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OSCE/ODIHR – VENICE COMMISSION
GUIDELINES
ON FREEDOM OF PEACEFUL ASSEMBLY
(2ND EDITION)

**Prepared by the OSCE/ODIHR Panel on Freedom of Assembly
and by the Venice Commission**

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Introduction

These *Guidelines on Freedom of Peaceful Assembly* together with the *Explanatory Notes* were prepared by the Panel of Experts on Freedom of Assembly of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation 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.¹

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The *Explanatory Notes* (Section B) constitute an integral and non-alienable part of the *Guidelines* (Section A), and should be read in concert with them.

Both the *Guidelines* and *Explanatory Notes*, first drafted by the ODIHR, were informed by four consultative roundtable events held in 2006 in Tbilisi, Belgrade, Almaty and Warsaw. In total, these roundtable sessions were attended by as many as 150 participants from 29 different OSCE participating States. Participants represented many diverse interests including law enforcement personnel and non-governmental human rights advocacy groups, government ministers and organisers of assemblies, academic commentators and practicing lawyers. The Document benefitted significantly from this wealth of hands-on experience in widely differing contexts. The first edition of the *Guidelines* has since informed a number of Legal Opinions and Legislative *Guidelines* prepared jointly by the OSCE-ODIHR Expert Panel on Freedom of Peaceful Assembly and the Venice Commission.² Reference to the *Guidelines* has also been made in the case law of the European Court of Human Rights,³ and by organs of the UN.⁴ This second edition of the *Guidelines* updates the 2007 document in light of new case law. It also expands upon the first edition drawing upon comments and feedback received by the Expert Panel.

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

² These Opinions can be found at:

<http://www.legislationline.org> and http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E

³ See, for example, *Oya Ataman v. Turkey* (2006) at para.16 (referring to the Venice Commission's Opinion on the then draft *Guidelines*); *Gillan and Quinton v. UK* (2010) citing para.86 of the report of the UK Parliamentary Joint Committee on Human Rights, 'Demonstrating respect for rights? A human rights approach to policing protest' (March 2009).

⁴ See, for example, *Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms* (A/62/225 Sixty-second session) at para.91-92 regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal. See also, UN Doc. A/HRC/7/28/Add.3, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Serbia, including Kosovo* (4 March 2008) at para.111.

The *Guidelines* (Section A) and *Explanatory Notes* (Section B) are based on international and regional treaties and other documents relating to the protection of human rights,⁵ evolving State practice (as reflected, *inter alia*, in judgments of domestic courts),⁶ 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 document, though, differs from other texts that merely attempt to codify these standards or summarize the relevant case-law. Instead, it seeks to promote excellence, and is therefore illustrated by examples of good practice (measures that have proven successful across a number of jurisdictions or which have demonstrably helped ensure that the freedom to assemble is accorded adequate protection).

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 its enjoyment. 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 the powers of law enforcement agencies, criminal and administrative codes, anti-terror legislation, and election laws). Recognizing these differences, and also the great diversity of country contexts (particularly in relation to democratic traditions, the rule of law, and the independence of the judiciary), the Document does not attempt to 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 *Explanatory Notes* seek to clarify key issues and discuss possible ways to address them.

In regulating freedom of assembly, well-drafted legislation is vital in framing the discretion afforded to the authorities.⁷ 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 organisations) as an integral part of the drafting process. Often, however, it is not the text of the law which is at issue, but its implementation. Therefore, while these *Guidelines* and *Explanatory Notes* will inform those involved in the drafting of legislation pertaining to freedom of assembly, they are also aimed at those responsible for implementing that legislation (the relevant administrative and law enforcement authorities) and those affected by its implementation. The *Guidelines* and *Explanatory Notes* are therefore primarily addressed to practitioners – legislative draftspersons, politicians, legal professionals, police officers and other law enforcement personnel, local officials, trade unionists, assembly organisers and participants, Non-Governmental Organisations (NGOs), Civil Society Organisations (CSOs), and those involved in monitoring both freedom of assembly and policing practice.

While Section A contains the *Guidelines*, Section B is not only essential to a proper understanding of these Guidelines, but provides examples of ‘good practice’, which is what makes this document special. Part I of Section B (chapters 1-5) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines the importance of freedom of assembly (chapter 1), identifies core issues in the regulation of freedom of assembly (chapter 2), sets out a number of guiding principles which should govern its regulation (chapter 3),

⁵ 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.

⁶ Including the Constitutional Courts of both OSCE participating and non-participating States.

⁷ As the UK Joint Committee on Human Rights has recently stated, it is better ‘to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather than to rely on decision-makers to exercise a broad discretion compatibly with human rights.’ See Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009) at pp.21-22, para.76 (and repeated in Recommendation 4).

examines the legitimate grounds for, and types of, restriction (chapter 4), and examines relevant procedural issues (chapter 5). Part II (chapters 6-8) is more practically focused, and examines the implementation of freedom of assembly legislation. It covers the policing of public assemblies (chapter 6), the responsibilities of assembly organisers (chapter 7) and the role of the media and independent monitors (chapter 8).

The Guidelines along with the Explanatory Notes are available for download from the ODIHR and Venice Commission websites as well as the ODIHR Legislative Database (www.legislationline.org), where national legislation on public assemblies and other related legal materials can also be found.

This second edition of the Guidelines and the Explanatory Notes remains a living document. The ODIHR and Venice Commission thus continue to welcome comments and suggestions, which should be emailed to assembly@odhr.pl.

Section A – guidelines on freedom of peaceful assembly

1. Freedom of Peaceful Assembly

Freedom of peaceful assembly

Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. It can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralist society in which groups with different beliefs, practices, or policies can exist peacefully together.

Definition of assembly

For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.

This definition recognizes that although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, and those which take place on publicly or privately owned premises or enclosed structures – deserve protection.

Only peaceful assemblies are protected

An assembly should be deemed peaceful if its organisers have professed peaceful intentions and the conduct of the assembly is non-violent. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

2. Guiding Principles

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.

2.2 The State's positive obligation to facilitate and protect peaceful assembly

It is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the State should always seek to facilitate and protect public assemblies at the organiser's preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

2.3 Legality

Any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international instruments on human rights. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards, and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and the likely consequences of any such breaches.

2.4 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 principle of proportionality requires that authorities do not routinely impose restrictions which would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. A blanket application of legal restrictions tends to be over-inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of the case.

2.5 Non-discrimination

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.

The freedom to organise and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, to women and men; to law enforcement personnel, and to persons without full legal capacity, including persons with a mental illness.

2.6 Good administration

The public should be informed 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 itself ensure that the general public has adequate access to reliable information about its procedures and operation. Organisers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have an opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with an explanation of the reason for each

restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the notified date of the assembly.

2.7 Liability of the regulatory authority

The regulatory authorities must comply with their legal obligations, and should be accountable for any failure – procedural or substantive – to do so. Liability should be gauged according to the relevant principles of administrative law and judicial review concerning the misuse of public power.

3. Restrictions on Freedom of Assembly

Legitimate grounds for restriction

The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.

3.2 Public space

Assemblies are as much a legitimate use of public space as commercial activity and the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.

3.3 Content-based restrictions

Assemblies are held for a common expressive purpose and thus aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.

3.4 Time, Place and Manner' restrictions

A wide spectrum of possible restrictions, which do not interfere with the message communicated, is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.

3.5 'Sight and Sound'

Public assemblies are held to convey a message to a particular target person, group or organisation. Therefore, as a general rule, assemblies should be facilitated within 'sight and sound' of their target audience.

4. Procedural Issues

4.1 Notification

It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require an assembly organiser to submit 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 in satisfaction of their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.

If the authorities do not promptly present any objections to a notification, the organisers of a public assembly should be able proceed with their activities according to the terms notified and without restriction.

4.2 Spontaneous assemblies

Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.

4.3 Simultaneous assemblies

Where two or more unrelated assemblies are notified for the same place and time, each should be facilitated as best as possible. Prohibition of public assemblies solely on the basis that they are due to take place at the same time and location of another public assembly will likely be a disproportionate response where both can be reasonably accommodated. The principle of non-discrimination further requires that assemblies in comparable circumstances do not face differential levels of restriction.

4.4 Counter-demonstrations

Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed demonstrators should respect the right of others to demonstrate as well. Emphasis should be placed on the State's duty to protect and facilitate each event where counter-demonstrations are organised or occur, and the State should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within 'sight and sound' of one another.

4.5 Decision-making

The regulatory authorities should ensure that the decision-making process is accessible and clearly explained. The process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the notified date of the assembly.

4.6 Review and Appeal

The right to an effective remedy entails a right to appeal the substance of any restrictions or prohibitions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an appeal mechanism to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final

ruling, or at least relief through an injunction, should therefore be given prior to the notified date of the assembly.

5. Implementing Freedom of Peaceful Assembly Legislation

5.1 Pre-event planning with law enforcement officials

Wherever possible, and especially in the case of large assemblies or assemblies on controversial issues, it is recommended that the organiser discuss with the law enforcement officials the security and public safety measures that are put in place prior to the event. Such discussions might, for example, cover the deployment of law enforcement personnel, stewarding arrangements, and particular concerns relating to the policing operation.

5.2 Costs

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. Organisers of non-commercial public assemblies should not be required to obtain public liability insurance for their event.

5.3 A human rights approach to policing assemblies

The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the State has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law enforcement officials must also 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.

5.4 The use of negotiation and/or mediation to de-escalate conflict

If a standoff or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – whilst not always successful – can serve as a preventive tool helping to avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.

5.5 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) and the level of force acceptable to deal with various threats. Governments should develop a range of responses which enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed.

5.6 Liability and accountability of law enforcement personnel

If the force used is not authorized by law, or more force was used than necessary in the circumstances, law enforcement personnel should face civil and/or criminal liability as well as disciplinary action. Law enforcement personnel should also be held liable for

failing to intervene where such intervention may have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted.

5.7 Liability of organisers

Organisers of assemblies should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants nor for the actions of non-participants or *agents provocateurs*. Instead, individual liability should arise for any individual if he or she personally commits an offence or fails to carry out the lawful directions of law enforcement officials.

5.8 Stewarding assemblies

It is recommended that organisers of assemblies be encouraged to deploy clearly identifiable stewards to help facilitate the event and ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law enforcement officials and should not use force, but should aim to obtain cooperation of assembly participants by means of persuasion.

5.9 Monitors

The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law enforcement officials. This information may be used to inform public debate and can usefully also serve as the basis for dialogue between government, local authorities, law enforcement officials and civil society. Non-governmental and civil society organizations play a crucial watchdog role in any democracy and must therefore be permitted to freely observe public assemblies.

5.10 Media access

The role of the media as a 'public watchdog' is to impart information and ideas on matters of public interest – information which the public also has a right to receive. Media reports can thus provide an otherwise absent element of public accountability for both assembly organisers and law enforcement officials. Media professionals should therefore be guaranteed as much access as is possible to an assembly and to any related policing operation.

Section B – Explanatory Notes

Part I

1. The importance of freedom of assembly

1. Throughout the Guidelines, the term 'right to *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.⁸ Participation in public assemblies should be entirely voluntary and uncoerced.⁹

2. Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. It has been recognised as one of the foundations of a functioning democracy. Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions which they hold in common with others. As such, freedom of peaceful assembly facilitates dialogue within civil society, and between civil society, political leaders and government.
3. Freedom of peaceful assembly can serve many purposes including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing and protest. The exercise of the freedom 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,¹⁰ the right to establish and maintain contacts within the territory of a State,¹¹ freedom of movement,¹² the right to cross international borders,¹³ freedom of expression,¹⁴ and freedom of thought, conscience and religion.¹⁵ 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.¹⁶
4. The protection of the right to freedom of assembly also underpins the realization of both social and economic rights (including employment and labour interests) and so-called 'third generation' rights (such as the right to a healthy environment). Article 12 of the EU Charter, for example, emphasizes the particular importance of the right to freedom of peaceful assembly and association in relation to political, trade union and civic matters.¹⁷ Furthermore, those who seek to defend and advance socio-economic and

⁸ See, for example, *Bączkowski and Others v. Poland* (2006) at 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.'

⁹ Tajik law, for example, defines 'participant' in terms of their support for the aims of the event.

¹⁰ Article 22, ICCPR, and Article 11, ECHR. See further indirect restrictions on freedom of assembly below at para.107.

¹¹ Article 17, *Council of Europe Framework Convention on National Minorities*, which draws upon paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE.

¹² Article 12, ICCPR, and Article 2 of Protocol 4, ECHR.

¹³ For example, *Djavit An v. Turkey* (2003); *Foka v. Turkey* (2008). See also *Indirect Restrictions on Freedom of Assembly* at para.107 below.

¹⁴ Article 19(2) and (3), ICCPR and Article 10, 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 recognised that freedom of assembly and freedom of expression are often, in practice, closely associated. See, for example, *Ezeline 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.

¹⁵ Article 18, ICCPR and Article 9, ECHR.

¹⁶ 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*. See also Fenwick, Helen 'The Right to Protest, the Human Rights Act and the Margin of Appreciation' (1999) 62 *Modern Law Review* 491 at 492-3.

¹⁷ See for example, *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only) in which the Grand Chamber of the European Court of Human Rights acknowledged that in participating in a national one-day strike action, trade union members had been exercising their right to freedom of peaceful assembly. Moreover, while the right to

developmental interests (properly regarded as indivisible from civil and political rights) can also rely upon the 'right to organise' as recognised in both Article 5 of the *European Social Charter*¹⁸ and the *ILO Convention (87) concerning Freedom of Association and Protection of the Right to Organise*.¹⁹ National labour laws should be interpreted consistently with these standards.

5. With appropriate media coverage, public assemblies communicate with local and national audiences and with the world at large. 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 effecting change.
6. Public assemblies often have increased prominence and significance in the context of elections when political parties, candidates and other groups and organisations seek to publicise their views and mobilize support (see further paragraph 107 below).²⁰ Legal measures that are potentially more restrictive than the normal regulatory framework governing freedom of assembly should not be necessary to regulate assemblies during or immediately after an election period, even if there is heightened tension. On the contrary, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organisation of public events.²¹ Open and free political expression is particularly valued in the human rights canon.
7. In addition to serving the interests of democracy, the ability to freely assemble is also crucial to creating a pluralist and tolerant society in which groups with different, and

strike is not absolute, a ban prohibiting all public servants or employees from taking such action was disproportionate and did not meet a pressing social need.

¹⁸ As revised (STE No.163) 3 May 1996.

¹⁹ The International Labour Conference has pointed out in a resolution adopted at its 54th Session in 1970 that the right of assembly (amongst others) is 'essential for the normal exercise of trade union rights'. See, 'Freedom of association and collective bargaining: Resolution of 1970 concerning trade union rights and their relation to civil liberties'(Document No. (ILOLEX): 251994G16). For a concrete example, see Committee of Experts on the Application of [ILO] Conventions and Recommendations (CEACR), *Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Malawi* (ratification: 1999; Document No. (ILOLEX): 062006MWI087, published 2006): 'The Committee notes the ... violent police repression of a protest march by tea workers in September 2004 as well as issues previously raised by the Committee on the right to strike. ... [F]reedom of assembly and demonstration constitutes a fundamental aspect of trade union rights and ... the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order...'

²⁰ A number of cases have arisen, for example, in relation to the regulation of the election-related protests in Moldova in 2009. See, for example, Application no. 29837/09 by Radu Popa against Moldova, lodged on 8 June 2009; Application no. 24163/09 by Sergiu Mocanu against Moldova, lodged on 11 May 2009; Application no.19828/09 by Stati and Marinescu against Moldova, lodged on 16 April 2009. See also, Applications nos. 43546/05 and 844/06 by Boris Hmelevschi and Vladimir Moscalev against Moldova lodged on 1 and 8 December 2005 (which also raises the issue of unregistered insignia).

²¹ See, for example, *Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations*, Opinion-Nr/: FOA – KYR/111/2008 27 June 2008, available at:

<http://www.legislationline.org/download/action/download/id/824/file/test.pdf> ; See also OSCE Election Observation Mission, Kyrgyz Republic, *Presidential Election, 23 July 2009: Statement of Preliminary Findings and Conclusions*, at p.3; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Republic of Moldova CCPR/C/MDA/CO/2*, 4 November 2009 at para.8(d) noting that against the backdrop of violence at post-election demonstrations in April 2009, '[t]he State party should: ... (d) Ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violation of human rights by its law enforcement officers do not occur again.'; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Azerbaijan CCPR/C/AZE/CO/3*, 13 August 2009 at paras.16-17.

possibly conflicting, backgrounds, beliefs, practices, or policies can exist peacefully together. In circumstances where the right to freedom of thought, conscience and religion is also engaged, the role of the authorities 'is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.'²² Furthermore, the European Court of Human Rights has held that in creating a pluralist, broadminded and tolerant society, 'although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.'²³

2. The Regulation of Freedom of Peaceful Assembly

The legal framework

International and regional standards

8. The sources of law identified in this section are among the most important treaties to which ODIHR refers when conducting reviews of legislation. The international and regional standards concerning freedom of assembly mainly derive from two legal instruments: the *International Covenant on Civil and Political Rights* (ICCPR)²⁴ and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) and their optional protocols.²⁵ The *American Convention on Human Rights* is also of particular relevance to member countries of the Organization of American States.²⁶ Other relevant treaties include the *UN Convention on the Rights of the Child*,

²² *Barankevich v. Russia* (2007) at para.30. In such circumstances, Article 11 should be interpreted in light of Article 9 (see *Barankevich*, paras. 20 and 44). The Court further stated at para.31: 'It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.'

²³ See, *inter alia*, *Bączkowski and Others v. Poland* (2007) at para.63; *Hyde Park and others v. Moldova (No.1)* (2009) at para.28; *Hyde Park and others v. Moldova (No.2)* (2009) at para.24; *Hyde Park and others v. Moldova (No.3)* (2009) at para.24; *Chassagnou and Others v. France* [GC] (1999) at para.112; *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgment of 14 February 2006) at para.64; *Young, James and Webster v. the United Kingdom* (1981) at para.63.

²⁴ The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a declaration rather than a binding treaty. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, were adopted in 1966 to give effect to the principles enunciated in the Declaration. The three documents together constitute the International Bill of Human Rights. 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 State parties is monitored by a body of independent experts – the UN Human Rights Committee. All State 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 party to the Protocol. See further Annex A.

²⁵ 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 since 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 to 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. See further Annex A.

²⁶ 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.' See further Annex A.

the *Charter of Fundamental Rights of the European Union* and the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (the CIS Convention).²⁷ The key provisions in relation to the right to freedom of peaceful assembly are reproduced below.

Article 20(1), Universal Declaration of Human Rights

*Everyone has the right to freedom of peaceful assembly and association.*²⁸

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 15, 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.*

Article 11, European Convention on Human Rights

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 freedoms of others.

Article 12, Charter of Fundamental Rights of the European Union

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*

²⁷ The CIS Convention was opened for signature on 26 May 1995 and came into force on 11 August 1998. It has been signed by seven of the twelve CIS member States (Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan) and ratified by Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan. See further, for example, Decision on the Competence of the [European] Court [of Human Rights] to Give and Advisory Opinion concerning 'the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights' (2 June 2004).

²⁸ See Article 29, UDHR for the general limitations clause.

2. *Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

Article 12, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention)

1. *Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to 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, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.*

OSCE Copenhagen Document 1990

[The participating States reaffirm that]:

9.2 *[E]veryone 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.*

9. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,²⁹ the European Court of Human Rights, and the Inter-American Commission on Human Rights.³⁰ 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 widely available.³¹

Regulating freedom of assembly in domestic law

10. Freedom of peaceful assembly should be accorded constitutional protection which ought, at a minimum, to contain a positive statement of both the right and the obligation to safeguard it. There should also be a constitutional provision which guarantees fair procedures in the determination of the rights contained therein. Constitutional provisions, though, cannot provide for specific details or procedures. Moreover, where a Constitution does not expressly articulate the principles of legality and proportionality, constitutional provisions relating to freedom of assembly that are of a general nature

²⁹ See further, Nowak, M. *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005) at 481-494; Joseph, S., Schultz, J., and Castan, M. *The International Covenant on Civil and Political Rights* (2nd ed.; New York: OUP: 2004) at 568-575.

³⁰ See, for example, Organisation of American States, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* (2005), Chapter 5, 'Public Demonstrations as an exercise of freedom of expression and freedom of assembly'. Available online at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1> ; U.N. Doc. A/62/225 Human Rights Defenders: Note by the Secretary-General, 13 August 2007, Section D at pp.8-14: 'Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms.' Available online at: <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>

³¹ For example, following the judgment of the European Court of Human Rights in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), the Bulgarian Ministry of Justice sent the judgment of the European Court of Human Rights, 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 judgment on its internet site <http://www.mjeli.government.bg/>. See *Human Rights Information Bulletin*, No.64, 1 December 2004 – 28 February 2005 at 49-50. (ISSN 1608-9618 H/Inf (2005) 3), available at http://www.coe.int/T/E/Human_Rights/hrib64e.pdf.

can, without further clarification, afford excessively wide discretion to the authorities and increase the possibility of abuse.

11. While there is no requirement that participating States enact a specific law on freedom of assembly, such legislation can greatly assist in protecting against arbitrary interferences with the right to freedom of peaceful assembly.³² Any such domestic legislation should confer *broadly* framed *protection* on freedom of assembly, and *narrowly* define those types of assembly for which some degree of *regulation* may be justified. It cannot be overemphasized that in an open society many types of assembly do not warrant any form of official regulation. The provisions of a specific law can also serve as a guide for sound decision making by regulatory authorities. Consequently, many States or municipal authorities have enacted specific legislation dealing with public assemblies in addition to constitutional guarantees.³³ The purpose of such legislation should never be to inhibit the enjoyment of the constitutional right to freedom of peaceful assembly, but rather to facilitate and ensure its protection. In this light, it is vital that any specific law should avoid the creation of an excessively regulatory or bureaucratic system. This is a real risk in many countries, and has been raised as a particular concern by the Venice Commission.³⁴ Well-drafted legislation, however, can help ensure that freedom of assembly is *not* over-regulated.
12. Domestic laws regulating freedom of assembly must be consistent with the international instruments ratified by that State. Domestic laws should also be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice. The enforcement of such laws will depend significantly upon the existence of an impartial and adequately trained police service and an independent judiciary.
13. Furthermore, the rule of law demands legal stability and predictability. Amendments introduced as a response to particular events, for example, often result in partial and piecemeal reforms which are harmful to the protection of rights and to the overall coherence of the legislative framework. Those involved in the drafting of legislation should always consult with those most closely involved in its implementation and with other interested individuals and groups (including local human rights organizations). Such consultation should be considered as an integral part of the drafting process. To this end, it may be helpful to place a statutory duty upon the relevant regulatory authority to keep the law under review in light of practice, and to make considered recommendations for reform if necessary.

³² See, for example, *Mkrtchyan v. Armenia* (2007) at para.39 in relation to the requisite quality of any such law if it is to meet the requirement of foreseeability.

³³ Ukraine, for example, has drafted a law governing demonstrations for the first time. The need for clear legislation governing public assemblies has also been recognized in Kosovo: UN Doc. A/HRC/7/28/Add.3, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Serbia, including Kosovo*, 4 March 2008 at para.111: 'At the time of the visit, the Kosovo Assembly had recently adopted a law on public assembly, which was in the legal office of UNMIK for examination. The Special Representative was later informed that the law could not be promulgated because legislation in this area is not within the competency of the Kosovo Assembly. The legislation in force on freedom of assembly is therefore a law adopted in 1981 under the former Socialist Federal Republic of Yugoslavia. ... [T]he Special Representative urges the authorities to adopt adequate legislation on freedom of peaceful assembly. Adequate legislation and its scrupulous implementation are fundamental to preventing the reoccurrence of the tragic incidents that happened on 10 February 2007. The Special Representative suggests using the *Guidelines on Freedom of Peaceful Assembly* published by the Office for Democratic Institutions and Human Rights (ODHIR) of OSCE to draft and implement legislation in this area. She further refers to the recommendations of her reports to the General Assembly of 2006 and 2007, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly.'

³⁴ CDL-AD(2005)040, Point 12.

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

14. It is also 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 the international and regional standards. The imposition of restrictions on the right to freedom of peaceful assembly also potentially encroaches on the rights to freedom of association, expression, and 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 the other rights should be viewed as subsidiary (the *lex generalis*).³⁵ 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 spirit of the Convention.³⁶
15. The imperative of adopting a holistic approach to freedom of assembly is underscored by the 'destruction of rights' provisions contained in Article 30 UDHR, Article 5 ICCPR and Article 17 ECHR.³⁷ As detailed further at paragraph 96 below, for example, participants in public assemblies whose advocacy of national, racial or religious hostility constitutes incitement to discrimination, hatred or violence will forfeit the protection of their expressive rights under the ECHR and ICCPR.

Article 30, Universal Declaration of Human Rights

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.

³⁵ See, for example, *Ezeliin v. France* (1991) at para.35. 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.

³⁶ *Otto-Preminger-Institut v. Austria* (1994), para. 47.

³⁷ See, for example, *Vajnai v. Hungary* (2008) paras.20-26 (discussing the Article 17 jurisprudence, and finding that the application in this case did not constitute an abuse of the right of petition for the purposes of Article 17). Similarly, Article 17 was not engaged in the cases of *Soulas v. France* (2008, in French only), or *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (1999) at para.77. These cases can be contrasted with *Glimmerveen and Hagenbeek v. the Netherlands* (1979); *Garaudy v. France* (2003); and *Lehideux and Isorni v. France* (1998).

Principal definitions and categories of Assembly

For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.³⁸

16. 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.
17. A range of different activities are protected by the right to freedom of peaceful assembly – static assemblies (such as public meetings, mass actions, ‘flash mobs’,³⁹ demonstrations, sit-ins, and pickets),⁴⁰ and moving assemblies (such as parades, processions, funerals, pilgrimages, and convoys).⁴¹ These examples are not exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible (as demonstrated by the extracts from the laws in Kazakhstan and Finland below). Recent case law evidences the variety of new forms of protest to which the right to freedom of assembly has been held to extend. These include mass cycle rides,⁴²

³⁸ See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005) at 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.’ In *Kivenmaa v. Finland* Communication No. 412/1990 at para.7.6, the Human Rights Committee stated that ‘public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to.’

³⁹ A flash mob occurs when a group of people assemble at a location for a short time, perform some form of action, and then disperse. While these events are planned and organised, they do not involve any formal organisation or group. They may be planned using new technologies (including text messaging and Twitter). Their *raison d’être* demands an element of surprise which would be defeated by prior notification.

⁴⁰ 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. Note, however, that the blocking of public roads as a protest tactic can be restricted in certain circumstances under Article 11(2) – see, for example, *Lucas v. UK* (2003, admissibility), where the European Court of Human Rights declared inadmissible the application of a demonstrator at Faslane naval base in Scotland (where protesters against Trident Nuclear submarines blocked a public road) after her conviction for a breach of the peace.

⁴¹ In *Christians Against Racism and Fascism (CARAF)* (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 für das Leben’ v. Austria* (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). See also David Mead, ‘The Right to Peaceful Process under the European Convention on Human Rights – A Content Study of Strasbourg Case Law’ 4 *EHRLR* (2007) 345-384.

⁴² In Poznan, Poland, for example, authorities refused to recognise Critical Mass ‘Great Bike Ride’ as a public assembly within the meaning of Article 7(2)(3) of the Polish Assemblies Act and Article 57 of the Constitution. It thus treated the ride as an ‘other event’ under Article 65 of the Road Traffic Act (requiring the organiser to obtain an administrative decision granting consent). See Adam Bodnar and Artur Pietryka, *Freedom of Assembly from the Cyclist’s Perspective* (Helsinki Foundation for Human Rights, 18 September 2009), referring to the Polish Constitutional Tribunal, judgment of 18 January 2006 (K21/05) relating to the Equality parade in Warsaw, where the Tribunal distinguished between assemblies (organised to express a point of view) and competitions or races (recreational events with no political or communicative importance). See also *Kay v. Metropolitan Police Commissioner* [2008] UKHL 69, holding that a critical mass cycle ride with no pre-determined route could be construed as a procession ‘customarily held’ (and thus within the exemption from prior notification under the UK *Public Order Act* 1986). Lord Phillips (at para.25) identified three possible alternative constructions of the notification

drive-slow protests,⁴³ and confirmation that the right to freedom of expression includes the choice of the form in which ideas are conveyed, without unreasonable interference by the authorities, particularly in the case of symbolic protest activities.⁴⁴

18. The question of at what point an assembly can no longer be regarded as a *temporary* presence (thus exceeding the degree of tolerance presumptively to be afforded by the authorities towards all peaceful assemblies) must be assessed in the individual circumstances of each case.⁴⁵ Nonetheless, the touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.⁴⁶ Where an assembly causes little or no inconvenience to others then the authorities should adopt a commensurately less stringent test of temporariness (see further paragraphs 39-45 below in relation to 'proportionality'). The extracts below also serve to highlight that the term 'temporary' should not preclude the erection of protest camps or other non-permanent constructions.

requirement in the *Public Order* Act 1986: '(i) The notification obligation does not apply to a procession that has no predetermined route; (ii) There is no obligation to give notice of a procession that has no predetermined route because it is not reasonably practicable to comply with section 11(1); or (iii) The notification obligation is satisfied if a notice is given that states that the route will be chosen spontaneously.'

⁴³ *Barraco v. France* (2009, in French only).

⁴⁴ *Women and Waves v. Portugal* (2009). It is worth noting, however, that the European Commission of Human Rights previously held in *Anderson v. UK* (Application No. 33689/96, decision of 27 October 1997, admissibility) that 'there is ... no indication ... that freedom of assembly is intended to guarantee a right to pass and re-pass in public places, or to assemble for purely social purposes anywhere one wishes.'

⁴⁵ See, for example, *Çiloğlu and Others v. Turkey* (2007, in French only) in which the European Court of Human Rights noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a High School in Istanbul, to protest against plans to build an F-type prison, had become an almost permanent event which disrupted traffic and clearly caused a breach of the peace: 'In view of the length and number of previous demonstrations, the Court considered that the authorities had reacted within the margin of appreciation afforded to States in such matters. It therefore held, by five votes to two, that [dispersal resulted in] no violation of Article 11.' See also, *Cisse v. France* (2002), in which the evacuation of a church in Paris which a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para.52) with the applicant's right to freedom of peaceful assembly (paras.39-40). In the case of *Friedl v. Austria* (1992) the European Commission – in finding the applicant's Article 11 complaint to be inadmissible – did not rule on whether a camp of (on average) 50 homeless persons with tables and photo stands which lasted for approximately one week 'day and night' before being dispersed fell within the definition of 'peaceful assembly' under Article 11(1) ECHR. The Commission noted that it had previously held that a demonstration by means of repeated sit-ins blocking a public road *did* fall within the ambit of Article 11(1), though ultimately the demonstration was legitimately restricted on public order grounds (*G v. the Federal Republic of Germany*, 1989, admissibility). In 2008, the Hungarian Constitutional Court rejected a petition which sought a finding of 'unconstitutional omission' because the law failed to adequately secure the protection of the right to free movement and the right to transport against 'extreme forms' of practising the right of assembly. The Constitutional Court held that while freedom of movement may be violated by events 'practically without time limits', such events were 'not protected by Article 62(1) of the Constitution, as they cannot be regarded as 'assemblies'. This term, as used in the Constitution, clearly refers to 'joint expressions of opinions within fixed time limits.' The Court noted that while organizers might not know in advance how long an assembly would actually last (and this could be 'several days'), the timeframe must still be notified. An organizer may then subsequently 'file an additional notification in order to have the duration of the event extended.' (*Decision 75/2008, (V.29.) AB*). Also worth noting is the UK case concerning 'Aldermaston Women's Peace Camp' (AWPC), which over the past 23 years, had established a camp on government owned land close to an Atomic Weapons Establishment. The women camped on the second weekend of every month during which time they held vigils, meetings and distributed leaflets. In the UK case of *Tabernacle v. Secretary of State for Defence* [2009], a 2007 by law which attempted to prohibit camping in tents, caravans, trees or otherwise in 'controlled areas' was held to violate the appellant's rights to freedom of expression and assembly. The court noted that the particular manner and form of this protest (the camp) had acquired symbolic significance inseparable from its message. See also *Lucas v. UK* (2003, admissibility) above note 40.

⁴⁶ *Patyi v. Hungary* (2008) cf. *Éva Molnár v. Hungary* (2008) at para.42, and *Barraco v. France* (2009, in French only). In finding a violation of Article 11 ECHR in the case of *Balcik and Others v. Turkey* (2007), the European Court of Human Rights noted that it was 'particularly struck by the authorities' impatience in seeking to end the demonstration.'

Article 1, Decree of the President in force of Law ‘On procedure of 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.

Section 11, Assembly Act, Finland (1999, as amended 2001)

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

19. These Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths).⁴⁷ In particular, the State should always seek to facilitate public assemblies at the organiser’s preferred location where this is a public place that is ordinarily accessible to the public (see further paragraphs 39-45 below in relation to ‘proportionality’).
20. 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 commercial activity or pedestrian and vehicular traffic).⁴⁸ This principle has been clearly stated by both the European Court of Human Rights and the Inter-American Commission on Human Rights’ Special Rapporteur for Freedom of Expression:

Balcik v. Turkey (2007) at paragraph 52, and Ashughyan v. Armenia (2008) at paragraph 90:

‘Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 ECHR is not to be deprived of all substance.’

Inter-American Commission on Human Rights: Report of the Office of the Special Rapporteur for Freedom of Expression (2008), at paragraph 70:

‘Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal

⁴⁷ This draws on the United States doctrine of the ‘public forum’. See, for example, *Hague v. Committee for Industrial Organisation*, 307 US 496 (1939).

⁴⁸ In *Patyi and Others v. Hungary (2008)* at paras.42-43, for example, the European Court of Human Rights rejected the Hungarian government’s arguments relating to potential disruption to traffic and public transport (*cf. Éva Molnár v. Hungary, 2008*). For further argument against the prioritization of vehicular traffic over freedom of assembly, see Nicholas Blomley, ‘Civil Rights Meets Civil engineering: Urban Public Space and Traffic Logic’ 22(2) *Can. J. L. & Soci.* 55 (2007).

provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals.'

21. Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression.⁴⁹
22. The right to freedom of peaceful assembly has also been held to cover assemblies on private property.⁵⁰ However, the use of private property for assemblies raises issues that are different from the use of public property. For example, prior notification (other than booking the venue, or seeking the permission of the owner of the premises) is not required for meetings on private property.⁵¹
23. In general, property owners may legitimately restrict access to their property to whomsoever they choose.⁵² Nonetheless, there has been a discernable trend towards the privatization of public spaces in a number of jurisdictions, and this has potentially serious implications for assembly, expression and dissent.⁵³ The State may on occasion have a positive obligation to ensure access to privately owned places for the purposes of assembly or expression. In the case of *Appleby and Others v. the United Kingdom* (2003), a case concerning freedom of expression in a privately owned shopping centre, the European Court of Human Rights stated that the effective exercise of freedom of expression 'may require positive measures of protection, even in the sphere of relations between individuals.'⁵⁴ Freedom of assembly in privately owned spaces may be deserving of protection *where the essence of the right has been destroyed*.

⁴⁹ See, for example, *Acik v. Turkey* (2009) (detention of student for protest during speech of University Chancellor; violation of Articles 3 and 10 ECHR); *Cisse v. France* (2002); *Barankevich v. Russia* (2007) at para.25: 'The right to freedom of assembly covers both private meetings and meetings in public thoroughfares ...' The use of such buildings may be subject to health and safety regulations, and to anti-discrimination laws. See also the discussion of 'quasi-public space' in Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009) at pp.16-17 'Public and Private Space'.

⁵⁰ See, for example, *Djavit An v. Turkey* (2003), para.56; *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p.119.

⁵¹ Public order and criminal laws also apply to assemblies on private property, enabling appropriate action to be taken if assemblies on private property harm other members of the public.

⁵² See further paragraphs 46-60 below. The owner of private property has much greater discretion to choose whether to permit a speaker to use his property than the government has in relation to publicly owned property. Compelling the owner to make his or her property available for an assembly may, for example, breach their rights to private and family life (Article 8 ECHR), or to peaceful enjoyment of their possessions (Article 1 of Protocol 1, ECHR).

⁵³ See, for example, Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003); 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* EHRLR 46 [1999]; *Fitzpatrick and Taylor, Trespassers Might be Prosecuted: The European Convention and Restrictions on the Right to Assemble* EHRLR 292 [1998]; Jacob Rowbottom, *Property and Participation: A Right of Access for Expressive Activities* 2 EHRLR 186-202 [2005].

⁵⁴ *Appleby v. United Kingdom* (2003) at para.39 citing *Özgür Gündem v. Turkey* (2000) paras.42-46, and *Fuentes Bobo v. Spain* (2000) para.38. It is noteworthy that the applicants in *Appleby* cited relevant 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 which 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. In *Cisse v. France* (2002), cited above at note xlv, the applicable domestic laws stated that 'Assemblies for the purposes of worship in premises belonging to or placed at

Extract from *Appleby and Others v. the United Kingdom* (2003) at paragraph 47:

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.

24. Planning regulations and architectural design can also serve to constrict the availability of public places, or make them entirely inaccessible for the purposes of freedom of assembly. For example, physical security installations that serve to prevent speakers from coming within close proximity of particular locations (particularly those of symbolic importance) may sometimes constitute an indirect but disproportionate blanket restriction on freedom of assembly, much like the direct prohibitions on assemblies at designated locations (see paragraphs 43, 89 and 102 below).⁵⁵ Similarly, urban landscaping (including the erection of fences and fountains, the narrowing of pavements and roads, or the planting of trees and shrubs) can potentially restrict the use of public space for assemblies. Urban planning procedures should therefore allow for early and widespread consultation. Planning laws might also usefully require that specific consideration be given to the potential impact of new designs on freedom of assembly.

‘Peaceful’ and ‘non-peaceful’ assemblies

25. *‘Peaceful’ assemblies:* Only ‘peaceful’ assembly is protected by the right to freedom of assembly. The European Court of Human Rights stated that ‘[i]n practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants *intended* to use violence.’⁵⁶ Participants must also refrain from using violence (though the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly – see paragraph 164 below). An assembly should therefore be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organising or participating in that particular event themselves intend to use, advocate or incite imminent violence.⁵⁷
26. The term ‘peaceful’ should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote,⁵⁸ and

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.’

⁵⁵ See, for example, Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (Cambridge University Press, 2009) at 130-132: ‘In recent years, local and national officials have altered the architectures and landscapes of public places in ways that may limit spatial contestation.’ Zick also discusses architectural designs that limit the scope for communicative interaction with those inside the buildings concerned (for example, by incorporating few or no windows on lower floors).

⁵⁶ In *Cisse v. France* (2002) at para.37 [emphasis added]. See also *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that ‘peaceful assembly’ does not cover a demonstration where the organisers and participants have violent *intentions* which result in public disorder.

⁵⁷ *Christian Democratic People’s Party v. Moldova* (No.2) (2010) at para.23: ‘The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities.’

⁵⁸ *Plattform “Ärzte für das Leben” v. Austria* (1988), at para. 32 which concerned a procession and open-air service organised 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

even conduct that temporarily hinders, impedes or obstructs the activities of third parties.⁵⁹ Thus, by way of example, assemblies involving purely passive resistance should be characterized as 'peaceful'.⁶⁰ Furthermore, in the course of an assembly, '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.'⁶¹

27. The spectrum of conduct that constitutes 'violence' should be narrowly construed, but may exceptionally extend beyond purely physical violence to include inhuman or degrading treatment,⁶² or the intentional intimidation or harassment, of a captive audience.⁶³ In such instances, the destruction of rights provisions may also be engaged (see paragraph 15 above).
28. 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 further at paragraphs 31-34,104 and 144-145 below). It should be noted that assemblies that survive this initial test (thus, *prima facie*, deserving protection) may still legitimately be restricted on public order or other legitimate grounds (see chapter 4).

3. Guiding Principles

29. 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

the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'⁵⁸ *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.

⁵⁹ See BVerfGE 69,315(360) regarding roadblocks in front of military installations. See Fn.3: 'Their sit-down blockades do not fall outside the scope of this basic right just because they are accused of coercion using force.' See generally, Peter E.Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (Routledge-Cavendish, 2008).

⁶⁰ If a narrower definition of 'peaceful' than this 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) ECHR) would be virtually redundant.

⁶¹ *Ziliberg v. Moldova* (2004, admissibility).

⁶² See, for example, the Northern Ireland case of *In re E (a child)* [2008] UKHL 66. There is a 'minimum level of severity' that must be met before behaviour can be deemed 'inhuman or degrading' for the purposes of Article 3 ECHR. This will depend on all circumstances of the case including duration of treatment, its physical and mental effects, and in some cases, the sex, age and state of health of the victim. See also Nowak, Manfred, *UN Covenant on Civil and Political Rights, ICCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005), cited above at note xxix, at 486-487.

⁶³ See, for example, recent funeral protest cases in the United States such as *Phelps-Roper v. Taft*, 2007 US Dist. LEXIS 20831 (ND Ohio, March 23, 2007). As Manfred Nowak states, 'In accordance with the customary meaning of this word, peaceful means the absence of violence in its various forms, in particular armed violence in the broadest sense. For example, an assembly loses its peaceful character when persons are physically attacked or threatened, displays smashed, furniture destroyed, cars set afire, rocks or Molotov cocktails thrown or other weapons used. ... So-called "sit-ins" or blockades are peaceful assemblies, so long as their participants do not use force ...' Nowak, M. supra note xxix, at 487. See also, David Kretzmer, 'Demonstrations and the Law', 19(1) *Israel Law Review* 47 at 141-3 (1984), proposing that the limits of 'pickets as harassment' be guided by the following principles: '(i) Pickets outside the office of a public figure cannot be regarded as harassment; (ii) Pickets outside the office or place of business of non-public figures may only be regarded as harassment if they exceed the bounds of reasonableness as regards duration and time; (iii) Pickets outside the residence of a public figure may not be regarded as "harassment" unless they exceed the boundaries ... as to duration, occasion, time and alternative avenues.' See also the *Interim Report* of the Strategic Review of Parading in Northern Ireland (2008), at p.50. Available at: <http://cain.ulst.ac.uk/issues/parade/srp/srp290408interim.pdf>

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

30. As a basic and fundamental right, freedom of assembly should be enjoyed without regulation insofar as is possible. 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 law in Armenia and the constitution in Romania below). Such provisions should not be interpreted restrictively by the courts or other authorities.⁶⁴ Furthermore, it is the responsibility of the State to put in place adequate mechanisms and procedures to ensure that the enjoyment of the freedom is practical and not unduly bureaucratic. The relevant authorities should assist individuals and groups who wish to assemble peacefully. In particular, the State should always seek to facilitate and protect public assemblies at the organiser’s preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded in any way.

Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

1. The objective of this law is to create the necessary conditions for citizens of the Republic of Armenia, foreign citizens, stateless persons (hereafter referred to as ‘citizens’) and legal persons to exercise their right to conduct peaceful, weaponless meetings, assemblies, rallies and demonstrations set forth in the Constitution and international treaties. The exercise of this right is not subject to any restriction, except in cases prescribed by the law and which are necessary in a democratic society in the interests of national security or public security for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. This article does not prevent the imposition of lawful restrictions on the exercise of these rights by police and state bodies.

Article 39, Constitution of Romania 1991 (as amended, 2003)

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.

State’s duty to protect peaceful assembly

31. The State has a positive duty to actively protect peaceful assemblies (see further *Rights and Responsibilities of Law Enforcement Personnel below*),⁶⁵ and this should be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police and military 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 them in any way.

⁶⁴ *Rassemblement Jurassien & Unité Jurassien v. Switzerland* (1979) at pp. 93 and 119; *Christians Against Racism and Facism v. UK (CARAF)* (1980) at p.148; *G v. The Federal Republic of Germany* (1989) at p.263; *Anderson et al v. UK* (1997), and *Rai Almond and ‘Negotiate Now v. the United Kingdom*, (1995) at p.146.

⁶⁵ See, for example, *Plattform Ärzte für das Leben v. Austria* (1988).

32. The importance of freedom of assembly for democracy was emphasized in paragraph 2 above. In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services)⁶⁶ should be fully covered by the public authorities.⁶⁷ The State must not levy any additional monetary charge for providing adequate and appropriate policing.⁶⁸ Furthermore, organisers of public assemblies should not be required to obtain public liability insurance for their event. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities.⁶⁹ To require assembly organisers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organisers. As such, imposing onerous financial requirements on assembly organisers is likely to constitute a disproportionate prior restraint.

Article 10, Law on Public Assemblies, Republic of Moldova (2008)

(4). Public authorities will undertake necessary actions to ensure the services solicited by the organizers, the services that are normally provided by the subordinated bodies and by the publicly administered enterprises.

Article 20, Law on Public Assemblies, Republic of Moldova (2008)

(3). Local public authorities cannot charge the organizers for the provided services that are the services that are normally provided by the subordinated bodies and by the publicly administered enterprises.

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

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

33. 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 which is unpopular, as this may increase the likelihood of hostile 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).⁷⁰ The

⁶⁶ See, for example, *Balçık and Others v. Turkey* (2007) at para.49 in which the European Court of Human Rights suggests that State provision of such preventive measures is one of the purposes of prior notification.

⁶⁷ In *Güleç v. Turkey* (1998), the European Court of Human Rights emphasized the importance of law enforcement personnel being appropriately resourced: 'gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province ...is in a region in which a state of emergency has been declared.' See further, 'Rights and Responsibilities of Law Enforcement Officials', paras.144-146.

⁶⁸ In *Barankevich v. Russia* (2007) at para.33, for example, the European Court of Human Rights was critical of the fact that there was 'no indication that an evaluation of the resources necessary for neutralising the threat [posed by violent counter-demonstrators] was part of the domestic authorities' decision-making process.'

⁶⁹ See, for example, OSCE/ODIHR Panel on Freedom of Assembly and European Commission for Democracy through Law (Venice Commission) *Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations* (Strasbourg/Warsaw, 27 June 2008, Opinion-Nr.: FOA – KYR/111/2008) at para.37.

⁷⁰ See, for example, *Öllinger v. Austria* (2006).

State should therefore make available adequate policing resources to facilitate demonstrations and related simultaneous assemblies within 'sight and sound' of one another (see further paragraphs 122-124 below). The principle of non-discrimination further requires that assemblies in comparable circumstances do not face differential levels of restriction.

34. The duty to protect peaceful assembly also requires that law enforcement officials be appropriately trained to deal with public assemblies, and that the culture and ethos of the agencies of law enforcement adequately prioritizes the protection of human rights (see paragraphs 147-148 and 178 below).⁷¹ 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

35. Any restrictions imposed must have a formal basis in primary law, as must the mandate and powers of the restricting authority.⁷² 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 also to foresee the likely consequences of any such breach.⁷³ The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and apply, and that regulation does not encroach upon activities that ought not to be regulated. Definitions, therefore, should neither be too elaborate nor too broad.
36. While this foreseeability requirement does not mean that a single consolidated law on freedom of assembly need be enacted, it does at least require consistency between the various laws that might be invoked to regulate freedom of assembly. Any law which regulates freedom of peaceful assembly should not duplicate provisions already

⁷¹ See, for example, Mary O'Rawe, 'Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland,' 27(3) *Human Rights Quarterly* (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' 26(4) *Fordham International Law Journal* (April 2003), pp.1015 -1073.

⁷² See *Hyde Park v. Moldova* (No.2) (2009). In this case, it was emphasized that the reasons for restrictions must be provided only by the legally mandated authority. The European Court of Human Rights noted that the reasons cited by the Municipality for restrictions on a demonstration were not compatible with the relevant Assemblies Act, and it was not sufficient that compatible reasons were later given by the Court: the Courts were not the legally mandated authority to regulate public assemblies and could not legally exercise this duty either in their own name or on behalf of the local authorities.

⁷³ See *Hashman and Harrup v. UK* (1999), where a condition was imposed on protesters not to behave *contra bonos mores* (ie in a way which is wrong rather than right in the judgment of the majority of fellow citizens). This was held to violate Article 10, ECHR because it was not sufficiently precise so as to be 'prescribed by law'. In *Gillan and Quinton v. the United Kingdom* (2010) the European Court of Human Rights reiterated (at para.77) that 'the law must indicate with sufficient clarity the scope of any ... discretion conferred on the competent authorities and the manner of its exercise.' In this case, the Court found that since the police powers under the *Terrorism Act 2000* to stop and search an individual for the purpose of looking for articles which could be used in connection with terrorism were 'neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse', they were not therefore 'in accordance with the law' (paras.76-87). See also *Steel and Others v. UK* (1998), and *Mkrtychyan v. Armenia* (2007) at 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 which had approved, *inter alia*, the Decree on "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR" of 28 July 1988. See also, for example, *Connolly v. General Construction Company*, 269 U.S. 385, 46 S.Ct. 126 (1926): 'A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.'

contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.

37. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, because of their general nature, will be less precise than primary legislation.⁷⁴ In contrast, legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed and should contain an exhaustive list of the grounds for restricting assemblies (see paragraph 69 below). Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.⁷⁵
38. To aid certainty, any prior restrictions should be formalised in writing and communicated to the organiser of the event within a reasonable timeframe (see further paragraph 135 below). 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. Finally, the imposition, after an assembly, of sanctions and penalties which are not prescribed by law is not permitted.

Proportionality

39. Any restrictions imposed on freedom of assembly must pass the proportionality test.⁷⁶ '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.'⁷⁷ The extent of the interference should cover only the purpose which justifies it.⁷⁸ Moreover, given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate purpose should always be given preference).⁷⁹
40. The regulatory authority must recognize that it has authority to impose a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition (see further '*Time, Place and Manner*' Restrictions at paragraphs 99-100 below). 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 achieved less effectively absent the restriction. The principle of proportionality thus requires that authorities do not routinely impose restrictions which would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city).⁸⁰

⁷⁴ See European Court of Human Rights, *Rekvényi v. Hungary* (1999), at para 34.

⁷⁵ See, for example, *Gillan and Quinton v. the United Kingdom* (2010), discussed further at note 223.

⁷⁶ See, for example, *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979).

⁷⁷ Feldman, D. *Civil Liberties & Human Rights in England and Wales*, 2nd ed., (2002) p.57. (emphasis added).

⁷⁸ Hoffman, D. and Rowe, J. *Human Rights in the UK: An Introduction to the Human Rights Act 1998* (2nd ed.) (Pearson Education Ltd. 2006) at p.106. Importantly, the only purposes or aims that may be legitimately pursued by the authorities in restricting freedom of assembly are provided for by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11(2) of the ECHR. Thus, the only objectives 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.

⁷⁹ As such, for example, the dispersal of assemblies must only be used as a measure of last resort (see further paras.165-170).

⁸⁰ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at paras.29.1 and 32 (English translation): '(29.1)...The extensive prohibitions in the very centre of the city essentially restricts the right of the persons to hold meetings, processions and pickets ... (32) ... In the case law of Germany, it is recognized that the institutions of power shall put up with any disturbance of traffic which it is not

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

'Restriction of freedom of assembly must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.' Moreover, 'measures taken for restriction of the freedom of assembly must be highly needed for reaching the goal which was the cause for making the restriction.'

41. The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Furthermore, where other rights potentially conflict with the right to freedom of peaceful assembly, decisions of the regulatory authorities should be informed by 'parallel analysis' of the respective rights at stake (bearing in mind that the limitations or qualifications permitted may not be identical for these other rights). In other words, there should be a full assessment of each of the rights engaged, examining the proportionality of any interference potentially caused by the full protection of the right to freedom of peaceful assembly.⁸¹
42. 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',⁸² 'convincing and compelling'⁸³ and based on 'an acceptable assessment of the relevant facts.'⁸⁴ Mere suspicion or presumptions cannot suffice.⁸⁵ This is particularly the case where the assembly concerns a matter of public interest, or where political speech is involved.⁸⁶
43. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or from particular locations or public places which are suitable for holding assemblies – tend to be over-inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of each case.⁸⁷ Legislative provisions which limit the holding of

possible to avoid when realizing freedom of assembly. *If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through the outskirts so that it does not disrupt the movement of traffic...'*

⁸¹ See, for example, *Campbell v. MGN Ltd* [2004] at paras.16-20 per Lord Nicholls. For detailed discussion of parallel analysis (in relation to Articles 8 and 10 ECHR), see further, Helen Fenwick and Gavin Phillipson, *Media Freedom under the Human Rights Act* (OUP, 2006) at pp.700-706. See also the Hungarian Constitutional Court's approach when confronted with a conflict between two fundamental rights (at note 140 below).

⁸² See, for example, *Makhmudov v. Russia* (2007) at para.65.

⁸³ *Id.*, at para.64.

⁸⁴ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), at para. 87. See also, *United Communist Party of Turkey and Others v. Turkey* (1998) at para. 47.

⁸⁵ See *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69,315 (353, 354)

⁸⁶ See, for example, *Christian Democratic Peoples' Party v. Moldova* (2006), at para.71. Similarly, *Rosca, Secareanu and Others v. Moldova* (2008) at para.40 (citing the *Christian Democratic Peoples' Party* case).

⁸⁷ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): 'The state may not prohibit holding meetings, processions and pickets at foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases ... this issue shall be solved on the level of application of legal norms' (emphasis added). While the Court noted (at para.28.1) that s.22(2) *Vienna Convention on International Diplomatic Relations* (1961) requires host states 'to undertake all the adequate measures to protect premises of the mission from any kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect', it concluded (at para.28.3) that there 'is no norm which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets.' See also, David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era* (Hart Publishing, 2010) at pp.101-2.

assemblies only to certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should thus be regarded as a *prima facie* violation of the right. Similarly, the regulation of assemblies in residential areas, or of assemblies at night time, should be handled on a case-by-case basis rather than being specified as a prohibited category of assemblies.

44. 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 (see chapter 4 below). This reflects the need for a proper balance to be struck between the rights of persons to express their views by means of assembly, and the interest of not imposing unnecessary burdens on the rights of non-participants.
45. 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 available.⁸⁸ Any alternative must be such that the message which the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed – in other words, within ‘sight and sound’ of the target audience (see also paragraph 33 above, and ‘Simultaneous Assemblies’ at paragraphs 122-124 below).⁸⁹

Article 13(4)-13(5), Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)

4. Should the authorized body find during the consideration of notification that there are grounds to prohibit conducting a mass public event pursuant to paragraph 2 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) or 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.

Any date proposed by the authorized body shall be within two days after the date proposed by the organizer.

Any time proposed by the authorized body shall be the same as proposed by the organizer or be within three hours’ difference.

5. Should the authorized body find during consideration of the notification that there are sufficient grounds to prohibit conducting a mass public event ..., 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).

Any place proposed by the authorized body shall meet the reasonable requirements of the organizer, specifically with regard to the possibility of participation of the estimated number of participants (provided the notification contains such information). Proposed places should not include areas outside the selected community and, in the case of Yerevan, areas outside selected districts. The proposed place shall be as close as possible to the place specified in the notification.

⁸⁸ *Rai, Almond and “Negotiate Now” v. United Kingdom* (1995, admissibility).

⁸⁹ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): ‘The state has the duty not only to ensure that a meeting, picket or a procession takes place, but also to see to it that freedom of speech and assembly is effective, namely – that the organized activity shall reach the target audience.’

Non-discrimination

46. Freedom of peaceful assembly is to be enjoyed equally by all persons. 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.⁹⁰
47. Article 14 ECHR does not provide a freestanding right to non-discrimination but complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (or arguably, the grounds of restriction) fall within the ambit of one or more of the other Convention rights.⁹¹ OSCE participating States, and parties to the ECHR, are encouraged to ratify Protocol 12 (see below) which contains a general prohibition of discrimination.⁹² Additionally, Article 5 of the Convention on the Elimination of all forms of Racial Discrimination requires States Parties to prohibit and eliminate racial discrimination.

Article 26 ICCPR

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 5, Convention on the Elimination of all forms of Racial Discrimination

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

... (d) Other civil rights, in particular:

... (ix) The right to freedom of peaceful assembly and association;

Article 14 ECHR

The enjoyment of the rights and freedoms set forth in this Convention 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.

Protocol 12 ECHR, Article 1 – General prohibition of discrimination

⁹⁰ See further 'General Comment 18: Non-Discrimination', U.N. Human Rights Committee, U.N. Doc. CCPR General Comment 18, (1989).

⁹¹ See for example, *Haas v. Netherlands* (2004) at para.41. In light of judgement of the European Court of Human Rights in *Thlimmenos v. Greece* (2000), Robert Wintemute argues that the interpretation of Article 14 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 Wintemute, R. "Within the Ambit": How big is the "gap" in Article 14 European Convention on Human Rights? Part 1' (2004) 4 *European Human Rights Law Review* 366-382.

⁹² See, for example, *Sejdić and Finci v. Bosnia and Herzegovina* (2009), the first case in which the European Court of Human Rights found a violation of Protocol 12, holding (at para.55) that '[n]otwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see the Explanatory Report to Protocol No. 12, para.18).'

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.

Article 21 of the EU Charter of Fundamental Rights:

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.

48. Any discrimination based on grounds 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. Moreover, the failure of the State to prevent or take steps in response to acts of discrimination committed by private individuals may also constitute a breach of the right to freedom from discrimination.⁹³
49. Importantly, Article 26 ICCPR has been interpreted to include 'sexual orientation' in the reference to non-discrimination on grounds of 'sex'.⁹⁴ 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

⁹³ See *Opuz v. Turkey* (2009) at paras.184-191 (here, in relation to domestic violence). Many problems have arisen specifically in relation to assemblies organised by Lesbian, Gay, Bisexual and Transgender (LGBT) groups. See further *Bączkowski and Others v. Poland* (2007) where the Court found there to be a violation of Article 14 in conjunction with Article 11 ECHR. See also, Applications nos. 4916/07, 25924/08 and 14599/09 by *Nikolay Aleksandrovich Alekseyev against Russia* lodged on 29 January 2007, 14 February 2008 and 10 March 2009. At the time of writing, members of the organizational committee of the Belgrade Pride Parade (which was to have been held on 20 September 2009) have challenged, *inter alia*, the alleged failure of state organs in Serbia to take all reasonable measures to prevent private acts of discrimination against the applicants. See also, Council of Europe, Parliamentary Assembly, *Recommendation 211 (2007) on Freedom of Assembly and Expression for Lesbians, Gays, Bisexuals and Transgendered Persons*, 26 March 2007 (available

<https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679>), and the related 'Explanatory Report: Freedom of Assembly and Expression for Lesbian, Gay, Bisexual and Transgendered Persons', Congress of Local and Regional Authorities, Council of Europe, 26-28 March 2007. Available online at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CPL\(13\)9PART2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CPL(13)9PART2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679). Furthermore, see U.N. General Assembly, *Human rights defenders: Note by the Secretary-General* (report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, in accordance with General Assembly resolution 60/161), U.N. Doc. A/61/312, 5 September 2006, at para.71; Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/104/17/PDF/G0710417.pdf?OpenElement> at para.96; Human Rights Council, *Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, at para.454. Also, ILGA, *LGBT Rights - Freedom of Assembly: diary of events by country (August 2008)*. Available at:

http://www.ilga-europe.org/media_library/lgbt_rights_freedom_of_assembly_diary_of_events_by_country_august_2008

⁹⁴ See *Nicholas Toonen v. Australia*, U.N. Human Rights Committee, No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (04/04/94) at para.8.7.

of sexual orientation.⁹⁵ Both Principle 20 of the *Yogyakarta Principles*,⁹⁶ and the *Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation*⁹⁷ are also directly relevant in this regard.

50. The regulatory authority must not impose more onerous pre-conditions on some persons wishing to assemble than on others whose case is similar.⁹⁸ The regulatory authority may, however, treat differently persons whose situations are significantly different.⁹⁹ 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.¹⁰⁰ Furthermore, the law enforcement authorities have an obligation to investigate whether discrimination was a contributory factor to any criminal conduct that occurs during an assembly (such as participants being physically attacked).¹⁰¹

⁹⁵ 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.

⁹⁶ Principle 20, *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* (<http://www.yogyakartaprinciples.org/>) provides that: 'Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities. States shall: Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection.' See also the accompanying *Jurisprudential annotations*, available at: <http://www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf>

⁹⁷ *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity* (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies) provides that: 'III. Freedom of expression and peaceful assembly... 14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity; 15. Member states should ensure that law-enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly; 16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order; 17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

⁹⁸ In part, this was the argument raised by the applicants in *Baczkowski and Others v. Poland* (2007) and (2006, admissibility). The applicants stated that they were treated in a discriminatory manner firstly because organisers of other public events in Warsaw in 2005 had not been required to submit a 'traffic organisation plan', and also because they had been refused permission to organise the March for Equality and related assemblies because of the homosexual orientation of the organisers.

⁹⁹ *Thlimmenos v. Greece* (2000) at para.44.

¹⁰⁰ Indirect discrimination occurs when an ostensibly non-discriminatory provision in law affects certain groups disproportionately.

¹⁰¹ *Nachova and Others v. Bulgaria* [GC] (2005), at para.161.

51. Attempts to prohibit and permanently exclude assemblies organised by members of one ethnic, national, or religious 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.”
52. This following section highlights some of the key human rights provisions which protect the freedom of peaceful assembly by particular sections of society whose freedoms are sometimes not adequately protected.

Groups, Unregistered Associations, and Legal Entities

53. Freedom of peaceful assembly can be exercised by both individuals and corporate bodies (as, for example, provided in the extract from the Bulgarian Law on Gatherings, Meetings and Manifestations below).¹⁰² In order to ensure that freedom of peaceful assembly is protected in practice, States should remove the requirement of mandatory registration of any public organisation and guarantee the right of citizens to set up formal and informal associations. (See further ‘Freedom of association and freedom of assembly’, at paragraphs 105-106 below).

Article 2, Law on Gatherings, Meetings and Manifestations, Bulgaria (1990)
Gatherings, meetings and manifestations can be organized and held by [individuals], associations, political and other social organizations.

Minorities

54. The freedom to organise 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.”¹⁰³ Article 3(1), *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) also 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.”¹⁰⁴ As noted above at paragraph 7, ‘democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.’¹⁰⁵

¹⁰² See *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p. 119, and *Christians against Racism and Fascism v. the United Kingdom* (1980) at p. 148. Similarly, the right to freedom of thought, conscience and religion can be exercised by a church body, or an association with religious and philosophical objects, *ARM Chappell v. UK* (1987) at p.246.

¹⁰³ See also 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.’

¹⁰⁴ Adopted by GA Res 47/135, 18 December 1992.

¹⁰⁵ See *Hyde Park v. Moldova No.1* (2009) para.28 citing *Young, James and Webster v. the United Kingdom*, 13 August 1981, para.63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95

'Non-Nationals'

55. **(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.'¹⁰⁶ 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, 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 activities by non-nationals which directly burden 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.¹⁰⁷

Women

56. Under Article 3 of the *UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*, State 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.¹⁰⁸

Children

57. 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 State parties to recognize the right of children to organise and participate in peaceful assemblies.¹⁰⁹

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.

58. In light of the important responsibilities of the organisers of public assemblies (see paragraphs 185-198 below), the law may set a certain minimum age for organisers,

and 28443/95, para.112, ECHR 1999-III). Similarly, *Hyde Park v. Moldova No.2* (2009) para.24; *Hyde Park v. Moldova No.3* (2009) at para.24.

¹⁰⁶ U.N. Human Rights Committee, General Comment 15, The position of aliens under the Covenant.

¹⁰⁷ See further Donatella della Porta, Abby Peterson, Herbert Reiter, *The Policing of Transnational Protest* (Ashgate, 2006).

¹⁰⁸ Article 7(c), CEDAW also safeguards the right of women to participate in non-governmental organizations and associations concerned with the public and political life of the country. See also *Opuz v. Turkey* (2009), cited above at 93.

¹⁰⁹ Article 15, Convention on the Rights of the Child.

having due regard to the evolving capacity of the child (see the examples from the *Finland Assembly Act* and the *Law on Public Assemblies of the Republic of Moldova* below). The law may also provide that minors may organise a public event only if their parents or legal guardians consent to their doing so.

Finland Assembly Act (1999)

Section 5, Right to arrange public meetings ...

A person who is without full legal capacity but who has attained 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 arranger of a meeting. Other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

Law on Public Assemblies of the Republic of Moldova (2008)

Article 6, Organisers of assemblies ...

(2) Minors of age 14, persons declared with limited legal capacity can organise public assemblies together with the persons with the full legal capacity.

Article 7, Participants in assemblies

(1) Everyone is free to actively participate and assist at the assembly.

(2) Nobody can be obliged to participate or assist at an assembly against his/her will.

Persons with a disability

59. 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...' ¹¹⁰ The 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.' ¹¹¹ All individuals should thus be facilitated in the enjoyment of their freedom to peacefully assemble, irrespective of their legal capacity.

Law enforcement personnel and State officials

60. The ECHR permits 'lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State.' ¹¹² Any such restrictions must be designed to ensure that 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. ¹¹³ The definition of neutrality is central.

¹¹⁰ Article 1, UN Convention on the Rights of Persons with Disabilities.

¹¹¹ 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.

¹¹² Article 11(2), European Convention for the Protection of Human Rights and Fundamental Freedoms. See, for example, *Demir and Baykara v. Turkey* (2008) at para.109: 'The Convention makes no distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. Article 11 is no exception to that rule. On the contrary, paragraph 2 *in fine* of this provision clearly indicates that the State is bound to respect freedom of assembly and association, subject to the possible imposition of "lawful restrictions" in the case of members of its armed forces, police or administration (see *Tüm Haber Sen and Çınar...*). Article 11 is accordingly binding upon the "State as employer", whether the latter's relations with its employees are governed by public or private law ...' See also *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only) cited at note 17 above.

¹¹³ See *Ahmed and Others v. United Kingdom* (1998); *Rekvényi v. Hungary* (1999).

Neutrality should not be interpreted so as to unnecessarily restrict the freedom to hold and express opinion. Legislation should not therefore restrict the freedom of assembly of law enforcement personnel (including the police and military) or State officials unless the reasons for restriction are directly connected with their service duties, and then only to the extent absolutely necessary in light of considerations of professional duty.

Good administration and transparent decision-making

61. The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law.¹¹⁴ It is important to have a properly mandated decision-making authority, as those officials who have to bear the risk of taking controversial decisions about assemblies often come under intense public pressure (potentially leading to decisions which 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.¹¹⁵
62. The officials responsible for taking decisions concerning the regulation of the right to freedom of assembly should be fully aware of, and understand their responsibilities in relation to, the human rights issues bearing upon their decisions. To this end, such officials should receive periodic training in relation to the implications of existing and emerging human rights case law. The regulatory authority must also be adequately staffed and resourced so as to enable it to effectively fulfil its obligations in a way that enhances co-operation between the organiser and authorities.
63. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies,¹¹⁶ and also about its procedures and operation. 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.
64. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks, or even real risks which, if opportunities were

¹¹⁴ See *Hyde Park v. Moldova No.1* (2009) at para.31. See xxiii above. 'It is true that new reasons for rejecting Hyde Park's application to hold an assembly were given by the courts during the subsequent judicial proceedings. However, sections 11 and 12 of the Assemblies Act give exclusive authority to the local authorities to authorise or not assemblies.' Similarly, *Hyde Park v. Moldova No.2* (2009) at para.27; *Hyde Park v. Moldova No.3* (2009) at para.27.

¹¹⁵ See, for example, the Parades Commission in Northern Ireland, whose members are appointed in accordance with Schedule 1 of the *Public Processions (NI) Act 1998*, and which, as a body, must be as representative as is possible of the community as a whole (para.2(3) of Schedule 1).

¹¹⁶ See, for example, '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 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 in which they are due to take place. See further <http://www.paradescommission.org>. See also, for example, the records maintained by Strathclyde Police in Scotland relating to the policing of public processions. Available at

<http://strathclydepoliceauthority.gov.uk/images/stories/CommitteePapers/FullAuthority2009/FA1October2009/item%206%20-%20review%20of%20police%20resources%20deployed%20at%20marches%20and%20parades.pdf>

given, could be adequately addressed prior to the assembly. In this regard, the authorities should ensure that its decisions are as well-informed as is possible. Domestic legislation could, for example, require that a representative of the decision-making authority attend any public assembly in relation to which substantive human rights concerns have been raised (irrespective of whether or not any restrictions were actually imposed). Organisers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should also have an opportunity to make oral and written representations directly to the regulatory authority (see further, 'Decision-making and Review Process' at paragraphs 132-140 below). It is of note that Article 41 of the Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

Article 41 of Charter of Fundamental Rights of the European Union (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.

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

Review and appeal

66. An initial option of administrative review (see further paragraph 137) can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an opportunity to appeal the decision of the regulatory authority to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling should therefore be given prior to the notified date of the assembly. In the absence of the possibility of a final ruling, the law should provide for the possibility of interim relief by injunction. This requirement is examined further below, in Chapter 5 'Procedural Issues' (*Decision-making and review process*, paragraphs 132-140) and in Annex A, 'Enforcement of International Human Rights Standards.'

Liability of the regulatory authority

67. The regulatory authorities must comply with their legal obligations, and should be accountable for any failure – procedural or substantive – to do so whether before, during or after an assembly. Liability should be gauged according to the relevant principles of administrative or criminal law, or of judicial review concerning the misuse of public power.

Article 183, Penal Code of the Republic of Moldova (2002)
Violation of the right to freedom of assembly

Violation of the right to public assembly by illegal actions to impede an assembly or by constraining participation is liable to a fine or prison for up to 2 years.

Article 67, Contraventions Code of the Republic of Moldova (2008)

Violation of the right to freedom of assembly

Impeding the organization and carrying out of assemblies as well as putting obstacles in the way of, or constraining, participation in the assembly will be sanctioned by a fine.

4. Restrictions on Freedom of Assembly

68. While international 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 the imposition of restrictions on public assemblies, and the types of limitation which can be imposed.

Legitimate grounds for restriction

69. The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation,¹¹⁷ nor loosely interpreted by the authorities.¹¹⁸
70. 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 discussed in this section (as provided in the limiting clauses in Article 21, ICCPR and Article 11, 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

71. The inherent imprecision of this term¹¹⁹ 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 are legitimate grounds for prohibiting a peaceful assembly.¹²⁰ 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.¹²¹ 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

¹¹⁷ That the authorities should not supplement the legitimate aims, particularly with arguments based on their own view of the merits of a particular protest, see *Hyde Park v. Moldova No.3* (2009) at para.26. See further note 23.

¹¹⁸ This point has recently been emphasized by the Council of Europe's Committee of Ministers. See recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, at para.16 (see note.97 above).

¹¹⁹ In the *Brokdorf* decision of the German Federal Constitutional Court (1985) (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.

¹²⁰ For example, *Makhmudov v. Russia* (2007).

¹²¹ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001) at para.94.

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.¹²²

72. An assembly which the organisers intend to be peaceful may still legitimately be restricted on public order grounds in certain circumstances. Such restrictions should only be imposed when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and such action is likely to occur. This approach is designed to extend protection to controversial speech and political criticism, even where this might engender a hostile reaction from others (see further content-based restrictions at paragraphs 94-98 below).¹²³
73. Compelling and demonstrable evidence is required that those organising or participating in the particular event will themselves use violence. In the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity to rebut it by submitting evidence that the assembly will be peaceful.

Public Safety

74. There is a significant overlap between public safety considerations and those concerning the maintenance of public order. Particular public safety concerns might arise, for example, when assemblies are held outside daylight hours, or when moving vehicular floats form part of an assembly. In such instances, extra precautionary measures should generally be preferred over restriction.
75. The State has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organiser of an assembly. However, the organiser and stewards may assist in ensuring the safety of members of the public. An assembly organiser could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see further paragraphs 191-196 below).

The Protection of Health

76. In the rare instances in which health might be an appropriate basis for restricting of one or more public assemblies, those restrictions should not be imposed unless other similar concentrations of individuals are also restricted. Thus, before a restriction may be justified based on the need to protect public health, similar restrictions should also have been applied to attendance at school, concerts, sports events, and other such activities where people ordinarily gather.
77. Restrictions might also be justified on occasion where the health of participants in an assembly becomes seriously compromised. In the case of *Cisse v. France* (2002), for example, the intervention of the authorities was justified on health grounds given that the protesters had reached a critical stage during a hungerstrike, and were confined in unsanitary conditions. Again, though, such reasoning should not be relied upon by the authorities to pre-emptively break-up peaceful assemblies, even where a hungerstrike forms part of the protest strategy.

¹²² See further *Ezelin v. France* (1991) and *Ziliberberg v. Moldova* (2004).

¹²³ See, for example, *Christian Democratic People's Party v. Moldova* (No. 2) (2010) at para.27. Finding a violation of Article 11 ECHR, the European Court of Human Rights stated that 'the applicant party's slogans, even if accompanied by the burning of flags and pictures, was a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.'

The Protection of Morals

78. The main human rights treaties which protect freedom of assembly (the ICCPR and ECHR) are 'living instruments' and thus attuned to diverse and changing moral values. Measures purporting to safeguard public morals must therefore be tested against an objective standard of whether they meet a pressing social need and comply with the principle of proportionality.¹²⁴ Indeed, it is not sufficient for the behaviour in question merely to offend morality – it must be behaviour which is deemed criminal and has been defined in law as such (see paragraph 35 above).¹²⁵
79. Moreover, the protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly.¹²⁶ Reliance on such a category can too easily lead to content regulation and discriminatory treatment. Restrictions will violate the right to freedom of peaceful assembly unless they are permissible under the standards governing content regulation (see paragraphs 94-98 below) and non-discrimination (at paragraphs 46-60 above).¹²⁷

The Protection of the Rights and Freedoms of Others

80. The regulatory authority has a duty to strike a proper balance between the important freedom to peacefully assemble 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.¹²⁸ Temporary disruption of vehicular

¹²⁴ *Norris v. Ireland* (1988) at paras.44-46. It is noteworthy that 'public morals' as a legitimate ground for limiting freedom of assembly is not synonymous with the moral views of the holders of political power. See Judgment of the Polish Constitutional Tribunal, 18th 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

¹²⁵ See, for example, *Hashman and Harrup v. UK* (1999) regarding the common law of offence of behaviour deemed to be 'contra bonos mores'.

¹²⁶ For criticism of a legislative provision relating to morality, see, <http://www.bahrainrights.org/node/208>; <http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>. Manfred Nowak's commentary on the ICCPR cites assemblies near or passing 'holy locations or cemeteries' (in relation to morality) or 'natural-protection or water-conservation grounds' (in relation to public health) as examples of particular. See Nowak, *supra* note 29 above at 493.

¹²⁷ See, for example, Tania Groppi (Siena University) *Freedom of thought and expression, General Report, Political Structure and Human Rights*, citing the Constitutional Court of Hungary (European Union Meeting, Union of Turkish Bar, Ankara 16-18 April 2003) at p.6. Available at http://www.unisi.it/ricerca/dip/dir_eco/COMPARATO/groppi4.doc. See, for example, Hungarian Constitutional Court, Decision no. 21/1996 (V.17.) [ABH 1997] 74 at 84.

¹²⁸ In the American case of *Schneider v. State*, 308 U.S. 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 Osterreich* (2003), the European Court of Justice held that allowing a demonstration which 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 EC Treaty). This was for three reasons: (1) the disruption was 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. See also *Commission v. France* (1997). This case concerned protests by French farmers directed against agricultural products from other 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 by private individuals, the French government had failed to fulfil its obligations under Article 30 EC Treaty, in conjunction with Article 5, of the Treaty.

or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly.¹²⁹ Nor is *opposition* to an assembly of itself sufficient to justify prior limitations. 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 upon the rights and freedoms of others.¹³⁰ This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.

81. While business owners and local residents do not normally have a right to be consulted in relation to the exercise of fundamental rights,¹³¹ where their rights are engaged, it is good practice for the organiser 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 (see further paragraph 134 below in relation to negotiation and mediated dialogue).
82. 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); and
 - 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.
83. Rights that might be claimed by non-participants affected by an assembly (although these need not be rights enumerated in the ICCPR or ECHR)¹³² potentially include: the right to privacy (protected by Article 17, ICCPR and Article 8, ECHR)¹³³ the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1, ECHR),¹³⁴ the right to liberty and security of person (Article 9, ICCPR and Article 5

¹²⁹ *Éva Molnár v. Hungary* (2008) at para.34: 'The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic.' As Nicholas Blomley argues, 'traffic logic serves to reconstitute public space ... Public space is not a site for citizenship, but a mere 'transport corridor'. See Nicholas Blomley, 'Civil Rights Meet Civil Engineering: Urban Public Space and Traffic Logic.' 22 *Can. J.L. & Soc.* 55 at 64 (2007). See also Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (Cambridge University Press, 2008).

¹³⁰ See, for example, *Ashughyan v. Armenia* (2008) at para.90, cited above at para.20. Similarly, *Balçık and Others v. Turkey* (2007) at para.49; *Oya Ataman v. Turkey* (2006) at para.38; *Nurettin Aldemir and others v. Turkey* (2007) at para.43.

¹³¹ 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.

¹³² In so far as other non-Convention rights are concerned, only 'indisputable imperatives' can justify the imposition of restrictions on public assemblies. See, for example, *Chassagnou v. France* (1999) at para.113: 'It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect 'rights and freedoms' not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.' This clearly sets a high threshold: there must be a verifiable impact ('indisputable') on the lives of others requiring that objectively necessary ('imperative') steps be taken. It is not enough that restrictions are merely expedient, convenient or desirable.

¹³³ 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 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) might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established.

¹³⁴ See, for example, *Chassagnou and Others v. France* (1999). Also *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

ECHR),¹³⁵ and the right to freedom of movement (Article 12, ICCPR and Article 2 of Protocol 4 ECHR).¹³⁶ It may also be that restrictions on freedom of assembly could be justified to protect the right of others to freedom of expression and to receive information (Article 19, ICCPR and Article 10 ECHR),¹³⁷ or to manifest their religion or belief (Article 18, ICCPR and Article 9, ECHR).¹³⁸ Nonetheless, no restrictions should be imposed on freedom of assembly on grounds of protecting the rights of others unless the requisite threshold has been satisfied in relation to these other rights. Indeed, anyone seeking to exercise the right to freedom of assembly in a way that would destroy the rights of others already forfeits their right to assemble by virtue of the destruction of rights clause in Article 5 ICCPR and Article 17 ECHR (see paragraph 15 above).

84. Assessing the impact of public events on the rights of others must take due consideration of the frequency of similar assemblies before the same audience. While a high threshold must again be met, the cumulative impact on a captive audience of numerous assemblies (for example, in a purely residential location) *may* constitute a form of harassment that could legitimately be restricted to protect the rights of others. Repeated, albeit peaceful, demonstrations by particular groups might also in certain circumstances be viewed as an abuse of a dominant position (see above, paragraphs 7 and 54), again legitimately restricted to protect the rights and freedoms of others.¹³⁹ The principle of proportionality requires that in achieving this aim, the least onerous restrictions possible should be used (see paragraphs 39-45 above).¹⁴⁰

offer protection only to proprietary interests. Moreover, for a public assembly to impact on the enjoyment of ones' 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.

¹³⁵ Note, however, that Article 5 ECHR is concerned with total deprivation of liberty, not mere restrictions upon movement (which might be covered by Article 2 of Protocol 4). This distinction between deprivation of, and mere restriction upon, liberty has been held to be 'one of degree or intensity, and not one of nature or substance.' See *Guzzardi v. Italy* (1980) at para.92; and *Ashingdane v. the United Kingdom* (1985) at para.41. See also *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* [2006] UKHL 55; and *Austin and Saxby v. Commissioner of Police of the Metropolis* [2009] UKHL 5. For critique of the latter judgment, see David Mead, 'Of Kettles, Cordons and Crowd Control: Austin v. Commissioner of Police for the Metropolis and the Meaning of 'Deprivation of Liberty' 3 *EHRLR* 376-394 (2009); Helen Fenwick, 'Marginalising human rights: breach of the peace, "kettling", the Human Rights Act and public protest' *Public Law* (2009) 737-765.

¹³⁶ Significantly, however, the right to free movement does not generally refer to the use of public roads but rather to the possibility of changing one's place of residence. See, for example, the judgement of the Polish Constitutional Tribunal, *Case 21/05*, 18 January 2006 (also cited in the decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, at para.2.3). See also note 14 above.

¹³⁷ *Acik v. Turkey* (2009) at para.45: 'In the instant case, the Court notes that the applicants' protests took the form of shouting slogans and raising banners, thereby impeding the proper course of the opening ceremony and, particularly, the speech of the Chancellor of Istanbul University. As such, their actions no doubt amounted to an interference with the Chancellor's freedom of expression and caused disturbance and exasperation among some of the audience, who had the right to receive the information being conveyed to them.'

¹³⁸ *Öllinger v. Austria* (2006), at para. 46. For such a claim to be upheld would require that the assembly impose a direct and immediate burden on the expressive rights or the exercise of the religious beliefs of others.

¹³⁹ See *Hyde Park v. Moldova No.1* (2009) at para.28 citing *Young, James and Webster v. the United Kingdom* (1981) at para.63, and *Chassagnou and Others v. France* [GC] (1999). Similarly, *Hyde Park v. Moldova No.2* (2009) para.24, and *Hyde Park v. Moldova No.3* (2009) at para.24.

¹⁴⁰ See the discussion of 'parallel scrutiny' at note lxxxi above (and accompanying text). See also, for example, the decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, at para.2.2 (referring to a previous decision of the Court, ABH 2001, 458-459): 'with respect to the prevention of a potential conflict between two fundamental rights: ... the authority should be statutorily empowered to ensure the enforcement of both fundamental rights or, if this is impossible, to ensure that any priority enjoyed by one of the rights to the detriment of the other shall only be of a temporary character and to the extent absolutely necessary.'

National Security

85. The issue of national security is often given too wide an interpretation in relation to freedom of assembly. The *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* limit reliance on national security grounds to justify restrictions of freedom of expression and assembly.

Part vi, Siracusa Principles on the Limitation and Derogation of 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 exist 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.*

86. Similarly, Principle 6 of the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* establishes clear parameters for the imposition of restrictions on freedom of expression in the interests of national security.¹⁴¹

Principle 6, Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;*
- (b) it is likely to incite such violence; and*
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.*

Legislation intended to counter 'terrorism' and 'extremism'

87. Efforts to tackle terrorism or 'extremism', and to enhance security must never be invoked to justify arbitrary action which curtails the enjoyment of fundamental human rights and freedoms. The 2004 *Berlin Declaration of the International Commission of Jurists on 'Upholding Human Rights and the Rule of Law in Combating Terrorism'*¹⁴² emphasized

¹⁴¹ *The Johannesburg Principles*, ARTICLE 19, November 1996 (ISBN 1 870798 48 1).

¹⁴² Available from <http://www.icj.org>. Similarly, the United Nations 'Global Counter-Terrorism Strategy' adopted by member States on 8 September 2006, emphasized 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...'

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.’ Similarly, both the *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* (2007)¹⁴³ and the *OSCE Manual on Countering Terrorism, Protecting Human Rights* (2007)¹⁴⁴ caution against the imposition of undue restrictions on the exercise of freedom of expression and assembly during crisis situations.

88. Principle 8 of the Berlin 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.

89. 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 organisations and the criminalization of expressing support for them, the creation of offences concerning provocation to, or advocacy of, extremism and/or terrorism,¹⁴⁵ the designation of specific sites or locations as prohibited areas (see above, paragraphs 24 and 43), increased penalties for participation in unlawful assemblies, and the imposition of border controls to prevent entry to individuals deemed likely to demonstrate and cause disturbances to public order. 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 further, ‘General Principles’ in chapter 2 above).¹⁴⁶
90. Any such extraordinary pre-emptive measures should be transparent and based on corroborated evidence,¹⁴⁷ time-limited and subject to independent or judicial review. Specifically, the unilateral suspension of the *Schengen Agreement* to enable the re-imposition of border controls in anticipation of large-scale assemblies should not permit disproportionate or blanket restrictions on the freedom of movement of those travelling to participate in or observe an assembly.¹⁴⁸

¹⁴³ Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers’ Deputies. Available online at: <https://wcd.coe.int/ViewDoc.jsp?id=1188493>

¹⁴⁴ Particularly, Chapter 16 ‘Freedom of Association and the Right to Peaceful Assembly’ at pp.240-150. Available online at: http://www.osce.org/publications/odihhr/2007/11/28294_980_en.pdf

¹⁴⁵ The EU Council Framework Decision on combating terrorism (2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA) requires that member States criminalize ‘public provocation to commit a terrorist offence’ (including ‘such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed’).

¹⁴⁶ The *Ten Basic Human Rights Standards for Law Enforcement Officials* adopted by Amnesty International also provide that exceptional circumstances such as a state of emergency or any other public emergency cannot justify any departure from these standards. AI Index: POL 30/04/98.

¹⁴⁷ *Makhmudov v. Russia* (2007) at para.68.

¹⁴⁸ See Donatella della Porta, Massimiliano Andretta, Lorenzo Mosca, and Herbert Reiter, *Globalization from Below: Transnational Activists and Protest Networks* (University of Minnesota Press, 2006) at 157-8 citing ‘Italian

91. Domestic legislation designed to counter terrorism or 'extremism' should narrowly define the terms 'terrorism' and 'extremism' 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. Furthermore, any discretionary powers afforded to law enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.¹⁴⁹

Derogations in times of war or other public emergency

92. Under Article 4 ICCPR and Article 15 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.¹⁵⁰ 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.'¹⁵¹ The *Siracusa Principles on the Limitation and Derogation of 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 4.¹⁵²

Parliamentary Investigative Commission (IPIC) 'Minutes of the Hearing. August 28, 2001 at <http://www.camera.it>. The suspension of the Schengen Agreement on free movement (11-21 July 2001) permitted border checks on people in advance of the G8 Summit in Genoa. 140,000 people were checked, and 2,093 rejected. See also 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), at para.97: 'Oversight, accountability and transparency concerns also arise with regard to State claims of exception to the Schengen regime.... The Schengen Convention (Article 2.2) establishes that internal borders may be crossed without checks on persons being carried out. However, it also recognises that where public policy or national security so requires, a member State may decide unilaterally to carry out national border checks appropriate to the situation for a limited period. Even though this was meant to apply exceptionally to emergencies and limited in time, EU member States have used this provision on a regular basis to re-establish border controls. This often occurs when there are high-level international political summits or meetings taking place which are expected to draw demonstrators and protestors. Protestors have been blocked entry into EU member States on the basis of membership in a group, rather than on an individual case-by-case basis. Because this provision remains at the intergovernmental level (ie. State authorities unilaterally take the decision to reimpose border controls), there is complete lack of judicial and parliamentary accountability for the implementation of this paragraph ... The law enforcement authorities at the national level have wide discretion to determine the existence of a threat to public policy and national security, and the security standards to follow in the particular event.' Through the over-use of supposed emergency clauses to reimpose border controls and to prevent entry to those deemed likely to demonstrate and cause disturbances to public order, States impinge on basic human rights such as the freedom of expression and freedom of assembly. There is a lack of democratic accountability, in particular of the failure to respect the principles of proportionality, transparency and human rights.'

¹⁴⁹ See, for example, *Gillan and Quinton v. the United Kingdom* (2010) in which police stop and search powers under section 44 of the United Kingdom's *Terrorism Act 2000* were held not to be 'in accordance with the law' for the purposes of Article 8 ECHR (the right to private and family life). This was in part due to the breadth of the powers (the exercise of which did not require reasonable suspicion on the part of the police officer) and also the lack of adequate safeguards against arbitrariness: 'such a widely framed power could be misused against demonstrators and protestors.' (see para.76-87). See also paragraph 35-38 above ('Legality') and paragraphs 89, 154 and 161 above regarding police stop and search powers.

¹⁵⁰ See also paragraph 25 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

¹⁵¹ See *Lawless v. Ireland* (1961) at para.28. See also 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 rights that cannot be derogated from.

¹⁵² *Siracusa Principles*, paragraphs 40-41. Annex, UN Doc E/CN.4/1984/4 (1984) <http://www1.umn.edu/humanrts/instreet/siracusaprinciples.html>.

93. A public emergency must be both proclaimed to the citizens in the State concerned¹⁵³ and notified to other State parties to the ICCPR through the intermediary of the UN Secretary General (Article 4(3) ICCPR), the Secretary General of the Council of Europe (Article 15(3) ECHR) and the OSCE (Paragraph 28.10, Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should also be time-limited.

Types of restriction

Content-based restrictions

94. Speech and other forms of expression will normally enjoy protection under Article 19 ICCPR and Article 10 ECHR. In general, therefore, the regulation of public assemblies should not be based upon the content of the message they seek to communicate. As the European Court of Human Rights has recently stated, it is 'unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest.'¹⁵⁴ This principle is explicitly reflected in the extract from the Netherlands *Public Assemblies Act* cited below. Any restrictions on the visual or audible content of any message displayed or voiced should therefore face heightened (sometimes referred to as 'strict' or 'anxious') scrutiny, and only be imposed if there is an imminent threat of violence. Moreover, criticism of government or State officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly – the European Court has often emphasized that the 'limits of permissible criticism are wider with regard to the government than in relation to a private citizen.'¹⁵⁵

Section 5, Public Assemblies Act, the Netherlands (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.

95. Whether behaviour constitutes the intentional incitement of violence is inevitably a question which must be assessed on the particular circumstances.¹⁵⁶ Some difficulty arises where the message concerns unlawful activity, or where it could be construed as inciting others to commit non-violent but unlawful action. Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct, and should not

¹⁵³ See Article 4(1) ICCPR, and the *Cyprus* case, (1958-59) Yearbook ECHR 174.

¹⁵⁴ *Hyde Park and Others v. Moldova No.1* (2009) at para.26. Here, an event to protest against Moldova's electronic voting in the Eurovision Song Contest was prohibited on the basis that "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events". In finding a violation of Article 11 ECHR, the European Court held that '[s]uch reasons cannot be considered compatible with the requirements of Article 11 of the Convention ...'

¹⁵⁵ For example, *Incal v. Turkey* (1998) at para.54. See also the Human Rights Committee's Concluding Comments on Belarus [1997] UN doc. CCPR/C/79/Add. 86, at para.18, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.86.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.86.En?Opendocument): "Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that 'insult the honour and dignity of officials of State organs' or which 'are aimed at damaging the State and public order and the rights and legal interests of citizens.' These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant."

¹⁵⁶ In *Christian Democratic People's Party 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.'

therefore face restriction on public order grounds. The touchstone must again be the existence of an imminent threat of violence.¹⁵⁷

96. While expression should normally still be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law.¹⁵⁸ 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.'¹⁵⁹ Even then, resort to such speech by participants in an assembly does not of itself necessarily justify the dispersal of the event, and law enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).
97. Where the insignia, uniforms, emblems, music, flags, signs or banners to be played or displayed during an assembly conjure memories of a painful historical past, that should not of itself be reason to interfere with the right to freedom of peaceful assembly to

¹⁵⁷ In the case of *Cisse v. France* (2002), the European Court of Human Rights 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).' 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 which suggested that it intended to use violence in pursuit of its goals. In the case of *Incal v. Turkey* (1998), the applicant's conviction for helping to prepare a political leaflet which 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.¹⁵⁷ See also *Stankov and the United Macedonian Organization* (2001) at paras.102-3, and *United Macedonian Organisation Ilinden and Others v. Bulgaria* (2006) at para.76. In *Christian Democratic People's Party v. Moldova* (No.2) (2010) at para.27, the Court rejected the Moldovan government's assertion that that the slogans ('Down with Voronin's totalitarian regime', 'Down with Putin's occupation regime') even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, and to an instigation to a war of aggression against Russia. The Court held that these slogans could not reasonably be considered to be a call for violence, but rather 'should be understood as an expression of dissatisfaction and protest' – 'a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.'

¹⁵⁸ Article 20(2) ICCPR.

¹⁵⁹ Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20. 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*. See, for example, the Austrian Constitutional Court judgment of March 16 2007 (B 1954/06) upholding a prohibition on an assembly because (in part) national-socialist slogans had been used at a previous assembly (in 2006) with the same organiser. The Austrian *National-Socialist Prohibition Act* 1947 prohibited all national-socialist activities. See also the Holocaust denial cases of *Ernst Zündel v. Canada*, Communication No.953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003) at 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) at 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.'

protect the rights of others.¹⁶⁰ On the other hand, where such symbols are intrinsically and exclusively associated with acts of physical violence, the assembly might legitimately be restricted to prevent the reoccurrence of such violence or to protect the rights of others.

98. The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.¹⁶¹

'Time, Place and Manner' restrictions

99. The types of restriction that might be imposed on an assembly relate to its 'time, place, and manner'. This phrase originates from American jurisprudence, and captures the sense that a wide spectrum of possible restrictions, which do not interfere with the message communicated, is available to the regulatory authority (see further 'Proportionality' above at paragraphs 39-45). In other words, rather than the choice for the authorities being one between non-intervention and prohibition, there are many 'mid-range' limitations that might adequately serve the purpose(s) which 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.
100. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interferences 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 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 paragraphs 61-67 above) by simply regulating freedom of assembly by administrative fiat. Furthermore, (as discussed at paragraphs 134 and 157 below) the use of negotiation and/or mediation can help resolve disputes around assemblies by enabling law enforcement authorities and the event organiser to reach agreement about any necessary limitations.

¹⁶⁰ See, for example, the 'Red Star' case of *Vajnai v. Hungary* (2008) at para.49: 'no real and present danger of any political movement or party restoring the Communist dictatorship.' Cf. *Lehideux and Isorni v. France* (1998); In *Stankov and the United Macedonian Organisation (ILINDEN)* (2001), the Court rejected the Bulgarian government's assertion that 'the context of the difficult transition from totalitarian regimes to democracy, and due to the attendant economic and political crisis, tensions between cohabiting communities, where they existed in the region, were particularly explosive. The events in former Yugoslavia were an example. The propaganda of separatism in such conditions had rightly been seen by the authorities as a threat to national security and peace in the region. See also *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (2009). See also *Soulas v. France* (2008, in French only). Finding no violation of Article 10, the Court's press release emphasizes that 'when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book's readers to share the solution recommended by the author, namely a war of ethnic re-conquest.'

¹⁶¹ See, for example, the Polish Constitutional Court judgment of 10 July 2004 (Kp 1/04); *City of Dayton v. Esrati*, 125 Ohio App. 3d 60, 707 N.E.2d 1140 (1997).

'Sight and Sound'

101. 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 or target audience (see above at paragraphs 33 and 45, and paragraph 123 below).

Restrictions imposed prior to an assembly ('prior restraints')

102. 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 for both those who have to follow them (assembly organisers and participants), and those tasked with enforcing them (the police or other law enforcement personnel). They can take the form of 'time, place and manner' restrictions or outright prohibitions. However, blanket legislative provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restrictions on individual assemblies.¹⁶² Given the impossibility of having regard to the specific circumstance of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, '[s]weeping 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.'¹⁶³
103. An assembly organiser should not be compelled or coerced either to accept whatever alternative(s) the authorities propose, or to negotiate with the authorities about key aspects (particularly the time or place) of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.
104. Prohibition of an assembly 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. 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.

Freedom of association and freedom of assembly

105. Since the right to assemble presumes the active presence of others for its realisation, restrictions upon freedom of association (Article 22 ICCPR and Article 11 ECHR) will often undermine the right to assemble. Freedom of association encompasses the ability of groups of individuals to organise collectively and to mobilise in protest against the State and/or other interests. Restrictions on the right to freedom of association that might undermine freedom of assembly include requiring formal registration before an association can lawfully assemble, prohibiting the activities of unregistered groups,

¹⁶² See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.1 (English translation): 'Inelastic restrictions, which are determined in legal norms as absolute prohibitions, are very rarely regarded as the most considerate measures.'

¹⁶³ See, for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001) at para. 97; *Association of Citizens Radko & Paunkovski v. The Former Yugoslav Republic of Macedonia* (2009) at para.76.

prescribing the scope of an association's mandate,¹⁶⁴ rejecting registration applications, disbanding or prohibiting an association, or imposing onerous financial pre-conditions.

106. Like freedom of peaceful assembly, the right to associate is essential to the effective functioning of democracy and an independent civil society, and such restrictions can therefore rarely be justified. Furthermore, while the right to associate – in a political party, a trade union or other civic body – may logically precede the organisation of public assemblies (see also paragraph 53 above), the right to freedom of peaceful assembly should never be made contingent upon registration as an association.¹⁶⁵ As the European Court of Human Rights itself stated in *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001), 'while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies.'¹⁶⁶

Indirect restrictions on freedom of assembly

107. *Restrictions should not be imposed on other rights which have the effect of burdening freedom of assembly unless there is a compelling justification for doing so.* It is noteworthy that restrictions imposed on *other* rights often indirectly impact upon the enjoyment of the right to freedom of peaceful assembly, and should therefore be taken into consideration when assessing the extent to which a State has met its positive obligations to protect freedom of assembly.¹⁶⁷ For example, restrictions on liberty and freedom of movement within the territory of a State (Article 12 ICCPR, Article 5 ECHR and Article 2 of Protocol 4, ECHR), and across international borders can prevent or seriously delay participation in an assembly.¹⁶⁸ Similarly, restrictions that impact upon a

¹⁶⁴ For example, *Zvozskov v. Belarus* (1039/2001) UN Human Rights Committee, 10 November 2006. 22 B.H.R.C. 114.

¹⁶⁵ See, for example, *The Guidelines for Review of Legislation Pertaining to Religion or Belief*, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the European Commission for Democracy through Law (Venice Commission). The Guidelines state that 'Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that should be addressed: ... It is not appropriate to require lengthy existence in the State before registration is permitted; Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned...' See further, *Kimlyla and Others v. Russia* (2009). See also Article 6 of the United Nations *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (UN GA Res.36/55 of 25 November 1981); and *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*, prepared under the auspices of the OSCE/ODIHR for the benefit of participants in the 1999 OSCE Review Conference.

¹⁶⁶ *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001) at para.92.

¹⁶⁷ For example, in *Balcik and Others v. Turkey* (2007), at para.44: the European Court of Human Rights noted that States must 'refrain from applying unreasonable indirect restrictions upon [the right to assemble peacefully].'

¹⁶⁸ It is worth noting that in the English case of *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; 2 AC 105, the House of Lords held that the use of police common law powers to prevent an *anticipated* breach of the peace (by stopping and searching a bus carrying demonstrators to a protest at an air-base, and escorting the bus back to its point of departure, thereby also detaining those on the bus for several hours) was a disproportionate interference with the applicant's rights to freedom of assembly and expression (since it was both premature and indiscriminate). Furthermore, the police reliance on their common law powers to return the bus to London was not prescribed by law: '[I]t is not enough to justify action that a breach of the peace is anticipated to be a real possibility' (at para.47). In addition, the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, has observed that human rights defenders 'have been prevented from leaving the country by representatives of the authorities at airports or border-crossings. In some of the cases, defenders have not been issued with the documents needed in order to travel. ... A large number of communications on this question have ... been sent to Eastern European and Central Asian States. ... [T]ravel restrictions imposed on

State's obligation to hold free elections (under Article 25 ICCPR¹⁶⁹ and Article 3, Protocol 1) such as the detention of political activists, or the exclusion of particular individuals from electoral lists,¹⁷⁰ can also indirectly curtail the right to freedom of assembly.

Restrictions imposed during an assembly

108. The role of the police or other law enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting imminent violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. 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. In such circumstances, it will be appropriate for other civil authorities (such as an Ombudsman's office) to have an oversight role in relation to the policing operation, and law enforcement personnel should be accountable to an independent body. Furthermore, as noted above at paragraphs 37 and 91, unduly broad discretionary powers afforded to law enforcement officials may breach the principle of legality given the potential for arbitrariness. The detention of participants during an assembly (on grounds of their committing administrative, criminal or other offences) should meet a high threshold given the right to liberty and security of person and the fact that interferences with freedom of assembly are inevitably time sensitive. Detention should be used only in the most pressing situations when failure to detain would result in the commission of serious criminal offences.

Sanctions and penalties imposed after an assembly

109. 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 prosecution or other disciplinary action rather than prior restraint.¹⁷¹ 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 a

defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the *Declaration [on Human Rights Defenders]* and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels".¹ *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006, at paras.57-60. See also note cxlviii below relating to the suspension of the Schengen Agreement.

¹⁶⁹ See also the Human Rights Committee's General Comment No.25 (1996) on article 25 (Participation in public affairs and the right to vote).

¹⁷⁰ See, for example, Application no. 21672/05 by Vidadi Sultanov against Azerbaijan, lodged on 2 June 2005; Application no. 15405/04 by Juma Mosque Congregation and Others against Azerbaijan, lodged on 28 April 2004; Reply from the Committee of Ministers to Written Question no.565, 'The situation for a political prisoner in Azerbaijan' 17 July 2009. Available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11995.pdf> *Kuolelis, Bartosevicius and Burokevicius v. Lithuania* (2008); *Zdanoka v. Latvia* (2006); *Tsonev Anguelov v. Bulgaria* (2006).

¹⁷¹ *Stankov* (2001) at para.94 (cited above at note 121).

disproportionate interference with the right to freedom of assembly or expression.¹⁷² As with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should therefore allow for the imposition of minor sanctions where the offence concerned is of a minor nature.

Defences

110. *Anyone charged with an offence relating to an assembly must enjoy fair trial rights.* All provisions that create criminal or administrative liability must comply with the principle of legality (see above at paragraphs 35-38). Furthermore, organisers and participants should benefit from a 'reasonable excuse' defence. For example, an assembly organiser should not face prosecution for either under- or over- estimating the number of expected participants in an assembly, if this estimation was made in good faith. Similarly, a participant should not be held liable for anything done under the direction of a law enforcement official,¹⁷³ or for taking part in an unlawful assembly if they were not aware 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.
111. Individual participants in any assembly who themselves do not commit any violent act should not be prosecuted even if others in the assembly become violent or disorderly. 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.'¹⁷⁴
112. Assembly organisers should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. Furthermore, organisers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organiser did not intend or directly participate in. Holding organisers of the event liable would be a manifestly disproportionate response since this would imply that organisers are imputed to have responsibility for acts by other individuals (including possible agents provocateur) which could not have been reasonably foreseen.

5. Procedural Issues

Advance notification

¹⁷² For example, *Patrick Coleman v. Australia* (2006) CCPR/C/87/D/1157/2003 at 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). See also *Ezelin v. France* (1991) (assembly), and *Incal v. Turkey* (1998) (expression). See also, David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era* (Hart Publishing, 2010) at pp.104-105.

¹⁷³ An example of such a defence is contained in Sections 6(7) and 6(8), *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 which 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.

¹⁷⁴ At para.52. In *Ziliberberg v. Moldova* (2004) (admissibility, at 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.' See also *Gasparyan v. Armenia* (2009) at para.43; *Galstyan v. Armenia* (2008) at para.115; *Ashughyan v. Armenia* (2008) at para.90. In *Cetinkaya v. Turkey* (Application 75569/01, judgment of 27 June 2006, in French only), the European Court of Human Rights found that the applicant's conviction and fine for mere participation in what the authorities later decided was an 'illegal assembly' (in this case, a press conference at which a statement critical of the authorities had been read out) constituted a violation of Article 11.

113. It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation.¹⁷⁵ Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.
114. 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, ICCPR.¹⁷⁶ 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.’¹⁷⁷
115. It is good practice to require notification only when a substantial number of participants are expected, or not to require prior notification at all for certain types of assembly. Some jurisdictions do not impose a notice requirement for small assemblies (see the extracts from the laws in Moldova and Poland below), or where no significant disruption of others is reasonably anticipated by the organiser (such as might require the redirection of traffic).¹⁷⁸ Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.¹⁷⁹ Where a lone demonstrator is joined by another or others, then the event should be treated as a spontaneous assembly (see paragraphs 126-131 below).

Article 3, Law on Public Assemblies, Republic of Moldova (2008): Definitions

‘Assemblies with a small number of participants’ – public assemblies that gather less than 50 persons.

Article 12(5), Law on Public Assemblies, Republic of Moldova (2008): Exceptions from notification

It is not obligatory to notify local public authorities in the case of assemblies with a small number of participants.

Article 6, Law on Assemblies, Poland (1990)

¹⁷⁵ Ireland is one example where there is no requirement at all for prior notification of static public assemblies (although organisers will generally notify the appropriate local police station). Similarly, the *Public Order Act 1986* in England and Wales does not require prior notification for open-air public meetings. See also Nathan W. Kellum, ‘Permit Schemes: Under Current Jurisprudence, what Permits are Permitted?’ 56 *Drake L. Rev.* 381 (2007-08).

¹⁷⁶ See U.N. Human Rights Committee, *Kivenmaa v. Finland* (1994). See also the Human Rights Committee’s Concluding Comments on Morocco [1999] UN doc. CCPR/79/Add. 113, at para.24: The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in *de facto* limits of the right of assembly, ensured in article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases. Available at: http://www.unhcr.org/refworld/country..HRC..MAR_456d621e2.3ae6b01218.0.html

¹⁷⁷ *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p.119.

¹⁷⁸ See, further, Neil Jarman and Michael Hamilton, ‘Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly’, 1(2) *Journal of Human Rights Practice* 208-235 (2009) at 218.

¹⁷⁹ See, for example, Kellum at note clxxv above, concluding (at 425) that ‘authoritative precedent supports the view that permit schemes should be limited in scope’ and ‘[i]ndividuals and small group gatherings should never be subjected to such tedious requirements.’

1. *Assemblies organised 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 organisations, 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 organisation of an assembly does not require notification.*

116. Any notification process should not be onerous or bureaucratic, as this would undermine the freedom by discouraging those who might wish to hold an assembly. Furthermore, 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 (for example, by deploying police officers, equipment etc),¹⁸⁰ 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. While laws may legitimately specify a minimum period of advance notification prior to an assembly, any outer time limit should not preclude the advance planning of large scale assemblies. When a certain time limit is set forth by the law, it should be only indicative.
117. The official receiving the notice should issue a receipt explicitly confirming that the organisers of the assembly are in compliance with applicable notice requirements (see the example from Moldova below). The notice should also be communicated immediately to all State organs involved in the regulatory process, including the relevant law enforcement agencies.

Article 10(3), Law on Public Assemblies, Republic of Moldova (2008)

10(3) The local public administration authority shall register the prior declaration and issue to the organiser a stamped copy of it, which should contain the number, date and hour of registration of the declaration.

Notification, not Authorization

118. Any legal provisions concerning advance notification should require an assembly organiser to submit a notice of intent to hold an assembly, not a request for permission.¹⁸¹ A permit requirement is more prone to abuse than notification, and may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that in a number of jurisdictions, permit procedures have been declared unconstitutional.¹⁸²

¹⁸⁰ In *Kuznetsov v. Russia* (2008), the European Court of Human Rights held (at para.43), that ‘merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability’. In this case, late notification did not prevent the authorities from adequately preparing for the assembly.

¹⁸¹ See also note 66 above citing *Balçık and Others v. Turkey* (2007) at para.49 in which the European Court of Human Rights suggests that State provision of such preventive measures is one of the purposes of prior notification.

¹⁸² The Constitutional Court of Georgia has annulled part of the law (Article 8 para 5) which allowed a body of local government to *reject* a notification (thus effectively creating a system of prior license rather than prior notification),

119. Nonetheless, a permit requirement based on a legal presumption that a permit for use of a public place *will* be issued (unless the regulatory authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.¹⁸³ Those countries in which a permit is required are encouraged to amend domestic legislation so as to require only notification.¹⁸⁴ 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. As emphasized at paragraphs 94-98 above, the authorities must not deny the right to assemble peacefully simply because they disagree with the merits of holding an event for the organiser's stated purpose.¹⁸⁵
120. There should be provision in law that in the event of a failure on the part of the authorities to respond promptly to a notification, the organisers of a public assembly may proceed with the activities according to the terms notified without restriction (see the example from the Armenian law below). Even in countries where authorization rather than notification is still required, authorization should be presumed granted if a prompt response is not given.

Article 12, Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

1. The authorized body shall consider the notification within 72 hours of receiving it, in the order in which notifications have been received.

...

8. Should the authorized body not issue a decision prohibiting convention of the mass public event within 72 hours of receiving the notification, the organizers shall have the right to conduct the mass public event on terms and conditions set forth in the notification.

121. If more people than anticipated by the organiser gather at a notified assembly, the relevant law enforcement agencies should facilitate the assembly so long as the participants remain peaceful (see also 'defences' at paragraphs 110-112 above).

Simultaneous assemblies

122. All persons and groups have an equal right to be present in public places to express their views. Where two or more assemblies are notified for the same place and time, the

Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia (5 November 2002) N2/2/180-183. See also *Mulundika and others v. The People*, Supreme Court, Zambia, 1 BHRC 199 (10 January 1996); *All Nigeria Peoples Party v. Inspector General of Police* (Unreported, June 24, 2005) (Fed HC (Nig)); *Rev. Christopher Mtikila v. Attorney-General*, High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993. Vol.1 *Commonwealth Human Rights Law Digest*, 1996, p.11. In the latter case, the Court held that 'the requirement of a permit in order to organise a public meeting is unconstitutional for it infringes the right to freedom of peaceful assembly as guaranteed in the Constitution.' Furthermore, 'in the Tanzanian context this freedom is rendered the more illusory by the stark truth that the power to grant permits is vested in cadres of the ruling party.'

¹⁸³ See generally *Forsyth County, Georgia v. The Nationalist Movement* 505 U.S. 123 (1992). Such a system derives from the US jurisprudence, and approximates a notification system because there is a legal presumption against denial of a permit absent a sufficient showing by the government. See also Kellum, note clxxv above.

¹⁸⁴ Such reforms have been welcomed by the European Court of Human Rights. See, for example, *Barankevich v. Russia* (2007) at para.28: 'The Court welcomes the amendment in 2004 of the law on public assemblies, to which the Government referred, whereby the requirement of prior authorisation was replaced by simple notification of the intended assembly.'

¹⁸⁵ *Hyde Park v. Moldova (No.3)* (2009) at para.26.

events should be facilitated together if they can be accommodated.¹⁸⁶ If this is not possible (due, for example, to lack of space) the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a random method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may, for example, be a 'first come, first served' rule, although abuse of such a rule (where an assembly is deliberately notified early to block access to other events) should not be allowed. The authorities may even hold a ballot to determine which assembly should be facilitated in the notified location (see the example from the law in Malta below). A prohibition on conducting public events in the same place and at the same time of another public event where they can both be reasonably accommodated is likely to be a disproportionate response.

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

When two or more persons whether as individuals or on behalf of an association simultaneously give notice of their intention of holding 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.

Counter-demonstrations

123. Persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.¹⁸⁷ 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. Such related simultaneous assemblies should be facilitated so that they occur within 'sight and sound' of their target in so far as this does not physically interfere with the other assembly (see also paragraphs 33, 45 and 101 above).
124. Nonetheless, 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.'¹⁸⁸ 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 organised.¹⁸⁹ Furthermore, an evidential question is raised where the intention of the

¹⁸⁶ See, for example, *Hyde Park v. Moldova No.2* (2009) at para.26: 'There was no suggestion that the park in which the assembly was to take place was too small to accommodate all the various events planned there. Moreover, there was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities or other groups meeting in the park on the day in question. Rather their intention was to hold a peaceful rally in support of freedom of speech. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need.'

¹⁸⁷ See *Öllinger v. Austria* (2006), at 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 concerned 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).

¹⁸⁸ See European Court of Human Rights, *Plattform "Ärzte für das Leben" v. Austria* (1988) at para 32.

¹⁸⁹ See *Christian Democratic People's Party v. Moldova (no. 2)* (2010) at para.28. Here the Court held that it 'was the task of the police to stand between the two groups and to ensure public order ... Therefore, this reason

organiser of a counter-demonstration is specifically to prevent the other assembly from taking place – effectively, to destroy the rights of others. In such cases, Article 5 ICCPR and Article 17 ECHR may be engaged, and the counter-demonstration will not enjoy the protection afforded to the right to freedom of peaceful assembly (see paragraph 15 above).

Exceptions from the notification process

125. It will be for the legislature in each jurisdiction to determine whether there should be any specific exceptions from the notification process. Exceptions must not be discriminatory in effect and should be targeted towards a class of assembly rather than a class of organiser.

Spontaneous assemblies

126. A spontaneous assembly is generally regarded as one organised in response to some occurrence, incident, other assembly, or speech, where the organiser (if there is one) is *unable* to meet the legal deadline for prior notification, or where there is no organiser at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed.¹⁹⁰
127. While the term ‘spontaneous’ does not preclude the existence of an organiser, spontaneous assemblies may also include gatherings with no identifiable organiser. Such assemblies are coincidental, and occur for instance, when a crowd gathers at a particular location with no prior advertising or invitation. They often result because of commonly held knowledge, or knowledge disseminated via the internet, about a particular event.¹⁹¹ Numbers may be swelled by passers-by who choose to join the assembly, although it is also possible that once a crowd begins to gather, mobilization can be achieved by various forms of instantaneous communication (phone, text message, word of mouth, internet etc). Such communication should not, of itself, be interpreted as evidence of prior organization. Where a lone demonstrator is joined by another or others, the gathering should be treated similarly to a spontaneous assembly.

Law on Public Assemblies, Republic of Moldova (2008)

Article 3, Main definitions

For the purposes of this Law: (...) a spontaneous assembly shall mean an assembly, that has been initiated and organized as a direct and immediate response to social events, and which, in the opinion of participants, cannot be postponed, and as a result the usual notification procedure is not possible...

for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention.’

¹⁹⁰ See the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB*, which established that the right of assembly recognized in Article 62 para. (1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the causing event) and assemblies held without prior organisation. The Court stated that ‘it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.’ See also the *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69,315 (350).

¹⁹¹ See, for example, *Kivenmaa v. Finland*, Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994) where the Human Rights Committee held that ‘the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration.’ As has been noted elsewhere (see Nowak for example, note xxix above), the dissenting opinion is much more persuasive.

Article 12, Exceptions from notification

(1) *In case of spontaneous assemblies, notification is allowed without formal written confirmation or within the provided 5 days prior the organization of assembly; it is sufficient to communicate the place, data, time, scope and the organisers*

(2) *The organisers exercise the right to spontaneous assembly provided in (1) with good-faith and inform the local public authorities immediately about their intention as it becomes known in order to facilitate the provision of the necessary services by the local public authorities.*

Article 10(1), Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

With the exception of spontaneous public events, mass public events may be conducted only after notifying the authorized body in writing.

Section 6(2)(b), Public Processions (Northern Ireland) Act (1998)

Where notification is not 'reasonably practicable' notification should be given 'as soon as it is reasonably practicable.'

128. Spontaneous assemblies should be lawful, and are to be regarded as an expectable (rather than exceptional) feature of a healthy democracy. Of course, the organiser's ability to meet a deadline for prior notification will depend on the length of the required notification period itself (and these requirements vary significantly between participating States). Laws regulating freedom of assembly should explicitly provide either for exemption from prior notification requirements for spontaneous assemblies (where giving advance notice is impracticable), or for a shortened notification period (whereby the organiser must notify the authorities as soon as is practicable). Such an exception would only apply in circumstances where an organiser is *unable* to meet the legally established deadline.¹⁹² It is appropriate that organisers should inform the authorities of their intention to hold an assembly as soon as is possible. Only in this way can the authorities reasonably be expected to fulfil their positive obligations to protect the assembly, and to maintain public order and uphold the rights and freedoms of others.
129. The European Court of Human Rights has clarified what it considers will constitute such 'special circumstances' (*i.e.* when the right to hold spontaneous events may override the obligation to give prior notification). These circumstances arise 'if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.'¹⁹³
130. Whether or not a specific organiser was unable to meet the deadline for prior notification, or whether a delay in holding the assembly would have rendered its message obsolete, are questions of fact and must be decided on the particular circumstances of each case. For example, even within a sustained long-running protest campaign (which might ordinarily suggest that timely notification would be possible), there may be events of urgent or special significance to which an immediate response by way of a spontaneous assembly would be entirely justified.

¹⁹² See further, for example, *Rai and Evans v. United Kingdom* (2009): 'The present applicants do not suggest they had insufficient time to apply for the authorisation and, given the subject matter of their demonstration (the ongoing British involvement in Iraq) and the evidence of their prior knowledge and planning, the time-limits set down in the 2005 Act did not constitute an obstacle to their freedom of assembly.' See also, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.30.2 (English translation).

¹⁹³ See *Bukta and Others v. Hungary* (2007) at para.32; *Éva Molnár v. Hungary* (2008) at para.38.

131. Even where no such exemption for spontaneous assemblies exists in the law, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. The European Court of Human Rights has stated that ‘a decision to disband such assemblies ‘solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.’¹⁹⁴

Decision-making and review process

132. 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 organisers 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-participant stakeholders. In doing so, it may be necessary to facilitate meetings with the event organiser and other interested parties.
133. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organiser, and the organiser 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 organiser with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a cooperative, rather than confrontational, relationship between the organisers and the authorities.
134. Assembly organisers, the designated regulatory authorities, law enforcement officials, and other parties whose rights might be affected by an assembly, should make every effort to reach mutual agreement on the time, place and manner of an assembly. If, however, agreement is not possible and no obvious resolution emerges, negotiation or mediated dialogue may help reach a mutually agreeable accommodation in advance of the notified date of the assembly. 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 organisations not affiliated with either the State or the organiser. The presence of parties’ legal representatives may also assist in facilitating discussions between the assembly organiser and law enforcement authorities. Such dialogue is usually most successful in establishing trust between parties if it is begun at the earliest possible opportunity. Whilst not always successful, it serves as a preventive tool helping to avoid the escalation of conflict or the imposition of arbitrary or unnecessary restrictions.
135. Any restrictions placed on an assembly should be communicated in writing to the event organiser 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). The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the

¹⁹⁴ *Bukta v. Hungary* (2007) at para.36. See also the subsequent decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, finding that: ‘...[I]t is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.’ See also *Oya Ataman v. Turkey* (2006) at paras.41 and 43. It is noteworthy that in the case of *Aldemir and Others v. Turkey* (2007), the dissenting opinion of Judges Türmen and Mularoni stated that ‘the majority fail ... to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces.’ See also *Kuznetsov v. Russia* (2008), at note 180 above.

- circumstances.¹⁹⁵ Such decisions should also be communicated to the organiser within a reasonable timeframe – *i.e.* sufficiently far in advance of the date of a proposed event to allow the decision to be judicially appealed to an independent tribunal or court before the notified date of the event.
136. The regulatory authority should 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 web-site.¹⁹⁶
137. The organiser of an assembly should have recourse to an effective remedy through a combination of administrative and judicial review. 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.
138. Ultimately, the assembly organisers should 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. The burden of proof and justification should remain on the regulatory authorities. Any such review must also be prompt so that the case is heard and the court ruling published before the planned assembly date (see also paragraph 66 above). This makes it possible, for example, to hold the assembly if the court invalidates the restrictions.¹⁹⁷ To expedite this process, the courts should be required to give priority to appeals concerning restrictions on assemblies. The law may also provide for the option of granting organisers injunctory relief. That is, in the case that a court is unable to hand down a final decision prior to the planned assembly, it should have the power to issue a preliminary injunction. The issuance of an injunction by the court in the absence of the possibility of a final ruling must necessarily be based on the court's weighing of the consequences of its issuance.

Article 14(2) Law on Assemblage and Manifestations, Republic of Georgia (1997, as amended 2009)

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

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

¹⁹⁵ See, for example, *Makhmudov v. Russia* (2007) at para.68.

¹⁹⁶ See, for example, the website of the Parades Commission in Northern Ireland, at: <http://www.paradescommission.org/>. In *Axen v. Germany* (1983), which related to the issue of fair trial, the European Court of Human Rights 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).'

¹⁹⁷ See *Baczkowski and Others v. Poland* (2007) at paras.68-78. See also, determination of the Constitutional Law of the Russian Federation on the appeal of Lashmankin Alexander Vladimirovich, Shadrin Denis Petrovich and Shimovolos Sergey Mikhailovich against the violation of their Constitutional rights by the provision of Part 5, Article 5 of the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing, Saint-Petersburg (2 April, 2009), affirming that the organizers of a public event were entitled to judicial remedy before the date of the planned event. See also Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at paras. 24.4.

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

139. The parties and the reviewing body should have access to the evidence on which the regulatory authority based its initial decision (such as relevant police reports, risk assessments, or other concerns or objections raised). Only then can the proportionality of the restrictions imposed be fully assessed. If such access is refused by the authorities, the parties should be able to obtain an expeditious judicial review of the decision to withhold the evidence.¹⁹⁸ The disclosure of information enhances accessibility and transparency, and the prospects for the co-operative and early resolution of any contested issues.
140. It is good practice for the regulatory authority to have a legal obligation to keep the regulatory framework under review and to make recommendations for its improvement. It is also 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.¹⁹⁹ At the very least, the regulatory authority should publish annual statistics and make these accessible to the public.²⁰⁰

Part II - Implementing Freedom of Peaceful Assembly Legislation

Introduction

141. Part I of these Guidelines focused on the parameters of freedom of assembly and the drafting of legislation which is consistent with international human rights standards. These earlier sections addressed the substantive grounds for restriction and the procedures which accord priority to the freedom to assemble. The implementation of freedom of assembly legislation, 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 second section.

¹⁹⁸ See, for example, *Makhmudov v. Russia* (2007) at para.68: 'In certain instances the respondent Government alone have access to information capable of corroborating or refuting specific allegations. The failure on a Governments' part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's claims.' In this case, 'the Government did not corroborate the affirmation with any material or offer an explanation as to why it was not possible to produce evidence substantiating their allegation' See also the interlocutory appeal in *Tweed v. Parades Commission for Northern Ireland* [2006] UKHL 53, where the Court held that the need for disclosure (of, *inter alia*, police reports and an assessment of local circumstances by Authorized Officers of the Parades Commission) 'will depend on a balancing of the several factors, of which proportionality is only one, albeit one of some significance.'

¹⁹⁹ Article 14(3) *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: '[t]he 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.'

²⁰⁰ It is noteworthy that the European Court of Human Rights has articulated a broader interpretation of the 'freedom to receive information', thereby recognizing a right of access to information. See *Sdružení Jihočeské Matky c. la République tchèque* (2006, judgment in French only).

142. 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, municipal authorities and other stakeholders such as monitors and stewards. Measures taken to implement freedom of assembly legislation should therefore neither unduly impinge on 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 3 above (including non-discrimination and good administration) are of particular relevance at the implementation stage.
143. Furthermore, the law enforcement agencies and judicial system 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 which were part of the drafting of the first edition of these Guidelines, that the independence of both law enforcement personnel and judiciary from partisan influence or, in the case of the judiciary, from executive branch interference must be assured. Law enforcement personnel 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 law enforcement and justice system.²⁰¹

6. Policing Public Assemblies

144. Diversifying protest tactics and new modes of communication undoubtedly present challenges for the policing of public assemblies. Nonetheless, the role of law enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights (see paragraphs 31-34, and 104 above).²⁰² This obligation derives from the State's general duty to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.²⁰³

A human rights approach to Policing

145. A human rights approach to policing assemblies requires that the authorities consider first their duty to facilitate the enjoyment of the right to freedom of peaceful assembly. The State has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.²⁰⁴ More broadly, the State also has a positive obligation to protect the right to life (Article 6 ICCPR, Article 2 ECHR) and the right to freedom from inhuman or degrading treatment (Article 7 ICCPR, Article 3 ECHR). These rights enshrine some of the most basic values protected by international human rights law, from which no derogation is permitted.²⁰⁵

²⁰¹ 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, at para.L, which urges member States to consider whether their institutions of law enforcement are compromised by 'institutional racism'.

²⁰² See, for example, the Council of Europe's *European Code of Police Ethics* (2001) and related commentary which sets out good practice principles for member State governments in preparing their internal legislation and policing codes of conduct.

²⁰³ See generally, *OSCE Human Dimension Commitments*, Volume 1 (Thematic Compilation) (2nd ed. 2005) at pp.7-8.

²⁰⁴ *Plattform 'Ärzte für das Leben' v. Austria* (1988) at para.32.

²⁰⁵ See, for example, *Giuliani and Gaggio v. Italy* (2009, referred to the Grand Chamber on 1 March 2010) at para.204.

The policing of assemblies must also be informed by the principles of legality, necessity, proportionality and non-discrimination (see chapter 3 above).

146. **The rights of law enforcement personnel should be recognised:** In the fulfillment of their obligation to protect human rights, regard should also plainly be had to the rights, health and safety of police officers and other law enforcement personnel. The nature of their job may place them in difficult and dangerous situations, in which they have to make split-second judgments based upon uncertain and rapidly evolving facts. 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.²⁰⁶

Training

147. 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 minimises conflict, and should include 'soft skills' such as negotiation and mediation. Training should also include relevant human rights issues,²⁰⁷ and should cover the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.²⁰⁸ In this way, training can help ensure that the culture and ethos of law enforcement agencies adequately prioritizes a human rights centered approach to policing.
148. The UN Code of Conduct for Law Enforcement Officials, together with other relevant international human rights standards,²⁰⁹ should form the core of law enforcement training. Domestic legislation should also provide standards that will guide the actions of law enforcement personnel, and such provisions should be covered in the preparation and planning for major events. A 'diversity awareness' perspective should be integrated into the development and implementation of law enforcement training, policy and practice.

Extract from OSCE Guidebook on Democratic Policing (2008): Use of Force paragraph 72 (references omitted)

72. Police officers should be trained in proficiency standards in the use of force, 'alternatives to the use of force and firearms, including the peaceful settlement of

²⁰⁶ Della Porta and Reiter, for example, note that Post-Genoa, a one month course was held by sociologists and psychologists for police deployed in Florence. Donatella della Porta and Herbert Reiter, 'the policing of global protest: the g8 at Genoa and its aftermath', chapter 2 in Donatella della Porta, Abby Peterson, and Herbert Reiter, *the policing of transnational protest* (Ashgate, 2006) at p.38.

²⁰⁷ See, for example, Article 15, *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 '[t]he 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.'

²⁰⁸ Issues around police training may be relevant in assessing whether a State has fulfilled its positive obligations under Article 2 ECHR – see, for example, *McCann v. UK* (1995) at para.151.

²⁰⁹ For example, the *OSCE Guidebook on Democratic Policing* (2008); the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; the Council of Europe, *European Code of Police Ethics* (2001); Amnesty International, *Ten Basic Human Rights Standards for Law Enforcement Officials* (AI Index: POL 30/04/98). The full text of the latter principles (available online at: <http://web.amnesty.org/library/index/engpol300041998>) contains further useful explanatory guidance relating to their implementation.

conflict, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as technical means, with a view to limiting the use of force and firearms.’ Practical training should be as close to reality as possible. Only officers whose proficiency in the use of force has been tested and who demonstrate the required psychological skills should be authorized to carry guns.

**Extract from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2nd General Report:²¹⁰
Training of law enforcement personnel**

59. ... the CPT wishes to emphasise the great importance it attaches to the training of law enforcement personnel (which should include education on human rights matters - cf. also Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer. Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of fundamental safeguards for detainees and prisoners.

60. In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.

Policing assemblies – general principles of good practice

149. **Law enforcement agencies should be proactive in engaging with assembly organizers:** Officers should seek to send clear messages that inform crowd expectations and reduce the potential for conflict escalation.²¹¹ Furthermore, there should be a nominated point of contact within the law enforcement agency whom protesters can contact before or during an assembly. These contact details should be widely advertised.²¹²
150. **The policing operation should be characterized by a policy of ‘no surprises’:** Law enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them.²¹³

²¹⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): The CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2009, at p.83. Available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

²¹¹ Her Majesty’s Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (November 2009) at p.54. In one UK example, the Metropolitan Police Service used Bluetooth messaging as a means to communicate with protesters during the Tamil protests in 2009, ‘explaining the policing approach and stating their intention not to disperse protesters and to allow the protest to continue.’ See Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest? Follow-up: Government’s Response to the Committee’s Twenty-Second Report of Session 2008-09* (London: HMSO, HL Paper 45; HC 328, 3 February 2010) at p.7.

²¹² Joint Committee on Human Rights, *Demonstrating Respect for Rights? Follow-up* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009), at para.14.

²¹³ Ralph Crawshaw, *Police and Human Rights: A Manual for Teachers, Resource Persons and Participants in Human Rights Programmes* (2nd Edition) (Martinus Nijhoff Publishers: Leiden and Boston, 2009) at p.237.

151. **Law enforcement command structures should be clearly established:** Clearly identifiable command structures and well defined operational responsibilities enable proper coordination between law enforcement personnel, between law enforcement agencies and the assembly organiser, and help ensure accountability for operational decisions.
152. **Inter-agency communication should be ensured:** It is imperative that law enforcement officials, representatives of regulatory authorities, and other public safety agencies (fire and ambulance services, for example) are able to communicate with one another and exchange data during public assemblies. As chapter 7 (below) emphasizes, it is also vital that the assembly organisers 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.²¹⁴
153. **Law enforcement personnel should be clearly and individually identifiable:** Law enforcement personnel 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 persons from reading it during an assembly.
154. **Intrusive anticipatory measures should not be used:** Unless a clear and present danger of imminent violence actually exists, law enforcement officials should not intervene to stop, search and/or detain protesters *en route* to an assembly.²¹⁵
155. **Powers to intervene should not always be used:** The existence of police (or other law enforcement) powers to intervene, disperse an assembly, or 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 its accommodation and facilitation, and over-zealous or heavy-handed policing is likely to significantly undermine police-community relationships. Furthermore, the policing costs of protecting freedom of assembly and other fundamental rights are likely to be significantly less than the costs of policing disorder borne of repression. Post-event prosecution for violation of the law remains an option.
156. **The response of law enforcement agencies must be proportionate:** A wide range of options are available to the relevant authorities, and their choice is not simply one between non-intervention or the enforcement of the prior restrictions, and termination or dispersal.
157. **Using mediation or negotiation to de-escalate tensions during an assembly:** If a standoff or dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. As noted at paragraph 142 above, such interventions can significantly help avert the

²¹⁴ For example, in *Giuliani and Gaggio v. Italy* (2009) at para.12 it was accepted by the parties that the *Carabinieri* and police officers could not communicate directly amongst themselves by radio but could only contact the control room.

²¹⁵ A violation of Article 11 ECHR was found in the case of *Nisbet Özdemir v. Turkey* (no. 23143/04, judgment of 19 January 2010), where the applicant was arrested while on her way to an unauthorised demonstration at Kadıköy landing stage in Istanbul in February 2003 to protest against the possible intervention of US forces in Iraq. The Court also found a violation of the investigative obligation under Article 3. See also note cxxxv above, referring to *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; 2 AC 105, and the report by the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006, at paras.57-60

occurrence of violence. The Municipality of Warsaw, for example, deploys specialised civil servants who may be present at an assembly, and who can facilitate communication between the organisers and law enforcement officials.²¹⁶ (See also paragraph 134 above regarding the use of negotiation and/or mediation to help resolve disputes in advance of assemblies).

158. **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 accidental bystanders or observers) being present in the vicinity of an assembly.²¹⁷ See further the discussion of 'kettling'²¹⁸ at paragraph 160 below.
159. **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.²¹⁹ Law enforcement officials should not therefore treat a crowd as homogenous if detaining participants or (as a last resort) forcefully dispersing an assembly.²²⁰ See further the discussion of 'kettling' at paragraph 160 below.
160. **Strategies of crowd control that rely on containment (a tactic known in the UK as 'kettling') must only be used exceptionally:** Such strategies tend to be indiscriminate in that they do not distinguish between participants and non-participants, or between peaceful and non-peaceful participants. While it is undoubtedly the case that allowing some individuals to cross a police line whilst at the same time preventing others from doing so can exacerbate tensions, an absolute cordon permitting no egress from a particular area potentially violates individual rights to liberty and freedom of movement.²²¹ As noted by the UK's Joint Committee on Human Rights, 'it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area, as this fails to consider whether individual circumstances require a different response.'²²²

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

Use of police lines

²¹⁶ See Article 11, Law on Assemblies, Poland (1990): (1) The communal authority may delegate its representatives to an assembly; (2) When so requested by the organiser, the communal authority shall, to the extent required and possible, secure police protection under provisions of the Act of 6 April 1990 on the Police (JoL No. 30, item 179) to see to a proper progress of the assembly, and may delegate its representative to attend the assembly; (3) Upon arriving at the site of the assembly, the delegated representatives of the communal authority shall be obliged to produce their authorisation to the leader of the assembly.

²¹⁷ Some Codes of Administrative Offences refer explicitly to 'active participation'. See also *Ziliberberg v. Moldova* (2004) (2004, admissibility, at p.11).

²¹⁸ 'Kettling' is the term used in the UK to describe a strategy of crowd management that relies on containment.

²¹⁹ *Ziliberberg v. Moldova* (2004, admissibility) at p.10 citing *Ezelin v. France* (1989) at para. 34.

²²⁰ See *Solomou and Others v. Turkey* (2008): violation of Article 2 in relation to whether the shooting of a demonstrator could be justified by the aim of quelling a 'riot or insurrection' under Article 2(2)(c) ECHR. Here, the Court regarded it of critical importance that despite demonstrators being armed with iron bars, Mr. Solomou was himself not armed and was peaceful.

²²¹ See further note 135 above.

²²² Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest? Follow-up* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009) at paras.28-29.

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.

161. **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, regard should be had to international jurisprudence concerning the right to private and family life, the right to liberty, and the right to freedom of movement. 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 law enforcement agencies 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 (see paragraphs 31-34 and 104 above).²²³ The retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences must be strictly limited by law.²²⁴
162. **Detention conditions must meet minimum standards:** Where individuals are detained, the authorities must ensure adequate provision for first aid, basic necessities (water and food), opportunity to consult with lawyers, and the separation of minor from adult, and male from female detainees. Detainees must not be ill-treated whilst being held in custody.²²⁵ 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.
163. **Facilitating peaceful assemblies which do not comply with the requisite preconditions or which substantially deviate from the terms of notification:** If the organiser fails or refuses to comply with any requisite preconditions for the holding of an

²²³ Article 9 ICCPR and 5 ECHR protect the right to liberty and security of person. For example, in *Gillan and Quinton v. the United Kingdom* (2010), at para.61 (citing *Foka v. Turkey*, 2008, in which the applicant was subjected to a forced search of her bag by border guards) the Court noted that 'any search effected by the authorities on a person interferes with his or her private life.' In *Gillan and Quinton*, the Court did not finally determine the issue of whether Article 5 was engaged by the use of police stop and search powers under s.44 Terrorism Act 2000. *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 ECHR. While not every restriction imposed on a person's liberty will necessarily amount to a *deprivation* of liberty as stipulated in article 5 ECHR, any restrictions must be deemed strictly necessary and be proportionate to the aim being pursued. See, for example, *Guzzardi v. Italy* (1980) at 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.' Moreover, *restrictions* on liberty may still constitute a violation of as protected by Article 12 ICCPR, and Article 2 of the Fourth Protocol, ECHR.

²²⁴ See *S. and Marper v. United Kingdom* (2008) in which the blanket and indiscriminate nature of powers concerning the retention of such data led the European Court of Human Rights to find a violation of the right to private and family life.

²²⁵ *Mammadov (Jalaloglu) v. Azerbaijan* (2007).

assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. The European Court of Human Rights has stated that ‘a decision to disband such assemblies ‘solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.’²²⁶ Such events may include ‘flash mobs’ (defined in note 39) the *raison d’être* of which demands an element of surprise that would be defeated by prior notification. 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. As stated in Basic Standard 4 of Amnesty International’s *Ten Basic Human Rights Standards for Law Enforcement Officials*,²²⁷ law enforcement personnel should ‘[a]void using force when policing unlawful but non-violent assemblies.’

164. **Policing peaceful assemblies that turn into non-peaceful assemblies:** Assemblies can change from being peaceful to non-peaceful and thus forfeit the protection afforded under human rights law (see paragraphs 25-28 above). Such an assembly may thus be terminated in a proportionate manner. However, the use of violence by a small number of participants in an assembly (including the use of inciting language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.
165. **Dispersal of assemblies:** 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. These rules need not be elaborated in legislation, but should be expressed in domestic law enforcement guidelines, and legislation should require that such guidelines be developed. 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).
166. 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.²²⁸

²²⁶ *Bukta and Others v. Hungary*, (2007) at para.36; *Éva Molnár v. Hungary* (2008) at para.36. See also the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB* at notes cxc and cxciv above.

²²⁷ AI 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.

²²⁸ Contrast, for example, the Court’s assessment in *Rai and Evans v. United Kingdom* (2009, admissibility) of the ‘the reasonable and calm manner in which the police ended the demonstration’ with the Court’s assessment of the police intervention in *Samüt Karabulut v. Turkey* (2009) at paras.37-38, where the Court considered that ‘the dispersal was quite prompt’ and it was ‘not satisfied that the applicant had sufficient time – together with his fellow demonstrators – to manifest his views’ (citing *Oya Ataman*, 2006 at paras.41-42; *Balçık and Others v. Turkey*, 2007 at para.51, and *cf. Éva Molnár v. Hungary*, 2008 at paras.42-43). See also *Kandzhov v. Bulgaria* (2008) at para.73 (finding a violation of Article 10 ECHR): ‘the applicant’s actions on 10 July 2000 were entirely peaceful, did not obstruct any passers-by and were hardly likely to provoke others to violence ... However, the authorities in Pleven chose to react vigorously and on the spot in order to silence the applicant and shield the Minister of Justice from any public expression of criticism.’

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

(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.

167. 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. Similarly, if 'agents provocateurs' infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the 'agents provocateurs' rather than terminating or dispersing the assembly, or declaring it to be unlawful (see also paragraphs 131 and 163 above, regarding the facilitation of peaceful assemblies even where the organiser has not complied with the requisite preconditions established by law).
168. If dispersal is deemed necessary, the assembly organiser and participants should be clearly and audibly informed prior to any intervention by law enforcement personnel. Participants should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further. 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 (see further chapter 8 below, 'Monitoring Freedom of Peaceful Assembly'). See further 'Use of force' at paragraphs 171-178 below.

169. **Photography and video recording (by both law enforcement personnel 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 law enforcement personnel is permissible. However, while monitoring individuals in a public place for identification purposes does not necessarily give rise to an interference with their right to private life,²²⁹ the recording of such data and the systematic processing or permanent nature of the record kept may give rise to violations of privacy.²³⁰ Moreover, photographing or videoing assemblies for the purpose of gathering intelligence can discourage individuals from enjoying the freedom, and should therefore not be done routinely. Photographing or video recording the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny.²³¹ Law enforcement agencies should develop and publish a policy relating to their use of overt filming/photography at public assemblies.²³²
170. **Post-event debriefing of law enforcement officials (particularly after non-routine events) should become standard practice:** Debriefing might usefully address a number of specific issues including human rights issues, health and safety considerations, media safety, community impact considerations, operational planning and risk assessment, communications, command issues and decision-making, tactics, resources and equipment, and future training needs. Event organisers should be invited to participate in debriefing sessions held by law enforcement officials after the assembly.

Use of Force

171. The inappropriate, excessive or unlawful use of force by law enforcement authorities can violate fundamental freedoms and protected rights, undermine police-community relationships, and itself cause widespread tension and unrest. The use of force should therefore be regulated by domestic law.²³³ Such provisions should set out the

²²⁹ 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 ECHR is, in fact, engaged. See *P.G and J.H. v. United Kingdom* (2001), para.57. A person's private life may be engaged 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.

²³⁰ See, for example, *Leander v. Sweden* (1987) at para.48; *Rotaru v. Romania* [GC] (2000) at paras.43-44. In *Amann v. Switzerland* [GC] (2000) at paras 65-67, the compilation of data by security services was held to constitute an interference with the applicants' private lives despite the fact that covert surveillance methods were not used. See also *Perry v. the United Kingdom* (2003) at para.38, and the UK case of *Wood v. MPC* [2009] EWCA Civ 414. See also the European Commission of Human Rights decisions in *X v. UK* (1973, admissibility) and *Friedl v. Austria* (1995) regarding the use of photographs.

²³¹ The confiscation and deletion of video footage has been raised in the pending case of *Matasaru v. Moldova* (Application no.44743/08, lodged on 22 August 2008).

²³² See, for example, the UK case of *Wood v. MPC* [2009] EWCA Civ 414.

²³³ 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, paragraph 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. The European Court of Human Rights has noted that '...[a]s the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and

- 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.
172. Governments should develop a range of means of response, which enable a differentiated and proportional use of force. These responses 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.²³⁴ This again emphasizes the requirement that the State adequately resource its law enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly.
173. 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 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.'²³⁵ 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 ...'²³⁶
174. The right to life (Article 6 ICCPR, Article 2 ECHR) covers not only intentional killing, but also where the use of force results in the deprivation of life. Its protection entails 'a stricter and more compelling test of necessity' – 'the force used must be strictly proportionate to the achievement of the permitted aims.'²³⁷ When assessing the use of force by law enforcement officials, the European Court of Human Rights has applied the evidential standard, 'beyond reasonable doubt'.²³⁸ The burden or proof 'rests on the Government to demonstrate with convincing arguments that the use of force was not excessive'²³⁹ and 'proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar un rebutted presumptions of fact...' ²⁴⁰ What will be

effective safeguards against arbitrariness and abuse of force.' See *Giuliani and Gaggio v. Italy* (2009) at paras.204-5.

²³⁴ See *Simsek v. Turkey* (2005) at para.91. In *Güleç v. Turkey* (1998), the European Court of Human Rights recognised that the demonstration was not peaceful (evidenced by damage to property and injuries sustained by gendarmes). However, the Court stated that '[t]he gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. *The lack of such equipment is all the more incomprehensible and unacceptable because the province ... is in a region in which a state of emergency has been declared* [emphasis added].

²³⁵ Principle 13, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana (Cuba) from 27 August to 7 September 1990).

²³⁶ *Id.*, Principle 14.

²³⁷ See, for example, *Giuliani and Gaggio v. Italy* (2009) at paras.204-5 citing *McCann and Others v. UK* at paras.148-149.

²³⁸ See *Ireland v. the United Kingdom* (1978) at para.161.

²³⁹ See *Balçık and Others v. Turkey* (2007) at para.28. In this case, the Court found a violation of Article 3 in relation to two applicants; and a Violation of Article 11. The Court held that the Government 'failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used' (concerning an unnotified demonstration of 46 people who refused to obey a police request to disperse, whereupon, after approximately half an hour, the police dispersed demonstration using truncheons and tear gas).

²⁴⁰ See *Saya and Others v. Turkey* (2008) in which the Court found a violation of Article 3 ECHR (both substantively and procedurally, but only in relation to some of the applicants). In this case, the Government 'failed to furnish convincing or credible arguments which could provide a basis to explain or to justify the degree of force used against the applicants, whose injuries are corroborated by medical reports.' See also *Eksi and Ocak v. Turkey* (2010). In this

judged to be a reasonable action or reaction requires an objective and real-time evaluation of the totality of circumstances.²⁴¹

175. The OSCE *Guidebook on Democratic Policing* (2nd ed., 2008) was published as a reference source for good policing practice and internationally adopted standards. The following extract from the Guidebook reproduces those principles most closely related to the use of force in the context of freedom of peaceful assembly.

Extract from OSCE Guidebook on Democratic Policing (2008): Use of Force paras.9, 65-74 (references omitted)

9. ... [D]emocratic policing requires that the police simultaneously stand outside of politics and protect democratic political activities and processes (e.g. freedom of speech, public gatherings, and demonstrations). Otherwise, democracy will be threatened.

...

65. Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. "In the event of unlawful but non-violent assemblies, law enforcement officials must avoid the use of force or, where this is not possible, limit its use to the minimum" ...

66. In dispersing violent assemblies, firearms may be used only when less dangerous means prove ineffective and when there is an imminent threat of death or of serious injury. "Firing indiscriminately into a violent crowd is never a legitimate or acceptable method of dispersing it."...

67. The police must have as their highest priority the respect for and the protection of life. This principle has particular applications for the use of force by police.

68. While the use of force is often indispensable to proper policing – in preventing a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders police officers must be committed to the principle that the use of force must be considered as an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective.

69. Law enforcement officials may not use firearms or lethal force against persons except in the following cases: to act in legitimate "self-defence or the 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

case, the applicants and approximately fifty others took part in a commemoration ceremony marking the events of "Bloody May Day" (1 May 1977), when thirty-four people died on Taksim Square in Istanbul. The Court found a violation of Article 3 (regarding their treatment and the ensuing police investigation) and Article 11 on the basis that they were ill-treated by police officers during the forced dispersal of their demonstration.

²⁴¹ In this regard, the European Court of Human Rights has held that 'the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified ... where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.' See, for example, *Giuliani and Gaggio v. Italy* (2009) at paras.204-5 citing *McCann and Others v. UK* at paras.148-149.

objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

70. If forced to use firearms, “law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

71. Law enforcement officials must ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment and that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

...

73. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities. (See also paragraph 89.)

74. The disproportionate use of force has to be qualified as a criminal offence. Instances of the use of force must therefore be investigated to determine whether they met the strict guidelines ...

176. 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;²⁴²
 - the use of attenuated energy projectiles (AEPs), baton rounds or plastic/rubber bullets, water cannon and other forceful methods of crowd control must be strictly regulated;²⁴³
 - under no circumstances should force be used against peaceful demonstrators 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).²⁴⁴ Moreover, where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be established (see further, *Liability and Accountability* at paragraphs 179-184 below).

²⁴² In *Oya Ataman v. Turkey* (2006), the European Court of Human Rights held there to have been no violation of Article 3, but found that there was a violation of Article 11. The case concerned an unnotified assembly (c.40-50 participants) to protest against plans for ‘F-type’ prisons. The group refused to disperse following a police request, and the police used pepper spray. The Court noted that neither Tear Gas nor Pepper Spray were considered chemical weapons under the CWC [Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction’ (1993)]. It further noted that Pepper Spray, ‘...used in some Council of Europe member States to keep demonstrations under control or to disperse them in case they get out of hand ... may produce side-effects such as respiratory problems, nausea, vomiting, irritation etc etc.’

²⁴³ One example of such guidance is that issued by the Police Service of Northern Ireland, *Service Guidance in relation to the Issue, Deployment and Use of Attenuating Energy Projectiles (Impact Rounds) in Situations of Serious Public Disorder*, available online at: <http://www.serve.com/pfc/policing/plastic/aep06.pdf>. These state that ‘[t]he AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors whether such aggressors are acting on their own or as part of a group’ (at para.2(4)(a)). See also, Association of Chief Police Officers (ACPO) Attenuating Energy Projectile (AEP) Guidance (Amended 16th May 2005), available online at: <http://www.serve.com/pfc/policing/plastic/aep.pdf>

²⁴⁴ 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). Available at <http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf> at pp.5-6, para.7, ‘Use of Force Reporting.’

177. 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.²⁴⁵ Standards concerning the use of firearms are equally applicable to the use of other potentially harmful techniques of crowd management such as batons, horses, tear gas or other chemical agents, and water cannon.

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

Of several possible and suitable options for Police measures or means of coercion, the one which 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)²⁴⁶

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.

178. Public order policies and training programmes should be kept under review to incorporate lessons learnt, and regular refresher courses should be provided to law enforcement officials. These standards should be circulated as widely as possible, and monitoring of their implementation should be by an independent overseer, with investigative powers to compel witnesses and documentation, who publishes periodic reports.

Liability and Accountability

179. Law enforcement officials should be liable for any failure to fulfil their positive obligations to protect and facilitate the right to freedom of peaceful assembly. Moreover, liability should also extend to private agencies or individuals acting on behalf of the State: the European Court of Human Rights has stated that 'the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention.'²⁴⁷
180. The compliance of law enforcement officials with international human rights standards should be closely monitored.²⁴⁸ It is good practice for an independent oversight

²⁴⁵ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para.1; See also, for example, *Simsek and Others v. Turkey* (2005) at para.91.

²⁴⁶ United States Department of Justice, *Principles for Promoting Police Integrity*, at paras.1 and 4.

²⁴⁷ *Solomou and Others v. Turkey* (2008) at para.46.

²⁴⁸ In a number of countries (including Hungary, Sweden, Moldova and the United Kingdom) high profile inquiries have been instigated in the aftermath of misuse of police powers during public demonstrations. Their recommendations have emphasized, amongst other things, the importance of narrowly framed powers and rigorous training of law enforcement personnel..

mechanism to review and report on any large scale or contentious policing operation relating to public assemblies. In Northern Ireland, for example, human rights experts from the police oversight body (the Policing Board) have routinely monitored all elements of police operations related to controversial assemblies.²⁴⁹ A police complaints mechanism should be established where none exists, with a range of potential resolutions at its disposal. In certain cases, there may also be a monitoring role for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²⁵⁰

181. 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.²⁵¹ The core purpose of any investigation should be to secure the effective implementation of domestic laws which 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.²⁵²
182. If the force used is not authorized by law, or more force was used than necessary in the circumstances, law enforcement officers should face civil and/or criminal liability as well

See, *Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006: Summary of Conclusions and Recommendations* (Budapest: February 2007), available online at: http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf; Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (HL Paper 47-I; HC 320-I, 23 March 2009), and *Follow-up Report* (London: HMSO, HL Paper 141/HC 522, 14 July 2009); Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (November 2009). In Moldova, in the aftermath of violence occurring at the election related demonstrations on 6-7 April 2009, a parliamentary commission was established to investigate the causes and effects of the April events. The commission was composed of the deputies and civil society representatives. Its comprehensive report examined the police response during and after the demonstrations and made a number of recommendations aimed at improving policing practices in Moldova.

²⁴⁹ For further details, see http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm

²⁵⁰ See, for example, the CPT report on its visit to Italy in 2004, published on 17 April 2006 regarding the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001) and actions taken in response to the allegations of ill-treatment made against the law-enforcement agencies. The CPT stated that it wished 'to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems).'

²⁵¹ See *McCann and others v. UK* (1995) at para.161; *Kaya v. Turkey* (1998) at para.105; *Kelly and others v. UK* (2001) at para.94, *Shanaghan v. UK* (2001) at para.88; *Jordan v. UK* (2001) at para.105; *McKerr v. UK* (2001) at para.111; *McShane v. UK* (2002) at para.94. See also *Güleç v. Turkey* (1998) where the applicant's son was killed by security forces who fired on unarmed demonstrators (during a spontaneous, unauthorised demonstration) to make them disperse. The European Court of Human Rights found a violation of Article 2 on two grounds: (a) the use of force was disproportionate and not 'absolutely necessary', and (b) there was no thorough investigation into the circumstances. The Court stated that 'neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces, or, as in the present case, a demonstration, however illegal it may have been.' (para.81). In *Saya and Others v. Turkey* (2008), a Health Workers' Trade Union march (for which authorization had been obtained) was stopped by police on May Day and forcefully dispersed. The applicants were taken into custody and released the next day. The European Court of Human Rights found that there had been a failure to carry out an effective and independent investigation into the allegations of ill-treatment ('Administrative Councils' in this case were not independent since they were chaired by governors, and composed of local representatives of the executive and an executive officer linked to the very security forces under investigation).

²⁵² *Kelly and others v. UK* (2001) at para.94; *Shanaghan v. UK* (2001) at para.88; *Jordan v. UK* (2001) at paras. 107, 115; *McShane v. UK* (2002) at para. 94.

as disciplinary action.²⁵³ The relevant law enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.

183. An applicant complaining of a breach of the right to life need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.²⁵⁴ Where allegations are made against law enforcement officials in relation to inhuman or degrading treatment or torture, the European Court of Human Rights will conduct 'a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place.'²⁵⁵
184. Specific definitions 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 less forceful response available) – should be contained in domestic criminal law.

Paragraph 21.2 of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991

(OSCE) participating States are urged 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.'

Paragraph 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

*'[G]overnments 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.'*²⁵⁶

Extract from Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006, in Budapest, Hungary (February 2007) at p.11

The Commission recommends that the Government draft a bill that ensures the possibility of legal remedy in case of unlawful riot control actions or in case police officers, acting individually or in groups, infringe the requirement of proportionality.

7. Responsibilities of the Organiser

The organiser

185. The organiser is the person or persons with primary responsibility for the assembly. It is possible to define the organiser as the person in whose name prior notification is submitted. As noted at paragraph 127 above, it is also possible for an assembly not to have any identifiable organiser.

Article 5, Montenegro Public Assembly Act (2005)

²⁵³ It is noteworthy, for example, that nine years after the G8 meeting in Genoa, 2001, the Italian Court of Appeal found a number of high ranking police officers guilty of human rights violations against protesters.

²⁵⁴ *Osman v. UK* (1998) at para.116.

²⁵⁵ *Muradova v. Azerbaijan* (2009) at para.99.

²⁵⁶ See also *Simsek and Others v. Turkey* (2005) at para.91.

The organiser of a peaceful assembly is any legal or physical entity (henceforth referred to as: the organiser) which, 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.

186. Organisers of assemblies should cooperate with law enforcement agencies to ensure that participants in their assemblies comply with the law and the terms of any submitted notification. There should be clarity as to who precisely is involved in the organisation of any assembly, and it can be assumed that the official organiser 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 informal organisation (see also paragraphs 53 and 105-106 above).²⁵⁷

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

187. **Pre-event planning with law enforcement officials:** Where possible, it is good practice for the organiser(s) to agree with the law enforcement officials about what security and public safety measures are being put in place prior to the event. Such discussions can, for example, cover stewarding arrangements (see paragraphs 191-196 below) and the size, positioning and visibility of the police deployment. Discussions might also focus upon contingency plans for specific locations (such as monuments, transport facilities or hazardous sites), or upon particular concerns of the police or the organiser(s). For example, the organiser may fear that a heavy police presence in a particular location would be perceived by participants as unnecessarily confrontational, and might thus 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 organiser, shall determine the number of police officers necessary for assisting in the maintenance of the 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 cooperation.

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

188. From outside the OSCE region, the legislation in South Africa provides a useful model of 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-

²⁵⁷ For example, *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (2005).

*ordination between the three parties and a willingness to negotiate and compromise where disputes arise.*²⁵⁸

189. **Risk Assessment:** Organisers – in co-operation with relevant law enforcement 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 that would unjustifiably deter groups and individuals from enjoying their freedom of peaceful assembly.
190. **Responsibility to obey the lawful directions of law enforcement officials:** The law on assemblies might legitimately place organisers (as well as participants) under a duty to obey the lawful orders of law enforcement officials. Refusal to do so may entail liability (see paragraphs 197-198 below).

Stewarding assemblies

191. 'Stewards' and 'marshals' (the terms are often used interchangeably) are individuals who assist an assembly organiser in managing the event.²⁵⁹ Laws governing freedom of assembly may provide for the possibility of organisers being assisted by volunteer stewards. For example, while the police may have overall responsibility for public order, organisers of assemblies are encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are persons, working in cooperation with the assembly organiser(s), with a responsibility to facilitate the event and help ensure compliance with any lawfully imposed restrictions.
192. Stewards do not have the powers of law enforcement officials and cannot use force, but should rather aim to obtain the cooperation of assembly participants by means of persuasion. 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 organiser) should have a responsibility to promptly inform the relevant law enforcement officials. Law enforcement agencies should work in partnership with event stewards, and each must have a clear understanding of their respective roles.
193. **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 organiser to coordinate 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 organiser. As with law enforcement officials (see paragraph 170 above), it is important that stewards – together with the event organiser – hold a thorough post-event debriefing and evaluation after any non-routine assembly.
194. **Identification:** It is desirable that stewards be clearly identifiable (e.g. through wearing a bib, jacket, badge or armband).

²⁵⁸ This legislation draws upon recommendations contained in the Report of the Goldstone Commission, *Towards Peaceful Protest in South Africa* (Heymann 1992).

²⁵⁹ For example, Article 3, Law on Assemblage and Manifestations in the Republic of Georgia (1997, as amended 2009) defines separate roles for 'Principal', 'Trustee', 'Organiser', and 'Responsible Persons'.

195. **Requirement to steward certain assemblies:** Under some circumstances, it may be legitimate to impose on organisers 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 likely violate the proportionality principle.²⁶⁰ 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 an adequate presence of law enforcement personnel and law enforcement agencies must still bear overall responsibility for public order. Nonetheless, efficient stewarding can help reduce the need for a heavy police or military presence at public assemblies.
196. In some jurisdictions, it is commonplace for professional stewards or private security firms to be contracted and paid to provide stewarding for assemblies. However, there should never be a legal obligation upon organisers to pay for stewarding arrangements. To impose such a cost burden would seriously erode the essential essence of freedom of assembly, and undermine the core responsibility of the State to provide adequate policing.

Liability

197. Organisers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to 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 organiser should not be liable for the actions of individual participants, or stewards not acting in accordance with the terms of their briefing.²⁶¹ 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.
198. The organiser 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 the organiser or event stewards – to limit the damage caused. In no circumstances should the organiser of a lawful and peaceful assembly be held liable for disruption caused to others.

²⁶⁰ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): ‘... The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person.’

²⁶¹ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): ‘If too great a responsibility before the activity, during it or even after the activity is laid on the organizer of the activity ... then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities.’

8. Monitoring Freedom of Peaceful Assembly

199. The right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression).²⁶² In this regard, the safeguards guaranteed to the media are particularly important.²⁶³ However, freedom to monitor public assemblies should not only be guaranteed to all media professionals²⁶⁴ but also to others in civil society, such as human rights activists, who might be regarded as performing the role of 'social watchdogs' and whose aim is to contribute to informed public debate.²⁶⁵
200. The monitoring of public assemblies provides a vital source of independent information on the activities of both participants and law enforcement officials that may be used to inform public debate and serve as the basis for dialogue between government, local authorities, law enforcement officials and civil society.

Independent monitors

201. For the purposes of these Guidelines, monitors are defined as non-participant third party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. Independent monitoring may be carried out by local NGOs, human rights defenders,²⁶⁶ domestic ombudsman offices or national

²⁶² See, *inter alia*, *Castells v. Spain* (1992) at para.43; *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

²⁶³ See, for example, *Observer and Guardian v. UK* (1991) at para.59(b); *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

²⁶⁴ The *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies) define 'media professionals' (at para.1) as 'all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters.'

²⁶⁵ The European Court of Human Rights has repeatedly recognized civil society's important contribution to the discussion of public affairs. See, for example, *Steel and Morris v. United Kingdom* (2005) at para.89: '...in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and ... there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest...' See also *Társaság a Szabadságjogokért v. Hungary* (2009) at para.36, in which the Hungarian Civil Liberties Union was regarded as performing the role of a 'social watchdog'.

²⁶⁶ See paragraph 3 of *Ensuring Protection – European Union Guidelines on Human Rights Defenders*: 'Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.' Available at: <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf> Furthermore, 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 that: '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.' See also Articles 6 and 8(2). As the UN Special Rapporteur on the situation of Human Rights Defenders has remarked: 'Social action for the realization of rights is increasingly manifested through collective and public action ... [T]his form of protest or resistance to violations has become most vulnerable to obstruction and repression. Collective action is protected by article 12 of the *Declaration on Human Rights Defenders*, which recognizes the right to participate, individually or in association with others, in "peaceful activities against violations of human rights and fundamental freedoms" and entitles those "reacting against or opposing" actions that affect the enjoyment of human rights to effective protection under national law. Read together with article 5, recalling the right to freedom of assembly, and article 6 providing for freedom of information and its dissemination, peaceful collective action is a legitimate means of drawing public attention to matters concerning human rights.' See U.N. Doc. A/HRC/4/37, *Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, 24 January 2007 at para.29. Available at: http://www.wunrn.com/news/2007/06_07/06_25_07/070107_special.doc. See also OSCE: *Human Rights Defenders*

- human rights institutions, or by international human rights organizations (such as Human Rights Watch or Amnesty International) or intergovernmental networks (such as the Council of Europe, the OSCE or the UN Office of the High Commissioner for Human Rights).²⁶⁷ Such individuals and groups should therefore be permitted to operate freely in the context of monitoring freedom of assembly.
202. Monitoring public assemblies can be a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.²⁶⁸ Monitors may, for example, be tasked with focusing on particular aspects of an assembly such as:
- The policing of an assembly (to consider 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;
 - Whether any additional restrictions are imposed on an assembly during the course of the event;
 - Any instances of violence or use of force, both by participants or by law enforcement personnel;
 - The interaction between participants in an assembly and an opposing assembly; and/or
 - The conduct of participants in a moving assembly that passes a sensitive location.
203. Monitors will usually write up the findings from their observations into a report, and this may be used to highlight issues of concern to the State authorities. The report can thus serve as the basis for dialogue and engagement on such matters as the effectiveness of the current law and the extent to which the State is respecting its positive obligations to protect freedom of peaceful assembly. Monitoring reports may also be used to engage with the relevant law enforcement agencies or with the municipal authorities and might highlight areas where further training, resources or equipment may be needed.
204. Independent monitoring reports may also be a useful resource for informing international bodies, such as the Council of Europe, the OSCE / ODIHR and the United Nations, of the level of respect and protection for human rights in a particular country (see further Appendix A, *Enforcement of international human rights standards*).
205. The ODIHR has developed a training programme for monitoring freedom of assembly, which has been used to support the work of human rights defenders in a number of countries in Europe and Central Asia. The ODIHR has also developed a handbook for monitoring freedom of assembly which further elaborates on the theory and practice of

in the OSCE Region: Challenges and Good Practices (2008), available at: http://www.osce.org/publications/odhr/2008/12/35711_1217_en.pdf.

²⁶⁷ See, for example, *Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms* (A/62/225 Sixty-second session) at para.91-92 regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal: 'The OHCHR monitoring role has been acknowledged as fundamental in containing human rights violations and in documenting those that occurred for accountability purposes.' See further, Office of the High Commissioner for Human Rights, *The April protests: democratic rights and the excessive use of force, Findings of OHCHR-Nepal's monitoring and investigations*, Kathmandu, September 2006.

²⁶⁸ See, for example, Loudes, Christina, *Handbook on Observations of Pride Marches* (ILGA-Europe, June 2006). See also, Prestholdt, Jennifer, *Familiar Tools, Emerging Issues: Adapting traditional human rights monitoring to emerging issues* (2004). Available in Russian, Polish, Ukrainian, Kyrgyz and English at <http://www.newtactics.org/en/FamiliarToolsEmergingIssues>

independent monitoring.²⁶⁹ The following section, which is drawn from the training pack, highlights some of the ethical issues for monitors.

Ethical issues for monitors

Monitoring is an ethically based activity that aims to increase respect for human rights. Monitors have to work to high standards to ensure that their observations and reports are respected and can stand scrutiny. The following ethical issues have been drawn from a diverse range of working documents that have been produced for and by monitoring teams in a range of settings.

1. *Monitors should respect the human rights of all parties.*
2. *Monitors must show respect for the law. They should obey the law at all times and should co-operate with the police and emergency services. Monitors should also bear in mind that the witnessing of illegal activities (by the police, demonstrators, or others) might require them to give evidence at a later date.*
3. *Monitors should remain neutral. They should not advise parties on the ground or voice opinions about the actions of any party.*
4. *Monitors must maintain their independence throughout the process. Monitors should ensure their neutrality and independence are not compromised by their location, dress or demeanour. They should not join the body of a demonstration / picket / protest. Monitors may introduce themselves to participants but should not voice opinions on events and activities.*
5. *The work of monitors should be visible. They should have a form of identification available at all times. Monitoring is a transparent and open practice and it is hoped that the visible presence of monitors will have a positive impact on respect for human rights and deter acts of aggression and violence.*
6. *Monitors should always work as part of a team. They should have an agreed plan of action, a chain of command, and an agreed means of communication with other team members. They should have an agreed public location (café, station, centre) for rendezvous after the event.*
7. *Monitors should be mindful of their own safety. Monitors should work in pairs and at times it may be necessary for monitors to withdraw from a location or from public space if they have concerns for their personal safety.*
8. *Monitors must be aware of their responsibilities and the limits of their responsibilities. They are present to observe events and activities and should not intervene in situations or try to influence the activities of any party.*
9. *Despite the provisos specified above, monitors should also remember their social responsibilities as citizens and there may be times when an individual may consider it necessary to intervene in a particular situation. The monitoring team should discuss such eventualities as part of its general preparation.*

²⁶⁹ See further, OSCE-ODIHR Handbook on Monitoring Freedom of Peaceful Assembly.

10. *Monitors should never act in away that will discredit the larger monitoring team. Monitors should never consume alcohol or other illegal drugs or substances before or during events.*
11. *Monitors should not make any formal comments to the press or other agencies about their work, other than to identify themselves as independent HR monitors.*
12. *The monitoring team should verbally debrief as soon as possible at the end of an event. Written reports should be prepared within twenty-four hours of the end of an event from notes made at the time.*
13. *Monitoring reports should be accurate. Monitors should ensure that their reports are based on what they have seen and heard. They must resist any efforts to influence their report. They should not report hearsay.*

Media

206. The media performs a pre-eminent role in a State governed by the rule of law. The role of the media, as a 'public watchdog', is to impart information and ideas on matters of public interest – information which the public also has a right to receive.²⁷⁰
207. Media professionals therefore have an important role to play in providing independent coverage of public assemblies. The OSCE Representative on Freedom of the Media noted that 'uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.'²⁷¹
208. Furthermore, '[a]ssemblies, 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.'²⁷² Media reports and footage thus provide an important element of public accountability both for organisers of events and law enforcement officials. As such, the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.

**Article 17, Law on Public Assemblies of the Republic of Moldova (2008):
Observance of Assemblies**

- (1) *Any person can make video or audio recording of the assembly.*
- (2) *Access of the press is ensured by the organisers of the assembly and by the public authorities.*
- (3) *Seizure of technical equipment, as well as of video and audio recordings of assemblies, is only possible in accordance with the law.*

209. There have, however, been numerous instances where journalists have been restricted from reporting at public assemblies, and occasions on which journalists have been

²⁷⁰ See, *inter alia*, *Castells v. Spain* (1992) at para.43; *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

²⁷¹ Miklos Haraszi (OSCE Representative on Freedom of the Media) *Special Report: Handling of the media during political demonstrations, Observations and Recommendations*. (OSCE, Vienna, June 2007). Available at http://www.osce.org/documents/rfm/2007/06/25176_en.pdf in English and at http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf in Russian.

²⁷² Justice Berger, Justice of the Supreme Court of British Columbia (1980).

detained and/or had their equipment damaged.²⁷³ As a result, the OSCE issued a special report on handling the media during political demonstrations and the following excerpt highlights its recommendations.²⁷⁴

OSCE Special Report: Handling of the media during political demonstrations, Observations and Recommendations (June 2007)

There have been a number of instances recently where journalists have received particularly harsh treatment at the hands of law-enforcers while covering public demonstrations. This has highlighted the need to clarify the modus operandi of both law enforcement agencies and journalists at all public events, in order that the media is able to provide coverage without hindrance.

Both law-enforcers and journalists have special responsibilities at a public demonstration. Law-enforcers are responsible for ensuring that citizens can exercise their right to peaceful assembly, for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means. Journalists carry the responsibility to be clearly identified as such, to report without taking measures to inflame the situation, and should not become involved in the demonstration itself.

Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police. This flows from the role of law-enforcers as the guarantor of public order, including the right to free flow of information, and their responsibility for ensuring the right to freedom of assembly.

Recommendations

1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.

2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.

3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events.

²⁷³ In the roundtable sessions held during the drafting of the first edition 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.

²⁷⁴ Miklos Haraszi (OSCE Representative on Freedom of the Media) *Special Report: Handling of the media during political demonstrations, Observations and Recommendations*. (OSCE, Vienna, June 2007). Available at http://www.osce.org/documents/rfm/2007/06/25176_en.pdf in English and at http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf in Russian.

4. *Wilful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.*

5. *Journalists should identify themselves clearly as such, should refrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.*

6. *Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists.*

210. In addition, the *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* underline that not only is media coverage 'crucial in times of crisis by providing accurate, timely and comprehensive information', but 'media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society.' The following extracts are particularly relevant in relation to media coverage of freedom of peaceful assembly:

Extracts from: Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis

'Member States should assure to the maximum extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member States as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.' (paragraph 2);

'Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours or other appropriate means...' (paragraph 11);

'National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation' (paragraph 27);

'Non-governmental organisations and in particular specialised watchdog organisations are invited to contribute to the safeguarding of freedom of expression and information in times of crisis in various ways, such as:

- *Maintaining help lines for consultation and for reporting harassment of journalists and other alleged violations of the right to freedom of expression and information;*
- *Offering support, including in appropriate cases free legal assistance, to media professionals facing, as a result of their work, lawsuits or problems with public authorities;*
- *Co-operating with the Council of Europe and other relevant organisations to facilitate exchange of information and to effectively monitor possible violations.’ (paragraph 30).*