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Summary record of the 3646th meeting*
Held at the Palais Wilson, Geneva, on Friday, 26 July 2019, at 10 a.m.

Chair: Mr. Fathalla
later: Ms. Pazartzis (Vice-Chair)

Contents

* No summary records were issued for the 3644th and 3645th meetings.

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The meeting was called to order at 10.05 a.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. **Mr. Santos Pais** expressed concern about the involvement of all Committee members in composing the initial draft of general comment No. 37, since that task had been assigned to the rapporteur for the general comment. It was acceptable during the first reading to propose general ideas for amendments that the rapporteur could contemplate and integrate at his discretion, but he could not be expected to incorporate comments on every single word or phrase. He therefore called on Committee members to exercise self-restraint and to leave the discussion of details for the second reading.

2. **Mr. Heyns** (Rapporteur for the general comment) said that Committee members' inputs had proved extremely valuable, for instance when it came to identifying outstanding issues. He also underscored the importance of maintaining balance. The basic aim was to conclude the first reading at the next session. States parties and civil society institutions could then submit comments for the second reading.

Paragraph 12 bis

3. **Mr. Heyns** said that he had added paragraph 12 bis at the beginning of section 2 of the general comment in order to describe the structure of the document, which dealt initially with the scope of the right of peaceful assembly and subsequently with justifiable restrictions. He read out the paragraph:

> Establishing whether someone is protected by article 21, as is the case with other rights, entails a two-stage process. It must first be established whether the person falls within the *scope* of the particular right [it must thus be asked who are protected, and what kind of activities are covered] and, secondly, it must be established whether or not legitimate *restrictions* apply to the exercise of the right. In this section, the scope of the right is discussed, while the question of when restrictions may be justified is discussed in section 4.

4. *Paragraph 12 bis was adopted.*

Paragraph 13

5. **Mr. Heyns** said that two alternative versions of the first sentence had been placed in square brackets. The paragraph now read:

> [States parties are obligated to facilitate/accommodate/respect and ensure this right for all individuals subject to their jurisdiction.] [Everyone can exercise the right of peaceful assembly.] The right may be exercised, for example, by children, foreign nationals, including migrant workers, asylum seekers and refugees, as well as stateless persons.

6. *Paragraph 13 was adopted.*

Paragraph 14

7. **Mr. Heyns** said that the paragraph now read:

> The term peaceful assembly, as used in article 21, has a distinct meaning. To qualify as an "assembly", there must be a gathering of persons with the purpose of expressing themselves collectively. Assemblies can be held on publicly or privately-owned property[, provided the property is publicly accessible].

8. *Paragraph 14 was adopted.*

Paragraph 15

9. **Mr. Heyns** said that the paragraph now read:

> The expressive purpose of an assembly may, for example, entail conveying a position on a particular issue. It can also entail asserting group solidarity or identity. Assemblies may, in addition to having such an expressive purpose, also serve other goals and still be protected by article 21. While commercial gatherings would for example not generally fall within the scope of what is protected by article 21, they are covered to the extent that they have a collective expressive purpose.

10. *Paragraph 15 was adopted.*

Paragraph 15 bis

11. **Mr. Heyns** said that new paragraph 15 bis dealt with the issue of online assemblies and referred to a statement made by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in a report to the Human Rights Council (A/HRC/41/41). It was as yet unclear whether offline limitations were also applicable online. The implications of equating them would need to be identified in due course. He read out paragraph 15 bis:

> While the notion of an assembly implies that there will be more than one participant, a single protester enjoys comparable protections under the Covenant, for example under article 19. Moreover, although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, comparable human rights protection may also apply to acts of collective expression through digital means.

12. *Paragraph 15 bis was adopted.*

Paragraphs 16 and 17

13. **Mr. Heyns** said that paragraphs 16 and 17 of document CCPR/C/GC/R.37 had been merged. The new paragraph read:

> Assemblies are often organized well in advance, allowing enough time to give notice to the authorities to take the necessary preparations. However, spontaneous assemblies, as direct responses to current events that do not allow enough time to provide such notice, whether coordinated or not, are also protected by article 21. Counter-assemblies occur where one assembly takes place to express opposition to another. Both assemblies fall within the scope of the protection of article 21.

14. *Paragraph 16, as amended, was adopted.*

Paragraph 18

15. **Mr. Heyns** said that the paragraph now read:

> A “peaceful” assembly stands in contradistinction to one that is violent (or is deemed to be violent, because of the incitement or intention of violence), and which as a result is not protected under article 21. The terms “peaceful” and “non-violent” are thus used interchangeably in this context. The right of peaceful assembly may not be exercised in a violent way. Violence in this context typically entails the use by participants of physical force that is likely to result in injury or death, or serious physical damage to property. Mere disruption of movement or daily activities does not amount to violence.

16. *Paragraph 18 was adopted.*

Paragraph 19

17. **Mr. Heyns** said that the paragraph now read:

> If an assembly is peaceful, the fact that not all the domestic legal requirements pertaining to the assembly have been met by the participants does not, on its own, place the participants outside the scope of the protection of article 21. Non-violent civil disobedience or direct-action campaigns are in principle covered by article 21.

18. *Paragraph 19 was adopted.*

Paragraph 20

19. **Mr. Heyns** said that the paragraph was unchanged, except that the word "widespread" had been placed in square brackets because it had given rise to discussion and would require further reflection.

20. *Paragraph 20, as amended, was adopted.*

Paragraph 21

21. **Mr. Heyns** said that the phrase "does not render" in the second sentence had been replaced with "does not in itself render". The last sentence had previously read: "The same applies to violence by members of the public, for example during counter-demonstrations." The new version read: "The same applies to violence by members of the public who come in contact with the assembly or by counter-demonstrators."

22. **Mr. Zimmermann** said that the term "counter-demonstrators" had not been defined.

23. **Mr. Heyns** said that he could replace "counter-demonstrators" with "counter-assemblies", which had been defined in paragraph 16.

24. **Mr. Bulkan** pointed out that "counter-demonstrators" referred to individuals who might pose a threat to an assembly.

25. **Ms. Brands Kehris** proposed replacing "counter-assemblies" with "participants in counter-assemblies".

26. *Paragraph 21, as amended, was adopted.*

27. **Mr. Heyns** said that the order of paragraphs 22 to 24 had been changed: the former paragraph 23 was now 22; the former paragraph 24 was now 23; and the former paragraph 22 was now 24.

Paragraph 22

28. **Mr. Heyns** said that the word "imminent" in the first sentence had been placed in square brackets and "the gathering as such", in the last sentence, had been replaced with "participation in the gathering as such". Otherwise the paragraph was the same as paragraph 23 of the previous version.

29. *Paragraph 22, as amended, was adopted.*

Paragraph 23

30. **Mr. Heyns** said that paragraph 23 corresponded to paragraph 24 of the previous version, and referred to article 20 of the Covenant. He proposed addressing the provision of article 20 concerning incitement to violence in the section on the scope of the right of peaceful assembly. The other provisions could be addressed in the section concerning restrictions. He suggested deleting the following phrase in the second sentence: "because the different rights limit one another (art. 5 (1))". He also suggested amending the third sentence to read: "Participation in an assembly which is aimed at destroying the rights of others should be prohibited (art. 5)." Lastly, he suggested referring in a footnote to the 2012 Rabat Plan of Action and the Beirut Declaration on Faith for Rights, which contained widely accepted observations on how article 20 should be interpreted.

31. **Ms. Brands Kehris**, supported by **Mr. Zimmermann**, expressed reservations regarding the implication that incitement to violence was the sole provision of article 20 that was relevant to the scope of the right to peaceful assembly. There was no logical distinction between incitement to violence and incitement to discrimination and hostility. She therefore proposed replacing "incitement to violence" in the first sentence with "incitement to violence, hostility and discrimination", and replacing "the high threshold of incitement to violence" in the third sentence with "the high threshold of such incitement" or, alternatively, "the high threshold of incitement to violence, hostility and discrimination". The final phrase in that sentence could also be amended to read "or whether participants' intentions are violent or to engage in such advocacy".

32. **Mr. Furuya** said that the preceding paragraphs had approached the issue of the peaceful or violent nature of an assembly from the perspective of the conduct of participants. Article 20, however, referred to the purpose of an assembly which, while remaining entirely peaceful, advocated hatred against certain groups. He considered that the section on the scope of the right of peaceful assembly should deal with the assembly's aim or purpose. If the purpose was advocacy of hatred, it should be prohibited under article 20 of the Covenant and the International Convention on the Elimination of All Forms of Racial Discrimination.

33. **Mr. Ben Achour** said that assemblies that advocated hate speech on national, racial or religious grounds or that constituted incitement to discrimination or hostility were not covered by article 21. He therefore failed to understand why the paragraph focused on propaganda for war and incitement to violence and omitted other components of article 20.

34. **Ms. Sancin** said that she agreed with Mr. Ben Achour. She enquired about the meaning of "subject to the normal limitations" at the end of the paragraph. Was it a reference to prescribed restrictions?

35. **Mr. Heyns** said that "subject to the normal limitations" could be deleted. If the scope was unduly expanded, authorities could invoke a wide range of grounds for prohibiting peaceful assemblies and would feel no need to present any justification. The components of article 20 referred to in the paragraph under discussion were two categories of violence, namely propaganda for war and incitement to violence. The general comment would subsequently address the issue of how to interpret whether the intention of an assembly's organizers was to cause violence. A discriminatory assembly could be prohibited, but not automatically: restrictions could be imposed, for instance, if it threatened national security or the rights of others. The paragraph, as currently worded, did not imply that discriminatory assemblies could be held. Any restrictions, however, would need to be justified and greater scrutiny would be required to prevent abuse by the authorities.

36. **Ms. Brands Kehris** said that she remained of the opinion that hate speech fell within both the scope of, and the restrictions on, the right of peaceful assembly and should therefore be included in the paragraph. She recalled that the European Court of Human Rights distinguished between two forms of hate speech. In its most extreme form, hate speech amounting to incitement was not protected under article 17 of the European Convention on Human Rights. It was similarly prohibited under article 21 of the Covenant and should therefore be included within the scope of the right of peaceful assembly. In its second form, hate speech that was not apt to destroy the fundamental values of the European Convention or the Covenant would thus be assessed under the restrictions on other rights such as freedom of expression.

37. **The Chair** said he took it that the rapporteur would prepare an amended version of the paragraph, providing different formulations in square brackets if necessary, so that the Committee could choose between them at a later date.

38. *It was so decided.*

Paragraph 24

39. **Mr. Heyns** said that no substantive changes had been made to paragraph 24, which corresponded to paragraph 22 of document CCPR/C/GC/R.37.

40. *Paragraph 24 was adopted.*

41. **The Chair** invited the Committee, now that it had dealt with the paragraphs discussed at the previous meeting on the draft general comment, to proceed to its consideration of section 3, on the obligations of States parties in respect of the right of peaceful assembly.

Paragraph 25

42. **Mr. Heyns** said that the purpose of paragraph 25 was to establish that, once conduct fell within the scope of the right of peaceful assembly, the State party had certain duties and

obligations. The paragraph therefore reiterated the general legal obligations imposed on States parties to the Covenant, as set forth in article 2 (1) and (2) of the Covenant.

43. **Mr. Zyberi** said that it would be useful to insert a reference to the Committee's general comment No. 31, on the nature of the general legal obligation imposed on States parties to the Covenant (CCPR/C/21/Rev.1/Add.13), and perhaps even to general comment No. 24, on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (CCPR/C/21/Rev.1/Add.6).

44. **Ms. Sancin** said that it was unclear whether the "various rights" mentioned at the beginning of the first sentence referred to those provided for in article 2 or article 21 of the Covenant. To remove any potential for misunderstanding, she proposed amending the sentence to read: "Protecting peaceful assemblies imposes a range of corresponding duties on the State to ensure their effective realization."

45. **Mr. Heyns** said he agreed that a reference to general comment No. 31 should be inserted. Although he had wished to keep the concepts of obligations and restrictions separate, he would nevertheless consider including a reference to general comment No. 24. The "various rights" mentioned at the beginning of the first sentence referred to the cluster of political rights that protected public assemblies, such as the right to freedom of expression, and were therefore not limited to article 21 of the Covenant. Article 2 referred to obligations on States parties to recognize, respect and give effect to the rights in the Covenant.

46. **Ms. Sancin** said that, while a number of rights could be involved during the exercise of the right of public assembly, such as the rights to life and to freedom of expression, only article 21 specifically protected the right of public assembly. The paragraph should be redrafted to better reflect that fact.

Paragraph 26

47. **Mr. Heyns** said that the purpose of paragraph 26 was to set out the obligation on States parties to accommodate, facilitate or enable public assemblies. A decision could be taken at a later date on the specific wording to be used; until then, he would place the words "obligation of accommodation" in square brackets wherever they occurred in the document.

48. **Mr. Zimmermann**, supported by **Mr. Ben Achour**, proposed deleting the reference to "the broader society" in the first sentence, since it implied that obligations were also imposed on private individuals to accommodate peaceful assemblies.

49. **Mr. Heyns** said that his intention had been to call attention to the fact that private entities and the broader society might have to experience some inconvenience in order to allow others to exercise their right of peaceful assembly. However, the issue was covered later in the document, in paragraph 35, and could therefore be deleted from paragraph 26.

Paragraph 27

50. **Mr. Heyns** said that the right of peaceful assembly entailed both positive and negative obligations for States. Paragraph 27 set out the negative obligations, in particular the duty to refrain from interfering in peaceful assemblies or, as he had worded it in the draft, to "leave them alone". Since that language was, admittedly, too informal for a general comment, he proposed replacing it with "allow them to take place without unwarranted interference". The third sentence referred to other largely negative duties, such as the requirement for States not to prohibit, restrict, block or disrupt assemblies without good reason, and not to sanction participants without good cause. He proposed replacing the words "good reason" with the more specific "compelling justification". The final sentence of the paragraph alluded to the idea that States must remain content-neutral by allowing participants to freely determine the purpose of an assembly and to enable the assembly to be conducted within the "sight and sound" of the target; those ideas would be developed more fully later in the document.

51. **Ms. Sancin** said that, just as the rapporteur had replaced the words "good reason" with "compelling justification", he should replace "good cause" with more precise language, such as "legitimate cause".

52. **Mr. Quezada Cabrera** said that, since the paragraph focused solely on the negative obligations of States, with the positive obligations being covered in paragraph 28, he wondered why the text referred to "largely negative duties". After all, the examples given were, in fact, entirely negative in nature.

53. **Mr. Furuya** said that, in the light of the restrictions provided for in article 20, the obligation on States to respect the content neutrality of a public assembly was not absolute. Although paragraph 40 of the draft referred to limitations on the right of peaceful assembly, he wondered whether reference should also be made to such limitations in paragraph 27.

54. **Ms. Tigroudja** said that she shared the concern raised by Mr. Quezada Cabrera, namely that the word "largely" seemed to suggest that the duties were not wholly negative. She agreed with Mr. Furuya that there was a need to underscore the obligation on States to remain relatively – albeit not completely – content-neutral, taking into account the provisions of article 20, which prohibited propaganda for war or advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence.

55. **Ms. Pazartzis**, supported by **Mr. Muhumuza**, said that she would propose merging the first sentence, which concerned the obligation of States to allow peaceful assemblies to take place, with the second, which referred to the fact that State agents must refrain from unwarranted interference with assembly participants, since the main thrust of the paragraph was the notion of "unwarranted interference".

56. **Mr. Bulkan** said that, while he understood Mr. Furuya's point that there were limits to content neutrality, it was nevertheless important to retain the idea that States must allow participants to determine the purpose of the assembly. The Committee's jurisprudence showed that States were often more motivated to police assemblies that were critical of them or that advocated messages with which they did not agree. The crux of the issue was that States should maintain neutrality in that regard. Lastly, he wondered whether the negative duty of States not to prohibit, restrict or otherwise disrupt assemblies without good reason should be linked to the legitimate restrictions provided for in article 19 of the Covenant.

57. **Ms. Sancin** said that, while she was not against merging the first two sentences, it was important to retain the different points they expressed. The first sentence concerned the obligation not to interfere with peaceful assemblies as a whole, whereas the second concerned the need to refrain from unwarranted interference with the individual participants in assemblies.

58. **Mr. Heyns** said he agreed that the first two sentences could be merged, as suggested by Ms. Pazartzis and Ms. Sancin. He was happy to delete the word "largely" before "negative duty", in line with the concerns raised by Mr. Quezada Cabrera, but proposed replacing it with the word "essentially", since negative duties did sometimes require a positive function. On the issue of content neutrality, he would like to draw the Committee's attention to paragraph 44, which cited the Committee's jurisprudence in the case of *Alekseev v. Russian Federation* and stated that:

> Central to the protection of the right of peaceful assembly is the requirement that any limitations on the right will be content-neutral, and thus will not be related to the message conveyed by the assembly. According to the Committee, a rejection of an individual's right to organize a public assembly addressing a chosen subject is one of the most serious interferences with the freedom of assembly.

59. His intention in paragraph 27 had simply been to introduce the notion of content neutrality, although the fact that it was not an absolute right should be made clear. At the same time, it was important to underscore that any exceptions to the freedom to determine the purpose or content of an assembly must be justified and in compliance with the principles of proportionality and necessity.

The meeting was suspended at 11.20 a.m. and resumed at 11.35 a.m.

In the absence of Mr. Fathalla, Ms. Pazartzis (Vice-Chair) took the Chair.

Paragraph 28

60. **Mr. Heyns** said that, while paragraph 27 had introduced the concept of the negative obligations of States, paragraph 28 referred to their positive obligations, which included facilitating and promoting an enabling environment and establishing a broad legal framework to ensure that the right of peaceful assembly could be exercised.

61. **Mr. Ben Achour**, referring to the French version of the text, said he was not convinced that the phrase "*les États sont ainsi également débiteurs d'obligations positives consistant à aider les participants*" was an accurate rendering of the English version of the text, which stated that "States thus also have positive obligations to assist participants". The reference to "*citoyens*" in the penultimate sentence should also be altered to align it with the English text, which referred to "members of the public".

62. **The Chair** said that the problems raised by Mr. Ben Achour and other translation issues would be amended in due course.

63. **Mr. Furuya** said that he wondered whether paragraph 28 should refer not only to the obligation to protect participants of peaceful assemblies and counter-assemblies, but also to non-participants.

64. **Ms. Brands Kehris** said that, in the last sentence, it would be better to add a reference to protecting participants from "harassment, intimidation and the threat of violence", given that abuse often took those forms, particularly when it was homophobic, sexual or gender-based in nature.

65. **Mr. Santos Pais** said it would be preferable to reformulate the last sentence so that it included more general terms and did not appear to preclude participants other than lesbian, gay, bisexual and transgender persons from receiving protection from violence.

66. **Mr. Zyberi** said that he would like the rapporteur to consider making a specific reference to private security or military companies near the reference to "non-State actors" in the penultimate sentence. In the last sentence, it would be preferable to include xenophobic violence or xenophobia among the types of abuse from which participants should receive protection.

67. **Mr. Koita** said that he wished to know whether the rapporteur would envisage giving a particular status within the "legal framework" referenced in the penultimate sentence to those responsible for providing security at public demonstrations.

68. **Mr. Heyns** said that a reference to the right of non-participants to protection could be added to the text. While he would caution against attempting to create an exhaustive list of types of violence from which the State must provide protection, he would look at examples of the Committee's concluding observations in order to identify other vulnerable groups that it would be useful to cite. Regarding the suggestions to include a reference to private security providers and to those who covered demonstrations, he encouraged the Committee to consult the sections of the draft general comment that dealt specifically with the obligations of the police and the protection of journalists and human rights defenders. If anything was found to be lacking, paragraph 28 could later be modified accordingly.

Paragraph 29

69. **Mr. Zimmermann** asked why the first sentence alluded to preventing violations of "different rights" rather than merely violations of the right of peaceful assembly.

70. **Mr. Heyns** said that, while the intention behind referring to "different rights" was to echo paragraph 25, which stressed that many overlapping rights were involved in peaceful assembly, he agreed that the focus could be narrowed in paragraph 29 to the right of peaceful assembly itself.

71. **Ms. Sancin** said that the word "proactive" in the phrase "States parties must be proactive in dealing with assemblies" was too strong. She proposed beginning the sentence

with the phrase “States parties must take precautionary measures”, which encompassed the notion of being proactive.

72. **Mr. Santos Pais** proposed changing the phrase “invasive measures that violate human rights” to “invasive measures that unduly violate human rights” in the last sentence.

73. **The Chair** said that the phrase “unduly violate” was not appropriate, as all violations of human rights were unacceptable.

74. **Ms. Brands Kehris** said that she, too, was uncomfortable with the phrase “unduly violate”, and would be happier with an expression such as “disproportionately invasive measures that violate human rights”.

Paragraph 30

75. **Mr. Ben Achour** said that there was a pressing need to amend the second sentence of the French version of the paragraph, as the phrase “*sur le mode ordinaire*” was not an appropriate translation of “ordinary” in that context. In addition, he would favour making a reference to article 19 of the Covenant when alluding to “ordinary expression”.

76. **Mr. Zimmermann** said that it would be better to remove the technical term “guarantee immunity” from the first sentence and replace it with simply “protect”.

77. **Mr. Heyns** said that the changes proposed would be incorporated and that, in order to incorporate the language of article 19, the phrase “ordinary expression” could be changed to “free expression”.

Paragraph 31

78. **Mr. Ben Achour** said that, while he agreed that the risk of violence was not sufficient grounds to prohibit an assembly, telling States parties that it was not a reason to “restrict” an assembly was going too far. Where authorities knew in advance that a violent reaction was likely, they were obliged to take restrictive measures.

79. **Ms. Sancin** said that she would be in favour of softening the language of the first sentence so that it did not imply that no restrictions on grounds of violence were ever warranted. She wondered why the second sentence imposed on States parties the due diligence obligation to take “all possible measures” to protect participants. It might be preferable to borrow the standard used in the Vienna Convention on Diplomatic Relations regarding the obligation to protect the inviolability of diplomatic mission premises, namely “all appropriate” measures.

80. **Ms. Tigroudja**, expressing agreement with the point raised by Mr. Ben Achour, said that the first sentence of the paragraph appeared to contradict the preceding paragraphs, which placed emphasis on the State’s positive obligations to protect the people in the general vicinity of the assembly. The Committee should be more cautious and more precise about what it expected of States parties when there was a risk of a violent reaction to the assembly.

81. **Ms. Brands Kehris** said that the first sentence of the paragraph should remain as it stood: the language was already softened by the use of “may” and the reference to “some” members of the public. The sentence was in keeping with the standards the Committee applied when assessing whether restrictions on the right of assembly were legitimate. The fact that there might be a violent reaction was not a sufficient reason to restrict an assembly.

82. **Mr. Santos Pais** said that he approved of the idea expressed in the first sentence, particularly because the Committee did not want the State party to use the risk of violence as an excuse to prevent groups such as lesbian, gay, bisexual and transgender persons from expressing themselves. In order to strike the right balance between the State party’s conflicting obligations, he proposed the wording: “The fact that a peaceful assembly may provoke reactions from some members of the public is not, in principle, in itself, a reason to restrict the assembly.”

83. **Mr. Zimmermann** said that the key phrase to retain was “in itself”. As the right of peaceful assembly was an essential part of any peaceful democracy, the police should make

every effort to respect it. He was not, therefore, in favour of lowering the standard of due diligence from "all possible measures" to "all appropriate measures" in the second sentence.

84. **Mr. Muhumuza** said that "in itself" should be changed to "in and of itself". He would favour the standard "all appropriate measures" over "all possible measures", which was too vague.

85. **Mr. Heyns** said that the first sentence set out the principle that the State could restrict an assembly if it was unable to contain it, but not merely because there was a danger of violence. He would incorporate the language proposed by Mr. Santos Pais and Mr. Muhumuza into the next draft of the paragraph. The phrase "possible measures" would be enclosed in square brackets for further discussion at a later date.

Paragraph 32

86. **Mr. Muhumuza** said that the text needed to be reformulated, proposing the following wording for the second sentence: "States should ensure that people know the provisions of the law in respect of their assembly rights, the responsible authorities, the rules applicable to those officials, and the remedies available in case of alleged violations of those rights."

87. **Mr. Bulkan** supported by **Mr. Zyberi**, said that the underlying idea – namely the need for the law and its procedures to be understandable, available and accessible – was not clear.

88. **Mr. Heyns** said that he would try to produce a more clear and concise version of the paragraph.

Paragraph 33

89. **Mr. Zyberi** said that a footnote should be added after the words "judicial remedies", making reference to the Committee's general comment No. 32 on article 14, on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

90. **Ms. Sancin** said that the words "There must be" at the beginning of the paragraph should be replaced with "States parties must ensure".

91. **Ms. Tigroudja** said that it would be helpful to obtain clarification on the precise meaning of "visible" in reference to oversight.

92. **Mr. Bulkan** said that he, too, struggled with the word "visible", and suggested that "transparent" might be more appropriate.

93. **Ms. Brands Kehris** and **Mr. Heyns** supported that suggestion.

94. **Mr. Zimmermann** said that replacing the words "the rights involved" with "the right to freedom of assembly" would add clarity.

95. **The Chair** said that the last sentence of the paragraph was rather general and perhaps out of place in the paragraph.

96. **Mr. Muhumuza** said that the words "the rights involved" were superfluous and should be deleted. Also, as the term "in the case of" already introduced a condition, it seemed unnecessary to refer to "potential" violations and the word should be deleted.

97. **Mr. Heyns** said that since the idea contained in the last sentence was already reflected in paragraph 25, the sentence could be deleted. The proposal to begin the sentence with "States parties must ensure" was useful, as was the suggestion to add a reference to the Committee's general comment on article 14. He felt that it was important to refer to "potential" violations in the current context, as the existence of a violation could only be confirmed once a judicial remedy had been sought. Regarding the reference to other rights involved, the Committee might wish to agree on a systematic approach: to have a general reference to overlapping rights – including a list of the rights concerned – in section 1, and subsequently to focus on the right to peaceful assembly.

98. **Ms. Sancin** said that it might be more appropriate to refer to "alleged violations", rather than "potential violations", as judicial proceedings were habitually brought for alleged, not potential, violations of rights.

99. **Mr. Bulkan**, supported by **Mr. Santos Pais** and **the Chair**, said that the term "potential violations" was more comprehensive and should be retained. Judicial proceedings could be brought not only in the case of actual violations, but also to seek protection from imminent risk.

100. **Mr. Quezada Cabrera** said that, when using words like "potential", the Committee should be mindful of any difficulties their translation into other languages might pose.

101. **Mr. Heyns** said that it might be best to place the word "potential" in square brackets and review the French and Spanish translations before taking a final decision.

Paragraph 34

102. **Mr. Heyns** said that the reference to "related rights" in the first sentence could be omitted. The reference to "their equipment" in the third sentence was rather imprecise and could usefully be amended to read "the equipment they use in fulfilling their professional duties".

103. **Mr. Santos Pais** said that a reference to human rights defenders should be added after "journalists" in the first sentence, so as to clarify that all elements of the paragraph applied to that group.

104. **Ms. Sancin** suggested amending the phrase "journalists and other monitors" in the first sentence to "journalists and others", which would implicitly include human rights defenders. By the same token, the phrase "the right of monitors" at the end of the fourth sentence should be amended to read "the right of journalists and others". It would be useful to know why the word "may", instead of "should" or a similarly strong term, had been used in regard to the prohibition to confiscate equipment.

105. **Mr. Ben Achour** said that the paragraph was of vital importance, as it illustrated more than any other the close link between the right of peaceful assembly and the right to freedom of expression. In order to make that connection even more explicit, it might be useful to replace the reference to "related rights" with one to article 19. Also, given the particularly important role of journalists, the rapporteur might wish to consider splitting the paragraph, dedicating one paragraph exclusively to journalists and another to human rights defenders and other monitors. Doing so might also resolve any ambiguities about the roles played by the different groups.

106. **Mr. Santos Pais** said that human rights defenders should be mentioned explicitly, either in one paragraph, together with journalists, or in a separate paragraph. An implicit reference to journalists "and others" was not sufficient.

107. **Ms. Brands Kehris**, supported by **Mr. Zyberi**, said that a direct reference to human rights defenders would indeed be desirable. Moreover, bearing in mind the difference between monitors and observers, the beginning of the second sentence should read "journalists, monitors and observers" and the reference to equipment should be made applicable to all three categories of persons. Furthermore, since the rights described applied to journalists, monitors, observers and human rights defenders alike, it might be most appropriate to address them in a single paragraph. Lastly, she was somewhat uncomfortable with the idea that independent national human rights institutions and non-governmental organizations should "make themselves available to monitor assemblies", which seemed to suggest that they were expected to work on the instructions of some other entity. It would be more appropriate to affirm that it was good practice for them "to independently monitor assemblies".

108. **Ms. Sancin** said that the reference in the penultimate sentence should read "assemblies", rather than "demonstrations".

109. **Mr. Heyns** said that he could not support the inclusion of a reference to article 19. As discussed earlier, it would be more useful to mention overlapping rights in detail in section 1, and to focus on the right to peaceful assembly elsewhere. The special link

between that right and freedom of expression was already reflected in section 1 and there was no need to repeat it. He agreed with previous speakers that human rights defenders should not be subsumed under the term "others". They were subject to considerable pressure and should be referred to explicitly.

110. Taking into account the comments made, the first sentence could usefully be amended to read: "The role of journalists, human rights defenders and other monitors engaged in observing, documenting and reporting on assemblies is of special importance, and is protected under article 21." In the second sentence, "journalists and monitors" could be replaced by "they", and the third sentence could commence with the words "The equipment they use in fulfilment of their duties". The penultimate sentence could be shortened to read: "No one should be harassed as a result of their attendance at assemblies". The last sentence could be amended in line with Ms. Brands Kehris' proposal.

111. **Ms. Brands Kehris** said that she was not convinced it would be a good idea to refer to human rights defenders, journalists and monitors under the term "no one" in the penultimate sentence, as doing so might dilute the message. More importantly, journalists and observers could not simply be replaced by "they" in the second sentence. It was important to refer specifically to observers, in particular in the digital age, as they became monitors as soon as they recorded events on their mobile phones. Even if it made the wording more cumbersome, the individual references should be retained and the word "monitors" could be added after "journalists" in the second sentence.

112. **Mr. Heyns** proposed amending the first sentence to read: "The role of journalists, human rights defenders, monitors and others engaged in observing", and to refer subsequently to "observers", to accommodate Ms. Brands Kehris' concern.

113. **The Chair** said she took it that the rapporteur would prepare an amended version of paragraphs 25 to 34 that reflected Committee members' comments and proposals for consideration at a future meeting.

114. *It was so decided.*

The meeting rose at 1.05 p.m.