



# International Covenant on Civil and Political Rights

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## Human Rights Committee 127th session

### Summary record (partial)\* of the 3684th meeting

Held at the Palais Wilson, Geneva, on Thursday, 7 November 2019, at 10 a.m.

*Chair:* Mr. Fathalla  
*later:* Ms. Abdo Rocholl (Vice-Chair)  
*later:* Mr. Fathalla (Chair)

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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) (continued)*

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\* No summary record was prepared for the rest of the meeting.

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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. **The Chair** invited Mr. Heyns to introduce paragraphs 100 to 107 of the first draft of general comment No. 37, as contained in [CCPR/C/GC/R.37](#).

*Paragraph 100*

2. **Mr. Heyns** (Rapporteur for the general comment) said that he proposed amending paragraph 100 to read:

The use of video recording devices by law enforcement officials during assemblies, including through body-worn cameras, may play an important role in securing accountability. However, the authorities should have clear and transparent guidelines to ensure that their use is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies.

3. **Mr. Santos Pais** said that the guidelines should be available for public scrutiny, for instance on the websites of law enforcement agencies. The phrase “clear and transparent guidelines” could perhaps be replaced with “clear and transparent public guidelines”.

4. **Mr. Heyns** proposed that the wording “clear and publicly available guidelines” should be used.

5. *Paragraph 100, as amended, was provisionally adopted.*

*Paragraph 101*

6. **Mr. Heyns** said that paragraph 101 addressed the issue of the expanding use of drones and autonomous weapons in policing. The word “meaningful” had been added before the phrase “human intervention” in the third sentence, which now read: “where lethal or less-lethal force can be used against assembly participants without meaningful human intervention”. The use of drones was not barred, since it might be tolerable in a situation involving, for instance, the taking of hostages. There was strong opposition, however, to the use of helicopters for dispersing tear gas against participants in assemblies.

7. **Mr. Zimmermann** asked whether “any remotely controlled use of force” in the first sentence referred to the use of force by the State rather than by third parties.

8. **Mr. Zyberi** said he understood that fully autonomous weapon systems were being developed, but he was unsure which weapons systems currently belonged in that category.

9. **Mr. Furuya** said that a number of paragraphs, ending with the new paragraph 98, dealt with the use of force. He therefore proposed inserting paragraph 101 after paragraph 98.

10. **Mr. Muhumuza** proposed amending the first sentence to read: “The State is fully responsible for any remotely controlled gadgets used during an assembly.”

11. **Ms. Sancin** said that it was not appropriate to refer in the first sentence to “use of force during an assembly”, since, as she understood it, the intention was to refer to the use of remotely controlled weapons systems, not to the use of force itself. In the last sentence, she proposed stating that fully autonomous weapons systems “shall never be used” for law enforcement during an assembly, rather than “should never be used”.

12. **Mr. Heyns** said that remotely controlled weapon platforms, such as helicopters, were increasingly used by law enforcement authorities for reconnaissance purposes. The use of drones was not deemed to be inherently unlawful in armed conflicts, but there was a great deal of controversy about the use of remotely controlled or potentially autonomous unmanned systems for policing. Where mistaken decisions were taken by a robot, the question arose as to who should be held accountable. The Committee was currently not

well placed to provide detailed guidance on such matters, but it should nonetheless highlight the issues that could arise from the use of autonomous weapons. He proposed amending the first sentence to read: “The State is fully responsible for any remotely controlled use of force by its agents during an assembly.”, or, alternatively, “... any remotely controlled weapons systems used by its agents”. He was not in favour of replacing “remotely controlled use of force” in the first sentence with “remotely controlled gadgets”, since gadgets might be used solely for reconnaissance purposes. He was willing to replace “should never be used” by “shall never be used” in the last sentence. Since both paragraphs 100 and 101 dealt with technology, it would be preferable to retain paragraph 101 in its current position.

13. *Paragraph 101, as amended, was provisionally adopted.*

#### *Title of section 7*

14. **Mr. Zyberi** said that the title of the section gave the impression that an armed conflict formed part of a state of emergency. He therefore proposed amending it to read: “Assembly during states of emergency or armed conflict”.

15. **Mr. Shany** said that states of emergency and armed conflicts were two overlapping legal categories. An armed conflict typically led to a state of emergency and threatened the life of the nation, in line with article 4 of the Covenant.

16. **Mr. Zyberi** said that there was a distinction under international humanitarian law between states of emergency and international armed conflicts.

17. **Mr. Zimmermann** proposed amending the title to read: “Assembly during states of emergency and armed conflict”.

18. *The title of section 7, as amended, was adopted.*

#### *Paragraph 102*

19. **Mr. Heyns** said that the reference to general comment No. 29 in the second sentence had been moved to a footnote. The first part of that sentence now read: “If States derogate from the Covenant in response to, for instance, a mass demonstration including instances of violence”.

20. **Mr. Shany** said that the reference to “some of the other assembly rights” in the first sentence was somewhat vague. He proposed amending it to read: “some of the other rights that might be violated where the right of peaceful assembly is not respected”.

21. *Paragraph 102, as amended, was provisionally adopted with minor drafting changes.*

#### *Paragraph 103*

22. **Mr. Heyns** said that the reference to general comment No. 29 would be moved to a footnote.

23. *Paragraph 103, as amended, was provisionally adopted.*

#### *Paragraph 104*

24. **Mr. Heyns** said that the last sentence had been amended to read: “An individual participant in an assembly during an armed conflict is not protected from being targeted with lethal force for such time as he or she is participating directly in hostilities, as that term is understood under international humanitarian law, and to the extent that he or she is not otherwise protected under international law from attack.”

25. **Mr. Shani** said that he proposed adding “subject to requirements of necessity and proportionality” after “lethal force” in the last sentence. In his view, the third sentence was incompatible with the content of the last sentence and should be deleted. Unarmed participants could, for example, be targeted as soldiers.

26. **Mr. Zimmermann** said that the application of international humanitarian law and the Covenant in situations of armed conflict represented a challenge. He would not object to the insertion of a reference to necessity and proportionality in the last sentence. Nor would he object to the deletion of the third sentence. However, if that sentence was retained, a number of issues needed to be addressed. For example, it would be important to specify that the “armed group” in question must be a party to an ongoing armed conflict in the State concerned. The question then arose as to whether members of that armed group who assumed a continuous combat function could be targeted with lethal force. The International Committee of the Red Cross (ICRC) took the position that they could be.

27. **Mr. Zyberi** said that the application of international humanitarian law and human rights law during states of emergency and situations of armed conflict was indeed a difficult balancing act. In his view, the third sentence was carefully worded and reflected the imperative of limiting the use of force, which was an aim of the general comment and international humanitarian law as a whole. In other words, it was preferable to detain unarmed participants who were members of armed groups than to shoot them. He also agreed with the last sentence, which, as currently worded, set out a position that was widely accepted.

28. **Mr. Shany** said he agreed with Mr. Zyberi that detention should be prioritized over shooting. Such an approach was in line with recommendation IX of the ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law. However, the Committee should refrain from wading into such a controversial topic in a general comment on the right of peaceful assembly. The situations encountered in practice might involve the use of drones or technology across borders. It was unclear, for example, whether the commander of the opposing force could be targeted if he or she was speaking at a peaceful assembly.

29. **Ms. Sancin** said that, as she understood it, the first two sentences addressed situations in which an assembly took place during a state of emergency that perhaps involved some violence but did not amount to an armed conflict. The third sentence, however, addressed situations of armed conflict. Indeed, without the context of armed conflict, there would be no need to discuss the status of members of armed groups. On that basis, she wondered whether the paragraph should not be split in two.

30. **Mr. Heyns** said that the paragraph addressed situations in which there was an armed conflict in the country as a whole but no conduct of hostilities in the specific context of the assembly. The third sentence reflected the “capture rather than kill” approach set out in recommendation IX of the ICRC Interpretive Guidance. However, although that sentence was attractive from a human rights perspective, he proposed that it should be deleted pending further discussion.

31. *Ms. Abdo Rocholl (Vice-Chair) took the Chair.*

32. **Mr. Zyberi** said that, although he was prepared to accept the Rapporteur’s proposal to delete the third sentence, he wondered whether it would be possible to insert a reference to the principles of proportionality and necessity and wait for feedback from States.

33. **Mr. Heyns** said that a reference to necessity and proportionality would be inserted in the last sentence. If the Committee would prefer not to delete the third sentence, it could be placed within square brackets for further consideration at a later stage.

34. **Mr. Zimmermann** said that, as the Committee was addressing the situation of civilians in relation to direct participation in hostilities, he would be in favour of replacing the words “An individual participant in an assembly” at the beginning of the fourth sentence with “A civilian participating in an assembly”. The Committee would then be leaving open the question of whether a non-civilian, or someone assuming a continuous combat function, could be targeted with lethal force.

35. **Mr. Heyns** said that he accepted Mr. Zimmermann’s proposal.

36. *Paragraph 104, as amended, was provisionally adopted.*

*Paragraph 105*

37. **Mr. Heyns** said that paragraph 105 was the first in section 8, which concerned the relationship between article 21 and other provisions of the Covenant and other legal regimes. The equivalent sections in other general comments were rather lengthy. However, the relationship between article 21 and other provisions of the Covenant and other legal regimes was addressed in detail elsewhere in the draft.

38. *Paragraph 105 was provisionally adopted.*

39. *Mr. Fathalla resumed the Chair.*

*Paragraph 106*

40. **Mr. Heyns** said that he had added a new second sentence to the paragraph, which read: “Religious assemblies may also be protected under the freedom to manifest one’s religion or beliefs (art. 18).” It was indicated in the associated footnote that the freedom in question was not subject to restrictions based on national security.

41. **Mr. Shany** said that he supported paragraph 106. He proposed including a reference to article 27, which concerned the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language. In his view, assemblies were an important element of that right.

42. **Mr. Heyns** said that he agreed with Mr. Shany’s suggestion. He had prepared a paragraph on discrimination, which he would propose for inclusion elsewhere in the draft; however, the situation of minorities should also be addressed in paragraph 106.

43. *Paragraph 106, as amended, was provisionally adopted.*

*Paragraph 107*

44. **Mr. Heyns** said that, although he had intended to conclude the general comment with an uplifting last paragraph, the current text of paragraph 107 was rather technical in nature.

45. **Ms. Pazartzis** said that the paragraph did not strike quite the right tone on which to conclude the general comment. It might be worth drafting new text that built on the idea set out in the first sentence, which concerned the non-infringement of the rights of others.

46. **Mr. Zimmermann** said that the paragraph could be deleted, as its content had been addressed in the section on restrictions on the right of peaceful assembly. However, if it was retained, the Rapporteur might wish to include a reference to property rights. Assemblies sometimes resulted in damage to property.

47. **Ms. Brands Kehris** said that the first sentence was a very absolute statement. It seemed to contradict the more balanced approach taken elsewhere in the draft. Although there were various other issues, such as access to health services, that could also be addressed in the paragraph, she would be in favour of deleting it.

48. **Mr. Zyberi** said that the last paragraph should tie together the various strands of the general comment. For example, the Committee could recall that it was setting out minimum standards, which States could nevertheless exceed, and that all participants were required to exercise common sense.

49. **Mr. Shany** said that he, too, would be in favour of either deleting or replacing the current text of paragraph 107. One solution might be to revisit the ideas set out in paragraph 2, namely that the exercise of the right of peaceful assembly was a valuable tool that could be used for the realization of a wide range of other rights, including those that emanated from other legal regimes, and that the protection of that right was informed by the protection of other substantive rights and regimes. In addition, although the Committee had taken a position against content-based restrictions to the right of peaceful assembly, the protection of that right could not be “content-neutral”. In other words, the cause being promoted at a particular assembly might be a reason for protecting the right of the participants to assemble peacefully. Paragraph 2 touched on those issues, but it did not

address their legal implications. He agreed, however, that restrictions to the right of peaceful assembly had been dealt with elsewhere in the draft.

50. **Mr. Santos Pais** said that one way of addressing some of the concerns raised would be to replace the words “must not infringe on” in the first sentence with “should take due account of”. The rights and freedoms listed in the second and third sentences could then be reformulated as examples. In his view, it was important to provide examples, as the right of peaceful assembly was not absolute.

51. **Mr. Heyns** said that it would be fitting to replace paragraph 107 with a more inspiring last paragraph. The Committee could reflect on the most appropriate wording over the following year. He agreed with the proposal to reaffirm the value of the right of peaceful assembly as part of the realization of human rights and the international legal order. The Committee should endeavour to produce a document that could serve as a guide for many years.

52. **The Chair** suggested that the Rapporteur should redraft paragraph 107 for consideration by the Committee later at the current meeting.

53. *It was so decided.*

*The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.*

54. **Mr. Heyns** said that he proposed introducing a new section heading, “Conclusion”, before the paragraph, which could then be reworded along the following lines:

Ensuring and respecting the legitimate exercise of the right of peaceful assembly is central to the full realization of all human rights, and of a global order which is responsive to the needs and aspirations of its people.

55. **Ms. Pazartzis** said that more time was required to consider the new wording of paragraph 107. She therefore wondered whether the Rapporteur would agree to place the paragraph in brackets. It might not be necessary to introduce a new title, if the paragraph could be linked to the “other legal regimes” mentioned in the title of section 8.

56. **Ms. Brands Kehris** said that she supported the wording of the paragraph, but would prefer it to be placed in brackets at that stage. She wondered if it was really necessary to end with a general, concluding paragraph of that nature.

57. **The Chair** said he took it that the Committee wished to place the paragraph in brackets for reconsideration during the second reading of the draft general comment.

58. *It was so decided.*

59. **The Chair** said that paragraphs 89, 91, 92 and 95 of the first draft had been revised by the Rapporteur in order to reflect proposals and comments made at the 3679th meeting. He invited the Committee to consider the revised and renumbered versions of those four paragraphs.

*Paragraph 92 (former paragraph 89)*

60. **Mr. Heyns** said that the new paragraph 92 read:

Preventive detention of targeted individuals, in order to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. This may be done only in exceptional cases and where the authorities have actual knowledge of the intent of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will be clearly inadequate. Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary.

61. The paragraph had raised several issues, among them the use of the term “preventive detention”. His research had shown that the term related to matters of public order. The term “administrative detention”, by contrast, related more to national security. He had amended the second sentence to build in more safeguards. It would be possible to mention further safeguards, if necessary.

62. *Paragraph 92 was provisionally adopted.*

*Paragraph 94 (former paragraph 91)*

63. **Mr. Heyns** said that he had revised the paragraph in order to strengthen the safeguards for which it provided and had inserted a new fourth sentence that read: “Particular care must be taken to include, as far as possible, only people who could be linked directly to violence and to limit the duration of the containment to the minimum necessary.”

64. **Mr. Shany** said that, while he understood the Rapporteur’s intention, the connection between the third and fourth sentences was unclear. He wondered whether it was realistic to expect law enforcement agencies to contain only those engaged in violence, as it would require them to encircle specific individuals in a crowd that might consist of many thousands of people. It would perhaps be better to replace the words “to include, as far as possible, only people who could be directly linked to violence” with “to minimize, as much as possible, the impact on non-violent participants”.

65. **Mr. Heyns** said that “kettling” was a blunt instrument. Although it served a purpose in avoiding problems, it also created problems of its own. The word “include” in the fourth sentence could be replaced with “contain”. As was clear from his use of the words “as far as possible”, his intention had been to describe an ideal situation rather than an expectation.

66. **Mr. Zyberi** said that another way of improving the coherence of the paragraph would be to place the current fourth sentence after the first one.

67. **Mr. Heyns** said that the current second sentence should follow the first one. However, the third and fourth sentences could be swapped. If they were, it might be necessary to amend the language slightly for the purpose of coherence.

68. **The Chair** said the order of the sentences and any amendments necessary as a result of their reordering could be left in the hands of the Rapporteur.

69. *Paragraph 94, as amended, was provisionally adopted on that understanding.*

*Paragraph 95 (former paragraph 92)*

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

An assembly may be dispersed if it is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed. An assembly that remains peaceful but which nevertheless causes a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.

71. *Paragraph 95 was provisionally adopted.*

*Paragraph 99 (former paragraph 95)*

72. **Mr. Heyns** said that he had inserted a proposed new second sentence, which read: “Members of the government and other political authorities should promote a culture of accountability for law enforcement officials.”

73. **Mr. Santos Pais** said that the phrase “Members of the government and other political authorities” should be amended to include a reference to the judiciary.

74. **Mr. Shany**, supported by **Ms. Pazartzis**, said that to avoid specifying the different branches of power, and to counter the rather abstract nature of the proposed new sentence, the first sentence could instead be changed to read as follows: “The State is responsible under international law for the actions and omissions of its law enforcement agencies, and should promote a culture of accountability for law enforcement officials.” In the last sentence, for consistency, “police officers” should be changed to “law enforcement officials”.

75. **Mr. Zyberi** said that he agreed with Mr. Shany’s proposal, but would suggest amending the last part of that sentence to read: “and State authorities should promote a

culture of accountability”. It would be useful if the sentence could be made to relate in some way to the right of peaceful assembly. He agreed that it was better to use the more general term “law enforcement officials”, rather than “police officers”.

76. **Mr. Heyns** said that the paragraph would thus read: “The State is responsible under international law for the actions and omissions of its law enforcement agencies, and to promote a culture of accountability during assemblies. To enhance effective accountability, uniformed law enforcement officials should always display a form of identification during assemblies.”

77. **Mr. Muhumuza** said that he wondered whether law enforcement officials would not always be uniformed.

78. **Mr. Heyns** said that the new paragraph 102 dealt with undercover officers, who by their very nature would not be uniformed or identified, whereas paragraph 99 dealt with uniformed officers.

79. **Mr. Shany** said that, it would be better to replace “during assemblies” with “in relation to assemblies” at the end of the paragraph, since it was not desirable for accountability to be limited to the actual duration of the assembly.

80. **The Chair** said he took it that the Committee wished to accept the revised version of the paragraph, as amended.

81. *It was so decided.*

82. **The Chair** invited the Committee members to consider a number of outstanding proposed amendments, which would be discussed in consecutive order.

#### *Paragraph 27 (former paragraph 28)*

83. **Mr. Heyns** said that the proposal was to change “a legal framework” to “a legal and social framework”, in the second sentence. He wished to know whether Committee members had any alternative wording to suggest. Rather than “social”, the word “political” or “administrative” could be used, for example.

84. **Mr. Shany** said he wondered whether “political” was perhaps better, since it was broader and included not only social but also other aspects.

85. **Ms. Pazartzis** said that the meaning of “political” was not clear. In her view, “administrative” would be better.

86. **Mr. Heyns** said he was concerned that “political” might be interpreted in the sense of “party political”. He would therefore prefer “administrative”.

87. **Ms. Sancin** proposed using the word “institutional”, which could cover a whole range of actors and measures.

88. **The Chair** said he took it that the Committee wished to amend “a legal and social framework” to “a legal and institutional framework”.

89. *It was so decided.*

#### *Paragraph 35*

90. **Mr. Heyns** said that he proposed inserting a final sentence to read: “Business enterprises have a responsibility to respect human rights, including the right of peaceful assembly.” That tied in with the questions of both private security service providers and private property.

91. **Mr. Zyberi** said that he supported the insertion of the additional sentence. With regard to footnote 33 referring to the Guiding Principles on Business and Human Rights, it should be noted that discussion on a related treaty was currently under way. If the treaty was adopted, a reference to it could be added on second reading.

92. **The Chair** said he took it that the Committee wished to accept the revised wording of the paragraph as proposed by the Rapporteur.



93. *It was so decided.*

#### *Section 4*

94. **Mr. Heyns** said that the sequence of the paragraphs in section 4 had been rearranged, such that the rules on restrictions (legality, necessity and proportionality) now came first, followed by the permissible grounds for restrictions, which had also been reordered in line with the structure of article 21 of the Covenant. Those paragraphs were followed by the rules on content and place, manner and time, as developed in the jurisprudence. While the substance of the paragraphs had not changed, their sequencing had thus been improved.

#### *Paragraph 40*

95. **Mr. Heyns** said that he proposed adding a final sentence, which would read: “Restrictions should not be aimed at discouraging participation in assemblies (resulting in the so-called ‘chilling effect’).”

96. **Mr. Shany** said that the parentheses should be removed, as should the quotation marks around “chilling effect”, which was a common concept. The words “so-called” should also be deleted, since they implied that the Committee was distancing itself from the concept. He would be in favour of inserting the word “potentially” before “resulting”, so as not to cause confusion by combining the aim expressed in the main sentence with the result currently expressed in parentheses. The sentence would thus read: “Restrictions should not be aimed at discouraging participation in assemblies, potentially resulting in a chilling effect.”

97. **Mr. Heyns** said that all Mr. Shany’s proposals made the text clearer. He had initially considered “chilling effect” to be a slang expression, but it was, in fact, a widely accepted term.

98. **The Chair** said he took it that the Committee agreed to remove the parentheses, the quotation marks and the expression “so-called” from the final sentence, and to insert the word “potentially” between “assemblies” and “resulting”.

99. *It was so decided.*

#### *Paragraph 43 (former paragraph 48)*

100. **Mr. Heyns** said that he had inserted new wording at the start of paragraph 43. The first sentence now read: “Article 21 spells out a general framework which any restrictions on the right of peaceful assembly must meet, consisting of the cumulative requirements of legality, necessity and proportionality, and identifying a limited number of grounds on which restrictions may be imposed.”

101. **The Chair** said he took it that the Committee wished to accept the new wording inserted at the start of paragraph 43.

102. *It was so decided.*

#### *Paragraph 51 (former paragraph 57)*

103. **Mr. Heyns** proposed inserting, after the word “tradition” in the second sentence, the phrase “and any such restrictions must be understood in the light of the universality of human rights and the principle of non-discrimination”.

104. **The Chair** said he took it that the Committee wished to accept the new addition to the second sentence.

105. *It was so decided.*

#### *Paragraph 52 (former paragraph 53)*

106. **Mr. Heyns** said that he had introduced references to “property rights” and the “right to work” in the second sentence because it seemed very limited to refer only to rights under the Covenant as possible grounds for restricting the right of peaceful assembly.

107. **The Chair** said he took it that the Committee members would be willing to discuss on second reading the issue of whether or not to include a reference to property rights.

108. *It was so decided.*

*Paragraph 53 (former paragraph 44)*

109. **Mr. Heyns** said that he had inserted a new sentence, which read: “In addition to the general framework for restrictions provided for in article 21 as discussed above, a number of additional considerations have been developed in the jurisprudence on restrictions on the right of peaceful assembly.” He would like to know whether that wording was clear.

110. **Mr. Shany**, supported by **Ms. Pazartzis**, said that the term “jurisprudence” should be removed because some States would object to it, since it raised the question of whether the Committee was a quasi-judicial body. Furthermore, the Committee, when drafting general comments, normally just stated propositions, rather than alluding in the text itself to their source.

111. **Mr. Zyberi** proposed replacing the word “jurisprudence” with “State practice”, which covered a wide variety of sources.

112. **Ms. Pazartzis** said that a more general formulation might be sufficient. The wording should not specify the source of the Committee’s propositions and, in particular, its interpretations of State practice should not be given.

113. **Mr. Zyberi** said that, while he understood the concerns about the term “State practice”, he took the view that it could be useful to mention it. Doing so could also prompt more States to provide their feedback on the draft general comment.

114. **Mr. Heyns** said that the Committee tried to set aspirational goals, which could be undercut if the wording was limited to a specific concept like “State practice”. Since caution was advisable in respect of the word “jurisprudence”, he proposed replacing the words “have been developed in the jurisprudence on” with “are relevant to”.

115. **The Chair** said he took it that the Committee members wished to accept the new formulation on a provisional basis.

116. *It was so decided.*

*Paragraph 56 (former paragraph 46)*

117. **Mr. Heyns** said that paragraph 56 now read:

In accordance with article 20 of the Covenant, peaceful assemblies may not be used for any propaganda for [aggressive] war (paragraph 1), or for any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (paragraph 2). Assemblies which fall within the scope of article 20 must be prohibited. As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole.

The wording was drawn from article 20 of the Covenant. However, he wished to highlight that he had inserted the word “aggressive” before the word “war” because, in his view, that was largely how article 20 had been interpreted; the qualification was necessary to allow for the possibility of a demonstration in favour of a legitimate war.

118. **Ms. Pazartzis**, supported by **Mr. Zyberi**, said that she was uncomfortable with the inclusion of the word “aggressive” and disagreed with the Rapporteur’s explanation that some wars might be permissible.

119. **Mr. Shany**, expressing agreement with the point made by Ms. Pazartzis, said that changes to the language of the Covenant should be avoided; the insertion of the word “aggressive” would invite reaction on that specific issue, which was not central to the general comment, and such reaction could render the Committee’s work more complicated. He took the view that the distinction between an aggressive war and a defensive war was in the eye of the beholder.

120. **The Chair** said he took it that the Committee wished to delete the word “aggressive”.

121. *Paragraph 56, as amended, was provisionally adopted.*

*Paragraph 69 (former paragraph 67)*

122. **Mr. Heyns** said that he had inserted the words “or other disguises” after “face coverings” in the first sentence of paragraph 69, in order to refer to ways in which technology might be used to disguise one’s identity. He proposed inserting two new sentences at the end of the paragraph: “Assembly participants should not be prohibited from wearing face coverings where there is no demonstrable evidence of imminent violence on their part and a probable cause for arrest. As such, blanket bans can only be justified on an exceptional basis.” The purpose of the two sentences was to make clear that such prohibitions should generally be applied only to individuals.

123. **The Chair** said he took it that the Committee wished to accept the new additions to the paragraph.

124. *It was so decided.*

*Paragraph 78*

125. **Mr. Heyns** said that a new paragraph 78 had been drafted. It read: “While terrorism and other similar acts of violence must be criminalized, such crimes may not be defined in a vague or overly broad manner that curtails or discourages peaceful assembly.” The issue of terrorism had previously been covered in the part of the draft general comment relating to national security, but members had expressed concerns that its inclusion there rendered it too specific.

126. **Mr. Shany** said that, while he largely agreed with the new paragraph, in his opinion, it needed to be read in conjunction with paragraph 56, which addressed assemblies used to incite violence; he proposed cross-referencing that paragraph, perhaps by means of a footnote. States might justify interference with a peaceful assembly that glorified terrorism on the ground that it fell within the scope of article 20 of the Covenant.

127. **Mr. Santos Pais** proposed replacing “curtails” with “may be used to curtail” because the definition of crimes in a vague or overly broad manner would not necessarily curtail or discourage peaceful assembly.

128. **The Chair** said he took it that the Committee wished to accept the proposed amendments.

129. *Paragraph 78, as amended, was provisionally adopted.*

*Paragraph 85 (former paragraph 82)*

130. **Mr. Heyns** said that, in view of the emphasis placed by Committee members on the importance of making clear that those involved in an assembly did not have a duty to engage in communication and dialogue, he proposed inserting a new sentence at the end of paragraph 85: “While engaging in such contact is generally good practice, participants cannot be forced to do so.”

131. **Mr. Bulkan** said that it was important to stress not only that participants had no duty to engage in communication and dialogue but also that they should not be prejudiced in any way for not doing so.

132. **Mr. Santos Pais** proposed inserting “and organizers” after “participants” in the final sentence.

133. **Mr. Heyns** said that one solution to Mr. Bulkan’s concern might be to replace the word “forced” with “required”, as a way of indicating that sanctions could not be imposed for refusal to engage in communication and dialogue. He agreed with the suggestion to insert “and organizers”.

134. **The Chair** said he took it that the Committee wished to accept the proposed amendments.

135. *It was so decided.*

*Paragraph 89 (former paragraph 86)*

136. **Mr. Heyns** said that, on the basis of some concerns expressed by Mr. Shany, the second sentence had been replaced with two new sentences inserted at the end of the paragraph:

Domestic legal regimes on the use of force by law enforcement officials must be brought in line with the requirements posed by international law, and not grant officials largely unrestricted powers, for example to use “force” or “all necessary force” to disperse assemblies, or to “shoot for the legs”. In particular, domestic law must not allow use of force against participants in an assembly on a wanton, excessive or a discriminatory basis.

The unrestricted powers mentioned were examples based on the most problematic domestic legal provisions that he had been able to find.

137. **Mr. Zimmermann** proposed removing “brought” from the first of the two new sentences.

138. **The Chair** said he took it that the Committee wished to accept, as amended, the two new sentences inserted at the end of paragraph 89.

139. *It was so decided.*

140. **The Chair** said that, if the Rapporteur and other Committee members had no further comments, he took it that the Committee wished to adopt the draft general comment as a whole on first reading. The draft general comment would then be submitted to States parties and other stakeholders for their input.

141. *Draft general comment No. 37 on article 21 of the Covenant (Right of peaceful assembly), as a whole, as amended, was provisionally adopted.*

*The discussion covered in the summary record ended at 12.25 p.m.*