



Chairmanship

2003

**Permanent Representation of the
Netherlands to the OSCE**

The Hague, 9 July 2003

SEMINAR ON HUMAN RIGHTS AND TERRORISM

Dear Colleagues,

The seminar Human Rights and Terrorism is organised in the context of the Netherlands Chairmanship of the Organization for Security and Cooperation (OSCE) during 2003 and is a joint initiative of the Netherlands Helsinki Committee (NHC) and the Netherlands Ministry of Foreign Affairs. The Chairman of the seminar is Professor P. Kooijmans, Judge at the International Court of Justice and former Netherlands Minister of Foreign Affairs.

The seminar will be held on 18 September in The Hall of Knights in The Hague and will start at 9.00 and finish at 17.30. After the opening speech from the Netherlands Minister of Foreign Affairs, Jaap de Hoop Scheffer, the agenda provides for three sessions. Please find enclosed a provisional agenda and other organisational modalities.

The evening prior to the seminar, all participants are cordially invited to the reception hosted by the Municipality of The Hague, the Netherlands Ministry of Foreign Affairs (OSCE Task Force) and the NHC. The reception will take place at Paviljoen de Witte, Pellenaerstraat 4 in The Hague/Scheveningen, and will start at 18.30.

Regarding the topic of the seminar, delegations are invited to be represented by both security and human rights experts. Please circulate the attached NGO registration form to relevant NGOs. We look forward to your participation.

Yours sincerely,

Justus J. de Visser
Chairman of the Permanent Council

To: All OSCE Delegations
All OSCE Institutions
OSCE Secretariat
OSCE Parliamentary Assembly
All Partners for Co-operation
All OSCE Field Operations

PROGRAMME SEMINAR HUMAN RIGHTS AND TERRORISM

17 September 2003, The Hague/Scheveningen

18.30 Reception, hosted by the Municipality of The Hague, The Netherlands Ministry of Foreign Affairs (OSCE Task Force) and Netherlands Helsinki Committee

18 September 2003, The Hall of Knights, The Hague

Chair	Pieter Kooijmans	Judge, International Court of Justice, The Hague	Co-chair
	Gabriella Kirk MacDonald	Judge, Iran-United States Claims Tribunal, The Hague (not confirmed)	

08.00: Registration and coffee

09.00: Opening by Pieter Kooijmans

Introduction by Netherlands Minister of Foreign Affairs, **Jaap de Hoop Scheffer**

09.30: Session 1: Terrorism: roots and prevention

<i>Valery Tishkov</i>	Director, Institute of Ethnology and Anthropology, Russian Academy of Sciences, Moscow (not confirmed)
<i>Abdullahi An-Naim</i>	Professor, School of Law, Emory University, United States

Plenary debate, reply keynote speakers

11.00: Coffee break

11.30: Session 2: Dilemma's with regard to human rights and terrorism

<i>Bertrand Ramcharan</i>	Acting UN High Commissioner for Human Rights, Genève
<i>Baltasar Garzón</i>	Magistrate to Central Court of the National Audience, Madrid
<i>Elisabeth Rehn</i>	Chair Working Table 1 of Stability Pact for South Eastern Europe, Helsinki

Plenary debate, reply keynote speakers

13.00: Lunch

Informal discussion on policy-dilemma's, introduced by *Paul de Waart*, Professor emeritus International Law

15.00 Session 2 Continued

Plenary debate, reply keynote speakers

15.30 Session 3: Human rights versus security: a crucial dialogue

<i>NN.</i>	Security Expert, United States
<i>Tom Malinowski</i>	Advocacy Director Human Rights Watch, Washington DC

Plenary debate, reply keynote speakers

17.00: Conclusions

Declaration	Chair <i>Pieter Kooijmans</i>
Remarks	<i>Holly Cartner</i> , Member Executive Committee International Helsinki Federation
Closure	<i>Daan Everts</i> , Personal Representative of the OSCE Chairman-in-Office

17.30 Drinks

OSCE Seminar on Human Rights and Terrorism The Hague 18 September 2003

To Non-Governmental Organizations

Please find attached the agenda, timetable, organizational modalities and registration forms related to the upcoming OSCE Seminar on Human rights and Terrorism to be held in The Hague on 18 September 2003. These documents are also available on the ODIHR website at www.osce.org.

NGOs whose activities directly related to the topic of the Seminar and wish to attend are requested to register for this event and return a completed NGO registration form by 15 August 2003.

NGO's may display information materials about their organization on the tables in the lobby of the main meeting room. NGOs may also distribute documents during the Seminar by giving one copy of each document (maximum 3 pages in length) to the staff of the Documents Distribution Centre.

Unfortunately, financial assistance can not be provided for participation in this seminar. For your convenience, please find attached a list of hotels in The Hague. NGOs are kindly requested to make their own hotel arrangements.

For further information on organization and logistics, please contact Mrs. Wil van Dalen at osce.seminar@bbo.org. For more information on the seminar program, please contact Jan ter Laak (Head of Prepcom) or Karen Mol (media) at osce.seminar@bbo.org Please find further contact information at the bottom of this page.

SEMINAR ON HUMAN RIGHTS AND TERRORISM
Netherlands Helsinki Committee and Netherlands OSCE Chairmanship

The Hague, 18 September 2003

Background paper

DILEMMAS WITH REGARD TO TERRORISM AND HUMAN RIGHTS

Introduction

Terrorism is an evil that now affects a growing number of countries on a regular basis. Acts of terrorism impair or even nullify the enjoyment of human rights and fundamental freedoms of innocent civilians. Against this background, a policy of actively fighting terrorism also serves to promote and protect human rights and fundamental freedoms.

From the same human rights perspective, however, there are limitations as to what methods can be used to fight terrorism. Terrorists, no matter how despicable their behaviour, are human beings and as such they themselves have human rights and fundamental freedoms. Admittedly, in times of public emergency, as is often the case when a state is confronted with a major terrorist attack, it is possible to temporarily derogate from certain human rights and fundamental freedoms. But there are human rights from which derogation is never permitted under any circumstances.

Tensions between the need for an effective policy against terrorism, and respect for human rights and fundamental freedoms, are very real. It is well understood that lack of respect for human rights and fundamental freedoms can render any measures against terrorism ineffective. It severely undermines the moral authority of those fighting terrorism. Ultimately, the means used to fight terrorism may be just as despicable as the terrorist acts themselves. However, there are also grey areas that raise dilemmas. This paper focuses on a number of these grey areas.

Definition problem

Attempts to arrive at a universal definition of terrorism have not been successful. Article 2 of the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on 9 December 1999, gives some idea of what "terrorism" is taken to mean. It reads as follows:

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willingly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
 - (a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex; or
 - (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The treaties listed in the Annex relate to the unlawful seizure of aircraft, to unlawful acts against the safety of civil aviation, to crimes against internationally protected persons, to the taking of hostages, to the physical protection of nuclear material, to unlawful acts against the safety of maritime navigation or of fixed platforms, and to terrorist bombings.

Although this provision gives a general idea of what terrorism entails, it is still relatively vague. The question therefore arises of whether the international community actually agrees on what exactly the fight against terrorism is aimed at. Some states have proposed that an exception be made for acts that can be seen as acts of liberation

directed against a repressive regime. Moreover, serious crime can have the effect of intimidating a population, although it would not normally be considered terrorism. In view of these difficulties, it is unlikely that the international community will soon reach agreement on a more precise definition.

Dilemmas

1. Criminal law, aliens law and the human rights of those who are suspected of terrorism

a. criminal law

In neither the UN Covenant on Civil and Political Rights, nor the European Convention on Human Rights, is the right to a fair trial included in the list of non-derogable rights. At the same time, in its General Comment No. 29 of 31 August 2001, the Human Rights Committee stated that “States Parties may in no circumstances invoke art. 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance ... by deviating from fundamental principles of fair trial, including the presumption of innocence”. Assuming that it is fair to say that in the case of severe terrorist acts, a state can invoke a state of public emergency, what are the implications for the type of criminal procedures that can be applied against terrorists?

Questions:

- Can alleged terrorists be detained indefinitely? How does this relate to the non-derogable right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment?
- Is it necessary for such detention to be based on a concrete accusation or can it be based on general indications (e.g. the person belongs to a certain group)?
- When should the arrested or detained person be brought before a judge?
- Is it possible to deal with terrorists outside the normal criminal law system (e.g. special tribunals)?

b. aliens law

Terrorists normally have some ulterior political motive. In other words, they represent some kind of political ideology. Sometimes, this ideology is connected with a region or with a certain religion or belief. It may then be tempting to single out, as an immediate reaction in the context of the fight against terrorism, members of a group belonging to the nationalities or adhering to the religions or beliefs involved. If these are non-nationals of the State concerned, this may lead to a number of measures in the field of aliens law.

It is generally understood that human rights and fundamental freedoms apply to all persons within the territory and subject to the jurisdiction of the State concerned. This includes non-nationals. Tension may therefore arise between an anti-terrorist policy that singles out certain nationalities, or certain religions or beliefs, and, for example, the general right to non-discrimination. However, the right to non-discrimination is not a non-derogable right.

Questions:

- Are measures singling out certain nationalities or religions or beliefs permissible under international human rights law in times of public emergency?
- Is the answer to this question different if the measures concern:
 - (a) visa policies;
 - (b) admission policies;
 - (c) detention (e.g. to obtain information about (the background of) terrorist organisations);
 - (d) expulsion?

2. The development of international human rights law and the fight against terrorism

Terrorism poses a threat to national security and can cause unrest within large segments of society. Hence the call for swift and effective action. When facing this challenge, governments are often confronted with tensions between this need for effective measures and restrictions stemming from international human rights law.

For example, this can come to the fore when governments want to obtain access to information that may be helpful in tracking down terrorists. The right not to be subjected to arbitrary or unlawful interference with one's privacy may restrict their ability to do so. Similarly, governments might be tempted to restrict freedom of expression, especially in the case of manifestations of that freedom that may be seen to incite terrorist acts.

Questions:

- Does international human rights law undermine the effectiveness of the fight against terrorism?
- When faced with tensions between human rights and measures against terrorism, can governments solve the problem by making use of derogation provisions or limitation clauses? Or is it possible to find alternative methods for dealing with terrorism that are fully in line with international human rights law?
- If international human rights law does undermine the effectiveness of the fight against terrorism, should this lead to a fundamental discussion on the interpretation of human rights law in view of the changing international situation? Or should such a discussion be avoided, given that it could be abused for political objectives unrelated to the fight against terrorism (e.g. by those who want to restrict the scope of human rights obligations anyway)?

3. Institutional arrangements and general questions concerning the development of international human rights law

The international bodies which are responsible for the fight against terrorism are not normally part of the international human rights machinery. For example, within the United Nations measures against terrorism are normally discussed within the Counter-Terrorism Committee, created by the Security Council. Although the UN High Commissioner for Human Rights has initiated contacts between the CTC and the Human Rights Committee, this is only a recent action and it remains to be seen what effect it will have.

More generally, the Council of Europe has set out guidelines on terrorism and human rights. But the effect of these guidelines on discussions in other fora where concrete measures against terrorism are developed remains unclear.

One general trend within current human rights policies is the mainstreaming of human rights. Since human rights standards have evolved greatly in recent decades, it is almost impossible for any particular body to be responsible for implementing and monitoring all of them. Instead, it is much more effective to incorporate respect for human rights and fundamental freedoms in all policies. To mainstream human rights, in other words. If there is a certain degree of receptiveness, this policy will indeed be much more efficient and probably more effective. But if human rights and fundamental freedoms are in fact largely ignored, mainstreaming will fail.

Questions:

- Is mainstreaming of human rights the right approach in the case of the fight against terrorism?
- What is the role of existing international human rights institutions in this regard?
- Should there be special institutional provisions to provide certain special control mechanisms, examining the extent to which anti-terrorism measures are in line with international human rights obligations?
- Is there a need for further clarification of the OSCE commitments with regard to terrorism and human rights?

**OSCE Seminar on
Human rights and terrorism
The Hague , 18 September 2003**

LIST OF HOTELS THE HAGUE

Crowne Plaza, Promenadehotel	Van Stolkweg 1	2585 JL	tel **31 (0)70 3525161 fax ** 31 (0)70 3541046
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Sofitel	Kon. Julianaplein 35	2595 AA	tel ** 31 (0)70 3814901 fax ** 31 (0)70 3825927
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Hotel des Indes	Lange Voorhout 54	2514 EG	tel ** 31 (0)70 3612345 Fax **31 (0)70 3612350
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Bel Air	Johan de Wittlaan 30	2517 RM	tel **31 (0)70 3525354 fax ** 31 (0)70 3525353
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Parkhotel	Molenstraat 53	2513 BJ	tel **31 (0)70 3624371 Fax**31 (0)70 3614525
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Mercure	Spui 180	2511 BW	tel ** 31 (0)70 3636700 Fax **31 (0)70 3639398
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Novotel	Hofweg 5 – 7	2511 AA	tel ** 31 (0)70 3648846 Fax** 31 (0)70 3562889
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Bilderberg Europa Scheveningen	Zwolsestraat 2	2587 VJ	tel ** 31 (0)70 4169595 fax ** 31 (0)70 4169555
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Carlton Beach	Gevers Deynootweg 201	2586 HZ	tel ** 31(0)70 3541414 fax ** 31 (0)70 3520020
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Dorint	Johan de Wittlaan 42 – 44	2717 JR	tel ** 31 (0)70 4169111 fax ** 31 (0)70 4169100
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Corona	Buitenhof 39 – 42	2513 AH	tel ** 31 (0)70 3637930 Fax** 31 (0)70 3615785
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Badhotel	Gevers Deynootweg 15	2586 BB	tel **31 (0)70 3512221 Fax **31 (0)70 3555870
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IBIS hotel	Gevers Deynootweg 63	2586 BJ	tel **31 (0)70 3543300 Fax**31 (0)70 3523916
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Aquarius	Zeekant 110	2586 JJ	tel **31 (0)70 3543543 Fax**31 (0)70 3543684
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Boulevard hotel Scheveningen	Seinpostduin 1	2586 EA	tel **31 (0)70 3540067 fax **31 (0)70 3552574
Hotel Hage	Seinpostduin 22	2586 EG	tel **31 (0)70 3514696 Fax**31 (0)70 3585851
Noordzee	Seinpostduin 24	2586 EG	tel **31 (0)70 3523500 Fax**31 (0)70 3522683
Seabreeze	Gevers Deynootweg 23	2586 BB	tel **31 (0)70 3524145 Fax**31 (0)70 3514830
**			
Albion	Gevers Deynootweg 118	2586 BP	tel **31 (0)70 3557987 Fax**31 (0)70 3555970
Deltahotel	Anna Paulownastraat 8	2518 BE	tel **31 (0)70 3624999 Fax**31 (0)70 3454440
Seinduin	Seinpostduin 15	2586 EA	tel **31 (0)70 3551971 Fax**31 (0)70 3505829



**OSCE SEMINAR ON
HUMAN RIGHTS AND TERRORISM
The Hague, 18 September 2003**

NGO REGISTRATION FORM

1. Organization:

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2. Surname: **3. First Name (s):**

4. Position / Title:

5. Date of birth: **6. Citizenship:**

7. Passport No.: **Issued by:**

8. Sex: **F e m a l e** **M a l e**

9. NGO's address:

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Phone: **Fax:**

E-Mail:

10. I will also attend the reception on 17 September : **O yes** **O no**

Date: **Signature:**

NOTE: As the capacity of the conference room is limited to 250 persons you are kindly requested to return this registration form duly completed by 15 August 2003 to:



**OSCE SEMINAR ON
HUMAN RIGHTS AND TERRORISM
The Hague, 18 September 2003**

REGISTRATION FORM FOR DELEGATIONS

1. State / Delegation:

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2. Surname: 3. First Name(s):

4. Position / Title:

5. Date of birth: 6. Citizenship:

7. Passport No.: Issued by:

8. Sex: F e m a l e M a l e

9. Delegation's address:

.....

Phone: Fax:

E-Mail:

10. I will also attend the reception on 17 September 2003: ☐ yes ☐ no

Date: Signature:

NOTE: As the capacity of the conference room is limited to 250 persons you are kindly requested to return this registration form duly completed by 15 August 2003 to:



**OSCE SEMINAR ON
HUMAN RIGHTS AND TERRORISM
The Hague, 18 September 2003**

REGISTRATION FORM FOR OSCE INSTITUTIONS

1. Institution/Mission:

.....

.....

2. Surname: **3. First Name(s):**

4. Position / Title:

5. Date of birth: **6. Citizenship:**

7. Passport No.: **Issued by:**

8. Sex: **F e m a l e** **M a l e**

9. Institution/Mission's address:

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.....

Phone: **Fax:**

E-Mail:

10. I will also attend the reception on 17 September 2003: ☐ yes ☐ no

Date: **Signature:**

NOTE: As the capacity of the conference room is limited to 250 persons you are kindly requested to return this registration form duly completed by 15 August 2003 to:



**OSCE SEMINAR ON
HUMAN RIGHTS AND TERRORISM
The Hague, 18 September 2003**

**REGISTRATION FORM
FOR INTERNATIONAL ORGANIZATIONS**

1. Organization:

.....

2. Surname: **3. First Name(s):**

4. Position / Title:

5. Date of birth: **6. Citizenship:**

7. Passport No.: **Issued by:**

8. Sex: **F e m a l e** **M a l e**

9. Organization's address:

.....

Phone: **Fax:**

E-Mail:

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Date: **Signature:**

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