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Summary record of the 3296th meeting
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Chair: Mr. Salvioli

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The meeting was called to order at 10.05 a.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. **Mr. Shany** (Rapporteur for the general comment) said that paragraphs 13 to 20 of revised draft general comment No. 36 on article 6 of the Covenant (CCPR/C/GC/R.36/Rev.2) had been amended in light of Committee members' comments. They were now being submitted for provisional adoption prior to the second reading.

Paragraph 13

2. **Mr. Shany** (Rapporteur for the general comment) said that the last sentence of paragraph 13, which dealt with new weaponry, had given rise to a great deal of discussion and no consensus had been reached. It had therefore been placed in square brackets. A reference to the use of weapons in peacetime had been added. Such reference seemed fitting given that a robot had been used the previous week, allegedly for the first time in a non-war context, to deliver the bomb that had killed the murderer of five police officers in Dallas, Texas, in the United States.

3. *Paragraph 13 was provisionally adopted, subject to drafting changes.*

Paragraph 14

4. **Mr. Shany** (Rapporteur for the general comment), recalling that paragraph 14 concerned the threat or use of weapons of mass destruction, said that the words "would in principle constitute a crime against international law" had been replaced with "may amount to a crime under international law". Two sets of square brackets had been inserted in the last sentence with a view to seeking the comments of States parties and other stakeholders on its content. Stronger wording had been introduced with regard to the role of States parties, which "must also respect their international obligations" to pursue negotiations aimed at achieving nuclear disarmament and to provide adequate reparations to victims of the testing of weapons of mass destruction. A footnote would be added in the second half of the sentence to include a reference to paragraph 21 of the Committee's concluding observations on the fifth periodic report of France (CCPR/C/FRA/CO/5), which recommended that the State party should compensate victims of French nuclear tests.

5. **Mr. Rodríguez Rescia** asked whether a threat of the use of weapons of mass destruction was considered as constituting a crime against humanity.

6. **The Chair** said that the Committee had discussed whether it should characterize certain acts as crimes against humanity on the basis of the Rome Statute of the International Criminal Court and the draft articles on the topic of crimes against humanity under consideration by the International Law Commission. He considered that the wording of paragraph 14 was well balanced in that regard.

7. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the International Law Commission was unlikely to address the issue of whether a threat of the use of weapons of mass destruction constituted a crime against humanity. He proposed that the word "threat" should be placed in square brackets.

8. **Mr. Rodríguez Rescia** said that he supported that proposal.

9. *Paragraph 14 was provisionally adopted, subject to drafting changes.*

Paragraph 15

10. **Mr. Shany** (Rapporteur for the general comment) said that among the changes made to paragraph 15, a new phrase had been inserted stating that the use of less lethal weapons must be strictly regulated in accordance with international protocols. In addition, a reference to the requirements of necessity and proportionality had been inserted in the penultimate sentence.

11. *Paragraph 15 was provisionally adopted, subject to drafting changes.*

Paragraph 16

12. **Mr. Shany** (Rapporteur for the general comment) said that a reference to paragraph 18 had been inserted in paragraph 16 because both addressed the issue of the use of lethal force in self-defence. Paragraph 20 had been merged with paragraph 16, since both dealt with the notion that the right to life was not absolute but that deprivations of life could be arbitrary if they failed to meet certain conditions. The wording taken from paragraph 20 had been rendered more restrictive to ensure that it was not perceived as unduly permissive with respect to the death penalty.

13. **Mr. de Frouville** said that the meaning of the sentence "Even those exceptional measures leading to deprivations of life which are not arbitrary per se must be applied in a manner which is not arbitrary in fact" was not clear.

14. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the sentence was based on the concepts of necessity and proportionality. The procedures that could be used for deprivation of life in exceptional cases must be applied in a manner that was not arbitrary. States might incorporate explicit provisions in their legislation but fail to apply them correctly in practice.

15. **Mr. Seetulsingh** said that paragraph 20 provided examples of procedures regulating activity that could result in deprivation of life, such as conditions for the use of lethal weapons by police and protocols for new drug treatment. He proposed that the former example should be included in paragraph 16.

16. **Mr. Shany** (Rapporteur for the general comment) proposed amending the sentence to read: "Even those exceptional measures leading to deprivations of life which are not arbitrary per se, such as the use of lethal force in self-defence, must be applied in a manner that is not arbitrary in fact."

17. *Paragraph 16 was provisionally adopted, subject to drafting changes.*

Paragraph 17

18. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 17 dealt with the overlap between the non-arbitrary nature of the right to life and the duty to protect the right to life by law. The reference to extrajudicial killing in violation of the law of armed conflict had been deleted because it would be addressed extensively elsewhere. A reference to laws of evidence had been inserted in the sentence which stated that a death sentence issued following a trial conducted in violation of domestic laws would generally be arbitrary and unlawful. The word "generally" had been retained since minor technical infringements might not violate due process rights.

19. *Paragraph 17 was provisionally adopted, subject to drafting changes.*

Paragraph 18

20. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 18 defined the concept of arbitrariness.

21. **Mr. Iwasawa** said that he wondered whether the Committee had sufficient authority to issue a comprehensive statement regarding a private individual's right to self-defence. The previous version had not explicitly mentioned private persons. It would be more acceptable, in his view, to restrict the example to law enforcement officers.

22. **Mr. Rodríguez Rescia** said that he would prefer to maintain the wording as it stood. A private individual was fully entitled under human rights law to use force to protect his or her life.

23. **Sir Nigel Rodley** (Rapporteur for the general comment) said that it would be preferable to refer in the example to a law enforcement officer. However, it should also be made clear that States had an obligation to prevent individuals from using lethal force in response to any perceived infringement of their rights or privacy.

24. **Mr. de Frouville** said that the same issues were frequently addressed throughout the general comment. He considered that all aspects of each issue, such as legitimate self-defence, should be addressed in the same context. He was in favour of maintaining the example currently provided in paragraph 18. Although it was not based strictly on the Committee's jurisprudence, it was in line with general principles of self-defence.

25. **Mr. Politi** said that the paragraph mentioned a deprivation of life authorized by domestic law. It would be strange if acts of self-defence were confined to law enforcement officers. He was in favour of maintaining the example as currently worded.

26. **Mr. Seetulsingh** said that the Committee should not give the impression that private persons were denied the right to self-defence.

27. **The Chair**, noting that a majority of Committee members were opposed to any amendment, said that States were required to prevent arbitrary deprivation of the right to life in the context of relations between private individuals.

28. **Mr. Shany** (Rapporteur for the general comment) said that the aspect of State responsibility might be reflected in the paragraph after the second reading.

29. *Paragraph 18 was provisionally adopted, subject to drafting changes.*

Paragraph 19

30. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 19 focused on the use of lethal force by law enforcement officers. In light of Committee members' proposals, the paragraph had been expanded to include references to appropriate legislation on the use of lethal force, adequate planning of law enforcement actions and the equipment of officers with adequate protective gear.

31. *Paragraph 19 was provisionally adopted, subject to drafting changes.*

Paragraph 21

32. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 21 had been heavily criticized by Committee members and some had proposed its deletion. However, the Rapporteurs considered that it should be retained because it linked the issue of arbitrariness to legality under the Covenant. The example concerning freedom of assembly had been maintained, but the words "killings of demonstrators" had been replaced with "the use of force resulting in the death of demonstrators". The second example concerned the passing of a death sentence following a trial that failed to meet due process requirements. A footnote referred to the Views adopted by the Committee in the *Burdyko v. Belarus* case.

33. *Paragraph 21 was provisionally adopted, subject to drafting changes.*

Paragraph 22

34. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 22 concerning persons with disabilities might be moved to section IV. Vulnerable people were entitled to special measures of protection against arbitrary deprivation of their life. The paragraph raised the issue of criminal proceedings involving the application of the death penalty, which was not adequately addressed in the Covenant and which would be discussed in section IV. The Rapporteurs would welcome proposals concerning procedures for taking psychosocial disabilities into account in determining criminal responsibility. It was quite a controversial issue. There were different views within the disability rights movement on the appropriateness of differentiated judicial proceedings. The Rapporteurs had taken the view that vulnerable people should be accommodated in light of the applicability of the principle of equality.

35. **Mr. Seetulsingh** said that paragraph 26 dealt with the duty to protect vulnerable persons. The two paragraphs should perhaps be combined. The issue of the criminal responsibility of persons with disabilities who faced charges that entailed the death penalty was a highly complex issue that should, in his view, be addressed at a later stage in the general comment. The footnote relating to the first sentence referred to article 10 of the Convention on the Rights of Persons with Disabilities, which stated that persons with disabilities had an inherent right to life on an equal basis with others, but did not mention special measures of protection in the context of criminal proceedings.

36. **Mr. Rodríguez Rescia**, supported by **Ms. Pazartzis**, said that he agreed that persons with disabilities should be included in the list of vulnerable persons contained in paragraph 26. He enquired about the definition of moral culpability in the context of criminal law.

37. **Ms. Cleveland** proposed moving the first sentence of paragraph 22 to paragraph 26 and moving the second sentence concerning culpability in criminal proceedings to paragraph 51. She said that there was some inconsistency between the instruction to States in paragraph 22 to afford considerable weight to assessment of the ability of persons with disabilities to defend themselves in cases involving the death penalty and the statement in paragraph 51 that States should normally refrain from applying the death penalty to vulnerable individuals. The prohibition of the execution of persons with mental disabilities was an important recent trend in international jurisprudence and had been recognized as an exception to the death penalty by the Supreme Court of the United States. That trend should not be undermined.

38. **Mr. Politi** said that he supported the proposal to move the first and second sentences of paragraph 22 to paragraphs 26 and 51 respectively. He agreed that the Committee should avoid undermining the idea that States should refrain from imposing the death penalty on people with disabilities. The second sentence was also somewhat convoluted and should be simplified. He enquired, in particular, about the meaning of the phrase "in appropriate cases".

39. **Mr. Iwasawa** said that he supported the proposal to move the two sentences. However, he said, he had reservations concerning the second sentence. As there was no footnote, the source of the Committee's position on such a complex and controversial issue was unclear.

40. **Mr. de Frouville** said that he had reservations about the term "vulnerable persons". He was in favour of moving paragraph 22 to section III but he was opposed to the idea of merging it with paragraphs 26 and 51. It should either be maintained as a separate paragraph or deleted. If it was maintained, the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on the rights of persons with disabilities should be consulted to ensure that consistent positions were adopted. It would probably be wiser to

reduce the content of the paragraph to the minimum. The issue of the criminal responsibility of persons with disabilities arose in all criminal proceedings, not just in those involving the death penalty.

41. **The Chair** said that the expression "persons in situations of vulnerability" was a more acceptable term than "vulnerable persons". The first sentence should, in his view, be moved to section III as a separate paragraph. He suggested inserting, immediately following the phrase "special measures of protection against deprivation of their life", the words "including reasonable accommodation in States' public policy". The second sentence should be moved elsewhere.

42. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the first sentence would probably be moved to within the vicinity of paragraph 26. However, he was unsure whether a one-sentence paragraph would be appropriate. The term "vulnerable persons" would be replaced with politically correct wording.

43. The content of the second sentence would be addressed in detail in section IV, on the death penalty. Substantial amendments would be introduced in light of Committee members' comments. He had attended a meeting of the Committee on the Rights of Persons with Disabilities on the death penalty, at which lawyers from the United States had highlighted the unacceptability of executing people with certain kinds of mental disabilities. That principle was enshrined in paragraph 3 of the safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council. However, some members of the Committee had deferred to the views of a civil society representative who had argued that no mental incapacity absolved a person of criminal responsibility. He was unsure whether the Committee had subsequently adopted a position on the issue. He supported the view that the Committee should seek to restrict the application of the death penalty wherever possible.

44. **The Chair** said that his suggestion to replace the term "vulnerable persons" with "persons in situations of vulnerability" was not a matter of political correctness; the language of human rights should be used wherever possible.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

Paragraph 23

45. **Mr. Shany** said that paragraph 23 provided an interpretation of the phrase "shall be protected by law" by way of a general introduction to section III.

46. **Mr. Ben Achour** said that he would be in favour of inserting an explicit statement to the effect that the existence of a legal framework to protect the right to life did not absolve States parties of their duty to protect the right to life under the Covenant. To that end, the words "*sans que cela puisse être considéré comme une condition préalable à la protection du droit à la vie au titre du Pacte*" could be inserted immediately before the words "*cela suppose également*" in the French version.

47. **Mr. de Frouville** said that, while sections II and III of the draft general comment dealt with the third and second sentences of article 6 (1) of the Covenant respectively, he was not sure that the title of section III, "The duty to protect life", was equivalent in emphasis to the second sentence of article 6 (1). Rather than follow the text of the Covenant, he would instead propose making a distinction between positive and negative obligations on the one hand, and the criteria used to establish whether an act or an omission by a State party constituted a violation of its positive or negative obligations under the Covenant on the other. The latter issue was dealt with largely in section II, "The prohibition against arbitrary deprivation of life", since arbitrariness was one such criterion, but it was also inseparable from the criteria according to which any restriction must be prescribed by law,

which was dealt with in section III. However, section III also dealt with the issue of the content of positive obligations. Paragraph 23 seemed to confuse those two issues. In his view, it would be preferable to move parts of paragraphs 23 and 24 from section III into section II.

48. **Mr. Iwasawa** proposed deleting the words "including from threats emanating from private persons and entities" from the last sentence.

49. **Mr. Rodríguez Rescia** said that the third sentence of the paragraph was rather unclear: how could "appropriate positive measures" be taken to protect life from "all possible threats"? Were States parties required, for example, to take "appropriate positive measures" to prevent childhood diseases? He would have no objection to Mr. Iwasawa's proposal.

50. **Ms. Seibert-Fohr** said that she shared the concerns expressed by Mr. de Frouville. One solution might be to go through the draft after the first reading with a view to clarifying the distinction between arbitrary deprivation and protective duties. In the *McCann and Others v. the United Kingdom* case, for example, the duty to protect the right to life had been paramount. As far as she understood it, the prohibition against the arbitrary deprivation of life covered any conduct attributable to the State party that caused an arbitrary deprivation. It could be made clearer that, even if the attribution could not be established, the State party nevertheless had a duty to protect the right to life.

51. **The Chair** said that paragraph 28 dealt with some of the concerns raised by Committee members. Referring to section III as a whole, he said that he would be in favour of including a general reference to the right to life and economic, social and cultural rights. He would like the Committee at some point to emphasize that human rights were indivisible and interdependent, a principle that had been highlighted during the recent joint meeting held with the Committee on Cultural, Economic and Social Rights.

52. **Mr. Shany** said that he would accommodate Mr. Ben Achour's proposal. As for the proposal to delete, in the last sentence, the clause "including from threats emanating from private persons and entities", he would be in favour of preserving the examples, since the paragraph would otherwise be rather abstract. The term "appropriate positive measures" had been chosen to convey that the obligations in question were not absolute in nature. The issue of diseases was dealt with in paragraph 28. He would take into account the Chair's comment regarding the indivisibility and interdependence of human rights. As had been suggested, structural issues could be considered during the second reading. It should be noted that, in the *McCann and Others v. the United Kingdom* case, the State party's agents had been directly involved in the deprivation of life. Mr. de Frouville's comment had touched on the editorial dilemma of whether to structure the general comment by positive and negative obligations or whether to follow the structure of article 6. While the latter option had been chosen, a more analytical framework could have been adopted instead.

53. **Sir Nigel Rodley** said that in his view, it was necessary for part of the general comment to be dedicated to positive obligations. It was possible that some confusion had been caused by the link made between positive obligations and the words "shall be protected by law" in article 6. The prohibition of torture entailed positive obligations for States, despite there not being an explicit reference to protection, and the same was true of the right to life. It might be possible to resolve the apparent dilemma by making small editorial changes, for example by replacing the words "It also".

Paragraph 24

54. **Mr. Shany** said that paragraph 24 dealt with the duty to introduce a legal framework to govern both negative obligations and positive, protective obligations. The second half of

the paragraph provided a number of examples. The last sentence dealt with the need to introduce criminal sanctions for crimes commensurate with their gravity.

55. **Mr. Ben Achour**, referring to the French version of the draft general comment, proposed replacing the terms "*meurtre*", "*homicide*" and "*homicide par négligence*" with the term "*homicide volontaire ou involontaire*", since the distinction between "*meurtre*" and "*homicide*" was not clear.

56. **Mr. Seetulsingh** proposed replacing the words "negligent manslaughter" with the words "involuntary homicide" or the phrase "homicide caused by negligence or imprudence", since, even in English, the term "negligent manslaughter" could give rise to confusion.

57. **Mr. de Frouville** said that there was a distinction to be made between the obligations of States parties and the criteria used to establish that a violation of the right to life had occurred. The first part of paragraph 24 dealt with the criteria according to which any deprivation of life must be prescribed by law, but the second part addressed the duty of States parties to prescribe and regulate measures necessary to protect lives, which was a different issue relating to States' positive obligations. Furthermore, it seemed inappropriate to include involuntary homicide in the same list as murder. Not every act of "terrorism" or every "disappearance" necessarily entailed a violation of the right to life. If the example of disappearances was to be retained, he would propose inserting the word "enforced" before the word "disappearance".

58. **Mr. Iwasawa** proposed deleting the third sentence on the grounds that it was not clear and that it made reference, in footnote 54, to the *González et al. ("Cotton Field") v. Mexico* judgment of the Inter-American Court of Human Rights, a judgment that appeared not to be directly relevant to the matter at hand.

59. **Ms. Seibert-Fohr** said that the paragraph in question seemed to confuse the legal framework governing the conduct of the State party and the legal framework governing the conduct of private persons and entities. A clear distinction should be made between them.

60. **Ms. Cleveland**, supported by **Mr. Rodríguez Rescia**, said that she was in favour of preserving the reference to the *González et al. ("Cotton Field") v. Mexico* judgment. The word "honour" should be placed in quotation marks in the phrase "honour killings".

61. **The Chair** said that he too was in favour of preserving the reference to the *González et al. ("Cotton Field") v. Mexico* judgment. In addition, he suggested that the issue of femicide might be treated in a separate paragraph.

62. **Mr. Shany** said that he would consider the proposal to split paragraph 24 in two in order to clearly distinguish the legal framework governing the conduct of the State party from the legal framework governing the conduct of private persons and entities. The crimes of "murder", "manslaughter" and so forth had been used only as examples and could easily be changed. He acknowledged the comments made about femicide, terrorism, enforced disappearances and the term "honour killings" and would pay special attention to the sentence identified by Mr. Iwasawa as problematic. As to Mr. de Frouville's comments, negligence and intent were obviously not equivalent, and he accepted that the distinction between them could perhaps be made clearer. The criteria of evaluation could not be dealt with in every paragraph.

Paragraph 25

63. **Mr. Shany** said that paragraph 25 addressed the duty of States parties to take positive measures to protect the right to life with regard to threats to life originating from private persons and entities. It included a number of examples drawn from the Committee's case law, mostly from concluding observations. The last sentence sought to address the

obligation of States parties to protect individuals against deprivations of life by other States operating within their territory and their obligation to ensure that all activities having an impact on individuals outside their territory were consistent with the right to life.

64. **Mr. de Frouville** said that the first sentence of paragraph 25 represented a partial repetition of the third sentence of paragraph 23. The second sentence dealt with the positive measures that States parties should undertake in response to foreseeable threats to life originating from private persons and entities, which was an issue that was also dealt with in paragraph 23 of the version of the draft general comment currently under discussion and in paragraph 6 bis, contained in the revised draft general comment (CCPR/C/GC/R.36/Rev.4) discussed earlier in the session. However, whereas paragraph 6 bis made reference to the criterion of due diligence, paragraph 25 seemed to make greater demands of States parties. The reference to "public transportation service-providers" was unclear. Furthermore, the obligation of States to "protect individuals against deprivations of life by other States operating within their territory" and their accountability for activities "having a direct, foreseeable and significant impact on individuals outside their territory" would both benefit from a more detailed explanation. It would be interesting to know, for instance, the origin of the criterion of "direct, foreseeable and significant impact".

65. **Mr. Iwasawa** said that the obligation to reduce the "proliferation of illegal weapons" excluded gun control, which was an important issue in the context of the right to life. In its concluding observations on the initial report of Angola (CCPR/C/AGO/CO/1), the Committee had recommended that the State party should reduce the proliferation of both legal and illegal weapons. The Committee had raised the issue of the impact of the activities of States parties on individuals outside their territory in its concluding observations on the sixth periodic report of Germany (CCPR/C/DEU/CO/6), but, in that particular case, there had been no reference to article 6 of the Covenant.

66. **Mr. Seetulsingh** said that he would be in favour of inserting an explicit reference to gun control. The reference to "the second sentence of article 6" should be corrected to "the second sentence of article 6 (1)".

67. **Ms. Cleveland** said that it should be made clear that the words "which do not impose on them unreasonable or disproportionate burdens" referred to positive measures. She would suggest inserting those words immediately after the words "positive measures" or, alternatively, changing "positive measures" to "reasonable positive measures". As to the last sentence, she would suggest adding the words "or jurisdiction" after each occurrence of the word "territory".

68. **Mr. Politi** said that he, too, would suggest inserting a phrase such as "or under their jurisdiction" after each occurrence of the word "territory" in the last sentence.

69. **Ms. Seibert-Fohr** said that she shared Ms. Cleveland's concern regarding the words "which do not impose on them unreasonable or disproportionate burdens". She would suggest separating the two issues addressed in the last sentence.

70. **The Chair** said that, with regard to the arbitrary deprivation of life by hospitals, the Rapporteurs might consider the cases of *Suárez Peralta v. Ecuador* and *Gonzales Lluy et al. v. Ecuador*.

71. **Mr. Shany** said that he would attempt to address the concerns expressed regarding the repetition of concepts and due diligence. As to transportation, States parties had an obligation to prevent the deprivation of life resulting from accidents. With regard to the issues dealt with in the last sentence, he would give consideration to the question of jurisdiction. The concepts of directness, foreseeability and significance referred to the burdens imposed on States parties. Although gun violence was mentioned in paragraph 28, he accepted that the issue of gun control could be given greater emphasis. He

acknowledged the cases that the Chair had cited and would consider Ms. Seibert-Fohr's suggestion.

72. **The Chair** suggested that the Committee should continue its consideration of the draft general comment at its 118th session.

73. *It was so decided.*

The meeting rose at 1.05 p.m.