



**International
Observers
Network**



WRITTEN CONTRIBUTION TO THE HALF-DAY GENERAL DISCUSSION ON ARTICLE 21 OF THE COVENANT

1. Introduction

1.1. The following written contribution is produced by the International Observers Network (ION) and is supported by the International Youth Human Rights Movement and the Human Rights House Foundation.

1.2. International Observers Network is an international association of citizen observers, based on common principles of independence and neutrality, established in 2014 by the International Youth Human Rights Movement, International Network for Freedom of Assembly and International Civic Initiative for the OSCE with the support of the International Platform “Civic Solidarity”. It unites individuals that are participating in leading oversight and observer initiatives in Russia, Ukraine and Belarus, coordinates international observation during assemblies and facilitates exchange of experience between monitoring groups in those countries and beyond.

ION’s mission is to promote mass engagement in civilian oversight and public observations and its objectives are the following:

- 1) to increase the openness, accessibility and accountability of law-enforcement agencies;
- 2) to strengthen and support citizen oversight initiatives in the countries of ION participants and at the international level as well as to develop international cooperation in this area;
- 3) to reduce the level of aggression between citizens and the authorities, as well as to facilitate non-violent resolution of possible conflicts from the position of a third force;
- 4) to respond to conflict situations associated with massive violations of Human Rights or to events that may lead to such situations.

1.3. Youth Human Rights Movement (YHRM) is an international network of civil society activists, primarily from the post-Soviet space, with a mission to form a new generation of human rights defenders. YHRM participants have been crucial in the monitoring initiatives in Belarus and Ukraine (including Crimea), have assisted in preparing a number human rights assessments of various government’s reactions to mass rallies and have launched observer initiatives in several countries. YHRM enjoys participatory status with Council of Europe and is a member of Council of Europe INGO Conference.

1.4. Human Rights House Foundation (HRHF) protects, empowers and supports human rights defenders and their organisations, and unites them in an international network of Human Rights Houses, which are collaborative projects of non-governmental organisations working in partnership to promote and advance human rights at home and abroad. HRHF advocates with partner organisations to promote the freedoms of assembly, association, and expression, and the right to be a human rights defender at home and abroad.

1.5. The International Observers Network welcomes the initiative of the Human Rights Committee to draft General Comment no. 37 to cover the right of peaceful assembly and find it timely and important.

1.6. The following observations build on our field expertise in observing mass assemblies directly on the ground in Russia, Ukraine and Belarus, as well as on the involvement of our participants in the initiatives in response to “mass riot” allegations, following some of the larger assemblies in those countries.

They do not intend to cover all issues raised in the note by the Rapporteur of the Committee, but rather focus on several issues, drawn from our experience. In particular, they address questions 1, 2, 4, 12 and 13 from the list of questions put forward by the rapporteur of the Committee. The contribution also indicates some of the soft-law instruments, primarily from Council of Europe and the OSCE region, that may be of relevance.

2. General observations on the importance of freedom of assembly

2.1. Freedom of assembly is crucial to the exercise of other civil, political, economic, social and cultural, rights and is an indicator of a State’s respect for the enjoyment of other human rights.¹

It becomes an essential element of a pluralist democracy by allowing direct public participation in policy making. Free civil society can only exist if it can enjoy freedom of expression, assembly and association. It is no coincidence that many governments moving towards authoritarianism and concentration of power restrict freedom of assembly (along with freedom of expression and association) when they want to tighten control over the society.

2.2. Distinctions should be made not so much between “legal” or “illegal” assemblies, but rather between assemblies with violent conduct and assemblies without violent conduct. At the same time, violent conduct of some of the participants doesn't render an entire assembly “violent” and, therefore, outside of protection guarantees for peaceful assemblies. In all cases, the objective of the police or other State intervention should be about preservation of the peace, rather than prioritizing public order.²

¹ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai to the 20th Session of the UN Human Rights Council, par. 12). http://freeassembly.net/wp-content/uploads/2013/10/A-HRC-20-27_en-annual-report-May-2012.pdf

² See on that matter the Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 May 2011, §135.

This point is important to prioritize, since in many cases the States act to the contrary as is evidenced by independent human rights assessments of government’s responses to mass rallies in Minsk, Belarus in Dec. 2010³ and in Moscow, Russia in May 2012⁴. Both reports (referenced also later) were compiled by renown international experts on request from leading human rights NGOs and highlight how the governments use violent episodes during assemblies to justify both the dispersals and the charges of “mass riots” against participants and organizers.

3. Assemblies involve elements before and after (agitation, access to the place of assembly, freedom to leave)

3.1. The protection of freedom of assembly encompasses the freedom to agitate for participation in one (including online and through the use of social media). As people increasingly use social media to organize protests, governments consequently try to create laws to regulate that behavior, in some instances criminalizing call to actions under the pretext of “inciting riots”.⁵

Such regulation should be constructed carefully to define both “riot” and “incitement to riot”, as not to punish legitimate free speech. The term “incitement” in our opinion means intentionally advocating, appealing to or encouraging others to engage in particular criminal acts and should not be equated to simply encouraging others to take part in a protest, even “unlawful” one.

3.2. The protection of freedom of assembly also encompasses access to the place of assembly, as well as the freedom to leave it peacefully.⁶ As Judge of the ECtHR Pinto De Albuquerque notes in his dissenting opinion in *Navalnyy and Yashin v. Russia* “It is a fact of life that a crowd heading to or leaving a place of

³ See Final Human Rights Assessment of the events of 19th December 2010 in Minsk, Belarus by the Special Rapporteur of the Committee on International Control over the Human Rights Situation in Belarus http://hrwatch-by.org/sites/default/files/Final_HRights_Assessment_of_19-12-2010_in_Minsk-eng_final.pdf. The Committee was a civil society coalition of more than 40 NGOs from 17 states that agreed to coordinate the permanent monitoring of fundamental human rights and the situation of HRDs in the Republic of Belarus. It has appointed Dr. Neil Jarman, an independent international expert, assisted by a group of experts on freedom of assembly and police response measures- to evaluate the events of 19 December 2010 and assess whether the use of force by law enforcement agencies- as well as further steps taken by the authorities to prosecute assembly participants - were proportionate and well-reasoned.

⁴ See Interim Assessment by the International Expert Commission of May 6, 2012 events on Bolotnaya square in Moscow, Russia http://www.6maycommission.org/sites/default/files/book_boloto_2014_eng-1_0.pdf. IEC was established by renowned international human rights NGOs (Amnesty International, Article19, European Association of Lawyers for Democracy and Human Rights, International Federation for Human Rights (FIDH), International Civil Initiative for OSCE (ICI OSCE), International Platform «Civil Solidarity», International Protection Center and Human Rights Watch to specifically evaluate the events of May 6, 2012 in Moscow, to assess the compatibility of the relevant Russia legal framework (including the concept of mass riots) with international human rights standards and to review the measures take by the police and the authorities in preparation for, during and after the assembly, as well as develop recommendations for improving the situation.

⁵ See “Incitement to Riot in the Age of Flash Mobs” by Margot Kaminski from Yale Law School in the University of Cincinnati Law Review Volume 81, Issue 1 <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1103&context=uclr>.

⁶ See ECtHR judgment *Nisbet Özdemir v. Turkey*, no. [23143/04](https://www.echr.coe.int/ViewDoc.aspx?id=23143/04), 19 January 2010, § 40.

assembly in the public space may cause some degree of social nuisance, and specifically some traffic disruption. This nuisance should be properly accommodated by the police”.⁷

Only a “clear and imminent danger” of acts of public disorder, crime or other infringement of the rights of others committed by individuals *en route* to or from the place of assembly may be ground for restrictions through stopping, searching or arresting demonstrators.

4. Interpretation of assemblies with a violent element as “mass riots”

Particularly worrying is the trend to interpret assemblies as “mass riots” and criminalize as participation in mass riots the mere presence at a scene of violent acts or at an assembly that has turned violent.

The interpretation of the event as “mass riots” should meet a certain threshold involving violent conduct of the substantial number of individuals acting together. The term “mass riots” should not become synonymous with public events at which some disorder, violence or riotous behavior occurs.⁸

As ECHR has stated in its admissibility decision in *Ziliberberg v Moldova* (2004) “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.”⁹

A person who has an organizational role in relation to an “assembly” at which some violence occurs must not be assumed, on that basis, to have organized “mass riots”. Unless there is compelling and demonstrable evidence that an individual intentionally sought to organize serious violence (meeting a certain threshold to satisfy narrowly constructed and precise definition of riotous behaviour involving a significant number of people), it cannot be said that that person “organized mass riots”.

A person who participates in an assembly – whether lawful or unlawful – cannot be assumed, on that basis alone, to have participated in “mass riots”. Unless there is compelling and demonstrable evidence of the individual actually using serious violence, it cannot be said that that person “participated in mass riots”.

Building on the principle of individual accountability, an individual should only be punished for his or her own actions and should not be held liable for the actions of other members of a group or crowd.

⁷ Dissenting opinion in *Navalnyy and Yashin v. Russia*, no. 76204/11, 04 December 2014 with reference to ECtHR judgments *Balçık and Others v. Turkey*, no. [25/02](#), 29 November 2007, §§ 50-52., and *Ashughyan v. Armenia*, no. [33268/03](#), 17 July 2008, § 90,

⁸ See for detailed analysis p. 22 of the Interim Assessment of the International Expert Commission for evaluation of May 6th 2012 on Bolotnaya Square in Moscow <http://www.6maycommission.org/en.html>

⁹ *Ziliberberg v. Moldova*, no. 61821/00, 1 February 2005

5. Role of the authorities in facilitating freedom of assembly

It would be useful to reference on that matter the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies¹⁰, which underlines that the role of the authorities (including law enforcement) should be about facilitating the enjoyment of fundamental rights rather than “control over public order”. Those points are also elaborated in the OSCE ODIHR Human Rights Handbook on Policing Assemblies.

Since the convenors and the responsible government bodies are not in an equal position when engaging around the assembly, it is especially important to draw out clear procedures that would impose obligations of transparency on the authorities and allow for additional scrutiny of how they assess relevant information that only they have access to.

5.1. Negotiation procedures about the time and place of the assemblies

The authorities are in their power to suggest a different time and place for an assembly based on the information they have about other public events or other use of the public space. However, when there is a disagreement as to the assessment of that information and when the convenors do not accept the proposed changes, there should be room for negotiation, according to a written-out procedure in an open and transparent manner, preferably with participation of relevant human rights institutions (for instance, Ombudsman’s office or human rights organizations) as facilitators.

As ECtHR has noted in *Lashmankin and others v. Russia* “the practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention.”¹¹ Therefore the principle consideration that assemblies should take place “within sight and sound” is to be used by default and only serious considerations, clearly justified and subject to additional independent scrutiny, could override that.

The organisers should also have a possibility to challenge the authorities’ decision before the appropriate bodies, including in court, in a timely and expedient manner.¹²

5.2. “Security” measures

¹⁰ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies to the Thirty-first session of the Human Rights Council, 4 February 2016 http://freeassembly.net/wp-content/uploads/2016/02/A.HRC_.31.66_E_with_addendum.pdf

¹¹ *Lashmankin and others v. Russia*, no. 57818/09, 07 February 2017, § 426

¹² See CDL-AD(2009)034 Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, paragraph 39.

All crowd-control or “anti-terrorism” measures should not provoke conflict and confrontation¹³ and their employment can only be justified in case of clear and imminent danger and should in no instance be used for the mere purpose of limiting freedoms of those gathering.

When allegations are made of such danger or risk that would justify restrictions on freedom of assembly, they should be subject to additional scrutiny as to good faith and reasonable grounds behind them, as well as to proportionality of imposed limitations - especially since solely the governments and not the convenors would have access to the relevant information and would be the ones assessing it.¹⁴

It is important to take into consideration studies that conclude that “crowd behaviour is often influenced by the type and manner of police deployment” and that “displays of real or implied force can lead to negative crowd reactions” and to escalation.¹⁵

6. Use of force and accountability of the state

We strongly support the position taken in the OSCE/ODIHR Human Rights Handbook on Policing Assemblies (Warsaw, 2016) that “the starting point for police in policing assemblies should always be facilitation, which may be achieved through dialogue, negotiation and other forms of communication”, that “any use of force by police should always be an exception rather than the norm” and that “preference should always be given to exploring the peaceful de-escalation of tensions through dialogue, persuasion and negotiation as alternative to the use of force.”

The European Court in *Bukta and Others v. Hungary*, evaluating spontaneous assemblies without a prior notification has expressed the view that “a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.¹⁶

In any case, the use of force should address a pressing social need that could not be met otherwise and the burden of proof with regard to facts that justify the use of force on an assembly should lie on the authorities. This has been a position taken by the ECtHR,¹⁷ but also by the Venice Commission and OSCE/ODIHR in their Joint Guidelines on Freedom of Peaceful Assembly, (paragraphs 135 and 138) as well as in their Joint Opinion on the laws, regulating assemblies in Kyrgyzstan, Serbia and Belarus.¹⁸

¹³ See ECtHR case *Frumkin v. Russia*, no 74568/1, January 5, 2016 drawing also on the conclusions of the International Expert Commission for evaluation of May 6th, 2012 on Bolotnaya Square in Moscow.

¹⁴ See ECtHR case *Makhmudov v. Russia*, no. 35082/04, 26 July 2007, §66, §69.

¹⁵ See for instance [Toronto Police Service After-Action Review](#) (June 2011) done in the aftermath of the violent G20 protests in Toronto in June 2010

http://www.torontopolice.on.ca/publications/files/reports/g20_after_action_review.pdf

¹⁶ *Bukta and Others v. Hungary*, no. 25691/04, § 36, 17 July 2007

¹⁷ *Christian Democratic People’s Party v. Moldova (No. 2)*, no. 25196/04, § 38, 2 February 2010

¹⁸ Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic (CDL-AD (2012)006, paragraph 109), Joint Opinion on the on the Public Assembly of Serbia (CDL-AD(2010)031, paragraph 53) and Joint Opinion on Law on Mass Events in the Republic of Belarus.

It is one of the 10 principles for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions that force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law.

Accountability of the authorities is especially important given the aforementioned “inequality” in positions of relevant law enforcement bodies and the organizers and participants of the assemblies. To give an example, in Russia and Belarus since 2010 there have been no criminal cases opened against officials hindering the right to freedom of assembly or against police officers for the use of excessive force against demonstrators, while dozens of people were convicted for alleged violence against the police, participation or organization of “mass riots”.¹⁹ Lack of impartiality and effectiveness of investigations into claims of excessive use of force and maltreatment during and after the assemblies has been noted a number of times by the Human Rights Committee.²⁰

We strongly back the recommendation from the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly of an “independent oversight mechanism to review and report on any large-scale or contentious policing operation relating to public assemblies” (§180). As the Guidelines state (§181) “when accounts of police brutality, maltreatment or torture at the hands of law enforcement around assemblies arise during trials, they should be followed up by serious and thorough investigation. Judges and prosecutors should have a clear obligation to refer all incidents that come to their attention to an independent authority with a mandate to investigate such incidents”. Ideally, independent oversight should be launched by default as a consequence of any large-scale or contentious police operation.

7. On the role of independent observers

7.1. Monitoring of assemblies constitutes an important aspect of human rights work and therefore should enjoy protection and support by the authorities.

Observers (“assembly monitors”) are independent from all other actors of the assembly, including state authorities, police, event organizers and participants and are present with the aim to gather first-hand information and have a positive impact on how the right to freedom of peaceful assembly is upheld.

While it is important to acknowledge human rights of all those present at assemblies and for the government to differentiate and distinguish different functions (participants, bystanders, journalists, “legal observers”, human rights monitors, etc.), the independent role of third-party observers should be

¹⁹ See, for example, “Afterword... Square 2010 through the Eyes of Belarusian Human Rights Defenders” <https://www.lawtrend.org/december-19/afterword-square-2010-through-the-eyes-of-belarusian-human-rights-defenders-compiled-by-marina-adamovich-tatsiana-ageyeva-daria-katkovskaya-alexey-kozliuk-maria-lugina-tamara-sidorenko-elena-tonkachev> or the aforementioned report of the International Expert Commission on May 6th 2012 events <http://www.6maycommission.org/en.html>.

²⁰ See recent Views by the Committee in *Maya Abromchik v. Belarus*, No. 2228/2012, 6 June 2018.

recognized, acknowledged and supported. They should not be regarded as participants of the assembly or as supporters, assistants or agents of the organizers.

7.2. The mere presence of independent observers may help prevent violations of the rights to freedom of assembly, but also ease tensions and deter conflicts and actions contrary to the human rights principles.

Reports by independent observers in the aftermath of the assemblies often provide valuable information, highlight human rights issues, contribute to accountability and stir public debates. Conclusions and recommendations, produced as a result, help to improve police conduct, management of assemblies and ultimately the protection of the right to freedom of peaceful assembly.

It is important to note, that aside from monitoring, recording, and reporting, observers so can also adopt a function of mediators, acting as an independent third-party to facilitate a peaceful resolution of conflictual situations.

Ideally, as OSCE ODIHR Handbook on Monitoring Freedom of Peaceful Assembly states, observers' work should "lead to a dialogue between civil society and government, with the objective of advancing human rights and producing social change". (p. 8).

7.3. The importance of reporting at protests and other assemblies has been widely recognized in the context of journalist work.²¹ The role and different functions of independent observers, while equally important, have not been yet recognized as widely.

We suggest that the General Comment calls for the States to expressly recognize and actively facilitate monitoring, recording and reporting on assemblies by independent observers. Similarly to the presumption that the assembly is to be peaceful if the organizers state so, observers should be regarded as independent if they state that they are independent.

The role of "social watchdog" that advances the public interest, is crucial to the function of the observers. The States should address specific criticism and recommendations provided by the observers and make efforts to remedy violations and shortcomings that are indicated in dialogue with relevant human rights organizations and institutions.

Recordings, photographs and reports by observers should be accepted as evidence in disciplinary, administrative or criminal proceedings.

7.4. Independent monitoring has been carried out by local and international human rights groups (i.e. Amnesty International, Human Rights Watch or ION), by national human rights institutions and human

²¹ See, for instance, HRC General Comment 34 as well as the Inter-American Court of Human Rights decision in *Velez Restrepero and Family v. Colombia*.

rights NGOs and by intergovernmental organizations (i.e. UN Office of the High Commissioner for Human Rights, Council of Europe bodies, OSCE ODIHR observers). Some of them may choose to visibly identify themselves and establish contact with the authorities beforehand.

While identification and prior communication may be encouraged, no formal demand for accreditation of observers should be made. While accreditation or specific identification card may provide access to certain areas and give certain privileges, it is in no way a precondition to practice the function of an observer or indeed collect and impart information.

In cases when government bodies (for instance, ombudsman's office or other NHRIs) participate in assembly observation, efforts should be made to establish contacts and cooperate with independent observers from human rights organizations.

7.5. As to specific steps that the States can take to recognize and facilitate independent observation, we support the following that have been advanced by the OSCE ODIHR:

- routinely notifying NHRIs or other relevant independent oversight or monitoring bodies (such as NGOs working in the area of freedom of assembly) of anticipated assemblies;
- providing information and access to the media and observers that enables them to monitor all aspects of an assembly and by communicating consistently with them before, during and after the assembly;
- not imposing undue limitations on monitoring activities, but ensuring that monitors can operate effectively in the context of assemblies;
- engaging with monitors in light of their findings and recommendations, and following their assessment of the facilitation of assemblies by the state authorities in order to feed into the institutional lessons-learned process.²²

We suggest that those recommendations are included in the General Comment.

7.6. Any reprisals against observers, arrests, and detentions for independent monitoring are unacceptable. Relevant authorities should not detain observers for simply being on the spot of the assembly that has turned violent and/or is to be forcibly dispersed.

Anyhow, in each case of arrest the government has an obligation to diligently and distinctively examine each individual situation, to distinguish those who have taken part in the protests presumed illegal and those who have been simply observing it or reporting on it in order to establish individual accountability. Failure to do so would deny due process guarantees and violate a right to a fair trial.

Unfortunately, there are cases, when observers were specifically targeted for their work (for example in Belarus on March 25, 2017²³ and on March 25, 2018²⁴) - such instances should not be tolerated and

²² OSCE ODIHR Report "Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (April 2015 – July 2016)", Warsaw, 16 December 2016, pp. 128-129.

²³ See Report on monitoring the Freedom Day demonstration in Minsk. 25 March 2017 by the Belarus Human Rights Centre "Viasna"

should be treated as reprisals for human rights work and addressed accordingly by relevant international bodies, including OHCHR.

7.7. The state parties to the ICCPR and the international intergovernmental organizations need to promote development of international initiatives of assembly monitors.

This includes facilitating trans-border movement of human rights defenders in order to monitor observance of human rights obligations by different states. In the OSCE such obligations already exist, for instance in the Copenhagen document of 1990,²⁵ stating that OSCE participating states should allow members of human rights monitoring groups and organizations “to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations” and in the Moscow Document of 1991²⁶, proclaiming that participating states will “endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions”. Those obligations need to be reaffirmed at the UN level, as well.

Other means may include publicly recognizing the role of independent international observers, issuing invitations to monitor large and/or potentially confrontational assemblies to the international observers, evaluating government reactions and the aftermath of such assemblies, providing means for monitors to meet and exchange information, experiences and recommendations and so on.

8. Conclusion

We hope that this written contribution will be useful for the Committee’s work on the General Comment No. 37. We are ready to interact with the Committee in the course of its drafting, to answer additional questions or to provide supplementary information.

The ION is also willing to submit pre-recorded video message for the session to highlight the importance of independent observation at assemblies and the need by the States and the intergovernmental organizations to acknowledge and recognize it.

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http://spring96.org/en/news/86740?fbclid=IwAR20rMKPVtPhBQ_UpBSQ9hiJ-0fc9TEAn6CZ4kqEu-kOdO_iFjJHnpOIGKk

²⁴ See Report on monitoring the peaceful assemblies on March 25, 2018 in Minsk by the Belarus Human Rights Centre Viasna”

<http://spring96.org/en/news/89625?fbclid=IwAR1vyC4aOcSUdGufcqqADoAmTGRZ3EeLAN8SWCKbD-YS5UqVL8u2SngZViY>

²⁵ Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE (1990), par. 10.4

²⁶ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), par. 43.2

