



# International Covenant on Civil and Political Rights

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## Human Rights Committee 127th session

### Summary record of the 3657th meeting

Held at the Palais Wilson, Geneva, on Friday, 18 October 2019, at 3 p.m.

*Chair:* Mr. Fathalla  
*later:* Mr. Shany (Vice-Chair)  
*later:* Mr. Fathalla

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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)*

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*The meeting was called to order at 3 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** said that the Committee had provisionally adopted paragraphs 1 to 34 of draft general comment No. 37 on article 21 of the Covenant at its previous session; the aim was to complete the first reading of the remainder of the draft at the current session. Mr. Heyns, the Rapporteur for the general comment, would first explain the changes he had made to the paragraphs already adopted before moving on to the new text. The idea was not to reopen the discussion on paragraphs that had already been debated at the previous session; if members had any objections to the proposed amendments, the relevant parts of the text could be placed in square brackets and taken up on second reading.

2. **Mr. Heyns** (Rapporteur for the general comment) said that, while the Committee would ideally finish its first reading by the end of the session, the most important aim should be to have a properly drafted text that served as a solid basis for consultation. Drawing attention to the document containing the latest version of paragraphs 1 to 34, he said that he had made several editorial changes to improve readability, which had been highlighted in the text. In the first sentence of paragraph 8, based on the Committee's previous discussion of the various possible formulations to describe the general obligation on States with respect to the exercise of the right of peaceful assembly, and following a study of the language used by other bodies, his proposal was to use the Covenant wording "respect and ensure". When it came to the negative part of the obligation, in the second part of the sentence he proposed stating that there should be no "unwarranted interference", while for the positive part of the obligation his proposal was to state that States were required to take positive action "to facilitate the exercise of the right and to protect the participants".

3. With regard to the issue of online assemblies, which would come up again in the new paragraphs, he wished to draw attention to the references in paragraph 11 – "currently emerging technologies present new spaces" – and paragraph 15 – "comparable human rights protections may also apply to acts of collective expression through digital means". Lastly, paragraph 22, which was in square brackets, presented two options with regard to article 20 of the Covenant: either to state that participation in assemblies where the expressive purpose was covered by article 20 did not fall within the scope of article 21 and must be prohibited, or to deal with article 20 under restrictions. That question would be left open until the second reading.

4. **Ms. Pazartzis** said that she wished to raise an issue for discussion on second reading. Given that the first sentence of paragraph 8 had been changed to include the phrase "respect and ensure", based on the language used in the Covenant, it might no longer be appropriate to include footnote 11, which referenced a decision of the European Court of Human Rights.

5. **The Chair** said he took it that the Committee wished to accept all of the amendments to paragraphs 1 to 34 proposed by the Rapporteur.

6. *It was so decided.*

7. **The Chair** invited the Committee members to turn their attention to the remainder of the draft text, contained in document [CCPR/C/GC/R.37](#).

*Paragraph 35*

8. **Ms. Kran** said that, in the second sentence, the word "also" should be deleted, as its inclusion suggested that the peaceful assembly somehow restricted the rights of the State as well as those of private entities.

9. **Mr. Heyns** said that he was proposing that, in the second sentence, the words “infringement of their rights” should be replaced with “disruption”, as private entities such as corporations did not have rights. He also accepted Ms. Kran’s proposal.

10. *Paragraph 35, as amended, was provisionally adopted.*

*Paragraph 36*

11. **Mr. Heyns** said that, although not everyone agreed with the position, there was a solid basis for stating, in the first sentence, that assemblies with a political message enjoyed a high level of protection. He proposed deleting, however, the words “heightened level of accommodation and thus” before “enhanced protection” in that sentence, as the word “accommodate” was no longer being used elsewhere in the text to describe the obligation of the State. As Mr. Zimmermann had proposed, the word “rights” in the last sentence should be replaced with “right of assembly”.

12. **Ms. Brands Kehris** said that she was reluctant to delete the reference to a “heightened level of accommodation”, as the sentence could otherwise be potentially misunderstood as referring to protection against political violence and could be seen as reducing the protection afforded. In her view, the idea of accommodation was an important one in that particular paragraph.

13. **Mr. Santos Pais** said that he shared Ms. Brands Kehris’s reluctance to delete the reference to “accommodation”, as it tied in well with “enhanced protection”. He proposed reformulating the end of the second sentence to read “groups or individuals who are experiencing or have historically experienced” to cover situations in which discrimination was ongoing.

14. **Ms. Kran** said that, regardless of whether the reference to “a heightened level of accommodation” was kept, perhaps the concept could be expanded upon in the next sentence, drawing on the Committee’s general comment No. 34 on freedoms of opinion and expression, by stating that the protection or the heightened obligation “applies to peaceful assemblies critical of heads of State and government as well as other governmental institutions”.

15. **Mr. Heyns** said that he had no objection to retaining the reference to the “heightened level of accommodation” in that instance. With regard to Mr. Santos Pais’s proposal, the last sentence could be reformulated to refer to “groups or individuals who are or have historically been exposed to discrimination”. Ms. Kran’s suggestion could perhaps be taken up in relation to paragraph 45, which dealt with limitations and listed the kinds of political opposition that should be protected.

16. *Paragraph 36, as amended, was provisionally adopted.*

*Paragraph 37*

17. **Mr. Heyns** said that paragraphs 37 and 38 dealt with activities that were conducted outside the scope of the gathering but were integral to it, such as advertising an upcoming assembly or reporting on it afterwards. The issue of online assemblies could be addressed on second reading, as he was not convinced that the Committee understood all the possible implications. Although it must ensure that it remained relevant, it needed to be careful of unintended consequences.

18. **Mr. Shany** said that the list in the third sentence of paragraph 37 should be open rather than closed, as other associated activities, such as wearing particular clothes, carrying banners and inviting speakers, could also be relevant. He therefore proposed adding the words “inter alia” at the end of the sentence.

19. **Ms. Sancin** said she agreed that the list in the third sentence should not be exhaustive; the words “activities such as” could therefore be added after “extend to” in the third sentence. She assumed that the references to “limitations” in that paragraph would be changed to “restrictions” as previously agreed.

20. **Ms. Kran** said that she supported the proposals made by Mr. Shany and Ms. Sancin in respect of paragraph 37 and agreed with the Rapporteur that the Committee should return

to the issue of online assemblies in order to stay up to date and relevant. When it did so, she would have some additional comments to make in respect of paragraph 15.

21. *Paragraph 37, as amended by Ms. Sancin, was provisionally adopted with minor drafting changes.*

*Paragraph 38*

22. **Mr. Heyns** said that, in the fifth sentence, the words “does not unduly infringe” should be replaced with “do not unduly infringe”. In the sixth sentence, he proposed adding the words “and interception of communications” before “must conform”.

23. **Ms. Sancin** said that she was not convinced that the third and fifth sentences should be formulated merely as recommendations to States. She would therefore propose replacing “should” with “shall” in those two sentences, particularly as the sixth sentence used the words “must conform”.

24. **Mr. Heyns** said that, as the obligation in the third sentence was qualified by the word “unduly”, he would have no objection to using the word “shall” rather than “should” in that instance.

25. **Mr. Shany** said that he did not agree with Ms. Sancin’s proposal to replace “should” with “shall” in the fifth sentence, as the issue of regulating private Internet service providers was a very sensitive one and the Committee did not wish to encourage States to overregulate that field. At the end of the same sentence, he proposed adding the words “or compromise their safety” after “does not unduly infringe upon the privacy of assembly participants”, as that was a concern in some countries. While he supported in principle the addition of a reference to the “interception of communications”, he was not sure how it would fit in to the existing sentence and would like to see a written draft before adopting it.

26. **Mr. Santos Pais** said that the sentence on self-regulation by Internet service providers was particularly sensitive, and it was important to separate clearly the responsibilities of the State and those of the Internet companies. He too would like to see the reformulation in writing before the paragraph was adopted.

27. **Ms. Pazartzis**, referring to Ms. Sancin’s proposal, said that she would be in favour of retaining the word “should” in both the third and fifth sentences.

28. **Mr. Zimmermann** said that he would prefer to use the word “shall” in the third sentence. In the last sentence, he proposed deleting the word “undue” before “restrictions”, as it seemed to suggest that the possibility of online communication could be used as a basis for restrictions in certain circumstances.

29. **Ms. Kran** said that she, too, would favour using the word “shall” in the third sentence and retaining “should” in the fifth sentence.

30. **Mr. Heyns** said that he was not opposed to using “shall” in the third sentence and “should” in the fifth. He also accepted Mr. Shany’s proposal to add the words “or compromise their safety” at the end of the fifth sentence. As there seemed to be agreement in principle concerning his own proposal to add the words “interception of communications” in the sixth sentence, he would draft a new version of the text for the Committee’s consideration.

31. **Mr. Shany** said that he agreed with Mr. Zimmermann that the word “undue” in the last sentence might appear to dilute the argument that the possibility of online communication should not be used as a pretext for restricting the right to assemble in person.

32. **Mr. Heyns** said he accepted that, in order to clearly convey the message, the word “undue” could be deleted.

33. **The Chair** said he took it that the Committee wished paragraph 38 to be amended as proposed, and that it would like Mr. Heyns to draft a new fifth sentence for discussion at a future meeting on the draft general comment.

34. *It was so decided.*

*Paragraph 39*

35. **Mr. Heyns** proposed that the words “various rights related to assemblies are realized” should be replaced with “the right of assembly is realized”.

36. **Mr. Santos Pais** said that he supported Mr. Heyns’s proposal. He also wished to propose that the words “on decision-making” should be inserted after the word “expertise” in the second sentence.

37. **Ms. Kran** said that she had not understood “expertise” to refer to expertise on decision-making, but rather to expertise on the right of assembly.

38. **The Chair** said that the opening sentence referred to the obligation of the “branches of government”, which were decision-making bodies. That seemed to be the reasoning behind Mr. Santos Pais’s proposal.

39. **Mr. Heyns** said that while he understood the reason for Mr. Santos Pais’s proposal, he did not wish to introduce undue limitations. “Expertise” could relate to a number of areas, from decision-making to substantive matters such as the particulars of the right itself.

40. **Mr. Quezada Cabrera** said that he was concerned about the way in which the paragraph was drafted. Any authorities that took decisions “at the local level”, such as municipal authorities, were necessarily organs of State. The point was that the central authorities had an obligation to ensure the right of assembly yet decisions were often taken at a local level.

41. **Mr. Heyns** said that he understood Mr. Quezada Cabrera’s concern. Perhaps the text would be clearer if the words “all branches of government” were replaced with “all branches and levels of government”.

42. **Mr. Santos Pais** said that local authorities often had a certain degree of autonomy and were elected separately from central Government. “At the local level” covered all bases and avoided the question of whether local authorities operated directly under the central Government.

43. **Mr. Quezada Cabrera** said that he agreed with Mr. Santos Pais. However, that point was not expressed clearly in the Spanish version of the paragraph.

44. **Ms. Sancin** said that she agreed that the drafting was unclear. Maybe the paragraph would be easier to follow if it stated that all “organs of State”, including at the local level, had an obligation to ensure the right of assembly.

45. **Ms. Tigroudja** said that the drafting was also unclear in the French version for the same reasons as those expressed by Mr. Quezada Cabrera.

46. **Mr. Heyns** said that Ms. Sancin’s proposal seemed to him to be the best solution. “Branches of government” would be replaced with “organs of State”.

47. *Paragraph 39, as amended by Mr. Heyns and Ms. Sancin, was provisionally adopted.*

*Paragraph 40*

48. **Mr. Heyns** said that, as previously agreed, in the subheading “limitations on the right of peaceful assembly” the word “limitations” would be replaced with “restrictions”. He wished to propose that the paragraph should be redrafted to read: “The right of peaceful assembly is not absolute, but restrictions should be kept to a minimum. Any restrictions of this right must be provided for by law and be necessary and proportionate to the aims enumerated by article 21.”

49. **Ms. Kran** said that she supported Mr. Heyns’s proposals. However, she proposed amending the wording of the second sentence to read: “No restriction to the right of freedom of assembly is permissible unless the limitation is imposed in accordance with the law and is necessary and proportionate to the limited, legitimate ends enumerated in article 21.” That wording was in line with the Committee’s Views in the case of *Turchenyak et al. v. Belarus* and emphasized that restrictions should not be permitted unless they were justified.

*Paragraph 41*

50. **Mr. Heyns** said that the aim of paragraph 41 was to indicate that a range of options existed between no intervention and prohibition; for example, the assembly could be postponed or be held in a different place. It also dealt with the idea that it was often useful not to take steps to restrict an assembly or impose sanctions immediately, but to wait for a certain period before doing so.

51. **Mr. Shany** said that it might be unclear what was meant by “intermediate or partial restrictions”. A relevant example might therefore be useful.

52. **Mr. Zimmermann** said that he was concerned about the words “and sometimes required”. Surely if partial restrictions were sufficient to protect other interests, the State should adopt only those restrictions and not take further measures, in accordance with the principle of proportionality.

53. **The Chair** said that the final sentence seemed to suggest that protesters could exercise their right of assembly but then be punished after the fact for doing so.

54. **Mr. Heyns** said he agreed that it would be useful to provide an example of an intermediate or partial restriction. With regard to Mr. Zimmermann’s concern, he would be happy to remove the words “and sometimes required”. As for the final sentence, he had intended to convey the idea that, during assemblies, it was often preferable not to arrest troublemakers straight away. The use of modern technology made it possible to identify such individuals and arrest them after the assembly, so as to avoid a potential escalation of the situation.

55. **The Chair** noted that the final sentence made no mention of troublemakers.

56. **Mr. Santos Pais** said he agreed that clarification was needed to avoid the implication that sanctions could be imposed ex post facto on individuals because of their participation in an assembly. If the intention was to convey that sanctions could be imposed on troublemakers who would be liable to face prosecution in any event, that should be made clear to avoid any misunderstanding.

57. **Ms. Pazartzis** said that it was unclear from the paragraph what would happen if intervention was needed during an assembly. Maybe the two scenarios, namely intervention during an assembly and intervention after the assembly, should be addressed separately. In the event of escalation, post facto sanctions might not be sufficient. She would appreciate further clarification from the Rapporteur.

58. **Mr. Shany**, expressing agreement with Ms. Pazartzis, said that the question was whether it was better to regulate freedom of assembly ex ante or ex post facto. In his view, it would be preferable to remove all mention of sanctions; the Committee should not be perceived as encouraging them. To meet the concerns raised by Ms. Pazartzis, perhaps the final sentence could state that an evaluation of the need for further steps should take place after the event had started, not after the event had ended.

59. **Mr. Zyberi** said that the second sentence could perhaps be amended to read: “Intermediate or partial restrictions are preferable to stopping the assembly from taking place.” The final sentence would then follow on more naturally. However, he was unsure how to deal with the question of sanctions, since it seemed problematic to suggest that an assembly could be allowed to go ahead but that sanctions could later be imposed on those who had taken part in it.

60. **Ms. Kran** said that she proposed amending the second sentence to read: “Intermediate or partial restrictions may also be permissible.” Intermediate or partial restrictions were of course “possible”; the question was whether they were acceptable under international law.

61. **Mr. Santos Pais** proposed that the final sentence should be amended to read: “It is, moreover, often preferable to allow an assembly to take place and to evaluate whether other steps should be taken at a later stage, rather than to impose prior restraints in an attempt to eliminate all risks.”

62. **Ms. Sancin** said that the issue could be resolved by incorporating the second sentence into the first sentence such that it read: “Where restrictions may be imposed on an assembly, the relevant authorities should consider a range of available options, including intermediate or partial restrictions, rather than viewing the choice as between no intervention and prohibition.”

63. **Mr. Heyns** said that he was open to Ms. Sancin’s proposal regarding the first sentence. The second sentence would then be deleted. It would still be necessary to provide an example of an intermediate or partial restriction, however. The final sentence could be amended to read: “It is, moreover, often preferable to allow an assembly to take place and to evaluate only after the event has started whether steps should be taken against perpetrators, rather than to impose prior restraints in an attempt to eliminate all risks.”

64. **The Chair** said that there was not much difference between evaluating whether “steps should be taken against perpetrators” and deciding whether to impose sanctions.

65. **Mr. Shany** said that it was not advisable to focus on the sanctioning of perpetrators. The final sentence should focus on the need to reassess the need for partial restrictions, not the need to impose sanctions. In any case, in view of the number of amendments proposed, he would prefer to see a revised text.

66. **Ms. Brands Kehris** said she agreed that the text should avoid focusing on “perpetrators”, not least because it was unclear to whom that referred. Perhaps it would be sufficient to refer to the need for a “post-event assessment”, rather than going into the details of the steps that should be taken. She agreed that the Rapporteur should review the paragraph and produce a revised version thereof.

67. **Ms. Pazartzis** said that she too would like to see a revised text.

68. **Mr. Quezada Cabrera** said that he also had his doubts regarding the final sentence. Having consulted the source mentioned in the footnote to the paragraph, namely paragraph 109 of the Organization for Security and Cooperation in Europe (OSCE) *Guidelines on Freedom of Peaceful Assembly*, he was unsure whether the final sentence was well placed in paragraph 41.

69. **Mr. Heyns** said that, in accordance with his understanding of the OSCE *Guidelines*, he had intended for the final sentence to counter the argument that arrest and preventive detention should be used as a means of avoiding potential escalation. He wanted to avoid limiting the paragraph to a mere discussion of restrictions that did not address situations where persons known to be planning an assembly were rounded up and arrested.

70. **The Chair** said he took it that the Committee wished to suspend its consideration of the paragraph to allow the Rapporteur to prepare a revised version.

71. *It was so decided.*

#### *Paragraph 42*

72. **Mr. Heyns** said that paragraph 42 dealt with the idea that any restrictions on a person’s exercise of the right of peaceful assembly should be based on an individualized assessment of the person’s conduct and the assembly concerned. He proposed replacing the word “limitations” with “restrictions”, as previously agreed.

73. **Mr. Bulkan**, noting that legitimate restrictions on the right of peaceful assembly could be based on a range of factors, said that the word “conduct” was unduly restrictive.

74. **Ms. Pazartzis** said that the word “indiscriminate” was not appropriate to the context and should be avoided.

75. **Mr. Shany** said that, rather than avoiding the word “indiscriminate” altogether, the Rapporteur could provide some examples of indiscriminate restrictions by way of clarification.

76. **Ms. Sancin** proposed replacing “blanket restrictions on public assemblies” with “blanket restrictions on participation in peaceful assemblies”, since the focus of the paragraph was the restriction of individual participation in assemblies.

77. **Ms. Kran** proposed amending the final sentence to read: “blanket restrictions on participation in public assemblies tend to be overinclusive and thus fail the proportionality test”, in order to encourage the relevant authorities to assess the proportionality of restrictions.

78. **Mr. Heyns** said that the word “conduct” had been used in order to make it clear that restrictions could not be based on mere dislike of a person or political party. Instead, they should be based on an assessment of actual conduct. Regarding the second sentence, he would prefer to retain the word “presumptively”, which put the onus on States parties to justify any restrictions on participation in peaceful assemblies. He proposed keeping the wording of the first sentence and amending the second sentence as proposed by Ms. Sancin.

79. *Paragraph 42, as amended, was provisionally adopted.*

#### *Paragraph 43*

80. **Mr. Heyns** said that paragraph 43 expanded further on the ideas introduced in the previous paragraph.

81. **Mr. Ben Achour**, supported by **Ms. Tigroudja**, said that it did not make sense to say that there was a presumption in favour of an event, such as the holding of a peaceful assembly. He proposed replacing the words “*présomption en faveur de la tenue des réunions pacifiques*” [presumption in favour of accommodating peaceful assemblies] in the French version of the draft with wording such as “*présomption en faveur de la légalité des réunions pacifiques*” [presumption in favour of the lawfulness of peaceful assemblies].

82. **Mr. Zimmermann** said that, as he understood it, the presumption was that States parties were under an obligation to accommodate peaceful assemblies. On a separate note, he proposed strengthening the wording of the first sentence by replacing “should” with “must”.

83. **Mr. Heyns** said that the word “accommodating” could be replaced with “respecting and ensuring”, in line with the language used in the Covenant.

84. **Ms. Sancin** proposed replacing “to justify restrictions as legitimate exceptions to the norm” with “to justify restrictions as permissible under article 21”, so as to avoid any implication that there was more than one category of acceptable restrictions.

85. **Ms. Brands Kehris** said that paragraph 43 could be interpreted in two different ways. The focus could be placed either on the presumption that one should be able to hold assemblies or on the circumstances in which restrictions were legitimate. The first interpretation justified the use of the word “should” in the first sentence.

86. **Mr. Bulkan** said that he was in favour of retaining “should” in the first sentence, in order to acknowledge that States might impose restrictions for a variety of reasons.

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

88. **The Chair** suggested that the Rapporteur should redraft the text in the light of the comments made by Committee members.

89. *It was so decided.*

*The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.*

#### *Paragraph 44*

90. **Mr. Heyns** said that paragraph 44 dealt with the requirement that any restrictions on the right of peaceful assembly must be content-neutral. He proposed replacing “aimed at the testing of ideas” with “aimed at establishing the extent of support for ideas” in the last sentence, in line with the language used in the revised version of paragraph 1.

91. **Mr. Furuya** said that the notion of content neutrality was not compatible with the idea that participation in assemblies could be restricted under article 20 of the Covenant, which required the prohibition of any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence.



92. **Ms. Brands Kehris** said that it was important to convey that, as a rule, restrictions must be content-neutral. However, the paragraph could be amended to clarify that restrictions under article 20 were an exception to the rule.

93. **The Chair** said that the issue could be resolved by inserting a word or phrase such as “generally” or “as a rule” in the first sentence.

94. **Mr. Heyns** proposed inserting the phrase “in principle” in the first sentence to that end.

95. **Ms. Sancin** proposed replacing “public assembly” with “peaceful assembly” in the second sentence.

96. *Paragraph 44, as amended, was provisionally adopted with minor drafting changes.*

#### *Paragraph 45*

97. **Mr. Heyns** said that paragraph 45 dealt with the idea that restrictions should not be used in order to pursue a political agenda. With regard to the first sentence, he proposed replacing “to stifle political opposition to a Government” with “to stifle expression of political opposition to a Government through assemblies”, for the sake of clarity. Further examples of restrictions intended to stifle political opposition could be included if the Committee so wished.

98. **The Chair** said that there was no need to expand the list of examples, since it was clear from the word “including” that the list was not exhaustive.

99. *Paragraph 45, as amended, was provisionally adopted with minor drafting changes.*

#### *Paragraph 46*

100. **Mr. Heyns** said that paragraph 46, in accordance with article 20 of the Covenant, dealt with the idea that, where assemblies were used to incite discrimination, hostility or violence, restrictions were justified and indeed necessary. He proposed replacing “only under restricted circumstances may limitations be based” with “only under strictly limited circumstances may restrictions be based” in the first sentence. He proposed amending the third sentence to read: “Peaceful assemblies may not be used to incite members of the public to commit acts of hostility, discrimination or violence against third parties, which ought to be prohibited under domestic law in accordance with international standards.” Lastly, he proposed removing the penultimate sentence in order to avoid repetition.

101. **Mr. Bulkan**, supported by **the Chair**, said that the first sentence was too broadly worded and appeared to contradict paragraph 44 of the draft, which dealt with the principle of content neutrality.

102. **Mr. Quezada Cabrera** said that the final clause of the third sentence could perhaps be amended to read: “which are prohibited under international law”.

103. **The Chair** proposed including a reference to article 20 (1) of the Covenant, which prohibited all propaganda for war.

104. **Ms. Brands Kehris** said that, even with the amendments proposed by the Rapporteur, the third sentence did not convey strongly enough that States should have effective legislation in place to prohibit messages of incitement to hostility, discrimination or violence. She proposed that either the wording of the third sentence should be strengthened, without removing the reference to domestic law, or that the penultimate sentence should be amended to read: “The use of assemblies to convey messages of incitement should be prohibited.”

105. **Ms. Sancin**, referring to the fourth sentence, proposed replacing “rather than against the group as a whole” with “rather than against the peaceful assembly as such”, for the sake of clarity.

106. **Mr. Heyns** said that the concern raised by Mr. Bulkan was addressed by the proposal to replace the phrase “restricted circumstances” with “strictly limited circumstances” in the first sentence in order to emphasize that there were very few

exceptions to the principle of content neutrality. A reference to article 20 (1) of the Covenant should be included earlier in the draft in connection with the scope of the right to peaceful assembly. He also proposed inserting a footnote referring to article 20 (1) at the end of the third sentence. In order to address the point made by Ms. Brands Kehris, he proposed that, in addition to the replacement of “which are prohibited under domestic law” with “which ought to be prohibited under domestic law”, an additional sentence should be added to clarify that assemblies used to incite hate crimes must be prohibited. The current penultimate sentence would be removed. In the fourth sentence, he would prefer to retain the word “group”, which was more concrete than “assembly”.

#### *Paragraph 47*

107. **Mr. Heyns** said that paragraph 47 dealt with the idea that restrictions on assemblies might be justified in exceptional cases where certain symbols were used, such as symbols exclusively associated with acts of physical violence.

108. **Ms. Brands Kehris** proposed that “physical violence” should be replaced with “violence” in the second sentence and that the concept of incitement to hostility, discrimination or violence should be mentioned, given that symbols were used for precisely that purpose in many countries.

109. **Mr. Santos Pais**, pointing out that symbols could be a form of expression evoking pain for a number of reasons, proposed replacing “even if such symbols are reminders of a painful past” with “even if, for instance, such symbols are reminders of a painful past” in the first sentence. He further proposed referring to hatred as well as violence in both the second and third sentences.

110. **Mr. Zyberi** said that the words “or extreme ideologies” could be inserted after “acts of physical violence” in the second sentence in order to reflect the fact that some symbols were associated with violent ideologies. Some States parties, particularly those that had adopted domestic legislation to counter extreme ideologies connected to their history, such as Nazism or apartheid, were unlikely to support the idea that only symbols associated with acts of physical violence justified restrictions.

111. **Mr. Furuya** said that the paragraph was ambiguously worded and did not provide clear guidance to States parties on the circumstances in which the use of a symbol ought to be restricted.

112. **The Chair**, supported by **Ms. Brands Kehris**, said that the paragraph should mention all restrictions on the use of symbols that were justified under article 20 of the Covenant.

113. **Ms. Sancin** proposed aligning the language with that of the previous paragraph by referring to acts of hostility, discrimination or violence.

114. **Mr. Muhumuza** proposed including a reference to hate speech.

115. **Mr. Heyns** said that paragraph 47 would become redundant if its wording was too closely aligned with that of paragraph 46. The aim of the paragraph was to convey the idea that States parties should exercise caution when imposing restrictions on the use of symbols. The use of a symbol that was associated with structural, non-physical violence did not necessarily justify a restriction.

116. **The Chair** said that there seemed to be a general consensus that the second sentence should be worded more broadly.

117. **Ms. Brands Kehris** proposed replacing “serve to intimidate” with “aim to intimidate”, in order to shift the focus from the outcome of the act to the intention of the person committing it.

118. **Mr. Heyns** said that he was not opposed to replacing “physical violence” with “violence” and replacing “serve to intimidate” with “aim to intimidate” in the second sentence.

119. **The Chair** suggested that the Rapporteur should redraft the paragraph in the light of the comments made by Committee members.

120. *It was so decided.*

121. *Mr. Fathalla resumed the Chair.*

*Paragraph 48*

122. **Mr. Heyns** said that paragraphs 48 and 49 dealt with the three main requirements that governed any restriction of the rights enshrined in the Covenant, namely legality, necessity and proportionality.

123. **Ms. Sancin** proposed replacing “limitations” with “requirements” in the second sentence.

124. **Mr. Santos Pais** said that the crux of the problem addressed in the final sentence was not the exercise of unfettered or sweeping discretion by persons charged with enforcing the law, but rather the exercise of discretion by such persons without judicial control. He proposed amending the final sentence to convey that idea.

125. **Mr. Bulkan** said that the point to be emphasized was not the need for judicial control but rather the need for laws that were sufficiently precise to enable individuals to regulate their conduct.

126. **Mr. Heyns** said that the issue of judicial control was addressed later in the draft.

127. *Paragraph 48, as amended by Ms. Sancin, was provisionally adopted.*

*Paragraph 49*

128. **Mr. Shany** said that the paragraph as a whole and the penultimate sentence in particular were not very accessible to the lay reader. He proposed expanding on the penultimate sentence in order to provide a clearer explanation of the technical term “proportionate”.

129. **Mr. Zimmermann** asked what was meant by the phrase “as a factual matter” in the second sentence.

130. **Ms. Sancin**, referring to the third sentence, proposed replacing “a society based on political pluralism and human rights” with wording that was aligned with the language used in the first paragraph of the draft.

131. **Mr. Heyns** said that the phrase “as a factual matter” had been used to bring out the contrast between the requirement of necessity, which was based on a factual assessment, and the requirement of proportionality, which was based on a value judgment, as mentioned in the final sentence of the paragraph. It was worth noting that the penultimate sentence, which was intentionally brief, was not a stand-alone sentence and should be read in conjunction with the final sentence.

132. **Mr. Zyberi** proposed replacing “value judgment” with “careful assessment” in the final sentence.

133. **Ms. Brands Kehris** said that the distinction between factual assessments and value judgments was an important one and should be retained.

134. **Mr. Heyns** said that he was willing to amend the third sentence as proposed by Ms. Sancin, to combine the penultimate sentence with the final sentence in order to address the concern raised by Mr. Shany, and to make various amendments to the paragraph as a whole in order to bring out the distinction between necessity and proportionality more clearly.

135. **The Chair** suggested that the Rapporteur should present a revised version of the paragraph at the Committee’s next meeting on the draft general comment.

136. *It was so decided.*

*Paragraph 50*

137. **Mr. Heyns** said that paragraph 50 introduced the idea that there was an exhaustive list of legitimate grounds on which the right of peaceful assembly could be restricted. Those grounds were then explained further in the paragraphs that followed.

138. *Paragraph 50 was provisionally adopted.*

*Paragraph 51*

139. **Mr. Heyns** said that paragraph 51 dealt with the restriction of the right of peaceful assembly on grounds of public safety, emphasizing that those grounds could be invoked only if the assembly posed a significant and immediate danger to the safety of persons or a risk of serious damage to property.

140. **Mr. Shany** said that the penultimate sentence described a situation in which dangerous conduct had already occurred, rather than a situation in which it could potentially occur. He therefore proposed replacing the word “risk” with “level of disruption”.

141. **Mr. Bulkan** said that he was not comfortable with the final sentence, which implied that a peaceful assembly could be penalized on the grounds that there was a threat of violence from opponents.

142. **Ms. Brands Kehris**, agreeing with Mr. Bulkan, said that the words “expected to elicit violence from opponents” in the final sentence were particularly problematic, because any expected violence should be mitigated by the police and should not be used as grounds for the restriction of a peaceful assembly.

143. **Ms. Sancin** proposed replacing “immediate danger” with “imminent danger” in the second sentence.

144. **The Chair** said that the Committee would continue its discussion of paragraph 51 at its next meeting on the draft general comment.

*The meeting rose at 6 p.m.*