*Unofficial translation*

**Comments by the Russian Federation to the Draft General Comment No. 37 of the Human Rights Committee on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights**

Within the framework of the preparation of the draft general comment No. 37 (hereinafter referred to as "the draft") on the right of peaceful assembly, as enshrined in Article 21 of the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant") by the Human Rights Committee, the Russian side would like to present the following comments.

In the context of the realization of the right of peaceful assembly, the Russian Federation assumes that a public event is an open, peaceful action which is accessible to everyone and held in the form of an assembly, meeting, demonstration, march or picket, or in various combinations of these forms, initiated by citizens, political parties or other public and religious associations, including with the use of vehicles.

The purpose of a public event should be free expression and formation of opinions, making demands on various issues of political, economic, social and cultural life of the country and its foreign policy.

In compliance with the Russian legislation, the organizer of a public event is obliged, in particular, to: file a notice of holding a public event with an executive authority of a constituent entity of the Russian Federation or a local self-government body; ensure compliance with the conditions for holding public events specified in the notice of holding a public event or with those altered as a result of agreement with the relevant authority; and demand that participants in a public event respect public order and the rules for holding public events and stop any violation of the law.

Participants in a public event have the right to: take part in the discussion and decision-making, other collective actions in compliance with the goals of the public event; make use of various symbols and other means of publicly expressing collective or individual opinions, as well as means of agitation not prohibited by law; adopt and forward resolutions, demands and other appeals of citizens to state authorities and local self-government bodies, public and religious associations, international and other bodies and organizations.

During a public event its participants are obligated to: comply with all legal requirements of the organizer of the public event, authorized representative of the relevant authority and officials of the internal affairs agencies; respect public order and rules of holding public events; comply with the requirements for ensuring transport and road safety if the event involves using vehicles.

Participants in public events are not entitled to: conceal their faces, including through the use of masks, means of disguise or other items specially intended to make them more difficult to identify; carry weapons, ammunition, stabbing or cutting items or other items that may be used as weapons, explosive devices, explosive, pyrotechnic, toxic, poisonous, inflammable substances, materials and articles (except for matches and pocket lighters), items and chemical materials that may be used to make pyrotechnic articles or fumes; carry and drink alcoholic beverages; be in a state of intoxication at the venue of the public event.

With regard to the draft general comment No. 37 prepared by the Human Rights Committee, the Russian Federation would like to report the following.

1. According to paragraph 2 of the draft, "a failure to recognize the right to participate in peaceful assemblies is a marker of repression". The Russian side considers it appropriate to remove this provision since it is a subjective evaluation that has no internationally recognized legal basis. Besides, the question arises as to whether restrictions on the right of peaceful assembly would in this case be qualified as "markers of repression".

2. According to paragraph 7 of the draft, peaceful assembly "can cause disruption, for example of vehicular or pedestrian movement or economic activity". In this regard, it would be useful to clarify that the disruption in question should not constitute a direct purpose of the public event, but rather be its possible collateral consequence.

3. In compliance with paragraph 14 of the draft, "assemblies may, in addition to having such an expressive purpose, also serve other goals and still be protected by article 21". In this regard, further clarification is needed as to what the authors of the document understand by "other goals".

4. Paragraph 19 of the draft contains a certain presumption of a peaceful nature of assemblies that is unknown under international law and represents a broad interpretation of Article 21 of the Covenant. In this context, it is not clear why paragraphs 402-403 of the judgment of the European Court of Human Rights of February 7, 2017 on the case *Lashmankin and others v. Russia*, which have nothing to do with the issue addressed in paragraph 19 of the draft, are used to support this idea.

The reference to "presumption against restrictions" in paragraph 40 appears equally unfounded.

5. We consider the provision of paragraph 23 of the draft according to which the carrying of weapons by participants does not in itself mean that the assembly is not peaceful, to be controversial. The Russian side believes that, when finalizing this provision, it is necessary to take into account the fact that the Constitutions of a number of the States Parties to the Covenant (for example, Article 31 of the Constitution of the Russian Federation, Article 8 of the Basic Law for the Federal Republic of Germany, Article 17 of the Constitution of the Italian Republic, etc.) provide for the right of citizens to assemble peacefully, but without weapons.

6. The Russian side cannot agree with the attempts made in paragraphs 28, 34 and 36 of the draft to create some kind of a privileged regime for protecting certain categories of persons in the exercise of their right to peaceful assembly. The Russian side believes that the rights and freedoms enshrined in the Covenant, including the right to peaceful assembly, are guaranteed to all persons without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 of the Covenant).

7. We consider doubtful the idea contained in paragraph 30 of the draft that "counter-assemblies should also be treated in a content-neutral way, and be allowed to take place, where possible, within sight and sound of the assemblies against which they are directed". We believe that its practical implementation may not only have a negative impact on the level of security, but may also provoke, in some cases, an open conflict between the participants of the *competing* events. In this regard, the Russian side stands for removing this wording.

8. It seems appropriate to complement the thesis contained in paragraph 35 of the draft that business structures should respect the rights of persons participating in a peaceful assembly, with a provision highlighting the importance of balancing the interests of private enterprises and citizens exercising their right to participate in the relevant public event. This applies equally to the respect for the rights of private owners of the territories used for organizing an event (paragraph 67).

9. Given the inclusion in paragraph 36 of the draft of a passage stating that "assemblies with a political message should likewise enjoy a heightened level of accommodation and protection", further clarification is needed from the authors of the document as to what they mean by "heightened level of accommodation and protection".

10. Paragraphs 48 and 52 of the draft state that restrictions on peaceful assemblies in the interests of national security and in order to protect State or public security, as well as public morals, should be imposed only exceptionally. This idea is not confirmed by Article 21 of the Covenant according to which no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society.

11. In paragraph 49 of the draft, along with life and physical integrity, it is appropriate to mention health and psychological integrity than can also be covered by the notion of *public safety* for which the right to peaceful assembly may be restricted.

12. Paragraph 50 of the draft states that "States Parties should not rely on some vague notion of "public order" as a ground to justify overbroad restrictions on the right of peaceful assembly". However, the authors of the document do not specify the notion of *public order* either in this paragraph, or in other provisions. It seems appropriate to address this gap.

13. Interpretation of the morals contained in paragraph 52 of the draft by the members of the Committee seems not sufficiently justified. Given the absence of the definition of the term *morals* in international law, this issue should be addressed with due account for national, historic, religious and other characteristic features of each State. Imposing any universal approaches in this regard is unacceptable.

14. It seems that the wording of paragraph 55 of the draft stating that "restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government, including calls for changes of government, the constitution, the political system, or political independence for part of the country", in certain situations may contradict the provisions of the Covenant. In particular, according to Article 21, the right of peaceful assembly is not absolute and may be restricted by law if it is necessary in a democratic society, including in the interests of national security or public safety.

Moreover, in some cases actions listed in paragraph 55 of the draft may fall under the definitions of unlawful acts contained in international instruments, such as:

- "extremist activity (extremism)" (article 1, paragraph 1, subparagraph 3 of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism of June 15, 2001);

- "extremist act" (article 2, paragraph 1, subparagraph 3 of the Convention of the Shanghai Cooperation Organization on Combating Extremism of June 9, 2017).

15. The provision contained in Article 55 of the draft stipulating that restrictions "should not be used to prohibit insults to the honour and dignity of officials or State organs or to pursue other objectives favoured by the authorities" raises some doubts. Although public officials acting in an official capacity and politicians are subject to a wider range of permissible criticism than individual persons (paragraph 59 of the judgment of the European Court of Human Rights of May 30, 2013, on the case of *OOO "Vesti" and Ukhov v. Russia*), such case laws cannot be arbitrarily interpreted as an unlimited right to publicly insult public officials and authorities.

16. We cannot agree with the idea contained in paragraph 58 of the draft that "the fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify prohibition". The Russian side assumes that the threat of violence as a result of a mass event is sufficient ground for using restrictive measures against it in order to protect the rights and legitimate interests of other citizens.

17. It appears that paragraph 60 of the draft stating that "generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past" requires further elaboration. In particular, the Russian side deems it necessary to add to this paragraph a provision stipulating that restrictions may be justified with regard to the use of Nazi symbols that include swastikas, flags, badges, elements of uniform, greetings, welcome gestures and other distinctive signs of state, military, and other structures outlawed by the Nuremberg Tribunal. This approach is in line with the general understanding of the inadmissibility of the glorification of Nazism which is enshrined in the resolutions on "Combating glorification of Nazism, neo-Nazism and other practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance" adopted annually by the UN General Assembly by an overwhelming majority of the UN Member States.

18. The idea contained in paragraph 70 of the draft that "assembly participants should not be prohibited from wearing face coverings where there is no demonstrable evidence of imminent violence on their part" raises some doubts as its implementation may weaken security during public events. The Russian side believes that restrictive measures prescribed by law may be used in this situation not only in case when there is clear evidence of direct violence, but also when there is a real threat of its use.

19. It is worth mentioning paragraph 75 of the draft providing that the organizers of mass events should not be held accountable for actions of other participants. This approach does not seem to be sufficiently justified, as ensuring peaceful nature of mass events largely depends on the organizers. Therefore, the Russian side sees no reason to absolve them from responsibility in cases when their actions cause damage.

20. Paragraph 85 of the draft states that the fundamental duty of law enforcement agencies is to ensure the exercise of the right of peaceful assembly. As for the crucial task of maintaining public order, it is not mentioned at all. The Russian side deems it necessary to address this gap.

21. Restrictions on preventive detention and search during the conduct of mass events set out in paragraphs 93, 94, and 103 of the draft, as well as on the participation of plainclothes officers are not sufficiently clear. It seems that unconditional compliance with these recommendations may significantly reduce the ability of law enforcement agencies to effectively and quickly respond to unlawful acts prior to or during mass events, and create serious security risks for their participants.