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**INTERNATIONAL SEMINAR**

**2<sup>ND</sup> MEETING OF THE IPCAN NETWORK:  
DEMOCRATIC CROWD CONTROL**

**MONDAY 23 MARCH 2015**

**CONSEIL SUPERIEUR DU NOTARIAT, 60 BOULEVARD DE LA TOUR-MAUBOURG,  
75007 PARIS**



## Democratic Crowd Control

### Programme

**8:30 a.m.:** *Welcome Coffee*

**9:00-9:15 a.m.:** **Opening by Jacques TOUBON, Defender of Rights**

**9:15 a.m-12:30 p.m.:** **I - THE MAINTENANCE OF LAW AND ORDER IN EUROPE**

*Introductory paper and moderation: Mr François DIEU, Senior Lecturer (Professeur des Universités), Department of Political Science and Sociology, University of Toulouse 1.*

**9:30-11:30 a.m.:** **National approaches to the maintenance of law and order**

**9:30-10:15 a.m.:** **Comparative police gendarmerie views of techniques and means of maintenance of order in France: *The maintenance of law and order in France, a guarantee of rights and freedoms.***

***Contributions from:***

**Mr Pierre CASAUBIEILH**, Colonel, Head of the French National Gendarmerie Training Centre (CNEFG / *Centre national d'entraînement des forces de gendarmerie*);

**Mr Laurent PERRAUT**, Police Superintendent (*Commissaire de police*), Head of the public order division, lecturer at the French ENSP National Police Training School of Higher Education (*Ecole nationale supérieure de la police*) in Saint-Cyr-au-Mont-d'Or.

**10:15-11:30 a.m.:** **Techniques and means for the maintenance of law and order in Belgium, the United Kingdom and Germany**

***Contributions from:***

**Mr Benoît BLANPAIN**, Police Superintendent (*Commissaire de police*), Office of the Head of Zone/Operational Coordination, POLBRUNO Police Zone, Brussels-North, Belgium;

**Mr Benoît VAN HOUTTE**, Head of Public Security (*Directeur Sécurité publique*) of the Federal Police, POLBRUNO Police Zone, Brussels-North, Belgium;

**Mr Karl-Heinz SCHENK**, Chief Superintendent, Federal Police, Germany;

**Mr Colin MORGAN**, A/Commander, Head of maintenance of law and order, London police, United Kingdom.

**11:30 a.m.-12:00 p.m.: Report on the observation and supervision of various demonstrations in Europe by the Organization for Security and Co-operation in Europe (OSCE)**

***Contribution from Ms Anita DANKA***, Adviser to the Human Rights Department - OSCE/ODIHR.

**12:00-12:30 p.m.: Exchanges with the public**

**12:30-2:00 p.m.: Lunch buffet**

**2:00-5:30 p.m.: II – SECURITY ETHICS AND DEMOCRATIC CROWD MANAGEMENT**  
*(Participants: Independent Authorities on Security Ethics)*

***Introductory paper and moderation: Ms Claudine ANGELI-TROCCAZ***, Vice-chair of the Board in charge of Security Ethics, Defender of Rights.

**2:15-3:00 p.m.: The prevention of risks connected with the maintenance of law and order**

***Contributions from:***

**Ms Kirsten DYRMAN**, Head of the Independent Authority on Security Ethics, Denmark;

**Mr Michael MAGUIRE**, Police Ombudsman for Northern Ireland, United Kingdom;

**Ms Diane REYNDERS**, Current Member, Committee P, Belgium.

**3:00-4:00 p.m.: Restoration of public order at the time of demonstrations**

***Contributions from:***

**Ms Estelle FAURY**, Rapporteur, Defender of Rights, France;

**Ms Sarah GREEN**, Deputy Chair, Independent Police Complaints Commission (IPCC), United Kingdom;

**Mr Jaanus KONSA**, Adviser to the Chancellor of Justice, Office of the Chancellor of Justice, Estonia;

**Ms Charlotte STORGAARD**, Head of Division, Independent Authority on Security Ethics, Denmark.

**4:00-6:30 p.m.: The European Court of Human Rights' (ECtHR) Point of View**

***Contribution from Ms Aysegül UZUN-MARINKOVIC***, Jurist, Research Division, Jurisconsult's Department, ECtHR.

**4:30-5:00 p.m.: Exchanges with the public**

**5:00-5:15 p.m.: Closing Address by Jacques Toubon, Defender of Rights**

## WELCOMING ADDRESS AND OPENING

**Jacques TOUBON** - This meeting carries on from a first meeting held two years ago on the initiative of my predecessor, Dominique Baudis, which gathered together a certain number of foreign counterparts in order to form a network for pooling our reflections with regard to the inspection of police ethics. At the time of taking up my duties, I immediately wanted to continue this network project, which we named IPCAN (Independent Police Complaints Authorities' Network), and which is therefore meeting for the second time this morning.

In the first place, I would like to thank the bodies, groups, administrations and authorities that have agreed to return to Paris today in order to continue the discussions. This morning, I would also like to welcome new participants who have joined the network, as well as the representatives of the Organization for Security and Co-operation in Europe (OSCE) and the European Court of Human Rights (ECtHR). I would also like to thank the members of the Committee that assists me in the exercise of my duties in terms of security ethics and, of course, French and foreign professionals in security, the police and the gendarmerie.

The Organic Law of 29 March 2011 entrusted the Defender of Rights with *“the task of upholding compliance with professional ethics by persons exercising security activities on French territory”*. The Interior Security Code (*Code de la sécurité intérieure*), in force since 1<sup>st</sup> January 2014, establishes that *“the National Police and the National Gendarmerie are subject to inspection by the Defender of Rights in accordance with the role conferred upon him by article 71-1 of the Constitution”*.

Our action in favour of the protection of rights by handling the complaints referred to us is accompanied by extensive dialogue with public actors as a whole, in order to bring about changes in legislation and practices and adapt them to contemporary security issues. This part of our activity is generally referred to as *“promotion”*.

The police and gendarmerie are faced with new challenges, but the demands expressed in public opinion are ambiguous: they call for security to be ensured, while refusing the restriction of liberties (of expression, assembly and opinion) by State action. In order to fulfil our role of raising questions and making proposals to the authorities with regard to problems of public interest, it is therefore incumbent upon us to engage in exchanges with our foreign partners faced with the same challenges and the same issues.

Since 2011, the Defender of Rights has already undertaken a great deal of work on these subjects. In the autumn of 2012, we published a report concerning relations between the police and citizens, addressing the issue of identity checks, and conducted in collaboration with our Spanish, British and Canadian counterparts. A second Report, made public two years ago, concerned non-lethal weapons, that is to say electroshock guns (Taser) and defensive launchers of firearm rounds (Flash-Ball), a subject which is still at issue. The exchanges with our foreign counterparts have proven to be particularly fruitful, since perceptions and cultures with regard to policing differ from one country to the next. The intention of our IPCAN network is therefore to engage in pooling and comparison.

Today's seminar concerns a major issue posed in each of our States: how to organise democratic crowd control? How to ensure the maintenance of order at a time of increasingly numerous and increasingly unpredictable demonstrations? Certain movements can be seen as veritable battlefields and have no hesitation in resorting to the most unexpected forms of violence. Demonstrators themselves have changed. In addition to trade union organisations and traditional movements, more spontaneous and less organised movements have now appeared, not to mention small, deliberately violent groups which cross borders, whether for sports events or meetings connected with environmental issues.

In France, one might mention the events at the airport of Notre-Dame-des-Landes, near Nantes, and at the Sivens Dam, in the Tarn department. A young man was killed during violent nocturnal clashes between demonstrators and gendarmes. Several investigations are in progress, including one undertaken by the Defender of Rights, who took up the case on his own initiative.

The French police, whose professionalism and composure were unanimously praised after the weeks of “suburban riots”, are today the first to raise questions about their mode of action: what reflections need to be undertaken with regard to the doctrine of the maintenance of law and order (it being understood that, contrary to other countries, we do not use the army but rather the police for the maintenance of order)? How can we think about these situations and, if necessary, bring about changes in our working methods?

We considered that work between counterparts from different countries constituted the best means, not of finding solutions, but rather of approaching a certain number of issues and putting some possible courses of action in place. The meeting will thus be divided into two parts:

- The morning will therefore, for the most part, be devoted to contributions from security professionals, using a comparative approach.
- Lunch will provide the occasion to present the text of a common resolution, enabling a number of prospects to be opened for the organisation of the network.
- The afternoon will be devoted to contributions from independent inspection authorities concerned with security ethics, with regard to two topics: prevention of risks connected with the maintenance of law and order and the re-establishment of public order, in other words “Circumspection. Action”, “Action. Circumspection”.

We should be able to continue our work within a wider European framework. This has been said in certain quarters, in particular in the course of the latest meetings at the Council of Europe Headquarters, and I also believe that the Organization for Security and Co-operation in Europe, the OSCE, will only see advantages therein.

## **ROUND TABLE 1: THE MAINTENANCE OF LAW AND ORDER IN EUROPE**

**François DIEU** - The question of the maintenance of law and order is a real issue for our democratic systems and assembly constitutes a fundamental instrument of democracy.

Democracies are strong systems of government, which endeavour to reconcile maintenance of order and the acceptance of a certain form of disorder. Indeed, because democracy is a sufficiently strong system of government, it can and should allow the expression of oppositions, sometimes including recourse to certain forms of disorder, in so far as these forms are generally peaceful. Moreover, democratic systems can be assessed by the space that they reserve for opposition.

For all that, democracy is characterised by an inherent aversion to forms of violence. Yet, democracy is changing. Representative democracy, rather than democracy itself, is in crisis. In all Western European countries, our fellow citizens on the whole remain attached the representative system, although at the same time they would like to see the development of other forms of political participation, allowing them more direct expression of their opinions in particular.

This has led to reflection about the 1970s concept of “demonstration democracy”: this is the idea that, alongside representative democracy, there should be demonstration democracy, that is to say democracy allowing “peaceful” expression of opinions and demands on the public highway. Yet, demonstrations may be periodically or occasionally violent.

In addition, for certain legal experts, demonstration is an abnormal, privatised use of the public highway, for which demonstrators could almost be asked to pay a charge, as is the case for parking in public areas.

From a legal point of view, criticisms are made concerning the fact that the freedom to demonstrate does not, as such, exist in France, but rather an administrative tolerance, organised around the distinction between demonstrations and unlawful assemblies.

Objections therefore exist to the acknowledgement of the democratic status of demonstrations:

- Demonstrations are not always controllable and can get out of hand.
- Because demonstrations use the street as a sounding board, they tend to amplify the demonstrators' representativeness. For example, there were 100,000 people in the demonstration in Paris today, a considerable figure. Yet, this figure only represents a small percentage of the French electorate (44 million people). What about the general will? The general will means that the law should be made by representatives elected by universal suffrage. Should it be accepted that, up to a certain point, law is also a matter for the street, which is not a guarantee of democracy?

As far as the maintenance of law and order is concerned, this is a real issue for democracies, as well as for countries in the course of democratisation, where the political authorities are subject to strong pressure from the street, to which they need to respond in a democratic manner. In Western countries, a transition is observable from "repression" (also found in authoritarian regimes) to "crowd policing", which is more along the lines of administrative policing, in the field of prevention, deterrence and control.

In our democratic societies, in response to violence on the part of demonstrators, the real police question also concerns the implementation of legal and legitimate State violence, which needs to be as limited as possible. This picture is connected with technical improvements, training and the development of a specific professional culture that upholds the rules of limitation of force.

This set-up is somewhat called into question by the almost systematically violent behaviour of certain groups and, more generally, by a kind of diffuse violence often taking the form of verbal abuse. In the face of the will to limit extreme use of violence by the police in our democratic societies, violence on the part of demonstrators has now to a certain extent become commonplace which, it might be added, is not to be found in other areas of life in society.

## **A) National Approaches to the Maintenance of Law and Order**

### **1. Comparative Police-Gendarmerie Views of Techniques and Means of Maintenance of Order in France: The Maintenance of Law and Order in France, a Guarantee of Rights and Freedoms.**

- **The Maintenance of Law and Order, a Primarily Preventive Task, which may Exceptionally lead to the Use of Force**

**Laurent PERRAUT** - France has two police forces with specific modes of organisation corresponding to their history and aimed at dealing with different problems.

The major principles behind the traditional legal framework for the maintenance of law and order in France are inherited from the revolutionary period. The Interior Minister is responsible for the maintenance of order in France. In this regard, under the authority of the prefects of French departments, the police and gendarmerie act to ensure order on a daily basis in the management of sports and cultural events, protests, demonstrations and other public gatherings. The actions of the

police and gendarmerie are guided by prevention before, during and after these events. In this respect, preparatory measures are very important. The vast majority of demonstrations take place very peacefully.

If force nevertheless needs to be used, we examine the authorities concerned and the applicable frameworks. In the first place, there is a fundamental dichotomy between authorisation of the use of force, which belongs to the civil authorities, and implementation by police commanders of the means under their control.

In the second place, unlawful assembly and the issuing of warnings constitute preconditions, which therefore means that the use of force needs to be continuously controlled by the civil authorities. Any gathering of people on the public highway or in a public place liable to disturb public order (and therefore before the occurrence of any disturbance) constitutes an unlawful assembly. When disturbances of public order occur, a decision to disperse the unlawful assembly is taken by the civil authorities. In France, these authorities are the departmental prefects, the mayor or deputy mayor, the district head police superintendent (territorial function) and the departmental gendarmerie group commander (territorial function). A police superintendent, a senior police officer or a commander of a group of gendarmerie companies is sometimes appointed to exercise this authority. In general, we delay the use of force as much as possible. We try to negotiate.

I would like to focus upon the specific role of the civil authorities which, at each stage of the implementation of measures taken, control the execution of the police commander's task of management of unlawful assemblies. The civil authorities may change or suspend these measures according to the development of the situation.

With regard to breaches of the law specific to unlawful assemblies, the act of remaining in an unlawful assembly is itself an offence. Once warnings have been given, people may be taken in for questioning. There are also specific offences with regard to the fact of being armed. The police commander may order the use of force outside of the framework of warnings, when violence is exercised against the police or when the latter have no other way of defending the ground they occupy. In any case, orders need to be traceable. We advise the civil authorities to make official reports recording the facts ascertained and their orders.

The traditional view of dispersal of unlawful assemblies taken in approaches to crowd management has changed. The police have to collect evidence, arrest perpetrators of serious crimes and offences, and present them to the judicial authorities. This is the already long-established notion of "bringing the maintenance of law and order within the jurisdiction of the courts". In this regard, we act within the framework of Articles 53 et seq. and Article 73 of the Code of Criminal Procedure (*Code de procédure pénale*).

There may also be frameworks other than the traditional approach to the maintenance of law and order. Legitimate self-defence is one such example. We avoid isolated, individual actions in the maintenance of order - this is a major general principle of action in the maintenance of order - however, action of this type cannot be totally ruled out. One might also mention, for example, the case of the offence of obstructing traffic, when a demonstration or gathering deliberately holds up road traffic. This might appear to be a minor detail, but in fact many different intersecting frameworks of action are juxtaposed with the traditional legal framework of the use of force for the maintenance of order. We will not tackle the assessment of inspections of police action. I pass the floor to the colonel.

- **Circumspect Use of Force**

**Pierre CASABIEILH** - At the end of the 19<sup>th</sup> century, a group of deputies, led by Georges Clemenceau, considered that the development of democracy and fundamental rights and freedoms called for a different response, instead of the use of troops for the maintenance of law and order. This response needed to be based on the police and strictly regulated at the legal level. It was to be manifested in the creation of a permanent force specialised in the maintenance of order. The Mobile Gendarmerie was thus created in 1921.

In the first place, the principle of “the least necessary force” contributes to the legitimation of the force of law, for better protection of the fundamental rights of the person. This precept is itself based upon the legal principles of proportionality and absolute necessity. These two principles are precisely codified in the Interior Security Code (*Code de la sécurité intérieure*). The Code of Ethics appears in the regulatory part of the Interior Security Code. Strict respect for the human person follows from higher rules of law, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the first place therefore, the use of force, which originates in law, presupposes respect for fundamental human rights, directly in line with article 12 of the Declaration of the Rights of Man and of the Citizen.

The second characteristic of the implementation of force is of a political nature: the maintenance of law and order is incumbent upon the Interior Minister. In France, local civil authority is vested in the departmental prefect, with strict legal supervision of the use of force based upon duality of responsibility between the competent authority and the police commander.

The third characteristic is tactical: the necessity of maintaining distance from the adversary, in order to avoid provocations, uncontrolled use of force and hand-to-hand combat, which disorganises the operation, in order to give the adversary time to retreat after warnings have been issued, to protect the police from thrown projectiles, and to provide the command with adequate response time. Under the rule of law, the maintenance of order also contributes to the necessary repression of perpetrators of crimes by mobile police units.

The fourth characteristic is doctrinal: the famous gradation of the use of force. This consists in giving demonstrators and possible opponents the most appropriate message, according to their behaviour, in order to prevent and bring disorders to an end. This message is the result of a combination of several different factors connected with the conduct of the police, their equipment, the nature of the operation, their modes of action and, of course, the controlled use of force properly speaking. Gendarmes and police officers thus need to be capable of adapting almost instantly to any dangerous situation. To this end, the police have a whole range of responses, from prevention to the use of weapons. This gradation is exercised from low to high, can be reversed at any time and corresponds to a presumption that the person encountered is reasonable.

The fifth characteristic is human: the maintenance of negotiated contact. This is a corollary of the gradation principle. Maintenance of order is a school of moderation, since use of excessive force is in general totally counter-productive in the long-term, carrying the risk of provoking feelings of resentment among the population. Negotiated contact needs to be maintained as long as possible, in order to prevent situations from getting out of hand. Negotiation is in fact a controlled ritualization of disorder between the police and the demonstration’s stewards.

Finally, the sixth characteristic: the reversibility of tactical responses and de-escalation. This is a matter of enabling a return to calm, having avoided any divide within the national community. May 1968 is significant in this respect. This event marked the advent of a new legitimacy of power based upon economy of the use of force on the part of the authorities, as the foundation of the social balance.



As far as the means and equipment resulting from these principles are concerned, the means of mobility are small vehicles, here we have the gendarmes above and the police below with boxer vehicles equipped with gratings. These tactical resources provide greater flexibility, rapidity and responsiveness in the face of changing situations and adversaries who are themselves tacticians. Means of coercion are conditioned by a legal framework and result from the previously mentioned principle of gradation: tear gas hand grenades, tear gas grenades fired by a launcher: a 56 mm weapon, sting grenades, tear gas blast grenades and special means including fire-fighting vehicles, referred to as water cannons and used by the national police force, the gendarmerie's armoured vehicles, mobile crowd containment equipment, that is to say vehicles with gratings, of which slightly different models are used by the police and the gendarmerie, helicopters etc. And finally, surveillance equipment, earth-moving equipment, and the planning and crisis management centre, which assists in the preparation and planning of far-reaching operations.

- **The Development of Protest and Anti-Authority Practices**

**Laurent PERRAUT** – There are three major institutions with territorial jurisdiction in the management of maintenance of law and order within the national police force, according to their respective areas of authority: the police headquarters of Paris and the *Petite Couronne* inner peripheral zone, the central Department of Public Security for provincial towns of more than 20,000 inhabitants and the airport and border police for air transport zones. Any police officer from these institutions may be involved in action for the maintenance of order. However, we give maximum priority to specialised units.

For their part, these specialised units include intervention companies and security and intervention companies, which are mixed uniformed, and also plain-clothed units, used within the framework of the maintenance of order, in particular in order to take individuals in for questioning. The anti-crime brigades, which are usually dedicated to fighting crime, can also be called upon.

Within the Paris police headquarters, these forces are grouped together within the public order and traffic department. The institutions with territorial jurisdiction also have priority when calling for reinforcements in the shape of riot police (CRS) and anti-riot platoons of gendarmes. They may be backed up by mobile units.

What do these institutions and personnel have to face? Events affecting public order may be of all kinds: cultural, sports and protest events, major G20 and G8 summits etc. The police are called upon within the framework of event management. This may be a burden, although it is also a guarantee of proper professionalism gained through accumulated experience. The year 2013 constituted a peak of activity with regard to the maintenance of order, with the management of 5,895 events, corresponding to around 15 events per day, as against 13 per day this year. The number of marchers increased from 6,200,000 to 11 million in the year 2013, the figure stood at 9,100,000 for 2014, and this level will undoubtedly increase markedly in 2015. High levels of action for the maintenance of order were observed in Paris, as well as in all of the large provincial cities.

Furthermore, demonstrators' practices are changing. They are less supervised, more spontaneous, often less declared, and vary according to the type of action. The strong influence of the social networking services should be noted, which give the organisers a large capacity for immediate mobilisation. Undeclared demonstrations have a major impact upon police departments, which are obliged to react quickly. A tendency for certain types of demonstrators to seek systematic destruction and confrontation with individual officers is also to be noted. In addition, these demonstrators show increased mobility.

Finally, there is an overall downward trend in phenomena of urban violence. Major efforts are also to be noted at the present time with regard to high-priority security zones (*zones de sécurité prioritaires*). The forms and geographical areas of urban violence are changing; for example, smaller towns may be affected. It may also be associated with demonstrations and events.

**Pierre CASABIEILH** – The maintenance of law and order is a general part of duty for the Gendarmerie. The task is entrusted to specialised units: the Republican Guard in Paris and the Mobile Gendarmerie, comprising 108 companies and 17 mobile gendarmerie group commanders, managed at the national and zonal level. In terms of their organisation, military culture and equipment, these specialised forces are particularly adapted to the management of disorders. Each company has 4 platoons, including an intervention platoon, which constitutes the key tactical element in the maintenance of order and is more specifically in charge of the arrest of violent demonstrators, freeing endangered persons and action on adversaries' flanks.

I distinguish several specific features of this mobile Gendarmerie:

- The specific nature of their training: *“gendarmes act as they are trained, they therefore need to train as they mean to act”*. For this reason, in 1969, 11 months after the events of 1968, the Gendarmerie decided to organise additional collective training at the national centre in Saint-Astier, in charge of preparing companies for the most demanding missions.
- The specific nature of the sites and theatres of engagement: the mobile Gendarmerie can take action anywhere at any time. It constitutes a third, intermediate force, between the army and the civil police, with capacities in crisis resolution and the preservation of social bonds.
- The specific nature of the operational command structure, which is referred to as “integrated”: the mobile Gendarmerie do not come under a central department like the riot police (CRS / *Compagnies républicaines de sécurité*), but are under the authority of a single head, who is territorial or commissioned for the occasion. With regard to difficulties of intervention, the violence of the adversary needs to be emphasised. It takes a multitude of different forms. It is necessary to distinguish demonstrators from adversaries, insurgents and assailants. Amongst adversaries, the following may be distinguished: transnational alter-globalists, supporters of sports events, socio-professional categories that are sometimes, in a period of economic crisis, in a state of social despair, but are neither delinquents nor ideological demonstrators. There are peri-urban adversaries, with a very good knowledge of their terrain. There are pro-independence movements and non-violent movements of associations calling the authorities' attention to social problems. There are demonstrators in French overseas departments and territories; gendarmes are faced with what are sometimes very violent community clashes, in which the adversaries are increasingly well-equipped. There is the special case of foreign operations, in which the adversary is acting in a country that is still sovereign, where the established power has called for international assistance. These adversaries are unpredictable, they are liable to attack the representative symbol of France and French nationals.
- The media and image aspect. This results from the major democratic principle of openness. Today, no government can take the risk of a media disaster as a result of excessive use of force. Conversely, the police are increasingly using video footage in order to justify the legality of their actions after the event and to identify delinquents, since the possibility of making such arrests during demonstrations may be uncertain.

- Finally, adaptation to changing situations and understanding of the situation. Each gendarme could commit an act for which the executive might be held liable. For this reason, they need to show discernment, and provide appropriate responses according to types of demonstrators.

In conclusion, legitimate force is built on a continuous basis.

The maintenance of law and order is a duty that is subject to change in at least two respects:

- In the first place, from the regulatory and political point of view, since the State agrees to restrict its own power in order to ensure a space of public freedom, in accordance with democratic values; this balance is built on a continuous basis. A Parliamentary commission of inquiry is currently working on proposals concerning methods of execution of the maintenance of order.
- In the second place, technologies are contributing to reshaping the exercise of the maintenance of order: surveillance imagery, drones and other means such as synthetic DNA for marking criminals, Long Range Acoustic Devices (LRAD), dazzlers, electromagnetic devices and the emergence of social networking services, which is already a reality. So many subjects which would be the worth specifically expanding upon.

## **2. Techniques and Means for the Maintenance of Law and Order in Belgium, the United Kingdom and Germany**

**Benoît BLANPAIN** - A police-gendarmerie merger has been effective since 2001. I come from the gendarmerie. I now work in a local police zone, as operational coordinator of operations, managing all of the different departments, administrative police, criminal investigation department, traffic, neighbourhood police etc. We have complete autonomy in police zones and work in real partnership with the federal police, who provide us with support in everything concerning resources, specialised and supra-local missions in particular.

Our policing landscape is divided into 200 zones. The police are completely in charge of management of maintenance of law and order and all other police issues. The federal police force manages supra-local and international questions and provides support to local police forces on request.

There is a large police contingent to be managed at the international level in Brussels, for the European Union and NATO, since these meetings attract large numbers of demonstrators. At the local level, demonstrations are authorised or prohibited by the burgomaster (the mayor). The police work in close collaboration with the latter, providing them with the necessary information and focusing on the community which constitutes the electorate. This enables burgomasters to take the most appropriate decisions in terms of results.

The development of society, and the development of the maintenance of order in general, are rather similar: from intervention focused on repression about fifty years ago, we have changed to intervention focused on the community, with what is perhaps an unusual feature as compared with France: the police do not form the armed wing of the prefect. There are no prefects in our country. The police form a part of the community and are never an adversary of demonstrators, but help demonstrators to demonstrate.

About fifteen or twenty years ago we used to work on techniques, as well as modes of action, for the most part in order to face up to conflict. We have widened our field of action, in order to work on

control of events, from start to finish, as well as joint management of public space. Joint management means that public areas are managed with demonstrators. The latter set up an entire internal team of stewards, who are in the first place responsible for supervising the event and any excesses. The police always remains as backup, in order to take action in the occurrence of an accident that is no longer negotiable or manageable or which involves security issues. For each event, the police work upstream, putting meetings in place with the event's organisers, in order to negotiate tolerance thresholds. Our intelligence service makes contact with the organisers on the ground.

It is important to stress the accountability and openness that we impose upon all police officers.

**Benoît VAN-HOUTTE** – The term surveillance police refers to unequipped personnel “in police uniform”, who provide the initial presence on the ground in order to guide the demonstrators. If an incident occurs, it is to be resolved in the first place by the internal team of stewards. The police only intervene in case of escalation leading to security risks, in the most targeted and shortest manner possible, after which they withdraw.

Our approach has therefore changed over the last 15-20 years, and is proving fruitful. Interventions take place under the responsibility of the police contingent's commander, who analyses the appropriateness and proportionality of the response to the given, the legal threshold having been determined with the administrative authorities upstream. This presupposes continuous assessment and differentiation between demonstrators. In addition, in Belgium it is possible to make administrative arrests, enabling any officer to arrest a person for a certain number of hours, in order to avoid any worsening of the situation. This preventive action makes it possible to maintain a calmer atmosphere.

The police's role is therefore manifested in the way in which it takes up position on the ground, since it needs to be both liaison officer and mediator, while being able to take action. This paradox even applies to the details of the kit worn. Too much emphasis on security in the kit will prevent the police from playing one of these roles.

There are no staff specialised in the maintenance of order, with the exception of certain number of police zones. The police retain a certain variety in their areas of activity. It needs to be possible to mobilise 12% of net operational capacity in order to call for reinforcements, either in other police zones or at the federal level. Police zone personnel intervene in the most high-risk situations, since they know the terrain, the individuals who live there, their intentions etc. This makes it possible to take a differentiated approach, according to the personnel and their working environment.

Police officers who work on the ground every day, and who receive training and equipment, can be mobilised. When taking action in their sector, where they have to work the next day, they are more concerned with the consequences of their actions than specialists brought in from outside. Because of their specialisation in using certain pieces of equipment, units with special resources form an exception.

In terms of specialised equipment, in recent years we have made major investments in the search for evidence and the use of high-quality video equipment, in order to be able to film troublemakers, enabling the postponement of arrests in order to avoid intervening in the crowd.

With regard to the different thresholds to be crossed before the police can intervene, the first criterion corresponds to the legality of our action; the second concerns the appropriate moment. The collateral damage that may be caused by intervention needs to be as limited as possible.

The new approach, which has been in place for about fifteen years, has produced very good results. We have observed a huge fall in the use of violence on all sides, an increase in satisfaction among the various different stakeholders and in the negotiated management of public space, as well as increased anticipation of events. This information-led movement makes it possible to anticipate the occurrence of demonstrations in 80% of cases.

**Karl-Heinz SCHENK** - In Germany all threats, disasters, emergencies, violent demonstrations and terrorist attacks are managed with the involvement of the mobile forces of the federal police. For example, on 18<sup>th</sup> March 2015, at the time of the inauguration ceremony of the European Central Bank in Frankfurt, 20,000 demonstrators assembled in a legal manner within the framework of the Occupy movement, in order to protest against capitalism and the international and European financial system. According to MTV, the demonstrators were peaceful. However, very early in the morning, at around 6:30 a.m., 40,000 other activists caused a great deal of material damage. 150 police officers were injured and 55 cars damaged.

The mobile forces are undergoing a training phase, for the G7 summit that is being held in June.

Germany is a federal State, with police departments at the level of the federal State and at that of the federated States. According to the Constitution, the Länder or Land can call upon the mobile forces in case of crisis or state of siege, according to the territorial scope of the phenomenon. It is in the national interest to have sufficient numbers of adequately-equipped police at the level of the federation and of the constituent States. In Germany, the gendarmes and the army are excluded from the maintenance of law and order.

In order to maintain mutual cooperation and coordination between all of the mobile police forces, an agreement has been established between the national government and each constituent State of the federation, in order to define the number of officers and their organisation and level of equipment. The federal government buys equipment and provides training in new technologies. In all, the mobile forces comprise about 16,000 specially-trained and equipped police officers. An additional 5,400 officers can also be mobilised.

The mobile forces' districts were defined under the aegis of the Interior Minister of the Federation. My department is located in the centre of Germany, near Kassel.

A total of 10 units take action under our command for the management of various risks within the region. There are therefore regular units, special units and technical operational support units. In the region of Sankt Augustin, there is also an international unit which can be mobilised for international activities.

As far as the legal framework is concerned, Germany has a Penal Code and a Code of Criminal Procedure, as well as several laws concerning the different police agencies and a specific law on public assembly. The Federal police departments, - the *Bundespolizei* and the *Bundeskriminalamt* -, are responsible for prevention and repression at the national level. 16 federated police agencies deal with this task at the local level. The constituent States of the federation have adopted their own laws, which are relatively similar.

The rule of law presupposes that democracy does not require an all-powerful State, but above all a State that accepts and protects rights and freedoms. The police's priority is protection of the right of assembly, in order to both protect demonstrators and prevent situations from getting out of hand.

For example, if a right-wing demonstration is announced, there will be other demonstrations in competition with it. The police have to cooperate with the organisers of all of these demonstrations, in order to ensure them the right to demonstrate, but separately. This can be a challenge.

The federal mobile police forces have elaborated “CONSEQUENT” guidelines, each letter of the acronym corresponding to a message:

- C: communicative;
- O: offensive;
- N: “*nachhaltig*” which means lasting in German;
- S: firm;
- E: “*eigener*”, which refers to internal intelligence;
- Q: quality, that is to say absence of risk and differentiated handling;
- U: “*unter*”, which means between peoples, and is focused on troublemakers;
- E: effectiveness;
- N: “*nachvollziehbar*”, which means provable or legal according to the situation.
- T: techniques, tactics and procedures.

In order to implement these guidelines, we have created tactical units to break situations of deadlock, arrest units and crowd management procedures. We have also developed surveillance tools and created a medical department. Our actions at the time of demonstrations are aimed at preventing violence, identifying hooligans, collecting evidence, responding to each situation in an appropriate manner, passing on cases to the public prosecutor and defending our police officers as witnesses and in the implementation of means. Responses need to be differentiated and proportionate, and made in a concerted manner with the organisers.

As far as the organisation of our mobile units is concerned, each unit is composed of around 120 police officers divided into 3 sections. Each section is composed of 38 police officers, 3 brigades and a small command team. The units are multifunctional. They are under the authority of a commander, and may work 24 hours a day. We have drawn up an operational tactics and control manual for rural and urban areas.

With regard to the forces’ equipment, it is composed of a *tonfa* (a short stick), a PF30 firearm, handcuffs and a pepper spray. The officers have fire-resistant uniforms and wear jackets in order to avoid theft of their equipment. Their whole body is protected, including the head.

In the addition to the mobile units, we have set up specially-trained and equipped special arrest units. For example, the meeting referred to as “*Hogesa*” or (Hooligans against Salafists) brings together hooligans and right-wing groups. “*Pegida*” is a word used to refer to a movement against the Islamisation of the Occident, which is very present in East Germany. Every Monday, we have *Pegida* protests in certain German towns, which lead to Salafist counter-movements. Special units are also needed to fight against organised crime, and the motorbike gangs that infiltrate events, including sports events.

Germany has put special units in place ready to take action in case of blocking of roads or infrastructures by activists. Road blockades are legal, but have to be limited in duration. The pyramid is a special technique used by activists in order to block roads and railways. Pyramids are impossible to remove and the demonstrators inside cannot be removed without injury. Specific technical knowledge is therefore needed in order to intervene.

We have created special riot units, we cooperate with mounted police and dog handlers and use vehicles with loudspeakers, armoured vehicles, concealed cameras and vehicles equipped with video surveillance and retransmission systems for the identification of troublemakers. Finally, we are in a

modernisation phase with the use of water cannons, whose use is more proportional than the use of pepper spray or batons, which are weapons.

In conclusion, the German mobile forces' role is to identify and arrest criminals and violent delinquents and therefore to intervene in a differentiated manner in the course of demonstrations, in order to produce lasting effects.

**Colin MORGAN** - As in any capital in Europe, there are numerous demonstrations in London: around 3,500 per year. Only between 10 and 15% of them are controlled. We have 32,000 officers in London, that is to say a quarter of the nation's police. We have all received training in the maintenance of law and order up to a certain level, but 6,500 have received specific training, with different specialisations.

In the United Kingdom, there is a national police service. This is the geographical police service in the regions. Whenever a national mobilisation is necessary, we therefore have a special department under the authority of the Home Secretary, which takes care of coordination and finance throughout the United Kingdom.

During the demonstration at the time of the G20 in 2009, a man was struck by a police officer and died as a result, despite his peaceful conduct. This led to in-depth reflection within the English police, and a publication by Her Majesty's Inspectorate of Constabulary: *"Adapting to Protest"*, which calls police intervention during demonstrations into question.

At the time of the demonstration in 2009, we had always tolerated legal demonstrations. However, we were applying the wrong criterion. We should have applied the criterion that we have since adopted: that of peaceful demonstrations. A demonstration may therefore be peaceful but illegal. This is the case of road blockades for example.

There were riots in London in 2011, a year before the Olympic Games. The City was literally burning, and we lost control for four days. A great deal of research has been published by Her Majesty's Inspectorate of Constabulary and the Metropolitan police. These publications concern the use of lethal force in particular.

With regard to the maintenance of law and order in the United Kingdom, our approach is similar to that of Germany. We encourage the organisers to take charge of their demonstrations. The right to peaceful demonstration is guaranteed by Articles 9, 10 and 11 of the European Convention, and the role of the police is to prevent violence, preserve the peace and protect property. The limits to police action are in line with the framework of strict respect for human rights. In 2009, we heavily supervised the demonstration and the police were seen as a source of oppression by the crowd. We have therefore rethought our approach.

Our approach to the maintenance of public order does not include judicial intervention. Although, we admittedly have a judicial review after the events. The making of decisions is incumbent upon the senior police officer in charge. We also have a manual of Authorized Professional Practice intended for all police units. It contains a model for conflict management and information concerning the assessment of threats, taking human rights into account as well as decision-making.

As far as the organisation of police responses is concerned, we have a very clear command structure, without judicial intervention. There are three different actors:

- Gold is the highest tactical and strategic commander, an individual, in general a single police officer;
- Silver is the tactical commander for the event;

- and finally there are the Bronze commanders, who have geographical and functional command.

Returning to the decision-making model, intelligence is the key in the assessment of threats. In practice, we very rarely use the power to limit the right to demonstrate. Police officers are duty-bound to keep the peace. However, Common Law also provides for the power to take action if necessary.

Police action during demonstrations needs to be proportionate, legal, responsible and necessary. The word necessary is interesting, particularly in the case of managing peaceful but illegal demonstrations. This is the case, for example, when considering the evacuation of a peaceful road blockade, and the possible use of force. An occupation lasting half an hour in front of the Prime Minister's residence may be reasonable. On the other hand, this may not be the case for 3 or 4 hours of occupation of a road; the right to go to work clashes with the right to demonstrate, and it is the police's role to strike a balance between these rights.

What can be done to encourage cooperation between demonstrators and minimise police intervention, while respecting the right to demonstrate guaranteed by the ECHR? Between Gold, Silver and Bronze commanders, priority should be given to the Bronze. Bronze commanders play a key role, since they establish contact with demonstrators and the inhabitants of the area concerned, as well as with conflicting movements. By giving priority to a society-based group movements approach, the use of force is no longer necessary. We have put liaison teams in place, on the Swedish model. We use community mediators, and our analytical research is conducted by a reference group, which informs us with regard to police surveillance in London.

We teach our officers a five-stage model of intervention, the use of force being the last resort. Our liaison teams enable us to improve our understanding of the situation, since the groups can express what they wish to do. This legitimises police action, and enables crowd control without the use of force. This has now been our mode of operation for two or three years and we observe better cooperation and a reduction in the required police resources, which are heavy. Demonstrators organise themselves, while maintaining contact with the liaison teams, which encourages mutual trust and respect for human rights.

## **B) Report on the Observation and Supervision of Various Demonstrations in Europe by the Organization for Security and Co-operation in Europe (OSCE)**

**Anita DANKA** - The right of peaceful demonstration is fundamental in a democratic society since, when this right is actually protected and encouraged, it enables groups, including minority groups, and individuals to express their opinions in the public arena. The right of peaceful demonstration is connected with other rights and freedoms, such as freedom of expression and freedom of association. It is often said that the approach taken by the authorities in terms of regulation of the right of peaceful demonstration may be considered a decisive test of their overall respect for human rights.

The right of peaceful demonstration is established by international and regional protective instruments, as well as within the framework of OSCE undertakings, unanimously adopted by its Member States. Numerous OSCE undertakings specifically guarantee this right to every individual, without discrimination. Nevertheless, in many cases the implementation of these undertakings remains a challenge for the OSCE region, often due to restrictive laws and measures.



The Office for Democratic Institutions and Human Rights (ODIHR), which is responsible for helping Member States to implement their undertakings, has actively focused on the promotion and implementation of the right of peaceful demonstration, by means of numerous activities such as the consolidation of skills. We have trained people, organisations from civil society and national human rights institutions in how to ensure respect for human rights and manage demonstrations. We also provide legislative assistance on request, for example by providing analyses of Bills, concerning the exercise of the right of peaceful demonstration, and the accordance thereof with international human rights standards and OSCE undertakings.

We also develop tools and benchmarks. General guidelines have been elaborated with the Venice Commission, in particular on the freedom to demonstrate peacefully. We are already on our second edition and our colleagues are working on a third. The Venice Commission and the ODIHR work hand in hand on the elaboration and updating of guidelines, including relevant case law, as well as internationally recognised good practices. Finally, we help in the supervision of demonstrations, with ODIHR personnel observing demonstrations within the OSCE area.

Over the last four years, we have advised 20 member countries and observed 53 demonstrations. We consider our activities to be focused on the East, Central Asia and to the East of Vienna, although not exclusively. In an initial project, we supervised demonstrations in Croatia, Hungary, Moldavia, Poland, Serbia, Slovakia, Switzerland, Ukraine, the United Kingdom and the United States. During a second mission, we supervised in Albania, Bulgaria, the Czech Republic, France, Greece, Montenegro, the Netherlands, Portugal and Spain.

The ultimate goal of these studies is not to set out an assessment of the countries concerned, which would be an impossible task on the basis of the observation of one of two demonstrations and study of the relevant law. We hope that our observations and conclusions drawn from specific examples may be useful to all countries concerned with guaranteeing the right of peaceful demonstration in accordance with international standards.

All of our activities concerning demonstrations presuppose direct observation and the gathering of information provided by all of the stakeholders in the specific demonstrations we observe, as well as observation of the overall situation with regard to the right of peaceful demonstration in a given country.

Each demonstration is intended to convey a message. It is necessary to make sure that this message can indeed be communicated to those for whom it is intended. The right of peaceful demonstration also includes the right to protection against violence from opponents. The risk of confrontation needs to be taken into account in the regulations. However, even in case of a risk of clashes, the authorities need to facilitate the holding of demonstrations.

Within the framework of our activities, we have observed demonstrations that involve specific challenges in terms of regulation. One type of demonstrations that we frequently observe are LGBTI Pride events, in countries where the latter has not been recognised. The first demonstration of this kind that we observed was held in Podgorica in 2013. The counter-demonstration was not very visible. Due to the high risk of clashes, and the counter-demonstrators' violent behaviour, this appeared appropriate.

We also make a distinction between peaceful and legal. On the basis of international standards and good practices, we believe that demonstrations should be authorised as long as they are peaceful. For the majority of demonstrations, illegality is based upon the fact that they have not been declared, but they are nevertheless facilitated by the police in numerous countries. We consider that the positive obligation to protect peaceful demonstrations also applies in a simultaneous manner to counter-movements, in so far as they are all peaceful.

In the run-up to demonstrations, certain States prohibit demonstrations in certain public places or at certain times of day. These broad prohibitions are disproportionate, since they do not take the specific circumstances of each demonstration into account. In our view, the only possible restrictions should be based upon well-founded arguments, permitted by international standards and OSCE undertakings.

We are pleased to observe that the majority of countries have a declaration system, which is preferable to rules of authorisation. In addition, in most cases the majority of demonstrations considered illegal in terms of applicable law were tolerated. It might be added that acts of violence that occurred during peaceful demonstrations were often resolved individually, without leading to the end of the demonstration.

In the majority of demonstrations observed, there were few or no arrests and force was seldom used. Even unjustified and excessive interventions were individual rather than general. We also observed that, the number of police officers with anti-riot gear was very high in numerous peaceful demonstrations. In other cases, crowd control strategy is based on containing demonstrators, while preventing them from dispersing. In our view these practices are excessive, constitute a potential violation of the right of peaceful demonstration, and undermine freedom of movement and the right to liberty.

Excessive regulation of demonstrations and use of tactics that risk increasing tensions constitutes a problem. There is a need to ensure that containment is only used when it is necessary in order to prevent serious damage or injuries, and when no other, less restrictive, means can be used. Moreover, police tactics that emphasise the de-escalation of tension are more beneficial than the massive deployment of police in riot gear.

We try to provide advice concerning the phase preceding demonstrations, according to the approach taken by the organisers, the legal framework, possibilities of communication with the police, the information at the police's disposal and the security strategy put forward by the latter.

The police departments at least tried to communicate with the organisers beforehand in the majority of demonstrations observed. They usually chose to share limited information on security strategy. In most cases, there was communication between the organisers and the police before and after demonstrations, although during demonstrations communication was sometimes limited. In general, it is observed that good communication facilitates police work and enjoyment of the right to demonstrate peacefully.

The ODIHR observers were able to freely conduct their activities. The countries we visited cooperated willingly. It should be emphasised that promotion and facilitation of independent observation of demonstrations by the participant States constitutes a good practice, in accordance with OSCE undertakings.

We obtained a great deal more information than appears in our topical reports. We therefore remain at the disposal of all of the countries we have assessed, if they wish to engage in further cooperation. We are going to commence our third round of assessments, which will concern between 10 and 12 countries.

In conclusion, the ODIHR is ready to set up a forum for exchange of experience and good practices, in order to facilitate peaceful demonstrations within the OSCE, as proposed by today's meeting.

## **ROUND TABLE 2: SECURITY ETHICS AND DEMOCRATIC CROWD MANAGEMENT**

**Claudine ANGELI-TROCCAZ** - In our democracies, we all share the common objective of striking a balance between keeping the peace and the protection of individual liberties, freedom of expression and the freedom to demonstrate. Moreover, this morning Mr Dieu has spoken about the paradox of our societies' attempts to reconcile this need for order with the acceptance of a certain form of disorder. This once again drives home the need to work together, for all of our independent institutions and authorities in particular, as a special observers of relations between the police and citizens.

### **A) The Prevention of Risks Connected with the Maintenance of Law and Order**

**Kirsten DYRMAN** - The Danish independent complaints authority was established by Act no. 404 of 21<sup>st</sup> April 2010, which came into force on 1<sup>st</sup> January 2012. It is not administratively attached to the police. It is responsible for conducting inquiries into criminal offences committed by police officers, whatever the level of seriousness thereof, and has jurisdiction to hear and rule upon wrongful acts committed by the police. Its final decisions are passed on to the national police superintendent, who then applies the corresponding disciplinary sanctions against the police officer concerned.

At the time of the UN Copenhagen summit, in December 2009, a demonstration was held which brought more than 100,000 demonstrators together. This peaceful and legally authorised demonstration rapidly turned into a riot due to the presence of several hundred troublemakers. The police considered that it was no longer a peaceful demonstration but rather a riot. The police officers then effected a pincer movement and arrested around 1,000 people. Several hundreds of these demonstrators were handcuffed in the cold on the ground for more than 4 hours without access to food or water. After the event, 178 of these people made a complaint against the police for violation of Article 3 of the European Convention on Human Rights. The Danish court found that there had been inhuman and degrading treatment and awarded 1,200 euros to each of the victims in compensation for non-material damage.

The Danish Ombudsman made several recommendations, including the placing of blankets and food and water at detained persons' disposal, as well as the setting up of medical infrastructures in particular. Police officers were also required to keep inquiries and questioning as short as possible, in order to reduce detention time.

**Michael MAGUIRE** - In Northern Ireland, the Ombudsman is the institution in charge of dealing with complaints and claims concerning professional misconduct by the police. Its officials are responsible for conducting investigations to establish or disprove such misconduct. The opening of the Office of the Police Ombudsman, on 6<sup>th</sup> November 2000, marked a turning point in the field of complaints against the police in Northern Ireland. It introduced an independent, impartial and civil system for monitoring the maintenance of law and order. In 2013-2014, the Office received 3,700 complaints against the police of Northern Ireland.

The mediator's role is particularly linked to the "flag protest" events in Northern Ireland, concerning the removal of the Union Flag from public buildings in Belfast, which led to considerable disorders, from road blockades to the use of bullets, in which several people were killed. The disturbance or public order during this period was considerable, although the reasons are still controversial. The way in which the police take action in order to maintain public order is therefore of particular significance.

300 complaints were subsequently lodged for excessive use of force, oppressive behaviour, failure of duty, incivility and unjustified arrest.

The Office of the Police Ombudsman took up the affair and put a special team together. However, certain complainants were reluctant to take up their cases with the institution, due to confusion of the latter with the police. The Office explained the complaints procedure, which was unknown to certain complainants. Another difficulty emerged with regard to the production of objective evidence.

It was important that, at certain times, the Office's findings showed that the police were free from blame, but that errors had also been committed, in order to gain the trust of both the police and complainants.

For example, a woman accused the police of having injured her leg with an Attenuated Energy Projectile (AEP), her injury subsequently becoming infected. Examination of surveillance videos showed that the police had indeed loaded an AEP at the time of the incident, without making it possible to determine whether the discharge had caused the injury. A medical examination was conducted concerning the causal links between the shot and the injury, on the basis of research on injuries caused by AEPs. It found that the injury could not have been caused by the shot. The Ombudsman therefore concluded that no wrongful act had occurred on the part of the police.

Other cases, in which video images bore witness to police violence for which no complaints had been lodged, were taken up by the Office of the Police Ombudsman, which ascertained disproportionate use of violence and recommended disciplinary sanctions.

In general, in view of the scale of disorder in Northern Ireland, very little evidence of police misconduct is to be found. On the whole, use of AEPs was duly authorised and individual decisions to use them were, for the most part, justified.

There were relatively few complaints in relation to the number of AEPs fired and the police were seldom found to have acted wrongfully, which suggests that the public in Northern Ireland could not have viewed the PSNI (Police Service of Northern Ireland) as being out of control during the riots. However, there is no room for complacency. Disorder creates serious tensions within the police and with parts of the community, which are currently being analysed. Both parties' feelings need to be taken into consideration. In spite of mistrust of State mechanisms, we succeeded in appearing independent by proceeding upon the basis of proof.

**Diane REYNDERS** - Committee P was created in 1991, in order to provide the Federal Parliament with an external, independent and impartial control body with regard to the police. It actually began its activities in 1993. Committee P exercises its duties through various different channels, in particular via the examination of citizens' complaints. In this respect, it should be specified that the Committee does not have any mediating role and was not created in order to resolve complainants' individual problems in relation to the police. It conducts inspection investigations in order to inform the Belgian Parliament and the Ministers concerned.

Committee P is intended to contribute to the proper functioning of a democratic, honest and community-focused police. It constitutes the external institution responsible for inspecting the overall working of police departments. In particular, it oversees the way in which the effectiveness, efficiency and coordination of police services are ensured and the way in which fundamental rights and freedoms are respected and actively promoted.

Circular CP4 establishes a reference framework for the negotiated management of events and assemblies. This document contains provisions that have to be respected by the police in several areas:

- a risks analysis has to be undertaken. The police have to obtain relevant information before, during and after the event. In 2013, Committee P ascertained that targeted information is collected about events by means of forms; there is sometimes a lack of dynamic and qualitative analysis of risks according to the probability and consequences thereof, as well as insufficient human and material resources to face up to them. The police have been making efforts to improve the analysis of risks for the last two years.
- a partnership needs to be established between the police and the community: the whole of the actors jointly create the conditions for the holding of demonstrations, so as to strike a balance between the different demands and interests of all groups taking part in the event. The tolerance thresholds are clearly defined and declared. The documents analysed show that partnership and work focused upon the resolution of problems are firmly established. However, the tolerance thresholds are not always elaborated in an equally detailed and formal manner in all types of operations, although they are indeed often available and used as a basis for negotiations with the various actors concerned.
- the use of physical restraint and deprivation of liberty. Police measures are implemented on a gradual basis, taking the development of the situation into account. If the police opt for greater visibility, they then always need to be aware of the possible impact of such visibility on those taking part in the event. In practice, the police endeavour to apply the philosophy of community-oriented work to the utmost within the framework of event management and control.

It may be said that, thanks to a community policing model, demonstrations in Belgium are in general rather well managed by the police services, which have greatly invested in know-how.

## **B) Restoration of Public Order at the time of Demonstrations**

**Estelle FAURY** - The Defender of Rights is an independent government agency with specific regulatory powers, established by the Organic Law and Ordinary Law of 29<sup>th</sup> March 2011. The institution combines the roles of the *Médiateur de la République* (French Mediator) [an independent government agency with specific regulatory powers in charge of the improvement of relations between citizens and the administration], the *Défenseur des enfants* (Defender of Children) [independent authority charged with the defence and promotion of children's rights], the *Haute autorité de lutte contre les discriminations et pour l'égalité* (HALDE / French High Authority for the fight against discrimination and for equality) and the *Commission nationale de déontologie de la sécurité* (CNDS / National Commission on Security Ethics). The Defender of Rights was established as the sole authority for the defence of rights. It should be specified that few cases are submitted to the Defender of Rights in relation to the number of demonstrations in France. In 2015, there were 13 demonstrations a day in Paris alone. These cases concern the manner in which the police act within the framework of demonstrations, gatherings, urban violence or the occupation of land, when a certain level of conflict has been exceeded and force is used in order to restore public order.

Generally speaking, the Defender of Rights examines the circumstances of incidents submitted to him in the light of the obligation incumbent upon the police to only make use of force with regard to demonstrators in a necessary and proportionate manner.

More specifically, the Defender of Rights has looked into the question of the use of weapons during demonstrations. After having noted technical faults in one of the two models of defensive projectile launchers used, the Flash-Ball Superpro®, he recommended prohibition thereof within the framework of demonstrations. He is also looking into the use of various grenades: sting and tear gas grenades.

A recent decision involved the question of the use of a Flash-Ball Superpro® against a child of 9 years of age, victim of a permanent disability. In this respect, the Defender of Rights recommended a disciplinary sanction against the police officer, this recommendation having been followed up by the Interior Minister who sanctioned the officer.

In October 2014, on his own initiative, the Defender of Rights took up the case of the death of an environmentalist activist, who had been the victim of an explosive grenade fired at the time of a demonstration against the planned construction of the Sivens Dam. Following on from this case, Mr Toubon specified that he had, *“begun reflection on this question which is of absolutely critical importance”*, since *“the practice of the maintenance of law and order is facing demonstrations that are increasingly difficult to repress”*.

The Defender of Rights also denounced the issue of dishonesty in the drafting of police reports in order to justify the circumstances of use of weapons after the event. *“This can make it difficult or even impossible to establish who was responsible for a shot, for example, and to control the use of force after the event”*.

Other difficulties are also problematic:

- The question of warnings, which should in principle be issued before the use of force. There are cases in which warnings may not be given. Moreover, have the demonstrators understood these warnings and when is force to be or not to be used?
- The various units acting within the framework of maintenance of order have not received the same training.
- The question of openness, the transparency of the chain of command and the traceability of orders;
- The appearance of new forms of social protest and the police reaction to these new forms of protest;
- Finally, the question of administrative liability within the framework of the use of force, which is set to become increasingly important in the future.

**Sarah GREEN** - Supervision of demonstrations and maintenance of law and order are a crucial question for the Independent Police Complaints Commission (IPCC). The creation of a Police Complaints Authority in 1985 was partly inspired by criticisms of the police in the wake of the Brixton riots of 1981, in the South of London. Nevertheless, it was only given limited powers for the inspection of police investigations, and was therefore unable to satisfy expectations in public opinion.

The creation of a truly independent body for control of the police with real powers of investigation was only recommended in 1999, in a report issued following the murder of a black adolescent. The IPCC was therefore created in 2003 and began to function in 2004.

The IPCC functions in an independent manner. Its primary task is to ensure public confidence in complaints lodged against the police, in England and Wales. Our activity consists of supervising the complaints system and issuing standards to be complied with by the police in the handling of complaints; we examine the most serious cases, devote special attention to persons dissatisfied with

the manner in which the police have dealt with their complaints, and try to find solutions for the improvement of police practices. The IPCC's action is guided by the principles of respect for equality, human rights, independence, diversity, honesty, openness and independence. The IPCC's resources are progressively increasing, which means that it is able to investigate a larger number of cases.

The British police model is based upon confidence within public opinion and the rule of law. For this reason the regulation of demonstrations and the handling of complaints that may arise therefrom attract a great deal of interest. One of our most recent inquiries concerned a demonstration in 2004 in favour of fox hunting, which was going to be prohibited. Several complaints were lodged and the IPCC investigated about forty allegations of serious head injuries. The IPCC made several recommendations, including prevention of the risk of crushing.

The IPCC has also investigated complaints against the police for acts connected with demonstrations at the time of the G20 summit in London in 2009, and concerning the death of a man in particular. The officer was prosecuted for homicide and removed from their post but acquitted. We recommended making police responses graduated and progressive.

In view of the high annual number of demonstrations, a reduction in the number of complaints is observed. This is to be explained by the fact that the persons concerned do not know that they can lodge a complaint, that they have not identified the officer concerned, that they do not think that the investigations will lead to any results or else because they do not want to give their names. This is particularly the case among ethnic minorities. When complaints are lodged, they are for the most part concerned with excessive containment at the time of demonstrations, excessive use of force and arrests without legal justification.

The majority of the most serious complaints concern the use of force. In England and Europe alike, there is a presumption of peaceful demonstration, and the police have to keep cases of use of force, - which should only be used as a last resort in crowd management- , to a minimum. All use of force has to be reasonable according to the circumstances, that is to say absolutely required for the purposes authorised by law, and the strength of the response also has to be reasonable and proportionate to the threat.

British law establishes the right to assemble in a peaceful manner, in this regard studies are in progress in order to determine under what circumstances the use of force by police officers is necessary.

The IPCC is concerned about two phenomena: the increasing use of Taser guns, and the recent purchase of water cannons for the first time by the Mayor of London, with the Home Secretary's agreement. Tasers have been used in England and Wales since 2003, as an alternative to firearms. They may be appropriate, provided that they are used in a suitable manner. The number of operations for which firearms are authorised has fallen considerably. However, since 2007, Tasers have been authorised in a larger number of situations, not necessarily connected with the maintenance of public order. The figures show an increase in the use of Tasers of 232%, as well as in the number of complaints resulting therefrom. It is therefore necessary to ensure that excesses are avoided. The IPCC is continuing its studies on the use of Tasers for the maintenance of public order.

In our response to the Mayor of London's consultation on the use of water cannons, we raised a certain number of questions concerning the ethics and effectiveness thereof. Water cannons may be appropriate to certain types of demonstrations, in order to maintain demonstrators at a distance from the police, when this appears strictly necessary.

One useful practice concerns the carrying of cameras by officers, in order to film interactions with the public, since these images can prove very instructive in the investigation of complaints.

**Charlotte STORGAARD** - This presentation concerns use of pepper spray and the reflections of the Danish independent authority on security ethics with regard to the use thereof during demonstrations.

In 2012, the ECtHR delivered a judgement on the case of *Ali Güneş v. Turkey* concerning the use of tear gas by the Turkish police against a person who had already been immobilised. The Court found that there had been a violation of Article 3 of the Convention, since the person concerned was already under control.

In Danish law, as in Germany and France, pepper spray is considered to be a weapon. According to Danish law, the police may resort to force in order to prevent and avoid disturbances of public order, in particular at the time of demonstrations or within the framework of the fight against private individuals' criminal activities. The use of force has to be necessary in relation to the intended protective objective.

The Danish independent authority on security ethics has authority to deal with complaints concerning police misconduct.

Pepper spray has been part of police officers' equipment since 2008, in order to reduce cases of injury of citizens and police officers. It is being increasingly used and our institution is therefore devoting special attention to the issue of trying to determine acceptable conditions for its use. Two situations have been identified as not justifying use of the spray: the arrest of persons driving two-wheeled vehicles and use against handcuffed persons, since they are presumed to be under police control.

### **C) The European Court of Human Rights' Point of View**

**Aysegül UZUN-MARINKOVIC** - This presentation concerns the latest developments in ECtHR case law. The views set out are the speaker's and not those of the Court.

In the first place, Article 11 of the Convention guarantees the right to freedom of assembly, while any possible restrictions thereto shall be provided by law and necessary for the defence of public order and security. The Court has constantly emphasised that this constitutes a necessary fundamental right in a democratic society and that, like freedom of expression, its exercise should not be restricted. Article 11 applies to various different scenarios: marches and processions, stationary groups, sit-ins and even the blockading of crossroads by vehicles and persons. A case is currently pending before the Grand Chamber: *Kudrevičius and Others v. Lithuania*, and we are awaiting the Court's position in this regard.

However, the Court has always specified that not all expression in a public area necessarily constitutes an "assembly". In a recent case, *Tatár and Fáber v. Hungary*, the Court emphasised that the term "assembly" has an autonomous meaning and that the classification of gatherings in public areas under national law is of only relative value.

However, the fact that the Court did not accept the use of the term "assembly" does not mean that the situation falls outside of the field of application of the Convention, and of Article 10 on freedom of expression in particular. In the case of *Açık and Others v. Turkey*, the Court considered, on the basis of Article 10, that the authorities were entitled to remove students who had come to interrupt the presentation from the hall, but that it was disproportionate to arrest and place them in detention. If the event has religious connotations, the Court deals with the case on the basis of



Article 9. This provided the basis for the Court's decision in the case of *Güler and Uğur v. Turkey* in 2014. The structure of these articles and the Court's examination of cases on the basis of the provisions thereof are similar in many aspects.

Article 11 only protects the right to freedom of peaceful assembly. However, in the Court's view, any disorder or violence that may occur does not remove demonstrations from the field of application of Article 11. In this case police should isolate troublemaking individuals.

Under the terms of Article 11, States have a negative obligation to refrain from infringing upon this freedom, as well as a positive obligation to protect citizens' right to demonstrate in a peaceful manner, apart from the exceptions provided for under paragraph 2. States also have a positive obligation to guarantee effective exercise of this right, in particular by means of the adoption of protective measures, and to investigate violations thereof.

The right demonstrate peacefully is inseparable from the principle of non-discrimination. In the *Alekseyev v. Russia* case of 2010, concerning the prohibition of a gay pride demonstration, the Court found that there had been a violation of Article 11 in conjunction with Article 14.

With regard to the supervision of demonstrations, the principal problem concerns use of force, at the time of dispersals in particular. This is examined from the point of view of Articles 2, 3 and, indeed, 8 of the Convention.

Within the framework of Article 2, the first question examined by the Court is that of protection by the law. The State is obliged to guarantee the right to life by putting the required legal and administrative framework in place, which in particular defines the cases in which it is possible to resort to force and the use of firearms, on the basis of a meticulous assessment of the situation. The law should also provide guarantees against arbitrary and abusive use of force, referred to by the Court as "avoidable accidents". According to the Court, the police should be trained in order to assess whether or not the use of firearms is possible in different situations, in accordance with respect for the fundamental right to life. The Court more or less transposes this line of reasoning to non-lethal weapons.

When the Court rules upon the basis of Article 2, it in the first place examines the acts of officers having made use of force, and then the specific circumstances. The use of force should be strictly necessary to the intended objective. The police should be equipped with means enabling them to make graduated responses to threats, however, the use of these means should also be proportionate to the situation. In the case of *Ataykaya v. Turkey*, a person caught in the middle of demonstrators died after having been hit on the head by a tear gas canister. The officer did not have any identification on him and proceedings could not therefore be instituted against him. Hence the necessity of means of identification.

As far as Article 3 is concerned, the Court considers that any use of force that is not strictly necessary constitutes a violation of human dignity. What constitutes bad treatment depends upon the circumstances (the length thereof, the person's sex, physical or psychological duress etc.).

The case of *Najafli v. Azerbaijan* concerned a journalist, identifiable as such, who was struck while covering a demonstration. The Court found that there had been a violation of Article 3 in conjunction with Article 10. The case of *Pentikäinen v. Finland*, which concerns the security of journalists during demonstrations, is pending before the Grand Chamber<sup>1</sup>.

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<sup>1</sup> Following the seminar, the Grand Chamber delivered its ruling on 20<sup>th</sup> October 2015.

As far as the protection of demonstrators, counter-demonstrators and third parties is concerned, in its landmark ruling *Plattform "Ärzte für das Leben" v. Austria*, the Court judged that the ideas which a demonstration seeks to promote may annoy or give offence, but that the participants must be able to demonstrate without fear for their safety. This not only means that the State has a duty not to interfere, but the latter also needs to take measures to protect the demonstrators. The police have a choice of means. This means a best efforts obligation rather than an obligation to achieve a particular result.

The State also has an obligation to undertake investigations. This does not explicitly appear in the Convention, but a procedural obligation has been inferred from Article 2, as well as Articles 3, 4, 11 etc. Investigations may take several different forms, but must have certain characteristics:

- in case of death investigation shall be conducted *sua sponte*;
- it shall be independent. For example, in the case of police violence, the investigator cannot come from the same district. In the case of *Tunç and Others v. Turkey*, which is pending before the Grand Chamber, the Court has to clarify the principle of independence. In a recent case *Jaloud v. the Netherlands*, concerning a death that occurred in Iraq, the Court considered that the fact that the persons conducting the investigation into the murder shared the same barracks as the persons having caused the death did not mean lack of independence;
- it needs to be adequate, that is to say effective. The investigation needs to make it possible to determine whether the use of force was justified in view of the circumstances and, if possible, to identify and convict those responsible. In case of murder, a far-reaching investigation is needed, focusing not only upon the victim and perpetrator, but upon the entire planning of the operation. The question of promptness and proper diligence of investigation is also an issue. The investigation needs to be commenced rapidly and should not take an excessively long time, in order to ensure that evidence does not disappear. Finally, there needs to be a certain level of public announcement of investigations and close relations should be able to be involved in order to safeguard their interests.

With regard to the question of containment or kettling, the Court considers that deprivation of liberty of a short duration may fall within the field of Article 5, which guarantees the right to liberty and security, although it needs to be distinguished from detention. For example, in the *Austin and Others* case, concerning a large anti-capitalist demonstration in London, the Court considered that containment for the purposes of crowd control could give rise to unjustified deprivation of liberty contrary to Article 5§1. The specific context in which such techniques are used has to be taken into account. In this instance, containment of the persons concerned for seven hours in order to avoid a real risk of damage to property did not constitute a deprivation of liberty, since it was the least intrusive technique. In another case, the petitioners had been confined for 3 and a half hours by a police cordon set up around 300 persons blocking a crossroads. The Court considered that the police cordon was aimed at identifying persons, that it thus constituted a preventive rather than a punitive measure and was therefore appropriate to the circumstances.

The *Anzhelo Georgiev v. Bulgaria* case of 2014 concerned the use of electroshock weapons, although outside of the framework of a demonstration. In this instance, the Court considered that there had been a violation of the Convention, since use of these weapons was not subject to any regulations and the police had not received any training concerning the time and manner of such use.

Finally, in the *Ostendorf v. Germany* case of 2013, a football hooligan was placed in detention for four hours in order to prevent him from taking part in a fight. This therefore constituted a preventive detention. The Court found that there had not been any violation of the Convention, since there was sufficient evidence to prove that the police decision had been proportional in view of the person concerned's profile.

## **CLOSING ADDRESS**

**Jacques TOUBON** - In the first place, there are very great differences in our implementation systems for the maintenance of law and order, as well as in our systems of police control. These differences are not only of a technical or legal nature, but are also based upon cultural differences. For example, certain countries consider water cannons to constitute a momentous Leviathan-like power, while others, on the contrary, see them as a means of avoiding the use of other, more expeditious and violent methods. With regard to the existence, non-existence and use of what are referred to as non-lethal weapons, some consider that they make it possible to avoid the use of weapons entirely, while others, on the contrary, consider them to be weapons in their own right, which create a problem in relations between police and citizens.

Questions remain with regard to training, assessment (including assessment as interventions progress) and prevention in order to ensure that situations do not get out of hand. The question of weapons also remains an issue. Depending upon the greater or lesser acceptance of violence by some as compared with others, the use of non-lethal weapons promotes the maintenance of distance, reduces the risk of clashes or, on the contrary, is considered an inherent part of confrontations that need to be avoided. The direct comparison of two forces with contrary objectives raises real questions about intended outcomes, although the role of the police is always to ensure that the freedoms of opinion, assembly and expression can be exercised without creating security problems with regard to people and property.

And finally, the 11 inspection bodies present, represented in 9 countries, have reason to question their authorities' status. A wide range of different statuses with greater or lesser independence, extent of incorporation into police systems and scope of powers of investigation is clearly observable among the various different bodies. If we want to act in accordance with the requirements of the European Convention on Human Rights and further the rule of law, we need to ensure progress in terms of the independent status and impartiality of the bodies concerned, as well as with regard to their powers of investigation and recommendation.

We should plan to meet once again next year in Strasbourg. The European Union, of course, has obvious problems of competence. On the other hand, I believe that within the intergovernmental framework of the Council of Europe, we can undertake very useful work with regard to the implementation of case law on the European Convention for the Protection of Human Rights. Furthermore, in order to ensure the success of an undertaking of this kind, I have suggested that we should establish a kind of informal network.

We need to exchange our practices and constantly improve our techniques, doctrines and responses... We need to be very aware that situations of asymmetry are evident, since they are one of the reasons for the police's role, but that the feeling arising from all of these situations needs to be taken into account. In order to ensure that fewer and fewer people consider that the State does not look after them and that the implementation of rights does not apply to all on an equal basis. We have a very important role in order to promote inclusion and feelings of belonging. Yet, the police are at the centre of life, on a daily or exceptional basis.

In order to be irreproachable there needs to be European model, this model is vague and varied and our work perhaps consists of: one, trying to establish it, and two, making it progress in order to improve it still further.