



International Covenant on Civil and Political Rights

Distr.: General
5 November 2019

Original: English

Human Rights Committee 127th session

Summary record of the 3670th meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 29 October 2019, at 10 a.m.

Chair: Mr. Fathalla

Contents

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

Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly) (continued)

* No summary records were issued for the 3667th to 3669th meetings.

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The meeting was called to order at 10 a.m.

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

Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly) (continued) (CCPR/C/GC/R.37)

Paragraphs 53 to 64

1. **The Chair** said that paragraphs 53 to 64 of the first draft of general comment No. 37 on article 21 of the Covenant had been revised by Mr. Heyns in order to reflect the proposals and comments made during the 3666th meeting.

2. **Mr. Heyns** (Rapporteur for the general comment), referring to the second sentence of the revised version of paragraph 53 concerning restrictions imposed on an assembly on the ground of protecting the rights and freedoms of others, said it was possible that such restrictions might be imposed not only to protect fundamental rights but also to protect other rights and freedoms. He had therefore placed the word “fundamental” in square brackets for reconsideration during the second reading of the draft general comment. In the fourth sentence, he had also inserted a reference, in square brackets, to “property rights” as a ground for restrictions.

3. Concerning the need to clarify the distinction between “public safety” and “public order”, he had moved the last sentence of paragraph 54, which contained a definition of “public order”, to the beginning of the paragraph. The definition of “public safety” was provided in paragraph 51.

4. Turning to paragraph 57, he said he was proposing that the word “parochial” should be used to refer to narrow conceptions of morality. The term had been placed in square brackets.

5. Paragraph 58 had been rephrased to read:

The regulation of the “time, place and manner” of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction in terms of the grounds set out above on a case-by-case basis.

6. He suggested that the first sentence of paragraph 62 should be moved to the end of paragraph 58, so that it would apply to the elements of “time” and “manner” as well as “place”.

7. Paragraph 59 had been rearranged to indicate that the principles that applied to duration were also applicable to frequency. It now read:

Concerning the element of “time”: There are no fixed rules about restrictions on the duration of peaceful assemblies, but participants must have sufficient opportunity to effectively manifest their views. Peaceful assemblies are generally by their nature temporary, and should be left to end by themselves. Assemblies should, moreover, not be limited solely because of their frequency. The duration and frequency of a demonstration may play a central role in the message that is being conveyed to the target audience. However, the cumulative impact of sustained gatherings should not disproportionately impact the rights of others.

8. In paragraph 60, he had added the words “or date” in the first sentence after “the precise time of day” in order to address the concerns expressed by Mr. Zimmermann at the previous meeting. Responding to a question by Ms. Sancin, he said that the first phrase of the second sentence of paragraph 60 could be amended to read: “At the same time, it should be recognized that assemblies held, for example, at night”.

9. At the start of paragraph 61, he had added the phrase “On the element of ‘place’”.

10. The first sentence of paragraph 63 now read:

The designations of the perimeters of places such as courts, parliament or official buildings as areas where assemblies may not take place should generally be avoided, because these are public spaces.

11. The final sentence of paragraph 64 had been revised to read: “Assemblies held on privately owned property with the consent of the owners enjoy the same protection as other assemblies”.

12. **Ms. Sancin** proposed that, in the first sentence of paragraph 63, the word “other” should be inserted before “official buildings”.

13. *Paragraphs 53 to 64, as amended, were provisionally adopted.*

14. **The Chair** invited the Committee to resume its consideration of the draft as contained in document [CCPR/C/GC/R.37](#), beginning with paragraph 65.

Paragraph 65

15. **Mr. Heyns** proposed amending the opening phrase to read: “Caution is also due when the manner in which assemblies are conducted is regulated”. In addition, Mr. Shany had proposed the insertion of “including sound systems” after “the erection of structures” in the third sentence.

16. **Mr. Ben Achour** said that some structures might prove dangerous, for instance if they were used to block traffic, and should not be permitted. Furthermore, the requirement that constructions should be “non-permanent” was presumably an obligation rather than a restriction.

17. **Mr. Zyberi** said that he wondered whether wording could be added to make clear that the second sentence referred to structures that supported the right to a peaceful assembly, such as podiums. The erection of structures to block traffic would, for example, be problematic.

18. **Mr. Ben Achour** proposed that “structures” should be replaced with “the structures required for the conduct of the peaceful assembly” [*les structures nécessaires au déroulement du rassemblement pacifique*].

19. **Mr. Furuya** said that, as indicated in paragraph 47, restrictions on the use of flags, uniforms, signs and banners might be justified in exceptional cases. He therefore proposed inserting the following sentence at the end of the paragraph: “In addition, they are subject to the exceptional restrictions mentioned in paragraph 47.”

20. **Ms. Sancin** said that the paragraph should perhaps mention the role played by online activities in such assemblies and the manner in which they were regulated.

21. **Ms. Tigroudja** said that it was unclear whether the paragraph simply addressed the issue of restrictions or whether it also imposed obligations on States to permit and facilitate mobile assemblies.

22. **Mr. Heyns** said that the idea conveyed in the paragraph was that, while it was permissible for States to regulate the manner in which assemblies were conducted, they should also allow them to proceed. He agreed with the proposal to refer to the structures as being part of the peaceful assembly, thereby clarifying that they assisted the assembly’s expressive purpose. A reference to paragraph 47 could be inserted as a footnote or in square brackets. Online assemblies should, in his view, be dealt with in a separate section of the general comment.

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

Paragraph 66

24. **Mr. Heyns** proposed replacing “a legitimate purpose” in the second sentence with “a legitimate ground for a restriction” and amending the final phrase to read “a maximum crowd capacity for a stadium or a bridge”.

25. **Mr. Furuya** wondered whether “public safety”, or simply the safety of participants, was at issue in such circumstances. Furthermore, it was essential to highlight a State’s

obligation to facilitate peaceful assemblies. He was unsure whether the term “public safety” was relevant in that context.

26. **Mr. Zimmermann** said that the use of “for example” before “public safety considerations” implied that there might be other considerations. He proposed inserting “for example” before “for a stadium or a bridge”.

27. **Mr. Zyberi** said that the phrase could perhaps be amended to read: “among others where public safety considerations dictate a maximum crowd capacity, for example for a stadium or a bridge”. The importance of limiting the number of participants in order to avoid stampedes should be borne in mind; however, that issue was probably addressed by the reference to “maximum crowd capacity”.

28. **Mr. Heyns** said that he had included “for example” before the phrase “where public safety considerations dictate a maximum capacity” because a huge assembly might raise concerns regarding not only public safety but also other issues such as public health. It was preferable to refer to “public safety considerations” rather than simply “safety considerations”, in order to make clear that the term was covered by the broad definition provided in paragraph 51, which included safety concerns. He was reluctant to open up the sentence to unduly broad implications.

29. **Mr. Zimmermann** said that he presumed that the grounds specified in article 21 could be invoked by the State to limit the number of participants. He therefore proposed inserting the words “as set forth in article 21” after “with a legitimate purpose”.

30. *Paragraph 66, as amended by Mr. Heyns and Mr. Zimmermann, was provisionally adopted.*

Paragraph 67

31. **Mr. Heyns** said that the aim of paragraph 67 was to prevent the imposition of a general ban on various types of face coverings. It should perhaps be stated that such decisions should be taken on an ad hoc basis. He also proposed deleting “Anonymous participation” and beginning the first sentence with the phrase “The wearing of face coverings may present challenges to law enforcement agencies”. The words “face masks” in the last sentence should also be replaced with “face coverings”.

32. **Mr. Ben Achour** said that he was opposed to the use of face coverings by anyone participating in a demonstration. It was, in his view, a sign of hostility and did not belong in a peaceful assembly. The very idea of participating in an assembly was to promote recognition and self-identification. If paragraph 67 was retained, it should be worded in an extremely cautious manner.

33. **Mr. Zimmermann** said that some cantons in Switzerland had laws banning the wearing of masks. A Swiss federal court had ruled that there must be exceptions to such laws if the wearing of masks was part of the form of expression used at an assembly. For example, environmental protesters sometimes chose to wear gas masks. The Committee should set out its position somewhat differently: States should be able to regulate the wearing of masks unless they were an intrinsic part of the assembly.

34. **Mr. Bulkan** said that he interpreted the words “Concerns about identification” at the beginning of the second sentence as a reference to the risk of reprisals. It might be advisable to include more specific guidance on how States should balance the competing demands of upholding public order by not allowing people intent on violence to cover their faces at assemblies and ensuring that those with peaceful intentions were not deterred from participation.

35. **Ms. Brands Kehris** said that she supported the general idea conveyed in the paragraph. Participants in peaceful assemblies might wear a mask for two main reasons: either for expressive purposes, as was the case in carnivals, or to protect their anonymity. In some countries, the very fact of protesting against State institutions or policies placed a person at risk. In the context of protests, anonymity served to protect not specific groups, but individual participants. In her view, the Committee should take the position that States should not impose a general ban on the wearing of masks, but that, in exceptional

circumstances, a ban might be appropriate for specific reasons. Restrictions on the wearing of face masks that were a part of the chosen form of expression would amount to content-based restrictions. Elsewhere in the draft, the Committee had set out a requirement that only in specific circumstances could content-based restrictions be imposed on the right to peaceful assembly.

36. **Mr. Zyberi** said that, as a general rule, the participants in peaceful assemblies did not cover their faces. However, there were various reasons why they might wish to do so. In addition to the reasons mentioned by Ms. Brands Kehris, participants might also cover their faces for health reasons. The increasing use of facial recognition technology and closed-circuit television cameras should also be borne in mind. In his view, the paragraph was carefully worded, but he agreed that the expression “face masks” might be too specific, as there were other ways in which the participants in an assembly could cover their faces.

37. **Mr. Koita** said that it should be possible to reach a consensus regarding the first sentence, as it established a link between the wearing of masks and the identification of those who engaged in violence. Although masks were an important part of certain assemblies, including carnivals, the Committee should not overlook the fact that participants often wore them in order to commit acts for which they did not wish to be identified. Indeed, the wearing of masks suggested an intention to commit acts that were not in accordance with the purpose of an assembly. The paragraph should be nuanced in order to take into account all possible scenarios.

38. **Ms. Kran** said that, on the basis of the current state of the law and best practice, it could not be concluded that the use of face coverings suggested an intention to commit violence. There were many examples of assemblies in which masks played an important role. They included carnivals and Halloween celebrations. The issue of reprisals was particularly important in the context of assemblies, but so too was the need to ensure that perpetrators of violence were held to account. She would be in favour of retaining the original text, as amended orally by the Rapporteur.

39. **Mr. Ben Achour** said that his earlier comments on the wearing of masks had concerned assemblies at which a specific cause, in particular a political cause, was being promoted. At such assemblies, the wearing of masks was often a sign of hostility. Indeed, in some cases, opponents of the cause being promoted at a protest wore masks in order to avoid identification in their efforts to cause disruption. He agreed that States should not impose a general ban on the wearing of masks, but, as a general rule, the wearing of masks should give rise to mistrust.

40. **Mr. Santos Pais** said that he supported the paragraph. It was clear that the wearing of masks at assemblies created problems for law enforcement. In fact, participants who wore face coverings were more likely to attract the attention of law enforcement officials. However, there should not be a general ban on the wearing of face coverings, which should be dealt with on a case-by-case basis. If face coverings were part of the form of expression used at a particular assembly, law enforcement would be able to take the necessary precautions.

41. **Ms. Sancin** said that the question of anonymous participation was also relevant to online assemblies, as Internet users could disguise their Internet Protocol (IP) addresses. For that reason, the words “and the wearing of face masks” should be deleted from the first sentence so as to broaden its scope. The wearing of face masks could then be mentioned in the second sentence as an example. In addition, the word “demonstrations” in that sentence should be replaced with “assemblies”.

42. **Mr. Heyns** said that the task before the Committee was to develop a norm that applied globally and not only to one culture. As currently drafted, the paragraph did not do justice to the full complexity of the problem. It also lacked any references. The purpose of the general comment was to provide guidance to States rather than to participants in assemblies. In the paragraph under consideration, the Committee had to strike a balance between advocating a general ban on the wearing of face coverings, which could lead to the imposition of undue restrictions on the right of peaceful assembly, and failing to recognize States’ legitimate concerns that some participants in assemblies might wear masks in order to avoid accountability. There appeared to be agreement in the Committee that the use of

face coverings could be part of the expressive purpose of an assembly. The types of assembly that fell into that category included not only celebrations, for example carnivals, but also certain protests. For example, protesters sometimes wore masks depicting the faces of political leaders. The question of reprisals was a complex one, as States would consider that the measures they took against individual participants constituted a means of ensuring accountability. The key point was that face coverings should not be used to avoid accountability for violence.

43. The word “anonymous” was ambiguous in the context of assemblies, as participants did not usually identify themselves and thus in effect remained anonymous. The central issue was therefore the covering of faces. The Committee would eventually have to address the issue of online assemblies, but, in view of the highly complex issues that they raised, he was not sure that the paragraph under consideration was the most appropriate place.

44. In the light of members’ proposals and comments, he proposed to prepare a revised version of paragraph 67 for consideration by the Committee at a subsequent meeting.

45. **The Chair** said he took it that the Committee wished to agree to the Rapporteur’s proposal.

46. *It was so decided.*

Paragraph 68

47. **Mr. Heyns** said that paragraph 68 addressed the collection of information and data. The aim of the paragraph was to highlight the relevance of international standards governing data collection rather than to set out those standards in full. He proposed that, in the second sentence, the words “the interception of communications” should be inserted after the words “including through surveillance.”

48. **Mr. Quezada Cabrera** said that, while he agreed with the general idea put forward in the paragraph, the reference to the “collection of accurate information and data” in the first sentence was unclear. He wondered whether it was to be understood in the same way as the reference to the “collection of personal information and data of those engaged in peaceful assemblies” in the subsequent paragraph. In any case, the connection between the two paragraphs in that regard should be clarified. In addition, in order to mirror more closely the Committee’s concluding observations on the fourth periodic report of the Republic of Korea (CCPR/C/KOR/CO/4), which were cited in footnote 74, he would be in favour of specifying in the third sentence that the “accessible legal frameworks” should be compatible with the Covenant.

49. **Mr. Furuya** said that he supported Mr. Quezada Cabrera’s proposal regarding the third sentence. In addition, the words “Such practices” at the beginning of that sentence were ambiguous. The sentence would be clearer if it stated simply that safeguards to prevent arbitrary information gathering and the misuse of any information gathered should be provided for in relevant legal frameworks.

50. **Mr. Santos Pais** said he agreed that the words “collection of accurate information and data” in the first sentence could give rise to confusion. It might be clearer if the word “accurate” was replaced with “relevant”. The information and data in question might concern not only the identity of the participants in an assembly, but also various other circumstances, such as its location. However, the “publicly accessible legal frameworks” mentioned in the third sentence were relevant principally to the participants. In his view, that sentence should include a reference to the possibility of challenging the use or misuse of information and data.

51. **Mr. Heyns** said that he had no objection to the replacement of the word “accurate” with “relevant” in the first sentence. His intention had been to mention, in the second sentence, the international standards that applied to practices such as information gathering, surveillance and interception of communications, before emphasizing, in the third sentence, that such practices, namely those referred to in the previous sentence, must be regulated by appropriate and publicly accessible legal frameworks. In other words, the international standards should be incorporated into domestic law. He would have no objection to the

insertion of wording such as “compatible with the Covenant” and would propose that “and subject to scrutiny by the courts” should also be added at the end of the third sentence.

52. **Mr. Zyberi** proposed that, in order to broaden the scope of the third sentence, it should include a reference to compatibility with international human rights standards rather than to compatibility with the Covenant alone.

53. **Mr. Heyns** said that, in implementation of Mr. Zyberi’s proposal, the words “compatible with international human rights standards and subject to scrutiny by the courts” could be inserted at the end of the third sentence.

54. **Ms. Sancin** said that, as currently drafted, the first sentence risked giving the impression that States should collect information and data on all assemblies. It would be better to reformulate the sentence in order to make clear that such information and data should be collected only for the specific reasons given.

55. **Mr. Quezada Cabrera** said that Mr. Santos Pais’s proposal to replace the word “accurate” in the first sentence with “relevant” did not address his concern, as the nature of the information and data in question would remain unclear. Although he had no objection to the proposed insertion of a reference to compatibility with international human rights standards in the last sentence, the aim of his original proposal had been to reflect more closely the language of the Committee’s concluding observations on the fourth periodic report of the Republic of Korea, which were cited in the corresponding footnote.

56. **Mr. Heyns** said that he agreed that the first sentence could be construed as suggesting that authorities should always gather data; in order to address that concern, he proposed inserting the words “in some cases” between “may” and “assist”. In response to Mr. Quezada Cabrera’s first point, the second sentence was intended to identify the five elements of the data collection referred to in the first sentence: information gathering, surveillance, interception of communications, and the retention and accessing of data. Since the Covenant itself and the Committee’s case law provided little guidance on data gathering, he thought it better to make no addition after “international standards” in the final sentence, rather than following more closely the language of the Committee’s concluding observations on the fourth periodic report of the Republic of Korea. In response to the concerns raised about the ambiguity of the words “such practices” in the final sentence, he proposed inserting “practices such as” between “However,” and “information gathering” in the second sentence.

57. *Paragraph 68, as amended, was provisionally adopted.*

Paragraph 69

58. **Mr. Heyns** said that the first sentence was intended to counter the argument, made by some, that the intrinsically public nature of assemblies rendered it impossible to infringe participants’ privacy by using facial recognition and other technologies. In the second sentence, he proposed inserting “as relevant to participation in public assemblies” after “social media”, in order to make the link to the previous sentence clearer. Despite some possible overlap with the final sentence of paragraph 68, he believed that the last sentence of paragraph 69 remained relevant.

59. **Mr. Zimmermann** said that, since it was such a crucial issue, he favoured using stronger language and imposing substantive restrictions on the collection of personal data, in order to ensure that such data collection was proportionate, and that, once an assembly had concluded peacefully, any data collected in relation to it would not be retained without a legitimate reason.

60. **Ms. Sancin** proposed that the word “mass” should be removed from the first sentence, in order not to limit its scope to mass assemblies, and that the word “public”, in the additional language proposed by Mr. Heyns in the second sentence, should be removed or replaced with the word “peaceful”.

61. **Mr. Heyns** said that he agreed with Ms. Sancin’s proposals. However, he was not in favour with Mr. Zimmermann’s suggestion, as data collection and retention had already been covered in paragraph 68.

62. **Mr. Bulkan** said that he saw merit in Mr. Zimmermann's suggestion, since, although international human rights standards were mentioned in paragraph 68, the principles of necessity, proportionality and non-discrimination had not been spelled out.

63. **Mr. Ben Achour** proposed inserting "in order to protect personal data" at the end of the final sentence, in order to clarify the purpose of the scrutiny and oversight in question.

64. **Mr. Heyns** said that he considered Mr. Ben Achour's proposal to be covered by the current wording. While it was necessary to avoid introducing excessive repetition, he was open to suggestions on ways of incorporating the principles of necessity, proportionality and non-discrimination into the paragraph.

65. **Mr. Zyberi** said that the second sentence would benefit from more detail on the monitoring of social media. However, before making his proposal, he wished to discuss informally with the Rapporteur the specific language to be used.

66. **Ms. Kran** said that, in relation to the right to privacy, she proposed the inclusion of the following wording: "which may have a chilling effect on those who wish to assemble but are concerned about the possible repercussions of being under surveillance". If it was deemed more appropriate, she was open to the insertion of that language elsewhere in the draft general comment.

67. **The Chair** said that he took it that the Committee wished to suspend the meeting to enable Mr. Zyberi and Ms. Kran to hold informal discussions with the Rapporteur on the wording of their proposed insertions.

68. *It was so decided.*

The meeting was suspended at 11.35 a.m. and resumed at noon.

69. **Mr. Heyns** said that, in the course of informal consultations with other members while the meeting had been suspended, agreement had been reached on two issues: the concept of the "chilling effect" would be incorporated elsewhere in the draft general comment, in order to give it due emphasis; and the words "protection of privacy" would be inserted between "same" and "applies" in the second sentence. Mr. Zimmermann would draft a proposed addition on the principles of necessity, proportionality and non-discrimination.

70. **The Chair** said he took it that the Committee agreed that paragraph 69 should be amended as proposed, and that Mr. Heyns should draft a new fourth sentence, based on Mr. Zimmermann's proposed addition, for discussion at a future meeting on the draft general comment.

71. *It was so decided.*

Paragraph 70

72. **Mr. Heyns** said that paragraph 70 dealt with the difficult question of whether civil servants, including police officers, military personnel and hospital staff, could engage in peaceful assemblies. Since it was an issue on which it was difficult to offer very detailed guidance, the content was fairly general; if, for example, the draft general comment were to indicate that military personnel in uniform should not participate in demonstrations, that would amount to an invitation for States parties to take action against such persons when they did participate. He proposed that, in the final sentence, the words "their ability" should be inserted between "and" and "to perform".

73. **Mr. Furuya** said that the Organization for Security and Cooperation in Europe (OSCE) Guidelines on Freedom of Peaceful Assembly, mentioned in footnote 75, referred to the issue of participation by law enforcement personnel and State officials in peaceful assemblies in the context of non-discrimination against various other groups, including women, children, minorities and persons with disabilities. Accordingly, the reference to law enforcement personnel and State officials was too limited and the whole issue should be addressed elsewhere in the draft general comment.

74. **Mr. Zimmermann** said that it was necessary to mention military personnel and to distinguish between State officials in general, on the one hand, and law enforcement and

military personnel, on the other. He wondered whether the issue of freedom of assembly in uniform should be specifically addressed because many countries banned soldiers, and in some cases police officers, from participating in demonstrations when wearing a uniform.

75. **Mr. Heyns**, replying to Mr. Furuya, said that, while the draft general comment did not include a special heading on non-discrimination, paragraph 9 did mention it. He did not consider that the issue of participation by State officials in assemblies was important enough to be included so early in the draft general comment, but was open to other proposed alternative locations. In response to Mr. Zimmermann's point, he proposed inserting the following additional phrase at the start of the paragraph: "While protest in uniform raises particular concerns".

76. **Mr. Santos Pais** proposed that the word "neutrality" should be replaced with "impartiality".

77. **Mr. Quezada Cabrera** said that, in the light of the provisions of the OSCE Guidelines on Freedom of Peaceful Assembly, he proposed replacing the word "ability" with "freedom" or "right".

78. **Mr. Ben Achour** said that law enforcement personnel and State officials should not be given equivalent treatment in paragraph 70 because "State officials" was a broad category encompassing all public employees, whereas the term "law enforcement personnel" referred to the police and any other forces responsible for the maintenance of law and order, with the exception of members of the military. Restrictions on law enforcement and military personnel could be more stringent, although such individuals should not be completely denied the right to participate in assemblies. However, other State officials should face no more limitations than any other member of the public.

79. **Mr. Heyns** said that he was happy to replace "neutrality" with "impartiality", and "ability" with "freedom". In response to Mr. Ben Achour's point, he proposed replacing the term "law enforcement personnel" with "members of the security forces"; he would not wish, however, to state that there were no restrictions on State officials' right of peaceful assembly because the impartiality of judges, for example, could be called into question if they were involved in demonstrations. He considered that the addition concerning protest in uniform addressed Mr. Ben Achour's concerns.

80. **Mr. Santos Pais** said that the point of the paragraph was to make clear that there should be no more limitations on the participation of members of the security services and State officials than was strictly required. It should fall to each State to decide what restrictions applied in such cases; if it was stated in the general comment that particularly severe restrictions could be imposed on members of the security services, that would amount to an invitation for States to impose such restrictions.

81. **Mr. Bulkan** said that there should be no distinction between State officials and law enforcement personnel because the criteria to be applied to restrictions were set out in the paragraph. As a Guyanese national, he wished to highlight that, in the domestic jurisprudence of the Caribbean, the landmark case relating to limitations on the right of peaceful assembly concerned a civil servant; the judgment had been that it was only permissible to limit that right if neutrality was essential to the performance of the duties of the civil servant in question.

Paragraph 71

82. **Mr. Heyns** said that paragraph 71 dealt with the costs of assemblies, including the cost of policing, maintenance, security and cleaning. It was generally not compatible with article 21 of the Covenant to shift those costs to participants.

83. **The Chair** said that the first sentence was too general. The examples of costs given in the second sentence should be moved to the first sentence, after "peaceful assemblies" in the first line, following the addition of the words "related to".

84. **Mr. Ben Achour** said he agreed that the first sentence was too general, since not all costs of peaceful assemblies should be covered by public funds. It would be necessary to specify at the start of the paragraph the costs to which that statement applied. The sentence

could be changed to something along the lines of: “Costs related to public order during the assembly” [*Les coûts relatifs à l’ordre public de la manifestation*].

85. **Ms. Pazartzis** said that she also thought the first sentence was too general. Rather than giving the misleading impression that everything should be covered by public funds, it needed to reflect the fact that public funds should mainly cover the provision of security and safety. She wondered whether the examples given in the second sentence were based on a specific case that had been considered by the Committee.

86. **Mr. Bulkan** said that the “soft” drafting of the paragraph, with the word “generally” inserted in both sentences, diluted an important safeguard of the right of peaceful assembly and opened the door to restrictions. He wondered whether the wording was based on the Committee’s jurisprudence. Given that States were required to facilitate the right of peaceful assembly, he did not see why organizers or participants should be asked to arrange and cover costs related to medical assistance or maintenance of security. It could be useful to include language similar to that used in *Poliakov v. Belarus* and *Sekerko v. Belarus*, concerning the requirement that restrictions on the exercise of the right of peaceful assembly should conform to the strict tests of necessity and proportionality, in order to provide greater guidance to States parties.

87. **Mr. Koita** said that he supported the paragraph, provided that it was made clear which costs would be covered by public funds.

88. **Mr. Zimmerman**, endorsing the point made by Mr. Koita, said that there was a distinction between political assemblies, on the one hand, and semi-commercial assemblies, such as Love Parade, on the other. In the case of the latter, it was reasonable for the organizers to cover the costs. The word “generally” should therefore be retained in the last sentence.

89. **Mr. Santos Pais** said that it was important to specify which costs fell to the State and which fell to private persons participating in the assembly. In line with Mr. Bulkan’s point about the need for proportionality, he proposed the insertion of words to the effect that the impact of the assembly on its organizers should not be disproportionate.

90. **Mr. Zyberi** said that the first sentence should make clear that costs related to safety and the immediate health needs of participants should be covered by public funds and should not be shifted to participants or organizers. The second sentence was important, since it made clear that a disproportionate burden should not be placed on those participating in or organizing assemblies.

91. **Mr. Heyns** said that greater clarity could be achieved by changing the order of the two sentences. “The costs” at the start of the new second sentence would then be changed to “These costs”. He would be in favour of keeping the word “generally”, since it reflected the language used in paragraph 14 on commercial assemblies.

92. **Ms. Sancin**, endorsing Mr. Heyns’ proposal to switch the order of the two sentences, proposed that the first phrase of the new first sentence should be changed to read: “Requirements for participants to arrange and cover policing or security costs or cleaning during assemblies”, and that the words “or to conclude” should be deleted.

93. **Mr. Bulkan** said that he would be interested to know what the Rapporteur thought of his proposal to refer to the requirement that restrictions on the exercise of the right of peaceful assembly should conform to the strict tests of necessity and proportionality, as established in the Committee’s jurisprudence. It would be useful to state that any transfer of costs to the organizers of assemblies should take place only under strict circumstances.

94. **Mr. Heyns** said that, while he agreed with the concept, he had some reservations about the inclusion of the reference in paragraph 71, since reference had already been made to the requirement of necessity and proportionality earlier in the general comment, and would be understood to apply also to subsequent paragraphs.

95. *Paragraph 71, as amended, was provisionally adopted.*

Paragraph 72

96. **Mr. Heyns** said that paragraph 72 addressed the issue of damage caused during peaceful assemblies. The most important element was that responsibility for damage should be limited to what could have been prevented with reasonable efforts.

97. **Mr. Bulkan** said that the assertion in the first sentence that assembly organizers and participants “may be” obliged to make reasonable efforts to comply with legal requirements had the effect of weakening that obligation; legal requirements should be complied with as a matter of course. He did not understand why the second sentence suggested that not only organizers, but also assembly participants, might be held responsible for damage caused by the crowd.

98. **Mr. Ben Achour** said that, with regard to the last sentence, in which the Committee stated that it was good practice for assembly organizers to appoint marshals where necessary, he had misgivings about the inclusion of the last phrase “but such an obligation must not be imposed”. He did not see why that obligation could not be imposed.

99. **Mr. Santos Pais** proposed that in the third sentence, the words “foreseen and/or” should be inserted before “prevented”.

100. **Mr. Zyberi** said that, in the first sentence, “may be obliged to” should be replaced with “shall”, since it was a matter of complying with legal requirements. In the second sentence, the assertion that responsibility of participants or organizers for damage caused by the crowd should “as a general rule” not be imposed was problematic. Their responsibility should be even more limited; quite simply, whoever caused the damage should pay for it.

101. **Ms. Sancin** said that she concurred with Mr. Zyberi’s proposal to strengthen the obligation to comply with legal requirements, in the first sentence. In addition, the words “in accordance with international standards” should be inserted after “comply with legal requirements”.

102. **Mr. Koita** said that the text was insufficiently assertive as it stood, and risked encouraging a culture of irresponsibility in the area of peaceful assembly. As a minimum, assembly organizers should be obliged to appoint marshals; there had to be somebody who was responsible for what happened during the assembly. In addition, organizers and participants should be obliged to comply with legal requirements.

103. **Mr. Heyns** said that many assemblies did not consist of a previously assembled crowd but were made up of members of the public who came and went spontaneously; not all assemblies had leaders. Nevertheless, it was important to recognize some level of responsibility. To take into account the points raised, in the first sentence the words “may be obliged” could be replaced with “are obliged”. In the second sentence, it would be preferable to retain the wording “participants or organizers”, since some assemblies had no organizers, in which case the participants should potentially be held accountable. In the third sentence, it was not clear whether “such responsibility” referred to civil or criminal liability; he suggested that the phrase should provisionally be placed within brackets. In the same sentence, he agreed with the addition of “foreseen and/or” before “prevented”, to guard against the expectation of “absolute responsibility”, which could deter people from organizing assemblies.

104. **Mr. Bulkan** said that, with regard to the second sentence and his earlier point, he still did not understand why participants in assemblies should bear responsibility for damage caused by the crowd. In his view, that could not be justified. The inclusion of the phrase “as a general rule” in that sentence was worrying; he wondered in what circumstances participants would be liable for damage caused by the crowd.

105. **Mr. Heyns** said that, if there were no organizers of an assembly, and participants could have foreseen that inciting others to engage in violent activity might result in damage, it seemed fair to him that they should be held accountable for their conduct.

106. **Mr. Zyberi** said that he was not comfortable using the word “responsibility”; rather, what should be conveyed was the obligation for participants and organizers to exercise due

diligence in their efforts to prevent or limit damage. In the final sentence, he had some reservations about the use of the word “marshals”.

107. **Mr. Santos Pais** said that he agreed with the Rapporteur’s comments with regard to the third sentence, since either civil or criminal liability might exist; it was not just a matter of a lack of due diligence. Participants and organizers could be held responsible in certain circumstances, and it would be up to the courts to rule on each case.

108. **The Chair** said that the Rapporteur would prepare a revised version of paragraph 72 for the following meeting.

The meeting rose at 1 p.m.