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Chair: Mr. Salvioli

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The meeting was called to order at 3.05 p.m.

Organizational and other matters, including the adoption of the report of the pre-session 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.3)

1. **The Chair** invited the Committee members to resume their discussion of paragraph 8 of the draft general comment.

Paragraph 8

2. **Mr. Shany** (Rapporteur for the draft general comment) said that he hoped that the Committee would be able to quickly wrap up its debate on the general content of paragraph 8, after which he would welcome specific drafting proposals for the paragraph. One specific suggestion made at an earlier meeting by a number of Committee members had been that the first two sentences of the paragraph should either be deleted altogether or substantially revised.

3. **Mr. Politi** said that the two rapporteurs were to be commended on the progress made towards reaching consensus on the paragraph, which dealt with a very polemic issue. The contents of the paragraph should be simplified and should focus more on women's rights and on the general principles that made up the common ground shared by all Committee members. While he could agree to the deletion of the first two sentences, an alternative might be to eliminate the reference to the American Convention on Human Rights and to incorporate wording that recognized the inherent difficulties and problematic nature of the issue being discussed.

4. He also suggested combining the third and fourth sentences into a single sentence by replacing the word "still" with the word "while" at the start of the third sentence and deleting the word "thus" at the start of the fourth sentence. In addition, he suggested including at the end of that sentence a statement to the effect that any legal restrictions on the ability of women to seek an abortion should not severely jeopardize their freedom of choice. Mention should also be made of States parties' duty to provide adequate remedies that would enable women to put forward demands that State authorities should guarantee their right to a lawful abortion. Reference could be made to the Committee's jurisprudence, as in one relevant case it had declared the available judicial remedies to be ineffective.

5. **Mr. Vardzelashvili** said that he agreed about the importance of finding common ground among all Committee members and that the more the Committee focused on the main issue, namely the right to life, the easier that would be. He was in favour of deleting or substantially revising the first two sentences. The Committee should emphasize the risks that any form of regulation or criminalization of abortion might pose to the health and life of pregnant women, while at the same time recognizing that the appropriateness of regulations or criminalization depended on the specific circumstances in each case. The language used when referring to criminalization in the current draft was overly broad; he would be happy to propose new wording if desired.

6. **Mr. Ben Achour** said that he fully agreed with the general philosophy set out in the paragraph. Since most Committee members objected to the first sentence, he suggested deleting the phrase "[u]nlike the American Convention on Human Rights" at the start of that sentence. He also suggested replacing the reference to "rights of the fetus" with "rights prior to birth", which was less direct. Lastly, he suggested adding the phrase "or of their physical or mental health" in the third sentence after the phrase "including the right to life of pregnant women".

7. **Mr. Rodríguez-Rescia** said that the interpretations provided by both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights were in the same spirit as the guidance given in paragraph 8 of the draft general comment. The Committee must not lower the minimum standards of protection for pregnant women already established in its own jurisprudence and in that of other human rights treaty bodies. It was important to note that the Chamber of Deputies in Chile had recently decriminalized abortion under certain circumstances in response to the Committee's concluding observations.

8. He proposed beginning the paragraph with a statement that would read: "The termination of a pregnancy is an issue that involves and could have an adverse effect on the right to life and other rights of pregnant women." The Committee could then avoid the more complicated aspects of the issue and highlight the fact that regulations on abortion could constitute discrimination against women by compelling them to seek clandestine abortions. He suggested removing the reference to the issue of not criminalizing "pregnancies by unmarried women", as the question at hand was discrimination against all women. In the last sentence, the Committee should make it clear that States parties were obligated not only to provide women with information about reproductive options but also to provide programmes on sexual and reproductive rights that would enable women to make informed decisions.

9. **Ms. Waterval** said that, as far as she recalled, the Committee had never referred to the rights of the fetus in its jurisprudence, and some States parties might find such a reference in the general comment to be very confusing. She therefore proposed deleting the first two sentences and avoiding any reference to the fetus while focusing instead on protection for women.

10. **Mr. Iwasawa** said that he proposed moving the paragraph to part V of the general comment, which dealt with the relationship of article 6 with other articles of the Covenant. He was also in favour of shortening and simplifying the paragraph in an effort to find common ground. He preferred to completely delete the first two sentences but was prepared to consider a substantial revision instead. The wording used to discuss the criminalization of abortion was too broad, as the Committee was primarily concerned about criminalization in cases in which it believed that abortion should be allowed. He was not sure that the Committee could really say that States parties had a positive duty to provide information about reproductive options. It should instead ask States parties not to prevent individuals from obtaining such information.

11. **Mr. Shany** said that, in order for him and the other rapporteur to gain a better sense of which way the consensus was leaning, it would be helpful to hear some comments about the general structure of the paragraph without analysing the paragraph line by line. While one option would be to focus narrowly on the interface between abortion and the right to life, since the Committee had not issued any other recent general comments that touched on abortion, he was concerned that the Committee's silence on certain aspects of the issue in this general comment could send the wrong message.

12. He was open to the proposal to move the paragraph to part V, which would then make it possible to address other relevant issues, such as the interplay between criminalization and clandestine abortion. However, the criminalization of abortion related not only to article 6 of the Covenant but also to other issues, such as the right to physical and mental health. There appeared to be some nuanced disagreement among the Committee members with respect to criminalization. He did not fully understand Mr. Rodríguez-Rescia's concern about the reference to the criminalization of pregnancies by unmarried women, and he believed that the reference should be retained. He would welcome any further comments of a general nature on the paragraph and suggested that specific proposals regarding wording should be saved for a later meeting.

13. **The Chair**, noting that a number of Committee members wished to take the floor, asked that they not repeat arguments already made and that they raise only general points.

14. **Mr. de Frouville** said that, in his view, the purpose of a general comment was to compile and codify all the Committee's past jurisprudence on a given subject. While it might be necessary to fill in some gaps by developing points not yet addressed in the Committee's concluding observations or Views, that aspect of the exercise should be kept to a minimum, particularly in the case at hand. It was therefore important to use references and footnotes in the text to refer back to specific cases in which the Committee had already dealt with the subject. Ms. Cleveland had drawn up a comprehensive table of the Committee's concluding observations that could be very helpful in that regard.

15. It would be appropriate, in his view, to move paragraph 8 to part III of the text, on the duty to protect life. He could also agree to the suggestion that it should be moved to part V, given the relationship between the issue of voluntary termination of pregnancy and articles 7 and 17 of the Covenant. He also considered that article 26 had a bearing on the issue inasmuch as discrimination against women was frequently the result of a patriarchal culture that prevented women from having control over their own bodies and taking decisions regarding reproduction. In that context, emphasis should be placed on the importance of sex education and the promotion of awareness of family planning techniques and of access to contraceptives.

16. He supported the proposal to delete the first three sentences of paragraph 8, which were based on philosophical rather than legal foundations. The fundamental objective identified in the Committee's concluding observations was prevention of maternal mortality in cases where the excessive regulation or criminalization of abortion endangered a woman's life or led her to seek a clandestine abortion.

17. **Mr. Seetulsingh** saw that he wished to draw attention to general comment No. 22 on the right to sexual and reproductive health, which had been adopted by the Committee on Economic, Social and Cultural Rights in February 2016. It dealt with the criminalization of abortion, restrictive regulations, the prevention of unsafe abortions and maternal mortality. No mention was made of the fetus. He supported the deletion of the first two sentences of paragraph 8 and proposed that the remainder of the paragraph should be inserted in part III after paragraph 26. A shorter version could also be inserted in part V concerning the relationship of article 6 with other articles of the Covenant.

18. **Mr. Ben Achour** said that he disagreed with the view that general comments simply reproduced the Committee's jurisprudence. They invariably expanded on the jurisprudence in the interests of progressive development. The content of paragraph 8, on the other hand, merely reflected the approach that the Committee had adopted on many occasions when considering crucial interlinked issues such as the right to life before birth, the criminalization of abortion and women's right to life and to physical and mental integrity. He therefore disagreed with the proposal to delete the first few sentences, except for the reference to the American Convention on Human Rights.

19. **Mr. Vardzelashvili** said that he would be willing to keep paragraph 8 where it was or to move it to part III. With respect to the sentence that warned States parties against regulating pregnancy or abortion in a manner that would compel women to seek clandestine illegal abortions that could endanger their lives, he wished to make the point that clandestine abortions were potentially life-threatening in virtually all cases. If States parties were given the right to regulate abortion in some cases, and the Committee were to list the types of cases in which such regulation would not violate the Covenant, women not covered by those exemptions might still resort to dangerous clandestine abortions. Where there was such a risk, the State should exercise great caution when devising regulations. On the other hand, the mere existence of a risk could not be equated with a violation of article 6 of the

Covenant. In some cases it might be proper or even necessary to criminalize some forms of abortion.

20. **Ms. Seibert-Fohr** said that she supported the proposal to move paragraph 8 to part III with a view to focusing on the right to life. Article 7, on torture and ill-treatment, was closely related to article 6, as had been reflected in various cases in the Committee's Views. However, she was hesitant about expanding the list to include, for example, articles 17 and 26 or even articles 2, 3 and 19. She was in favour of retaining the third sentence of paragraph 8. As noted by Mr. Vardzelashvili, all restrictions on abortion could not be held to constitute a violation of article 6. On the other hand, where restrictions or criminalization seriously endangered women's lives or health, or where they were imposed in cases of incest and rape, there were valid grounds for arguing that such restrictions could indeed compel women, in violation of article 6, to seek clandestine abortions that endangered their lives. She therefore suggested inserting a recommendation to States parties to take effective measures to protect women's lives. The existence of lengthy mandatory waiting periods before a legal abortion could be performed could not be viewed per se as constituting a violation of article 6. Some of the wording, such as the references to "humiliating requirements" and "severe mental anguish", was somewhat vague. She recommended using more precise terminology.

21. **Ms. Cleveland** said that paragraph 8 should not begin with a discussion of prenatal interests. It should focus on the prohibition under article 6 of restrictions on voluntary terminations of pregnancy that could put women's life or health at risk. The paragraph should then caution States parties against invoking the protection of prenatal interests in order to justify limitations on women's rights that were protected by the Covenant, including the right to life of pregnant women and girls and their right to freedom from physical or mental suffering that constituted cruel, inhuman or degrading treatment. She therefore supported the inclusion of an explicit reference to article 7 but felt that other relevant articles invoked in the Committee's concluding observations and Views would be covered by the general reference to Covenant rights. States parties must ensure that women had access to safe abortion services when their lives or health were at risk, when the pregnancy was due to sexual assault or incest, and when the fetus suffered from fatal abnormalities. As the Committee's jurisprudence also extended to other cases, it should add that States parties must ensure that the regulation of terminations of pregnancy would not be such as to lead them to have recourse to clandestine or illegal abortions that might put women's lives or health at risk. They should also refrain from imposing criminal penalties. States parties should also be required to provide access to contraceptives, to reproductive health education, also for men and boys, and to prenatal and post-abortion health care.

22. **Mr. Shany** said that the rapporteurs would submit a new text in the light of the comments that had been made. The Committee members appeared to agree that excessive regulation or criminalization that led to unsafe clandestine abortions violated the right to life. It was necessary, however, to draw a distinction between excessive regulation and situations in which States had the right to protect legitimate interests. The rapporteurs would list the available options and submit them to the Committee for consideration. They would also leave some portions of the text in square brackets.

23. Ms. Seibert-Fohr had criticized the use of vague or open-ended language. It was not possible, however, to spell out all circumstances that would constitute excessively burdensome or humiliating requirements for obtaining permission to undergo an abortion. References to cruel, inhuman or degrading treatment also constituted open-ended language. While he agreed with Mr. Ben Achour's comment on progressive development through general comments, he feared that it might not be appropriate in the case of paragraph 8.

24. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that he would suggest that the Committee should refrain from engaging in ideological discussions

concerning the purpose of general comments. It was clearly useful, on the other hand, to discuss the current state of the Committee's jurisprudence and to decide on the most appropriate interpretation of the Covenant in areas where inconsistencies existed. The rapporteurs would seek to produce a text that reconciled the conflicting positions.

25. **The Chair** said that the Committee's draft general comment on the right to life had attracted the interest of a number of other human rights treaty bodies and international organizations. It was therefore imperative that any references made to the jurisprudence of other entities in the course of the drafting process were entirely accurate and duly warranted.

Paragraphs 9, 10 and 11

26. **Mr. Shany** proposed that the Committee should defer its consideration of paragraphs 9 and 10 until it had reached a decision on whether to delete the first two sentences of paragraph 8, since, if those sentences were deleted, paragraph 9 should be eliminated as well.

27. **Mr. Ben Achour** said that he agreed with Mr. Shany that paragraph 9 should be deleted if the Committee decided to reword the first two sentences of paragraph 8. However, paragraph 10 should remain, regardless of the decision taken on paragraph 8, given that it was so closely linked to the issues addressed in paragraph 11.

28. **Mr. Shany** said that it would be ill-advised to include a separate paragraph concerning the end of life if the Committee decided to delete paragraph 9 and, along with it, the reference to the beginning of life. In that instance, it would be far better to incorporate paragraph 10 into paragraph 11.

29. **Sir Nigel Rodley** said that paragraph 11, on suicide and assisted suicide, aimed to establish a balance between the right to life, on the one hand, and the right not to be subjected to cruel, inhuman or degrading treatment, on the other. The Committee had first considered how to reconcile the two concepts in its 2009 concluding observations on the report of the Netherlands and had decided in favour of prioritizing the right to life. In that particular case, there had been concerns that sufficient action had not been taken by the State party to monitor and prevent abuses of treatments designed to facilitate the termination of life. The Committee had, however, been careful to note that the State party's desire to protect the dignity of a person for whom life was untenable had been a valid approach. In the light of that particular case, the Committee should carefully consider whether trying to balance the two rights was the right course of action and, if so, whether the wording of the paragraph in its current form achieved that aim.

30. **Mr. Ben Achour** said that he agreed with the overall philosophy upon which article 11 was founded and believed that the main emphasis should be on personal autonomy. The Committee should seek to reconcile the two rights and make a clear distinction between assisted suicide, where persons in full possession of their mental faculties chose to die with dignity, and euthanasia. He therefore suggested that the first line of the paragraph should be reworded to read: "Dans le domaine du droit à la vie, les États parties doivent tenir compte de l'autonomie de la personne et son droit de vivre dans la dignité. Ce droit implique également le droit de mourir dignement. En conséquence, les États parties, tout en respectant l'autonomie personnel, devraient prendre des mesures adéquates pour prévenir le suicide des personnes ou des groupes vulnérables, sans enfreindre leurs autres obligations au regard du Pacte."

31. **Ms. Seibert-Fohr** said that paragraph 11 should focus on the right to life and protection of vulnerable persons rather than on personal autonomy, in accordance with the Committee's concluding observations on the report of the Netherlands. The second sentence of the paragraph should be amended in order to make that stance clear.

32. **Mr. de Frouville** said that he proposed that paragraph 10 should be deleted, since it failed to develop or codify the right to life. He also questioned the inclusion of paragraph 11 on such complex subjects as suicide and assisted suicide based solely on the jurisprudence contained in one set of concluding observations. In the event that the Committee decided to proceed with its consideration of paragraph 11, he suggested that the concepts of suicide and artificial termination of life should be addressed separately. On both matters, the Committee should refrain from making philosophical or theoretical assertions and should instead focus on establishing certain key objectives for States parties, such as the reduction of suicide rates among children and adolescents. He therefore suggested that the first sentence of paragraph 11 should be amended to read: “Les États parties devraient prendre des mesures adéquates pour prévenir le suicide [...]” and that the reference to “une personne qui planifie son suicide ou fait une tentative de suicide traverse peut-être une crise temporaire qui diminue son aptitude à prendre une décision rationnelle ayant des conséquences à long terme” should be removed. The second part of paragraph 11 should also be reworded to make it clear whether the Committee was referring to assisted suicide, euthanasia or the withdrawal of medical treatment.

33. **Mr. Iwasawa** said that he supported the deletion of paragraph 10 and the division of paragraph 11 into two sections. He proposed that the reference urging States parties to “seek to limit access by suicidal individuals to firearms” should be deleted since it was not merely suicidal individuals who should have restricted access to firearms.

34. **Ms. Cleveland** said that she supported the proposal to place greater emphasis on personal autonomy and to establish that the right to life should not be used as justification to inflict unnecessary suffering on a person with a terminal illness who wished to die. She agreed that paragraph 11 should be divided into two sections and believed in the importance of broaching the subject of assisted suicide in the draft general comment.

35. **Mr. Seetulsingh** proposed that the phrase “vulnerable population groups” in paragraph 11 should be more clearly defined so that readers would be aware that it referred to the Committee’s 1998 concluding observations on the report of Ecuador regarding young rape victims who had become pregnant and had committed suicide because safe abortion services were unavailable.

36. **Mr. Politi** said that he agreed that it was important to discuss assisted suicide in the context of suicide and welcomed the proposal to divide paragraph 11 into two distinct sections to cover the two issues. He supported the deletion of the phrase “individuals planning or attempting to commit suicide may experience a temporary crisis that hinders their ability to take rational decisions with long term implications” and the inclusion of a reference to personal autonomy. In that context, he suggested that the first part of the third sentence of paragraph 11 should be amended to read: “Furthermore, States parties that allow medical professionals to provide treatment designed to facilitate the termination of life of catastrophically afflicted adults, such as the mortally wounded or terminally ill who wish to die with dignity ...”.

The meeting was suspended at 5.05 p.m. and resumed at 5.15 p.m.

37. **Sir Nigel Rodley** said that the prevailing view seemed to be that paragraph 11, and the basic idea of the interplay between the need to protect the right to life and the obligation not to subject somebody to cruel, inhuman or degrading treatment or punishment, should be maintained. Ms. Cleveland’s suggestion to specifically mention article 7 would certainly be taken into account. Since paragraph 9 was to be deleted and paragraph 8 was to be moved, paragraph 11 might also have to be relocated, perhaps near the end of the document where reference was made to the relationship between rights. It would be necessary to distinguish more clearly between suicide, assisted suicide and euthanasia, which was easier said than done. He had taken note of the comments by Mr. de Frouville and Mr. Politi that, as

currently worded, the reference to “a temporary crisis that hinders their ability to make rational decisions” might not be apt, but he did not agree that it was offensive. The point was to recognize that some individuals might be in need of help to live rather than help to die, and that was the obligation assumed by States parties under article 6. The wording could certainly be changed, but he considered it appropriate to retain that basic idea. There was clearly a need to refine the language in relation to the prevention of suicides among “vulnerable population groups” so as to avoid any misunderstandings. Mr. Seetulsingh’s proposal to cite the Committee’s concluding observations on the report of Ecuador was very apropos, and that could perhaps be done in a footnote. With regard to Mr. Ben Achour’s and Mr. Politi’s points about personal autonomy, he noted that the concept was already addressed elsewhere in the text and that the focus perhaps needed to be on balancing the obligations deriving from articles 6 and 7 rather than on the philosophical concepts of autonomy as a starting point, although he agreed that the first sentence should be redrafted to ensure that personal autonomy did not sound like a throwaway idea.

38. **Mr. Shany** said that he associated himself fully with the point made by Sir Nigel Rodley that rights were for the individual to apply. The idea of “temporary crisis” was a central explanation for why the Committee was requiring States to interfere with personal autonomy. The Committee believed that the situations that led individuals to want to take their own lives could be addressed, and it was therefore, in a sense, encouraging States to override an individual’s decision in those circumstances. If the “temporary crisis” justification were removed, the Committee would be undermining the idea that rights were to be exercised by the rights holders and not to be determined by the State. It was important to ensure that the general comment was not simply a list of obligations borne by States parties without any explanation of the reasons and philosophical positions underlying the Committee’s views. Including an explicit reference to article 7 in the second part of the paragraph, as suggested, would help to clarify why personal autonomy was being limited. The mention of firearms was one of only three in the Committee’s jurisprudence, but he agreed that it perhaps raised more issues than it resolved.

39. **Mr. de Frouville** said that, as currently drafted, paragraph 11 did not specifically address the withdrawal of life-prolonging treatment, an issue that had been brought before the European Court of Human Rights in the case of *Lambert and Others v. France*. In his view, the fact that a clear distinction was not drawn between assisted suicide, euthanasia and the withdrawal of treatment suggested that the Committee did not have a full understanding of those issues and should refrain from addressing them until it had the necessary conceptual tools to do so.

40. **Sir Nigel Rodley** said that, as it stood, the paragraph dealt with suicide, assisted suicide and euthanasia and there was possibly room for drawing a sharper distinction between those concepts. He did not agree with the logic that, because the issue of the withholding of treatment had not been covered in the paragraph, the Committee should refrain from addressing the other issues at all, and he did not believe that it reflected the opinion of the Committee.

41. **Mr. Shany** said that the words “treatment designed to facilitate the termination of life” in the sentence on euthanasia had been deliberately chosen to cover both passive and active treatment: in other words, the discontinuation of an existing treatment but also, in those countries where it was permitted, active treatment to facilitate the termination of life.

42. **Mr. Ben Achour** said that he agreed with Mr. de Frouville about the distinction between assisted suicide, euthanasia and the discontinuation of life-prolonging treatment, but the central problem in paragraph 11 was specifically related to persons who experienced intolerable pain and suffering and wished to die with dignity, which suggested that they were still able to express their will and had the capacity to make such a decision. That was not generally the case with the discontinuation of futile medical care, which usually

involved persons who were unable to express themselves and whose families or doctors had to make the decision for them.

43. **The Chair** said that the rapporteurs would prepare a new draft of the paragraph taking account of the Committee members' comments.

Paragraph 12

44. **Mr. Shany** said that paragraph 12 dealt with the positive and negative obligations of States parties to respect the right to life, to refrain from acts that resulted in deprivation of life and to protect individuals from deprivation of life brought about by others. Since, during the discussions on paragraph 6 on the deprivation of life, several members had expressed an interest in addressing both the negative and positive obligations of States parties, one option that could be pursued when preparing new formulations of paragraph 6 would be to consolidate paragraphs 6 and 12 or to place one of them right after the other so that the concept of the deprivation of life would be complemented by the concept of the positive and negative obligations of States parties.

45. **Mr. Rodríguez-Rescia** said that he proposed moving the first sentence of paragraph 12 on the positive and negative obligations of the State to paragraph 4, which discussed the essential obligations of States parties in protecting the right to life. In his view, the examples provided in paragraph 12 were problematic, and he would prefer for them to be deleted. He would be in favour of expanding the second sentence to cover all kinds of State authorities, not only the police and military.

46. **Mr. Seetulsingh** said that the reference to "military operations during armed conflicts" in the second sentence of paragraph 12 should be moved further down. With regard to the reference to introducing "appropriate safeguards in order to minimize the risk posed to human life during police raids targeting violent criminals", he proposed specifically mentioning the notions of necessity and proportionality. In his view, the reference in the last sentence to protecting "the right to life of individuals against deprivations caused by persons or entities not acting on behalf of the State" was not clear. In that regard, he recalled the judgement of the European Court of Human Rights in the case of *Osman v. the United Kingdom*, in which the authorities had known that there was a risk to the life of an individual. It should be stated more specifically in paragraph 12 that the State had a duty to take operational measures to protect the life of an individual when the authorities were aware that a specific person posed a real and tangible threat to the life of that individual. He would be grateful if the rapporteurs could reformulate the sentence to take account of such situations.

47. **Mr. Iwasawa** said that it was not the Committee's practice to draw analogies from the jurisprudence of regional mechanisms. He agreed with Mr. Seetulsingh about introducing the principle of proportionality into the second sentence. With regard to the third sentence concerning the protection of "the right to life of individuals against deprivations caused by persons or entities not acting on behalf of the State", he proposed changing the word "persons" to "private individuals" and introducing the principle of due diligence, which was used elsewhere in the context of the State's duty to protect aliens.

48. **Mr. Shany** said that the principle of due diligence could certainly be addressed and, in fact, the phrase "all suitable measures, which can reasonably be expected from them" already alluded to it. He had no objection to referring to the principles of necessity and proportionality, which clarified the scope of the State's obligations. The actual nature of the obligation would be discussed subsequently. The proposal in relation to the reference to "persons or entities" would certainly be considered, although those words had been carefully chosen so as to cover not only natural persons but also legal persons and other States. He agreed that, since military operations were addressed subsequently, the reference

could be deleted from paragraph 12. It would be difficult to accommodate Mr. Rodríguez-Rescia's proposal to move the first sentence to paragraph 4, since that paragraph merely enumerated the topics to be addressed but did not set forth any substantive or conceptual elements. Moving paragraph 12 close to paragraph 6 should resolve the concern underlying that proposal.

49. **Sir Nigel Rodley** said that the principles of necessity and proportionality were dealt with extensively in paragraph 19. Since there seemed to be no disagreement on elements of substance, the rapporteurs would reserve the right to restructure the paragraph and possibly split it up into different parts. He would favour Mr. Iwasawa's proposal to refer to due diligence, which had been used in general comment No. 31, over Mr. Seetulsingh's proposal based on the interpretation of the Osman case, which might excessively narrow the scope of State responsibility.

50. **The Chair** said that the difficulty was that there were different levels of action by private agents in relation to State responsibility, and the due diligence to be exercised in relation to a group of persons or non-State agents was not the same as the horizontal effect between individuals, as was clear from the jurisprudence of the European Court of Human Rights. The Committee was on the right track, however, and he trusted that the rapporteurs would make the necessary changes to the paragraph. Although no paragraphs had been adopted at the current meeting, a good deal of progress had been made on a number of very complex issues.

The meeting rose at 5.55 p.m.