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Chairperson: Mr. Iwasawa

Contents

General comments of the Committee (agenda item 8)

Draft general comment No. 34 on article 19 of the Covenant

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The meeting was called to order at 10.10 a.m.

General comments of the Committee

Draft general comment No. 34 on article 19 of the Covenant (CCPR/C/GC/34/CRP.1)

1. **The Chairperson** invited the Committee to begin discussion of draft general comment No. 34 on article 19 of the Covenant.
2. **Mr. O’Flaherty** (Rapporteur for the general comment) said that he had prepared the draft general comment bearing in mind the purpose of general comments as set out in document CCPR/C/21/Rev.1, that being “to assist States parties in fulfilling their reporting obligations” based on the lessons learned in the Committee’s consideration of their reports. The principal references for the draft were: general comment No. 10, the first general comment on article 19 of the Covenant; other comments, parts of which were of interest, for example general comment No. 31 (general legal obligation imposed on States parties) and general comment No. 24 (reservations); the Committee’s jurisprudence relating to article 19; and its concluding observations. While the Committee’s two latest general comments made no mention of concluding observations, if one went back in time, it would be found to have been normal practice. In that particular case, the wide range of issues relating to article 19 made it essential to refer to concluding observations. The draft contained components relating to the interpretation and application of legal principles as well as components that were recommendations rather than obligations. The final section dealt with its relation to article 20, but his mandate had not included also drafting a general comment on article 20, as some experts had suggested.
3. **The Chairperson** invited the Committee to make general observations on the approach and the methodology used in the draft, on the understanding that substantive issues would be discussed later.
4. **Mr. Thelin** requested more information on the references used. They seemed to be of three types, of differing normative value: Views adopted in communications, concluding observations, and a third category different from the first two. The normative effect of Views was clear, as explained by the Committee in general comment No. 33, but the normative effect of its concluding observations was less clear, especially when compared with Views. It might be worth discussing the three categories’ normative relation.
5. **Ms. Majodina** said that the draft general comment was a considerable improvement on general comment No. 10, which was very unsatisfactory. As the Rapporteur had pointed out, the Committee’s general comments were intended to assist States parties in implementing the Covenant. In some regions of the world, for example Africa, that assistance was particularly necessary. It was not merely a matter of explaining what the Covenant’s provisions meant; the comment must also help an average civil servant to understand the State party’s obligations regarding freedom of expression.
6. **Ms. Chanet** welcoming the Rapporteur’s innovative approach — a thematic analysis rather than a comparison between that article and the other articles of the Covenant — said that the question of possible restrictions on freedom of expression was particularly well-reasoned. There was no need to devote a separate chapter to the relationship between article 19 and article 20. However, whether the draft would replace general comment No. 10 could not be decided in the first paragraph; that decision could be taken only at the end.
7. **Mr. Salvioli** also welcomed the very rigorous treatment of the issue of possible restrictions on freedom of expression. Article 19 presented many challenges, which the Rapporteur had done a good job of highlighting. The references to concluding observations were very useful, as were the many examples, although some of those examples could perhaps be deleted. The issue of access to information was likewise very well covered.

8. **Ms. Keller** said that the Rapporteur had struck the perfect balance between the two effects a general comment should produce: scientific analysis coupled with more political and diplomatic relevance.

9. **Mr. Amor** said that the adoption of a thematic approach, as had been done in paragraphs 38 ff., might cause the Committee to make arbitrary choices. There were a great many issues that could be discussed: for example, a chapter could be devoted to freedom of expression and its relationship to money or to academic freedom or to representation of women in the media. It would therefore be wiser simply to provide some examples to illustrate the commentaries to the provisions. The issue of the relation of article 19 to article 20 should be introduced at the outset because the former was applicable, above all, within the framework defined in the latter. The distinction between freedom of expression and freedom of opinion warranted further explanation, for although article 19 dealt principally with freedom of expression, freedom of opinion was nevertheless the starting point and was somewhat neglected in the draft. Conversely, great attention was devoted to the media and the status of journalists; care must be taken in the draft, however, not to treat the quality press and the tabloid press the same, the latter being sometimes guilty of violations of the most basic human rights. Emphasis should be placed on the need to strengthen protection of the quality press but without accepting violations of the law committed by some media outlets. The conception of the law contained in the draft should also be revisited. Regulations emanating from the executive branch, as well as municipal regulations and by-laws, which, if unrestricted, might, in practice, undermine freedom of expression could not be considered to have the status of laws. Any expansion of the notion of law would empower not legitimate authorities to impose restrictions, which was legally unacceptable. Article 19 enshrined legal norms that needed to be interpreted by the Committee. However, methods of interpretation varied and a teleological approach taken to extremes risked distorting the interpretation of the provisions. They must be interpreted scientifically and not in the light of some people's experience. References to the Committee's jurisprudence were certainly useful, but a decision did not of itself constitute jurisprudence, even when many decisions converged. When drafting a general comment the Committee must therefore be mindful of the myriad situations existing in the various regions of the world.

10. **Mr. Bouzid** fully endorsed the comments made by Mr. Amor.

11. **Sir Nigel Rodley** recalled his reluctance to issue a general comment on article 19 because the Committee would have to deal with issues in which it had little experience. In those areas it would, therefore, be difficult to find the precise terminology needed to reflect the meaning of the Covenant. It should be borne in mind that change in the world owed much to those who had fought, sometimes sacrificing their lives, for the right to freedom of opinion and of expression; the Committee therefore had an obligation to defend that particular principle. It was a value that sometimes came at great cost, because many irresponsible acts were protected in the name of freedom of expression and might continue to be thus protected because of lack of clarity on how to define the limits. Some words could mean different things in different situations. That point had been illustrated by the American jurist Oliver Wendell Holmes, who had said that no one had the right to shout "Fire!" without cause in a crowded theatre. There came a time when, in certain contexts, words became action. It was therefore necessary to limit expression and it was in fact at that precise point that freedom of expression ended. Lastly, unlike Mr. Amor, he believed that article 20 must be interpreted in the light of article 19 rather than the other way around.

12. **The Chairperson**, speaking as a member of the Committee, said that the Committee must clearly base itself on its experience, in other words on its jurisprudence and the concluding observations formulated following the consideration of reports, but that it should not lose sight of the difference between the two. The Committee's Views concerned individual cases of alleged violations of the Covenant, whereas the concluding observations

dealt with general issues of concern accompanied by recommendations. The draft contained a large number of footnotes, which often referred to concluding observations. To date, general comments had contained few such references, the majority of them citing the Committee's Views. Did the Rapporteur wish to retain all the references to concluding observations or had he simply included them to facilitate the discussion?

13. **Mr. Lallah** said that the Committee most often spoke with one voice when taking a decision on its Views; it would therefore be preferable to base general comments mainly on those Views.

14. **Mr. O'Flaherty** (Rapporteur for the general comment) said that it was undeniable that the Views expressed in communications had a higher value than concluding observations. He had included a great many references to concluding observations because they reflected a wide range of experience and helped to illustrate how principles were applied; he was not, however, proposing any legal principle founded on concluding observations. The concluding observations in question could be analysed one by one during the Committee's discussion of the draft and retained or deleted depending on their usefulness. Some sections of the draft contained virtually no references because the Committee had never expressed an opinion on the issues in question. He had therefore simply been guided by logic normally followed by the Committee.

15. As for the relationship between article 19 and article 20, he agreed with Sir Nigel Rodley that article 20 did not establish the context for article 19 but, rather, defined another, legitimate, restriction on freedom of expression. He would not be opposed to integrating the relationship between those two articles in text rather than under a separate heading.

16. Regarding Mr. Amor's questions, he had adopted a thematic approach to the restrictions on freedom of expression, beginning with paragraph 38. As indicated in paragraph 37, States parties might seek to justify limitations on freedom of expression on the basis of one or more of the limitations in paragraph 3 of the article or by general reference to the entire paragraph, making it necessary to recall the Committee's jurisprudence on all the grounds set out in paragraph 3, in the context of specific restrictions such as national security or public morals, which were frequently invoked by States parties themselves. As for the choice of categories, they all corresponded to cases that had come before the Committee. The situations mentioned by Mr. Amor, freedom of expression and money, academic freedom or representation of women in the media, had never been dealt with by the Committee; perhaps they too should be mentioned and the Committee should perhaps issue a more general statement on censorship. The text was simply a draft and could be supplemented as the Committee saw fit.

17. It was true, as Mr. Amor had pointed out, that the draft did not deal with freedom of opinion in any detail; that was because the Committee had hardly expressed any position solely on that issue. As for freedom of expression in the media, the Committee had studied in depth the legitimacy of limitations on media activity. If, however, the Committee felt that that section was too detailed it could be shortened. He also agreed with Mr. Amor that the draft should take into account the fact that freedom of expression had developed differently from one culture to another, an issue implied in paragraph 32.

18. The hierarchy of laws was very important, as Mr. Amor had underscored. If there was the slightest ambiguity in the text, it would be redrafted and made clear. Indeed, the text contained specific references to the fact that customary law did not have the same status as statutory law (paras. 26 and 52).

19. **Mr. Amor** said that the Rapporteur had quite rightly underscored that customary law was not included in the concept of law envisaged in article 19. Law should be

understood to mean legislation adopted by the representatives of the people, and no statutory text could result in a restriction of freedoms.

20. Article 19, paragraph 3, stated that the exercise of the freedoms provided for in paragraph 2 of the same article carried with it “special duties and responsibilities”. Those two concepts were very difficult to analyse and define, but it was important to grasp their legal meaning and scope and include those notions in the general comment. The issue was not one of moral or ethical duties but of a legal notion.

21. Regarding the thematic structure of paragraphs 38 ff., they could be incorporated into the rest of the analysis. He proposed that if the Committee decided to retain the current structure the three issues he had raised should be added.

22. **Ms. Chanet** pointed out that a general comment was not a mere compilation of concluding observations or Views and that there was no hierarchy between the two. Article 40, paragraph 4, of the Covenant stated that the Committee must transmit to States parties such general comments as it considered appropriate. The original purpose of general comments had been to guide States in preparing reports for submission to the Committee. References to all the texts issued by the Committee were essential for review of the draft. Like Sir Nigel Rodley and Mr. O’Flaherty, she believed that article 20 dealt with restrictions and, unlike article 19, could not be invoked under a communication as an individual right, since it dealt with the State’s obligation to incorporate it into the law. With regard to the thematic part, the important thing was not form but content; all restrictions must be studied with a view to deciding whether they were justifiable or not.

24. **Mr. Rivas Posada** said that the relationship between opinion and expression of opinion should be studied. It was impossible to know someone’s opinion unless he/she expressed it. In other words, that freedom only became effective when the opinion was expressed. The general comment should perhaps place more emphasis on freedom of opinion.

25. With regard to the reservations expressed about whether or not the Committee should issue a general comment on article 19 of the Covenant, the Committee’s relative lack of experience on the subject of that article was vastly outweighed by the urgency of stating its position on a phenomenon that affected all societies and the need to interpret the obligations set out in the Covenant in relation to one of the great scourges of our times, the violation of freedom of expression. The Committee was therefore quite right in deciding to interpret article 19, although the task would not be an easy one.

26. **Mr. O’Flaherty** (Rapporteur for the general comment) explained that he had not analysed the meaning of special duties and special responsibilities because the Committee had said virtually nothing on the subject. In a handful of examples, the Committee’s practice provided some guidance on the duties and responsibilities of States by recalling, for example, their duty to vigorously defend freedom of expression.

27. With regard to the themes dealt with, it went without saying that the Committee could add to them. While it was quite possible to adopt a different style of presentation from that of the draft, none of the substance, which reflected a considerable part of the Committee’s practice, should be removed.

28. The reason the Committee’s general comment No. 14 cited only Views and not concluding observations was that a vast body of jurisprudence existed on article 14; that was not the case with article 19.

29. **Mr. Thelin** noted that Miss Woodward, who was absent, had sent four pages of comments on specific points and wondered what should be done with them. Mr. O’Flaherty could perhaps read them out as the various points were raised.

30. **Mr. O'Flaherty** (Rapporteur for the general comment) said that Ms. Wedgwood had sent her comments by e-mail, which he had taken the liberty to distribute to the Committee. He had taken those comments into account when submitting the draft and would continue to do so during the discussion.

31. **The Chairperson** invited the Rapporteur to introduce the first section, entitled "General remarks" before proceeding to examine it paragraph by paragraph.

32. **Mr. O'Flaherty** (Rapporteur for the general comment) said that, in accordance with the Committee's practice, the section contained preliminary remarks which could not be included in the sections dealing with the specific aspects of article 19. They were based on the positions expressed by the Committee in other general comments as well as in its Views on communications.

Paragraph 1

33. **Sir Nigel Rodley** recalled that each time the Committee had adopted a new general comment on an article that had already been dealt with in a general comment, the new text had replaced the old one. He therefore saw no reason why general comment No. 34 should not replace general comment No. 10, as indicated in paragraph 1.

34. **Mr. Amor, Mr. Thelin and Mr. O'Flaherty** (Rapporteur for the general comment) agreed.

35. **Ms. Chanet** explained that her intention had not been to delete paragraph 1 but simply to wait for the end of the discussion on the draft before deciding whether the new general comment would replace general comment No. 10 or simply complement it.

36. **The Chairperson** said that it was only a first reading of the draft and therefore no definitive decision would be taken at that stage. He suggested retaining paragraph 1 as it stood and returning to it once the Committee had discussed the draft as a whole.

Paragraph 2

37. **Sir Nigel Rodley** said that the words "freedom of opinion and expression" in the first sentence should be replaced with "freedom of opinion and freedom of expression" so as to underscore that they were two distinct freedoms. In order to avoid repetition, he suggested replacing "free development" with "full development".

38. *It was so decided.*

39. **Mr. Lallah** said that the Covenant was intended to be a universal instrument and not restricted to a certain type of society. Freedom of opinion and freedom of expression were indispensable in all societies, and not solely in free and democratic societies.

40. **Mr. Amor**, agreeing, said that it was important to state that the right to freedom of opinion and to freedom of expression was a recognized right of all individuals no matter which society they lived in. To imply that that right was valid only in democratic societies would open the door to very dangerous *a contrario* interpretations.

41. **Ms. Chanet** argued that freedom of opinion and freedom of expression had never existed in societies that were not democracies; it would therefore be nonsensical to declare that they were the cornerstone of any society. The words "cornerstones in any free and democratic society" were taken directly from the Committee's jurisprudence and should therefore be retained as quoted.

42. **Sir Nigel Rodley** said that a distinction had to be made between desideratum and reality. Freedom of opinion and freedom of expression should be the cornerstone of all societies but, unfortunately, was not the case, a fact that could not be ignored. However, in

order to take into account the comments of Mr. Lallah and Mr. Amor, the text could stress the importance of those two freedoms for every individual and for any free and democratic society, as well as for any society.

43. **Mr. Amor** proposed rewording paragraph 2 to read: “Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are indispensable for any society. They are the cornerstone of any free and democratic society.”

44. *It was so decided.*

Paragraph 3

45. **Ms. Chanet** said that the overlap, referred to in the first sentence, between article 19 on freedom of expression and article 18 on freedom of thought, conscience and religion, was debatable. It might be more accurate to say “Several articles of the Covenant contain guarantees relating to freedom of opinion or expression”. In the second sentence, the reference to article 14 on the right to equality before courts and tribunals and to a fair trial was not clear; the link between article 14 and article 19 should be explained, otherwise the reference could be deleted. In the third sentence, “underpin” should be replaced by something more precise, and the reference to economic, social and cultural rights should be deleted because the examples cited related only to civil and political rights.

46. **Sir Nigel Rodley** said that the title assigned to article 18 in parenthesis in the first sentence, “freedom of thought, conscience and belief” was not the wording of the Covenant, which was “freedom of thought, conscience and religion”. The word “belief” should therefore be replaced with “religion”. The reference to freedom of movement in the last sentence could also be deleted.

47. **Mr. Salvioli** proposed further clarifying the third sentence by inserting “the full exercise of” following “also underpin”. It would then read: “The right to freedom of opinion and the right to freedom of expression also underpin the full exercise of a wide range of other rights.”

48. **Ms. Majodina** said that the text should explain why article 18 was non-derogable with a reference to article 4, paragraph 2, of the Covenant so that the general comment was understandable to persons without a legal background. In addition, the wording of the first sentence might be interpreted as meaning that article 19 was likewise non-derogable by association with article 18, which was not the case.

49. **Mr. Thelin** said that he had no objection to retaining the reference to article 14 if the purpose was to recall that the right to a fair trial was a means of guaranteeing that article 19 was respected.

50. **Mr. Rivas Posada** said that the link between articles 18 and 19 should be explained, but elsewhere in the text. He agreed that the references to article 14 and freedom of movement, which had no direct relationship to paragraph 3, should be deleted. As for the title of article 18, the text should refer to freedom of thought, conscience, religion and belief in order to reflect all the elements mentioned in that article and also take into account the fact that there could be a difference between religion and beliefs.

51. **Ms. Chanet** said that there should be no reference to article 14, which granted only a procedural right; if the Committee wished to retain a reference to an article of the Covenant that guaranteed respect for the rights enshrined therein, it would be more appropriate to refer to article 2, which provided for the right to an effective remedy. The reference to article 14 had no doubt been included to recall that freedom of speech was necessary to guarantee equality before the courts, but the reference was not essential; and, if retained, should be clarified.

52. **Mr. Lallah** said that the reference to article 14 was perhaps intended to recall the right of individuals to the services of an interpreter if needed. He agreed that the references to economic, social and cultural rights and freedom of movement should be deleted.

53. **Mr. O'Flaherty** (Rapporteur for the general comment) said that he had mentioned the overlap between articles 18 and 19 in the first sentence with a view to paving the way for the argument in the following paragraph concerning the non-derogability of article 19, paragraph 1, but he could easily redraft the sentence. As for the title of article 18, he had erroneously referred to belief rather than religion and suggested that the text should read "freedom of thought, conscience or religion" in order to bring it into line with the general comment on that article. He had mentioned article 14, as Ms. Chanet had surmised, in order to recall the need to be able to express oneself in order to participate in a judicial procedure, but he would not be opposed to deleting the reference. In the third sentence, he proposed replacing "underpin" with "form a basis for". The reference to economic, social and cultural rights was simply intended to underscore the fact that freedom of expression was necessary in order to exercise those rights; it could be deleted if the Committee so wished, as could the reference to freedom of movement. Taking into account the proposed amendments, the paragraph would read: "Other articles contain guarantees of freedom of opinion or of expression: article 18 on freedom of thought, belief and religion; article 17 on the right to privacy; article 25 on political rights; and article 27 on protection of minorities. The right to freedom of opinion and the right to freedom of expression form the basis for the full exercise of a large number of other civil and political rights. For example, freedom of expression is an integral part of the exercise of the right to freedom of assembly and association".

54. **Mr. Bouzid** said that there should also be a reference to article 24 of the Covenant, which referred to protection of the rights of the child.

55. **Mr. Salvioli** said that although the Committee's mandate was limited to the rights enshrined in the International Covenant on Civil and Political Rights it was perfectly justified to state that a particular right formed the basis for the exercise of other rights, including economic, social and cultural rights. He suggested that the text should refer to the full exercise of "other human rights".

56. **Ms. Majodina**, seconding that proposal, reiterated her proposal to refer explicitly to article 4, paragraph 2, in order to explain why article 18 was non-derogable.

57. **Mr. O'Flaherty** (Rapporteur for the general comment) agreed with Mr. Salvioli's proposal. He had not included article 24 because it did not explicitly refer to freedom of expression, and the Committee had no experience of dealing with a child's right to freedom of expression. Lastly, discussion of the following paragraph would address the point raised by Ms. Majodina.

Paragraph 4

58. **Mr. O'Flaherty** (Rapporteur for the general comment), replying to Ms. Majodina, said that the non-derogability of article 19, paragraph 1, was explained in paragraph 4. It had been established that freedom of thought, conscience and religion, as enshrined in article 18, were non-derogable. Opinion could not be dissociated from belief, religion, thought and conscience; therefore, if article 18 was non-derogable, article 19, paragraph 1, was likewise non-derogable.

59. **Sir Nigel Rodley** said that it might not be necessary to refer to possible reservations to article 19, since that was the subject of the following paragraph. He proposed deleting "inexorable" from the first sentence. The last sentence was problematical because even if the justification for the non-derogability of article 18 also applied to article 19, that did not automatically make article 19 non-derogable as well. Article 19, paragraph 1, was non-

derogable not because it was analogous to article 18, paragraph 1, but because there was no legitimate reason a State could invoke for holding individuals to account for their opinions.

60. **Ms. Majodina**, thanking Mr. O’Flaherty for his explanation, underscored that all she sought was to explain clearly why article 18 was non-derogable. For that reason, and in order to ensure that the general comment would be understood by everyone, it would be worthwhile explaining in the first sentence of paragraph 4 why no reservation to article 19, paragraph 1, was allowed.

61. **Mr. O’Flaherty** (Rapporteur for the general comment) proposed deleting the word “inexorable” in the first sentence, as well as the reference to article 18 in the last sentence. He had raised the issues of derogation and reservations in paragraphs 4 and 5 because they dealt with different issues — freedom of opinion and freedom of expression respectively — which needed to be discussed separately in order to avoid confusion. With regard to Ms. Majodina’s proposal, the general comment was a technical rather than an explanatory document and should be kept concise. Those issues had also already been dealt with in other documents, including general comments, and the Committee would therefore only be repeating itself.

62. **The Chairperson** said that the Committee would continue its consideration of the draft general comment at a later meeting.

The meeting rose at 1.05 p.m.