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Summary record of the 3630th meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 16 July 2019, at 10 a.m.

Chair: Mr. Fathalla

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* No summary records were issued for the 3626th to 3629th meetings.

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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 Communications *(continued)*

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

1. **The Chair** said that the first three paragraphs of the first draft of general comment No. 37 on article 21 of the Covenant, together with their footnotes, had been revised by Mr. Heyns to reflect the proposals and comments made during the 3625th meeting.

Paragraph 1

2. **Mr. Heyns** (Rapporteur for the general comment) said that paragraph 1 now read:

The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other rights related to political freedom, it constitutes the very foundation of a system of participatory government based on democracy, human rights and pluralism where a premium is placed on persuasion in the pursuit of change. Peaceful assemblies play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Where peaceful assemblies are used to air grievances, this may create the opportunity for their resolution in a peaceful and inclusive manner.

3. Upon rereading the paragraph, he wondered whether the second sentence was not redundant, as the concepts of individuals and collectives had been emphasized in the first sentence.

4. **Mr. Shany** said that he was in favour of keeping the second sentence, as the right of peaceful assembly had intrinsic value as well as being a fundamental right.

5. **Ms. Sancin** said that she too approved of the language of the second sentence. In the third sentence, however, “the rule of law” should be added before “pluralism”, as agreed in the previous discussion.

6. **Mr. Santos Pais** said that he also preferred to keep the second sentence. In the third sentence, he would prefer a more neutral word than “premium”, which, for him, had connotations of a contest or competition.

7. **Mr. Heyns** said that the second sentence would be retained. He would add “the rule of law” and find a more neutral word than “premium” – perhaps “emphasis”.

8. *Paragraph 1, as amended, was provisionally adopted on that understanding.*

Paragraph 2

9. **Mr. Heyns** said that paragraph 2 now read:

Peaceful assembly is, moreover, a valuable tool that can and has been used for the realization of a wide range of other human rights, including socioeconomic rights. It is of particular importance to marginalized and disenfranchised members of society. A failure to recognize the right to organize and participate in peaceful assemblies is a marker of repression. Peaceful assembly is a legitimate use of the public space.

10. *Paragraph 2 was provisionally adopted.*

Paragraph 3

11. **Mr. Heyns** said that paragraph 3 now read:

The first sentence of article 21 of the International Covenant on Civil and Political Rights provides that: “The right of peaceful assembly shall be recognized.” The right is articulated in similar general terms in other international, including regional,

instruments. The content of the right has been elaborated upon in interpretive guidelines and judicial decisions. In addition to being bound by international law to recognize the right of peaceful assembly, the vast majority of States also recognize the right in their respective national constitutions.

12. **Ms. Sancin** said that footnote 2 currently included no examples of judicial decisions. The Rapporteur should either add some examples to the footnote or place the footnote indicator after “interpretive guidelines” instead of after “judicial decisions”.

13. *Paragraph 3, as amended, was provisionally adopted, subject to the necessary drafting changes.*

14. **The Chair** invited the Committee to resume its consideration of the draft general comment contained in document [CCPR/C/GC/R.37](#).

15. **Mr. Heyns**, making a general point, said that the question of how to characterize the overall obligation that article 21 placed on States parties remained to be settled. As he saw it, the Committee had three options. It could retain the current language, whereby the State had an overall obligation to “accommodate” peaceful assemblies, a negative obligation to “allow” or “refrain from unwanted interference” in them, and a positive obligation to “facilitate”, “protect” or “promote” them. Alternatively, it could affirm that the State had an overall obligation to “facilitate” peaceful assemblies, a negative obligation to “allow” them and a positive obligation to “enable”, “protect” or “promote” them. Lastly, the Committee could describe the overall obligation as being to “respect and ensure the right of peaceful assembly”, and take the positive and negative obligations from one of the other two options. He would appreciate comments and suggestions on those three options as the discussion progressed.

16. **Mr. Shany** said that, as the word “facilitate” had a specific connotation in human rights law as one of the sub-elements of the duty to fulfil, he would be more comfortable with one of the other formulations.

Paragraph 4

17. **Mr. Heyns** said that the purpose of paragraph 4 was to introduce the notion of peaceful assembly without entering into the specifics, which were covered in later paragraphs. He would like to propose the deletion of the reference to the “core” of what the right protected, which was somewhat amorphous.

18. **Ms. Pazartzis** said that she wished to know, in the light of the Committee’s previous discussion, whether the Rapporteur intended to keep the phrase “a number of people”.

19. **Mr. Zimmermann** said that he would be happy to delete the reference to the “core” of the right. In order to avoid limiting the number of people to whom the right applied, he suggested changing “a number of people” to simply “people”.

20. **Mr. Zyberi** said that he saw no need to delete the word “core”, but the sentence could be reformulated to omit the reference to “people”. It would then read: “The core of what the right of peaceful assembly protects is non-violent gatherings in a publicly accessible place with a common expressive purpose.”

21. **Mr. Furuya** said that he questioned the aptness of the term “publicly accessible place”. The definition of an assembly in the Guidelines on Freedom of Peaceful Assembly of the Organization for Security and Cooperation in Europe (OSCE), as cited in footnote 4, specified that the gathering must be in “a public place”, while the definition in the Guidelines on Freedom of Association and Assembly in Africa, of the African Commission on Human and Peoples’ Rights, referred to gathering “in private or in public”. The Committee must clarify whether the right of peaceful assembly covered private gatherings or not. As some States parties had laws that restricted freedom of assembly even in private places, he believed that it should.

22. **Mr. Bulkan** said that he failed to see the need for paragraph 4 in the first place, given that many of the constituent elements of peaceful assembly were covered in

paragraph 1. Defining the “core” of the right was a fraught undertaking for the reasons previously expressed by Committee members.

23. **Mr. Shany** said that, on the contrary, paragraph 4 was necessary. Although paragraph 1 covered the foundations of the right, it did not provide an actual definition. In his view, the right of peaceful assembly also encompassed gatherings in private places. Although the public aspect might well be at the core of the right, once the Committee moved to a full definition it should use more open language. He suggested that the Committee should emphasize that the right encompassed the gathering of people “at the same time and in the same place”, which would circumvent the issue of whether the assembly was public or private.

24. **Mr. Santos Pais** said that he supported the Rapporteur’s idea of using paragraph 4 as an introduction to the right, particularly because the general comment should be accessible to readers without specialized knowledge of human rights. As later paragraphs translated the right into more concrete provisions, paragraph 4 was not out of place.

25. **Mr. Ben Achour** said that it was important to be clear that the right of peaceful assembly could only apply to private places open to the public, such as hotels, cinemas or places of worship. Assemblies that took place by invitation and on private property did not fall within the scope of article 21.

26. **Ms. Sancin** said that she approved of the current wording, “publicly accessible place”. On the other hand, she would prefer the phrase “non-violent gathering” to be changed to “peaceful gathering”.

27. **Mr. Koita** said that the formulation “publicly accessible place” was apposite, as it did not specify whether the place was public or private, and thus kept all options open.

28. **Mr. Muhumuza** said that, in States where public gatherings were subject to repression, people tried to be creative by using private events such as family celebrations to give politicians a platform to address the community. In many cases, States interfered in such events. For that reason, the Committee must cater for peaceful assemblies in both public and private places.

29. **Mr. Shany** said that he failed to see why the Committee would wish to limit the definition of a peaceful assembly and thus limit the protection provided. Universal access was not an intrinsic component of the right. He would be reluctant to keep the current language.

30. **The Chair** said that, while he agreed that peaceful assemblies could take place in private places, he did not see how the State had the obligation or ability to protect private gatherings.

31. **Ms. Sancin** said that any measures taken by the State to protect a private assembly could be seen as interfering with other rights, such as the right to privacy. Therefore, public assemblies protected under article 21 must be publicly accessible.

32. **Mr. Ben Achour** said he did not agree that purely private gatherings could be considered as peaceful assemblies. If private gatherings led to violence or disruption, the police could intervene, but their intervention would fall firmly outside the scope of article 21 of the Covenant.

33. **Mr. Furuya** said that private places should be included in the protection afforded by article 21 for the simple reason that the State should be obliged to refrain from interfering in such gatherings. While private events, such as weddings, were already protected under article 17, they should also be protected under article 21 if they had a specific purpose.

34. **Mr. Quezada Cabrera** said that he supported the formulation “publicly accessible place”. Peaceful assemblies must have a common expressive purpose and involved the transmission of messages to third parties. Of all the examples and references given, only the guidelines of the African Commission on Human and Peoples’ Rights entertained the possibility that the assembly might be in a private place. Extending the protection of article 21 to purely private venues would require the reformulation of much of the draft general comment.

35. **Mr. Zimmermann** said that he was happy with the wording of paragraph 4 as it stood. It implicitly covered meetings in private places, provided that they were publicly accessible.

36. **Ms. Pazartzis** pointed out that, at any rate, the subject of private meetings would be broached later in the text.

37. **Mr. Shany** said that the concept of private meetings was particularly pertinent in States with oppressive regimes. Indeed, some historic initiatives – such as the Charter 77 initiative in the former Czechoslovak Socialist Republic – had been organized in private. In failing to refer to private meetings, the Committee might leave the door open to abuse. For instance, States could argue that gatherings in areas placed under curfew could not be protected under article 21 because those areas were, technically speaking, not publicly accessible.

38. **Mr. Muhumuza** said that the African Commission on Human and Peoples' Rights had included the concepts of both public and private gatherings in the Guidelines on Freedom of Association and Assembly in Africa precisely because certain regimes were so hostile to assemblies. In the face of such oppression, gatherings were sometimes organized in intensely private settings, such as funerals. The Committee should afford protection to persons forced to assemble in such ways.

39. **The Chair** said that it appeared unlikely that the Committee would reach consensus on the issue any time soon, and so suggested putting the two formulations “publicly accessible place” and “public or private place” in square brackets, so that the Committee could choose between them at a later date.

40. **Mr. Heyns** said that article 21 should not be deemed to cover forms of gathering that were protected under other articles of the Covenant. However, it could feasibly cover activities associated with gatherings, such as the organization of meetings. He would change “gathering of a number of people” to “gathering of people”, and “non-violent gathering” to “peaceful gathering”, provided that no distinction was drawn between the latter two concepts in the remainder of the text. As suggested by the Chair, he would place “publicly accessible place” and the alternative formulation “public or private place” in square brackets, for further discussion. He would also omit the reference to the “core” of what was protected under the right of peaceful assembly.

Paragraph 5

41. **Mr. Shany**, supported by **Mr. Furuya** and **Mr. Koita**, proposed that a reference to online assemblies should be included in the paragraph.

42. **Mr. Furuya** said that while the last sentence of the paragraph referred to the right of peaceful assembly as an individual right, the footnote to that sentence cited paragraph 9 of the Committee's general comment No. 31, which concerned the “rights of legal persons or similar entities or collectivities”. He thus proposed that the footnote should be either deleted or amended.

43. **Mr. Ben Achour** proposed that the paragraph should refer to the protection of peaceful assemblies whether in areas open to movement of people or in public or private places not open to movement of people. Such a reference could be included at the end of the second sentence.

44. **Mr. Quezada Cabrera** said that he failed to see the logical link between the right of peaceful assembly and the “associative element” in the final sentence of the paragraph.

45. **Ms. Brands Kehris**, noting that freedom of peaceful assembly was defined in the OSCE Guidelines on Freedom of Peaceful Assembly as a fundamental human right that could be “enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies”, said that paragraph 5 did not specify whether the individual right of peaceful assembly was particular to natural persons.

46. **Mr. Zyberi**, supported by **Mr. Zimmermann**, said that the paragraph was fine as it stood and should not be overloaded with issues that would be addressed later in the text.

47. **Mr. Zimmermann** said that any reference to online assemblies would be better placed in paragraph 38 than in paragraph 5.
48. **Ms. Sancin** proposed that “spontaneous assembly” should be included among the various forms of assembly mentioned in the first sentence.
49. **Mr. Ben Achour** said that the “many forms” of peaceful assembly alluded to in the paragraph should be listed in full there, rather than at some later stage in the text. Online assemblies could be included in the list.
50. **Ms. Tigroudja**, supported by **the Chair** and **Mr. Heyns**, said that there was no need to be exhaustive at such an early stage in the text.
51. **Mr. Heyns** said that he struggled to understand Mr. Ben Achour’s proposal regarding areas that were open or not open to movement of people. The current reference to both “stationary” and “moving” assemblies covered all bases. Moreover, the issue of public accessibility had already been dealt with in paragraph 4.
52. Online assemblies, if they were to be included in paragraph 5, would need to be thoroughly debated. For instance, the Committee would need to determine whether the restrictions imposed on regular assemblies, such as notification of time and place, should also apply to online assemblies. Furthermore, any reference to online assemblies could undermine the argument that private meetings should be protected as they were the only alternative to public assemblies when the latter were banned.
53. General comment No. 31 referred to peaceful assembly as an individual right that “may be enjoyed in community with others”. Thus, it was important to emphasize the associative element. However, since that general comment also explicitly referred to article 22 of the Covenant, perhaps its relevance to article 21 should not be overstated. Accordingly, he proposed that footnote 6 should begin with “Cf. general comment No. 31” rather than simply “General comment No. 31”.
54. Lastly, since paragraph 5 was intended only to provide a broad overview, he saw no need to refer specifically to spontaneous assembly.

Paragraph 6

55. **Mr. Heyns** said that the purpose of paragraph 6 was to state that in the vast majority of cases the goals pursued by peaceful assemblies were not controversial. While there might be disruptions in exceptional cases, the assemblies should nonetheless be protected and any risks that arose should be managed within a human rights framework.
56. **Mr. Santos Pais** proposed replacing “unpopular goals” in the third sentence with “controversial goals”.
57. **Mr. Zimmermann** proposed deleting the second sentence and replacing “may create risks” in the last sentence with “may create risks for public order”.
58. **Mr. Shany** agreed that the risks needed to be defined, perhaps as risks to the public interest or the rights of others.
59. **Ms. Sancin** proposed referring to “controversial ideas and goals” in both the first and third sentences.
60. **Mr. Zyberi** proposed combining the last two sentences to read: “Even when peaceful assemblies are used to pursue controversial goals and their scale or nature can cause disruption, they have to be managed within a human rights framework.” The reference to the creation of risks, which was somewhat ambiguous, would thus be deleted.
61. **Mr. Ben Achour** proposed amending the last phrase to read “they have to be managed on the basis of a fair balance between public order and human rights”, since the risks could pose a threat to public order.
62. **Mr. Heyns** said that he accepted the proposal to refer to “controversial ideas and goals” in the first sentence. He suggested replacing “a popular event” in the second sentence with “an event”. He also accepted the proposal to replace “unpopular goals” in the third sentence with “controversial goals”. With regard to the final sentence, he suggested

“may create risks for public safety” rather than “may create risks for public order”. In his view, the concept of a human rights framework already implied that a fair balance should be sought between the public interest and individual interests.

Paragraph 7

63. **Mr. Heyns** said that paragraph 7 highlighted States’ obligations and responsibilities. He suggested replacing “unlawful assemblies” in the second sentence with “assemblies that do not comply with domestic law”, which would imply that they were consistent with international law.

64. **Mr. Shany** expressed support for that amendment. He proposed replacing “a certain level of accommodation” in the first sentence with “a high level of accommodation” or “a considerable level of accommodation”. Lastly, he proposed amending the last sentence to read: “Law enforcement officials should use their discretion in deciding whether or not to respond to every unlawful act immediately, while continuing to counter violence.”

65. **Mr. Ben Achour** queried the legitimacy of stating that assemblies that failed to comply with domestic law should be accommodated provided that they were peaceful.

66. **Mr. Zyberi** said that the wording implied that there was invariably a strained relationship between international law and domestic law. The statement in the last sentence that law enforcement officials “may have to use their discretion not to respond to every unlawful act” was unduly broad. It was unclear how “unlawful act” should be defined.

67. **Mr. Santos Pais** said that in cases where domestic laws were unacceptably restrictive, assemblies should be permitted under international law provided that they were peaceful. He therefore supported the amendment proposed by Mr. Shany.

68. **Ms. Sancin** proposed amending the first sentence to read: “The recognition of the right of peaceful assembly imposes a corresponding obligation on States to respect and ensure the exercise of the right and its repercussions.” She also proposed amending the last phrase in the paragraph to read “while addressing the risks to public order”.

69. **Mr. Zimmermann** said that the judgment of the European Court of Human Rights in the case mentioned in footnote 7 referred to “a certain degree of tolerance”. If the first sentence was amended to read “a high level of accommodation”, footnote 7 should be deleted.

70. **Mr. Bulkan** said that the idea in the last sentence was that law enforcement officials should refrain from taking action that might escalate tensions. Given the importance of setting normative standards, peaceful assemblies should be protected even if they contravened domestic law.

71. **Ms. Brands Kehris** said that the last sentence was open not only to an unduly broad interpretation but also to misinterpretation. Law enforcement officials had in many cases used their discretion in order to refrain from intervening to protect minority demonstrators.

72. **Mr. Furuya** said that it was highly unlikely, in practice, that law enforcement officials would accommodate assemblies that violated domestic law, even if they were peaceful. States parties should therefore be provided with a clear picture of the types of assemblies that could be prohibited under domestic law and the laws that were permissible under article 21 of the Covenant.

73. **Ms. Pazartzis** said that the judgment of the European Court of Human Rights mentioned in footnote 8 also referred to “a certain degree of tolerance”. She therefore considered that the term “accommodation” was unacceptable. The last sentence was unduly vague and should be rendered more precise.

74. **Mr. Muhumuza** proposed combining the last two sentences to read: “In the process of dealing with unlawful assemblies, law enforcement officials should refrain from measures that would further escalate the situation.”

75. **Mr. Ben Achour** proposed amending the last sentence to read: “While countering acts of violence, law enforcement officials should refrain from the excessive use of force.”

76. **Mr. Shany** highlighted the importance of the issues of necessity and proportionality, which served as a buffer between respecting the law and affording space for the exercise of international rights. The purpose of discretion was to enable rights to be exercised.

The meeting was suspended at noon and resumed at 12.15 p.m.

77. **Mr. Heyns** said that, in some countries, assemblies were prohibited by obnoxious laws, as had been the case, for instance, in his own country, South Africa, during the apartheid era. Law enforcement officials were required, on the one hand, to uphold the law and, on the other, to provide protection. During peaceful assemblies, the duty of upholding the law and opposing every infringement required some degree of accommodation or tolerance, in line with article 21 of the Covenant. While anarchy was intolerable, it was important to prevent any form of escalation and to maintain balance.

78. The changes he would propose at the present stage were provisional, on the understanding that he would revert back to the Committee with an amended version of the text at its next meeting on the draft general comment.

79. In the light of the comments made, the first sentence of the paragraph could usefully be amended to read: “The recognition of the right of peaceful assembly imposes a corresponding obligation on States to facilitate” – or, alternatively, “accommodate”, “respect” or “ensure” depending on the term the Committee chose – “the exercise of the right and to accommodate its repercussions”. As members had rightly pointed out, a degree of accommodation or tolerance was certainly needed. While the notion of tolerance was not objectionable per se, and was used by other international bodies, it could be perceived as implying that protesters were a phenomenon to be endured and dispensed with as soon as possible. The appropriate term should be chosen with care so as to avoid sending the wrong message.

80. With reference to the third sentence, he said that it might be appropriate to replace the term “unlawful assemblies” with “assemblies that do not fully comply with domestic law”.

81. The final sentence sought to capture the idea that, while the duty for law enforcement officials to protect people was not negotiable, the direct enforcement of the law should be exercised with a measure of discretion in order to avoid escalation. Rather than speaking about “continuing to counter violence”, it would perhaps be preferable to refer to “still addressing public safety”. Although the issue would be dealt with in greater detail in paragraph 19, it might nevertheless be useful to include a first reference in the present context. Otherwise, the call for discretion on the part of law enforcement officers might be misconstrued as a carte blanche for participants in peaceful assemblies to break the law.

Paragraph 8

82. **Mr. Heyns** said that the paragraph introduced the notion of limitations to the right of peaceful assembly and could possibly be combined with paragraph 7.

83. **Ms. Sancin** proposed amending the first sentence to read “The right to peaceful assembly does not constitute an absolute right and may in some cases be restricted”, and the last sentence to read: “There are, in effect, limitations to the restrictions that may be imposed.”

84. **Mr. Ben Achour** pointed out that the notion of necessity and proportionality was precisely what limited the restrictions imposed on the right of peaceful assembly. It could thus be usefully referred to in the present paragraph, rather than in paragraph 7 as originally proposed by Mr. Shany. Such a reference could be added at the end of the paragraph.

85. **Ms. Brands Kehris**, recalling the Committee’s earlier discussion on paragraph 1 of the draft general comment, said that the principle of a presumption in favour of holding assemblies might be well placed in the present context. The phrase “although the presumption is in favour of holding assemblies” could be inserted after “absolute right”. Doing so would further emphasize the narrow scope of legitimate restrictions and underline that the focus should be on allowing assemblies to be held.

86. **Mr. Heyns** endorsed the proposals put forward by the previous speakers.

Paragraph 9

87. **Mr. Heyns** said that paragraph 9 described the link between article 21 and other, related rights whose implementation was indispensable for the full protection of the rights set forth in article 21.

88. **Mr. Ben Achour** said that the first sentence, as currently worded, established a possibly unintentional hierarchy of rights that, in his view, should be avoided. Therefore, and also for the sake of concision, the sentence should be amended to read: “Other rights related to political freedom are also protected, notably freedom of expression, freedom of association and political participation.”

89. **Mr. Shany** said that, while the inclusion of a long list of relevant rights would exceed the scope of the paragraph, the right to freedom of movement was often at stake, especially in regard to moving assemblies, and should be mentioned.

90. **Ms. Sancin** proposed replacing the term “those engaged in” in the first sentence with “participants in”.

91. **Mr. Bulkan** said that he could not agree to that proposal. Not only the rights of participants, but also those of bystanders and observers should be protected.

92. **Mr. Heyns** endorsed the alternative wording proposed by Mr. Ben Achour. Mr. Shany’s proposal to include a reference to freedom of movement was also useful. He shared Mr. Bulkan’s sentiments about the danger of limiting the protection afforded during peaceful assemblies to participants and would advocate the retention of the original term “those engaged”.

Paragraph 10

93. **Mr. Heyns** said that the paragraph recognized that the object of protection, namely a manifestation in the public sphere, was not only protected by article 21, but also by other provisions of the Covenant. The list of examples cited was not exhaustive. Supported by **Mr. Zimmermann**, he said that it might be useful to add a reference to article 22.

94. **Mr. Shany**, supported by **Mr. Zimmermann**, proposed replacing the word “primarily” by “also”, to avoid ranking the different levels of protection. A reference to parades, which were protected under article 12, might also be appropriate.

Paragraph 11

95. **Mr. Heyns** said that the paragraph set out to describe the protection afforded to participants in assemblies that did not fall within the scope of article 21. Its purpose was to respond to situations where States qualified assemblies as “unprotected” because they were not peaceful or no notification had been given, or because they otherwise failed to meet the requirements set forth by law. It was important to emphasize that there was no such thing as an “unprotected assembly” and that, even if the assembly did not meet the requirements of article 21, participants were still protected by other applicable provisions of the Covenant.

96. **Mr. Santos Pais**, supported by **Ms. Brands Kehris**, said that the scope of the term “participant” was overly narrow and could possibly be replaced by “all those involved”.

97. **Mr. Shany** said that, although the importance of the right to life was beyond doubt, a reference to the right to freedom of expression was even more pertinent in the present context.

98. **Mr. Ben Achour** said that there was no need to replace the word “participants”; bystanders and observers were covered by other provisions of the Covenant, not by article 21. Article 21 solely covered participants. Supported by **Ms. Pazartzis** and **Mr. Zyberi**, he said that he was unconvinced of the need to single out some of the rights that could be invoked in situations where article 21 no longer applied. The assertion that “those involved retain all their other rights under the Covenant” sufficed.

99. **Ms. Brands Kehris** said that, while it might be wise not to include a list of rights, she would have liked to see a reference to arbitrary detention and ill-treatment, both of which were common practices in the context of assemblies and well-documented in the Committee's jurisprudence.

100. **Mr. Zyberi** advocated the use of more inclusive language, proposing that the first sentence should be amended to read: "All participants in a peaceful assembly are protected under the Covenant and other applicable laws."

101. **Mr. Heyns** agreed with previous speakers that it might be preferable not to include a list of specific rights.

Paragraph 12

102. **Mr. Heyns** said that the paragraph described the changes in recent years in the way in which assemblies were conducted, and the elements that had brought about those changes. It also provided the rationale for developing a general comment on the right of peaceful assembly at the present time.

103. **Mr. Shany** said that new technologies presented not only new opportunities, but also new spaces for the exercise of the right to freedom of assembly. It might be useful to make that point in the second sentence.

104. **Mr. Santos Pais** said that surveillance technologies had implications not only for privacy, but also for other rights. It would therefore be useful to include, in the third sentence, the word "particularly" before "for privacy".

105. **Ms. Brands Kehris** proposed adding "and monitoring" after "organizing" in the third sentence, as the term "controlling" did not adequately cover that aspect.

106. **Ms. Sancin** said that, in the interest of temporal neutrality, the words "in recent years" in the first sentence should be replaced by "over time", and the word "today" in the last sentence should be deleted. She sought clarification with regard to the rationale for including a reference to "less-lethal and remote-controlled weapons" in the fifth sentence; the reference appeared to be somewhat out of context as the remainder of the paragraph was chiefly concerned with communication technologies.

107. **Mr. Heyns** said that the paragraph was concerned with new technologies, which included weapon systems; the word "systems" could usefully be added for the sake of clarity.

108. Endorsing the proposals put forward by the previous speakers, he suggested amending the paragraph to read:

The manner in which public assemblies are conducted has materially changed over time. New technologies present opportunities and spaces, as well as risks, for the protection of peaceful assemblies. Communication technologies often play an integral role in organizing and monitoring but also in controlling assemblies. Surveillance technologies can be used to detect threats of violence but could also have far-reaching implications for privacy and other rights. A whole range of less-lethal and remote-controlled weapon systems have become available. There is increased private ownership of public spaces. Considerations such as these need to inform an assessment of the legal framework required to give full effect to article 21.

Section 2

109. **Mr. Heyns** said that section 2 identified the scope of the right of peaceful assembly. It set forth the definition of "assembly" and the definition of "peaceful" and addressed the issue of one-person protests and the issue of "imminent" versus "deemed" violence. The Committee had yet to decide on the order in which the different topics would appear in the final version of the draft.

110. The role played by article 20 also needed to be discussed. The Committee would need to decide whether both advocacy that incited violence and advocacy that incited hatred

resulting in hostility and discrimination should be covered in section 2. While the provisions of article 20 regarding incitement to violence usefully linked up with the scope of the right of peaceful assembly, the remainder of article 20 was perhaps more appropriately addressed in section 4, on limitations on the right to peaceful assembly.

111. **The Chair** said that the Committee would continue its discussion on the draft general comment at its next meeting.

The meeting rose at 1 p.m.