



## CHAPTER 8

# Maintenance of public order

### Learning objectives for Chapter 8

After completing this chapter you should be able to:

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- *Discuss the international human rights principles applicable to the use of force by police in maintaining or restoring public order*
- *Explain the responsibilities of police officers in maintaining public order within the framework of citizens' freedom to associate and demonstrate*
- *Describe the rights of people to peacefully demonstrate, assemble and to express themselves*
- *Appreciate the significance of these rights to enabling peaceful democratic participation and expression by all citizens*
- *Describe the legitimate limits on these rights: how the exercise of basic expression and assembly rights might be limited, within the law, in order to protect the rights of others (the safety or dignity of the general public and the protection of property)*



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## Chapter 8

### Maintenance of public order

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## 8.1. Introduction

The phenomenon of people taking to the streets to express their feelings and opinions publicly is common enough in most countries of the world. Such events, rallies, protests, assemblies or demonstrations, or whatever they may be called, may occur spontaneously (as a result of a significant event) or after planning and publicity by certain citizens or groups. Such events – conducted peacefully and within the law – may be understood as logical, essential consequences of liberty and democracy, as well as of individual and collective freedom. Freedom of assembly and expression on matters of concern to citizens is necessary for the existence of an open, participatory democracy where people can contribute to determining the sort of society they wish to live in. Such freedoms are also a fruit or benefit of an open democracy founded on respect for human rights.

As well as the fundamental rights listed below, member countries of the Commonwealth have committed themselves in the 1971 Singapore Declaration to ensuring and protecting the freedom of citizens to peacefully assemble, associate, express oneself and demonstrate:

*"We believe in the liberty of the individual...and in their inalienable right to participate ... in framing the society in which they live."*

What does this mean for policing and police training? At a day-to-day level, it falls to police officers to respect the rights that underlie this commitment, and to give it practical, tangible and visible effect. It is the role of police to secure, maintain and, when disrupted, to restore peace and security in a country. This role is highlighted during and in the run-up to elections, when citizens become actively involved in the process of election campaigns, marches, assemblies and other activities, and where they express themselves and associate themselves with specific political parties or groups.

To give effect to the rights of freedom of assembly, association and expression, it is important for police to be impartial (non-political) and to allow people to express themselves, within the parameters of the law. Essential to this is an understanding that the ideal position is not: "You may not assemble or demonstrate unless permitted." Instead, it is: "You may – you have a right to – assemble or demonstrate, unless you threaten others or property."

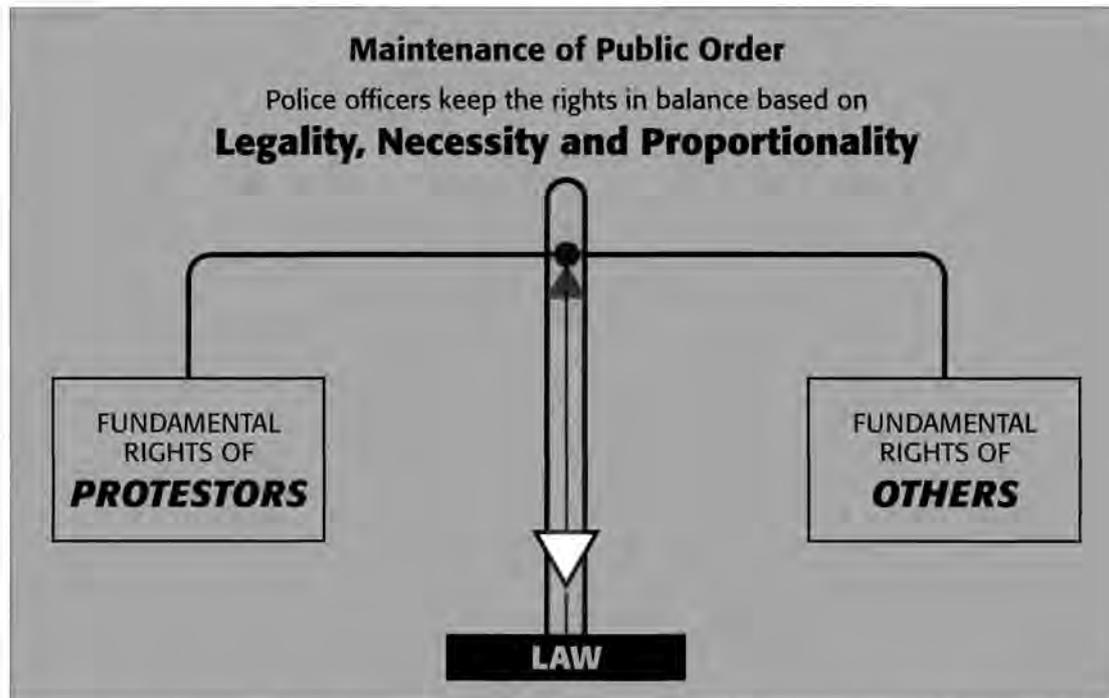
Since their role is intricately related to maintaining peace, police officers should be encouraged to see demonstrations not just as a function of people's rights, but within the wider context of what contributes to a peaceful country. They can see public assemblies as a form of democratic 'safety valve'. If people feel the police are not enabling them to peacefully express themselves without fear, they may resort to more violent means of expression.

Equally important is to instil an understanding that demonstrators can be loud, enthusiastic, taunting and boisterous, but still be counted as 'peaceful'. The right to demonstrate peacefully does not mean people must shuffle along quietly. People do not break the law and surrender their free expression rights by being vocal, dancing, etc. Many crowd control situations deteriorate because police seek to prematurely shut down peaceful but enthusiastic demonstrations. The restraint needed comes from self and group confidence in the police officers themselves. This is about confidence in the competence and calm of their chain of command as the situation develops. It is helped by having the right equipment and training to deal with grades of force as might be necessary (see below).



A rights-based approach to public order means that police should not themselves escalate tension or provoke deterioration of the situation. Police should take the initiative and co-ordinate with march organisers, and involve them in planned marches so that they understand that they are jointly responsible for whatever occurs.

Maintenance of public order deals mainly with the difficult balance between free political expression in groups, and protecting public safety and good order – between different people's rights. When policing major public events, police officers require more than just an understanding of the legal rights and responsibilities of participants at such events. They also require an understanding of the rights, freedoms and obligations, under the law, of those people who do not participate.



There should always be a balance between the rights of people to exercise their legal rights of expression and assembly, and the rights of non-participant members of the public not to be threatened, assaulted or have their property damaged.

## **8.2. Maintaining law and order: basic policing principles and use of force – 'P.L.A.N.'**

Sometimes, force is required to maintain public safety and order. However, even when force is applied, human rights principles dictate the manner and extent of the use of force.

As is set out in chapter 5, 'force' can have varying grades, and should be applied only insofar as it is necessary. The purpose for which it is used is also informed by human rights – force is

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to be used not to punish, provoke or persecute protestors, but to protect the public and property. It may be that police need to preserve a deterrent effect, but a reputation for 'fairness but firmness' is to be preferred. The regular disproportional use of force, provocation or punitive policing actions is, experience shows, likely to lead to loss of public respect for the police and an expectation of violence on the part of the public, and can make the job of the police harder to do. This can lead to a threat to the lives of police officers.

When police officers are present during marches, meetings or processions, and particularly when force is to be applied in a deteriorating situation, it is important to take the following 'P.L.A.N.' principles, encountered in chapter 5, into consideration:

- **P**roportionality
- **L**egality
- **A**ccountability
- **N**ecessity

### **'PROPORTIONALITY'**

The principle of proportionality requires that the police consider the purpose of the limitation, its nature and extent as well as the **relationship** between the limitation and its purpose. It concerns the relationship between the means the police apply during a public order situation, and the end sought to be achieved. The police should suitably equip members according to the circumstances before they are deployed. Already during the planning phase, the police should determine which methods and equipment may be regarded as least forceful in the circumstances. This process should logically lead to a decision to use the **least forceful** (restrictive) methods to attain the lawful goal of maintaining public order. When the use of force is unavoidable, it must cease immediately once police members attain the objective of the operation.

### **'LEGALITY'**

Before the police undertake any action, the operational commander will ask whether he or she has any legal authority to intervene. In other words: whether the police have the necessary mandate according to local legislation. The authority to intervene and the restrictions on such intervention must be clear to the police **before** they take any measures. The principle of legality requires a clear legal framework **justifying** intervention by the police.

### **'ACCOUNTABILITY'**

Police officers may expect to be held **accountable** in law (and as a matter of internal discipline) for their use of force where it is **not necessary** to use such force, **not lawful**, or **out of reasonable proportion** to the threat.

### **'NECESSITY'**

This principle of 'situational appropriateness' requires that the police assess the prevailing circumstances of any particular situation to be able to respond appropriately and within a framework of legality. Every situation where a crowd needs to be managed will be different. Operational decisions should be based on the actions of the crowd, which should be anticipated and planned for, rather than rigid, pre-prescribed procedures. The principle of

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'optimisation' concerns the optimal use of equipment and personnel to reach or obtain the goal set out in the planning phase, when different crowd behaviour is anticipated and catered for. The principle of situational appropriateness requires that police actions should be **reasonable** and **justifiable** and that all factors must be taken into account. Force should only be used when necessary to protect the person or property of others (including police officers), and even then, should be proportionate to the threat faced.

Basic Principle 14 of the UN's *Basic Principles on the Use of Force and Firearms by Law Enforcement Officers* is of particular importance for 'policing' assemblies and demonstrations, and states that:

- In dispersing UNLAWFUL but NON-VIOLENT assemblies, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict the use of force to the minimum extent necessary.
- In dispersing VIOLENT assemblies law enforcement officials may use firearms only when less dangerous means are not practicable AND only to the minimum extent necessary AND ONLY under the conditions stipulated in Basic Principle 9:

Law enforcement officials shall not use firearms against persons except:

- in self-defence or defence of others against the imminent threat of death or serious injury;
  - to prevent the perpetration of a serious crime involving grave threat to life;
  - to arrest a person presenting such a danger and resisting their authority; or
  - to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.
  - In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
- Basic Principle 14 does NOT allow indiscriminate firing into a violent crowd as an acceptable tactic for dispersing that crowd.

### **8.3. Maintenance of public order: international standards applicable**

As noted in the introduction, it is proper for a trainer to build into tactical and other training on crowd management not only the right to life and related principles, but also the background human rights and freedoms applicable to assemblies, demonstrations, rallies (etc.):

- The right to hold opinions without interference (*International Covenant on Civil and Political Rights*, Article 19.1).
- The right to freedom of expression (ICCPR, Article 19.2).
- The right of peaceful assembly (ICCPR, Article 21).
- The right to freedom of association (ICCPR, Article 22.1).

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The exercise of those rights is not without limits. Restrictions on the exercise of such rights can be imposed on it, provided that:

- (a) they are lawful; and
  - (b) necessary:
    - for respect of the rights or reputation of others; or
    - for the protection of national security, public order, or public health or morals.
- (ICCPR, Articles 19.3, 21 and 22.2)

From the various international legal sources and guidelines, it is possible to compile a list of applicable human rights-related standards on police management of crowds:

### **Human rights standards**

- All measures for the restoration of order shall respect human rights.
- Restoration of order shall be achieved without discrimination.
- Any limitations on rights shall be only those determined by law.
- Any action taken and any limitations on rights shall be solely for the purpose of securing respect for the rights and freedoms of others, and for meeting the just requirements of morality, public order and the general welfare.
- Any action taken and any limitations on rights shall be only those consistent with the requirements of a democratic society.
- No exceptions are permitted with regard to the right to life; the right to freedom from torture; the prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.
- Non-violent means shall be attempted before the use of force.
- Force shall be used only when strictly necessary.
- Force shall be used only for lawful law enforcement purposes.
- Force applied shall be proportional to the lawful law enforcement objectives.
- Every effort shall be made to limit damage and injury.
- A range of means for the differentiated use of force shall be available.
- No unnecessary limitations on the rights to free speech, assembly, association or movement shall be imposed; limitations should not be imposed on freedom of opinion.
- The independent functioning of the judiciary shall be maintained.
- All wounded and traumatised persons shall be immediately cared for.





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It is also possible to compile a list of practical conduct that police officials can engage in, in order to give practical effect to these standards.

### **Human rights practice**

#### **All police officials should:**

- Adopt community policing strategies, and monitor levels of social tensions between various groups in society, and between those groups and the authorities.
- Be alert as to any preparations for unlawful demonstrations.
- Be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily.
- Establish contacts with representatives and individuals in the crowd.
- Where it is necessary to disperse a crowd, always leave a clear and obvious corridor of escape.
- Deal with a crowd as a group of independently thinking individuals, not as a single-minded mass.
- Avoid unnecessarily provocative tactics.
- Develop crowd-control techniques which minimise the need for the use of force.
- Enrol in training programmes to improve skills in first aid; self-defence; the use of defensive equipment; the use of non-lethal instruments; the use of firearms; crowd behaviour; conflict resolution; and personal stress management.
- Acquire and practice the use of shields, defensive vests, helmets and non-lethal instruments.
- Acquire, practice with and utilise a range of means for the differentiated use of force, including non-lethal incapacitating weapons.
- Study and employ techniques for persuasion, mediation and negotiation.
- Plan in advance for the gradual, progressive use of force, beginning with non-violent means.

#### **Command and supervisory officials should:**

- Issue clear standing orders on respect for peaceful, free assembly.
  - Introduce community policing strategies, and monitor levels of social tensions between various groups in society, and between those groups and the authorities.
  - Instruct officials to be tolerant of unlawful, but peaceful, non-threatening assemblies, so as not to escalate the situation unnecessarily. The paramount objectives to be remembered in developing crowd control strategies are the maintenance of order and safety and the protection of human rights, not the enforcement of legal technicalities regarding permits or unlawful but non-threatening behaviour.
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- Establish and enforce clear standing orders on the use of force and firearms.
  - Provide regular training in first aid; self-defence; the use of defensive equipment; the use of non-lethal weapons; the use of firearms; crowd behaviour; conflict resolution; stress management; and persuasion, mediation and negotiation.
  - Acquire and issue defensive equipment, including helmets, shields, bullet-proof vests, gas masks and bullet-proof vehicles.
  - Acquire and issue non-lethal incapacitating and crowd-dispersal instruments.
  - Acquire the broadest possible range of means for the differentiated use of force.
  - Establish clear reporting guidelines for every incidence of the use of force or firearms.
  - Strictly regulate the control, storage and issuing of firearms, including procedures for ensuring that officers are accountable for arms and ammunition issued to them.
  - Prohibit the use of weapons and ammunition which cause unwarranted injury, damage or risk.
  - Develop strategies to reduce the risk that officers will be forced to use firearms.

Police agencies should develop a proper crowd management policy and guidelines that can form a framework within which the police can define their powers. This can prevent arbitrary police action, the overzealous use of force and violent dispersal of 'illegal' gatherings.

#### **8.4. Police in States of Emergency and military conflict situations**

##### **What is the status of human rights standards in States of Emergency?**

- States of emergency may only be declared in conformity with national constitutional law and international law and must be officially declared before exceptional measures may be taken.
  - International law (ICCPR, Article 4) declares that states of emergency may only be declared where a public emergency threatens the life of the nation, and where ordinary measures are plainly inadequate to address the situation.
  - Any exceptional measures must be strictly required by the demands ('exigencies') of the situation and must not be inconsistent with other requirements under international law.
  - Any exceptional measures must not discriminate solely on the basis of race, colour, gender, language, religion or social origin.
  - No exceptions are permitted with regard to the right to life; the prohibition of torture and cruel, inhuman or degrading treatment; the prohibition of slavery; the prohibition of imprisonment for failure to fulfil a contractual obligation; the prohibition on retrospective laws; the recognition of everyone as a person before the law; or the right to freedom of thought, conscience and religion.
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- No one may be held guilty of any criminal offence which was not an offence at the time it was committed.
- No one may be subjected to a heavier penalty than that which was applicable at the time the offence was committed.

### **Police, human rights standards and armed conflict**

Existing in parallel to international human rights law is international humanitarian law (IHL), the branch of international law that commences to apply when a situation of armed violence degenerates into international or internal armed conflict (which entails a certain level of intensity, spread and prolonged nature). The best known IHL treaties are the four *Geneva Conventions* of 1949 and their two *Additional Protocols* of 1977. The requirement to distinguish between civilians and combatants, and the prohibition of attacks on civilians or indiscriminate attacks, lies at the heart of humanitarian law.

As IHL applies only in situations of armed conflict, it does not regulate police activities in peacetime. These are regulated by international human rights law. There is never a legal vacuum since either (or both) of these legal regimes will apply in any one situation. The onset of armed conflict does not mean that international human rights law no longer applies.

- During armed conflicts and occupation, police are to be considered non-combatants, unless formally incorporated into the armed forces.
- Police have a right to abstain from fulfilling their functions under occupation, by reason of conscience, and this shall not result in an alteration of their status.
- Humanitarian law applies in all situations of armed conflict.
- Principles of humanity must be safeguarded in all situations.
- Non-combatants and persons put out of action by injury, sickness, capture or other cause must be respected and protected.
- Persons suffering from the effects of war must be aided and cared for without discrimination.

### **During 'armed conflict', acts prohibited in all circumstances include:**

- murder; torture; corporal punishment; mutilation; outrages upon personal dignity, including rape; hostage-taking; collective punishment; executions without regular trial; cruel, inhuman or degrading treatment or punishment; and
- reprisals against the wounded, sick and shipwrecked; medical personnel and services; prisoners of war; civilians; civilian and cultural objects; the natural environment; and works containing dangerous forces.

Commission of some of these offences may be a crime in international law and attract the jurisdiction of the International Criminal Court.

No one may renounce or be forced to renounce protection under humanitarian law. Protected persons must at all times have resort to a protecting power (a neutral state safeguarding their

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interests) or to the International Committee of the Red Cross (ICRC) or any other impartial humanitarian organisation.

### **Human rights practice**

#### **All police officials should:**

- (a) undergo training in the requirements of human rights and humanitarian law during armed conflict;
- (b) undergo training in first aid, disaster management and civil defence procedures;
- (c) learn their agency's strategies for the maintenance of order and protection of the civilian population during periods of conflict;
- (d) co-operate closely with medical services, firefighters, civilian authorities and the military; and
- (e) pay special attention to the special needs of particularly vulnerable groups during such periods, including refugees and displaced persons, children and the injured.

#### **Civilian police commanders and supervisors should:**

- (a) provide training to all officials on the above matters and develop standard emergency co-operative procedures for co-ordinated action with medical services, firefighters, civilian authorities and the military; and
- (b) issue clear instructions on the civilian status of the police during armed conflict.

#### **Police incorporated into armed forces during armed conflict should learn and apply the 'soldier's rules', as follows:**

- 'Be a disciplined soldier. Disobedience of the laws of war dishonours your army and yourself, and causes unnecessary suffering. Far from weakening the enemy's will to fight, it often strengthens it.'
- 'Fight only enemy combatants and attack only military objectives.'
- 'Destroy no more than your mission requires.'
- 'Do not fight enemies who are "out of combat" or who surrender. Disarm them and hand them over to your superior.'
- 'Collect and care for the wounded and sick, be they friend or foe.'
- 'Treat all civilians, and all prisoners in your power, with humanity.'
- 'Prisoners of war must be treated humanely and are bound to give information only about their identity. No physical or mental torture of prisoners of war is permitted – you too may be a prisoner if fortunes reverse.'
- 'Do not take hostages.'
- 'Abstain from all acts of vengeance.'





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- 'Respect all persons and objects bearing the emblem of the Red Cross or the Red Crescent, the white flag of truce, or emblems designating cultural property.'
  - 'Respect other people's property. Looting is prohibited.'
  - 'Endeavour to prevent any breach of the above rules. Report any violation to your superior. Any breach of the laws of war is punishable.'

### 8.5. Summary

- The basic human right to assemble in groups and express oneself through peaceful mass demonstration is (within the limits acknowledged by international human rights law) the natural product of a working democracy, and vital to the functioning of a participatory democracy.
- Police officials play a critical role when it comes to the maintenance of public order in such situations. They should be encouraged to see the right to assemble peacefully to express oneself (including with great enthusiasm) as ultimately necessary to maintaining overall peace. Police face a difficult challenge to ensure a balance between the rights of people to exercise their legal rights and freedoms by peaceably assembling or demonstrating (protestors), and the rights of others (non-protestors) not to be threatened, injured, or have their property damaged.
- When police officials act positively or use force to maintain or restore public order, their actions should always be **legal, necessary, proportional** and they have to act in an ethical manner, and be **accountable** to the populace and to superiors for their actions: '**P.L.A.N.**'
- The situation of police in military or armed conflict is regulated by international law. There is never a 'legal vacuum' where no law applies.

### 8.6. Questions for self-evaluation

- *Do people have the right to demonstrate, assemble and express themselves?*
  - *Describe the balance between the rights of people to exercise their legal rights and freedoms without infringing the rights of others, and observance of the law by all parties.*
  - *What role do police officers play to ensure the rights of protestors while protecting the rights of the public? When may police stop an assembly?*
  - *What are the responsibilities of police officers in maintaining public order?*
  - *What human rights principles are applicable to use of force to disperse assemblies?*
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