United Nations CCPR/C/SR.3724

International Covenant on Civil and Political Rights

Distr.: General
23 July 2020

Original: English

Human Rights Committee
129th session

Summary record of the 3724th meeting
Held via videoconference on Friday, 17 July 2020, at 12.30 p.m. Central European Time

Chair: Ms. Pazartzis (Vice-Chair)

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In the absence of Mr. Fathalla, Ms. Pazartzis (Vice-Chair) took the Chair.

The meeting was called to order at 12.35 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 she 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.

Paragraph 70 (*continued*)

2. **Mr. Heyns** (Rapporteur for the general comment) said that, in the light of the Committee's discussion at the previous meeting on the draft general comment, the final two sentences of paragraph 70 had been amended to read: "The anonymity of participants should be allowed unless their conduct presents reasonable grounds for arrest, or there are other similarly compelling reasons. The use of disguises should not in itself be deemed to signify violent intent."

3. **The Chair** said she took it that the Committee agreed with the proposed additional amendment to paragraph 70.

4. *It was so decided*.

Paragraph 72 (*continued*)

5. **Mr. Heyns** proposed that the phrase "does not mean that participants' privacy is not protected" at the end of the first sentence of paragraph 72 should be amended to read "does not mean that participants' privacy cannot be violated".

6. **The Chair** said she took it that the Committee agreed with the proposed additional amendment to paragraph 72.

7. *It was so decided*.

Paragraph 74 (*continued*)

8. **Mr. Heyns** said that he had drafted a revised paragraph 74 in the light of the Committee's discussion at its previous meeting on the draft general comment. The revised text read: "Requirements for participants or organizers either to make arrangements for or to contribute toward the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21." The final sentence of the original text, which read "such public utility costs should be covered by public funds and not be transferred to the participants or organizers", would be deleted.

9. *Paragraph 74, as amended, was adopted*.

Paragraph 75 (*continued*)

10. **Mr. Heyns** said that, in the light of the Committee's discussion of the paragraph at its previous meeting, he wished to propose that, in the first sentence, the word "but" should be replaced with the word "and". He also wished to propose that the second and third sentences should be amended to read: "However, they should as a general rule not be held responsible for the conduct of others. Where organizers are held accountable for the conduct of others, this must be confined to cases where damage is caused or injuries inflicted which they could reasonably have foreseen and prevented."

11. **Mr. Shany** said that paragraph 75 required some fine-tuning. The word "unlawful" should be inserted before "conduct" in the first sentence. That would limit the scope of the sentence, which was currently too open-ended. The proposed second sentence was problematic

from a legal standpoint: it appeared to undermine a basic principle of criminal law, namely, that individuals were responsible only for their own conduct. The words "as a general rule" should therefore be deleted. The second and third sentences should be merged, and the third sentence should be reformulated to make it clear that organizers could be held accountable for the conduct of others only in the case of damage caused or injuries inflicted which they could have reasonably foreseen and prevented.

12. **Mr. Zyberi** said that he agreed with Mr. Shany's proposal to insert "unlawful" in the first sentence. Moreover, the words "of violence" should be inserted after "incitement" in that sentence for the sake of clarity. He was not in favour of the proposed second and third sentences. He agreed with Mr. Shany that the second sentence undermined the general principle of criminal law that individuals were responsible for their own conduct only. With regard to the third sentence, he could not imagine a situation in which it would be appropriate to hold organizers responsible for violence that occurred in the context of an assembly that was intended to be peaceful. The text extended criminal and civil responsibility beyond what would be considered reasonable under domestic law.

13. **Ms. Sancin** said that she shared the concerns expressed by Mr. Shany and Mr. Zyberi. She was also uncomfortable with the first sentence; all persons should be expected to respect domestic law, not simply to make "reasonable efforts" to do so. If the point was that only reasonable efforts should be made to respect requirements that were not compatible with the Covenant, the sentence should be redrafted to make that clear.

14. **Mr. Heyns** said he agreed that the word "unlawful" should be inserted before "conduct" in the first sentence: that addition made it clear by implication that the word "incitement" in the first sentence meant incitement to engage in unlawful activity. With regard to the point raised by Ms. Sancin, the first clause of the first sentence was intended to convey that participants and organizers should make reasonable efforts to comply with legal requirements for the assembly as a whole, as distinct from their obligation as individuals to obey the law. However, he agreed with her proposal, made via the online chat function, to replace the phrase "obliged to make reasonable efforts to comply with legal requirements" with "expected to comply with legal requirements". He agreed to take on board Mr. Shany's proposal for the second and third sentences; however, he wished to point out that the proposed reformulation cast a wider net in terms of responsibility, insofar as it implied that organizers should be held responsible for damage caused and injuries inflicted by other participants which they could have reasonably foreseen and prevented, while the original version had stated that, as a general rule, they should not be held responsible for the conduct of others at all. In response to a question posed by Mr. Zyberi in the chat function, he explained that the final sentence was intended to convey that, while it was best practice to appoint marshals where necessary, it should not be a legal requirement to do so. It was important to make that clarification, since a legal requirement to appoint marshals could be used as a means of repression.

15. **The Chair** invited the Rapporteur to prepare a revised version of the paragraph, taking into account the Committee members' comments and proposals, for consideration at the next meeting.

16. *It was so decided*.

Paragraph 76

17. **Mr. Heyns** said that the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) had suggested that both participants and organizers should be mentioned in paragraph 76. Edison Lanza, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, had suggested that the paragraph should refer to "rights under the Covenant". Equal Rights Trust had submitted that it was important to highlight that sanctions must not be discriminatory in nature. Resonar, a non-governmental organization (NGO), had expressed concern about ambiguous and broad criminal offences, such as "attacks on peace", being used as a means to suppress the exercise of the right of peaceful assembly. In the light of those comments, he proposed that the words "organizers of or" should be inserted before "participants" and that the phrase "cannot apply where their conduct is protected by the right" should be amended to

"cannot be based upon ambiguous or over-broad offences aimed at supressing conduct protected by the Covenant or be discriminatory in nature".

18. **Mr. Santos Pais** proposed reorganizing the paragraph so that the obligation of non-discrimination was mentioned earlier.

19. **Mr. Shany** proposed that the phrase "ambiguous or over-broad offences" should be amended to "ambiguous or over-broad definitions of offences" and that the words "or that result in" should be inserted after "aimed at".

20. **Ms. Sancin**, supported by **Mr. Bulkan** via the online chat function, said that the phrase "in a peaceful assembly" should be followed by the words "for their unlawful conduct" to ensure that the paragraph did not suggest that mere participation in a peaceful assembly should give rise to criminal or administrative sanctions.

21. **Mr. Heyns** said that he agreed with Ms. Sancin. To reflect the other proposals made, he proposed further revising the second half of the sentence so that it read: "such sanctions must be proportionate, non-discriminatory in nature and cannot be based upon ambiguous or over-broadly defined offences aimed at or resulting in suppressing conduct protected by the Covenant".

22. *Paragraph 76, as amended, was adopted*.

Paragraph 77

23. **Mr. Heyns** said it had been proposed that, in paragraph 77, which dealt with remedies, the qualifier "independent" should precede the words "appeal or review" in the first sentence. As the courts themselves should also be independent, the Committee should consider whether the word "independent" should be repeated and also inserted before the phrase "courts and other tribunals".

24. The Committee had received a number of comments from stakeholders. The OSCE Office for Democratic Institutions and Human Rights had suggested that the last sentence should include references both to the "organization of" and "participation in" peaceful assemblies. Amnesty International had recommended clarifying that the possibility of appeal must be available with respect to prohibitions: he wished to highlight, however, that the paragraph encompassed all restrictions, including prohibitions. The International Center for Not-for-Profit Law had expressed concern that the phrase "courts or other tribunals" could be taken to imply that access to other tribunals, including administrative tribunals, could be a substitute for access to the courts: he noted, however, that the phrase was taken from article 14 of the Covenant. He would appreciate the Committee's view as to whether the first sentence of the paragraph should refer to a "right to a remedy", as suggested by the Center, or just to a "remedy".

25. In the light of the comments received, he proposed that the first two sentences of paragraph 77 should be revised to read: "Recourse to courts or other tribunals to seek a remedy concerning restrictions must be readily available, including the possibility of appeal or review. The timeliness and duration of such proceedings must not jeopardize the exercise of the right." The second sentence addressed situations where, for example, a court might hear or judge a case only after the date proposed for the assembly had passed. In the final sentence, he proposed deleting the words "participation in". The procedural guarantees referred to in that sentence were those set out in article 14 and other articles of the Covenant.

26. **The Chair** said that she did not consider it necessary to refer to a "right to a remedy".

27. **Mr. Santos Pais** said that he would appreciate clarification as to whether the possibility of appeal raised in the first sentence referred to the possibility to appeal decisions to impose restrictions or the possibility to appeal court decisions related to the restrictions imposed.

28. **Mr. Heyns** said that, in his view, the sentence related primarily to recourse to the courts: organizers and participants must be able to seek a remedy and, if that remedy was not granted by a lower court, they should be able to appeal to a higher court.

29. **Mr. Quezada Cabrera** said that the reference to "deprivation of liberty and the imposition of sanctions" in the last sentence was problematic because the current phrasing

suggested that the two terms were mutually exclusive. While "deprivation of liberty" encompassed situations such as pretrial detention, it was also a penalty that could be imposed as a criminal sanction.

30. **The Chair** proposed using the formulation "deprivation of liberty or the imposition of sanctions".

31. **Mr. Furuya** said that he was against using the word "or": in cases where assembly organizers and participants were arrested and placed in prolonged pretrial detention, deprivation of liberty did not constitute a sanction, and it was important to address those cases.

32. **The Chair** said that, using the online chat function **Mr. Shany**, supported by **Mr. Quezada**, had proposed "detention" as an alternative to "deprivation of liberty".

33. **Mr. Heyns** said that he therefore proposed the formulation "detention or the imposition of sanctions, such as fines".

34. *Paragraph 77, as amended, was adopted*.

Paragraph 78

35. **Mr. Heyns** said that he was not proposing any changes to paragraph 78 as it appeared in the revised draft as provisionally adopted on first reading. The paragraph was intended to address situations in which individuals arrested during an assembly were told by the police that they would be released if they signed a pledge never to participate in any assembly in future.

36. The stakeholders' submissions included suggestions that the scope of the paragraph should be broader and that no prohibition on future participation of any form should be allowed. However, he was of the view that a blanket ban could have unintended consequences: courts sentencing individuals for having participated in assemblies that turned non-peaceful were sometimes willing to hand down suspended sentences in exchange for an agreement not to participate in future assemblies, and if the courts were unable to request a pledge of that kind, a custodial sentence might be the only other option.

37. There was general agreement on the point that no one should be forced to participate in an assembly. Lithuania had suggested that the paragraph should also consider the lawfulness of paying individuals to participate in an assembly. However, paid participation was a potentially difficult issue to address because organizers sometimes provided, for example, bus transportation to assemblies or food en route. Thus, if paid participation were to be addressed, the Committee would need to consider whether food, transport and any other services provided without charge should be excluded and how such exclusions should be defined.

38. **The Chair** said that Ms. Sancin, supported by other members, had suggested via the online chat function that the words "to participate" should be preceded by "to organize or".

39. **Mr. Santos Pais** said that he was not in favour of adding a reference to the organization of assemblies because the paragraph at hand dealt solely with participation. He agreed that it was useful for courts to be able to request an agreement from an individual not to participate in future assemblies as an alternative to imposing harsher sanctions. However, the text should perhaps state that any future prohibition must have a time limit and must be tied to the court's decision.

40. **Mr. Heyns** said that paragraph 78 addressed pledges of the type that would be signed in a police station and not agreements that might be signed in court in exchange for a suspended sentence. He was therefore of the view that the paragraph should apply to both participants and organizers. He was not in favour of including a specific reference to court agreements prohibiting future participation.

41. **The Chair** said that, using the online chat function, Mr. Santos Pais had requested clarification as to how the term "pledges" should be understood.

42. **Mr. Zyberi** said that he shared Mr. Santos Pais's concern as to how States might interpret the word "pledge". Although paragraph 78 was not the place to address restrictions on future participation imposed by courts as sanctions, the issue should be addressed elsewhere in the general comment.

43. **The Chair** said that, via the online chat function, certain members had proposed "undertaking" as an alternative for "pledge".

44. **Mr. Heyns** said that he agreed with that proposal. Responding to the concerns expressed by Mr. Zyberi and Mr. Santos Pais, he explained that in its current form the text did not preclude courts from imposing restrictions on future participation if such restrictions constituted the lesser of the available penalties.

45. **Mr. Santos Pais** said that the use of "States parties" might lead readers mistakenly to believe that the scope of the paragraph encompassed courts and proposed that "the authorities" be used instead.

46. **Mr. Heyns** said that he agreed with that suggestion.

47. *Paragraph 78, as amended, was adopted*.

Paragraph 79

48. **Mr. Heyns** said that the purpose of paragraph 79, which was the last in section 4, was to address the use, by certain States, of antiterrorism legislation to clamp down on peaceful assemblies. The paragraph related to concerns, also present in earlier paragraphs, regarding vaguely defined crimes and sanctions.

49. In the stakeholders' submissions, Amnesty International and Article 19 had expressed concern about the use of language equating terrorism with "other acts of violence"; he considered their concern valid and proposed deleting that phrase. The group of NGOs from the Hong Kong Administrative Region had proposed including the word "riot", but the Committee had already identified the potential for misuse of that term in an earlier discussion about the definition of violence. The Committee might, on the other hand, consider the suggestion made by Michael Hamilton, Associate Professor of Public Protest Law at the University of East Anglia, United Kingdom, which involved merging paragraphs 76,78 and 79.

50. In the light of the comments received, he proposed that the text of the paragraph should be amended to read: "While acts of terrorism must be criminalized, the definition of such crimes in domestic law must be in accordance with international law, be precise, proportionate and non-discriminatory, and not serve to curtail or discourage the exercise of the right of peaceful assembly."

51. **Mr. Santos Pais** said that he would welcome further clarification of the Rapporteur's understanding of the word "proportionate" as it was used in the proposed amendment.

52. **Mr. Furuya** said that, although he agreed with the Rapporteur's proposed amendments, the issue of terrorism, and using the threat of terrorism as a pretext to restrict the exercise of the right of peaceful assembly, should be addressed elsewhere in the general comment, nearer the paragraphs dealing with restrictions imposed in the interests of national security and public safety.

53. **Mr. Heyns** said that the draft general comment would be reviewed subsequently to ensure that thematically related paragraphs, including those referred to by Mr. Furuya, were grouped together. It would perhaps make more sense to state not that definitions of terrorism must be proportionate, as the amendment he had proposed stated, but that such definitions must not be overly broad, as in the version of the paragraph that had been adopted on first reading.

54. **Mr. Zyberi** proposed amending the paragraph to state that laws adopted to combat terrorism should be applied in a precise, proportionate and non-discriminatory manner. Stating simply that crimes of terrorism should be defined in such a manner was insufficient.

55. **Ms. Tigroudja** said that it was the laws themselves and the definitions they contained that must not be imprecise, discriminatory or too broad. To refer to the enforcement or application of the laws would change the meaning of the paragraph.

56. **Mr. Heyns** said that the paragraph would be amended to state that the definition of crimes of terrorism must be precise, not overly broad and non-discriminatory, and that the application of counter-terrorism laws must not serve to curtail or discourage the exercise of the right of peaceful assembly. The amended paragraph, which might ultimately be placed elsewhere in the general comment, would be presented to the Committee at its next meeting.

57. *Paragraph 79, as amended, was adopted on that understanding*.

Paragraph 80

58. **Mr. Heyns** said that paragraph 80 was the first paragraph of section 5 of the draft general comment, which dealt with notification and authorization as applied to plans to organize an assembly. In general, the Committee was of the view that, while it should be unnecessary to seek permission to hold a peaceful assembly, a requirement to notify the authorities was acceptable. The differences between notification and authorization regimes were explored in the section, which contained five paragraphs under the amended heading "Notification regimes" (shortened from "Notification and authorization regimes" in the version adopted on first reading).

59. Paragraph 80 contained an explanation of notification procedures. It stated that such procedures should not be unduly bureaucratic (in a proposed amendment to the version of the paragraph adopted on first reading, in which it had been stated that they should not be unduly burdensome). The amended paragraph also stated, in a proposed addition, that notification procedures should be free of charge.

60. There had been a number of comments from stakeholders concerning section 5 as a whole. Switzerland, for example, was of the view that favouring one system (notification) over another (authorization) was counterproductive and that it would be more useful to identify the criteria for compliance with article 21. Markus Schefer of the Committee on the Rights of Persons with Disabilities had stated that notification and authorization regimes should be accessible to persons with disabilities, while the national human rights institution of Kenya had proposed that the Committee should state that authorization systems were incompatible with article 21; in its view, the Committee should dispense with the notion of authorization altogether. However, he was of the view that to assert that all authorization regimes were incompatible with article 21 was a step too far and that some regimes could in fact coexist with the exercise of the right of peaceful assembly.

61. There had also been comments on paragraph 80 in particular. For instance, David Mead, Professor of United Kingdom Human Rights Law at the University of East Anglia, had noted that the draft did not touch on the practice whereby any person who notified the authorities of plans to hold an assembly was presumed to be the organizer. The International Network of Civil Liberties Organizations had submitted that the Committee should recognize that in many cases notification was not required. A number of other stakeholders had also made submissions, but in at least some cases the suggestions they had made were for adjustments to explicitly enunciate ideas that were already implicitly expressed in the paragraph.

62. **Mr. Shany** said that the third sentence of the paragraph should be amended to state not merely that notification requirements were sometimes misused to stifle peaceful assemblies, but also that they must not be misused for that purpose. The idea that notification procedures should be transparent could be introduced in the final sentence. He asked whether the notion of proportionality, also alluded to in the final sentence of the paragraph, could be explained more clearly. For instance, the sentence could be expanded to make clear that the demands made of assembly organizers in respect of notifying the authorities should be proportionate to the potential public impact of the assembly they were organizing.

63. **Mr. Heyns** said that he agreed with Mr. Shany's proposals.

64. **Mr. Muhumuza** said that the Committee should state explicitly that notification in and of itself was sufficient. Organizers of assemblies should not have to seek permission from the authorities for a peaceful assembly once they had notified them of their plans.

65. **The Chair** said that the issue referred to by Mr. Muhumuza was covered in paragraph 84.

66. **Mr. Heyns** said that one of the reasons for the proposed amendment to the section heading was to avoid suggesting that notification and authorization regimes were equally preferable.

67. **Mr. Ben Achour** said that he had serious misgivings about the proposal to remove the word “authorization” from the section heading. The heading referred to all the paragraphs in the section, including those in which authorization systems were discussed.

68. **Mr. Heyns**, supported by **Mr. Bulkan**, **Mr. Furuya**, **Mr. Quezada Cabrera**, **Ms. Sancin**, **Mr. Santos Pais**, **Ms. Tigroudja** and **the Chair**, said that although the argument that the heading was merely descriptive was not without merit, the Committee’s message would be conveyed more directly if the heading were amended as he had proposed.

69. **Mr. Ben Achour** said that it must therefore be made clear in one of the paragraphs of the section that notification systems were preferred. Oblique expressions of the Committee’s views were best avoided.

The meeting rose at 2.30 p.m.