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TESTIMONY OF MULTINATIONAL PANEL REGARDING LAWFUL CONTROL
OF DEMONSTRATIONS IN THE REPUBLIC OF SOUTH AFRICA
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REGARDING THE PREVENTION or PUBLIC VIOLENCE AND INTIMIDATION
THE HONORABLE RICHARD J. GOLDSTONE, CHAIRMAN

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CAPE TOWN, REPUBEI :OF SOUTH AFRICA

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ON

THURSDAY, JULY 9, 1992

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EXECUTIVE SUMMARY

The panel of experts from South Africa, the United States, Canada, Great Britain, Belgium and the Netherlands have found an agreement on a set of basic principles which frame

It will be useful

themselves i

the more detailed recommendations that follow.

to state those at the outset.

The right to demonstrate is as fundamental a right of democratic citizenship as the right to take part in political

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purpose of the demonstration is protest, the

campaigns. Where the

demonstration is at the core of free expression in a democracy.

One of the central responsibilities of the police is to facilitate the right to demonstrate.

A democratic public can properly insist upon demonstrations and protests being carried out peacefully and without-violence.

The responsibility corresponding to that right is shared in the first instance by three parties:

- those organizing demonstrations,
- the local or state authorities, and
- the police..

The chief of the Rotterdam police terms this tri-partite allocation of management responsibility, the "safety triangle."

requires combining and
managing a demonstration
Properly
intangible resources of these three
coordinating tangible and
parties to the "safety triangle" to assure that the demonstration
will be peaceful as well as effective. The relevant resources for
managing the demonstration thus go far beyond those in the hands of
They include provision of necessary facilities (e.g.
first aid station or toilets), of speaker systems and platforms,
9 with vehicular or pedestrian traffic. Both
and of help in dealin
rdination during the
by careful pre-event planning and by coo
demonstration itself, the three partners can draw upon these as
well as the authority 9f the organizers and of the police in
managing the demonstration.
All this requires a system for coordinating the views and the
resources of the three participants. The primary responsibility
for aiding aha operating this system should, we believe, rest with
uthority where the event is to take place, although
t toward the other two parties
the local a
responsibility will inevitably shif
Where there are disagreements
anned to ensure
over the way in which a demonstration should be pl
that it will be non-disruptive as well as effective, the dispute
should be resolved by a higher authority which, in the case of
f the Supreme Court.
South Africa, we believe should be a judge o
Unexcused failure to give timely notice of a demonstration and
to join in discussions with the other parties may properly be the

Similarly conditions agreed upon by the three parties, imposed by the local authority, or directed by the Supreme Court on review, will sometimes be disregarded by the demonstrators. If the organisers wilfully disregard such conditions, they may be subjected to a penalty. But the violation of such conditions must be met with great restraint should be used in applying very vague statute regarding breach of the peace or unlawful assembly to arrest non-violent demonstrators. If the activities of the demonstrators violate general criminal laws -or occasion civil liability, particular demonstrators or those urging them on can be sanctioned later through the normal processes of the law or through the disciplinary mechanisms of the organization holding the demonstration.

If the organizers of the demonstration fail to participate in required negotiations with the other two "parties over the management of the demonstration, more of the responsibility will inevitably fall on the police and the local authority. Similarly, if events develop during the demonstration that were not anticipated at the beginning, much of the responsibility will fall on the police and the organizers. In both cases the police will bear exceptional responsibilities for which they should be organized, trained and equipped.

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In terms of organization, this means that when police use of force may be required, the police should be formed in well-disciplined and specialized units. In terms of equipment it means that they must have available to them a wide range of non-lethal resources. In terms of training it means that they must have not only the skills in using their equipment but also skills in peacefully interacting with crowds, in negotiation in situations of potential conflict, and in human relations. It also requires specific and early consideration of certain familiar situations which are faced by police attempting to maintain public order in many countries.

When the police must intervene to prevent disruption or more serious harm from a demonstration -- i.e. when the organizers themselves cannot or will not assure a peaceful demonstration -- a choice must be made whether to pursue individuals engaged in illegal action (by contemporary arrest or arrest following the demonstration) or, alternatively, to attempt to contain or disperse the demonstration. Minimal necessary force is the widely agreed upon rule for acting against either individuals or the demonstration. That requires something more than disobedience by the demonstrators; all particular uses of force can only be justified by the specific dangers they are intended to prevent. And force should be targeted as nearly as possible on the individuals who are engaging in or encouraging disruption or violence. Finally, and most importantly, lethal force can only be

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in the

This is also the view
of several of the parties making submissions to the panel. New
legislation is needed both (i) to give effect to the new principles

TESTIMONY.OF MULTINATIONAL PANEL REGARDING LAWFUL CONTROL
OF DEMONSTRATIONS IN THE REPUBLIC OF SOUTH AFRICA
INTRODUCTION

On May 25, 1992 Mr. Justice Richard J. Goldstone announced the appointment of a multinational advisory panel by the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation. The names and positions of the members of this panel follow our report as Appendix A. Their individual views, including any disagreements with those I am now presenting as chairman of the w.

panel, are attached following this report and its appendices.

A. our Basic Premises.

We have found very substantial agreement among the countries of Western Europe, the United States, and Australia on the handling of political demonstrations.¹ We are also acutely aware that the situation in South Africa is, in many respects, very different from that in the United States, Great Britain, Germany, the Netherlands, Belgium, and Australia -- the countries that we have studied most carefully. Even after making allowances for these significant differences -- and adding to our comparison careful studies of the handling of demonstrations in two very troubled situations, in

¹ The same is generally true of Namibia

Israel and Northern Ireland — we are in substantial. even surprising, agreement on a number of recommendations. They involve significant changes in the South African practice, bringing it far closer to alignment with that of the countries we have studied. Our starting point is the widely accepted principle that public demonstrations of support or opposition for a policy, organization, or leader are as essential a part of dEmocratic. government as political campaigning and political parties. Non-violent, non-destructive demonstrations are thus not a form of anarchy but a form of democratic expression which is an essential right of persons in a democratic society.² Social science research of the seventies and eighties has taught us that people who engage in protest, are not poorly integrated, deviant _individuals. Rather, they are concerned people expressing their legitimate concerns on a variety of social/political issues such as the environment, housing, abortion, ethnic/racial concerns, and political rights. Political campaigning is one way for free citizens to bring about change; expressing the strength of their feelings, recruiting supporters, and generating group solidarity by demonstrating peacefully is another equally legitimate way. The police should never be required to prevent efforts to bring about change by such democratic means. Their function is to facilitate operation of the

² See Sect. 1.2 National Peace Accord.

crucial mechanisms of democracy, including non-violent demonstrations. This is no less important than the very powerful obligation of police in a democracy to prevent those actions whoever may be the organisers and whatever may be the cause. This is the premise, widely supported within the democratic world, that underpins the consensus that we will be describing. Joined to this moral claim there is a social reality. Police throughout the Western democracies have come to recognize that reducing violence, property damage and disorder requires an approach to the plans of a large protesting group far more accommodating than that required in the case of a single individual violating a law or behaving in a disorderly fashion. The spirit of protest, the sense of group power and individual anonymity, the distrust of authority implicit in the protest -- all these require handling a sizeable demonstration tolerantly and sympathetically if the risks of violent disorder are to be minimized. This notion, too, permeates what follows. We believe it is as true in the South African context as in the other more or less violent situations we have canvassed. Finally, in making our recommendations we have assumed that they are recommendations for a South Africa that will soon be truly democratic, whatever the particulars of the constitutional scheme that is adopted. The question arises whether these suggestions are fully applicable now; for the moral and political context of demonstrations is quite different in a situation where a new state

k the vote. While our
is being formed and many demonstrators lack
proposals can not be a new set of Marquess of Queensberry rules for
opposing parties struggling over the form of the new South African
ieve that the right to demonstrate should be more,
state, We believe
rather than less, respected when the demonstrators lack the
alternative of voting. And we believe that non-violent
demonstrations represent a far healthier means of political
struggle over the form of a new government than any likely
alternative. Thus we do not see any reason why the application of
recommendations in the form of new statutory and administrative
provisions should be delayed.

B. The "Special" Context in South Africa.

Demonstrators want to affect the actions of the government,
of institutions or of powerful private parties. We recognize that
those effects can come about in any of several ways including:

1. By a symbolic demonstration of the breadth
and depth of views on a particular issue.
the pickets.
3. Through the consequences of various forms of
peaceful civil disobedience interfering with
the normal operations of a government and
its citizens.
4. By violence or the destruction of property
or the threat of these consequences.

All of the parties making submissions to the Goldstone Commission have recognized that the fourth way cannot be tolerated; all of the parties recognize that there must be a very broad acceptance of the first, although there would be disagreement about the extent to which the inevitable inconvenience and disruption caused to normal traffic and commerce by a large demonstration must be accepted. On this issue and on the issues regarding peaceful civil disobedience and boycotts, we would expect, and have found, differing views -- with those holding governmental power at present least tolerant of the more forceful tactics of demonstrations and those seeking power most accepting of those

0% tactics and consequences.

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It is obviously significant that the South African Police are thrown into the middle of whatever disagreements there are on these issues. So far as possible, our effort has been to extract them from that impossible position. Political authorities must accept responsibility for political decisions, particularly when the most important asset of any police force, widespread public acceptance, has already been terribly compromised by being asked to enforce past policies of apartheid.

3 We believe that our approach to the policing of demonstrations and the recommendations that follow from it, is applicable to all the police forces and local authorities operating within the broader boundaries of the South African State.

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Still, demonstrations demand management, everywhere in the world, even if only to facilitate the relationship with normal commerce that any large demonstration involves. In the case of more difficult than in, for example, the Netherlands. The widespread availability of weapons combined with a long history of order, particularly within the townships; means that there is a special threat of dangerous violence directed at the South African police. In the one hundred years before 1985, no police officer was Allied in a demonstration in Croatia. The assurance of safety in South Africa is substantially 19:.

According to the submission of the South African Police, in 1990 and 1991 125 members of the SAP were killed in unrest related incidents. During the same period 263 people died as a result of police action and 4395 died as a result of actions by others in such incidents according to the same report.

In some locations in South Africa, a demonstration could easily turn into relatively sizeable, well-armed violence instigated either by opponents of the demonstrators or small violent groups within an otherwise peaceful demonstration or even by provocateurs of one sort or another. These fears necessarily affect policing. The response of even individual police officers

to those fears can create a self-fulfilling prophecy, as it has in the past in South Africa and elsewhere.

Looking to the future, we anticipate that many of the special difficulties of demonstrations in South Africa will remain, although taking new forms. Even a truly democratic government will have to anticipate more or less violent, organized demonstrations by many South Africans of different persuasions. Demonstrations are particularly the form of protest of the numerous and uninfluential. So, for instance, the poorest, most frustrated and disappointed citizens of a new South Africa may well demonstrate in large and perhaps disorderly numbers in an effort to speed the pace of change.

Demonstrations where members of one impassioned group face demonstrators of another, opposed, and equally impassioned group are likely and will be particularly difficult to police. So is the likely conflict between citizens of different social groupings. In the latter situation violence has been endemic; it will never be very far from the surface of a confrontation among even peaceful demonstrators of one group and hostile demonstrators from another group.

Needless to say, we do not believe that the path of the Chinese government in response to the massive demonstration in Tiananmen Square is the direction that South Africa should take. We have looked at other dangerous situations and other countries

with well-armed and hostile segments of their populations. See Appendix 8, Northern Ireland and Appendix C, Israel. The conclusions that follow thus do not disregard whatever is and will continue to be special about the situation in South Africa. What we are proposing is, we believe, the safer course as well as a democratic one.

Like South Africa, a number of the European countries that we have examined have emergency powers that would, if invoked, permit the banning of demonstrations. Our recommendations are based on the assumption that South Africa will -- like the Netherlands,

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Belgium, and Germany -- resist the temptation to use emergency powers to circumvent democracy's acceptance of demonstration and to relegate the hopes civil societies have placed in tolerant policing to the corner of some future, entirely safe state.

Emergency powers have not been invoked in the Netherlands, Belgium, or Germany since World War II. In the case of South Africa the introduction of a State of Emergency providing for emergency powers must be reserved for a situation very near a state of insurrection or truly uncontrollable violence.

C. The Three Major Subjects of Our Recommendations.

In the sections that follow we will present our recommendations about three separate subjects. First, we will describe the processes that we believe are appropriate prior to the

time a demonstration takes place. In what ways should the authorities be made aware of plans for a demonstration, what powers should the government have to affect those plans, and -- most important by far -- how should the process be designed to maximize negotiation toward an agreed-upon demonstration between its organizers and the appropriate authorities?

The pre-demonstration, negotiation phase is designed to establish plans for the management of the demonstration phase. These plans are designed to establish the role and place of the police and others in managing the demonstration and to integrate

the resources available to each party. Managing the demonstration involves both what the police and others do. Where the planning has been successful, the police role may be no more than the provision of backup resources that are not used.

It is of fundamental importance to see that these issues are largely separable from a second group that concern the use of force by the police during a demonstration. The Western democracies that we have studied understand that the maintenance of law and order does not necessarily require the dispersal of, or any other particular police action. Against, every demonstration that is unauthorized or in violation of understandings to which its leaders have agreed.

Each of these countries has come to recognize that, despite extensive laws regarding giving notice of demonstrations and

its on the demonstrators' activities, a negotiating or imposing limit ignored the established spontaneous demonstration which has forceful governmental should not necessarily compel processes should be taken by the police against the reaction. If some action demonstration, it is because of the dangers inherent in what the demonstration legally-established process for handling ignored an orderly. We do not suggest that such orderly processes may demonstrations. but only that when they are ignored by properly be ignored, government authorities should retain discretion as demonstrators, an obligation to choose their response to their response and through such a demonstration, it may be perfectly wisely. Following appropriate to take legal action against the organizers and/or one In principle, the police should not police demonstration on the grounds that it not been approved by the authorities. Police response to for crowds are not responsive to demonstrations require judgment, by that individuals are, and this is rules and threats in the same way with regard to crowds already involved in particularly so protesting the unfairness of some state action. There is a large number of extremely difficult That of course leaves issues with regard to the crucial police role in the management of situations that become violent or threaten substantial civic demonstration should be addressed in their disorder. But these questions

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individual merits and substantially without regard to the first set of questions concerning the opportunity for prior agreement on how a demonstration will be carried out. In this second section we will also explore some of the most difficult of policing choices in order to give more concrete content to the general words that are the only guidance ordinarily given to the police: that, in the language of the continental tradition, police responses are to be proportionate, reasonable, and involve the use of minimal force. Our third and final group of recommendations involves the recruiting, training, organizing, and equipping of riot control forces and the relationship of these questions to the policing of ordinary demonstrations. The central principle we will apply in this section is that there is a logic to the relationship among these questions. Decisions about tactics and the propriety of various levels of force in different situations should precede and determine decisions about organization, equipment and training. Very important and difficult decisions about who should control the policing of demonstrations (local authorities or specialized national units) must, for example, determine the organizational structures for handling these questions.

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I. A Model Process for

the Events Preceding a Demonstration.

In the first part of this section we will outline what We believe is the preferred procedure for dealing in advance with demonstrations⁴, which often involve some disruption to the normal functioning of a community. Part of that process is the promulgation in advance. of parliamentary and subordinate legislation which make tolerably clear the limits of the authority of the state to regulate this form of political expression.

After we have described the process we recommend, we return to some of the most troublesome issues with regard to what should be permitted and what can be prohibited in the way of means and ends of demonstrators. That is the subject of the second part of this section.

A. The Process.

The process that follows is designed to express several fundamental principles of modern policing of demonstrations:

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; We use the word demonstrations to include loosely gatherings, processions and pickets.

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_No less important, this is a far more democratic way to
UUHLLUL Lhc behaviuui of demonatratro. The inherent conflict
and there is one between the convenience of other Fiti7onc uhn
have no interest in the dehonstrations and the purpose of the
demonstrators to make a statement both to their supporters and to
their opponents can be resolved consensually by negotiation between
the leaders of a voluntary demonstration and the elected
authorities who must protect the rights of the-demonstrators egg of
other persons. This way of reaching an agreement that redognizes
the interests of everyone involved-will itself command more moral
authority than the directives of even elected officials, let alone
the directives of a police force which has been viewed historically
with, at best, suspicion.

1. Excepting states of emergency (which have not existed in
these countries since World War II) the Netherlands and Germany
require onl; notice to local authorities prior to a demonstration.
Similarly, Great Britain does not require the obtaining of any
formal permission.⁵ The typical procedure in the United States,
5 Belgium's practice is somewhat different. Paragraph one of
Art. 19 of the Belgium Constitution states that Belgians have the
right to gather peacefully and unarmed if they obey the laws which
regulate the execution of this right, without need of prior
permission. Paragraph two, however adds that this provision is not
applicable to gatherings in the open air which remain subject to
the relevant police laws. One of the mcst important laws in this
connection is the Local Government Act that' underlines- the
responsibility of the municipalities for the maintenance of public
order and gives them the right to make police regulations in this
field. Belgian municipalities thus generally require permission of
the mayor to organize an outdoor gathering. (See, g;g;, the police
regulation of Leuven, Article One.)

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to demonstrate and may be biased against particular parties, we nonetheless believe that this is the best office to receive notice -- with a copy simultaneously directed to the South African Police -- and to manage the processes of consultation with the organisers of the demonstration (or their representatives), the police, any other local officials, and interested private parties. This is widely recommended in the submissions we have received. We strongly recommend that the local authorities seek the advice of the National Peace Accord structures where they are in place. The alternative of giving more than one set of officials responsibility seems unnecessarily cumbersome,. dilatory, and confusing. There are some advantages to placing responsibility for the process in the hands of the police. There will be occasions in which authorities will attempt to prevent some aspect of 4a demonstration which the police would have approved, thus making it more difficult for the police to reach an effective accommodation with the demonstrators. still, these considerations seem less weighty to us than the importance of making clear that the police are not responsible for preventing the tolerable disruptions and risks implicit in any demonstration, for these are political rather than policing" choices. Ultimate political accountability for preserving freedom to demonstrate should be firmly fixed with local political authorities. It is these authorities who are also in control of many of the places crucial for demonstrations such as squares, parks, and areas near government buildings.

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What inconvenience pedestrians, motorists, and others can be expected to endure to allow a demonstration to go on in the most effective way for the demonstrators is largely a political issue, not a policing issue. How serious it is for a sit-in to take place boycott of a particular sort are political questions. Such issues are not matters of enforcing the law against criminals; they are matters concerned with the broad regulation of democratic processes, including the right to demonstrate, and they require the balancing of the rights of different groups of citizens. For the political authorities to force the responsibility for making these people with such exceptions as the local authority may define for funerals, sporting events, parties, church services, etc. Many of the policing problems associated with non-political events are identical to those encountered in political demonstrations. It is part and parcel of a broader class of "public order" policing that includes festivals, carnivals, etc. Moreover, we believe that the definitional problems of distinguishing, for example, a "cultural

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requiring a permit but limiting sharply the grounds on which permission can be denied, is thus exceptional. We strongly recommend that demonstrators simply be required to give timely notice to the appropriate authorities before a demonstration, thus simple, useful, and specified by law; there is, in fact, broad agreement about the information needed.⁶

The "notice only" system expresses most clearly that there is a right to demonstrate peacefully which does not depend upon the discretion of local authorities. It requires the authorities to initiate restrictive action, thus symbolizing the right to demonstrate and making very clear a point crucial to clarify in South Africa: that failure to comply with legal requirements provokes forceful action. Finally, it encourages both parties to negotiate, making it clear that authorities will have to justify any restriction before a neutral body of review.

⁶ To indicate the information needed and in response to a submission that forms be designed, we have attached the forms used in Washington, D.C. (Appendix D) See also Sect. 2.5 National Peace Accord and Appendix B (for the information required in Northern

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-- to the maximum extent possible, the organisers of the demonstration should be responsible for controlling participants;

-- the governmental authorities (as well as the organizers) should regard their two-fold task as facilitation of the demonstration and minimization of' any inconvenience to other citizens which is not justified by the expressive purposes of the demonstration; and

-- reconciliation of the purposes of the demonstrators and the purposes of others, where they conflict, should be accomplished by negotiation and embodied in a binding understanding.

to command the most moral authority with the participants, particularly if the demonstration is in protest against governmental policy. As in the case of criminal law, such moral authority (accompanied by the legitimacy of the leadership invoking it) is almost always a more powerful force than the threat of punishment. This is particularly true where the actions of individuals can be both hidden and protected by their location in a mass of similarly motivated demonstrators. Thus the most effective way to prevent violence or other destructive behaviour during a demonstration is to rely on the leaders of the demonstrations and their marshals to exercise control.

festival" from a "olitical demonstration" are likely to prove
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impossible.

Crowds can be involved in any of a number of activities, all
of which raise related problems of maintaining public order. A
that it is crowd may want to publicize its views, displaying the
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intensity, breadth and unity of the support they enjoy. Such a
danancracien is likely ho-bohn'ao diEEaL-cntly duyutlditlg uyull LL:
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cooperate with a particular government policy or to demand a change
a particular private Activity. More broadly, it may be protesting
against the government itself Zr the government's security forces,
and therefore be determined that the demonstration show an
unwillingness to obey any of the orders of the present government
or the police. Such common purposes may disintegrate into what
amounts to a riot -- a sizeable number of people expressing
the name of revenge. Each of these variations has problems closely
related to the far simpler, but themselves sometimes dangerous,
tasks of managing a large crowd engaged in pursuit of some common
pleasure at aa concert or a sporting event, often drinking to
excess. We see no reason to limit the scope of what we are
proposing to one or another of these forms of group behaviour.
Thus we do not believe it is necessary or wise to add to the
definition of the demonstrations which are, subject to the notice
requirement, language such as that used in German case law limiting

the requirement to those gathering to discuss public affairs or raise public issues. Local authorities will remain free to create sensible and convenient exceptions to the notice requirements. For example, it is reasonable to limit the notice requirement to processions in, or involving movement of crowds through places open to the public.

4. Notice of a proposed demonstration or other similar gathering should be given as soon as the organisers begin issuing invitations to the occasion but no later than six working days before the event.⁷ We believe that six working days is an adequate period of time, although it will require local authorities to Brganize efficiently. Amsterdam, which has a one day notice requirement, has special bureaus in the town government and in the police for dealing quickly with these issues. We have calculated six days by allowing two days for the local government authorities to arrange and hold meetings with the police, officials responsible for the location, and the organisers of the demonstration; two days within which the demonstrators g; the police can appeal and the court can decide on any necessary conditions; and two days thereafter for the local authorities and the police to make preparations for the demonstration and for the organisers of the necessary for them to wait until six days before to begin preparations just because the sponsors wait until the last moment. In Australia, Britain and Holland the police initiate contact and get negotiations going as soon as they are aware that an event is being planned.

demonstration to notify the participants of the conditions under which it will take place and make final arrangements for marshals. If the local authorities do not act within whatever time is allotted to them, after notice is given, that failure to act should (unless good cause is shown) be taken as an automatic approval of the demonstration described in the notice.

We recognize that the problem of notice is likely to be less serious when the organizers need time to advertise the event than when a symbolic event precipitates an almost instantaneous reaction among a group living in close physical proximity with each other and communicating quickly and effectively through informal "grapevines." Every country that we have examined recognizes that in the latter circumstance -- where a demonstration is triggered suddenly by a dramatic event -- the demonstration is likely to lack clearly identifiable organisers and the demonstrators are likely to fail to give the required notice.

The South African Police have dealt with thousands of such "unauthorized" demonstrations without violence in the past. Each of the nations we have examined treats the absence of compliance with notice as an inconvenience but not as a ground for immediately taking action to prevent the demonstration. The response of the authorities in these situations should be to attempt, even at that late date, to facilitate the demonstration and to reasonably accommodate its needs to those of other members of the public.

This is the response of the authorities in the United States, Great Britain, Australia, the Netherlands, Belgium, and Germany. Once a notice has been received by the local authority, the local authority normally should be responsible to convene a meeting between representatives of the local authority, the police, the organisers and any other interested parties to consider the arrangements for the demonstrations. Local authorities develop and publish their procedures.

5. We believe it is essential that there be established provisions for the extremely prompt judicial review of any decision by a local authority imposing conditions on a demonstration. We recommend that the review be by a single judge of the Supreme Court decision even where he has committed no illegality or has not been guilty of any irregularity, but has taken a wrong view of the law and/or the facts. In exercising its powers of review necessary for the purposes of arriving at a just and equitable decision. It should have the power to reach any decision which should have been made by the official concerned.

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Making the right to judicial appeal meaningful and guaranteeing the freedom of demonstrations may require the passage of legislation with regard to the factors which the local authority may take into account when arriving at any decision. A Supreme Court judge would also be free to conclude more broadly that even legislatively authorized conditions were simply unnecessary and therefore unreasonable in the circumstances. This broad discretion is, for example, the general standard in Great Britain. Because the South African police are not subordinate to local authorities, we believe it is important for the police also to be free to seek review of either the imposition of conditions by local authorities that the police believe are illegal, unnecessary, or impracticable, or the failure to impose conditions that the police believe are essential to public safety. Since the mode of review should be very informal to permit prompt decision, we believe it should be within the discretion of the court to allow additional parties who may be affected by the demonstration to express their views.

6. Nothing is more important in the process we have described than the stage of negotiation among the local authorities, the organisers of the demonstration, and the police following the receipt of notice of a prospective demonstration and preceding any decision of the local political authorities. If there are bona fide negotiations with good will on all sides, ever.

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the largest of demonstrations can take place with safety for the demonstrators and others, with maximum effectiveness in Conveying the message of the demonstr the raters, and with as little disruption of lives of others as vigorous, independent review. ' ' the United States.

participation in
second reason for enthusiastic
negotiations by political and police authorities is the expectation
that the organisers of (demonstrations are xvilling and able to
assure the compliance of their followers with any agreements that
are reached. It is impossible to exaggerate the importance of this
condition. No one takes seriously negotiating towards an agreement
which will be ignored whether wilfully, mistakenly, or because what
is promised is beyond the capacity of the party agreeing. In
principle, marshals chosen by the organisers of a demonstration can
do far more than the police to prevent destructive behaviour by the
demonstrators, using far less force and recognizing boundaries
reached by mutually beneficial agreements with local authorities.
But what is true in principle may be difficult in practice.
Much depends on the social structure of the group that is
demonstrating: the nature and unity of its values, its cohesion,
and its acceptance of leadership. Much also depends upon the
ability of the organisers to either speak for or control more
radical or dissident segments of the demonstrating group. The
capacity of the organisers of demonstrations to speak for then
followers must be nourished and made to grow. Everything possibb
must be done to strengthen those mechanisms of self-control on th
part of the demonstrating' group. Rotterdam, for example, i
initiating a program to train marshals.
For the organisers of a demonstration to want to negotia:
in good faith, they too must see advantages. More predictable a7
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tolerant policing is one such advantage. Another, equally important, is the variety of forms of assistance that political and police authorities can and should offer to provide as part of an understanding. Demonstrations require help in negotiating traffic and in protection against hostile individuals or groups. They need facilities from loudspeakers to toilets. They need safe places in which large numbers of people can effectively gather. All these can and should be the subject of assistance by authorities in connection with negotiations surrounding a demonstration.

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Even if governmental authorities are determined to facilitate a demonstration and even if the leaders of the demonstrating group, a negotiated solution may fail either because there is, in the final analysis, a real difference between the two parties over how disruptive a demonstration can or should be or simply because there is a lack of trust in the police on the part of the demonstrators and in the leaders of the demonstration on the part of the police. Dealing with the latter, a lack of trust, requires efforts by both the authorities and leaders of organizations to build relationships over time.

As in any complicated negotiation over important matters, the result of the negotiations should be fully recorded to ensure that there is no disagreement about what was arrived at. In Great Britain, the leaders of police units will carry copies of the understanding which they can call to the attention of leaders of

the demonstration on appropriate occasions. The leaders of the demonstration could make similar use of copies available to them

7. Finally, in terms of process, we turn to the possible civil and criminal responsibilities of the organisers of a demonstration for the violation of conditions arrived at in this way. Demonstrators who cause damage and those who urge them or presently remain civilly responsible for that damage, if they can be identified and proven to have been at fault. Participation in a demonstration provides no special immunity. Moreover, the failure to comply with conditions suggested by the police or imposed by local authorities a judge may be considered important in determining whether organisers of a demonstration have been negligent. Only minor criminal sanctions are occasionally imposed on the organisers in the countries we have studied for failure to comply with conditions, although such sanctions are formally available in most countries. Despite the risk of discouraging frank disclosure of the identity of the organisers and thereby interfering with full and trusting negotiation with local authorities, we believe there should be minor penalties available

9 Great Britain also holds local authorities and the police responsible to citizens for certain damage to property caused by riot.

10 One submission suggests, as an incentive towards the organisers shouldering their important responsibilities for the peacefulness of a demonstration, that good faith performance of conditions arrived at prior to a demonstration might wisely be treated as defence to (or a ground for state indemnity of) civil suit. '

if organisers wilfully disregard the agreements they have made or the conditions imposed by a local authority or a judge on review of that authority's decision.

The more important sanction for violating conditions agreed upon, regardless of the excuse, will be for local authorities and the reviewing judicial body to consider the unreliability of the leaders of the demonstrations in judging what would be reasonable conditions on the occasion of a subsequent demonstration. Beyond this, an additional sanction for breaking an agreement is widespread adverse publicity, Nn harfv 4c livalu ?A 4nunea ak:_sanction.

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B. The Conditions That Can Be Imposed On Demonstrations.

Attached as Appendix E is a description of the general legislation in the Netherlands, Belgium and Germany authorizing local authorities to impose conditions on the right to demonstrate. We recommend similar provisions for South Africa,¹¹ supplemented by a statement designed to encourage the courts, on review of the decision of local authorities, to develop a substantial body of case law with regard to permissible restrictions on the right to demonstrate. The courts in the United States have been extremely active in this regard, and the results have generally been salutary. We attach as Appendix F a summary of the results of judicial review of the imposition of conditions on demonstrations in the United States.

¹¹ The United States Supreme Court invalidated a city ordinance which allowed city officials to refuse a permit for march if required to by "public welfare, peace, safety, health, decency, good order, morals or convenience." The march in question had been conducted along sidewalks without interfering with other pedestrians or traffic. The ordinance as written subjected the exercise of First Amendment freedoms to the prior restraint of license without narrow, objective, and definite standards to guide the licensing authority. *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969).

Similarly, a city ordinance making it a criminal offense for three or more persons to assemble on any of the sidewalks, street corners, vacant lots, or miles of alleys in the city, "and then conduct themselves in a manner annoying to persons passing by," was held to be unconstitutional on its face for vagueness in subjecting the exercise of the right of assembly to an unascertainable standard, and for overbreadth in authorizing the punishment of constitutionally protected conduct. *Coates v. Cincinnati*, 402 U.S. 611 (1971).

1. In general, the restrictions imposed in the Western European nations are designed to protect the safety of persons and property, the health and freedom of individuals, government and economic interests, the honour or reputation of individuals, and public tranquillity. The conditions permitted in the United States are analogous and are addressed to preventing six types of harm: attacks on other citizens; destruction of private or public property or occupation of public or private areas; closing dOWN of government or private enterprises and disruption of their functions; disruption of the movement of others by vehicle or foot; intercommunal violence or riot; and assaults on the police.

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Within these categories local authorities should define far more carefully the conditions under which demonstrations will be allowed. For example, we recommend a universal prohibition on demonstrators carrying weapons or replicas of weapons or wearing disguises. Local by-laws could also announce restrictions on demonstrations to times and places that do not unnecessarily impede motor vehicle or pedestrian traffic; that create appropriate distance between rival groups of demonstrators during a demonstration; that maintain access to private and public property in workplaces; and that forbid damage to public or private property.

The official policy papers of Amsterdam make clear that there will be no tolerance of violation of five specific conditions prohibiting : weapons, petrol bombs, barricades in the

street, racist statements, and, in general, 'danger to the safety, health, or honour of other citizens. Recognizing the history of armed bands during the Weimar Republic, Germany also regularly

prohibits any objects that could be used as weapons, either offensive or defensive as well as, like the Netherlands, forbidding hate speech.

Local authorities can and should properly retain an authority to prevent a demonstration from entering any place from which all other members of the public have been excluded for reasons of their safety or the safety of others. For example, the danger of an explosion is an adequate reason for preventing a demonstration from proceeding. So is the presence of injured citizens awaiting the arrival of help in the form of ambulances. More generally, the police can properly be left with authority to change conditions in what are legitimately emergency situations. Circumstances permitting, police should approach the local authority and 'if necessary' the court for a variation of the conditions imposed on the demonstration.

2. There are a variety of conditions bearing on the management of demonstrations that deserve special consideration. Similarly, Art. 53 of the local police regulation of Amsterdam forbids anyone from possessing, in public places and buildings accessible to the general public, an object or a substance obviously intended to disturb public order.

We believe it is reasonable to require meeting with the authorities and, in connection with that, the designation of representatives who can speak for the demonstrating organization. Although it is difficult to enforce, it also makes sense to require a sufficient number of marshals for the number of demonstrators (4:1, one marshal for every five demonstrators) and to insist that they be members of the organization, clearly identifiable, unarmed, and identified to the authorities so that contact with them can easily be made during the demonstration.

We recommend strongly against any requirement that the organisers of a demonstration post a bond for potential damage arising from the demonstration or be required to pay for the costs of policing the demonstration. Demonstrations are the democratic tactic of the poor and the powerless. Such conditions would frequently deny them one of their only sources of democratic political influence. Individual: who encourages damage to property or harm to individuals can of course be held liable under normal provisions of law.

or demonstrators. In principle we are in favour of the creation of such a fund to compensate innocent victims of harm caused by demonstrators. We have not, however, investigated the ways in

which such a fund should be financed and we are therefore unable to make any recommendations in this regard.

3. Several possible conditions cause the greatest concern and the most complicated issues. We have addressed three in particular.

First, local authorities should 393 as a general rule be empowered to deny a demonstrating group the right to demonstrate in a particular place or at a particular time on the ground that the demonstrators will be attacked violently by their opponents. The only exception to this rule recognized in the countries we have examined is where the police are demonstrably unable to provide protection for the demonstrating group despite bearing the costs and inconvenience of a very substantial effort to guarantee the safety of the demonstrators. To allow hostile parties to prevent a demonstration by threatening violence is to give them the very freedom to foreclose a fundamental democratic right which the state must deny itself. The only answer is to restrict the activities of the violent opponents on the demonstration, not the peaceful expression of the demonstrators.

We do not believe that there is any distinction to be drawn in this regard in terms of whether the demonstrators intend to provoke their opponents by the peaceful demonstration. This is too difficult a matter to determine and too easy a conclusion to manipulate; it should make no difference. Nor should it make a

difference that the demonstrators want to march peacefully through a "hostile" area. Speaking to those hostile to them is part of the democratic rights of citizens; although, on demonstrating in the immediate vicinity of either courts or parliaments. hand, each of the nations we have examined makes a substantial effort to permit any demonstration, including those addressed to courts or parliaments, target.

Africa. , the parliament, and the offices of the state president should be allowed within sight and sound of their target. However they can be kept at a sufficient distance (for example, 500 meters) that the officials occupying these offices are not endangered; prevented from doing their work by noise and commotion, Africa. Individual demonstrators can be arrested in the

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or language group in South

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Netherlands and Germany if they violate a general prohibition of hate speech found in their criminal codes;¹³ the prohibition also often appears as a condition of approval of the demonstration. Similarly words and behaviour likely to incite racial or, in Northern Ireland, religious hatred are specifically forbidden by British law. (See Appendix B.) On the other hand, such prohibitions might well be considered unconstitutional in the A.

United States.¹⁴

We believe that this issue of hate speech is of great importance in the present context of South Africa. We believe that the society in South Africa is too dangerously divided by suspicion and fear and too tenuously united by hopes for a unified future to insist that local authorities permit demonstrations intended to inflame hatred and incite fear. Until the national parliament acts, we believe that local authorities should be authorized to prohibit demonstrators from inciting hatred and fear of other

¹³Article 130 of the German Criminal Code states

"Whoever attacks the human dignity of others in a manner liable to disturb the public peace by

1. inciting hatred against a certain part of the population,
2. inciting to violent or arbitrary acts against such part of the population or
3. insulting, maliciously ridiculing or defaming such party,

shall be punished by a term of imprisonment of not less than three months and not exceeding five years".

¹⁴ See *R.A.v. v. St. Paul*, No. 90-7675, decided by the U.S. Supreme Court on June 22, 1992.

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15 See Sect.
2.4 of National Peace Accord.
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II. The

Use of Force in the Policing of Demonstrations.

Introduction

We believe that the most difficult questions arise in the area of managing a demonstration after it is under way and not in the area we have just discussed of negotiating the conditions under which demonstrations may be held. Managing a demonstration after it is under way, just as much as planning it, is a responsibility of the organizers,

joint

the police, and, where feasible, local authorities. Thus, to facilitate a change of behaviour of crowds (towards more peaceful actions)

we emphasize the crucial

importance of negotiation and communication-where possible during the course of demonstrations.

This emphasis has various components: (1) Negotiations between police and demonstrators need to be, where possible, continuous and visible, not only "behind the scenes." (2)

Establishment of clear c

hannels of communication during the course

(3) In the l

, both police and demonstrators

should nevertheless attempt to establish channels of communications during' demonstrations.

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Still, sometimes shared responsibility breaks down, leaving very troublesome issues as to the use of force by the police. We now turn to these.

It is important initially to recognize that the very real difficulties of handling demonstrations in some particularly troublesome situations would not be reduced by forbidding the exercise of the democratic right to demonstrate. As the South African Police have noted, thousands of unauthorized demonstrations take place now without any substantial violence. Moreover, even if it were possible to tell in advance what demonstrations were likely to result in violence -- a very questionable prediction in many cases -- prohibiting the demonstration might well not prevent that violence. Indeed, an effort to disperse a demonstration that had not yet become violent risks encouraging violence by inflaming the participants and by disregarding the important role in managing the demonstration that can be played by the organisers.

We therefore emphasize that the South African Police have no obligation to assure the dispersal of a demonstration only because it is conducted without prior notice or in some other way violates the law without threatening violence or massive disorder. The obligation of the police is to facilitate peaceful demonstrations while preventing injury to individuals, damage to property and, so far as is consistent with recognition of the importance of demonstrations to democracy, interference with the rights of others.

We will discuss our recommendations With regard to the use of force in policing demonstrations in two sections. First, there are the questions with regard to the rules for use of lethal force, sub-lethal force, the power to arrest, and other possible

16 powers. These rules are of great importance, but we are aware fact that the justification for using various levels of force often depends not just on the activities of the demonstrators but also Chi prior tactical decisions made by the police. Thus, in the Secondi section, under the use of force in policing, we will address what we believe are the most troublesome practical problems of policing demonstrations, using these examples as a way of adding clarity to the necessarily vague prescriptions regarding the use of force.

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16 Closely, related to these questions are those involving the scope of intelligence gathering and any necessary systems for
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A. The Applicable Legal Rules with Regard to Policing.

1. The Use of Lethal Force. For the use of lethal force, we recommend the rule followed by Germany, the Netherlands, most jurisdictions within the United States, Australia, and Great Britain: that lethal force is only justified in policing a demonstration when the conditions make available the general justification: for the use of lethal force in principle: not criminal law and criminal procedure¹⁷. There should be no additional power to use lethal force because the activities are part of a large-scale demonstration. There should, of course, be no less justification for using lethal force because a demonstration is involved. Thus self-defense, protection of the lives of others, and prevention of certain very serious violent crimes justify the use of lethal force. The protection of property normally does not. In principle, lethal force should never be justified to disperse a crowd, let alone when a crowd is retreating.

The only broadening of that rule to which we gave serious consideration would be to allow the use of lethal force, as a last resort, to prevent a crowd from occupying certain highly symbolic, ¹⁷ The legal position in South Africa regarding the use of lethal force to effect an arrest does not form part of the brief of this panel, but needs clarification.

correspond to the
which
demonstrators can be kept at d
On balance,
however,
1")
upon two matters that go beyond 5
there are enforcement devices.
Most important, it depends upon the
regulation of the of demonstrations to
prevent the i
demonstrators from engaging in behaviour that t
smaller, armoured,
air-conditioned vehicles to
demonstrations that are becoming dangerous.

single vehicle and requiring Lhcm to disembark from it, perhaps, under threat of fire, increases the need for defensive fire and the risk of death to all parties.

2. The use (of non-lethal force. The general rule in continental Europe is that sub-lethal force must be proportionate to 'the need, reasonable in the circumstances, and minimal to accomplish what is required. Its appropriateness depends upon what is at stake. Similar notions are plainly applicable in Great Britain, Australia and the United States; it is to deal with the inherent vagueness of these prescriptions that we address certain

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troublesome situations in the next subsection. At this point we have only one general observation and one procedural recommendation.

All the parties agree with the police of the other countries we have observed that there is a requirement of minimal force in policing demonstrations. But behind this agreement there lies a certain amount of confusion about how to interpret that requirement, which may have any of several meanings. One important meaning is that, given a specific goal, no more force should be used, and no more harm should be done, in accomplishing that goal than is absolutely necessary. To apply this meaning in practice, a police force may insist on a slow escalation of steps and warnings. For example, police procedures might specify that birdshot could only be used after the failure of rubbershot or

plastic or rubber rounds, and these could only be used after tear-gas, and that only after water cannon or sneeze machines had been tried.

wise within its own limited realm, this definition of minimal force does not, however, address the (question on what occasions for what goals any force should be used. Thus, another meaning of the requirement of minimal force would limit y the occasions on which any force would be used to substantiall

disperse a demonstration, or any force beyond the arrest of articular demonstrators.¹⁸ We have em hasized that question in p P

discussing the response to a demonstration which has not been the subject of notice and negotiation.

closely related to this second meaning, "minimum force" could include the broader requirement that certain kinds of sub-lethal force would not be authorized where the goal did not warrant such force. In this third meaning of "minimum force" there would be specific limitations not only on the use of lethal force but also on the use of various forms of dangerous sub-lethal force. For example, even a crowd that was damaging property might not be subjected to certain forms of sub-lethal force unless, and until, its actions posed more serious dangers. The last definition is in operation in a number of the countries we have observed.

¹⁸ This is the position apparently taken in Sect. 3.2.5.1 (vi) of the National Peace Accord which require, for the use of any force to disperse a crowd, "a danger to the public safety or to the safety of any individual or to any valuable. .property."

The Netherlands, Germany, and Belgium have a variety of rules affecting the use of various sub-lethal devices. Each of them forbids plastic and rubber bullets altogether as part of a strategy designed to reduce the risk of lethal violence by either side. The Netherlands restricts the use of tear gas to specially trained units and imposes procedural requirements such as an order of the general police commander as well as substantive requirements that the crowd is posing an immediate and serious threat to persons or property and that the crowd has an ample opportunity to flee. Without embracing any specific recommendations as to specific sub-lethal forms of crowd control, we recommend that the question be addressed more formally by the Minister of Law and Order in consultation with the Police Board and that he be charged with establishing a set of rules prohibiting or regulating the use of particular, somewhat dangerous devices including rubber and plastic munitions and tear gas. The formal review should result in the publication of proposed regulations in the Government Gazette and the public should be invited to comment on them. In this connection, we strongly recommend careful consideration of the systems developed in the United States, Great Britain, the Netherlands, Belgium, Germany, and Australia.

3. Arrest and Other Legal Powers. The arrest of individuals engaged in or encouraging violence or the destruction

of property is the much preferred alternative for dealing with these dangers during a demonstration. Using this option requires:

- _ adequate intelligence on the behaviour of individuals with in the demonstrating group;
- highly trained arrest units able to move quickly into the crowd and seize the individual;

Amsterdam, for example, has special units. Each of these nations pays special attention to the use of cameras to gather evidence that can be used at a trial at a later date. each of the countries

It is important for South Africa to have the same capacity to make arrests.

dangers that a few individuals can present in an otherwise peaceful demonstration. This individuals are beyond the control of the organisers of the demonstration and their marshals.

from a rival group.

posed by the use of gOVernment informers or agents to secretly spy
on political organizations, those serious problems

4. Met

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Demonstratiog;i _____ff__T_____h-_JL____ig.f_ _ _g

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, hOWever, there should not be a

separate system for handling demonstrations.

partles in a way' that is impossible for other
interactions.

is likely to be a confrontation leading to conflicting allegations of wrongdoing.

In its submission, the ANC has recommended that a commission should be available to provide monitors at the request of demonstrators. We believe that recommendation is a very useful one which should be available to all parties and might well be funded Intimidation.

n.

In general we believe that post-incident independent review is a powerful influence on police behaviour during a demonstration, for the police are aware that the reviewers will demand to know what options were considered and why some were discounted. It should be borne in mind that police officers are not only influenced by legal sanctions, but also and more importantly by political consequences. The same would of course apply to demonstrators. Thus much will depend upon the attitude of influential groups in South Africa. In a political climate that abhors violent disorder, provocative police action, and the use of excessive force, policing will be restrained because careers may be at risk. Where the climate is extremely tolerant of such police actions, there is little incentive to use restraint q: to ensure that subordinate officers comply with higher level directionc.

In the United
States, Great Britain the Netherlands Belgium, Germany, France,
Italy, and Australia We hope that the result would be an
increased
sophistication among those who
Before turning to these, we
should emphasize that
confrontations are frequently not inevitable.
In many cases,
49

Equally important, the need for confrontation can be substantially impeding traffic or commerce. Their natural physical contours make it unlikely that the demonstration will spread out uncontrollably in the form of a riot, although this happens occasionally. The advantages to the organisers are the availability of a stage, powerlines, loudspeakers, and other facilities. This too decreases the likelihood of confrontation.

1. Picketing. For several reasons, picketing presents an easy subject of policing. It is generally static, small-scale, and

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line. The plcketers have an
ess to the bulldng or location they are
Thelr right is to peacefully persuade people at the
, not to impede entrance. Peacee
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prevent the demonstrators from
gathering in the city centre either by requesting small groups to
depart from the area as they attend
or ordinance prohibiting
traffic would be entirely a
Netherlands,

later be arrested and prosecuted for any offense the committed.

y may haVe

3. Pa

aceful Demonstrators Occugying a Govarnment Building.

In all of the countries we haVe studied

The matter would not, of course,

be treated as some symbolic form of treason or insurrection, but

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the demonstrators are then allowed to leave on their own, being arrested after they have left the building.¹⁹

The important point is that in no place that we have considered would more substantial force be used than is required to arrest and 'remove the occupants despite the occupation of a government building. Any more force than this is likely to appear disproportionate, causing sympathy for the demonstrators and their cause. It would also be likely to incite resistance by the demonstrators or observers and thus lead to a dangerous confrontation with the police.

4. A Potentially Violent Confrontation Between Two Hostile Groups as the Results of a Demonstration. There are two possibilities here. The first, we have already addressed. If a group of peaceful demonstrators is likely to be attacked by a hostile and rival group, the police in each of the countries we have examined will make every effort to protect the peaceful demonstration and arrest those attacking it. There is no effective distinction to be made in terms of whether the peaceful demonstrators intend to provoke violence against themselves or not. In either event they must be protected. Nor can they be denied the right to travel in areas largely populated with members of a hostile group. Freedom to travel anywhere in the country is also

¹⁹ Incidents involving violent terrorists holding hostages of course require entirely different police response.

r group. That risk
Large groups moving toward a
confrontation,
even carrying stones and bottles, cannot be
separated by the use of lethal force,
save for the circumstances
mentioned above.

Police have described in its second submission several widely accepted procedures for dealing with this problem including: assuring that a march continues until it is in a safe location for the group to disperse; having the organizers provide vehicles to move the demonstrators out; and providing substantial police support during the dispersal period. We strongly endorse these measures.

5. A Police Unit Under Attack with Stones and Bottles. It is, of course, appropriate to use the police to block the path of a demonstration the object of which is to endanger others, destroy property, or deny access to a government or a private building. In this situation the demonstrators and their leaders are likely to resort to throwing stones and bottles, or even petrol bombs, to displace the police or merely as an expression of frustration and hostility. 'Assuming the police were unable to prevent the assembly of the demonstrators or to disperse them, for example, by the use of mounted patrols, and assuming that negotiation is fruitless, what should the police do?

offensive action against demonstrators standing at some distance and throwing missiles will in most cases stoke the crowd's anger and rebellion and incite stronger police responses. On the other hand, the police should not retreat, leaving the target exposed to damage at the hands of an unruly and violent crowd. In most of the countries we have examined the preferred tactic would

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distance they would lay down
Belgium and generally in Germany,
plastic Bullets.

law They would be recognising that there are two battles taking
place. one currently on the ground and the second soon to be in the
press

The problem in this situation, as in the one that follows,
is that it is extremely difficult for supervisors to maintain

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control of police on the line. Assaulted with stones and bottles, let alone petrol bombs, some police officers are likely to respond with rage. If one person then fires lethal ammunition, everyone is likely to fire. The only answer for this is careful training, careful supervision, proper protective gear, and equipment with non-lethal means to hold an angry and hostile demonstration at bay. All of this requires planning ahead.

6. Someone Within the Group of Demonstrators Fires Upon the Police. This situation may be very much the same as that described within the demonstrating group is firing a gun at the police. This occurred in Germany in November 1987 during a massive demonstration against the construction of the Frankfurt Airport. The result was the death of two police officers.

In this situation the police should try to arrest those demonstrators using lethal weapons, if this can be accomplished with reasonable safety. If the demonstrator cannot be arrested safely, even by specially trained arrest units, other specially trained units should be used to target the offending demonstrator with preventive fire. Only the person firing on the police should be a target. The others are not responsible for his actions, which may indeed be those of a provocateur hostile to the aims of most of the demonstrators.

C. The Hardest 0229131 A Situation In Which

There Is A Serious Risk That The Police Will Be Enqulfed By A Hostile Demonstrating Group.

to members of a lcivai group, to government officials, or to property. All the experts with whom we haVe talked emphasize that continue towards their goal, is damage to property.

group when they reach their goal, we must address the question whether there are any situations in which lethal force may be required and justified. We believe the legal stahdard, based in the lay of selfedefence, is clear enough. Since the police are be permitted and encouraged to stand their ground in situations like

those we have described, they may resort to deadly force if, but only if, they reasonably believe that any substantial delay in using such force would severely endanger the lives of one or more of the police or other people. The difficulty, as so often, is in applying the standard.

The danger and the great fear it is likely to arouse is well described by Anthea J. Jeffery in her book, "Riot Policing in Perspective."

"Rioters in Europe may be violent toward a policeman who falls into their hands, but they would rarely fatally injure or kill a member of the force. In South Africa there appears to be no such restraint... Policemen know, accordingly, that they can expect little mercy from the mob. This is borne out, for example, by events at Daveyton in March 1991, when a policeman, who became isolated from his colleagues and surrounded by an angry crowd, was repeatedly stabbed and hacked to death.

The result is that 'close contact' measures are immediately rendered unusable, except where the police have sufficient numbers to guarantee against being outflanked or surrounded or having their formation broken up.' Under any other circumstances, there would be too great a risk of one or more policemen being seized by the mob and, quite probably, killed." (Page 95)

Facing a hostile crowd is different from facing a hostile individual. A constable with a firearm can be expected to allow events to develop to the point where he is quite sure of the dangerous intentions and capabilities of a single individual without a gun before using the pistol to prevent an attack. But 'with ten, twenty or thirty angry demonstrators. In that situation, letting the approaching group get close to him will mean that it

may be too late to defend himself,
although until they come within
reach it will often be difficult to tell whether they intend
violence to the constable.

It is also likely to be exaggerated on many
occasions. Obviously deadly force is justified in this situation
where failure to use it promptly would severely endanger the lives
of one or more of the police. Plainly, deadly force is not
justified if the demonstrators are simply determined, disorderly,
or defiant, but not homicidal. The difficulty is in telling the
by reacting with lethal force

either too quickly or too slowly -- is the basis for our most
important recommendation. h

occur. Explicit advance discussion with the organisers the use of
physical barriers the movement of reinforcements, the availability
of sub-lethal equipment, the development of sophisticated tactical
contingency plans -- all these and more must be directed to
avoiding the situation we have described. For once it occurs,
there is no satisfactory solution.

More specifically, we can recommend only the following:

-- When there is specific reason to believe that the participants in a demonstration are likely to outnumber the available police and are likely to do injury to the police if they are not stopped, units armed with lethal Weapons (not merely holstered revolvers), including shotguns should be available but at a distance behind the most exposed and endangered frontlines of the police attempting to block the demonstration. Preferably, they should be kept out of sight until needed.

. and dispensing

the most effective range of sub-lethal "distancing" request of the officer in charge of policing the demonstration. Even thereafter, use of lethal force should have greater precision 'the situations in which lethal force should be used to prevent

Command
and Control of Police.

III. The organizational and Training Implications of our Recommendations.

A. overall Training

We have recommended a new set of principles with regard to demonstrations and a different concept of how demonstrations should be managed. These require a departure from the role the South African Police may have been expected to play in managing demonstrations in the past. If our recommendations are adopted, there should be a comprehensive review of present police training in this area.

At one level, what is required is a new emphasis on particular techniques and tactics. The concept of shared management-and responsibility among the police, local authorities, and the organizers of demonstrations means that there must be increased training in negotiations and in ways to cooperate with the organisers of demonstrations to defuse situations of actual or potential confrontation. At a purely tactical level, the changes we have suggested with regard to the use of force will require exploring and mastering new equipment, reducing the emphasis on the use of lethal weapons, and more attention to the social and psychological factors that will influence both police and demonstrators, particularly at times of stress. The Netherlands, for example, emphasizes the last in its training.

We would particularly like to emphasize one point, drawing on the experience of New York City. Human relations training, "designed to equip the officer with the knowledge and skills necessary for working with persons who are different from himself, should be a central part of law enforcement training. Conveying the necessary insights and skills in this crucial area requires more than lectures. Role playing, workshops, and other interactive training methods should be employed. Topics such as prejudice, hate, racism, discrimination and bias should be included in the workshops. The training sessions should emphasize communication skills including listening. In multicultural societies "human relations" training must also include cultural awareness. The history and distinguishing characteristics of each major culture should be introduced. Members of the various cultures should be invited to assist in both the preparation of the course material and the classroom presentation.

8. Major Organizational Decisions

At a broader level, there would have to be an effort to reduce the paramilitary quality of present thinking and training about demonstrations and to develop new attitudes more like those that have developed in the last two decades in the United States, Western Europe, and Australia. Outside assistance by police experts from other countries may prove to be essential. We therefore recommend that the assistance of such experts be sought.

In the countries we have examined there are two basic models of organization for public order policing. In Belgium and France special units of the police bear the primary responsibility for policing demonstrations and riots.²¹ In the Netherlands, Great Britain, and the United States the primary responsibility is borne by the police units which have a daily responsibility for the normal policing of the area. The former tradition involves a more military-like structure and tactics. The latter is more in the line of civilian policing and can allow more flexible tactics. Most countries involve a mixture with an emphasis on one or the other of the classic forms. We recommend that the South African Police emphasize broader roles for well-trained but normal police units, along the model of Great Britain, the Netherlands and the United States of America.

The advantages of placing principal reliance on special, mobile reaction units are these. The units can develop a substantial repertoire of coordinated movements and actions and can develop experience at all levels which will increase calm and rationality under stress. Broad reliance on a specialized reaction

²¹ In Belgium and France only the (mobile) gendarmerie, and in Germany only the Bundesgrenzschutz, are organized, trained and equipped for the containment of very serious, potentially violent clashes in the framework of public order maintenance. These police forces can be categorized as "third forces": between the civil police and the army. In Belgium and Germany the civil police forces only have very limited capacities to contain public disorder. In France the (national) civil police has its so-called "Compagnies Republicaines de Securite": their organization falls somewhere between the "normal" civil police units in most countries and the special mobile units in the gendarmerie police forces.

police from the burden on their unit also relieves the ordinary time and, importantly, on their credibility that can flow from public order policing. The latter is often thought to be a particularly important advantage. Public order policing involves not simply with known criminals, and thus can cost the police dearly in terms of reputation and support.

The disadvantages of relying primarily on a specially trained reaction unit are also well known. Its expertise leads it to assume control in any situation where it is called in, although it will not know the background of the demonstration or riot nearly as well as the police officers who are assigned to the area. It will have no responsibility for the aftermath.

Equally important, g and thus has no major incentive to be restrained. Finally, because specially dedicated reaction units are under-occupied most of the time, they are generally kept small; and, being small, they tend to offensive action, a tendency strongly reinforced by more force and policing. This in turn encourages opponents to use to become more violent.

Believing that there are great advantages to maintaining reaction, we the commanders with territorial responsibility in that we recommend that primary responsibility be given to local police for any demonstration that they can be trained, equipped, and organized

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to handle. There is no
their relationship
no more important resource is
one with the local community
or the police than
ity. There is no resource
that is more in doubt in South Africa. There is no situation that
threatens that crucial resource more than the policing of
demonstrations. This is the argument that leads us to urge primary
reliance on
community policing for normal
The organizational model
can maintain a high level
primarily on a single,
countries we have examined
organizational structure
the customer who,
menu of specialized units that
can interact, chooses from the
aid of the police resources
authorities must accept
there and must
public
commander remains in charge,
the form of public order
Thus, for example,
might be
of personnel
demonstration.
In local policing of demonstrations
of sophistication without
national,
have managed to accomplish their
re that they
advised by full-time professionals
already under his command.
Assure that the necessary specialists
Assure that a local commander
in order problem knows what the
for this is the center:
order policing
in Great Britain any of a number
involved
actions as well as efforts at
all times.
We are urging is only useful if it
relying
mobile unit. A number of the
is by an
teats the local police commander as
professionals who know the
can be called upon and the way they
menu what he thinks will do best in
Central
specialized units are
der confronted with a
y can do for him. But the local
al principle of
that we are proposing.
ber of types
in policing a particular

1. Ordinary constables who receive a limited amount of basic training in handling demonstrations.

2. 8mm: ronctabloc who rcccch a greater amount of more specialized training in handling riots.

These first two levels are merged in the Netherlands where everyone receives six-weeks' training in the responsibilities of participating in mobile anti-riot units.

3. A relatively specialized, highly trained anti-riot unit.

Unlike the first two groups of participants, this last would be small and would not have other responsibilities. It would, for example, be prepared to handle a crowd throwing stones and bottles and it would be equipped with the necessary vehicles. The small highly-trained group would thus be familiar with close-contact work which is often dangerous.

In an ordinary demonstration, constables with a minimum of training might be used in the first instance to guide the demonstration along an agreed upon path. If a demonstration turned into a riot the highly-trained anti-riot unit might then be called in. As the situation was brought under control, the officers with an intermediate level of training might be used to maintain the re-established order and free the anti-riot unit for other duties.

In addition to these divisions of basic crowd control responsibility, officers trained and serving a tour of duty in highly specialized unit Could be called upon by the territorial commander. In the Netherlands there are such specialized units for arrest, control of informants, the use of horses, and the use of such non-lethal weapons as tear gas and baton rounds. If there is gunfire from the crowd in the Netherlands or Great Britain or the United States, a SWAT team or an armoured response unit could be called upon.

Needless to say the training, transportation, and equipment of each of the units we have listed would be different and specialized to its purposes. But each of the specialized unit would be headed by an officer of a lower rank than the territorial commander who called upon them and each would operate under the territorial commander's direction.

In recommending some variation of this pattern for the South African Police, we are well aware that it is an extremely demanding form of policing. We are convinced that the South African Police have the capacity to implement our recommendations. We suggest that the South African Police consult with police forces elsewhere that have been applying these principles for some time. Preferably these consultations should take place under the auspices of the Peace Accord.

The only exception to the rule of overall command in the hands of the territorial commander would be in the extreme case where a military or gendarmerie unit would have to be called in because the level of lethal force being used by forces arrayed against the police was sufficient to require equipment (such as automatic weapons, hand grenades, or tanks) and training more frequently found within military units and more appropriately kept out of civilian policing.²²

Thus, the Netherlands, Belgium and Germany use such special units under the command of civilian ministries when and if heavy equipment such as hand grenades or automatic weapons is needed. In South Africa we could only envisage such heavy equipment in use if there was the equivalent of a battle underway between well-armed rival groups. For that hopefully rare occasion, we believe it would be better to rely on military units under the authority of the Minister of Law and Order, as in Germany and the Netherlands, than to have police specially trained and equipped for pitched battles.

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²² In the Netherlands special units from the Marechaussee (a small gendarmerie force) and the army can be called in: In Belgium and Germany these situations would be handled by especially trained units of the gendarmerie and Bundesgrenzschutz; the army would play no active offensive role in these countries (one of the advantages of a "third force").

C. Types of Equipment and Length of Training

The understandings with regard to the use of force discussed in Section II. above have obvious implications for equipment and training. The very limited authorization for use of lethal force suggests that holstered sidearms should be the only form of lethal weapon carried by ordinary units charged with riot control or even specially trained units intended to deal with an angry crowd throwing stones, bottles and petrol bombs. Muzzleloaders should be held in reserve in the hands of units which will only be brought forward if there is reason to expect danger to life and then only on the order of the local commander. However, although birdshot fired from a shotgun may be sub-lethal, there is no way for demonstrators to know what is being fired from the shotgun. Therefore we recommend that shotguns be treated as lethal weapons, handled by separate units and held, out of sight, in reserve for occasions where life is threatened. otherwise demonstrators will react as if they are confronted with a shotgun loaded as a lethal weapon. The reduction in lethal weapons we propose requires that there be a substantial range of other equipment³³ and a supply of tear gas and other riot control equipment. Reducing the use of lethal force also will require increased sophistication and training of all levels of police involved in

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23 See Sect. 3.2.5.1 (vii) of National Peace Accord.

demonstration control. An ordinary South African constable now receives four weeks of riot control training out of a six-month course. A comparable constable in the Netherlands receives six weeks of training out of a one-and-one-half year course of instruction, including lessons in crowd sociology and psychology, the effects of physical and mental stress on one's own group, tactics, and law. In addition there is a one-week annual refresher and a semi-annual exercise. In crowd psychology (or every officer). There is an additional four weeks of training for the specialized arrest units which are sent into crowds to arrest those engaged in or inciting violence.

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In this regard the responsibilities of commanding officers needs stressing. Public order operations involve police acting corporately in relation to a crowd acting as a collectivity. It is essential that police officers be properly disciplined and that those who command them are properly trained. Effective planning and preparation tends to maximize control over events and inhibits confrontation and over-reaction.

Finally, we believe that the effectiveness of the joint management of demonstrations and the safety of all can be advanced by substantially increasing the role of underrepresented groups in police leadership in this area. The crucial decisions about police action from the time of notice and negotiation through to the time demonstrators return home are made by senior police officers who should have the knowledge and enjoy the trust that comes from

familiarity with members of the leadership of the demonstration and understanding of the causes of its participants. We recognise that this requires far more than a single directive; energetic recruitment, careful selection, promotion and well planned training take time. But the time to begin that path is now and the way to begin it is with boldness of vision.

CONCLUDING REMARKS

We were charged by the Commission with reporting what treatment of demonstrations in South Africa we believe was dictated by reason, fairness, and, above all, a respect for democratic principles rooted in the tradition of the Western nations. In carrying out this charge we have carefully considered and extensively debated whether our answer is applicable to conditions in South Africa, and we have concluded that it is.

One final point of context does, however, seem to us essential to emphasize. The various opportunities and problems that demonstrations present today are just one part of a much broader picture. To lose sight of how our recommendations are related to a far greater task of building a true democracy would be short-sighted and likely to lead to bitter disappointment. Four connections are, we believe, central.

First, our various recommendations themselves are connected as part of a single coherent package. The most important connection

is the one with which we began : effective egg peaceful demonstrations require cooperation among organisers, local authorities, and police which in turn depends on prompt, continuing, and fair procedures and very restrained use of force. We believe that South Africa should strive for an integrated policy on demonstrations to be embodied in comprehensive legislation and systematic efforts at organisational change. This is not only the view of the panel. All the parties making submissions to the Commission emphasize, in one way or another, that the time has come to change many matters together.

The second connection is this. To begin, one must start somewhere and the Commission began by asking us about demonstrations. But handling demonstrations requires considering closely related policies that were beyond our brief. We have mentioned several subjects that bear importantly on our subject but also affect much else. Hate speech, for example, is not primarily a problem of demonstrations. Nor are the very significant questions as to the permissible scope, in a democracy, of intelligence gathering about non-violent political organisations. We have discussed picketing in general but were not expected to place our recommendations in the broader context of recommendations for South African labour law. We do not believe our recommendations would change if these important areas were included in the picture, but their resolution will shape many of the consequences of our recommendations.

As to one very closely related area, we are more concerned
We have proposed new rules without proposing new referees -- ne
structures to enforce them. We are acutely aware that if th
people of South Africa are to have confidence in those whom we hav;
recommended be responsible for the planning and policing 0:
demonstrations they will have to be assured that the police and
others will act in accord with the approach we advocate. It is
essential that mechanisms be established for scrutinising the
conduct of the activities of all those inVOIVed in demonstrations
the policing of demonstrations but applies to policing generally.
Although this is not an issue that falls within our mandate as a
panel, it is central to the success of our recommendations. We
recommend that the Goldstone Commission examine this important and
contentiogs issue. Its recommendations would include, but not b(
limited to, the question of demonstrations that has concerned us
Third, nowhere is it clearer than in dealing wit
demonstrations that politics and law are deeply cqnected. Ou
democratic political activity that can t
both effective and peaceful can only work if the mainn_pnlitica
forCes in south Africa want peaceful and effective political debat
and contest. History teaches us that democratic politics
including peaceful demonstrations and restrained and trusted poli(
involvement in protecting democratic values, depends upon a socie
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'thout mutual restraint.
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ceful democracy.
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