

United Nations Human Rights Guidance on Less- Lethal Weapons in Law Enforcement

Geneva, August 2019

*Advanced Unedited Version

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1. INTRODUCTION

- 1.1 Less-lethal weapons,¹ such as police batons and chemical irritants, have an important role in law enforcement, which aims to protect individuals and uphold the law. They may be used in situations where some degree of force is necessary but where the use of firearms would be unlawful, or as a less dangerous alternative to firearms, in order to reduce the risk of injury to members of the public, including those suspected of criminal conduct. Law enforcement officials should be equipped with an appropriate range of less-lethal weapons and related equipment. Where they are equipped only with a baton and a firearm, the risks to themselves and to the public may be heightened.
- 1.2 Less-lethal weapons and related equipment may also kill or inflict serious injury, especially when they are not used by trained personnel in accordance with the specifications, general principles on the use of force, and international human rights law. In addition, extrajudicial killings and acts of torture or other forms of cruel, inhuman, or degrading treatment or punishment — serious violations of international law — have been perpetrated using less-lethal weapons and certain forms of related equipment.
- 1.3 The purpose of this Guidance is to provide direction on the lawful and responsible design, production, transfer, procurement, testing, training, deployment, and use of less-lethal weapons and related equipment. It is addressed to States, law enforcement agencies, manufacturers, human rights bodies and mechanisms, private security companies, police oversight bodies, human rights defenders, as well as individuals seeking to assert their right to a remedy for human rights violations. The Guidance is also intended to promote accountability for the design, production, testing, transfer, deployment, and use of less-lethal weapons and related equipment. The Guidance is not intended to serve as standing operating procedures for individual officers, but may assist States and their law enforcement agencies to implement their duty to put in place such procedures.
- 1.4 The Guidance is based on international law, in particular international human rights law and law enforcement rules, as well as good law enforcement practice. It may assist in the application and implementation of the rules of international human rights law, especially those pertaining to the rights to life, to freedom from torture or other forms of cruel, inhuman, or degrading treatment or punishment, and to security of person, and the right of peaceful assembly.² The Guidance supplements and complements the standards laid down in the 1979 United Nations (UN) Code of Conduct for Law Enforcement Officials (1979 Code of Conduct)³ and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990 Basic Principles).⁴

¹ The Guidance avoids referring to weapons and equipment as ‘non-lethal’ since the use of any weapon can have fatal consequences.

² These rights are protected, for example, in Articles 6, 7, 9, and 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and in the regional human rights treaties.

³ Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly Resolution 34/169. The resolution was adopted without a vote on 17 December 1979.

⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, welcomed by UN General Assembly Resolution 45/166. The resolution was adopted without a vote on 14 December 1990.

- 1.5 The 1979 Code of Conduct requires that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.⁵ The 1990 Basic Principles call on States and law enforcement agencies to develop ‘non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons’.⁶ The 1990 Basic Principles further call for the development and deployment of such weapons to be ‘carefully evaluated in order to minimize the risk of endangering uninvolved persons’, and affirm that ‘the use of such weapons should be carefully controlled’.⁷
- 1.6 In 2014, Resolution 25/38 of the UN Human Rights Council encouraged States to make ‘non-lethal weapons available to their officials exercising law enforcement duties, while pursuing international efforts to regulate and establish protocols for the training and use of non-lethal weapons’.⁸ In 2018, the UN Human Rights Council further encouraged the establishment of protocols ‘for the training and use of non-lethal weapons, bearing in mind that even less-lethal weapons can result in risk to life’.⁹
- 1.7 In line with international human rights law and principles on the use of force, the present Guidance applies to acts of law enforcement at all times. This includes the use of force in counterterrorism operations outside the conduct of hostilities during an armed conflict as well as during situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature. The Guidance applies to acts of law enforcement wherever they occur, including extraterritorially, and even in exceptional cases where military personnel are acting as law enforcement officials.
- 1.8 In this document, the words ‘shall’, ‘should’, and ‘may’ are used to convey the intended degree of fulfilment with the Guidance. This is consistent with the use of such language in International Organization for Standardization (ISO) standards and guidelines. ‘Shall’ is used to indicate a requirement. ‘Should’ is used to indicate a preferred method or course of action. ‘May’ is used to indicate a possible method or course of action.

⁵ Article 2, 1979 Code of Conduct.

⁶ Principle 2, 1990 Basic Principles.

⁷ Principle 3, 1990 Basic Principles.

⁸ Human Rights Council Resolution 25/38, adopted on 28 March 2014, para. 14.

⁹ Human Rights Council Resolution 38/11, adopted without a vote on 6 July 2018, para. 15.

2. GENERAL PRINCIPLES ON USE OF FORCE

- 2.1 Law enforcement officials shall at all times respect and protect fundamental human rights and freedoms, in particular when they consider any use of force. The rights of law enforcement officials to life and to security shall also be respected and ensured.¹⁰
- 2.2 In carrying out their duties, law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force only if other means appear ineffective or without any promise of achieving the intended result.¹¹ Where necessary, law enforcement officials shall be equipped with appropriate personal protective equipment,¹² such as helmets, shields, stab-resistant gloves and vests, and bullet-resistant vests. Such appropriate personal protective equipment may decrease the need for law enforcement officials to use weapons of any kind.¹³
- 2.3 Any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-discrimination, and accountability.

THE PRINCIPLE OF LEGALITY

- 2.4 The use of force shall be regulated by domestic law and administrative regulations in accordance with international law. The use of force can only be justified when it is used with the aim of achieving a legitimate law enforcement objective.¹⁴ National policies shall be adopted on the use of force by law enforcement agencies and officials that comply with international law and standards. The relevant State legislation must be sufficiently clear so that its legal implications are foreseeable and widely published so that it is easily accessible to everyone. Force in law enforcement shall never be used punitively.¹⁵
- 2.5 Only weapons and weapons systems duly authorised by the relevant State authorities for use in law enforcement may be deployed by law enforcement agencies and used by law enforcement officials. Domestic law and regulations shall specify conditions for the use of less-lethal weapons and related equipment and impose limitations on their use in order to minimise the risk of injury.

THE PRINCIPLE OF PRECAUTION

¹⁰ UN Office on Drugs and Crime (UNODC)/Office of the UN High Commissioner for Human Rights (OHCHR), *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 15.

¹¹ Principle 4, 1990 Basic Principles.

¹² Principle 2, 1990 Basic Principles.

¹³ Human Rights Council Resolution 38/11, adopted without a vote on 6 July 2018, para. 15.

¹⁴ Principle 1, 1990 Basic Principles; African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: Article 4, the Right to Life', adopted in November 2015, para. 27; Inter-American Court of Human Rights, *Cruz Sánchez and others v. Peru*, Judgment, 17 April 2015, para. 261; European Court of Human Rights, *Nachova and others v. Bulgaria*, Judgment, 6 July 2005, paras. 99, 100.

¹⁵ UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 17.

- 2.6 Law enforcement operations and actions shall be planned and conducted taking all necessary precaution to avoid or at least minimise the risk of recourse to force by law enforcement officials and members of the public, as well as to minimise the severity of any injury that may be caused.¹⁶ Law enforcement officials should delay direct contact or engagement with members of the public, if doing so would make the need to use force or the potential for violent outcomes less likely and where the delay poses no threat to officers or third persons.¹⁷ The availability, training, and equipping of law enforcement officials with adequate protective equipment and an appropriate range of less-lethal weapons are essential measures of precaution to avoid unnecessary or excessive harm.
- 2.7 Law enforcement policies, instructions and operations must give special consideration to persons particularly vulnerable to the harmful consequences of the use of force in general as well as the effects of specific less-lethal weapons, such as children, pregnant women, elderly, persons with disabilities, persons with mental health problems, and persons under the influence of drugs or alcohol.

THE PRINCIPLE OF NECESSITY

- 2.8 In carrying out their duty, law enforcement officials may use force only when strictly necessary and only to the extent required for the performance of their duty. In other words, law enforcement officials should only use force when it is strictly necessary in the circumstances to achieve a lawful and legitimate law enforcement objective.¹⁸
- 2.9 Necessity requires that no reasonable alternative, other than resorting to the use of force, appears available at that moment, to achieve a legitimate law enforcement objective.¹⁹ In particular, law enforcement officers must seek to de-escalate situations, including by seeking peaceful resolution of a dangerous situation whenever possible. Unnecessary or excessive use of force can amount to cruel, inhuman or degrading treatment.²⁰ When the use of force is reasonably necessary in the circumstances, only the minimum force required to achieve that objective shall be used.²¹

THE PRINCIPLE OF PROPORTIONALITY

- 2.10 The type and level of use of force and the harm that may be reasonably expected to result shall be proportionate to the threat posed by an individual or group of individuals or the

¹⁶ European Court of Human Rights, *McCann and others v. United Kingdom*, Judgment, 27 September 1995, para. 194; Inter-American Court of Human Rights, *Nadege Dorzema and others v. Dominican Republic*, Judgment, 24 October 2012, para. 87; Principle 5(b), 1990 Basic Principles; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 63; African Commission on Human and Peoples' Rights, General Comment on the Right to Life, 2015, para. 27.

¹⁷ European Court of Human Rights, *Shchiborshch and Kuzmina v. Russia*, Judgment, 16 January 2014, para. 240.

¹⁸ Principle 4, 1990 Basic Principles; Article 3, 1979 Code of Conduct.

¹⁹ Principle 4, 1990 Basic Principles; Article 3 and Commentary (a), 1979 Code of Conduct.

²⁰ UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 17.

²¹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 60; Commentary (a) on Article 3, 1979 Code of Conduct.

offence that is being, or is about to be, committed.²² In no case should force be used which is excessive in relation to the legitimate objective to be achieved.²³ For example, force that is likely to result in moderate or severe injury, including through the means of less-lethal weapons, may not be used simply to obtain compliance with an order by a person who is only passively resisting. At all times, law enforcement officials should consider and minimize the possible incidental impact of their use of force on bystanders, passers-by, medical personnel, and journalists. They shall not direct force against such persons and any incidental impact must be strictly proportional to the legitimate objective to be achieved.

THE PRINCIPLE OF NON-DISCRIMINATION

2.11 In carrying out their functions, law enforcement officials shall not discriminate against any person on the basis of race, ethnicity, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, disability, property, birth, or other similar criteria.²⁴ In order to ensure non-discrimination and de facto equal treatment of persons subject to the use of force, a heightened level of care and precaution shall be exercised with respect to individuals who are known or are likely to be especially vulnerable to the effects of a particular weapon.²⁵ Monitoring of the use of force, including with reference to appropriate information about those against whom force is used, is a critical element in efforts to ensure that force is not used in a discriminatory manner.

²² UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 18; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 66; Principle 5(a), 1990 Basic Principles; Commentary (b) on Article 3, 1979 Code of Conduct.

²³ Commentary (b) on Article 3, 1979 Code of Conduct.

²⁴ Article 2, 1979 Code of Conduct. The principle of non-discrimination is considered customary international law. It is also provided for in the UN Charter, Universal Declaration of Human Rights, and all core human rights instruments, such as in article 2(1) of the ICCPR.

²⁵ For example, in the case of conducted electrical weapons, the United Kingdom's Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons advises that 'individuals with heart disease, or who have taken certain prescription or recreational drugs, may be more likely to experience adverse cardiac effects as a result of Taser discharge'. Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons, 'Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults', 2012, para. 77, at: <https://bit.ly/2tFIS8f>.

3. ACCOUNTABILITY

- 3.1 Under international human rights law and international principles on the use of force, States are obligated to ensure that law enforcement officials are held accountable for their actions, including any decision to use force. As law enforcement officials are required to protect the public, in certain circumstances States are also obliged to hold them accountable for omissions.²⁶ To ensure effective accountability, law enforcement agencies shall establish sufficiently independent and effective internal accountability mechanisms and States should consider the establishment of an adequately resourced external oversight body, in the absence of which an Ombudsman or National Human Rights Institution should fulfil this external oversight function.²⁷
- 3.2 Effective accountability for law enforcement officials involves many different actors: government representatives, parliament, the judiciary, civil society actors, and independent oversight bodies, including national human rights institutions or ombudspersons' offices. Primarily, though, it concerns the police or other law enforcement agency itself.²⁸ Members of the government and other political authorities should promote a culture of accountability for law enforcement and must be held responsible if they encourage or enable unlawful behaviour. States are obligated to regulate and control the actions of private security companies operating on or from their territory in domestic law that complies with international law.
- 3.3 Monitoring, reporting, and transparency are essential components of accountability. Law enforcement officials should be identifiable, such as by the wearing of nametags or individually assigned service numbers. All weapons,²⁹ and, where feasible, ammunition, munitions, batons, and projectiles, should be marked. Accountability is further facilitated by record-keeping of the equipping of law enforcement officials with less-lethal weapons, combined with prompt and comprehensive reporting of incidents where officials have used force.³⁰ In this regard, States should consider requiring all law enforcement agencies to document every use of force involving less-lethal weapons or related equipment.
- 3.4 Where injury occurs, a report should contain sufficient information to establish whether the use of force was necessary and proportionate, and set out the details of the incident, including: the surrounding circumstances; measures taken to avoid the use of force and to de-escalate the situation; the type and manner of force employed, including specific weaponry; the reasons for the use of force; its effectiveness; and the consequences. The

²⁶ See, e.g., European Court of Human Rights, *Tagayeva v. Russia*, Judgment (First Section), 13 April 2017; 'Police officers jailed over Bijan Ebrahimi murder case', *The Guardian*, 9 February 2016, at: <http://bit.ly/2MoAvGi>.

²⁷ African Commission on Human and Peoples' Rights, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, Banjul, 2017, para. 8.1.

²⁸ UNODC, *Handbook on Police Accountability, Oversight and Integrity*, Criminal Justice Handbook Series, Vienna, July 2011.

²⁹ According to Article 8(1) of the 2001 Firearms Protocol, for example, each state party is required, at the time of manufacture of each firearm, to require 'unique marking with the name of the manufacturer, the country or place of manufacture, and the serial number', or any alternative marking 'with simple geometric symbols in combination with a numeric and/or alphanumeric code' that permits 'ready identification by all States of the country of manufacture'.

³⁰ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 5 ("Human Rights and the Use of Force").

report should conclude whether the use of force was lawful and, in any event, identify any lessons learned from the incident.

- 3.5 Where death or injury is caused by the use of a less-lethal weapon or related equipment by a law enforcement official, the incident shall be reported promptly to the official's superiors.³¹ This obligation also applies to any private security company undertaking law enforcement activities. All deaths and injuries resulting from the use of less-lethal weapons or related equipment — not only where they result from an apparently or potentially unlawful use of force or any breach of the present Guidance — should be reported, without delay, to a judicial or other competent authority. This independent authority shall be mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases.
- 3.6 The use of force in a custodial setting should be reported immediately to the director of the institution or individual of equivalent authority, as appropriate.³² Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury or incident in which there are reasonable grounds to believe that torture or other cruel, inhuman, or degrading treatment or punishment has been committed to a judicial or other competent authority. This authority shall be independent of the prison administration and mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases.³³
- 3.7 Every law enforcement official is responsible for his or her decisions and actions, including a commander. Each use of force must be justified and justifiable.³⁴ Obedience to a manifestly unlawful order from a superior to use force shall not excuse any illegal act.³⁵ Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on a law enforcement official who refuses to carry out an illegal order to use a less-lethal weapon, or who reports such illegal orders, or such use of force by other officials.³⁶
- 3.8 Under international human rights law, there is an obligation on the State to investigate all alleged or suspected violations of human rights, in particular the rights to life, and security, and to freedom from torture or other forms of cruel, inhuman, or degrading treatment or punishment.³⁷ Such investigations shall be impartial, independent, and effective, and conducted in a prompt and transparent manner. All law enforcement officials shall cooperate fully with any such investigation and investigators shall be able to compel the production of

³¹ Principles 6 and 22, 1990 Basic Principles. Principle 22 further provides that in cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

³² Rule 82(1), UN Standard Minimum Rules for the Treatment of Prisoners, adopted without a vote by UN General Assembly Resolution 70/175 of 17 December 2015 ('2015 Nelson Mandela Rules').

³³ Rule 71(1), 2015 Nelson Mandela Rules.

³⁴ See, e.g., US Court of Appeals (Fourth Circuit), *Meyers v. Baltimore County*, 713 F.3d 723 (2013), pp. 733–34; UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, pp. 12, 16, and 78.

³⁵ Principle 26, 1990 Basic Principles; European Court of Human Rights, *Gäfgen v. Germany*, Judgment, 1 June 2010, paras. 176, 177.

³⁶ Principle 25, 1990 Basic Principles.

³⁷ See generally the *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, OHCHR, Geneva, 2017.

evidence. Such investigative powers should be given to independent police oversight mechanisms, which strengthen the accountability of law enforcement agencies and officials. Medical professionals involved in any investigation shall act in accordance with professional ethics, including the duty to act impartially with a view to facilitating justice.

- 3.9 When law enforcement officials deprive an individual of liberty, for instance by detaining or placing that person in custody, they assume a heightened level of responsibility to protect that individual's rights, in particular the rights to life and to physical integrity. Where a person dies in custody, including as a result of the use of less-lethal weapons, there is a presumption of State responsibility, and the burden of proof rests upon the State to prove otherwise. In any event, a prompt, impartial, independent and effective, and transparent investigation must be carried out by an independent body.³⁸
- 3.10 Where an investigation into the use of force by law enforcement officials reveals evidence that a death or injury may have been caused unlawfully, the State should ensure that perpetrators are prosecuted through a judicial process and, if convicted, given appropriate punishment.³⁹ Punishment for unlawful use of force by law enforcement officials shall be effective, proportionate, and dissuasive. Where a violation of domestic or international law or administrative regulation occurs, retraining or requalification may be required in addition to any criminal law or disciplinary sanction or civil law penalty that may be imposed on responsible law enforcement officials.
- 3.11 States should ensure, including through internal periodic review, that lessons learned from situations where the exercise of human rights has been negatively affected by the use of less-lethal weapons or related equipment are fully reflected in policies, procedures, and training.⁴⁰
- 3.12 Victims of unlawful use of force by law enforcement officials shall have a right to an effective remedy.⁴¹ Forms of remedy include compensation, guarantees of non-repetition, rehabilitation, reparation, restitution, and satisfaction. The right of victims to participate in any investigation should be respected.
- 3.13 Accountability for unlawful use of force by law enforcement officials is supported by UN human rights mechanisms, such as treaty bodies and special procedures. In the absence of state compliance, accountability may be ensured or promoted by international judicial mechanisms such as the regional human rights courts or international criminal tribunals, and, in exceptional circumstances, by the International Criminal Court. Accountability for unlawful use of force in law enforcement contexts has also been promoted by international commissions of inquiry and fact-finding missions, and in country and thematic reports of the Office of the UN High Commissioner for Human Rights (OHCHR).

³⁸ *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, para. 17.

³⁹ *Ibid.*, para. 8(c).

⁴⁰ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 19 ("Law Enforcement and Human Rights in Command and Control, Management and Organization").

⁴¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 21 March 2006; Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 15.

4. GENERAL CONSIDERATIONS CONCERNING LESS-LETHAL WEAPONS AND RELATED EQUIPMENT

4.1 DESIGN AND PRODUCTION

- 4.1.1 Less-lethal weapons and related equipment intended for use in law enforcement shall be designed and produced to meet legitimate law enforcement objectives and to comply with international human rights law. This duty applies to the State and its agents and also to companies that manufacture weapons for law enforcement.⁴²
- 4.1.2 Public and private manufacturers of less-lethal weapons and related equipment should bring specific risks to the attention of the purchaser and/or user as well as the public at large. States, law enforcement agencies, and manufacturers should be transparent about the technical specifications of weapons in use, while respecting non-disclosure agreements and manufacturers' intellectual property rights. At a minimum, all material safety data sheets should be provided by the manufacturers to the purchaser and/or user. Publicly available data should include each weapon's design features and parameters⁴³ with a view to facilitating medical treatment and public acceptance. Manufacturers should also identify and release all medical studies and the names of experts who have contributed to safety analyses, disclosing those who have received compensation for promoting their products.
- 4.1.3 The nature of law enforcement places special constraints on the extent to which force may be delivered remotely.⁴⁴ Among other reasons, this is because the potential for the assessment and the non-violent resolution of a situation requiring a law enforcement intervention, including an arrest of a criminal suspect, is likely to be substantially reduced. In any event, an appropriate measure of human control over the use of force in law enforcement should be ensured. This has significant implications for the design of less-lethal weapons and related equipment.

4.2 LEGAL REVIEW, TESTING, AND PROCUREMENT

- 4.2.1 States shall ensure that a legal review is conducted prior to procurement and equipping of law enforcement officials with less-lethal weapons or items of related equipment to determine whether this would, in some or all circumstances, be prohibited by any rule of international or domestic law, in particular human rights law.⁴⁵

⁴² See, e.g., *The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, OHCHR, Geneva/New York, 2011.

⁴³ Thus, for example, in the case of a chemical irritant, this would encompass its strength and the type of solvent used.

⁴⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/69/265, 6 August 2014, paras. 77–89.

⁴⁵ Human Rights Council Resolution 38/11, para. 16. See also Art. 36, 1977 Additional Protocol I to the 1949 Geneva Conventions; African Commission on Human and Peoples' Rights, General Comment on the Right to Life, para. 30.

- 4.2.2 As part of the legal review, testing should be conducted independently of the manufacturer and in accordance with recognised standards. Testing should take full account of both the required and the potential capabilities and effects of the weapons, and should be based on impartial legal, technical, medical, and scientific expertise and evidence.⁴⁶ Testing should evaluate the effects of all reasonably likely or expected uses of the weapons. Particular consideration should be given to assessing the potential effects of using less-lethal weapons and related equipment against individuals who may be especially vulnerable.⁴⁷
- 4.2.3 Less-lethal weapons and related equipment whose designated, expected, or intended use does not comply with the rules governing law enforcement, or which presents undue risk of loss of life or serious injury to anyone, including criminal suspects, bystanders, and law enforcement officials themselves, shall not be authorised for procurement, deployment, or use.
- 4.2.4 Less-lethal weapons and related equipment that deliver force through remote control, automatically, or autonomously⁴⁸ should only be authorised if, in the context of their intended or ordinary use, it can be ensured that such use would comply with domestic law and international law, in particular international human rights law.

4.3 MONITORING

- 4.3.1 States and law enforcement agencies shall monitor the use and effects of all less-lethal weapons and related equipment they procure, deploy, and use for law enforcement purposes.
- 4.3.2 Monitoring should include contextual information about the circumstances of use. Relevant data on those on whom force is used should be disaggregated, to the extent possible, for example by age, sex/gender, disability (where that exists), and ethnic group. The results of monitoring should be made public in accordance with the transparency requirements set out below. This should include publicly available national statistics on deaths and serious injuries related to different categories of less-lethal weapons.

⁴⁶ Human Rights Council Resolution 25/38, para. 15. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, 'Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment', UN doc. A/72/178 (2017); and UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017.

⁴⁷ See, e.g., Taser International, 'TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement', 1 March 2013, p. 3; Environmental Defender's Office (ACT) (Australia), *The Risks of Use of Capsicum Spray and Pain Compliance Techniques against Public Gatherings, Police Powers of Crowd Control*, Submission to ACT Legislative Assembly Legal Affairs Committee Inquiry, June 2005.

⁴⁸ The Human Rights Committee has advised that: 'the development of autonomous weapon systems lacking in human compassion and judgement raises difficult legal and ethical questions concerning the right to life, including questions relating to legal responsibility for their use.' The Committee believes that such weapon systems should not be developed and put into operation unless it has been established that their use conforms with Article 6 of the ICCPR and other norms of international law. See Human Rights Committee, General Comment 36 on the right to life, para. 65.

- 4.3.3 Monitoring should include spot checks on less-lethal weapons and related equipment. The use of body-worn cameras (or other suitable recording equipment) when less-lethal weapons are used should also be considered.
- 4.3.4 Analysis of data should inform changes to training, guidance, deployment, and policy, as and where necessary.
- 4.3.5 States and law enforcement agencies should cooperate with monitoring of the use and effects of all less-lethal weapons and related equipment by external monitoring bodies like National Human Rights Institutions and Independent Police Complaint Mechanisms as well as international organizations and civil society organizations. The results of such monitoring should be considered in training and when updating internal policies or guidance.

4.4 TRANSPARENCY

- 4.4.1 States and law enforcement agencies should be transparent about their regulation of the use of less-lethal weapons and related equipment and the policies on, and criteria for, their lawful use. This should include information on the risks resulting from the use of such weapons or equipment. Where manufacturers provide guidance on risks during use or on the operational use of their less-lethal weapons, this should also be subject to such transparency requirements. Wherever it is possible to do so, States should consider consulting the public prior to the procurement of new types of less-lethal weapons and law enforcement agencies should be transparent about the types of weapons at their disposal.
- 4.4.2 Anonymity of law enforcement officials and/or victims may be preserved where necessary and appropriate. Where legitimate limitations are imposed on the detail included in transparency measures, such limitations should not be used as a justification to suppress publication of aggregate data.
- 4.4.3 Relevant data and information should also be shared within law enforcement communities, including at regional and international levels.

4.5 TRAINING

- 4.5.1 Law enforcement officials shall be trained in the lawful use of force. This should include training on applicable human rights principles and standards, how to avoid the use of force, including through de-escalation techniques, mediation, and effective communication, on how less-lethal weapons may offer a safer and effective alternative to firearms, and on which individuals or groups may be especially vulnerable to use of certain less-lethal weapons.⁴⁹ Training should be scenario based as well as theoretical in nature, and should include the management of stress in use of force situations. Training should be institutionalized by law enforcement agencies and, where external assistance is offered, it should not be provided solely by the manufacturer of a particular weapon. Training programmes should be continuously reviewed to incorporate lessons learned during operations and to ensure that they reflect all relevant policies and updated internal

⁴⁹ See African Commission on Human and Peoples' Rights, General Comment on the Right to Life, 2015, para. 30.

regulations.⁵⁰ Moreover, States should consider inviting technical support from relevant international organizations and other countries' law enforcement agencies.

- 4.5.2 Law enforcement officials shall receive appropriate initial and refresher training in the use and effects of any less-lethal weapons with which they may be equipped or deployed. The training should be to a high standard and a trainee should only be authorised to carry and use weapons in which they have been trained successfully. Command and supervisory officials should also receive ongoing training on their obligations related to their command functions in areas related to the use of force.⁵¹
- 4.5.3 The training should include the particular vulnerabilities of certain individuals to the effects of a particular weapon and on how to identify especially vulnerable individuals.⁵² Trainees shall be made aware of not only the primary risk of injury arising from use of any less-lethal weapons with which they may be equipped but also the secondary injuries that may result (for example, as a result of the person against whom the weapon is used falling from an elevated position or onto a hard surface). These effects and risks should also be reflected in standing operating procedures.
- 4.5.4 In accordance with the human rights principle of precaution, appropriate emergency first-aid training shall be provided to all law enforcement officials to enable them to respond appropriately to the injuries or other impacts that may result from the use of the weapons with which they are equipped. Law enforcement officials shall be made aware of the potential injurious effects of the weapons they are authorised to use and be specifically trained on attending to those consequences. Training shall also address the requirements for specialist medical attention (including to vulnerable individuals) and on the need to gather data to assess the forms of use, their effectiveness, and issues of safety.

4.6 MEDICAL ASSISTANCE

- 4.6.1 Medical assistance shall be rendered to any injured or affected person at the earliest possible moment.⁵³ The duty to assist applies without discrimination of any kind. Thus, assistance shall be duly provided irrespective of whether or not the injured person is a suspected offender. Distinctions as to the medical assistance provided are only justifiable on medical grounds, for instance the urgency of the medical needs. Access to medical assistance should therefore be provided on the basis of severity of injury.
- 4.6.2 Where feasible, appropriate first-aid equipment should routinely be accessible by law enforcement officials (for example, in police vehicles and during assemblies). In any event, access of ambulances to any injured or affected person shall not be arbitrarily withheld.

⁵⁰ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 5 ("Human Rights and the Use of Force"); and OSCE/ODIHR and Council of Europe, *Guidelines on Freedom of Peaceful Assembly*, para. 178.

⁵¹ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 5 ("Human Rights and the Use of Force").

⁵² Principles 19 and 20, 1990 Basic Principles; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 106.

⁵³ Principle 5(c), 1990 Basic Principles.

4.6.3 Law enforcement officials shall at all times facilitate and cooperate with those providing medical assistance, including by making available pertinent information relating to the less-lethal weapon or related equipment that has been used.⁵⁴ This duty applies to interactions with medical professionals rendering assistance in their official capacity as well as other health-care workers with appropriate skills

4.7 TRANSFER

4.7.1 States shall regulate all transfer, including export and import, of less-lethal weapons and related equipment in accordance with their international obligations.⁵⁵ They should put in place risk assessment procedures to ensure, prior to authorization of the transfer, that such items are not used to commit or facilitate a serious violation of international humanitarian law or a violation of the rights to life, to physical integrity, to freedom of peaceful assembly, and to fair trial, or other due process guarantees or other human rights.⁵⁶

4.7.2 Less-lethal weapons and related equipment whose designated, expected, or intended use is of a nature to amount to torture or other forms of cruel, inhuman, or degrading treatment or punishment shall never be transferred.⁵⁷

4.7.3 Less-lethal weapons and related equipment that present undue risk of loss of life or injury following designated, expected, or intended use, taking into account also the human rights record of the recipient state, shall not be transferred.

4.8 INTERNATIONAL COOPERATION AND ASSISTANCE

4.8.1 States in a position to do so should consider responding positively to requests for international cooperation and assistance in the supply of appropriate less-lethal weapons and related equipment (including personal protective equipment). States that receive less-lethal weapons and related equipment should consider requesting training on their lawful use.

4.8.2 As a matter of good practice, the provision of assistance should be accompanied by support for training in the appropriate use of the less-lethal weapons and related equipment, and on how to mitigate any negative consequences associated with its use.

⁵⁴ See, e.g., European Court of Human Rights, *Lipencov v. Moldova*, Judgment, 25 January 2011, para. 38; *Jasinskis v. Latvia*, Judgment, 21 December 2010, paras. 56–68.

⁵⁵ Such obligations may result, inter alia, from their adherence to the 2013 United Nations Arms Trade Treaty, under international human rights law, from their membership of regional organisations, or as a result of their adherence to relevant regional treaties.

⁵⁶ This principle is set out in Article 7 of the 2013 Arms Trade Treaty.

⁵⁷ See, e.g., Omega Research Foundation, *Ending the Trade in the Tools of Torture: Five Key Principles*, United Kingdom, 2017, at: <https://bit.ly/2IAADPH>. The same applies for any of the weapons mentioned in section 6.1 below.

5. UNLAWFUL WEAPONS AND RELATED EQUIPMENT

5.0.1 The following are instances weapons and related equipment that violate international human rights law. The list is not exhaustive.

5.1 UNLAWFUL WEAPONS

5.1.1 Use of the following weapons is widely considered to violate international human rights law. They should not be used in law enforcement:

- Spiked batons⁵⁸
- Lasers designed to permanently blind⁵⁹
- Directed energy weapons of a nature to cause serious injury.⁶⁰

5.2 UNLAWFUL RELATED EQUIPMENT

5.2.1 The following equipment is inherently degrading or unnecessarily painful and should not be used in law enforcement:

- Metal chains (shackles)
- Irons (leg or wrist)⁶¹
- Thumb-screws and thumb-cuffs
- Spiked or electrified instruments of restraint
- Weighted instruments of restraint.

⁵⁸ See, e.g., European Commission Council Regulation No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment (as amended), 27 June 2005.

⁵⁹ 1995 Protocol IV on blinding laser weapons to the 1980 Convention on Certain Conventional Weapons.

⁶⁰ See, e.g., Jürgen Altmann, 'Millimetre waves, lasers, acoustics for non-lethal weapons? Physics analyses and inferences', Forschung Deutsche Stiftung Friedensforschung (DSF) No. 16, Osnabruck, Germany, available at: <http://bit.ly/2sDlmlc>.

⁶¹ Rule 47(1), 2015 Nelson Mandela Rules.

6. USE OF FORCE IN SPECIFIC SITUATIONS

6.1 DURING ARREST

- 6.1.1 Force is often used by law enforcement officials during the course of an arrest. Force should only be used when it is necessary. The force used in the course of an arrest should be proportionate to the objective sought and the resistance faced. Arrest shall only be carried out for a legitimate law enforcement objective. Particular attention must be given to the principle of proportionality in case of a person fleeing arrest: the degree of force to prevent the escape must be balanced against the seriousness of the threat posed by the person fleeing.⁶² Once the need for force has passed, no further force is lawful. Arrest and detention shall never be used to justify excessive, abusive, or punitive use of force or any form of cruel, inhuman, or degrading treatment or punishment.
- 6.1.2 The use of a law enforcement official's hands and arms is not covered by the present Guidance. The same general principles on the use of force apply to such means as they do to less-lethal weapons or related equipment.
- 6.1.3 When police dogs are present during arrest, they shall be properly trained and should be under the effective control of their handlers at all times, including when they are not on a leash.⁶³ Police dogs may cause serious injuries to a victim. There is also a risk of secondary infection from dog bites.⁶⁴
- 6.1.4 Disorientation or distraction devices, such as pyrotechnic flash-bang grenades, are devices that are designed to warn or to help facilitate a safe arrest, especially in the course of high-risk operations. The use of pyrotechnic flash-bang grenades directly against a person would be unlawful as it may cause serious burn or blast injuries and there may even be a risk of fragmentation in certain cases.

6.2 CUSTODIAL SETTINGS

- 6.2.1 Individuals are especially vulnerable to injury from less-lethal weapons in custodial settings.⁶⁵ In accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), all detainees shall be treated with the respect due to their inherent dignity and value as human beings.⁶⁶ No detainee shall be subjected to, and all detainees shall be protected from torture or other forms of cruel, inhuman, or degrading treatment or punishment. No circumstances whatsoever may be invoked as a

⁶² See, e.g., European Court of Human Rights, *Nachova and others v. Bulgaria*, Judgment, 6 July 2005, paras. 95, 99. OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 6 (“Human Rights and Arrest”).

⁶³ UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 84.

⁶⁴ See, e.g., P. C. Meade, ‘Police and domestic dog bite injuries: What are the differences? What are the implications about police dog use?’, *Injury Extra*, Vol. 37, No. 11 (November 2006), pp. 395–401.

⁶⁵ See, e.g., E. Hoffberger-Pippan, ‘Non-Lethal Weapons and International Law: A Three-Dimensional Perspective’, PhD Thesis, Johannes Kepler University, Linz, Austria, 2019, §III(A)(2).

⁶⁶ See also Article 10, ICCPR.

justification for such treatment or punishment. The safety and security of detainees, staff, and visitors shall be ensured at all times.⁶⁷

6.2.1 Regulations for custodial settings should clearly state which less-lethal weapons and related equipment are authorised for use, by whom, and what types of force may be used. They should establish rules and procedures for use that comply with international standards. The carrying of personal weapons by law enforcement officials in custodial settings shall be prohibited. Persons in custody should be informed about the existence of applicable regulations governing the use of force.

6.2.2 Custodial staff shall not use force against persons in custody, except as a last resort, and only in cases involving in self-defence, attempted escape, or active/passive physical resistance to an order based on law or regulations.⁶⁸ In any event, the force used shall be proportionate to the threat posed by the person against whom force is used and the legitimate objective sought. Proportionate force may also be used, where necessary, to protect a detainee, including where he or she is self-harming.

6.3 DURING ASSEMBLIES (PUBLIC ORDER MANAGEMENT)

6.3.1 Law enforcement officials should respect and protect the right of peaceful assembly without discrimination and in accordance with international law.⁶⁹ The fundamental human rights of the participants shall be respected and protected, even if an assembly is considered unlawful by the authorities.⁷⁰ Appropriate de-escalation techniques should be used to minimize the risk of violence. Law enforcement officials should recall that heavy displays of less-lethal equipment may escalate tensions during assemblies. Where force is necessary and proportionate to achieve a legitimate law enforcement objective, all possible precautionary steps shall be taken to avoid, or at least minimise, the risk of injury or death.⁷¹

6.3.2 In an assembly in which certain individuals are behaving violently, law enforcement officials have a duty to distinguish between those individuals and the rest of the assembly participants,⁷² whose individual right to peaceful assembly should be unaffected. If it is decided that less-lethal weapons are an appropriate means of addressing individual acts of violence, then due care should be given to the likely proximity of third parties and bystanders.

6.3.3 The use of less-lethal weapons to disperse an assembly should be considered a last resort. Before approving dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly, which may allow the assembly

⁶⁷ Rule 1, 2015 Nelson Mandela Rules.

⁶⁸ Rule 82(1), 2015 Nelson Mandela Rules. See also UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly Resolution 45/113 of 14 December 1990, para. 65.

⁶⁹ Article 21, ICCPR; Human Rights Council Resolution 25/38, paras. 3, 4.

⁷⁰ 'Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies', UN doc. A/HRC/31/66, 4 February 2016, paras. 13–17 and 25.

⁷¹ *Ibid.*, para. 52; and Human Rights Council Resolution 25/38, para. 9.

⁷² OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 9 ("Human Rights and Policing of Public Assemblies").

to continue.⁷³ If these targeted interventions are ineffective, law enforcement officials may employ area impact weapons, such as water cannons and tear gas, after issuing an appropriate warning, unless providing the warning causes delay that either risks serious injury or will be futile in the circumstances. In addition, time should be given for participants in the assembly to obey the warning, and a safe space or route shall be ensured for them to move to.

- 6.3.4 The use of firearms to disperse an assembly is always unlawful. Only less-lethal weapons may be used in situations where some force is necessary. In such situations, less-lethal weapons that can be individually aimed shall target only individuals engaged in acts of violence. Weapons such as chemical irritants dispersed at a distance (tear gas) should be targeted at groups of violent individuals unless it is lawful in the circumstances to disperse the entire assembly. Such use should accord due consideration to the impact on other, non-violent participants or bystanders. In addition, when the use of any less-lethal weapons or related equipment is envisaged against assembly participants, due attention should be paid to the potential for panic in a crowd, including the risk of a stampede. Only weapons that meet international standards of accuracy may be used.
- 6.3.5 Physical barriers should never be such as to pose a risk to safety. Barbed wire, razor wire, or other spiked barriers typically create an undue risk of injury to participants in an assembly. Safer alternatives should be employed where a barrier is needed.
- 6.3.6 Medical personnel should be provided with safe access to attend to any injured, whether they are acting officially or as volunteers.

⁷³ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, UN doc. A/HRC/31/66, 4 February 2016, para. 52; and Human Rights Council Resolution 25/38, para. 9.

7. USE OF SPECIFIC LESS-LETHAL WEAPONS AND RELATED EQUIPMENT

- 7.01 This section describes key issues and specific considerations with respect to the use of certain less-lethal weapons. This is not an exhaustive list of less-lethal weapons, but includes those most commonly used in contemporary law enforcement. Certain weapons are designed to be used against individuals, while others are less discriminate, intended for use against groups of individuals. The description of risks or potential unlawful use is not exhaustive, but rather presents the most common problems related to a particular type of weapon.
- 7.02 The guidance provided in this section supplements the general principles set out above on the use of force and less-lethal weapons. Where weapons are used that are likely to kill or seriously injure a person, this use of force is subject to the rules set down in Principle 9 of the 1990 Basic Principles.

7.1 POLICE BATONS

UTILITY AND DESIGN

- 7.1.1 The police baton (also called a truncheon or nightstick) is the most common less-lethal weapon with which law enforcement officials are equipped. Police batons are most often made out of wood, rubber, plastic, or metal, and are available in a variety of lengths, some up to nearly a metre long. The most widely sold products on the market today are straight batons, side-handle batons ('tonfa'), and telescopic batons.⁷⁴
- 7.1.2 Batons have many uses in law enforcement, some unrelated to their function as a weapon for use against a person, but are typically used as a less-lethal weapon to enable law enforcement officials to defend themselves against violent assailants or to effect the lawful arrest of a suspect who is violently resisting.

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

- 7.1.3 Batons are, in general, a weapon that is for use against specific individuals engaged in or threatening injury against a law enforcement official or member of the public. Baton strikes should be targeted against the arms or legs of an assailant.

SPECIFIC RISKS

- 7.1.4 Over-arm baton strikes on bones and joints have a heightened risk of resulting in dislocations, fractures, and soft-tissue injuries.⁷⁵ Jabs or driving strikes with a baton at the thorax, neck, or head should be avoided because of the risk of injury to, and even rupture of, vital organs.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

⁷⁴ Omega Foundation, 'Police Batons', Unpublished document, 2014.

⁷⁵ M. Stark (ed.), *Clinical Forensic Medicine: A Physician's Guide*, 2nd Edn, Humana Press, New York, 2005, p. 198.

7.1.5 Officials should avoid baton strikes to sensitive areas of the body, such as the head, neck and throat, spine, kidneys, and abdomen. Neck-holds using batons should not be employed as they present an especially high risk of death or serious injury as a result of large blood-vessel or airway compression. There is also the risk of injury to the larynx, trachea, and hyoid bone. Batons shall not be used against a person who is neither engaged in, nor threatening, violent behaviour. Such use is likely to amount to cruel, inhuman, or degrading treatment, or even torture.

7.2 HAND-HELD CHEMICAL IRRITANTS

UTILITY AND DESIGN

7.2.1 A range of hand-held chemical irritants (also called lachrymatory agents) exist for use in law enforcement. The most common are pepper spray (also known as OC: oleoresin capsicum), PAVA, and CS spray. Pepper spray contains capsaicin, a chemical extracted from the fruit of certain plants and which is incorporated in liquid and pressurised to turn it into an aerosol. Sprays come in the form of jets or ‘fogger’ variants, with jets being more discriminating.

7.2.2 Chemical irritants are used to incapacitate or weaken a violent assailant or help effect a lawful arrest of a suspect who is violently resisting.⁷⁶ They are intended to be used to spray the face of a person at a distance of up to several metres, delivering the active chemical to the eyes, nose, and mouth. This causes irritation to the eyes, upper respiratory tract, and skin.⁷⁷

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

7.2.3 A chemical irritant should only be used where sufficient toxicological information is available to confirm that it will not cause any unwarranted health problems, and when its delivery against a target is accurate. Chemical irritants should only be deployed where a law enforcement official has reason to believe there is an imminent threat of injury.

SPECIFIC RISKS

7.2.4 The effects of chemical irritants when used appropriately are normally transient, lasting up to approximately three hours.⁷⁸ Exposure to fresh air and treating the eyes with cool water⁷⁹ typically remedies the effects within one or two hours. Certain people, though, have exceptionally severe reactions to irritant spray. Restraining a suspect by placing them in the prone position (i.e. where the person is lying flat with the chest down and his or her back up) should be avoided after exposure. If an individual suffering from the effects of a chemical irritant is restrained, his or her breathing shall be monitored constantly. Any

⁷⁶ Omega Foundation, ‘Crowd Control Technologies: An Appraisal of Technologies for Political Control’, 2000.

⁷⁷ J. McGorrigan & J. J. Payne-James, ‘Irritant Sprays: Clinical Effects and Management’, Faculty of Forensic and Legal Medicine, United Kingdom, 2017, at: <http://bit.ly/2R4mfDE>.

⁷⁸ J. J. Payne-James, G. Smith, E. Rivers, S. O’Rourke, M. Stark, and N. Sutcliffe, ‘Effects of incapacitant spray deployed in the restraint and arrest of detainees in the Metropolitan Police Service area, London, UK: a prospective study’, *Forensic Science Medicine and Pathology*, Vol. 10, No. 1 (March 2014), pp. 62–68.

⁷⁹ Hot water will reactivate the irritant.

unexpected or long-lasting effects should be referred for relevant specialist assessment and treatment.

- 7.2.5 Use of chemical irritants can temporarily cause breathing difficulties; nausea; vomiting; irritation of the respiratory tract, tear ducts, and eyes; spasms; chest pains; dermatitis; and allergies. In high doses, it can cause necrosis of the tissue in the respiratory tract and the digestive system, pulmonary oedema, and internal bleeding.⁸⁰ There is also the possibility of burns or other injury resulting directly from the solvents if they have not evaporated before contact with skin. There is a specific risk of flammability from the solvent: for instance if a subject is smoking.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

- 7.2.6 Irritants that contain carcinogenic substances or hazardous levels of active agent shall not be used. Repeated or prolonged exposure should be avoided. Some solvents are toxic, may cause corneal erosion, or are flammable.⁸¹
- 7.2.7 Chemical irritants should not be used in situations of purely passive resistance.⁸² Chemical irritants should not be used in closed environments without adequate ventilation or where there is no viable exit, owing to the risk of death or serious injury from asphyxiation.

7.3 CHEMICAL IRRITANTS DISPERSED AT A DISTANCE (TEAR GAS)

UTILITY AND DESIGN

- 7.3.1 A range of chemical irritants⁸³ are available which can be launched at a distance against groups of individuals engaged in violent acts. The term ‘tear gas’ is used to describe a variety of lachrymatory agents used by police forces in certain countries. The most widely used chemical irritant dispersed at a distance is CS (either micronised powder or pyrotechnically generated CS particles), which is typically discharged either in the form of projectiles or from grenades shot from a launcher. Malodorants are also dispersed at a distance.

⁸⁰ European Court of Human Rights, *Abdullah Yaşa and others v. Turkey*, Judgment, 16 July 2013, para. 30.

⁸¹ M. Holopainen *et al.*, ‘Toxic carriers in pepper sprays may cause corneal erosion’, *Toxicology and Applied Pharmacology*, No. 186 (2003); and P. Rice, D. Jones, and D. Stanton, *A literature review of the solvents suitable for the police CS spray device*, Chemical & Biological Defence Establishment, Salisbury, 1997.

⁸² US Court of Appeals (Ninth Circuit), *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185 (2000), pp. 1205–06.

⁸³ The term riot control agent is employed in the 1992 Chemical Weapons Convention. Therein they are defined broadly as ‘Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.’ Art. II(7), 1992 Chemical Weapons Convention. Their use is not restricted to a riot, as defined by States under domestic law. In 2014, the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) published a note on riot control agents under the Convention. ‘Note by the Technical Secretariat: Declaration of Riot Control Agents: Advice from the Scientific Advisory Board’, OPCW doc. S/1177/2014, 1 May 2014, at: <http://bit.ly/2Dp3CXb>.

7.3.2 The aim of using chemical irritants dispersed at a distance is usually to cause the members of the group to disperse and to refrain from further violence. In such circumstances, they should be fired at a high angle.⁸⁴

SPECIFIC RISKS

7.3.3 A stampede may result when irritants are used against a crowd in enclosed areas, such as a football stadium.⁸⁵ Tear gas may have indiscriminate effects in open areas because of changes in wind direction. In certain cases, the consequences of using chemical irritants may be lethal,⁸⁶ such as when they are dispersed in closed spaces and result in high levels of exposure. Pyrotechnic projectiles containing chemical irritants may result in death as a result of fire generated by the round burning near combustible material.

7.3.4 When chemical irritants are deployed behind a group of violent individuals, this may prompt them to move towards law enforcement officials and agencies, increasing the risk of a violent confrontation. Irritants will also affect law enforcement officers if they are not adequately protected from cross contamination caused by movement of the irritant cloud/particles.

7.3.5 Use of chemical irritants can temporarily cause breathing difficulties, nausea, vomiting, irritation of the respiratory tract, tear ducts, and eyes; spasms; chest pains; dermatitis; and allergies. In high doses, it can cause necrosis of the tissue in the respiratory tract and the digestive system, pulmonary oedema, and internal bleeding.⁸⁷ Repeated or prolonged exposure to chemical irritants should be avoided. Any person who has been exposed to any chemical irritant should be decontaminated as soon as possible.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

7.3.6 Irritant projectiles should generally not be fired at an individual. In any event, projectiles should not be fired at the head or face, owing to the risk of death or serious injury from impact trauma.⁸⁸

7.3.7 In general, chemical irritants should not be used in confined spaces, such as prison cells,⁸⁹ where there is no viable exit or adequate ventilation, owing to the risk of death or serious injury from asphyxiation. Low cross-contamination irritants (e.g. PAVA) may be better suited to this application.

⁸⁴ European Court of Human Rights, *Abdullah Yaşa and others v. Turkey*, Judgment, 16 July 2013, paras. 42–49.

⁸⁵ Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28th September 2009 in Guinea, UN doc. S/2009/693, 18 December 2009, para. 62.

⁸⁶ Y. Karagama *et al.*, 'Short Term and Long Term Physical Effects of Exposure to CS Spray', *Journal of the Royal Society of Medicine*, Vol. 94, No. 4 (2003), pp. 172–74; M. Crowley, *Chemical Control*, Palgrave, London, 2015, p. 48. See also R. J. Haar *et al.*, 'Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray', *BMC Public Health*, Vol. 17 (2017).

⁸⁷ European Court of Human Rights, *Abdullah Yaşa and others v. Turkey*, Judgment, 16 July 2013, para. 30.

⁸⁸ European Court of Human Rights, *Ataykaya v. Turkey*, Judgment, 22 July 2014, paras. 56, 57.

⁸⁹ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 5.

7.3.8 Chemical irritants that contain hazardous levels of active agent shall not be used. Where an irritant is found to have had long-term negative effects on individuals, it should be determined whether these effects may be prevented through better supervision and training of law enforcement officials or whether the use of the particular type of agent should be discontinued. Associated chemicals (for example, combustion products from pyrotechnic devices) may also have toxic effects. Accordingly, any toxic effects of active or associated chemicals should be assessed and tested. Law enforcement agencies should use irritants with the lowest level of toxicity that is still likely to be effective.

7.4 CONDUCTED ELECTRICAL WEAPONS ('TASERS')⁹⁰

UTILITY AND DESIGN

7.4.1 Conducted electrical weapons are typically used to deliver pulses of electrical charge that cause the subject's muscles to contract in an uncoordinated way and prevent purposeful movement. This effect has been termed 'neuromuscular incapacitation'. The charge is delivered through metal probes that are fired towards the subject but which remain electrically connected to the device by fine wires. During the period of uncoordinated muscle activity, law enforcement officials are able to intervene to restrain the subject using conventional methods, such as handcuffs. Many models use compressed nitrogen to fire two darts that trail electric cable back to the weapon's handset. When the darts strike the human body, pulses of high-voltage charge pass down the cable.⁹¹

7.4.2 Many conducted electrical weapons can also deliver an electric-shock when pressed directly against an individual (a use sometimes referred to as drive-stun mode), though this relies on pain compliance and does not result in neuro-muscular incapacitation. There are also direct-stun conducted electrical weapons.

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

7.4.3 Among other uses, conducted electrical weapons are used by law enforcement officials to incapacitate, at a distance, individuals posing an imminent threat of injury (to others or to themselves).⁹² Conducted electrical weapons offer an alternative to other less-lethal weapons that might prove more dangerous, in the circumstances, either to the law enforcement official or the individual being targeted. They offer an alternative to the use of firearms in certain circumstances. The use of red-dotting or arcing or the simple aiming of a conducted electrical weapon may achieve a legitimate law enforcement objective without the need to discharge the weapon.

7.4.4 To avoid a prolonged charge being applied to a suspect, every conducted electrical weapon should have an automatic cut-off of the electrical charge. This is often set at no more than five seconds. An automatic cut-off feature is not incorporated into every weapon.

⁹⁰ TASER® is a market-leading brand of conducted electrical weapon and the word 'taser' is sometimes used generically to describe this type of weapon.

⁹¹ It has been claimed by one manufacturer of a conducted electrical weapon that only 1,200 volts enter the victim's body. US Court of Appeals (Ninth Circuit), *Bryan v. McPherson*, Opinion (Case No. 08-55622), 28 December 2009, para. 2 and note 4.

⁹² US Court of Appeals (Fourth Circuit), *Armstrong v. Village of Pinehurst*, Judgment, 11 January 2016, pp. 19, 21.

SPECIFIC RISKS

- 7.4.5 The risks from a conducted electrical weapon discharge include primary injury from the electrical charge or the barbs imbedded in the skin.⁹³ The elderly may be more prone to musculo-skeletal injury from the muscle contractions produced by the weapon.⁹⁴ Conducted electrical weapons should not be used against persons in elevated positions owing to the risk of secondary injury, especially to the head. This is particularly as a result of falling to the ground from height or onto a hard surface, since persons who have received the electrical charge will typically be physically incapable of breaking their fall using their hands.
- 7.4.6 The risk of significant injury or even death is increased in certain conditions, including where the individuals who have been electrically shocked have heart disease; have taken certain prescription or recreational drugs, or alcohol or both; or are more susceptible for other reasons to adverse cardiac effects. TASER guidance recommends that when possible, users should avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death.⁹⁵ Children and slender adults may be at greater risk of internal injury from tissue-penetrating barbs as their body-wall thickness is generally less.⁹⁶ Discharge of a conducted electrical weapon may trigger seizures in those affected by epilepsy, irrespective of barb location.⁹⁷ Law enforcement officials should also avoid using conducted electrical weapons against genitals or other sensitive body areas.
- 7.4.7 Certain aggressive behaviour that may lead law enforcement officers to use conducted energy devices can be caused by mental health issues, language barriers, hearing disorders, visual impairment, or neurodevelopmental and neurobehavioral disorders or learning difficulties.⁹⁸ Law enforcement agencies should ensure that those working in situations where they are likely to encounter persons with pre-existing vulnerabilities must have had detailed guidance and training in identifying such risks and possess the knowledge, ability, and tools, to understand, and if possible de-escalate, violent situations that could trigger the use of conducted energy weapons.⁹⁹
- 7.4.8 Use of conducted electrical weapons in the presence of flammable liquid or explosive vapour may result in fire, deflagration, or even an explosion.¹⁰⁰ Some irritant spray solvents

⁹³ J. Payne-James and B. Sheridan, 'Taser: Clinical Effects and Management of those subjected to Taser Discharge', Faculty of Forensic and Legal Medicine, United Kingdom, 2017, at: <https://bit.ly/2EXzCmV>.

⁹⁴ Defense Scientific Advisory Council Sub-committee on the Medical Implications of Less-lethal Weapons (DOMILL), Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults, United Kingdom, 2012, at: <http://bit.ly/2AYRieJ>.

⁹⁵ 'TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement', 19 May 2017, p. 5.

⁹⁶ DOMILL, Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults, United Kingdom, 2012.

⁹⁷ Ibid.

⁹⁸ Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons, *Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults*, para.85.

⁹⁹ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 5 ("Human Rights and the Use of Force").

¹⁰⁰ Scientific Advisory Committee on the Medical Implications of Less-Lethal Weapons (SACMILL), 'Statement on the Medical Implications of Use of the TASER X2 Conducted Energy Device System', 2016, at: <https://bit.ly/2KjxHMU>.

may be flammable, and the solvent may be ignited by the arc discharge from a conducted electrical weapon.

7.4.9 Use of conducted electrical weapons against an individual to prevent or limit self-harming behaviour must be justifiable in the circumstances.

7.4.10 Even when drive-stun use of conducted electrical weapons is lawful, it may not be effective on persons with serious mental health issues or on others who may not respond to pain, for example due to a mind-body disconnect. In such instances, a heightened risk of serious injury exists.¹⁰¹

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

7.4.11 Conducted electrical weapons should not be used with a view to overcoming purely passive resistance to an official's instructions through the infliction of pain.¹⁰² Repeated, prolonged, or continuous discharge should be avoided whenever possible.¹⁰³

7.4.12 The risk of inflicting pain or suffering that may rise to the level of torture or other forms of cruel, inhuman, or degrading treatment or punishment is especially severe when the weapon is used in 'drive-stun' mode, where the weapon directly applies electricity to an individual but does not achieve incapacitation. It may also raise the level of aggression of the individual due to the inflicted pain.¹⁰⁴

7.5 KINETIC IMPACT PROJECTILES

UTILITY AND DESIGN

7.5.1 A range of kinetic impact projectiles are used by law enforcement officials to tackle violent individuals, including as a less-lethal alternative to lethal ammunition discharged by firearms. Various names are used to describe kinetic impact projectiles, such as rubber bullets, plastic bullets, impact rounds, baton rounds, or bean bags.

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

7.5.2 Kinetic impact projectiles should generally only be used in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public.

SPECIFIC RISKS

¹⁰¹ US Department of Justice, *Investigation of the Baltimore City Police Department*, 10 August 2016, p. 62; and see also Police Executive Research Forum (PERF) & Community Oriented Policing Services (COPS), *2011 Electronic Control Weapon Guidelines*, United States, 2011, p. 14, at: <https://bit.ly/2MzSFUt>.

¹⁰² US Department of Justice (Civil Rights Division), *Investigation of the Ferguson Police Department*, Washington DC, 4 March 2015, p. 28; US Court of Appeals (Eighth Circuit), *Brown v. City of Golden Valley*, 574 F.3d 491, 499 (2009).

¹⁰³ 'TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement', 19 May 2017, p. 5.

¹⁰⁴ Independent Police Complaints Commission (IPCC), *IPCC Review of Taser Complaints and Incidents: 2004–2013*, United Kingdom, 2014, p. 12.

- 7.5.3 Targeting the face or head may result in skull fracture and brain injury, damage to the eyes, including permanent blindness, and even death. The dispersal of kinetic impact projectiles from the air or from an elevated position, such as could occur during an assembly, is likely to increase their risk of striking protesters in the head. Targeting the torso may cause damage to the vital organs and there may be penetration of the body, especially when projectiles are fired at close range. The calibre and velocity of the projectiles, as well as the material of their construction, will also affect the likelihood and seriousness of injury.
- 7.5.4 Certain projectiles are highly inaccurate.¹⁰⁵ To meet international standards, impact projectiles should be capable of striking an individual to within a 10-centimetre diameter of the targeted point when fired from the designated range. Skip-firing off the ground causes an unacceptable risk of serious injury due to their resultant inaccuracy.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

- 7.5.5 Kinetic impact projectiles should not be fired in automatic mode.
- 7.5.6 Multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality. Metal pellets, such as those fired from shotguns, should never be used.
- 7.5.7 Kinetic impact projectiles must be tested and authorized to ensure they have sufficient accuracy to have impact on a safe area on a human-sized target at the required distance, and without excessive energy that could cause unwarranted injury.¹⁰⁶
- 7.5.8 Kinetic impact projectiles should not be targeted against the head, face, or neck. Rubber-coated metal bullets are particularly dangerous projectiles and should not be used.¹⁰⁷

7.6 DAZZLING WEAPONS

UTILITY AND DESIGN

- 7.6.1 Dazzling weapons are a form of directed energy weapon that uses, for example, lasers or light-emitting diodes (LEDs) to achieve their effects. In law enforcement operations they are used especially against subjects in a moving vehicle. Depending on the model, they can be used to engage targets at distances up to several kilometres.

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

¹⁰⁵ A. Mahajna *et al.*, 'Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study', *The Lancet*, Vol. 359, No. 9320 (2000), pp. 1795–1800.

¹⁰⁶ Amnesty International and Omega Research Foundation, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, p. 138; R. J. Haar and V. Iacopino, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*. Network of Civil Liberties Organizations and Physicians for Human Rights, 2016, p. 24, available at: <http://bit.ly/2FBbxmA>.

¹⁰⁷ The UN Department of Peacekeeping Operations prohibits the use of rubber bullets by UN police personnel, because of the risks of serious injury or even death from their improper use. UN, *United Nations Peacekeeping Missions Military Police Manual*, July 2015, para. 3.6.1.

7.6.2 Dazzling weapons may have utility in high-risk scenarios, such as in counterterrorism operations, in particular as an alternative to the use of firearms. There are, though, other, potentially safer alternatives to cause a vehicle to be stopped and the use of dazzling weapons for such an objective should be exceptional. A mechanism should be incorporated as part of a weapon's safety controls to ensure that blindness is not caused by such weapons, for example by the inclusion of a range-finder or automatic cut-off or by the use of lower power lasers.

SPECIFIC RISKS

7.6.3 Dazzling weapons may reversibly impair the function of the retina or even cause permanent blindness.¹⁰⁸ When used against drivers, the outcome may be that the vehicle is crashed. There may also be particular risks of photo-sensitive epileptic seizures as a result of strobe lighting. Light-scattering of a laser beam caused by dirt or imperfections in a vehicle's windscreen may obscure the driver's vision and increase the risk of crashing, even if the driver's eyes are not directly targeted by the beam.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

7.6.4 Dazzling weapons shall not be used with intent to blind or where permanent blindness is a likely outcome.

7.7 WATER CANNON

UTILITY AND DESIGN

7.7.1 Water cannon are vehicles designed to project water at a variety of pressures and forms for the purpose of dispersal of groups, to protect property, or to put an end to violent behaviour. Malodorants or substances that are hazardous to health are sometimes mixed with the water used in water cannon.

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

7.7.2 In general, water cannon should only be used in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury, or widespread destruction of property. In order to meet the requirements of necessity and proportionality, the deployment of water cannon should be carefully planned and managed with rigorous command and control at a senior level.¹⁰⁹

SPECIFIC RISKS

7.7.3 Water cannon should not be used against persons in elevated positions where there is a risk of significant secondary injury. Other risks include hypothermia and cold-water shock in cold weather (especially if the water is not heated) and the risk of slipping or being forced

¹⁰⁸ See, e.g., International Commission on Non-Ionizing Radiation Protection (ICNIRP) Guidelines on Limits of Exposure to Laser Radiation of Wavelengths between 180 nm and 1,000 nm, *Health Physics*, Vol. 105, No. 3 (2013), pp. 271–95, available at: <http://bit.ly/2FPZa5t>.

¹⁰⁹ UNODC and OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, New York, 2017, p. 90.

by the jet against walls and other hard objects. Certain water cannon are indiscriminate in their effects as they are unable to target individuals accurately.

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

7.7.4 Water cannon shall not target a jet of water at an individual or group of individuals at short range owing to risk of causing permanent blindness or secondary injuries due to the individual being energetically propelled by the water jet. They shall also not be used against restrained individuals or individuals otherwise unable to move.¹¹⁰

7.8 ACOUSTIC WEAPONS AND EQUIPMENT

UTILITY AND DESIGN

7.8.1 Certain acoustic warning devices are sometimes used as sonic weapons.¹¹¹

CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

7.8.2 In the maritime environment, the risks of indiscriminate effects from acoustic weapons are substantially reduced and their use during counterpiracy operations may dissuade potential pirates from continuing an attack. The warning mode of an acoustic weapon may be useful during an assembly, subject to the risks set out below.

SPECIFIC RISKS

7.8.3 A number of serious health risks are associated with the use of these weapons, particularly at close range, loud volume, and/or excessive lengths of time. Such risks range from temporary pain, loss of balance, and eardrum rupture, to deafness.¹¹² To mitigate the risks, an appropriate decibel limit and a minimum range should be set in advance for all use of warning devices to avoid injury, especially where the device does not have a rangefinder and automatic cut-off.

7.8.4 There is a clear risk of acoustic weapons being indiscriminate in their effects, targeting sections of the crowd instead of focusing on individuals within it.¹¹³ This increases the risk that uninvolved persons may be affected.¹¹⁴

CIRCUMSTANCES OF POTENTIALLY UNLAWFUL USE

¹¹⁰ UNODC and OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, New York, 2017, p. 90.

¹¹¹ INCLO and PHR, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*, United States, 2015, pp. 70–77; J. Altmann, ‘Acoustic Weapons – A Prospective Assessment’, *Science & Global Security*, Vol. 9 (2001), pp 165–234.

¹¹² See, e.g., ‘Acoustics – Estimation of noise-induced hearing loss’, International Organization for Standardization (ISO) 1999:2013, Standard reviewed in 2018, available at: <http://bit.ly/2MINrNi>.

¹¹³ CCLA, *Factum of the Moving Parties*, 2010, at: <https://bit.ly/2NbL7IE>.

¹¹⁴ Evidence of Dr. Harrison in *Canadian Civil Liberties Assn. v. Toronto (City) Police Service* [2010] O.J. No. 2715 2010 ONSC 3525 Court File No. CV-10-404640.

7.8.5 Indiscriminate use of an acoustic weapon against a crowd, or use against targeted individuals at a range where the decibel output is likely to cause permanent hearing damage would be unlawful.¹¹⁵

¹¹⁵ NATO, *Non-Lethal Weapons and Future Peace Enforcement Operations RTO Technical Report*, Doc. TR-SAS-040, 2004; see *Canadian Civil Liberties Assn. v. Toronto (City) Police Service* [2010] O.J. No. 2715 2010 ONSC 3525 Court File No. CV-10-404640p8.

8. DISSEMINATION, REVIEW, AND IMPLEMENTATION

- 8.1 The present Guidance shall be disseminated as widely as possible, in particular to law enforcement agencies and officials, relevant government departments, judges, prosecutors, manufacturers, the military, United Nations peacekeepers, private security companies and personnel, and health workers.
- 8.2 The content of the Guidance should be reviewed by experts every five years.
- 8.3 At domestic level, States and law enforcement agencies are encouraged to take the Guidance into account in developing policies, training manuals, and standing operating procedures related to less-lethal weapons and related equipment. In addition, these policies, manuals, and procedures should be under continual review to ensure that lessons learned are effectively fed back into practice.

9. DEFINITIONS

9.1 The definitions in this final section are in alphabetical order.

ASSEMBLY

9.2 Assembly refers to an intentional and temporary gathering in a private or public space for a specific purpose. Assemblies may take the form of demonstrations, meetings, strikes, processions, rallies, or sit-ins with the purpose of voicing grievances, aspirations, or celebrations.¹¹⁶ The term extends also to incorporate other public gatherings, such as sporting events or music concerts. An assembly may be peaceful or may involve acts of violence or rioting.

CUSTODIAL SETTING

9.3 Custodial setting refers to detention, imprisonment, or institutionalisation of a person in a public or private institution which that person is not permitted to leave at will, by order or under de facto control of a judicial, administrative, or any other authority.¹¹⁷ This includes detention in a ship or other maritime vessel in the context of maritime law enforcement. Those responsible for securing and protecting detainees are custodial staff.

DETENTION

9.4 Detention covers situations where a law enforcement official apprehends or holds an individual against his or her will, including during or following an arrest. It is a broader notion than custody. Detention includes situations where an individual is held against his or her will in a vehicle, such as a police car or van. Prolonged maintenance of a person in a police cordon is also likely to amount to detention.

DIRECTED ENERGY WEAPONS

9.5 Directed energy weapons may use technologies that produce concentrated electromagnetic energy and atomic or subatomic particles as a means to damage or destroy equipment and kill or injure personnel.¹¹⁸ Directed energy weapons may also be employed for non-lethal purposes, such as the use of laser dazzle devices to provide a warning at a distance to potentially hostile actors.

¹¹⁶ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN doc. A/HRC/31/66, 4 February 2016, para. 10.

¹¹⁷ Inter-American Commission on Human Rights, 'Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners', UN doc. UNODC/CCPCJ/EG.6/2014/INF/2, 8 October 2013, p. 3.

¹¹⁸ See Joint Chiefs of Staff, *Electronic Warfare*, Joint Publication 3-13.1, 8 February 2012, p. 1-16; A. Feickert, *U.S. Army Weapons-Related Directed Energy (DE) Programs: Background and Potential Issues for Congress*, United States Congressional Research Service, 12 February 2018, p. 1.

DISCRIMINATION

9.6 Discrimination means any distinction, exclusion, or restriction on the basis of prohibited grounds which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of human rights and fundamental freedoms.¹¹⁹

IMMINENT THREAT

9.7 An imminent threat is one that is reasonably expected to occur in a split second or at most a matter of several seconds.¹²⁰

INJURY

9.8 Injury means physical or physiological bodily trauma resulting from interaction of the body with energy (mechanical, thermal, electrical, or radiant, or due to extreme pressure) in an amount, or at a rate of transfer, that exceeds physical or physiological tolerance, or are the results of toxic chemical substances.¹²¹

LAW ENFORCEMENT AGENCY

9.9 Law enforcement agency means any entity or body that is entrusted or contracted by a State with the prevention, detection, and investigation of crime and the arrest and detention of criminal suspects and offenders. This includes immigration and other border control agencies. Law enforcement agencies may be local, provincial, national, or supranational. The relevant body or unit of the military and other security forces will be considered a law enforcement agency when it is conducting law enforcement tasks, whether that occurs domestically or in any other jurisdiction.¹²²

LAW ENFORCEMENT OFFICIAL

9.10 Law enforcement official means any officer of the law, whether appointed or elected, who exercises police powers, especially the powers of arrest or detention.¹²³ Where law enforcement powers are exercised by the military, whether uniformed or not, or by State security forces, the definition of law enforcement official includes any officers of such services.¹²⁴ Law enforcement officials include immigration officers. The term applies to those acting extraterritorially as well as on national territory.

¹¹⁹ The prohibited grounds are enumerated in Section 3.11 below.

¹²⁰ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 59; UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017, p. 21.

¹²¹ World Health Organisation (WHO), 'Injury, poisoning or certain other consequences of external causes', International Classification of External Causes of Injury (ICECI), June 2018, at: <https://bit.ly/2DGIH5j>.

¹²² Commentary (a) and (b) to Article 1 of the 1979 Code of Conduct; footnote to the 1990 Basic Principles.

¹²³ Commentary (a) on Article 1, 1979 Code of Conduct.

¹²⁴ Commentary (a) and (b) to Article 1 of the 1979 Code of Conduct; footnote to the 1990 Basic Principles.

LEGITIMATE LAW ENFORCEMENT OBJECTIVE

9.11 Legitimate law enforcement objective refers to one that is recognised in both international and national law, such as protecting members of the public or a law enforcement official against violence, preventing the perpetration of a criminal offence, arresting a person suspected of having committed a criminal offence, or detaining a convicted criminal pursuant to a lawful sentence. It also refers to the duty of law enforcement agencies and officials to facilitate and protect the right of peaceful assembly and, in certain circumstances, may encompass medical purposes, when these are pursued in accordance with medical ethics.

LESS-LETHAL WEAPONS

9.12 Less-lethal weapons are weapons designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, have a lower risk of causing death or serious injury than do firearms. Less-lethal ammunition may be fired from conventional firearms. For the purpose of this Guidance, the term less-lethal weapons includes conventional firearms when they are used to discharge less-lethal ammunition but not when they are used to discharge either conventional bullets or other ammunition that would be likely to result in life-threatening injuries.

MODERATE INJURY

9.13 A moderate injury is an injury that is not life-threatening but is more severe than minor injuries, such as small cuts, abrasions, or bruises.¹²⁵

PERMANENT BLINDNESS

9.14 Permanent blindness means irreversible and uncorrectable loss of vision in at least one eye which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured for the eye.¹²⁶

RELATED EQUIPMENT

9.15 Related equipment includes personal protective equipment used in law enforcement such as shields, helmets, body armour, and other equipment provided to law enforcement officials to minimise injury. Equipment may be general in nature or specific to certain situations, such as assemblies, and includes equipment that may be used remotely, automatically, or autonomously, as well as information communication technology used by law enforcement. The term also covers restraints used in custodial settings.

SERIOUS INJURY

9.16 A serious injury is an injury that is potentially life-threatening or life-changing.¹²⁷

¹²⁵ See WHO, 'Injury, poisoning or certain other consequences of external causes', ICECI, June 2018.

¹²⁶ Art. 4, 1995 Protocol IV on blinding laser weapons to the 1980 Convention on Certain Conventional Weapons.

¹²⁷ See WHO, 'Injury, poisoning or certain other consequences of external causes', ICECI, June 2018.

SPECIFIC WEAPONRY

9.17 Specific weaponry refers to the particular less-lethal weapons or weapons systems addressed in Section 8 of this Guidance (as opposed to less-lethal weapons as a class).

TRANSFER

9.18 Transfer means the export of weapons from the jurisdiction of one State to the jurisdiction of another, including where the exporter or importer is an individual or a company. In addition to sales, transfer comprises also gifts, leases, and loans.

UNDUE RISK

9.19 Undue risk is a level of identifiable risk that is unacceptable under domestic or international law.

USE OF FORCE

9.20 Use of force refers to the use of physical means to coerce or influence behaviour or damage property. Such means may be kinetic in nature, as well as chemical, electrical, or other. The use of force may injure and even, in certain instances, kill. A weapon may be used to apply force without it being discharged, for example by pointing it at a person with the threat to discharge it unless he or she engages in or refrains from certain behaviour.