OSCE

Office for Democratic Institutions and Human Rights

Report

Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States

(May 2011 – June 2012)

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS 6

EXECUTIVE SUMMARY 7

CONSOLIDATED RECOMMENDATIONS 12

INTRODUCTION 17

ODIHR's work on the freedom of peaceful assembly and background to the report 17

ODIHR's mandate 18

Methodology 18

Structure of the report 21

SECTION I: RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND PROCEDURAL ISSUES 22

NOTIFICATION AND AUTHORIZATION REQUIREMENTS 22

Notification and authorization requirements for assemblies – international standards and good practice 22

Notification and authorization requirements for assemblies – ODIHR findings 23

Conclusions and recommendations on notification and authorization requirements for assemblies 26

RESTRICTIONS IMPOSED BEFORE ASSEMBLIES 27

Restrictions imposed before assemblies – international standards and good practice 27

Bans on assemblies – ODIHR findings 29

Content-based restrictions – ODIHR findings 31

Time, place and manner restrictions on assemblies – ODIHR findings 32

Conclusions and recommendations on restrictions imposed before assemblies 35

FACILITATING SIMULTANEOUS ASSEMBLIES AND PUBLIC EVENTS 39

Facilitating simultaneous assemblies and public events – international standards and good practice 39

Procedural issues and facilitation of simultaneous assemblies and public events – ODIHR findings 40

Conclusions and recommendations on procedural issues and the facilitation of simultaneous assemblies and public events 44

DUTIES AND RESPONSIBILITIES OF THE ORGANIZERS 47

Duties and responsibilities of the organizers – international standards and good practice 47

Duties and responsibilities of the organizers – ODIHR findings 48

Conclusions and recommendations on the duties and responsibilities of the organizers 52

SECTION II: POLICING ASSEMBLIES 56

POLICING ASSEMBLIES THAT DO NOT COMPLY WITH LEGAL REQUIREMENTS 56

Policing assemblies that do not comply with legal requirements – international standards and good practice 56

Policing assemblies that do not comply with legal requirements – ODIHR findings 57

Conclusions and recommendations on the policing of assemblies that do not comply with legal requirements 63

POLICING DEMONSTRATIONS AND COUNTER-DEMONSTRATIONS 65

The policing of demonstrations and counter-demonstrations – international standards and good practice 65

The policing of demonstrations and counter-demonstrations – ODIHR findings 65

Conclusions and recommendations on policing of counter-demonstrations 68

USE OF FORCE, DETENTION, KETTLING AND DISPERSALS 70

The use of force, detention, kettling and dispersals – international standards and good practice 70

The use of force, detention, kettling and dispersals – ODIHR findings 72

Conclusions and recommendations on the use of force, detention, kettling and dispersal 75

ENGAGEMENT AND COMMUNICATION BY THE POLICE WITH ASSEMBLY ORGANIZERS AND PARTICIPANTS 78

Engagement and communication by the police with assembly organizers and participants – international standards and good practice 78

Engagement and communication by the police with assembly organizers and participants – ODIHR findings 79

Conclusions and recommendations on engagement and communication by the police with assembly organizers and participants 82

SECTION III: MONITORING FREEDOM OF PEACEFUL ASSEMBLY: ACCESS AND RESTRICTIONS 85

Journalists and assembly monitors – international standards and good practice ... 85

Access and restrictions for journalists and assembly monitors – ODIHR findings . 87

Conclusions and recommendations on access and restrictions for journalists and monitors 90

ANNEX I: RELEVANT OSCE COMMITMENTS 92

ANNEX II: ASSEMBLIES MONITORED BY ODIHR BETWEEN 5 MAY 2011 AND 9 JUNE 2012 96

ANNEX III: GLOSSARY OF KEY TERMS 99

LIST OF ABBREVIATIONS

ACLU	American Civil Liberties Union
ACHR	American Convention on Human Rights
CPD	Chicago Police Department
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
LAPD	Los Angeles Police Department
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NATO	North Atlantic Treaty Organization
NLG	National Lawyers Guild
NYPD	New York Police Department
NYCLU	New York Civil Liberties Union
ODIHR	Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe
OPD	Oakland Police Department
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
WEF	World Economic Forum
WTO	World Trade Organization

EXECUTIVE SUMMARY

1. This report presents the findings of the monitoring of public events undertaken by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in selected OSCE participating States between May 2011 and June 2012 in line with ODIHR's mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly. The monitoring exercise focused on specific events on the basis of set criteria. The main goal of the monitoring was to identify gaps and challenges, as well as examples of good practices, in how participating States meet their commitments on freedom of peaceful assembly. The recommendations contained in this report aim to advance the implementation of these commitments in all OSCE participating States, not just those where ODIHR has monitored assemblies.

2. ODIHR is the main OSCE institution concerned with the human dimension of security, tasked with assisting in monitoring the implementation of human dimension commitments (Helsinki 1992). ODIHR's monitoring mandate is based on a number of OSCE commitments (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003). Moreover, ODIHR serves as a point of contact for information provided by participating States (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).

3. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990). This freedom is, moreover, enshrined in a number of international human rights treaties. The international standards employed in the analysis arise out of the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights and the American Convention on Human Rights. The report uses the *Guidelines on Freedom of Peaceful Assembly*, jointly published by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission), as its main benchmark and reference point to assess compliance with international human rights standards.

4. Assemblies were monitored between 5 May 2011 and 9 June 2012 in the following participating States: Croatia, Hungary, Italy, Moldova, Poland, Serbia, Slovakia, Switzerland, Ukraine, the United Kingdom, and the United States of America. In some participating States, multiple events were observed that took place on the same day, on different days, or over a period of several days. The observation of one assembly generally also involved the monitoring of any counter-demonstrations, if present. A table including all events monitored as part of this project is included in Annex II to this report.

5. A total of 13 participating States received communication of ODIHR's intention to monitor assemblies. Of those, 11 participating States welcomed and facilitated the ODIHR mission. In its choice of participating States and events to be monitored, ODIHR also attempted to ensure geographical balance and the

coverage of a variety of different contexts across the OSCE area. To preserve the integrity of the sample, only events selected by ODIHR on the basis of the below criteria were observed.

6. The monitoring sample included events that due to their nature, size or complexity posed particular difficulties for the authorities and the organizers. These relate, *inter alia*, to the expression of views or positions that challenge prevailing opinions, to the presence of counter-demonstrations and the potential of a resulting conflict between opposing groups, as well as to the need to ensure a balance between the respect for the freedom of peaceful assembly and security considerations.

7. The monitoring of assemblies involved the gathering of first-hand information by observers able to witness the conduct of, and interaction among, participants in the assemblies, law enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, etc.). ODIHR monitoring teams deployed on the ground ranged in size between two and eight observers. The observation focused on events and activities that took place in public spaces in the run-up to and during assemblies. Although assembly monitoring places particular emphasis on the gathering of first-hand information, the observation findings were, whenever possible, complemented by information gathered at meetings with: representatives of the relevant authorities; organizers of, and participants in, assemblies and their legal representatives; civil society organizations; journalists; and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events. Secondary sources, including media, academic and NGO reports, were also used. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.

8. The report is organized thematically according to relevant standards on freedom of peaceful assembly. Section I deals with restrictions on the freedom of peaceful assembly and procedural issues. Section II discusses the policing of assemblies. Section III briefly deals with international standards and good practice in the monitoring of public assemblies and the work of journalists in relation to assemblies. The report provides thematic recommendations to OSCE participating States.

9. As regards the notification and authorization requirements for assemblies, ODIHR observed that most of the participating States under consideration employ a notification system for assemblies, rather than a permit or an authorization system. Some participating States differentiate in their notification requirement between static and moving assemblies or between different types of assemblies while others have permit or authorization systems in place. Federal systems are characterized by different practices at the sub-federal levels. Notification systems for assemblies are, in principle, preferable to authorization systems. Imposing notification requirements only on organizers of assemblies that are likely to require a response by the state (either to facilitate freedom of assembly or to

protect public order, public safety, and the rights and freedoms of others) contributes to limiting the regulation of assemblies to the minimum extent necessary. An authorization requirement based on a legal presumption that a permit for the use of a public place will be issued may serve the same purpose as an advance notification system. The authorization requirements which apply to all types of assemblies are not fully consistent with the principle of presumption in favour of holding assemblies and could lead to restrictions on assemblies based on their content.

10. In some participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies including, in one case, a blanket ban on assemblies. Some authorization systems that were observed may leave open the possibility for the competent authorities to impose content-based restrictions on assemblies. Some events were directly or indirectly affected by time, place and manner restrictions on assemblies, or, more generally, by restrictions on access to particular areas based on security considerations. Blanket bans on assemblies, as were observed, are likely to be disproportionate. Restrictions imposed in different participating States, which limited the ability of protesters to be within sight and sound of their intended audience, varied in their scope and range. Restrictions on assemblies must only be imposed where there are compelling arguments to do so on grounds that are permissible under OSCE commitments and international human rights standards.

11. ODIHR observed a number of simultaneous assemblies and public events, including demonstrations and related counter-demonstrations. In cases where authorities deemed counter-demonstrations required restrictions, these were mainly aimed at separating counter-protesters from participants on public order grounds. It is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition of holding events at the same place and time. In accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation with all parties. Although counter-demonstrations may give rise to public safety and security considerations, the authorities should generally seek to facilitate the holding of an assembly and related counter-demonstrations within sight and sound of one another.

12. In relation to duties and responsibilities of the organizers ODIHR has observed that in some participating States, the competent authorities impose fees to process permit applications to hold assemblies. Some laws oblige the organizers of an assembly to cover the cost incurred because of the temporary alteration of traffic and other costs incurred by the additional performance of public services or that public property damaged during an assembly be restored as soon as possible, with priority given to restoration at the expense of those responsible for the damages. Some local regulations, moreover, provide that organizers have to submit proof of liability insurance or other guarantees for potential damage caused by an event. Legislation in some participating States deals with the duties and responsibilities of organizers in relation to the presence of assembly stewards during gatherings

and the maintenance of public order. In light of the importance of the enjoyment of freedom of peaceful assembly by everyone, the State should not impose additional costs on the organizers of an assembly. Analogous considerations can be made with regard to the insurance requirements imposed on organizers of assemblies. Especially for large or controversial assemblies, it is a good practice to ensure adequate stewarding of public events and good communication between stewards, law enforcement officials, and other relevant state bodies. However, any requirement to provide stewarding during assemblies may in no way detract from the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.

13. A failure to comply with relevant legal requirements on notification or authorization of assemblies and on organizing and holding assemblies may result in civil, administrative, or criminal liability for the organizers, depending on the jurisdiction. In such situations, the competent authorities may impose fines on organizers or, in some cases, prison sentences. Any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle.

14. Most assemblies that occurred in violation of applicable laws but were otherwise peaceful, as observed by ODIHR, were accommodated and facilitated by law enforcement agencies as long as they remained peaceful. Violent or unlawful acts by participants in otherwise peaceful protests should be dealt with individually and should not lead to the termination of an assembly.

15. Where demonstrations and counter-protests had been notified and/or took place within sight and sound of each other, ODIHR generally observed good police practice in allowing opposing groups to be within sight and sound of each other, creating police cordons and placing physical barriers when the circumstances made this necessary.

16. In most assemblies observed by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally the case also during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants. In some individual situations observed by ODIHR, however, use of force and limitations or deprivations of liberty were not in line OSCE commitments and international human rights standards. It is important to note that, even in those situations where cases of unnecessary or excessive use of force were observed, these did not constitute a pattern but rather individual instances of inappropriate police conduct.

17. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. In general, the approach adopted by police forces was to share limited information on their security preparations with assembly organizers, including when assemblies were considered to be at a higher risk.

Communication with all organizers was particularly useful where several simultaneous assemblies were organized. In some cases, ODIHR observed the use of a third party to mediate and facilitate communication between assembly participants and police authorities in particularly tense situations. In many cases, communication was considered to be adequate by both police and assembly organizers. It was also widely recognized that good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants in public events.

18. Moreover, ODIHR gathered information from secondary sources on recent "Occupy" protests and, in this context, received reports of cases of excessive use of force and restrictions on assemblies. Assemblies involving the establishment of encampments and other temporary structures should be facilitated as much as possible. Considerations of public health, safety, or avoidance of substantial interference with the rights of others may be taken into account when imposing restrictions. Nevertheless, attempts should be made to address these issues and discuss them with the protesting group, with the aim of reaching the least intrusive solution possible for freedom of peaceful assembly. Where the rights and freedoms of others are engaged (e.g. with respect to the use of public space), the imposition of time, place and manner restrictions that would still allow the message to be conveyed, are a preferable alternative to the eviction of the camp.

19. During monitoring deployments, ODIHR observers did not experience restrictions on their ability to observe assemblies and gather information. In the vast majority of cases, before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. ODIHR observers were able to carry out their activities unhindered and in some cases were granted access to cordoned areas or areas where other movement restrictions were in place. ODIHR did not directly observe any restrictions imposed on the activities of journalists during monitored assemblies though ODIHR received reports that journalists and assembly monitors had experienced difficulties in covering and observing certain protests and related police action. The promotion and facilitation of independent observation of assemblies by participating States is a good practice in line with OSCE commitments.

20. ODIHR wishes to thank the authorities of the participating States where the monitoring took place for their openness and co-operation and their assistance in organizing, and willingness to take part in, meetings for the purpose of gathering information. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about freedom of peaceful assembly in their respective countries.

CONSOLIDATED RECOMMENDATIONS TO OSCE PARTICIPATING STATES

On notification and authorization requirements for assemblies

1. Where there are authorization requirement for assemblies, to consider amending legislation to introduce a notification system;
2. To ensure that notification or, where they are retained, permit requirements are only imposed when necessary to facilitate freedom of assembly or to protect public order, public safety, and the rights and freedoms of others, and to only limit the regulation of assemblies to the minimum extent necessary;
3. Where an authorization system is retained, to ensure that this is based on a legal presumption that the authorization will be issued and that any refusal of authorization will be based on clearly defined criteria based on time, place and manner considerations and will be subject to prompt judicial review.

On restrictions imposed before assemblies

4. To ensure that restrictions on assemblies are only imposed on grounds that are legitimate under OSCE commitments and international human rights law (to protect national security or public safety, public order, public health or morals or the rights and freedoms of others);
5. To ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
6. To ensure, in particular, that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions and recourse to a prompt and effective remedy through a combination of administrative and judicial review; any administrative review procedures must be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the date of the assembly provided in the notification;
7. To refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate and discriminatory;
8. To generally refrain from imposing content-based restrictions on assemblies unless these can be compellingly justified by intentional incitement of violence resulting in an imminent threat of violence, or by a message constituting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
9. To ensure that any restrictions on assemblies are not discriminatory and reflect the principle that, in restricting the rights of vulnerable and disadvantaged groups, the State has a narrower margin of appreciation;

10. To ensure that security or other considerations do not disproportionately limit the ability of assembly participants to convey their message within sight and sound of their intended audience;

11. To ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are, whenever possible, previously discussed with the organizers of assemblies, and that suitable alternatives in line with the sight-and-sound principle are proposed; whenever possible, a negotiated and agreed solution should be considered the most desirable outcome.

On facilitating simultaneous assemblies

12. To ensure that provisions regulating assemblies, or assemblies and other public events, taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated;

13. In particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;

14. In relation to assemblies and corresponding counter-demonstrations, to ensure that, whenever possible, no pre-assembly restrictions are imposed preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should only be based on legitimate grounds supportable with objective evidence under international human rights law;

15. To ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue to find a mutually satisfactory solution;

16. To ensure that licensing and other authorization systems for the use of public spaces for events other than assemblies, including official and state-sponsored events, are not used to limit the availability of public spaces for the purpose of holding assemblies;

17. To ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure 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.

On duties and responsibilities of the organizers

18. to ensure that the duties of the organizers of assemblies are limited to making reasonable efforts to meet legal requirements for assemblies, to ensure that their assemblies are peaceful, and to ensure that lawful instructions by law enforcement officials are obeyed;

19. To ensure that no insurance requirements, or fees to cover the costs of clean-up after assemblies or for other additional public services are imposed on the organizers of assemblies;

20. To ensure that the duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law enforcement officers and policy makers at all levels, as a central responsibility of the State;

21. To ensure that a requirement to have assembly stewards present during a gathering, is only imposed on a case-by-case basis, when justified by the size or nature of the assembly;

22. To ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators assisting organizers in managing events; assembly stewards should not be tasked with government functions that directly pertain to the maintenance of public order during assemblies;

23. To ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate; where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature.

On policing assemblies that do not comply with legal requirements

24. To ensure that, whenever possible, peaceful assemblies that do not meet relevant legal requirements are facilitated by police forces and other competent authorities;

25. To ensure that police restrictions on such peaceful assemblies are only imposed on grounds that are legitimate under OSCE commitments and international human rights law, to protect national security or public safety, public order, public health or morals (when the behavior is deemed criminal and has been defined in law as such) or the rights and freedoms of others;

26. In particular, to ensure that lack of compliance with formal legal requirement for assemblies does not constitute, as such, sufficient grounds for the dispersal of the assembly;

27. In regulating protest camps and other similar assemblies, in accordance with the principle of proportionality, to ensure that the least intrusive measures to achieve the legitimate objectives being pursued are adopted, whenever possible, following discussions and in agreement with the protesting groups;

28. To ensure that the eviction of protest camps does not result from individual unlawful acts of protesters or others in or around the camp when the assembly remains otherwise peaceful.

On policing of demonstrations and counterdemonstrations

29. To ensure that police authorities facilitate assemblies and counter-demonstrations within sight and sound of each other;

30. In particular, whenever possible, to ensure that any measures taken to physically separate demonstrators and counter-protesters or onlookers, including by creating buffer zones, interfere as little as possible with the ability of assembly participants to be within sight and sound of one another or their intended audience;

31. To take adequate measures to protect the safety and security of all assembly participants, demonstrators and counter-demonstrators alike, as well as of onlookers; such measures should place emphasis on keeping opposing groups close to each other, albeit physically separate;

32. In particular, to ensure that members of minority and vulnerable groups, in exercising their freedom of peaceful assembly without State interference, are also protected against violent attacks by onlookers.

On the use of force, detention, kettling and dispersals

33. To ensure that the use of force by law enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality;

34. In particular, to ensure that less-than-lethal weapons, including irritating and other chemical agents, are only used when necessary and proportionate to maintain public order or to achieve other legitimate aims; the use of such weapons should be strictly regulated and subjected to regular review;

35. To ensure that any reports of police misconduct are investigated in a prompt, thorough and impartial manner and that those responsible are disciplined or prosecuted as appropriate; any criminal proceedings arising from such investigations should meet international fair trial standards;

36. To ensure that victims of police misconduct have access to effective remedies and are provided with reparation including compensation;

37. To ensure that officers equipped with less-than-lethal weapons are trained in their use; their training should incorporate international human rights principles on the use of force;

38. To ensure that individual participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests; mass arrests should be avoided;

39. To ensure that crowd control strategies relying on containment (kettling) are only employed when necessary to prevent serious damage or injury and when no alternative police tactics that would have less impact on the right to liberty and the freedom of movement can be employed;

40. To ensure that police tactics place emphasis on de-escalating tension and involve the deployment of large numbers of police officers in riot gear only when necessary on the basis of a specific risk assessment;

41. To provide training to law enforcement officials on the use of force and on facilitating assemblies with a strong emphasis on crowd management and crowd control measures in line with OSCE commitments and human rights standards.

On engagement and communication by the police with assembly organizers and participants

42. To ensure that, before and during assemblies, effective communication is established between assembly organizers, participants and police forces;

43. To ensure that the police appoint liaison officers, or other points of contact, whom organizers can contact before or during an assembly;

44. To adopt a "no surprises" approach in policing assemblies; when possible, this approach may also extend to dialogue and communication with all groups, including potentially violent groups at the pre-assembly stage;

45. To promote direct contacts and dialogue as the preferred way to address differences in views or disputes both before and during the assembly;

46. When necessary, to encourage the involvement of third parties to facilitate dialogue and mediation between the police and assembly organizers and participants; these may include NGOs, as well as other local or state authorities.

On access and restrictions for journalists and assembly monitors

47. To allow and facilitate the monitoring of assemblies by international and local observers without imposing undue limitations on their activities;

48. To ensure that journalists are able to provide coverage of public assemblies without hindrance;

49. In particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists, to all locations where they may carry out their activities;

50. To ensure that identifiable journalists without accreditation, except under circumstances where resources, such as time and space at certain events, are limited, are not restricted in their ability to report on assemblies;

51. To ensure that journalists and assembly monitors are only detained by the police if they engage in unlawful conduct and not as a result of mass arrests or their lack of credentials; they should not be arrested as a result of their failure to leave an area once a dispersal order is given, unless their presence would unduly interfere with police action.

INTRODUCTION

ODIHR's work on the freedom of peaceful assembly and background to the report

21. Freedom of peaceful assembly plays a central role in democratic systems by enabling groups and individuals to make their views heard in public spaces. When fully protected, it empowers minority and marginalized voices to express their opinions and allows views that may be considered unpopular to be heard in an open "marketplace of ideas". It is closely interrelated with other important freedoms, such as the freedom of expression and the freedom of association. The enjoyment of freedom of peaceful assembly can serve an important purpose in democracies, where certain groups may face limitations in their access to, and participation in, formal institutions. Its enjoyment by everyone can enrich the debate about political and social issues and allows for grievances, criticism and alternative views to be voiced.

22. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990). This freedom is, moreover, enshrined in a number of international human rights treaties.[1] ODIHR has been active in providing legislative assistance to participating States, often in co-operation with the Council of Europe's European Commission for Democracy through Law (Venice Commission), and in training civil society organizations to promote full respect for the freedom of peaceful assembly.

23. As part of this work, ODIHR and the Venice Commission jointly published the Guidelines on Freedom of Peaceful Assembly,[2] which are intended to clarify the obligations of participating States in relation to the freedom of peaceful assembly and to provide examples of good practice in meeting such obligations.

24. In addition, ODIHR, often in co-operation with OSCE field operations, supports civil society actors in a number of participating States in the systematic monitoring of assemblies. The reports produced by NGOs as part of these exercises have been used to engage in a dialogue with the local authorities, to identify examples of good practice to be promoted and to address gaps and challenges in the regulation and policing of assemblies. Building on these country monitoring projects, ODIHR published its Handbook on Monitoring Freedom of Peaceful Assembly,[3] which sets out a methodology to observe public assemblies with a view to assessing compliance with human rights principles.

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[1] Article 21 ICCPR, Article 11 ECHR, Article 15 ACHR.

[2] OSCE/ODIHR and Council of Europe's European Commission for Democracy through Law, *Guidelines on Freedom of Peaceful Assembly. second edition*, (Warsaw/Strasbourg: ODIHR, 2010), hereinafter "Guidelines on Freedom of Peaceful Assembly", <http://www.osce.org/odihr/73405>.

[3] OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2011), <http://www.osce.org/odihr/82979>.

25. In order to support participating States in the implementation of their commitments on freedom of assembly, ODIHR undertook the monitoring of public events in 11 participating States between May 2011 and June 2012. The monitoring exercise focused on specific events on the basis of set criteria. It was carried out by ODIHR observers in line with the Office's mandate, and the findings of the monitoring are included in this report. The main goal of the monitoring was to identify gaps and challenges, as well as examples of good practices, in how participating States meet their commitments on freedom of peaceful assembly.

ODIHR's mandate

26. ODIHR is the main OSCE institution concerned with the human dimension[4] of security, tasked, inter alia, with assisting in monitoring the implementation of human dimension commitments (Helsinki 1992). ODIHR's monitoring mandate is based on a number of OSCE commitments (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003).[5] Moreover, ODIHR serves as a point of contact for information provided by participating States (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).

27. ODIHR has monitored assemblies with the ultimate goal of providing advice and assistance aimed at fulfilling relevant OSCE human dimension commitments. The recommendations contained in this report aim to advance the implementation of relevant OSCE commitments in all OSCE participating States, not just those where ODIHR has monitored assemblies. ODIHR stands ready to offer additional support to participating States, inter alia, in the form of legal opinions, the exchange of good practices, and targeted training courses, to promote the enjoyment of freedom of peaceful assembly in the OSCE area.

Methodology

28. Assemblies were monitored between 5 May 2011 and 9 June 2012 in the following participating States: Croatia, Hungary, Italy, Moldova, Poland, Serbia, Slovakia, Switzerland, Ukraine, the United Kingdom, and the United States of America. In some participating States, multiple events were observed that took place on the same day, on different days, or over a period of several days. The observation of one assembly generally also involved the monitoring of any

[4] In OSCE terminology, the term *human dimension* is used to describe the set of norms and activities related to human rights and democracy that are regarded within the OSCE as one of three dimensions of security, together with the politico-military and the economic and environmental dimensions. The term also indicates that the OSCE norms in this field cover a wider area than traditional human rights law.

[5] A compilation of relevant OSCE commitments is provided in Annex I.

counter-demonstrations, if present. A table including all events monitored as part of this project is included in Annex II to this report.

29. A total of 13 participating States received communication of ODIHR's intention to monitor assemblies. Of those, 11 participating States welcomed and facilitated the ODIHR mission. Two participating States, France and Greece, indicated that they were not willing to facilitate the monitoring work related to the specific assemblies that had been selected for observation. In its choice of participating States and events to be monitored, ODIHR also attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area. To preserve the integrity of the sample, only events selected by ODIHR on the basis of the below criteria were observed.

30. The monitoring sample included events which due to their nature, size or complexity posed particular difficulties for the authorities and the organizers. These relate, inter alia, to the expression of views or positions that challenge prevailing opinions, to the presence of counter-demonstrations and the potential of a resulting conflict between opposing groups, as well as to the need to ensure a balance between the respect for the freedom of peaceful assembly and security considerations. In this regard, assemblies organized by lesbian, gay, bisexual, transgender and intersex (LGBTI) groups, especially when held for the first time, in some cases presented challenges that were notably linked to the restrictions imposed on them, the policing of counter-demonstrations and the protection of assembly participants from potential violence. High-level summits and governmental meetings were, in some cases, accompanied by large and complex demonstrations, often lasting several days, with the participation of local protesters, as well as demonstrators from foreign countries. Managing and policing such assemblies presents challenges stemming from security considerations arising from the presence of high-ranking officials, the potential presence of violent protesters (in otherwise largely peaceful demonstrations), and the sheer complexity and size of the protests. Similarly, when multiple assemblies with opposing messages are organized simultaneously, such events present analogous challenges.

31. The choice to focus on one or a limited number of events in each participating State stems from the necessity to keep the exercise feasible from the point of view of logistics and resources. It means that the monitoring findings cannot be used to draw a comprehensive picture or systematic assessment of the situation of freedom of peaceful of assembly in any of the States covered in this report. Rather, the report is intended to pinpoint, by looking at a series of case studies, some of the common trends and patterns related to the enjoyment of freedom of peaceful assembly in the context of the observed events. Due to space constraints, thematic sections only include illustrative examples from some of the participating States included in the monitoring. They should not be regarded as providing an exhaustive overview of issues arising, in relation to each particular topic, in all participating States covered in the report.

32. The monitoring of assemblies involved the gathering of first-hand information by observers able to witness the conduct of, and interaction among, participants in the assemblies, law enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, etc.). ODIHR monitoring teams deployed on the ground ranged in size between two and eight observers and always included ODIHR staff trained in assembly monitoring techniques and/or members of the OSCE/ODIHR Panel of Experts on the Freedom of Assembly.[6] As part of some deployments, external consultants with relevant expertise were employed, including local monitors selected through an open call for applications.

33. The observation focused on events and activities that took place in public spaces in the run-up to and during assemblies. Although assembly monitoring places particular emphasis on the gathering of first-hand information, the observation findings were, whenever possible, complemented by information gathered at meetings with: representatives of the relevant authorities; organizers of, and participants in, assemblies and their legal representatives; civil society organizations; journalists; and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events. Secondary sources, including media, academic and NGO reports, were also used. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.

34. In general, ODIHR monitoring teams attempted to communicate with, and/or hold meetings with, the main groups involved in organizing assemblies and potential counter-demonstrations, with the exception of those groups that had advocated violence during the monitored assembly or had been significantly involved in violent activities in the past. Such communication took place before and after assemblies.

35. It should be noted that, following an assembly, further actions by the State and its officials might affect the enjoyment of the rights to freedom of assembly or other human rights (for instance, in relation to the detention of participants in assemblies, or of other individuals, or the investigation of police misconduct). These events fall beyond the scope of this monitoring exercise in the course of which no attempt was made to gather systematic information on such further actions.[7]

[6] The OSCE/ODIHR Panel of Experts on the Freedom of Assembly was established in 2006 and consists of ten independent experts from OSCE participating States, selected on the basis of their expertise, experience, integrity and objectivity. The Panel advises and consults with ODIHR on the promotion of freedom of peaceful assembly in the OSCE area.

[7] For a full description of the assembly monitoring methodology employed by ODIHR, see OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2011).

36. During the deployment in the United States to monitor protests organized in connection with the May 2012 NATO and G8 Summits in Chicago and Camp David, ODIHR collected information on recent "Occupy" protests in Los Angeles, New York and Oakland. This information was obtained not by direct observation, which generally would not have been possible,[8] but in meetings with state and non-state interlocutors. In light of the relevance of some of the issues raised by these protests in relation to the enjoyment of the freedom of peaceful assembly, information gathered as part of this fact-finding is included in this report.

37. ODIHR wishes to thank the authorities of the participating States where the monitoring took place for their openness and co-operation and their assistance in organizing, and willingness to take part in, meetings for the purpose of gathering information. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about freedom of peaceful assembly in their respective countries.

Structure of the report

38. The report is organized thematically according to relevant standards on freedom of peaceful assembly. The report uses the *Guidelines on Freedom of Peaceful Assembly* as its main benchmark and reference point to assess compliance with international human rights standards. Section I deals with restrictions on the freedom of peaceful assembly and procedural issues. Section II discusses the policing of assemblies. Section III briefly deals with international standards and good practice in the monitoring of public assemblies and the work of journalists in relation to assemblies.

39. Sections and subsections open with a preliminary discussion of international standards and identified good practices, which is followed by a description of the findings of the monitoring, illustrating some of the key issues. In Sections II and III, boxes summarize information gathered about the assemblies of the Occupy movement in New York, Oakland and Los Angeles.[9] Subsections end with conclusions and recommendations for OSCE participating States. This structure is meant to enable an easier comparison between OSCE commitments, international human rights standards and domestic law and practice, as documented and observed by ODIHR.

[8] In most instances, Occupy camps had already been evicted and related protests had taken a different form. It is worth noting that the observation of assemblies that last several weeks or months and that involve the erection of structures such as tents and camps raises particular operational challenges due to the sheer duration of the assemblies and the difficulties in ensuring their continuous coverage.

[9] These assemblies were not directly monitored by ODIHR. A fact-finding mission was undertaken by ODIHR in May 2012. Information was gathered in meetings with State representatives, academics and civil society representatives and through media sources, including video footage available in the public domain.

SECTION I: RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND PROCEDURAL ISSUES

40. OSCE participating States are committed to guaranteeing the right to freedom of peaceful assembly, ensuring that any restriction that may be placed on this right be prescribed by law and be consistent with international standards (Copenhagen 1990). Article 21 of the International Covenant on Civil and Political Rights (ICCPR)[10] provides that "[n]o restrictions may be placed on the exercise of [the right of peaceful assembly] 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." One of the key guiding principles at the basis of the Guidelines on Freedom of Peaceful Assembly is the presumption in favour of holding assemblies, which holds that, as a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation.[11]

NOTIFICATION AND AUTHORIZATION REQUIREMENTS

Notification and authorization requirements for assemblies – international standards and good practice

41. Although not necessary under international human rights law,[12] a requirement to give prior notice of an assembly may be compatible with permitted limitations under the ICCPR.[13] The purpose of a notification system is to enable the competent authorities to make necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.[14] The Guidelines on Freedom of Peaceful Assembly note that it is good practice to require notification only when a substantial number of participants are

[10] All participating States covered in this report are parties to the ICCPR. A similar provision is included in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which enshrines the principle that no restrictions shall be placed on the exercise of the right to freedom of peaceful assembly "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." Among the participating States mentioned in this report, Croatia, France, Greece, Hungary, Italy, Moldova, Poland, Serbia, Slovakia, Switzerland, Ukraine and the United Kingdom are parties to the ECHR. Moreover, a comparable provision is contained in Article 15 of the American Convention on Human Rights (ACHR). Among the participating States mentioned in this report, the United States has signed the ACHR in 1977 but has not yet ratified it.

[11] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, para. 2.2.

[12] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 113.

[13] UN Human Rights Committee, *Kivenmaa v. Finland* (1994).

[14] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 113.

expected or only for certain types of assemblies.[15] The UN Special Rapporteur on the rights to freedom of peaceful assembly and association also considers that a notification should be subject to a proportionality assessment.[16]

42. Any provisions concerning advance notification should require the organizers to submit a notice of the intent to hold an assembly but not a request for permission.[17] A permit requirement is generally more prone to abuse than a notification requirement, and it could devalue the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful.[18] Where permit systems are in place, they must clearly prescribe in law the criteria for the issuance of a permit, which should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation.[19]

Notification and authorization requirements for assemblies – ODIHR findings

43. Most of the participating States where ODIHR observed assemblies have a notification system for assemblies, rather than a permit or an authorization system. The legislation of Moldova, Poland and Croatia does not require notification of assemblies with a small number of participants.[20]

44. Some participating States differentiate in their notification requirement between static and moving assemblies or between different types of assemblies. In Northern Ireland,[21] the Public Processions Act of 1998 requires organizers of public processions to give notice to the Police Service of Northern Ireland not less than 28 days before the date on which the procession is to be held (Section 6). Notification requirements also apply to protest meetings related to public processions (counter-demonstrations) with a deadline of 14 days prior to the event

[15] *Ibid*, Explanatory Notes, para. 115.

[16] "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", May 2012, para. 28, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>.

[17] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para 118.

[18] *Ibid*.

[19] *Ibid*, para. 119.

[20] In Moldova, there is no notification requirement for assemblies that gather fewer than 50 participants (Articles 3 and 12 of Moldova's Law on Public Assemblies). The Polish Law on Assemblies defines an assembly as a group of at least 15 people, thus eliminating the notification requirement for smaller groups (Article 1). Similarly, the Croatian Law on Public Assembly defines peaceful assemblies and public protests as gatherings of more than 20 individuals (Article 4).

[21] The legislative framework in Northern Ireland on freedom of peaceful assembly is different than in other parts of the United Kingdom.

(Section 7). However, other static assemblies are exempt from notification requirements.

45. In Switzerland and the United States, permit or authorization systems are in place. In the United States, regulations on assemblies differ in various cities but permits are often required for assemblies involving the use of amplifying devices, when participants in a moving assembly do not remain on sidewalks or when the assembly is expected to obstruct pedestrian or vehicular traffic or may require the closure of streets. Specific regulations often apply in parks and public plazas.[22]

46. The Municipal Code of Chicago, for example, provides for permit requirements for parades and for public assemblies that are reasonably anticipated to obstruct the normal flow of pedestrian or vehicular traffic.[23] In New York, permits are required, inter alia, to march on a public street (when it is not possible to remain on sidewalks) and for the use of amplification devices on public property. Assemblies on public sidewalks that do not involve the use of amplification devices do not require permits.[24] In Los Angeles, permits are generally required for static and moving assemblies that do not comply with normal or usual traffic regulations and controls.[25]

47. In Switzerland, regulatory and legislative frameworks on assemblies differ at the cantonal level, but, in general, the organizers of assemblies need to seek authorization from the local authorities in the cantons of Bern, Geneva and Graubünden.

48. In the Geneva Canton, the 2008 Law on Demonstrations in Public Spaces[26] stipulates that organizers of demonstrations have to submit an authorization request to the Department of Security, Police and Environment (Article 3). Article 5 of the Law deals with the issuance, delivery and refusal of the authorization.[27]

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[22] Public plazas are generally intended to be privately owned open areas that are open to the public and adjacent to buildings.

[23] A parade is defined as "any march, procession or other similar activity consisting of persons, animals, vehicles or things, or combination thereof, upon any public street, sidewalk, alley or other public place, which requires a street closing or otherwise requires police officers to stop or reroute vehicular traffic because the marchers will not comply with normal and usual traffic regulations or controls" (para. 10.8.330.b).

[24] See New York City Administrative Code, Section 10.110, and Rules of the City of New York, Title 38, Chapter 19.

[25] See Los Angeles Municipal Code, Section 103.111.1.b.

[26] Amendments to the law applicable during the monitoring of WTO-related protests (which took place in December 2011) entered into force on 21 April 2012 (see below).

[27] Amendments to Article 5 entered into force on 21 April 2012, further regulating the authorization procedure and introducing, inter alia, the obligation for assembly organizers to be at the disposal of the police for the duration of the demonstration and providing for the possibility of imposing an obligation on the organizers to ensure the presence of assembly stewards (*service d'ordre*).

Geneva Canton Law on Demonstrations in Public Spaces, Article 5. Issuance, conditions and refusal of authorization

1. When receiving an application for authorization, the Department shall evaluate all interests involved, in particular the danger that the demonstration could involve for public order. The Department's assessment is based notably on information contained in the application for authorization, on past experiences and on the correlation between the demonstration's theme and potential unrest.

2. While issuing the authorization, the Department shall impose terms, obligations and conditions for the demonstration, taking into consideration the application for authorization, as well as private and public interests involved. In particular, it shall determine the place and the itinerary of the demonstration, as well as the planned date and time of the beginning and end of the demonstration.

3. For this purpose, the Department shall notably make sure that the itinerary does not provoke a disproportionate risk for persons and property and enables the intervention of the police and its means along the entire route. It may order the demonstration to be held in a given place and to remain static.

4. If this measure seems appropriate in order to limit the risks of breach of public order, the Department shall oblige the applicant to put in place a team of assembly stewards**.** The number of assembly stewards shall be proportionate to the risk of breach of public order. Before the demonstration, the Department shall make sure that the applicant is able to fulfil this obligation. The assembly stewards shall be obliged to cooperate with the police and follow its orders.

5. If the imposition of conditions or obligations does not enable to ensure the respect for public order or does not protect against a disproportionate breach of other interests, the Department shall refuse the authorization for the demonstration.

6. The Department may modify or withdraw an authorization in the event of that new circumstances arise.

49. Article 2 of the Regulation of the City of Bern on Demonstrations on Public Land provides that demonstrations are only permitted with the prior authorization of the City.[28] The authorization is issued if the assembly can take place in an orderly manner and if the disruption caused to others who use public land appears reasonable (Article 2). In Davos, a similar authorization system is in place. A municipal ordinance was in force in Davos between 21 and 29 January 2012, on the occasion of the World Economic Forum (WEF) Annual Meeting, stipulating that authorization requests for demonstrations on public land had to be submitted

[28] An exception is made for spontaneous assemblies that do not require authorizations (but the competent authorities should be notified as soon as possible).

to the Executive Municipal Council of the Municipality of Davos, at least 48 hours prior to the event.[29]

Conclusions and recommendations on notification and authorization requirements for assemblies

50. Notification systems for assemblies are, in principle, preferable to authorization systems.[30] In the context of notification systems, provisions such as those included in the Moldovan and Polish laws on assemblies, which require notification only for assemblies gathering a certain number of participants, are welcome. It is good practice to include in laws and regulations provisions such as those in force in the United Kingdom, including in Northern Ireland, which require notification only for certain types of assemblies (e.g., marches or parades) that are likely to interfere with traffic or other activities that routinely occur at the same site.

51. Imposing notification requirements only on organizers of assemblies that are likely to require a response by the state (either to facilitate freedom of assembly or to protect public order, public safety, and the rights and freedoms of others) contributes to limiting the regulation of assemblies to the minimum extent necessary.

52. A permit requirement based on a legal presumption that a permit for the use of a public place will be issued may serve the same purpose as an advance notification system.[31] The US Supreme Court, in recognizing that "government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to hold a march, parade, or rally", noted that there is a "heavy presumption" against the validity of a prior restraint on speech.[32] In this regard, the exclusion from the permit system of assemblies that are not expected to significantly interfere with pedestrian or vehicular traffic is a positive means of not overregulating assemblies.

53. The authorization requirements in place in Geneva, Bern and Davos, in contrast, apply to all types of assemblies. In Geneva, in particular, they detail a number of requirements and conditions that may be imposed on the organizers of assemblies (see para. 72, 126, 132 and 133). The Geneva Canton Law on Demonstrations in Public Spaces grants final authority to the Department of Security, Police and

[29] The ordinance is available in English at <http://www.wef.gr.ch/EN/faq/Seiten/2012.aspx>.

[30] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 118.

[31] *Ibid*, Explanatory Notes, para. 119.

[32] See *Forsyth County v. The Nationalist Movement*, 505 U.S. 123 (1992) and *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). The U.S. Supreme Court clarified that requiring a permit and a fee before authorizing "public speaking, parades or assemblies" can be seen as a prior restraint. As such, the permit scheme should not delegate overly broad licensing discretion to a government official and should not be based on the content of the speaker's message.

Environment to determine the place and the itinerary of the demonstration, as well as the planned date and time of the beginning and end of the demonstration (Article 5.2). In addition, stipulating that the competent authorities will consider the authorization request taking into account "the correlation between the demonstration's theme and potential unrest" (Article 5.1) leaves open the possibility of restrictions on assemblies (or potentially a denial of authorization) based on its content or message, rather than purely on time, place and manner considerations (see para. 71).[33]

54. There is no indication that the Geneva authorization regime (or the less detailed ones in force in Bern and Davos) has resulted in the denial of authorization for a significant number of assemblies. When ODIHR monitored a small protest on 17 December 2011 against the WTO Ministerial Conference in Geneva, with approximately 150 participants, the demonstration had in fact been authorized. However, the current legal and regulatory framework in force in Geneva is not fully consistent with the principle of presumption in favour of holding assemblies and could lead to restrictions on assemblies based on their content.

55. Recommendations for participating States:

- where there are authorization requirement for assemblies, to consider amending legislation to introduce a notification system;
- to ensure that notification or, where they are retained, permit requirements are only imposed when necessary to facilitate freedom of assembly or to protect public order, public safety, and the rights and freedoms of others, and to only limit the regulation of assemblies to the minimum extent necessary;
- where an authorization system is retained, to ensure that this is based on a legal presumption that the authorization will be issued and that any refusal of authorization will be based on clearly defined criteria based on time, place and manner considerations and will be subject to prompt judicial review.

RESTRICTIONS IMPOSED BEFORE ASSEMBLIES

Restrictions imposed before assemblies – international standards and good practice

56. Restrictions on freedom of peaceful assembly must be necessary in a democratic society in the interests of national security or public safety, public order, the

[33] As noted above, the Regulation (*Reglement*) of the City of Bern on Demonstrations on Public Land only states that authorizations are issued if demonstrations can take place in an orderly manner and if the disruption caused to others who use public land appears to be reasonable (Article 3). While this regulation is less restrictive than the authorization system in force in Geneva, it fails to define clear criteria for issuing authorizations and may carry the risk of giving overly broad discretion to the body (the Police Inspectorate) considering authorization requests.

protection of public health or morals or the protection of the rights and freedoms of others (Article 21 of the ICCPR).

57. Any restrictions imposed must have a basis in primary law, as must the mandate and powers of the restricting authority (principle of legality).[34] Furthermore, they must be proportionate to the achievement of a legitimate aim. Given that a wide range of interventions might be suitable, the least restrictive means of achieving a legitimate purpose should always be given preference.[35]

58. In general, restrictions on assemblies should not be based on the content of the message they seek to communicate.[36] This has been recognized in the case law of the European Court of Human Rights (ECtHR) and of the Supreme Court of the United States.[37] So-called time, place and manner restrictions do not interfere with the message communicated and involve a wide array of possibilities available to the regulatory authority.[38] Such limitations, rather than involving a choice between non-intervention and prohibition, relate to necessary changes to the time or place of an event – without preventing access to the targeted audience – or the manner in which it is conducted.[39]

59. Importantly, if there is a proper basis for imposing time or place restrictions on assemblies, suitable alternative times or places should be identified. Any alternative must be such that the message that the assembly seeks to convey, can be effectively communicated to those to whom it is directed, in other words, within "sight and sound" of the target audience.[40]

60. Restrictions based on public order grounds should not be imposed where there is only a hypothetical or an insubstantial risk of public disorder or the mere presence of a hostile audience.[41] 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

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[34] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 35.

[35] *Ibid*, Explanatory Notes, para. 39.

[36] Nonetheless, the law should still prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 96.

[37] See, for example, ECtHR, *Hyde Park and Others v. Moldova No. 1* (2009) and Supreme Court of the United States, *United States v. Grace*, 461 U.S. 171 (1983) and *Forsyth County v.The Nationalist Movement*, 505 U.S. 123 (1992).

[38] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 99.

[39] *Ibid*.

[40] *Ibid*, Explanatory Notes, para. 45. However, the organizer of an assembly should not be compelled or coerced to accept whatever alternative(s) the authorities propose. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly. See *ibid*, Explanatory Notes, para. 103.

[41] *Ibid*, Explanatory Notes, para. 71.

prosecution rather than prior restraint.[42] Evidence of disorder at an organizer's previous assembly should not, in and of itself, be grounds to automatically prevent an organizer from organizing a subsequent assembly.[43]

61. There can be a significant overlap between public order and public safety considerations (which may arise, for instance, in relation to the use of vehicles in assemblies).[44] In rare cases, restrictions on assemblies may also be justified on public health grounds.[45] The protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly. Reliance on such a category can too easily lead to the regulation of content (see below) and discriminatory treatment.[46]

62. The regulatory authority has a duty to strike a proper balance between the important freedom of peacefully assembly and the competing rights of others in the location affected by an assembly.[47] Given the need for respect for diversity 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.[48] Temporary disruption of vehicular or pedestrian traffic and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.[49]

Bans on assemblies – ODIHR findings

63. In some of the participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies.[50] This section discusses bans and

[42] *Ibid*.

[43] See Supreme Court of the United States, *Kunz v. New York*, 340 U.S. 290, 294 (15 January 1951): "The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence."

[44] Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 74.

[45] In such cases, similar restrictions should also apply to attendance at schools, concerts, sporting events, etc. Restrictions may also be justified where the health of participants in an assembly becomes seriously compromised (e.g., during a hunger strike). See Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, paras. 76 and 77.

[46] Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 79.

[47] *Ibid*, para. 80.

[48] *Ibid*.

[49] *Ibid*.

[50] The Ukrainian Code of Administrative Procedures provides that local authorities, upon receipt of an assembly notification, can file a case to request the prohibition of the event before the competent administrative court. However, the court can only accept or reject the application by the municipal authorities, and has no option to reach other decisions, for instance imposing different and less intrusive types of restrictions. See Articles 182 and 183 of the Code of Administrative Procedures.

content-based restrictions, while the following section includes some examples of time, place and manner restrictions.[51]

64. Police authorities initially banned the Budapest Pride parades in 2011 and 2012, on the grounds that the events would be likely to cause excessive traffic disruption,[52] pursuant to Article 8.1 of Act III on Freedom of Assembly (1989). Following appeals by the organizers, the bans were overturned by the Budapest Metropolitan Court, and both events took place.

65. In Serbia, ODIHR deployed a monitoring team to observe the 2011 Belgrade Pride march, which was due to take place on 2 October 2011. On 30 September 2011, media reported that the Council for National Security, a high-level national security body,[53] adopted a resolution banning all assemblies throughout Serbia, for security reasons, on 1 and 2 October 2011.[54]

66. In the weeks and days preceding the planned 2011 Pride march, the police and city authorities gave conflicting messages on the willingness and readiness of state bodies to protect the freedom of peaceful assembly of Pride participants. On the day the alleged Council for National Security resolution was announced in the media, police authorities communicated to the organizers that the Belgrade Pride march had been banned on the grounds that the assembly could result in the "disruption of public traffic, damage to health, public morals, or the security of persons and property".[55] The Minister of Interior and Belgrade's Mayor, in

[51] Provisions on restrictions on assemblies in the participating States covered in this report are complex and would merit a separate, exhaustive discussion. In the interest of being concise, this and the following sections will provide only some references to them, focusing mainly on restrictions reported in the participating States during the monitoring period (or that were directly relevant to the observed events).

[52] See Amnesty International, "Document - Hungary: Authorities must lift ban on 2012 Pride march", 10 April 2012, <http://www.amnesty.org/en/library/asset/EUR27/002/2012/en/f16c94a3-e6cc-4aa0-8e90-313b134aa663/eur270022012en.html>.

[53] Composed of the President, the Prime Minister and a number of ministers, including the Minister of Internal Affairs, as well as the heads of military, security, and intelligence agencies.

[54] Although this resolution was never officially confirmed, it was largely reported in the media, for instance, in B92, "Zabranjeni svi skupovi, pa i Prajd", 30 September 2011, <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=30&nav_category=12&nav_id=545889>. The mere fact that the resolution could not be officially confirmed made it impossible to challenge the blanket ban decision before any judicial body.

[55] The decision simply lists permissible grounds, under Article 11.1 of Serbia's Public Assembly Law, for the banning of an assembly. Similar communications were received by organizers of other events on those two days for which notification had been provided. For instance, a protest by the Novi Sad Ecological Movement close to the ultra-nationalist group Naši, which was expected to take place on 2 October, was banned on exactly the same grounds. A copy of the decision was obtained from the Serbian Ministry of Interior. The leader of the Novi Sad Ecological Movement, Nikola Aleksić, was briefly detained on 2 October 2011 for having performed a "one-person protest" on the day and time the banned assembly had been planned. Nikola Aleksić claimed that his protest, which involved only one individual, did not qualify as an assembly and, as such, was not in defiance of the blanket ban. While observing the enforcement of the ban on a square in central Belgrade on 1 October 2011, a group of four ODIHR monitors, who were non-identifiable as such, were approached by a police officer and instructed to "disperse."

particular, were reported as openly calling for the Pride march to be cancelled due to the security risks involved.[56] In addition, a police trade union made repeated calls, including a joint statement issued with the right-wing party Dveri, to ban the march.[57]

67. In 2010, the Pride march had been marred by widespread violence and destruction of property in clashes involving significant numbers of violent counter-demonstrators. Reportedly, more than 140 people were injured in the incidents, including at least 124 police officers and 17 counter-demonstrators. In 2011, a number of groups, including the nationalist organization Obraz, announced their intention to organize protests against the Pride march and counter-demonstrations on 1 and 2 October.

68. Following the resolution of the Council for National Security, the Pride march (and related counter-demonstrations) did not take place. The organizers of the Belgrade Pride march decided to organize an event indoors and a small flash mob, instead of the planned assembly. The flash mob took place on 1 October in the centre of Belgrade, and lasted for approximately five minutes. It ended following requests by police officers to disperse.

Content-based restrictions – ODIHR findings

69. Although the Belgrade Pride march was the only event that ODIHR planned to monitor that was banned, there are other examples of restrictions on assemblies specifically targeting Pride parades or related events in the participating States covered in this report. In some cases, these restrictions appear to have been motivated by "public morality" considerations, effectively resulting in the regulation of the content of assemblies. In Moldova, for example, an assembly organized by the LGBTI group GenderDoc-M, which had been due to take place on 2 May 2010[58] in a central square in Chisinau, was banned by the Chisinau Appeals Court at the request of the Chisinau municipal authorities and allowed, instead, to take place in a park in a less central location.[59] The ruling cited security considerations as reasons for the ban and relocation, as well as "public morality", in response to petitions brought by a number of organizations against

[56] See, for example, B92, "Đilas i Dačić za odlaganje Prajda", 29 September 2011, <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=29&nav_category=12&nav_id=545707>.

[57] See, for example, B92, "Policajci i 'Dveri' protiv Parade", 22 September 2011, <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=22&nav_category=12&nav_id=543814>.

[58] Although this event falls outside the monitoring period, it provides important background information in relation to the subsequent event ODIHR monitored in 2011. In a related development, on 12 June 2012, the ECtHR found that Moldova had violated Articles 11, 13 and 14 of the ECHR in relation to a 2005 denial of authorization for a 2005 GenderDoc-M demonstration. See ECtHR, *GenderDoc-M v. Moldova* (2012).

[59] The ruling of the Chisinau Appeals Court was subsequently reversed by the Moldovan Supreme Court.

the event. The proposed new location was rejected by GenderDoc-M, and the organization chose instead to organize a flash mob. As a result, in 2011 GenderDoc-M decided to hold a small event instead which did not require notification.[60]

70. In relation to potential content-based restrictions on freedom of peaceful assembly applying to LGBTI groups, since February 2012 a number of Moldovan local councils have adopted provisions banning the "propaganda of non-traditional sexual orientations."[61] Such provisions may be used to impose bans or other restrictions on public events organized by LGBTI groups.

71. The authorization system in the Geneva Canton may leave open the possibility for the competent authorities to impose content-based restrictions on assemblies in light of the regulating body's role in considering the "correlation between the demonstration's theme and potential unrest" (Article 5.1 of the Geneva Canton Law on Demonstrations in Public Spaces).

72. In relation to the specific event monitored by ODIHR in Geneva, the authorization the organizers received for their anti-WTO protest on 17 December 2011 stated that "no media (images, audio, video etc.) which may be disturbing to certain individuals will be used".[62] This condition may be interpreted as imposing content-based restrictions on the event.[63]

Time, place and manner restrictions on assemblies – ODIHR findings

73. Summit-related protests monitored by ODIHR were directly or indirectly affected by time, place and manner restrictions on assemblies, or, more generally, by restrictions on access to particular areas.[64] These restrictions were often imposed on security grounds.

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[60] Interview with representatives of GenderDoc-M, 12 May 2011.

[61] See, for example, International Commission of Jurists and International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe, "'Homosexual Propaganda' Bans: Analysis and Recommendations", 25 June 2012, <http://documents.icj.org/Joint_briefing_paper_ICJ_IE_propaganda_bans_25_June.pdf>. A recent example is the decision of the City Council of Bălți (the second largest city in Moldova) of February 2012, which "prohibits aggressive propaganda of non-traditional sexual orientations in demonstrations, propaganda that the central authorities of the Republic of Moldova are seeking to impose on the municipality"

[62] A copy of the authorization was obtained by ODIHR from the organizers of the protest.

[63] In Italy, the 1931 Consolidated Act of Public Safety Laws provides that assemblies where slogans that are "seditious" or offensive to authorities, may be dispersed (Article 20). Also see Article 21, which characterizes seditious gatherings.

[64] In relation to Pride events, it is worth mentioning that the City of Split attempted to impose a restriction on the place of the 2012 Split Pride parade. Apparently in response to petitions against the parade by Split residents, the city authorities adopted a decision on 30 June 2012 modifying a previously issued authorization to the LGBTI group Kontra for the use of public land during the Pride parade (see Službeni Glasnik Grada Splita, "Zaključak o izmjeni zaključka davanju na privremeno korištenje javnih gradskih

74. On 28 January 2012, ODIHR monitored a protest against the WEF Annual Meeting in Davos. Between 25 and 29 January 2012, the Graubünden Canton Police enacted restrictions on access to certain areas of the town[65] close to the venues of the meeting. They affected access to these areas by all individuals with the exception of police and security personnel, residents, and individuals who (as participants, organizers, accredited media, etc.) were taking part in the WEF meeting or related activities. As a result, neither the protest that took place on 28 January 2012 nor a related Occupy Davos camp could be within sight and sound of the WEF delegates. In addition, ODIHR was informed that security considerations played a role in the decision, which was reached through negotiation with the organizers, to move the 28 January protest from the location where it had been originally planned, closer to the security zones and the congress centre,[66] to a square in front of the local municipal building.[67] In contrast, in Geneva, the anti-WTO protest took place within a relatively close distance from the venue of the WTO Ministerial Conference.

75. In the United States, ODIHR monitored assemblies organized in connection with the 2012 G8 Summit, which took place at the presidential retreat of Camp David on 18-19 May 2012, and the Chicago NATO Summit, which took place on 20-21 May 2012.

76. Due to security concerns, the Camp David residence and its surroundings were inaccessible to the general public.[68] Small protests took place in Frederick and Thurmont, two towns in the state of Maryland, in the vicinity of Camp David. In this case, the very choice of the Summit location made it virtually impossible to organize protests within "sight and sound" of the intended audience.[69]

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površina Lezbijskoj grupi Kontra", 1 June 2012). The authorization appeared to have been needed in relation to the erection of a stage during the Pride parade (interview with Deputy Mayor, 11 June 2012). Police authorities clarified that they were ready to provide protection during the event at the location provided by the organizers in their notification (interview with representatives of the Croatian Ministry of Internal Affairs, 12 June 2012), and the Split Pride parade took place on 9 June 2012 at the originally notified location.

[65] The police order and the map of the security areas are available in English at the following links: <http://www.wef.gr.ch/DE/faq/FAQ_Dokumente/02%20WEF%202012%20Polizeiliche%20Anordnungen%20eng.pdf> and <http://www.wef.gr.ch/DE/faq/FAQ_Dokumente/06%20WEF%202012%20Sicherheitszonen%20Davos%20eng.pdf>.

[66] The rally was originally planned to happen on Arkadenplatz, a central square in Davos, but the location was changed because the WEF Committee (which plays a decision-making and co-ordinating role in relation to the WEF Annual Meeting) expressed security-related concerns regarding this location. (interview with the Landammann of Davos, 28 March 2012).

[67] Interviews with the Landammann of Davos, 28 March 2012 and with the organizers of the protest, 28 January 2012 and 28 March 2012.

[68] Camp David is a military installation officially known as Naval Support Facility Thurmont.

[69] Initially, the G8 Summit was planned to take place in Chicago. The decision to move it to Camp David was announced in March 2012.

77. Demonstrations in Chicago took place on the days before, during and after the NATO Summit. ODIHR monitored assemblies between 18 and 21 May 2012. As with other Summit-related protests, it was also impossible in Chicago to organize protests in the immediate vicinity (and within sight and sound) of the Summit venue. In general, this was the result of constraints imposed by the creation of a security perimeter around the Summit venue. The borders of the security area were reportedly established by the United States Secret Service on the basis of security considerations.[70]

78. Notably, to mitigate the effects of the security restrictions, the American Civil Liberties Union (ACLU) agreed with the managers of McCormick Place, the Summit venue,[71] to allow so-called free-speech activities within the security perimeter. The agreement involved the placement of banners, signs and literature (pamphlets and informational brochures) in areas within access to the delegates and the display of videos in areas with access to both delegates and the international media room.[72]

79. The main NATO-related protest took place on 20 May 2012 in Chicago. A parade permit application was filed on 6 March 2012 by the Coalition Against NATO/G8 War & Poverty Agenda (CANG8)[73] and was denied by the Chicago Department of Transportation due to the expected traffic disruption and drain on police resources during the NATO Summit.[74] In denying the application, the Department

[70] The NATO Summit was declared a National Special Security Event by the Department of Homeland Security, which gave the Secret Service the task of developing of an overall security plan. Information on security restrictions in place during the NATO Summit is available at <http://www.secretservice.gov/press/NATO01-12_SecurityTransportationPlan.pdf>.

[71] McCormick Place is owned and operated by a government agency known as the Metropolitan Pier and Exposition Authority.

[72] See <http://www.aclu-il.org/free-speech-in-mccormick-place/>.

[73] A parade permit had initially been filed for a protest on 19 March, in anticipating that the G8 and NATO Summits would both be held in Chicago.

[74] Section 10.8.330 of the Municipal Code of Chicago stipulates that parade permits are issued if:

The parade will not substantially or unnecessarily interfere with traffic in the area contiguous to the activity, or that, if the parade will substantially interfere with such traffic, that there are available at the time of the proposed parade sufficient city resources to mitigate the disruption;

There are available at the time of the parade a sufficient number of on-duty police officers, or other city employees authorized to regulate traffic, to police and protect lawful participants in the parade and non-participants from traffic-related hazards in light of the other demands for police protection at the time of the proposed parade;

The concentration of persons, animals, vehicles or things at the assembly and disbanding areas and along the parade route will not prevent proper fire and police protection or ambulance service;

The parade will not interfere with the use of the requested area by another party to whom a valid permit has been issued for the same area or route, or does not conflict with another application, or with a traditional parade;

of Transportation proposed an alternative route for the event on the same date and at the same time.[75] The alternate route, although shorter, included the locations that the organizers had indicated as important to convey their message. An appeal against the decision to reroute the parade was rejected by the Department of Administrative Hearing, Municipal Division, which, inter alia, found that the alternative route provided "comparable public visibility" to the organizers.

80. There were discussions about the final part of the assembly, when a symbolic ceremony was organized by US veterans from the organization Iraq Veterans Against the War (IVAW), during which they planned to return their medals. IVAW had proposed that a small group of veterans who were willing to undergo security screening be allowed within the security perimeter to be able to hand over their medals to high-ranking NATO officials.[76] This proposal was rejected, apparently mainly due to a lack of response by NATO. In a letter of understanding addressed to the organizers of the 20 May march, the Chicago Department of Transportation urged IVAW to "conduct any presentation of medals as part of their ceremony on the flatbed truck" provided by the City outside the security perimeter.[77] Eventually, during the ceremony, IVAW representatives threw their medals towards the security area.

81. Furthermore, restrictions were also imposed on an assembly organized by National Nurses United, a trade union, on 18 May 2012. A permit had initially been granted for a march ending with a rally at the central location of Daley Plaza. On 8 May, the city authorities issued a revised parade permit requiring the organizers to change the route of the march and move the rally to a different and less central location, due to the larger than originally expected number of participants and concerns that they could not be accommodated in Daley Plaza. A compromise solution was finally reached on 11 May in an agreement to organize a static rally only in Daley Plaza.

Conclusions and recommendations on restrictions imposed before assemblies

82. Restrictions on assemblies must only be imposed where there are compelling arguments to do so on grounds that are permissible under OSCE commitments and international human rights standards.

The parade will not be conducted for any purpose or in any manner made unlawful elsewhere in this code or by any other local, state or federal law; and

The application contains sufficient information about the person or organization applying for the permit, the parade organizer, and the proposed date, time, location, route and number of participants.

[75] The permit application and the denial letter were obtained from the organizers of the protest.

[76] Alternatively, IVAW invited a small group of NATO officials to come outside the security perimeter to receive the medals.

[77] A copy of the letter, dated 15 May 2012, was obtained from the organizers of the protest.

83. Blanket bans on assemblies, such as the one that was in force in Serbia on 1 and 2 October 2011, are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved.[78] Police and security bodies in Serbia were clearly faced with real security challenges in relation to the 2011 Belgrade Pride march.[79] However, it is a matter of concern that they decided to address them by imposing sweeping measures prohibiting all assemblies in Serbia for two days. By doing so, the authorities failed to identify and implement less intrusive measures[80] to regulate assemblies and to minimize security risks. This is illustrated by one of the paradoxical consequences of the ban, the "dispersal" and brief detention of the participant in a one-person protest by the Novi Sad Ecological Movement (which was very unlikely to pose any security or other risks).

84. The lack of an individualized and case-by-case approach in imposing restrictions on assemblies is further exemplified by the nature of the individual decisions adopted by the Serbian police authorities for assemblies planned on 1 or 2 October 2011, which all cite identical grounds for their prohibition.[81] In this regard, it should be noted that the authorities cannot evade charges of discriminatory restrictions simply by declaring a wider ban (which they might argue does not target any particular group but is rather an objective measure in the face of threatened public disorder).

85. There are also concerns as to the legal basis for the above-mentioned individual decisions, which are all apparently based on the blanket ban decided by the Council for National Security. No provisions in Serbian law give powers to the Council for National Security to impose restrictions on the enjoyment of human rights and, specifically, on freedom of assembly.[82] The blanket ban decision by the Council was only reported by the media, and it is unclear whether it exists in written form and what formal procedure was followed to reach it. Indeed, no ruling by the Council for National Security is mentioned in any of the individual decisions reviewed by ODIHR banning assemblies on 1 and 2 October 2011. This conflicts with the principles of legality and transparent decision-making and had

[78] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 43.

[79] Statements made in advance of the Pride march by the Minister of Interior, the Mayor of Belgrade, and other individuals in positions of authority raise doubts as to the readiness of the authorities to take all necessary measures to protect the event from violent protesters. Had the Pride march taken place, these statements could have had the effect of encouraging counter-protesters to confront the police and Pride march participants.

[80] This might have potentially involved restrictions (e.g., on time, place and manner) on some assemblies.

[81] ODIHR is in possession of copies of seven individual decisions, which are all justified by potential "disruption of public traffic, damage to health, public morals, or the security of persons and property."

[82] The Council for National Security may, inter alia, "recommend to the competent state bodies measures to improve national security". See Law on the Basic Regulation of the Security Service of the Republic of Serbia, Article 5.

the effect of limiting access to an effective remedy against the ban through administrative or judicial review.[83]

86. In many OSCE participating States, LGBTI communities are particularly vulnerable groups who have suffered a history of prejudice and social exclusion. In light of this, the State has a substantially narrower margin of appreciation and must have very weighty reasons for imposing restrictions on enjoyment of human rights of such marginalized and vulnerable groups.[84] Measures purporting to safeguard public morals must be tested against an objective standard of whether they meet a pressing social need, comply with the principle of proportionality and address criminal conduct.[85]

87. These considerations apply to events in Serbia, as well as to restrictions imposed on assemblies organized by an LGBTI group in Moldova (partly motivated by reasons of "public morality"). The latter, coupled with recent provisions adopted by Moldovan local councils banning the "propaganda of non-traditional sexual orientations" raise a number of additional concerns in relation to real and potential content-based restrictions on freedom of peaceful assembly and their discriminatory effect.[86]

88. As discussed, a different set of time, place and manner restrictions were imposed on other protests organized on the occasion of international summits and meetings. With the exception of a small anti-WTO demonstration in Geneva, in none of the participating States included in the monitoring sample could summit-related protests be organized within sight and sound of the summit's delegates or venue. Also, in such situations, there are legitimate security considerations that have to be taken into account when regulating and facilitating assemblies during summits. However, these should not be used to justify disproportionate interference with the freedom of peaceful assembly and, specifically, the ability of assembly participants to convey a message to their intended audience.

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[83] Organizers of assemblies could have appealed against individual decisions banning their events. However, Article 11 of Serbia's Public Assembly Law provides no timeframe for considering appeals against an assembly ban and stipulates that the appeal has no suspending effect on the implementation of the decision. Given that individual decisions to ban assemblies were communicated to the organizers one or two days before their planned date, no possibility was left for appeals to be considered before the date of the prohibited event.

[84] See ECtHR, *Kiss v. Hungary* (2010); ECtHR, *Kiyutin v. Russia* (2011); and ECtHR, *MSS v. Belgium and Greece* (2011). The ECtHR, in a recent judgement in a case brought by GenderDoc-M against Moldova, noted that "where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for achievement of the aim sought." See ECtHR, *GenderDoc-M v. Moldova* (2012). The Court found Moldova in violation of, inter alia, provisions of the ECHR protecting the freedom of peaceful assembly and prohibiting discrimination.

[85] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 78.

[86] A previous ban imposed in 2010 on an assembly organized by the LGBTI group GenderDoc-M had played an important role in the organization's decision not to organize a larger demonstration in 2011 (interview with representatives of GenderDoc-M, 13 May 2011).

89. It is important to note that restrictions imposed in different participating States, which all limited the ability of protesters to be within sight and sound of their intended audience, varied in their scope and range. A similar situation arose in Camp David, where protesters, due to the tight security restrictions imposed at the Summit venue, could not assemble in the vicinity.

90. Elsewhere, in Davos and Chicago, assembly participants could gather in the town or city where the Summit was organized but not near the Summit venues. These situations remain unsatisfactory from the point of view of ensuring that protesters are close enough to their audience to effectively convey their message. However, a positive aspect to be highlighted is that, during negotiations between local authorities and assembly organizers (in Davos and Chicago), and in the judicial decision on the rerouting of a protest (in Chicago), public visibility considerations were taken into account and, in some cases, led to a partial accommodation of the organizers' requests.[87] It should be noted, however, that an appeal should be possible if the de facto restrictions emerging from such negotiations are not actually agreed upon by all participants in the negotiations.

91. The compromise reached in Chicago that allowed free-speech activities in areas visible to summit delegates and the media should not be considered a substitute for enabling assemblies to take place within sight and sound of their intended audience. However, it illustrates how through negotiation and the identification of creative solutions, security considerations may be partly addressed when allowing expressive activities to take place.

92. Recommendations for participating States:

- to ensure that restrictions on assemblies are only imposed on grounds that are legitimate under OSCE commitments and international human rights law (to protect national security or public safety, public order, public health or morals or the rights and freedoms of others);
- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
- to ensure, in particular, that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions and recourse to a prompt and effective remedy through a combination of administrative and judicial review; any administrative review procedures must be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the date of the assembly provided in the notification;

[87] Albeit, as previously mentioned, the Chicago Department of Administrative Hearing, Municipal Division ultimately rejected the organizers' appeal against the rerouting of the march of 20 May 2012.

- to refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate and discriminatory;
- to generally refrain from imposing content-based restrictions on assemblies unless these can be compellingly justified by intentional incitement of violence resulting in an imminent threat of violence, or by a message constituting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
- to ensure that any restrictions on assemblies are not discriminatory and reflect the principle that, in restricting the rights of vulnerable and disadvantaged groups, the State has a narrower margin of appreciation;
- to ensure that security or other considerations do not disproportionately limit the ability of assembly participants to convey their message within sight and sound of their intended audience;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are, whenever possible, previously discussed with the organizers of assemblies, and that suitable alternatives in line with the sight-and-sound principle are proposed; whenever possible, a negotiated and agreed solution should be considered the most desirable outcome.

FACILITATING SIMULTANEOUS ASSEMBLIES AND PUBLIC EVENTS

Facilitating simultaneous assemblies and public events – international standards and good practice

93. Where notification, or an authorization request, is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible.[88] A prohibition against 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.[89]

94. In the case of counter-demonstrations, emphasis should be placed on the state's duty to protect and facilitate each event where counter-demonstrations are organized or occur and to provide adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within sight and sound of one another.[90] Importantly, the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate.[91] When the intention of the

[88] *Ibid*, para. 4.3.

[89] *Ibid*, Explanatory Notes, para. 122.

[90] *Ibid*, para. 4.4.

[91] *Ibid*.

organizers of a counter-demonstration is specifically to prevent the other assembly from taking place, Article 5 of the ICCPR, Article 17 of the ECHR and Article 29 of the ACHR on the prohibition of abuse of rights may be engaged, and the counter-demonstration will not enjoy protection afforded according to the right to freedom of peaceful assembly.[92]

Procedural issues and facilitation of simultaneous assemblies and public events – ODIHR findings

95. This section deals with procedural and related issues in connection with the notification or authorization process for simultaneous assemblies before assemblies take place. A section in the following chapter will discuss the policing of simultaneous assemblies and counter-demonstrations.

96. In some participating States, there are laws or regulations that address issues arising from assemblies occurring on the same day and at the same time. These include local provisions on the issuance of assembly permits in US locations. In Chicago, for example, permits for public assemblies are issued provided they will not directly interfere with a previously planned permitted activity or public assembly.[93] Parade permits are issued where the parade will not interfere with the use of the requested area by another party to whom a valid permit has been issued, or does not conflict with another application, or with a traditional parade.[94] There are similar provisions, in that they refer to one event possibly interfering with another, in place in Los Angeles.[95] Elsewhere, for example in New York and Oakland, a permit may be denied when other events take place at the same place and time.[96]

97. There are detailed provisions specifically regulating parades and counter-demonstrations in force in Northern Ireland, where the Parades Commission has been established as a quasi-judicial body with an important regulatory and mediation role. The Parades Commission is, inter alia, tasked with facilitating mediation between parties to particular disputes concerning proposed public processions and with issuing determinations – legally binding rulings imposing

[92] *Ibid*, Explanatory Notes, para. 124.

[93] Municipal Code of Chicago, Section 10.8.334.b.

[94] Traditional parades are defined as those held every year for at least five consecutive years. Municipal Code of Chicago, Section 10.8.330.d. Applications are generally processed on a first-in-time basis. See Section 10.8.330.h.

[95] Los Angeles Municipal Code, Section 103.111.

[96] See Rules of the City of New York, Title 38, Chapter 19, and the Oakland Municipal Code, Chapter 12.44.130. In Ukraine, where no law on assemblies is in force, the issue is regulated on the basis of Article 39 of the Constitution and local regulations. The Procedure on Organizing and Carrying Out in Kiev Non-Governmental Mass Public Events of a Political, Religious, Cultural-Educational, Sport- and Entertainment-Related Character, similarly provides that an event may be banned if another event is taking place in the same location and at the same time (para. 5.1).

restrictions on parades or related protests – in respect of processions and related counter-demonstrations.[97] In relation to both parades and "related protest meetings" (counter-demonstrations), the Commission has the power to impose certain restrictions (but not to ban an event).[98] Restrictions on parades and counter-demonstrations may include conditions as to the route of the parade or on the location of a counter-protest, its maximum duration, and the maximum number of people who may take part in it.[99]

98. Article 11 of the Moldovan Law on Assemblies provides that, if notification is provided for simultaneous assemblies, the organizers should be invited by the authorities to discuss possible solutions accommodating both events. Should the simultaneous holding of assemblies not be possible, the municipal authorities can propose to the organizers changes to the time, place, or manner of the assemblies. If these are not accepted, priority is given to the organizers who had notified their event first.

99. The recently amended Polish Law on Assemblies provides that the regulatory body should accommodate simultaneous assemblies if it is possible to separate them or, if they can take place in such a way that they will not endanger the life or health of persons or property to a large extent (Article 6 of the Law on Assemblies, amendment introduced by the Law of 14 September 2012 on amending the Law on Assemblies, Article 1.2).[100] These new amendments introduced restrictions on holding simultaneous assemblies. In particular, the new Article 7a provides that the municipality is vested with the right to immediately summon "the organizer of the assembly for which notification was provided later to amend the time and place of the assembly or the walking route of the participants" in case the above conditions, as defined in Article 6, are not met. Moreover, the new Article 8.2 states that the authorities shall prohibit an assembly if "the organizer […] despite the summoning mentioned in Article 7a Paragraph 1, did not change the time or place or the walking route in due time."[101]

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[97] Public Processions (Northern Ireland) Act 1998, Section 2.

[98] Notification of related protest meetings has to be provided at least 14 days before the planned protest or, if this is not reasonably practicable, as soon as it is reasonably practicable. See Public Processions (Northern Ireland) Act 1998, Section 6. The Secretary of State has the power to ban parades and counter-protests (Sections 11 and 11A).

[99] Public Processions (Northern Ireland) Act 1998, Sections 8 and 9A.

[100] Amendments to the law entered into force on 14 September 2012.

[101] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 103. For a complete analysis of the draft amendments to the Polish Law on Assemblies, see OSCE/ODIHR, "Note on the Draft Law Amending the Law on Assemblies of Poland", 21 May 2012, <http://www.osce.org/odihr/90855>.

100. Other participating States (even where this is not directly or explicitly stipulated in laws or regulations) generally apply a first-come-first-served principle in dealing with notifications of simultaneous assemblies.[102]

101. Assemblies monitored by ODIHR included demonstrations and counter-demonstrations, as well as other unrelated simultaneous events. In this regard, a series of assemblies and public events organized in Budapest on 15 March 2012 constituted a particularly complex scenario.

102. 15 March is a Hungarian national holiday, and a number of official events and assemblies took place on that day in different Budapest locations. ODIHR monitors were able to observe one pro-government march (the so-called Peace March), one large civic opposition protest by the Millions for Press Freedom group commonly referred to as the Milla movement, one demonstration organized by radical right-wing groups partly simultaneously and right next to the Milla assembly, one demonstration by the opposition political group Democratic Coalition, as well as two static assemblies and one march organized by the nationalist party Jobbik.

103. In January 2012, Milla and other opposition groups had raised concerns about the apparent lack of availability of public spaces in central Budapest for assemblies, the majority of which had been "reserved" for official events.[103] In response to the notification, on 15 January 2012, of a Milla protest planned for 15 March in central Budapest, police authorities replied that a permit had already been issued for the Budapest Mayor's Office to hold a public celebration at the same location and therefore no assemblies could be organized at the same place.[104] Reportedly, a significant number of other central locations had been similarly reserved for official events by the Ministry of Public Administration and Justice and the Budapest Mayor's Office.[105]

104. In February, following discussions between Milla, the Ministry of Justice and Public Affairs and the Budapest Mayor's Office, an agreement was reached allowing for the use of the same public spaces for more than one event at different times of the day. Representatives of the Budapest Municipality explained that, in light of the large number of events planned on that day, it was decided to limit the

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[102] Interviews with representatives of the Budapest Police and of the Hungarian Ministry of Interior (14 March 2012) and of the Croatian Ministry of Internal Affairs (12 June 2012). Also see also Ordinance (*Verordnung*) of the City of Bern on Demonstrations on Public Land, Article 7.

[103] In areas belonging to the City of Budapest, the use of public space for purposes other than expressive ones (i.e., cultural parades, commercial or sporting events etc.) is subject to the issuance of a permit by the Municipal authorities, as regulated by Decree 59/1995 (X. 20.) on the use of land belonging to the districts of Budapest and Decree 60/1995. (X.20.) on the use of land belonging to the capital. The municipal authorities issue these permits for a fee and for the duration of a full day.

[104] A copy of the correspondence is available at <http://nemtetszikarendszer.blog.hu/2012/01/18/vajon_mire_keszul_tarlos>.

[105] HVG, "Blokkolt március 15.? A kormányerők einstandolják Budapestet," 20 January 2012, <http://hvg.hu/itthon/20120120_marcius_15_ellenzek>.

time slots for permits usually issued for the whole day, thus allowing for the hosting of more events, including assemblies, on the same day and at the same place.[106] In this way, a larger number of events, including assemblies, could be accommodated.

105. A flash mob organized in Kiev on 21 May 2011 provides another example of an assembly potentially interfering with a series of public events organized in central Kiev on that day to celebrate Europe Day. Following the notification of the LGBTI Pride flash mob (on 20 May) by the NGO Insight, police authorities reportedly initially contacted the organizers, indicating that they were going to ban the assembly. An agreement was eventually reached to hold the assembly in a different nearby location. Apparently, the agreement also involved keeping a "low profile" during the assembly.[107]

106. In other participating States, notifications were provided for counter-demonstrations that, in some cases, took place in relation to LGBTI Pride events. In some participating States, no particular restrictions applied to counter-demonstrations against the Pride events. In Poland, where ODIHR monitored the Equality Parade that took place on 11 June 2011, notified counter-demonstrations were acknowledged by the competent local authorities and no restrictions were imposed on them.[108] ODIHR observed the Belfast Pride parade on 30 July 2011, which was accompanied by a small counter-demonstration notified by the Stop the Parade Coalition. Although the Belfast Pride parade was considered by the Parades Commission to be a "sensitive" event,[109] no conditions were imposed on the counter-demonstration (or on the Pride parade itself).

107. Elsewhere, the competent authorities took a different approach, mainly aimed at separating counter-protesters from participants in Pride events. In Italy, ODIHR observed the 2011 Europride event,[110] a large assembly organized by LGBTI groups on 11 June 2011, gathering approximately 500,000 participants from across Europe. A conservative Catholic group, Militia Christi, notified at the end of May of their intention to hold a counter-demonstration on 11 June in a location close to the route of the Pride event. Reportedly, they were verbally informed by Italian police authorities that, for reasons of public order, they could not have their event so close to the route of the Pride parade.[111] This appears to be the

[106] Interview with representatives of the Budapest Municipality, 11 April 2012.

[107] Interview with representatives of the NGO Insight, organizer of the assembly, 23 May 2011.

[108] Interview with representatives of the Warsaw City Police, 17 June 2011.

[109] In light of its potential effects on relationships within the community, potential disruption to the life of the community, and of issues arising from the conduct of the parade itself. Interview with representatives of the Parades Commission, 25 August 2011.

[110] Europride is a pan-European event supporting LGBTI rights and is hosted by a different European city each year.

[111] Interviews with representatives of Militia Christi (12 June 2011) and of the Italian Ministry of Interior (14 June 2011).

standard approach adopted by the Italian police authorities when demonstrations and counter-demonstrations are organized in the close proximity of each other.[112]

108. In Croatia, ODIHR monitors observed the 2012 Split Pride event, which took place on 9 June 2012. The 2011 Split Pride event, which had been the first organized in this Croatian city, had been characterized by a large presence of counter-protesters, many of them violent, who reportedly threw rocks and other objects at participants in the Pride event and others.[113] In advance of the 2012 Split Pride event, there were concerns about potential security problems caused by violent counter-demonstrators.

109. On 5 June 2012, the police authorities were notified of an assembly that was due to take place in the same place and at the same time as the Split Pride parade. The assembly organizers were members of a group called Civic Initiative that opposed the holding of the Split Pride event in its planned location, the Riva seafront promenade. Reportedly, the organizers of the counter-demonstration were informed by the police authorities that, due to the delay in providing notification of the assembly,[114] they had 24 hours to provide an explanation of the reasons for the delay.[115] In addition, they were informed that they could not hold their counter-demonstration at the proposed place because another assembly was already taking place there.[116] The organizers of the counter-demonstration failed to respond to the request for additional information and, as a result, their assembly was not registered.

Conclusions and recommendations on procedural issues and the facilitation of simultaneous assemblies and public events

110. In light of the OSCE commitments and international human rights standards, it is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. This should be reflected in procedures followed during the pre-assembly notification or authorization phase.

111. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition of holding events at the same place and time. In this regard, provisions in force in Los Angeles and Chicago, for example, that mention interference with another pre-authorized event

[112] Interview with representatives of the Italian Ministry of Interior, 14 June 2011.

[113] The Pride event took place on 11 June 2011. Reportedly, eight people were injured in the attacks, which resulted in the interruption of the event.

[114] According to the Croatian Law on Public Assembly, assemblies are to be notified to the police authorities five days in advance of a planned assembly (Article 7).

[115] Interview with representatives of the Croatian Ministry of Internal Affairs, 12 June 2012.

[116] Interview with representatives of the Croatian Ministry of Internal Affairs, 12 June 2012. Also see Radio Slobodna Evropa, "Policija: Skup protiv Split Pridea nije prijavljen", 7 June 2012, <http://www.slobodnaevropa.org/archive/news/20120607/500/500.html?id=24606580>.

as potential grounds for the denial of a permit are preferable to regulations allowing the ban of assemblies simply on the grounds that they are organized at the same time and location. This makes it possible for two assemblies to be held together if they can be accommodated[117] and do not interfere with one another.

112. In accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation. The provisions in Moldovan law outlining the steps the authorities need to follow to accommodate separate events in the same place are an example of a good way to regulate on this issue. The Public Processions Act in Northern Ireland appropriately places emphasis on the role of the Parades Commission in promoting and facilitating mediation to resolve disputes concerning public processions.[118]

113. In Poland, recently adopted amendments to the Law on Assemblies raise concerns about the imposition of restrictions on the holding of simultaneous assemblies. In particular, the amendments give powers to the regulating body to prohibit an assembly if the organizers do not modify the time or place of simultaneous assemblies. The new provisions in case of counter-demonstrations run counter to the principle that authorities should take measures to ensure that all assemblies can take place within sight and sound of one another, whenever possible. Moreover, they run counter to the principle that the organizer of an assembly 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.[119]

114. In other contexts, and in situations where simultaneous assemblies are not specifically regulated, the police and other local authorities can play an important role in facilitating or restricting simultaneous assemblies. It is a matter of concern that the Budapest Municipality appeared to have granted permits in early 2012 for the use of the majority of public spaces in central Budapest for official events, which de facto limited the ability of other groups to hold assemblies on 15 March 2012. However, a positive aspect to be underlined is that, with the adoption by the Municipality of a more flexible approach to the timeframe of these permits, and in agreement with the organizers of other events, a large number of assemblies and official events could finally be accommodated and took place in Budapest on 15 March 2012.

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[117] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 122.

[118] It should be noted, however, that in the case of the Parades Commission of Northern Ireland, there is a potential conflict of interest concerning the proximity of (or even overlap between) mediators and adjudicators (i.e., those who have authority to impose restrictions).

[119] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 103. For a complete analysis of the draft amendments to the Polish Law on Assemblies, see OSCE/ODIHR, "Note on the Draft Law Amending the Law on Assemblies of Poland", 21 May 2012, <http://www.osce.org/odihr/90855>.

115. Specifically in relation to LGBTI Pride marches and similar events, counter-demonstrations may give rise to public safety and security considerations. However, the authorities should generally seek to facilitate the holding of an assembly and related counter-demonstrations within sight and sound of one another. The approach adopted in Poland before the 2011 Equality Parade was an example of good practice in dealing with the notification of assemblies and counter-demonstrations taking place almost at the same place and time.

116. In contrast, in Italy, where the police authorities informally asked the organizers of a small counter-demonstration to move their event to a different location, they took insufficient steps to protect the right of everyone to convey their message within sight and sound of one another. While it is clear that moving a small counter-demonstration to a separate location made the policing of both the Europride event and the counter-demonstration easier, in this case there appeared to be no compelling security or other considerations requiring the imposition of a change in location for the counter-demonstration.

117. In Split, the competent authorities had to take into account the violent incidents that had taken place during the previous Split Pride event in 2011, as well as the calls for violence by certain extremist groups in advance of the 2012 Pride parade. For this reason, their cautious approach in maintaining distance between Pride participants and counter-protesters (requiring the organizers of the counter-demonstration to relocate their event) may have been justified.[120] However, while this may not have been possible to achieve following the incidents in 2011, the ultimate goal for similar events in the future should be to accommodate peaceful assemblies and counter-demonstrations within sight and sound of each other in those cases where the latter are not intended to prevent the other assembly from taking place.

118. Recommendations for participating States:

- to ensure that provisions regulating assemblies, or assemblies and other public events, taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated;
- in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;
- in relation to assemblies and corresponding counter-demonstrations, to ensure that, whenever possible, no pre-assembly restrictions are imposed preventing them from taking place within sight and sound of each other; any restrictions

[120] The Civic Initiative group that had initially notified their protest did not appear to be likely to pose security risks (interview with representatives of the Croatian Ministry of Internal Affairs, 8 June 2012). However, a counter-protest against the Pride event could have attracted potentially larger groups of violent demonstrators not directly affiliated with the organizers.

imposed on assemblies should only be based on legitimate grounds supportable with objective evidence under international human rights law;

- to ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue to find a mutually satisfactory solution;
- to ensure that licensing and other authorization systems for the use of public spaces for events other than assemblies, including official and state-sponsored events, are not used to limit the availability of public spaces for the purpose of holding assemblies;
- to ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure 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.

DUTIES AND RESPONSIBILITIES OF THE ORGANIZERS

Duties and responsibilities of the organizers – international standards and good practice

119. At the stage of pre-event planning, it is good practice for organizers to discuss with law enforcement officials the security and public safety measures that are to be put in place prior to the event. Such discussions can cover, inter alia, the deployment of law enforcement personnel, stewarding arrangements and particular concerns relating to the policing operation[121] (see Section II for assembly policing).

120. The costs of providing additional services to facilitate and protect assemblies should be covered by the State. In particular, the costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities and no additional charge should be levied for providing adequate policing.[122] Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.[123]

121. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event,[124] as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly.[125] Under some circumstances, it may be legitimate to impose on

[121] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, para. 5.1.

[122] *Ibid*, para. 5.2.

[123] *Ibid*, Explanatory Notes, para. 32.

[124] *Ibid*, para. 5.2.

[125] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 198.

organizers of assemblies the condition that they arrange a certain level of stewarding for their gathering.[126] However, such a condition should only be imposed as a result of a specific assessment of the assembly in question, and never by default.

122. Organizers 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.[127] This principle also applies in those cases when an assembly degenerates into serious public disorder. In such circumstances, it is the responsibility of the State to limit the damage caused and under no circumstances should the organizers of a lawful and peaceful assembly be held liable for disruption caused to others where the organizers did not cause and did not specifically intend the damage or disruption.[128]

123. Any liability arising after an assembly and any sanctions imposed on the organizers should be in line with the principle of proportionality.[129]

Duties and responsibilities of the organizers – ODIHR findings

124. In some participating States, the competent authorities impose fees to process permit applications to hold assemblies. In general, such fees are relatively small, although, in certain locations, they may reach a significant amount.[130] In certain jurisdictions, laws or regulations provide that the organizers of public events should pay fees to cover traffic control and clean-up costs. In a number of jurisdictions, these fees can be waived in the case of assemblies, and are only imposed on the organizers of commercial events.[131]

125. In Serbia, however, the Public Assembly Law places an obligation on the organizers of an assembly to cover the cost incurred because of the temporary alteration of traffic and other costs incurred by the additional performance of

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[126] *Ibid*, Explanatory Notes, para. 195. Stewards or marshals are individuals who assist the organizers of an assembly in managing the event.

[127] Organizers should not be liable for the actions of individual participants or stewards; instead, individual liability should arise for participants or stewards if they commit an offence or if they fail to carry out the lawful directions of law-enforcement officials. See *ibid*, Explanatory Notes, paras 112 and 197.

[128] *Ibid*, para. 198.

[129] *Ibid*, para 109. Also see ECtHR, *Ezelin v. France* (1991).

[130] In Geneva, Article 6 of the Regulation on the Execution of the Law on Demonstrations in Public Spaces of 15 October 2008 provides that the competent authority may collect a fee ranging between 20 and 500 Swiss Francs (approximately 24 and 600 Euros, respectively). In Frederick, MD, in the United States, organizers of parades are to pay a 200 USD processing fee (Administrative Regulations Parades, Races, and Walkathons, Section 03.A).

[131] See, for example, Los Angeles Municipal Code, Section 103.111, and Oakland Municipal Code, Chapter 12.44.180.

public services.[132] In the Geneva Canton, local provisions require that public property damaged during an assembly be restored as soon as possible, with priority given to restoration at the expense of those responsible for the damages.[133]

126. The authorization for the anti-WTO protest that took place on 17 December 2011 in Geneva stated that "all potential expenses related to the possible restoration of the [public] land will be covered by the organizer." This obligation placed on the organizers appears to mainly refer to possible clean-up costs.[134]

127. Some local regulations in OSCE participating States provide that organizers have to submit proof of liability insurance or other guarantees for potential damage caused by an event.[135] In Oakland, police authorities may require proof of liability insurance in the amount required by the city to approve a permit. In Chicago, applicants for larger parades[136] must obtain 1 million USD in insurance, which is waived if this requirement "would be so financially burdensome that it would preclude the applicant from applying for a parade permit for the proposed activity."[137] Particular insurance requirements may also apply for events taking place in certain areas or places, such as parks.

128. In Chicago, assemblies organized in parks operated by the Chicago Park District have to undergo an application process for a special-event permit. The application requires, inter alia, that organizers provide proof that they have a 1 million USD policy for liability insurance, as well as an endorsement document issued by the insurance carrier.[138] Reportedly, organizers of the anti-NATO protest that took place in Chicago on 20 May 2012 had to satisfy a 1 million USD insurance requirement in relation to the use of Grant Park to assemble before the march. Reportedly, a number of insurance companies refused to provide insurance for the assembly. The insurance company that finally agreed to provide its services charged an amount in excess of 800 USD.[139]

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[132] Public Assembly Law of Serbia, Article 4.

[133] See Geneva Canton Law on Demonstrations in Public Spaces, Article 9.

[134] Interview with representatives of the Geneva Gendarmerie, 16 December 2011.

[135] Also see the Italian Directive of the Ministry of Interior for Demonstrations in Urban Centres and Sensitive Areas, Section 4, which empowers prefects to "establish rules - in agreement with mayors - and after having consulted Provincial Committees for Order and Public Security to: […] 2. where necessary, provide for forms of guarantee for potential damage."

[136] A large parade is defined as any parade that is held in the central business district, or any parade that is anticipated to require city services exceeding 20,000 USD in value. See Municipal Code of Chicago, Section 10.8.330.

[137] *Ibid.* The insurance requirement is only waived for parades protected by the First Amendment of the US Constitution (that is, for parades that qualify as public assemblies).

[138] See Chicago Park District, "2012 Special Event Permit Application Package", <http://www.chicagoparkdistrict.com/assets/1/23/2012_Special_Event_Permit_Application2.pdf>.

[139] E-mail communication with a representative of the assembly's organizing committee, 20 July 2012.

129. Legislation in some participating States deals with the duties and responsibilities of organizers in relation to the presence of assembly stewards during gatherings and the maintenance of public order. The Croatian Law on Public Assembly appears to give shared responsibility to organizers and the police authorities to maintain order during an assembly. Article 16.1 places an obligation on the organizers to ensure that peace and order are maintained during assemblies, while Article 16.4 gives responsibility to the police authorities to maintain public peace and order within and outside the location where the assembly is taking place.[140] In addition, organizers have a duty to ensure the presence of a sufficient number of assembly stewards.[141] According to the Croatian Law on Public Assembly, assembly stewards have a duty, inter alia, to protect assembly participants and property[142] and to detain and immediately transfer into the police custody any assembly participants or others carrying weapons or who are responsible for grave breaches of peace and order.[143] Notably, assembly stewards are prohibited from carrying weapons.[144]

130. Article 5.1 of Serbia's Public Assembly Law provides that "maintaining order in a public assembly is the responsibility of the organizer." In this regard, the Law requires organizers to notify the authorities, inter alia, of the measures in place to maintain order and of the stewarding service organized for this purpose (Article 6.4). Article 5.2 clarifies, however, that the Ministry of Interior, and therefore the police authorities, carry out activities to ensure the protection of people and property, to maintain public order and peace, and to regulate traffic.

131. In Slovakia, ODIHR monitored the 2011 Rainbow Pride march in Bratislava on 4 June 2011. The assembly took place after the 2010 Pride march had been characterized by incidents caused by violent counter-protesters. The Slovak Law on the Right to Assembly provides that the organizer must ensure the presence of the necessary number of stewards (Article 5.a). It appears that, in relation to the 2010 Pride event, this provision may have been interpreted as shifting the duty to protect the assembly from the State to the organizers.[145] Unlike in 2010, before the 2011 Pride event, police authorities made detailed security preparations for the

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[140] The Law does not clearly define the distinction between "peace and order", under Article 16.1, and "public peace and order", under Article 16.4.

[141] Article 16.2 of the Croatian Law on Public Assembly. Assembly stewards are defined as individuals tasked by the organizer to maintain peace and order (Article 19.1).

[142] Article 19.2.

[143] Articles 19.2 and 19.3.

[144] Article 20.2.

[145] In the aftermath of the 2010 Pride event, the Slovak Minister of Interior was reported as stating that, if the organizers wanted to ensure that security met their standards, "they could have hired a private security firm." See *Financial Times*, "Violence at Gay Pride in Slovakia", 24 May 2010, <http://www.ft.com/intl/cms/s/0/5baa4cc8-6689-11df-aeb1-00144feab49a.html#axzz20QAmbuhe>. This information was also provided to ODIHR by the organizers of the Pride event in an interview (6 June 2011).

event while maintaining frequent communication with the organizers (see para. 207).[146]

132. In a number of other participating States, laws or regulations include provisions allowing the regulatory body to require organizers to ensure the presence of an adequate number of assembly stewards.[147] In Geneva, the organizers of the anti-WTO protest were required to ensure that identifiable assembly stewards were in place for the duration of the assembly although the relevant legal provision had not yet entered into force.[148] In Northern Ireland, the importance of stewarding is underlined in a code of conduct on public processions and parades issued by the Parades Commission.[149]

133. A failure to comply with relevant legal requirements on notification or authorization of assemblies and on organizing and holding assemblies may result in civil, administrative, or criminal liability for the organizers, depending on the jurisdiction. In such situations, the competent authorities may impose fines on organizers or, in some cases, prison sentences.[150] In this regard, recently introduced amendments to the Geneva Canton Law on Demonstrations in Public Spaces significantly increased the amounts of fines that may be applied to assembly organizers who do not comply with relevant legal requirements, to a maximum of 100,000 SFR (approximately 83,000 Euros).[151] Moreover, the amended law provides that organizers may be subjected to restrictions on their freedom of peaceful assembly as a result of actions by participants in assemblies that were outside the organizers' control. Article 10 envisages that the regulatory body may reject future authorization applications for a period of between one and five years "if the beneficiary of the authorization to demonstrate does not respect the conditions and obligations imposed by the authorization or if, even in case

[146] However, representatives of the Slovak Police stated in an interview on 6 June 2011 that the overall responsibility for making security arrangements during assemblies lies with the organizers, who may request assistance from the police, if needed.

[147] See, for example, Slovakia's Law on the Right to Assembly, Article 6; Geneva Canton Law on Demonstrations in Public Spaces, Article 5.4; Regulation (Reglement) of the City of Bern on Demonstrations on Public Land, Article 5; Los Angeles Municipal Code, Section 103.111; and Oakland Municipal Code, Chapter 9.52.080.

[148] Amendments to the Geneva Canton Law on Demonstrations in Public Spaces explicitly introduced the possibility for the regulatory body to impose such a condition on the organizers. They entered into force on 21 April 2012.

[149] See Parades Commission, *Public Processions and Related Protest Meetings – A Code of Conduct*, (Belfast: Parades Commission, 2005), pp. 4 and 7.

[150] See, for example, Serbia's Public Assembly Law (maximum 60 days of imprisonment); Public Processions (Northern Ireland) Act 1998, Sections 6.10 and 7.9 (maximum six months of imprisonment); and Oakland Municipal Code, Section 12.44.200 (maximum six months of imprisonment).

[151] Article 10 of the Law holds that "Persons not having applied for authorization to demonstrate, not having complied with its contents, having violated the prohibition referred to in the Article 6, paragraph 1 [on wearying masks, carrying weapons, or objects that may cause damage to property], or not having followed police orders, shall be punished with a fine of up to 100 000 Francs."

they are not at fault, the demonstration gives rise to serious damages to persons or property."

Conclusions and recommendations on the duties and responsibilities of the organizers

134. The enjoyment of freedom of peaceful assembly involves certain duties for the organizers (and participants), such as the obligation to act peacefully, to comply with the terms of the notification (or permit) process, and to obey lawful orders by law enforcement officials.[152]

135. In light of the importance of the enjoyment of freedom of peaceful assembly by everyone, the State should not impose additional costs on the organizers of an assembly. Provisions such as the ones in force in Serbia, or in the Geneva Canton (as reflected in the authorization received by anti-WTO protesters), could result in the imposition of an obligation on organizers to cover the clean-up costs after assemblies and, therefore, in onerous financial requirements for them. As such, these provisions are likely to impose a disproportionate burden on organizers of assemblies.[153]

136. Analogous considerations can be made with regard to the insurance requirements imposed on organizers of assemblies in Oakland, or in certain parks in Chicago. Insurance requirements for assemblies are inconsistent with OSCE commitments and international human rights standards as they would have a disproportionate and inhibiting effect on the enjoyment of freedom of peaceful assembly and should therefore be waived for non-commercial assemblies.[154]

137. Especially for large or controversial assemblies, it is a good practice to ensure adequate stewarding of public events and good communication between stewards, law enforcement officials, and other relevant state bodies. Assembly stewards can indeed play an important role in facilitating an assembly and ensure compliance with any lawfully imposed restrictions.[155]

138. Organizers of certain assemblies may be required to ensure adequate stewarding of their event based on a specific assessment of that particular assembly.[156] Nevertheless, when this requirement is imposed on organizers of all assemblies, with no distinction made, it violates the proportionality principle. Legislation in Croatia and in Serbia, which appears to include a general obligation on organizers

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[152] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 190.

[153] See, for example, OSCE/ODIHR and Venice Commission, "Joint Opinion of the Public Assembly Act of the Republic of Serbia", 18 October 2010, <http://www.legislationline.org/download/action/download/id/3118/file/Joint%20Opinion%20on%20the%20Public%20Assembly%20Act%20of%20Serbia_18%20Oct%202010.pdf>.

[154] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 198.

[155] *Ibid*., Explanatory Notes, para. 195.

[156] *Ibid.*

to ensure the presence of stewards during assemblies, could result in the imposition of disproportionate restrictions on assemblies.[157]

139. A preferable formulation is included, for example, in the Geneva Canton Law on Demonstrations in Public Spaces, which grants the regulatory body the power to impose the presence of assembly stewards when this is justified by a risk of breach of public order. However, such a provision could become problematic if it is applied without being based on a rigorous and diligent assessment. Such assessment should reflect the specific circumstances of the assembly in question and, whenever possible, be carried out in consultation with assembly organizers. The obligation, imposed on the organizers of the WTO-related protest in Geneva, to ensure the presence of assembly stewards appeared to lack a clear justification. The assembly, even at its peak, did not gather more than 150 participants and remained easy to police, with no significant risk involved.

140. It is also important to highlight that any requirement to provide stewarding during assemblies in no way detracts from the positive obligation of the State to protect the safety and security of assembly participants and other individuals present.[158] It is a matter of concern that provisions in Serbia and, to an even more significant extent, in Croatia, appear to partly shift the responsibility of maintaining order during the assembly to its organizers and to assembly stewards.

141. Assembly stewards are participants in assemblies and they are not public officials. Therefore, they do not, and should not, have the powers of law-enforcement agents. Insofar as their role is to facilitate assemblies, they are still participants and should not be expected to use force as if they were police officers. They should aim to ensure the co-operation of assembly participants by means of persuasion.[159] They should work in partnership with law-enforcement agents, with a clear understanding of their role.[160] Primarily, assembly stewards should orient the public and provide it with explanations and information to identify potential risks and hazards.[161] However, Croatian law delegates official powers and responsibilities to assembly stewards that go beyond their proper role as facilitators and that should rather be assigned to law enforcement officials. Provisions in Croatian law that give assembly stewards the responsibility to maintain peace and order and to (albeit briefly) detain individuals are in conflict with the principle that it is a central responsibility of the State to maintain public order. They also raise questions as to how unarmed assembly stewards, as opposed to law enforcement officers, can safely and effectively perform such

[157] *Ibid.*

[158] *Ibid.* Moreover, there should be no obligation placed upon organizers to pay for stewarding arrangements (for example, by employing professional stewards or private security firms). See *ibid*, Explanatory Notes, para. 196.

[159] *Ibid*, Para. 192.

[160] *Ibid.*

[161] *Ibid.*

tasks where there are grave breaches of peace and order and/or where armed individuals are to be detained.

142. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should not only be clearly defined in law but also reinforced by explicit commitment of the relevant institutions and authorities to fulfill this duty. Statements made by the Slovak Minister of Interior suggesting that the organizers of the Pride event should have hired a private security company to avoid the violence that had taken place at the 2010 Bratislava Pride event indicate a renunciation of the State's international obligations and duty to enforce its laws. Such statements could also carry the risk of making the work of the police more difficult by reducing the deterrence effect against potential violent protesters that would result from a clear and public commitment to protect participants in assemblies from violent attacks.[162]

143. Organizers of assemblies may be held liable for their failure to act within the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. Provisions such as the ones in force in Oakland, Northern Ireland and Serbia, even if rarely applied, raise concern, in that they may provide for prison sentences for a failure to comply with minor legal requirements for assemblies. In the absence of genuine criminal activity punishable by other laws, a violation of the notification or permit requirements should be addressed by fines proportional to the offences.[163]

144. Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. The maximum amount (exceeding the equivalent of 80,000 Euros) of the fine provided for in the Geneva Canton Law on Demonstrations in Public Spaces, in this regard, is excessive and could potentially become a powerful disincentive to the enjoyment of freedom of peaceful assembly.

145. New provisions in Geneva introducing potential restrictions for organizers, who do not comply with legal requirements for assemblies, or whose assemblies cause serious damage, are highly problematic. Restrictions on the freedom of assembly of individuals solely on the basis of their previous failure to comply with legal requirements for assemblies are not in line with international standards that allow States to impose limitations on freedom of assembly only when there are compelling arguments to do so and only on the basis of legitimate grounds defined in human rights law (see para. 56). Such concerns are compounded by the

[162] Similar conclusions could be made regarding the conflicting messages about the willingness and readiness of Serbian state bodies to protect the freedom of peaceful assembly of the Belgrade Pride participants (see above).

[163] OSCE/ODIHR and Venice Commission, "Joint Opinion of the Public Assembly Act of the Republic of Serbia", 18 October 2010, para. 42.

fact that these provisions explicitly state that bans on future assemblies can be applied even where the organizers bore no responsibility for acts that led to severe damages.

146. Recommendations for participating States:

- to ensure that the duties of the organizers of assemblies are limited to making reasonable efforts to meet legal requirements for assemblies, to ensure that their assemblies are peaceful, and to ensure that lawful instructions by law enforcement officials are obeyed;
- to ensure that no insurance requirements, or fees to cover the costs of clean-up after assemblies or for other additional public services are imposed on the organizers of assemblies;
- to ensure that the duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law enforcement officers and policy makers at all levels, as a central responsibility of the State;
- to ensure that a requirement to have assembly stewards present during a gathering, is only imposed on a case-by-case basis, when justified by the size or nature of the assembly;
- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators assisting organizers in managing events; assembly stewards should not be tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate; where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature.

SECTION II: POLICING ASSEMBLIES

147. Policing in a democratic society includes safeguarding the exercise of democratic activities.[164] Public trust and confidence in the police are prerequisites for effective policing,[165] and, in the performance of their duty, law enforcement officials must respect and protect human dignity and maintain and uphold the human rights of all people.[166]

148. In light of the above, the policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality, accountability and non-discrimination and must adhere to applicable OSCE commitments and 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 protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.[167]

149. Aside from the overall facilitation of assemblies, 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.[168]

POLICING ASSEMBLIES THAT DO NOT COMPLY WITH LEGAL REQUIREMENTS

Policing assemblies that do not comply with legal requirements – international standards and good practice

150. The lack of compliance with legal requirements may give rise to liability for organizers and the imposition of sanctions after an assembly (see para. 122). However, where an assembly occurs in violation of applicable laws but is otherwise peaceful, non-intervention or active facilitation by the police is generally the best way to ensure a peaceful outcome.[169] In general, so long as

[164] OSCE, *Guidebook on Democratic Policing* (Vienna: OSCE 2008), para. 65.

[165] *Ibid*, para.8.

[166] UN Code of Conduct for Law Enforcement Officials, Article 2.

[167] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, para. 5.3

[168] *Ibid*, Explanatory Notes, para. 108

[169] *Ibid*, Explanatory Notes, para. 155

assemblies remain peaceful, they should not be dispersed by law-enforcement officials.[170]

Policing assemblies that do not comply with legal requirements – ODIHR findings

151. ODIHR has monitored assemblies or parts of assemblies that had not complied with legal requirements on notification or authorization in Hungary (Budapest), Serbia (Belgrade), Switzerland (Bern and Davos), the United Kingdom (Belfast)[171] and the United States of America (Chicago; Frederick, MD; and Thurmont, MD). ODIHR did not observe but gathered information about Occupy assemblies in New York, Oakland, and Los Angeles that had not obtained the relevant permits.[172]

152. Most of such assemblies monitored by ODIHR were accommodated and facilitated by law enforcement agencies as long as they remained peaceful.[173] These include assemblies organized in Frederick and Thurmont (Maryland, United States), two towns in the vicinity of Camp David, during the 2012 G8 Summit, and one assembly that took place in Chicago during the 2012 NATO Summit.

153. In Frederick, Maryland, a small unpermitted march protesting the G8 Summit was facilitated by the Frederick Police Department on 18 May 2012. Police presence along the route remained discreet, and police officers deployed during the march stopped and rerouted traffic to facilitate the assembly. The Chief of Police in Frederick, in a follow-up meeting, informed ODIHR that the approach of facilitating peaceful assemblies, regardless of their permit status, was the policy adopted by the local police in dealing with protests in general and in particular with those related to the G8 Summit.[174]

154. In Thurmont, Maryland, on 19 May 2012, approximately 150-200 people took part in an assembly for which no permit had been issued. The local police

[170] *Ibid*, Explanatory Notes, para. 165. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that "[i]n the dispersal of assemblies that are unlawful but nonviolent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary" (Principle 13).

[171] The assembly observed in Belfast that did not comply with legal requirements was a counter-demonstration and will therefore be commented on as such in the following sub-section, on policing demonstrations and counter-demonstrations (see para. 172). It should be noted that this counter-demonstration was facilitated by the police.

[172] For further information on sources used, see para. 36.

[173] Also see also below for a discussion of the small counter-demonstration against the 2011 Belfast Pride event, which had not been notified to the authorities.

[174] Interview with representative of the Frederick Police Department, 18 May 2012.

authorities learned about the assembly a few hours before the event.[175] The protest attracted participants from outside Thurmont who arrived on two buses to demonstrate against the presence of late Ethiopian Prime Minister Meles Zenawi at the G8 Summit. The assembly was initially policed by a small number of United States Secret Service personnel and Thurmont police officers, the latter redirecting traffic to facilitate the protest. As the number of participants grew, a greater number of police officers in riot gear were deployed, with reinforcements from the Frederick County and Maryland State Police. The police deployment at an intersection appeared to be mainly aimed at containing the crowd, which was vocal but entirely peaceful, stationing at an intersection. The group dispersed peacefully at the end of the protest.

155. In Chicago, ODIHR monitored a rally and a march by the local Occupy movement and other anti-NATO groups on 21 May 2012 for which no permits had been obtained. The location of the gathering was announced on Occupy Chicago's website several days before the event, although the time was changed at the last moment, and the route of the march was not made public. After reaching the announced destination of the march (the headquarters of the multinational aerospace and defence corporation Boeing), assembly participants continued to march through the streets of Chicago for several hours. The Chicago Police Department (CPD) facilitated the assembly by closing streets and rerouting traffic before the arrival of the marching group. During the march, police officers communicated with those who appeared to be the organizers of the assembly to receive information on the route. Additional small unpermitted events monitored by ODIHR in Chicago on 18 and 19 May were facilitated by the police.

Unpermitted Occupy encampments in the United States

The Occupy movement has involved the erection of protest camps in a number of cities throughout the United States, as well as in other locations worldwide. The occupation of New York's Zuccotti Park started on 17 September 2011, with structures and tents being set up in mid-October 2011 to allow for overnight lodging for the protesters. Zuccotti Park is a privately owned public space,[176] and, following the establishment of an Occupy Wall Street encampment, the owners of the park (Brookfield Office Properties) instituted

[175] The Thurmont Police Department was informed of the planned protest by the US Secret Service, which was carrying out security tasks in relation to the G8 Summit. Interview with representative of the Thurmont Police Department, 19 May 2012.

[176] In New York City, privately owned public spaces are an amenity provided and maintained by a developer for public use in exchange for additional floor space. Privately owned public space, include arcades, urban plazas, residential plazas, sidewalk widenings, open air concourses, covered pedestrian spaces, through block arcades and sunken plazas. Zuccotti Park must be made open to the public 24 hours a day, seven days a week in accordance with a 1968 real estate contract between Brookfield Office Properties and the City of New York. Also see <http://www.nyc.gov/html/dcp/html/pops/pops.shtml>.

rules restricting activities in the park, prohibiting inter alia camping and the erection of tents or other structures.[177]

Most of these rules were initially not enforced,[178] but on 11 October, Brookfield Office Properties asked for support from the New York Police Department (NYPD) to clear the park in order to comply with its obligations as owner to "ensure that the park is safe […] and perform the necessary cleaning, inspection, damage assessment and repairs".[179] New York City Mayor Michael Bloomberg immediately announced that protesters would be made to temporarily leave Zuccotti Park in order to proceed with the clean-up.[180] Negotiations and mutual efforts were temporarily successful in addressing these concerns and preventing an eviction from the park.[181]

Overnight on 14-15 November 2011, the NYPD evicted protesters from Zuccotti Park. The justifications used by the City of New York for the eviction included the need to comply with the law requiring the park to be open for the public to enjoy for passive recreation 24 hours a day, health and fire-safety hazards to the protesters and to the surrounding community, reports of businesses being threatened and complaints about noise and unsanitary conditions. According to Mayor Bloomberg, the eviction occurred at this time of day to reduce the risk of confrontation in the park and to minimize disruption to the surrounding neighborhood.[182] In the first hours following the eviction, the legal representatives of the protesters obtained a temporary restraining order against the City of New York, the NYPD and Brookfield Properties, thus allowing protesters back in Zuccotti Park with their belongings and preventing the enforcement of the owner's

[177] Also see New York Supreme Court, *Waller v. City of New York*, Index 112957/2011 (15 November 2011).

[178] The Global Justice Clinic (New York University School of Law) and the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice (Fordham Law School), "Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street", July 2012, p. 99, <http://www.chrgj.org/projects/suppressingprotest.pdf>. Also see *The Wall Street Journal*, "Against Rules, Tents Arise at Protest", 24 October 2011, <http://online.wsj.com/article/SB10001424052970204777904576649691966085946.html>.

[179] This request was made in a letter addressed to NYPD Commissioner Raymond Kelly.

[180] *The New York Times*, "Protesters Are Told They'll Have to Leave Zuccotti Park Temporarily", 12 October 2011, <http://www.nytimes.com/2011/10/13/nyregion/protesters-told-they-will-have-to-leave-zuccotti-parktemporarily.html?_r=1>.

[181] Occupy participants, fearing an eviction, reportedly started an extensive clean-up of the park on 13 October and provided a written commitment to Brookfield to increase cleaning as necessary and "address any reasonable issues of sanitation safety and access." Also see *The New York Times*, "Cleanup of Zuccotti Park is Postponed," 14 October 2011, <http://cityroom.blogs.nytimes.com/2011/10/14/cleanup-of-zuccotti-park-cancelled/>. Reportedly, at the end of October, the Fire Commissioner issued a violation order against the owners of the park in relation to the presence of combustible materials in, and the obstruction of exits from, the park. See The Global Justice Clinic (New York University School of Law) and the Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p. 100.

[182] *The Guardian*, "Michael Bloomberg's statement on the Zuccotti Park clearance," 15 November 2011, <http://www.guardian.co.uk/world/2011/nov/15/michael-bloomberg-statement-zuccotti-park>.

rules.[183] Reportedly, the NYPD refused to comply with this order and officers in riot gear blocked access to Zuccotti Park while the park was being cleaned and cleared of all tents and protesters' possessions.[184] A subsequent ruling on the same day denied extension of the restraining order and imposed the enforcement of the owner's rules (preventing inter alia the use of tents).[185] The park was re-opened that afternoon: the NYPD let protesters into Zuccotti one by one, searching their bags and preventing them from bringing in tents and sleeping bags.[186]

The Occupy encampment in Oakland started on 10 October 2011 at the Frank Ogawa Plaza in front of Oakland City Hall, and the protesters were subsequently evicted by multiple law enforcement agencies on 25 October 2011. The decision to evict the encampment was directly linked to a fatal shooting that occurred near the camp the previous week.[187] Other arguments made by the City Administration included hygiene issues, as well as reports of drug abuse, sexual assaults and violence inside the encampment.[188] Following the eviction, the plaza was reoccupied for 18 days, and Occupy Oakland participants were evicted again on 14 November, reportedly three days after the City of Oakland started distributing notices of eviction explaining that the protesters were in violation of the law by lodging overnight, obstructing the use of a public park, and making fires in a public park.[189] On 29 November 2011, the City Administrator's Office issued, at the request of the demonstrators, a temporary encroachment permit for one symbolic teepee[190] structure to be allowed on Frank Ogawa Plaza between 6 am and 10 pm every day (but that could not be used for overnight lodging).[191] On 3 January 2012, the teepee and concomitant Occupy Oakland vigil were

[183] Supreme Court of the State of New York, "Order to show cause and temporary restraining order", 15 November 2011, <http://www.scribd.com/doc/72786657/Order-to-Reopen-Zuccotti-Park>.

[184] *The Guardian*, "Occupy Wall Street: Zuccotti Park re-opens – as it happened," 15 November 2011, <http://www.guardian.co.uk/world/blog/2011/nov/15/occupy-wall-street-zuccotti-eviction-live>.

[185] Supreme Court of the State of New York, *Waller v. City of New York*, Index 112957/2011, 15 November 2011, <http://www.law.com/jsp/decision_friendly.jsp?id=1202532602387>.

[186] *The Guardian*, op. cit., note 180.

[187] *The Financial Times*, "Police evict Occupy Oakland protesters", 14 November 2011, <http://www.ft.com/cms/s/0/d2f05cbe-0ee9-11e1-b585-00144feabdc0.html#axzz22IrzS0Ps>.

[188] Interview with Oakland Police Department (OPD) and City of Oakland, 29 May 2012.

[189] *The Los Angeles Times*, "Occupy Oakland: Police pass out eviction notices", 11 November 2011, <http://latimesblogs.latimes.com/lanow/2011/11/occupy-oakland-eviction-notices.html>.

[190] A teepee is a conical tent.

[191] "City of Oakland Issues Permit for Symbolic Teepee on Plaza and Reinforces Ground Rules for Peaceful and Safe Demonstrations", Press release, 29 November 2011, <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/pressrelease/oak032357.pdf>.

deemed unlawful by the Interim Police Chief on the grounds that the plaza had been the stage for camping and food distribution without health permits.[192]

In Los Angeles, an Occupy encampment was established on 1 October 2011 on the grounds of Los Angeles City Hall. On 25 November the Mayor of Los Angeles announced that three days later the camp in City Hall Park would be evicted due to public health and safety concerns and the need to restore public access to the park.[193] Reportedly, the City unsuccessfully offered Occupy protesters the possibility of using an indoor location as well as land to cultivate food and shelters for homeless Occupy participants.[194] On 26 November, the Mayor of Los Angeles and the Chief of the LAPD issued an eviction order giving protesters a deadline of 12:01 a.m. on 28 November to vacate City Hall property.[195] Local authorities cited as grounds for the eviction order the need to repair the grounds and to restore public access to the park.[196] The deadline passed and the Occupy encampment was not evicted, although LAPD officers surrounded the area for six hours after the deadline, apparently without plans to evict.[197]

156. In Switzerland, one anti-WEF assembly that was announced in Bern on 21 January 2012, but whose organizers had not applied for authorization, was assessed as posing a security risk. As a result, the police and City authorities decided in advance that they would not allow the group to assemble.[198] According to information received from the Bern Canton Police, the decision was taken based on the potential risk of violence and damage to property during the planned assembly. In particular, it was reported that two individuals, apparently associated with the groups organizing the Bern protest, had been detained in Zurich a few days before the assembly on suspicion of having caused damage to the National Bank building in Zurich.[199] In addition, the Bern Canton Police cited calls for

[192] *East Bay Express*, "Oakland City Hall Revokes Occupy Oakland Teepee Permit," 3 January 2011, <http://www.eastbayexpress.com/92510/archives/2012/01/03/oakland-city-hall-revokes-occupy-oakland-teepee-permit>.

[193] See Los Angeles Mayor's statement to Occupy Los Angeles, 25 November 2011, <http://occupylosangeles.org/?q=node/2274>. Similar arguments were made by representatives of the Los Angeles Police Department (LAPD) in an interview with ODIHR (29 May 2012).

[194] Reuters, "Los Angeles to evict Occupy camp on Monday", 25 November 2011, <http://www.reuters.com/article/2011/11/26/us-protest-westcoast-idUSTRE7AP01220111126>.

[195] *The Christian Science Monitor*, "Occupy LA deadline comes, but many say they won't go," 27 November 2011, <http://www.csmonitor.com/USA/Latest-News-Wires/2011/1127/Occupy-LA-deadline-comes-but-many-say-they-won-t-go>.

[196] *The Guardian*, "Occupy Los Angeles faces Monday eviction deadline," 26 November 2011, <http://www.guardian.co.uk/world/2011/nov/26/occupy-los-angeles-eviction-monday?newsfeed=true'>.

[197] *The Guardian*, "Occupy LA protesters subject to arrest 'at any time' – mayor's office," 28 November 2011, <http://www.guardian.co.uk/world/2011/nov/28/occupy-la-protesters-arrest-any-time>.

[198] Interview with representatives of the Bern Canton Police, 21 January 2012.

[199] Interview with representatives of the Bern Canton Police, 21 January 2012. Reportedly, graffiti was scribbled on the building and red paint was thrown at the building of the National Bank. See Reuters,

violence published on the Internet by the groups organizing the protest as raising additional concerns.[200] Police representatives also explained that the location of the planned assembly, in the centre of Bern, was particularly problematic due to the limited space and to the significant number of passers-by there.[201] Bern Canton Police representatives noted that the decision to prevent an unauthorized assembly from taking place was an exceptional one and that, normally, unauthorized assemblies are facilitated by the police.[202]

157. ODIHR monitors observed, in advance of the planned assembly, a significant number of police officers deployed at or in the vicinity of the planned location of the assembly. In a number of cases, in particular in and near Bern's central train station, the police stopped and searched individuals, apparently focusing on potential participants in the planned protest. At the planned time and place of the assembly, before the group of protesters could gather, the police created cordons and "kettled"[203] a small crowd that appeared to include protesters preparing to take part in the assembly, as well as passers-by. A second group of approximately 70 protesters, who were arriving at the assembly location from a nearby street, were also encircled by a police cordon.

158. As noted above, after the Serbian authorities imposed a ban on all assemblies on 1 and 2 October, the organizers of the Belgrade Pride event organized a small flash mob on 1 October 2011. The assembly had a limited duration and, for a few minutes, police officers present stopped traffic to facilitate the gathering. At the same time, law enforcement officials called for the assembly to disperse. The assembly lasted for approximately five minutes and ended with the voluntary dispersal of the crowd.

159. Some assemblies that were notified to or authorized by the authorities did not fully comply with the conditions agreed upon or communicated to the authorities. This was the case, for instance, when participants did not disperse at the planned end time of the assemblies.

160. In Davos, Switzerland, the assembly monitored by ODIHR had been authorized by the authorities as a static event. As the gathering came to an end, a group of around 25 people separated from the main group and began an unauthorized march. The small group first unsuccessfully attempted to march on Davos' main street towards the city centre, but was immediately stopped by a police cordon with metal fences and police vans. The group then moved in the opposite

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"Protesters vandalize SNB building ahead of Davos", 18 January 2012, <http://www.reuters.com/article/2012/01/18/us-switzerland-snb-attack-idUSTRE80H1E120120118>.

[200] Interview with representatives of the Bern Canton Police, 21 January 2012.

[201] *Ibid.*

[202] *Ibid.*

[203] "Kettling" is a strategy of crowd control whereby police create cordons which contain the crowd in specific locations and do not allow it to move or disperse.

direction and, for approximately 500 metres, marched in the direction of the train station, with no visible police presence. The group was stopped by another police cordon near the train station, where some protesters briefly clashed with the police. Subsequently, the group dispersed.

161. In Budapest, ODIHR monitors observed the notified rally "Rendszervágás" ("Cut the regime"), supported by far-right-wing demonstrators who did not disperse at the announced time. The group started to march towards Szabadság Square, where, *inter alia*, the office of the International Monetary Fund (IMF) resident representative is located. Local police forces deployed around the rally followed the marching crowd of about 100 individuals. The police formed a cordon as protesters briefly entered the IMF building in an attempt to hand over a petition and threw pyrotechnic devices inside the building. Subsequently, the group gathered at a nearby park where a speech was delivered and the assembly voluntarily dispersed shortly afterwards.

Conclusions and recommendations on the policing of assemblies that do not comply with legal requirements

162. In line with international standards and good practice, most of the assemblies observed by ODIHR that did not comply fully with relevant legal requirements were facilitated by the police. This approach, which does not exclude the imposition of sanctions after the event (see para. 122), enables the enjoyment of freedom of peaceful assembly even when the formal and legal requirements for assemblies are not met. It is in line with the principle that any intervention by the State in restricting freedom of assembly should be limited to the minimum extent necessary on grounds that are legitimate under OSCE commitments and international human rights law. Active facilitation, where the assembly remains peaceful, may also have practical advantages from a policing perspective. It is less likely to increase tension and thus facilitates a peaceful outcome.

163. While it is positive that the Bern Canton Police appears to have a general policy of facilitating unauthorized assemblies, the approach adopted before the publicly announced, but not authorized, anti-WEF assembly in January 2012 raises a number of questions in relation to its compliance with OSCE commitments and international human rights standards.

164. The pre-emptive decision by the local police, in conjunction with the Bern city authorities, to prevent the assembly from taking place was motivated by security considerations and the possibility of violence during the assembly. The planned protest may have indeed involved a risk of violent or potentially violent incidents. Nevertheless, it is not clear whether there were compelling reasons to impose an effective ban on this unauthorized assembly. The detention of two individuals who had caused damage to the National Bank in Zurich (apparently by scribbling graffiti and throwing red paint on the building) and calls for violence published on the internet were among the factors cited by the Bern Canton Police in its security assessment of the assembly. However, they do not appear, as such, to provide sufficient evidence that the participants in the assembly were themselves going to use or incite imminent violent action and that such action was likely to occur.

Indeed, the police operation that led to the immediate kettling of the small group of people who had started to gather at the planned location of the assembly was not accompanied by significant incidents. The kettling left out of the police cordons a significant number of individuals who had planned to take part in the protest. Those outside the police cordons protested against the police operation, but did not appear to engage in violent conduct.[204]

165. Assemblies involving the establishment of encampments and other similar temporary structures, such as the ones organized by the Occupy movement in the United States, should be facilitated as much as possible. Considerations of public health, safety, or avoidance of substantial interference with the rights of others may be taken into account when imposing restrictions on such assemblies. Nevertheless, attempts should be made to address these issues and discuss them with the protesting group, with the aim of reaching the least intrusive solution possible for freedom of peaceful assembly. Where the rights and freedoms of others are engaged (e.g. with respect to the use of public space), the imposition of time, place and manner restrictions that would still allow the message to be conveyed, are a preferable alternative to the eviction of the camp. The temporary establishment of a symbolic teepee structure in Oakland was a positive step in this regard. However, the teepee permit was revoked shortly after it was issued, and no similar solutions could be found in other locations where the Occupy movement erected encampments that were subsequently evicted.

166. As noted above in relation to assemblies in general, violent or unlawful acts by participants in otherwise peaceful protests should be dealt with individually and should not lead to the termination of an assembly. This principle also applies to protests involving the establishment of camps, which should not be evicted because of instances of individual unlawful acts that can be addressed on an individual basis or because the erection of the camp evidences the intention of the protesters to remain at the site for an extended period of time.

167. Recommendations for participating States:

- to ensure that, whenever possible, peaceful assemblies that do not meet relevant legal requirements are facilitated by police forces and other competent authorities;
- to ensure that police restrictions on such peaceful assemblies are only imposed on grounds that are legitimate under OSCE commitments and international human rights law, to protect national security or public safety, public order, public health or morals (when the behavior is deemed criminal and has been defined in law as such) or the rights and freedoms of others;
- in particular, to ensure that lack of compliance with formal legal requirement for assemblies does not constitute, as such, sufficient grounds for the dispersal of the assembly;

[204] This could also be explained by the extensive deployment of police forces at the assembly location and throughout the centre of Bern.

- in regulating protest camps and other similar assemblies, in accordance with the principle of proportionality, to ensure that the least intrusive measures to achieve the legitimate objectives being pursued are adopted, whenever possible, following discussions and in agreement with the protesting groups;
- to ensure that the eviction of protest camps does not result from individual unlawful acts of protesters or others in or around the camp when the assembly remains otherwise peaceful.

POLICING DEMONSTRATIONS AND COUNTER-DEMONSTRATIONS

The policing of demonstrations and counter-demonstrations – international standards and good practice

168. People have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.[205] Therefore, the positive duty to protect peaceful assemblies also applies to counter-protests, and the police forces should act in a way that ensures the respect of both demonstrators' and counter-demonstrators' right to assemble. In particular, 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.[206]

169. As already mentioned, the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate.[207] Indeed, law-enforcement officials must protect participants of a peaceful assembly from any person or group, including counter-demonstrators, that attempts to disrupt or inhibit the assembly in any way.[208]

The policing of demonstrations and counter-demonstrations – ODIHR findings

170. The policing of assemblies and related counter-demonstrations may pose specific risks of confrontation between opposing groups. This is underscored by the need to ensure that assemblies are consistently policed in line with principles providing that an assembly should be allowed to take place within sight and sound of its intended audience. ODIHR monitored assemblies and related counter-demonstrations in Hungary (Budapest), Italy (Rome), Poland (Warsaw), Slovakia (Bratislava), and the United Kingdom (Belfast).

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[205] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 123.

[206] *Ibid*., para 4.4.

[207] *Ibid*., Explanatory Notes, para. 124.

[208] *Ibid*., para. 5.3.

171. In Rome and Belfast, where counter-demonstrators protested against Pride events, the police facilitated these simultaneous assemblies. As noted above, the Rome counter-demonstration did not take place in the immediate vicinity or within sight and sound of the 2011 Europride march. As a result, no specific challenges emerged during the policing of the anti-Pride protest.

172. In Belfast, two peaceful counter-demonstrations took place in connection with the Pride event on 30 July 2011, one of which had not been notified in advance. Both events were facilitated by the police. The non-notified protest included approximately 40 participants, who were enclosed by metal barriers erected by the police. The other group that had notified the protest was asked to disperse at the announced end time of their assembly, which was right when the Pride assembly started.[209] Subsequently, the protesters were asked to move away behind the barriers, which meant they had to come into contact with Pride event participants. The police removed the barriers separating the protesters from the Pride parade participants, leaving no separation between the two groups.

173. A more significant police presence was observed during counter-demonstrations against Pride events in Warsaw and Bratislava. The Warsaw Equality Parade, as it moved from the Parliament to its final destination, was protected by two lines of police officers. Counter-demonstrations monitored in Warsaw around the 2011 Equality Parade were restricted in time and space and heavily policed. At the time of gathering of the Equality Parade in front of the Parliament, the police formed a tight cordon between counter-demonstrators[210] and participants in the Equality Parade with an empty zone in between in order to prevent clashes. Two rows of police officers heavily padded with protection gear and helmets surrounded the counter-demonstrators on all sides, with a reinforced presence along the adjacent streets. A group of about 400 counter-demonstrators were kettled by the police and, after a few bottles were thrown in the direction of the Equality Parade, some were stopped in order to check their identification. The police took a different approach with regard to another counter-demonstration of approximately 25 people, organized by a religious group at the assembly's final destination. Only a limited police presence was visible there and no incidents were reported.

174. In Bratislava, ODIHR monitored a counter-demonstration organized around the Rainbow Pride event on 4 June 2011. During the event in 2010, anti-Pride protesters had attacked Pride participants, seriously disrupting the assembly. During the 2011 Bratislava Pride event, a significant police presence, including police officers in anti-riot gear, was visible throughout the event. As the initial gathering of Pride participants took place, and speeches were delivered,

[209] According to an interview conducted on 24 August with representatives of Stop the Parade, organizers had made a mistake when notifying the time of their counter-demonstration and had not intended for it to finish before the start of the Pride event they were actually planning to protest.

[210] Counter-demonstrators had banners representing a nationalist movement called Narodowe Odrodzenie Polski (National Rebirth of Poland) and they also included clearly identifiable football supporters and other far-right activists.

approximately 100 counter-demonstrators were present.[211] They were kept apart (including by a police cordon in riot gear) from the Pride event participants, in the same large square, although not in the immediate vicinity of the Pride event.[212] As the Pride event participants began to march, the police created cordons around the moving group. A heavy police presence blocking adjacent streets was also observed. The only reported significant incident occurred when a smoke bomb was thrown by some protesters in the direction of the Pride march. The police reacted to the incident by dispersing the small group of attackers.[213] At the end of the parade, the police continued to provide protection as participants boarded buses to leave the assembly.

175. During the 2012 Split Pride event the police authorities did not acknowledge the notification of a counter-demonstration. The police requested, *inter alia*, that the opposing group move to a different location not in the immediate vicinity of the Pride event. As the protesters failed to comply with the police requirement to present an amended notification, the counter-demonstration was not registered, and did not take place. It is worth mentioning that the Split Pride event was protected by a very significant number of police officers. Police created cordons of officers in riot gear as the participants marched and subsequently gathered at their final destination. A large buffer zone (with a radius of approximately 40 metres) was created around the assembly, limiting access to participants in the Pride event only. Other measures to protect the Pride event from potential attackers or violent counter-demonstrators included searches and identity checks carried out by the police in central Split and the removal of ashtrays and glasses from the terraces of bars and cafes adjacent to the route of the march. Notably, after the assembly, the police escorted participants to the office of one of the organizer groups and, subsequently, to their final destination as they left the assembly or Split.[214]

176. ODIHR also monitored a small flash mob organized in Kiev on 21 May 2011. The event was very small in scale, and police forces provided protection to the

[211] There were reports that the police had stopped a significant number of individuals for carrying weapons or who were suspected of being right-wing extremists on their way to the Pride event (interview with organizers of the Bratislava Rainbow Pride march, 6 June 2011, and interview with representatives of the Bratislava Police, 6 June 2011). According to police, one of the main concerns was the possibility that violent attackers could infiltrate the Pride event.

[212] Initial plans to have set up barriers all around the square were abandoned by the police at the request of the organizers of the Pride event (interview with organizers of the Bratislava Rainbow Pride march, 6 June 2011).

[213] Approximately 45 people were detained by the police during its operation to protect the Pride, mainly for "trespassing" (Interview with organizers of the Interview with organizers of the Bratislava Rainbow Pride, 6 June 2011, and interview with representatives of the Bratislava Police, 6 June 2011).

[214] Such a preventive measure may be needed where there is a risk of hate crimes targeting people travelling to or from Pride events. For further information about hate crimes, see "Hate crimes in the OSCE Region - Incidents and Responses, Annual Report for 2010", OSCE/ODIHR, November 2011, <http://tandis.odihr.pl/hcr2010/pdf/Hate_Crime_Report_full_version.pdf>.

participants, which extended to escorting them to a location where they were able to use public transportation to leave the area after the end of the flash mob. However, when LGBTI groups attempted to organize the first real Pride assembly in Kiev a year later on 20 May 2012 (as opposed to a small flash mob), the event was cancelled shortly before it was due to start because of security concerns. Reportedly, on the day the Pride event was due to take place, three LGBTI activists were attacked in Kiev by masked assailants.[215] Allegedly, approximately 30 minutes before the expected beginning of the assembly, the police advised the organizers to cancel the event, which they did.[216]

177. On 15 March 2012 in Budapest, ODIHR monitored the Rendszervágás protest organized in a location adjacent to an assembly of the civic opposition group Milla. The Budapest Police set up a police line between the extreme-right-wing supporters of the Rendszervágás event and participants in the Milla assembly who were dispersing at the time, and who were also separated by a fence, although it should be noted that it was possible to move between the two assemblies.[217] The two groups verbally confronted each other but the police cordon ensured that no physical confrontation between the groups could take place. No physically violent incidents were observed and, as the Milla demonstration dispersed, the supporters of the Rendszervágás assembly began a march that had not been notified (see para. 161).

Conclusions and recommendations on policing of counter-demonstrations

178. In policing demonstrations and counter-demonstrations, the police must ensure that assembly participants are able to convey their message to their audience, while ensuring the safety and security of all individuals present. Where demonstrations and counter-protests had been notified and/or took place within sight and sound of each other, ODIHR generally observed good police practice in allowing opposing groups to be within sight and sound of each other, creating police cordons and placing physical barriers when the circumstances made this necessary.

179. In some cases, notably in Bratislava, Budapest, Split, and Warsaw, police deployment was significant, or very significant, and involved the creation of tight police cordons, buffer zones, and the placement of physical barriers between

[215] *Korrespondent.net*, "В Киеве неизвестные избили организаторов гей-парада", 20 May 2012, <http://korrespondent.net/kyiv/1351447-v-kieve-neizvestnye-izbili-organizatorov-gej-parada>.

[216] Also see, Amnesty International, "Ukraine: First-ever Kyiv pride cancelled in face of ultra-right threat", 20 May 2012, <http://www.amnesty.org/en/news/ukraine-first-ever-kyiv-pride-cancelled-face-ultra-right-threat-2012-05-20>.

[217] Police and representatives of the Ministry of Interior explained that they could not directly regulate or stop the flow of people from one location to the other as the police had no legal powers to take measures effectively imposing restrictions on the participation of individuals in public assemblies (interviews with representatives of the Budapest Police and of the Hungarian Ministry of Interior, 11 April 2012).

opposing groups of protesters. In Split, the size of the observed buffer zone would have made it very difficult to hold a counter-demonstration against the Pride event within sight and sound of its participants.

180. The situations observed in these cities were particularly challenging from a policing perspective, also in light of the serious incidents that had taken place in 2010 and 2011 during the same events (in Bratislava and Split, respectively), and of the continuing threats emanating from some groups that were apparently planning to disrupt other assemblies. Police authorities should be encouraged to find ways to allow demonstrations and counter-demonstrations near one another (unless counter-demonstrations are directly threatening the rights of others), avoiding the creation of unnecessarily large buffer zones. Whenever possible, they should limit their interventions to keeping opposing groups close to each other, albeit physically separate.[218] However, given the difficult operational circumstances in which they were acting, they should also be commended for having successfully fulfilled their duties to protect the freedom of peaceful assembly of LGBTI groups. The noticeable progress compared to the previous years observed in Bratislava and in Split, in protecting the security of Pride participants, is a particularly positive development in this regard.

181. In Ukraine, the police authorities successfully protected a very small LGBTI flash mob observed by ODIHR in May 2011. However, the local police authorities were reportedly unwilling or unable to provide the same level of protection when a larger public event was organized by LGBTI groups in May 2012. It is a central responsibility of the State to maintain public order and protect everybody's freedom of peaceful assembly. It is therefore a matter of concern that the 2012 Kiev Pride event reportedly had to be cancelled at the last minute, on the advice of the Ukrainian police, due to a high security risk.

182. Recommendations for participating States:

- to ensure that police authorities facilitate assemblies and counter-demonstrations within sight and sound of each other;
- in particular, whenever possible, to ensure that any measures taken to physically separate demonstrators and counter-protesters or onlookers, including by creating buffer zones, interfere as little as possible with the ability of assembly participants to be within sight and sound of one another or their intended audience;
- to take adequate measures to protect the safety and security of all assembly participants, demonstrators and counter-demonstrators alike, as well as of

[218] While no incidents directly linked to the lack of physical separation between groups were observed, situations such as the ones monitored in Belfast and Budapest presented certain risks. In Belfast, when the police asked counter-demonstrators to move, the counter-protesters and the Pride participants were briefly in direct contact with one another, which could have created a security risk for both sides. In Budapest, a physical barrier between Milla and right-wing protesters was initially very easy to cross, allowing for contacts between the two groups and posing a potential risk of physical confrontation.

onlookers; such measures should place emphasis on keeping opposing groups close to each other, albeit physically separate;

- in particular, to ensure that members of minority and vulnerable groups, in exercising their freedom of peaceful assembly without State interference, are also protected against violent attacks by onlookers.

USE OF FORCE, DETENTION, KETTLING AND DISPERSALS

The use of force, detention, kettling and dispersals – international standards and good practice

183. OSCE commitments require participating States to prohibit torture and other cruel, inhuman or degrading treatment or punishment and to take effective legislative, administrative, judicial and other measures to prevent and punish such practices (Vienna 1989, Copenhagen 1990). The prohibition of torture and other forms of ill-treatment is also enshrined in a number of international human rights treaties, including the ICCPR (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16) [219] the ECHR (Article 3) and the ACHR (Article 5.2). In fulfilling their duties, police officers may only use force in line with the principles of necessity and proportionality.[220] They should, as far as possible, apply non-violent means before resorting to the use of force and firearms,[221] which may be employed only if other means remain ineffective or without any promise of achieving the intended result.[222]

184. Human rights principles on the prohibition of torture and other ill-treatment and on the use of force by law enforcement officers have specific implications with respect to the policing of assemblies. It is worth noting that, in addition to being in violation of human rights obligations, the inappropriate, excessive or unlawful use of force by law-enforcement authorities can be counter-productive, notably in undermining police-community relationships and causing widespread tension and unrest.[223]

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[219] All participating States covered in this report are parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[220] See, for example, the UN Code of Conduct for Law Enforcement Officials, Article 3.

[221] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

[222] *Ibid.* On the use of force by the police, also see OSCE, *Guidebook on Democratic Policing* (Vienna: OSCE 2008), paras. 54 and ff.

[223] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 171

185. In the context of assemblies, the use of force should be preceded by adequate prior warnings that permit individual participants to leave peacefully.[224] A variety of responses should enable a differentiated and proportional use of force,[225] that is adequate to the threat, and, under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.[226]

186. The principles mentioned in the two previous paragraphs apply as well to so-called less-than-lethal weapons, including plastic and rubber bullets, attenuated-energy projectiles, water cannons and other forceful methods of crowd control, which must be strictly regulated,[227] ensuring that they are used only when necessary by police officers who are trained in their use. More generally, such types of equipment should be seen as being close to the far end of a continuum, which begins with equipment designed to minimize the need for the use of force (e.g., protective gear, shields, helmets, etc.) and which moves to different types of weapons, disabling chemicals, etc. depending on the threat faced by the police officers or others.

187. Strategies of crowd control that rely on containment (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.[228] The kettling of protesters may also result in a violation of their rights to liberty and freedom of movement.

188. OSCE commitments provide that no one will be deprived of his or her liberty except on such grounds and in accordance with procedures that are established by law (Moscow 1991).[229] In the context of assemblies, it is important to establish clear protocols for the lawful arrest of participants in assemblies, providing guidance as to when detention is justified.[230] While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests based on unlawful conduct of arrestees 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 individualize arrest decisions based on particularized facts.[231]

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[224] *Ibid*, para. 5.5.

[225] *Ibid.*

[226] *Ibid*, Explanatory Notes, para. 176

[227] *Ibid.*

[228] *Ibid*, para. 160.

[229] A similar principle is enshrined in Article 9 of the ICCPR.

[230] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 161.

[231] *Ibid.*

189. As noted above, the dispersal of assemblies should be a measure of last resort[232] and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials should avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.[233] Dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm and unless there is an imminent threat of violence.[234]

The use of force, detention, kettling and dispersals – ODIHR findings

190. Use of force, detentions, and kettling by law enforcement officials were observed by ODIHR monitors in Switzerland (Bern and Davos), Poland (Warsaw) and in the United States (Chicago). In Davos, during the anti-WEF demonstration, law enforcement officials used, in a few cases, pepper spray on individual protesters mainly to prevent them from approaching police lines. In the majority of cases observed and documented,[235] the protesters targeted did not appear to engage in violent conduct. According to representatives of the Graubünden Canton Police, pepper spray was used when protesters approaching police cordons did not respond to police warnings not to move towards the cordon.[236]

191. In Bern, a planned unauthorized assembly was prevented from gathering through the kettling of two groups, one in the location of the assembly and the other moving towards it. In relation to the group that had already begun to assemble, the kettling took place rapidly (potentially involving passers-by and initially leaving outside the police cordon a number of protesters who had not yet reached the assembly location). Following the kettling, individuals behind the police cordon were searched and checked. The majority of them were released within approximately 90 minutes.

192. The second group of approximately 70 people, kettled on their way to the assembly's gathering point, were initially held for about 45 minutes between two police lines. They were then slowly pushed by the police towards a side street. The vast majority of protesters in this group were arrested by the police. In one case, force was used against a demonstrator who had walked out of a crowd of onlookers, unfurled a banner and started to sing in support of kettled demonstrators. He was restrained, put on the ground by three police officers, and subsequently detained. The individual in question did not appear to have engaged

[232] *Ibid*, Explanatory Notes, para. 165

[233] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 13.

[234] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 165.

[235] Video material documenting the use of pepper spray in Davos is available at <http://www.youtube.com/watch?v=uYv7ErDIKVI>.

[236] Telephone interview with representatives of the Graubünden Canton Police, 27 April 2012.

in any violent conduct. Later that day, another individual standing near ODIHR monitors observing protesters being boarded onto police buses engaged in an altercation with a police officer. While he had remained peaceful, he was abruptly pulled behind a police line by a law enforcement officer and later detained.

193. In Chicago, during the anti-NATO protest that took place on 20 May 2012, law enforcement officials used force while dispersing and/or detaining protesters at the end of the assembly once the permit for the march had expired. The police acted when a small group of a few dozen demonstrators (including so-called "Black Bloc"[237] protesters), who mixed in with a significantly larger and peaceful crowd, attempted to push through a riot police line in order to walk towards McCormick Place, where the NATO Summit was being held. Objects (bottles, sticks, etc.) were also thrown in the direction of the police. The police reacted by pushing the crowd back and by using batons to beat protesters near the police line. ODIHR monitors also observed the arrest of a number of individual protesters. The detentions, in certain cases, appeared to have been carried out using excessive force against individuals who had already been restrained.

194. In addition to the detention of individual protesters, police in Chicago also used the kettling of protesters to disperse the assembly, as tension between the police and some of the protesters escalated. After several calls for dispersal made by the organizers and law enforcement officials, police cordons were formed to divide the crowd into several small groups that were slowly pushed from or asked to move away from, the security zone and the Summit premises by police officers walking in lines and giving dispersal orders. The kettled group mostly comprised of hundreds of demonstrators who had not left the scene after the official end of the assembly as well as, apparently, media representatives.

Use of force, "kettling" and detention in Occupy encampments and during protests

There have been a number of reports of excessive use of force by the police during the eviction of Occupy encampments in some locations in the United States, as well as during the policing of marches and rallies organized by the Occupy movement.

Testimonies by members of the Occupy Wall Street movement gathered by ODIHR,[238] in some cases corroborated by video evidence, as well as information gathered by local NGOs[239] and other groups, suggest that Occupy Wall Street protesters (and sometimes journalists) were subjected to excessive or unnecessary use of force by law enforcement officials. Reports included the unnecessary or disproportionate use of bodily force, of

[237] A black bloc is a tactic used by individuals wearing black clothing and concealing their identity while protesting as a united group.

[238] Interviews with members of the Occupy Wall Street movement, 25 May 2012.

[239] Interview with the Occupy Wall Street Coordinator, New York Civil Liberties Union (NYCLU), 25 May 2012.

weapons (including batons and pepper spray) and the inappropriate use of means of restraint (plastic handcuffs) causing pain to the restrained individuals.[240]

In New York, for example, in one incident on 24 September 2011, a small group of women protesters were kettled behind orange netting and subsequently pepper-sprayed. There was no apparent justification for the use of force, which is documented in video footage available on the Internet.[241] The police officer who had used the pepper spray was subsequently disciplined.[242] Occupy Wall Street members also alleged that, on the same day, pepper spray was used against protesters who were already in a police van.[243] Allegations of excessive use of force by the police were also reported during the eviction at Zuccotti Park,[244] during events organized on New Year's Eve in 2011,[245] and on 17 and 18 March 2012 during an assembly at Zuccotti Park marking the first six months of the Occupy Wall Street protest.[246] During the first months of the Occupy Wall Street protests, there were a number of allegations of police kettling, including by using plastic nets. The frequency with which the NYPD has employed this tactic appears to have been significantly reduced in 2012.

Some of the most serious allegations of unnecessary or excessive use of force during the policing of Occupy protests and the eviction of encampments have been reported in Oakland. OPD officers, joined in the operation by law enforcement agents from nearby locations, made widespread use of force during the eviction of the Occupy Oakland camp

[240] The Global Justice Clinic (NYU School of Law) and the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice (Fordham Law School) gathered information on 130 alleged incidents of unnecessary or excessive use of force by law enforcement officers against Occupy protesters, bystanders, lawyers, legal observers, and journalists from September 2011 through July 2012. See The Global Justice Clinic (NYU School of Law) and the Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, pp. 72 and *ff.* and pp. 133 and *ff*. On 21 December 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association wrote to the US authorities expressing concerns at the alleged excessive use of force against peaceful protesters who were assembled in various cities throughout the United States of America. The letter is available at: <https://spdb.ohchr.org/hrdb/20th/UA_USA_21.12.2011_(23.2011).pdf>.

[241] See, for example, <http://www.youtube.com/watch?v=TZ05rWx1pig>.

[242] ABC News, "NYPD Cop Disciplined Over Occupy Wall Street Pepper Spray," 18 October 2011, <http://abcnews.go.com/blogs/headlines/2011/10/nypd-cop-disciplined-over-occupy-wall-street-pepper-spray/>.

[243] Interviews with members of the Occupy Wall Street movement, 25 May 2012.

[244] See, for example, Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p. 73.

[245] *The Huffington Post*, "New Year's Eve Occupy Wall Street Protests: Police Arrest Dozens," 1 January 2012, <http://www.huffingtonpost.com/2012/01/01/new-years-eve-occupy-wall-street-protests_n_1178579.html>.

[246] Interviews with members of the Occupy Wall Street movement, 25 May 2012. Also see Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, pp. 74-75.

on 25 October 2011.[247] Inter alia, police officers reportedly used chemical agents and less-than-lethal ammunitions indiscriminately in order to disperse crowds, as well as in response to violent behavior by some protesters. Clashes were also reported later on 25 October, when a group of approximately 1,500 protesters gathered to demonstrate against the eviction and to attempt to reclaim the cleared area. On the evening of the same day, a protester was seriously injured when struck in the head with a projectile employed by the police.[248] Immediately following the protester's injury, and while he was lying on the ground, at least one canister containing a chemical agent was fired by a police officer into a crowd that had surrounded the injured protester to render aid.[249]

Violent incidents during protests in Oakland also occurred on 2 and 3 November 2011. For example, in a widely reported incident that occurred overnight on 2-3 November, a videographer who was filming police officers present at the protest was shot by police with what appeared to be a beanbag projectile.[250] The use of force appeared to be unprovoked.

According to the National Lawyers Guild (NLG) and other sources, cases of unnecessary or excessive use of force during the policing of protests in Oakland have reduced in frequency in the past months. Moreover, in detaining protesters, the police now appear to rely more on targeted arrests of individual demonstrators rather than on mass detentions, which were common in 2011.[251]

Conclusions and recommendations on the use of force, detention, kettling and dispersal

195. In a number of assemblies that remained peaceful, ODIHR observed the deployment of a very significant number of police officers in riot gear. This was particularly noticeable during summit-related assemblies in Bern, Chicago and Thurmont, MD. In Thurmont in particular, the police facilitated a protest related to the G8 Summit taking place at nearby Camp David. It is worth noting that police forces took no action to stop the protests, but employed a large number of police officers in anti-riot gear to contain it. The assembly remained vocal but

[247] This operation has been extensively documented and has been the subject of an independent investigation commissioned by the City of Oakland that resulted in a public report. See Frazier Group, "Independent Investigation, Occupy Oakland Response, October 25, 2011", 14 June 2012, <www2.oaklandnet.com/w/OAK036236>.

[248] He was either hit by a drag-stabilized flexible baton round (commonly known as "beanbag") or some sort of chemical ammunition. See, for example, *ibid.*, p. 12.

[249] *Ibid.*

[250] For footage of the incident, see <http://www.youtube.com/watch?feature=player_embedded&v=I0pX9LeE-g8>. In relation to this and other incidents, the ACLU and the National Lawyers Guild (NLG) sued the OPD in federal court. See <http://www.aclu.org/blog/free-speech/aclu-sues-oakland-police-department-stop-violence-against-protesters-0>.

[251] Interview with representatives of the NLG, San Francisco Bay Area Chapter, 28 May 2012.

peaceful throughout, and some tension between the police and the crowd could be observed precisely when a significant presence of police in riot gear became visible.

196. Ensuring that police practice in detaining and using force against participants or others present at assemblies meets human rights standards is of central importance. In this regard, it is positive that in most assemblies monitored by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally the case also during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants.

197. In some individual situations, however, use of force and limitations or deprivations of liberty observed by ODIHR were not in line OSCE commitments and international human rights standards. It is important to note that, even in those situations where cases of unnecessary or excessive use of force were observed, these did not constitute a pattern but rather individual instances of inappropriate police conduct.

198. The use of pepper spray in Davos against peaceful individuals who had simply approached a police cordon was unnecessary and, as such, is a matter of concern. While warnings on the use of force generally constitute good practice, the actual use of force must nevertheless meet the requirements of necessity and proportionality. No threat to the police or others seemed to justify the use of pepper spray against assembly participants. The use of batons observed in Chicago against protesters, mainly as a means of crowd control, raises concern due to the real risk of using unnecessary or disproportionate use of force against individual protesters close to a police line. Individual cases of excessive use of force were also observed during the detention of individual protesters. These included cases, in both Chicago and Bern, of use of force against demonstrators who did not resist or who had already been restrained.

199. In addition to its monitoring findings, ODIHR received credible reports of excessive or unnecessary use of force during the policing of Occupy protests in Oakland and New York. The most disturbing allegations, as described in the previous section, relate to the eviction of the Oakland Occupy encampment and to the policing of Occupy Oakland demonstrations in late 2011. In New York, while allegations were less serious, they involved a significant number of individual cases of excessive or unnecessary use of force that reportedly occurred between late 2011 and 2012.

200. The kettling of demonstrators observed by ODIHR in Bern and Chicago was used to disperse demonstrators or to facilitate their dispersal. The decision to disperse the Bern anti-WEF demonstration was problematic in a number of respects. These concerns were compounded by the decision to disperse the assembly using a police tactic that is inherently indiscriminate and that, in addition to violating the freedom of peaceful assembly, has a negative impact on the freedom of

movement and on the right to liberty.[252] In Chicago, kettling incidents were observed during the anti-NATO assemblies in May 2012. In these cases, kettling did not appear to be a tactic employed to avoid serious injury or damage but was aimed rather at dispersing, or facilitating the dispersal of, an assembly considered unlawful. As such, the employment of this tactic raises concerns about its compliance with the proportionality principle.[253]

201. All the above considerations are broadly related to the issue of over-policing of assemblies and the employment of police tactics that carry a risk of escalating, rather the de-escalating, tension. On a number of occasions, especially in relation to the policing of summit-related protests, the deployment of very large numbers of police officers, often in riot gear, appeared to have been aimed at having a deterrent effect in relation to protesters. Very large numbers of police officers were noticeable in Bern and Davos, for assemblies that attracted a small number of participants (dozens to hundreds), and in Chicago, for significantly larger assemblies. In Thurmont, the deployment of large numbers of police officers in riot gear (and the open display of handcuffs and less-than-lethal shotguns) may have had an intimidating effect on peaceful protesters and briefly contributed to escalation of tension. ODIHR recognizes the importance of adequate police preparedness to deal with potential unrest during assemblies. However, given the potential effect on public perception and community confidence, and as a way of de-escalating tension, a good practice in some situations may be to deploy police officers (in riot gear, if necessary) who are ready to intervene in locations that are very close to an assembly, but who are not immediately visible to the assembly participants.

202. Recommendations for participating States:

- to ensure that the use of force by law enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality;
- in particular, to ensure that less-than-lethal weapons, including irritating and other chemical agents, are only used when necessary and proportionate to maintain public order or to achieve other legitimate aims; the use of such weapons should be strictly regulated and subjected to regular review;

[252] Researchers in the United States have noted the chilling effect of kettling on enjoyment of freedom to assemble, observing that "even very brief kettling incidents not resulting in mass arrests have the effect of immediately reducing protest duration and size – many individuals who had been trapped inside or who witnessed the containment are chilled from continuing to participate in a march at which police are able to exercise apparently arbitrary power, or for fear that the next kettle will result in arrest". See Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p.112-113.

[253] For example, the ECtHR recently emphasized that measures of crowd control should not be used by national authorities directly or indirectly to stifle or discourage protest, given the fundamental importance of freedom of expression and assembly in all democratic societies. In relation to kettling, the Court underlined that, when not necessary to prevent serious injury or damage, alternative crowd control measures should be used. See *Austin and Others v. UK* (2012).

- to ensure that any reports of police misconduct are investigated in a prompt, thorough and impartial manner and that those responsible are disciplined or prosecuted as appropriate; any criminal proceedings arising from such investigations should meet international fair trial standards;
- to ensure that victims of police misconduct have access to effective remedies and are provided with reparation including compensation;
- to ensure that officers equipped with less-than-lethal weapons are trained in their use; their training should incorporate international human rights principles on the use of force;
- to ensure that individual participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests; mass arrests should be avoided;
- to ensure that crowd control strategies relying on containment (kettling) are only employed when necessary to prevent serious damage or injury and when no alternative police tactics that would have less impact on the right to liberty and the freedom of movement can be employed;
- to ensure that police tactics place emphasis on de-escalating tension and involve the deployment of large numbers of police officers in riot gear only when necessary on the basis of a specific risk assessment;
- to provide training to law enforcement officials on the use of force and on facilitating assemblies with a strong emphasis on crowd management and crowd control measures in line with OSCE commitments and human rights standards.

ENGAGEMENT AND COMMUNICATION BY THE POLICE WITH ASSEMBLY ORGANIZERS AND PARTICIPANTS

Engagement and communication by the police with assembly organizers and participants – international standards and good practice

203. Engagement and communication by the police with assembly organizers and participants can help facilitate the enjoyment of the freedom of peaceful assembly and the work of the police, as well as in reducing the risk of violence during assemblies. Proactive engagement by the police with assembly organizers with a view to sending a clear message informing crowd expectations and reducing the potential for conflict escalation is preferable.[254] Well-informed organizers can

[254] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 149. Also see "Adapting to Protest: Nurturing the British Model of Policing", Her Majesty's Chief Inspector of the Constabulary, 2009. p. 54, <http://www.hmic.gov.uk/media/adapting-to-protest-nurturing-the-british-model-of-policing-20091125.pdf>.

play an important role in relaying information to participants about potential risks, security measures, and planned or ongoing police action.

204. In a similar vein, good practice in policing assemblies involves the adoption of a policy of "no surprises", whereby law enforcement officers allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them.[255]

205. Prior warnings are necessary before the use of force, but the "no surprises" approach may extend beyond that and, broadly intended, can involve communication between police and organizers at the operational planning stage. Informing the organizers of assemblies of planned police action and, to the extent possible, co-ordinating preparations with them during the pre-assembly phase, can help in ensuring the effective policing of public assemblies. Assembly participants who are aware of expected police action may adapt and respond to it, avoiding confrontation or potential risks. To promote good communication, there should be a point of contact within the law-enforcement agency with whom protesters can communicate before or during an assembly.[256] It is also good practice to have a similar point of contact among the organizers, especially during the assembly.

206. Direct contacts and dialogue should be the preferred way to address differences in views or disputes both before and during an assembly. In the pre-assembly phase, the facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organizations not affiliated with either the state or the organizer. The presence of these parties' legal representatives may also assist in facilitating discussions between the organizers of the assembly and law-enforcement authorities.[257] Such dialogue might help to avoid the escalation of a conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.[258] Similarly, if a stand-off 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.[259]

Engagement and communication by the police with assembly organizers and participants – ODIHR findings

207. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. Good communication at the planning stage is of

[255] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 150.

[256] *Ibid*., Explanatory Notes, para. 149

[257] *Ibid*., Explanatory Notes, para. 134

[258] *Ibid*., para. 5.4

[259] *Ibid*., Explanatory Notes, para. 157

particular importance during events that could pose particular risks, e.g., in relation to a possible confrontation with counter-demonstrators. Assemblies in Croatia (Split), Serbia (Belgrade) and Slovakia (Bratislava) were considered to pose a higher risk of violence by counter-protesters. In all these cases, prior discussions between organizers and law enforcement and other local authorities took place, with a particular focus on security aspects. In Chisinau (Moldova), the police learned about the event from public sources – as it was not notified because it gathered less than 50 participants – and contacted the organizer GenderDoc-M to discuss arrangements to maintain public order.[260] Communication between police authorities and Pride event organizers was reported as having been good in Italy[261] and in Poland.[262]

208. In general, the approach adopted by police forces was to share limited information on their security preparations with assembly organizers, including when assemblies were considered to be at a higher risk. In Belgrade, during meetings between Pride organizers and police representatives, details of the security preparations were reportedly not shared by the police and remained strictly confidential.[263] In some cases, however, prior discussions between police and organizers led to changes in the security preparations. In Bratislava, initial plans to fence the entire square where Pride participants assembled were abandoned at the request of the organizers, who felt that this would have impacted on their visibility.[264] In Split, limited or no communication appeared to have taken place between the police and the organizers of anti-Pride counter-demonstrations prior to the events. However the police reached out to the general public ahead of the assembly by distributing leaflets calling for tolerance.

209. It is worth noting that other police services, most notably the Police Service of Northern Ireland, as a matter of general policy, adopt a different approach, involving attempts to reach out to and communicate with all groups, including potentially violent ones. While such an approach was not necessary or relevant in the context of the Belfast Pride parade, an assembly that was deemed to present a low risk, representatives of the Police Service of Northern Ireland explained that prior communication with all groups made the policing of very contentious parades more effective.[265]

210. Communication with all organizers was particularly useful where several simultaneous assemblies were organized. In Budapest, the police prepared to

[260] Interview with a representative of the General Police Commissariat of Chisinau Municipality, 12 May 2011.

[261] Interview with organizers of the Rome Europride, 10 June 2011.

[262] Interview with organizers of the Warsaw Equality Parade, 17 June 2011.

[263] Interview with organizers of the Belgrade Pride event, 1 October 2011.

[264] Interview with organizers of the Bratislava Rainbow Pride event, 6 June 2011.

[265] Interview with representatives of the Police Service of Northern Ireland, 25 August 2011.

facilitate several demonstrations on the same day and in nearby locations by reaching out to all organizers and agreeing with them on practical arrangements. Police representatives informed ODIHR that, in at least one case, the communication attempt was unsuccessful due to the apparently intentional provision of incorrect contact information by the organizer of one event.[266]

211. The Canton Police in Bern informed ODIHR of their failed attempts to contact the organizers of an unauthorized assembly on 21 January 2012.[267] The pre-emptive decision not to allow the assembly to take place was kept confidential until it was implemented on the day of the assembly. In Davos, there appeared to have been limited communication between municipal authorities, police authorities and assembly organizers prior to the protest observed by ODIHR on 28 January 2012. However, the local municipal authorities and the Landammann of Davos in particular played an important role in ensuring communication with the organizers and in facilitating the protest (including by identifying a suitable location acceptable to both organizers and security bodies). In Chicago, before protests organized on the occasion of the NATO Summit in May 2012, the CPD reportedly facilitated discussions and the reaching of an agreement between the ACLU and the managers of the Summit venue to allow certain free-speech activities within the security perimeter.[268]

Engagement by the police with assembly organizers in the Occupy movement

In Los Angeles, the local chapter of the NLG reportedly played a role in mediating and facilitating communication between city and police authorities and the protesters of the local Occupy movement.[269] The importance of the role played by the NLG was recognized by representatives of the LAPD, who expressed the view that it facilitated communication and reduced the risk of incidents.[270] Reportedly, when a decision was taken to evict the Los Angeles Occupy encampment, the LAPD encouraged the NLG 72 hours before the planned eviction to discuss their plans with protest participants and ask those who wanted to leave to do so before the encampment was cleared.[271]

[266] Interview with representatives of the Budapest Police and of the Hungarian Ministry of Interior, 14 March 2012.

[267] Interview with representatives of the Bern Canton Police, 21 January 2012.

[268] Interview with representatives of the CPD, 22 May 2012.

[269] Interview with representative of NLG Los Angeles, 30 May 2012.

[270] Interview with representatives of the LAPD, 30 May 2012.

[271] Interview with representative of NLG Los Angeles, 30 May 2012. Elsewhere, in Oakland and New York, communication between protesters and the police was often reported as being unsatisfactory, partly also as a result of the reported difficulties the local authorities experienced in identifying individuals who could speak or negotiate on behalf of the movement. Also see Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p. 83.

212. During assemblies, communication between participants and police authorities could be observed in a number of locations. ODIHR monitors observed law enforcement agents engaging directly with organizers during assemblies in order to facilitate the events or accommodate a march. As previously mentioned, during a march on 21 May 2012 in Chicago, police officers communicated with those who appeared to be the organizers of the assembly to determine the route of the assembly and redirect traffic accordingly.

213. In Chicago, at the time of the dispersal of the rally on 20 May 2012, police officers clearly called demonstrators to disperse, both in English and Spanish, using loudspeakers on several occasions. The kettling occurred approximately 15 minutes after the first call for dispersal and left time for protesters who wanted to leave the scene to do so.

214. In Budapest, the police informed ODIHR that liaison officers usually participate in assemblies to ensure continuous communication between the police and the organizers during an event.[272] After the end of the assembly organized by Milla on 15 March 2012, ODIHR observed Milla's stewards and the Budapest Police working closely together to ask demonstrators to move to the sidewalks so that the road could be reopened to vehicular traffic.

215. In some cases, ODIHR observed the use of a third party to mediate and facilitate communication between assembly participants and police authorities in particularly tense situations. In Davos, a group of demonstrators left the location where their assembly was authorized and moved to a nearby location, where they faced a line of riot police behind barriers and police trucks.[273] During the standoff, communication between the police and the protesters was extremely limited. Nonetheless, negotiations between the demonstrators and the police were conducted by the Landammann of Davos, who appeared to have acquired the trust of some of the protesting groups. The crowd slowly dispersed and no significant incidents were reported.

Conclusions and recommendations on engagement and communication by the police with assembly organizers and participants

216. For most assemblies observed by ODIHR, communication between participants and organizers and police took place both before and during the assembly. It is positive that, in many cases, communication was considered to be adequate by both police and assembly organizers. It was also widely recognized that good communication facilitated the work of the police and the enjoyment of the

[272] Interview with representatives of the Budapest Police and of the Hungarian Ministry of Interior, 14 March 2012, pursuant to Article 12 of the Decree of the Minister of Interior No. 15/1990 on the duties of the police related to assuring the order of assemblies.

[273] On this location, the crowd started conveying its message by building a line of small snowmen carrying small signs and banners across the road. The snowmen were eventually crushed as police vehicles advanced.

freedom of peaceful assembly by participants in public events. In Chicago, communication during an assembly with people who were marching allowed the police to facilitate an unpermitted assembly, which otherwise would have been difficult to protect. Liaison police officers employed by the Budapest Police played a positive role in facilitating the exchange of information between police, assembly organizers, and assembly stewards.

217. Communication before and during assemblies acquired particular significance where the assembly was assessed as involving specific risks for the participants or, more generally, for public order. It is worth noting that, in the context of some of the higher-risk Pride events monitored by ODIHR only limited information was shared between organizers and police forces on security preparations and only limited attempts were made by the police to establish contact with potentially violent groups that planned to organize counter-protests. In Bern, despite a reported attempt by the local police to communicate with the organizers of the unauthorized assembly on 21 January 2012, immediately before the assembly the police appeared to adopt kettling and dispersal tactics that were deliberately aimed at taking assembly participants by surprise.

218. In this regard, the recent experience of Northern Ireland is of particular relevance in dealing with potentially violent assemblies or related counter-demonstrations. It is important to acknowledge that real security risks are involved in the policing of some assemblies and that there may be a need to retain a certain degree of confidentiality in relation to planned police tactics. Nevertheless, in some circumstances, openness and communication between the police and the protesters, including at the planning stage, could reduce the risk of incidents and could facilitate the work of the police. A similar approach could be adapted to different contexts, for instance, in relation to potentially violent counter-protests organized in relation to Pride events.

219. As a positive practice, and in contrast to what happened in Bern, it should be noted that the dispersal of the assembly on 20 May 2012 in Chicago was preceded by adequate and intelligible warnings (including in Spanish) and sufficient time for the crowd to start dispersing.

220. Positive practice was observed with regard to the role of NGOs, or of other state authorities, in facilitating dialogue and communication. While, in Davos and Bern communication between the police and assembly organizers or participants was extremely limited, the Mayor of Davos played a positive role in mediating between the police and the protesters and in de-escalating tension during a tense situation that could have potentially involved the risk of incidents. The positive relationship local NGOs have established with both protesters and the police (as was the case in Los Angeles) appeared to have contributed to a more peaceful outcome during the Occupy protest and, in some respects, also during the eviction of the Occupy encampments.

221. Recommendations for participating States:

- to ensure that, before and during assemblies, effective communication is established between assembly organizers, participants and police forces;
- to ensure that the police appoint liaison officers, or other points of contact, whom organizers can contact before or during an assembly;
- to adopt a "no surprises" approach in policing assemblies; when possible, this approach may also extend to dialogue and communication with all groups, including potentially violent groups at the pre-assembly stage;
- to promote direct contacts and dialogue as the preferred way to address differences in views or disputes both before and during the assembly;
- when necessary, to encourage the involvement of third parties to facilitate dialogue and mediation between the police and assembly organizers and participants; these may include NGOs, as well as other local or state authorities.

SECTION III: MONITORING FREEDOM OF PEACEFUL ASSEMBLY: ACCESS AND RESTRICTIONS

Journalists and assembly monitors – international standards and good practice

222. The monitoring of public assemblies carried out by ODIHR as part of its mandate is part of a broader effort to observe and document public assemblies by a range of actors that include, in addition to international monitors, both local observers and journalists.

223. OSCE participating States are committed to ensuring that everyone can enjoy the freedom of expression and to respecting the right of everyone, individually or in association with others, to freely seek, receive and impart views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information (Copenhagen 1990). The freedom of expression is protected in numerous other international human rights instruments, such as the ICCPR (Article 19), the ECHR (Article 10) and the ACHR (Article 13).

224. The right to observe public assemblies is part of the more general right to receive information (a corollary to the right to freedom of expression). Freedom to monitor public assemblies should not only be guaranteed to all media representatives, including so-called citizen journalists,[274] but also to others in civil society, such as human rights activists.[275] 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 state and local authorities, law-enforcement officials and civil society.[276]

225. Independent monitoring may be carried out by intergovernmental organizations, national human rights institutions and NGOs. Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly.[277] In addition, OSCE commitments require participating States to facilitate free movement and contacts, individually and collectively, whether

[274] Citizen journalism is intended here as the activity of citizens who do not work for the mainstream media but who collect, report, analyse, and disseminate news and information.

[275] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 199.

[276] *Ibid*, Explanatory Notes, para. 200. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, also referring to a previous report by the Special Representative of the UN Secretary-General on the situation of human rights defenders, recently highlighted the importance of ensuring that human rights defenders can operate freely in the context of freedom of assembly. These human rights defenders include "members of civil society organizations, journalists, 'citizen journalists', bloggers and representatives of national human rights institutions". See "Report of the Special Rapporteur" *op. cit.*, note 12.

[277] Guidelines on Freedom of Peaceful Assembly, *op. cit.*, note 1, Explanatory Notes, para. 201.

privately or officially, among persons, institutions and organizations of the participating States (Helsinki 1975). Participating States have recognized the importance of such contacts in the context of the protection and promotion of human rights and fundamental freedoms (Copenhagen 1990). Moreover, they have committed to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions; facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions; welcome NGO activities, including, *inter alia*, observing compliance with commitments in the field of human dimension and allow NGOs, in view of their important function within the human dimension, to convey their views to their own governments and the governments of all the other participating States during the future work of the OSCE on the human dimension (Moscow 1991).

226. The role of the media is to impart information and ideas on matters of public interest, information that the public also has a right to receive.[278] They also have a very important role to play in providing independent coverage of public assemblies.[279] Media reports and footage provide a key element of public accountability, both for organizers 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.[280]

227. The OSCE Representative on Freedom of the Media issued a special report on handling the media during political demonstrations, providing detailed guidance and recommendations on the rights and freedoms of media representatives during assemblies,[281] noting that:

- 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.

- 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.[282]

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[278] *Ibid*, Explanatory Notes, para. 206.

[279] *Ibid*, Explanatory Notes, para. 207.

[280] *Ibid*, Explanatory Notes, para. 208.

[281] OSCE Representative on the Freedom of the Media, "Special Report – Handling of the Media during Political Demonstrations, Observations and Recommendations", 2007, <http://www.osce.org/fom/25744>.

[282] *Ibid*, pp. 4-5.

Access and restrictions for journalists and assembly monitors – ODIHR findings

228. During monitoring deployments, ODIHR observers did not experience restrictions on their ability to observe assemblies and gather information. However, in two participating States, France and Greece, ODIHR observation teams could not be deployed to monitor the particular assemblies that had been selected for observation. This was the result of decisions by the respective authorities not to facilitate and assist the deployment of ODIHR monitoring teams during such events.

229. In the vast majority of cases, before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted.[283] Co-operation and the exchange of information were usually good or very good. An exceptionally high degree of openness and co-operation was noted in meetings with the Bern Canton Police in Switzerland, the Budapest Police in Hungary, and with the LAPD in the United States.

230. During the monitoring, ODIHR observers were able to carry out their activities unhindered. In Bratislava, Bern and Split, ODIHR monitors were granted access to cordoned areas or areas where other movement restrictions were in place.

231. Local NGO monitors from the ACLU and the NLG were present during assemblies in the United States, where ODIHR carried out observations. In Bratislava and Split, Pride events were observed by monitors from Amnesty International. ODIHR did not record any instances of inappropriate conduct by law enforcement or other state officials towards local or international NGO monitors. In Croatia, Amnesty International representatives expressed their satisfaction at the good level of co-operation with the local police.[284]

232. During anti-NATO protests in Chicago, the CPD announced that it would not enforce the Illinois Eavesdropping Statute (720 ILCS 5/14-2), criminalizing the audio recording of conversations without the consent of all parties involved. Such legislation is potentially problematic in the context of assembly monitoring or other human rights monitoring activities requiring the recording of police conduct. The ACLU had challenged in court the application of these provisions to the arrest or prosecution of individuals who make audio recordings of public

[283] ODIHR was unable to hold meetings with the Bratislava City authorities in Slovakia, with the NYPD in New York, and with the federal bodies responsible for security preparations before the NATO and G8 Summits in the United States (the Department of Homeland Security, the Secret Service, and the Federal Bureau of Investigation). A meeting with the OPD and the Oakland City authorities was of short duration and, as a result, did not allow for a comprehensive discussion of issues surrounding the eviction of the Oakland Occupy camp, or the policing of Occupy protests.

[284] Interview with representatives of Amnesty International, 8 June 2012.

conversations with police who are performing their public duties in a public place and speaking in a voice loud enough to be heard by the unassisted human ear.[285]

233. ODIHR did not directly observe any restrictions imposed on the activities of journalists during monitored assemblies. Many assemblies observed by ODIHR were extensively covered by the media, in particular those organized around international summits, such as the ones that took place in Chicago.

Access and restrictions for journalists and assembly monitors during Occupy assemblies

Journalists and assembly monitors have reportedly experienced difficulties in covering and observing Occupy protests and police action.

Credentials issued by the NYPD, the OPD and the LAPD may allow journalists better access to Occupy protests, including across police lines (usually at the discretion of the officer in charge of the scene).[286] In New York, both credentialed and non-credentialed journalists reported that they were intentionally inhibited or blocked from witnessing or recording events by the NYPD.[287] Many journalists, regardless of their accreditation, were blocked from observing and interviewing protesters during the clearing of Zuccotti Park on 15 November 2011.[288] In Oakland, a journalist was reportedly kettled and briefly handcuffed during the 28 January events, along with 300 demonstrators, because her press credentials had been issued by the San Francisco Police Department rather than the OPD.[289] Restriction of media coverage was also reported in Los Angeles, where the LAPD granted access during the eviction of the Occupy Los Angeles encampment to 12

[285] See <http://www.aclu-il.org/aclu-v-alvarez22/>. On 8 May 2012 the US Court of Appeals for the Seventh Circuit issued a preliminary ruling barring the enforcement of the Illinois eavesdropping statute against the ACLU and its employees or agents who openly recorded the audible communications of law-enforcement officers (or others whose communications were incidentally captured) when the officers were engaged in their official duties in public places. See US Court of Appeals for the Seventh Circuit, American Civil Liberties Union of Illinois v. Anita Alvarez, No. 11-1286, 8 May 2012, <http://www.aclu-il.org/wp-content/uploads/2012/05/Alvarez_ruling.pdf>.

[286] Columbia Journalism review, "Who's A Journalist?," 7 October 2011, <http://www.cjr.org/behind_the_news/whos_a_journalist_1.php?page=all>. In Los Angeles, for example, an LAPD press pass can be considered necessary for journalists "engaged in the gathering and reporting of spot, hard core, police-beat and/or fire news involving the Los Angeles Police Department, that would require [the journalist] to cross police and/or fire lines in the course of news gathering duties within the City of Los Angeles." See Los Angeles Police Department, Press Pass Policy, <http://www.lapdonline.org/inside_the_lapd/content_basic_view/2026>.

[287] Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p. 84.

[288] *The New York Times*, "Reporters Say Police Denied Access to Protest Site," 15 November 2011, <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>. In a statement, New York City Mayor Bloomberg explained that access was denied to the press "to prevent a situation from getting worse and to protect members of the press". The treatment of journalists by the NYPD on that occasion elicited protests by a number of actors, including the New York Press Club. See <http://www.nypressclub.org/coalition.php>.

[289] KGO 810 News Information, "KGO 810AM Reporter Detained by OPD During Mass Arrest," 29 January 2012, <http://www.kgoam810.com/Article.asp?id=2383309&spid=>.

mainstream media outlets only. The selected media were, moreover, prevented by LAPD from reporting live from the scene.[290]

Assembly monitors were on occasions unable to carry out their activities due to police restrictions. NYCLU legal observers reported being occasionally prevented from taking photographs during arrests at Occupy assemblies. NLG observers in New York have also reported access restrictions to certain locations, preventing them from documenting events during Occupy Wall Street assemblies.[291]

There have been reports of 85 arrests of journalists detained while reporting on Occupy protest throughout the United States, between September and May 2012.[292] At least seven journalists were arrested on the day of the eviction of the Occupy Wall Street camp in New York.[293] Interviews by ODIHR with journalists covering the Occupy movement have provided other examples of arrests. Non-credentialed journalist John Knefel, for example, was arrested on 12 December 2011 while documenting arrests during a protest in New York, along with 16 others. He was reportedly held in detention for 37 hours.[294] He alleges that he was arrested immediately after being questioned by a police officer about his credentials.

In Oakland, six journalists were reportedly arrested in a mass arrest during Occupy protests on 28 January 2012.[295] A reporter for the CNS news wire service was arrested in Los Angeles during the eviction of the Occupy encampment by the LAPD on 30 November 2011 while he was purportedly presenting his official media credentials to the police.[296]

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[290] *The Washington Post*, "At Occupy L.A. eviction, police restrict media coverage," 30 November 2011, <http://www.washingtonpost.com/blogs/blogpost/post/at-occupy-la-eviction-police-restrict-media-coverage/2011/11/30/gIQAlWqGDO_blog.html>. Reportedly, the LAPD would have threatened to arrest "uncredentialed" media if they came too close to the eviction area. See *The Atlantic*, "Media Choreography and the Occupy LA Raid," 30 November 2011, <http://www.theatlantic.com/technology/archive/2011/11/media-choreography-and-the-occupy-la-raid/249277/>.

[291] Interview with representatives of the NLG, New York City Chapter, 25 May 2012.

[292] See Josh Stearns, "Tracking Journalist Arrests at Occupy Protests Around the Country, Part One", 17 May 2012, <http://storify.com/jcstearns/tracking-journalist-arrests-during-the-occupy-pro>.

[293] See Committee to Protect Journalists, "Journalists obstructed from covering OWS protests", 15 November 2011, <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>. Other sources report a larger number of ten or eleven arrested journalists. See Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, p. 85; and Stearns, *ibid.*

[294] Interview with John Knefel, 25 May 2012.

[295] See, for example, Reporters Committee for Freedom of the Press, "Six Journalists Arrested at Occupy Oakland", 30 January 2012, <http://www.rcfp.org/browse-media-law-resources/news/six-journalists-arrested-occupy-oakland>.

[296] *Los Angeles Times*, "LAPD arrest of reporter during Occupy L.A. raid draws criticism," 13 December 2011, <http://latimesblogs.latimes.com/lanow/2011/12/lapd-arrest-of-reporter-during-occupy-la-raid-draws-criticism.html>.

According to reports received by ODIHR, assembly monitors were on some occasions arrested while carrying out their activities during Occupy protests. In Oakland, for example, NLG legal observers were detained on 3 November 2011 apparently for their failure to disperse during an Occupy Oakland protest.[297] In New York, a number of incidents of arrests of, or unnecessary use of force against, legal observers have been reported.[298] On one occasion, a NYCLU legal observer was reportedly arrested and charged with disorderly conduct, while documenting events during a protest. Charges were subsequently dropped.[299]

Conclusions and recommendations on access and restrictions for journalists and monitors

234. In line with their OSCE commitments, Croatia, Hungary, Italy, Moldova, Poland, Serbia, Slovakia, Switzerland, Ukraine, the United Kingdom and the United States facilitated ODIHR's assembly monitoring missions by providing access to assembly locations and official interlocutors, as well as supplying additional information when requested. ODIHR regrets that it was unable to monitor assemblies, in line with its mandate, in France and Greece.

235. In many of the participating States included in this monitoring exercise, there exists no established practice by local civil society organizations to observe assemblies systematically. Where such practice exists, in the United States and in Northern Ireland, it has contributed to improved human rights protection for all actors involved. The promotion and facilitation of independent observation of assemblies by participating States is a good practice in line with OSCE commitments.

236. Allowing unhindered access to journalists and monitors during assemblies and enabling them to document and report on the interaction between assembly participants, police forces and others is an important corollary of OSCE commitments and other human rights standards on freedom of peaceful assembly, freedom of expression, and freedom of the media. It is positive that ODIHR, in the course of its monitoring, did not directly observe any significant impediments or obstacles to the work of journalists and assembly observers.

237. It should also be noted as a positive fact that a large number of NGO observers and journalists could be present and could operate during Occupy assemblies in the United States. However, it is a matter of concern that, in the context of fact-finding conducted in relation to Occupy assemblies, ODIHR received information suggesting that assembly monitors and journalists occasionally experienced

[297] Interview with representatives of the NLG, San Francisco Bay Area Chapter, 28 May 2012.

[298] Global Justice Clinic and Walter Leitner International Human Rights Clinic, *op. cit.*, note 174, pp. 91-92.

[299] Interview with Occupy Wall Street Coordinator, NYCLU, 25 May 2012.

difficulties in carrying out their activities due to restrictions imposed by the police.

238. Restrictions on the activities of journalists such as the ones imposed during the eviction of the Occupy camps in Los Angeles and New York appear to have been imposed also with the purpose of limiting coverage by the media of these events. As such, they are not in line with relevant OSCE commitments and other human rights standards.

239. In addition, measures should be taken to ensure that, whenever arresting participants in assemblies, law enforcement officials refrain from detaining other individuals, including assembly observers and journalists, not engaging in unlawful conduct.

240. Information received by ODIHR suggests that, in the context of Occupy protests, journalists without credentials experienced greater limitations in their access to assembly locations and were also at greater risk of arrest by the police. With respect to journalists' access to assembly locations and to other restrictive measures imposed on them by the police, such as arrests, it should be noted that the authorities should not distinguish between accredited journalists and those without credentials, including citizen journalists, by limiting the ability of the latter to carry out their reporting work.

241. Recommendations for participating States:

- to allow and facilitate the monitoring of assemblies by international and local observers without imposing undue limitations on their activities;
- to ensure that journalists are able to provide coverage of public assemblies without hindrance;
- in particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists, to all locations where they may carry out their activities;
- to ensure that identifiable journalists without accreditation, except under circumstances where resources, such as time and space at certain events, are limited, are not restricted in their ability to report on assemblies;
- to ensure that journalists and assembly monitors are only detained by the police if they engage in unlawful conduct and not as a result of mass arrests or their lack of credentials; they should not be arrested as a result of their failure to leave an area once a dispersal order is given, unless their presence would unduly interfere with police action.

ANNEX I: RELEVANT OSCE COMMITMENTS

Helsinki 1975

[…] The participating States […]

Make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States […].

Sofia 1989

The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. These individuals, groups and organizations have the right to participate in public debates on environmental issues, as well as to establish and maintain direct and independent contacts at national and international level.

Copenhagen 1990

[…] The participating States reaffirm that

[…] everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

[…] The participating States affirm that freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms. They will ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act, the Madrid Concluding Document and the Vienna Concluding Document. […]

Paris 1990

[…] We affirm that, without discrimination, every individual has the right to […] freedom of association and peaceful assembly […]

Moscow 1991

The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such

organizations to conduct their national activities freely on their territories; to that effect they will

- endeavour to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;
- endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;
- welcome NGO activities, including, *inter alia*, observing compliance with CSCE commitments in the field of the human dimension;
- allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

Helsinki 1992

[…] The participating States express their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society. To these ends, they will broaden the operational framework of the CSCE, including by further enhancing the ODIHR, so that information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tension and potential conflict. In doing so, they will focus their attention on topics in the Human Dimension of particular importance. They will therefore keep the strengthening of the Human Dimension under constant consideration, especially in a time of change.

[…]

[…] ODIHR will, as the main institution of the Human Dimension:

(5a) assist the monitoring of implementation of commitments in the Human Dimension

by:

- serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document;
- receiving any comments from States visited by CSCE missions of relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual comments to all participating States with a view to discussion at the next implementation meeting or review conference;
- participating in or undertaking missions when instructed by the Council or the CSO;

[…]

(5c) assist other activities in the field of the Human Dimension, including the building of democratic institutions by:

[…]

- communicating, as appropriate, with relevant international and non-governmental organizations;

Rome 1993

[…] Inter alia, the ODIHR will enhance its activities under its mandate in the following areas:

[…]

- receiving information provided by NGOs having relevant experience in the human dimension field;
- serving as a point of contact for information provided by participating States in accordance with CSCE commitments;
- disseminating general information on the human dimension, and international humanitarian law.

Budapest 1994

[…] [ODIHR] will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received.

Oslo 1998

[…] The OSCE and its institutions and instruments should further develop practical programs to foster democratic institutions, human rights and the rule of law in the OSCE area. The ability to react in a flexible and quick manner to emerging needs should be increased and the participating States should be encouraged to forward their requests for assistance to the relevant OSCE institutions and instruments. In particular the ODIHR should develop further its short-term advisory missions ("democratization teams").

Istanbul 1999

[…] We individually confirm our willingness to comply fully with our commitments. We also have a joint responsibility to uphold OSCE principles. We are therefore determined to co-operate within the OSCE and with its institutions and representatives […]. We will co-operate in a spirit of solidarity and partnership in a continuing review of implementation.

Maastricht 2003

[…] Full use will be made of ODIHR's monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority.

Helsinki 2008

[…] We reiterate that everyone has the right to freedom of thought, conscience, religion or belief; freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments. […]

ANNEX II: ASSEMBLIES MONITORED BY ODIHR BETWEEN 5 MAY 2011 AND 9 JUNE 2012

Date(s)	Participating State	City	Type of event	Counter-protest	Short description
5/5/2011	Moldova	Chisinau	Flash mob – LGBTI group	No	Very short LGBTI flash mob, unnotified but lawful, gathering up to 30 assembly participants.
21/5/2011	Ukraine	Kiev	Flash mob – LGBTI group	No	LGBTI 10-minute-long flash mob, gathering 6 participants.
4/6/2011	Slovakia	Bratislava	LGBTI Pride	Yes	Second LGBTI Rainbow Pride parade in Slovakia with about 1,000 participants and related counter-demonstration gathering about 50 counter-protesters.
11/6/2011	Italy	Rome	LGBTI Pride	Yes	LGBTI Europride event of about 500,000 participants, accompanied by two small, distant counter-protests with up to 50 people.
11/6/2011	Poland	Warsaw	LGBTI Pride	Yes	Equality Pride rally and march of about 2,000 participants accompanied by two counter-demonstrations gathering up to 430 counter-protesters.

30/7/2011	United Kingdom	Belfast	LGBTI Pride	Yes	LGBTI event which gathered 17,000 participants, accompanied by two small peaceful counter-protests of overall up to 110 people.
2/10/2011	Serbia	Belgrade	Flash mob – LGBTI group	No	Unpermitted peaceful flash mob gathering up to 50 participants, organized instead of the banned LGBTI Pride event.
15 to 17/12/2011	Switzerland	Geneva	Summit protest (WTO Ministerial Conference)	No	Small camp erected in front of the Summit venue (15-16 December) and static rally with up to 150 participants on 17 December.
21/1/2012	Switzerland	Bern	Summit protest (WEF)	No	Unauthorized assembly against the WEF of up to 200 participants, who were not allowed to march. Many were kettled as soon as they gathered.
28/1/2012	Switzerland	Davos	Summit protest (WEF)	No	Small “igloo camp” erected at a distance from the conference centre. Authorized static rally on 28 January gathering up to 200 people, followed by unauthorized march by about 25 rally participants.

15/3/2012	Hungary	Budapest	Multiple assemblies during national holiday	Yes	Multiple official and civil society marches and static rallies for 15 March national celebrations (with 100,000 participants for the Milla event, 5,000 for official events, 300 for the Democratic Coalition rally and 200 for Jobbik assemblies), including simultaneous protests.
18 to 21/5/2012	United States of America	Chicago	Summit protests (NATO)	No	Multiple marches and static rallies, gathering up to 5,000 people for authorized assemblies and hundreds for unauthorized marches.
18/5/2012	United States of America	Frederick, MD	Summit protest (G8)	No	Unauthorized (but facilitated) march and authorized rally by about 60 protesters against the G8 Summit.
19/5/2012	United States of America	Thurmont, MD	Summit protests (G8)	No	Unauthorized rally by up to 200 protesters against the presence of the late Ethiopian Prime Minister Meles Zenawi at the G8 Summit.
9/6/2012	Croatia	Split	LGBTI Pride	No	Second LGBTI Pride event in Split, gathering up to 300 participants.

ANNEX III: GLOSSARY OF KEY TERMS

Assembly
The intentional and temporary presence of a number of individuals in an open-air public place for a common expressive purpose.

Authorization
The act of authorizing; permission (expressly provided in writing).

Content-based restrictions
A restriction that limits expression on the basis of the message it conveys.

Counterdemonstration
An assembly that is convened to express disagreement with the views expressed at another public assembly, and takes place at, or almost at, the same time and place as the one it disagrees with.

Dispersal
A formal requirement that participants in an assembly leave the site of the assembly, with the threat of the use of force by the authorities.

Kettling
A strategy of crowd control whereby police create cordons that contain the crowd in specific locations and do not allow it to move or disperse.

Less-than-lethal weapon
A weapon that is designed to incapacitate the target rather than kill or seriously injure.

Notification
A notice that provides information on an upcoming assembly and does not constitute a request for permission.

Organizer
The person or persons with primary responsibility for an assembly.

Participant
A person intentionally and voluntarily present at an assembly who supports the message of the assembly.

Permit
The formal grant of permission by a regulatory authority to hold an assembly.

Proportionality (principle of)
The principle requiring that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

Public order
Security in public places.

Public safety
A broad notion involving the protection of the population at large from various kinds of significant damage, harm, or danger, including emergencies.

Public space
A space where everyone is free to come and leave without restriction (e.g., streets or parks).

Simultaneous assemblies
An assembly that takes place at the same time and place as another one but that has no relationship to the other event.

Steward
A person, working in cooperation with assembly organizer(s), with a responsibility to facilitate an event and help ensure compliance with any lawfully imposed restrictions.