



# International Covenant on Civil and Political Rights

Distr.: General  
27 July 2020

Original: English

---

## Human Rights Committee 129th session

### Summary record of the 3728th meeting

Held via videoconference on Tuesday, 21 July 2020, at 12.30 p.m. Central European Time

*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)*

---

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.20-09851 (E) 240720 270720



\* 2 0 0 9 8 5 1 \*

Please recycle A small graphic of a recycling symbol.



*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** 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. Before proceeding with the second reading of the draft general comment from paragraph 101 onward, however, the Committee would review a number of earlier paragraphs with which there were issues pending.

*Paragraph 89 (continued)*

2. **Mr. Heyns** (Rapporteur for the general comment) said that he had made two changes to paragraph 89. The first was in the second sentence, which now stated that law enforcement officials “are obliged, as far as possible, to exhaust non-violent means and to give a warning if it is absolutely necessary to use force, unless doing either would be manifestly ineffective”. The second change, in the final sentence, was a lexical change made to avoid suggesting that instruments such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement were binding.

3. *Paragraph 89, as amended, was adopted.*

*Paragraph 92 (continued)*

4. **Mr. Heyns** said that the pending issue in paragraph 92 was whether there should be a reference to persons or population groups in situations of vulnerability and, if so, how that reference should be worded. In view of the comments made previously, he had amended the second sentence of the paragraph to read: “Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children or persons with disabilities”.

5. *Paragraph 92, as amended, was adopted.*

*Paragraph 93 (continued)*

6. **Mr. Heyns** said that paragraph 93 had prompted a fair number of comments, including from Committee members who had been troubled by the paragraph’s silence on how long a person could be held in preventive detention. He had decided, however, that no specific period of time should be mentioned, as to establish a time limit could be seen as giving States implicit permission to hold a person for up to that length of time. The amended part of the paragraph thus read: “Where domestic law permits such detention, it may be used only in the most exceptional cases, for no longer than absolutely necessary and only where the authorities have proof of the intention of the individuals involved to engage in or incite acts of violence during a particular assembly.”

7. **Mr. Shany**, supported by **the Chair**, said that it would be useful to mention a time limit. The sentence could be amended to state that preventive detention should last no longer than absolutely necessary and, in any event, no more than a few hours.

8. **Mr. Heyns** said that he would reinstate the reference to a time limit.

9. **The Chair** said he would take it that, if there were no objections, Committee members wished to adopt the paragraph subject to the mention of a time limit.

10. *Paragraph 93, as amended, was adopted on that understanding.*

*Paragraph 96 (continued)*

11. **Mr. Heyns** said that the closing sentence of paragraph 96 had been reworded to read: “Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly.”

12. *Paragraph 96, as amended, was adopted.*

*Paragraph 97 (continued)*

13. **Mr. Heyns** said that the change to paragraph 97 involved nothing but using the word “may” instead of the word “should” in the part of the sentence that, as previously drafted, had stated that “only the minimum force necessary should be used”.

14. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 97.

15. *It was so decided.*

*Paragraph 97 bis (continued)*

16. **Mr. Heyns** said that, on reflection, he had decided to include the words “affecting an area” in the first sentence of the paragraph, which had been amended to read: “Less-lethal weapons affecting an area [...] tend to have indiscriminate effects.”

17. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 97 bis.

18. *It was so decided.*

*Paragraph 98 (continued)*

19. **Mr. Heyns** said that he had reworded the second and third sentences of the paragraph in response to comments made by Committee members. The reworded sentences stated:

It is never lawful to fire indiscriminately into a crowd or to use firearms in fully automatic mode. In order to comply with international law, any use of firearms by law enforcement officials in the context of assemblies must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury.

20. **Mr. Shany** said that it should be made clear that it was never lawful to fire a weapon in fully automatic mode in an attempt to control a crowd or police an assembly.

21. **The Chair** said he took it that the Rapporteur would make the requested clarification.

22. *Paragraph 98, as amended, was adopted on that understanding.*

*Paragraph 99 (continued)*

23. **Mr. Heyns** said that paragraph 99 was likely to be moved to a later section of the general comment. The Committee could nonetheless consider the changes he proposed, including a change to point out that the use of unnecessary or disproportionate force might constitute a breach not only of articles 7 and 9 of the Covenant but also of article 6. The paragraph, as amended, also stated that “in an extreme case, where other relevant criteria are met, widespread or systematic use of force against participants in peaceful assemblies may also constitute a crime against humanity”.

24. *Paragraph 99, as amended, was adopted.*

*Paragraph 101*

25. **Mr. Heyns** said that the stakeholders’ submissions on paragraph 101, which dealt with issues of accountability, had included a suggestion from Mexico, which he proposed to accept, to refer to access to remedies for the victims of unlawful use of force by law enforcement officials. He also proposed accepting a suggestion from Amnesty International to make explicit mention of gender-based or sexual violence. An additional footnote

reference had been proposed on the recommendation of Lawyers' Rights Watch Canada. The body of the amended paragraph thus read:

States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force by law enforcement officials during or in connection with assemblies. The duty to investigate pertains also to sexual or gender-based violence perpetrated during an assembly. Both intentional and negligent action or inaction can amount to a violation of human rights. Law enforcement agencies and individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims.

26. **Mr. Ben Achour** said that he wished to know why the second sentence, on sexual and gender-based violence, had been added. If, as noted in the first sentence, States had an obligation to investigate allegations of unlawful use of force in connection with an assembly, then it stood to reason that they would have to investigate allegations of sexual or gender-based violence.

27. **Mr. Zimmermann** asked whether the second sentence also referred to acts of sexual or gender-based violence perpetrated by private citizens. If not, the sentence could be deleted, and the relevant point could be made in the first sentence, which could be revised to state that States had an obligation to investigate allegations of "unlawful use of force, including sexual or gender-based violence".

28. **The Chair** asked whether the remedies mentioned in the last sentence of the paragraph should be understood as domestic remedies, international remedies or both.

29. **Mr. Heyns** said that, as the second sentence referred to acts of violence committed by officials, the proposal to delete the sentence and include the relevant point in the first sentence was acceptable. The remedies referred to in the last sentence were to be understood as both domestic and international.

30. **Mr. Santos Pais** said that he would appreciate a clarification of what was meant by the last sentence. Was it the law enforcement agencies that must be held accountable or the law enforcement officials themselves?

31. **Mr. Heyns** said that he supported the proposal to incorporate the proposed new sentence on sexual and gender-based violence into the first, and that he would find appropriate language to effect that change. In response to the question raised by Mr. Santos Pais, the main focus of the paragraph was the responsibility of individual officials, so, if members agreed, he would remove the reference to "law enforcement agencies" in the final sentence.

32. **Mr. Ben Achour** said that it was still unclear to him why specific mention was made of sexual and gender-based violence. Moreover, it was unclear whether the proposed new second sentence referred to sexual and gender-based violence perpetrated by State officials or by participants in the assembly. The sentence should be deleted or, at the very least, should be reworked to make clear that the Committee was referring to sexual and gender-based violence by State officials.

33. **Mr. Zyberi** said that he supported the proposal to incorporate the proposed new language on sexual and gender-based violence into the first sentence. However, the separate issue of sexual and gender-based violence committed by participants was important and should be addressed elsewhere in the draft general comment. Sexual and gender-based violence between participants had become a recurrent problem in assemblies, and States should address it in accordance with their duty to facilitate the right of peaceful assembly.

34. **Ms. Tigroudja** said that she too supported the proposal to merge the proposed new second sentence with the first. Responding to the concern raised by Mr. Ben Achour, she said that it was very important for the draft general comment to address the issue of sexual and gender-based violence perpetrated by State officials against women during assemblies, and she was glad that the Rapporteur had decided to mention it specifically in paragraph 101. Women who participated in assemblies were often subjected not only to the use of weapons such as those described in earlier paragraphs, but also to sexist insults and sexual violence by

State officials who felt that they were stepping out of line by choosing to take part in a public demonstration. However, Mr. Zyberi was right to state that the issue of sexual and gender-based violence perpetrated by participants should also be addressed.

35. **The Chair** said he took it that the Committee agreed to adopt paragraph 101 as amended orally by the Rapporteur.

36. *Paragraph 101, as amended, was adopted on that understanding.*

#### *Paragraph 102*

37. **Mr. Heyns** said that relatively few comments had been submitted by stakeholders regarding paragraph 102, which addressed the reporting of use of force by law enforcement officials. He proposed that the word “promptly” should be inserted after the word “reflected” in the first sentence.

38. **Mr. Shany** said that he was unsure whether the meaning of the word “transparent” in the phrase “transparent report” was sufficiently clear. It was important to emphasize that reports on the use of force should be publicly accessible.

39. **The Chair** said that the Committee had decided on the word “transparent”, after considering various alternatives, on its first reading of the paragraph. Ms. Sancin had proposed via the online chat function that the words “or damage” should be inserted after “injury” in the second sentence.

40. **Mr. Heyns** said that he supported Ms. Sancin’s proposal. With regard to the concern raised by Mr. Shany, the second sentence set out in detail the information that should be included in reports on the use of force; however, not all of that information needed to be made available to the public in respect of every incidence of use of force. The use of the word “transparent” in the first sentence implied that it was sufficient for an outline of the information included in reports to be publicly accessible.

41. **Mr. Zyberi** said that he shared Mr. Shany’s concern regarding the use of the word “transparent”. It was unclear for whom the report was meant to be “transparent”. Reports on the use of force must be publicly accessible; the phrase “transparent report” did not make that sufficiently clear.

42. **Mr. Heyns** said that he did not wish to reopen the debate around the meaning of “transparent”, which had been extensively discussed on first reading. “Transparent” meant that the report should not be accessible only to the law enforcement authorities and that aspects of it should be available to the public.

43. *Paragraph 102, as amended, was adopted.*

#### *Paragraph 103*

44. **Mr. Heyns** said that paragraph 103 addressed the deployment of plain-clothes police officers. Michael Hamilton, Associate Professor of Public Protest Law at the University of East Anglia, United Kingdom, had submitted that the wording of the paragraph could be substantially strengthened and that the low threshold of “reasonably necessary” set out in the first sentence failed to recognize that the deployment of plain-clothes officers should be exceptional and was justified only when strictly necessary. The group of non-governmental organizations from the Hong Kong Special Administrative Region had suggested clarifying that plain-clothes officers had an obligation to identify themselves and give explicit warnings before they exercised police powers such as using force, stopping and searching participants and making arrests. In the light of those comments, he proposed that the phrase “reasonably necessary” in the first sentence should be amended to “strictly necessary” and that a new final sentence should be inserted, which would read: “Before conducting a search or making an arrest, plain-clothes officers must identify themselves.”

45. **The Chair** said that Mr. Ben Achour and Ms. Tigroudja had proposed via the online chat function that the parentheses in the phrase “such officers (or other State agents)” should be removed.

46. **Mr. Shany** said he agreed with the suggestion to delete the text in parentheses. With regard to the use of plain-clothes officers, he wished to emphasize that, although the power to deploy them could be abused, in some circumstances it was an important tool for protecting the safety of participants in an assembly.

47. **Mr. Santos Pais** said that, in the proposed new final sentence, it should be clarified that plain-clothes officers must identify themselves to the persons concerned by their operations.

48. **Mr. Zyberi** said that he agreed with Mr. Shany and was thus unsure about the use of the word “strictly”, which might unduly restrict legitimate uses of plain-clothes officers. With regard to the text between parentheses, the parentheses should be removed but the text itself should be retained. He supported Mr. Santos Pais’s proposal with regard to the proposed new final sentence.

49. **Mr. Heyns** said that he supported Mr. Santos Pais’s proposal; he would add “to the persons concerned” to the proposed new final sentence. He agreed that the text in parentheses could be deleted, since paragraph 103 dealt with plain-clothes officers and the issue of State agents acting as *agents provocateurs* was addressed in an earlier paragraph.

50. **Mr. Zimmermann** said that if the phrase “(or other State agents)” was deleted, the text would seem to imply that only plain-clothes officers must never act as *agents provocateurs* and that other officers might do so. He was therefore in favour of maintaining it.

51. **Mr. Heyns** said that paragraph 20 of the draft general comment guarded against the use of *agents provocateurs* by the State. He reiterated his support for the replacement of “reasonably necessary” with “strictly necessary”. It was important to set a high threshold for the deployment of plain-clothes officers, which was a power that could easily be abused. In the light of various comments made by Committee members in the online chat function, he proposed that the Committee should continue its discussion of the paragraph at a later meeting.

52. **The Chair** said he took it that the Committee agreed to suspend its consideration of paragraph 103 until a later meeting.

53. *It was so decided.*

#### *Paragraph 104*

54. **Mr. Heyns**, recalling that paragraph 104 addressed the use of private security service providers, said that Amnesty International had noted that, where a State had not empowered or authorized a private individual or entity to use force but was aware of and had tolerated its use, the State bore responsibility for the actions of that individual or entity. Since the text adopted on first reading was rather lengthy, he proposed deleting the second and third sentences provisionally adopted on first reading. In the light of Amnesty International’s submission, he also wished to propose inserting the phrase “or their involvement is acquiesced to” after “when private security providers are used by the authorities for law enforcement tasks” in the first sentence. Lastly, he proposed that, in the final sentence, the words “in any event” should be deleted and the words “and training” should be inserted after “their use of force”.

55. **Mr. Shany** said that the text adopted on first reading had offered a balance between the responsibility of the State and the responsibility of private actors. Deleting the second sentence, which addressed the accountability of private security service providers under domestic and international law, undermined that balance. He was therefore in favour of retaining the second sentence.

56. **Mr. Santos Pais** said that, for the sake of clarity, the first part of the first sentence should be reformulated to read: “When private security providers are used or their involvement is acquiesced to by the authorities responsible for law enforcement tasks during an assembly.”

57. **Mr. Zyberi** said that he too was in favour of retaining the second sentence. If that sentence was deleted, however, the word “ultimately” should be inserted before “remains

responsible for their actions” in the first sentence, to make it clear that private security providers could not escape responsibility and that States should be held accountable only as a last resort. It might be appropriate to insert a reference to the Guiding Principles on Business and Human Rights.

58. **Mr. Zimmermann** said that he was unsure about the addition of the phrase “or their involvement is acquiesced to”. His understanding of article 11 of the draft articles of the International Law Commission on responsibility of States for internationally wrongful acts was that, in order for wrongful conduct to be attributed to a State, the State must have acknowledged and adopted the private actions as its own; mere acquiescence was not sufficient.

59. **Ms. Tigroudja**, expressing agreement with Mr. Zimmermann, said that, in addition, the Inter-American Court of Human Rights decision cited in footnote 137 did not seem entirely relevant. Not only did it involve paramilitary activities rather than security services provided during assemblies, but it also applied the criteria of attribution referred to by Mr. Zimmermann, namely, those set out in article 11 of the aforementioned draft articles, rather than the acquiescence criterion stated in paragraph 104. Accordingly, she encouraged the Rapporteur to reconsider the wording of the first sentence and the reference contained in footnote 137.

60. **Mr. Quezada Cabrera** said that he agreed with the stakeholder submissions which stated that the use of private security service providers to monitor assemblies should not be endorsed in such an absolute manner, as that might encourage States to renounce one of their key duties. Rather, it should be made clear at the beginning of paragraph 104 that the use of private security should be exceptional. In his view, the second sentence should be retained, because private security service providers were responsible for their own acts irrespective of any State liability. In addition, he suggested adding a footnote reference to the International Code of Conduct for Private Security Service Providers, which set out best practices for security providers acting on behalf of the State.

61. **Mr. Heyns** said he agreed that the second sentence should be retained. With respect to the first sentence, he proposed that “their involvement is acquiesced to” should be replaced with “their involvement can be attributed to the State”. He would also take into account other formulations proposed via the online chat function and would present a revised version of the first sentence for consideration the next day.

62. *It was so decided.*

#### *Paragraph 105*

63. **Mr. Heyns** said that paragraph 105 addressed the use of recording devices and body-worn cameras by law enforcement officials. In the stakeholders’ submissions, Greenpeace USA and National Lawyers Guild had expressed concern that, while the use of body-worn cameras by law enforcement officials might, on occasion, support protesters, the practice increased the power of police and was ripe for abuse. In the light of their comments, he proposed replacing the words “an important role” in the first sentence of the revised draft as provisionally adopted on first reading with the words “a positive role” and adding the clause “if used judiciously” at the end of the sentence. He also proposed adding a sentence on the practice of “recording back”, whereby assembly participants recorded the law enforcement officials who were recording them. Since the recording devices used by participants or journalists engaged in that practice were often confiscated or destroyed, it was important that the right to “record back” was specifically established. The new sentence would end with a footnote reference to paragraph 71 of the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies ([A/HRC/31/66](#)).

64. **Mr. Zyberi**, supported by **Mr. Shany**, said that the phrase “record back” in the last sentence should be replaced with the word “record”; it was unnecessary to tie recordings made by participants, journalists or monitors to recordings made by law enforcement officials.

65. **Mr. Heyns** said that, as ending the sentence with “record” seemed somewhat abrupt, he proposed replacing “record back” with “record the actions of law enforcement officials” to address the concern raised by Mr. Zyberi and ensure that participants’ right to record was not in any way conditioned by the recordings of law enforcement officials.

66. **Ms. Pazartzis** said that, although the proposal was acceptable, she questioned the need for the sentence as the right to record during assemblies should be self-evident. However, she would not insist on that point.

67. **The Chair** noted that the words “the actions of law enforcement officials” could be deleted if the word count of the draft general comment was too high.

68. *Paragraph 105, as amended, was adopted on that understanding.*

#### *Paragraph 106*

69. **Mr. Heyns** said that paragraph 106 addressed the deployment of unmanned systems, drones and autonomous weapons during assemblies, where they were sometimes used to disperse tear gas, for example. In the stakeholder submissions, Israel and Norway had both drawn attention to the absence of an internationally agreed definition of what constituted an “autonomous weapon”, while International Network of Civil Liberties Organizations, Greenpeace USA and National Lawyers Guild had stated that the general comment should prohibit the use of any type of remotely controlled weapons system during assemblies. However, the Committee had noted in previous discussions that an absolute ban might cause difficulties, for example, in situations where remotely controlled weapons were the only means of reaching individuals in need of help. In the light of those discussions and the concerns raised, in the third sentence he proposed replacing the words “lethal or less lethal force” simply with “lethal force”.

70. *Paragraph 106, as amended, was adopted.*

#### *Paragraph 107*

71. **Mr. Heyns** said that the Committee had received several comments from stakeholders regarding paragraph 107, which was the first in the section of the draft general comment that dealt with assemblies during states of emergency and armed conflict. Although he did not fully agree with all the comments, he had taken them into account and on that basis he proposed adding the words “and comply with the conditions set out in article 4” at the end of the last sentence. He had also made a couple of minor drafting changes and proposed including a footnote reference to the Committee’s recently issued statement on derogations from the Covenant in connection with the COVID-19 pandemic ([CCPR/C/128/2](#)) at the end of the paragraph.

72. *Paragraph 107, as amended, was adopted.*

#### *Paragraph 108*

73. **Mr. Heyns** said that paragraph 108 was a short paragraph that could potentially be merged with paragraph 107. In line with a suggestion from one of the stakeholders, which had indicated that the text provisionally adopted on first reading had not been very clear, he was proposing a redrafting of the second sentence so that it read: “Restrictions consistent with Article 21 will generally be adequate to address concerns about assemblies in a situation of emergency”. He did not consider it necessary to refer to online assemblies, as suggested by the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, as that issue was sufficiently addressed elsewhere. He was unsure whether it was necessary to specify that any restrictions must be non-discriminatory, as Amnesty International had recommended, given the emphasis on non-discrimination throughout the draft general comment. He would therefore appreciate Committee members’ view on that point.

74. **Mr. Shany** suggested that the Rapporteur should harmonize paragraph 108 with the language of the Committee’s statement on derogations from the Covenant in connection with the COVID-19 pandemic, which was more forceful in the guidance it provided to States.



75. **Mr. Heyns**, expressing agreement with that suggestion, said that he would prepare a succinct paragraph that was consistent with the language of the aforementioned statement. Responding to a query raised by Ms. Sancin via the online chat function, he clarified that, in the second sentence of his latest draft “situation of emergency” should read “state of emergency”.

76. **Mr. Bulkan** said that he had understood the reference to “a situation of emergency” to mean a situation in which there had been no formal declaration of a state of emergency. He would appreciate clarification as to the difference between the meanings of “situation of emergency” and “state of emergency”, as understood by the Rapporteur.

77. **Mr. Heyns** said that, while the distinction was not whether or not a state of emergency had been declared, it might be that “situation of emergency” was a broader term, as suggested by Mr. Bulkan, and therefore more consistent with the message that the Committee wanted to send to States. He would consider that point further and prepare a new draft of the paragraph for consideration the next day.

78. *It was so decided.*

#### *Paragraphs 109 and 110*

79. **Mr. Heyns** said that he proposed simplifying and merging paragraphs 109 and 110 of the revised draft. Both paragraphs as provisionally adopted on first reading addressed situations where assemblies took place during an armed conflict in which civilians who were directly participating in the hostilities might be involved.

80. In the stakeholder submissions, Israel had suggested using the phrase “principles and rules”, rather than “rules” alone, and he had incorporated that proposal. Israel had also indicated that, in its view, the words “and to the extent that they are not otherwise protected under international law from attack” constituted a legal error. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe had called for the sentence concerning the protection of civilians to be framed in positive rather than negative terms, as follows: “Civilians are protected from being targeted unless they are directly participating in hostilities.” Amnesty International had expressed concern about the implication that individuals involved in assemblies who were directly participating in hostilities might not be protected against collateral damage under international humanitarian law. However, he believed that, unfortunately, the current wording was an accurate reflection of the law.

81. In light of the comments received, he proposed that the paragraph should read:

In a situation of armed conflict, the use of force during peaceful assemblies remains regulated by the rules governing law enforcement. Civilians in an assembly are not protected from being targeted with lethal force if and for such time as they are participating directly in hostilities, as that term is understood under international humanitarian law (IHL). However, only those participating directly in hostilities may be targeted, and only to the extent that they are not otherwise protected under international law from attack. Any use of force under applicable IHL is subject to the principles and rules of distinction, precautions and proportionality in attack, military necessity and humanity. In all decisions on the use of force, the safety and protection of assembly participants and the broader public should be a primary consideration.

82. **Mr. Shany** said that he was happy with the proposed text. He disagreed with the assertion that the third sentence of the Rapporteur’s latest draft contained a legal error but was in favour of recasting the second sentence as a positive rather than negative statement, as that was also the formulation used under the Protocol I Additional to the Geneva Conventions of 1949.

83. **Mr. Zimmermann** said that he was also in favour of that change. In addition, he proposed adding the word “civilians” to the third sentence so that it read “only those civilians participating directly in hostilities may be targeted”.

84. **Ms. Sancin** said that she also favoured a positive recasting of the second sentence. She wondered whether the last sentence was needed, given that the first sentence already

stated that the use of force was regulated by the rules governing law enforcement. Furthermore, it was unclear whether that sentence, when read alone, would be applicable in situations of armed conflict, where there would certainly be other considerations.

85. **Mr. Heyns** said that he agreed to the positive reframing of the second sentence and the addition of the word “civilians” in the third sentence. He also proposed deleting the fifth sentence.

86. **Ms. Pazartzis** said that, since the paragraph dealt with international humanitarian law, it should be moved to the section of the general comment that addressed the relationship of article 21 to other legal regimes.

87. **Mr. Zyberi** said that, to be more consistent with the language generally used in international humanitarian law, the fourth sentence should be rephrased as follows: “Any use of force under applicable international humanitarian law is subject to the rules and principles, distinction, precautions in attack, proportionality, military necessity and humanity”. He was against deleting the fifth sentence because it reinforced the idea that the safety and protection of civilians was a key function of the State. It also served as a guard against the collateral damage that might be permitted under international humanitarian law.

88. **The Chair** invited the Rapporteur to prepare a revised draft of the paragraph for consideration the next day.

89. *It was so decided.*

*The meeting rose at 2.30 p.m.*