



A police officer draws his gun during clashes between police and demonstrators in Gothenburg, Sweden, in June 2001.
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Critical Triggers:

IMPLEMENTING INTERNATIONAL STANDARDS FOR POLICE FIREARM USE

INTRODUCTION

Pull the trigger or not? Police decisions to use force have broad repercussions for the societies they are meant to protect.

The first casualty of police firearm misuse is the bond between citizen and state. Under international law, the state is sworn to respect the human rights of its citizens. National policing is a key testing ground of that commitment—and of the state's commitment to the rule of law generally. Policing, good or bad, also influences individual decisions about security: to trust in the state or rely on private security providers.

Against the backdrop of relevant international standards, this chapter examines the issues associated with police use of force and firearms. Among its major conclusions are the following:

- Police use of force and firearms is a core human rights issue.
- The twin principles of necessity and proportionality underpin the legitimate use of force by law enforcement officials under international and national law.
- A broad range of factors, such as equipment and training, condition police use of force and firearms.
- Although there is some good news, policing in many countries appears to fall well short of international standards.
- While resources are important for good policing, political commitment is the key.

This chapter aims to highlight critical issues relating to the implementation of international standards for police use of force and firearms. It does not attempt to assess state implementation in a systematic way, yet its sample of high, middle, and low-income countries from all parts of the world illustrates the many challenges and problems arising in this area.

The next two sections examine the normative framework that governs the use of force and firearms by law enforcement officers at both the international and national levels. The chapter points out that police firearm misuse involves a violation of such fundamental human rights as the right to life and the right not to be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. The chapter then moves to specifics—comparing state practice with relevant norms in a wide range of areas that shape the legitimate and illegitimate use of force by police.¹

INTERNATIONAL STANDARDS

National policing practices must fulfil international human rights obligations. The 1948 *Universal Declaration of Human Rights* (UNGA, 1948) contains a number of provisions that are directly relevant to the use of firearms in law enforcement work, in particular Article 3, which reads: 'Everyone has the right to life, liberty and security of person.'

Other provisions of the *Universal Declaration*, such as the ban on torture along with ‘cruel, inhuman or degrading treatment or punishment’ (art. 5), are also relevant to the use and misuse of firearms by state agents.

While the *Universal Declaration* is not a legally binding instrument, provisions such as those cited above are commonly held to form part of customary international law, which is legally binding. Many of the *Universal Declaration*’s provisions have also been incorporated, in legally binding form, in human rights treaties, most notably the *International Covenant on Civil and Political Rights* (ICCPR) (UNGA, 1966). Article 6 of the ICCPR, enunciating ‘the inherent right to life’, is one of a limited number of provisions from which no derogation is permitted, even ‘[i]n time of public emergency which threatens the life of the nation’ (art. 4). Other treaties, such as the 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNGA, 1984), have since reinforced the normative framework sketched out in the *Universal Declaration*.

International efforts to create a code of practice for police that is consistent with international human rights obligations can be traced back to 1957, when the International Federation of Senior Police Officers adopted a code of ethics (Heijder, 1984). Two decades later, in June 1975, a seminar organized by Amnesty International (AI) at the Hague resulted in a set of proposals for an international code of conduct on policing (the ‘Declaration of The Hague’).

Shortly afterwards, a process was launched under UN auspices for the development of a non-binding *UN Code of Conduct for Law Enforcement Officials* (UNGA, 1979b). The 1979 UN Code comprises a Commentary intended to guide interpretation of its eight articles.

Article 1 defines the Code’s scope of application, specifying that the term ‘law enforcement officials’ embraces ‘all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention.’ This definition explicitly encompasses ‘military authorities’ and ‘State security forces’ that exercise such powers.

Article 3 of the UN Code presents the fundamental principles that, as discussed below, underlie more specific rules governing the use of force and firearms by police, namely necessity and proportionality: ‘Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.’ The Commentary to the article specifies that such force ‘should be exceptional’ and ‘[i]n no case ... disproportionate to the legitimate objective to be achieved’ (paras a–b). The Commentary adds, in paragraph (c):

The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

While this chapter reviews a wide range of standards governing the use of force and firearms by state agents exercising a policing function,² it will focus mainly on the most specific formulation of norms in this area, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted in September 1990 (UN, 1990). Although this instrument is not legally binding, many of the Basic Principles reflect states’ existing obligations under international human rights law in the law enforcement context.

Basic Principles 4 and 5 articulate the fundamental considerations that apply to the use of force and firearms by police. Basic Principle 4 specifies that any such use must be a last resort. Police ‘may use force and firearms only if

other means remain ineffective or without any promise of achieving the intended result.’ Basic Principle 5 stipulates that any use of force or firearms must be restrained and proportionate to the seriousness of the offence and the objective being pursued by the police officer (para. a). Law enforcement officials must minimize any harm arising from their use of force or firearms (para. b). They also have a duty of care to any injured or affected persons, extending necessary medical assistance (para. c) and notifying close friends and relatives (para. d).

Basic Principle 9 builds on the principles of necessity and proportionality articulated in Basic Principles 4 and 5 (and in the 1979 *UN Code of Conduct*), specifying that law enforcement officials ‘shall not use firearms against persons’ except in the following circumstances, and then ‘only when less extreme means are insufficient to achieve these objectives’:

- in self-defence or defence of others against the imminent threat of death or serious injury;
- to prevent the perpetration of a particularly serious crime involving a grave threat to life;
- to arrest a person presenting such a danger and resisting the police officer’s authority, or to prevent his or her escape.

Basic Principle 9 also stipulates that, ‘[i]n any event, intentional *lethal* use of firearms may only be made when strictly unavoidable in order to protect life’ (emphasis added).

According to Basic Principle 10, ‘law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed,’ unless the particular circumstances dictate otherwise.

Guidelines listed in Basic Principle 11 are intended to underpin national rules and regulations governing the use of firearms by law enforcement officials.

In order to meet these standards, Basic Principle 19 states that ‘[t]hose law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.’ Standards for such training are set out in Basic Principle 20.

Basic Principle 2 also calls upon governments and law enforcement agencies to ‘develop a range of means as broad as possible ... that would allow for a differentiated use of force and firearms’. Basic Principles 13 and 14 set strict limits to the use of force and firearms by police in dispersing unlawful assemblies, even when these are violent. Many of these specific issues are discussed below.

NATIONAL REGULATION

Police have the difficult task of preventing, combating, and investigating crime, maintaining public order, and protecting the population within their jurisdiction. These men and women have a direct interest in clear rules for the use of force—particularly lethal force—when apprehending violent suspects or otherwise protecting the public.

States, in other words, need to set out the basis of legitimate force in national legislation and more specific operational guidance for police. Basic Principle 11 indicates that such rules should:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage, and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty. (UN, 1990)

Legal frameworks

The levels of force that police can use in the performance of their duties are generally defined both administratively and by statute. National courts also play an important role in interpreting, and in some cases establishing, these rules. These may (or may not) reflect relevant international norms, such as those found in the *UN Code of Conduct*, the *UN Basic Principles*, and the ICCPR.



A Manila police officer disperses two opposing political factions in the Philippines in May 1998.

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Although most countries have ratified the ICCPR, about one-quarter have not.³ Moreover, the laws and regulations of states that have ratified the treaty do not always mirror its provisions. The *UN Code of Conduct* and *UN Basic Principles* are also imperfectly and partially reflected in national legislation around the world.

For example, in July 2003, the UN Human Rights Committee, which monitors state compliance with the ICCPR, noted with concern that Portuguese regulations on the use of firearms by police were not compatible with the *UN Basic Principles*. This discrepancy was reported to have been a factor in a series of lethal shooting incidents involving the Portuguese police. The Committee asked the government to ensure that Basic Principles 9, 14, and 16 were

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'fully integrated into Portuguese law and implemented in practice, and that adequate training [was] effectively conducted' (UN, Human Rights Committee, 2003).

The UN reported in 1998 that written standards for training and the use of force were generally high among police departments in the United States. These appeared to reflect relevant international standards, including the *UN Code of Conduct* and *UN Basic Principles*, 'despite the fact that there [was] little, if any, awareness of the existence of these international standards' (UN, Commission on Human Rights, 1998, para. 130).

Many developing countries inherited their policing structures from the colonial era. Laws and practices on the use of force by police in many African, Asian, and Caribbean countries derive from quasi-militaristic approaches to policing developed by the British in Ireland and subsequently Northern Ireland. French, Portuguese, and Spanish traditions of gendarme policing were similarly imposed on former colonies.

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For example, the traditions of 19th-century British-run constabulary policing in Ireland were exported to South Africa after the Anglo-Boer War, so shaping the militaristic South African Police Service for most of the 20th century (Brogden, 1985). Similarly repressive models of colonial internal security influenced professional policing in El Salvador, Guatemala, and Haiti (Neild, 1995; 2001).

Some regional agreements on police use of force and firearms are still drafted in a way that permits national laws and practices to fall below international standards. For example, in July 2001 the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) adopted a *Code of Conduct for Police Officials* as a 'minimum standard for police forces/services in the region' (SARPCCO, 2001). While the Code contains many essential policing standards in line with UN human rights instruments, it does not specifically refer to the use of firearms or the *UN Basic Principles*. Article 3 regarding the 'Use of Force' is formulated in broad terms, leaving the development of specific guidelines to national authorities.⁴ These may or may not be consistent with international standards.

Several of the national police agencies covered by this Code, such as those in Zimbabwe and Swaziland, have reportedly used firearms to commit human rights violations, while at least three governments in southern Africa retain laws that allow impunity for such violations.⁵ Other countries, such as Malawi, have yet to upgrade colonial-era policing legislation to incorporate the *UN Basic Principles* and other international standards concerning police use of firearms.

Self-defence

Several fundamental principles underpin and inform almost all national legislation governing the use of force and firearms by law enforcement officials. These are also reflected in the international instruments and standards described in the preceding section. The first of these principles is self-defence. UN Basic Principle 9 restricts the police use of firearms to situations that include 'self-defence or defence of others against the imminent threat of death or serious injury' (UN, 1990). This concept is very similar to that of 'risk of serious physical harm or loss of life', codified in US law after the US Supreme Court, in a 1985 ruling, set narrow limits to the use of deadly force by police.⁶ For example, current rules in Cincinnati, Ohio, stipulate:

Respect for human life requires that police officers exhaust all other reasonable means before resorting to the use of firearms and then only when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from the risk of serious physical harm or loss of life. (Cincinnati Police Department, 2003)

Other US police departments have similar rules.⁷ In fact, the principle of self-defence is universally established, as noted by South Africa's Constitutional Court:

Self-defence is recognised by all legal systems. Where a choice has to be made between the lives of two or more people, the life of the innocent is given preference over the life of the aggressor ... To deny the innocent person the right to act in self-defence would deny to that individual his or her right to life.⁸

Although the approach to self-defence varies between countries, there appears to be near universal agreement that a police officer has a legal right to use lethal force to stop an aggressor who poses a direct and immediate threat to the life of the officer or another person, if necessary under the circumstances.

Courts in Canada, Germany, and the UK have reached conclusions that are very similar to those of the US Supreme Court. In each country, the degree of force police can use in making an arrest is determined not only by the seriousness of the offence, but also by the threat or danger posed by the suspect to the police or to others in society.⁹

Necessity and proportionality

Necessity and proportionality underpin national rules for the use of force and firearms by police.

Two further principles underpin national rules for the use of force and firearms by police: necessity and proportionality. French law requires that any use of force be proportionate to the severity of the threat or attack. Pursuant to Article 9 of the *Code of Professional Ethics of the French National Police*, '[w]hen lawfully authorized to use force and, in particular, to use weapons, the police officer must only do so when strictly necessary and in proportion to the objective to be achieved.'¹⁰ The rules governing the use of weapons by police derive from Article 122-5 of the French penal code concerning the broader right of self-defence.¹¹

All States Parties to the European Convention on Human Rights (Council of Europe, 1950), including France, Germany, and the UK, are bound by the Convention's Article 2, which articulates many of the principles already discussed, in particular necessity:

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

The Article 2 requirement of 'absolute necessity' involves a stricter application of the proportionality principle than one finds in other parts of the Convention. The relevant use of force must not be merely 'reasonable', it must be 'absolutely necessary'.

Pursuant to South Australia's *Police Issue 3375*, resort to the use of a firearm must only occur when the police officer 'believes on reasonable grounds such use is necessary to protect life or prevent serious injury and only then when satisfied no other means are available' (Sarre, 1993).

Notions of what is 'necessary' and 'proportional' in this regard have evolved over time. Under old British common law, a 'fleeing felon' could be killed, but this approach dates back to the period, centuries ago, when almost all

felonies were punishable by death. Prior to the 1985 US Supreme Court decision described above, most of the 50 US states had laws approving the so-called ‘any-felony’ policy, allowing police to use firearms, or other means of deadly force, to arrest persons suspected of committing any felony. Some states allowed police officers to shoot fleeing persons, including those suspected of such property offences as cheque forgery and auto theft. Other states had somewhat more restrictive rules, limiting the use of deadly force to persons suspected of having committed ‘forcible’ felonies, such as a robbery. About 12 states had no statute at all on the use of deadly force by police.¹²

Common law states have now distanced themselves from the old ‘fleeing felon’ rule. The relevant felony must be punishable by life imprisonment and police must have no other means of apprehending a suspect before they can use force or firearms.¹³

Box 7.1 Replacing apartheid-era legislation in South Africa

Under apartheid-era legislation, police in South Africa were allowed to shoot suspected thieves, drug dealers, and other offenders posing no direct threat to the life of the officer or the public (Hartley, 2002).¹⁴ The central provision at issue was Section 49 of the Criminal Procedure Act of 1977.

In November 1998, the South African Parliament adopted a revised draft Section 49 to bring the rules governing the use of force by police into line with South Africa’s new Constitution and international human rights law (South Africa, Parliament, 1998). With backing from the Minister of Safety and Security and the Vice President, however, the South African Police Service (SAPS) won a delay in the implementation of the new law in order to allow police to be retrained in its requirements. In 1997 and 2002, the SAPS issued interim orders that significantly tightened the rules governing officers’ use of firearms. The SAPS claimed, in early 2004, that its firearms training had largely been brought into compliance with the standards contained in the 1998 amendment,¹⁵ although this assertion was questioned by a leading expert.¹⁶

The South African government finally put the 1998 legal amendment into effect in July 2003. The new law allows police to use lethal force where there are reasonable grounds to believe that a person presents a danger of ‘future death or grievous bodily harm’. While this is a considerable improvement on the apartheid-era legislation, the new law’s use of the term ‘future’ is at odds with the requirement of an ‘imminent threat of death or serious injury’ contained in the *UN Basic Principles* (UN, 1990, Basic Principle 9, emphasis added).

A critical issue for the regulation of police firearm use—but which the *UN Basic Principles* do not address—is whether police officers should be allowed or encouraged to fire warning shots. In South Africa, under the post-apartheid Constitution, the government issued a directive requiring that police officers only use potentially deadly force after ‘a warning and/or a warning shot’. Police in countries such as the UK, and some states and counties in the United States, no longer use warning shots because of the danger they may pose to innocent bystanders.

For instance, police in Houston are told, ‘Never fire warning shots.’ Rule 8 of the Police Firearms Policy prohibits Houston police officers from ‘drawing or otherwise displaying their firearms without probable cause to believe there is a threat to the officers’ life or safety.’ The reason for this is that ‘drawing or displaying a firearm can limit officers’ alternatives in controlling situations, as well as create unnecessary anxiety on the part of citizens and result in unwarranted or accidental discharges’ (Houston Police Department, 1984, ‘Use of Firearms’, Rule 8).

While the Cincinnati Police Rules and Regulations do not prohibit warning shots, they stipulate: ‘Officers should only use warning shots if convinced a warning shot will possibly save a life or alleviate the need of taking a life. As with any shot an officer fires, the officer must know it will not endanger innocent bystanders’ (Cincinnati Police Department, 2003).

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STATES OF EMERGENCY

Human rights are often compromised during states of emergency.

UN Basic Principle 8 stipulates that '[e]xceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles' (UN, 1990). There are strict limits to the kinds of restrictions that may be imposed in a state of emergency. Some rights are so fundamental they may never be suspended, even during a state of emergency. These include the right to life, the right not to be tortured or subjected to cruel, inhuman, or degrading treatment or punishment, and the right to freedom of thought, conscience, and religion.¹⁷

In practice, however, human rights are often compromised during states of emergency. Violations of the rights to life and freedom from torture frequently occur when police and other security forces are authorized to maintain public order in the absence of safeguards designed to uphold these rights.

The People's Republic of China has adopted martial and anti-terrorism laws that give wide powers to the security forces and enable the excessive use of force by armed police (see Box 7.2).

Box 7.2 China's martial and anti-terrorism laws

A new *Martial Law of the People's Republic of China*, promulgated on 1 March 1996 by the Standing Committee of the National People's Congress, reportedly allows martial law enforcement personnel to use 'guns and other weapons ... if police instruments prove to be of no avail' in various situations where violence occurs or there is a threat of violence. These rules apply, for example, if a person who is detained or transported under escort commits a physical assault or 'attempts to get away'. Significantly, the law sets no limit on the amount of force to be used in such situations (AI, 1997). The *Martial Law* has been applied in the Tibet Autonomous Region, the Inner Mongolia Autonomous Region, and the Xinjiang Uighur Autonomous Region (XUAR).

At the end of December 2001, China amended the provisions of its criminal law for the stated purpose of making more explicit certain existing punishments for 'terrorist' crimes. It appears that the new law nevertheless creates considerable uncertainty about what conduct is prohibited and how it will be punished. Several of its articles are vaguely worded, the terms 'terrorism', 'terrorist organization', and 'terrorist crime' are not defined despite being used in several places, and no maximum punishment is specified for some offences (HRW, 2003b).

This law has since been applied in the context of the Chinese government's current campaign against 'separatist, terrorist and religious extremist forces' in XUAR, with hundreds of armed police units mobilized for this purpose (AI, 2002d).

Policing practices also appear to have fallen short of international standards in Israel, where a state of emergency has been in force since 1948. Numerous human rights groups have reported that in policing the demonstrations of September–October 2000, in Israel proper and the Occupied Territories, Israeli security forces tended to use military methods rather than more appropriate policing methods. Although Palestinian demonstrators, many of whom were younger than 18 years old, threw stones, and occasionally petrol bombs, at Israeli security forces, these posed little or no threat to the Israelis who occupied secure positions and were well-protected. Nevertheless, Israeli security forces frequently responded with lethal weaponry, including rubber or plastic-coated metal bullets and live ammunition.¹⁸

DIFFERENTIATED USE OF FORCE

The *UN Basic Principles* stress the need for police to be given the means to perform their various law enforcement functions without having to resort to the use of potentially lethal force.

Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind. (UN, 1990, Basic Principle 2)

In the same spirit, Basic Principle 3 stipulates:

The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

Basic Principle 11 requires governments to '[p]rohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk'. This prohibition, applicable in peacetime, is distinct from the similar wartime prohibition, under international humanitarian law, of the use of military weapons that are inherently indiscriminate in nature or cause unnecessary suffering.

Regardless of whether they include equipment allowing for the non-lethal use of coercion, police holdings of small arms vary enormously between countries with similar characteristics, and sometimes within the same country. Depending on their roles, different units or forces may possess very different types of equipment. Security forces in many developing countries, especially those affected by civil war, often use powerful assault rifles for policing in non-conflict situations, posing an increased risk of excessive force.

A threshold question is whether police are issued firearms as regular equipment. Norway and the UK are two of the few countries around the world with a largely unarmed police force. Firearms and other powerful weapons are stored at police armouries or in patrol cars and may be used in self-defence or in case of need with the permission of a police commissioner. The tendency, however, is to rely on the rapid deployment of specialist firearms officers. In contrast, Swedish police officers carry handguns whenever they are in uniform.

In order to determine whether this difference in police access to guns affects the number of shootings, a recent study compared data from Norway and Sweden from 1985 to 1999. The study examined all reported incidents of firearms use by on-duty police officers. While about 450 shooting incidents occurred in Sweden, with 15 people killed by police officer's fire, in Norway there were only around 50 such incidents and 4 persons killed. Given that Sweden has about twice Norway's population, and that the two countries share many social characteristics, the study suggests that police shootings and killings increase where police have regular access to firearms (Knutsson and Strype, 2000). More research is needed, however, before any firm conclusions can be reached on this question.

Since rubber bullets were first used against crowds in 1970 by UK forces in Northern Ireland, security forces around the world have used them as a form of riot control considered 'less lethal' than regular firearm munitions.

Box 7.3 UK police weapons¹⁹

UK police forces hold 9mm pistols (Browning and SIG Sauer), revolvers (Smith & Wesson), and 9mm semi-automatic carbines ('short rifles', including the Heckler & Koch MP5), as well as a few 'specialist munitions' such as high-velocity sniper rifles, shotguns, and 'less lethal' weapons such as baton guns. The 9mm pistols and revolvers are usually accurate over a range of 50m, although the rounds can cause serious injury at distances up to 500m, while the MP5s can be accurate over 200m. Sniper rifles are normally used over a 200m to 500m range, though some models are accurate and lethal at distances up to 1km. Fully automatic rifles are not issued to UK police as they pose an unwarranted risk to the public. A burst of fire from these weapons—containing multiple rounds and travelling 2 to 3km—can be especially dangerous in densely populated areas.

The type of weapon to be used in a specific operation is determined by taking a series of factors into consideration:

- ▶ the type of situation or threat
- ▶ the level of force needed to meet the threat
- ▶ the likely distance between the police officers and the source of the threat (affecting the time police have to react to a developing threat)
- ▶ the weapon(s) used by the source of the threat
- ▶ the operational environment (e.g. extent of cover, room for manoeuvre)
- ▶ the training and experience of the armed firearms officers involved.

At shorter ranges, revolvers, self-loading pistols, and carbines firing handgun ammunition may be appropriate. At greater distances, rifles and carbines using rifle ammunition may be more suitable.

Armed officers also have a range of munitions that can be used when carrying out specific tasks. 'Specialist munitions' include shotgun CS gas (tear gas) rounds, baton rounds, exploding distraction devices, and shotgun breaching rounds. Specialist munitions have the potential to cause injury, including fatal injury, even when used correctly, with secondary fragments posing a particular danger. Police officers handling or using such munitions are therefore given special training in their characteristics and proper use.

UK police use the term 'less lethal options' to refer to weapons, devices, and tactics that are intended to induce compliance by a subject without posing a substantial risk of serious or permanent injury or death to that person. The aim, in other words, is to control and then neutralize a threat without resorting to lethal force (though the actual outcome may, on occasion, be lethal). These 'less lethal options' are also designed to minimize the risk of unwarranted injury and any treatment that could be considered torture or cruel, inhuman, or degrading treatment or punishment.²⁰ The development of 'less lethal options' requires ongoing research. In the UK, this work is being conducted by the Police Scientific Development Branch.

Both, the Israeli police and the Israeli Defence Forces, which exercise a policing function in the Occupied Territories, use rubber bullets. These can be lethal if used at short range and cause great trauma if fired at the head, for example. In May 2002, a group of doctors based in hospitals in Israel published the results of a study examining injuries from rubber bullets sustained by 152 Arab citizens of Israel during riots in early October 2000, at the start of the second Palestinian intifada (Mahajna *et al.*, 2002). The authors examined 201 injuries, and identified the effects of two types of rubber bullet fired by Israeli police, both manufactured by TAAS (Israel Military Industries):

Rubber bullets
and plastic baton
rounds are
controversial
'less lethal'
munitions.

- RCC-95, a 'blunt cylindrical missile composed of three metal cores that are coated by a hard rubber shell 0.2cm thick with a diameter of 1.8cm. The bullet is mounted in a special canister that fits on the muzzle of a US-manufactured M-16 assault rifle ... The missile dissociates into its three components after shooting'.
- MA/RA 88, composed of '15 rubber balls with a metal core, each weighing 17g ... When fired, the bullets form a circle with a diameter of 7m at a range of 50m'.

Three of the people in the doctors' study died: two from injuries sustained when rubber bullets entered their brains through an eye; one from post-operative complications. The doctors categorized 71 of the 201 injuries as 'moderately severe' and 38 as 'severe'. They recovered RCC-95 bullets from all of the severe injuries and most of the moderately severe.

This type of inaccurate ammunition—one missile that breaks into three components immediately after firing—and the resulting ricochets evidently make it difficult or impossible to avoid severe injuries to vulnerable body regions such as the head, neck and upper torso, leading to substantial mortality, morbidity, and disability. (Mahajna *et al.*, 2002)

Plastic baton rounds (PBRs) are another controversial 'less lethal option'. Their use by British police in Northern Ireland has resulted in several deaths and injuries, prompting calls for their withdrawal. PBRs are held by a number of police departments worldwide. The Patten Commission on policing reform in Northern Ireland recommended that '[t]heir use should be confined to the smallest necessary number of specially trained officers, who should be trained to think of the weapon in the same way as they would think of a firearm, that is as a weapon which is potentially lethal' (Patten Commission, 1999, para. 9.17).

Many alternatives to firearms were considered to be inappropriate by the UK Home Office, but even products approved for police use have attracted criticism. For example, a 1999 report by the UK Police Complaints Authority indicated that, in contravention of relevant guidelines, CS (tear) gas had not been used in self-defence in 40 per cent of the 135 cases it had reviewed (AI, 2001c).

While the use of 'less lethal' weapons by police is intended to reduce police



A British police officer demonstrates a baton gun in August 2002 in Essex, England.

use of firearms, it is unclear whether this is the result. The US-based International Association of Chiefs of Police (IACP) has established a National Police Use of Force Database in an attempt to record the most common types of force used by US police. In 1999–2000, the IACP reported that physical force was the most common type of force used by US police officers, followed by the use of chemical sprays, kinetic impact force (batons), and firearms. During the same period, US police use of chemical force—primarily products using Oleoresin Capsicum (OC), the principal ingredient of pepper spray—exceeded the combined total for electronic (stun guns, taser guns), impact, and firearm force. The IACP argues that as US police have increased their use of chemical force, they have decreased their use of firearms, but this finding is based on reporting from a relatively small number of (mostly municipal) police forces nationwide (IACP, 2001, pp. ii, 9–10).²¹

Although US-produced OC spray has been promoted as a safer, more effective alternative to other chemical agents, there is some concern about its health risks. Since the early 1990s, more than 100 people are reported to have died in custody in the United States after being exposed to OC spray. While other causes, such as drug intoxication or positional asphyxia, have been blamed for most of these deaths, OC spray appears to have contributed to some of them (AI, 2003h, p. 65).

A differentiated range of police equipment with which to apply appropriate minimal force in varying circumstances, as required by the *UN Basic Principles*, is chronically lacking in most developing countries. Police in developing countries

usually have to choose between using, or threatening to use, their own bodily strength, handcuffs, a baton or stick, tear gas canisters, or a firearm. This may seem sufficient, but use of force experts argue that police officers need a suitable, non-lethal instrument 'that provides sufficient stand off so that they can outrange a rock thrown by a strong teenager' (Alexander, 2002, p 17).

In Malawi, for example, district police stations, in 2001, still had little elementary equipment, such as adequate protective clothing or means of force other than hands and guns. This problem was compounded by an absence of vehicles, radios, telephones, stationery, and other means needed to organize and record police responses (Wood, 2001).

Clearly, the ability of police forces to meet international standards, such as those spelled out in the *UN Basic Principles*, depends in large measure on the availability of financial and other resources. Equipping police officers with a range of appropriate 'less-than-lethal' means of coercion and rigorously training them in the use of these instruments can be costly. Yet even less developed societies with minimal resources can develop effective policing practices consistent with international standards, given committed police leadership and reasonably good governance and accountability. For example, certain community-based policing initiatives in Botswana, Malawi, and South Africa have seen local communities and police successfully cooperate in the development and implementation of crime reduction plans (AI, 2002f).

SELECTION AND TRAINING

The careful selection and rigorous training of police officers is essential in limiting police misuse of firearms. UN Basic Principle 18 requires governments and law enforcement agencies to:

ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review. (UN, 1990)

Pursuant to Basic Principle 19:

Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

Basic Principle 20 stipulates that such training should emphasize 'issues of police ethics and human rights, especially in the investigative process' and 'alternatives to the use of force and firearms, including the peaceful settlements of conflicts, the understanding of crowd behaviour, and ... methods of persuasion, negotiation and mediation'. Basic Principle 20 also calls on law enforcement agencies to 'review their training programmes and operational procedures in the light of particular incidents.'

Other human rights instruments also underline the importance of police training. For example, the third UN *Principle on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* states:

Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out ... extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions. (UNECOSOC, 1989)

Training is essential in limiting police misuse of firearms.



An FBI agent instructs a police officer on appropriate firearm use in threatening situations at an international academy in Hungary.

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In many countries, however, relatively little attention is given to the development of police training courses. The translation of international standards into practical instruction is often neglected in favour of technical competence. As a result, while police officers become adept at operating and cleaning their weapons and hitting targets, they are unable to properly assess threat levels and the correct level of force needed in actual incidents. Nor are they taught how to carry out an armed operation with minimum risk.

In the Philippine city of Cebu, 194 of 300 policemen who took a firearms proficiency test reportedly failed (Taghoy, 2003). These officers were required to undergo retraining, and even threatened with dismissal if they did not improve their performance. This training, however, was based solely on shooting accuracy.

In contrast, an effort has been made to provide practical guidance to French police concerning when to use firearms. The principle of proportionality between the means of defence and the seriousness of the threat is explained in the French police training manual:

If there is the slightest possibility of the police officer avoiding, without serious consequences for himself or others ... an unjustified attack ... he must opt for that solution rather than use his weapon. For example, if a vehicle is driven intentionally at the officer and he has the time and is physically able to move aside ... he should do so rather than use his weapon. Once the vehicle has passed, the criteria for self-defence no longer existing, the use of the weapon by the officer is forbidden.²²

Many police institutions with colonial roots continue to emphasize more militaristic modes of police training, such as drill and armaments training. Policing institutions in these countries also tend to stress hierarchy and military-type discipline, as opposed to the high level of discretion associated with modern, professional policing. In Indonesia, efforts are now underway to wean the national police force off Suharto-era militarism (see Box 7.4).

Box 7.4 Police training in Indonesia

Following the end of General Suharto's regime in 1998 and the independence of East Timor in 1999, Indonesia's political leaders moved to create a national police force that would take over responsibility for regular law enforcement from the army. During 1999-2001, the national police corps was separated from the Indonesian armed forces and placed under civilian authority.

Training facilities for the new Indonesian National Police were, however, apparently very modest, consisting largely of benches with blackboards and chalk. Training materials and practices at the country's main police college were strongly militaristic in tone, reinforcing 'a trigger-happy approach to the use of force'. New police recruits were given target practice, but no operational training reflecting the requirements of the *UN Basic Principles*.²³

International observers reported that the whole notion of training in the Indonesian police was poorly regarded. New recruits to the police had often failed to get into the military, which was seen as a more prestigious profession. Consequently, they paid to enter police college, paid for exam papers, and then for postings and promotions. Trainers did not appear to make much money.²⁴

In recent years, international donors have directed their attention to the Indonesian police. Assistance programmes with a training component have been conducted by the Australian, Japanese, UK, and US governments, as well as the UN High Commissioner for Human Rights.²⁵

Resources for police training are often limited, especially in developing countries. For example, in Zamboanga City, in the Philippines, private gun club members rather than professional firearms officers were allowed to train police because of a lack of public funds. The programme focused on proficiency in hitting targets, as well as firearms handling and safety (*Minda News*, 2003).

Countries with adequate resources do not necessarily have better police training, yet many of the better programmes are in fact found in the developed world. Some police organizations in the North instruct officers in tactics that are useful in averting violence where confrontation is necessary. Several police departments in the United States have developed 'officer survival', 'hostage negotiation', conflict resolution, and verbal skills courses. These have been credited with preventing physical conflict and saving the lives of officers and suspects alike (United States, Department of Justice, 2002).

Box 7.5 Firearms training for UK police²⁶

In most UK county police forces, roughly five per cent of trained police are 'authorised firearms officers'. These officers are increasingly trained in a sophisticated range of methods that are broadly compatible with the *UN Basic Principles*.

New firearms officer recruits are selected annually for initial training from a pool of officers who have already completed their two-year probationary period and, in addition, pass certain IQ, health, fitness, and psychological tests. The initial firearms training is very intensive. It takes place over a period of around two weeks, with recruits required to pass a number of additional proficiency tests relating to all aspects of the use of standard issue firearms. The essential elements of the training involve:

- ▶ *Technical and mechanical proficiency*, e.g. cleaning and maintaining guns so as to avoid misfires; the safe handling of weapons and ammunition;
- ▶ *Practical and tactical efficiency*, e.g. accurate multi-positional shooting; police firearms tactics;
- ▶ *Applied decision-making*, i.e. meeting the requirements of law, including human rights law, applicable in the UK (e.g. under what conditions can the weapon be aimed and the trigger pulled? How can effective warnings be given before shooting?)

Those who qualify as 'authorised firearms officers' are assigned to the crew of an 'armed response vehicle' where they are mentored and subjected to regular refresher training courses, varying in duration from one day to one week. Experienced firearms officers may graduate, via further higher-level training, to using specialist weapons, or eventually become firearms instructors and commanders of armed-response operations.

As civil society organizations become more involved in educating the public about policing and in monitoring certain police actions from a human rights or human security perspective, the need to familiarize civil society representatives in the basic concepts and provisions of the *UN Basic Principles* has become evident. With this goal in mind, NGOs and the Malawi Police Service jointly organized local workshops in 2000–02 to introduce civilian members of the country's many 'Community Policing Forums' to basic policing issues. In an effort to create mutual understanding and respect, the subjects taught included basic standards for the use of force by police and the need for communities to report suspected illegal firearms possession or use.²⁷

COMMUNITY LINKS

A positive, helpful, and dynamic relationship between the police and surrounding community greatly diminishes the prospect of the police using excessive force. In its resolution adopting the *UN Code of Conduct*, the UN General Assembly emphasized that law enforcement agencies 'should be representative of and responsive and accountable to the community as a whole' (UNGA, 1979a, para. a). Police selection, recruitment, and career structures often fall short of this standard, however, particularly with regard to women and ethnic minorities.

The UN *Declaration on the Elimination of Violence against Women* requests all states to '[t]ake measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women' (UNGA, 1993). UN standards that promote non-discrimination and protection from sexual harassment require police services to:

- ensure that female officers are able to submit complaints and recommendations on gender-related issues of concern to them;
- discourage gender-insensitive conversations and jokes; and
- review recruitment, hiring, training, and promotion policies to remove any gender bias. (UN, OHCHR, 2002b)

Institutional practice along such lines cannot be effectively organized without recruiting and training women police officers at all levels of command. Rather than mainstreaming female officers into all parts of the police service, however, some countries tend to deploy them to 'vulnerable persons units' or 'victim support units', which specialize in domestic violence and child abuse. Such assignments do not take their skills or suitability for such work into consideration.



An armed Pakistani policewoman guards the venue of a forthcoming summit in Islamabad in January 2004.

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The extent to which ethnic minorities are represented in police forces is another key determinant of the police–community relationship. A 1998 report by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions states that:

Many [US] police departments are trying to have a more balanced ethnic representation among their personnel in an effort to make them more representative of the local population. The Special Rapporteur was informed that in Miami, 50 per cent of the police officers are Hispanic, 25 per cent are African American and 25 per cent white. ... Balancing the composition of police departments according to the ethnic distribution of the local population may also have a positive impact in reducing allegations of racial bias. (UN, Commission on Human Rights, 1998)

'Community-based policing', involving the cultivation of decentralized, co-operative, and consultative ties between police forces and the communities they serve, gradually emerged in the UK and United States in the 1970s and 1980s.²⁸ A 1999 report indicated that 75 per cent of police chiefs in a large, representative sample of US departments said they were relatively far along in implementing this 'new paradigm' (Parks *et al.*, 1999).

For example, beginning in the mid-1990s, the Boston Police Department launched a strategic planning process involving community stakeholders. Both supporters and critics of the department were asked to identify problems in their neighbourhoods and contribute to the development of crime-fighting strategies. City-wide surveys were conducted to assess levels of fear and gather recommendations for improved policing. In an effort to improve diversity, almost 300 new officers were added to the ranks of the force in 1994–99. Training for new recruits and serving officers emphasized the importance of respect and civility in police interactions with the public. The Boston police claim a decline in complaints of nearly 50 per cent against officers during this time.²⁹

Police in Maryland similarly contend that an emphasis on police courtesy in dealings with citizens improved public attitudes towards the force. This approach did not preclude 'aggressive enforcement', so long as the latter was backed up by intensive officer training.³⁰ Nevertheless, as discussed below, such changes occurred against a backdrop of federal government scrutiny.

The use of force and firearms can be reduced where the police pursue policies and practices that have the consent of the public—especially the poor, who are the most vulnerable, and often the most alienated from the police. Where partnerships with the public are developed in undemocratic or factional ways, however, poor and vulnerable groups may be excluded. Some partnership institutions have consequently fallen under the sway of powerful local groups and political associations which seek to influence these institutions (and ultimately the police) for their own ends. Preventing the exclusion or domination of particular groups or interests requires careful stakeholder analysis and the prudent development of partnership relationships.³¹

Where police forces have persistently used excessive or inappropriate force, especially with firearms, they have been slow to adopt community-based policing strategies. Senior police management and politicians have been afraid that such policing, while useful in terms of enhancing the public image of police forces, could undermine their effectiveness in combating crime. Despite some success in integrating community-based policing into training programmes, many forces have failed to understand that such an approach requires a radical change in police–public relationships. Frequently, the police have preferred to set the terms for public involvement, as opposed to negotiating these; and many projects have not secured the participation of all stakeholders.³²

The use of force and firearms can be reduced if the police pursue policies and practices that have the consent of the public.

Many police forces have been slow to fully integrate community-based policing into their policies and practices. Projects aimed at lessening dependence on force and firearms have failed to consider the needs and interests of those most vulnerable to crime and to develop full partnerships with these groups. Some new projects in South Africa show that, with relatively strong government, police, and public commitment, it is possible to build effective police–public partnership institutions and to begin to develop a different approach to policing. Yet, where vulnerable groups (the poor, ethnic groups, women) have been marginalized or excluded, such efforts have had minimal impact on crime rates or police dependence on firearms.

Two different cases, both in urban South Africa, illustrate this point.³³ Kwamashu township and surrounding area in Durban, with roughly one million residents, has been plagued by unemployment and high levels of violence for many years. Criminal gangs armed with firearms have become entrenched in this area. In the late 1990s, there were relatively few local police, and their equipment and training was quite poor. In 1999, the South African government began ‘Operation Ventilation’. This involved house-to-house sweeps by heavily armed police in armoured vehicles, from outside the township, but low levels of cooperation with existing local police. The result was that, by February 2000, very few firearms had been recovered, gang violence was just as pervasive, and police morale was very low.

In contrast, the Police Task Team sent in to Edendale township, in Pietermaritzburg, adopted a community-based policing strategy with an intelligence-led anti-firearms programme. Edendale, another large, low-income township, faced high levels of armed violence of a political nature during the late apartheid and immediate post-apartheid period, and now confronts increasing violence perpetrated by organized criminal gangs. The Police Task Team, formed in early 2000, was made up of highly trained officers from other parts of South Africa, as well as a significant number of local police officers trusted by the community. Consequently, the Task Team obtained extremely valuable information on the activities and whereabouts of the armed gangs, resulting in a high number of arrests.

As the leader of the Edendale Police Task Team recounted in 2002:

Apartheid policing broke down community trust of the state. Under the new democratic government, crime escalated—we saw running gun battles between gangs—until community-based policing took root. After four years, we have solved over 500 murder cases, recovered stolen vehicles and confiscated illegal weapons—AK-47s, handguns, shotguns, rifles and home-made pipe-guns. Police officers are responding rapidly to community reports, trying to avoid the use of firearms.³⁴

Another South African scheme points to the success of community-based approaches. Police and community leaders in Cator Manor, a former squatter camp in Durban, adopted a strategy very similar to that used in Edendale. This resulted in a significant reduction in armed and other violence by both community residents and police.³⁵

FIREARM STORAGE

UN Basic Principle 11(d) requires governments to develop guidelines that ‘[r]egulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them’ (UN, 1990). This provision is routinely ignored in many countries. For example, firearms and ammunition may be issued to police officers without adequate recording of gun and ammunition markings, or there may be no

International standards regarding the storage and record-keeping of police firearms are routinely ignored in many countries.

comprehensive system for reviewing the security and effectiveness of equipment, or any means of safely storing and guarding it. In 2003, an audit of firearms control laws in 12 of the countries belonging to the Southern African Development Community (SADC)³⁶ found that only Mauritius and South Africa had legislation providing for the control and management of state firearm stockpiles, notwithstanding widespread concern over leakages of state holdings (Cross, *et al.*, 2003).

Box 7.6 Failure to safeguard police weapons in the Solomon Islands

Armed conflict broke out in the Solomon Islands at the end of 1998, with native Guadalcanal men attacking a second group, originally from the island of Malaita, on the main island of Guadalcanal. Malaitans formed their own militia, the Malaita Eagle Force (MEF), and in January and June 2000 staged separate raids on police armouries on both Malaita and Guadalcanal islands, gaining possession of high-powered assault rifles.

The seizure of weapons from the armouries was principally the result of complicity between many members of the paramilitary police force and the MEF, but police advisers who subsequently visited the storage facilities indicated that their rudimentary nature had greatly facilitated the thefts. The Police Act contained no clear rules on the storage of weapons or indeed professional standards for the conduct of police. By mid-2000, the police service was effectively no longer functioning on the islands of Guadalcanal and Malaita, as MEF members had deprived it of almost all weapons, most vehicles, and equipment.

Not surprisingly, law and order had broken down, leaving the population vulnerable to the excesses of paramilitary groups and criminal opportunists. The Townsville Peace Agreement (TPA), signed in October 2000, established an International Peace Monitoring Team and local Peace Monitoring Council, and provided for the disarmament of combatants. The TPA brought about a cessation of overt violence, but serious law and order problems, including human rights violations, persisted. In mid-2003, an international peacekeeping force led by Australia was assisting with the implementation of the TPA.

PERSONS IN CUSTODY OR DETENTION

Rules for the use of force and firearms by law enforcement officials also apply after arrests have been made and convictions secured. UN Basic Principle 15 states that:

Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. (UN, 1990)

UN Basic Principle 16 specifies that these officials shall not use firearms against detainees 'except in self-defence or in the defence of others against the immediate threat of death or serious injury', or when strictly necessary to prevent the escape of a person in custody or detention who presents a grave threat to life.

The *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* are also relevant:

In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms (UNECOSOC, 1989, Principle 2).

Extrajudicial execution remains a problem in many parts of the world.

Extrajudicial execution remains a problem in many parts of the world. Mozambique is a case in point. In late 2001 and early 2002, there were allegations that police officers were removing detainees from their place of custody and extrajudicially executing them. Three detainees were reportedly shot by police in December 2001 (AI, 2002c).

In order to ensure that weapons do not fall into the hands of prisoners, current thinking argues against the carrying of firearms by staff, including police, in prisons. Officials who need to be armed should be well trained and have a clear understanding of the circumstances in which they may use their firearms (Coyle, 2002, p. 28). This approach is reflected in Rule 54(3) of the UN *Standard Minimum Rules for the Treatment of Prisoners*, which states:

Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use. (UNECOSOC, 1955)

This rule is even more stringent when applied to juvenile prisoners and detainees—i.e., those less than 18 years old. According to the *UN Rules for the Protection of Juveniles Deprived of their Liberty*, ‘The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained’ (UNGA, 1990, rule 65).



Police shoot at inmates during a raid at a prison in Guatemala in April 2003. One guard and three inmates were killed in the clash.

UK prison regulations are consistent with the *UN Basic Principles* in that they allow the lethal use of firearms only where there is an immediate and clearly perceived threat to human life. Thus, in the UK, an officer cannot use a firearm simply because a prisoner is escaping (Coyle, 2002, p. 28). The standards of many countries fall well short of the requirements found in the *UN Basic Principles*. A particular problem is the present lack of international standards governing the use of firearms during inmate insurrections. Such situations, involving a risk of serious harm to police, wardens, and other persons, also pose a threat of firearms misuse by security personnel. The *UN Basic Principles* relating to firearm use and policing of unlawful assemblies can, however, be applied in such situations to reduce the risk of abuses.

Box 7.7 Killings of prisoners in Brazil

In September 2002, Brazil's Carandiru prison complex was closed. The prison achieved widespread notoriety in October 1992, when members of the São Paulo military police killed 111 inmates following a riot at the prison.

Similar violence was averted in February 2001, when human rights observers and Brazilian politicians helped negotiate an end to a prisoner rebellion at 29 detention centres throughout São Paulo state. While 16 inmates died during the revolt, these deaths were mostly the result of prisoner-on-prisoner violence (AI, 2001b, 2002a, 2003a).

In early 2004, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions pointed to an apparent decline in deaths in custody in São Paulo and Rio de Janeiro state prisons in recent years, but she also noted that judicial or other enquiries into such deaths were, in general, 'superficially carried out' (UN, Commission on Human Rights, 2004).

POLITICAL MANIPULATION

State repression of fundamental political and civil rights usually involves the threat—though not necessarily the use—of deliberate and arbitrary force that contravenes the spirit of the *UN Code of Conduct* and the letter of such instruments as the *UN Basic Principles* and the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

The political manipulation of police or other public security forces will often involve the use of force and firearms for the express purpose of suppressing political opposition. For example, the Government of Zimbabwe has reportedly used youth militia, sometimes armed, to attack and even kill actual or perceived opposition supporters. These militia have seized control of some rural areas, denying access to the political opposition, especially during elections (AI, 2002e).³⁷ Under Zimbabwe's Public Order and Security Act, police have also been granted the power to restrict the movement of anyone above the age of 16 if they are unable to produce their identity documents. Police can easily misuse this provision to intimidate and discourage people from attending political gatherings and rallies (AI, 2003d).

In some countries, the use of excessive force by armed police at the behest of political authorities may be primarily intended as a public demonstration of unrestrained state power. Police can also be used to uphold the rule of authoritarian regimes (rather than the rule of law) under the guise of 'fighting violent crime'. Militaristic policing methods involving flagrant violations of international standards may, in fact, have political aims, though they are presented as a response to citizens' concerns over violence and crime. Moreover, the boundaries between politics and crime

Box 7.8 Crackdown on drug dealers in Thailand

On 28 January 2003, the Prime Minister of Thailand, Thaksin Shinawatra, announced the government was launching a three-month 'war on drugs'. Yet this campaign was soon criticized as 'a de facto shoot-to-kill policy of anyone believed to be involved in the drugs trade' (AI, 2003b). By 24 April, more than 2,270 alleged drug criminals had reportedly been killed since the start of the crackdown on 1 February. According to Thai police sources, 51 of these had been killed by police in self-defence, with the rest dying in battles among dealers. More than 50,000 suspected drug traffickers had been arrested (Adams, 2003).

International observers, including Amnesty International, the Asian Legal Resource Centre, and Human Rights Watch (HRW), rejected government claims that drug dealers were killing each other. They attributed the high number of casualties to a combination of financial incentives and government pressure on police to 'produce results' (AI, 2003b). In their view, disregard for the lives of alleged drug traffickers had also been fostered by incendiary remarks made by high-ranking government officials, including the Prime Minister. Subsequent investigation of the shooting incidents was widely perceived as inadequate, with active obstruction by the authorities reported in certain cases (Adams, 2003; AI, 2003g; Asian Legal Resource Centre, 2003).

may be deliberately blurred. One study of crime in transitional societies noted: 'Generally, ... police in authoritarian regimes made an effort to control some aspects of criminal behaviour, although in most cases there was an overlap between what constituted a crime and what was the stuff of politics' (Shaw, 2002, p. 27).

CORRUPTION AND CRIMINALITY

Police corruption and criminality can have a major impact on the control and use of firearms. Article 7 of the *UN Code of Conduct* requires law enforcement officials to 'rigorously oppose and combat' corruption, while paragraph (a) of the Commentary to this Article calls for the full enforcement of the law regarding any official who commits an act of corruption (UNGA, 1979b). UN Basic Principle 1 requires governments to 'keep the ethical issues associated with the use of force and firearms constantly under review' (UN, 1990). This is not mere rhetoric. The rule of law, which rests on impartial and accountable policing, can be fatally undermined where police institutions are riddled with corruption.³⁸

Corruption among low-ranking police officers can sometimes directly undermine efforts to control access to and use of firearms. For example, in northern Kenya, an inadequate state presence has led to the arming of local pastoral communities through the 'home guard' system or as Kenya Police Reservists (KPR). In some districts, the 'home guards' or KPR act on behalf of powerful individuals. The KPR often become alternative sources of small arms supply, compounding the problem of insecurity. In recent years, some of the KPR have themselves become involved in banditry and arms trafficking at the local level (HRW, 2002; Khadiagala, 2003).

Arguably, where police officers are deeply involved in organized crime, they will be more inclined to resort to the use of lethal force to protect their interests. This appears to be the case in Indonesia, where an international environmental group has implicated both police and military in illegal logging activities (EIA and Telapak, 2003). Armed police have allegedly tortured and arbitrarily arrested individuals they accuse of carrying out attacks on logging companies. In 2001, 27 people arrested during such operations claimed they were tortured; they were given jail terms after unfair trials. As of the end of 2002, no investigation had been carried out into their allegations (AI, 2003a).

Death squads with links to police reportedly operate in several parts of Brazil. In many cases, these groups are involved in organized criminal activity, including drug trafficking and extortion. In the coastal state of Espírito Santo, for example, death squads are said to have penetrated all branches of the state government. While several investigations have been carried out on these groups over the past decade, their impact has been limited to date. In March 2003, a judge who was presiding over several cases against members of one squad was murdered. He had received repeated threats against his life (UN, Commission on Human Rights, 2004, paras 42–7).

Corruption among low-ranking police officers can undermine efforts to control access to and use of firearms.

CROWD CONTROL

Demonstrations, especially violent ones, pose a formidable challenge to police forces around the world. On the one hand, police are asked to confront specific threats to life, limb, and property; on the other hand, they must limit their use of force and firearms to what is strictly necessary and proportional in the circumstances.



A lesson in crowd control: Czech police officers in riot gear train in August 2000.

© Sean Gallup/Newsweek/Getty Images

UN Basic Principle 13 requires law enforcement officials who are dispersing unlawful, but non-violent, assemblies to avoid the use of force. If force needs to be used, for example, to secure the safety of others, they are to use the minimum amount of force necessary (UN, 1990). According to Basic Principle 14, '[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means

are not practicable and only to the minimum extent necessary.' Basic Principle 14 specifies that any use of firearms in these circumstances is governed by the general principles examined earlier. Police officers can therefore use firearms to defend themselves, demonstrators, or members of the public 'against the imminent threat of death or serious injury' (Basic Principle 9). But they cannot use firearms for the sole purpose of dispersing an unlawful assembly, even where violent (Basic Principle 14).

This rule can be difficult to apply in extreme circumstances, where the actions of a group of individuals may, as a group, pose an imminent threat to life, but police cannot distinguish between those who pose the threat and those who do not. A few examples serve to show the range of contexts in which police have resorted to firearms to control (sometimes violent) crowds and the varying responses by governments to these events.

Police in Mauritius were accused of using excessive force in response to demonstrations that followed the death in custody of a well-known singer in February 1999. Three people were shot dead, at least one by the police, with many others injured. The resulting government inquiry criticized police handling of the protests (AI, 2002f).

Box 7.9 Crowd control in Belize

The Belize government and police have conducted several investigations of disputed police shootings in recent years, including in situations involving crowd control. In November 2002, for example, the Solicitor General reviewed a case of alleged excessive use of force by police during a demonstration by civilians from the Cayo District of Belize. On 24 April 2002, 200–250 demonstrators, including schoolchildren in uniform, assembled to protest against fare increases imposed by bus operators.³⁹ The demonstration was authorized, but apparently took place after the agreed time. A section of the crowd demanded that police allow them to march to one of the bus companies, but the police refused, citing the stoning of the company's premises on 19 April. The refusal prompted some 100 demonstrators to throw stones, bottles, and sticks at the police, inflicting minor injuries on 29 police officers. According to the police version of events, officers then fired warning shots into the air. Nevertheless, a 15-year-old student was reportedly shot in the chest, and another in the leg. In addition, three other demonstrators were severely beaten. Police or friends took the injured to nearby hospitals, and some civilians were arrested and charged. As of mid-2003, this incident was still being reviewed by the Solicitor General.⁴⁰

A highly controversial aspect of public order policing in Northern Ireland has been the use of plastic baton rounds in place of regular ammunition. PBRs were introduced into the UK police service in the 1970s, replacing rubber bullets. The Patten Report (1999) indicated that a total of 41,657 PBRs had been discharged by police and 14,572 by the UK

army in Northern Ireland since 1981. Eleven deaths and 615 injuries were attributed to PBRs during this period, with the last death occurring in 1989 (Patten Commission, 1999, p. 54).

PBRs are also held by police services in mainland Britain, as well as Canada and the United States. Rather than being employed in public order policing, however, they are used against individuals posing a threat of death or serious injury to police or others—as in many hostage-taking incidents. Their utilization against rioters in Northern Ireland can be explained by the rioters' use of petrol bombs, blast bombs, and firearms against police. Crowd control methods requiring close proximity between police and rioters, such as baton charges or the use of mounted police, are ineffective in such situations (Patten Commission, 1999, p. 54). Northern Ireland police have emphasized that PBRs are only employed against 'individuals behaving in a way that brings risk to life', not for crowd control in a broader sense.⁴¹

The use of CS (tear) gas canisters has also proven controversial in Northern Ireland. As noted by the Patten Commission, they are relatively indiscriminate in their effects. While useful in dispersing crowds, they may also affect innocent bystanders and people in their homes. They cannot be used against particular individuals posing a specific threat to public order and safety (Patten Commission, 1999, p. 54).

Box 7.10 Attempted reform of crowd control in Indonesia

During 2000, an expatriate training adviser introduced modern policing techniques for crowd control to the Indonesian police. In line with the requirements of the *UN Basic Principles*, the role of firearms was minimized. Instead of placing armed police officers at the front of a police line—which increases the chances of police shooting unruly, but unarmed, demonstrators—police with assault rifles were placed at the rear, behind another line of police in protective clothing carrying shields and batons. At the very front, lightly clothed police without guns talked and engaged with the crowd. These methods were credited with the absence of deaths or serious injuries in demonstrations outside the Indonesian Parliament in August 2001.⁴²

Nevertheless, there are reports of police later dealing brutally with other protesters. On 19 August 2002, two trade unionists were apparently shot and seriously injured by police in Bandung, the capital of West Java, during large peaceful demonstrations against two proposed labour laws (HRW, 2003a).

VULNERABLE PERSONS

International human rights standards have increasingly addressed the specific needs of especially vulnerable groups of people, such as women, children, and minorities. These standards have implications for conduct by police and other state actors.⁴³

Under the terms of the UN *Declaration on the Elimination of Violence against Women*, 'States should pursue by all appropriate means and without delay a policy of eliminating violence against women', whether physical, sexual, or psychological in nature, and whether occurring in public or private life (UNGA, 1993, arts 1, 4). In particular, states are to:

Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women. (art. 4(i))

Nonetheless, Human Rights Watch has reported that violence against women, often facilitated and perpetrated by police, was a prominent aspect of the sectarian violence that swept through the Indian state of Gujarat in February–March 2002 (HRW, 2003c, pp. 27–30).

The *UN Code of Conduct for Law Enforcement Officials* acknowledges the need to protect children⁴⁴ from the excessive use of force by police: ‘The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children’ (UNGA, 1979b, art. 3, commentary c). This provision is reflected in police regulations at the national level. For example, Cincinnati police rules stipulate: ‘A police officer will not discharge a firearm at a person known to be or suspected of being a juvenile (person less than 18 years of age)’ except in self-defence, meaning the defence of the police officer or others from a threat of ‘death or serious physical harm’ (Cincinnati Police Department, 2003).

Nevertheless, there have been persistent reports of police shootings of children in certain countries—for example, Honduras. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions travelled to the country in August 2001 to investigate allegations of extrajudicial executions of a large number of children from 1998–2000. She concluded that it was ‘abundantly clear that children have been killed in Honduras by members of the security forces. In most of the cases the child was unarmed and did not provoke the police to use force, let alone lethal force.’ These killings, she added, were fostered by a climate of ‘institutionalized impunity’ that rendered investigations, trials, and convictions in these cases exceptional (UN, Commission on Human Rights, 2002, para. 73).

Police mistreatment
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countries.

Police mistreatment of ethnic minorities is a recurring problem in many countries. In Greece, allegations of human rights violations committed by police officers from the mid-1990s to mid-2002 included eight cases of fatal shootings. Persons with vulnerable social identities made up most of the victims: three Roma, two ethnic Albanians, a 17-year-old Serbian high school student, a Pontic Greek, and a member of the majority Greek population. Human rights groups reported that no police officers were convicted of torture or ill-treatment between 1996 and 2000. Judicial bodies handed down decisions in five cases of fatal police shootings from January 2000 to June 2002. In two of these cases, no indictments were brought against the officers concerned. While the other three cases produced convictions for manslaughter, two of the accompanying prison sentences were suspended, while the third (four-and-a-half years) was subsequently appealed. As of the end of June 2002, no indictments had been issued in connection with a series of border incidents cited by these organizations (AI and IHF, 2002).

The UN has begun to promote Guidelines for Command and Supervisory Officials in police training. These emphasize, among other things, the responsibility of police commanders and supervisors to ‘issue clear orders on the special vulnerability and protective needs of refugees and non-nationals’ and to ‘develop cooperative schemes with community representatives to combat racist and xenophobic violence and intimidation’ (UN, OHCHR, 2002b, p. 167).

Human rights groups have documented the police harassment and abuse of sexual minorities (homosexuals, bisexuals, or transgendered persons) in, for example, Egypt and southern Africa. Firearms are often used as instruments of intimidation or coercion in these cases (HRW, 2004; HRW and IGLHRC, 2003). Moreover, it appears that some law enforcement officials have failed to protect sexual minorities in their custody from violence. They have also failed to provide needed assistance to victims or witnesses of hate crimes against sexual minorities. In some instances, police have further mistreated those who have reported such violence to the authorities (AI, 2001d; HRW, 2001b).

Police are frequently called to scenes involving mentally disabled people; however, police rules and practices regarding the use of force and firearms do not usually reflect their particular circumstances. On 20 September 2000, two police officers shot to death a 28-year-old mentally disabled man of Vietnamese origin in a wooded area near the town of Ulm, Germany. The man was a long-term resident of a home for the mentally disabled and had been reported missing earlier in the afternoon. The two officers reportedly shot at the man 21 times, hitting him eight times. It appears

they used little or no restraint in using their firearms against a suspect who had not fired upon them. The ‘gun’ he was carrying was, in fact, a toy (AI, 2001a).

Once a suspect has been shot and the threat they posed ended, they become a vulnerable person to whom police owe a duty of care. Basic Principle 5(c) stipulates that ‘[l]aw enforcement officials shall ... [e]nsure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment’ (UN, 1990).

If basic first aid is not provided, minor gunshot wounds may become fatal injuries. In East Timor, for instance, recruits to the new (post-independence) police force received no training in treating gun-shot wound trauma, nor were they equipped with battle dressings, despite being armed and frequently posted to locations where there was little or no possibility of trauma assistance.⁴⁵

OVERSIGHT SYSTEMS

Systems designed to oversee the use of force and firearms by police officers and hold the latter accountable for improper or illegal conduct are essential in curbing abuses and upholding the rule of law generally.

The *UN Basic Principles* stress the need for prompt reporting of incidents involving the use of force or firearms. Basic Principle 6 requires police officers promptly to inform their superiors of any injury or death caused by their use of force and firearms (UN, 1990). Basic Principle 11(f), more broadly, requires governments to ‘[p]rovide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.’

Prompt reporting is only one step in the overall process. In many cases, an internal investigation is required. External review of police actions—by other branches of the government, including the judiciary—is also an essential element of the broader system. Basic Principle 22 requires governments and law enforcement agencies to establish effective reporting and review procedures for all incidents in which injury or death is caused by the use of force and firearms by police, or where the latter use firearms in the performance of their duty. Government and police authorities must also ‘ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances.’

Basic Principle 23 specifies that persons affected by the police use of force and firearms or their legal representatives ‘shall have access to an independent process, including a judicial process.’

Accountability of superior officers is essential to preventing the misuse of firearms by subordinates. Basic Principle 24 states:

Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.⁴⁶

This principle does not absolve individual police officers of responsibility for the unlawful use of force and firearms. Basic Principle 26 stipulates that ‘[o]bedience to superior orders shall be no defence’ to such conduct. Basic Principle 25 specifies that governments and law enforcement agencies shall not punish police officers who refuse to carry out an order to use force or firearms that is in conflict with UN policing standards, or who report such use by other officers.

The *UN Basic Principles* stress the need for prompt reporting of incidents involving the use of force or firearms.

Box 7.11 Unlawful police shootings in Jamaica

Since at least 1983, Jamaica has seen an exceptionally high rate of police killings. In 2003, Jamaican police took the lives of 114 people, yet trials of officers accused of unlawful killings are exceedingly rare. Police describe most fatal shootings as the result of exchanges of gunfire that were initiated by armed civilians. It is true that Jamaica has a high level of crime and police officers face armed criminals daily, often leaving them no alternative but the use of lethal force to protect their own lives and those of the public. There were 1,045 murders in Jamaica during 2002. Sixteen of the dead were officers of the Jamaica Constabulary Force. Others were seriously injured. At least 112 police officers were killed between 1991 and 2001 (AI, 2001d, 2004).

Nonetheless, human rights groups have documented many incidents that point to indiscriminate fire by the Jamaican police (HRW, 2001c). Such abuses are apparently a particular feature of 'emergency' anti-crime operations, which have involved the use of paramilitary-style tactics since 1999. Per capita rates of police killings indicate that Jamaican police kill at a rate almost five times that of their counterparts in South Africa, a country also suffering from high levels of violent crime (AI, 2001d).

The 'Braeton Seven' incident has contributed, more than any other case, to publicizing the problem of Jamaican police killings. On 14 March 2001, armed police officers from the Crime Management Unit (CMU) approached a house in Braeton to arrest one of its occupants. A short time later, seven boys and young men aged between 15 and 20 (the 'Braeton Seven') were shot dead. The police subsequently claimed they came under heavy fire from within the house. Yet neighbours said they heard the boys pleading for their lives before being shot one at a time (AI, 2003c).

In April–June 2003, following an intense campaign by human rights groups, as well as diplomatic interventions from several governments, the Jamaican government committed itself to a series of measures designed to prevent and punish unlawful police killings. These included:

- ▶ improving autopsies on civilians killed by police;
- ▶ reducing the backlog in Coroner's Court inquiries into police killings;
- ▶ explicitly and publicly stating that unlawful killings by police officers will not be tolerated;
- ▶ publicly requesting the Director of Public Prosecutions to decide whether to prosecute members of the CMU involved in the 'Braeton Seven' shootings;
- ▶ seeking and receiving expert assistance from the Canadian, UK, and US governments in investigating the killing of four persons in Crawley by CMU officers on 7 May 2003; and
- ▶ disbanding the CMU (AI, 2003e).

While most states around the world have established systems to oversee and review the use of force and firearms by police, there are considerable variations worldwide, especially with respect to actual practice. The robustness and independence of investigations, and the transparency with which they are conducted, differ considerably. Independent judicial review is often lacking. Even if low-ranking officers are punished for firearm misuse, their superiors may escape justice.

The excessive use of force by police, including unjustified shootings, has been a problem in many parts of the United States (HRW, 1998). In 1994, the US Congress authorized the Justice Department to conduct investigations into city police departments alleged to have committed systematic civil rights violations. Where investigators decide that changes are needed to police practices, the Justice Department can either negotiate an agreement with the city for the implementation of necessary reforms or file a lawsuit to force changes. As of September 2002, the Justice Department had agreements or consent decrees for eight cities.

Agreements were reached in 2002 with Cincinnati, Ohio, and Buffalo, New York. The Cincinnati investigation followed protests and rioting that were sparked by the shooting of an unarmed African-American man, Timothy Thomas, in April 2001. The Cincinnati agreement required the police department to institute improvements in a wide range of areas, including complaint procedures, training, use-of-force policies, and supervision. The agreement with the Buffalo Police Department focused on the force's improper use of pepper spray, complaint procedures, use-of-force reporting procedures, and training (IHF, 2003).

Box 7.12 Investigative procedures in the UK

Recent police reforms in the UK⁴⁷ have included changes designed to improve accountability. For example, the ACPO firearms guidance manual has been published (UK, ACPO, 2001) with only a few tactical sections removed from public view. UK citizens are now able to ascertain their rights and responsibilities, along with those of the UK police, with respect to the use of force and firearms.

Under procedures in force in 2003, any use of force by police that results in the death of a person will usually culminate in a formal Public Inquest by a public coroner. The purpose of the Coroner's Court is to establish the cause of death and not apportion blame or determine guilt.

In addition to the civil remedies they may have in the UK court system, victims can make complaints against individual officers through the UK Police Service's complaints procedure (UK, ACPO, 2001, ch. 6). Investigations of complaints are usually conducted by the police agency directly concerned. Depending on the situation, however, another UK police force, usually from another county, may carry out the investigation in order to enhance its independence.

Any instance during which UK police officers discharge a firearm while on duty is usually voluntarily referred to the Police Complaints Authority under Section 71 of the Police Act 1996. If death or serious injury results, this referral is mandatory. The Authority approves the appointment of an Investigating Officer (nominated by the relevant Chief Officer) and oversees the investigation.

These investigations tend to be wide-ranging, examining not only the specific circumstances of the firearms injury or death, but also the circumstances leading to the shooting and other surrounding factors. Among the issues that may need to be investigated are:

1. **Intelligence:** What intelligence or evidence was available before the operation and who was in possession of it? What decisions were taken as a result and why? What steps were taken to verify the information?
2. **Briefing:** Was available information accurately relayed at the briefing, or subsequently as events unfolded?
3. **Authorization:** Who granted the authority for the issue of firearms? Who authorized the operation (if different)?
4. **Threat/risk assessment:** What assessments were carried out? What conclusions were reached?
5. **Armed Response Vehicles (ARVs):** What use was made of ARVs? What were their terms of reference in the relevant police force?
6. **Firearms Teams:** What use was made of Firearms Teams? What were their terms of reference in the relevant police force?
7. **Specialist munitions:** Were any used—shotgun or tear gas rounds, distraction devices, shotgun breaching rounds—and what internal Force instructions exist for their use?
8. **Command structure:** Who occupied which positions within the structure?
9. **Strategy:** What was the strategic intention of the 'Gold Commander' (the most senior officer in charge of strategy, policy, and tactics)?
10. **Tactical parameters:** Were any set by the 'Gold Commander'? What were they?
11. **Tactical plan:** What tactical options did the 'Silver Commander' (the officer in charge of policy and tactics) consider? What was the reasoning behind the decisions that were taken?
12. **Negotiator:** Was one used? What was his or her input?
13. **Tactical advisor:** Was one used? What was his or her input?
14. **Rendezvous points:** Where were they?
15. **Communications:** What arrangements were made?
16. **Records:** Is there any video footage/photographs of the incident?
17. **Medical:** What were the paramedic/ambulance/first aid training arrangements? How was the police duty of care to the injured person met?
18. **Scene management:** What steps were taken to preserve public safety?
19. **Tours of duty:** What were their lengths?
20. **Firearms training:** Were police officers authorized to use the particular weapon(s) they were carrying or fired? What records relating to firearms training are available?
21. **Fitness:** Are records of health/eyesight/fitness tests available? (UK, ACPO, 2001)

Although the Police Complaints Authority monitors these investigative procedures and distributes leaflets telling citizens how to file a complaint, the system has been criticized for a lack of independence. For example, in a May 2001 case concerning alleged violations of the right to life by UK security forces in Northern Ireland, the European Court of Human Rights found that investigating police officers were not sufficiently independent of the accused officers whose conduct they were examining (European Court of Human Rights, 2001).

A government's
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oversight systems.

The costs of establishing and maintaining effective investigative and judicial review bodies are significant. Governments of developed countries can devote greater resources to the development and operation of such systems, yet these do not always function well. In 1999, for instance, Amnesty International concluded that courts in France 'feel uneasy about convicting police officers for crimes of violence or excessive force to anything but nominal sentences' (AI, 1999). While it is more difficult for less-developed countries to find the necessary funds, they sometimes prioritize the effective oversight of policing. Even more important than the question of resources is a government's commitment to international human rights norms.

The Constitution of Mauritius, for instance, contains human rights guarantees that prohibit arbitrary arrest and detention, along with torture and inhuman treatment. In 1999, the police established a Complaints Investigation Bureau, which investigates allegations of abuses by police officers. A National Human Rights Commission, set up in 2001, oversees these investigations. At least 13 deaths in police custody occurring between January 1996 and April 2002, some the result of police shootings, have been or are the subject of judicial inquiries (AI, 2002 f).

POST-CONFLICT REFORM

Police reform in the aftermath of conflict has a mixed history. Reform efforts conducted since the end of the Cold War, though useful in many respects, have often failed to yield lasting change consistent with international policing standards. Two of the largest UN-supervised transitions, conducted in Namibia in 1989–90 and Mozambique in 1993–94, included limited police reforms; nevertheless, post-transition reviews of police practice in these countries found that police still tended to use excessive force (AI, 2002 f).⁴⁸ Likewise, in El Salvador, national laws and training programmes for police were not fully reformed following the 1992 peace accord. Despite some UN assistance with these reforms, it appears they produced little change in Salvadoran police tactics, which still emphasized enforcement (O'Rawe and Moore, 1997, pp. 105–6, 265–6).

A recognition that UN civilian police trainers needed to be better prepared for this work led the UN Department of Peacekeeping Operations (DPKO) and the United Nations Centre for International Crime Prevention to develop standardized training materials in 1995–96 (Broer and Emery, 1998). In recent years, human rights training programmes for both military and police personnel regularly feature in UN-led post-conflict rehabilitation efforts. Key players in these efforts have included DPKO, the Office of the High Commissioner for Human Rights (OHCHR), and the UN High Commissioner for Refugees. Target countries (and peace operations) have included: Bosnia and Herzegovina, Croatia, East Timor, and Mozambique (UN, OHCHR, 2002a).

OHCHR has also worked with the Palestinian National Authority (PNA) to improve police adherence to international standards governing the use of force and firearms in the Palestinian territories (UN, OHCHR, 2002a). Since 1996, the PNA has been criticized for allowing a broad array of armed officials to commit serious human rights abuses, including extrajudicial executions and torture.⁴⁹ During 2001, OHCHR supported the development of guidelines on arrest, detention, and the use of force and firearms for the Palestinian police. These were adopted by the PNA Higher Security Council in 2002. OHCHR has also drafted a human rights curriculum for use in training courses aimed at members of the Palestinian security forces (UN, OHCHR, 2002a).

In October 1999, a UN transitional administration was created to assist East Timor in its transition to independence after decades of Indonesian rule. A key objective was the rapid establishment of a professional police force.⁵⁰ Recent killings of civilians by East Timorese police have, however, highlighted the limitations of the UN-supervised training

programme. In the most widely-publicized event, police shot two people dead and injured several others during disturbances in the capital, Dili, in December 2002 (AI, 2003f, pp. 1–2, 9–12). More generally, complaints of assaults and excessive use of force by Timorese police were on the rise in 2003.

Though highly motivated, nearly 90 per cent of recruits to the East Timor Police Service have had no prior policing experience. Police officers in the new force were issued pepper spray, batons, and Austrian Glock pistols. The UN-supervised training in the handling of firearms, notably the Glock pistols, did not review in any serious way the circumstances in which police should use their weapons. New recruits were simply sent out onto the streets after receiving target practice.⁵¹

Box 7.13 Reform in the Balkans

A recent study conducted for the Small Arms Survey (Grillot, 2004) has reviewed ongoing police reforms in five Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and Montenegro) and one territory (Kosovo).⁵² Police reform has been a particular focus of efforts to rebuild the Balkans after a decade of civil war and political instability. Law enforcement officials played an important role in perpetrating and perpetuating violence and repression before, during, and even after this decade of crisis, leading, in many cases, to a complete breakdown of the police–community relationship.

Reforms in the Balkans have been directed at many of the elements of good practice previously highlighted in this chapter, including, in addition to the controlled use of force and firearms: police force representation, depoliticization, demilitarization, and accountability. In pursuing these goals, governments in the subregion, in cooperation with a wide range of international and local actors, have undertaken a series of overlapping initiatives. The training of new recruits and retraining of serving officers have been central to these efforts. Training materials typically cover such issues as human rights and professional ethics. In some cases, they have specifically incorporated the *UN Basic Principles*. Other initiatives designed to improve policing in the Balkans include police restructuring, new laws and regulations, and surveys of public perceptions.

In some cases (Bosnia, Kosovo), international actors have had a relatively free hand in designing and implementing these programmes. In most countries, however, national governments have retained direct control over this work, with international and local actors playing more of a facilitating role.

It is presently unclear how successful these efforts are in bringing Balkan policing into line with international standards. Government officials and many of their international partners are upbeat, claiming that these standards are having an impact on policing practice. In particular, these officials assert that police relations with the public are now vastly better than they were even a few years ago.

The available evidence indicates, at a minimum, that more and more police in the subregion are being trained to respect human rights and exercise caution in their use of force and firearms. Yet, it appears that not all Balkan countries have taken up police reforms wholeheartedly. Some of the international officials involved in reform have expressed concern, even scepticism, about the lasting impact of this work. There is a fear that old, bad practices will reassert themselves in some countries once the international community directs its attention elsewhere. Moreover, there is a question as to how far existing practices have been altered. For example, Western police officers working alongside Kosovo police have indicated that new human rights training has not conquered a culture of law enforcement that emphasizes the use of force.

It is unclear whether such problems are isolated or indicative of broader trends. For the moment, the evidence suggests that the Balkans, collectively, has some way to go before its policing truly meets international standards. Yet at least the subregion now seems to be moving in the right direction.

Source: Grillot (2004)

CONCLUSION

Modern, professional policing is a complex task. This chapter focuses on a specific, yet crucial aspect of this task, namely the use—and misuse—of force and firearms by law enforcement officials. This subject lies at the heart of several key governance and security concerns.

In the first instance, police use of force and firearms is a core human rights issue. Gun misuse by police and other state agents involves a violation of such fundamental human rights as the right to life and the right not to be tortured or subjected to cruel, inhuman, or degrading treatment or punishment.

The use of firearms by police also features prominently in the governance debate. While policing is just one component of public security—along with judicial and penal systems—it is arguably the state’s most visible expression of commitment (or lack of commitment) to the rule of law.

The use or misuse of firearms by police is equally a factor in small arms proliferation. When civilians do not trust the state to provide security, they often fall back on local structures—and on themselves—to fill the gap. The most immediate consequences are a rise in individual gun ownership and the risk of spiralling levels of armed violence. If the public has little or no confidence in state security forces, measures to control small arms and remove surpluses from society are unlikely to succeed.

As awareness of the importance of public perceptions has spread, modern policing has begun to emphasize the need for police officers to develop and sustain the trust of the communities in which they work. Such an approach contrasts with the more militaristic policing traditions still prevalent in many parts of the world, especially in post-colonial societies, which frequently concentrate on the protection of the state and ruling elites, rather than that of citizens. As the chapter indicates, strong links between the police and the community are crucial to promoting good policing practices, minimizing the recourse to firearms, and enhancing human security.

Though by no means perfect,⁵³ the normative framework governing the use of force and firearms by law enforcement officers is increasingly well-developed at both the international and national levels.

At the international level, several instruments now specifically govern the use of force and firearms by police, above all the *UN Basic Principles*. A number of other human rights norms are also relevant. These rules apply both to societies at peace and to those that have declared states of emergency.

Although national rules vary considerably in their formulation, it appears that certain critical principles are ever more widely shared. In general, states are accepting that any use of force by police must be limited to what is necessary under the circumstances and proportional to the objective at hand. In almost all states that have signed up to international civil and political rights standards, these principles (necessity and proportionality) restrict any form of firearm use by police to situations involving self-defence or defence of members of the public against a direct threat to life or limb.

As the chapter describes, specific rules govern the use of firearms against persons in custody or detention, vulnerable persons, and crowds. Standards and practices relating to the selection and training of police officers, their links to the community, equipment, and weapons storage are all essential to preventing recourse to excessive or inappropriate force. Other measures subsequently intervene to punish violations by public security forces, deter further abuses, and generally uphold the rule of law. Especially important in this regard are systems that oversee police conduct and ensure that officers are held accountable for excessive force or firearm misuse.

The chapter also examines instances where security and policing systems break down as a result of political manipulation or institutionalized corruption and criminality. Yet policing institutions—even when devastated by civil war—can be rebuilt. The final section of the chapter illustrates some of the difficulties of reforming police structures and practices in post-conflict societies.

The chapter’s selection of national practice from various regions of the world, though useful in illustrating the challenges and problems arising in specific areas, does not allow us to map implementation with precision. The chapter’s many examples nonetheless demonstrate that a large number of states around the world are not adhering to these standards.

Policing that is consistent with the requirements of the *UN Basic Principles* requires significant resources—no least for training, equipment, and the establishment and operation of oversight mechanisms. A number of developing countries, however, are succeeding in their efforts to comply with such standards, with or without international assistance. Resources are clearly important for good policing, but ultimately it is political commitment that determines whether it is firmly rooted in respect for human rights.

7. LIST OF ABBREVIATIONS

ACPO	Association of Chief Police Officers
AI	Amnesty International
ARV	Armed Response Vehicle
CMU	Crime Management Unit (Jamaica)
DPKO	Department of Peacekeeping Operations (United Nations)
HRW	Human Rights Watch
IACP	International Association of Chiefs of Police
ICCPR	International Covenant on Civil and Political Rights
ICITAP	International Criminal Investigative Training Assistance Program (United States)
KPR	Kenya Police Reservists
MEF	Malaita Eagle Force
OC	Oleoresin Capsicum
OHCHR	Office of the High Commissioner for Human Rights
PBR	Plastic baton round
PNA	Palestinian National Authority
SADC	Southern African Development Community
SAPS	South African Police Service
SARPPCO	Southern African Regional Police Chiefs Co-operation Organisation
TPA	Townsville Peace Agreement (Solomon Islands)
XUAR	Xinjiang Uighur Autonomous Region (People's Republic of China)

7. ENDNOTES

¹ For further background, see: AI, IANSA, and Oxfam International (2004); Crawshaw, Devlin, and Williamson (1998); de Rover (1998); Crawshaw (1994).

² These standards include: *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*; *Declaration on the Protection of All Persons from Enforced Disappearance*; *Standard Minimum Rules for the Treatment of Prisoners*; *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*; *Declaration on the Elimination of Violence against Women*; and *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. References and full text are available at <<http://www.unhchr.ch/html/intlinst.htm>>

³ As of 2 November 2003, 43 states had not ratified the ICCPR, although some of these had signed: Andorra (signed), Antigua and Barbuda, Bahamas, Bahrain, Bhutan, Brunei Darussalam, China (signed), Comoros, Cook Islands, Cuba, Fiji, Guinea-Bissau (signed), Holy See, Indonesia, Kazakhstan, Kiribati, Laos (signed), Liberia (signed), Malaysia, Maldives, Marshall Islands, Mauritania, Micronesia, Myanmar (Burma), Nauru (signed), Niue, Oman, Pakistan, Palau, Papua New Guinea, Qatar,

Saint Kitts and Nevis, Saint Lucia, Samoa, Sao Tome and Principe (signed), Saudi Arabia, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, United Arab Emirates, and Vanuatu. Source: OHCHR (www.unhchr.ch).

⁴ 'Police officials may only use force when strictly necessary and to the extent required for the performance of their duties adhering to national legislation and practices.' SARPPCO (2001, art. 3).

⁵ For a comprehensive look at this issue, see AI (2002f).

⁶ 'Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so ... Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.' United States, Supreme Court (1985).

- ⁷ See, for example, Houston Police Department (1984).
- ⁸ From Judge Chaskalson's leading judgement in the South African death penalty case *State v. Makwanyane and Mchunu*. South Africa, Constitutional Court (1995).
- ⁹ A review of jurisprudence and legislation in these countries was carried out by the South African government in 1996 and analysed by Judge Olivier in the case of *Govender v. Minister of Safety and Security*. South Africa, Supreme Court of Appeal (2001).
- ¹⁰ Author's translation of the French original: 'Lorsqu'il est autorisé par la loi à utiliser la force et, en particulier, à se servir de ses armes, le fonctionnaire de police ne peut en faire qu'un usage strictement nécessaire et proportionné au but à atteindre.' France (1986, art. 9).
- ¹¹ See France (2004, art. 122-5).
- ¹² The city of Seattle claims to have been the first major US city to legislate the use of deadly force by police officers. A May 1978 ordinance overturned state law dating from the 19th century, which allowed police to use deadly force to arrest persons suspected of committing any felony. See Wilma (2000).
- ¹³ See Sarre (1993).
- ¹⁴ Interview with Capt. Bongani Mbhele, Head of Human Rights Unit, Division of Policing Standards, South African Police Service, 13 December 2002.
- ¹⁵ Interview with Assistant Commissioner, South African Police Service, Pretoria, 15 January 2004.
- ¹⁶ Interview with Professor Anthony Minnaar, Institute for Human Rights and Criminal Justice Studies, Pretoria, 19 March 2004.
- ¹⁷ See UNGA (1966, article 4(2)).
- ¹⁸ See for example: AI (2000); HRW (2001a); Physicians for Human Rights (2000).
- ¹⁹ Information in this section is derived from interviews conducted by author Brian Wood with UK police experts during 2002–03 and from UK, ACPO (2001, especially chs. 3, 5).
- ²⁰ For examples of so-called non-lethal or 'legitimate' policing equipment whose use has contributed to unwarranted injury, torture, or serious ill-treatment, see AI (2001c).
- ²¹ Note that while the IACP argues that data collected for 2000 (the most recent year covered in the report) is representative of the United States as a whole, this is probably not true for previous years (1991–99). See pp. ix, 2–3.
- ²² *Gestes et techniques professionnels d'intervention: Direction du personnel et de la formation de la police*. Translation from the French original, quoted in AI (1998).
- ²³ Information from police advisers provided to author Brian Wood, in 2000–01.
- ²⁴ Ibid.
- ²⁵ The US programme, run by the US government's International Criminal Investigative Training Assistance Program (ICITAP), is summarized in Newsweek (2002). For a critique of US foreign police training, see AI (2002b).
- ²⁶ Information in this section is derived from discussions with UK police officers during 2002–03, and from the Association of Chief Police Officers (2001).
- ²⁷ Sources: author Brian Wood's notes and unpublished reports on regional training workshops by the Malawi Centre for Human Rights and Rehabilitation, the Public Affairs Committee, and the Malawi Police Service, 2000–2002.
- ²⁸ For more information, see Neild (1998).
- ²⁹ Paul Evans, Commissioner of Police, Boston, Massachusetts, 9 April 1999. Quoted in US, Dept of Justice (2002, sec. III).
- ³⁰ John Farrell, Chief of Police, Prince George's County, Maryland, February 1999. Quoted in US, Dept of Justice (2002, sec. IV).
- ³¹ See Neild (1998) for examples in Baltimore, Boston, Denver, Detroit, and Los Angeles in the United States, as well as Australia and the Netherlands.
- ³² Many pilot schemes for community policing in post-apartheid South Africa, for instance, failed because the (as yet unreformed) police sought to dominate and control these structures, while community groups tried to use them for their own ends. See Shaw (2002, pp. 41–47).
- ³³ Sources: interviews and documents obtained in KwaZulu-Natal, South Africa, February 2000 and April 2002.
- ³⁴ Captain Pillay, Police Special Investigations Task Team, addressing 30 AI and local NGO representatives, Edendale, South Africa, 29 April 2002.
- ³⁵ Cator Manor Project reports and local interviews conducted by author Brian Wood in February 2000 and April 2002.
- ³⁶ The 12 SADC countries surveyed were Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.
- ³⁷ In 2002, election observer teams noted that threats and intimidation were used to prevent independent investigators from entering these areas. AI (2002e)
- ³⁸ See Crawshaw (1994, chs. 1, 9).
- ³⁹ Letter from the Solicitor General of Belize to AI, 11 November 2002 (confidential).
- ⁴⁰ Ibid. See also AI (2003a).
- ⁴¹ Royal Ulster Constabulary Chief Constable Sir Ronnie Flanagan. Quoted in BBC (2001).
- ⁴² Interview with AI researcher, August 2001.
- ⁴³ See the police training manual produced by the Office of the High Commissioner for Human Rights for chapters on juveniles, women, and refugees: UN, OHCHR (2002b).
- ⁴⁴ Defined in the *UN Convention on the Rights of the Child* as anyone under 18 years of age. UNGA (1989, art. 1).
- ⁴⁵ Information from a policing consultant after a mission to East Timor in late 2002.
- ⁴⁶ See also UN (1990, Basic Principle 26, last sentence).
- ⁴⁷ These were set in motion by the Sheehy Report and the White Paper on police reform, both published in 1993: Sheehy *et al.* (1993); UK, Home Office (1993).
- ⁴⁸ See also Woods (1998).
- ⁴⁹ For detailed criticism of the Palestinian police in the initial, post-Oslo period, see AI (1996).
- ⁵⁰ The following account of police reforms in East Timor is largely based on AI (2003f).
- ⁵¹ Information from a policing consultant after a mission to East Timor in late 2002.
- ⁵² Research, both in-country and desk-based, was conducted during 2003. For more information on policing reforms in the six Balkan countries/territory covered in this box, see Grillot (2004).
- ⁵³ See UN, Commission on Human Rights (2003, para. 28).

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