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Summary record of the 3399th meeting*
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Chair: Mr. Iwasawa

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* No summary record was issued for the 3398th meeting.

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The meeting was called to order at 10.05 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Individual Communications (*continued*)

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

1. **The Chair** drew attention to new language for section V of the draft general comment, which had been circulated to members earlier. Paragraphs I, II and III of the new language had been translated into French and Spanish. He invited the Committee to consider paragraph I, which would be inserted after paragraph 61 of the draft general comment.

Paragraph I

2. **Mr. Shany** (Rapporteur for the general comment) said that the proposed text of paragraph I read:

> "The right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, sexual orientation, disability and age. All legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination and any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is motivated by discriminatory attitudes towards women, is a particularly grave form of assault on the right to life."

3. Four of the grounds for discrimination listed — caste, sexual orientation, disability and age — were not explicitly mentioned in the Covenant but had been addressed by the Committee in its work. The paragraph referred to legal protections in law and in fact, and drew attention to the very serious problem of femicide.

4. **Ms. Brands Kehris**, referring to the last sentence, said that the phrase "gender-based violence that is motivated by discriminatory attitudes towards women" should be replaced with the phrase "gender-based violence that targets women", in line with the language used by the Special Rapporteur on violence against women, its causes and consequences, because the motivation for violence of that kind might be unclear and difficult to prove.

5. **Mr. Heyns** proposed replacing the phrase "all legal protections" with the phrase "the legal protections" at the start of the second sentence.

6. **Ms. Cleveland** proposed adding "and gender identity" after the words "sexual orientation" in the first sentence and splitting the second sentence into two sentences, the first ending with "all forms of discrimination" and the second starting with "Any deprivation of life".

7. **Ms. Kran** said that the final sentence should refer to both women and girls, in line with the practice of the Special Rapporteur on violence against women, its causes and consequences. Instead of the word "targets", proposed by Ms. Brands Kehris, she would prefer a more neutral verb without violent connotations, such as "affects".

8. **Mr. Santos Pais** said that the concerns of Ms. Brands Kehris and Ms. Kran could be accommodated by changing the last sentence to read: "Femicide, which constitutes an extreme form of gender-based violence due to discriminatory attitudes affecting young girls and women, is a particularly grave form of assault on the right to life."

9. **Ms. Brands Kehris**, supported by **Ms. Kran**, said that she would be happy to use the verb "affects" rather than "targets" but that she would prefer to avoid any reference to discriminatory attitudes. Emphasis should be placed on the effect of such violence rather than its cause, because it was difficult to prove the motivation behind hate crimes, including femicide.

10. **Ms. Cleveland** said that the verb "affects" did not adequately convey the idea that femicide was committed against women specifically because of their gender. The word "gender-based", which expressed that idea to a certain extent, could be further supplemented by wording such as "violence that reflects discriminatory attitudes towards women and girls".

11. **The Chair** suggested that the problem could be resolved by shortening the sentence to read: "Femicide, which constitutes an extreme form of gender-based violence, is a particularly grave form of assault on the right to life."

12. **Ms. Waterval** said that it would be a good idea to include albinism in the list of grounds for discrimination, since persons with albinism were particularly susceptible to violations of the right to life.

13. **The Chair** suggested that the Rapporteur should look for a supporting reference to albinism in the Committee's concluding observations.

14. **Mr. Ben Achour** said that discrimination against persons with albinism was just one example of harmful traditional practices, among many. Since it was not possible to list all forms of discrimination, he proposed adding a phrase such as "or any other form of discrimination that may violate the right to life" at the end of the first sentence.

15. **The Chair** said that the word "including" clearly indicated that the list of grounds for discrimination was not exhaustive.

16. **Mr. Santos Pais** said that he supported the proposal to mention albinism, because persons with albinism were particularly likely to suffer violations of the right to life as a result of discrimination.

17. **Mr. Heyns** proposed replacing the phrase "all forms of discrimination" with the phrase "all such forms of discrimination" in the second sentence, in order to strengthen the link between the first and second sentences.

18. **Mr. Shany** said that he would be happy to insert the words "and gender identity" and to add a reference to albinism, with a footnote citing the report of the Independent Expert on the enjoyment of human rights by persons with albinism. He accepted the proposed amendments to the second sentence, except Mr. Heyns' proposal to change "all forms of discrimination" to "all such forms of discrimination", which implied that the list of forms of discrimination was finite.

19. To address the concerns raised with regard to femicide, he proposed amending the last sentence to read: "Femicide, which constitutes an extreme form of gender-based violence that is directed against women and girls, is a particularly grave form of assault on the right to life." Shortening the sentence further was not a satisfactory solution because it shifted the focus away from the victims.

20. **Ms. Cleveland** said that the concluding observations from the current session contained a reference to albinism that could be cited in a footnote.

21. **Mr. Santos Pais** proposed replacing the phrase "women and girls" with "girls and women", in the final sentence.

22. *It was so decided.*

23. *Paragraph I, as amended, was provisionally adopted.*

Paragraph II

24. **Mr. Shany** drew attention to the proposed text of paragraph II, which read:

> "II. Environmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the interpretation and application of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law. In particular, the ability of individuals to enjoy a

right to life with dignity depends on measures taken by States parties to protect the environment against harm and pollution, engage in sustainable utilization of natural resources, conduct environmental impact assessments for activities likely to have a significant impact on the environment, provide notification to other States of natural disasters and emergencies, and take due note of the precautionary principle."

25. The paragraph expanded on a sentence in an earlier version of the draft regarding the conditions that were necessary for the enjoyment of the right to life. It asserted that the obligations of States parties under international environmental law should inform the interpretation of article 6 of the Covenant and provided examples of such obligations. He had taken pains to word the third sentence carefully, so as to steer clear of the doctrinal debate on whether the principles of international environmental law were binding.

26. **Mr. Fathalla**, supported by **Mr. Politi** and **Mr. de Frouville**, proposed that the phrase "the right to life with dignity" in the third sentence should be amended to "the right to life, in particular life with dignity", in order to acknowledge that, in many developing countries, environmental threats had a direct impact on the right to life itself.

27. **Ms. Pazartzis** said that the second half of the second sentence, which started with the words "and the obligation of States parties", was redundant and could be removed. She would like to know exactly what was meant by "depends on" in the third sentence.

28. **The Chair** said that it was not necessary to mention both the interpretation and the application of article 6 in the second sentence. He suggested referring solely to interpretation, in accordance with the language used in the Vienna Convention on the Law of Treaties.

29. **Mr. Politi** said that he endorsed the general thrust of the paragraph, which responded to his concerns regarding the need for a specific reference to the environmental aspects of the right to life. For the sake of brevity, he proposed amending the second clause of the second sentence to read: "and the duty to respect and ensure the right to life must reinforce States' obligations under international environmental law". A full stop should be inserted after the word "pollution" in the third sentence. The sentence would then read: "In this respect, States parties should engage in sustainable utilization of natural resources, apply the precautionary principle, conduct environmental impact assessments …". Although he did not accept that the precautionary principle was controversial, he would not obstruct consensus should the Committee prefer the term "take due notice of" instead of "apply". He would also like to see a reference to the duty to assist other States affected by environmental emergencies, which was intimately linked to the duty of notification.

30. **Mr. Shany** said that the general comment was intended to interpret the Covenant; references to environmental law needed to be treated with caution. It would be unwise to include a reference to the duty to assist, which thus far was not an established concept in international law. He proposed replacing the words "interpretation and application" in the second sentence with "contents". The sentence was important, inasmuch as it acknowledged that human rights law was relevant to environmental law, but if members felt strongly about the need to be less prescriptive, the word "must" could certainly be replaced with "should". With the integration of Mr. Fathalla's proposal, the third sentence would read: "… the ability of individuals to enjoy a right to life, in particular a life with dignity …". The word "depends" played a key role, as it asserted the connection between States' conduct in terms of environmental protection and the ability of individuals to enjoy the right to life. Given that the enjoyment of the right to life depended on a series of elements, the sentence was quite long and could be split. However, the proposal for a fourth sentence commencing with the words: "States parties should engage in the sustainable utilization of natural resources …" transformed its current descriptive nature into a normative statement. He did not support that change, since it was not for the Committee to pronounce on international environmental law. Similarly, the notion of the "duty to assist" was not sufficiently established under international law and it would be premature to take a position in that regard.

31. **The Chair** said that the Committee should indeed exercise the utmost caution when it came to taking a position on environmental law.

32. **Ms. Pazartzis** concurred. If Mr. Fathalla's proposal were adopted, the words "In particular" at the beginning of the third sentence should be deleted.

33. **Mr. Politi** said that environmental impact assessments were at the core of the precautionary principle. The Committee appeared to be comfortable with asking States to conduct environmental impact assessments but hesitant to call for the application of the precautionary principle. Those two attitudes were contradictory and the Committee must work towards a more coherent solution.

34. **Mr. de Frouville** said that, while he would prefer to retain the words "interpretation and application" in the second sentence, he would not object to their replacement with "contents". The paragraph established a useful causal link between State action and applicable norms under the Covenant. However, it would be unhelpful to confine the issue to the link between the enjoyment of the right to life and the measures enumerated in the sentence. In doing so, the general comment would fall short of relevant standards developed over time by institutions such as the European Court of Human Rights. The Committee had discussed the issues involved at length on previous occasions and addressed complex issues such as the nature of States' obligations under the Covenant, the need for short- and long-term measures, the concept of the progressive realization of certain obligations, the notion of positive duty and the implementation of immediate and non-immediate obligations. Faithful to that spirit, it had identified States' obligations with regard to the threat posed by environmental deterioration. The precautionary principle in environmental law was akin to the notion of positive duty in human rights law. By virtue of that principle, it was legitimate to request States to take immediate measures, for example to prevent foreseeable future catastrophes caused by a global rise in temperature. Consequently, it would be useful to include a request to States parties to take the necessary short-term measures to prevent foreseeable damage to the environment. He fully supported Mr. Politi's proposal to insert a full stop after "pollution", move the reference to the precautionary principle further up in the sentence, and use the words: "States parties should engage in sustainable utilization of natural resources … and conduct environmental impact assessments". It was a perfectly reasonable request that could easily be linked to States' obligations under the Covenant.

35. **The Chair** said that the obligation to conduct environmental impact assessments was firmly established in international customary law, while the precautionary principle remained subject to debate among scholars of international environmental law. The Committee must steer clear of such controversy. For the purpose of a general comment on the right to life, the invitation for States to "take due note of" the precautionary principle was perfectly adequate.

36. **Mr. Fathalla** endorsed Mr. Politi's proposal, as supported by Mr. de Frouville.

37. **Mr. Shany** said that, although he preferred the current language, he would not object to the proposal to insert a full stop after "pollution", and to commence the following sentence with the words "In this respect, States parties should….". He did not, on the other hand, support replacing the words "take due note of" with "apply".

38. With regard to Mr. de Frouville's observations, he said that paragraph 28 of the draft general comment merely described factual conditions; it contained no normative prescriptions, because at that time, the Committee had focused on identifying problems. The new text, on the other hand, introduced a normative component, albeit implicitly, concerning the interface between facts and the law. He had no objection to being more explicit and accepting Mr. Politi's proposal.

39. **The Chair**, speaking in his capacity as a member of the Committee, said that the obligation to conduct environmental impact assessments constituted a recognized norm under customary international law; listing it alongside other measures that did not enjoy the same status might weaken its standing.

40. Summing up, he said he took it that the Committee wished to retain the first sentence as originally drafted. In the second sentence, the words "interpretation and application" would be replaced with "contents". In the third sentence, the words "in particular" would be deleted and the words "and, in particular, a right to life" would be inserted before "with dignity".

41. *Paragraph II, as amended, was provisionally adopted.*

Paragraph III

42. **Mr. Shany** drew attention to two draft texts, which would be the basis for the Committee's discussions:

Paragraph III

> "Individuals claiming to be victims of a violation of the obligations of the States parties under article 6 (1) of the Covenant must demonstrate that their right to life was already violated by acts or omissions attributable to the State party concerned, or is under a real and personalized risk of being violated."

Paragraph 68:

> "Article 6 of the Covenant imposes on State parties wide-ranging obligations to respect and to ensure the right to life. Individuals claiming under article 1 of the Optional Protocol to the Covenant to be victims of a violation of the Covenant must show, however, that their rights were directly violated by acts or omissions attributable to the States parties, or are under an imminent prospect of a direct violation."

43. He explained that the texts were inspired by language contained in paragraph 28 of the draft general comment. The drafters had sought to strike a balance between expanding the scope of application of article 6 while taking account of concerns that, as a result, anyone affected by environmental problems such as global warming, for example, might seek remedy under the Covenant. The Committee had once dealt with the notable case of a Dutch activist — *E.W. et al. v. the Netherlands* (CCPR/C/47/D/429/1990) — challenging the nuclear deterrence policy of the North Atlantic Treaty Organization (NATO) in Europe under article 6 of the Covenant. In order to prevent a landslide of communications, the right to seize the Committee under the Optional Protocol had been restricted.

44. Although the new paragraph had been meant for insertion at the end of section V, given its technical nature it might be better placed at the end of section I.

45. **Mr. Fathalla** said that, in both paragraphs, the words "no action" or "inaction" should be inserted after "acts" in order to clarify that the failure of States parties to take action to protect the environment could also constitute a violation of the rights set forth in article 6.

46. **Mr. de Frouville** questioned the utility of provisions that were not directly related to the purpose of the general comment, which pertained to the obligations of States parties under article 6, whereas the principle established in the proposed new texts related to the Optional Protocol. It was also not useful, and even misleading for States parties, to include a rigid characterization of the legal standard required to establish victim status; whether or not an individual qualified as a victim should be assessed on a case-by-case basis.

47. **Ms. Cleveland** said that, so long as the legal standard applied by the Committee under the Optional Protocol was accurately articulated, the Committee would still be able to discuss the details of the application of the standard in particular cases.

48. **Mr. Fathalla**, supported by **Ms. Pazartzis**, said that draft paragraph 68 could begin with the same words as draft paragraph III: it could refer simply to individuals claiming to be victims of violations of article 6 (1) of the Covenant and make no mention of the Optional Protocol.

49. **Mr. Santos Pais** said that the general comment was meant to be of use not only to States parties but also to the public at large. A reference to the requirements for applying to the Committee was therefore not inappropriate, although it could be made at the end of part I, as the Rapporteur had suggested. In any event, the general comment should address the standing of victims.

50. **Ms. Pazartzis** said that inaction would be covered by the word "omissions".

51. **Mr. Shany** said that he wished to retain the reference to the Optional Protocol, but he had revised the paragraph in part because the original wording suggested that anyone who failed to demonstrate that he or she was a direct victim was not a victim at all. The proposed revision made it clearer that such a person could still be a victim, albeit not for the purpose of submitting a communication under article 1 of the Optional Protocol. The first sentence of the proposed revision, which began with the words "Article 6 of the Covenant", was an explanation of the reason for the paragraph. As such, it too should be retained.

52. **The Chair** said that the Rapporteur's explanation had persuaded him of the advisability of referring to the Optional Protocol, as had been done in draft paragraph 68. He wondered whether the word "victims" could be put in quotation marks to show that it was being used in a highly technical sense.

53. **Mr. Fathalla**, joined by **Mr. Muhumuza**, said that, if the reference to the Optional Protocol was retained, the paragraph would be of little relevance to persons under the jurisdiction of States that were not parties to it.

54. **Mr. de Frouville** said that the words "real and personalized risk", which appeared only in paragraph III, were often used in the Views adopted by the Committee. In only one case, *E.W. et al. v. the Netherlands*, had the Committee referred to a victim within the meaning of the Optional Protocol as a person who showed either that an act or an omission of a State party had already adversely affected his or her enjoyment of a right protected by the Covenant or that such an effect was imminent. The revised version of the paragraph appeared to be a reinterpretation, based on that case alone, of who qualified as a victim within the meaning of the Optional Protocol.

55. **Ms. Cleveland** said that Mr. de Frouville had previously argued that reference should be made to the standard applied by the Committee in cases involving non-refoulement. In other words, the paragraph could refer to a "real risk" of a direct violation rather than an "imminent prospect" thereof. It should be made clear that the victims referred to in the paragraph were victims in the sense of the Optional Protocol rather than in a broader sense. In that regard, it could be helpful to rephrase the sentence in question so that it read: "Individuals claiming to be victims of a violation of the Covenant for the purpose of article 1 of the Optional Protocol must show, however, that their rights were directly violated by acts or omissions attributable to States parties …".

56. **Mr. Heyns** said that the paragraph as revised by the Rapporteur was useful, not least because it could prevent prospective authors of communications from forming unrealistic expectations. It did not seem necessary to refrain from referring to the Optional Protocol simply because some States parties to the Covenant had not ratified the Protocol.

57. **Mr. Shany** said that the first sentence of paragraph 68 should remain the same. It was quite possible, however, that he had drawn too heavily on the case *E.W. et al. v. the Netherlands*. He was therefore willing to return to the wording — "real and personalized risk" — that he had used in paragraph III. Including the wording changes proposed by Ms. Cleveland, the second sentence of paragraph 68 would thus be amended to read: "Individuals claiming to be victims of a violation of the Covenant for purposes of article 1 of the Optional Protocol must show, however, that their rights were directly violated by acts or omissions attributable to States parties to the Optional Protocol or were at real and personalized risk of being violated."

58. **Mr. Fathalla** said that he was not fully persuaded of the soundness of the changes proposed by the Rapporteur. The Committee was drafting a general comment on article 6 of the Covenant, not on the Optional Protocol.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

59. **Mr. Shany** said that he would give further consideration to the question of whether to include the two references to the Optional Protocol. Until a decision was made, they would be included in square brackets in a new version of the paragraph.

60. **The Chair** said he took it that there were no objections to the Rapporteur's proposal.

61. *Paragraph III/Paragraph 68 was provisionally adopted.*

Paragraphs 51 to 65, revised

62. **The Chair** invited Committee members to consider proposed amendments to the title of section V and paragraphs 51 to 53, 55, 58, 59, 63 and 65 based on the Committee's earlier discussions.

Paragraph 51

63. **Mr. Shany** said that most of the changes made to the paragraph were editorial. They were unlikely to pose major problems.

64. **The Chair** said that the word "not" was surely missing from a parenthetical remark in footnote 7, which stated that the death penalty should be imposed where there was a violation of article 7.

65. **Mr. Shany** said that the missing "not" would be added to the note.

66. *Paragraph 51, as amended, was provisionally adopted.*

Paragraph 52

67. **Mr. Shany** said the earlier discussion of paragraph 52 had prompted him to revise the first two sentences of the paragraph so that they read:

> "Article 6 (1) reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights."

68. The discussion on how to express the idea that occasional increases in the number of people put or sentenced to death in a given State party were not necessarily an indication that the State party had abandoned its obligation to make progress towards the abolition of the death penalty had informed his revision of the last sentence of the paragraph, which stated: "It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent to which they resort to the death penalty, and to reduce the number of pardons and commutations they grant." The idea had been to suggest that States parties could not choose deliberately to resort more frequently to the death penalty.

69. **Ms. Brands Kehris** asked whether the steps referred to by the Rapporteur in the last sentence of the paragraph would include lifting a moratorium on the death penalty. If so, and if lifting a moratorium on the death penalty was contrary to article 6, the implication was that a moratorium was equivalent to abolition.

70. **The Chair** said that he was not entirely happy with the use of the phrase "in the foreseeable future" in the first sentence, which introduced a chronological element but did not account for the possibility of changing circumstances.

71. **Mr. Shany** said that the Committee had adopted the view that a moratorium on the death penalty was not equivalent to abolition of the death penalty and that lifting a moratorium was therefore not a violation of article 6 (2) of the Covenant. It was, however, contrary to the object and purpose of the article. The vagueness of the phrase "in the foreseeable future" was deliberate. Over time, numbers could rise or fall, but the trend towards abolition should be clear. It would be inadvisable to introduce language that would accommodate a reversal of that trend.

72. **Mr. Santos Pais** said that the sentence would be more forceful without the phrase "in the foreseeable future", which seemed to serve no purpose other than to provide States parties with a pretext for inaction.

73. **Mr. Heyns**, supported by **Mr. Shany** and **the Chair**, said that removing the phrase would lessen the impact of the sentence.

74. **The Chair** suggested that the Committee should adopt paragraph 52 as revised by the Rapporteur.

75. *It was so decided.*

76. *Paragraph 52 was provisionally adopted.*

Paragraph 53

77. **Mr. Shany** said that the first sentence now read: “Although the allusion to the conditions for application of the death penalty in article 6 (2) suggests that when drafting the Covenant the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, subsequent agreements by the States parties or subsequent practice establishing such agreements may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances.” The phrase “considerable progress may be made” in the second sentence had been replaced with “considerable progress has been made”. The opening phrase of the third sentence now read: “Such a legal development is consistent with the abolitionist spirit of the Covenant”.

78. **Ms. Cleveland** proposed replacing the phrase “or subsequent practice establishing such agreements” with the phrase “and subsequent practice establishing such agreements”.

79. **Mr. Shany** said that the phrases concerning agreements reflected article 31 (3) (a) and (b) of the Vienna Convention on the Law of Treaties. He would therefore prefer to retain the word “or”.

80. *Paragraph 53 was provisionally adopted.*

Title of section V

81. **Mr. Shany** said that it had been proposed to amend the title to read: “Relation of article 6 with other articles of the Covenant and other legal regimes”.

82. **Mr. Heynes** proposed replacing “Relation” with “Relationship”.

83. *It was so agreed.*

84. *The title of section V, as amended, was provisionally adopted.*

Paragraph 55

85. **Mr. Shany** said that the original version of the paragraph had referred only to human rights defenders who were cooperating with the Committee. He now proposed new wording to broaden its scope. States parties should be required to protect individuals against reprisals “for promoting and striving to protect and realize human rights, including through cooperation or communication with the Committee”. A reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms should be added to footnotes 18 and 19.

86. **Mr. de Frouville** said that article 9 (4) of the Declaration could be cited in footnote 17; and footnote 18 should refer to article 12 (2) instead of article 12.

87. **Mr. Shany** said that he would include the reference to the Declaration in footnote 17, but he would require further consultations with Mr. de Frouville regarding the relevance of article 12 as a whole or just one paragraph of the article.

88. **Ms. Cleveland** proposed replacing “States” in the second sentence with “States parties”. She also proposed deleting the words “whose lives are under threat” in the same sentence, which already contained a reference to death threats.

89. **The Chair** suggested replacing the phrase “should reflect the importance of the work of human rights defenders” at the end of the second sentence with “should reflect the importance of their work”.

90. **Mr. Shany** said that he was happy to accept all the proposed amendments.

91. *Paragraph 55, as amended, was provisionally adopted.*

Paragraph 58

92. **Mr. Shany** said that he had endeavoured to shorten the paragraph and to clarify its substance. It now read:

> "The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant. Furthermore, even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances surrounding the death of an individual may violate their rights under article 7, as would failure to inform them, in circumstances where the death penalty is applied, of the date in which the carrying out of the death penalty is anticipated, and of the place of burial. Families of executed individuals must be able to receive back their remains, if they so wish."

93. **Ms. Cleveland** noted that, according to the second sentence, failure to provide relatives with information on the circumstances surrounding the death of an individual "may violate their rights under article 7 as would failure to inform them" of the date of execution of the death penalty. She proposed replacing "would" with "may".

94. She proposed replacing "their remains" with "the remains" in the last sentence.

95. **Mr. de Frouville**, referring to the last sentence, said that article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance defined a victim, in addition to the disappeared person, as any individual, not just a family member, who suffered harm as a result of an enforced disappearance. Hence it was not just family members who were entitled to recover the remains. He also proposed reinstating the words "the location of the body" in the last sentence, rather than replacing them with "the place of burial", since some cultures were opposed to burial.

96. **Mr. Shany** said that he accepted both of Ms. Cleveland's proposals.

97. He pointed out that the word "relatives" rather than "families" was used in the first two sentences. It had been argued that complications might arise if persons other than the family requested access to the remains, but he would reconsider the matter. He concurred with the proposal to restore the phrase "the location of the body".

98. *Paragraph 58, as amended, was provisionally adopted, subject to a drafting change.*

Paragraph 59

99. **Mr. Shany** said that the words "detention constituting part of enforced disappearances" had been replaced with the words "acts and omissions constituting enforced disappearance". In addition, enforced disappearance was deemed to "violate the rights to personal liberty and personal security as well as the right to life". Violations of article 9 (3) and (4) "could also result in a violation of article 6".

100. **Mr. de Frouville** proposed that a reference should be made to paragraph 7 of the general comment, which stated that enforced disappearance "constitutes a unique and integrated serious of acts and omissions representing a grave threat to life".

101. **Mr. Shany** said that he would insert the following footnote: "See paragraph 7 above".

102. *Paragraph 59, as amended, was provisionally adopted.*

Paragraph 63

103. **Mr. Shany** said that he had inserted a reference to "indiscriminate attacks" and had replaced "less lethal alternatives" with "non-lethal alternatives".

104. He had replaced the phrase "article 6 continues to apply also in situations of armed conflict" in the first sentence with "article 6 continues to apply also to the conduct of hostilities in situations of armed conflict" in response to recommendations by experts who were not Committee members. As he was unsure whether the addition was appropriate, he had left it in square brackets.

105. He was also unsure of the appropriateness of the phrase "subject to compelling security considerations", which had been inserted in the penultimate sentence, and had also left it in square brackets.

106. He had added a new final sentence, which read: "They must also investigate allegations of violations of article 6 in situations of armed conflict, in accordance with the relevant international standards." Footnote 13 referred to paragraphs 28 and 29 of the draft general comment and paragraphs 21 and 22 of the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).

107. **Mr. Heyns** proposed that footnote 13 should refer to paragraphs 20 to 22 of the Protocol, because paragraph 20 dealt with the duty to investigate a potentially unlawful death in an armed conflict.

108. **Mr. Shany** concurred.

109. *Paragraph 63, as amended, was provisionally adopted.*

Paragraph 65

110. **Mr. Shany** said paragraph 65 now read:

> "It would be incompatible with the object and purpose of the Covenant for a State party to enter a reservation with respect to article 6 in light of the peremptory and non-derogable nature of the obligations set out in this article. In particular, no reservation may be made to the prohibition against arbitrary deprivation of life of persons, nor to the prohibition against the application of the death penalty outside the strict limits provided in article 6."

111. He had changed the order of the ideas expressed without changing the content. The idea was to underscore the peremptory and non-derogable nature of the obligations contained in article 6, which were not open to reservations.

112. **The Chair** said that the Committee should avoid implying that a reservation was incompatible with the object and purpose of the Covenant only if the norm was peremptory and non-derogable. He therefore suggested amending the first sentence to read: "It would be incompatible with the object and purpose of the Covenant for a State party to enter a reservation with respect to article 6, especially in light of the peremptory and non-derogable nature of the obligations set out in this article."

113. **Mr. Shany** concurred.

114. *Paragraph 65, as amended, was provisionally adopted.*

The meeting rose at 1 p.m.