United Nations CCPR/C/SR.3711

International Covenant on Civil and Political Rights

Distr.: General
8 July 2020

Original: English

Human Rights Committee
129th session

Summary record of the 3711th meeting
Held via videoconference on Wednesday, 1 July 2020, at 4 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*)

GE.20-08843 (E) 070720 080720

2008843

The meeting was called to order at 4.10 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 had been distributed to members and would be displayed on screen.

2. **Mr. Heyns** (Rapporteur for the general comment) said that the Committee members had also received the latest version of paragraphs 7 to 9 the previous evening and he proposed that the Committee should discuss the points in those paragraphs on which it had yet to reach agreement before continuing its second reading of the rest of the draft general comment.

Paragraph 8 (*continued*)

3. **Mr**. **Heyns** said that he proposed to change the wording of the last sentence from "limitations on the limitations that may be imposed" to "restrictions on the restrictions that may be imposed". It was important to emphasize that States did not have carte blanche when imposing restrictions on the right of peaceful assembly.

4. **Ms. Pazartszis** said that she found it unadvisable to use the same word twice and was concerned that such a construction might cause problems in some of the other language versions. She proposed either using different words or deleting the sentence entirely.

5. **Mr. Santos Pais** said that the sentence should remain, as it gave more weight to the idea that States did not have unlimited leeway in applying restrictions.

6. **Mr. Heyns** said that, to avoid the repetition, the text could read, "There are in effect limits on the restrictions that may be imposed".

7. *Paragraph 8, as amended, was adopted.*

Paragraphs 9 and 10 (*continued*)

8. **The Chair** recalled that paragraph 10 had been combined with paragraph 9.

9. **Mr. Shany**, noting that the second sentence of the version discussed at the previous meeting ended with a reference to economic, social and cultural rights, said that it would be advisable for the sake of balance to insert the words "of civil and political rights" after "broader range".

10. **Mr. Muhumuza** said that, in the last sentence, the phrase "they retain their other rights under the Covenant" could be changed to read "do not necessarily lose their other rights under the Covenant".

11. **Ms. Tigroudja**, supported by **Ms. Kran** and **the Chair**, said that the use of a negative formula would be likely to introduce uncertainty among some readers. She preferred the original wording.

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

Paragraph 11

13. **Mr. Heyns** said that paragraph 11 set out the present-day conditions that the general comment sought to address. Two submissions, from Israel and Access Now, had drawn attention to the need to mention the chilling effect of surveillance technologies. Spain had commented on the issue of drones and artificial intelligence, a point that, in his opinion, could be raised later in the document. Switzerland had suggested that the phrase about privatization of public space needed more justification, while the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe had pointed out that the private ownership of online space should also be noted. A submission from Jamie Grace, Senior Lecturer in Law at Sheffield Hallam University, United Kingdom, had mentioned the need to refer to biases found in modern technologies, a point that might not be

suitable for inclusion in paragraph 11 but could be usefully inserted in paragraph 71. The European Center for Not-For-Profit Law had raised the question of how to deal with restricted access to assemblies in privately owned spaces. The Association for Progressive Communications had rightly pointed out that online assemblies served to facilitate participation by marginalized groups such as persons with disabilities. While that point was not particularly relevant to paragraph 11, it could be inserted later in the document. The International Center for Not-For-Profit Law had proposed the deletion of the word "public" in the first sentence of the paragraph.

14. Based on the submissions received, he had amended the revised draft, as provisionally adopted on first reading, to read:

> The way in which assemblies are conducted changes over time, and the same applies to their context. This may in turn affect the way in which the right of peaceful assembly is to be approached by the authorities. For example, emerging communication technologies offer the opportunity to assemble either wholly or partly online and often play an integral role in organizing, participating in and monitoring physical gatherings, which means that interference with such communications can impede assemblies. Surveillance technologies are used to detect threats of violence and thus to protect the public in the context of assemblies, but they can infringe on the right to be free from arbitrary interference with privacy and other rights of participants and bystanders and have a chilling effect. A range of less-lethal weapons, as well as remote-controlled weapons systems, have become available for use during the policing of assemblies, which can restrain or increase the force that is employed during assemblies. Moreover there is increased private ownership and other control of public spaces and communications platforms. Considerations such as these need to inform a contemporary understanding of the legal framework required to give full effect to article 21.

In particular, he had deleted the word "public" from the first sentence and, in the second sentence, he had inserted "of peaceful assembly" to add clarity. The third sentence gave examples of how the context in which assemblies were conducted had changed over time. He had revised the fourth paragraph to take account of the comments by Israel and Access Now. The inclusion in the sixth sentence of references to "other control" and "communications platforms" was intended to address the complexity of questions regarding ownership of information on the Internet. It was particularly important to flag the issues of the shift from public to private spaces and the private control of communications.

15. **Mr. Bulkan**, noting that in the original revised draft the fourth sentence had included the phrase "can be used" instead of "are used", said that "can be" did not denote permissiveness, but capacity. Throughout the rest of the text, when the Committee wished to express permissiveness, "may" was used in the text. If the final text read "are used", he feared that it might be construed as meaning that the Committee considered that surveillance technologies were used only for innocuous purposes, which was not the case. In order to ensure consistency and clarity, the text should retain the original wording. On another point, he questioned whether the paragraph should itemize instances of the use of surveillance. The point might be better expressed in more general terms. He would like to hear the views of other members on that question.

16. **Mr. Ben Achour** said that the word "public" should be reinserted before "assemblies" in the first sentence because all gatherings covered by the right of peaceful assembly were, by definition, public. Even if the Committee decided to omit "public" from the English version of the text, the word "*publiques*" would need to be retained in the French version because the sentence would not make sense without it.

17. **Mr. Shany** said that he supported Mr. Bulkan's proposal to revert to "can be used" instead of "are used" in the fourth sentence. He did not agree that it was necessary to reinsert the word "public" in the first sentence, especially as the Committee had not fully resolved the question of whether the right of peaceful assembly covered assemblies held in private spaces.

18. **The Chair** proposed referring to "peaceful assemblies" in the first sentence, in line with the language of the Covenant.

19. **Mr. Heyns** said that, up to that point, the Committee had adopted the approach that assemblies held indoors and on private property were covered by the right of peaceful assembly. It therefore made sense to omit the word "public" from the first sentence. He suggested that Mr. Ben Achour could liaise with the secretariat about the French translation of that sentence.

20. **Mr. Zyberi** proposed amending the beginning of the fourth sentence to read "While surveillance technologies can be used to detect threats of violence … they can infringe", in order to bring out the contrast between the good and bad ways in which surveillance technologies could be used.

21. **Mr. Heyns** said that he accepted the proposals made by Mr. Bulkan and Mr. Zyberi regarding the fourth sentence.

22. **Mr. Bulkan** noted that he had also proposed simplifying the structure of the paragraph.

23. **Ms. Sancin** proposed inserting "and private" after the word "public" in the penultimate sentence, since there was increased control of not only public but also private spaces and communications platforms.

24. **Mr. Heyns** said that he would prefer to keep the overall structure of the text as provisionally adopted on first reading for two reasons: firstly, reopening the discussion on such matters would delay the adoption process; and secondly, making drastic changes to the text would detract from the public consultations that had been conducted. He accepted Mr. Shany's proposal, made via the online chat function, to replace "other control" with "other forms of control" in the penultimate sentence. It would be helpful if Ms. Sancin could clarify her proposal.

25. **Ms. Sancin** said that she had understood the penultimate sentence to be referring to, firstly, private ownership of spaces that would otherwise be public and communications platforms, and secondly, other forms of control of public and private spaces and communications platforms.

26. **Mr. Santos Pais** said that it was awkward to refer to private ownership of private spaces as proposed by Ms. Sancin. It was also important to think carefully about the wording used to refer to spaces that were privately owned but nonetheless accessible to the public.

27. **Mr. Shany** said that although Ms. Sancin's proposal was accurate, it made the sentence too complicated. He proposed replacing "public spaces" with "publicly accessible spaces", in order to resolve some of the issues raised.

28. **Mr. Heyns** said that he accepted Mr. Shany's proposal.

29. **Mr. Ben Achour** said that it would make sense for the second part of the paragraph to be a separate paragraph altogether, since it dealt with a new topic, namely the use of less-lethal weapons. He proposed starting a new paragraph after the words "chilling effect".

30. **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 a later meeting.

31. *It was so decided.*

Paragraph 12

32. **Mr. Heyns** said that paragraph 12 marked the beginning of section 2, which dealt with the scope of the right of peaceful assembly. According to Amnesty International, the paragraph was confusingly worded and should be restructured; he would welcome the Committee's views on the matter, bearing in mind that no other stakeholders had raised any such concern. Article 19: International Centre against Censorship had cautioned against using the word "participation" in paragraph 12; however, he believed that the meaning of the paragraph was clear, provided that it was read together with the subsequent paragraph, which defined the concept of participation. Taking into account the comments submitted by stakeholders, he proposed amending paragraph 12 to read:

> Establishing whether someone's right of peaceful assembly is protected by article 21, as is the case with other rights, entails a two-stage process. It must first be established

whether the conduct of the person in question falls within the *scope* of the protection offered by the right, in that it amounts to participation in a "peaceful assembly" (as described in this section). If so, the State has the obligation to "respect and ensure" the rights of the participants (as described in section 3). Secondly, it must be established whether or not legitimate *restrictions* apply to the exercise of the right in that context (as described in section 4).

33. **Mr. Furuya** said that it would be better to avoid using the verb "establish", since – from a legal perspective, at least – that verb was associated with the burden of proof. The current wording implied that persons participating in an assembly had to establish whether or not their conduct fell within the scope of the protection offered by article 21.

34. **The Chair** said that Mr. Zyberi had used the online chat function to propose omitting the word "establishing" from the beginning of the first sentence.

35. **Mr. Heyns**, supported by **Ms. Kran**, said that he was wary of making significant changes to wording that had been adopted on first reading and had not been challenged by any of the stakeholders. In his view, the paragraph did not imply that the burden of proof lay with a particular party.

36. **Mr. Muhumuza** proposed, via the online chat function, that the verb "establish" could be replaced with "determine" throughout the paragraph, in order to address Mr. Furuya's concern.

37. **Mr. Shany** proposed inserting "or not" after the word "whether" in the first and second sentences, as a further measure to avoid implying that the burden of proof lay with a particular party.

38. **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 a later meeting.

39. *It was so decided.*

Paragraphs 13 and 14

40. **Mr. Heyns** said that, in their submissions, a number of stakeholders had made comments on paragraphs 13 and 14 as provisionally adopted on first reading. Those paragraphs addressed the question of what constituted a peaceful assembly within the meaning of article 21 of the Covenant. With regard to paragraph 13, many stakeholders were in favour of deleting the reference to "publicly or privately owned property".

41. Several of the points raised by stakeholders concerned issues that had already been addressed in the section of the draft on restrictions. Kyrgyzstan had noted that, under its national law, assemblies were not permitted within the vicinity of certain facilities, for example power plants, and the United Kingdom had emphasized that assemblies held on privately owned property would require the landowner's permission. According to the Office for Democratic Institutions and Human Rights, the nature of a State's obligation to facilitate and regulate an assembly would vary in accordance with whether the assembly was held on publicly or privately owned property.

42. Germany had noted that the wording of the reference to privately owned property was overly broad and that the criteria set out in the judgment of the European Court of Human Rights in the case concerning *Appleby and others v. United Kingdom* should be included. A reference to that case was provided further on in the draft, but the Committee might wish to address its implications in greater detail. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Amnesty International, had highlighted the issue of protests organized by indigenous people to protect their land rights. In his view, there was no need to include an explicit reference to that issue in the paragraphs under consideration, but such a reference could be added to the provision on discrimination further on in the draft. Disputes relating to indigenous land rights often hinged on disagreements as to whether a specific parcel of land was publicly or privately owned.

43. Michael Hamilton, Associate Professor of Public Protest Law, University of East Anglia, United Kingdom, had expressed a preference for the expression "publicly or privately owned spaces". Amnesty International had noted that, in some countries, single-person protests had become the only way in which a person could express his or her views. A similar

point had been made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. However, the Committee's jurisprudence and its work at the previous session would suggest that, in its view, a public assembly required at least two persons.

44. With regard to paragraph 14, the Office for Democratic Institutions and Human Rights had noted that, as a rule, gatherings held for purposes other than the expression of emotions, ideas or opinions on matters of public interest or concern might fall outside the scope of article 21 of the Covenant. In his view, that position had already been accommodated in the draft. Lawyers' Rights Watch Canada did not believe that there was any basis on which a distinction could be made between commercial and other gatherings.

45. In the light of those and other submissions received from stakeholders, he had prepared a revised version of the text provisionally adopted on first reading. His proposal, which involved merging the two paragraphs into one, read:

> Participating in an "assembly" entails organizing or taking part in a gathering of persons for a purpose such as conveying a position on a particular issue or exchanging ideas. The gathering can also be intended to assert or affirm group solidarity or identity. Assemblies may, in addition to having such aims, also serve other goals, such as an entertainment or commercial objective, and still be protected by article 21.

46. **Mr. Ben Achour** said that, while he agreed with the decision to merge the two paragraphs, he had serious reservations regarding the last sentence of the revised version proposed by the Rapporteur, as it placed undue emphasis on assemblies that had an entertainment or commercial objective. Assemblies that had cultural objectives, for example, had not been mentioned. In his view, it would be preferable either to mention all the objectives that peaceful assemblies could have or not to mention any.

47. **Mr. Quezada Cabrera** said that he would be grateful if the Rapporteur could explain why his revised version did not include the references to collective expression and expressive purpose that had appeared in paragraphs 13 and 14 as provisionally adopted on first reading.

48. **Mr. Bulkan**, supported by **Mr. Zyberi**, said that he, too, had reservations regarding the last sentence of the revised version proposed by the Rapporteur. He would prefer not to link entertainment and commercial objectives, since that might lead to the interpretation that entertainment objectives were of lesser value than other aims such as the exchange of ideas, whereas in fact assemblies with an entertainment objective were often of enormous cultural value. Indeed, in some countries, assemblies involving cultural expressions such as music and dance had historical associations with resistance to slavery and colonialism and continued to have important political dimensions. The Committee should make clear that such assemblies were also protected under article 21 of the Covenant.

49. **Mr. Zyberi** said that he would prefer to retain the reference to "publicly or privately owned property", which had appeared in paragraph 13 as provisionally adopted on first reading. It should be stated that, in principle, peaceful assemblies could take place on either publicly or privately owned property. The deletion of that statement risked being misinterpreted. With regard to the revised version proposed by the Rapporteur, it would be preferable to use either the word "goals" or the word "objectives" throughout the last sentence.

50. **Mr. Santos Pais** said that, while he understood Mr. Ben Achour's concern regarding the last sentence of the revised version proposed by the Rapporteur, it should be borne in mind that, as noted elsewhere in the draft, the concept of a public assembly was shifting. In his view, it was important to include examples of the "other goals" that public assemblies could have, and the Committee might wish to mention additional such goals, for example those relating to the protection of human rights. That said, it might be preferable not to imply an equivalence between entertainment and commercial objectives.

51. **Mr. Furuya** said that the last sentence of the revised version proposed by the Rapporteur should not be amended. Unless the Committee made clear that all public assemblies were protected under article 21 of the Covenant, whatever their objective, States would be able to argue that gatherings that had an entertainment or commercial objective did not qualify for protection.

52. **Mr. Heyns** said that, at the previous session, the Committee had discussed whether a common expressive purpose was an essential element of a peaceful assembly within the meaning of article 21 of the Covenant. It had been decided that, while a specific purpose was essential, that purpose did not necessarily have to be expressive in nature. Nevertheless, in order to recognize the close link between the right of peaceful assembly and freedom of expression, it had been specified in paragraph 4, as adopted on second reading, that the right of peaceful assembly protected the non-violent gathering by persons for specific purposes, principally expressive ones.

53. In paragraph 6, as adopted on second reading, it was noted that peaceful assemblies were protected wherever they took place, whether outdoors, indoors or online, and in a public or private space. In order to ensure consistency with the paragraphs that the Committee had already adopted on second reading, he had not included the words "publicly or privately owned property" in the revised version of paragraph 13 that he was proposing at the current meeting. The exclusion of those words also reflected the majority view among the stakeholders that had submitted comments on the matter.

54. As Mr. Furuya had rightly noted, States should not be able to claim that assemblies involving performances by entertainers or commercial transactions were not protected under article 21. Nevertheless, in order to address the concerns expressed regarding the linking of entertainment and commercial objectives, he proposed that further examples of "other goals", including cultural objectives, should be added to the list.

55. **The Chair** said he took it that the Committee wished to request the Rapporteur to submit a written text of the revised version of the paragraphs, as amended on the basis of the comments made at the current meeting, for adoption later at the session.

56. *It was so decided.*

The meeting rose at 6.05 p.m.