



International Covenant on Civil and Political Rights

Distr.: General
27 July 2020

Original: English

Human Rights Committee 129th session

Summary record of the 3730th meeting

Held via videoconference on Wednesday, 22 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.20-09917 (E) 270720 270720



* 2 0 0 9 9 1 7 *

Please recycle A universal recycling symbol consisting of three chasing arrows forming a triangle.



The meeting was called to order at 12.30 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, which included a number of earlier paragraphs with which there were several issues pending, had been distributed to members and would be displayed on screen.

Paragraph 93 (continued)

2. **Mr. Heyns** (Rapporteur for the general comment) said that, pursuant to an agreement reached at the previous meeting to refer to a time limit on preventive detention, he proposed to reintroduce the second sentence of an earlier version of the paragraph, which read: “This is especially the case if detention lasts more than a few hours.”

3. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 93.

4. *It was so decided.*

Paragraph 96 (continued)

5. **Mr. Heyns** said that he had made some minor drafting changes to paragraph 96.

6. **The Chair** said he took it that the Committee agreed with the proposed changes.

7. *It was so decided.*

Paragraph 102 (continued)

8. **Mr. Heyns** said that, in the interests of reducing the word count of the draft general comment, he wished to propose that some of the details that the Committee had recommended for inclusion in reports on the use of force should be omitted. The second half of the second sentence would thus read “and set out details of the incident, including: the reasons for the use of force, its effectiveness, and the consequences”.

9. **The Chair** said he took it that the Committee agreed with the proposed additional amendment to paragraph 102.

10. *It was so decided.*

Paragraph 103 (continued)

11. **Mr. Heyns** said that, in the light of the Committee’s discussion of paragraph 103 at its previous meeting, he wished to propose that the phrase “on the part of other participants, for example, by acting as *agents provocateurs*” should be deleted from the first sentence. It added little to the text. He also wished to amend the proposed new final sentence to: “Before conducting a search, making a search, or resorting to any use of force, plain-clothes officers must identify themselves to the persons concerned.”

12. *Paragraph 103, as amended, was adopted.*

Paragraph 104 (continued)

13. **Mr. Heyns** said that he had reformulated paragraph 104 in the light of the Committee’s discussion of the paragraph at its previous meeting. The first and second sentences now read: “The State is ultimately responsible for law enforcement during an assembly. This includes situations where, exceptionally, private security service providers perform law enforcement tasks.” The second sentence of the text adopted on first reading, which related to the accountability of private security service providers, would be retained.

14. **Mr. Shany** said that he proposed retaining the language that emphasized that States remained responsible for the conduct of private security service providers to which they delegated law enforcement tasks. It was an important notion that was not fully captured by the phrase “ultimately responsible for law enforcement”.

15. **The Chair** said he took it that the Committee agreed that the text should be amended in accordance with the proposals put forward by the Rapporteur and Mr. Shany.

16. *It was so decided.*

Paragraphs 107 and 108 (continued)

17. **Mr. Heyns** said that, in the light of the Committee’s discussion at the previous meeting, paragraph 108 had been merged with paragraph 107. The first sentence of the revised paragraph 107 remained unchanged, while the rest of the paragraph, from the second sentence onward, read:

If not derogated from, the right of peaceful assembly continues during states of emergency. However, States parties must not rely on derogation from the right of peaceful assembly when they are able to attain their objectives by imposing restrictions in terms of article 21. If States derogate from the Covenant in response, for instance, to a mass demonstration that includes acts of violence, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all measures derogating from their obligations under the Covenant are strictly required by the exigencies of the situation and comply with the conditions set out in article 4.

18. **Mr. Zyberi** said that the second sentence should be deleted in order to reduce the word count. It was redundant since the rest of the paragraph was concerned with the conditions applicable to derogation.

19. **Mr. Heyns** said that the second sentence should be retained; it was important to emphasize that the right of peaceful assembly continued unless the State registered a formal derogation. Some members had asked via the online chat function whether it was necessary to include the example of a “mass demonstration that includes acts of violence” in the fourth sentence. In his view, it was important to provide a concrete example, in addition to mentioning the more abstract notion of a threat to the life of the nation, in order to make it clear to States that even if violence occurred during an assembly, it could often be dealt with through restrictions.

20. **Ms. Tigroudja** said that she was not convinced of the need to include the example. It did not reflect recent, real-world examples of derogations from article 21, and should be deleted in order to reduce the word count.

21. **Mr. Zyberi** said he agreed that the example provided in the fourth sentence should be deleted. Moreover, the final sentences overlapped in terms of content, making parts of them redundant; they should be consolidated to reduce the word count.

22. **Mr. Heyns** said that there was no redundancy, as the two sentences addressed two different situations. The fourth sentence stated that in many cases derogation was not necessary because restrictions were sufficient. The final sentence, however, emphasized that if a State did ultimately choose to derogate from the Covenant in response to an assembly with violent elements, it still had to be able to justify its decision. The example given further emphasized that point, so he remained opposed to its removal.

23. **Mr. Shany** said that he agreed that the example should be retained. The sentence underscored that States could not use the existence of an assembly that had a significant disruptive effect as a pretext to impose a state of emergency, since the conditions set out in article 4 still had to be met. To remove the example would make the sentence a simple restatement of a general rule, in which case it might as well be removed entirely.

24. **Mr. Heyns** said that he would review the paragraph in the light of the current discussion. The Committee should return to it at a subsequent meeting.

25. **The Chair** said he took that it the Committee agreed to suspend its consideration of paragraph 107 until a later meeting.

26. *It was so decided.*

Paragraphs 109 and 110

27. **Mr. Heyns**, recalling that the Committee had agreed to subsume paragraph 110 into paragraph 109, said that the paragraph balanced human rights and international humanitarian law approaches to situations in which an assembly took place during an armed conflict. In the light of the Committee's discussion at its previous meeting, he had redrafted the second sentence in order to reframe the obligation it set forth in a positive way. The revised sentence read: "Civilians in an assembly are protected from being targeted with lethal force unless and for such time as they take a direct part in hostilities, as that term is understood under international humanitarian law". With regard to the third sentence, he wished to propose that the words "only those" should be replaced with "only persons", rather than the alternative "only civilians". Combatants and persons with continuing combat functions could participate directly in hostilities; to state that "only civilians participating directly in hostilities" could be targeted would therefore raise questions. Lastly, he had reviewed the final sentence and had decided that it should not be deleted. It was important for the balance of the paragraph. International humanitarian law provided a low level of protection to human life. The final sentence therefore stressed that, in situations in which it was difficult to judge whether persons were directly participating in hostilities, a human rights perspective should be taken and the safety and protection of the participants in the assembly should be an important consideration.

28. **Mr. Shany** said that while he understood the reasoning behind the Rapporteur's proposal of "persons" as an alternative to "those" in the third sentence, the formulation "only persons" was, in a technical sense, problematic; it left open the question of whether combatants, or individuals with continuing combat functions, qualified as persons participating directly in hostilities. He proposed that the word "civilians" should be used, but that the words "only" and "and" should be deleted, so that the sentence read: "Civilians participating directly in hostilities may be targeted only to the extent that they are not otherwise protected under international law from attack." That formulation was legally precise but did not address specifically all the other persons to which international humanitarian law would continue to apply.

29. **Ms. Sancin** said that she wished to propose merging the first and final sentences in order to make the link between the two clear. The merged sentence would read: "In a situation of armed conflict, the use of force during peaceful assemblies remains regulated by the rules governing law enforcement, and the safety and protection of assembly participants and the broader public should be a primary consideration."

30. **Ms. Pazartzis** said that she agreed with Mr. Shany's proposals for the third sentence. Care should be taken to ensure that the proper terminology was used to describe the rules and principles of international humanitarian law set out in the fourth sentence. She reiterated her proposal that paragraph 109 should be moved to the section of the general comment that addressed the relationship of article 21 to other legal regimes.

31. **Mr. Heyns** said that he too agreed with the language proposed by Mr. Shany for the third sentence. In response to Ms. Pazartzis's concern regarding the fourth sentence, he believed that the terminology used was consistent with international humanitarian law, as Mr. Zyberi had noted at the previous meeting. He did not favour moving the last sentence to earlier in the paragraph. The logic of the paragraph was to begin by stating that, in situations of armed conflict, the use of force during peaceful assemblies was regulated by the rules governing law enforcement, or human rights law; then move into the realm of international humanitarian law and raise the issue of collateral damage; and conclude by returning to human rights and pointing to their continued application even in situations of armed conflict in which international humanitarian law is applied. The sentence would lose its force if placed at the beginning of the paragraph, before the mention of the possibility of collateral damage. If the word "primary" was considered too strong, he proposed "important" as an alternative;

it was relatively uncontroversial to state that safety, even if not the overriding concern, must be an important consideration.

32. With regard to the paragraph's position within the general comment, he was reluctant to include it in the section dealing with the relationship of article 21 to other legal regimes, which was a largely technical section, because international humanitarian law was not the primary concern addressed in paragraph 109. Rather, the paragraph dealt with a type of situation, namely, peaceful assemblies taking place during a state of emergency or armed conflict, that could leave deep scars.

33. **Ms. Tigroudja** said that she agreed with Mr. Shany's proposal to use "civilians" rather than "persons", since that was the language used within the framework of international humanitarian law. She was also in agreement with the Rapporteur's view that the order of the sentences should not be changed for the reasons he had given.

34. **The Chair** said that the Committee would return to the paragraph to reach a decision on the outstanding question of whether "civilians" should be used instead of "persons".

35. *It was so decided.*

Paragraph 111

36. **Mr. Heyns** said that paragraph 111 marked the start of the final section of the general comment, which addressed the relationship between article 21 and other provisions of the Covenant and other legal regimes. The Committee traditionally included such a section at the end of its general comments. Very few stakeholder submissions had been received in relation to paragraph 111, which concerned use of force. Switzerland had called for greater clarity, and Amnesty International had noted that the force used did not need to be excessive in order for a violation of article 7 to occur; for example, threats of rape could also constitute a violation of that article. In the current draft, paragraph 111 incorporated text moved from paragraph 99 that the Committee had discussed the previous day. In addition, he was proposing to move the last two sentences of the paragraph as provisionally adopted on first reading to paragraph 112.

37. In the light of those comments and considerations, he proposed that the paragraph should be amended to read:

The full protection of the right of peaceful assembly depends on the protection of a range of rights. The use of unnecessary or disproportionate force or other unlawful conduct by State officials may breach articles 6, 7 and 9 of the Covenant. 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. Of course, other conduct might breach articles 6, 7 and 9 as well.

38. **Mr. Shany**, seconded by **Mr. Santos Pais** using the online chat function, said that, in the second sentence, the words "State officials" should be followed by "in the context of policing in an assembly". Otherwise, the statement might seem disconnected from the subject matter of the general comment.

39. **Mr. Heyns** said that he agreed with Mr. Shany's proposal. Responding to a suggestion to replace the phrase "other unlawful conduct" with "other unlawful violence" made by Ms. Sancin via the online chat function, he said that, although he was not opposed to the word "violence", he preferred "conduct" because it was a broader term, and, as indicated by Amnesty International, conduct that was not violent such as verbal abuse might also constitute a violation of article 7. Since via the online chat function other Committee members were indicating a preference for "conduct", he would retain that word.

40. *Paragraph 111, as amended, was adopted.*

Paragraph 112

41. **Mr. Heyns** said that he proposed dividing paragraph 112 as it had appeared in the draft provisionally adopted on first reading into two paragraphs, paragraph 112 and paragraph 112 bis. He would first focus on paragraph 112. In relation to that paragraph, Michael Hamilton, Associate Professor of Public Protest Law at the University of East Anglia, United

Kingdom, had noted that, if expressive purpose was no longer considered an essential element in paragraph 4, that change would need to be reflected in paragraph 112 as well. As such a change had indeed been made to paragraph 4, he had adjusted the draft accordingly. He had also incorporated the suggestion made by Open Society Justice Initiative and specified that the information referred to in the paragraph was information “held by public bodies”. As a result, the revised draft of paragraph 112 read:

Restrictions on people’s ability to travel in order to participate in assemblies, including to travel abroad (art. 12 (2)), and to participate in marches and other moving assemblies, may violate their freedom of movement (art. 12 (1)). Decisions restricting the exercise of assembly rights fall under the protection of fair trial rights (art. 14 (1)). The surveillance of those involved in assemblies and other data-gathering activities may violate their right to privacy (art. 17). Religious assemblies may also be protected under the freedom to manifest one’s religion or beliefs (art. 18). The right of peaceful assembly is more than a manifestation of freedom of expression (art. 19 (2)), but it often has an expressive element and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways. Freedom of access to information held by public bodies (art. 19 (2)) underlies the ability of the public to know about the legal and administrative framework applicable to assemblies and enables them to hold public officials accountable.

He had included the word “often” in the fifth sentence to indicate that the expressive element did not always need to be present.

42. **Mr. Shany** said that the second sentence was unclear. He believed that the underlying idea was that decisions regarding the exercise of assembly rights must be open to legal challenge and that such challenges must be judged in a fair and public hearing. If his understanding was correct, that idea needed to be expressed more clearly. In the fifth sentence, he proposed inserting the word “just” before “a manifestation” to underscore the point being made.

43. **Mr. Zyberi** said that he was concerned about the use of the phrase “including to travel abroad” in the first sentence; on a number of instances, travel abroad had been used as an opportunity to interfere in the politics of another country.

44. **The Chair** said that he shared the concerns raised by Mr. Shany and Mr. Zyberi. To address the latter’s concern, he proposed that the second sentence should refer only to nationals’ ability to return to their country of origin to participate in assemblies.

45. **Mr. Heyns** said that, although restrictions on the ability to travel abroad to participate in assemblies could potentially violate freedom of movement, that was not always the case. While the issue did raise some legitimate concerns, the intention and thrust of the first sentence was not to state that there should be an unrestricted right of travel in all cases. The right to travel to participate in assemblies fell within the scope of freedom of movement but could be restricted in terms of article 21, as the general comment made clear. With respect to the suggested use of the word “nationals”, he wished to adhere to the language of the Covenant, and article 12 (1) and (2), which concerned the right to liberty of movement, including the freedom to leave any country, used the word “everyone”. He agreed with Mr. Shany’s proposals to insert the word “just” in the fifth sentence and to reformulate the second sentence to clarify that decisions affecting the exercise of assembly rights must be open to legal challenge in accordance with fair trial rights.

46. **The Chair** asked whether the Rapporteur intended to add language from article 12 (3) of the Covenant, regarding restrictions on freedom of movement, to the first sentence.

47. **Mr. Heyns** said he did not consider that necessary because the paragraph was not dealing specifically with article 12 and the restrictions concerned were implicit in the references to that article included in parentheses.

48. *Paragraph 112, as amended, was adopted.*

Paragraph 112 bis

49. **Mr. Heyns** said that paragraph 112 bis extended the line of thought begun in paragraph 112. He had incorporated the suggestions, made by the United States of America and the Kenya National Commission on Human Rights respectively, to include a reference to article 2 (1) in the sentence on non-discrimination and to emphasize the relationship between articles 21 and 25. As a result, he proposed that paragraph 112 bis should read:

Freedom of association (art. 22) also protects collective action, and restrictions on this right often affect the right of peaceful assembly. The right of political participation (art. 25) is closely linked to the right of peaceful assembly. The right to non-discrimination protects participants against discriminatory practices in the context of assemblies (art. 2 (1) and art. 26).

50. **Mr. Shany** said that the second sentence seemed to lack substance, and should be reworked to state that restrictions on one right must also, in appropriate circumstances, be justified pursuant to the provisions protecting the other right.

51. **Mr. Zyberi**, expressing support for Mr. Shany's view, said that, to make the link between the two rights clearer, the sentence should state either that the right of peaceful assembly furthered the right of political participation or that impediments on the right of peaceful assembly could negatively affect the right of political participation.

52. **Mr. Heyns** said that via the online chat function Ms. Tigroudja, seconded by Mr. Santos Pais, had made a proposal, with which he agreed, to include a reference to article 24 in the last sentence. With regard to the second sentence, he would rework the language as suggested to make the link clearer.

53. *Paragraph 112 bis, as amended, was adopted on that understanding.*

Paragraph 113

54. **Mr. Heyns**, recalling that paragraph 113 dealt with the rights of those affected by persons exercising their right of peaceful assembly, said that the draft as provisionally adopted on first reading had been criticized. Some stakeholders, including the International Network of Civil Liberties Organizations, were of the view that it provided the authorities with a useful pretext for clamping down on participation in peaceful assemblies. As article 21 made specific mention of the rights and freedoms of others, however, those rights and freedoms could not be ignored. Israel had pointed out that it was States parties, and not individuals, that incurred obligations under the Covenant. That comment had informed his proposed amendments to the paragraph, which now read: "At the same time, participation in peaceful assemblies may be restricted on the basis of the rights of others. This may, for example, include civil and political rights such as those discussed above, as well as socioeconomic rights, such as the right to health or to education".

55. **Mr. Shany** said that in some of the stakeholder submissions it was noted, not without reason, that the issue of proportionality was not addressed in the paragraph. He therefore proposed that the first sentence should be amended to state that participation in peaceful assemblies could be restricted "in a proportionate manner, if doing so is necessary to protect the rights of others". The words "such as those discussed above", in the second sentence, could be omitted.

56. **Mr. Muhumuza** said that the word "only" should be added to the first sentence, so that it stated that participation in peaceful assemblies could be restricted *only* when necessary to protect the rights and freedoms of others.

57. **Mr. Heyns** said that he would shorten the second sentence as proposed. It would be difficult to insert the word "only" as Mr. Muhumuza had suggested, however, as the exercise of the right of peaceful assembly could be restricted for reasons other than to protect the rights and freedoms of others.

58. **Ms. Pazartzis** said that the enumeration of rights in the second sentence seemed unnecessary, as those rights had been mentioned elsewhere in the draft general comment. The entire second sentence could therefore be deleted, with a mention of broad categories of rights, or of rights already referred to in earlier paragraphs, being made in the first sentence.

59. **Mr. Quezada Cabrera** said that he too was unsure of the purpose of the second sentence. The first sentence also posed problems for him. As currently worded, it would fit better in one of the paragraphs in the section of the draft that dealt with restrictions on the exercise of the right of peaceful assembly. Thus, the entire paragraph could in fact be deleted. If the Committee chose to retain it, however, it should contain a reference to other rights enshrined in the Covenant. In that way, the paragraph would be a thematic fit for the section, which, as the Rapporteur had suggested, was a summary of the interplay of the right of peaceful assembly and other Covenant rights.

60. **Mr. Zyberi** said that if the Committee did choose to retain the paragraph, the text could be amended to state that the right of peaceful assembly must be exercised with due respect for the rights of others, including both civil and political rights and economic, social and cultural rights.

61. **Mr. Heyns** said that much of the final section of the draft could be viewed as repetitive. In its general comments, however, it was standard practice for the Committee to summarize the ways in which a given right interacted with other Covenant rights. It was therefore necessary to refer both to the rights that reinforced the right of peaceful assembly and to the rights that could lead to restrictions. Referring only to the former rights would be one-sided.

62. **The Chair** suggested that the paragraph, including proposed amendments informed by Committee members' comments, should be brought back before the Committee at a later meeting.

63. *It was so decided.*

Paragraph 114

64. **Mr. Heyns** said that stakeholders' comments on paragraph 114, which was the final paragraph of the draft, had been generally positive. Not all stakeholders had been in favour of its inclusion, but the majority had. The concerns expressed by the city of Amsterdam and the Netherlands – namely, that the ideas expressed in the paragraph were incompatible with the idea of content-neutrality – were, in his view, misplaced. His proposal was therefore to retain the paragraph, albeit with some minor editorial changes so that it read:

The right of peaceful assembly has an intrinsic value. It is moreover often exercised with the aim of advancing the implementation of other human rights, as well as other norms and principles of international law. In such cases, the duty to respect and ensure the right of peaceful assembly derives its legal justification also from the importance of the broader range of other rights, norms and principles whose implementation it advances.

The right of peaceful assembly was thus placed in a broader context. In addition to the intrinsic value that was the source of its legitimacy, it was valuable, as the paragraph suggested, as a tool for advancing the implementation of other rights.

65. *Paragraph 114, as amended, was adopted.*

Matters pending

66. **Ms. Pazartzis** said that paragraph 109, which dealt with international humanitarian law, could be moved to the final section of the draft, as that section explored the right of peaceful assembly as it related not only to other Covenant rights but also to those enshrined in other legal regimes. It might also be preferable to move paragraph 107, on the non-derogability of the right of peaceful assembly, to the final section of the general comment, perhaps just before paragraph 114; indeed, in its general comment No. 36 (2018) on the right to life, the Committee had included a paragraph on the issue of derogation in a final section equivalent to the final section of the present draft general comment. How to arrange the paragraphs of the final sections of the draft would, however, be clearer once the Committee had an overarching view of the draft in something approaching its definitive form.

The meeting rose at 2.15 p.m.