



MAINTAINING LAW AND ORDER: AT WHAT COST?

SUMMARY OF THE REPORT ON DEVELOPMENTS IN LAW
ENFORCEMENT PRACTICES IN FRANCE AND THEIR IMPACT
ON PERSONAL FREEDOMS

A YEAR-LONG INVESTIGATION

For several years, ACAT (Action by Christians for the Abolition of Torture) has been looking at the use of force by the French police and gendarmes and at the access to justice for victims of unlawful violence. In a first report published in 2016, ACAT was already examining the subject of law enforcement operations. Observing that changing practices sparked discussions, ACAT continued its inquiry by producing various analysis reports. The handling of the Gilets jaunes¹ (yellow vest) demonstrations and the numerous debates about the use of force deployed during the protests reinforced the organisation's initial analyses. ACAT then launched an important investigation aimed at questioning the role and choices of law enforcement authorities since the early 2000s.

From November 2018 to January 2020, ACAT carried out a careful analysis of the available documentation on the subject in order to update and deepen its previous analyses. As part of this investigation, ACAT has always sought to expand its sources of information. Numerous documents have thus been studied and used, such as institutional and parliamentary reports; papers written by organisations; sociological and medical studies; court decisions; and newspaper articles. ACAT has also met with a very wide range of individuals concerned with law enforcement issues: victims, lawyers, law enforcement officers and authorities, researchers, and representatives of the Défenseur des droits (Defender of Rights). A total of 55 people were interviewed. Other more informal exchanges also contributed to this study.

As a result of this investigation, ACAT has published this report, which sets out its observations and assessments and lists the recommendations it intends to bring before the competent authorities.

ANALYSING CHANGES IN LAW ENFORCEMENT PRACTICES: A NECESSITY

Article 5 of the Universal Declaration of Human Rights (UDHR) is one of the bases of ACAT's commitment. The first half of the statement is widely known—*"No one shall be subjected to torture"*—but it is also important to recall the rest: *"or to cruel, inhuman or degrading treatment or punishment."* This article was supplemented by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by France in February 1986, which specifies that to be considered as such, these acts must be *"inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"*. In addition, Article 2 of the same convention provides that *"legislative, administrative, judicial"* measures must be taken against to prevent mistreatment.

As a human rights association which fights against torture and mistreatment, ACAT must denounce the excessive and unlawful use of force by representatives of the state. The recent changes in policing practices and the serious concerns expressed by national and international human rights bodies make it more necessary than ever to reflect on the force being deployed.

As a human rights association, ACAT questions the role and choices of the authorities in this matter. This review inevitably leads to an interest in the police force which implements them and whose use of force — if permitted by law — is not unrestricted. However, ACAT has absolutely no intention of stigmatising law enforcement officers, which, it acknowledges, work under very difficult conditions.

As a human rights association, ACAT neither denies nor endorses the criminal acts committed by certain demonstrators. However, it is up to us to examine the implications of practices and use of force which could restrict the exercise of personal freedoms.

As a human rights association, ACAT considers it essential to demand the sanction of unlawful police violence in order to guarantee trust between public institutions and the public, but also in order to ensure that the misdeeds of some do not interfere with the actions of all others.

¹ A protest movement which started in France in the fall of 2018 in reaction to an increase in fuel prices. The original demands were then extended to include other political and social demands.

SUMMARY OF THE REPORT PUBLISHED BY ACAT IN MARCH 2020

COVER PHOTO: ANTONIN BURAT / HANS LUCAS

PRINTED BY CORLET IMPRIMEUR CORLET IMPRIMEUR | CONDÉ-SUR-NOIREAU



INTRODUCTION

PROTESTING, A FUNDAMENTAL RIGHT

It is important to remember that protesting in a public space is a protected right².

The right to peaceful assembly is recognised as a fundamental right by various texts, in particular by the International Covenant on Civil and Political Rights (article 21) or by the European Convention on Human Rights (article 11). The UN states that nations not only must refrain from violating the rights of those who participate in peaceful assembly but also have a positive obligation to facilitate and protect freedom of assembly, and therefore demonstration, by guaranteeing the rights of demonstrators and promoting a favorable environment for them, for example, by avoiding excessive bureaucratic requirements or other unreasonable constraints on their organisation and by facilitating access to relevant documentation.

- It is also the responsibility of the authorities to guarantee a “*favorable and safe climate for the whole public, including for human rights defenders and civil society*” and to respect the following guiding principles: legality, proportionality, nondiscrimination and good administration.
- The guarantees provided by international law apply to peaceful assembly, a concept which must be understood in the broad sense according to the UN and the OSCE³. Indeed, public demonstrations entail a degree of coordination in order to protect the various interests involved, which implies a certain tolerance for disorder (e.g., obstructions to traffic, general dissatisfaction, loss of commercial activity).
- An individual does not lose the right to peaceful assembly because of sporadic violence or wrongdoing that may occur within or at the margins of the demonstration as long as he or she maintains the intention of peaceful conduct.

The right to demonstrate is not expressly provided for in the French Constitution. It is implicitly protected by the Declaration of the Rights of Man and of the Citizen, incorporated in the preamble to the Constitution, which guarantees the freedoms of opinion and expression in its article 10.

“Obstructing the creation and functioning of associations, insufficiently protecting those who exercise and defend human rights, inflicting excessive and disproportionate punishment for breaches of the law or unreasonably restricting the use of public spaces has a negative impact on the right to peaceful assembly.”

UNITED NATIONS SPECIAL RAPPORTEURS

LAW AND ENFORCEMENT AND MISTREATMENT

Crowd control units employ the general principles of the use of force which govern the prohibition of torture and abuse. In the context of demonstrations, and in all their missions, law enforcement officers have the right to use force, provided that it is strictly necessary and proportionate and that the law is observed. The central question therefore lies in establishing the borderline between the legality and the illegality of the use of force, which is as tenuous as it is fundamental. In fact, the management of demonstrations in public space in France testifies to the difficulty of determining the lawfulness (or unlawfulness) of the use of force.

“Inappropriate, excessive or illegal use of force by the police can violate fundamental personal freedoms and protected rights, affect relations between society and the police, and cause tension and unrest.”

OSCE GUIDELINES

MAINTAINING LAW AND ORDER, AN INEXACT AND POLITICAL SCIENCE

Each year, tens of thousands of protests are organised in France. However, attention tends to be focused on those that give rise to violence, although they are a minority. Whether they are demonstrative or festive, organised or spontaneous, protests are protected by the right to peaceful assembly. However, this right is not absolute and it can be regulated, which requires maintaining a delicate balance that shifts depending on political orientations and choices, conditions of engagement of the police, and also the type of demonstration and the participants.

Maintaining law and order is, and always has been, across all police operations, eminently political. This is reflected in particular in the communication that is made regarding demonstrations. When these interest public opinion, they tend to be highly publicised and accompanied by political speeches, which have consequences that affect the maintenance of order and therefore also the course of the demonstrations. For example, political speeches that use war-adjacent terms to describe demonstrations and their participants can lead to a relativisation of, or even a justification for, the use of force on the side of the police and gendarmes, who may want to defend themselves beyond what is strictly necessary.

CONCERNS OF HUMAN RIGHTS PROTECTION AUTHORITIES

Recent developments in policing practices and, more recently, the yellow vest protests have highlighted certain issues. In 2019, several authorities expressed their concerns about the violence deployed during demonstrations, in particular with regard to the massive use of nonlethal weapons, including Defender of Rights in France, United Nations experts and the Council of Europe’s Commissioner for Human Rights.

“Restrictions on rights have also resulted in a high number of individuals being arrested and being placed into police custody, searches and confiscation of materials from demonstrators, and serious injuries caused by the disproportionate use of so-called nonlethal weapons, such as grenades and riot-control guns or Flash-Balls.”

UNITED NATIONS SPECIAL RAPPORTEURS, FEBRUARY 2019

2. For more details, see Commission européenne pour la démocratie par le droit (commission de Venise), “Lignes directrices du BIDDH/OSCE et de la commission de Venise sur la liberté de réunion pacifique” (second edition), July 9, 2010; and “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, February 2, 2016, A/HRC/31/66.

3. Commission européenne pour la démocratie par le droit (commission de Venise), “Lignes directrices du BIDDH/OSCE et de la commission de Venise sur la liberté de réunion pacifique” (second edition), July 9, 2010, p. 81.

THE FRENCH DOCTRINE OF LAW ENFORCEMENT

A BRIEF HISTORY OF LAW ENFORCEMENT

The French doctrine of law enforcement was progressively constructed starting in the nineteenth century and then developed throughout the twentieth century. Gradually, the police force became demilitarised and professionalised. In 1935, a decree-law created the context for the co-construction of demonstrations, which resulted in negotiations between the two parties—the authorities and the demonstrators. Together, the parties discuss the choice of route and the methods of securing the march. Then begins a phase of institutionalisation of street protests.

Even if, in general, there has been a tendency over the course of the twentieth century for policing to become more peaceful and for moderation to be exercised in the use of force in France, we cannot speak of a chronological linearity, as the century has been marked by moments of extreme violence, especially in the context of the Algerian War. The following decades were also marked by many very violent demonstrations which changed law enforcement practices in France.

PRINCIPLES OF FRENCH POLICING

Law enforcement mechanisms must above all allow individuals to exercise public freedoms, most importantly that of protesting, while preserving public safety and order. The French doctrine of policing is based on three fundamental principles:

- the use of specialised and specially trained forces;
- keeping crowds at a distance, which is based on the acceptance of a certain form of disorder, or even material damage;
- the graduated and reversible use of force, particularly in order to de-escalate violence.

THOSE RESPONSIBLE FOR MAINTAINING LAW AND ORDER

Command: A Civil Authority



Ministry of the Interior: Responsible for the preparation and execution of internal security and civil security policies and therefore responsible for the preservation of public order.

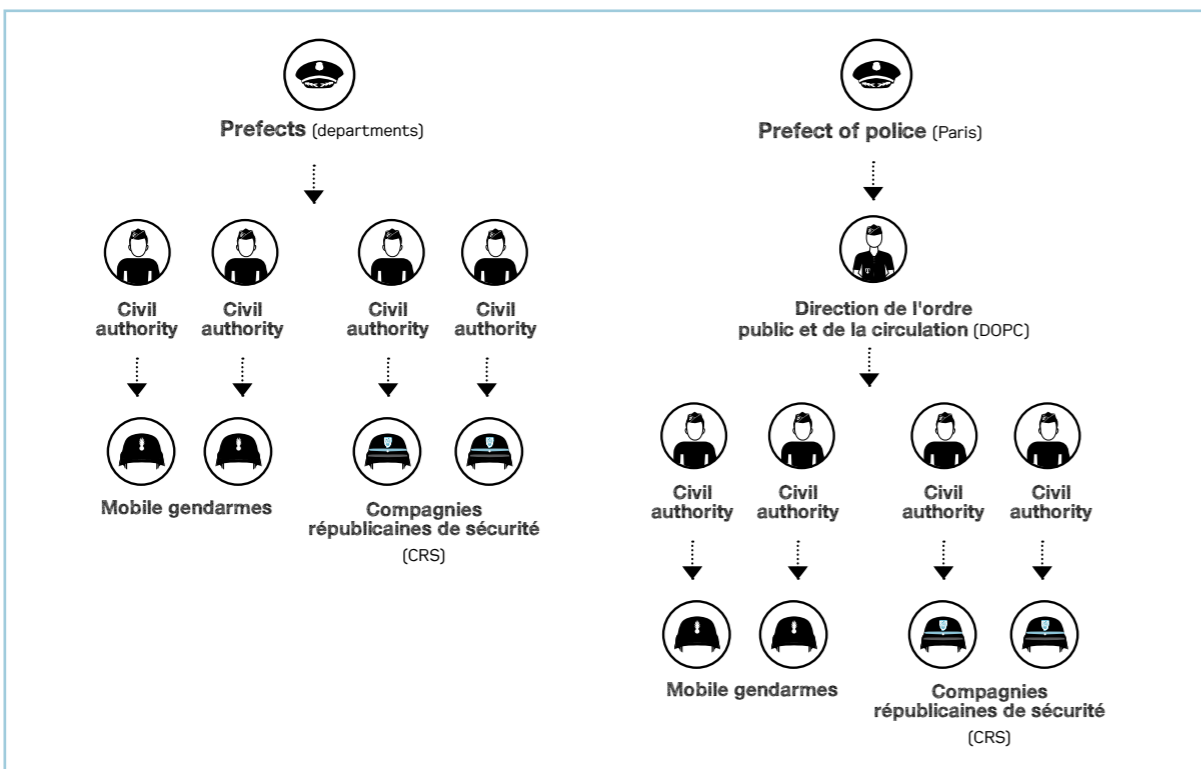


Prefect or Prefect of Police in Paris: Represents the state in the departments. Has regulatory power and takes the necessary measures to maintain public order. Head of the law enforcement chain of command.







The chain of command: The UN requires that the use of force in policing operations be determined by a command structure. This structure should be clear, transparent and well-defined in order to minimise the risk of violence and the use of force, as well as to ensure that officers are held accountable for any unlawful act or omission. It is also essential to keep track of all the decisions made by the agents, whatever their hierarchical level.



In France, maintaining law and order is a prerogative of public power. It is the responsibility of the Minister of the Interior and is, by means of delegation, entrusted to the prefects in the departments and the police prefect in Paris. This authority gives instructions to the police and gendarmes on the ground, who must carry out the orders given to them, except in the case of manifestly illegal orders. The authority empowered to decide on the use of force may vary: prefect, sub-prefect, police commissioner, group or company

command of the Departmental Gendarmerie, etc. In any event, the authority must be present on the ground when it decides to use force. Instructions not to intervene immediately in the event of damage may be given.



On the field:

-  **Specialised forces:** Squadrons of mobile gendarmes and Compagnies républicaines de sécurité (Republican Security Companies, or CRS; the general reserve of the French National Police). These are units specially trained for law enforcement operations.
-  **Nonspecialised forces:** Police and gendarmes whose main function is not maintaining law and order and who are not specifically trained for it.
-  **Intelligence services:** Make it possible to analyse the actors and the challenges of protests and thus make it possible to adapt the process for maintaining order.
-  **Judicial authority:** Intervenes in advance of (in the preparation of law enforcement processes), during (when freedom-limiting measures, such as being placed in police custody, are taken), and after (in the event of legal proceedings) demonstrations.
-  **Organisers and demonstrators:** As a rule, demonstrations must be declared to the prefectural authority.
-  **Media:** Demonstrations take place in public space and therefore attract media attention.

SPECIALISED FORCES	Mobile gendarmes 	Compagnies républicaines de sécurité 
	13 000 servicemen	10 000 police officers
DIVISIONS	109 squadrons , of which 108 can be engaged in law enforcement, made up of 110 agents divided into four platoons	7 zonal directorates and 78 companies made up of 130 police officers
UNIFORM	Navy pants and black jacket. Blue helmet. The gendarmes have the text "gendarmerie" displayed on the back of their uniforms. Identification is displayed on the shoulder or above the badge or the braid.	Navy blue uniform. Yellow bands on their helmets (except certain specialised units). Section number (from 1 to 4) and tactical group (A, B or C) written on the back.
FIELD MOBILISATION	<ul style="list-style-type: none"> - Overseas missions (around twenty permanent missions) - 7 squadrons mobilised in Paris to secure various locations (courthouses, embassies, airports, train stations, etc.) - 5 and a half squadrons mobilised in missions to fight irregular immigration - 1 squadron mobilised in Bure, where activists are opposing the installation of a nuclear waste landfill - 4 squadrons guard sites considered sensitive - Half a squadron protects the residence of the President of the Republic, Emmanuel Macron, in Le Touquet 	<ul style="list-style-type: none"> 60 general service companies 18 specialised companies : - 2 mountain companies in the Alps and the Pyrenees - 9 highway companies - 6 motorcycle units - 1 unit made available to the protection service
TRAINING FACILITY	National Gendarmerie Training Center (CNEFG) of Saint-Astier	4 specialised centres: Sainte-Foy-lès-Lyon, Rennes, Toulouse, and Plombières-lès-Dijon
INITIAL TRAINING	12 months and 1 week of collective training within the assigned unit	4 weeks training before being assigned to a company
CONTINUOUS TRAINING	3-week refresher course every 30 months , in theory	25 days of collective training per year within their assigned unit, to which are added other ad hoc training days that can be organised each year and specific training on an ad hoc basis—for example, about the use of tear gas canisters.
ARREST MISSIONS	Intervention platoons	Protection and intervention sections (SPI)

THE RULES OF ENGAGEMENT OF THE FORCE

“Assuming that the texts allow violence, it must always be used in moderation, without excess and only to the extent that it proves to be essential.”

COURT OF CASSATION, 19324

The methods deployed during law enforcement operations vary according to the nature of the mission and the type of demonstration. However, the use of force, be it physical force or the use of weapons, must also allow for a de-escalation of violence. According to the doctrine, it is more about showing potential strength rather than using it.

In applying the legal and regulatory principles and provisions, the use of force is authorised only when it is strictly necessary. It must also be graduated in terms of the methods and materials used, which can be broken down into several phases (see diagram below) under the control of the civil authority and the unit commander. The most powerful weapons are traditionally the least used.

The Four Main Principles of the Use of Force

Several essential conditions govern the use of force by the police and the gendarmes: legitimacy, necessity, proportionality and respect of the precautionary principle. Any use of force that does not meet these criteria constitutes unlawful police brutality.

Principle of legitimacy

Any use of force must have a legal basis and pursue a legitimate objective (arrest, prevention of the escape of a person suspected of having committed a crime, self-defense, dispersal of violent assemblies, etc.). Thus, the use of force for punitive purposes, domination or humiliation is not legitimate.

Principle of necessity

Force can be used only if it is made strictly necessary by the aim pursued by the agents, as well as by the behavior of the person whom they seek to apprehend (when they represent, for example, a danger or a threat, resist arrest, etc.). As a result, strength is no longer needed once the person has been overpowered.

Principle of proportionality

The harm likely to be caused by the use of force must not be excessive in relation to the benefit derived from the objective to be achieved. It is a matter of weighing the risks against the benefits of the use of force. Several indicators should make it possible to assess the degree of force necessary, such as the behavior of the person to be apprehended, his or her age and state of health, the number of agents present, their equipment, the risk of causing collateral damage, etc. Even if force is necessary to achieve a legitimate objective, it must be graduated and strictly proportionate to the situation so that the risk of injury or death is not disproportionate to the objective sought.

Precautionary principle

Security force operations must be planned, prepared and conducted in a way that minimises the use of force and, if the use of force becomes unavoidable, that causes the least possible damage. For example, police operations, particularly in the context of public demonstrations, must be prepared in such a way as to reduce the escalation of violence.

“Repeat to yourself and to those around you: whenever unlawful violence is committed against a protester, dozens of their comrades want to avenge them. This escalation has no limits.”

MAURICE GRIMAUD, PREFECT OF POLICE, LETTER ADDRESSED TO ALL POLICE OFFICERS, MAY 29, 1968

DISPERSAL AND WARNINGS

When the dispersal of a protest is deemed necessary:

- international authorities reiterate the need to provide clear information to protesters before any intervention;
- protesters must be given reasonable time to disperse voluntarily.

If they refrain from dispersing, the police may intervene, even if the choice to use force could potentially lead to an escalation of violence.

In France, the Internal Security Code (le code de la sécurité intérieure, or CSI) specifies the procedures according to which warnings must be made. Thus the directives governing the use of force must be transmitted by any available means to ensure their materiality and traceability. However, this study has revealed that in practice, the current warning system is largely unsatisfactory, in particular because of its lack of clarity and the fact that the warnings are sometimes inaudible. In addition, demonstrators are not always familiar with the badges worn by civil authorities.

 **FOR MORE INFORMATION** on the French doctrine of maintaining law and order in the “Maintaining Law and Order: At What Cost” report, (pp. 17-49.)

TOWARDS A NEW NATIONAL MODEL FOR MAINTAINING LAW AND ORDER

In the winter of 2019, the Ministry of the Interior announced that it wanted to develop a new national law enforcement plan. Interior Minister Christophe Castaner then said that an “outside view” would be helpful in designing the new plan. Starting in June 2019, a symposium was organised, followed by meetings that brought together “experts”. ACAT, alongside Amnesty International and the Human Rights League, asked to attend the events. However, ACAT was not welcomed to take part in this process, unlike the two other organisations.

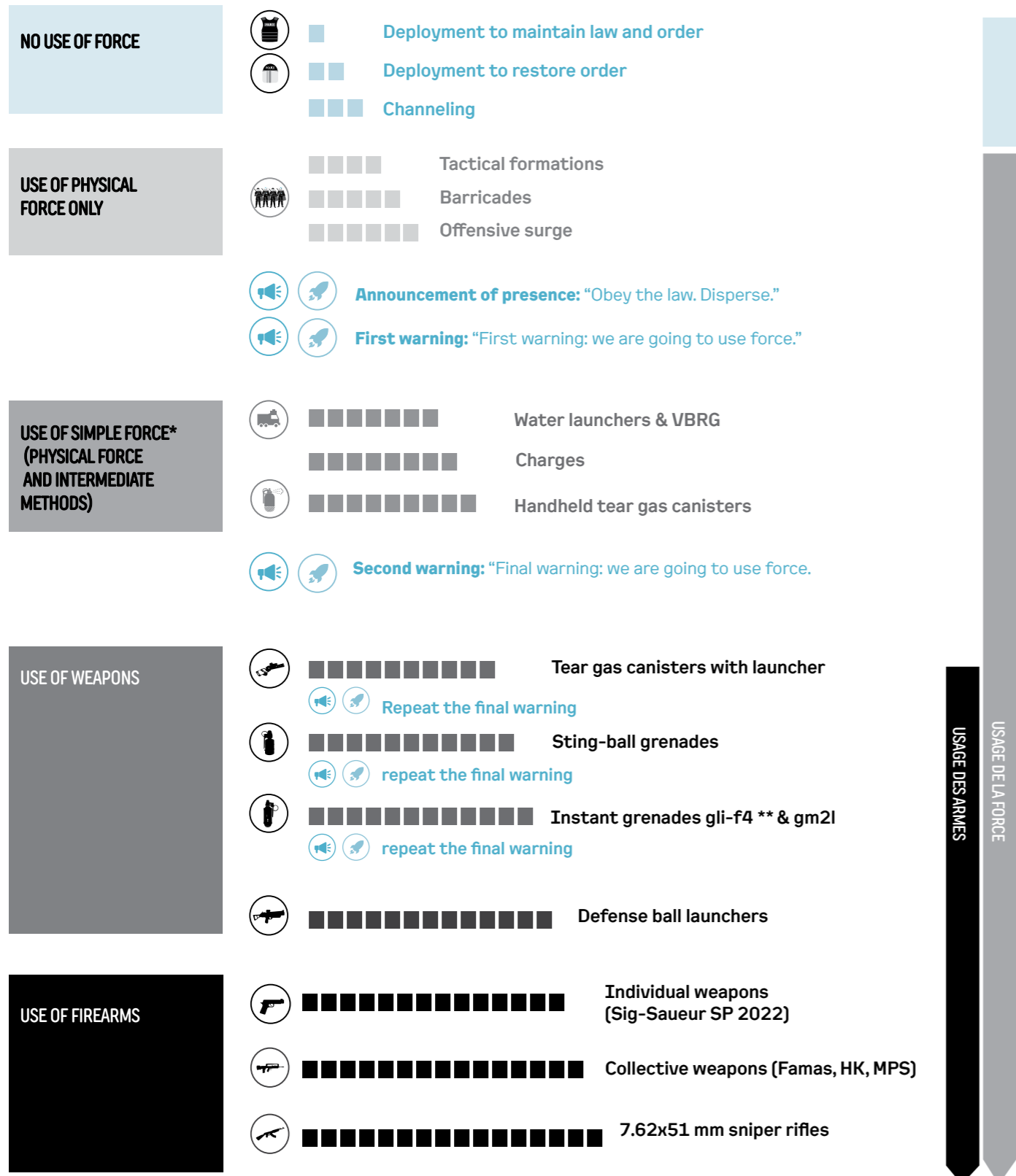
At the time of writing, the new national law enforcement plan has not yet been made public. However, according to news reports and information that ACAT has been able to obtain, several avenues are being considered.

 **FOR MORE INFORMATION** on the early developments of this new national law enforcement plan, see pp. 114-115 in the full report.

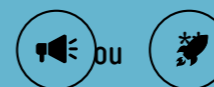
RECOMMENDATION

ACAT invites the authorities to review the procedures for warnings issued before the use of force with the aim of improving the understanding and visibility of the actions of law enforcement officers aimed at the public and demonstrators.

General Framework for the Use of Force in the Event of an Unruly Crowd



WARNINGS (ART. R211-11 OF THE INTERNAL SECURITY CODE)



Announcement of presence: "Obey the law. Disperse."

First warning: "First warning: we are going to use force."

Second and final warning: "Final warning: we are going to use force."

*The procedures for issuing warnings may evolve within the framework of the new national law enforcement plan.

**If the use of the loudspeaker is impossible or obviously ineffective, each announcement or warning may be replaced or supplemented by the launch of a red flare.



THE PRINCIPLES OF DIALOGUE AND REVERSIBILITY

At all stages, the police must prioritise **dialogue with the demonstrators.**

Principle of reversibility of force: the use of force must be strictly commensurate and must therefore cease immediately when the conditions which had justified it are no longer met. For example, the use of weapons does not prevent the use of simple force afterwards.

LEXICON

Unruly crowd: Defined by article 431-3 of the penal code as "any gathering of people in a public place likely to disturb public order".

Barricades: Barriers intended to restrict traffic and prevent access to a specific location. Different types exist.

Offensive surge: A maneuver intended to break law enforcement officers free from a crowd perceived as hostile to them. It must allow them to prevent injuries, not be subjected to pressure from the demonstrators and to hold their ground.

Channeling: A maneuver that can be deployed with a crowd perceived as calm, either to split the crowd into several currents or maintain its flow and keep it on a determined route.

Charge: Used to compel a hostile crowd to vacate a location they refuse to leave.

Maintaining and restoring order: Maintaining order primarily involves carrying out preventive measures intended to prevent a disruption of public order. Restoring order occurs when law enforcement officers have to intervene to oppose or put an end to unrest, including by using force.

Tactical formations: Used to compel a crowd which is not considered hostile to law enforcement officers to evacuate a specific location without resorting to the use of force.

VBRG: A wheeled armored vehicle equipped with a tear gas diffuser. Used by the gendarmerie.

*As opposed to force resulting from the use of firearms./ **Withdrawn by the Ministry of the Interior in January 2020.

RECENT DEVELOPMENTS IN THE METHODS USED TO MAINTAIN LAW AND ORDER

The significant use of nonspecialised forces and nonlethal weapons, the high number of people injured and the increase and the crystallisation of tensions between demonstrators and law enforcement officers points to a dysfunctional maintenance of law and order which at times fails to fulfill its primary mission: guaranteeing the optimal exercise of public freedoms.

ARE FRENCH PROTESTORS MORE VIOLENT NOW THAN IN THE PAST?

The argument that French demonstrators are more violent now than in the past, and in comparison to demonstrators in other European countries, is often advanced by the authorities to justify the need to resort to increasingly offensive strategies and weapons, but it is also used to argue that methods used in other countries are not applicable in France. The feeling among police that demonstrators are more violent now is undoubtedly real. However, research studies actually tend to show that France has experienced more violent episodes in the past than those that have occurred recently, and it must be noted that law enforcement officers were less well-equipped in these past clashes.

Lille, 1947: *“Demonstrators use batons, lead pipes, caltrops, sawn-through bolts thrown with slingshots, bricks and stones, explosive devices made of bottles wrapped in paper or bottles filled with a liquid likely to cause serious injuries to the police”⁵.*

Lyon, May 1968: *“The demonstrators set fire to barricades, throw cobblestones at them, toss Molotov cocktails at the police and try to seize ice picks and weights”⁶.*

Béziers, 1975: *“The demonstrators launch homemade bombs, made from pétanque balls, stuffed with explosives and shot with a detonator with a slow wick at the police”⁷.*

Rennes, 1994: *“The fishermen throw paving stones, logs and bolts and launched flares and harpoons at law enforcement officers”⁸.*

AN EVOLUTION OF DEMONSTRATIONS THAT HARMS THE SYSTEM OF MAINTAINING LAW AND ORDER

Several trends can be observed in terms of demonstrations. There has been an increase in the overall number of demonstrations, an increase in the direct questioning of policies, a multiplication of micro-mobilisations, the development of transnational modes of action and, in relative terms, a decrease in violent episodes in the late twentieth century. This evolution of the street protest is permanent and can undermine law enforcement.

Yet the difficulty of adapting to the new forms of demonstrations sometimes results in decisions that are difficult for the authorities and law enforcement officers to understand, and which can be sources of tension. This can be seen, for example, in union demonstrations, which are resulting in more and more confrontations, and by certain demonstration routes being imposed. This is also the case with undeclared demonstrations, which are not formally prohibited beforehand, but are treated as unlawful assemblies when they take place and are dispersed by force.

5. P. Bruneteaux, “Maintenir l’ordre,” March 1996, p. 155.

6. L. Mathieu, “L’autre côté de la barricade : Perceptions et pratiques policières en mai et juin 1968,” in *Revue historique*, 2003/1, p. 20.

7. “Archives de la gendarmerie de 1975,” in P. Bruneteaux, “Maintenir l’ordre,” March 1996, p. 233.

8. D. Dufresne, “Maintien de l’ordre,” 2013, pp. 203-204.

A DEEPER TRANSFORMATION OF SOCIETY THAT FOCUSES ON SECURITY OVER FREEDOM

Historically, it is generally acknowledged that there is a structural trend towards pacification and the reduction of violence in modern societies. Law enforcement must also be considered in a more global context of a growing intolerance of violence and the primacy placed on security, particularly in regard to the fight against terrorism. In terms of demonstrations, this new attitude manifests itself both on the part of the demonstrators, who have given up, to some extent, on using violence for political ends, and on the part of the authorities, because the democratisation of regimes has made it more difficult to inflict indiscriminate violence on protesting citizens.

Paradoxically, this double movement of pacification tends to justify greater repression and the use of greater violence:

- The police and the gendarmes see themselves increasingly as being attacked by an enemy with multiple faces, made up of those they call “thugs”, “terrorists”, “youth from working-class neighbourhoods”... The police know that these are not all the same people, but this feeling further fuels rising tensions between the police and these groups.
- On the other side, the demonstrators feel that there has been an increase in violence on the part of the police, in particular because of the growing number of weapons they are equipped with and the way they use them, and this comes within the framework of a more marked restriction of public freedoms since the implementation of a state of emergency in 2015.

 **FOR MORE INFORMATION** on the primacy of security over freedoms, see pp. 62-67 in the full report.

THE JUDICIALISATION OF THE MAINTENANCE OF LAW AND ORDER AND THE SYSTEMATISATION OF THE LOGIC OF ARREST

For several years, law enforcement operations have been planning more and more arrest missions. This results in the units responsible for these missions being deployed *“without great concern for the overall consistency of the system or for what is known as ‘de-escalation’”*, explains Fabien Jobard⁹.

At the same time, the judicial authority has gradually become a major player in law enforcement operations, leading to the creation of mechanisms that constrain participants before, during and after demonstrations. In this regard, for several years, political communication before and after demonstrations has been telling: figures on the number of arrests, detentions, immediate appearances, etc., constitute an important part of government and prefectural communication, giving the impression that the level of repression has become the best indicator of the quality of the management of demonstrations.

Maintaining order or creating unrest?

One of the specificities of the French doctrine of law enforcement is the use of forces specialised in the management of public order: the CRS and the mobile gendarmes. However, while their workforce was reduced significantly starting in 2010, nonspecialised units are now frequently mobilised during demonstrations.

9. . F. Jobard, “Extension et diffusion du maintien de l’ordre en France,” in *Vacarme*, 2016/4.

RECOMMENDATION

The specificity of specialised forces in maintaining order must be acknowledged. In addition, their training must be further improved and updated in order to better take into account the development of demonstrations and guarantee the effective exercise of freedoms. This training should be more open to social sciences and civil society.

A gendarme's viewpoint

“Given the very political sensitivity of the task of maintaining law and order, the phenomenon of media amplification, and its great symbolic significance, we must do everything we can to have the most precise and professional response possible, and the integration of nonprofessional units is doubly problematic. It is problematic in the moment in terms of tactics and problematic when it comes to measuring force because these people are ill-prepared, so the response is not necessarily adapted properly to the situation.”

BERTRAND CAVALLIER, FORMER GENDARME

It is with this in mind that rapid action detachments (détachements d'action rapides, or DARs) were created in Paris in late 2018 as part of the yellow vest demonstrations. They were transformed in March 2019 into brigades for the repression of violent action (brigades de répression de l'action violente, or BRAV), each made up of around sixty agents, two thirds of whom are staff from intervention companies and one third are agents presented as more mobile, coming from anti-crime brigades (brigades anti-criminalité, or BAC). These units do not, however, receive adequate training in law enforcement operations and are regularly questioned in cases of unlawful violence.

The increasing use of nonspecialised forces in law enforcement operations for the purpose of arresting demonstrators is a cause for concern in several respects. Indeed, as noted by a parliamentary commission of inquiry in 2015, *“Without ignoring the difficulties and complexity of a law enforcement operation, it has been shown that the use of methods of restraint in this context can be carried out in less secure conditions than when it is carried out by specialised units”*.¹⁰ There is, in fact, no requirement for law enforcement to intervene systematically and immediately when an offence is committed. The appropriateness of an arrest must be accurately evaluated: it can lead to an escalation of violence and therefore exposes both law enforcement officers and demonstrators to potential danger. In addition, the maneuver must not destabilise the tactical system of the whole operation.

The viewpoint of a former Director General of the National Gendarmerie: *“An individual who has not received adequate training may pose a danger to the safety of both demonstrators and law enforcement officers”*.¹¹

A trend in conflict with the French doctrine of maintaining law and order

Situations involving policing and arrests follow specific tactical patterns, maneuvers, operational postures and timelines. As far as arrest missions are concerned, they presuppose a physical proximity and therefore, *de facto*, an abandonment of the distance-keeping logic which has prevailed until now in the doctrine of policing. The development of arrest strategies therefore represents a radical change in approach.

Specialised forces also deplore the fact that they are regularly mobilised as static guards, in particular for official buildings (prefectures, historic monuments, etc.), while nonspecialised police and gendarmes are put on the front line of law enforcement operations. *“We are doing backwards policing: the forces least prepared for this are on the front line, and those trained and equipped to absorb shocks are left behind”*, explained a CRS officer to the Senate law commission in March 2019¹².

10. “Rapport de la commission d'enquête parlementaire relative au maintien de l'ordre,” May 21, 2015, p. 74.

11. “Rapport de la commission d'enquête de l'Assemblée nationale sur la situation, les missions et les moyens des forces de sécurité, qu'il s'agisse de la police nationale, de la gendarmerie ou de la police municipale,” July 3, 2019, p. 100.

12. Statement made by a “CRS Alliance Police nationale” national delegate before the Senate Law Commission on March 25, 2019.

GROWING USE OF THE KETTLING TACTIC

ACAT is also concerned about the use of kettling, which has been increasing since 2016. Used to isolate disruptive elements from the rest of a march of demonstrators, this tactic has no legal basis. ACAT is concerned by the proliferation of testimonies stating that people who get trapped are unable to get out and can thus be subjected to the use of force, in particular tear gas or other nonlethal weapons.

TESTIMONIAL. Manuel, who was seriously injured by a tear gas canister in Paris on November 16, 2019, said that there had been no confrontation with the police where he had been: *“The police had blocked the whole place. We were trying to get out, but we were exhausted because as soon as we got close to an exit, they would throw tear gas at us. So we decided to wait in a quieter area. We were actually talking with a street medic and wondering why the police had chosen to contain us in an area that was under construction, with site tools lying around that could be used. It was dangerous and I only wanted one thing: to get out and protect my wife”*.¹³

A HEAVY RELIANCE ON NONLETHAL WEAPONS

Presented as nonlethal or less lethal, as opposed to firearms, nonlethal weapons have grown considerably in popularity in recent decades. This increase is related to the development of international law regarding this topic. The United Nations recommends that governments and police authorities put in place *“as wide a range of methods as possible”* and *“equip law enforcement officers with various types of weapons and ammunition which allow differentiated use of force and firearms”*. In particular, the United Nations recommends the use of nonlethal neutralising weapons, *“with the aim of increasingly limiting the use of methods capable of causing death or injury”*.¹⁴

However, according to ACAT, far from helping to ease tensions and maintain order, the systematic use of nonlethal weapons is likely to generate violence. In the very short term, as part of a law enforcement operation, the use of these weapons often appears to be counterproductive, generating more tension and disturbing public order rather than maintaining it. In the medium term, the use of increasingly offensive weapons contributes to an increase in the level of violence and can in turn generate an escalation in the violence of certain protesters.

Furthermore, contrary to what the terminology used suggests, these weapons are far from being danger free. Conversely, ACAT has found that some of these weapons represent a disproportionate risk, which is why it is calling for them to be banned. Others, by the indiscriminate nature of their effects, are also a source of concern, since they do not distinguish troublemakers from peaceful demonstrators or simple passers-by.

The trivialisation of these weapons is all the more worrying because law enforcement officers are insufficiently trained in how to use them. This is reflected in particular in many documented cases of these weapons being used outside the framework of legal use.

FOR MORE INFORMATION on the growing use of nonlethal weapons and their consequences, see pp. 87-98 in the full report.

13. “Basic Principles on the Use of Force and the Use of Firearms by Law Enforcement Officers Adopted by the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders”, held in Havana (Cuba), August 27 to September 7, 1990, articles 2 and 3.

14. “Basic Principles on the Use of Force and the Use of Firearms by Law Enforcement Officers Adopted by the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders”, held in Havana (Cuba), August 27 to September 7, 1990, articles 2 and 3.

RECOMMENDATION

ACAT requests:

- the authorities to ensure transparency as to the real danger of the weapons used and their composition;
- the authorities to publish the number of uses of each type of weapon used by law enforcement officials.

RECOMMENDATION

ACAT requests:

- the ban on defense ball launchers;
- the suspension of the use of GM2L grenades and sting-ball hand grenades pending a full and independent review of these weapons. It also requests that reflection be undertaken on the use of such weapons in law enforcement operations;
- to limit the use of tear gas to cases where it is absolutely necessary. It also requests a study of the impact of their large-scale use on the health of demonstrators and the police;
- to limit the use of water canons to cases where it is absolutely necessary. It also requests that the doctrine for the use of these devices be published.





PLUS**D'INFORMATIONS**

sur la judiciarisation du maintien de l'ordre dans le rapport *Maintien de l'ordre : à quel prix ?* (pp. 67-86).

RECOMMENDATION

ACAT recommends that the kettling tactic should be used only on an exceptional basis and for a limited time. A legal framework should be adopted, setting out the conditions for implementing this measure and the methods of communication with the persons concerned. The need to provide a way out should also be recalled.

Classées comme armes à feu

	WEAPONS	TYPE OF WEAPON	DESCRIPTION
	Defense ball launchers	First-category weapons (A2) in the CSI*	<ul style="list-style-type: none"> • Kinetic impact weapon, supposed to cause trauma without penetrating the target • Shoots projectiles with a diameter of 40x46 mm using an aiming system with an "EOTech" luminous reticle • Two types of ammunitions were in use at the end of 2019: CTS ammunition, used by forces specialised in maintaining order for shots between 10 and 50 m; and single-defense ammunition, used by nonspecialised forces for shots between 3 and 35 m • Multi-shot launchers will be available soon
	Grenade launchers	First-category weapons (A2) in the CSI*	<ul style="list-style-type: none"> • Single or multi-shot • 40 mm or 56 mm diameter • Grenades launched can be fitted with a delay propulsion device with a variable delay depending on the distance that the shooter wishes to reach. • Can launch different types of grenades
	Stun grenades and tear gas canisters (GM2L)	First-category weapons (A2) in the CSI*	<ul style="list-style-type: none"> • Blast grenade • 56 mm caliber • Pyrotechnic module which has a double effect: tear inducing (CS gas) and deafening (160 dB at 10 m) • The explosion does not generate any shrapnel according to the manufacture
	Sting-ball hand grenades (also called ballistic de-encirclement devices or manual protection devices)	First-category weapons (A2) in the CSI*	<ul style="list-style-type: none"> • Blast grenade • 1.5 second delay fuse • Causes a loud detonation and projects 18 rubber pellets weighing 9.3 g which disperse in all directions • Speed of 126.5 metres / second • Sound effect between 145 and 165 decibels

OBJECTIVE	DOCTRINE OF USE	IDENTIFIED RISKS
<ul style="list-style-type: none"> • Remotely neutralise individuals who represent a danger to themselves or to others • Stop violence or assaults against law enforcement officers or if they cannot otherwise defend the area they occupy (without warning) • Legitimate defense of people and property • In a state of necessity 	<ul style="list-style-type: none"> • Similar doctrine of use for police and gendarmes, with one exception** • Officers should avoid shooting vulnerable individuals or aiming at the head or torso; upper and lower limbs should be preferred • Officers must ensure that third parties are out of range • After firing at an individual, officers must check on the target's health and keep them under surveillance • Each use of the weapon must be subject to a detailed report 	<ul style="list-style-type: none"> • The severity of the injuries varies according to several factors (shooting distance, speed and weight of the projectile, impact surface, body part affected) • Can result in internal injuries and severe pulmonary contusions which can lead to death without any penetrating surface injury having occurred • Irreversible eye damage (total or partial loss of sight or eye) • Head trauma • Fractures
<ul style="list-style-type: none"> • Disperse a crowd (after warnings have been given and on order) • Stop violence or assaults against law enforcement officers or if they cannot otherwise defend the area they occupy (without warning) • Legitimate defense of people and property • In a state of necessity 	<ul style="list-style-type: none"> • Similar doctrine of use for police and gendarmes, with one exception** • Must be operated in pairs (a launcher and a supervisor) • Throw by hand: by rolling on the ground, by throwing up in a curve or by extending a bent arm • With a launcher: direct shots prohibited, throws or shots in low-capacity premises banned • After firing at an individual, officers must check on the target's health and keep them under close surveillance • Each use of the weapon must be subject to a detailed report 	<ul style="list-style-type: none"> • Risks are mainly linked to improper use, in particular direct shots • Serious head injuries • Severe injuries to limbs or chest • Lethal risk depending on the ammunition used
<ul style="list-style-type: none"> • Disperse a crowd (after warnings have been given) • Stop violence or assaults against law enforcement officers or if they cannot otherwise defend the area they occupy (without warning) • Legitimate defense of people and property • In a state of necessity 	<ul style="list-style-type: none"> • Doctrine d'emploi similaire pour les policiers et les gendarmes, à une exception près** • L'utilisation doit se faire en binôme (un lanceur et un superviseur) • Lancer à la main : en la faisant rouler au sol, en courbe ou par détente du bras fléchi • Avec un lanceur : tirs tendus interdits, interdiction des jets ou tirs dans des locaux de faible capacité • Après un tir, les agents doivent s'assurer de l'état de santé de la personne visée et la garder sous surveillance permanente • Chaque usage de l'arme doit faire l'objet d'un compte-rendu précis 	<ul style="list-style-type: none"> • Several serious injuries have been recorded that have resulted in a partial or total amputation of a limb • Irreversible hearing damage • Risk of serious head or face injury from shrapnel
<ul style="list-style-type: none"> • When the police want to free themselves from a situation in which they are surrounded • Stop violence or assaults against law enforcement officers or if they cannot otherwise defend the area they occupy (without warning) • Legitimate defense of people and property • In a state of necessity 	<ul style="list-style-type: none"> • Similar doctrine of use for police and gendarmes, with one exception** • Should always be thrown at ground level and cannot be used with a launcher • Use in a closed environment is limited to specific conditions • Officers must take into account the risk posed to people in the vicinity • After firing at an individual, officers must check on the target's health and keep them under close surveillance • Each use of the weapon must be subject to a detailed report 	<ul style="list-style-type: none"> • Several serious injuries caused by receiving projectiles to the face have been identified (total or partial loss of an eye) • The rubber pellets and metallic residues dispersed can deeply cut the skin and cause serious or even irreversible injuries (in particular to ligaments and nerves) • Irreversible hearing damage

* Weapons considered to be war equipment; acquisition and possession prohibited.

** The only members of the gendarmerie that may use this weapon are those on protective duty within a highly sensitive defense zone, according to article L4123-12 of the defense code.

STING-BALL HAND GRENADES: UNDERESTIMATED VELOCITY

10

m/s, the speed at which rubber pellets are propelled during the explosion of the grenade, according to the Ministry of the Interior

126

m/s, the actual speed of the rubber pellets when they explode out of the grenade

Source: Lyon TGI, December 10, 2018

RECOMMENDATIONS

ACAT calls for:

- French authorities to remind the police of their obligation to respect the work and the integrity of journalists in the context of demonstrations;
- the work of citizen observers to be officially recognised and not hindered;
- thorough investigations to be carried out into all violations of the rights of journalists and observers of demonstrations, regardless of whether the demonstrations they observe are peaceful or not.

CHRONIC LACK OF TRANSPARENCY

ACAT condemns the French authorities' opacity regarding which weapons are used by security forces. The public is not informed about new weapons or ammunition being put into service. Most of the time, the public is made aware of any new equipment only when it is used in the context of demonstrations. This is also the case with the circumstances and conditions under which weapons may be used.

In addition, even though law enforcement officers are required to report any use of their weapons, ACAT questions the real possibility of providing precise information to these files when there is such prolific use of nonlethal weapons, particularly during the yellow vest demonstrations.

This lack of transparency is all the more worrying because ACAT's documentation work has shown that several of the weapons used by French law enforcement are more dangerous than the Ministry of the Interior has indicated in its documentation.



Sting-ball grenades, when they explode, also project other dangerous elements, such as the igniter plug and its cap, according to the National Gendarmerie Criminal Research Institute (l'Institut de recherche criminelle de la gendarmerie nationale, or IRCGN). In addition, the trajectory of the plastic pellets is actually much less predictable than the technical sheet of the weapon claims, which can result in serious injury to the face. It therefore appears that the real power of these grenades is largely underestimated.



Contrary to what the authorities maintain, **GLI-F4 grenades** produce substantial shrapnel that can penetrate the flesh during the detonation and thus cause numerous injuries. This was established by a July 2018 IRCGN report that was requested after a protester's hand was ripped off by a grenade of this type in Notre-Dame-des-Landes.



In January 2020, the Ministry of the Interior announced that it would replace GLI-F4 grenades with a new type of grenade: the **GM2L**, which also has tear-inducing and deafening effects but does not contain TNT. It detonates using a pyrotechnic compound, the exact composition of which has not been made public. Although the manufacturer maintains that the materials used do not generate any shrapnel during operation, ACAT notes that such an assertion was supported for the GLI-F4 grenade but was disputed by an expert from the IRCGN. Initial accounts seem to indicate that shrapnel from these grenades indeed caused injuries.

OBSERVERS IN DANGER?

The treatment of journalists during demonstrations was widely discussed during the yellow vest movement. These professionals report a significant increase in intimidation, threats and obstacles to carrying out their work, in particular via repeated police checks and the confiscation of equipment. Complaints have been filed and brought to the IGPN (L'inspection générale de la Police nationale), IGGN (L'inspection générale de la Gendarmerie nationale) and the Defender of Rights. Most of the investigations are still ongoing, according to information obtained by ACAT. In addition, when faced with the evolution of law enforcement practices and the proliferation of injuries, many citizens and associations have chosen to set up monitoring centers in several French cities. As with journalists, these monitoring centers report obstacles to the exercise of their missions, threats and intimidation, and acts of violence perpetrated by law enforcement officers.

OPACITY ON THE NUMBER OF WOUNDED IN LAW ENFORCEMENT OPERATIONS

For several years, ACAT has also noted that French authorities have had the greatest difficulty in determining the damage caused by nonlethal weapons. The number of injured is regularly underestimated. A striking example is that of the report on the use of ammunition in law enforcement operations submitted to the Minister of the Interior by IGGN and IGPN after the death of Rémi Fraisse in Sivens in 2014. Examining the weapons and ammunition used in law enforcement operations, the report cites the example of Spain, where, *"in the past ten years, there have been 18 seriously injured by rubber bullets"*, specifying that *"most injuries concern the loss of an eye, (...) cases of head trauma, cervical fractures or internal injuries"*¹⁵. At no time, however, did the two investigations bother to mention the numerous French victims of defense ball launchers.

The absence of comprehensive official data on the number of people injured or killed during police or gendarmerie operations questions the authorities' willingness to shed light on the use of force and firmly sanction abuse. However, it seems unlikely that information relating to the use of force by the police and gendarmes is not being compiled, or that it would not be possible to compile such information were there a willingness to do so. In this regard, ACAT also notes that the number of complaints filed does not constitute a precise and exhaustive x-ray of the facts of unlawful violence carried out by the police. Indeed, many people refuse to file complaints either for fear of reprisal or because of discouragement, convinced that they will have no results.

The IGPN has embarked on a process of transparency by creating a tool that identifies people injured or killed during police missions, but ACAT disputes the calculation methods used and regrets that this process does not go further. ACAT also regrets that such an initiative was not undertaken by the National Gendarmerie.

TOWARDS THE END OF THE "ZERO WOUNDED, ZERO DEAD" DOCTRINE?

Legally, any injury caused by law enforcement officers cannot be considered unlawful if the officers have the right to use force in the course of their duties—and in particular during public demonstrations. However, as the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment points out, *"No one can lose their right to be protected from torture and other cruel, inhuman or degrading treatment or punishment by any circumstance whatsoever, including in the context of violent riots or illegal demonstrations"*¹⁶.

ACAT is aware of the difficult conditions in which law enforcement officers are forced to intervene, as well as the acts of violence to which they may be subjected, which it unreservedly condemns. However, if a thorough analysis of the number of people injured during demonstrations is difficult to produce due to a lack of precise and official figures on police violence, ACAT can only express concern about the long list of people injured during demonstrations, including both those taking part in them and those that were simply nearby. More serious still, ACAT is concerned about the authorities' denial of this worrying situation and regrets that insufficient consideration has been given to the injured.

Previous law enforcement operations resulting in death or serious injury have led authorities to review their practices, with the idea that law enforcement should strive for "zero casualties, zero deaths". This was the case, for example, with water-launching devices in the 1990s, which were banned after a woman was seriously injured by one during a protest of nurses; or the dissolution of the "voltigeurs"¹⁷ after the violence

RECOMMENDATION

ACAT requests that the authorities publish the number of people injured or killed in the course of police or gendarmerie interventions.

15. IGPN and IGGN, "Rapport relatif à l'emploi des munitions en opérations de maintien de l'ordre", November 13, 2014, p. 33.

16. "Note du Secrétariat général à l'Assemblée générale des Nations unies: Usage de la torture hors détention et interdiction de la torture et autres peines ou traitements cruels, inhumains ou dégradants", A/72/178, July 20, 2017, §15.

17. Created in 1969, the voltigeurs were platoons of motorcycle policemen deployed during demonstrations. Two officers were on each vehicle: while one was driving, the other was armed with a baton. They were dissolved in 1986 after being implicated in the death of Malik Oussekiné.

which led to the death of Malik Oussekin in Paris in 1986. Yet it is clear that this principle has been gradually questioned. The authorities are indeed assuming more violent “contact” postures, which inevitably result in an increase in the number of injured, and not only among the demonstrators.

When asked by ACAT about this change, sociologist Sebastian Roché stated that he believes that if the desire to avoid deaths during demonstrations persists, then the authorities must publicly take responsibility for the injuries caused by law enforcement officers. *“This is why the comparison with other countries is interesting, because some morally refuse to inflict harm on their citizens while others allow it,”* he explained.

WHAT JUSTICE IS THERE FOR VICTIMS OF POLICE VIOLENCE?

Each year, many people are seriously injured or killed during interactions with law enforcement officers. This fact justifies citizens demanding accountability from police and gendarmerie officials. Beyond each victim’s individual right to justice, the effective investigation of all allegations of excessive use of force is essential in order to foster public trust in law enforcement institutions.

POLICE VIOLENCE, AN INESCAPABLE DENIAL?

Cases of torture and mistreatment are not reserved for the worst dictatorships but also occur in democratic countries, including France. However, political authorities tend to deny this reality and even sometimes contest the public’s right to question law enforcement operations.

“Do not speak of repression or police violence, these words are unacceptable under the rule of law.”

EMMANUEL MACRON, FRENCH PRESIDENT, MARCH 7, 2019

ACAT is therefore concerned about the Minister of the Interior’s refusal to meet with the United Nations special rapporteurs when they visited France in May 2019 after sending a letter of allegations motivated by their concerns about law enforcement was managed during the yellow vest demonstrations. ACAT is also concerned about statements made by several authorities, including remarks made by Laurent Nunez, Secretary of State to the Minister of the Interior, who warned in June 2019 that *“the ministry will systematically appeal convictions”* against the police¹⁸. Similarly, after the death of Steve Maia Caniço in Nantes on June 21, 2019, the director of the IGPN, Brigitte Jullien, declared in the newspaper Liberation, *“You cannot make a value judgment on someone who maintains order. It could have dramatic consequences for the management of public order if the police are told that they should have backed down. If we say that today, tomorrow the police will no longer hold their positions and will back away, saying that ultimately, that is what the administration thinks they should do in this situation”*¹⁹. ACAT reaffirms, on the contrary, the need for increased monitoring, including by citizens, of the activity of law enforcement officers.

THE MAIN PRINCIPLES OF EFFECTIVE INVESTIGATION ACCORDING TO INTERNATIONAL STANDARDS

An effective investigation should be conducted as soon as there are reasonable grounds to believe that acts of torture or abuse have been committed. To be effective, these investigations must:

- be independent, meaning that the persons responsible for conducting the investigation must not have any link to the audited body;
- be complete, thorough and conducted in a timely manner;
- be transparent to the public and allow the victim to be involved in the entire procedure;
- extend to persons who have command authority and who should be held responsible when they have not effectively exercised their duty of command or control²⁰. This obligation is particularly relevant in the context of law enforcement operations because of the particular importance of the role of hierarchical authority.

18. *Libération*, “Police : l’État en illégitime défense”, June 13, 2019.

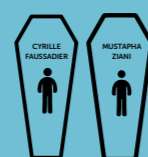
19. *Libération*, “On ne dit pas circulez, il n’y a rien à voir” : entretien musclé avec les dirigeants de l’IGPN”, August 4, 2019.

20. “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”, February 2, 2016, A/HRC/31/66, §89-91.

In its report (*L’Ordre et la force*), published in 2016, ACAT attempted to identify the number of people seriously injured by certain nonlethal weapons. This count, which was not intended to be exhaustive and which was not carried out only in the context of demonstrations, continued thereafter. Between 2000 and 2019:

DEFENSE BALL LAUNCHERS (LBD 40 ET FLASHBALL)


 **71** people seriously injured



2 people killed

Mustapha Ziani died in December 2010 after being hit by a short-range chest shot.

A defense ball launcher was also involved in the death of Cyrille Faussadier. The autopsy highlighted pulmonary and cardiac contusions, which could be linked to being hit by a projectile fired by the weapon. The investigation is ongoing.

 **48** of which lost an eye or partial or total sight

INSTANT TEAR GAS GRENADES (GLI-F4)

 **8** hands torn off

 **2** serious foot injuries

STING-BALL GRENADES (GMD)

 **7** serious injuries

 **8** people lost an eye or partial or total sight

RECOMMENDATIONS

ACAT requests the regular publication of data concerning:

- the use of weapons and the use of force: the number of uses of each type of weapon, disaggregated statistics showing the weapons or technical gestures involved in complaints that have been filed and the police operations in which these incidents took place (law enforcement operations, arrests made in the home, transportation, police custody, etc.) and the number of people injured or killed in the course of police or gendarmerie interventions;

- judicial sanctions: the number of complaints filed against law enforcement officers for violence, the rate of cases dropped by type of offence, the rate of conviction by type of offence and the number of sentences passed; disciplinary sanctions: the number of administrative investigations opened, the facts relating to these investigations, the rate of disciplinary sanctions by type of alleged offence, the number of sanctions by type of alleged offence.

LACK OF TRANSPARENCY ON THE USE OF FORCE

This study highlights a lack of transparency on the use of force by police and gendarmes. Insufficient statistics and figures are made public, even though plentiful precise data is regularly collected on the subject by the competent authorities. The United Nations recommends the publication of data on the use of force, in particular on the way in which force is used and the damage resulting from it²¹. The need for transparency in regard to the actions of security forces is recognised by the IGPN itself²². The IGPN has committed to taking steps in this direction, but this is still insufficient. Furthermore, no data is currently published by the national gendarmerie.

ACAT also condemns the lack of transparency regarding the judicial action taken when complaints of unlawful police violence are filed, since no data on this subject is published by the Ministry of Justice. This data has been requested from the French authorities several times by the United Nations Committee against Torture²³. It is necessary that such statistics be published regularly.

CHRONIC OBSTACLES TO OBTAINING AN EFFECTIVE INVESTIGATION

Difficulties identifying law enforcement officers

This study reveals the obstacles that are encountered when attempting to obtain an effective investigation, in particular when the police who have committed unlawful violence are unidentified or unidentifiable. Since 2014, officers are required to wear a number that identifies them, the *référentiel des identités et de l'organisation* (RIO)²⁴. The reality, however, is that these numbers are not displayed systematically. In addition, numerous videos show police officers hiding their faces, making it difficult to identify them in the event of unlawful violence.

Law enforcement operations involve the engagement of many officers, from the police and the gendarmerie, specialised and nonspecialised. The multiplicity of the teams involved cannot justify confusion in the chains of command or allow the police and gendarmes to not be held accountable for the unlawful use of force.

In the investigation into the death of Zineb Redouane in Marseille on December 2, 2018, information published by the press indicates that the police officer responsible for the shot that hit the victim could not be identified. In addition, the CRS commander in question allegedly refused to send the launcher that fired the grenade to the IGPN, which was in charge of the investigation²⁵. ACAT reiterates that the authorities must not tolerate any manifest refusal by police authorities to cooperate with the competent judicial authorities in order to identify police officers in question.

21. "Les États devraient mettre en place des systèmes efficaces de suivi et d'établissement de rapports sur l'usage de la force et rendre les informations pertinentes accessibles au public, y compris les statistiques concernant les dates, les personnes touchées et la manière dont la force a été utilisée et les dommages qui en ont résulté," in "Note du Secrétariat général à l'Assemblée générale des Nations unies, Usage de la torture hors détention et interdiction de la torture et autres peines ou traitements cruels, inhumains ou dégradants", A/72/178, July 20, 2017, §70.

22. IGPN, "L'accueil des observateurs extérieurs des activités de police", July 26, 2018, p. 2.

23. United Nations, "Observations finales n°31 du Comité contre la torture sur les quatrième à sixième rapports périodiques de la France", CAT/C/FRA/CO/4-6, May, , p. 9; et United Nations, "Observations finales concernant le septième rapport périodique de la France", CAT/C/FRA/CO/7, June 10, 2016, §16.

24. Arrêté du 4 décembre 2013 relatif aux conditions et modalités de port du numéro d'identification individuel par les fonctionnaires de la police nationale, les adjoints de sécurité et les réservistes de la police nationale.

25. *Mediapart*, "Mort de Zineb Redouane : les enquêteurs se sont montrés peu curieux", July 26, 2019.

Difficulties in identifying the weapons responsible for injuries

The UN recommends that the equipment provided to each officer in the course of an operation, including vehicles, firearms and ammunition, be accurately recorded in a data retention system or a register²⁶. It is also the responsibility of the authorities to justify the use of weapons²⁷.

In France, the police and gendarmes are required—albeit in different ways—to report on their use of weapons in the course of their missions. Shortcomings in identifying these uses have been noted, and this can have an impact on the ability to identify the officer in question in the event of a complaint of police brutality. In addition, in the absence of transparency as to which weapons are actually being used by the police, wounded people may encounter problems identifying the weapon that caused their injuries, especially if they have been injured by weapons that are still in experimental stages.

Difficulty proving the facts

Many complaints of excessive use of force are dismissed due to a lack of material evidence. This difficulty in proving alleged facts is due to several factors. Some, that are very serious (such as the disappearance of evidence, the rewriting of facts, the creation of false statements, etc.), concern the security forces. Others (such as the increased credibility given to police testimony, the refusal to carry out certain acts of investigation, etc.) are due more to the judicial authority.

 **FOR MORE INFORMATION** on law enforcement systems that fail to guarantee the dignity of protesters, see pp. 107-114.

APPROPRIATE INDEPENDENT REGULATORY BODIES

Investigations of cases involving the police or the gendarmerie are carried out by one of the two parties and thus struggle to be impartial and effective, as demonstrated by ACAT in 2016²⁸. France could take inspiration from other European nations, such as Northern Ireland, where two bodies are responsible for monitoring the work of the police: the Policing Board of Northern Ireland, which has a say in the actions of law enforcement officers; and the Ombudsman, whose mission is to deal with all complaints relating to police misconduct.

26. "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", February 2, 2016, A/HRC/31/66, §65.

27. CEDH, "Abdullah Yasa and others v. Turkey", n°44827/08, July 16, 2013.

28. ACAT, "L'Ordre et la force: Enquête sur l'usage de la force par les représentants de la loi en France", March 2016.

RECOMMENDATION

ACAT requests that law enforcement officers be systematically identified as part of their missions. An enquiry should be carried out on the current form of RIO, and changes should be made so that these numbers are more visible and easier for citizens to remember.

RECOMMENDATION

ACAT recommends that an independent body be created in France responsible for investigating offences committed by police and gendarmerie officers.

RECOMMENDATION

L'ACAT recommends that judicial convictions be in all circumstances proportionate to the violations found.

DIFFICULTIES OBTAINING JUSTICE

In addition to the difficulties of investigating the police and the gendarmes, obtaining justice for victims of unlawful violence is difficult in several respects. First because the position of the justice system vis-à-vis the police is not simple, because both of these institutions have daily links in the context of carrying out their work.

In addition, the concept of self-defense—which is framed by law—is often advanced by the authorities and used by the police and the gendarmes to justify the use of force. It seems, moreover, that a part of the political class and of the public agrees with this justification, even when force is used in an abusive or deceptive way, as ACAT explained in 2016²⁹.

Furthermore, although the case-law of the ECHR imposes a criterion of promptness for an investigation to be deemed effective, it must be noted that this principle does not always apply to cases of police brutality. The slowness of the proceedings is fraught with consequences, even at the very start of investigations. Video surveillance and footage recorded by law enforcement officers is not preserved beyond a certain duration and may therefore have been erased by the time the first steps of investigation have been taken.

Finally, in addition to cases that are dismissed, ACAT has observed that when convictions are handed down, they rarely exceed suspended sentences, even when the offence led to the death or permanent infirmity of the victim. In addition, few convictions are registered in the bulletin n°2 of the criminal record or accompanied by any type of ban.

🔍 **FOR MORE INFORMATION** about the difficulties encountered by victims during investigations, see pp. 129-135 in the full report.

ANOTHER FORM OF LAW ENFORCEMENT IS POSSIBLE**REFORMS ELSEWHERE IN EUROPE**

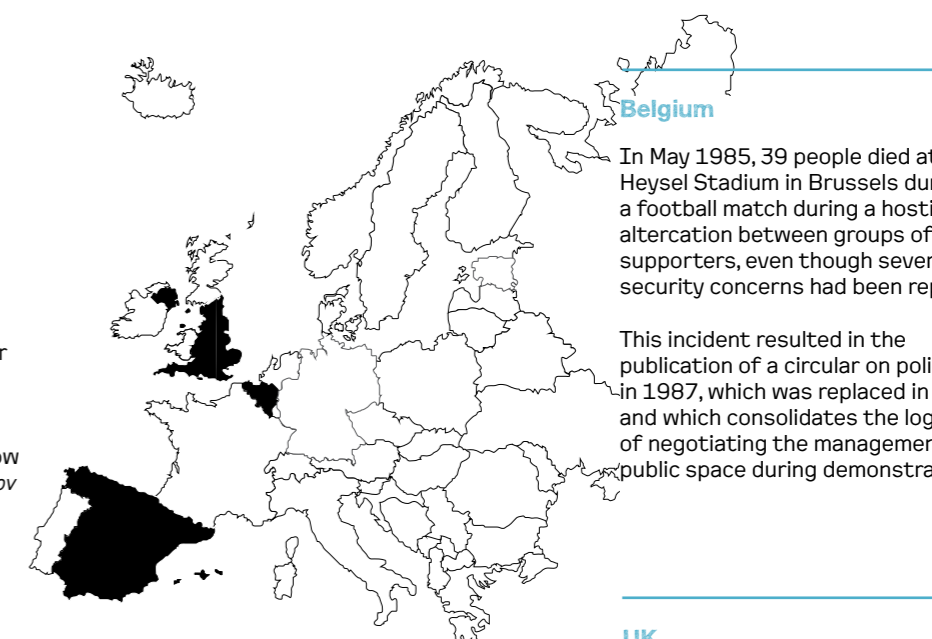
French authorities pride themselves on the superiority and international reputation of their expertise in maintaining law and order. However, “*seen from abroad, policing in France raises concerns*”³⁰. If French law enforcement practices were legitimately respected at one point, this is no longer the case today, as shown by foreign police forces that are turning to other models.

Northern Ireland

Radical changes are taking place in this country after decades of civil war. Gary White, a former police officer in Belfast with whom ACAT was able to speak, reminds us that Ireland has experienced particularly violent protests, much more so than the yellow vest demonstrations. “*Dozens of Molotov cocktails were hurled at the police, and demonstrators showed up with AK-47s*”, he explains. In response, the police used a massive amount of rubber bullets, similar to the defense ball launchers used today by the French police, which caused numerous serious injuries and deaths. As part of the peace agreement signed in 1998, an independent report examined the issue of armaments and asked that alternative weapons be developed. In addition, greater discipline and better training in the handling of these weapons has been implemented.

🔍 **FOR MORE INFORMATIONS**

For more information on policing practices in Europe, see pp. 139-146.

**Belgium**

In May 1985, 39 people died at the Heysel Stadium in Brussels during a football match during a hostile altercation between groups of supporters, even though several security concerns had been reported.

This incident resulted in the publication of a circular on policing in 1987, which was replaced in 2011 and which consolidates the logic of negotiating the management of public space during demonstrati

UK

At the G20 summit in London in 2009, Ian Tomlinson, a homeless newspaper vendor who ended up by chance in the middle of a demonstration, was killed after being pummeled by a police officer and then pushed heavily to the ground. The press published the conclusions of an initial medical expert's report which concluded that he had died naturally. However, a second autopsy revealed that he died of an internal hemorrhage that was caused by the baton hits he received. This incident resulted in a serious enquiry of crowd management practices in England.

Spain

The violent breakup of a demonstration of the anti-austerity protestors known as the “*Indignados*” at the Plaça de Catalunya in Madrid on May 27, 2011, led to the creation of a mediation department made up of police officers trained in psychology and sociology, based on the model of Swedish dialogue units. Since the creation of this unit, the number of violent incidents during demonstrations has decreased.

29. ACAT, “L’Ordre et la force: Enquête sur l’usage de la force par les représentants de la loi en France”, March 2016.

30. O. Fillieule et F. Jobard, “Le splendide isolement des forces françaises de maintien de l’ordre,” in Jérémie Gauthier et Fabien Jobard, “Police : questions sensibles”, p. 21.

LE PROJET GODIAC IN NUMBER

20

organisations involved in the development of the GODIAC project

9

countries studied

3

publications, including a booklet listing good practices

A COLLECTION OF GOOD PRACTICES: THE KFCD (KNOWLEDGE, FACILITATION, COMMUNICATION, DIFFERENTIATION) MODEL

We are not here to pretend that there is an optimal model for managing crowds of protestors. Finding the right balance between ensuring the exercise of human rights and maintaining public order is not an easy task. In addition, each country has its own history and its own institutions, making it impossible to exactly duplicate an allegedly ideal model worldwide. Violence that occurs during demonstrations is often the result of a series of situations which can lead to a vicious circle, hence the importance of thinking about mechanisms which make it possible to avoid the triggering of this spiral to the maximum extent possible. Certain practices observed in a few countries appear to be interesting ways to pacify law enforcement operations.

“It is neither possible nor desirable to draft a single ‘model law’ that is suitable for all OSCE member states. Rather, the Guidelines and Explanatory Notes try to clarify some important issues and suggest possible solutions.”

OSCE GUIDELINES³¹

Between 2010 and 2013, a project was launched, with the support of the European Union, focused on police officers in the context of developing law enforcement operations. It is called the GODIAC project (Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe), and it brought together researchers and police officers who followed demonstrations in nine countries³² (including a rally against the transport of radioactive waste in Germany, a NATO summit in Portugal, a union demonstration against austerity in London, a demonstration hostile to Muslims in Denmark, etc.).

This project resulted, in May 2013, in the creation of a model articulated around the importance of dialogue and communication in the management and prevention of disturbances to public order during demonstrations. Based on a new approach to crowd psychology, it is based on the premise that indiscriminate use of force by the police increases the risk of threats to public order. It aims to minimise collateral, unnecessary and dangerous violence. Another objective is to build and maintain a permanent dialogue with the crowd to allow for the de-escalation of tensions. It is based on four key concepts.

The first pillar of this model is **knowledge**. It involves:

- knowing the protest groups well by understanding their goals, strategies and dynamics of protest;
- gathering reliable information in order to avoid, as sometimes occurs in some countries, including France, basing intervention strategies on stereotypical views, rumors or misunderstandings. Better knowledge of demonstrators’ goals and tactics makes it possible to plan and analyse risks so as to avoid, for example, arriving over-equipped, in excess or mounting a disproportionate response to a situation;
- and properly transmitting information collected to the agents who will intervene in the field.



WHAT ABOUT OUR NEIGHBOURS? Germany, for example, issues law enforcement officers booklets that detail the context of the event, the protesters’ objectives, the expected course of action and the lines not to be crossed.

31. Commission européenne pour la démocratie par le droit (commission de Venise), “Lignes directrices du BIDDH/OSCE et de la commission de Venise sur la liberté de réunion pacifique” (second edition), July 9, 2010, p. 6.

32. Demonstrations were observed in the following countries: Austria, Denmark, Germany, Hungary, Portugal, Spain, Slovakia, Sweden, and the United Kingdom.

The second pillar of the KFCD doctrine is to **facilitate** and support street protests, based on the premise that the vast majority of people come to demonstrate peacefully and are not violent. Police intervention must therefore:

- aim to facilitate the achievement of the protesters’ legitimate objectives;
- facilitate the conduct of peaceful authorised demonstrations and those that take place in more difficult conditions;
- and, when ordered by their superiors, police may even be required to facilitate undeclared public gatherings.

The third pillar is **communication**, based on the premise that an unexplained police maneuver or tactic can lead to misunderstanding, anger and even hostility. This principle must be understood by the various parties taking part in an event: law enforcement officers, public security services (firefighters, ambulances, etc.) and regulatory authorities. Maintaining this communication requires careful planning of emergency measures. Law enforcement officers who intervene must be given detailed information about the conditions of their intervention.

This principle:

- applies to all stages of law enforcement operations and must be put into action as soon as possible to avoid “surprises” on the part of the authorities towards the demonstrators;
- implies a commitment to sustained dialogue, even if certain demonstrators may be reluctant to negotiate with authorities;
- requires that personnel who come into contact with event organisers be trained in communication and conflict management in order to be able to manage security problems, answer for the conduct of law enforcement officers and follow up on requests made by participants.



WHAT ABOUT OUR NEIGHBOURS? Several countries have established law enforcement units dedicated to dialogue. The United Nations Special Rapporteurs recommend that this liaison function be exercised independently of other policing functions.³³ Such units exist in several countries: there are dialogue officers in Sweden, event police in Denmark, peace units in the Netherlands and police liaison officers in England. In Germany, dialogue units are deployed during demonstrations and football matches. The objective of these units is to ensure that the actions of the police are systematically explained in order to be correctly understood and interpreted by the demonstrators. Each arrest during policing operations is thus followed by the intervention of a dialogue team in order to defuse conflicts that may arise from police action.

The fourth and last principle is that of **differentiation**, which requires authorities to be able to distinguish participants from nonparticipants (for example, passers-by near the demonstration or observers), and peaceful demonstrators from nonpeaceful ones. This means that law enforcement officers must:

- be aware of the variety of individuals in a crowd (different identities, ways of acting and reacting);
- treat problematic individuals individually to prevent the spread of illegal behavior. This relates to the psychology of crowds, described below, and is based on the premise that indiscriminate actions taken by the police can lead to the crowd standing in solidarity with individuals the police are trying to isolate. This can generate an escalation of violence and therefore increase the risk of a threat to public order. It is therefore important that the police do not indiscriminately use force, in order to avoid people, without malicious or tortious intent, supporting individuals who are legitimately targeted by a police action.

33. “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”, February 2, 2016, A/HRC/31/66, §49.

RECOMMENDATION

ACAT recommends that French authorities establish liaison officers whose functions will be exercised independently of other law enforcement functions. These officers will be responsible for facilitating communication between the various groups in demonstrations in a spirit of dialogue and facilitation. Liaison officers should be specially trained in communication and conflict management.

FOR MORE INFORMATION

on political choices regarding law enforcement, see pp. 155-157 in the full report.

Two visions of crowd psychology

Gustave Lebon :

At the end of the 19th century, Lebon considered the crowd to be one and indivisible, and he believed that it acted irrationally under the influence of a leader. In fact, he believed that demonstrators lost their faculties of reasoning and discernment.

This conception still forms the basis of police education on this subject in France.

Stephen Reicher / Otto Adang :

According to Reicher and Adang, any presence hostile to a group undermines the individuality of its members, who then tend to unite against what they perceive to be hostile. Thus, indiscriminate police action against a group of demonstrators can lead to their solidarity against the police. Once the threat is gone, each person reaffirms his or her own characteristics, and the unity of the group disintegrates.

From this perspective, many police forces believe that tear gas does not allow differentiated management of troublemakers and can therefore lead to an escalation of violence. For example, some countries refuse to use tear gas, and others use them only as a last resort.

A policeman's viewpoint: "It's a choice: you can quietly disperse, or gas, or use the water cannons, which is also a technique. Here, with the yellow vests, the police do not speak, or not enough, before using force. If there were clearer warnings, liaison officers, telling people where to go... There are a lot of things people don't know. New forms of engagement require more work from the authorities, but 'peaceful policing is still possible. This requires engaging more resources, and that is a political question: from the start, it has been getting more and more violent on the part of the government, whereas in my opinion, if we wanted it to go better, we would need more communication within law enforcement."

THIERRY TINTONI, RETIRED POLICE OFFICER

DETERMINING POLITICAL CHOICES

Law enforcement practices and their developments are often the result of tough political decisions.

- Emphasis should be placed on the working conditions and training of law enforcement officers. Indeed, their interventions must always be strictly supervised and prepared, in particular so that they do not give the impression of taking sides against demonstrators who express their anger. In addition, the training of agents must cover a broad range of subjects, such as communication techniques and crowd psychology, for example.
- A different approach to the way crowd police officers are armed must also be adopted. Officers should be armed with more moderate equipment, like in Germany, where grenades have been gradually removed from the arsenal of law enforcement officers due to indiscriminate use. In this context, the use of defense ball launchers in France is sharply criticised by our European neighbours.

CONCLUSION

The use of force by police and gendarmes has rarely been discussed as much as it is being discussed now. The number of people injured or even killed while participating in or being in the vicinity of a demonstration is indicative of failings in policing practices. If these facts seem relatively exceptional in view of the number of interventions law enforcement officers engage in, the investigative work of ACAT nonetheless demonstrates that developments in policing practices over the past twenty years are far from trivial. They also have very concrete consequences for the exercise of personal freedoms.

The dramatic increase of cases of police brutality, the restriction of public freedoms and fundamental rights, the destruction of the bond of trust between institutions, notably the police and citizens—should order be maintained at this cost?

Maintaining order is a matter of political choice, both in terms of the resources allocated to training law enforcement officers and the weapons which are made available to them, as well as in terms of the acceptance of various protest movements. In any event, states have a legal obligation to protect their citizens' fundamental freedoms and rights, including those of individuals who exercise their right of assembly in the context of public demonstrations. It is also the responsibility of the state to prevent and punish abuse caused by the excessive and disproportionate use of force.

Consequently, ACAT renews its request to undertake a serious enquiry on the police practices implemented during public demonstrations. Without this work, which will require a strong political commitment, the gap between the police and the population will likely continue to widen and fuel even greater tensions at public demonstrations.

Trust between authorities and citizens in the context of demonstrations is built over the long term, based on the experiences of all parties involved. In this context, ACAT also invites the authorities not to set protesters and law enforcement officers in opposition to one another. It is up to the authorities to create the conditions for a de-escalation of violence.

In general, and like other institutions working for the protection and promotion of human rights, ACAT calls on the authorities to base all police missions on the respect of human rights. These rights are not an obstacle to police efficiency. On the contrary, ACAT is convinced that it is with respect for ethics and human rights that a lasting bond of trust can be established between the French population and its security forces. It is up to the authorities to take the necessary measures to guarantee its citizens that force is used only when strictly necessary and proportionate to the aim to be achieved, that the allegations of violence are seriously examined and that proven mistreatment will be duly punished.

The use of force by police and gendarmes has rarely been discussed as much as it is being discussed now. The number of people injured or even killed while participating in or being in the vicinity of a demonstration is indicative of failings in policing practices. If these facts may seem relatively exceptional in view of the number of interventions law enforcement officers engage in, the management of demonstrations in the past couple of years can only lead one to question the choices authorities have made in this matter.

Continuing its work on the subject, ACAT publishes a new report: “Maintaining Law and Order: At What Cost?” Based on more than a year of investigation, it examines developments in law enforcement practices and their consequences for public freedoms. With this report, ACAT intends to remind the French authorities of their obligations to protect the fundamental freedoms and rights of its citizens and to prevent and punish unlawful violence committed by law enforcement officers. It also raises the question: the proliferation of unlawful violence, the restriction of public freedoms, the breach of the bond of trust between institutions and citizens – should order be maintained at this cost?

MAINTAINING LAW AND ORDER: AT WHAT COST?

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