termination of life.

14. **Mr. Vardzelashvili** said that the general comment was meant to elaborate on the obligations of the State vis-à-vis the right to life and to give them guidance on ensuring the enjoyment of that right, for example by protecting a person from suicide without at the same time causing greater suffering. Individuals should have the right to decide for themselves whether or not to continue living. He agreed that a State's failure to allow euthanasia could amount to torture. Regarding the third sentence, while he preferred the phrase "may allow" to the phrase "should not prevent", he proposed that the Committees should retain both bracketed options, and await responses from the States parties. Any measures that States might introduce to allow people to die with dignity must also be accompanied by safeguards to protect them from abuse. Lastly, he supported the proposal to start the paragraph with the second sentence.

15. **Ms. Seibert-Fohr**, supported by **Mr. Politi**, said that the first two sentences of the paragraph might be combined into a single one, which would begin with the words "States party should take adequate measures" and end with the words "recognizing that individuals planning or attempting to commit suicide may be doing so because they are undergoing a momentary crisis which may affect their ability to make irreversible decisions, such as to terminate their life". Concerns about assisted suicide should be acknowledged. She was opposed to the proposed alternative "should not prevent" in the third sentence. The sentence could instead be redrafted to begin with a subordinate clause that read: "If States parties allow medical professionals to provide medical treatment or means designed to facilitate the termination of life".

16. **Mr. Iwasawa** said that he favoured deleting the first sentence of the paragraph. He was reluctant to recommend using, in the third sentence, the phrase "should not prevent", as it had a strong normative connotation. The proposal made by Ms. Seibert-Fohr — namely, to begin the sentence with an "if" clause — was well worth considering. He was somewhat uncomfortable with the description "catastrophically afflicted". The clause "who experience severe pain and suffering" could be omitted.

17. **Mr. Rodríguez Rescia** said that the paragraph would serve no purpose if it suggested that States parties could allow assisted suicide if they so wished. He was therefore in favour of stating that the facilitation of the termination of life should not be prevented. A sentence about the rights of the members of the family of a person who was not capable of making a decision to end his or her life should also be added to the paragraph.

18. **Mr. Ben Achour** said that the first sentence of the paragraph should be maintained. The principles of living in dignity and dying in dignity were inseparable. In that connection, he recalled the French writer Romain Gary, who had once announced that he would not grow old. It would have been better if Gary, who had committed suicide in 1980, had had access to a medical procedure that could have helped him die painlessly. He had been

surprised by the suggestion that suicide should be penalized. A suicide had triggered the recent revolution in his country, Tunisia.

19. **Ms. Jelić** said that she would prefer to retain the clause, in the first sentence, acknowledging the central importance to human dignity of personal autonomy. She also preferred the formulation "should not prevent" in the third sentence.

20. **Ms. Waterval** said that she supported keeping the paragraph largely as it was. She too favoured the option "should not prevent" in the third sentence.

21. **Mr. Politi** said that he was increasingly attached to the reference to the central importance to human dignity of personal autonomy; he wondered if it might be useful to move the paragraph's opening phrase "While acknowledging the central importance to human dignity of personal autonomy" to the first part of the current second sentence.

22. **Sir Nigel Rodley** (Rapporteur for the general comment) said that he took seriously the suggestions that the Committee could be moving into an area in which it lacked experience. As a result, it had to proceed with great caution. An increasing number of States parties seemed to be granting some degree of personal autonomy to people who wished to seek assistance in ending their lives. The issue of human dignity was closely tied to the prohibition of cruel, inhuman and degrading treatment, and it was not entirely clear to him what human dignity without personal autonomy could mean. The paragraph concerned a small group of people that the Committee could safely ignore if it wished to take no chances. If, however, the Committee failed to envisage the right of such people to obtain help in following through on a decision that they were unable to follow through on themselves, it would be going much farther than upholding the right to life; it would be imposing an obligation to live, regardless of the quality of that life. The Committee was not on solid moral footing in condemning anyone to living in a condition that, had it been intentionally inflicted, would surely have been described as cruel, inhuman and degrading. Denying anyone the ability to avoid such a fate could thus be tantamount to denying him or her the right not to be subjected to cruel, inhuman and degrading treatment. States had a number of good reasons to be reluctant to permit suicide or assisted suicide. Nonetheless, the rights of people who had decided to end their lives but were unable to do so should not be infringed as a result of understandable but ultimately misguided efforts to prevent abuse. As long as all necessary safeguards were in place, they should have the right to assistance in acting on their decision to stop living.

23. **Mr. Shany** (Rapporteur for the general comment) proposed that the paragraph, with the entire first sentence in square brackets, should be adopted provisionally. In addition, the word "they" in the second sentence of the paragraph would be replaced with the word "States", and the phrase "or halt" would be inserted after the words "to provide" in the third sentence. The alternatives "may allow" and "should not prevent" would remain in square brackets. He and Sir Nigel Rodley proposed to retain the adverbs and adjectives that had been questioned by some Committee members; they also wished to add the phrase "physical or mental" before the words "pain and suffering". In the fourth sentence, the word "wishes", as had been suggested, would be replaced with the word "decision". Comments on the provisionally adopted paragraph would be sought from States parties and civil society, and the Committee could thus return to it on second reading with more information.

24. **Ms. Cleveland** said that she supported Mr. Shany's proposed amendments to paragraph 9. The general comment should not be understood as suggesting that States had it available to them under the Covenant to deny people the ability to end their lives in situations where taking such action would violate other rights under the Covenant. She requested clarification on the rapporteurs' indication that, in paragraph 9, the Committee was not referring to situations in which people were not capable themselves of taking the

decision to end their lives and must rely on their families to help them do so. Those situations in fact represented a large class of people at the end of life, including many cancer patients. While the Committee had little experience with any of the issues being discussed, she was not sure it had any more experience with the class of persons referred to explicitly in paragraph 9. The fact that such situations were not covered in the draft general comment might also be understood as suggesting that States parties had the right to deny families the ability to take steps consistent with the needs of their dying relatives; such an erroneous interpretation should be avoided.

25. **Mr. de Frouville** said that the grounds for linking article 7 of the Covenant were not obvious; he would, however, accept the connection to article 17, on the right to privacy, which covered the right to personal autonomy, and thus allowed for the possibility of expressing oneself vis-à-vis society and of self-determining one's life, including the moment at which it should end. Including a reference to article 17 would also ensure that families were not punished in the case of a relative taking his or her own life.

26. Because paragraph 9 related to limitations on States parties in situations where States permitted others to kill a person, it was important to underline that the paragraph dealt with an authorized violation of article 6 of the Covenant. He therefore proposed inserting, in the third sentence, the phrase ", without violating the Covenant," after the phrase "States party may". As for the tone of paragraph 9, specifically in the third sentence, he proposed deleting the overly dramatic modifier "catastrophically" and relativizing the subsequent examples given by introducing them with the phrase "in particular, in cases". That said, he supported the paragraph as amended by Mr. Shany and had made additional remarks primarily for the purposes of the official record of the current meeting and with a view to the Committee's future discussions of the general comment.

27. The Chair said that he supported the relocation of paragraph 9 to the section dealing with the relationship of article 6 with the rights covered under other articles of the Covenant. The purpose of paragraph 9, after all, was to convey that a person in an extremely serious situation should not encounter obstacles that constituted violations of article 7. He also agreed that the modifier "catastrophically" was not appropriate.

28. **Mr. Shany** (Rapporteur for the draft general comment) said that he supported the proposal to relocate paragraph 9; in addition, he would attempt to find, in time for the Committee's second reading of the draft general comment, more generally acceptable language to replace the description "catastrophically afflicted". In response to Ms. Cleveland's request for clarification, he said that indeed, any action should be taken without violating other rights under the Covenant, as was explicitly stated in the general comment. For those patients who were not themselves able to take their own lives, the last sentence began with the words "In such cases" precisely because it did not seek to create an exhaustive list of examples. While the Committee had little experience with such cases, there had been one case of a State programme on euthanasia. He proposed that for the time being, paragraph 9 should be provisionally adopted with the changes that he had previously proposed.

29. *Paragraph 9, was provisionally adopted, subject to the necessary amendments.*

30. **The Chair** invited the Committee members to resume their consideration of the previous revision of the draft general comment No. 36 (CCPR/C/R.36/Rev.2), beginning with paragraph 12. He noted that that revised draft had not yet been updated to reflect changes made to paragraphs that had been provisionally adopted at the Committee's 115th session.

31. **Mr. Shany** (Rapporteur for the draft general comment) recalled that when the Committee had provisionally adopted paragraph 11, it had also decided, based on the fact that it also dealt with States parties' obligations, to relocate it to immediately follow

paragraph 6 of the draft general comment, and thus had renamed it paragraph 6 bis. The Committee had also decided to extract one sentence from paragraph 11 for the purposes of relocating it to a subsequent paragraph on planning military operations.

32. Paragraph 12 of the draft general comment addressed the fact that while States could privatize some of its security operations, to the extent that a State used lethal force, it retained the obligation of controlling the lethal force used by private actors and therefore of protecting the right to life even when private actors were involved. The footnote in the paragraph cited the Committee's concluding observations on the periodic report of Guatemala (CCPR/C/GTM/CO/3).

33. **Mr. de Frouville** said that there seemed to be a false symmetry between paragraphs 6 bis and paragraph 12: the former highlighted the responsibility of the State when it did not exercise due diligence to protect the right to life of individuals against violations by private actors, whereas the latter related to the State's responsibility when granting powers to private entities, including the power to take lethal action. Moreover, in paragraph 12, there was no mention of attribution of conduct to States parties, as there was in paragraph 6 bis. Paragraph 12 discussed responsibility not in terms of international law, but in terms of control or monitoring of private entities to which it had granted powers. The language in paragraph 12 should therefore be brought into line with that of paragraph 6 bis. The articles on responsibility of States for internationally wrongful acts developed by the International Law Commission was a sound basis for the Committee's general comment. Article 5 of those articles recognized that the conduct of private companies on which a State had conferred powers could be attributed to the State; article 7 of the same articles concluded that even in cases where an entity was empowered to exercise governmental authority acts ultra vires of it, the conduct in question was nevertheless attributable to the State. Therefore, he suggested inserting, in the first sentence of paragraph 12, the phrase "the actions of those entities are attributable to the State party and" between the words "to employ lethal force" and the words "the State party remains responsible for". In the last sentence in paragraph 12, the word "those" should be inserted before the words "private actors" to make it clear that it was specifically those private actors to which the State party had granted certain powers. Otherwise, the obligation to provide effective remedy might appear to apply to all violations to the right to life committed by any private actor.

34. **Mr. Ben Achour** said that he agreed that the use of "lethal force" was the responsibility of the State. Moreover, any authorization to use such force by States parties to private entities should be the exception to the rule. He proposed incorporating wording to that effect in the first sentence of paragraph 12. In addition, he noted that the term "lethal force" was contested, including by technical specialists; it might be more appropriate, at least in the French version, to refer to "*armes meurtrières*" (deadly weapons), "*armes susceptibles de donner la mort*" (weapons likely to result in death) or "*armes qui mettent en danger la vie humaine*" (weapons that endanger human life). In the French version, he suggested replacing the phrase "de leur observation des dispositions" with the phrase "de leur respect des dispositions". In the penultimate sentence, he wondered if it might not be preferable to refer to "past violations of the right to life" rather than to "past human rights violations".

35. **Ms. Cleveland** supported the proposal to accord the language used in paragraphs 6 bis and paragraph 12 and the proposal to indicate the exceptional nature of a State party's authorization of a private entity to use lethal force. She had been struck by the draft's explicit reference, in the last two sentences, to the fact that persons involved in past human rights violations should be excluded from private security forces and that effective remedy to the victims must be provided; she wondered whether it might be useful to replace the last sentence of the paragraph with a new sentence, to read: "They must also fully investigate, prosecute and punish violations and provide victims of arbitrary deprivation of life by such

private actors effective reparation." The words "effective reparation" were in line with the Committee's usual practice.

36. **Mr. Rodríguez Rescia** said that he too supported the proposal to indicate the exceptional nature of a State party's authorization of a private entity to use lethal force. Furthermore, he would prefer to delete the example given in the penultimate sentence of paragraph 12, since, among other things, it was not clear to which specific violations the paragraph made reference.

37. **Mr. Iwasawa** said that, like Mr. de Frouville, he would prefer to emphasize the obligation, rather than the responsibility, of States parties; therefore, he proposed replacing, in the first sentence, the phrase "the State party remains responsible for their compliance" with the phrase "the State party has an obligation to ensure compliance". In the second sentence, the words "powers afforded" should be replaced with the words "powers granted" to ensure consistency within the same sentence.

38. **Ms. Seibert-Fohr** said that she agreed with Mr. de Frouville's distinction between primary and secondary obligations. The purpose of paragraph 12 was to address the primary obligations of the State. As the paragraph currently stood, it seemed that States parties simply had a duty of due diligence, which would then trigger State responsibility. However, if it was applying the articles on responsibility of States for internationally wrongful acts of the International Law Commission, the Committee should be clear that States were not just responsible for abiding by article 6 of the Covenant — if they granted powers to other entities, which then exercised the powers, those entities' conduct could also be attributable to the States concerned. She therefore suggested reversing the order in which the two types of obligations were mentioned, and ending the paragraph with the notion that any failure by those entities to abide by article 6 of the Covenant triggered State responsibility even if the State had complied with its due diligence obligations.

39. **Mr. Politi** said that he agreed with the proposals made by Mr. de Frouville and Ms. Seibert-Fohr regarding the distinction between primary and secondary obligations. When private entities were employed by a State, they became de facto organs of that State. It was therefore not necessary to ensure the private entities' compliance with article 6 of the Covenant, but to make clear that States were directly responsible for their compliance.

40. **Mr. Shany** (Rapporteur for the draft general comment) said that the language of paragraph 12 dovetailed with that of paragraph 8 in the Committee's general comment No. 35, on the subject of private prisons. He did not disagree with any of the proposals made by Committee members regarding paragraph 12. The paragraph did not deal with due diligence, indeed, but with States' responsibility, in accordance with the articles on responsibility of States for internationally wrongful acts. He and Sir Nigel Rodley would discuss all the drafting proposals made, including the reordering of the elements of the first sentence; the proposal to replace the word "must ensure" with the words "have an obligation to ensure"; the incorporation of the notion of exceptionality in authorizing private entities to employ lethal force; and changing the term "lethal force" as appropriate. As for the reference to past human rights violations, he said the language had been taken from the concluding observations on the periodic report of Guatemala; he would, however, consider adding the qualifier "serious" as an improvement on the phrase. He supported the proposal to insert the word "those" before the words "private actors" in the last sentence of paragraph 12. On the other hand, he was reluctant to include the phrase "investigate, prosecute and punish" every time violations were mentioned in the general comment. He would make the necessary changes to paragraph 12 in time for the Committee's next reading of the draft general comment.

Paragraph 13

41. **Mr. Shany** (Rapporteur for the draft general comment) said that paragraph 13 highlighted the fact that a specific body of law on the use of lethal force in military operations was already in place. However, the Covenant remained relevant in that regard and the relationship between human rights law and other branches of law relating to the regulation of armed conflict was addressed further on in the draft general comment. The paragraph focused on the introduction of next generation lethal autonomous robotics, weapons that could self-activate and fire without human intervention, but did not take a stance on their legality, instead simply calling for the regulation of their use. Certain commentators had claimed that, from a human rights perspective, robots might be preferable to human soldiers in time of war.

42. **Ms. Cleveland** said that the first sentence of paragraph 13 should be replaced with the following text, which was closely based on the first sentence of paragraph 64 of the Committee's general comment No. 35 on article 9 (Liberty and security of person): "Like the rest of the Covenant, article 6 applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While rules of international humanitarian law may be relevant for the purposes of article 6, both spheres of law are complementary, not mutually exclusive." A reference to "international *jus ad bellum*" could be inserted if necessary. Paragraph 13 and the following paragraphs made no reference whatsoever to existing military weapons. Consequently, the second sentence of paragraph 13 should be amended to read: "In developing and using weapons and means or methods of warfare, including the study, development, acquisition or adoption of new weapons, States must always consider the impact on the right to life."

43. **Mr. de Frouville** said that the first sentence of paragraph 13 should be deleted, given that lethal autonomous robotics could potentially be used in peacetime for civilian security purposes. He welcomed the reference to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, but said that the Committee should reflect the Special Rapporteur's recommendation on lethal autonomous weapons in its entirety by referring to a moratorium on at least the testing, production, assembly, transfer, acquisition, deployment and use of lethal autonomous robotics until such time as an internationally agreed upon framework on the future of lethal autonomous robotics had been established. When States had developed the capacity to put those types of weapons into operation, it would be too late.

44. **Ms. Seibert-Fohr** said that the reference to "international *jus ad bellum*" contained in the first sentence of paragraph 13 was not relevant given the context. The approach under which lethal force was primarily regulated by international humanitarian law was not in line with the Committee's general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant and the Committee's position in that regard had been cited by a number of other judicial bodies in the past. The first sentence of the paragraph should be deleted, together with the word "Still" in the second sentence. Paragraph 13 could be moved elsewhere in the draft text and a reference to the Committee's stance relating to the rules of international humanitarian law included in a different paragraph. Reference should be made to existing military weapons. The Committee should not give the impression that it was in favour of the use of lethal autonomous robotics in everyday peacetime situations and must make it clear that the application of that technology should be restricted to military uses and operations.

45. **Mr. Iwasawa** said that he supported Ms. Cleveland's proposal relating to the first two sentences of paragraph 13 and the inclusion of the issue of existing weapons. As to the third and fourth sentences of the paragraph, he recalled that the Committee was not a law-making body.

46. **Mr. Shany** (Rapporteur for the draft general comment) said that he would consider the proposals on the deletion of the first sentence and the inclusion of existing weapons. The use of lethal autonomous robotics should be specifically linked to military, rather than civilian, operations. A proposal could tentatively be drawn up extending the moratorium referred to in the fourth sentence to the use, development and acquisition of robotics. However, as had been pointed out, the standard-setting capacity of the Committee was limited. The term "normative framework" had been selected to encompass treaties and other possible instruments. The issue of lethal autonomous robotics had been identified by civil society as being central to the debate on the application of the right to life and the Committee should address it, carefully taking into consideration the position of the Special Rapporteur on extrajudicial, summary or arbitrary executions in that regard.

47. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that the Committee's role was to focus on legal obligations, rather than on policy; therefore, not every statement made by a Special Rapporteur should be seen as binding. The Committee should be extremely cautious about encouraging the use of lethal autonomous robotics in peacetime law-enforcement situations, owing to the limitations of that technology.

48. **The Chair** suggested that discussion of paragraph 13 should be suspended pending the preparation of a new draft version of the text reflecting the concerns expressed by the Committee members.

49. *It was so decided.*

Paragraph 14

50. **Mr. Shany** (Rapporteur for the draft general comment) said that, unfortunately, the Committee's general comment No. 14 on article 6 (Right to life) had addressed the issue of nuclear weapons prior to the publication of, and had taken a significantly different approach to, the International Court of Justice advisory opinion on the legality of the threat or use of nuclear weapons. Consequently, paragraph 14 had been drafted in such a way as to maintain the concerns expressed in that advisory opinion, with the term "prima facie" being employed in order to better reflect it. Paragraph 14 had also been drafted with a view to highlighting the need to halt the proliferation and prevent the development of nuclear weapons without employing the challenging language used in paragraph 6 of general comment No. 14, which called for the production, testing, possession, deployment and use of nuclear weapons to be prohibited and recognized as crimes against humanity. That appeal had not been seized on by other bodies and the Committee might have overstepped its competence in that regard.

51. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that, prior to issuing its advisory opinion, the International Court of Justice had been made aware of, but had, perhaps fortunately, chosen to ignore general comment No. 14. It would be unwise to go beyond the views set out in the advisory opinion.

52. **Mr. Politi** said that the expression "prima facie" should be deleted from the first sentence of paragraph 14. The Committee was not dealing with the legality of the use of nuclear weapons, but rather with the compatibility or incompatibility of the use of weapons of mass destruction, including nuclear weapons, with the right to life. It could be argued that no use of nuclear weapons could be deemed to be compatible with that right. He fully supported Mr. Shany's position on paragraph 6 of general comment No. 14. The International Court of Justice itself had not expressed a clear opinion on the criminalization of the use of nuclear weapons, preferring to leave that decision to a future date.

53. **Mr. Rodríguez Rescia** said that a reference to the obligation to promote the destruction of existing weapons of mass destruction could perhaps be inserted into the second sentence of paragraph 14.

54. **Mr. de Frouville** said that paragraph 14 did not reflect the advisory opinion of the International Court of Justice. The Court had stated that the use of nuclear weapons would always be disproportionate, had raised doubts with regard to its compatibility with the right to life and had unanimously concluded that there existed an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. Paragraph 14, on the other hand, called on States parties to take all feasible measures to stop the proliferation of weapons of mass destruction and to prevent their development and use. The current international legal regime was based on the obligation to undertake negotiations, in particular in the case of nuclear powers in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons. Nuclear weapons were tools of mass murder, which, according to experts in the field, if used in even relatively small numbers, would kill tens of millions of persons and trigger an environmental catastrophe of global proportions. Consequently, the issue of their use was extremely relevant in the context of the draft general comment under consideration. Given the overwhelming support among the States Members of the United Nations for efforts to prevent the proliferation and use of nuclear weapons, it would be strange for the Committee to adopt a general comment containing language on nuclear weapons that was weaker than that of general comment No. 14. The Committee could either amend, but should not weaken, paragraph 6 of general comment No. 14, or agree that it would not be replaced by general comment No. 36. He had conveyed a number of proposals to the Rapporteurs on the draft general comment, based on the advisory opinion of the International Court of Justice, that referred to the obligation of States to pursue negotiations leading to the elimination of nuclear weapons, as reflected in the United Nations resolutions and texts adopted to date in that regard. Paragraph 14 should reflect the fact that a large number of States had recently signed a document on the humanitarian impact of nuclear weapons on the fringes of the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and a number of United Nations General Assembly resolutions had been adopted calling for a general convention on the abolition and total prohibition of nuclear weapons. In his opinion, the use of nuclear weapons should be classified as a crime against humanity under article 7 of the Rome Statute of the International Criminal Court.

55. **Mr. Fathalla** said that the phrase "in accordance with their international obligations" should be inserted at the end of paragraph 14 and reference should be made to the possible possession of weapons of mass destruction, including tactical nuclear weapons, by non-States parties and its consequences.

56. **Ms. Seibert-Fohr** said that the two concepts of the threat and use of weapons of mass destruction, including nuclear weapons, should be dealt with separately. The notion of taking all feasible measures suggested that it was not States but rather other actors who were responsible for the proliferation of weapons of mass destruction. Paragraph 14 should, therefore, be redrafted.

The meeting rose at 6 p.m.