



International Covenant on Civil and Political Rights

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Summary record (partial)* of the 3213th meeting

Held at the Palais Wilson, Geneva, on Monday, 26 October 2015, at 10 a.m.

Chairperson: Mr. Salvioli

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* No summary record was prepared for the rest of the meeting.

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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

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

1. **The Chairperson** invited the rapporteurs to present draft general comment No. 36.
2. **Mr. Shany** (Rapporteur for the draft general comment) said that, in the interests of developing a uniform approach to the drafting of general comments, the structure of draft general comment No. 36 largely covered followed that of general comment No. 35. For the sake of comprehensiveness, the rapporteurs had, to the extent possible, all of the Committee's output that referred to article 6, including its Views, concluding observations and other general comments. They had sought to enrich the draft with the output of other treaty bodies, special procedures and, particularly in areas where the Committee's work was less extensive, the relevant practice of regional human rights bodies. They had also considered *travaux préparatoires* where necessary. In the light of comments that had already been received from, among others, special procedures mandate holders and Committee members, the rapporteurs had reconsidered some of the terminology used and, as a result, would, in the course of discussion of the draft, circulate a number of proposed amendments with a view to harmonizing the language of the draft with that used elsewhere in the United Nations human rights system. It was important to recall that the current exercise concerned the interpretation of a specific article of the Covenant and therefore any comments regarding general human rights issues, such as immigration or public health, could be addressed only to the extent that they related to article 6.
3. In the interests of transparency and in order to enable interested parties to follow the discussion more easily, the draft comment had been posted on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR). However, the text would not be circulated for formal comment by stakeholders, including Member States, until it had been adopted on first reading.
4. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that a consultation process with external contributors had first been conducted in connection with general comment No. 31, on which submissions had been invited between the first and second readings. However, prior to the current process, the draft general comment concerned had not been placed in the public domain until after the conclusion of the first reading. The decision to make the draft of general comment No. 36 available at an earlier stage, for the reasons stated by Mr. Shany, had perhaps led to an assumption on the part of some parties that the Committee had already opened the consultation process. He therefore wished to echo Mr. Shany's comment that submissions from stakeholders would not be solicited or considered until a later stage.
5. **The Chairperson** invited members of the Committee to make general observations on draft general comment No. 36 before considering the text paragraph by paragraph.
6. **Mr. de Frouville** said that he wished to pay tribute to the immense work accomplished by Mr. Shany and Sir Nigel. Their draft attested to the wisdom of the decision to prepare a new general comment on the right to life in the light of the extensive jurisprudence that had been established in the three decades since the Committee had adopted general comments Nos. 6 and 14. The rapporteurs, who had faced considerable challenges, given the large number and complexity of the issues addressed by the Committee from the perspective of the right to life, had succeeded in

producing a comprehensive draft that encompassed all the issues that had been identified by the Committee at its previous session.

7. The Committee was tackling the topic in the context of a situation that was hardly conducive to the realization of the right to life. While the last decade of the twentieth century had seen conditions that were favourable for the expansion of human rights, the beginning of the twenty-first century had been marked by a global terrorism that had made the violation of the right to life its operating principle. The international community had responded not through enhanced multilateral action that sought to strengthen the human rights framework but through unilateral measures that had resulted in yet further loss of life and created a climate of permanent fear in which the preservation of national security had taken precedence over respect for rights. In such difficult circumstances, it was the duty of the Committee not to yield to regressive trends but rather to reaffirm the right to life as a basic human right and to take a clear position on the many controversial issues covered in the draft general comment, in keeping with the spirit in which the Covenant had been drafted almost 50 years previously.

8. With respect to the death penalty, for example, although ever fewer States opposed the idea of the need to establish a moratorium on executions, nothing could be taken for granted, since regressive tendencies could again emerge in the current context. The Committee's jurisprudence was key in that regard, since it should lead States progressively to the conclusion that the death penalty was incompatible with the principles set out in the Covenant.

9. A woman's right to control over her own body was related to the issue of the right to life, inasmuch as the criminalization of voluntary termination of pregnancy did not deter women from seeking abortions but rather pushed them into undergoing abortions in conditions that could result in death. Every year, some 47,000 women died as a result of complications from unsafe abortions, deaths that could have been prevented if States had complied with their obligations under article 6. Priority therefore had to be given to legalizing voluntary terminations of pregnancy, developing family planning and reproductive health programmes and improving access to contraception.

10. The right to life during armed conflict covered numerous difficult areas where there was a risk of backsliding, in particular with respect to the use of nuclear weapons. Nuclear proliferation had reached new heights: an increasing number of States already possessed weapons that could destroy humanity as a whole, while in the future non-State actors would in all likelihood use such weapons as a tool of terror. There was, then, more than ever a need to reaffirm the words in general comment No. 14 calling for the prohibition of the production, testing, possession, deployment and use of nuclear weapons.

11. **Mr. Iwasawa** emphasized that the draft text had been posted on the Committee's website for information only, in a spirit of transparency. All interested parties would have a formal opportunity to comment on it on completion of its first reading by the Committee.

12. **Mr. Ben Achour** said that the draft text would offer an excellent basis for the Committee's discussions. The rapporteurs' balanced position on such fundamental issues as abortion took account of the Committee's jurisprudence. He fully agreed with the general structure of the draft text. In particular, he was in favour of the distinction drawn between the prohibition of the arbitrary deprivation of life and the obligation to protect life, as well as the separate treatment of the death penalty. He was likewise in favour of consulting civil society and other parties after the first reading of the draft general comment.

13. **Mr. Rodríguez-Rescia** said that the draft text was courageous and comprehensive. The idea underpinning general comment No. 6, paragraph 5, should be retained and, if possible, strengthened by requiring States to adopt positive measures to protect life. It was necessary to move towards an understanding of the right to life as the right of individuals to a dignified life. The right to life should therefore be linked to the enjoyment of economic, social and cultural rights, especially those of vulnerable groups. For that reason, he would like to see a first paragraph that viewed the right to life holistically, as encompassing all other rights. It was unclear whether the general comment under consideration was intended as a systematization of the committee's jurisprudence. Although he had always believed that the general comments could transcend that jurisprudence, he doubted whether the Committee should deal with the life of frozen embryos, eggs or sperm. Paragraphs 7 and 35 therefore provided much food for thought and discussion. Unfortunately, footnote 21, which related to the manner in which the Inter-American Court of Human Rights had interpreted the American Convention on Human Rights, was misplaced, in that it should refer to paragraph 7 of the draft text. It should be corrected.

14. Lastly, he commended the fact that the Committee adopted a transparent approach and was ready to work with civil society on a subject of crucial importance.

15. **Mr. Politi** said that the excellent draft text prepared by Mr. Shany and Sir Nigel Rodley offered a good basis for discussion. General comment No. 36 would cover a much wider range of issues than general comments Nos. 6 and 14 and would explicitly deal with each paragraph of article 6. Some issues, such as abortion, the use of lethal force in military operations (including the use of weapons of mass destruction), the death penalty and the relationship of the Covenant with international humanitarian law would require especially careful consideration by the Committee. In that connection, he endorsed the comments made by Mr. de Frouville.

16. He agreed with the structure of the text. Paragraph 7 was a largely successful attempt to balance various considerations and the different inputs from civil society, but it still left States too much discretion to restrict women's right of choice to seek an abortion. Paragraph 13, concerning the use of lethal force in military operations, should be worded more strongly and should state that "the obligation of States parties to uphold the right to life includes the duty to ensure that, in situations of armed conflict, military operations are consistent with the relevant international law, including international humanitarian law and human rights law". The second part of that paragraph, concerning lethal autonomous robotics, should include a reference to a State's duty to be as transparent as possible about a normative framework that authorized targeted killing operations by armed drones. He fully subscribed to Mr. de Frouville's comments on the death penalty. The concept of "most serious crimes" in paragraph 20 would have to be interpreted very restrictively. In that context, the Committee should refer to the conclusions reached on that subject by the Special Rapporteur on extrajudicial, summary or arbitrary executions. In paragraph 42, it might be wise to consider the prohibition of the indefinite solitary confinement of persons who had been sentenced to death and the possible violation of the rights of the family of the convict in those circumstances. He wondered whether a separate paragraph could be devoted to enforced disappearance in relation to the right to life. He welcomed the approach adopted in paragraph 63 and, in that connection, he subscribed to the views expressed by David Weissbrodt in his article "The Role of the Human Rights Committee in Interpreting and Developing Humanitarian Law", since the two bodies of law — human rights law and international humanitarian law — increasingly tended to overlap.

17. **Ms. Seibert-Fohr** said that the draft text provided the Committee with an opportunity to focus on the most fundamental of all rights, namely the right to life,

and to give due recognition to the imperative need to protect that right. She agreed with the rapporteurs that the general comment should primarily rest on the Committee's earlier jurisprudence and she trusted that discussions within the Committee would enable it to arrive at the consensus required in order to give the general comment persuasive force.

18. **Mr. Seetulsingh** endorsed the comments made by Mr. Rodríguez-Rescia in respect of the connection between the right to life and economic, social and cultural rights. The general comments of the Committee on Economic, Social and Cultural Rights were therefore of great pertinence to the contents of paragraph 28.

19. **Ms. Pazartzis** congratulated the rapporteurs on undertaking a Herculean task and on their comprehensive report, which paid due heed to the diverging opinions expressed at the lively public discussion held in the spring of 2015 on one of the most fundamental human rights. Drawing on a multitude of sources, the rapporteurs had tackled all the issues involved, even those deemed to be "difficult", as was clear from the general remarks in section I. She agreed with their methodology of focusing on the prohibition of the arbitrary deprivation of life and the positive duty to protect the right to life. She concurred with Mr. Seetulsingh that some economic, social and cultural rights would have to be taken into consideration in the context of the right to life. The death penalty should indeed be addressed in a separate paragraph. It was necessary to remember that, once the general comment had been adopted, it would serve as a point of reference not only for the committee but also for States.

20. **Mr. Bouzid**, supported by **Ms. Waterval**, congratulated the rapporteurs on their work. The right to life was inseparable from all other rights. However, cultural perspectives needed to be taken into consideration during the discussion on the draft general comment, especially concerning abortion.

21. **Ms. Cleveland** thanked the rapporteurs for their draft. The decision to prepare a new general comment was in itself an acknowledgement of the advances made since the adoption of previous general comments, such as progress towards recognizing the positive obligations of States to recognize the right to life, abolishing capital punishment, protecting women's control over reproductive choice and achieving a better understanding of the relationship between human rights and international humanitarian law, all of which were addressed in the draft.

22. **Mr. Ben Achour** said that, while the right to life could not be dissociated from the rights that ensured a decent life, such as the right to education and to health, they were nevertheless distinct from one another. Protection of the right to a dignified existence, while fundamental, was not the objective of the Committee's current discussion, which should centre on the right to life in itself. The relationship between the two concepts was succinctly explained in paragraph 3 of the draft text and there was no need for further elaboration.

23. **Mr. Fathalla** said that respect for the right to life was pivotal to the protection of all the other rights enshrined in the Covenant. Bearing in mind the developments in human rights over recent decades, the general remarks should highlight the cross-cutting issues and the interpretation of article 6 should cover the right to a dignified existence, without which it was impossible to guarantee the right to life.

24. **The Chairperson**, speaking as a member of the Committee, said that the drafting of the new general comment constituted a significant challenge for the Committee. The Committee should take into account its consideration of country reports and individual communications in which it had reached conclusions on both the violation and the non-violation of the right to life. Discussing the right to life in the context of international law, setting aside personal opinions, would also pose a challenge to the Committee.

25. **Mr. Shany** (Rapporteur for the draft general comment) thanked the Committee members for their remarks and said that all suggestions regarding the draft were welcome. The rapporteurs had not based the draft on their own views but had sought to encapsulate the work of the Committee and to develop a platform from which the Committee's jurisprudence could advance. They had identified gaps in the Committee's decisions, as well as gaps between its decisions and those of other bodies, with the aim of preparing a comprehensive text.

26. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that drafting general comments was essentially a codificatory process, taking as a starting point the Committee's positions on certain issues. Although the Committee's views would evolve, the rapporteurs had aimed to give effect to its accumulated wisdom and the text was certainly not a reflection of the individual views of the rapporteurs. The forthcoming discussion would therefore essentially entail decisions on how to reflect most effectively the acquired knowledge of the Committee as a whole and the way in which, operating under appropriate canons of interpretation of international conventions, it perceived the meaning of the Covenant.

27. The preamble to both the International Covenants set out the underlying philosophy of those texts and of human rights in general: "Recognizing that these rights derive from the inherent dignity of the human person". While cross-cutting issues should be taken into account in the discussion of the draft general comment, and the right to life was primordial about human dignity, it was essential for the Committee to consider the right to life separately from other human rights issues and determine its specificities in order to develop sound guidance for States parties. The text contained controversial issues and the Committee would rely on the Chairperson's direction in order to ensure discussions did not stall.

28. **The Chairperson** thanked the rapporteurs and invited the Committee to consider draft general comment No. 36, paragraph by paragraph.

Paragraph 1

29. **Mr. Shany** said that, as the two previous general comments were brief, the rapporteurs had used them only to a limited extent, but the essential aspects had been maintained.

30. **Mr. de Frouville** said that it was important to consider whether the two earlier general comments had really been replaced by the draft general comment, as stated in paragraph 1, or whether the drafting process rather constituted a revision of them. If they formed part of the Committee's acquired knowledge, they should be incorporated into the new text, using the same wording that had been used to address specific issues in the earlier general comments.

31. **Mr. Rodríguez-Rescia** said that the word "replaces" implied that the earlier comments had been entirely subsumed under the new draft. He therefore proposed that the phrase "incorporates and complements" ("*integra y complementa*") should be used instead of the word "replaces", in order to ensure that certain aspects of the earlier comments that might not be covered by the draft text remained valid.

32. **Mr. Ben Achour** said that identical phrasing to that in paragraph 1 had been used in previous general comments. The word "replaces" should therefore be retained in order to ensure consistency and prevent confusion among the States parties.

33. **The Chairperson**, speaking as a member of the Committee, said that the purpose of drafting new general comments was precisely to bring previous general comments up to date and thus the draft did, in effect, replace the earlier general comments. Nevertheless, if it was deemed that a particular aspect of the earlier general

comments was not duly reflected in the draft text, a suitable point for its insertion could be identified elsewhere in the text.

34. **Sir Nigel Rodley** said that, while in principle it was not desirable to change existing practice, the Committee might decide on a paragraph that contained differences from previous general comments. In such circumstances, some members might not wish the text to supersede earlier general comments and he therefore proposed that the paragraph should be provisionally adopted as it stood and, if it became necessary to develop a consensus on substance elsewhere in the text, the Committee could reconsider the use of the word “replaces” at a later stage.

35. *Paragraph 1 was adopted on that understanding.*

Paragraph 2

36. **Mr. Shany** said that the language in paragraph 2 derived from published texts, but the rapporteurs were open to other suggestions.

37. **Mr. Rodríguez-Rescia** proposed replacing the words “all individuals” (“*todas las personas*”) with the words “every human being” (“*la persona humana*”) in order to align the paragraph with the language contained in article 6 and to ensure that the same scope was applied to paragraph 2 as to article 6. In the Spanish text, that amendment would also exclude other possible interpretations of “*personas*”, such as legal persons.

38. **Mr. Fathalla** proposed stronger wording for the last sentence, along the following lines: “It is most precious for its own sake: without guaranteeing such a right, the enjoyment of other human rights stipulated in the Covenant could not be invoked or addressed.”

39. **Mr. Ben Achour** agreed that the word “individuals” in the first sentence should be replaced with the words “human beings”.

40. He proposed that the phrase “The right to life has profound importance” in the second sentence should be replaced with the phrase “The right to life is of paramount importance” (“*d’une importance capitale*”), which was the wording used in paragraph 3 of general comment No. 6.

41. He further proposed that the phrase “but also serves as a basic right” in the last sentence should be amended to read: “but also serves as a fundamental and natural right inherent in the human person”.

42. **Mr. de Frouville** proposed that the phrase “even in time of public emergency” should be inserted after the phrase “from which no derogation is permitted” in the second sentence, which would then reflect the wording of general comment No. 14, paragraph 1. A reference should perhaps also be made to article 4 of the Covenant concerning derogations.

43. He supported the proposal to replace the words “profound importance” with the words “paramount importance” in the second sentence.

44. He also supported the proposal to replace the words “basic right”, which implied that there was a hierarchy of rights, with the words “fundamental right” in the third sentence.

45. **Mr. Bouzid** proposed inserting the words “without discrimination” after the phrase “the right to life of all human beings” in the first sentence.

46. **Ms. Cleveland** noted that the statement in general comment No. 6, paragraph 1, that the right to life should not be interpreted narrowly had not been reflected in

paragraph 2. It was unclear whether the implication was that States parties tended to adopt an unduly narrow approach to the right to life.

47. General comment No. 6, paragraph 2, and general comment No. 14, paragraph 2, addressed the scourge of war and referred to the duty of States to prevent war. The issue was addressed at the very end of the draft general comment currently before the Committee. Given the devastating implications of war for the right to life and the number of armed conflicts that had broken out in recent years, she proposed that the primacy of the issue should be restored.

48. **The Chairperson**, speaking as a member of the Committee, suggested that the last phrase of the paragraph should be amended to read that the right to life “is the source of the enjoyment of all other human rights”.

49. **Sir Nigel Rodley** expressed support for the proposal to replace the word “individuals” with the words “human beings” in the first sentence.

50. A reference to the prevention of war could be inserted in the context of non-derogation, bearing in mind the wording of general comments Nos. 6 and 14.

51. **Mr. Shany** agreed that the word “individuals” should be replaced with the words “human beings” in the first sentence and that the words “without discrimination” should be inserted at the end of the sentence.

52. He suggested inserting the words “even in time of war or in other exceptional circumstances” after the phrase “from which no derogation is permitted”.

53. He supported the proposal to replace the phrase “has profound importance” with the phrase “is of paramount importance”.

54. The remaining proposals would be studied by the rapporteurs and reflected in a revised version of the paragraph.

55. *It was so agreed.*

Paragraph 3

56. **Mr. Shany** said that the paragraph presented a general definition of the right to life.

57. The reference to “a dignified existence”, which reflected the strong support expressed for such a concept during the open discussion with civil society, would need to be discussed.

58. As lists of illustrative examples invariably raised sensitive issues, the second sentence referred only to the death penalty for persons convicted of serious crimes, which also covered extrajudicial killings in the context of the war on terror.

59. **Mr. Rodríguez-Rescia** said that the desirability of including open-ended lists had been discussed repeatedly when the Committee was drafting general comment No. 35 on liberty and security of person. He had reservations regarding the reference in the second sentence of paragraph 3 to criminals and terrorists only. The sentence should either contain a more extensive list of categories of persons for whom the right to life was guaranteed or be deleted.

60. **Mr. Iwasawa** expressed reservations regarding the term “a dignified existence”, since it suggested that article 6 of the Covenant could be interpreted as guaranteeing rights such as social security, an adequate standard of living and the highest attainable standard of physical and mental health, which were enshrined in articles 9, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

61. **Mr. Politi** said that he strongly supported the retention of the reference to a dignified existence, which denoted, in his view, the right to be free from torture, inhuman treatment and trafficking in human beings. He proposed that the phrase “legitimate expectation to enjoy a dignified existence” should be replaced with the phrase “entitlement to enjoy a dignified existence”.

62. **Mr. Bouzid** said that a dignified existence required not only freedom from torture and ill-treatment but also a high standard of physical and mental health, and freedom from hunger and poverty.

63. **Mr. Ben Achour** said that he supported the wording of the paragraph as it stood. In particular, it was essential to refer to terrorism, since a number of States were restoring the death penalty precisely in response to the serious crime of terrorism. For some time, there had been a virtual moratorium on the use of the death penalty in his own country, Tunisia, but the death penalty had now been restored.

64. **The Chairperson** said that the discussion would be continued at the Committee’s 3218th meeting.

The discussion covered in the summary record ended at 12.10 p.m.