



European System of Human Rights Protection

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*Human Rights and Counter-Terrorism:
International Monitoring Systems*

Introduction

Ladies and gentlemen,

I would like to start by thanking the ICJ for the invitation to this highly relevant and important conference. As most international organizations have increased their focus on monitoring activities in the area of fighting terrorism, information exchanges such as this, are crucial in order to increase synergies and impact.

Before I move to the current work of the ODIHR, I would like to say some words on the philosophy underpinning the OSCE in general. I am referring to the concept of comprehensive security that has formed the basis of the OSCE's activities since its creation in 1975. This concept is based on democracy, respect for human rights, fundamental freedoms, the rule of law, a market economy, and social justice. Key elements are the comprehensiveness and indivisibility of security, as well as the allegiance to shared values and commitments.

This concept of comprehensive security is as relevant today as it was in 1975. It is particularly crucial in the fight against terrorism. The threat of international terrorism is multi-dimensional by nature, and consequently requires a multi-dimensional response. Reaction and prevention have therefore been equally emphasised when the OSCE participating States have developed their comprehensive security policy for the 21st century. The ODIHR has taken the same approach when developing its activities in this area.

A comprehensive strategy to tackle terrorism requires States to react to both the consequences and causes of the problem. Domination, discrimination and denigration of groups and individuals are common factors that lead to violence. Recognizing these human rights violations as a destabilizing factor has made it an obligation to foster a climate of mutual respect and tolerance in OSCE's participating States. The ODIHR supports this work by offering its assistance to strengthen democratic institutions, human rights, rule of law, tolerance, and multiculturalism.

An important task has been assigned to the ODIHR as the OSCE's clearing-house regarding information on states of emergency. This requires participating States to notify the ODIHR when a state of emergency is declared or lifted. It also requires a State to inform of any derogation made from international human rights obligations. This clearing-house function provides the ODIHR with an excellent opportunity to monitor developments within the context of a national emergency.

Another opportunity is provided through a number of regular review meetings, which serve as an important tool for information sharing, political dialogue and recommendations on how to address shortcomings.

The most significant of these occasions is the annual Human Dimension Implementation Meeting in Warsaw. This conference reviews how effectively participating States have implemented their OSCE human rights commitments. In addition there are supplementary human dimension meetings, which focus on more specific areas, such as the prevention of torture and the freedom of religion and belief.

Except for representatives of the participating States, there is also a high number of NGO representative's present during these meetings. The uniqueness is that NGOs have a chance to present their views and opinions on the same footing as government officials during these meetings.

A primary example of the peer review system that is the trade mark of the OSCE is its Permanent Council in Vienna. It meets on a weekly basis and is attended by delegates of participating States. Any representative can raise concerns in the Permanent Council, both in general and on specific cases. The ODIHR serves an important role in this respect in providing requested information from delegations or the Chairman in Office for this kind of intervention.

There is also an opportunity for heads of OSCE institutions and field operations to raise concerns through their regular reports to the Permanent Council.

Now let me move to the specific work of the ODIHR regarding the fight against terrorism. A new position of a Co-ordinator on Anti-Terrorism was established in 2002. Subsequently, the ODIHR has developed three programmatic areas that focus on; 1) terrorism and human rights analysis; 2) legislative technical assistance; and 3) preventive action against terrorism. Each of these programmatic areas involves a monitoring element.

Terrorism and human rights analysis is based on activity reports of OSCE Missions and assessments by ODIHR staff. Other sources include information provided by non-governmental organizations and other inter-governmental organizations.

Before developing a monitoring strategy, the ODIHR conducted a mapping exercise to identify areas and regions where information concerning anti-

terrorism measures and practices remains difficult to obtain. Based on the result, key areas of concern were identified in order to target further work.

This work continues through monitoring exercises, research, analysis, and review.

As part of this work the ODIHR is currently collecting and compiling major anti-terrorism legislation from all OSCE participating States. The collected legislation is posted on the ODIHR Legislationline website. It is intended as a resource for government officials, professionals, and academics interested in the field of anti-terrorism, as well as lawmakers themselves.

The ODIHR technical assistance to States is also based on this programme, taking advantage of its geographical scope, which extends into the South Caucasus, Central Asia and South-Eastern Europe. Workshops within this programme focus on the legislative implementation of UNSCR 1373 and include presentations from experts on human rights protection in the domestic legal framework. Let me assure you that the ensuing discussions among participants are always extremely lively.

The preventative activities of the ODIHR focus on the right to a fair trial. This right should be seen as one of the most crucial safeguards against human rights violations by States especially when they are justified as anti-terrorism activities. The ODIHR plans a trial-monitoring programme in 2004-5, aimed at increasing compliance with national and international fair trial standards. The programme will help to build the capacity of local civil society organizations to monitor trials and to actively report on compliance with national and international standards.

A further objective of the programme is to obtain systematic and impartial information on trials in the OSCE region. Monitors will complete set trial report forms, which will be collated and analysed before being published together with recommendations on changes in law and legal practice to improve the observance of fair trial standards. Recommendations will be discussed with relevant officials and members of the legal community, resulting in appropriate technical assistance.

Another monitoring programme area for 2004-5 regards freedom of assembly and association. The aim of the programme is to oversee participating States' compliance with relevant OSCE commitments and other treaty obligations. As freedom of assembly and association are rights that can be derogated from in time of state emergency, it is important to ensure that such measures do not extend any further than the situation necessitates.

ODIHR is particularly concerned over prohibition and dissolution of political groups on account of their alleged extremist or terrorist activities. In order to monitor this, the ODIHR will gather and analyse data on existing legislative provisions and practices. It will also monitor legal developments and implementation of relevant laws. This exercise will focus on the proportionality of domestically prescribed restrictions. This work would link in well with the ODIHR's existing programmes and projects on tolerance and freedom of religion or belief.

One of the OSCE's most obvious advantages is its access to detailed information through field presences. Supporting missions in their monitoring tasks is one of the ODIHR's most important tasks and the Office sees drafting guidelines on monitoring terrorism and human rights as one of the main tasks in the months ahead.

Experience shows that systematic monitoring requires sufficient staff and resources. Otherwise there is a risk that monitoring becomes reactive in nature and fails to be comprehensive. Information is at times inaccessible and the quality and reliability of reports sometimes questionable. This is a problem for any institution or mechanism faced with monitoring counter-terrorism practice s and an issue that needs to be addressed.

Geographical challenges to monitoring should not be overlooked: while there is a wealth of information in the public domain regarding mature democracies, it is difficult to obtain reliable information from those countries in the OSCE region where civil society is not so well developed. At the same time it is important that countries do not feel unduly singled out, particularly to avoid the impression of countries being measured against double standards.

The ODIHR's monitoring work has already proven its value in feeding into its policy and project work. On-going projects can be assessed in terms of their potential to address various causes or enabling factors of terrorism: discrimination, severe inequality, ethnic hatred, corruption, bad governance, lack of democratic institutions, and resentment felt by groups who are excluded and marginalised at home and abroad.

It is now more important than ever to monitor and address violations of human rights, particularly in the context of counter-terrorism measures. As has been highlighted here today, there is still a gap in the international response on the issue of monitoring the use of anti-terrorism measures. The necessity of information exchanges such as today, can therefore not be overemphasized.

Allow me to thank you once again for the opportunity to address you on this most important subject. I look forward to continue this dialogue with you and your organisations, not only during this seminar but in our future work.

Thank you