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**OSCE / ODIHR GUIDELINES
ON FREEDOM OF PEACEFUL ASSEMBLY**

**Prepared by
THE OSCE/ODIHR PANEL OF EXPERTS
ON THE FREEDOM OF ASSEMBLY**

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Foreword by Ambassador Strohal

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Foreword

The right to assemble peacefully is an essential condition for the exercise of other human rights such as the freedom of expression. As a true foundation of democracy, the right to assemble is guaranteed by major human rights treaties and by a commitment made by OSCE participating States in 1990, in Copenhagen. My Office has been providing legislative support to participating States to assist them in ensuring that their legislation on freedom of peaceful assembly complies with OSCE commitments and international standards. These *Guidelines on Freedom of Peaceful Assembly* are a new cornerstone of this assistance, adding to the ODIHR's *Legislationline.org* database, where lawmakers can obtain examples from other countries' legislation that can help them prepare legislation regulating the exercise of the freedom of assembly.

International standards certainly offer a clear general framework; however, too little guidance is available to legislators and executive branches on how the exercise of freedom of peaceful assembly may be regulated in law and practice at the national level. Good laws by themselves cannot mechanically generate improvements in practice. In countries where special legislation on the subject was passed, one can, in a number of cases, identify an inclination towards limiting the risks associated with the so-called command-and-control approach as reflected in more regulations, more control, and more bureaucratic hurdles. Public demonstrations and rallies, for instance, are not always seen as part of the routine that makes up pluralistic democracy. They are frequently considered suspicious by those in power, hence the trend towards more regulations and control. This trend certainly contributes to the widening of a gap between civil society and governments. In short, I believe that some of the legislation and practice we encounter across the OSCE region reflects the conviction that it is the state that regulates this freedom in a way that often results in its *de facto* denial. This prompted the ODIHR to develop guidelines with a view to formulating minimum standards that should be met by national authorities in their regulation of this right. The resulting *Guidelines on Freedom of Peaceful Assembly* are aimed at both lawmakers and practitioners responsible for implementing laws.

In order to be used in the contexts of different countries, the Guidelines cannot provide one-size-fits-all solutions; rather, they should reflect best international practice. The ODIHR therefore set up an expert panel and convened four roundtables to make the drafting truly inclusive and participatory. These roundtables helped us to discern trends and patterns at the juncture between the law and real-life situations. In the course of 2006, the roundtables brought together as many as 150 participants – practitioners and academics – from a majority of OSCE participating States.

At the end of this process, we are pleased to present these Guidelines to the OSCE participating States and to the wider public. They are a living instrument and will benefit from periodic review. They demarcate parameters for implementation consistent with international standards, and illustrate key principles with examples of good practice from individual participating States. We hope they will find many users – legal drafters, police officers, government officials, judges, academics, and members of non-governmental organizations – and we count on these users to contribute their expertise and experience in order to further enrich this document.

Ambassador Christian Strohal
ODIHR Director

Introduction

These *Guidelines on Freedom of Peaceful Assembly* together with the Interpretative Notes were prepared by the Panel of Experts on Freedom of Assembly of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in consultation with the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe. The Document takes into account comments received from members of the Venice Commission who were consulted on an initial draft of these Guidelines¹.

The Interpretative Notes constitute an integral part of the Guidelines, and should be read in concert with them.

The Guidelines was originally drafted by the ODIHR, providing a solid foundation on which to build. It was posted on the ODIHR website and circulated to all those who contributed to the drafting process, particularly those who took part in consultative roundtable events held in Tbilisi, Belgrade, Almaty, and Warsaw. In total, these roundtable sessions (all held in 2006) were attended by as many as 150 participants from 29 different OSCE participating States. **The participants** represented many diverse interests, bringing together police officers, non-governmental human rights advocacy groups, government ministers, organizers of assemblies, academic commentators, and practicing lawyers. **The Guidelines and the notes attached to them** take into account comments made by participants in the course of the events, as well as afterwards. Without this input, which reflects a wealth of hands-on experience in widely differing contexts, this would be a less comprehensive document.

The legal regulation of freedom of assembly is a complex matter. A wide range of issues (both procedural and substantive) must be considered so as to best facilitate the enjoyment of the freedom. Moreover, the approach to regulation varies greatly across the OSCE space: from the adoption of a single consolidated law to the incorporation of provisions concerning peaceful assemblies in an array of different laws (including laws governing police powers, criminal and administrative codes, anti-terrorism legislation, election laws, and even architectural regulations). Recognizing these differences, as well as the great diversity of country contexts (particularly in relation to democratic traditions, the rule of law, and the independence of judiciary), **the Guidelines** and the notes attached to them do not provide ready-made solutions. It is neither possible nor desirable to draft a single transferable model law that could be adopted by all OSCE participating states. Rather, the Guidelines and the notes attached to them clarify key issues and discuss possible ways to address them.

The Guidelines and the notes attached to them are based on international and regional treaties relating to the protection of human rights,² evolving state practice (as reflected, *inter alia*, in judgments of domestic courts),³ and the general principles of law recognized by the community of nations. They demarcate a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of freedom of peaceful assembly. **The Guidelines and the notes attached to them** differ, however, from other texts that merely attempt to codify these standards or summarize the relevant case law. Instead, they promote excellence, and therefore provide examples of good practice (measures that have proven successful in a number of jurisdictions or that have demonstrably helped ensure that the freedom of assembly is accorded adequate protection).

In regulating the enjoyment of the freedom of assembly, well-drafted legislation is vital in framing the discretion afforded to the authorities. This demands that governments and those involved in the drafting of legislation consult with the individuals and groups affected by it (including local human rights organizations) as an integral part of the drafting process. Often, however, it is not

the text of the law that is at issue, but its implementation. Therefore, while **these Guidelines and the notes attached to them** will inform those involved in the drafting of legislation pertaining to freedom of assembly, they are also aimed at those responsible for implementing such legislation (the relevant administrative and law enforcement authorities), and those affected by its implementation. **The Guidelines and the notes attached to them** are aimed at practitioners in many sectors: legislative drafters, politicians, legal professionals, police officers, local officials, trade unionists, assembly organizers and participants, non-governmental organizations (NGOs), and those involved in monitoring both freedom of assembly and policing practice.

While Section A contains the Guidelines, Section B, the Interpretative Notes, is not only essential to a proper understanding and interpretation of the Guidelines, but it provides examples of good practice, which is what makes this document special. Part I of Section B (Chapters 1-4) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines a number of general principles that should govern its regulation (Chapter 2); sets out the legitimate grounds for, and types of, restrictions (Chapter 3); and examines relevant procedural issues (Chapter 4). Part II (Chapters 5-7) has a more practical focus, and it examines the implementation of legislation on freedom of assembly. It covers the rights and responsibilities of law enforcement officials (Chapter 5), event organizers (**Chapter 6**), and the role of other stakeholders (Chapter 7). Appendix A contains a list of cited cases, and Appendix B provides a glossary of terms (**with a Russian translation**). This glossary defines major terms and notions used in the **Guidelines and the notes attached to them**.

The **Guidelines and the notes attached to them** can be downloaded from the ODIHR website, as well as from the ODIHR's legislative database, www.legislationline.org, where national legislation on public assemblies and other related legal materials can also be found.

The **Guidelines and the notes attached to them** are a living document, and will undoubtedly be revised over time. The ODIHR welcome comments and suggestions, which should be emailed to assembly@odhr.pl.

A - GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY

Regulation of Freedom of Peaceful Assembly

The importance of freedom of assembly. **Peaceful assemblies can serve many purposes**, including the expression of views and the defence of common interests. **The freedom of peaceful assembly** can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. It is also recognized as one of the foundations of a functioning democracy, and its protection is crucial for creating a tolerant society in which groups with different beliefs, practices, or policies can exist peacefully together.

Definition of assembly

- a. For the purposes of **these Guidelines**, an assembly is the intentional and temporary presence of a number of individuals in a public place that is not a building or structure for a common expressive purpose.
- b. This definition should not be interpreted so as to preclude protection being extended to other types of peaceful assembly, such as assemblies taking place on publicly or privately owned premises or structures. While all types of peaceful assembly deserve protection, public assemblies that take place in public spaces that are not buildings or structures raise particular regulatory issues, and are therefore the subject of **these Guidelines**.

Only peaceful assemblies are protected. An assembly should be deemed peaceful if its organizers have peaceful intentions. The term “peaceful” should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that a particular assembly is promoting, and even conduct that deliberately **impedes or obstructs** the activities of third parties. Participation in a public assembly must be voluntary.

Six Guiding Principles

Principle 1. Presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law.

Principle 2. The state’s duty to protect peaceful assembly. It is the responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom of assembly is enjoyed in practice and is not subject to unduly bureaucratic regulation.

Principle 3. Legality. Any restrictions imposed must have a formal basis in law. The law itself must be compatible with international human rights law, and it must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and what the consequences of such breaches would likely be.

Principle 4. Proportionality. Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The dispersal of assemblies may only be a measure of last resort. The principle of proportionality thus requires that authorities not routinely impose restrictions that would fundamentally alter the character of an event, such as routing marches through outlying areas of a city. The blanket application of legal restrictions tends to be overly inclusive and thus fails the proportionality test because no consideration is given to the specific circumstances of the case in question.

Principle 5. Good administration. The public should know which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information, and it should operate in an accessible and transparent manner.

Principle 6. Non-discrimination.

- a. Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The freedom to organize and participate in public assemblies must be guaranteed to both individuals and corporate bodies; to members of minority and indigenous groups; to both nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists); to both women and men; and to persons without full legal capacity, including persons with mental illness.
- b. The law must recognize the child’s right to participate in and organize peaceful assemblies. With due regard to the evolving capacity of the child, the right of children to organize an assembly may be subject to restrictions such as a certain minimum age for organizers or a requirement that the consent of their parents or legal guardians be obtained.
- c. Freedom of assembly of police or military personnel should not be restricted unless the reasons for the restriction are directly connected with their service duties, and only to the extent absolutely necessary in light of considerations of professional duty.

Restrictions on Freedom of Assembly

1. **Legitimate grounds for restriction.** Legitimate grounds for restriction are prescribed in universal and regional human rights instruments, and these should not be supplemented by additional grounds in domestic legislation.
2. **Restrictions on time, place and manner.** A broad spectrum of possible restrictions that do not interfere with the message communicated are available to the regulatory authority. As a general rule, assemblies should be facilitated within sight and sound of their target audience.

Procedural Issues

1. **Advance notice.** The legal provisions concerning advance notice should require a notice of intent rather than a request for permission. The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged. If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with the planned activity in accordance with the terms notified and without restriction.
2. **Spontaneous assemblies.** The law should explicitly provide for an exception from the requirement of advance notice where giving advance notice is impracticable. Even if no reasonable grounds for the failure to give advance notice are provided, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. Organizers who ignore or refuse to comply with valid advance-notice requirements may be subsequently prosecuted.
3. **Simultaneous assemblies.** Where notification is given for two or more assemblies at the same place and time, they should be facilitated as much as possible. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized.

Implementing Legislation on Freedom of Peaceful Assembly

1. **Pre-event planning with law enforcement officials.** Where possible and where special security concerns exist (for instance, in the case of large assemblies or assemblies on highly controversial issues), it is recommended that the organizer agree with law enforcement officials prior to the event about what security measures will be put in place. Such discussions can cover the deployment of police and stewards, and concerns around the nature of the policing operation.
2. **The use of negotiation and/or mediation to help resolve disputed assemblies.** If a proposed assembly, or its time, place, or manner, is disputed and no resolution emerges between the organizer, designated regulatory authority, law enforcement officials, or other parties whose rights might be affected, then negotiation or mediated dialogue is recommended to help reach a mutually agreeable accommodation. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organizations not affiliated with either the state or the organizer.
3. **Policing assemblies.** The state must protect participants of a peaceful assembly from any person or group (including *agents provocateurs* and counter-demonstrators) that attempts to disrupt or inhibit it in any way. The costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The state must not levy any additional monetary charge for providing adequate policing. Organizers of non-commercial public assemblies should not be required to obtain public liability insurance for their event.

4. **The use of force.** The use of force must be regulated by domestic law, which should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings), as well as the level of force acceptable to deal with various threats. Governments should develop a range of means of response, and equip law enforcement officials with various types of weapons and ammunition so as to enable a differentiated use of force. These should include the development of non-lethal incapacitating weapons for use in appropriate situations.
5. **Liability and accountability of police officers.** If the force used is not authorized by law, or more force is used than necessary in the circumstances, police officers should face civil and/or criminal liability, as well as disciplinary action. Police officers should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force. Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law enforcement officers, an effective official investigation must be conducted.
6. **Liability of organizers.** Organizers of assemblies should not be held liable for their failure to perform their duties if they make reasonable efforts to do so, nor should organizers be held liable for the actions of non-participants or *agents provocateurs*. Organizers should not be liable for the actions of individual participants. Instead, individual liability should arise for any participant if they commit an offence or fail to carry out the lawful directions of law enforcement officials.
7. **Stewarding assemblies.** While the police have overall responsibility for public order, it is recommended that organizers of assemblies be encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are people who work with assembly organizers and who are responsible for facilitating an event and helping ensure compliance with any lawfully imposed restrictions. Stewards should not have the powers of law enforcement officials and should not use force, but should rather aim to persuade assembly participants to co-operate. Stewards should receive an appropriate level of training and a thorough briefing before the assembly takes place, and it is the responsibility of the organizer to co-ordinate the stewarding operation. It is also recommended that stewards be clearly identifiable.
8. **Monitors.** For the purposes of these Guidelines, monitors are defined as non-participant third-party persons or groups whose primary aim is to observe and record what is taking place. The monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct both of participants and of law enforcement officials. While the primary responsibility to promote and protect freedom of assembly lies with the state, NGOs play an important role in furthering the cause of human rights. Human rights defenders should therefore be permitted to operate freely in the context of freedom of assembly.
9. **Media access.** Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities.

B – INTERPRETATIVE NOTES

Introduction

1. These Interpretative Notes constitute an integral part of the Guidelines, and thus should be read in concert with them. They are not only essential to a proper understanding and interpretation of the Guidelines, but they provide examples of good practice, which is what makes this document special.
2. Part I of the Interpretative Notes (Chapters 1-4) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines a number of general principles that should govern its regulation (Chapter 2); sets out the legitimate grounds for, and types of, restrictions (Chapter 3); and examines relevant procedural issues (Chapter 4). Part II (Chapters 5-7) has a

more practical focus, and it examines the implementation of legislation on freedom of assembly. It covers the rights and responsibilities of law enforcement officials (Chapter 5), event organizers (Chapter 6), and the role of other stakeholders (Chapter 7). Appendix A contains a list of cited cases, and Appendix B provides a glossary of terms (with a Russian translation). This glossary defines major terms and notions used in the Guidelines and the Interpretative Notes.

PART I FREEDOM OF PEACEFUL ASSEMBLY

1. Regulation of Freedom of Peaceful Assembly

The importance of freedom of assembly

3. Throughout the Guidelines and the Interpretative Notes, the term *freedom* of peaceful assembly is used in preference to that of the *right* to peaceful assembly. This emphasizes that any right to assemble is underpinned by a more fundamental freedom, the essence of which is that it should be enjoyed without interference.⁴ Participation in public assemblies should be entirely voluntary.⁵
4. **Peaceful assemblies can serve many purposes**, including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing, and protest. Freedom of peaceful assembly can have both symbolic and instrumental significance, and can be an important strand in the maintenance and development of culture and in the preservation of minority identities. It is complemented by other rights and freedoms such as freedom of association,⁶ the right to establish and maintain contacts within the territory of a state,⁷ freedom of expression,⁸ and freedom of thought, conscience, and religion.⁹ As such, freedom of assembly is of fundamental importance for the personal development, dignity, and fulfilment of every individual and the progress and welfare of society.¹⁰
5. It is also recognized as one of the foundations of a functioning democracy. Facilitating participation in peaceful assemblies – in addition to holding elections in line with international standards – helps ensure that all people in a society have the opportunity to express opinions that they hold in common with others. As such, freedom of peaceful assembly constitutes a form of direct democracy. It facilitates dialogue within civil society, as well as between civil society, political leaders, and government. With appropriate media coverage, public assemblies communicate with the world at large, and in countries where the media is limited or restricted, freedom of assembly is vital for those who wish to draw attention to local issues. This communicative potential underlines the importance of freedom of assembly in advocating and effecting change. States should therefore recognize the profound and long-term benefits of freedom of assembly. Indeed, the financial costs entailed by protecting freedom of assembly are likely to be significantly less than the costs of policing disorder borne of repression.
6. In addition to serving the interests of democracy, the ability to freely assemble is also crucial to creating a tolerant society in which groups with different, and possibly conflicting, beliefs, practices, or policies can exist peacefully together.

The legal framework

7. **Regulating freedom of assembly in domestic law.** Freedom of peaceful assembly should be accorded constitutional protection that ought to contain, at a minimum, a positive statement of both the right and the obligation to safeguard it. There should also be a constitutional provision that guarantees fair procedures in the determination of the rights contained therein. Constitutional provisions, however, cannot provide for specific details or procedures. As such, general constitutional provisions can be abused and, of themselves, afford unduly wide discretion to the authorities.
8. Consequently, many countries have enacted specific legislation dealing with public assemblies in addition to constitutional guarantees. Such legislation should not inhibit the enjoyment of the

constitutional right to peaceful assembly, but should rather facilitate and ensure its protection. In this light, it is vital that any specific law avoid the creation of an excessively regulatory, bureaucratic system that **seeks to prescribe for all matters** and that may thus infringe fundamental rights. This is a real risk in many countries, and has been raised as a particular concern by the Venice Commission.¹¹ Well-drafted legislation, however, can help ensure that freedom of assembly is *not* over-regulated.

9. Domestic laws regulating freedom of assembly must be consistent with the international instruments ratified by that state, and the legitimacy of domestic laws will be judged accordingly. Domestic laws must also be interpreted and implemented in conformity with the relevant international and regional jurisprudence.
10. **Universal and regional instruments.** The sources of law identified in this section are among the most important treaties that the ODIHR makes reference to when reviewing legislation. The **universal** and regional standards concerning freedom of assembly mainly derive from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)¹² and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the optional protocols thereto.¹³ The American Convention on Human Rights is also of particular relevance to member states of the Organization of American States.¹⁴
11. The significance of these treaties derives, in part, from the jurisprudence developed by their respective monitoring bodies: the UN Human Rights Committee, the European Court of Human Rights, and the Inter-American Commission on Human Rights. This body of case law is integral to the interpretation of these standards, and should be fully understood by those charged with implementing domestic laws on freedom of assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases are made available to the relevant authorities, and indeed, more widely.¹⁵
12. The key provisions in relation to the right to freedom of peaceful assembly are reproduced below (noting that a number of other human rights instruments will also often be applicable in certain cases).¹⁶

Article 20(1), Universal Declaration of Human Rights

*Everyone has the right to freedom of peaceful assembly and association.*¹⁷

Article 21, International Covenant on Civil and Political Rights

The right of peaceful assembly shall be recognized. 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 in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 11, European Convention for the Protection of Human Rights and Fundamental Freedoms

1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

Article 15, American Convention on Human Rights

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

OSCE Copenhagen Document

9.2 [The participating States reaffirm that] everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.

Freedom of peaceful assembly in the context of other rights and freedoms

13. It is essential that those involved in drafting and implementing laws pertaining to freedom of assembly give due consideration to the interrelation of the rights and freedoms contained in these treaties. The imperative of adopting a holistic approach to freedom of assembly is underscored by the destruction-of-rights provisions contained in Article 30 of the Universal Declaration of Human Rights (UDHR), Article 5 of the ICCPR, and Article 17 of the ECHR.

Article 30, Universal Declaration of Human Rights

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Article 5, International Covenant on Civil and Political Rights

(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 17, European Convention on Human Rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

14. The imposition of restrictions on the right to freedom of peaceful assembly also potentially encroaches on the rights to freedom of expression and freedom of thought, conscience and religion. Where issues under these other rights are also raised, the substantive issues should be examined under the right *most* relevant to the facts (the *lex specialis*), and other rights should be viewed as subsidiary (*lex generalis*).¹⁸ Significantly, the European Court of Human Rights has stated that the ECHR is to be read as a whole, and that the application of any individual article must be in harmony with the overall logic of the Convention.¹⁹

Principal definitions and categories of assembly

For the purposes of the Guidelines, an assembly is the intentional and temporary presence of a number of individuals in a public place that is not a building or structure for a common expressive purpose.²⁰

15. An assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly.
16. A range of activities are covered by freedom of peaceful assembly, including both static assemblies (such as meetings, mass actions, demonstrations, rallies, sit-ins, and pickets)²¹ and moving assemblies (such as parades, funerals, weddings, pilgrimages, and convoys).²² These examples are not exhaustive, and domestic legislation might emphasize the need for an inclusive and expansive interpretation of “assembly” as demonstrated, for example, by the following extracts from laws in Kazakhstan and Finland. These examples also serve to highlight that the term “temporary” should not preclude the erection of protest camps or other impermanent constructions.²³

Article 1, Decree of the President in force of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Mass Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan (1995)

...the forms of expression of public, group and personal interests and protest referred to as assemblies, meetings, processions and demonstrations shall also include hunger strikes in public places and putting up yurts, tents, other constructions and picketing.

Finland’s Assembly Act (1999)

In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the organizer shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.

17. These Guidelines apply to assemblies held in public places that everyone has an equal right to use and that are not buildings or structures (such as public parks, squares, streets, avenues, sidewalks, pavements, and footpaths).²⁴
18. Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic). This principle was clearly stated in a decision of the Israeli Supreme Court in 1979:

Israeli Supreme Court decision, Sa'ar v. Minister of Interior and Police (1979)²⁵

"... In exercising the 'traffic' consideration, a balance must always be struck between the interests of citizens who wish to hold a meeting or procession and the interests of citizens whose right of passage is affected by that meeting or procession. Just as my right to demonstrate in the street of a city is restricted by the right of my fellow to free passage in that same street, his right of passage in the street of a city is restricted by my right to hold a meeting or procession. The highways and streets were meant for walking and driving, but this is not their only purpose. They were also meant for processions, parades, funerals and such events."

19. Other public facilities that are buildings and structures – such as publicly owned auditoriums, stadiums, or the lobbies of public buildings – are proper sites for public assemblies to the same extent that such facilities are made available for similar activities. Their use is subject to relevant health and safety laws, and to anti-discrimination laws (see paras. 45-59).
20. Furthermore, private property capable of accommodating assemblies, meetings, or gatherings may, of course, be used for such activities, but the property owner may open his or her property to whoever he or she chooses, subject only to relevant health and safety laws, and applicable anti-discrimination laws (see paras. 45-59).²⁶ While the freedom of peaceful assembly has been held to cover both public and private meetings,²⁷ the use of private property for speech activities raises issues that are different from those raised by the use of public property. On this basis, indoor assemblies fall outside the scope of these Guidelines. Nonetheless, **provisions in public order** law and criminal law will also often generally apply to private property. This ensures that appropriate action can be taken if events on private property harm other members of the public.
21. It is, however, important to note that there has been a discernable trend towards the privatization of public spaces in a number of jurisdictions. This raises serious concerns about the regulation of such space and the implications for assembly, expression, and dissent, and is an issue deserving of close attention.²⁸ In the freedom-of-expression case of *Appleby and Others v. the United Kingdom* (2003), the European Court of Human Rights stated that the effective exercise of freedom of expression "does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals" (see the extract below).²⁹ Freedom of assembly in privately owned spaces may be deserving of protection where the essence of the right has been destroyed.

Extract from *Appleby and Others v. the United Kingdom*³⁰

Where ... the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The corporate town, where the entire municipality was controlled by a private body, might be an example.

Peaceful and unlawful assemblies

22. **Peaceful assemblies.** Only peaceful assembly is protected by the right to freedom of assembly. An assembly should be deemed peaceful if its organizers have peaceful intentions.³¹ This should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in a particular event will themselves use, advocate, or incite **imminent** violence. The term "peaceful" should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that an assembly is promoting,³² and even conduct that

deliberately **impedes or obstructs** the activities of third parties.³³ Thus, by way of example, assemblies involving purely passive resistance, or sit-down blockades, should be characterized as peaceful.³⁴ If this fundamental criterion of peacefulness is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the state authorities (see paras. 26-29). Peaceful assemblies can properly be subjected to limitations in certain circumstances.

23. **Unlawful assemblies.** Clearly, assemblies that are deemed non-peaceful will also be unlawful because of the existence of a compelling and demonstrable threat of **imminent** violence. However, assemblies that are deemed peaceful might still potentially be unlawful. This could be because: (1) the assembly does not comply with the requisite preconditions established by domestic law (which itself must be compatible with international human rights standards); or (2) it pursues a purportedly unlawful objective (see paragraph 135). The regulation of peaceful but unlawful assemblies raises important issues for those whose role it is to implement and enforce the law, and this is discussed further in paras. 132-135 below.

2. General Principles

24. Respect for the general principles discussed below must inform all aspects of the drafting, interpretation, and application of legislation relating to freedom of assembly. Those tasked with interpreting and applying the law must have a clear understanding of these principles. To this end, three principles – the presumption in favour of holding assemblies, the state’s duty to protect peaceful assembly, and proportionality – should be clearly articulated in legislation governing freedom of assembly.

Presumption in favour of holding assemblies

25. As a basic and fundamental right, freedom of assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should therefore be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law. In many jurisdictions, this is achieved by way of a constitutional guarantee, but it can also be stated in legislation specifically governing the regulation of assemblies (see the extracts from the laws of Romania and Armenia below). Such provisions should not be interpreted restrictively by the courts or other authorities.³⁵ Furthermore, it is the responsibility of the state to put in place adequate mechanisms and procedures that are not unduly bureaucratic to ensure that this freedom is enjoyed in practice. The relevant authorities should assist individuals and groups who wish to assemble peacefully.

Article 36, Constitution of Romania

Freedom of assembly

Public meetings, processions, demonstrations or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind whatsoever.

Article 1, Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2004)

The objective and the subject of regulation of the law

1. The objective of this law is to create necessary conditions for citizens of the Republic of Armenia, foreign citizens, stateless persons (hereafter referred to as citizens) and legal persons to exercise the constitutional right to conduct peaceful, weaponless meetings, assemblies, rallies and demonstrations that is set forth in the Constitution and international treaties.

State's duty to protect peaceful assembly

26. The state has a positive duty to actively protect peaceful assemblies (see paras. 115-148)³⁶ and this should be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police powers. This positive obligation requires the state to protect the participants of a peaceful assembly from any person or group (including *agents provocateurs* and counter-demonstrators) that attempts to disrupt or inhibit it in any way.
27. The importance of freedom of assembly for democracy was emphasized in paragraph 6 above. In this light, the costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The state must not levy any additional monetary charge for providing adequate policing. Furthermore, organizers of non-commercial public assemblies should not be required to obtain public liability insurance for their event. The cost of doing so could create a significant deterrent for those wishing to enjoy their right to freedom of assembly, and may actually be prohibitive for many organizers. Similarly, the responsibility to clean up after an event will normally lie with the municipal authorities. Unreasonable or prohibitive clean-up costs should not be imposed on an assembly organizer. This is particularly the case where non-profit assemblies are concerned. However, the mere existence of commercial sponsorship of an event should not be used by the authorities as an excuse to impose unreasonable clean-up costs.

Article 18, Law of the Russian Federation on Rallies, Meetings, Demonstrations, Marches and Picketing (2004)

The maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of a public event shall be carried out on a free basis [by the authorities].

28. The state's duty to protect peaceful assembly is of particular significance where the persons holding, or attempting to hold, the assembly are espousing a view that is unpopular, as this may increase the likelihood of violent opposition. However, potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify the imposition of restrictions on the peaceful assembly. In addition, the state's positive duty to protect peaceful assemblies also extends to simultaneous opposition assemblies (often known as **counter-demonstrations**).³⁷ The state should therefore make available adequate policing resources to facilitate demonstrations and related simultaneous assemblies within sight and sound of one another (see paras. 82 and 100).
29. The duty to protect peaceful assembly also implies that law enforcement officials be appropriately trained to deal with public assemblies, and that the culture and ethos of law enforcement agencies adequately prioritize the protection of human rights.³⁸ This not only means that they should be skilled in techniques of crowd management that minimize the risk of harm to all concerned, but also that they should be fully aware of, and understand, their responsibility to facilitate as far as possible the holding of peaceful assemblies.

Legality

30. Any restrictions imposed must have a formal basis in primary law. The law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and to foresee what the consequences of such breaches would likely be.³⁹ The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and to apply, and that regulation does not encroach upon activities

that ought not to be regulated. Definitions should therefore be neither too elaborate nor too broad.

31. While this foreseeability requirement does not necessarily mean that a single consolidated law on freedom of assembly needs to be enacted, it does require consistency between the various laws that might be invoked to regulate freedom of assembly. Any law that regulates freedom of peaceful assembly should not duplicate provisions already contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.
32. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, because of their general nature, may be less precise than other legislation.⁴⁰ Legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed. Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.
33. To aid certainty, any prior restrictions should be formalized in writing and communicated to the organizer of the event. Furthermore, the relevant authorities must ensure that any restrictions imposed during an event are in full conformity with the law and consistent with established jurisprudence. The imposition, after an assembly, of sanctions and penalties that are not prescribed by law is not permitted.⁴¹

Proportionality

34. Any restrictions imposed on freedom of assembly must pass the proportionality test.⁴² Given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate objective⁴³ being pursued by the authorities should always be given preference.
35. The regulatory authority must be aware that it has the authority to impose a range of restrictions, rather than viewing their choice as one simply between non-intervention or prohibition (see paras. 80-82). Any restrictions should closely relate to the particular concerns raised, and should be narrowly tailored to meet the specific aim(s) pursued by the authorities. The state must show that any restrictions promote a substantial interest that would not be served absent the restriction. The principle of proportionality thus requires that authorities not routinely impose restrictions that would fundamentally alter the character of an event, such as routing marches through outlying areas of a city.
36. The question of whether or not a particular restriction will be proportionate requires the consideration of a number of factors:
 - The nature of the right;
 - The importance of the purpose of the limitation;
 - The nature and extent of the limitation;
 - The relation between the limitation and its purpose; and
 - Whether there are any less restrictive means to achieve the purpose.⁴⁴
37. “The principle of proportionality is a vehicle for conducting a balancing exercise. It does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering.”⁴⁵ The principle of proportionality requires that there be a full and objective evaluation of the individual circumstances affecting the holding of an assembly. The European Court of Human Rights has further held that the reasons adduced by national authorities to support any claim of proportionality must be “relevant and sufficient” and based on “an acceptable assessment of the relevant facts”.⁴⁶ Mere suspicion or presumptions cannot suffice⁴⁷.

Extract from Article 7(III)-(IV), Law of the Republic of Azerbaijan on Freedom of Assembly (1998)

“Restriction of the freedom of assembly must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.” (...) “measures taken for restriction of the freedom of assembly must be highly needed for reaching the goal that was the cause for making the restriction.”

38. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times or in any public place that is suitable for holding assemblies – tend to be overly inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of each case.
39. The time, place, and manner of individual public assemblies can, however, be regulated to prevent them from unreasonably interfering with the rights and freedoms of other people. This reflects the need to strike a proper balance between the rights of persons to express their views by means of assembly and the interest of not imposing unnecessary burdens on non-participants. Such regulation must not be based on the content of the message communicated by the assembly.
40. If, **having regard to the relevant factors**, the authorities have a proper basis for concluding that restrictions should be imposed on the time or place of an assembly (rather than merely the manner in which the event is conducted), a suitable alternative time or place should be made available⁴⁸. Any alternative must be such that the message that the assembly seeks to convey is still capable of being effectively communicated to those it is aimed at – in other words, within sight and sound of the target audience (see paras. 100-102).

Article 13(4)-13(5), Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2004)

4. Should the authorized body find during the consideration of notification that there are grounds to prohibit conducting a mass public event pursuant to paragraphs 2, 3 or the last paragraph of part 1 of this Article, the authorized body shall offer to the organizer other dates (in the place and at the time specified in the notification) and other hours (in the place and on the date specified in the notification) for conducting a mass public event or other conditions concerning the form of the event.

5. Should the authorized body find during consideration of the notification that there are sufficient grounds to prohibit conducting a mass public event in accordance with point 4 of paragraph 1 of this Article, the authorized body shall offer to the organizer another place for conducting the mass public event (on the date and time specified in the notification).

Good administration, transparent decision-making, and access to justice

41. The public should know which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law. It is important to have a properly mandated decision-making authority, as those who have to bear the risk of taking controversial decisions about assemblies often come under intense public pressure (potentially leading to decisions that do not adhere to or reflect the human rights principles set out in these Guidelines). In some jurisdictions, it may be appropriate for decisions about regulating assemblies to be taken by a different body from the authority tasked with enforcing the law. This

separation of powers can assist those enforcing the law by rendering them less amenable to pressure to change an unfavourable decision. In jurisdictions where there are diverse ethnic and cultural populations and traditions, it may be helpful if the regulatory authority is broadly representative of those different backgrounds.

42. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies.⁴⁹ Many countries already have legislation specifically relating to access to information, open decision-making, and good administration, and these laws should be applicable to the regulation of freedom of assembly.
43. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks or even real risks that, if opportunities were given, could be adequately reduced prior to the event. Article 41 of Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

Article 41, Charter of Fundamental Rights of the European Union (proclaimed on 7 December 2000)

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.

44. Laws relating to freedom of assembly should outline a clear regulatory procedure and establish a protocol for interaction between event organizers and the regulatory authorities. This should set out appropriate time limits working backwards from the date of the proposed event, and allow adequate time for each stage in the regulatory process.

Non-discrimination

45. Freedom of peaceful assembly is to be enjoyed equally by everyone. The principle that human rights shall be applied without discrimination lies at the core of the interpretation of human rights standards. Article 26 of the ICCPR and Article 14 of the ECHR require that each state secure the enjoyment of the human rights recognized in these treaties to all individuals within its jurisdiction without discrimination.⁵⁰
46. Article 14 of the ECHR does not provide a freestanding right to non-discrimination but rather complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (and arguably also the grounds of restriction) fall within the ambit of one or more of the other Convention rights.⁵¹ OSCE participating states and signatories to the ECHR are encouraged to ratify Protocol 12 (see below), which contains a prohibition of discrimination.

Protocol 12 to the ECHR, Article 1 – General prohibition of discrimination

1. *The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

47. Importantly, Article 26 of the ICCPR has been interpreted to include sexual orientation in the reference to non-discrimination on grounds of sex.⁵² Article 13 of the Amsterdam Treaty also provides for the European Union to “undertake necessary actions to fight discrimination based on ... sexual orientation”, and Article 21(2) of the EU Charter of Fundamental Rights prohibits “any discrimination on any ground”, including on the basis of sexual orientation.⁵³
48. The regulatory authority must not therefore impose more onerous preconditions on some persons wishing to assemble than on others whose case is similar.⁵⁴ The regulatory authority may, however, treat differently persons whose situations are significantly different.⁵⁵ Article 26 of the ICCPR guarantees all persons equality before the law and equal protection of the law. This implies that decisions by the authorities concerning freedom of assembly must not have a discriminatory impact, and so both direct and indirect discrimination are prohibited.⁵⁶ Furthermore, if criminal conduct occurs during an assembly (for example, participants being physically attacked), law enforcement authorities have an obligation to investigate whether discrimination was a contributory factor.⁵⁷
49. Attempts to prohibit and permanently exclude assemblies organized by members of one racial group from areas predominantly occupied by members of another racial group may be deemed to promote segregation, and would thus be contrary to the UN Convention on the Elimination of All Forms of Racial Discrimination, Article 3 of which affirms that “[p]arties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”
50. The following section highlights some of the key human rights provisions that protect the freedom of peaceful assembly by groups whose freedoms are sometimes not adequately protected.
51. **Groups and legal entities.** Freedom of peaceful assembly can be exercised both by individuals and by corporate bodies (as, for example, provided in the extract from the Bulgarian Law on Gatherings, Meetings and Demonstrations below).⁵⁸ In order to ensure that freedom of peaceful assembly is protected in practice, states should remove the requirement of mandatory registration of any public organization and guarantee the right of citizens to set up formal and informal associations.

Article 2, Bulgarian Law on Gatherings, Meetings and Demonstrations (1990)

Gatherings, meetings and demonstrations can be organized and held by citizens, associations, and political and other social organizations.

52. **Minorities.** The freedom to organize and participate in public assemblies should be guaranteed to members of minority and indigenous groups. Article 7 of the Council of Europe Framework Convention on National Minorities (1995) provides that “[t]he Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion”.⁵⁹ Article 3(1) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) states that “[p]ersons belonging to minorities may

exercise their rights ... individually as well as in community with other members of their group, without any discrimination.”⁶⁰

53. **Non-nationals (stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists).** International human rights law requires that non-nationals “receive the benefit of the right of peaceful assembly”.⁶¹ It is therefore important that the law does not extend freedom of peaceful assembly only to citizens, but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists. Note, however, that Article 16 of the ECHR provides that “[n]othing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.” The application of Article 16 should be confined to speech by non-nationals that directly threatens national security. There is no reason to stop non-nationals from participating in an assembly that, for example, challenges domestic immigration laws or policies. The increase in transnational protest movements also underscores the importance of facilitating freedom of assembly for non-nationals.⁶²
54. **Women.** Under Article 3 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states parties are obliged to take all appropriate measures to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁶³
55. **Children.** Like adults, children also have legitimate claims and interests. Freedom of peaceful assembly provides them with a means of expressing their views and contributing to society. Article 15 of the UN Convention on the Rights of the Child requires states parties to recognize the right of children to organize and participate in peaceful assemblies.⁶⁴

Article 15, UN Convention on the Rights of the Child

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

56. In light of the important responsibilities of the organizers of public assemblies (see paras. 149-155), the law may set a certain minimum age for organizers, having due regard to the evolving capacity of the child (see the example from Finland’s Assembly Act below). The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so.

Section 5, Finland’s Assembly Act (1999): *Right to arrange public meetings*

... A person who is without full legal capacity but who has reached 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the organizer of a meeting. Other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

57. **Other persons without full legal capacity.** International standards provide that “[e]very person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in ... the International Covenant on Civil and Political Rights, and in

other relevant instruments.”⁶⁵ The UN Convention on the Rights of Persons with Disabilities similarly emphasizes the need to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities”.⁶⁶ **Everyone’s enjoyment of the freedom of peaceful assembly should thus be facilitated regardless of their legal capacity.**

58. **Police, military officers, and state officials.** The ECHR allows legislation to impose “lawful restrictions on the exercise of [the right to freedom of assembly and to freedom of association] by members of the armed forces, of the police or of the administration of the State.”⁶⁷ Any such restrictions must be designed to ensure that both the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.⁶⁸ The definition of neutrality is central. Neutrality should not be interpreted so as to unnecessarily restrict the freedom to hold and express an opinion. Legislation should therefore not restrict the freedom of assembly of the police or military personnel unless the reasons for restriction are directly connected with their service duties, and only to the extent absolutely necessary in light of considerations of professional duty. Restrictions should be imposed only where participation in an assembly would impugn the neutrality of police or military personnel in serving all sections of society.
59. **Human rights defenders.** Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms protects the freedom of peaceful assembly for the purpose of promoting and protecting human rights and fundamental freedoms.⁶⁹

3. Restrictions on Freedom of Assembly

60. While universal and regional human rights instruments affirm and protect the right to freedom of peaceful assembly, they also allow states to impose certain limitations on that freedom. This chapter examines the legitimate grounds for their imposition and the types of limitations that can be imposed.

Legitimate grounds for imposing restrictions on assemblies

61. Legitimate grounds for restriction (such as the prevention of disorder or crime, or the protection of the rights and freedoms of others) are prescribed by the relevant international and regional human rights instruments, and these should not be supplemented by additional grounds in domestic legislation.
62. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims listed below (as provided in the limiting clauses in Article 21 of the ICCPR and Article 11 of the ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.

Public order

63. The inherent imprecision of this term⁷⁰ must not be exploited to justify the prohibition or dispersal of peaceful assemblies. Neither a hypothetical risk of public disorder nor the presence of a hostile audience is a legitimate basis for prohibiting a peaceful assembly. Prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.⁷¹ The European Court of Human

Rights has noted that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.⁷²

64. Restrictions should only be imposed on public-order grounds when participants in the assembly incite imminent lawless action and such action is likely to occur. This principle is based on the doctrine of a clear and present danger drawn from US jurisprudence, and it is very similar to Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. This requires that there be an intention to incite violence, a likelihood of imminent violence, and a causal connection between that violence and the expression in question. This approach is designed to extend protection to controversial speech and political criticism as long as it does not present a real and imminent threat of violence. The application of the “clear and present danger” test in freedom-of-assembly and -expression cases therefore ensures consistency of the outcome with the right to political participation.⁷³

Public safety

65. There is a significant overlap between public-safety considerations and those concerning the maintenance of public order. The state has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organizer of an assembly. That is not to say, however, that the organizer and stewards cannot assist in ensuring the safety of members of the public. An assembly organizer could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see paras. 156-160).

Protection of health and morals

66. It should be noted that “the right to health is closely related to and dependent upon the realization of other human rights ... including ... the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.”⁷⁴
67. Any limitations imposed on freedom of assembly should not undermine **the very essence** of the freedom. Adherence to the principles of a particular political ideology or religious creed cannot warrant the imposition of preventive or penal sanctions on freedom of assembly. Furthermore, not only are the main human rights treaties (the ICCPR and ECHR) “living instruments” and thus attuned to changing moral values, but the moral views of the holders of political power are not synonymous with public morals as intended in this context as a premise for limiting freedom of assembly.⁷⁵
68. As stated above under *Legality* (paras. 30-33), any restrictions must have a basis in domestic law, and this must be sufficiently clear and precise to enable individuals to foresee the consequences of their actions. It is not sufficient for behaviour merely to offend morality, but it must be behaviour that is deemed criminal and has been defined in law as such.⁷⁶ This requirement of legal certainty applies equally to all types of restriction (prior, during, and retrospective), including, for example, legislative provisions that purport to allow restrictions on assemblies deemed “injurious to public morals”, and administrative offences that penalize the use of “vulgar expressions in public”.⁷⁷

69. Measures allegedly safeguarding public morals should also meet an objective standard of whether they answer a pressing social need and comply with the principle of proportionality.⁷⁸ There should be a requirement of state neutrality that precludes moral judgments on, for example, preferences for any sexual orientation over another (see paras. 45-59).⁷⁹

Protection of the rights and freedoms of others

70. The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens.⁸⁰ Mere disruption, or even opposition to an assembly, is not therefore, of itself, a reason to impose prior restrictions on it. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, amounts only to temporary interference with these other rights.
71. Where the regulatory authority restricts an assembly for the purpose of protecting the competing rights and freedoms of others, the body should state:
- The nature of any valid rights claims made;
 - How, in the particular context, these rights might be infringed (outlining the specific factors considered);
 - How, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and
 - Why less intrusive measures could not be used.
72. The rights that might be claimed by non-participants affected by an assembly include the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR),⁸¹ the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1 to the ECHR),⁸² the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR), and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 to the ECHR). It may also be that restrictions on freedom of assembly could be justified to protect the right of others to manifest their religion or belief (Article 18 of the ICCPR and Article 9 of the ECHR), but to uphold such a claim, it would have to be shown that the assembly posed a direct and immediate threat to the exercise of the religious beliefs of others.⁸³

National security

73. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly:

"National Security", Part VI, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

74. The issue of national security is often given too wide an interpretation in relation to freedom of assembly. Drawing on Principles 7, 8, and 9 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information,⁸⁴ the following examples of expression should *not* be regarded as constituting a threat to national security:
- Mere advocacy of change of government policy, or of the government itself, where that advocacy does not incite immediate and substantial violation of the law or create a serious and imminent threat that a substantial violation of the law will actually occur. A similar point has been made by the European Court of Human Rights: “It is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised.”⁸⁵
 - Criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials⁸⁶. Similarly, the restriction of assemblies that promote views considered to be unconstitutional is a form of content regulation and thus an unjustifiable incursion on freedom of peaceful assembly. Concerns relating to territorial integrity must pass a high threshold in order to justify restrictions on national-security grounds. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001)⁸⁷, which concerned the actions of a separatist group in Bulgaria, the European Court of Human Rights found that the Bulgarian government had unduly restricted the applicants’ right to freedom of assembly. The Court ruled that, even though the issues at stake touched on national symbols and national identity, that was not sufficient reason for the national authorities to be granted broad discretion.
 - Objection, or advocacy of objection, on grounds of religion, conscience, or belief to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes.
 - The transmission of information issued by or about an organization that a government has declared threatens national security or a related interest, or the expression of views in a particular language, especially the language of a national minority.

Legislation intended to counter terrorism and “extremism”

75. Efforts to tackle terrorism or “extremism” and to enhance security must never be invoked to justify arbitrary action that curtails the enjoyment of fundamental human rights and freedoms. The Berlin Declaration of the International Commission of Jurists on Upholding Human Rights and the Rule of Law in Combating Terrorism (2004)⁸⁸ emphasizes that “the odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights”. Principle 8 of the Declaration is of particular relevance:

Principle 8, Berlin Declaration of the International Commission of Jurists on Upholding Human Rights and the Rule of Law in Combating Terrorism

In the implementation of counter-terrorism measures, states must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination; as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights must be necessary and proportionate.

76. Counterterrorism measures pose a number of particular challenges to the right to freedom of peaceful assembly. Commonly, emergency legislation is introduced to increase police stop-and-search powers, and it may also extend the time period allowed for administrative detention without charge. Other examples of exceptional measures include the proscription of particular organizations and the criminalization of expressing support for them, the designation of specific sites or locations as prohibited areas, increased penalties for participation in unlawful assemblies, and the imposition of border controls to prevent entry to those deemed likely to demonstrate and cause disturbances to public order.⁸⁹ All of these have a detrimental impact on the right to freedom of peaceful assembly, and all must be shown to be necessary and strictly proportionate (see paras. 34-40). The **Ten Basic Human Rights Standards for Law Enforcement Officials** adopted by Amnesty International provide that exceptional circumstances such as a state of emergency or any other public emergency cannot justify any departure from these standards.⁹⁰
77. Domestic legislation designed to counter terrorism or **“extremism”** should narrowly define these terms so as not to include forms of civil disobedience and protest; the pursuit of certain political, religious, or ideological ends; or attempts to exert influence on other sections of society, the government, or international opinion.

Derogations in times of war or other public emergency

78. Under Article 4 of the ICCPR and Article 15 of the ECHR, in times of war or public emergency threatening the life of the nation, states may take measures derogating from their obligation to guarantee freedom of assembly. They may do so only to the extent strictly required by the exigencies of the situation, and provided that such measures are not inconsistent with their other obligations under international law.⁹¹ The crisis or emergency must be one “which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed”.⁹² The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights further state that neither “[i]nternal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation” nor “[e]conomic difficulties” can justify derogations under Article 4.⁹³
79. A public emergency must be both proclaimed to the citizens in the state concerned⁹⁴ and notified to other states parties to the ICCPR through the intermediary of the UN Secretary General (Article 4(3) of the ICCPR), the Secretary General of the Council of Europe (Article 15(3) of the ECHR) and the OSCE (para. 28.10, Document of the Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should have a time limit.

Types of restrictions

80. **Restrictions on time, place, and manner.** The types of restrictions that might be imposed on an assembly relate to its time, place, and manner. This originates from US jurisprudence, and it captures the sense that a wide spectrum of possible restrictions that do not interfere with the

message communicated is available to the regulatory authority. In other words, rather than the choice for the authorities being between non-intervention and prohibition, there are many mid-range limitations that might adequately serve the purpose(s) that they seek to achieve (including the prevention of activity that causes damage to property or harm to persons). These can be in relation to changes to the time or place of an event, or the manner in which the event is conducted. An example of manner restrictions might relate to the use of sound-amplification equipment or lighting and visual effects. In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed.

81. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to both avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This, however, in no way implies that the authorities can evade their obligations in relation to good administration (see paras. 41-44) by simply regulating freedom of assembly by administrative fiat. Furthermore (as discussed at paras. 117 and 151), the use of negotiation and/or mediation can help resolve disputes around assemblies by enabling law enforcement authorities and the event organizer to reach agreement about any necessary limitations.
82. Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within sight and sound of its object/target audience.
83. **Restrictions imposed prior to an assembly (prior restraints).** These are restrictions on freedom of assembly either enshrined in legislation or imposed by the regulatory authority prior to the notified date of the event. Such restrictions should be concisely drafted so as to provide clarity both for those who have to follow them (assembly organizers and participants) and for those tasked with enforcing them (primarily, the police). They can take the form of restrictions on time, place, and manner or outright prohibitions. However, blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies.⁹⁵ Given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”⁹⁶
84. Prohibition, therefore, is a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests. Furthermore, given the state’s positive duty to provide adequate resources to protect peaceful assembly, prohibition may actually represent a failure of the state to meet its positive obligations. Where a state body has prohibited an action unlawfully, legal responsibility of the state will ensue.
85. **Restrictions imposed during an assembly.** The role of the police during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin **using violence or inciting imminent violence**), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. In such

circumstances, it would be appropriate for other civil authorities (such as a prosecutor's office) to have an oversight role in relation to the policing operation, and the police should be accountable to an independent body. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be equally rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient.

86. **Sanctions and penalties imposed after an assembly.** The imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.⁹⁷ Such measures include prosecution (for example, for participation in an unlawful assembly, or for other public-order offences) or other disciplinary action. It is noteworthy, however, that on several occasions, the Human Rights Committee and the European Court of Human Rights have found subsequent sanctions to constitute disproportionate interference with the right to freedom of assembly or expression.⁹⁸
87. Legislation relating specifically to freedom of assembly should not contain any general provisions regarding criminal or administrative liability, which should instead be adequately covered by the relevant criminal or administrative legislation. Some offences, however, might reasonably be included in legislation dealing specifically with freedom of assembly, such as:
- Failure to comply with the requisite notice (or permit) requirements;
 - Participation in an unlawful assembly;
 - Failure to perform the responsibilities of organizer as specified;
 - Carrying prohibited objects or substances in an assembly; or
 - Obstructing a lawful assembly.
88. All provisions that create criminal or administrative liability must comply with the principle of legality (see paras. 30-33). Furthermore, organizers and participants should benefit from a "reasonable excuse" defence. For example, participants in unlawful assemblies should be exempted from liability for the offence of "participation in an unlawful assembly" when they had no prior knowledge that the assembly was unlawful. Similarly, a participant should not be held liable for anything done under the direction of a police officer.⁹⁹
89. Individual participants who do not themselves commit any violent act cannot be prosecuted solely on the ground of participation in a non-peaceful gathering. As stated in the case of *Ezelin v. France* (1991), "[i]t is not 'necessary' in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights."¹⁰⁰ Anyone charged with an offence relating to an assembly should enjoy fair-trial rights.
90. Assembly organizers should not be held liable for failure to perform their duties if they make a reasonable effort to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizer did not intend or directly participate in. Holding organizers of the event liable would be a manifestly disproportionate response since this would imply that organizers are imputed to have responsibility for acts by individuals (including *agents provocateurs*) that could not have been reasonably foreseen.

4. Procedural issues

Advance notification

91. It is common for the regulatory authority to require advance written notice of public assemblies. Such a requirement is justified by the state's positive duty to put in place any necessary arrangements to facilitate freedom of assembly and protect public order, public safety, and the rights and freedom of others. The UN Human Rights Committee has held that a requirement to give notice, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitations laid down in Article 21 of the ICCPR.¹⁰¹ Similarly, the European Commission on Human Rights, in *Rassemblement Jurassien* (1979), stated that: "Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right."¹⁰²
92. The notification process should not be onerous or bureaucratic, as this would undermine the freedom of assembly by discouraging those who might wish to hold an assembly. Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate. Where a lone demonstrator is joined by another or others, then the event should be treated as a spontaneous assembly (see paras. 97-98).

Article 6, Poland's Law on Assemblies (1990)

1. Assemblies organized in the open in areas accessible to unspecified individuals, hereinafter referred to as "public assemblies", must be reported in advance to the commune authority with competence *ratione loci* for the site of the assembly.
2. If the assembly is to be held in the neighbourhood of a diplomatic representation/mission, consular offices, special missions, or international organizations, which are covered by diplomatic immunities and privileges, the commune authority is obliged to notify the responsible police commander and Ministry of Foreign Affairs.
3. The commune council may specify areas where the organization of an assembly does not require notification.

93. The period of notice should not be unnecessarily lengthy (normally no more than a few days), but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event (deploy police officers, equipment, etc.), for the regulatory body to give a prompt official response to the initial notification, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged.
94. The official receiving the notice should issue a receipt explicitly confirming that the organizers of the assembly are in compliance with the applicable notice requirements. The notice should also be communicated immediately to all state organs involved in the regulatory process, including the relevant police authorities.

Notification, not authorization

95. Legal provisions concerning advance notice should require a notice of intent rather than a request for permission. Although lawful in several jurisdictions, a permit requirement accords insufficient value to both the fundamental freedom to assemble and to the corresponding principle that everything not regulated by law should be presumed to be lawful. Those countries where a permit is required are encouraged to amend domestic legislation so as to require notification only. It is significant that, in a number of jurisdictions, permit procedures have been declared unconstitutional.¹⁰³ Any permit system must clearly prescribe in law the criteria for

issuance of a permit. In addition, the criteria should be confined to considerations of time, place, and manner, and should not provide a basis for content-based regulation.

Section 5, the Netherlands' Public Assemblies Act (1988)

3. A condition, restriction or prohibition may not relate to the religion or belief to be professed, or the thoughts or feelings to be expressed.

96. If the authorities do not respond promptly to a notification, the organizers of a public assembly may proceed with the activities according to the terms notified without restriction. Even in countries where authorization rather than notification is still required, authorization should be presumed granted if a response is not given within a reasonable time.

Spontaneous assemblies

97. The ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous events should be regarded as an expectable (rather than exceptional) feature of a healthy democracy. As such, the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.¹⁰⁴
98. The issue of spontaneous assemblies merits special attention with regard to the requirement of prior notification. The law should explicitly provide for an exception from the requirement of prior notification where giving prior notification is impracticable. The law should also provide a defence for participants charged with taking part in an unlawful assembly if they were unaware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.

Other exceptions from the notification process

99. It will be for the legislature in each jurisdiction to determine whether there should be any specific exceptions from the notification process. Some jurisdictions, for example, do not impose a notice requirement on small assemblies (see the extract from the Armenian law below). Exceptions, however, must not be discriminatory in effect and should be targeted towards a class of assembly rather than a class of organizer.

Article 10(2), Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2005)

Citizens and legal persons shall have the right to convene non-mass public events [a public event with the participation of fewer than 100 citizens] without notification to the authorized body

...

Simultaneous assemblies

100. All persons and groups have an equal right to be present in public places to express their views. Thus, persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.¹⁰⁵ On such occasions, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target insofar as this does not physically interfere with the other assembly.

101. As clearly stated in the ECHR case of *Plattform "Ärzte für das Leben" v. Austria* (1988), "the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate".¹⁰⁶ Thus, because each person or group has a right to express their views undisrupted by others, counter-demonstrators may not disrupt the activities of those who do not share their views. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized. Furthermore, an evidential question is raised where the intention of the organizer of a counter-demonstration is specifically to prevent the other assembly from taking place – effectively, to destroy the rights of the other. In such cases, Article 5 of the ICCPR and Article 17 of the ECHR will be engaged, and the counter-demonstration will not enjoy the protection afforded to the right to peaceful assembly.
102. Where notification is given for two or more assemblies at the same place and time, each should be facilitated as best possible. A prohibition on conducting public events in the same place and at the same time of another public event is likely to be a disproportionate response. In some jurisdictions, a "first come, first served" rule operates. Such a rule is permissible so long as it does not discriminate between different groups, and an alternative venue and/or time for the other assemblies is provided to the satisfaction of the organizers. The authorities might even hold a ballot to determine which assembly should be facilitated in the notified location (see the example from the Law of Malta below).

Article 5(3), Malta's Public Meetings Ordinance (1931)

When two or more persons whether as individuals or on behalf of an association simultaneously give notice of their intention to hold a meeting in the same locality and at the same time, preference shall be given to the person whose name is extracted at a ballot held by the commissioner of police or any other police officer deputed by him.

Decision-making and review process

103. The regulatory authority should make publicly available a clear explanation of the decision-making procedures. It should fairly and objectively assess all available information to determine whether the organizers and participants of a notified assembly are likely to conduct the event in a peaceful manner, and to ascertain the probable impact of the event on the rights and freedoms of other non-participants. In doing so, it may be necessary to facilitate meetings with the event organizer and other interested parties.
104. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organizer, and the organizer should be offered an opportunity to respond to any concerns raised. This is especially important if these concerns might later be cited as the basis for imposing restrictions on the event. Providing the organizer with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a co-operative, rather than confrontational, relationship between the organizers and the authorities.
105. The law should be sufficiently flexible to allow assembly organizers and regulatory authorities should make every effort to reach a mutual agreement on the time, place, and manner of an assembly. Such negotiation serves as a preventive tool helping avoid the imposition of arbitrary and unnecessary restrictions.
106. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with a brief explanation of the reason for each restriction (noting that such explanation must correspond with the permissible grounds enshrined in human rights law and as

interpreted by the relevant courts). Such decisions should be communicated to the organizer within a reasonable time frame, i.e., sufficiently far in advance of the date of a proposed event to allow the decision to be appealed to an independent tribunal or court before the notified date of the event. If, for example, the required notification period is five days prior to the date of the assembly, the regulatory authority should publish its decision at least three days before the date of the event.

107. The regulatory authority should also publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated website.¹⁰⁷
108. If restrictions are imposed on an assembly, the organizer should have recourse to an effective remedy through a combination of administrative and judicial review. The reviewing body should have access to the evidence on which the regulatory authority based its initial decision (including, for example, relevant police reports), as only then can it assess the proportionality of the restrictions imposed. The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances.
109. The availability of effective administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. Any administrative review procedures must themselves be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the notified date of the assembly.
110. The assembly organizers should also be able to appeal the decision of the regulatory authority to an independent court or tribunal. This should be a *de novo* review, empowered to quash the contested decision and to remit the case for a new ruling. Any such review must also be prompt so that the case is heard and the court ruling published before the planned assembly date (in order to make it possible to still hold the assembly if the court invalidates the restrictions). One option to expedite this process would be to require the courts to give priority to appeals against restrictions on assemblies so as to permit the completion of judicial review prior to the date of the assembly.

Article 14(2), Law of Georgia on Assemblies and Demonstrations (2004)

A decision of a local governance body on forbidding the holding of an assembly or demonstration may be appealed in court. The court shall pass a final decision within two working days.

Article 7, Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peacefully, without Weapons, and to Freely Conduct Meetings and Demonstrations (2002)

The decisions of bodies of local state administration or local self-government ... are subject to court appeal, and shall be considered by the court within 24 hours if less than 48 hours remains before the planned public assembly.

111. It is considered good practice for the regulatory authority to submit an annual report on the activity of the regulatory authority (including relevant statistics on, for example, the number of assemblies notified and the number restricted) to an appropriate supervisory body, such as a national human rights institution, ombudsman, or parliament.¹⁰⁸

Part II

Implementing Legislation on Freedom of Peaceful Assembly

Introduction

112. Part I of these Guidelines focused on the parameters of freedom of assembly and the drafting of legislation that is consistent with international human rights standards. These earlier sections addressed the substantive grounds for restriction and the procedures that accord priority to the freedom to assemble. The implementation of legislation on freedom of assembly, however, brings with it different challenges. If laws are to provide more than mere paper guarantees, and if rights are to be practical and effective rather than theoretical or illusory, the implementation of laws relating to freedom of assembly by domestic law enforcement agencies must also meet exacting standards. These standards are the subject of this part.
113. The socio-economic, political, and institutional context in which assemblies take place often impacts upon the success of steps taken to implement the law. It is vital to note, however, that the presence of certain socio-economic or political factors does not of itself make violence at public assemblies inevitable. Indeed, violence can often be averted by the skilful intervention of law enforcement officials. Measures taken to implement legislation on freedom of assembly should therefore neither unduly infringe the rights and freedoms of participants or other third parties nor further aggravate already tense situations by being unnecessarily confrontational. Such interventions must instead aim to minimize potential harm. The guiding principles outlined in Chapter 2 (including good administration and non-discrimination) are of particular relevance at the implementation stage.
114. Furthermore, the police and judicial systems in participating States play a crucial role in the prevention of violence and the apprehension and prosecution of offenders. It was often emphasized during the roundtable sessions that were part of the drafting of these Guidelines that the independence of both the police and judiciary from partisan influence or, in the case of the judiciary, from executive interference must be assured. The police in some jurisdictions have, in the past, failed to intervene to protect peaceful assemblies. States are urged to implement measures (including policy development and targeted recruitment initiatives) to increase trust and confidence in the police and justice system.¹⁰⁹

5. Rights and Responsibilities of Law Enforcement Officials

115. The state has a positive duty to take reasonable and appropriate measures to enable lawful demonstrations to take place without participants fearing physical violence (see paras. 26-29).¹¹⁰ The role of law enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights.¹¹¹ In particular, the state has a positive obligation to protect the right to life (Article 2 of the ECHR),¹¹² and an applicant complaining of a breach of Article 2 need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.¹¹³
116. In the implementation of legislation on freedom of assembly, consideration should also be given to the rights, health, and safety of police officers. In addition, it should be noted that the nature of their job may place police officers in difficult, rapidly evolving and dangerous situations, in which they have to make split-second judgments. What will be judged to be a reasonable action or reaction must therefore depend on an objective and real-time evaluation of the totality of circumstances. Specific defences such as self-defence – subject to important qualifications (such as a reasonableness test, and requirements that an attack was actual or imminent and that there was no other more peaceful response available) – should be contained in domestic law.

Training

117. Governments must ensure that law enforcement officials receive adequate training in the policing of public assemblies. Training should equip law enforcement agencies to act in a manner that avoids escalation of violence and minimizes conflict, and should include “soft skills” such as negotiation and mediation. Training should also include relevant human rights issues,¹¹⁴ and should cover the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.¹¹⁵
118. The UN Code of Conduct for Law Enforcement Officials, together with other relevant international human rights standards,¹¹⁶ should form the core of law enforcement training. Domestic legislation should also provide standards that will guide police action, and such provisions should be covered in the training and planning for major events. A “diversity awareness” perspective should be integrated into the development and implementation of law enforcement training, policy, and practice.

One example of a useful training resource is the *Manual of Guidance on Keeping the Peace* compiled by the national Association of Chief Police Officers (ACPO) in the UK.¹¹⁷

119. Public-order policies and training programmes should be kept under review to incorporate lessons learned (through, for example, debriefing sessions or the emergence of new technologies), and regular refresher courses should be provided to law enforcement officials. These standards should be circulated as widely as possible, and their implementation should be monitored by an independent overseer, with investigative powers to compel witnesses and documentation, who publishes periodic reports.

Policing assemblies – general principles of good practice

120. **The physical safety of all parties should be ensured.** This emphasizes the mutual responsibilities of the parties involved in organizing and facilitating peaceful assemblies, and requires the establishment of structured means of communication during an assembly.
121. **Police command structures should be clearly established.** Command structures enable proper co-ordination between police officers, and between the police and the assembly organizer, and they also ensure accountability for operational decisions. Such command structures can be role-specific rather than rank-related, and need not compromise operational flexibility.¹¹⁸
122. **Inter-agency communication should be ensured.** It is imperative that law enforcement and other public-safety agencies (fire and ambulance services, for example) are able to communicate with one another and exchange data during critical situations. As Chapter 6 states, it is also vital that assembly organizers do everything within their power to assist these agencies in responding to emergencies or criminal conduct. Thorough inter-agency contingency planning can help ensure that lines of communication are maintained.
123. **Police officers should be clearly and individually identifiable.** Police officers, while in uniform, must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent people from reading it during an assembly.

124. **Law enforcement officials should differentiate between participants and non-participants.** The policing of public assemblies should be sensitive to the possibility of non-participants (such as bystanders or observers) being present in the vicinity of an assembly.¹¹⁹
125. **Law enforcement officials should differentiate between peaceful and non-peaceful participants.** Neither isolated incidents of sporadic violence nor the violent acts of some participants in the course of a demonstration are themselves sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly.¹²⁰ Law enforcement officials should not therefore treat a crowd as homogeneous if detaining participants or (as a last resort) dispersing an assembly (see paras. 137-140).
126. **Protocols for the stop and search, detention, or arrest of participants should be established.** It is of paramount importance that states establish clear and prospective protocols for the lawful stop and search or arrest of participants in assemblies. Such protocols should provide guidance as to when such measures are appropriate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest. In drafting these protocols, consideration should be given to the jurisprudence of Article 9 of the ICCPR and Article 5 of the ECHR, which protect the right to liberty. While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the police do not have sufficient resources to effect individual arrests – adequate resourcing forms part of the positive obligation of participating States to protect the right to assemble.

Section 108, First Amendment Rights and Police Standards Act (2004), District of Columbia, United States

Use of police lines.

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.

127. Restrictions imposed on individuals during an assembly may violate their rights to liberty¹²¹ and freedom of movement.¹²² Individuals should not be stopped and searched unless the police have a reasonable suspicion that they have committed, are committing, or are about to commit, an offence, and arrests must not be made simply for the purpose of removing a person from an assembly or preventing their attendance. Indeed, arrests made during an assembly should be limited to persons engaging in conduct that is creating a clear and present danger of imminent violence.
128. Planning by the relevant authorities must be adequate to ensure provisions for first aid, basic necessities (water and food), an opportunity to consult with lawyers, and the separation of minor from adult and male from female detainees. Minors, though, should be provided with an opportunity to communicate with a parent or legal guardian. Detainees must not be ill-treated while being held in custody.¹²³ Where detention facilities are inadequate to deal with the number

of individuals, arrested individuals must be freed unless doing so would pose a threat to public safety. Procedures must be established to limit the duration of detention to a strict minimum.

129. **Photography and video recording (by police and participants) should not be restricted, but data retention may breach the right to private life.** During public assemblies, the photographing or video recording of participants by the police is permissible. However, while monitoring individuals in a public place for identification purposes does not necessarily give rise to interference with their right to private life,¹²⁴ the recording of such data and the systematic processing or permanent nature of the record kept may give rise to violations of privacy.¹²⁵ Moreover, the photographing or video recording of assemblies for the purpose of gathering intelligence can discourage individuals from enjoying the freedom of peaceful assembly, and should therefore not be done routinely. The photographing or video recording of a policing operation by participants and other third parties should not be prevented, and any requirement to surrender film to the police should be subject to prior judicial scrutiny.
130. **Post-event debriefing of law enforcement officials (particularly after non-routine events) should become standard practice.** Event organizers should be invited to participate in debriefing sessions held by law enforcement officials after an assembly. Debriefing might usefully address a number of specific issues, including:¹²⁶
- Human rights issues;
 - Health and safety considerations;
 - Community-impact considerations;
 - Pre-operational planning and risk assessment;
 - Communications;
 - Command issues and decision-making;
 - Tactics;
 - Commendable actions;
 - Fears and concerns;
 - Resources;
 - Equipment;
 - Training needs; and
 - Media.
131. **Law enforcement officials should have access to professional counselling services.** On occasion, law enforcement officers may suffer the emotional, physical, and behavioural consequences of **critical incident** or post-traumatic stress. In such cases, law enforcement agencies should have recourse to skilled mental-health professionals to facilitate confidential individual debriefings.

Regulating peaceful unlawful assemblies

132. **Powers to intervene should not always be used.** The existence of police powers to intervene and disperse an unlawful assembly or to use force does not mean that such powers should always be exercised. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, non-intervention or active facilitation may sometimes be the best way to ensure a peaceful outcome. In many cases, dispersal of an event may create more law enforcement problems than accommodating and facilitating it. Post-event prosecution for violation of the law remains an option.
133. **The response of law enforcement agencies must be proportionate.** A wide range of options are available to the relevant authorities (including toleration of unlawful assemblies and

negotiation with the event organizer), and their choice is not simply one between non-intervention or the enforcement of prior restrictions, and termination or dispersal.

134. **Peaceful assemblies that do not comply with the requisite preconditions established by law or that substantially deviate from the terms of notification.** If the organizer fails or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. However, such assemblies should still be accommodated by law enforcement authorities as far as is possible. If a small assembly is scheduled to take place and, on the day of the event, it turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law enforcement authorities and should be treated as being lawful so long as it remains peaceful.
135. **Peaceful assemblies that are for a purportedly unlawful objective.** While the content or message of an assembly should not of itself lead to its classification as unlawful, a difficulty arises where the subject matter constitutes a criminal offence, or could be construed as inciting others to commit an offence. While a speaker can be arrested for incitement if he or she intentionally provokes people to commit violent actions, this is inevitably a question that must be assessed based on the particular circumstances, and a high threshold must be overcome.¹²⁷ To suggest that assemblies might legitimately be restricted on the basis of their having unlawful objectives errs dangerously close to content-based restriction (also see paras. 39 and 74). In all cases, the touchstone must be the existence of an imminent threat of violence. This is illustrated by the following examples of peaceful assemblies:
- **Rallies urging non-violent reform of the law or constitution.** There are two essential conditions under which such change may legitimately be promoted: “firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles”.¹²⁸ Calls for the imminent and violent overthrow of the constitutional order might provide a sufficient ground for restricting an event, whereas an assembly where non-violent change of the constitutional order is advocated would be deserving of protection.¹²⁹
 - **Protests opposing the deportation of illegal immigrants.** Such assemblies should not be declared illegal simply because they support the rights of those presently in breach of immigration law.¹³⁰
 - **Public assemblies where hatred is expressed.** Speech and other forms of expression will normally enjoy protection under Article 19 of the ICCPR and Article 10 of the ECHR. This is the case even where such expression is hostile or insulting to other individuals, groups, or particular sections of society. However, as provided by Article 20 of the ICCPR, “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20 further provides that specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.”¹³¹ Even then, resort to such speech by participants in an assembly does not of itself turn an otherwise peaceful assembly into a non-peaceful or unlawful assembly, and the regulatory authorities should arrest the particular individuals involved rather than dispersing the entire event.
 - **Demonstrations supporting a military offensive against another sovereign state.** Such assemblies should not be deemed illegal even if such military action might itself be

Peaceful assemblies that turn into non-peaceful assemblies

136. Assemblies can change from being non-violent to being violent. Should there be, at any stage during a peaceful assembly, a declaration of unlawful intent, it may change from being peaceful to non-peaceful (and thus forfeit the protection afforded to it under human rights law), and/or from being lawful to being unlawful (and may thus be terminated in a proportionate manner). However, the making of unlawful statements by participants in an assembly (whether verbal or written) does not of itself turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should again arrest the particular individuals involved rather than dispersing the entire event.

Dispersal of assemblies

137. So long as assemblies remain peaceful, they should not be dispersed by law enforcement officials. Indeed, dispersal of assemblies should be a measure of last resort and should be governed by prospective rules informed by international standards. While these need not be elaborated in legislation, they should be expressed in domestic police guidelines, and legislation should require that such guidelines be developed.
138. Guidelines should specify the circumstances that warrant dispersal, and who is entitled to make dispersal orders (for example, only police officers of a specified rank and above). Dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (including, for example, quieting hostile onlookers who threaten violence), and unless there is an imminent threat of violence.
139. Dispersal should not therefore result where:
- A small number of participants in an assembly act in a violent manner. In such instances, action should be taken against those particular individuals;
 - *Agents provocateurs* infiltrate an otherwise peaceful assembly. Here, the authorities should take appropriate action to remove the *agents provocateurs* rather than terminating or dispersing the assembly, or declaring it to be unlawful; or
 - An assembly is deemed to be unlawful either because the organizer has not complied with the requisite preconditions established by law, because the assembly is for a purportedly illegal purpose, or because of the presence of a proscribed organization.¹³²
140. If dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any police intervention. Participants should also be given reasonable time to disperse prior to such intervention. Third parties (such as monitors, journalists, and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.

**Extract from Section 107, First Amendment Rights and Police Standards Act (2004),
District of Columbia, United States**

(d) The [police] shall not issue a general order to disperse to participants in a[n] ... assembly except where:

(1) A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;

(2) A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or

(3) A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the ... assembly be dispersed.

(e)(1) If and when the [police] determines that a[n] ... assembly, or part thereof, should be dispersed, the [police] shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest. (3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.

Use of force

141. The inappropriate, excessive, or unlawful use of force by law enforcement authorities can violate fundamental freedoms and protected rights, undermine police-community relationships, and cause widespread tension and unrest. The use of force should therefore be regulated by domestic law.¹³³ Such provisions should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings), as well as the level of force acceptable to deal with various threats. Governments should develop a range of means of response, and equip law enforcement officials with various types of weapons and ammunition so as to enable a differentiated use of force. These should include the development of non-lethal incapacitating weapons for use in appropriate situations. Moreover, law enforcement officials ought to be provided with self-defence equipment such as shields, helmets, fire-retardant clothing, bullet-proof vests, and bullet-proof transport in order to decrease the need to use weapons of any kind.¹³⁴ This again emphasizes the requirement that the state provide adequate resources for its law enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly.
142. Police owe a duty of care (to prevent death or physical injury) to members of any assembly that they are, or should be, managing. This implies that the police must have the necessary legal powers and competencies to enable them to fulfil these duties, including the power to use reasonable force to ensure that members of a crowd stay where the police reasonably require them to stay for as long as is necessary to allow them to disperse safely.¹³⁵
143. International standards give detailed guidance regarding the use of force in the context of dispersal of both unlawful non-violent and unlawful violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provide that, “[i]n the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”¹³⁶ The UN Basic Principles also stipulate that, “[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”¹³⁷

Principle 9, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

144. The following principles should underpin all occasions when force is used in the policing of public assemblies:
- Where pepper spray or other irritant chemical may be used, decontamination procedures must be set out;
 - The use of energy-attenuating projectiles (also known as baton rounds or plastic/rubber bullets), water cannon, and other forceful methods of crowd control must be strictly regulated;¹³⁸ under no circumstances should force be used against people who are unable to leave the scene; and
 - The use of force should trigger an automatic and prompt review process after the event. It is good practice for law enforcement officials to maintain a written and detailed record of force used (including weapons deployed).¹³⁹
145. It is vital that governments and law enforcement agencies keep the ethical issues associated with the use of force, firearms, and emerging technologies constantly under review.¹⁴⁰ Standards concerning the use of firearms are equally applicable to the use of other techniques of crowd management that are potentially harmful, such as batons, horses, tear gas or other chemical agents, and water cannon (see paras. 161-162 for issues concerning liability for abuse of force by the police).

Extract from: Ten Basic Human Rights Standards for Law Enforcement Officials (Amnesty International)¹⁴¹

Basic Standard 3: Do not use force except when strictly necessary and to the minimum extent required under the circumstance.

Basic Standard 4: Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

Basic Standard 5: Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.

Section 15(2), Hungary's Act XXXIV on the Police (1994)

Of several possible and suitable options for police measures or means of coercion, the one that is effective and causes the least restriction, injury or damage to the affected person shall be chosen.

Extract from: Principles for Promoting Police Integrity (United States Department of Justice)¹⁴²

Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others.

(...)

When the use of force is reasonable and necessary, officers should, to the extent possible, use an escalating scale of options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been, adequate. The levels of force that generally should be included in the agency's continuum of force include: verbal commands, use of hands, chemical agents, baton or other impact weapon, canine, less-than-lethal projectiles, and deadly force.

Liability and accountability

146. If the force used is not authorized by law, or more force is used than is necessary in the circumstances, police officers should face civil and/or criminal liability, as well as disciplinary action. Police officers should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.

Paragraph 21.2 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, urges participating States to “ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments”. Similarly, paragraph 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that “governments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”.¹⁴³

147. Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law enforcement officers, an effective official investigation¹⁴⁴ must be conducted.
148. The core purpose of any investigation should be to secure the effective implementation of domestic laws that protect the right to life and bodily integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.¹⁴⁵

5. Responsibilities of the Organizer

The organizers

149. The organizer is the person or persons with primary responsibility for the assembly. It is possible to define the organizer as the person in whose name prior notification is submitted.

Article 5, Montenegro's Public Assembly Act (2005)

The organizer of a peaceful assembly is any legal or physical entity (henceforth referred to as: the organizer) that, in line with this Act, organizes, holds and supervises the peaceful assembly. Peaceful assembly under paragraph 1 of this article can also be organized by a group of citizens, or more than one legal entity.

150. Those who organize assemblies should co-operate with police to ensure that participants in their assemblies comply with the law and the terms of the submitted notification. There should be clarity as to who precisely is involved in the organization of any assembly, and it can be

assumed that the official organizer is the person or persons in whose name prior notification is submitted. This need not be a legal entity, and could, for example, be a committee of individuals or an informal organization.¹⁴⁶

Ensuring the peaceful nature of an assembly – principles of good practice

151. **The use of negotiation and/or mediation to help resolve disputed assemblies.** If a proposed assembly, or its time, place, or manner, is disputed and no resolution emerges between the organizer, the designated regulatory authority, law enforcement officials, or other parties whose rights might be affected, then negotiation or mediated dialogue may help reach a mutually agreeable accommodation. Genuine dialogue between relevant parties can often yield a more satisfactory outcome for everyone involved than formal recourse to the law. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organizations not affiliated with either the state or the organizer. The presence of parties' legal representatives may, however, also assist in facilitating discussions between the assembly organizer and law enforcement authorities.
152. **Pre-event planning with law enforcement officials.** Where possible, it is a good practice for the organizer(s) to agree prior to the event with law enforcement officials about what security measures will be put in place. Such discussions can cover the deployment of the police and stewards (see paras. 157-161) and concerns about the nature of the policing operation. Sometimes, for example, a police presence in a particular location may be perceived as being unnecessarily confrontational or provocative and the organizer might request that the police maintain a low visibility).

Article 30, Act on Public Assembly (2004), Slovenia

(Police assistance)

When as regards the nature of the gathering or event or as regards the circumstances in which the gathering or event is held ... there exists a possibility that police measures will be necessary, the police, in agreement with the organizer, shall determine the number of police officers necessary for assisting in the maintenance of public order at the gathering or event. In the event of such, the ranking police officer shall come to an agreement with the leader on the method of co-operation.

In the instances specified in the previous paragraph, the organizer of the gathering or event is obliged to co-operate with the police also regarding the planning of measures for the maintenance of order at the gathering or event.

153. From outside the OSCE region, South African legislation provides a useful model of a good practice, in that it specifically requires a signed contract detailing the duties and responsibilities of both the police and the demonstrators:

Regulation of Gatherings Act, No. 205 (1993), South Africa

The Act states that the peaceful exercise of the right to assemble is the joint responsibility of the convenor (organiser) of the event, an authorised member of the police and a responsible officer of the local authority. Together, these three parties form a 'safety triangle' with joint responsibility for ensuring order and safety at public events. The success of the safety triangle is based upon collective planning and co-ordination between the three parties and a willingness to negotiate and compromise where disputes arise.¹⁴⁷

154. **Risk assessment.** Organizers – in co-operation with the police and other agencies (such as fire and ambulance services) – should consider what risks are presented by their assembly, and how they would deal with them should they materialize. The imposition by law of mandatory risk assessments for all open-air public assemblies would, however, create an unnecessarily bureaucratic and complicated regulatory regime, and would unjustifiably deter groups and individuals from enjoying their freedom of peaceful assembly.
155. **Responsibility to obey the lawful directions of law enforcement officials.** The law on assemblies might legitimately require that organizers (as well as participants) obey the lawful orders of law enforcement officials. Refusal to do so may entail liability (see paras. 161-162).

Stewarding assemblies

156. Stewards and marshals (these terms are often used interchangeably) are individuals who assist an assembly organizer in managing an event.¹⁴⁸ Laws governing freedom of assembly may provide for the possibility of organizers being assisted by volunteer stewards. While the police have overall responsibility for public order, organizers of assemblies are encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are persons who work with assembly organizer(s) and who are responsible for facilitating the event and helping ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law enforcement officials and cannot use force, but they should rather aim to persuade assembly participants to co-operate. Their presence can provide reassurance to the public, and help set the mood of an event. The primary role of stewards is to orient, explain, and give information to the public and to identify potential risks and hazards before and during an assembly. In cases of public disorder, the stewards (and organizer) should promptly inform the police. Police should work in partnership with event stewards, and each must have a clear understanding of their respective roles.
157. **Training, briefing, and debriefing.** Stewards should receive an appropriate level of training and a thorough briefing before the assembly takes place (in particular stewards should be familiar with the geography of the area in which the assembly is being held), and it is the responsibility of the organizer to co-ordinate the stewarding operation. For larger events, a clear hierarchy of decision-making should be established, and stewards must at all times during an assembly be able to communicate with one another and with the organizer. As with law enforcement officials, it is important that stewards – together with the event organizer – hold a thorough post-event debriefing and evaluation after any non-routine assembly.
158. **Identification.** It is desirable that stewards be clearly identifiable, e.g., by wearing a bib, jacket, badge, or armband.
159. **Requirement to steward certain assemblies.** Under some circumstances, it may be legitimate to impose on organizers a condition that they arrange a certain level of stewarding for their gathering. However, such a condition should only be imposed as the result of a specific assessment and never by default. Otherwise, it would violate the proportionality principle. Any requirement to provide stewarding in no way detracts from the positive obligation of the state to provide adequately resourced policing arrangements. Stewards are not a substitute for the police, and the police still bear overall responsibility for public order. However, efficient stewarding can help reduce the need for a heavy police presence at public assemblies. This ultimately facilitates any negotiation process where the authorities may have concerns about public safety, and reduces the likelihood that an assembly will be restricted on public-order or safety grounds.

160. In some jurisdictions, it is commonplace for professional stewards or private security firms to be contracted and paid to provide stewarding for assemblies. Yet there should never be a legal obligation upon organizers to pay for stewarding arrangements. To impose such a cost burden would seriously erode the essence of freedom of assembly, and undermine the core responsibility of the state to provide adequate policing.

Liability

161. Organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organizer should not be liable for the actions of individual participants or for stewards who fail to act in accordance with the terms of their briefing. Instead, individual liability will arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law enforcement officials.
162. The organizer may wish to take out public liability insurance for their event. Insurance, however, should not be made a condition of freedom of assembly, as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom. Moreover, if an assembly degenerates into serious public disorder, it is the responsibility of the state, not of the organizer or event stewards, to limit the damage caused. In no circumstances should the organizer of a lawful and peaceful assembly be held liable for disruption caused to others.

7. Human Rights Monitors, Media, and Other Stakeholders

Human rights defenders, observers, and monitors

163. The monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. Monitoring might, for example, be carried out by local NGOs. Domestic ombudsman offices and human rights commissions may also undertake monitoring roles, as can international human rights NGOs (such as Human Rights Watch or Amnesty International) or intergovernmental organizations (such as the Council of Europe or the OSCE).
164. While the primary responsibility to promote and protect freedom of assembly lies with the state, NGOs play an important role in furthering the cause of human rights. Human rights defenders¹⁴⁹ should therefore be permitted to operate freely in the context of freedom of assembly.
165. For the purposes of these Guidelines, monitors are defined as non-participant third-party persons or groups whose primary aim is to observe and record what is taking place.
166. Monitoring public assemblies is a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.¹⁵⁰ Monitors may, for example, be tasked with monitoring particular aspects of an assembly, such as:
- The policing of an event (and whether the state is fulfilling its positive obligations under human rights law);
 - Whether parties adhere to a prior agreement about how an assembly is to be conducted;
 - The interaction between participants in a demonstration and counter-demonstrators; or
 - The conduct of participants in a procession that passes a sensitive location.
167. Sections of the guidance contained below are closely modeled on the *United Nations Training Manual on Human Rights Monitoring*.¹⁵¹

Guidance for Monitors

Prior to the assembly

Monitors should be briefed before they attend an assembly. This briefing should be focused solely on the specific event to be covered. Monitors should also be briefed to focus on certain aspects of the assembly, rather than attempting to observe and report on everything that happens. This may mean that it is necessary to deploy several (even many) monitors at the same event. If possible, the monitor should establish contact in advance with the organizers and collect information about the scenario, including: the site, planned activities, route, number of participants, duration, goals, expected response of the authorities, and alternative courses of action. Prior to an assembly, monitors should acquaint themselves with the route planned by the organizers. Familiarity with the route will assist monitors in identifying possible difficulties, dangers, parking areas, and escape routes. If possible, monitors should request that the organizers advise participants not to approach monitors or impede them from carrying out their task

During the assembly

On the day of the demonstration, monitors must avoid participating or being seen to participate in any way. They must make every effort to be viewed as observers, and not as demonstrators, and should normally be clearly identifiable. Where visibility might compromise their personal safety, monitors should instead carry identification cards. Monitors should keep a prudent and sufficient distance between themselves and the demonstrators, as well as between themselves and the military and/or police, and should leave the scene at the first sign of serious danger. Monitors and human rights defenders can serve a more active role by placing themselves in a position to intervene, either through their physical presence, or through mediating, facilitating negotiation, or providing a line of communication between parties (including the police).¹⁵² Monitors should be aware of, or inquire as to the identity of, the police chief or of the responsible authority, so that they know who to approach about difficulties, and they should later include this information in the report. The police should be informed of the presence and location of monitors to enable the police to promote their safety. It also enables the police to facilitate the monitor in his/her role, perhaps in passing through police lines, or attaining a particular observation position, or in being informed of an unfolding situation. Monitors should be equipped with equipment (phones or radios) to communicate with other monitors. Monitors have no additional powers and can only request assistance from the police in the same way and to the same degree as any other individual. If arrests take place during or after a demonstration, and depending on the focus of the monitoring operation, it may be necessary to try to obtain the names of persons arrested, and possibly the names of witnesses to the arrest. In order to do so, the monitor should proceed cautiously and avoid any behaviour or language likely to exacerbate an already tense situation.

After the assembly

Following the demonstration, the monitors who attended the demonstration should write a detailed report. Monitor reports should be factual, precise, objective and neutral – under no circumstances should monitors report something that they did not see. Monitors' reports should not express any opinion on the legality or illegality of demonstrations under national or local law. Monitors should take part in a post-event debriefing and evaluation. The written report might include the following information:

- Monitor's location;
- Time of monitor's arrival and departure;

- Organizations involved in the assembly and its stated purpose;
- Estimated number of participants;
- Conduct of participants (including slogans, banners, etc);
- Presence of any simultaneous assembly (and the conduct of participants);
- Attitude, behaviour, and visibility of law enforcement officials; and
- Any threats or provocations against the monitors.

Media

168. Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants in the event, and be given as much access as is possible by the authorities. In order to avoid confusion and facilitate such access, it *may* be necessary to require journalists and other media personnel to be clearly identifiable (by, for example, wearing fluorescent bibs).
169. “Assemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public.”¹⁵³ Media footage also provides an important element of accountability both for organizers of events and law enforcement officials. The media must therefore have access to assemblies and the policing operations mounted to facilitate them. This is in satisfaction of the media’s fundamental right to freedom of expression¹⁵⁴.

Other stakeholders

170. Peaceful assemblies will often impact on the rights of non-participants such as business owners, local residents, road users and pedestrians, observers, and bystanders. Mere interference with these rights does not, of course, immediately justify the imposition of restrictions on freedom of assembly. Interference with the rights of others must reach a certain threshold before restrictions on freedom of assembly can properly be justified. Moreover, the fact that freedom of assembly is, by definition, of only a temporary nature should be considered when determining the necessity and proportionality of any restrictions.
171. While such stakeholders do not normally have a right to be consulted,¹⁵⁵ where their rights might be affected, it is a good practice for the organizer and law enforcement agencies to discuss with the affected parties how the various competing rights claims might best be protected to the mutual satisfaction of all concerned. In situations where face-to-face discussions are problematic, it may be possible to agree a mediated process of dialogue.

Annex A – Cases cited

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- *Öllinger v. Austria* (2006) (Application No. 76900/01)
- *Osman v. United Kingdom* (1998) (Application No. 23452/94)
- *Otto-Preminger-Institut v. Austria* (1994) (Application No. 13470/87)
- *Perry v. the United Kingdom* (2003) (Application No. 63737/00)
- *P.G. and J.H. v. United Kingdom* (2001) (Application No. 44787/98)
- *Plattform "Ärzte für das Leben" v. Austria* (1988) (Application No. 10126/82)
- *Rai, Almond and "Negotiate Now" v. United Kingdom* (1995) (Application No. 25522/94)
- ***Rassemblement Jurassien Unité Jurassienne v. Switzerland*** (1979) (Application No. 8191/78)
- *Refah Partisi (The Welfare Party) and Others v. Turkey* (2003) (Application Nos. 41340/98, 41342/98 and 41343/98)
- *Rekvényi v. Hungary* (1999) (Application No. 25390/94)
- *Rotaru v. Romania* (2000) (Application No. 28341/95)
- *Shanaghan v. United Kingdom* (2001) (Application No. 37715/97)
- *Simsek v. Turkey* (2005) (Application Nos. 35072/97 and 37194/97)
- *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (1998, admissibility) (Application Nos. 29221/95 and 29225/95)
- *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* (2001) (Application Nos. 29221/95 and 29225/95)
- *Steel v. United Kingdom* (1998) (Application No. 9415/81)
- *Thlimmenos v. Greece* (2000) (Application No. 34369/97)
- *Tsonev v. Bulgaria* (2006) (Application No. 45963/99)
- *X and Y v. The Netherlands* (1985) (Application No. 8978/80)
- *Ziliberg v. Moldova* (2004, admissibility) and (2005) (Application No. 61821/00)

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- *Kivenmaa v. Finland* (1994) CCPR/C/50/D/412/1990
- *Nicholas Toonen v. Australia*, UN Human Rights Committee, No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (04/04/94)
- *Patrick Coleman v. Australia* (2006) CCPR/C/87/D/1157/2003 (Jurisprudence) Communication No. 1157/2003: Australia. 10/08/2006
- *Ernst Zündel v. Canada*, Communication No. 953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003)
- *Robert Faurisson v. France*, Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996)

National case law

Georgia

- *Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002) N2/2/180-183

Germany

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- BVerfGE 92, 1
- BVerfGE 104, 92 (FN 20 & 33)
- BVerfGE 69, 315 (Brokdorf decision), 14 May 1985
- BVerfGE 63, 115 (353, 354)

Israel

- *Sa'ar v. Minister of Interior and Police* (1979) 34(II) PD 169

Nigeria

- *All Nigeria Peoples Party v. Inspector General of Police* (unreported, 24 June 2005) (Fed HC (Nig))

Poland

- Judgement of the Polish Constitutional Tribunal, 18 January 2006, K 21/05, Requirement to Obtain Permission for an Assembly on a Public Road, English translation available at: http://www.trybunal.gov.pl/eng/summaries/documents/K_21_05_GB.pdf.

United Kingdom

- *Austin v. Metropolitan Police Commissioner* (2005) EWHC 480 (QB)
- *Gillan v. Commissioner of Police for the Metropolis & Another* (2006) United Kingdom HL 12 (8 March 2006)
- *Nicol and Selvanayagam v. Director of Public Prosecutions* (1996) Justice of the Peace Reports 155

United States of America

- *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972)
- *Hague v. Committee for Industrial Organisation*, 307 US 496 (1939)
- *Schneider v. State*, 308 U.S. 147 (1939)
- *Texas v. Johnson*, 491 US 297 (1989)

Zambia

- *Mulundika and Others v The People*, Supreme Court, Zambia, 1 BHRC 199 (10 January 1996).

ANNEX B – English-Russian Glossary of Key Terms

This glossary defines major terms and notions used in the Guidelines and gives their equivalents in Russian. Definitions in the glossary have been derived or adapted from official or other authoritative sources and cross-checked.

Where the term in the Guidelines differs from general usage, the glossary gives the definition that best fits the context of the Guidelines.

The ODIHR acknowledges the use of the Merriam-Webster dictionary in wording some definitions.

English Term	Definition	Russian Term
Accountability	An obligation to accept responsibility for one's actions	Ответственность
Assembly	Intentional and temporary presence of a number of individuals in an open-air public place for a common purpose.	Собрание
Authorization	The act of authorizing; permission (expressly provided in writing).	Разрешение; Санкция
Blanket (e.g., ban, restriction)	Effective or applicable in all instances.	Автоматический (<i>например</i> , запрет, ограничение)
"Clear and present danger" test	Doctrine that allows the imposition of restrictions only when participants in an assembly incite imminent lawless action and such action is likely to occur.	Анализ на выраженное присутствие непосредственной опасности
Concurring assembly	An assembly that takes place at the same time and place as another one, and conveys a message that does not run counter to the message of the other assembly.	Собрание, сходящееся во мнениях с другим собранием
Content neutrality (principle of)	A principle that only allows restricting expression without regard to the content or communicative impact of the message conveyed.	Нейтральный подход к содержанию
Content-based restrictions	A restriction that limits expression because of the message it conveys.	Ограничения на содержание
Counter-demonstration	See <i>Dissenting assembly</i>	См. <i>Dissenting assembly</i>

Data retention	Storage or preservation of recorded information, regardless of form or the media on which it may be recorded.	Хранение данных
Demonstration	A public display of group feelings toward a person or a cause.	Демонстрация
Derogation	Partial repeal of the norm.	Временное отступление государства от выполнения взятых на себя международных обязательств
Dispersal	Forceful termination of an assembly	Принудительное прекращение
Disruption	Interruption of the normal course of action.	Прерывание; Срыв
Dissenting assembly	An assembly that is convened to express disagreement with the views expressed at another public assembly, and takes place at the same or almost the same time and place as the one it disagrees with.	Собрание в знак несогласия с другим собранием
Human rights defender	Individuals, groups or other organs of society that work or act to promote and protect universally recognized human rights and fundamental freedoms.	Защитник прав человека
Liability	The state of one who is bound in law and justice to do something that may be enforced by action.	Ответственность (в т.ч. за вину)
Marshal	See <i>Steward</i>	См. <i>Steward</i>
Monitor	See <i>Observer</i>	Монитор; Наблюдатель
National security	The quality or state of being capable of resisting hostile or destructive acts from inside or outside a state.	Национальная безопасность
Non-lethal weapons	A weapon that is designed to incapacitate the target rather than kill or seriously injure.	Специальные средства
Non-nationals	Those who are not citizens of a given state.	Неграждане
Notification	A notice that provides information on an upcoming assembly that does	Уведомление

	not constitute a request for permission.	
Observer	Someone who oversees and reports on the progress of an assembly from a neutral point of view.	Наблюдатель
Organizer	The person or persons with primary responsibility for an assembly.	Организатор
Parade	See <i>Procession</i> .	Парад
Participant	A person intentionally and voluntarily present at an assembly and supporting the message of the assembly.	Участник
Peaceful enjoyment of one's possessions (right to)	The right to protection of property and against its deprivation.	Право на уважение своей собственности
Penalty	A punishment established by law for its breach.	Мера наказания
Peremptory norm	A fundamental principle of international law considered to have acceptance among the international community of states as a whole. Peremptory norms do not require consent and cannot be violated by any state.	Императивная норма
Permit	The formal consent of the regulatory authority to hold an assembly.	Разрешение
Presumption in favour of holding assemblies	The presumption that an assembly may proceed in the absence of well-founded justifications for the imposition of restrictions or for preventing the assembly from occurring.	Презумпция в пользу проведения собрания
Prior restraint	Restrictions imposed in advance of an event.	Предварительное ограничение
Procession	A gathering that moves along public thoroughfares. A procession may involve the use of vehicle or other conveyances.	Шествие; Процессия
Proportionality (principle of)	The principle requiring that the least intrusive means of achieving the	Соразмерность

	legitimate objective being pursued by the authorities should always be given preference.	
Protection of health and morals	The notion refers to public health and public morals.	Охрана здоровья и нравственности
Protection of rights and freedoms of others	Prevention of major interference with the conflicting rights and freedoms of others.	Защита прав и свобод других лиц
Public order	Security in public places.	Общественный порядок
Public safety	A broad notion involving the protection of the population at large from varied kinds of significant damage, harm, or danger, including emergencies.	Безопасность населения
Public space	A space where everyone is free to come and leave without restriction (e.g., streets, parks etc.).	Общественная территория
Rally	A static demonstration.	Митинг
"Reasonable excuse" defense	A defense applicable where failure to comply was not willful but a matter of impossibility.	Защита на основании наличия объективных препятствий к соблюдению закона
Regulatory authority	The authority responsible for taking decisions about public assemblies.	Орган регулирования
Riot control	Measures taken to control an act of public violence by an unruly mob.	Действия по пресечению массовых беспорядков
Risk assessment	Assessment of the magnitude of a potential loss and the probability that a loss will occur.	Оценка риска
Sanction	A coercive measure intended to ensure compliance with the law.	Мера принуждения
Simultaneous assemblies	Two or more assemblies taking place at the same place and time.	Одновременные собрания
Sit-in	A static demonstration in which participants seat themselves in a particular place and refuse to move.	Сидячая демонстрация
Spontaneous assembly	A assembly that takes place without prior notification.	Стихийное собрание

Steward	A person, working in co-operation with assembly organizer(s), with a responsibility to facilitate an event and help ensure compliance with any lawfully imposed restrictions.	Распорядитель (на собрании)
Supporter	Someone who is in the close proximity of the assembly and shares the views expressed.	Сочувствующее лицо
Unlawful assembly	An assembly that proceeds in noncompliance with the law.	Собрание с несоблюдением закона
Use of force	Exertion of physical force as a means of compulsion or coercion.	Применение силы
Violence	Illegal or abusive exertion of physical force.	Хулиганские действия; применение насилия.

ANNEX C – Expert Panel**Neil JARMAN (Panel Chairperson, United Kingdom)**

Neil Jarman is Director of the Institute for Conflict Research in Belfast, Northern Ireland, UK. His academic interest is primarily in peacebuilding activity and conflict mitigation, with specific focus on public assemblies and their policing, and community-based responses to violence and public disorder. He was a Specialist Adviser with the Northern Ireland Affairs Committee for the inquiry into hate crime in Northern Ireland. He is the author of numerous publications on issues such as policing public order, human rights and conflict resolution, and combating hate crime.

Nina BELYAEVA (Russian Federation)

Nina Belyaeva is the Head of the Public Policy Department of the State University-Higher School of Economics, the first Western-type state university in Russia, created in 1992 with the assistance of the EU and several European universities. Her academic interests focus on the legal environment for the public participation of civil society and legal forms of citizen-government interaction. She is the principal author of the Russian Law on Public Associations of 1995, which attracted a lot of attention and comments from the international community after recently introduced amendments imposing new restrictions on NGO activities. Being a recognized practitioner and organizer of innovative forms of NGO activities, she is also Chair of the Board of an international coalition of NGOs called We – the citizens! and President of Interlegal, an international foundation for political and legal research.

She has participated in numerous working groups on Russian federal and regional legislation regulating the activities of public associations and NGOs, as well as many international expert groups created by CIVICUS, the World Bank, and the EU aimed at compiling best practices and elaborating model legislation in the field of civil society and relations between civil society and state authorities.

David GOLDBERGER (United States)

David Goldberger is the Isadore and Ida Topper Professor of Law at Ohio State University. He teaches a course on the First Amendment to the US Constitution, a survey course on the US Constitution, and a course in clinical skills in which he supervises upper-level law students representing clients in pending cases. His academic writing focuses primarily on the scope of the right to freedom of speech under the US Constitution. Prior to becoming an academic, he was legal director of the American Civil Liberties Union, Illinois Division. He specializes in free-speech cases. Through the years, his clients have included, among others, anti-Vietnam War demonstrators, the National Socialist Party of America (in its effort to get a permit to demonstrate in Skokie, Illinois), the Communist Party of Illinois, and the Ku Klux Klan. He has also represented political candidates for state and county office from America's major political parties.

Muatar S. KHAIDAROVA (Tajikistan)

Muatar S. Khaidarova is a Legal Consultant with the International Center for Not-for-Profit Law in Tajikistan and President of the NGO Society and Law. She has authored a number of publications on issues of civil liberties, religion and the law, and the state and the law.

Serghei OSTAF (Moldova)

Serghei Ostaf is the Director of the Resource Center for Human Rights (CReDO), a non-profit organization that develops the capacity of civil society organizations to advocate for democratic changes and that is engaged in the promotion of democratic policies in Moldova. CReDO offers change-oriented consultancy and policy research and carries out advocacy actions. Ostaf has been involved in human rights advocacy work in Moldova and lobbying with the Council of Europe, UN human rights bodies, and the ODIHR by means of presenting advocacy research, monitoring, and presenting shadow reports, bringing human rights cases to national courts and

the European Court of Human Rights (freedom of expression, freedom of assembly, religious liberty and personal liberty, privacy and cases related to forced labour). His current interests include lobbying for the adoption of democratic public policies by the government, consulting on effective implementation of such policies through the use of legal and institutional mechanisms. He teaches master-level courses in public policy, policy-process analysis, and democratic policy implementation.

Vardan POGHOSYAN (Armenia)

Vardan Poghosyan is the founder of the NGO Democracy, an Armenian think tank focusing on legal and political research. He is also the Legal Advice Project Coordinator with GTZ in Armenia. His primary academic interest is in constitutional and administrative law, as well as in comparative political systems. He has participated in a number of legislative drafting projects in Armenia, including membership in the Working Group on Drafting the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, as well as participation in drafting constitutional amendments and the Administrative Procedure Code.

Andrzej RZEPLIŃSKI (Poland)

Andrzej Rzepliński is a Professor of Law at Warsaw University's Faculty of Applied Social Sciences and Resocialization. He specializes in the fields of basic rights and freedoms, crimes of totalitarian regimes, laws on the police and security services, as well as in penology, and he has published extensively on these topics. He is a member of the Board of Directors of the Helsinki Foundation for Human Rights, the International Helsinki Federation for Human Rights, and the Polish Section of the International Commission of Jurists. He is an expert for the Council of Europe in training judges and monitoring freedom of expression.

Alexander VASHKEVICH (Belarus)

Dr. Alexander Vashkevich is an Associate Professor at the Department of the International Law at Belarusian State University and a former Justice of the Constitutional Court of Belarus. He teaches Comparative Constitutional Law and European Human Rights Law and has published extensively on human rights issues. He is the head of a working group that carries out reviews of the compliance of **Belarusian domestic legislation and practice with ECHR and the case law of the European Court of Human Rights.**

Yevgeniy A. ZHOVTIS (Kazakhstan)

Yevgeniy A. Zhovtis is Director of the NGO Kazakhstan International Bureau for Human Rights and the Rule of Law and a member of the Board of Directors of Interlegal. He has an extensive track record as a defense lawyer. His primary interest is in civil liberties.

Michael HAMILTON (Secretary to the Expert Panel, United Kingdom)

Dr. Michael Hamilton is a lecturer in human rights law at the Transitional Justice Institute, University of Ulster. His research has focused on the legal regulation and mediation of public protest, particularly parade disputes in Northern Ireland.

Endnotes

¹ See CDL-AD(2005)040 Opinion on the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to Freedom of Assembly adopted by the Venice Commission of the Council of Europe at its 64th Plenary Session, Venice, 21-22 October 2005). Note that a member of the Venice Commission (Peter Paczolay of Hungary) participated in the roundtable in Warsaw, one of the four roundtables where the Guidelines were discussed.

² Principally, the relevant standards contained in the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and the jurisprudence of the United Nations Human Rights Committee and the European Court of Human Rights, respectively.

³ Including the constitutional courts both of OSCE participating States and of non-participating states.

⁴ See, for example, *Bączkowski and Others v. Poland* (2006, admissibility decision), p. 5: “The Constitution clearly guaranteed the freedom of assembly, not a right. It was not for the State to create a right to assembly; its obligation was limited to securing that assemblies be held peacefully.”

⁵ Tajik law, for example, defines “participant” in terms of a person’s support for the aims of the event.

⁶ Article 22 of the ICCPR and Article 11 of the ECHR.

⁷ Article 17 of the Council of Europe Framework Convention on National Minorities, which draws upon paras. 32.4 and 32.6 of the Copenhagen Document of the CSCE.

⁸ Article 19(2) and (3) of the ICCPR and Article 10 of the ECHR. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The European Court of Human Rights has often recognized that freedom of assembly and freedom of expression are often, in practice, closely associated. See, for example, *Ezelin v. France* (1991), paras. 37, 51; *Djavit An v. Turkey* (2003), para. 39; *Christian Democratic People’s Party v. Moldova* (2006), para. 62; *Öllinger v. Austria* (2006), para. 38.

⁹ Article 18 of the ICCPR and Article 9 of the ECHR.

¹⁰ See Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. Also see Helen Fenwick, “The Right to Protest, the Human Rights Act and the Margin of Appreciation”, *Modern Law Review*, Vol. 62, 1999.

¹¹ *Op. cit.*, note 1, point 12.

The ICCPR sets out universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by states ratifying or acceding to the Covenant are meant to be discharged as soon as a state becomes party to the ICCPR. The implementation of the ICCPR by its states parties is monitored by a body of independent experts: the UN Human Rights Committee. All states parties are obliged to submit regular reports to the Committee on how the rights are being implemented. In addition to the reporting procedure, Article 41 of the Covenant provides for the Committee to consider interstate complaints. Furthermore, the First Optional Protocol to the ICCPR gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by states parties to the Protocol.

¹³ The ECHR is the most comprehensive and authoritative human rights treaty for the European region. The treaty has been open for signature since 1950. All member states of the Council of Europe are required to ratify the Convention within one year of the state’s accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it undertake to secure these rights and freedoms for everyone within their jurisdiction. Individual and interstate petitions are dealt with by the European Court of Human Rights in Strasbourg. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the ECHR and the protocols thereto.

¹⁴ As provided by Article 44 of the American Convention, “[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization [of American States], may lodge petitions with the [Inter-American] Commission [on Human Rights] containing denunciations or complaints of violation of this Convention by a State Party.”

¹⁵ For example, following the judgment of the European Court of Human Rights (ECtHR) in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), the Bulgarian Ministry of Justice sent the judgment of the ECtHR, translated into Bulgarian, and accompanied by a circular letter, to the mayors of the cities concerned. In order to inform the courts and the public of the new binding interpretation of the law, the court also posted the Bulgarian translation of the judgement on its website at <http://www.mjeli.government.bg/>. See *Human Rights Information Bulletin*, No. 64, 1, December 2004-28 February 2005, pp. 49-50, available at http://www.coe.int/T/E/Human_Rights/hrib64e.pdf.

¹⁶ For example, Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms states that “[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right,

individually and in association with others, at the national and international levels ... to meet or assemble peacefully.” The 1990 OSCE Charter of Paris also states that, “without discrimination, every individual has the right to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and peaceful assembly”.

¹⁷ See Article 29 of the Universal Declaration of Human Rights for the general limitations clause.

¹⁸ See, for example, *Çiraklar v. Turkey* (1998), *Plattform “Ärzte für das Leben” v. Austria* (1988). Thus, if the right to freedom of peaceful assembly is considered to be the *lex specialis* in a given case, it would not be plausible for a court to find a violation of the right to freedom of expression if it had already established, on the same facts, that there had been no violation of the right to freedom of peaceful assembly. This question was touched upon by Mr. Kurt Herndl in his dissenting opinion in the case of *Kivenmaa v. Finland* (1994), CCPR/C/50/D/412/1990, at para. 3.5.

¹⁹ *Otto-Preminger-Institut v. Austria* (1994), para. 47.

²⁰ Also see Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary* (Kehl, Strasbourg, Arlington: Engel Publisher, 1993), p. 373. “The term ‘assembly’ is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only *intentional*, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.”

²¹ See (generally) the decisions of the German Constitutional Court in relation to roadblocks in front of military installations. BVerfGE 73, 206; BVerfGE 92, 1; and BVerfGE 104, 92.

²² In *Christians Against Racism and Fascism (CARAF) v. United Kingdom* (1980), the European Commission accepted “that the freedom of peaceful assembly covers not only static meetings, but also public processions” (at p. 148, para. 4). This understanding has been relied upon in a number of subsequent cases, including *Plattform Ärzte* (1988) and *Ezelin v. France* (1991). In the latter case, it was stated that the right to freedom of assembly “is exercised in particular by persons taking part in public processions” (Commission, para. 32).

²³ For example, the standard of permanence permitted in Moldova is two months.

²⁴ This draws on the United States doctrine of “public fora”. See, for example, *Hague v. Committee for Industrial Organisation*, 307 US 496 (1939).

²⁵ 34(II) PD 169 at 177-78, per Barak J.

²⁶ An owner of private property has far more discretion to choose whether to permit a speaker to use his property than the government does. At a private assembly, access is restricted to invited persons. Compelling an owner to make his or her property available for an assembly may breach their rights to private and family life (Article 8 of the ECHR) or to peaceful enjoyment of their possessions (Article 1 of Protocol 1 of the ECHR).

²⁷ *Djavit An v. Turkey* (2003), para. 56; *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p. 119.

²⁸ See, for example, Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003), and Margaret Kohn, *Brave New Neighbourhoods: The Privatization of Public Space* (New York: Routledge, 2004); Kevin Gray and Susan Gray, *Civil Rights, Civil Wrongs and Quasi-Public Space* [1999] EHRLR 46; Fitzpatrick and Taylor, *Trespassers Might be Prosecuted: The European Convention and Restrictions on the Right to Assemble* [1998] EHRLR 292; Jacob Rowbottom, *Property and Participation: A Right of Access for Expressive Activities* [2005] 2 EHRLR 186-202.

²⁹ *Appleby v. United Kingdom* (2003), para. 39, citing *Özgür Gündem v. Turkey* (2000), paras. 42-46, and *Fuentes Bobo v. Spain* (2000), para. 38. In *Cisse v. France* (2002), the European Court of Human Rights held that the evacuation of a group of approximately 200 illegal immigrants who had occupied a church in Paris for several months did amount to interference with the applicant’s right to freedom of peaceful assembly, but in this case, the interference was both necessary and proportionate primarily on health grounds (see para.52). The applicable domestic laws stated that: “Assemblies for the purposes of worship in premises belonging to or placed at the disposal of a religious association shall be open to the public. They shall be exempted from [certain requirements], but shall remain under the supervision of the authorities in the interests of public order.”

³⁰ At para. 47. In reaching its decision, the ECtHR examined the case law of Canada (para. 31) and the United States (paras. 25-30, and 46). The Court considered: (a) the diversity of situations obtaining in contracting states; (b) the choices that must be made in terms of priorities and resources (noting that the positive obligations “should not impose an impossible or disproportionate burden on the authorities”); and (c) the rights of the owner of the shopping centre under Article 1 of Protocol 1.

³¹ In *Cisse v. France* (2002), para.37, the European Court of Human Rights stated that, “In practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants *intended* [emphasis added] to use violence”. Also see *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that peaceful assembly does not cover a demonstration where the organizers and participants have violent *intentions* that result in public disorder.

³² *Plattform "Ärzte für das Leben" v. Austria* (1988), para. 32, concerning a procession and open-air service organized by anti-abortion protesters. Similarly, the European Court has often stated that, subject to Article 10(2), freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'."

³² *Handyside v. The United Kingdom* (1976), para. 49. Applied in *Incal v. Turkey* (1998), para. 46; *Otto-Preminger-Institut v. Austria* (1994), para. 49, and joint dissenting judgment, para. 3; *Müller and Others v. Switzerland* (1988), para. 33; *Observer and Guardian v. United Kingdom* (1991), para. 59; *Chorherr v. Austria* (1993), Commission, para. 39.

³³ See BVerfGE 69, 315(360) regarding roadblocks in front of military installations. See para. 3: "Their sit-down blockades do not fall outside the scope of this basic right just because they are accused of coercion using force."

³⁴ If a narrower definition of "peaceful" were to be adopted, it would mean that the scope of the right would be so limited from the outset that the limiting clauses (such as those contained in Article 11(2) of the ECHR) would be virtually redundant.

³⁵ *Rassemblement Jurassien Unité Jurassienne v. Szitzerland* (1979), pp. 93 and 119; *Christians Against Racism and Facism (CARAF) v. United Kingdom* (1980), p. 148; *G v. The Federal Republic of Germany* (1989), p. 263; *Anderson v. United Kingdom* (1997), and *Rai, Almond and "Negotiate Now" v. United Kingdom*, (1995).

³⁶ See, for example, *Plattform "Ärzte für das Leben" v. Austria* (1988).

³⁷ See, for example, *Öllinger v. Austria* (2006).

³⁸ See, for example, Mary O'Rawe, "Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland", *Human Rights Quarterly*, Vol. 27, No. 3, August 2005, pp. 943-968; Mary O'Rawe, "Transitional Policing Arrangements In Northern Ireland: The Can't And The Won't Of The Change Dialectic", *Fordham International Law Journal*, Vol. 26, No. 4, April 2003, pp. 1015 -1073.

³⁹ See *Hashman and Harrup v. United Kingdom* (1999), where a condition was imposed on protesters not to behave *contra bonos mores* (i.e., in a way that is wrong rather than right in the judgement of the majority of fellow citizens). This was held to violate Article 10 of the ECHR because it was not sufficiently precise so as to be "prescribed by law". Also see *Steel v. United Kingdom* (1998), and *Mkrichyan v. Armenia* (2007), paras. 39-43 (relating to the foreseeability of the term "prescribed rules" in Article 180.1 of the Code of Administrative Offences). In the latter case, the Armenian government unsuccessfully argued that these rules were prescribed by a Soviet law that had approved, *inter alia*, the Decree of 28 July 1988 on Rules for Organizing and Holding Assemblies, Rallies, Street Processions and Demonstrations in the USSR.

⁴⁰ See *Rekvényi v. Hungary* (1999), para. 34.

⁴¹ See, for example, *Ezelin v. France* (1991), para. 45.

⁴² See, for example, *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979).

⁴³ The objectives or aims that may be legitimately pursued by the authorities in restricting the freedom of assembly are provided for by Article 21 of the ICCPR and Article 11 of the ECHR. Thus, the only purposes that may justify the restriction of the right to peaceably assemble are the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

⁴⁴ As such, the dispersal of assemblies must only be used as a measure of last resort.

⁴⁵ D. Feldman, *Civil Liberties & Human Rights in England and Wales* (Oxford: Oxford University Press, Oxford, 2002), 2nd edition.

⁴⁶ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 87. Also see *United Communist Party of Turkey and Others v. Turkey* (judgement of 30 January 1998), para. 47.

⁴⁷ See the *Brokdorf* decision of the Federal Constitutional Court of Germany (1985) BVerfGE 69, 315 1 BvR 233, 341/81.

⁴⁸ *Rai, Almond and "Negotiate Now" v. United Kingdom* (1995).

⁴⁹ See, for example, the Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. One example of a good practice is provided by the Northern Ireland Parades Commission, which publishes details of all notified parades and related protests in Northern Ireland categorized according to the town where they are due to take place. See <http://www.paradescommission.org>.

⁵⁰ See "General Comment 18: Non-Discrimination", UN Human Rights Committee, UN Doc. CCPR General Comment 18, (1989).

⁵¹ See, for example, *Haas v. Netherlands* (2004), para.41. In light of the judgement of the European Court of Human Rights in *Thlimmenos v. Greece* (2000), Robert Wintemute argues that the interpretation of Article 14 of the ECHR should be broadened to include "two access routes" so that not only the opportunity denied, but also the ground for its denial, could be deemed to fall "within the ambit" of another Convention right and so engage Article 14. See R.

Wintemute, “‘Within the Ambit’: How big is the ‘gap’ in Article 14 European Convention on Human Rights? Part 1”, *European Human Rights Law Review*, No. 4, 2004, pp. 366-382.

⁵² See *Nicholas Toonen v. Australia*, para. 8.7.

⁵³ Article 21 of the Charter of Fundamental Rights of the European Union provides that, “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” [2000] C364/01, available at http://www.europarl.eu.int/charter/pdf/text_en.pdf.

⁵⁴ In part, this was the argument raised by the applicants in *Bączkowski and Others v. Poland* (2006, admissibility). The applicants stated that they were treated in a discriminatory manner, first, because the organizers of other public events in Warsaw in 2005 had not been required to submit a “traffic organization plan”, and also because they had been refused permission to organize the March for Equality and related assemblies because of the homosexual orientation of the organizers.

⁵⁵ *Thlimmenos v. Greece* (2000), para. 44.

⁵⁶ Indirect discrimination occurs when an ostensibly non-discriminatory provision in law affects certain groups disproportionately.

⁵⁷ *Nachova and Others v. Bulgaria* (2005).

⁵⁸ See *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p. 119, and *Christians against Racism and Fascism (CARAF) v. the United Kingdom* (1980), p. 148. Similarly, the right to freedom of thought, conscience and religion can be exercised by a church body or by an association with religious and philosophical objects, *ARM appell v. United Kingdom* (1987), p. 246.

⁵⁹ Also see Article 17 of the Framework Convention on National Minorities: “(1) The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage; (2) The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.”

⁶⁰ Adopted by General Assembly Resolution 47/135 of 18 December 1992.

⁶¹ UN Human Rights Committee, General Comment 15, “The position of aliens under the Covenant”.

⁶² See Donatella della Porta, Abby Peterson, Herbert Reiter, *The Policing of Transnational Protest* (Canada: Rowman & Littlefield Publisher, 2004).

⁶³ Article 7(c) of the Convention on the Elimination of Discrimination against Women also safeguards the right of women to participate in non-governmental organizations and associations concerned with the public and political life of the country.

⁶⁴ Article 15, Convention on the Rights of the Child.

⁶⁵ Principle 1 (5), United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, United Nations General Assembly Resolution 46/119.

⁶⁶ Article 1, UN Convention on the Rights of Persons with Disabilities.

⁶⁷ Article 11(2), European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶⁸ See European Court of Human Rights, *Ahmed and Others v. United Kingdom* (1998) and *Rekvényi v. Hungary* (1999).

⁶⁹ Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides: “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully.” Also see Articles 6 and 8(2).

⁷⁰ In the *Brokdorf* decision of the Federal Constitutional Court of Germany (1985) BVerfGE 69, 315 1 BvR 233, 341/81, for example, “public order” was understood as including the totality of unwritten rules, obedience to which is regarded as an indispensable prerequisite for an orderly communal human existence within a defined area according to social and ethical opinions prevailing at the time.

⁷¹ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 94.

⁷² See *Ezelin v. France* (1991) and *Ziliberberg v. Moldova* (2004).

⁷³ In the case of *Incal v. Turkey* (1998), the applicant’s conviction for helping to prepare a political leaflet that urged the population of Kurdish origins to band together and “set up Neighbourhood Committees based on the people’s own strength” was held by the European Court to have violated the applicant’s freedom of expression under Article 10. Read in context, the leaflet could not be taken as incitement to the use of violence, hostility or hatred between citizens.

⁷³ Moreover, the Court stated that the “limits of permissible criticism are wider with regard to the government than in relation to a private citizen”, para. 54.

⁷⁴ The right to the highest attainable standard of health: 11/08/2000 E/C.12/2000/4. (General Comments), Committee on Economic, Social and Cultural Rights, Twenty-second session Geneva, 25 April-12 May 2000, Agenda item 3, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights”, General Comment No. 14 (2000), “The right to the highest attainable standard of health” (Article 12 of the International Covenant on Economic, Social and Cultural Rights).

⁷⁵ See Judgement of the Polish Constitutional Tribunal, 18 January 2006, K 21/05, *Requirement to Obtain Permission for an Assembly on a Public Road*, English translation available at http://www.trybunal.gov.pl/eng/summaries/documents/K_21_05_GB.pdf

⁷⁶ See, for example, *Hashman and Harrup v. United Kingdom* (1999) regarding the common law of offence of behaviour deemed to be “*contra bonos mores*”.

⁷⁷ For criticism of a recent legislative provision, see, <http://www.bahrainrights.org/node/208>; <http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>.

⁷⁸ *Norris v. Ireland* (1988), paras. 44-46.

⁷⁹ See, for example, Tania Groppi, “Freedom of thought and expression, General Report”, University of Sienna, 2003. Available at http://www.unisi.it/ricerca/dip/dir_eco/COMPARATO/groppi4.doc.

⁸⁰ In the US case of *Schneider v. State*, 308 US 147 (1939), it was held that there was a right to leaflet even though the leafleting caused litter. In *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972), it was held that there was a right to assemble in open areas that the park officials had designated as picnic areas. In *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Österreich* (2003), the European Court of Justice held that allowing a demonstration that blocked the Brenner Motorway between Germany and Italy for almost 30 hours was not a disproportionate restriction on the free movement of goods under Article 28 of the EC Treaty). This was for three reasons: (1) the disruption was of a relatively short duration and on an isolated occasion; (2) measures were taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. The Austrian authorities considered that they had to allow the demonstration to go ahead because the demonstrators were exercising their fundamental rights of freedom of expression and freedom of assembly under the Austrian constitution. Also see *Commission v. France* (1997). This case concerned protests by French farmers directed against agricultural products from other EU member states. The Court held that, by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions of private individuals, the French government had failed to fulfil its obligations under Article 30 of the EC Treaty, in conjunction with Article 5 of the Treaty.

⁸¹ The right to “private life” covers the physical and moral integrity of the person (*X and Y v. The Netherlands* (1985)), and the state must not merely abstain from arbitrary interference with the individual, but must also positively ensure *effective* respect for private life. This can extend even in the sphere of relations between individuals. Where it is claimed that a right to privacy is affected by freedom of assembly, the authority should seek to determine the validity of that claim, and the degree to which it should tolerate a temporary burden. The case of *Moreno Gómez v. Spain* (2004, final 2005) might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established.

⁸² See, for example, *Chassagnou and Others v. France* (1999). Also see *Gustafsson v. Sweden* (1996). The right to peacefully enjoy one’s possessions has been strictly construed by the European Court of Human Rights so as to offer protection only to proprietary interests. Moreover, for a public assembly to impact on the enjoyment of one’s possessions to an extent that would justify the placing of restrictions on it, a particularly high threshold must first be met. Businesses, for example, benefit from being in public spaces and, as such, should be expected to tolerate alternative uses of that space. As previously emphasized, freedom of assembly should be considered a normal and expectable aspect of public life.

⁸³ *Öllinger v. Austria* (2006), para. 46.

⁸⁴ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, UN Doc. E/CN.4/1996/39 (1996).

⁸⁵ *Freedom and Democracy Party (Özdep) v. Turkey* (1999).

⁸⁶ See, for example, *Texas v. Johnson*, 491 US 297 (1989) in which the US Supreme Court found that flag-burning was protected under the First Amendment to the US Constitution, and invalidated laws in 48 US states that prohibited the desecration of the American flag.

⁸⁷ See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001).

⁸⁸ Available from <http://www.icj.org>. Similarly, the United Nations Global Counter-Terrorism Strategy adopted by member states on 8 September 2006 emphasizes in part IV “that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing”, and that “States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law”.

⁸⁹ See, for example, Lluís Maria de Puig (rapporteur) “Democratic Oversight of the Security Sector in Member States”, Report for the Political Affairs Committee, Parliamentary Assembly of the Council of Europe (2 June 2005, Doc. 10567), para. 97.

⁹⁰ Amnesty International Index: POL 30/04/98, United Kingdom (1998).

⁹¹ Also see para. 25 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

⁹² See *Lawless v. Ireland* (1961), para.28. Also see the Questiaux Principles: Nicole Questiaux, “Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency”, UN Doc. E/CN.4/Sub.2/1982/15, 27 July 1982. In addition, General Comment No.29 of UN Human Rights Committee (August 2001) provides examples of rights that cannot be derogated from.

⁹³ Siracusa Principles, paras. 40-41. Annex, UN Doc. E/CN.4/1984/4 (1984), <http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>.

⁹⁴ See Article 4(1) of ICCPR, and *Greece v. United Kingdom* (1958-1959).

⁹⁵ See Philip Leach, *Taking a case to the European Court of Human Rights* (Oxford: Oxford University Press, 2005), 2nd edition, p. 333.

⁹⁶ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 97.

⁹⁷ *Ibid.*, para. 94.

⁹⁸ For example, *Patrick Coleman v. Australia* (2006), para. 7.3 (the Human Rights Committee considered a fine and five-day custodial sentence to be a disproportionate penalty for making a speech without a permit). Also see *Ezelin v. France* (1991) (assembly); *Incal v. Turkey* (1998) (expression).

⁹⁹ An example of such a defence is contained in Sections 6(7) and 6(8) of the Public Processions (Northern Ireland) Act 1998. There may be a number of ways to provide for the “reasonable excuse” defence in the law, but good practice suggests that words such as “without reasonable excuse” should be clearly identified *as a defence* to the offence where it applies, and not merely as an element of the offence that would have to be proved or disproved by the prosecution. See “Preliminary Comments on the Draft Law ‘On Amendments to Some Legislative Acts of the Republic of Kazakhstan on National Security Issues’”, OSCE/ODIHR Opinion Nr. GEN-KAZ/002/2005, 18 April 2005.

¹⁰⁰ At p. 363. In *Ziliberberg v. Moldova* (2004) (admissibility), p. 10, it was stated that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.

¹⁰¹ See UN Human Rights Committee, *Kivenmaa v. Finland* (1994).

¹⁰² *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p. 119.

¹⁰³ The Constitutional Court of Georgia has annulled part of the law (Article 8, para. 5) that allowed a body of local government to *reject* a notification (thus effectively creating a system of prior license rather than prior notification), *Georgian Young Lawyers’ Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002), N2/2/180-183. Also see *Mulundika and Others v. The People*, Supreme Court of Zambia, 1 BHRC 199 (10 January 1996). *All Nigeria Peoples Party v. Inspector General of Police* (Unreported, June 24, 2005) (Fed HC (Nig)).

¹⁰⁴ See *Oya Ataman v Turkey* (2006), paras. 41, 43.

¹⁰⁵ See *Öllinger v. Austria* (2006), paras. 43-51, which provides guidance as to the factors potentially relevant to assessing the proportionality of any restrictions on counter-demonstrations. These include whether the coincidence of time and venue is an essential part of the message of the counter-demonstration, whether the counter-protest concerns the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators have peaceful intentions, and the proposed manner of the protest (use of banners, chanting, etc.).

¹⁰⁶ See *Plattform “Ärzte für das Leben” v. Austria* (1988), para. 32.

¹⁰⁷ In *Axen v. Germany* (1983), which related to the issue of fair trial, the ECtHR considered ‘that in each case the form of publicity to be given to the ‘judgment’ under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6(1).’

¹⁰⁸ Article 14(3) of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides that: “The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.”

¹⁰⁹ See also, for example, the Resolution on the Increase in Racist and Homophobic Violence in Europe, passed by the European Parliament on 15 June 2006, para. L, which urges member states to consider whether their institutions of law enforcement are compromised by institutional racism.

¹¹⁰ *Plattform "Ärzte für das Leben" v Austria* (1988), para. 32.

¹¹¹ See, for example, the Council of Europe's European Code of Police Ethics (2001) and related commentary, which sets out principles for the governments of member states in preparing their internal legislation and policing codes of conduct.

¹¹² The UN Human Rights Committee has noted that "State parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces". General Comment No. 6, Article 6, 16th Session (1982), para. 3.

¹¹³ *Osman v. United Kingdom* (1998), para. 116.

¹¹⁴ See, for example, Article 15 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which provides that: "The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme."

¹¹⁵ Issues around police training may be relevant in assessing whether a state has fulfilled its positive obligations under Article 2 of the ECHR. See, for example, *McCann v. United Kingdom* (1995), para. 151.

¹¹⁶ For example, Amnesty International, Ten Basic Human Rights Standards for Law Enforcement Officials (Amnesty International Index: POL 30/04/98); Council of Europe, European Code of Police Ethics (2001).

¹¹⁷ Available at http://www.acpo.police.uk/asp/policies/Data/keeping_the_peace.pdf.

¹¹⁸ See, for example, ACPO Manual of Guidance on Keeping the Peace, p. 35.

¹¹⁹ Some codes of administrative offences refer explicitly to "active participation". Also see *Ziliberberg v. Moldova* (2004), para. 11.

¹²⁰ *Ziliberberg v. Moldova* (2004), p. 10, citing *Ezelin v. France* (1989), para. 34.

¹²¹ Article 9 of the ICCPR and Article 5 of the ECHR protect the right to liberty and security of person. *Guenat v. Switzerland* (1995) was a case involving detention for the purpose of making enquiries (thus falling short of arrest). The police actions were found not to have violated Article 5 of the ECHR. While not every restriction imposed on a person's liberty will necessarily amount to a deprivation of liberty as stipulated in Article 5 of the ECHR, any restrictions must be deemed strictly necessary and be proportionate to the aim being pursued. See, for example, *Guzzardi v. Italy* (1980), paras. 92-93: "The difference between deprivation of and restriction upon liberty is ... merely one of degree or intensity, and not one of nature or substance." This argument was raised in a freedom-of-assembly case in the UK. See *Gillan v. Commissioner of Police for the Metropolis & Another* (2006), UKHL 12, paras. 21-24. Moreover, restrictions on liberty may still constitute a violation of the freedom of movement as protected by Article 2 of the Fourth Protocol to the ECHR.

¹²² Article 12 of the ICCPR and Article 2 of the Fourth Protocol to the ECHR.

¹²³ *Mammadov (Jalaloglu) v. Azerbaijan* (2007).

¹²⁴ The existence of a reasonable expectation of privacy is a significant, though not conclusive, factor in determining whether the right to private and family life protected by Article 8 of the ECHR is, in fact, affected. See *P.G. and J.H. v. United Kingdom* (2001), para. 57. A person's private life may be affected in circumstances outside their home or private premises. See, for example, *Herbecq and Another v. Belgium* (1998). In *Friedl v. Austria* (1995), the police photographed a participant in a public demonstration in a public place, confirmed his identity, and retained a record of his details. They did so only after requesting that the demonstrators disperse, and the European Commission held that the photographing did not constitute an infringement of Article 8.

¹²⁵ See, for example, *Leander v. Sweden* (1987), para. 48; *Rotaru v. Romania* (2000), paras. 43-44. In *Amann v. Switzerland* (2000), paras 65-67: the compilation of data by security services on particular individuals even without the use of covert surveillance methods constituted interference with the applicants' private lives. Also see *Perry v. the United Kingdom* (2003), para. 38.

¹²⁶ This list is neither exhaustive nor prescriptive. It draws upon "Derbyshire Constabulary: Debriefing of Policing Operations", p. 5, available at <http://www.derbyshire.police.uk/sei/s/864/f10.pdf>.

¹²⁷ In *CDPP v. Moldova* (2006), for example, the European Court of Human Rights was "not persuaded that the singing of a fairly mild student song could reasonably be interpreted as a call to public violence".

¹²⁸ See *Refah Partisi and Others v. Turkey* (2003), para. 98. Note that, in *Tsonev v. Bulgaria* (2006), the European Court of Human Rights found that there was no evidence that merely by using the word "revolutionary", the Bulgarian Revolutionary Youth Party represented a threat to Bulgarian society or to the Bulgarian state. Nor was there anything in the party's constitution that suggested that it intended to use violence in pursuit of its goals.

¹²⁹ See, for example, para. 67 of the Johannesburg Principles, *op. cit.*, note 91.

¹³⁰ In the case of *Cisse v. France* (2002), the ECtHR stated (at para. 50) that “[t]he Court does not share the Government’s view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as ... [*inter alia*] ... peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11 § 2.”

¹³¹ The Appendix to Recommendation No. R(97) 20 defines hate speech as “covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”. See further, the UN Convention on the Elimination of All Forms of Racial Discrimination, and Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred. Also see the Holocaust-denial cases of *Ernst Zündel v. Canada*, Communication No. 953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003), para.5.5: “The restriction ... served the purpose of protecting the Jewish communities’ right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant”; and *Robert Faurisson v. France*, Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996), para. 9.6: “Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-semitism.”

¹³² See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (1998, admissibility).

¹³³ Paragraph 13 of Resolution 690 on the Declaration on the Police adopted by the Parliamentary Assembly of the Council of Europe in 1979 states that “police officers shall receive clear and precise instructions as to the manner and circumstances in which they may make use of arms”. Similarly, para.1 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials.

¹³⁴ See *Simsek v. Turkey* (2005), para.91.

¹³⁵ See, for example, the UK case of *Austin v. Metropolitan Police Commissioner* (2005), para. 510.

¹³⁶ Principle 13, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

¹³⁷ *Ibid.*, Principle 14.

¹³⁸ An example of such guidance was issued to Army officers serving in Northern Ireland

¹³⁹ To ensure comprehensive reporting of uses of non-deadly force, agencies should define “force” broadly. See further, for example, “Principles for Promoting Police Integrity”, United States Department of Justice (2001), pp. 5-6, para. 7, “Use of Force Reporting”, available at <http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>.

¹⁴⁰ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 1; *Simsek and Others v. Turkey*, para.91.

¹⁴¹ Amnesty International Index: POL 30/04/98. The full text of these principles (available online at: <http://web.amnesty.org/library/index/engpol300041998>) contains further useful explanatory guidance relating to their implementation.

¹⁴² *Op. cit.*, note 141, paras. 1 and 4.

¹⁴³ *Simsek and Others v. Turkey* (2005), para. 91.

¹⁴⁴ See *McCann and Others v. United Kingdom* (1995), para. 161; *Kaya v. Turkey* (1998), para. 105; *Kelly and Others v. United Kingdom* (2001), para. 94; *Shanaghan v. United Kingdom* (2001), para. 88; *Jordan v. United Kingdom* (2001), para. 105; *McKerr v. United Kingdom* (2001), para. 111; *McShane v. United Kingdom* (2002), para. 94.

¹⁴⁵ *Kelly and Others v. United Kingdom* (2001), para. 94; *Shanaghan v. United Kingdom* (2001), para. 88; *Jordan v. United Kingdom* (2001), paras. 107, 115; *McShane v. United Kingdom* (2002), para. 94.

¹⁴⁶ See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001).

¹⁴⁷ This legislation draws upon recommendations contained in the Report of the Goldstone Commission, *Towards Peaceful Protest in South Africa*, (South Africa: Heymann, 1992).

¹⁴⁸ For example, Article 3 of the Law of Assemblies in Georgia defines separate roles for “principal”, “trustee”, “organizer”, and “responsible persons”.

¹⁴⁹ See para. 3 of “Ensuring Protection – European Union Guidelines on Human Rights Defenders”, available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

¹⁵⁰ See, for example, Christina Loudes, *Handbook on Observations of Pride Marches* (Belgium: ILGA-Europe, 2006).

¹⁵¹ See UN Training Manual on Human Rights Monitoring - Chapter XV: Monitoring Demonstrations and Public Meetings, Office of the High Commissioner for Human Rights, Professional Training Series No. 7 (2001). Available at http://www.ohchr.org/english/about/publications/docs/train7_a.pdf.

¹⁵² See D. Bryan and N. Jarman, *Independent Intervention: Monitoring the police, parades and public order* (Belfast: Democratic Dialogue, 1999), available at <http://www.democraticdialogue.org/r12pp.pdf>.

¹⁵³ Justice Berger, Justice of the Supreme Court of British Columbia (1980). [no idea. This comes from the Secretary of the Panel. The quote is not very specific. We could perhaps simply remove the quotation marks and thus the endnote. He is unlikely to claim copyright on this sentence.]

¹⁵⁴ See, for example, Article 19 of the ICCPR and Article 10 of the ECHR. Also see “Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression” (March 2001). In the roundtable sessions held during the drafting of these Guidelines, evidence was presented that, in some jurisdictions, law enforcement agencies had destroyed property belonging to media personnel. Such actions must not be permitted.

¹⁵⁵ The UN Declaration on the Rights of Indigenous Peoples includes a right to be consulted on decisions and actions that have an impact on indigenous peoples’ rights and freedoms.