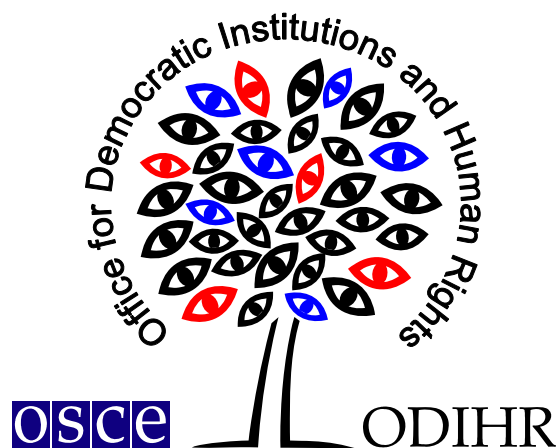


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BACKGROUND PAPER ON

**PREVENTING AND COMBATING TERRORISM:
THE HUMAN DIMENSION**

**OSCE Annual Security Review Conference
Vienna, 29 June - 1 July 2011**

INTRODUCTION

By adopting the 1975 Helsinki Final Act, the OSCE participating States recognized that security goes beyond politico-military issues. Security is not merely the absence of conflict, and establishing or maintaining a secure environment in the region is not solely a political or military question. The OSCE's security concept concentrates not only on the security of states and governments but also fully encompasses the security of the individual human being. Efforts to counter security threats should be undertaken in all three OSCE dimensions of security: the politico-military dimension, the economic and environmental dimension, and the human dimension.¹

In particular, the OSCE's comprehensive, co-operative, equal and indivisible approach to security regards security anchored in the respect for human rights, democracy and the rule of law and it relates the maintenance of peace to respect for human rights and fundamental freedoms. Recently, the OSCE States reaffirmed that the organization's comprehensive approach to security remains indispensable and "convinced that the inherent dignity of the individual is at the core of comprehensive security, [they] reiterate[d] that human rights and fundamental freedoms are inalienable, and that their protection and promotion is [their] first responsibility".²

Today, in a world faced with a multitude of new threats, including terrorism, which challenges States' stability, the OSCE's comprehensive security concept is more relevant than ever. Combating and ultimately overcoming terrorism will not succeed if the means to do so are not in conformity with human rights standards.

On the occasion of the OSCE Annual Security Review Conference, the purpose of this paper is to highlight the importance of the human dimension in preventing and countering terrorism. The paper would also underline the main commitments undertaken by participating States to respect human rights when preventing and combating terrorism as well as present the OSCE Office for Democratic Institutions and Human Rights (ODIHR) activities in this area.

¹ Regarding the counter-terrorism efforts, see e.g OSCE Ministerial Statement on Preventing and Combating Terrorism, MC/12(JOUR)/2, Sofia, 7 December 2004: "4. (...) We reaffirm that the OSCE efforts to counter terrorist threats should be taken in all OSCE dimensions, the security dimension, including the politico-military area, the economic and environmental dimension, and the human dimension. Based on the common, comprehensive and indivisible approach to security, our Organization could make further substantial contributions to global anti-terrorist efforts".

² OSCE Astana Commemorative Declaration: Towards a Security Community, Astana Summit 2010, Paragraph 6.

1 – THE HUMAN DIMENSION APPROACH TO COUNTER-TERRORISM

Throughout the years, the OSCE participating States have committed themselves to a comprehensive catalogue of human rights and democracy norms. These form the basis of the human dimension of security, which involves the protection of human rights and fundamental freedoms, as well as the promotion of strong democratic institutions and the rule of law. The human dimension commitments are reflective of traditional human rights norms and concepts as enshrined in international human rights treaties and declarations and express the OSCE participating States' political promise to comply with these standards.

This OSCE's multi-dimensional approach to security does not call for the balancing of liberty and security, or suggest that liberty, or aspects of it, must be sacrificed to achieve security. On the contrary, the OSCE regards the protection of human rights as an integral element of security. The proper balance can and must be found within human rights law itself; "law is the balance and not a weight to be measured".³

Thus, the presumption that certain human right violations may be permissible under certain circumstances, including in the context of security threats and terrorism, is mistaken. Human integrity and dignity cannot be compromised under any circumstances. Indeed, states have the duty to take all due measures to prevent and combat terrorism. They also have the positive obligation to ensure the protection of the fundamental rights and freedoms, in particular the right to life. Therefore, a targeted and proportionate counter-terrorism strategy would not only be effective to achieve security but would also comply with a state's human rights obligations.

In that perspective, the OSCE approach which links the guarantee of human rights and protection from terrorism provides participating States with a comparative advantage to combat terrorism. This inextricable link between human rights and counter-terrorism has also been recognized at the international level with the 2006 United Nations (UN) Global Counter-Terrorism Strategy⁴ and at the regional level with the relevant Council of Europe instruments⁵ which place respect for human rights and the rule of law at the very core of comprehensive and effective responses to terrorism. Indeed, far from being hindrances, human rights are useful tools to both prevent and counter terrorism.

³ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Ten areas of best practices in countering terrorism, A/HRC/16/51, 22 December 2010, paragraph 12, page 7.

⁴ For example, in the Resolution 1963 (2010) of 20 December 2010, the UN Security Council recognizes that development, peace and security, and human rights are interlinked and mutually reinforcing and that all measures taken to combat terrorism should comply with international law.

⁵ The Council of Europe's main legal instruments related to the fight against terrorism are the Revised European Convention on the Suppression of Terrorism (1977), the Convention on the Prevention of Terrorism (2005) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005). In addition to the 2002 Guidelines on human rights and the fight against terrorism, the Committee of Ministers of the Council of Europe adopted Guidelines on the protection of victims of terrorist acts in 2005.

By protecting human rights, states address the conditions conducive to the spread of terrorism and reduce the threat. These conditions include “prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance”.⁶ The OSCE participating States have firmly rejected the identification of terrorism with any nationality or religion and highlighted the necessity to address the conditions that may foster and sustain terrorism by promoting human rights, tolerance and multi-culturalism and tackling negative socio-economic factors.⁷

By developing and implementing human-rights compliant measures, states prevent the spread of terrorism. Counter-terrorism strategies that are compliant with human rights not only avoid certain legal pitfalls, but may also prove more effective in the long term at winning the ideological battle against terrorism than those strategies that themselves violate human rights.

Indeed, upholding human rights creates a climate of trust between states and persons under their jurisdiction. This is the starting point of an effective response to contemporary threats to security, including terrorism. On the other hand, poorly conceived counter-terrorism measures, especially those that are drafted too broadly or applied too forcefully, are not effective in countering global challenges to security. To the contrary, they may compound resentment, lack of trust, discrimination and marginalization, resulting in counter-productive effects. Perceived as unjust and discriminatory, such measures may undermine the rule of law, and the credibility and ability of public authorities to address the threat, in a manner that diminishes states’ long-term security.

Therefore, genuine security can only be achieved where counter-terrorism measures adopted by states are effective, proportionate and respectful of human rights and the rule of law. Such measures must be consistent with human rights standards to ensure that their implementation does not undermine their very purpose, which is to protect and maintain a democratic society. At the same time, effective counter-terrorism measures are needed in order to safeguard human rights.

Effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing objectives which must be pursued together as part of states’ duty to protect individuals within their jurisdiction.

⁶ UN General Assembly, The United Nations Global Counter-Terrorism Strategy, Doc. A/RES/60/288, 8 September 2006, Plan of Action Measures to address the conditions conducive to the spread of terrorism.

⁷ See e.g. OSCE Charter on Preventing and Combating Terrorism (2002): the OSCE participating States “20. Are convinced of the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty (...)”.

2 – OSCE HUMAN DIMENSION COMMITMENTS ON THE PREVENTION OF TERRORISM

The OSCE participating States have repeatedly reaffirmed the utmost importance of the human dimension in preventing and countering terrorism and have pledged in their commitments to fully respect international law and human rights standards in the fight against terrorism.

International law imposes the obligation on states not to interfere with human rights as well as to secure and guarantee them. In the anti-terrorism context, this obligation requires that states should not devise and implement anti-terrorism strategies and practices in contravention of established human rights standards and that they should ensure the respect of fundamental freedoms. Consequently, States have legitimate reasons and a duty to prevent and combat terrorism.

The OSCE human dimension commitments are reflective of international human rights law and provide therefore a framework to develop and implement effective human rights compliant counter-terrorism strategies. Thus, while recognizing that states have legitimate and urgent reasons to prevent and counter terrorism, the OSCE Bucharest Plan for Combating Terrorism (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002) affirmed that responses to the threat of terrorism must not unlawfully infringe upon, damage or destroy the very standards, principles and values of human rights, rule of law and pluralistic democracy.⁸

Moreover, the OSCE participating States have firmly affirmed that the struggle against terrorism is not a war against religions or peoples⁹ and that anti-terrorist action is not aimed against any religion, nation or people.¹⁰ They underlined the need to adopt a

⁸ The main OSCE Commitments related to the protection of human rights while combating terrorism are: **Bucharest Ministerial Declaration (2001)**:3. (...) We reiterate that the struggle against terrorism is not a war against religions or peoples. We reaffirm our commitment to protecting human rights and fundamental freedoms. 4. We are determined to protect our citizens from new challenges to their security while safeguarding the rule of law, individual liberties, and the right to equal justice under law; **Bucharest Decision No. 1 on Combating Terrorism (2001)**: (...) The OSCE participating States will not yield to terrorist threats, but will combat them by all means in accordance with their international commitments (...) They will defend freedom and protect their citizens against acts of terrorism, fully respecting international law and human rights. They firmly reject identification of terrorism with any nationality or religion and reconfirm the norms, principles and values of the OSCE; **OSCE Charter on Preventing and Combating Terrorism (2002)**: The OSCE participating States (...) 6. Reaffirm their commitment to take the measures needed to protect human rights and fundamental freedoms, especially the right to life, of everyone within their jurisdiction against terrorist acts; 7. Undertake to implement effective and resolute measures against terrorism and to conduct all counter-terrorism measures and co-operation in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law (...).

⁹ Bucharest Ministerial Declaration (2001): 3. (...) We reiterate that the struggle against terrorism is not a war against religions or peoples (...).

¹⁰ OSCE Charter on Preventing and Combating Terrorism (2002): The OSCE participating States (...) 2. Firmly reject identification of terrorism with any nationality or religion and reaffirm that action against terrorism is not aimed against any religion, nation or people.

comprehensive approach to prevent and counter terrorism, which includes addressing the factors that may engender terrorism.¹¹

They also recognized the crucial role played by civil society in anti-terrorism efforts and identified that genuine partnerships between civil society and governments are key to effectively prevent and combat terrorism. The OSCE participating States consequently committed themselves to enhance their cooperation with civil society.¹²

Finally, the OSCE participating States are committed to solidarity with victims of terrorism by exploring the possibility of introducing and enhancing appropriate measures, subject to domestic legislation, for support, including financial support, to victims of terrorism and their families.¹³

However, the newly heightened security environment has put at risk a number of fundamental rights and freedoms over the past years. Violations of human rights perpetrated in the fight against terrorism exacerbate the conditions in which terrorism is fostered. In some cases, the need to counter terrorism and security threats has been used as a justification to infringe on human rights. Some participating States have developed anti-terrorism legislation and practices in violation of human rights law, such as the use of torture and other cruel, inhuman or degrading treatment; secret detentions; abductions; illegal transfers and renditions; refoulement; arbitrary, prolonged and incommunicado detention; unfair trials and enforced disappearances. Measures have also included unlawful restrictions of freedom of expression, freedom of religion or belief, freedom of assembly and freedom of association. Some participating States have, moreover, used discriminatory tools such as racial profiling to target specific groups considered to be a threat to security.

The rhetoric which justifies the curtailing of human rights for the presumed benefit of security has been used across the OSCE area to justify unlawful practices undertaken by participating States as well as their complicity in them. States have had the tendency to pit the ideas of human rights and counter-terrorism against each other, considering that human rights must give way before the imperatives of security.

Complying with both their obligations to counter terrorism and to respect human rights represents a serious challenge for states but this challenge is not insurmountable. Indeed, human rights have been devised to satisfy both security concerns and protect human

¹¹ OSCE Charter on Preventing and Combating Terrorism (2002): The OSCE participating States (...) 20. Are convinced of the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty; (...).

¹² See e.g. Ministerial Council Decision 10/08 on Further Promoting the OSCE's Action in Countering Terrorism: 'participating States are encouraged to continue to exchange ideas and national best practices about their strategies and measures to counter violent extremism and radicalization that lead to terrorism as well as to enhance their co-operation with media, the business community, industry and civil society'.

¹³ OSCE Permanent Council Decision No. 618, Solidarity with victims of terrorism, 1 July 2004.

dignity and the rule of law. International human rights law makes ample provision for counter-terrorist action, even in the most exceptional circumstances, and it allows for the limitation and restriction of certain rights. However, any interference with a right has to be lawful, which means that it must be prescribed by law, pursue a legitimate purpose and respect the principles of necessity, proportionality and non-discrimination.

There is therefore no opposition between achieving security and respecting human rights. The fight against terrorism and the implementation of OSCE human dimension commitments are aims to be pursued simultaneously as integral components of successful counter-terrorism strategies, policies and practices.

3- OSCE/ODIHR HUMAN RIGHTS AND ANTI-TERRORISM PROGRAMME

Recognizing the challenge of protecting human rights and effectively countering terrorism, the participating States tasked the ODIHR to offer technical assistance and advice for the appropriate implementation of anti-terrorism policies in line with their international human rights obligations and commitments.

ODIHR Human Rights and Anti-Terrorism Programme is uniquely placed to provide this assistance, as it operates within the context of a regional security arrangement that addresses terrorism with a multi-dimensional approach. It offers a comprehensive range of activities to ensure respect for human rights when preventing and combating terrorism in the whole OSCE region.

The Programme works in four main areas:

- ✓ Capacity building;
- ✓ Expert advice and analysis
- ✓ Legislative assistance; and
- ✓ Cooperation with other key actors working on counter-terrorism.

✓ Capacity Building

The Programme has developed a specific training module on human rights and anti-terrorism as well as a set of expert resources, in particular a manual on “Countering Terrorism, Protecting Human Rights”. The training module, which has been successfully delivered in over a dozen locations in the OSCE region, aims at providing senior public officials and counter-terrorism practitioners with a better understanding of the main human rights issues that arise while addressing terrorism and ways to ensure the protection of human rights in line with international standards and OSCE commitments.

In order to complement this training module, the Programme, in cooperation with the OSCE Strategic Police Matters Unit (SPMU), is currently developing an advanced operational training module. It will focus on specific practical aspects involved in conducting investigations to counter terrorism where human rights issues may arise.

Moreover, the Programme has developed, in cooperation with the OSCE Border Management Staff College (BMSC), a one-week training on “Human Rights, Counter-

Terrorism and Border Security” and has delivered the human rights sessions of the OSCE BMSC Annual Staff Courses for border officials.

The Programme also supports the integration of the training module as a sustainable component of national training programmes. Thus, the Programme is implementing a project in Tajikistan, together with the OSCE Field Operation, to support the development of a specific course on human rights and counter-terrorism for its future integration into the training curricula of the Ministry of Internal Affairs and the State Committee on National Security of Tajikistan.

✓ **Expert advice and analysis**

The Programme provides advice and analysis on key human rights issues that arise in the fight against terrorism, as well as on the conditions that may foster and sustain terrorism. It has organized numerous activities (expert meetings, workshops, roundtable) and developed background research papers to facilitate the exchange of knowledge and experiences between government officials, practitioners, experts and civil society from across the OSCE on issues such as: the role of the civil society in preventing terrorism; the protection of victims of terrorism; the international co-operation in counter-terrorism; and radicalization and violent extremism leading to terrorism.

✓ **Provision of legislative assistance**

ODIHR provides legislative assistance in drafting anti-terrorism legislation and strengthening existing legislation in line with international human rights standards. ODIHR has developed an online legislation database (legislationline.org) which is intended as a resource for lawmakers in the OSCE region, while also guiding ODIHR's work in providing technical assistance to participating States with respect to the implementation of the relevant UN Security Council Resolutions, the UN Global Counter-Terrorism Strategy and international conventions and protocols on anti-terrorism.

✓ **Cooperation with key international and regional actors**

The Programme is committed to co-operation and co-ordination as the only way to advance the OSCE human dimension commitments on the prevention of terrorism within the OSCE's comprehensive concept of security. For this purpose, the Programme co-operates closely with the relevant units of the OSCE Secretariat, including the Action against Terrorism Unit (ATU) and the SPMU, the OSCE Field Operations as well as other international and regional organizations in providing assistance to states with a view to promote compliance with international human rights standards.

4 - CONCLUSION

Counter-terrorism strategies and human rights standards are intimately linked. Counter-terrorism policies and practices that damage or destroy human rights are self-defeating and unacceptable in a society governed by human rights, the rule of law and democratic values. The OSCE participating States have repeatedly acknowledged this link, highlighting that counter-terrorism measures which do not protect human rights are counter-productive. They have committed themselves to prevent and combat terrorism in full compliance with OSCE human dimension commitments and international human rights standards.

The OSCE comprehensive approach to security makes the Organization 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. In particular, its human dimension provides useful guideposts to develop effective human-rights compliant counter-terrorism strategies.

The OSCE Annual Security Review Conference will facilitate discussions on ways to tackle current transnational threats such as terrorism. In this regard, it is of particular relevance to put an emphasis on OSCE guiding principle that security can only be maintained through the promotion and protection of human rights. Respecting human rights while countering terrorism is not only a matter of principle but it is vital to the success of counter-terrorism measures. As one of the most effective tools to prevent and counter terrorism, human rights should be mainstreamed in all elements of counter-terrorism strategies.

The only effective counter-terrorism strategy compatible with OSCE commitments, therefore, will be one that has integrated human rights.