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Summary record of the 3722nd meeting

Held via videoconference on Wednesday, 15 July 2020, at 4 p.m. Central European Time

Chair: Mr. Fathalla

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The meeting was called to order at 4.05 p.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 he invited the Committee to resume its second reading of draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly). The text of the paragraphs to be considered at the current meeting had been distributed to members and would be displayed on screen.
2. **Mr. Heyns** (Rapporteur for the general comment) said that the Committee should bear in mind the overall word count of the draft, which had increased over the course of the second reading. He was grateful for the written proposals that several members had submitted. Members whose written proposals had not been incorporated into the revised draft of a given paragraph could reiterate their proposals orally, in the plenary.
3. He wished to reiterate his recommendation that the Committee should not reopen the discussion on paragraphs that had been adopted on second reading. In that regard, if members had any specific concerns relating to such paragraphs, he urged them to raise their concerns with him before doing so in the plenary.

Paragraph 67 (continued)

4. **Mr. Heyns** said the Committee had taken the position that private spaces fell within the scope of the right of peaceful assembly and that the imposition of restrictions in that context depended on various considerations, examples of which had been provided in the paragraph. In response to comments and suggestions made by stakeholders and members of the Committee, he wished to propose that the phrase “whether the ownership of the space is contested through the gathering” should be added as a further example. That question was particularly relevant in the context of demonstrations by indigenous peoples.
5. *Paragraph 67, as amended, was adopted.*

Paragraph 70 (continued)

6. **Mr. Heyns** said that the version of the paragraph presented at the previous meeting, based on the draft as provisionally adopted on first reading, had begun with a statement of the reasons for the wearing of face coverings or other disguises, followed by the specific circumstances in which anonymous participation could be prohibited. That approach had been based on the principle that individuals should be free to dress how they wished. However, in response to a concern expressed by Mr. Ben Achour, some Committee members had proposed a reversal of that approach, such that the paragraph would instead begin with an affirmation of the importance of transparency in a democratic society, followed by a statement regarding the specific circumstances in which anonymous participation should not be prohibited. In the context of online assemblies, the question of anonymity would cover such issues as digital encryption.
7. In his view, it would be preferable not to alter the approach originally taken in the paragraph. However, if the Committee did not share that view, he would propose that a new clause should be inserted at the beginning of the first sentence, to read: “While interpersonal communication is important during an assembly ...”. He recalled that the importance of communication and dialogue in the context of the right of peaceful assembly was also noted in paragraph 86 of the draft as provisionally adopted on first reading. An alternative solution would be to insert a statement of the importance of transparency in a democratic society.
8. **Mr. Zyberi**, referring to the wording proposed for insertion at the beginning of the first sentence, said that he would prefer the inclusion of a reference to “face-to-face interpersonal communication”. The Committee should not lose sight of the importance of such communication in the context of the right of peaceful assembly.
9. **Ms. Pazartzis** said that, in accordance with the Committee’s long-standing practice, it might be advisable to return to the paragraph at a later stage during the second reading,

once the draft as a whole was nearer completion. It was important for the Committee to take into account any concerns that members raised in relation to specific paragraphs of the draft, even if those concerns had already been raised during the first reading. In her view, the proposed inclusion of a reference to the importance of interpersonal communication would not address the concerns that had been expressed at the previous meeting. In addition, any reference to “face-to-face interpersonal communication” would not be applicable to online assemblies.

10. She would be in favour of deleting one of the two occurrences in the paragraph of the expression “steps to participate anonymously”. On a separate point, she reiterated that the first sentence conflated two issues, namely the wearing of face coverings or other disguises that formed part of the expressive element of a peaceful assembly and anonymous participation as a means by which reprisals could be countered.

11. **Mr. Santos Pais** said that he supported the Rapporteur’s suggestion to insert a reference to the importance of interpersonal communication at the beginning of the paragraph. However, as currently drafted, the rest of the first sentence was confusing, as anonymous participation was listed alongside the wearing of face coverings and other disguises as one of the factors that could form part of the expressive element of a peaceful assembly.

12. **Mr. Heyns** said that, as the draft general comment as a whole had not yet been adopted on second reading, the Committee could revisit specific issues that had already been discussed, where appropriate. In addition, nothing prevented the Committee from returning to the paragraph under consideration at a later stage during the second reading. With regard to the point made by Mr. Santos Pais, anonymous participation could, in fact, form part of the expressive element of an assembly, even one that was held online.

13. With regard to the second sentence, he had come to the conclusion that the reference to the requirement of “demonstrable evidence of imminent violence” should be deleted, as it set a very high threshold for prohibiting anonymous participation. Moreover, assemblies in which the participants used violence would not fall within the scope of the right of peaceful assembly. In addition, he would prefer to replace the expression “probable cause” with the well-established term “reasonable grounds”. Thus, he proposed that the second sentence should read: “Assembly participants should not be prohibited from taking steps to participate anonymously unless their conduct presents reasonable grounds for arrest, or there are other similarly compelling reasons.” He further proposed that a third sentence should be added at the end of the paragraph, to read: “The wearing of masks should not in itself be deemed to signify violent intent.”

14. **Mr. Shany** said that, in his view, the reference to interpersonal communication proposed for inclusion at the beginning of the first sentence would be inappropriate in the context of a draft general comment, as it addressed a sociological problem and thus fell outside the Committee’s field of expertise. He supported the Rapporteur’s proposal to delete the requirement of “demonstrable evidence of imminent violence”. In the new sentence that the Rapporteur had proposed for inclusion at the end of the paragraph, it would be more appropriate to refer to the wearing of “masks or disguises”, as some masks had no associations with violence.

15. **Mr. Bulkan** said that, while the requirement of “demonstrable evidence of imminent violence” set too high a threshold for prohibiting anonymous participation, the requirement of a “probable cause for arrest” seemed to set too low a threshold. He supported the Rapporteur’s proposal to replace the expression “probable cause” with “reasonable grounds”. The expression “reasonable suspicion” was another option.

16. **Ms. Sancin** said that, in some countries, the wearing of face masks had recently been made mandatory in public spaces as part of efforts to combat the spread of the coronavirus disease (COVID-19). In that context, she wondered whether the practice of wearing face masks for health reasons could be addressed in the paragraph. She did not support the Rapporteur’s proposal to insert a reference to interpersonal communication at the beginning of the first sentence. With regard to the wording of the new sentence that the Rapporteur had proposed for inclusion at the end of the paragraph, she would be in favour of replacing the word “masks” with “any disguise”.

17. **The Chair**, speaking as a member of the Committee, said that he too would be in favour of replacing the word “masks” with “any disguise”.

18. **Mr. Heyns** said that it would be best to leave the first part of the opening sentence in square brackets and to return to it later, with a view to finding better wording and ensuring that the text had the support of as many Committee members as possible. He would remove the repetition of “participate anonymously”. There was general agreement that the phrase “demonstrable evidence of imminent violence on their part or” should be removed and that the term “reasonable grounds” should be used. Various countries had different rules for what constituted reasonable grounds, but they all had to comply with international standards. He accepted Ms. Sancin’s proposal to replace “the wearing of masks” with “any disguise”.

19. **The Chair** said that he understood that there was general agreement on the content of the paragraph and that only the wording of the first part of the opening sentence, which remained in square brackets, required further elaboration. The Committee would return to it at a subsequent meeting.

20. *Paragraph 70, as amended, was adopted on that understanding.*

Paragraph 72 (continued)

21. **Mr. Heyns** said that he had introduced some minor changes in the light of Committee members’ comments and proposals. In the first sentence, he had replaced the phrase “assemblies take place” with “a particular assembly takes place”. He had removed the word “hacking” from the draft of the paragraph presented at the previous meeting, had inserted the words “sharing or” before “retention” in the final sentence and had added the phrase “with a view to ensuring the compatibility of such actions with the Covenant” at the end of that sentence.

22. At the previous meeting, he had proposed the inclusion of a reference to the recent report of the Office of the United Nations High Commissioner for Human Rights on the impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests ([A/HRC/44/24](#)). As that reference was related more closely to issues of discrimination than privacy, his original proposal had been to add it as a footnote to the paragraph under discussion. However, it could perhaps be included instead in a subsequent paragraph, concerning discriminatory policing.

23. *Paragraph 72, as amended, was adopted.*

Paragraph 73

24. **Mr. Heyns** said that the paragraph addressed the extent to which public officials had the right to take part in peaceful assemblies, which was a particularly sensitive question. During the first reading, the Committee had discussed the problems that could emerge if judges involved in particular kinds of cases or members of security forces participated in assemblies. The Committee had then decided to include the second sentence, which referred specifically to the need for security forces to retain public confidence in their impartiality. As it was difficult to anticipate every type of situation that could arise, the wording of the paragraph had been cast in general terms.

25. In the stakeholders’ submissions, Germany had emphasized that it was important to allow for limitations of the right to strike for certain groups of State employees. According to Amnesty International, the paragraph appeared to be opening the door to restrictions on the right of State officials to take part in assemblies, without reference to the grounds for restrictions set out in article 21. The joint submission of Hong Kong non-governmental organizations (NGOs) had called for the addition of “and civil servants” after “State officials”, and MINBYUN-Lawyers for a Democratic Society had suggested that the text should recognize that State officials could take part in peaceful assemblies in their individual capacity. In his view, such a position might be problematic; for instance, it might lead to problems if judges took part in assemblies even in their individual capacity.

26. In the light of the stakeholders’ submissions, he had amended the first sentence by adding the phrase “and civil servants” after “State officials” in the first sentence and inserting a reference to article 21 at the end of the sentence. The text in its latest drafting version read:

The freedom of State officials and civil servants to participate in peaceful assemblies should not be limited more than is strictly required by the need to ensure public confidence in their impartiality, and thus their ability to perform their service duties, and any such restrictions must comply with article 21. Ensuring that members of the security forces in particular retain public confidence in their impartiality is a legitimate State concern.

27. **Mr. Bulkan** said that the concept of civil servants was very broad and could cover advisers to a government minister, judges and even junior clerical officers; in Caribbean legal systems, they were all considered civil servants. While there was a need for impartiality among senior members of the civil service, that need did not necessarily extend to junior staff. It would perhaps be advisable to insert “as determined based on an individualized assessment”, after “service duties”.

28. **Mr. Santos Pais** said that States normally required strict neutrality and impartiality on the part of their civil servants, and a reference to individualized assessment could thus be problematic. He proposed adding “judicial officers and prosecutors” to the second sentence, which mentioned the need to retain public confidence.

29. **The Chair** noted that a proposal had been made via the online chat function to use the words “public officials” in the first sentence. Speaking as a member of the Committee, he said he found that proposal acceptable. With regard to Mr. Santos Pais’s proposal, it was his opinion that the content of the second sentence differed significantly from the first.

30. **Mr. Heyns** said that the paragraph was intended to cover not only civil servants, but also politicians. The term “public officials” would cover both. In practical terms, it would be very difficult to call for individualized assessments in all cases. In any event, individuals who considered that their right to participate in an assembly had been unduly restricted could take their cases to court. In the second sentence, he proposed using the formulation “members of the security forces and the judicial system”.

31. **Ms. Tigroudja** said that she was not in favour of including the members of the judiciary in the second sentence. In many countries, judges and other judicial officers had actively demonstrated in favour of a return to democracy and had faced reprisals, including dismissal. In the light of very real situations of that kind, it was not advisable for the Committee to state that a Government could limit the rights of judicial officers to take part in peaceful assemblies.

32. **Mr. Quezada Cabrera** said that he was concerned about the wording of the second sentence, which could be interpreted as allowing severe restrictions on the right of public servants to take part in peaceful assemblies. The sentence should perhaps be recast in less extreme terms. He also proposed replacing the term “security forces” with “law enforcement personnel”, which would cover both the armed forces and the police. That term was used in the Organization for Security and Cooperation in Europe (OSCE) *Guidelines on Freedom of Public Assembly*, which were cited in the footnote to the paragraph.

33. **Mr. Heyns** said that it would be appropriate to delete the second sentence, which the Committee had included during its first reading of the text with the intention of qualifying the main idea, as expressed in the first sentence.

34. *Paragraph 73, as amended, was adopted.*

Paragraph 74

35. **Mr. Heyns** said that the paragraph dealt with coverage of general operating costs, such as for policing, medical and cleaning services or public utilities for the conduct of peaceful assemblies. The general point was that such costs should be covered by public funds and not transferred to the participants or organizers. In the stakeholder submissions, Colombia had pointed to the need to specify that persons who damaged public or private property could be held liable for the damage they inflicted and be subject to penalties. Israel had emphasized that the point made in paragraph 75, according to which assembly organizers and participants were obliged to make reasonable efforts to comply with legal requirements, should also apply in paragraph 74. Switzerland considered that the paragraph reflected an excessively broad interpretation of the Committee’s concluding observations to the fourth periodic report of Switzerland ([CCPR/C/CHE/CO/4](#)) and the Committee’s Views

in the case of *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), both of which were cited in footnotes. He had consulted those two sources and had found them to be valid.

36. The United Kingdom had suggested that the paragraph could mention the possibility that private security or stewarding could be arranged by the participants, a concept addressed in paragraph 75. The Organization for Security and Cooperation in Europe (OSCE) had suggested that “organizers” should be mentioned as well as “participants”, and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights had noted that the content of the paragraph should also extend to clean-up services. Both the former United Nations Special Rapporteur on the rights to freedom of assembly and association, Maina Kiai, and World Movement for Democracy had indicated that those who organized and participated in assemblies must have the right to seek and receive funding from other sources, including domestic and foreign donors, to support assemblies and other activities. That question was quite complex and should perhaps be addressed elsewhere in the general comment. Amnesty International had recommended clarifying that traffic management and marshalling costs should be borne by the State. Several NGOs had highlighted the need to avoid words such as “generally” or “as a rule” and to replace them with more specific terms.

37. Based on the comments received from stakeholders, he proposed revising the paragraph to read:

Requirements for participants or organizers either to make arrangements for or to contribute toward the costs of policing or security or medical assistance or cleaning associated with peaceful assemblies are generally not compatible with article 21. Such public utility costs should be covered by public funds and not be transferred to the participants or organizers.

38. **Mr. Shany** said that it would be interesting to hear the views of the Rapporteur and other Committee members about the question of NGO fundraising from outside sources. In some countries it was difficult for organizers to secure funding for assemblies owing to restrictions on the solicitation or reception of outside funding. He wondered whether that issue could be addressed in the paragraph under consideration.

39. **The Chair**, speaking as a member of the Committee, said that he did not consider it appropriate to address questions of outside funding in the paragraph. He would like to know whether the paragraph was also intended to cover assemblies held in private spaces.

40. **Mr. Heyns** said that there was already a reference in the third sentence of paragraph 37 to the mobilization of resources for holding assemblies. He would be interested to hear whether the Committee members felt that the question should be addressed in greater detail. In particular, he would like to know their views on whether considerations such as outside funding belonged in the general comment, and if so, in which paragraph. The issue was quite complex, but he was sympathetic to its inclusion. It would be necessary to determine the extent of the right and whether and in what conditions restrictions could be permissible.

41. Paragraph 74 did not directly mention whether the assemblies in question were held in private or public spaces, but the main thrust of the text was directed at the cost of public utilities. It would be difficult in the general comment to set out guidelines in respect of private spaces.

42. **Mr. Zyberi** proposed deleting the word “generally” from the first sentence or reformulating the sentence in order to make it clear that the charging of fees to participants or organizers was not acceptable under article 21.

43. **Mr. Heyns** said that, since the Committee had adopted a broad definition of the term “peaceful assembly” that did not exclude assemblies with an entertainment, cultural or commercial objective, it would be going too far to say that the charging of fees to participants or organizers was not acceptable under any circumstances.

44. **The Chair**, supported by **Mr. Shany** and **Ms. Pazartzis**, proposed replacing the word “generally” with “in principle”.

45. **Ms. Sancin** proposed shortening the two sentences and combining them into a single sentence, in order to avoid repetition.

46. **Mr. Heyns** said that he agreed with the proposals made by the Chair and Ms. Sancin.

47. **The Chair** suggested that the Rapporteur should prepare a revised version of the paragraph, based on the comments and proposals made by Committee members, for consideration at a later meeting.

48. *It was so decided.*

Paragraph 75

49. **Mr. Heyns** said that paragraph 75 dealt with the extent to which organizers and participants could be held responsible for damage caused by other participants in an assembly. In the version of the paragraph provisionally adopted on first reading, the Committee had taken the position that organizers could be held accountable for their own conduct – in other words, if they had incited others to engage in violence – or if the damage could have been foreseen and prevented with reasonable efforts.

50. With regard to the first sentence, some stakeholders were in favour of retaining the words “civilly or criminally”, which had been placed in square brackets in the revised draft provisionally adopted on first reading, while others had proposed that those words should be omitted; in his view, they could be omitted, because it was sufficient to refer to accountability in a general sense. Germany had noted that it was not clear which types of official were covered by the word “marshals” in the final sentence; in his view, however, there was no need for greater precision, since the sentence described a good practice rather than establishing a legal principle. The Russian Federation had stated that it saw no reason to absolve organizers from responsibility in cases where their actions had caused damage. He wished to emphasize, in that regard, that the Committee was not saying that organizers should never be held accountable.

51. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression had proposed that responsibility for the acts of third parties should be limited to situations where the organizer or participant “incited, caused or participated” in actual damage or disorder, in line with the third edition of the OSCE *Guidelines on Freedom of Peaceful Assembly*. In his view, however, it was important to address the question of whether organizers or participants could be held accountable for damage that could have been foreseen or prevented.

52. Michael Hamilton, Associate Professor of Public Protest Law, University of East Anglia, United Kingdom had asserted that the paragraph imposed an unjustifiable form of strict liability on assembly organizers. Amnesty International had noted that the first sentence seemed to impose a positive obligation on States to hold individuals accountable for their conduct; he himself would argue, however, that the first sentence was simply a general statement about the need for organizers and participants to obey the law. The Association for Progressive Communications had suggested that it should be made clear that organizers remained responsible for themselves in both offline and online spaces. The Committee had already addressed that point by including a reference to online spaces in an earlier paragraph.

53. Based on the comments received from stakeholders, he proposed amending the paragraph to read:

Assembly organizers and participants are obliged to make reasonable efforts to comply with legal requirements, but they should be held accountable for their own conduct only. Responsibility of organizers or participants for damage caused by other participants in an assembly should as a general rule not be imposed except where such damage could have been foreseen and prevented with reasonable efforts. It is good practice for assembly organizers to appoint marshals where necessary, but such an obligation should not be imposed.

In addition, he proposed deleting the footnote reference to the judgment handed down by the Constitutional Court of South Africa, in line with the Committee’s decision to avoid referring to judgments of national courts.

54. **Mr. Ben Achour** said that he agreed with the proposal to omit the words that had been placed in square brackets. However, he had reservations about the wording of the final sentence, as it seemed to imply that national legislation requiring assembly organizers to appoint marshals was excessive or contrary to the Covenant.

55. **The Chair** proposed reformulating that sentence in order to make it clear that an obligation to appoint marshals could be imposed.

56. **Mr. Bulkan** said that the word “foreseen” could be interpreted very broadly, especially in the absence of any reference to the likelihood of damage occurring. There was a risk that organizers and participants could be held accountable for all manner of situations, particularly if the Committee decided to omit the reference to civil and criminal liability that had been placed in square brackets. He was also concerned by the reference to participants, as he did not believe that participants should be held responsible for damage caused by others that they could have foreseen or prevented.

57. **Mr. Furuya** said that there was a contradiction within the paragraph, because the first sentence stated that organizers and participants should be held accountable for their own conduct only, whereas the second sentence stated that they could be held responsible for damage caused by other participants. He agreed with the concerns raised by Mr. Bulkan and proposed deleting the words “or participants” from the second sentence.

58. **Mr. Shany** said that he supported Mr. Furuya’s proposal.

59. **Mr. Quezada Cabrera** said that he too supported Mr. Furuya’s proposal. He did not understand why the word “but” had been used in the first sentence, since the two parts of the sentence were not in opposition to one another. The first part of the sentence could, in fact, be removed altogether, for it was fairly obvious that organizers and participants were required to obey the law.

60. **Mr. Zyberi** said that the first sentence could be amended to read: “Assembly organizers and participants can be held accountable for their own conduct only.” He was in favour of deleting the second sentence altogether, or at least removing the reference to participants.

61. **Mr. Heyns** said that the aim of the first sentence was to establish that organizers and participants were obliged to make reasonable efforts to comply with the legal requirements relating to the assembly, such as notification requirements. The word “but” had been used to emphasize the fact that, while organizers and participants must make such efforts, they could be held accountable only for their own conduct. He proposed keeping both parts of the sentence but amending the last part of the sentence to read “they can only be held accountable for their own conduct”.

62. The words “or participants” had been included in the second sentence to cover situations where participants made a point of saying that an assembly had no organizers. He was willing to delete the reference, however, since the word “organizers” could be considered to cover both official and de facto organizers. Although the words “foreseen and prevented” raised certain problems, they provided some clarity as to the extent to which organizers could be held responsible for damage caused by participants. In his view, the qualifiers used in the second sentence were sufficient to prevent an overly broad interpretation of the word “foreseen”.

63. The fourth sentence had been worded in such a way as to avoid placing too much emphasis on the responsibilities of organizers, for fear of creating a chilling effect. The sentence conveyed that the appointment of marshals was a good practice but not a legal obligation.

The meeting rose at 6 p.m.