



## International Covenant on Civil and Political Rights

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### Human Rights Committee 100th session

#### Summary record of the 2753rd meeting

Held at the Palais Wilson, Geneva, on Monday, 18 October 2010, at 10 a.m.

*Chairperson:* Mr. Iwasawa

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*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.4)*

1. **The Chairperson** invited the Committee to resume its consideration of the draft general comment and recalled that at its ninety-ninth session the Committee had stopped at paragraph 37.
2. **Mr. O'Flaherty** (Rapporteur for the general comment) said that some of the changes adopted at the Committee's previous session were not reflected in the conference room paper. He therefore recalled that the first sentence of paragraph 29 would be incorporated into paragraph 33 and that paragraphs 33 and 37 would be inserted following paragraph 28.

*Scope of political expression*

*Paragraph 38*

3. **Mr. O'Flaherty** (Rapporteur for the general comment) said that the section was intended as a response to the attitude common among States parties, who invoked article 19, paragraph 3, as justification for imposing restrictions on freedom of expression. The types of restrictions mentioned had been drawn from real cases that the Committee had encountered in its work.
4. **Ms. Chanet** said that it would be worth reiterating in the first sentence that in order to be compatible with paragraph 3 a restriction must be provided by law and be necessary. The text should perhaps likewise explain the criteria for determining whether restrictions were necessary because some of the restrictions mentioned in the second sentence as incompatible with paragraph 3 could be justifiable in some situations.
5. **Mr. O'Flaherty** (Rapporteur for the general comment) was not convinced of the need to repeat all that information at the beginning of paragraph 38 as it had been dealt with in detail in the preceding paragraphs.
6. **The Chairperson**, in response to Ms. Chanet, suggested that a reference to the pertinent paragraphs could be added to the first sentence.
7. *It was so decided.*
8. **Mr. Salvioli** said that the sentence "Not every restriction is incompatible with paragraph 3." seemed to refer to the restrictions in the preceding sentence cited precisely because they were examples of those which the Committee had found to be in violation of article 19. In order to avoid confusion there should be a new paragraph beginning "Not every restriction is incompatible ... ."
9. **Mr. Rivas Posada** said that one way to address the ambiguity that concerned Mr. Salvioli would be to change the order of the paragraph so that the paragraph would begin "Any restriction on the political discourse must be undertaken with great care to ensure its compatibility with paragraph 3, since not all such restrictions are incompatible with that paragraph."
10. *It was so decided.*
11. *Paragraph 38, as amended, was adopted.*

*Paragraph 39*

12. **Mr. O’Flaherty** (Rapporteur for the general comment) said that for reasons of clarity a reference to the pertinent paragraphs would be added to the first sentence; “in paragraphs xxx ...” would be inserted following “As noted earlier”.

13. **Sir Nigel Rodley** said that political power was not necessarily personified by the head of state. It would be preferable to use more general wording in the third sentence that would include the full range of situations. He suggested that the sentence should read: “Moreover, all public figures, including those exercising the highest political authority, such as heads of state and government ... .”

14. *It was so decided.*

15. **Mr. Amor** said that paragraph 39 and paragraph 48, on defamation laws, overlapped to a certain extent, and he wondered whether some of the points dealt with in paragraph 39 might not be left for paragraph 48.

16. **Mr. Thelin** agreed and said that the last sentence of paragraph 39, that concerned defamation laws, could be incorporated in paragraph 48.

17. **Mr. Amor** said that insults to public figures did not occur solely in statements; actions could likewise be insulting. There were examples of parliamentary debates ending in fisticuffs. The scope of the second sentence could be broadened by inserting “or actions” following “statements”. He added that it had become increasingly common to make intrusive references to public figures’ personal and even private lives in the context of political debate, in violation of article 17 of the Covenant. The text should reflect that trend. He therefore suggested inserting “in principle” before “sufficient”, and “especially if they do not violate article 17” at the end of the sentence. In order to ensure coherence with the rest of the paragraph, he suggested replacing “figures in the public domain” in the first sentence with “public figures”.

18. **Ms. Chanet** said that Mr. Amor’s point regarding article 17 was very useful; ordinary law must be respected in cases where a public figure’s private life was targeted. That idea could be incorporated into the last sentence, concerning defamation, by adding “without prejudice to any penalties imposed when a public figure is targeted as a private person, in particular pursuant to article 17”.

19. **Mr. Rivas Posada** said that he would be reluctant to consider incidents like the fisticuffs mentioned by Mr. Amor to be the expression of an opinion as provided for in article 19. Too broad an interpretation of article 19 would lead the Committee into very dangerous territory; it should restrict itself to a more narrow interpretation.

20. **Sir Nigel Rodley** said that the concern Mr. Amor had quite rightly raised could be addressed easily by replacing “statements” in the second sentence with “opinions expressed”, which was broader and would also cover non-verbal expressions of opinion. While article 17 could be invoked to restrict expressions of opinion regarding the private lives of political figures, some caution was called for. Indeed, the private lives of political figures should be open to criticism when there was a contradiction between their private lives and the political views they expressed.

21. **Mr. O’Flaherty** (Rapporteur for the general comment) said that in order to take into account Mr. Amor’s comment regarding the way “figures” should be described in the first sentence, the phrase “figures in the public domain” should be deleted and replaced with “public figures in the political domain”. With regard to the word “statements” in the second sentence, in order to cover the notion of acts he suggested replacing it with “forms of expression” rather than “opinions expressed”, which was too restrictive.

22. As for the rest of the paragraph, he recalled that the second sentence had been taken from the Committee's decision in the *Bodrožič v. Serbia and Montenegro* case (communication No. 1180 (2003)). In order to take into account the comments of Sir Nigel Rodley and other members of the Committee, he suggested inserting "albeit public figures benefit from the protection of article 17" following "imposition of penalties". The second sentence would therefore read: "Thus, the mere fact that a form of expression is considered to be insulting to a public figure is not sufficient to justify the imposition of penalties,<sup>92</sup> albeit public figures benefit from the protection of article 17."

23. **Sir Nigel Rodley** welcomed the amendment, but reserved the right to revisit the matter during second reading of the draft general comment.

24. **Mr. Amor** wished to further discuss the distinction between private and public life. After listening to the discussion, he wondered whether it might not in the end be preferable to keep the last sentence in paragraph 39 rather than move it to paragraph 48, with in addition the phrase proposed by Ms. Chanet. While it was true that there could be contradictions between the public and private attitudes of political figures, there must be limits to political debate, and the protection of privacy must at all times be taken into consideration, even though the emphasis should be placed on the need to comply with article 19, which lay at the heart of paragraph 39.

25. **Mr. Lallah** said that Mr. O'Flaherty's suggested text took full account of the legitimate concerns raised by Mr. Amor.

26. **Mr. Salvioli** said that he was reluctant to refer to article 17, which dealt with the actions of States and not individuals. Privacy and the family were protected by the criminal codes and involved relationships between private persons. The scope of the private life of a public figure was much more restricted. Anyone assuming a role as a public figure must be ready to accept criticism, including with regard to aspects of his private life, where they were of public interest. Mr. O'Flaherty's suggested text clearly reflected those principles.

27. **Mr. Thelin** agreed with Mr. O'Flaherty's proposal.

28. **Ms. Chanet** said that she could accept the proposal but only as a compromise, because article 17 was not the only one at issue. There was also the right of a public figure to bring an action for defamation. She recalled the case of a minister from a European country who had been the subject of attacks for being homosexual and could not even defend himself. A penalty should not be more severe because a minister is attacked, nor should a minister be denied the opportunity to defend himself normally in his private capacity. The reference to article 17 did not strike the same balance but she was nevertheless prepared to accept it.

29. **Mr. Lallah** said that article 19, paragraph 3 (a), of the Covenant was sufficient to protect the privacy and reputation of public figures, so that there was no need to refer to article 17.

30. **Mr. El-Haiba** said he wondered whether Mr. O'Flaherty had taken into account not only the Committee's jurisprudence but also the jurisprudence of regional institutions, such as the European Court of Human Rights. He shared the concerns raised by Ms. Chanet and Mr. Amor but believed that article 19, paragraph 3 (a), was sufficiently clear to protect the privacy of public figures.

31. **Sir Nigel Rodley** thanked Mr. Lallah and Mr. El-Haiba for pointing out that article 19, paragraph 3 (a) was aimed specifically at protecting individuals against certain types of defamation laws; adding a reference to article 17 might just confuse the issue. The example given by Ms. Chanet was persuasive and there were many other cases where the press had revealed aspects of political figures' personal lives solely to harm them politically. It could also be the case, however, that government officials could be criticized by members of the

opposition who were equally blameworthy; it would be quite inappropriate for those who criticized to be themselves exempt from criticism. Those were the two aspects of the issue that must be reconciled; the best way to achieve the right balance might be to keep to article 19, paragraph 3 (a).

32. **Mr. O'Flaherty** (Rapporteur for the general comment) said that Mr. Amor and Ms. Chanet had raised an issue that, although important, had never been considered by the Committee in any depth; it had not therefore developed any jurisprudence that could serve as guidance. The current discussion had shown that it was difficult to address that concern by including a reference to article 17; on the other hand, article 19, paragraph 3 (a), was dealt with elsewhere in the draft. He suggested including a reference to the Covenant as a whole; accordingly, the end of the second sentence would read "even if all public figures enjoy the protection provided by the provisions of the Covenant".

33. Furthermore, in the light of the members' comments, there was no reason to keep the last sentence of paragraph 39, which should be moved to paragraph 48.

34. *Both amendments were adopted.*

35. *Paragraph 39, as amended, was adopted.*

*The meeting was suspended at 11.25 a.m. and resumed at 11.45 a.m.*

*Scope of expression by the media and related information gathering/dissemination actors*

36. **Mr. O'Flaherty** (Rapporteur for the general comment) said that paragraphs 40 to 46 complemented the section on freedom of expression and the media (paras. 14 to 17) because they dealt with the legitimate limits on the media's freedom of expression. The text went beyond the traditional definition of "the media" to include new forms of journalism, such as blogs, Facebook, Twitter, etc., which was the reason why he had referred to "related information gathering/dissemination actors". Paragraph 40, which was general in nature, was an important one because it dealt with the legitimacy of the general restrictions imposed on the written press and on the broadcast media. The issue of licensing was raised solely for that sector because the Committee's practice had established that a general licensing regime while unwarranted for the written press was essential for the broadcast media for technical reasons. Paragraphs 41 and 42 dealt with some aspects of the media sector that the Committee's practice had held to be very important: maintaining balance and fairness between the regimes governing public and private media and the need to prevent the creation of monopolies. Paragraph 42 used much the same language as the Committee's general comment No. 10, which seemed to have anticipated the transformation of the media. Paragraph 43 contained a series of examples drawn from the Committee's practice that illustrated the issues dealt with in paragraphs 40 to 42. Paragraph 44 dealt with the Internet and issues relating to that medium, while paragraphs 45 and 46 dealt with journalism, journalists and protection of journalists. Paragraph 45 recognized the emergence of what might be called "new media": while some might disagree, it could be said that the profession of journalist as traditionally understood in the past was to some extent disappearing. In the light of that new reality, it was important that the general comment should also take into account self-proclaimed journalists and human rights defenders, who monitored and reported on the situation of human rights. Paragraph 45 also drew a very important distinction between the granting of licences and accreditation, by establishing that a licensing regime was inappropriate for the "new journalists", whereas limited accreditation regimes might be necessary in certain circumstances. Paragraph 46 dealt with specific issues drawn from the Committee's practice intended to illustrate the preceding paragraphs, which might make the list appear somewhat incongruous.

*Paragraph 40*

37. **The Chairperson** said that footnote 100 was not necessary since the first sentence was perfectly clear. He added that the last sentence should be deleted, because it contained a recommendation of a general nature that was not really founded in law.

38. **Mr. Thelin**, while agreeing that a distinction must be drawn between the written press and the broadcast media, said that the issue of the convergence of the media should likewise be dealt with in the paragraph; many written press outlets had an Internet presence, which also served as a platform for radio and television broadcasters. In order to fully reflect that fact, in the second sentence, he suggested replacing “as well as the Internet” with “as well as the convergence of the electronic media and the Internet”. He said that in the fifth sentence “broadcast media, including on community and commercial stations”, which appeared very much to reflect the situation in the United States, should be replaced with “public and private media”. In the next-to-last sentence he suggested replacing “commercial and community” with “and private”. Lastly, he said that he agreed with the suggestions made by the Chairperson.

39. **Ms. Majodina**, with regard to the fifth sentence, said that any requirement that the media be licensed by a State authority opened up the possibility for a State to ban a media outlet, as had for example occurred in Gambia, where a radio station had been closed by the Government. Generally speaking she believed that the media should be self-regulating; the State should not interfere or exercise any oversight whatever, as was already the case in many countries. Unlike the Chairperson, she believed that the last sentence of the paragraph should be retained but strengthened by adding that the independent authority should be a “public” body. She recalled that paragraph 16 stipulated that “States parties should ensure that public broadcasting services operate in an independent manner”; that principle should be underscored. Lastly, she suggested adding a new sentence at the end of the paragraph, which would read: “States should also ensure that government-controlled broadcasters are transformed into public broadcasters.”

40. **Ms. Chanet** agreed with Ms. Majodina that it should not be assumed that all States licensed the media; the text should also take into account situations where the media were self-regulating and the authorities did not interfere. She suggested deleting the fifth sentence, which reflected the situation in Gambia but was not generally applicable. The Committee’s intention was to stress that the criteria set out in the sixth sentence must be met. She suggested adding “When States parties grant licences to public or private media they must meet reasonable application criteria”, followed by the description provided in the paragraph.

41. **Mr. Thelin** said that, while self-regulation for the written media was possible, that principle could not be applied to the broadcast media. States parties, which were all members of the International Telecommunication Union (ITU), the relevant governing body, allocated frequencies and implemented licensing procedures that incorporated ITU rules into domestic law. The general comment could only call on States to allocate frequencies fairly and to avoid favouring one sector over another.

42. **Mr. O’Flaherty** (Rapporteur for the general comment) agreed with Mr. Thelin’s argument; that was why the paragraph dealt first with the written press and then the broadcast media. To the best of his knowledge there was no country where the allocation of frequencies was not regulated by the State, with the possible exception of Somalia. However, in order to take into account the points raised, he proposed linking up the fifth and sixth sentences to read: “States parties, in providing licences for the broadcast media, must ensure that the criteria for the application of conditions and licence fees are reasonable and objective, clear, transparent” etc.

42. Footnote 100 could be deleted but the last sentence should be retained because it reflected a valid point drawn from the Committee's practice. The same held true for the notion of "community broadcasters", which reflected a very specific situation very common in certain developing countries, where locally created non-profit media, which were neither public nor private, were established in villages and played an essential role in broadcasting information and various programmes. Lastly, he agreed that the text should refer to the convergence of the media and suggested adding "and taking into account in addition the convergence of different forms of media" at the end of the second sentence, in order to cover all situations, including that of the written press on the Internet.

43. **Ms. Majodina**, while agreeing that only the written press could be self-regulating, pointed out that the Committee had already stipulated that the competent authority for the granting of operating licences must be public, but not State-controlled, as was the case in many countries. In any case that body could be independent, in accordance with the criteria set out in paragraph 16. The Committee, in its concluding observations, had often deplored certain States' monopoly control over regulatory systems. It was important that the paragraph underscore the need to move from a State-controlled authority to an independent public one.

44. **Mr. Lallah** strongly supported Ms. Majodina, whose comment was not valid solely in the context of the developing countries; it was an absolute necessity. For example, in Mauritius, a multicultural society, it had been deemed necessary to establish an independent authority for the audio-visual sector that was responsible for granting licences.

45. **Mr. Bhagwati** fully endorsed the comments of Ms. Majodina and Mr. Lallah. If the audio-visual authority was not independent of the Government, information could easily be reduced to State propaganda and freedom of expression and exchanges of opinion could vanish, along with democracy.

46. **Mr. O'Flaherty** (Rapporteur for the general comment) recalled that the last sentence of the paragraph recommended that States should establish an independent authority. With regard to the comments made by Ms. Majodina, he would have no difficulty adding the term "public" to qualify the independent authority. On the other hand, with regard to the sentence she had suggested adding at the end of the paragraph, he pointed out that there were many different situations: in some countries broadcasting services were State-owned; in others there were no State broadcasters, while in others still they were owned by the State but run by totally independent operators. He had not been able to discover any particular practice of the Committee in that regard, with the exception of the recommendation concerning the establishment of an independent authority for the granting of licences to the broadcast media. Ms. Majodina's suggestion that the Committee call for State broadcasting services to be made public services went far beyond anything the Committee had recommended in the past.

47. **Ms. Majodina** said that she would withdraw her suggestion concerning a new last sentence.

48. *Paragraph 40, as amended, was adopted.*

49. *Paragraph 41 was adopted.*

#### *Paragraph 42*

50. **Mr. Rivas Posada** said that paragraph 42 in its current form underscored the danger inherent in monopoly control by the State over the media but omitted to mention the situations where the media were excessively dominated by private interests, which were equally dangerous for freedom of expression and a particularly current concern. That

danger, which concerned the written press as well as the broadcast and even the electronic media in many countries, should not be underestimated.

51. **Sir Nigel Rodley** noted that only the first sentence of the paragraph dealt with State monopoly control; the rest of the paragraph dealt with the implementation of measures aimed at preventing the creation of private monopolies in the media. Those two issues could be more clearly differentiated if they were dealt with in separate paragraphs. The issue of State control should however come first since that issue was fundamental to the Covenant. In the light of Ms. Majodina's comment relating to paragraph 40, he suggested strengthening the wording of the first sentence to read: "The State should not have monopoly control over any branch of the media." He added that the word "monopolies" in the last sentence could be interpreted in its most literal sense as control by a single commercial actor of all the media, whereas the real problem very often was rather that one private actor owned enough of the media to dominate the sector. Perhaps the word "monopolies" could be replaced with "cartels".

52. **Mr. El-Haiba** shared Mr. Rivas Posada's concerns about private control of the media. Any democratic society should avoid such a monopoly, which in some cases coincided with political or economic monopoly, which would have very negative consequences for multiparty politics. Some mention should also be made of the role of independent public authorities in preventing monopolies, be they public or private. He suggested replacing "appropriate action" with "appropriate juridical and institutional measures", which would recall the role of such independent public institutions.

53. **Mr. Thelin** said that he understood his colleagues' concerns but that the Covenant's central aim after all was to protect citizens against abuses on the part of the State. Any undue dominance by the private sector would be better prevented through anti-trust laws, the purpose of which was to prevent the creation of monopolies. The two types of threat as identified by Mr. Rivas Posada should not be given equal weight. The current text achieved the appropriate balance because the type of monopoly that must be avoided above all was State control. He agreed with Sir Nigel Rodley's suggestion for changing the first sentence but recommended replacing "should" with "must". As for the word "monopolies", he said that in anti-trust instruments the term "monopolies" covered the category of "cartels".

54. **Mr. Lallah** suggested moving the current second sentence to the beginning of the paragraph, which would start with "The Committee reiterates"; that would be followed by a new sentence to read: "States parties should take appropriate measures to ensure that there is no monopoly, whether public or private, over the media ...". The current third sentence would be retained but "impede" should be replaced by a more precise verb and the word "monopolies" would be replaced with "cartels".

55. **The Chairperson** agreed that the current second sentence, which was a general statement, should be moved to the beginning of the paragraph.

56. **Mr. Salvioli** fully agreed with Mr. Rivas Posada and said that the issue of concentration of the media must be raised. He understood Mr. Thelin's objection but said that the issue was not merely one of economic concentration, which could be addressed through anti-trust legislation. Human rights were also at stake. In his country 80 per cent of the media, in the broadest sense of the word, were controlled by three economic groups. It might be wondered how much freedom the people who worked for those groups enjoyed. That situation was very worrisome.

57. **Mr. Bhagwati** said that in the first sentence the words "public and private" should be inserted before "media" when describing monopoly control.

58. **Mr. Amor** shared the concerns raised by Mr. Rivas Posada and Mr. Salvioli, which highlighted a growing problem. A clear distinction must be drawn between State and

private monopoly control, both of which were equally unacceptable. Rather than referring to “cartels”, he would prefer the words “public or private monopolies, whether direct or indirect”.

59. **Ms. Majodina** also shared the concerns expressed by Mr. Rivas Posada, which posed a problem in her country. She agreed with Mr. Lallah that the second sentence should be moved to the beginning of the paragraph and said that the rest of the paragraph should put more emphasis on the threat posed by private sector monopolies.

60. **Mr. O’Flaherty** (Rapporteur for the general comment) said that it would be difficult to deal with both types of monopolies in the same paragraph. While a State could avoid its own control of the media, it could hardly prevent the emergence of private monopolies. He suggested redrafting the paragraph. The first sentence would read: “The State should seek to avoid any public or private monopoly, whether direct or indirect, over any branch of the media.” The second sentence would begin “The Committee reiterates”, followed by the current text. The third sentence would read: “States parties should take appropriate action, consistent with the Covenant, to impede privately controlled media monopolies and/or cartels.”

61. **Sir Nigel Rodley** said that, unlike Mr. O’Flaherty, he believed that a State could, through legislation, prevent the creation of private monopolies; the wording of the first sentence should therefore be strengthened. The third sentence should refer to the need “to prevent undue dominance by the privately controlled media monopolies” because the issue was not one of preventing the establishment of monopolies but rather of taking whatever action was appropriate to prevent any dominance of the press by a monopoly.

62. **Mr. Thelin** agreed with Sir Nigel Rodley’s proposed wording for the third sentence but suggested adding “to avoid State monopolies”.

63. **Mr. Amor** said that there were few examples of public or private monopolies in the literal sense of the term; it was more likely to come across situations of near-monopoly, where one actor, while not completely dominating the media, had sufficient control to channel information in a particular direction. He gave the example of the Springer press group in Germany and its political role, which had included calling for the murder of Rudi Dutschke in 1968. There was no monopoly in Germany but rather a situation where one group was so dominant that opposing views tended to be marginalized. The term monopoly must therefore be used with caution since a situation of full monopoly was quite rare.

64. **Mr. Lallah** suggested that that the current paragraph 42 should be moved before paragraph 41, which dealt with only one aspect of the overall issue.

65. **Mr. O’Flaherty** (Rapporteur for the general comment) agreed that the order of those two paragraphs could be inverted. He would redraft the text taking into account all the proposed changes and would submit a new text to the Committee as soon as possible.

*The meeting rose at 1.05 p.m.*