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Held via videoconference on Friday, 3 July 2020, at 4 p.m. Central European Time

Chair: Mr. Shany (Vice-Chair)

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Mr. Shany (Vice-Chair) took the Chair.

The meeting was called to order at 4.15 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).

Paragraph 23 (continued)

2. **The Chair** recalled that, at the previous meeting, the Rapporteur for the general comment had presented an amended version of the paragraph as provisionally adopted on first reading.

3. **Ms. Sancin** said, via the online chat function, that it might be preferable to replace the word “violent” with “non-peaceful”.

4. **The Chair**, speaking as a member of the Committee, said that, while he was of the view that the Committee should not use the adjective “violent” to describe assemblies, he had no objection to the use of that adjective to describe the conduct of participants.

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

Paragraph 24

6. **Mr. Heyns** (Rapporteur for the general comment) said that paragraph 24 served as an introduction to section 3 on the obligations of States parties with respect to the right of peaceful assembly. It largely mirrored the language of the Covenant.

7. Several stakeholders had submitted comments on the paragraph as provisionally adopted on first reading. Israel had suggested that, as the word “adjusted” in the last sentence did not capture the legal principle discussed in the paragraph, the word “limited” should be used instead, while the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, had noted that the word “restricted” would be more appropriate in that context. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe had expressed the view that emphasis should not be placed on the restriction of the right of peaceful assembly. The national human rights institution of the Philippines had suggested that the Committee should include a list of situations in which the obligation to protect the right of peaceful assembly could be adjusted; it was worth noting, however, that the matter of restrictions was addressed in detail in a subsequent section of the draft.

8. Amnesty International had recommended that the last sentence of the paragraph, which stated that the right of peaceful assembly was not absolute, should be deleted. The Equal Rights Trust had proposed stating that the obligation to respect and ensure the rights enshrined in the Covenant should be fulfilled without discrimination; in his view, however, there was no need to deal with the matter of discrimination in paragraph 24, as it was addressed elsewhere in the draft. The International Network of Civil Liberties Organizations had stated that the reference to the non-absolute nature of the right of peaceful assembly should be deleted, as it could be quoted out of context. Article 19: International Centre against Censorship had noted that the last sentence of the paragraph seemed to be inconsistent with the principle that certain aspects of the right of peaceful assembly, such as the right to an effective remedy, were absolute, and that there was a risk that the words “may in some cases be adjusted accordingly” might be interpreted very broadly.

9. In the light of those and other submissions received from stakeholders, he had prepared a revised version of the last two sentences of the paragraph as provisionally adopted on first reading. His proposal, which involved merging the two sentences into one, read: “The obligation of States parties in respect of the right of peaceful assembly thus comprises these various elements, the application of which may in some cases be restricted according to the criteria of article 21.”

10. **Mr. Ben Achour**, supported by **the Chair**, said that, unlike certain other rights, the right of peaceful assembly was not absolute, and it was important to state that fact in paragraph 24 in order to lay the ground for the subsequent discussion of the restrictions that could be imposed by States parties. He did not agree with the Rapporteur's proposal to delete that statement and preferred the version of the paragraph provisionally adopted on first reading.

11. **Mr. Quezada Cabrera**, supported by **the Chair**, said that the paragraph as provisionally adopted on first reading stated that the specific obligation to respect and ensure the right of peaceful assembly might in some cases be adjusted, whereas the revised version presented by the Rapporteur stated that the application of "these various elements", that is, the obligations set out in article 2 (1)–(3) of the Covenant, might in some cases be restricted. That shift in emphasis changed the meaning of the paragraph. For that reason, he too preferred the version of the paragraph provisionally adopted on first reading, although some amendments might be necessary.

12. **Mr. Zyberi** said that he supported the revised version of the paragraph. It was made clear elsewhere in the draft that the right of peaceful assembly was not absolute. He proposed inserting the words "without discrimination" into the first sentence, immediately after the words "respect and ensure", as a non-exhaustive list of prohibited grounds of discrimination was set out in article 2 (1) of the Covenant.

13. **Mr. Heyns** said that, since the Committee had decided to include a reference to discrimination in an earlier paragraph and the question was also dealt with extensively in a subsequent one, he was not convinced that a reference of the kind proposed by Mr. Zyberi should be included in paragraph 24. With regard to the last sentence of his revised version, he had deleted the reference to the non-absolute nature of the right of peaceful assembly because there was a risk that it might be quoted out of context. As for Mr. Quezada Cabrera's concern, it might be necessary to reword the last sentence in order to clarify that it was the right of peaceful assembly, and not the obligations of States parties, that could be restricted.

14. **Ms. Tigroudja**, supported by **Mr. Furuya** and **Mr. Zyberi**, said that she was in favour of amending the paragraph as proposed by the Rapporteur. The question of discrimination and the non-absolute nature of the right of peaceful assembly were addressed elsewhere in the draft.

15. *Paragraph 24, as amended, was adopted, subject to the agreed drafting change.*

Paragraph 25

16. **Mr. Heyns** said that paragraph 25 was intended to provide a summary of the most important aspects of the obligation of States parties in respect of the right of peaceful assembly. That obligation was then explored in greater detail in the paragraphs that followed.

17. Several stakeholders had submitted comments on the paragraph as provisionally adopted on first reading. Michael Hamilton, Associate Professor of Public Protest Law, University of East Anglia, United Kingdom, had suggested that the principles of content neutrality and "sight and sound" might usefully be addressed in separate paragraphs. According to Amnesty International, it should be explained that it was for organizers, in the first instance, to determine the locations of their assemblies. The International Network of Civil Liberties Organizations had proposed that the words "as far as possible" should be deleted from the last sentence. The Memorial Human Rights Centre, OVD-Info and the International Center for Not-For-Profit Law had suggested that the expression "in principle" should be removed from the second sentence. The European Center for Not-For-Profit Law had proposed that the word "purpose" in the first sentence should be replaced with "purposes".

18. In the light of those and other submissions received from stakeholders, he had prepared a revised version of the paragraph, which read:

Importantly, States must leave it to the participants freely to determine the purpose or expressive content of the assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be "content neutral" and also not be based on the identity of the participants or their relationship with the

authorities. Moreover, while the “time, place and manner” of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be able to conduct assemblies within “sight and sound” of the target audience.

19. **Mr. Ben Achour**, supported by **Ms. Tigroudja**, said that, if the words “*dans une large mesure*” in the French version were an accurate translation of the English word “importantly”, he would prefer to delete that word from the first sentence, as it would imply that States parties had the discretion to decide whether the determination of the purpose or expressive content of an assembly should be left to the participants.

20. **The Chair** said that the use of the English word “importantly” did not carry any such implication.

21. **Ms. Kran** said that she would be in favour of deleting the word “importantly” from the first sentence because it implied that there was a hierarchy among the paragraphs in the section. In addition, she proposed deleting the word “also” from the second sentence of the revised version. She supported the Rapporteur’s proposal to insert the word “typically” into the third sentence, as assemblies were held for diverse reasons.

22. **The Chair**, speaking as a member of the Committee, said that he supported the proposal to delete the word “importantly” from the first sentence.

23. **Mr. Quezada Cabrera** said that he agreed that “importantly” should be removed. He expressed concern about the use of the phrase “in principle”, the Spanish translation of which, “*en principio*”, would leave open the possibility of exceptions. Would it be acceptable for the authorities exceptionally to adopt a non-neutral approach? It was his understanding that the requirement of neutrality was permanent, if not absolute. Similarly, the restrictions imposed must be content neutral.

24. **Mr. Zyberi** said that the words “in principle” had been used to cover situations where peaceful assemblies were held in support of extremist ideologies. In such cases, States might be allowed to censor the content of the assembly or to intervene. He supported the wording of the third sentence, as it took into account the fact that some States prohibited protests within a certain distance of important sites, such as national parliaments or seats of government.

25. **Mr. Furuya**, supported by **Mr. Santos Pais**, said that “in principle” had been inserted during the first reading of the text because of the existence of article 20, which provided for exceptions to the principle of content neutrality, inasmuch as it prohibited propaganda for war and incitement to discrimination.

26. **Ms. Sancin**, supported by **Mr. Muhumuza** and **Mr. Santos Pais**, proposed, via the online chat function, that the words “able to conduct assemblies” in the third sentence should be replaced with “allowed to conduct assemblies”.

27. **The Chair** said that the words “in principle” could be replaced by another turn of phrase in order to avoid the problems posed in the Spanish translation. Speaking as a member of the Committee, he said that the phrase “as far as possible” in the third sentence was perhaps insufficient. The Committee had received a number of complaints about Governments that limited the venues for peaceful assemblies on grounds such as concern about traffic disruptions. It might be preferable to use “in the absence of other compelling reasons”.

28. **Mr. Heyns** said that “importantly” could be removed. However, as indicated by Mr. Zyberi and Mr. Furuya, the use of “in principle” was intentional and addressed certain situations where exceptions to content neutrality should be allowed. Another paragraph in the draft general comment stated that assemblies with a political message should enjoy a higher level of protection; there too, content played a role. The words “in principle” should therefore be retained. The word “also” could conceivably be removed, as it followed the word “and”, but it served to strengthen the point that the identity of participants should not be taken into account. While he agreed with Ms. Sancin’s concern about the use of “able to conduct”, replacing it with “allowed to conduct” would reduce the meaning to a negative obligation on the State. He proposed using “enabled to conduct” or finding alternative wording that conveyed the idea of the creation of an enabling environment for peaceful assemblies.

29. **The Chair** said that he noted from the online chat discussion that, among the members of the Committee who worked in languages other than English, there was support for using “in general” instead of “in principle”, and for maintaining the word “also”. Speaking as a member of the Committee, he said that if the words “enabled to conduct” were used, he would withdraw his proposal to replace “as far as possible” with stronger wording.

30. **Mr. Heyns** said that “in principle” should be retained in the English version of the paragraph, as it set a normative standard, unlike “in general”, which was merely descriptive. However, it might be possible to find more appropriate renditions in the other languages.

31. *Paragraph 25, as amended, was adopted.*

Paragraph 26

32. **Mr. Heyns** said that paragraph 26 introduced the idea that States had both positive and negative duties and enumerated the negative obligations, specifying for instance that there should be no unwarranted interference in peaceful assemblies. The Office for Democratic Institutions and Human Rights had proposed that the wording should be changed to cover not only participants, but also organizers. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights had suggested adding the idea that States must not dissolve or disperse assemblies without compelling justification. Amnesty International had expressed concern that the references to compelling justification and legitimate cause did not adequately summarize the tests of legality, legitimate aim, necessity and proportionality; it was inevitable, however, that some paragraphs of the draft contained general statements that were fleshed out in subsequent paragraphs.

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

The obligation to respect and ensure peaceful assemblies imposes essentially negative as well as positive duties on States. They have the negative duty of *no unwarranted interference* with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, and not to sanction participants or organizers without legitimate cause.

34. **The Chair** said that, using the online chat function, Mr. Zyberi had raised the question of what constituted unwarranted interference and Ms. Sancin had called for the second sentence to specify that the negative duty entailed no unwarranted interference with peaceful assemblies, rather than affirming that States had such a duty.

35. **Mr. Ben Achour** said that the fact that the Committee was working exclusively on the English version would likely pose some problems when it came to the translation of the text. The Committee should bear in mind the need to ensure that the translations would be of the highest quality.

36. **The Chair** invited the secretariat to explain the procedure for the translation of general comments.

37. **Ms. Habtom** (Secretary of the Committee) said that, once the text had been adopted, it would be submitted for editing, which would be done in consultation with the secretariat and the Rapporteur. The edited text would then be submitted for translation into the remaining languages. Colleagues in the translation services regularly referred questions to the Rapporteur, via the secretariat, in order to clarify any issues.

38. **The Chair** said that, as he recalled, during the translation process for a previously adopted general comment, the draft translations had been shared on an informal basis with Committee members whose main languages were the corresponding working languages. It was indeed important to ensure that the translations of the final version were of the highest quality.

39. **Mr. Muhumuza** said that the wording of the second sentence, which included three negations, could be made clearer. In the context, it would be possible to remove the word “negative” without changing the meaning.

40. **The Chair** said that it might be advisable to refer, in the third sentence, to the grounds on which restrictions could be imposed, as set out in article 21.

41. **Mr. Heyns** said that he was conscious of the need to ensure the highest quality of translation in the final version. He was aware, for instance, that substantive and problematic differences had emerged between the English and Spanish versions of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. For the final version of the general comment, he intended to circulate to the French- and Spanish-speaking members of the Committee a list of phrases that were key to the text and to request them to specify how, in their view, those phrases should be translated.

42. The wording proposed by Ms. Sancin would not change the meaning of the paragraph but it would shift the emphasis away from the duty bearer. He would prefer to retain the word “negative” before “duty” in the second sentence, because the distinction between negative and positive duties was important and worth explaining. The negative constructions in the paragraph were inevitable, since the idea to be conveyed was that States could avoid problems simply by not interfering and by not taking action. Noting that the grounds on which restrictions could be imposed were mentioned in paragraph 24 and in many other places in the text, he said that he would be reluctant to refer to those grounds too often for fear of placing restrictions at the forefront of the discussion at all times.

43. **The Chair** suggested that the Rapporteur should prepare a revised version of the paragraph, taking into account the Committee members’ comments and proposals, for consideration at the next meeting.

44. *It was so decided.*

Paragraph 27

45. **Mr. Heyns** said that paragraph 27 established that States parties had a positive duty to facilitate peaceful assemblies and to protect assembly participants. A number of stakeholders had stated that they were in favour of keeping the reference to private security providers that had been placed in square brackets in the draft as provisionally adopted on first reading. According to the Office for Democratic Institutions and Human Rights, the reference to the identification of an alternative site in the penultimate sentence was out of place, since the relocation of an assembly constituted a restriction and should therefore be dealt with in the section on restrictions. Markus Schefer, a member of the Committee on the Rights of Persons with Disabilities, had pointed out that some protective measures, such as the use of tear gas against violent counterdemonstrators, could have serious side effects on persons with psychosocial or intellectual disabilities; however, it seemed more appropriate to address that concern in the paragraphs on the use of force by law enforcement officials.

46. The University of East Anglia and the Centre of Governance and Human Rights had proposed drawing attention to the fact that facilitating an assembly included addressing discriminatory barriers to participation arising from the nature of the space in which the assembly was being held. Amnesty International had proposed clarifying that the State’s duty to protect participants was applicable before, during and after the assembly. Article 19: International Centre against Censorship had noted that the reference to “legitimate objectives” in the first sentence could cause confusion regarding the scope of the right of peaceful assembly; he agreed that the word “legitimate” should be left out, since it could be misused by States.

47. Among the other comments received from stakeholders, there was a proposal from Maina Kiai, the former Special Rapporteur on the rights to freedom of peaceful assembly and of association, regarding the need for States to ensure the ability of assembly organizers to receive funding for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means. Since the issue of funding for assembly organizers was a controversial one that raised many questions, he had not drafted any new wording based on Maina Kiai’s proposal, but he was open to discussing the matter if the Committee felt strongly about it.

48. Based on the comments received from stakeholders, he proposed amending paragraph 27 to read:

States parties moreover have the positive duty to *facilitate* peaceful assemblies, and to make it possible for participants to achieve their objectives. States must thus

promote an enabling environment for the exercise of the right of peaceful assembly and put into place a legal and institutional framework within which the right can be exercised effectively. In some cases, specific intervention may be required on the part of the authorities, before, during or after the assembly. For example, they may need to block off streets, redirect traffic, or provide security. It can also include addressing discriminatory barriers to participation arising from the character of the space, whether physical or otherwise. Where needed, States must also *protect* participants against possible abuses by non-State actors, such as interference or violence by other members of the public, counter-demonstrators and private security providers.

49. **Mr. Ben Achour** said that he was not convinced that States parties had a positive obligation to facilitate peaceful assemblies. In his view, the actions that were described in paragraph 27, such as the redirection of traffic and the removal of discriminatory barriers, fell into the category of negative obligations.

50. **The Chair** said that although he would prefer not to make radical changes to wording that had been adopted on first reading and had not been challenged by any of the stakeholders, if other members of the Committee agreed with Mr. Ben Achour, the paragraph might need to be amended.

51. **Ms. Kran** said that, to her mind, any obligations that required States to take action were positive obligations. She supported the proposal to retain the reference to private security providers in the final sentence, particularly in the light of the consultations with non-governmental organizations on the draft general comment that she had attended in Mexico the previous year. During those consultations, various stakeholders had reported that violence committed by private security officers against participants in assemblies was a serious problem in their region.

52. **Mr. Zyberi** proposed, via the online chat function, that the word “positive” could be removed from the first sentence, in order to address Mr. Ben Achour’s concern.

53. **Ms. Tigroudja** said that she saw no need to remove the word “positive”, since the notion that States had certain positive obligations in the context of assemblies was well established in international law. For example, the judgment of the European Court of Human Rights in the case of *Plattform “Ärzte für das Leben” v. Austria*, which was mentioned in one of the footnotes to the paragraph, illustrated that States had a positive obligation to protect participants from violence committed by counterdemonstrators.

54. **Mr. Fathalla** said that he would not object to removing the word “positive”, since the duty to facilitate peaceful assemblies was, by definition, a positive duty. However, he did not agree with the Rapporteur’s proposal to omit the word “legitimate” from the first sentence, because States had a duty to facilitate assemblies only when there was a legitimate objective.

55. **Mr. Santos Pais** said that he supported the proposal to retain the reference to private security providers in the final sentence, for the reasons given by Ms. Kran. He would prefer to keep the word “positive” in the first sentence, for it was important to emphasize to States that they had a duty to facilitate assemblies; moreover, the positive duties described in paragraph 27 were the counterpart to the negative duties mentioned in paragraph 26. He supported the proposal to omit the word “legitimate” from the first sentence, since the main idea to be conveyed was that States should make it possible for participants to pursue their objectives, unless there were compelling reasons for not doing so.

56. **Mr. Ben Achour** said that his objection concerned the word “facilitate” rather than the word “positive”. In his view, the obligation described in the case of *Plattform “Ärzte für das Leben” v. Austria* was a duty to protect the participants rather than to facilitate the assembly.

57. **The Chair**, pointing out that the Committee had chosen to use the verb “facilitate” after a lengthy discussion during the first reading, said that according to the doctrine of the Committee on Economic, Social and Cultural Rights, facilitation was just one aspect of States’ positive duties, alongside other aspects such as protection and fulfilment.

58. **Mr. Zyberi** said that, generally speaking, the words “positive” and “negative” were open to subjective interpretation and could therefore cause confusion. Similarly, the word

“legitimate” in the first sentence of paragraph 27 was problematic because an objective that was considered legitimate by one person or group might be considered illegitimate by another; he was therefore in favour of removing the word “legitimate”, as proposed by the Rapporteur.

59. **The Chair**, speaking as a member of the Committee, said that the words “the positive duty” in the first sentence could be replaced with “certain positive duties”, in order to address some of the concerns that had been raised. He suggested that the Rapporteur should prepare a revised version of paragraph 27, taking into account the Committee members’ comments and proposals, for consideration at the next meeting.

60. *It was so decided.*

The meeting rose at 6.05 p.m.