



Preventing and Combating Terrorism: The Human Dimension

An OSCE/ODIHR Discussion Paper

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1. Introduction

The purpose of this paper is to highlight the importance of the human dimension in countering terrorism and to provide an overview of the counter-terrorism activities of the Office for Democratic Institutions and Human Rights (ODIHR) and its Co-ordinator on Anti-Terrorism Issues. Since the adoption of its founding document, the 1975 Helsinki Final Act, the OSCE participating States have recognized that security is not merely the absence of war and that establishing or maintaining a secure environment in the region is not solely a political or military question. The OSCE's security concept goes beyond politico-military issues and includes, as integral parts, human rights and democracy, as well as economic and environmental issues. The concept has evolved from concentrating on the security of states and governments to encompass more fully the security of the individual human being.

As a regional organization, the OSCE's comprehensive approach to security makes it uniquely suited to address the challenge of balancing respect for human rights with the duty of each participating State to protect citizens from potential terrorist attacks. Participating States have reaffirmed their commitment to fully implement obligations under United Nations Security Council Resolution (UNSCR) 1373, as stated in the Bucharest Plan of Action (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002). The Co-ordinator on Anti-Terrorism Issues seeks to ensure that anti-terrorism measures taken by participating States fully comply with OSCE commitments and international human rights law. Within the framework of these commitments, three distinct anti-terrorism programme areas have been identified under which the Office will focus its activities in the area of preventing and combating terrorism:

- Terrorism and human rights analysis;
- Preventive action against terrorism; and
- Legislative technical assistance.

2. The Comprehensive Approach to Security and the Human Dimension

When the OSCE was created in 1975, the comprehensive security concept was groundbreaking. Today, in a world faced with a multitude of new threats and challenges, it is more relevant than ever. The first model for an OSCE security policy adapted for the 21st century was set out in the Lisbon Summit in 1996. The approach is one of co-operative security based on democracy, respect for human rights, fundamental freedoms, the rule of law, a market economy, and social justice. This concept's key elements are the comprehensiveness and indivisibility of security and the allegiance to shared values, commitments, and norms of behaviour.

At the OSCE Summit in Istanbul, participating States reaffirmed that "respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security". Furthermore, they committed themselves to "counter such threats to security as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism". OSCE participating States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively.

3. The Mandated Tasks of the ODIHR

The main OSCE documents outlining commitments to prevent and combat terrorism are the Bucharest Plan of Action (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002). The Bucharest Plan of Action for Combating Terrorism (2001) established a framework for comprehensive OSCE action fully respecting international law, including international human rights law. The Plan of Action states that, while no circumstance can justify acts of terrorism, "... there are various social, economic and political and other factors, including violent separatism and violent extremism, which engender conditions in which terrorist organizations are able to recruit and win support".

The Bucharest Plan of Action mandates the ODIHR to address those factors that can be described as the "root causes" or "enabling conditions". In particular, the document states that the ODIHR will be active in strengthening democratic institutions, human rights, tolerance, and multiculturalism. Furthermore, the Bishkek Programme of Action places a strong emphasis on human rights and stresses the need for strengthening the rule of law, building democratic institutions, enhancing the capacity of the judiciary, engaging civil society, and promoting tolerance and dialogue among religions and cultures. In particular, the ODIHR has been specifically tasked to:

- Offer technical assistance/advice in legislative drafting necessary for the ratification of international instruments upon request. Will consider facilitating contacts between national experts to promote exchange of information and best practices on counter-terrorism legislation (Bucharest Plan of Action, paras. 6 and 18);
- Continue and increase efforts to promote and assist in building democratic institutions at the request of states, *inter alia*, by helping to strengthen administrative capacity, local and central government and parliamentary structures, the judiciary, ombudsman institutions, and civil society (Bucharest Plan of Action, par. 10);
- Facilitate exchanges of best practices and experience between participating States and develop projects to solidify democratic institutions, civil society, and good governance (Bucharest Plan of Action, par. 10);
- Promote and enhance tolerance, co-existence, and harmonious relations between ethnic, religious, linguistic, and other groups, as well as constructive co-operation among participating States (Bucharest Plan of Action, par. 11);
- Provide an early warning of, and appropriate response to, violence, intolerance, extremism, and discrimination against these groups and, at the same time, promote their respect for the rule of law, democratic values, and individual freedoms. Will work to ensure that persons belonging to national minorities have the right to freely express, preserve, and develop their ethnic, cultural, linguistic, or religious identity (Bucharest Plan of Action, par. 11).

4. The ODIHR Programme Outline – Preventing and Combating Terrorism

4.1 Terrorism and Human Rights Analysis

The Bucharest Plan of Action (2001) states that measures taken to combat terrorism must fully respect international law, including international human rights law. There is concern that the war on terrorism has been used as an excuse to suppress legitimate expressions of dissent and limit fundamental freedoms, in particular freedom of religion and belief, freedom of expression, and freedom of assembly. In addition, standards of privacy and the fair

administration of justice are at risk as states respond to the increased threat of international terrorism.

International human rights law, reflected by OSCE commitments, provides a valuable and workable framework under which appropriate and targeted action can be taken in response to emergencies. The Co-ordinator on Anti-Terrorism Issues, together with the Human Rights Section, monitors counter-terrorism practice to ensure that appropriate checks and balances are in place regarding the conformity of anti-terrorism measures with international law, in particular human rights law. This work is conducted through monitoring exercises (including country assessment missions), research, analysis, and review. In order to prevent and address shortcomings in national practice, the monitoring of anti-terrorism measures against human rights standards is conducted according to thematic areas or rights at risk:

- Freedom of association;
- Freedom of religion and belief;
- Non-discrimination;
- The right to private and family life;
- The right to property;
- Freedom from arbitrary detention;
- The right to a fair trial;
- The right to an effective remedy; and
- Prohibition of torture, inhuman and degrading treatment.

The ODIHR was designated by the Concluding Document of Helsinki (1992) as the OSCE's clearing house for information on states of public emergency. Paragraph 28.10 of the Moscow Document (1991) requires participating States to notify the ODIHR when a state of public emergency is declared or lifted, as well as of any derogation made from the State's international human rights obligations. In this regard, the ODIHR is well placed to monitor developments regarding any measures taken in derogation of international human rights obligations and OSCE commitments resulting from a national emergency.

The Human Rights Section of the ODIHR carried out a mapping exercise that identified the areas and regions where information concerning anti-terrorism measures and practices implemented since 11 September 2001 remains difficult to obtain. Information came from a variety of sources, namely NGO and IGO reports in the public domain. The OSCE has a number of advantages compared to other regional intergovernmental organizations – most notably, its access to information gained via field presences and through travel conducted across the OSCE region by ODIHR staff.

The ODIHR is currently collecting and compiling major anti-terrorism legislation from all OSCE participating States. The collected legislation is posted on the Legislationline website¹ and is organized by subject and by country. It is also maintained as reference material in the ODIHR database, which is accessible by OSCE participating States and ODIHR personnel. This project is intended as a resource for lawmakers in the OSCE region and for the ODIHR. The legislation is organized into major legislation, including codes of criminal law, criminal procedure, administrative law, and specially enacted anti-terrorism legislation, and, in addition, portions of legislation will be posted in subsections organized by subject to make reference easier for those undertaking specific research. The presence of the full text of major

¹ www.legislationline.org.

legislation alongside thematically organized collections of related legislative provisions should greatly facilitate the use of Legislationline as a reference and research tool. It will also be useful for government officials, professionals, and academics interested in the field of anti-terrorism.

4.2 Preventive Action against Terrorism

A comprehensive approach to address terrorism requires addressing root causes. Within the ODIHR, work is already being carried out across a broad range of core mandated tasks, including the promotion of human dimension commitments in the area of human rights, democracy, and the rule of law. The Human Rights Section also conducts programme activities in the field of freedom of religion or belief. Terrorism prevention focuses on tolerance promotion, awareness raising, and addressing the root causes of terrorism. The preventive action programme area falls into two sub-categories along the lines of the two specific ODIHR-mandated tasks of the Bucharest Plan of Action (2001):

- Promoting human rights, tolerance, and multiculturalism; and
- Institution-building and strengthening the rule of law and state authorities.

4.2.1 Promoting human rights, tolerance, and multiculturalism

Commitments on freedom of thought, conscience, religion, or belief were first enshrined as OSCE commitments in the Helsinki Final Act of 1975, making them among the longest-standing OSCE human dimension commitments. These initial commitments have been repeatedly reaffirmed and have been expanded substantially in subsequent OSCE documents, notably the Vienna Concluding Document of 1989. The ODIHR is responsible for fostering implementation of these commitments, and the importance of freedom of religion and belief is central to the work of the Human Rights Section. Practical commitment to an anti-discrimination agenda includes the following:

- Helping governments to bring their legislation into line with international standards through legislative review;
- Developing new policies intended to foster improved relations among religious groups;
- Promoting dialogue between governments and religious groups; and
- Promoting tolerance through the development of school curricula and the media in participating States;

The promotion of tolerance through education and training activities is central to any strategy to prevent and combat terrorism. Human rights education, both internal and external, has been highlighted as one of the main priorities of the Human Rights Section of the ODIHR. In particular, the ODIHR will aim to develop educational activities to foster tolerance among segments of the population that may be at risk of being exposed to extremist propaganda, thereby reducing the ability of terrorist and extremist organizations to recruit and win support.

4.2.2 Institution-building and strengthening the rule of law and state authorities

The absence of the rule of law and effective governance in states often enables terrorists to flourish. States that lack legitimacy and control over the economy and other traditional levers of power provide the space and oxygen for terrorist groups to thrive. Full participation in the

economic and political systems of states gives citizens a voice and a belief that their voice counts. Supporting an independent judiciary is also an important part of the strategy to address the root causes of violence. An independent judiciary is transparent and effective in checking abuse and providing remedies. The ODIHR has increased the number of projects it has implemented in the last three years significantly as a result of its success in concentrating on specific topic areas. This work is concentrated on the following areas: legislative alert/review and assistance, technical assistance to ombudsman offices, legal training and education for students and legal professionals, prison reform, and torture prevention.

The key to enhancing human security is the pursuit of a comprehensive human rights agenda. Encouraging states to ratify international human rights conventions is one way of promoting and ensuring respect for human rights. ODIHR staff work with legal professionals in participating States to strengthen their understanding and use of international treaties and commitments through training on substantive law, advocacy skills, and teaching methodology. The ODIHR works with participating States to ensure that international standards are transferred into national law and practice.

The role of civil society and, in particular, of human rights defenders is crucial in the quest to eliminate the root causes of terrorism. Part of the work of the ODIHR focuses on encouraging interaction between civil society actors and governmental agencies. ODIHR staff continue to mediate and promote dialogue between governments and NGOs in particular in Central Asia. As most human rights NGOs in the Caucasus and Central Asia suffer from a lack of capacity and skills, the ODIHR is committed to providing human rights training and monitoring programmes. Through its civil diplomacy programmes, the Office concentrates on civil society/government relations with initiatives to build bridges between community actors in countries with serious societal rifts.

4.3 Legislative Technical Assistance

United Nations Security Council Resolution (UNSCR) 1373 calls upon states to become parties, as soon as possible, to the relevant international conventions and protocols relating to terrorism and to increase co-operation and implement the relevant conventions and protocols and UNSCRs 1269 (1999) and 1368 (2001). UNSCR 1373 also called upon the UN to create a Counter-Terrorism Committee (CTC) to monitor implementation of the resolution and to co-ordinate assistance programmes. The CTC encourages assistance programmes to be conducted through regional organizations. In the Bucharest Plan of Action (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002), participating States reaffirmed their commitment to fully implement obligations under UNSCR 1373 and called upon institutions, in particular the ODIHR, to provide technical assistance in legislative drafting upon request.

The ODIHR's programme on legislative technical assistance focuses on supporting participating States' work to ratify and implement the 12 UN conventions and protocols relating to terrorism. OSCE participating States reaffirmed their commitment in this regard in the Bucharest Plan of Action (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002). From the outset, it was recognized that other specialized bodies had developed relevant assistance materials, most notably the UN Office on Drugs and Crime's (ODC) Legislative Guide and the Commonwealth Secretariat's Implementation Kits. These organizations' particular geographical areas of focus, however, do not extend into the South

Caucasus, Central Asia, or South-Eastern Europe, where many of the OSCE participating States have reduced capacity to focus on the ratification process as a priority.

The ODIHR encourages, and uses as part of its approach, the participation of relevant experts from participating States who share their governments' experience of the ratification and implementation process. This exchange and discussion of best practice, highlighted during the special meeting of the CTC in March 2003, is a considerable comparative advantage of the OSCE as a regional organization. The current technical assistance provided by the ODIHR has been carried out in co-operation with the ODC's Global Programme Against Terrorism, in co-ordination with the OSCE's Action against Terrorism Unit (ATU). The OSCE recognizes that anti-terrorism measures should be addressed within the overall framework of the United Nations, with the Counter-Terrorism Committee as the lead body within that organization for monitoring the implementation of UNSCR 1373. It also encourages participating States to recognize the three stages as defined by the CTC, i.e. creating the legislative framework (Stage A), creating executive machinery for implementation (Stage B), and international co-operation (Stage C). The ODIHR's approach is also to assist participating States in their commitment to take measures to prevent and combat terrorism that fully comply with international law, including international human rights law.

Activities began in London in February 2003 with a seminar for Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan focusing on the implementation of UNSCR 1373. This was supported by the UK Foreign and Commonwealth Office, the ODC, and the CTC with a view to holding follow-up workshops in the capitals of the four countries. In April 2003, similar workshops were held in Azerbaijan and Georgia, funded by the Government of Canada and using Canadian expertise, that outlined the main elements of UNSCR 1373 and, in particular, the conventions and protocols. As a direct response to the London seminar earlier in the year, the Government of Kyrgyzstan requested additional assistance in its implementation of the conventions and protocols, which resulted in a two-day seminar in June 2003 with experts from the ODIHR, the ODC, and the Canadian Department of Foreign Affairs and International Trade. The overall methodology of anti-terrorism technical assistance provided by the OSCE corresponds to the guidelines issued by the UN Counter-Terrorism Committee.

Preceded by a review and analysis of the participating State's current domestic legislation carried out by national and international experts, the basic methodology of the workshops is as follows:

- Overview of international legal obligations under UNSCR 1373, international and regional institutional framework of fighting terrorism; international human rights instruments, and OSCE commitments within the concept of the rule of law as a general framework;
- System of ratification and implementation of the international treaties by an expert of the participating States in order to clarify how international law becomes a part of the legal system;
- Example of ratification and implementation given by experts of other participating States to promote shared experience;
- Introduction of legislative assistance materials that are available, including the UN Legislative Guide and the Commonwealth Secretariat's Implementation Kits, stressing the importance of the legal framework as a basis for investigating and prosecuting serious and terrorist crimes, covering such important issues as offence elements,

jurisdiction, dual criminality for the purposes of extradition, the principle of “no safe haven”, penalization of convention offences, the crime of financing terrorist activities, etc., and providing examples from other participating States;

- Compliance of national legislation with international human rights standards; and
- Support in drafting an action plan for follow-up activities by the participating States and the OSCE/ODIHR and relevant outside bodies.

In addition to the work already planned, the ODIHR stands ready to provide technical assistance to any participating State, on request, in the field of drafting anti-terrorism legislation and the legislative implementation of UNSCR 1373.

5. Conclusion

Human rights cannot be set aside in order to achieve security. Ensuring respect for human rights while creating a democratic environment is the best long-term guarantor of security. The ODIHR is uniquely placed to foster the human dimension element of the OSCE’s comprehensive security policy. Much of the work is already being done in the guise of the ODIHR’s continuing human dimension programmes and projects. These projects have a vital role to play in promoting security and tackling the root causes of factors of instability. Preventing and combating terrorism requires concerted and co-ordinated action. The ODIHR recognizes and supports the overall co-ordinating role of the Action against Terrorism Unit and encourages all OSCE bodies and institutions to co-operate with the ATU in countering the threat of terrorism.

The ODIHR will continue to monitor counter-terrorism practice to ensure conformity with OSCE commitments and international human rights law and to promote discussion and analysis of the “root causes” or the conditions that enable or encourage terrorism. An additional focus will be tolerance promotion through human rights training and education. As the institution tasked with legislative support on anti-terrorism issues, the ODIHR will also continue its proactive approach in organizing workshops to raise awareness of the requirements of UNSCR 1373.