



# International Covenant on Civil and Political Rights

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## Human Rights Committee 129th session

### Summary record of the 3710th meeting

Held via videoconference on Tuesday, 30 June 2020, at 4 p.m. Central European Time

*Chair:* Ms. Pazartzis (Vice-Chair)

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*Ms. Pazartzis (Vice-Chair) took the Chair.*

*The meeting was called to order at 4.05 p.m.*

**Organizational and other matters, including the adoption of the report of the Working Group on Communications** (*continued*)

*Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly) (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 revised draft of the general comment as provisionally adopted by the Committee on first reading at its 127th session was available on the website of the Office of the High Commissioner for Human Rights (<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>). At its 128th session, the Committee had adopted paragraphs 1 to 6 of the draft general comment, on second reading, and had begun to discuss paragraph 7. The latest version of the paragraphs to be considered at the current meeting had been distributed to members and would be displayed on screen during the meeting.

2. **Mr. Heyns** (Rapporteur for the general comment) said that he was grateful to the many stakeholders that had submitted comments and suggestions since the conclusion of the Committee's first reading of the draft general comment. A summary of those submissions had been distributed to members, and he would highlight points relating to specific paragraphs as and when they became relevant to the discussion. The main purpose of the second reading was to reflect on the draft in the light of those submissions.

3. Recalling that the Office of the United Nations High Commissioner for Human Rights had recently released two documents on related topics, namely a report on the impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests ([A/HRC/44/24](#)), and the final version of its Guidance on less-lethal weapons in law enforcement, he said that both documents would serve as important points of reference for the Committee's discussion.

4. He wished to recall two significant amendments that the Committee had decided to make to paragraphs 1 to 6 of the draft at the previous session. First, the scope of the right of peaceful assembly as described in paragraph 4 had been broadened to include protection for non-violent gathering "for specific purposes, principally expressive ones". Second, it had been specified in paragraph 6 that peaceful assemblies were protected wherever they took place, "outdoors, indoors and online; in public and private spaces; or a combination thereof".

5. Some stakeholders had suggested that such issues as the imposition of restrictions on the right of peaceful assembly should be addressed in the first couple of paragraphs of the general comment. However, in his view, the purpose of those paragraphs was to introduce the topic, and such issues as the imposition of restrictions were dealt with comprehensively in subsequent sections.

6. The current draft was over 11,000 words long, but the Committee should bear in mind that the final text should respect the established word limit of 10,700 words.

7. He proposed that the Committee should briefly return to paragraphs 1 and 2 – which had been adopted with amendments at the previous session and to which he had made two further small amendments – before it resumed its second reading paragraph by paragraph, beginning with paragraph 7.

*Paragraph 1*

8. **Mr. Heyns** said that, at the previous session, the Committee had decided to replace the vague expression "other rights related to political freedom" with the words "other related civil and political rights". However, as some stakeholders had expressed the view that a focus on civil and political rights could be interpreted as excluding socioeconomic rights, he proposed that the words "other related rights" should be used instead.

9. **The Chair** said she took it that the Committee agreed with the Rapporteur's proposal.

10. *It was so decided.*

*Paragraph 2*

11. **Mr. Heyns** said that, at the previous session, the Committee had decided to add the word “often” to the last sentence in order to temper the general statement that a failure to respect and ensure the right of peaceful assembly was a marker of repression. However, as the use of the word “often” risked creating the impression that a failure to respect and ensure that right was in many cases not a marker of repression, he proposed that the word “typically” should be used instead.

12. **The Chair** said she took it that the Committee agreed with the Rapporteur’s proposal.

13. *It was so decided.*

*Paragraph 7*

14. **Mr. Heyns** said that, at the previous session, the Committee had begun to discuss paragraph 7, which addressed the disruption that peaceful assemblies could cause. In accordance with the proposals made by members during that discussion, he had prepared a revised text, which currently read:

In many cases, peaceful assemblies do not pursue controversial ideas or goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies can sometimes be used to pursue ideas or goals that are contentious. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that these events may create risks, such risks have to be managed within the framework of article 21.

With regard to the last sentence, Mr. Shany had submitted a proposal to replace the words “create risks, such risks” with “create disruptions or risks, these”.

15. **Mr. Zimmermann** said that it was unclear what was meant by the word “disruptions” in the wording proposed by Mr. Shany.

16. **Mr. Heyns** said that the word “disruptions” referred to the effects that peaceful assemblies might have on, inter alia, vehicular or pedestrian movement or economic activity.

17. **Mr. Zimmermann**, supported by **Ms. Kran** and **the Chair**, proposed that, for greater clarity, the word “such” should be inserted before the word “disruptions” in the last sentence, as amended by Mr. Shany.

18. **Ms. Sancin** said that she proposed that, in the fourth sentence, the words “scale or nature” should be replaced with “scale, nature or location”, as the location of an assembly could also be a cause of disruption. She supported Mr. Shany’s proposal.

19. **Mr. Ben Achour**, supported by **Ms. Tigroudja**, said that the reference to “the framework of article 21” in the last sentence was redundant, as the applicability of that article was self-evident in the context of a general comment on the right of peaceful assembly. He preferred the previous wording, namely the more general expression “a human rights framework”.

20. **Ms. Kran** said that she endorsed the manner in which paragraph 7 had been reworked and supported Mr. Shany’s proposal. With regard to the fourth sentence, she agreed with Ms. Sancin that the location of an assembly could also be a cause of disruption, but the Committee might wish to reflect further on the potential implications of her specific proposal.

21. With regard to the last sentence, while she understood the attraction of the previous wording, for which Mr. Ben Achour had expressed a preference, it would be more accurate to include a specific reference to article 21 of the Covenant, which was the focus of the general comment.

22. **Ms. Tigroudja** said that she agreed with Mr. Ben Achour's proposal to revert to the expression "a human rights framework" in the last sentence. In her view, the Committee was seeking to convey the message that, even if a peaceful assembly created risks, human rights would continue to apply.

23. **Mr. Santos Pais**, supported by **Mr. Zimmermann**, said that a specific reference to article 21 of the Covenant was preferable to a more general reference to "a human rights framework".

24. **The Chair**, speaking as a member of the Committee, said that she too would prefer to retain the specific reference to article 21 of the Covenant in the last sentence, as that article was the tool for addressing any risks created by peaceful assemblies. She suggested that, in the same sentence, the word "managed" could be replaced with "addressed".

25. Lastly, she too urged caution regarding Ms. Sancin's proposal to include a reference to location in the fourth sentence, as it could be misconstrued. Her preference would be to retain the words "scale or nature".

26. **Mr. Heyns** said that, in his opinion, the reference to the scale and nature of the assemblies conceptually also included the locations where such assemblies took place. The proposal to insert "such disruptions or risks" was acceptable. As for whether the text should refer to the "human rights framework" or to "the framework of article 21", he considered that either formulation could be used, the former being a broader concept. Police intervention was generally covered more directly by other articles of the Covenant, including article 6.

27. **The Chair** proposed that the last sentence should instead refer to "the framework of the Covenant".

28. *It was so decided.*

29. **The Chair** said that she took it that the Committee accepted Mr. Shany's proposal to add "disruptions" and Mr. Zimmermann's proposal to place the word "such" before "disruptions or risks" in the last sentence.

30. *Paragraph 7, as amended, was adopted.*

#### *Paragraph 8*

31. **Mr. Heyns** said that the submissions received from Mexico, Spain, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and three civil society organizations had pointed to the need for more detailed descriptions of the conditions under which restrictions could be imposed. However, it would be difficult to include such descriptions in an introductory paragraph that gave general information. Such questions were addressed in greater detail later in the text, in section 4. On the other hand, the Equal Rights Trust had rightly pointed to the need to emphasize that restrictions must be non-discriminatory, a point that was further developed in paragraph 28 but was general enough to be easily included in an introductory paragraph. In his latest drafting suggestions, he had proposed adding the words "without discrimination" at the end of the first sentence; however, in line with a suggestion by Mr. Shany, the words "and apply on a non-discriminatory basis" could instead be inserted at the end of the penultimate sentence. NGO Monitor had proposed that the introductory paragraphs should make cross-references to later sections of the text, but he felt that, in general, that would be a break from the Committee's previous practice for general comments and could possibly set a bad precedent that would make introductions to such documents more difficult to read.

32. He proposed that the phrase "whenever it is needed" in the second sentence could be deleted, as it added nothing of substance. The rest of the second sentence corresponded with the wording used in the Covenant or later in the draft. In the third sentence, he proposed adding the clause "in that the second sentence of article 21 provides potential grounds for restriction", after "The right of peaceful assembly is not absolute", in order to make the text more specific and better grounded in article 21 of the Covenant. The addition of that clause would also require the insertion of the word "such" before "restrictions", later in the same sentence.

33. **Mr. Zimmermann**, supported by **Ms. Sancin**, **Ms. Tigroudja** and **Mr. Santos Pais**, said that it would be better to leave the words "without discrimination" in the first

sentence, where they would refer to the need to both respect and ensure the right of peaceful assembly.

34. **Mr. Bulkan** said that the word “unwarranted” in the second sentence could potentially be interpreted too broadly and seen to extend beyond the standard test of justification. It might be preferable instead to use the language and approach of the Covenant by stating that any restrictions must be justified. While the phrase “restrictions must be narrowly drawn”, in the third sentence, appeared in the jurisprudence of some countries, it would be best in the Committee’s general comment to refer to the Committee’s own specific standard, which was the requirement that restrictions should be necessary and proportionate.

35. **Mr. Furuya** said that the last sentence, “There are ... limitations on the limitations that may be imposed”, could be misleading and should be removed. He supported the idea of providing more specific information on restrictions, by using the language commonly cited by the Committee.

36. **Ms. Sancin**, supported by **Mr. Santos Pais** and **Mr. Zimmermann**, said that if the last sentence remained, the second “limitations” should be replaced with “restrictions”.

37. **Mr. Heynes** said that the Committee had previously reached consensus on a number of points, including the use of the term “unwarranted interference” to describe the negative obligation of States parties, while their positive obligation had been described with the words “to facilitate and protect”. He would thus prefer to retain the phrase “unwarranted interference” in the second sentence, among other reasons because that wording appeared later in the text. It might be recalled that the Committee had decided to use the terms “respect and ensure” in the first sentence precisely to cover the negative and positive obligations in question. He would be happy to keep the words “without discrimination” in the first sentence. The technical term “narrowly drawn”, which was in use in some domestic jurisdictions, implied that there was a certain threshold to the possibility of restrictions on the right of peaceful assembly. It was important not to limit the concept to just the two criteria of necessity and proportionality, since other criteria, such as precaution, non-discrimination and legality, were applicable as well. He accepted the replacement of the word “limitations” with “restrictions” in the second part of the last sentence.

38. **The Chair** said it was her understanding that “without discrimination” would remain in the first sentence, that the phrases “unwarranted interference” and “narrowly drawn” would be retained and that the second use of the word “limitations” in the last sentence would be replaced with “restrictions”.

#### *Paragraphs 9 and 10*

39. **Mr. Heyns** said that he proposed combining paragraphs 9 and 10 to form a single paragraph about the interaction between the right of peaceful assembly and other rights. The same subject would be dealt with in more detail in section 8 of the draft general comment. Remarks from stakeholders on paragraph 9 included a proposal from the Council of Europe Expert Council on NGO Law to replace “but also rights such as freedom of association” with “and also rights such as freedom of association”, in order to avoid any implication that some rights were more important than others, and a proposal from Amnesty International to include a reference to economic, social and cultural rights.

40. With regard to paragraph 10, a number of stakeholders had raised concerns about the implication that the violent behaviour of a few individuals could easily lead to an entire assembly being considered violent. He agreed that the wording could give rise to abuses by State authorities and should be amended to focus on the conduct of individuals. The International Center on Nonviolent Conflict had proposed referring to the need for non-violent discipline among participants in an assembly. However, he did not agree with that proposal, as it implied that such discipline was a precondition for the exercise of the right of peaceful assembly.

41. Based on the comments received from stakeholders, he had amended and combined paragraphs 9 and 10 to read:

The full protection of the right of peaceful assembly is possible only when other, often overlapping, rights are also protected, notably freedom of expression, and rights such as freedom of association and political participation. Protection of the

right of peaceful assembly is also dependent on the realization of a broader range of rights, such as non-discrimination, movement, privacy, religion, freedom from cruel, inhuman or degrading treatment and from arbitrary detention, and the right to life, as well as economic, social and cultural rights. Where individuals' conduct places them outside the scope of the protection of article 21, for example because they are behaving violently, they retain their other rights, including those listed above, subject to the applicable restrictions.

In addition, Mr. Shany had proposed replacing "detention" with "arrest or detention" in the second sentence and inserting "under the Covenant" after "rights" in the final sentence.

42. **Mr. Santos Pais** said that he was happy with the proposed wording.

43. **Mr. Furuya** said that he would prefer to omit the reference to economic, social and cultural rights because such rights were not closely linked to the right of peaceful assembly and were not relevant in a scenario where participants in an assembly behaved violently.

44. **Ms. Kran** said that, on the contrary, it was important to mention economic, social and cultural rights because many peaceful assemblies were held in response to violations of precisely those rights. She proposed mentioning the rights of indigenous peoples as well.

45. **Mr. Zyberi** said that he proposed inserting "equality and" before "non-discrimination" and replacing "freedom from cruel, inhuman or degrading treatment" with "the prohibition of torture" in the second sentence. He was in favour of keeping the reference to economic, social and cultural rights because he could imagine situations in which a person's ability to exercise those rights had a direct impact on his or her ability to exercise the right of peaceful assembly. For example, individuals might be unable to participate in an assembly because they could not afford to pay for transport to the place where the assembly was being held.

46. **Ms. Sancin** said that she too was in favour of keeping the reference to economic, social and cultural rights. She proposed replacing "protected" with "respected and ensured" in the first sentence. Since the words "limitations" and "restrictions" both appeared in the Covenant in connection with different sets of rights, she proposed amending the last part of the final sentence to read: "they retain their above-mentioned rights, subject to the applicable limitations or restrictions".

47. **The Chair**, speaking as a member of the Committee, said that she agreed with the points made by Mr. Furuya. It seemed unnecessary to refer to economic, social and cultural rights or to the rights of specific groups, such as indigenous peoples, especially as the broader human rights context was dealt with in the final section of the draft general comment.

48. **Mr. Heyns** said that, since the general reference to "other, often overlapping, rights" in the first sentence could be considered to include economic, social and cultural rights, he would be willing to remove the specific reference to those rights from the second sentence. He accepted the proposal to replace "protected" with "respected and ensured" in the first sentence, although it was not uncommon for the verb "protect" to be used as shorthand for "respect and ensure" in the human rights context. He did not agree with Ms. Sancin's proposal to refer to "their above-mentioned rights" in the final sentence, because it was important to convey that the individuals in question retained all their other rights, not just those listed in the earlier part of the paragraph; however, he had no objection to referring to both limitations and restrictions at the end of the sentence.

49. Although the rights of indigenous peoples were important and should be mentioned elsewhere in the text, he did not wish to single out specific groups in the paragraph under discussion, since the rights of many different groups could be considered relevant. Regarding Mr. Zyberi's proposal to replace "freedom from cruel, inhuman or degrading treatment" with "the prohibition of torture" in the second sentence, he would prefer to keep the original language because it covered both torture and less serious forms of abuse.

50. **The Chair** said that if the Rapporteur decided to keep the specific reference to economic, social and cultural rights in the second sentence, the words "including those listed above" could be removed from the final sentence in order to address the point raised by Mr. Furuya.

51. **Ms. Kran** said that she strongly believed that the Committee ought to recognize that a person's ability to exercise the right of peaceful assembly was directly affected by his or her ability to exercise economic, social and cultural rights. For example, poor nutrition could mean that a person was not strong enough to travel to an assembly, and the digital divide, which had been exacerbated by the coronavirus disease (COVID-19) pandemic, meant that some people did not have access to information about assemblies that were taking place. She did not agree that there was only a remote link between economic, social and cultural rights and the right of peaceful assembly; on the contrary, for a growing number of people around the world, there was a very close connection between the two.

52. **Mr. Quezada Cabrera** said that, while he agreed with the proposal to include a reference to economic, social and cultural rights, it was problematic to say that the protection of the right of peaceful assembly was wholly dependent on the realization of a range of other rights, including economic, social and cultural rights, for that assertion implied that, in countries where certain economic, social and cultural rights were not respected, the right of peaceful assembly was never effectively protected. He therefore proposed reinserting the words "*en muchos casos*" [in many cases] before "*depende también*" [also dependent] in the second sentence.

53. **Mr. Furuya** said that if economic, social and cultural rights were to be mentioned in the second sentence, he would like the third sentence to be amended in order to avoid stating that assembly participants who behaved violently retained those rights specifically.

54. **Ms. Tigroudja**, supported by **the Chair**, said that the various points of view that had been expressed could be reconciled by amending the third sentence.

55. **Mr. Heyns** said that the matter could be resolved by inserting "under the Covenant" after "rights" in the third sentence.

56. **The Chair** suggested that the Rapporteur should prepare a revised version of paragraphs 8 to 10, taking into account the Committee members' comments and proposals, for consideration at the next meeting.

57. *It was so decided.*

*The meeting rose at 6 p.m.*