



**SUPPLEMENTARY HUMAN DIMENSION  
MEETING**

**“HUMAN RIGHTS  
AND THE FIGHT AGAINST TERRORISM”**

**FINAL REPORT**

**Vienna, 14-15 July 2005**

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## I. EXECUTIVE SUMMARY

The second OSCE Supplementary Human Dimension Meeting for 2005 was devoted to human rights and the fight against terrorism. The Meeting took place on 14-15 July in Vienna, bringing together 206 participants, including 46 representatives of 37 non-governmental organizations (NGOs).

The main objective of the Meeting was to discuss specific human rights at risk and challenges that the international community faces in the fight against terrorism. OSCE commitments, such as the 2001 Bucharest Plan of Action for Combating Terrorism and the 2004 Sofia Ministerial Statement on Preventing and Combating Terrorism re-emphasize the determination of OSCE participating States to combat terrorism with "respect for the rule of law and in accordance with (their) obligations under international law, in particular human rights, refugee and humanitarian law". Counter-terrorism measures that fall outside the framework of the rule of law and human rights standards effectively roll back established norms and lay the foundations for further insecurity.

The Meeting was designed to devise ways that participating States can enhance their efforts to fulfill the mutually reinforcing goals of respecting human rights and international law while combating terrorism and violent 'extremism'. Recommendations targeting OSCE participating States, OSCE institutions and intergovernmental and non-governmental organizations arose during the discussions.

In his opening remarks, the ODIHR Director welcomed the Slovenian Chairmanship's attention to this important topic, and stated that: "We must reinforce the common goals of those who point to the importance of upholding human rights and those who want to pursue the fight against terrorism ... Nor can we sacrifice the principles of our free societies - democracy, human rights and the rule of law - in the fight against terrorism. That would play into the hands of the very terrorists we fight," he continued, calling on all 55 OSCE participating States to endorse and implement recommendations made during the meeting.

The topics selected for discussion in the sessions comprised 1) religious freedom and the fight against terrorism; 2) torture and the fight against terrorism; and 3) the role of civil society and the fight against terrorism.

In **Session 1** participants discussed freedom of religion in the context of the fight against terrorism. It was emphasized that religious communities must be allowed to operate freely, without governmental oversight or intervention. While no religious label should be put on terrorism, religious communities also have the duty to act responsibly in the fight against terrorism. Participants stressed the importance of inter- and intra-religious dialogue. OSCE participating States should reach out to minority religious communities and work with them to combat terrorism. The discussion also focused on how OSCE participating States across the region should ensure that the fight against terrorism and violent 'extremism' must not be used to crack down on legitimate political opposition.

When discussing torture and the fight against terrorism in **Session 2**, all participants reiterated the absolute and non-derogable prohibition on torture. The importance of increasing transparency around detention and interrogation to reduce the incidence of torture was highlighted. A disturbing development arising from the fight against terrorism is the practice of ‘extraordinary rendition’ without due process to places where people may be at risk of torture or ill-treatment. Participants recommended that States should ensure careful examination of the cases of persons subject to expulsion or extradition to ensure that there is no prospect of torture.

During **Session 3**, participants examined various examples of ways in which civil society can be an active and positive force in the fight against terrorism. The vulnerability of NGOs and human rights defenders was emphasized by the participants, while the role of civil society in ensuring an ongoing debate on counter-terrorism measures was stressed. Examples of the role of victims associations, both in providing legal assistance and psychological support to victims were brought up. Civil society can be a source of expertise, rather than a threat or an obstacle to security.

In addition to a wealth of concrete recommendations the discussions were enriched by country-specific examples and exchanges of best practice.

This report draws out concrete recommendations that arose from the three sessions. These recommendations – from delegations of the OSCE participating States and partners for co-operation, international organizations, and NGOs – are wide-ranging and aimed at various actors (OSCE participating States, OSCE institutions and its field operations, as well as other international organizations and NGOs). These recommendations, however, have no official status, are not based on consensus, and their inclusion in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives aimed at human-rights education and training.

When compiling this report, the OSCE ODIHR relied on notes taken by: Ms. Alina Christova; Legal Expert, Legislative Support Unit, Department of Democratization, ODIHR, Mr. Piotr Dynowski; Research Assistant, Human Rights Department, ODIHR, and Ms. Hema Kotecha; Project Consultant, OSCE Centre in Almaty, Kazakhstan. Their substantive contribution to the preparation of this report is acknowledged and appreciated.

### **General recommendations from the opening and closing plenary:**

#### *General recommendations to the OSCE participating States:*

- Any fight against terrorism must include the respect for human rights. Violations of human rights may exacerbate the conditions which may lead to the fomentation of support for terrorist or extremist activities or ideologies;

- OSCE participating States should not improperly invoke national security as a justification for limiting human rights and fundamental freedoms, including freedom of religion or belief;
- Terrorism ignores all borders and the fight against terrorism must also cross borders therefore respect for human rights and international law must form the cornerstone of our international engagement;
- Strategies to combat terrorism should be based on the OSCE's comprehensive security approach which recognizes the respect for human rights, fundamental freedoms, democratic values and the rule of law as the foundation of genuine security. All measures taken to combat or prevent terrorism should respect these principles.
- The freedom of the media should be ensured in the context of the fight against terrorism and the potential for a positive influence of the free media in prevention of terrorism and in acting as a watchdog to ensure the respect for human rights and fundamental freedoms in countering terrorism should be explored.
- OSCE participating States should redouble efforts to finalize an international definition of terrorism;
- All efforts should be made to sign the International Convention for the suppression of acts of nuclear terrorism once it is opened for signature at the United Nations Headquarters in New York on 14 September 2005;
- OSCE participating States should redouble efforts to finalize the draft comprehensive convention as requested by UN Secretary General Kofi Annan in his report "In larger freedom";
- Governments must never use the fight against terrorism to justify clampdowns or harassment of opposition voices - political parties, NGOs, the media or its people;
- Violence should never be directed against civilians in the name of combating terrorism. It is important to always bear in mind that human rights continue to apply to all persons, including those who have committed, or are suspected of having committed, terrorist acts;
- The Council of Europe Guidelines on Protecting Human Rights in the Fight Against Terrorism may provide a set of minimum standards in the fight against terrorism which could be used by all participating States, not just by members of the Council of Europe;

- Greater focus should be directed at preventive activities, including the protection of human rights. The international community and individual states should address issues relating to the social, economic and cultural conditions which may create the circumstances where support for terrorism and extremism might flourish. Actions to eradicate poverty and to promote sustainable development should be undertaken. Poverty and frustration are often amongst the reasons for people to join terrorist groups.
- Intergovernmental working groups and other governmental bodies responsible for counterterrorism should include human rights concerns on an equal basis with other activities. The human rights perspective should be included in reporting mechanisms under the relevant international counter-terrorism mechanisms and within training programmes of state officials on combating terrorism;
- A common and coordinated approach of international and regional organizations as well as cooperation between governments and between different sectors of the same government is needed in order to create an effective counter-terrorism strategy;
- Those suspected of committing terrorism should be brought to justice and fair trial standards should be upheld in all circumstances and the role of defence lawyers should be respected;
- Participating States of the OSCE should take advantage of the ODIHR's expertise, especially with regard to training, legislative review, early warning, monitoring or technical advice. The ODIHR should be encouraged to continue to develop its work in these areas.

*General recommendations to the OSCE institutions and field missions:*

- The OSCE and its institutions should ensure that all its actions are in respect of fundamental human rights, and in particular of freedom of religion and belief, without which there cannot be any efficient fight against terrorism;
- ODIHR should continue to promote civil society initiatives and models of dialogue between governments and civil society;
- ODIHR in close co-operation with the OSCE Representative on Freedom of the Media should seek ways to expand support to participating States in improving early –warning mechanisms and monitoring of violations of human rights and fundamental freedoms in preventing and combating terrorism;

- ODIHR can also make an important contribution by helping States to develop comprehensive and effective counter-terrorism measures that comply with international human rights standards;
- ODIHR should continue its work of assisting participating States in implementing their commitments, through programmes in the areas of legislative and judicial reform, training of magistrates, and monitoring trials and places of detention;
- The OSCE should explore the possibility of formalizing its endorsement of the Council of Europe's Guidelines on Human Rights and the Fight against Terrorism.

General recommendations to other intergovernmental organizations:

- International Organizations should strengthen their efforts in the area of economic development and poverty eradication as these are important fields in the fight against terrorism. Supporting policies based on the promotion of and respect for human rights, international law and sustainable development would enhance global security.

## II. RECOMMENDATIONS

### Outcome of Session 1: Freedom of Religion and the Fight against Terrorism

**Moderator:** William G. O'Neill, Independent Consultant

**Rapporteur:** Laila Bokhari, Anti-terrorism Officer, OSCE ODIHR

**Introducers:** Dr. Roman Podoprigora, Professor of Law, Adilet Law School, Kazakhstan

Mr. John Kinahan, Assistant Editor, Forum 18 News Service

Dr. Catherine de Wenden, Director of Research, CNRS (CERI), Paris

Ms. Geneive Abdo, Research Fellow, Georgetown University

There was clear agreement that freedom of religion is one of the foundations of a democratic society and is a fundamental freedom that cannot be undermined in the fight against terrorism. Participating States warned against attaching any religious label to the notion of terrorism.

The discussions raised a number of examples from across the OSCE region and pointed to a number of conclusions. Religious communities should be allowed to operate freely, without governmental oversight or intervention. At the same time the responsibility and the valuable role religious communities can play in preventing and combating terrorism should be recognized. Furthermore, stress was placed on inter- and intra-religious dialogue and education. Tolerance education is important at all levels of society. OSCE participating States should ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators recognize human dignity and respect human rights and fundamental freedoms, particularly different religions and beliefs in the course of their duties and do not discriminate on the grounds of religion or belief. To that end, all necessary and appropriate education or training must be provided in order to recognize members of the minority community and immigrants as part of society.

#### Recommendations to the OSCE participating States:

- OSCE participating States must respect that religious freedom is a right, and that national security should not be used as an improper justification for limiting this right;

- OSCE participating States should allow individuals to worship, individually or in community with others, and to convey their beliefs through education;
- Religious communities should be allowed to operate freely, without governmental oversight or intervention, and any registration requirements should be fair and according to international human rights law;
- OSCE participating States should take measures to prevent stigmatization of any minority or other group in society because of their religion or belief;
- OSCE participating States should ensure that groups perpetrating criminal activities under the guise of religious activity are prosecuted in accordance with international fair trial standards;
- OSCE participating States should reach out to minority religious communities and work with them to combat terrorism;
- OSCE participating States should avoid actions that contribute to the stereotyping of religious communities, especially via state media outlets;
- OSCE participating States should ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, *inter alia* by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, and the right to practise freely one's religion, including the right to change one's religion or belief, is violated;
- OSCE participating States should ensure, in particular, that no one within their jurisdiction is deprived of the right to life or the right to liberty and security of person because of religion or belief, or is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights;
- OSCE participating States should exert the utmost efforts to ensure that religious places, sites and shrines are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;
- In conformity with international human rights standards, OSCE participating States should take all necessary action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities. In this context they should also pay particular attention to practices which violate the human rights of women and discriminate against women, including in the exercise of their right to freedom of thought, conscience, religion or belief;

- OSCE participating States should promote and encourage, through education and other means, understanding, tolerance and respect in all matters relating to freedom of religion or belief;
- It is important to stay vigilant and not tolerate that the liberty of cult and expression serves a radicalism that produces appeals to hatred and violence or as a recourse to proselytism in favour of a terrorist cause;
- OSCE participating States should firmly reject the identification of terrorism with any particular religion or belief;
- The attempt to use of freedom of religion and expression as a shield to allow for incitement to hatred and violence or for the promotion of a terrorist cause should not be allowed;
- OSCE participating States should recognize the valuable role religious communities can play in preventing and combating terrorism;
- OSCE participating States should facilitate the practice of religion or belief and promote inter and intra-religious dialogue within a framework for promoting tolerance, mutual understanding and respect for diversity;
- In rejecting the identification of terrorism with any particular religion or belief, all OSCE participating States should protect the right to freedom of religion or belief, and promote inter- and intra-faith dialogue, recalling the Berlin, Brussels and Cordoba declarations;
- A specific focus should be put on education. OSCE participating States should allow individuals to worship, individually or in community with others, and to convey their beliefs through education. Education on tolerance is necessary to ensure freedom of religion plus education about different religions and their aims;
- OSCE participating States should proactively reach out to racial, religious and ethnic minorities and civil society organizations and work with them to prevent and combat terrorism and to prevent discrimination; they should encourage representation of religious groups in the political process; recognition should be given to the valuable role religious communities can play in preventing and combating terrorism;
- OSCE participating States should train law enforcement officers and other officials to respect cultural and religious diversity, both as a means of preventing discrimination and racial/religious profiling, and as a means of preventing torture and cruel, inhuman or degrading treatment of detainees;

- OSCE participating States should ensure that the fight against terrorism and violent ‘extremism’ is not used to crack down on legitimate opposition or to stifle freedom of expression, freedom of religion and freedom of association;
- There should be an institutional infrastructure in OSCE participating States for members of religious groups to express their dissatisfaction with state policy through legal and political channels;

*Recommendations to the OSCE institutions and field operations:*

- ODIHR should continue its activities in the area of religion or belief as one of the core priorities of the organisation and should continue to include specific aspects related to preventing and combating terrorism;
- ODIHR in close co-operation with the OSCE High Commissioner on National Minorities should continue to pay specific attention to supporting minority religious groups in the promotion of inter- and intra-religious dialogue;
- The role of ODIHR in the field of tolerance and non-discrimination should be further strengthened;
- The OSCE should continue to support the ongoing work of the Personal Representative of the Chairman in Office on combating intolerance and discrimination against Muslims.

*Recommendations to other intergovernmental and non-governmental organizations:*

- Religious groups have a responsibility to develop as active participants in the fight against terrorism; religious organizations have a vital role to play in scrutinizing governmental actions and in feeding in ideas as to how to efficiently and realistically deal with the problem of religious extremism;
- Civil society should identify key figures in religious communities to start a dialogue with and between religious organizations;
- The UN Human Rights Commission should focus more on reported cases of violations of the freedom of religion when combating terrorism.

## **Outcome of Session 2: Torture and the Fight against Terrorism**

**Moderator:** William G. O'Neill, Independent Consultant

**Rapporteur:** Frank Ledwidge, Rule of Law Adviser, OSCE ODIHR

**Introducers:** Dr. John Pearse, Independent forensic psychologist, former Superintendent, Metropolitan Police, UK

Ms. Karinna Moskalenko, Director, the International Protection Centre, Moscow

Mr. Michael Posner, Director, Human Rights First

Ms. Gabriela Echevarria, International Legal Adviser, REDRESS

Several threads ran through Session 2. These included transparency, the absolute and non-derogable nature of the prohibition on torture, redress for acts of torture and concerns regarding new practices which have grown up in the fight against terrorism, notably that of 'extraordinary rendition' in breach of the principle of *non-refoulement*.

In relation to transparency, cases were outlined of countries where the insistence on audio recording of interviews combined with training based on that activity had produced excellent results. Open monitoring also practiced in several countries has proved to be very effective in prevention of torture.

Article 22 of the Convention against Torture provides an individual complaints mechanism, this is an article to which several OSCE participating states have yet to accede. It was suggested that the OSCE could assist in ratification of various legal instruments which might help to prevent torture.

Ensuring that the detention and questioning procedures are open to judicial oversight as well as the possibility of monitoring was underlined by several participants. The dangers, revealed throughout history, inherent in parallel justice systems, special jurisdictions and secret tribunals were outlined. It was pointed out that the use of torture, unlike the practice of capital punishment, is carried out in secret, and it is that secrecy that systems must constantly seek to penetrate and eliminate.

One of the more disturbing developments arising from the fight against terrorism is the practice of 'extraordinary rendition' – that is the transfer of a person from one jurisdiction to another without due process and often to countries with a poor record for preventing torture. Some have referred to this as 'outsourcing' of torture. Several participants stated that terrorism has been used as a pretext in several OSCE participating states, East and

West, for watering down the international prohibition of torture, sometimes it seems with apparent public support.

It was pointed out that the crime of torture may still occur in countries that have good intentions to ensure the prohibition on torture and a firmly established system based on the rule of law. Where allegations of torture are made they must be investigated and the perpetrators must face prosecution and serious punitive sanction if states are to fully respect their international obligations on the prohibition of torture.

*Recommendations to OSCE participating States:*

- OSCE participating States should reaffirm the absolute nature of the obligation under international law not to expel, return, extradite, render, or otherwise transfer any person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment;
- OSCE participating States should prohibit the reliance upon diplomatic assurances in situations where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return;
- OSCE participating States should ensure that any person subject to transfer has the right, prior to transfer, to challenge its legality before an independent tribunal. Any legal review must include an examination of all relevant evidence, including evidence relating to any diplomatic assurances provided by the recipient country. Persons subject to transfer must have access to an independent lawyer and a right of appeal with suspensive effect;
- OSCE participating States should include in required periodic reports to the UN Committee against Torture, the Human Rights Committee and other relevant international and regional monitoring bodies detailed information about all cases in which diplomatic assurances against the risk of torture or ill-treatment have been sought or secured in respect of a person subject to transfer.
- OSCE participating States should give serious consideration to the early ratification and subsequent effective implementation of the Optional Protocol to the UN Convention against Torture. The ratification of this human rights instrument will send a strong signal to the international community of the importance which each State attaches to combating torture;
- OSCE participating States are encouraged to initiate a dialogue on a national level and amongst themselves in order to facilitate exchange of information and best practice on the establishment and effective functioning of national visiting mechanisms;

- OSCE participating States are urged to ensure that any statement, that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;
- There should be zero tolerance of torture and other forms of cruel, inhuman and degrading treatment. To that end, OSCE participating States should make full use of the expertise of OSCE institutions and field operations;
- OSCE participating States should consider making declarations under Article 22 UN CAT accepting the jurisdiction of the Committee against Torture in individual cases;
- There should be no recourse by OSCE participating States to the use of parallel judicial or quasi-judicial systems, special or secret tribunals. Instead the detention and questioning of subjects must always be subject to independent judicial control;
- OSCE participating States should ensure transparency of detention and interrogation procedures by, *inter alia* allowing access to counsel from the outset of detention, the right to communicate the fact of detention to a third party, the right of access to a doctor of the detainee's choice and judicial oversight of detention.

*Recommendations to the OSCE institutions and field operations:*

- The OSCE should reaffirm the absolute and non-derogable nature of the prohibition on torture which includes the obligation not to transfer any person to a country where there are substantial grounds for believing that he or she would be at risk of torture or ill-treatment;
- The OSCE should declare that diplomatic assurances in relation to torture or ill-treatment are inherently unreliable and do not provide an effective safeguard against such treatment. As such, the use of diplomatic assurances in the face of risk of torture or ill-treatment violates the absolute prohibition in international law against torture and ill-treatment, including the principle of *non-refoulement*; OSCE institutions should reject any attempt to establish minimum standards for the use of diplomatic assurances against the risk of torture and ill-treatment as these are incompatible with the absolute prohibition in international law against torture and ill-treatment, including the *non-refoulement* obligation;
- The OSCE ODIHR could play an important role in facilitating international exchanges of information and best practices. The OSCE ODIHR could also play

an important role in facilitating dialogue at the country level. These activities would be particularly relevant in the light of the OSCE ODIHR's ongoing efforts to promote the monitoring of places of detention in certain OSCE participating States and its production of important information materials on the subject;

- The OSCE ODIHR might facilitate these activities by ensuring that all torture prevention initiatives, including initiatives to promote the Optional Protocol to the UN Convention against Torture, are coordinated and integrated by the focal point on the prevention of torture within OSCE ODIHR. The focal point could also help mainstream torture prevention activities within the OSCE in general;
- The OSCE Chairman-in-Office and the Permanent Council should attach greater importance to the need to prevent torture in the region and address the issue on a regular, consistent basis. Without genuine political will, overall progress will be difficult;
- ODIHR may have a role in assisting with the strengthening of judicial independence and processes of transparent investigation and detention where appropriate;
- The OSCE should consider examining provisions both within the OSCE system and internationally for the control of private companies engaged in providing detention and interrogation services.

**Recommendations to other intergovernmental and non-governmental organizations:**

- NGO's and relevant treaty bodies should continue to monitor the situation regarding torture in the OSCE region.

### **Outcome of Session 3:        The Role of Civil Society in the Fight against Terrorism**

**Moderator:**            **William G. O’Neill**, Independent Consultant

**Rapporteur:**         **Susie Alegre**, Anti-terrorism Adviser

**Introducer:**         **Mr. Yevgeniy Zhovtis**, Director, Kazakhstan International Bureau  
for Human Rights and Rule of Law

**Mr. Vladimir Petrovsky**, Professor, MGIMO University, Head of  
Foreign Policy Studies, Russian Political Science Association

**Ms. Irune Aguirrezabal**, Europe Co-ordinator of the Coalition for  
the International Criminal Court, legal expert for the Madrid  
Summit on Terrorism and Democracy

**Dr. Gus Hosein**, Senior Fellow, Privacy International, Visiting  
Fellow, London School of Economics and Political Science

An effective fight against terrorism and extremism requires both strong governmental institutions and strong civil society. Clamping down on internal opposition using the context of the fight against terrorism as a justification can have very negative consequences creating a political vacuum which may be inhabited by more radical thinkers. The vulnerability of NGO’s working in this field, particularly those monitoring human rights in the context of the fight against terrorism should not be overlooked.

Civil Society should support the independent media, provide mechanisms for human rights advocacy, promote civil control over the military and security sectors and assist in providing policy advice and legislative assistance to States.

The role of victims associations, both in providing legal assistance and psychological support to victims and in sensitizing civil society in general should not be underestimated. There should be support for the creation of a global citizens’ network in the fight against terrorism as put forward in the Madrid agenda.

The role of civil society in ensuring an ongoing and active debate over measures taken in the context of counter-terrorism should be promoted. There are risks posed to due democratic process, in particular when the decision making process on these issues is shifted to the international level. The question was posed: how do we ensure that national parliaments and civil society have a role in debates on measures taken at the international level? The important role that can be played by National Human Rights institutions was also raised.

Recommendations to OSCE participating States:

- OSCE participating States should recognize the important role of a vibrant civil society in preventing and combating terrorism;
- OSCE participating States should maintain an active dialogue with civil society initiatives and NGOs at local and community level; it is extremely important in the OSCE area for governments to turn towards new and positive ways of permanently engaging with citizens;
- OSCE participating States should support and enhance civil society initiatives aimed at promoting the respect for human rights and fundamental freedoms and creating an environment of tolerance and respect for diversity; they should also strengthen their dialogue and cooperation with NGOs and other human rights defenders in fostering a strong society able to stand up for human rights and to oppose terrorism;
- OSCE participating States should cooperate with civil society in the implementation of the OSCE Permanent Council decision 618 on solidarity with victims of terrorism amongst other measures to protect the rights of victims;
- OSCE participating States should ensure that counter-terrorism measures are accompanied by measures to strengthen civil society;
- The important role of civil society in the promotion and protection of human rights, democratic values and the rule of law should in no way be compromised by participating States' policies on countering terrorism and extremism;
- OSCE participating States must not use counter-terrorism or counter-extremism policies as a way of clamping down on the legitimate work of civil society;
- OSCE participating States should encourage National Human Rights Institutions (where these exist) to take part in discussing and monitoring the measures taken in context of counter-terrorism;
- OSCE participating States should support the creation of a global citizens' network in the fight against terrorism as put forward in the Madrid Agenda.

Recommendations to the OSCE institutions and field operations:

- The OSCE should review its commitments on freedom of media and review the politico-military Code of Conduct to expand it beyond the military to the security sector at large;

- The OSCE should consider establishing guidelines on national legislation on counter-terrorism based on the model of the guidelines on religious freedom.
- The OSCE should encourage the strengthening of civil society in relation to the protection of human rights in the fight against terrorism;
- The OSCE ODIHR should monitor the impact on civil society of counter-terrorism policies and legislation.

*Recommendations to other intergovernmental and non-governmental organizations:*

- The organizations of civil society should take a pro-active, constructive stance with a view to contributing to policy making in the fight against terrorism;
- Civil society can fulfill a crucial role by reminding OSCE participating States of their commitments, and holding them to account;
- Civil society should support the independent media, provide mechanisms for human rights advocacy, promote civil control over the military and security sectors and assist in providing policy advice and legislative assistance to the States;
- Victims' associations should provide both legal assistance and psychological support to victims and assist in sensitizing civil society to the plight of victims of terrorism.

### III. ANNEXES

#### ANNEX I. AGENDA

**Day 1**

**14 July 2005**

15.00 - 16.00

**OPENING SESSION:**

**Opening remarks:**

*Mr. Boštjan Šefic*, Head of the Interdepartmental Working Group on Counterterrorism, Republic of Slovenia

*Ambassador Christian Strohal*, Director of the OSCE/ODIHR

**Key-note Speakers:**

*Mr. Terry Davis*, Secretary General, Council of Europe

*Prof. Manfred Nowak*, UN Special Rapporteur on Torture

*Technical information* by the OSCE/ODIHR

16.00 - 18.00

**Session I: Freedom of Religion and the Fight against Terrorism**

**Introducers:**

*Dr. Roman Podoprigora*, Professor of Law, Adilet Law School, Kazakhstan

*Mr. John Kinahan*, Assistant Editor, Forum 18 News Service

*Dr. Catherine de Wenden*, Director of Research, CNRS (CERI), Paris

*Ms. Geneive Abdo*, Research Fellow, Georgetown University

**Moderator:**

*William G. O'Neill*, Independent Consultant

*Discussion*

18:30

**Reception offered by the OSCE Chairmanship**

**Day 2**

**15 July 2005**

9.00 - 12.00

**Session II: Torture and the Fight against Terrorism**

**Introducers:**

*Dr. John Pearse*, Independent forensic psychologist, former Superintendent, Metropolitan Police, UK

*Ms. Karinna Moskalenko*, Director, the International Protection Centre, Moscow

*Mr. Michael Posner*, Director, Human Rights First

*Ms. Gabriela Echevarria*, International Legal Adviser, REDRESS

**Moderator:**

*William G. O'Neill*, Independent Consultant

*Discussion*

12.00 - 14.00

Lunch

14.00 - 16.00

**Session III: The Role of Civil Society in the Fight against Terrorism**

**Introducers:**

*Mr. Yevgeniy Zhovtis*, Director, Kazakhstan International Bureau for Human Rights and Rule of Law

*Mr. Vladimir Petrovsky*, Professor, MGIMO University, Head of Foreign Policy Studies, Russian Political Science Association

*Ms. Irune Aguirrezabal*, Irune Aguirrezabal, Europe Co-ordinator of the Coalition for the International Criminal Court, legal expert for the Madrid Summit on Terrorism and Democracy.

*Dr. Gus Hosein*, Senior Fellow, Privacy International, Visiting Fellow, London School of Economics and Political Science

**Moderator:**

*William G. O'Neill*, Independent Consultant

*Discussion*

16.00 - 16.30

Break

16.30 - 17.30

**CLOSING PLENARY:**

Reports by the Working Session Moderators

Comments from the floor

**Closing remarks:**

*Ambassador Janez Lenarčič*, Chairman of the Permanent Council

*Ambassador Christian Strohal*, Director of the OSCE/ODIHR

**17:30**

Close of Day 2

## **ANNEX II. ANNOTATED AGENDA**

### **OVERVIEW**

Counter-terrorism measures that fall outside the framework of the rule of law and human rights standards effectively roll back well-established norms and lay the foundations for further insecurity.

The 2004 OSCE Ministerial Council adopted the Sofia Ministerial Statement on Preventing and Combating Terrorism. This Statement re-emphasizes the determination of the OSCE participating States “to combat terrorism in all its forms and manifestations, as a crime that has no justification, whatever its motivation or origin, and to conduct this fight with respect for the rule of law and in accordance with [their] obligations under international law, in particular international human rights, refugee and humanitarian law.” The OSCE also notes the declaration on the issue of combating terrorism contained in the annex to UN Security Council Resolution 1456 (2003), in particular the statement that states must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.

Human rights are sometimes violated during the conduct of the fight against terrorism. These violations may take many forms including the limitation of fundamental freedoms such as freedom of religion and belief, freedom of expression and freedom of assembly. The right to life has also been threatened in certain circumstances and certain other non-derogable rights, as set forth in Article 4 of the International Covenant of Civil and Political Rights, such as the right to freedom from torture or inhuman and degrading treatment or punishment and the right to a fair trial have been limited by certain legislation and practices in the fight against terrorism. A strong and active civil society that is actively engaged in promoting democracy and tolerance is instrumental in combating terrorism. This must go hand-in-hand with civil society’s support to legitimate measures of the State’s authorities aimed at protecting everybody under their jurisdiction from terrorist acts.

The OSCE approach is one of co-operative security based on democracy, respect for human rights, fundamental freedoms, the rule of law 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. Respect for and compliance with international human rights law remains central to the efforts to prevent and combat terrorism.

This Meeting is designed to devise ways that participating States can enhance their efforts to fulfill these mutually reinforcing goals and OSCE commitments.

## **SESSIONS**

### **Session I: Religious freedom and the fight against terrorism**

Freedom of religion or belief is a non-derogable right. In the aftermath of 11 September 2001 and 11 March 2003, a number of religious communities in the OSCE area have experienced growing distrust and hostility. As the fight against terrorism has been stepped up and the perceived threat of religious extremism has become a major focus of public debate, religious and immigrant communities have increasingly felt stigmatized or targeted for discrimination or abuse because of their beliefs.

This session will aim to look at how certain communities have felt that freedom of religion or belief has been undermined in the aftermath of 11 September 2001 and 11 March 2004, and how they have reacted to this new security climate. Also, the session will examine how governments can balance security concerns while allowing individuals and communities of believers to meet freely for worship, educate their followers and provide information about their beliefs to the public at large.

- How can freedom of religion be fostered as a tool in the fight against terrorism?
- What methods can be used to combat extremism while protecting freedom of religion or belief in society?
- How should governments balance security concerns while respecting religious freedoms?
- How can minority communities provide a positive element in a comprehensive strategy to combat terrorism?

### **Session II: Torture and the fight against terrorism**

The right to life, the right to freedom from torture or cruel, inhuman and degrading treatment or punishment are absolute non-derogable rights in all circumstances. Unfortunately these rights have been threatened and limited by certain legislation and practices in the fight against terrorism. Any discussion of human rights in the context of preventing and combating terrorism must recognise the basic premise that state authorities must take steps necessary to protect society from terrorism but that the fight against terrorism cannot provide a justification for the use of or for collusion in torture or cruel, inhuman or degrading treatment or punishment. States must be vigilant to ensure that security measures taken and investigatory techniques used in the context of the fight against terrorism protect against torture and ill-treatment. Allegations of torture in prisons and interrogations in the context of the fight against terrorism and trends in jurisprudence on the admissibility of evidence which may have been extracted through torture are of great concern in this regard.

- What can be done to reduce the risk of torture or cruel, inhuman and degrading treatment or punishment in the context of the fight against terrorism?
- Why should evidence extracted through torture not be relied upon?
- How can it be ensured that statements extracted through torture will not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made?

### **Session III: The Role of Civil Society and the Fight against Terrorism**

The development of a strong and active civil society is essential for a well-functioning and stable and democratic State. This can be achieved through strengthening democratic institutions and non-governmental organizations that aim to promote human rights, tolerance and respect for diversity. Freedom of association and assembly, freedom of expression and freedom of religion or belief are human rights that states must respect. Since 11 September 2001, a number of participating States have introduced specific anti-terrorism, crime and domestic security legislation. There is a growing concern over prohibition and dissolution of political groups on account of their alleged extremist or terrorist activities. Some anti-terrorist measures may be open to abuse restricting certain fundamental freedoms by targeting, e.g. minority or religious groups, NGOs and independent journalists. A vibrant civil society is essential to combating terrorism, to promote democracy and tolerance and to hold governments accountable.

- How can civil society engage with governments to combat terrorism?
- How can civil society act as a check on potential excesses in the fight against terrorism and promote best practice and accountability?
- How can civil society foster an atmosphere which discourages recruitment to terrorism and builds bridges in society?

### **ANNEX III. KEYNOTE SPEECHES**

#### **Opening Remarks by Mr. Bostjan Sefic, Head of the Interdepartmental Working Group on Counter-terrorism, Republic of Slovenia**

(written statement)

Director,  
Ladies and gentlemen,  
Honoured guests,

It is my great pleasure to be able to greet you on behalf of the Slovenian OSCE Chairmanship at this meeting that will try to find answers to certain highly topical issues, significant for citizens of any country.

Human rights and freedoms are foundations of every modern democratic country. They are values and achievement of many generations before ours, which we must cherish, develop and promote. Enormous efforts were invested and a lot of sacrifices made in order to reach such a high level of human rights. But they are threatened in all aspects by international terrorism, which has at the turn to the 21<sup>st</sup> century grown into the currently most serious global security threat.

The recent terrorist attacks on the London means of public transport and a similar bomb attack carried out in Madrid on 11 March last year confirm the fear shared by a number of experts that Europe is becoming a scene of major and menacing attacks of terrorist cells, which are linked with the Al Qaeda terrorist network or which say that have primarily ideological links with the network.

In all cases of terrorist attacks carried out in the recent years (from the 11 September 2001 attack on the US, in Casablanca, Bali, Istanbul, Madrid, and Beslan to the latest attack in London) the victims of indiscriminate attacks have been innocent civilians, whose most fundamental human right – the right to life – has been infringed. These acts are a totally unacceptable way of expressing dissatisfaction or opposition to anything. Terrorism is not and may not be an excuse for any “cause”. It is merely an instrument causing terror and confusion used by those who do not want or cannot fight for their cause with the power of arguments.

Slovenia, like all democratic countries, unconditionally condemns terrorist acts as a means for pursuing any aim, and actively participates in the international efforts to prevent terrorism. Slovenia supports the activities aimed at countering terrorism all over the world, but at the same time counterterrorism should consistently respect legal norms of national and international law.

Terrorism, which is becoming ever greater and uncontrollable problem, is covered by all public media. A number of terrorist dramas literally unfold before our eyes. Without the huge media attention, terrorism would have less impact on the global scale. The

implications of terrorism are increasingly drastic, many-folded, and often unpredictable and uncontrollable. Terrorism is becoming an increasingly important part of political affairs, both foreign and domestic, as the use of physical force in political life is increasingly frequent. Force and violent actions are also used in the name of counterterrorism.

Terrorism is not limited to individual geographical areas any longer. The main aim of terrorist attacks is now to cause a great number of casualties and material damage as well as to attract attention of the media. Beside the coordination of activities at the national level, international cooperation is particularly important in countering terrorism. In this context, the great significance of cooperation between intelligence and security services along with their mode of operation should be pointed out, as it is not possible to counter terrorism with the police or military tactics and strategy due to the specific characteristics of activity carried out by the terrorist networks. At the same time, we should bare in mind that intelligence and security services contribute only to limiting the consequences and persecuting the perpetrators, and cannot eliminate the reasons for the emergence of terrorism.

At this point, it is individual countries or international community with all institutions and mechanism that should get engaged more actively and adopt an adequate preventive policy. Therefore, the international community and individual states should focus more on adopting adequate political, social and economic measures in order to limit the reasons for terrorism. Greater focus of attention should be on the so-called preventive activities, including the protection of human rights. It is necessary to study the reasons for the emergence of terrorism and then eliminate them. This is the number one responsibility of all of us, both international and national institutions, as well as the civil society. In my sincere conviction, we should not expect that we can counter those who pursue their goals with terrorism applying solely repressive measures. Intelligence and security services, the military, and the other state bodies cannot do away with the reasons for the emergence of terrorism. Only an active policy and an open dialogue based on arguments and held among all those who can contribute to solving the conflicts can guarantee fruitful solutions to the existing religious, social, economic and other conflicts. No one should be left out of this process. The civil society should be involved in this process as a more relevant and active partner.

The OSCE is playing an important role in solving the crisis situations. Counterterrorism has become the most important area of its activity, in which the OSCE works together with the UN in the framework of 12 UN conventions and protocols on counterterrorism.

The implementation of our commitments on countering terrorism emanating from various OSCE documents, particularly the Bucharest Action Plan in the field of counterterrorism is on a right track. In the Sofia Ministerial Statement on preventing and combating terrorism we reaffirmed our commitment to protect the enjoyment of human rights and fundamental freedoms. We re-emphasized our determination to combat terrorism respecting the rule of law and in accordance with our obligations under international law, in particular international human rights law, refugee and humanitarian law. Further we

expressed our conviction that respect of human rights is an important element of ensuring peace and stability and prevention of terrorism.

This Supplementary Human Dimension meeting will address the issue of human rights and counterterrorism. I believe that this first “official” OSCE event entirely dedicated to the topic of human rights and terrorism will further enhance the activities of this security organisation in this field. This is a clear cross-dimensional issue and it should be, in my opinion, addressed as such not only at the international level but also at the national level when implementing international obligations and commitments in countering terrorism. Intergovernmental working groups and other governmental bodies responsible for counterterrorism should include the human rights concerns on the equal basis with other activities. Human rights perspective should be included in the reporting mechanisms under the relevant international counterterrorism mechanisms and within training programmes of state officials on combating terrorism.

In this respect the Slovene OSCE Chairmanship would further like to encourage discussions that would lead us to more concrete commitments at the Ljubljana Ministerial. The fight against terrorism needs very concrete action and therefore our commitments should be concrete.

The three topics and three main starting points for our deliberations are:

1. Freedom of religion or belief is a non-derogable right that cannot be undermined in the fight against terrorism;
2. The right to life and the right to freedom from torture or cruel, inhuman and degrading treatment or punishment are absolute non-derogable rights in all circumstances;
3. The development of a strong and active civil society is essential for a well-functioning, stable and democratic State, and can act as essential actors in the fight against terrorism.

As I already mentioned – it is true that repressive measures and the use of force can prevent individual terrorist attacks, but they can in no way eradicate the terrorism or the reasons for its occurrence. Every excessive use of force only provokes even stronger reactions of the opposite side. Every violation of human rights leads to even more serious violation of human rights. This way, we find ourselves in the vicious circle. Such a situation, which seems to be without prospects, can lead to the ultimate chaos and the loss of all of the achievements of humanity. That is why the countries and the state bodies, which have an important role in prevention of extremist and illegal groups’ activities as well as in prevention of individual terrorist acts should, beside their primary task, also support the positive processes and provide for the favourable conditions for their effective realization.

Terrorism can by no means be justified as a means for pursuing political or any other goals, since it causes victims primarily among the civilians and undermines the inviolability of human life. That is the reason why, in order to resist terrorism, exceptional circumstances require the use of legal and controlled intervention in the

rights and freedom – especially if the security of the majority is being threatened. Infringement of human rights is exceptionally allowed when reasonable grounds exist for suspicion of threat to national or international security i.e. to the health and lives of a larger group of people according to the principle of lesser damage – that is, infringement of rights of a smaller group of people for the protection of rights of the majority. However, even in such a case, certain elementary human rights and dignity of every individual have to be respected, and an appropriate supervision of the public as well as the civil society should be ensured.

The sole limitation of human rights and freedoms does not contribute to a successful fight against terrorism but rather reveals a country's inefficiency and by that the success of terrorists. The fact is that the demonstration of a country's and its institutions' inefficiency, that of the civil society's activities and the democratic principles, is precisely one of the goals of terrorist groups. We cannot allow this to happen.

Those are two different poles which cannot be equated and unconditionally and directly considered as one phenomenon, if we truly want to touch the core of the conflict, understand it in all its dimensions, and resolve it successfully. Terrorism knows no faith, and is limited to no region. If this is not taken into consideration, the already existing gap between the Western society and the Islamic world will only grow deeper. In this context, we are aware of the fact that the integration is not possible without proper mutual consent. It is my pleasure to be able to confirm that this fact is being recognized and is gradually but determinately coming forward. We should make good use of the positive will and readiness.

Ladies and gentlemen,

Such conferences, as is today's, can in many ways contribute to better understanding of individual problems, to better and more coordinated functioning of individual factors, to the adoption of common standpoints, and to coordinated activity in the future.

In conclusion, I would like to express my trust in the effectiveness of your work, in the open dialogue, and that you will find certain possible answers to the really important and challenging issues that are also the reason why we gathered at this meeting.

Thank you.

## **Key-note Speech by Mr. Terry Davis, Secretary General, Council of Europe**

(written statement)

Mr Chairman,

Excellencies,

Ladies and Gentlemen,

Only a week ago, the terrorist attacks in London - the worst in the United Kingdom since the end of the Second World War - appalled and angered all of us. After Russia, Turkey and Spain over the last two years, terrorism has struck Europe yet again, reminding us that there is no room for complacency or pause in our anti-terrorist campaign, that it is a question of "when" and "where", not "whether", terrorists will attack again.

Our response to such atrocities must be more than expressions of solidarity and sympathy.

Nor is it enough to say that we will step up our collective efforts in the fight against this evil.

We must remember what we are fighting for. We should remember the words of a great man who, a hundred years ago, wrote: "The true soldier fights not because he hates what is in front of him but because he loves what is behind him".

Let us remember that we are fighting because we love our values of democracy, human rights and the rule of law, the values on which our societies are built. It is exactly these values that terrorists seek to undermine.

At the Council of Europe, we have many weapons which can be used in this struggle, ranging from the European Convention on the Suppression of Terrorism, adopted in 1977 and revised in 2003, to two brand new treaties opened for signature during the Summit of our Heads of State and Government in Warsaw this May - conventions on the prevention and financing of terrorism.

The new conventions bridge the gap in existing international law, making it a crime to incite terrorist acts, recruit and train people to carry out terrorist acts, or collect money to finance them. The convention on the financing of terrorism also helps to track and seize assets, and to investigate suspicious transactions, making it easier to disrupt the funding of terrorists. Our task now is to put these conventions into practice as soon as possible. We cannot afford to wait for another London, another Beslan, another Madrid or another Istanbul.

At the Council of Europe, the attacks of 11 September 2001 immediately prompted us to agree with our member states on a three-track approach in our action against terrorism: first, to make sure that the measures taken by our member States respect democratic values, human rights and the rule of law; second, to boost co-operation in the struggle against terrorism and fill some gaps in our existing legal instruments - the new conventions which I have just mentioned are a good example; and third, to address the

root causes of terrorism by investing in a more cohesive society and by promoting intercultural and inter-religious dialogue.

In July 2002 our Committee of Ministers adopted the Guidelines on Human Rights and the Fight against Terrorism, which specified the limits to State action in the campaign against terror. They were complemented in March this year by the Guidelines on the Protection of Victims of Terrorist Acts. Both sets of Guidelines are directed at member States of the Council of Europe, but their principles and rules are capable of universal application and, as such, we hope that they will serve as a source of inspiration to the international community in general.

A month ago, experts from our member States met in Strasbourg to look at how these Guidelines are being implemented at the national level. The experts made several proposals for reinforcing these Guidelines, and I should like to share some of these proposals with you today, in three particular areas of human rights concerns: the prevention of torture; the need to preserve freedom of expression and information; and the fight against racism and discrimination.

One of our current major concerns is the temptation of some States to use torture and inhuman or degrading treatment in order to obtain information from terrorist suspects. Torture has always been an affront to human dignity, a grave violation of human rights. However, torture today is not only physical - leaving visible scars and bruises - it is also psychological and subtle - torture through deprivation of water, food, sleep, contacts with relatives, or even reading material - leaving mental scars and trauma. The Warsaw Summit clearly reaffirmed the absolute prohibition of torture, in any form and under any circumstances, by giving the green light for a campaign against such practices. If we condoned torture, even for the sake of the fight against terrorism, the very foundations of democratic societies committed to human rights and the rule of law would be undermined, which would be a major victory for the terrorists themselves.

However, unfortunately, as our Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment - the CPT - has reported, there is, and I quote, "a growing body of evidence that the methods of detention and interrogation employed in various locations, in the context of the fight against terrorism and of military operations it has spawned, have on occasion violated that prohibition." (unquote)

Another concern is the use of information obtained through torture or ill-treatment. It is our strong belief that such information must not be used as evidence in court proceedings, which would be one way of rendering such practices useless and senseless.

The emerging practice of seeking so-called "diplomatic assurances" before extraditing terrorist suspects - assurances to the effect that they will not be ill-treated - is also an important issue to be debated. Too often there is no follow-up to check whether such assurances are respected after extradition, and I believe that we should ask ourselves whether it is simply a way to circumvent the absolute prohibition of torture, and whether

these assurances should be better regulated or simply abandoned. This question needs some indepth consideration.

Detention for an indefinite duration without trial is yet another issue which cannot be ignored.

To be blunt, constant vigilance is required if absolute prohibition of torture and ill-treatment is to be upheld; this is true for every country, and our member States are no exception.

However, reports and recommendations will have little or no effect without the force of public pressure. That is why freedom of the media is of the utmost importance, especially in the context of the fight against terrorism. The public has the right to know not only what is going on in Abu Ghraib, and what is going on in Guantanamo Bay - to name the best known places - but also what is happening in other detention centres across our continent and in our observer states.

We take as our premise the notion that the fight against terrorism does not justify extraordinary restrictions on the media. On the contrary, freedom of expression helps to combat and prevent terrorism. It is the duty of the State to facilitate access to information and to ensure respect for editorial independence, even in times of crisis. For their part, media professionals have a responsibility not to contribute to terrorist aims and to refrain from propagating hate speech and inciting violence. They should also respect the dignity, safety and private life of victims, and the presumption of innocence of terrorist suspects. These principles have been clearly rearmend in the Council of Europe Declaration on freedom of expression and information in the *media* in the context of the Fight against terrorism, adopted by our Committee of Ministers in March this year.

One phenomenon which contributes a great deal to ill-treatment is the use of racial stereotypes. Too often, the fight against terrorism has unleashed stereotyping and racial discrimination by association - association with a given religion or ethnic group.

In some cases, it is spurred not only by governments but also by the media and sometimes society as a whole. This is absolutely unacceptable. There are bad apples in every barrel – but to change the metaphor, if we start painting whole groups of people as black or white, we will go back to the 1930s, and we all know how dearly the people of Europe paid for such a black and white vision in the 1940s.

To counter racist stereotypes and prejudices, it is not enough to talk about fostering dialogue between different groups within society. This dialogue must be coupled with measures promoting education in diversity and combating intolerance. That is why the Warsaw Summit also gave the Council of Europe the mandate to promote and enhance intercultural and inter-religious dialogue, both within our societies and with our neighbors in Central Asia, the Middle East and the southern shore of the Mediterranean. Similarly, the Council of Europe cannot turn a blind eye to racial discrimination embedded in anti-terrorist legislation and its implementation. As is the case with torture, we take a firm stand that racial discrimination cannot be allowed under any circumstances. Our member States must not adopt anti-terrorist measures which are

discriminatory, be it on the grounds of race, colour, language, religion, nationality or ethnic origin.

States should also be particularly vigilant to avoid any discriminatory trends dealing with the entry and stay of foreign citizens on national territory - which includes border checks, the issue of residence and work permits, expulsions, extraditions and asylum procedures. Areas such as the protection of personal data, and more generally, of private and family life are also concerned.

These matters were addressed by the European Commission against Racism and Intolerance (ECRI), our independent human rights monitoring mechanism, in its General Policy *Recommendation No. 8 on Combating Racism While Fighting Terrorism*, adopted in June 2004.

In conclusion, I should like to stress that, of course, no government or international organisation can win the fight against terror by itself. In this regard, I am pleased to report that we are strengthening our co-operation with the United Nations, and I would once again commend the excellent co-operation between the Council of Europe and the OSCE, and in particular the ongoing reflection on possible practical measures to enhance it even further.

The joint meeting of the Permanent Council of the OSCE and our Committee of Ministers' Deputies, held in Strasbourg on 18 April this year, set out the path and launched some concrete ideas. The outcome of this reflection will provide the basis for a common pan-European action against terrorism - effective and, at the same time, respecting our fundamental values.

Ladies and Gentlemen,

People go to war to protect their way of life. As I said at the outset, in our fight against terrorism we must not sacrifice freedom, civil liberties, human rights and the rule of law. We must defend these values - the values on which the Council of Europe was founded,

Together, we will win.

Thank you.

## **Key-note Speech by Prof. Manfred Nowak, UN Special Rapporteur on Torture**

(written statement)

1. The need for restrictions of human rights in the fight against terrorism: recent reactions to the London terrorist attacks of 7 July 2005: need for more preventive surveillance as well as the collection, recording and transmission of personal data.
2. Permissible restrictions of human rights: limitation clauses (in the interest of national security, public safety, prevention of disorder or crime, protection of rights and freedoms of others), principles of subsidiarity and proportionality, prohibition of abuse (Article 17 ECHR, Article 5(1) CCPR), derogation in state of emergency, reservations.
3. Most human rights permit restrictions: e.g. right to life, personal liberty, fair trial, privacy, freedoms of movement, expression, religion, assembly and association. In the context of counter-terrorism measures, even the use of lethal force may be justified where it is based on an honest conviction deemed, for good reasons, to be valid at the time of events (Judgment of the European Court of Human Rights of 27 September 1995 in *Mc Cann and Others v. UK*, Series A-324, relating to the right to life in Article 2 ECHR). Special investigation techniques constitute far-reaching interference with the right to privacy (e.g. searches, telephone tapping, installation of bugging devices, recordings made by directional microphones, interception of mail and electronic correspondence, photographing and filming, recording of personal data, use of informants and infiltrated officers), the right to a fair trial (e.g. use of agents provocateurs and anonymous witnesses: the criteria of a fair criminal trial are more demanding than those for the preparatory investigation), the right to personal liberty and other human rights. Such far-reaching interference may be justified if it is based on an accessible and sufficiently precise legal framework and if it strikes a fair balance between the individual's human rights and a democratic society's legitimate right to protect itself against the activities of terrorist organisations (Judgment of the European Court of Human Rights of 25 November 1997 in *Zana v. Turkey*, 1997-VII). In addition, the right to an effective remedy (Article 13 ECHR) demands an effective control of interference with human rights by an independent body. The Council of Europe "Guidelines on Human Rights and the Fight against Terrorism" of 11 July 2002 and similar rules adopted by the United Nations, the OSCE, the European Union and other organisations strongly confirm that counter-terrorism strategies must fully comply with all human rights standards contained in relevant treaties (above all ECHR, CCPR) and customary international law. Otherwise, terrorists would be successful in upsetting the rules of the game established by sovereign democratic States.
4. Most human rights are subject to derogation measures in time of public emergency which threatens the life of the nation: e.g. personal liberty, privacy, freedoms of movement, expression, assembly and association. Example: UK

derogation in relation to ECHR and CCPR in reaction to the terrorist attacks of 11 September 2001.

5. Only very few human rights are absolute and non-derogable: prohibition of torture, cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude, right to recognition as a person before the law, freedom of thought and conscience (forum internum)

Torture is one of the most serious violations of human rights as it constitutes a direct attack on the core of the human personality and its dignity. As a consequence, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment constitutes one of the few human rights which are absolute under international law and, therefore, permit no exception. As such, freedom from torture and other forms of ill-treatment constitutes a peremptory norm of international law (*ius cogens*) and a non-derogable right which cannot be suspended under any circumstance, including armed conflict, situations of public emergency or in the context of counter-terrorism measures.

6. Attempts to circumvent the absolute and non-derogable nature of human rights in the context of counter-terrorism strategies primarily concern the prohibition of torture and ill-treatment: As the recent case-law of the European Court of Human Rights, above all against Turkey (anti-terrorist activities in the Kurdish region) and the Russian Federation (anti-terrorist activities in Chechnya) illustrates, counter-terrorism strategies might even lead to the systematic practice of torture within the member States of the Council of Europe. In addition to these de facto violations of the prohibition of torture, this important human rights guarantee is also subjected to a major legal challenge. Can the “ticking time bomb” scenario be used as a justification for the use of torture? Comparison between the right to life (cf. Article 2(2) ECHR: intentional killing of a terrorist permitted in specific cases) and the prohibition of torture. Principle of proportionality in defining whether a specific measure amounts to torture, cruel, inhuman or degrading treatment or punishment. Lawful sanctions clause (Art. 1 CAT).

The absolute and non-derogable nature of the prohibition of torture and ill-treatment, which emerged after World War II in response to the Nazi Holocaust, unfortunately, did not lead to the universal eradication of torture. But Governments which practised, condoned or tolerated torture and ill-treatment, in fact have been well aware that they were violating a binding universal norm which has been firmly established in both treaty and customary law. For the first time since World War II, this important consensus of the international community seems to be put in question by some Governments in the context of their counter-terrorism strategies.

7. Distinction between torture on the one hand, and cruel, inhuman or degrading treatment or punishment on the other: Art. 16 CAT

Harsh methods of interrogation: deprivation of essential human needs, suffocation with a wet cloth, death threats, holding detainees in painful and/or stressful positions, deprivation of sleep and light for prolonged periods, exposure to extremes of heat, cold, noise and light, hooding, deprivation of clothes, stripping detainees naked, threats with dogs etc.

8. Detention and interrogation of terrorist suspects abroad: US Supreme Court judgment of 28 June 2004 in *Rasul v. Bush et al*, 124 S.Ct. 2686 (2004) confirming the jurisdiction of US courts to consider claims by foreign nationals captured abroad in connection with the global “War on Terror” and incarcerated at Guantanamo Bay. Public inquiry related to the human rights situation at Guantanamo Bay carried out since June 2005 jointly by five special procedures of the UN Commission on Human Rights (Working Group on Arbitrary Detention, Special Rapporteurs on torture, the right to health, the independence of judges and freedom of religion).
9. Maintenance of secret places of detention: prolonged incommunicado detention and enforced disappearances may constitute in itself an act of torture or ill-treatment, and the right to challenge one’s detention before an independent court (right of habeas corpus) is violated in all cases of secret detention.
10. Outsourcing interrogations to private contractors: States might nevertheless be held accountable for torture or ill-treatment by acquiescence (Articles 1 and 16 CAT), for the violation of the principle of due diligence (judgment of the Inter-American Court of Human Rights of 29 July 1988 in *Velásquez Rodríguez v. Honduras*, Ser. C 4/1988), and for a violation of their general obligation to protect individuals against torture by private parties.
11. Prohibition of *refoulement* (Article 33 Refugee Convention, Article 3 CAT, Article 7 CCPR, Article 3 ECHR): Does international law make a distinction between torture and other forms of ill-treatment (cf. Article 3 and 16 CAT)? May the principle of *non-refoulement* be balanced with national security interests (cf. Article 33(2) Refugee Convention)? The European Court of Human Rights (judgment of 15 November 1996 in *Chahal v. UK*, 1996-V) held that the prohibition provided by Article 3 ECHR against torture and other forms of ill-treatment is equally absolute in expulsion cases: “Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion ... In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration. The protection afforded by Article 3 is thus wider than that provided by Articles 32 and 33 of the United Nations 1951 Convention on the Status of Refugees.”

12. Use of diplomatic assurances in expulsion or “rendition” cases: The UN Committee against Torture (decision of 20 May 2005 in *Agiza v. Sweden*, Comm No 233/2003) held that Sweden had violated Articles 3 and 22 CAT by removing the applicant on 18 December 2001, with the assistance of the US Government, to Egypt, which was known at the time of the removal to have “resort to consistent and widespread use of torture against detainees”. In respect of the Swedish defence argument that the Government had sought and received diplomatic assurances from the Egyptian Government that the applicant would not be subjected to torture or other inhuman treatment, the Committee responded as follows: “The procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk.”
13. Admission of confessions made under torture abroad as evidence in domestic judicial proceedings: Article 15 CAT, which prohibits to invoke as evidence in any proceedings any statement which is established to have been made as a result of torture, does not make any distinction between torture applied in the territory of a State party or abroad.
14. Conclusions: Notwithstanding the evident need to restrict certain human rights in the context of counter-terrorism strategies, such restrictions must be compatible with permissible limitations and derogation of human rights as laid down in relevant international human rights law. The prohibition of torture, cruel, inhuman or degrading treatment or punishment is one of the few absolute and non-derogable human rights which allows no exception even in the case of the “ticking time bomb” scenario. All attempts to circumvent the absolute and non-derogable nature of this important human right undermine a fundamental consensus of the international rule of law and human rights regime and signify to the terrorists that they have reached the goal of upsetting the rules of the game established by sovereign States.

## **ANNEX IV. INTRODUCTORY SPEECHES TO WORKING SESSIONS**

### **SESSION 1 Freedom of Religion and the Fight against Terrorism**

#### **Introductory speech by Dr. Roman Podoprigora, Professor of Law, Adilet Law School, Kazakhstan**

(written statement, translated)

On the one hand, I am honoured to speak at today's meeting; on the other hand, I am very sad because the tragic list of countries which have suffered from terrorism is getting longer and longer and words like terrorism and extremism have become some of the most popular words nowadays. Some time ago such a title of a meeting would have been inappropriate because terrorism has been very distant to many countries. Today, we do not face just new terrorist acts, but their extreme forms. Through the fight against terrorism we start evaluating many other forms of state and social life like the constitutional order, public security, democracy and human rights. Often, the opinion is presented that in the fight against terrorism it is possible to overrule the Constitution and to sacrifice human rights. The freedom of religion also belongs to the sacrifices. Such sacrifice can be easily explained when entire religions are blamed in support of the terrorists and religious organizations are perceived as potentially dangerous structures which can easily transform into extremist and terrorist organizations.

The main problem is that facing new threats the states use old means like the following:

1. Adoption of new laws: Many governments adopt new laws which deal with the freedom of religion and contain words like "is forbidden", "is not allowed", "is restricted", etc. Not taking into account the warnings of experts that it is impossible to provide precise definitions in such a delicate sphere like the freedoms of religion, states provide unclear and disputable definitions of religion, religious extremism, etc. However, terrorists operate outside legal grounds and the presence of such laws does not stop them. Perhaps this is the reason why despite assuring statements about the adoption of legal acts on the fight against extremism in many countries, terrorist's acts still take place. On the other hand, the laws affect strongly law abiding organizations.
2. Strengthening the police functions of the states: Police is one of the main figures of modern society. However, it is good if there are mechanisms to control the actions of the almighty police. If such mechanisms do not exist, the police can become law-maker, judge and prosecutor united in one person, and the state itself can transform into a legal terrorist explaining in the spirit of Maximilian Robespierre that terror as a quick and rigid justice is necessary to defend democracy. It is naïve to think that registration, accreditation and other similar instruments are an insurmountable obstacle for terrorists. Practically, the terrorists

receive all necessary permits without a problem, and the police use the procedures for their own illegal actions. Only peaceful religious organizations suffer from the administrative procedures. If the believers do not agree with the permission procedures, they are put in line with the terrorists. Let's take as an example the problem of registration of religious organizations which is very acute in many of the post soviet countries. The states do not understand that the fight against unregistered organizations is useless. Such organizations will exist anyway, and their prosecution will just create new groups of citizens disappointed from their state.

3. Strengthening Accountability: The criminal and administrative codes get filled with more and more rigid sanctions. However, it is possible to threaten with a death penalty a terrorist who voluntarily chooses to die? It is possible to determine the member of a religious organization accused of an extremist action and send him to prison. This often happens in the region where I live. Nevertheless, it is necessary to know that for the time that person is under detention, a new extremist group will appear in the prison. At the same time, the access of even traditional, big religious organizations to the prisons is prohibited or is limited on grounds of the separation of religious organizations from the state and numerous procedural regulations.
4. Creation of Lists of Forbidden Organizations: Not only really dangerous organizations, but also innocent organizations can get on such lists simply because the Government or the religious leaders of the recognized religious organizations do not like them or they are prosecuted in other countries. It is important to stress that for the terrorists it does not matter whether they are on a black list or not. It is naïve to think that a state prohibition automatically leads to the termination of activity of the forbidden religious group. All these activities, although very popular, are not effective. They would have been effective under different conditions in case terrorism was an inner state problem with another organization and with a totally different information infrastructure. Under the present conditions, different approaches and forms of antiterrorism measures are needed. It is difficult to make universal recommendations for different countries. The problems about which I talk are severe in some countries and less severe in others. For instance, there are different approaches to terrorism with regard to the events of the last week. The answer of the western Governments to the terrorist acts in London was to defend democracy. In the other part of the world, the Shanghai Cooperation Organization adopted a declaration in which the efforts to combat terrorism are emphasized, but not the importance of democratic institutions.

When talking about the fight against terrorism with regard to the freedom of religion we make the following recommendations for the so-called post soviet region:

1. To stop to create tension with regard to terrorism: It is necessary to make a realistic assessment of the threats and a realistic analysis of the actions of

- different social groups. There is no point in looking for terrorists among those who are not considered to be friends, but are not terrorists either.
2. To reconsider the role of religion in the society: Until now, in many countries religion is perceived in a negative sense as a threat to the state, ideology and morals. If someone hides behind religion in order to achieve unmoral goals, this does not mean that all religion should be blamed for that
  3. To respect the religious beliefs of citizens no matter how strange they are, and not to fight against them: It is easy to respect traditional religious beliefs,; it is much more difficult to respect untraditional ones. It is a common practice to label what is different as being “bad”. However, the respect towards untraditional beliefs of minorities will make them allies instead of enemies to the state.
  4. To recognize the objective need for new religious technologies: If everything changes in the world, the religious forms can not stand still. New religious organizations like sects, etc. differ from the traditional structures. However, is this a reason the prosecute them?
  5. To search for possible forms of cooperation with religious structures: The state can not fight terrorism alone. Help from religious entities can be crucial in this respect. Only people from these structures can help to explain the religious speculations of the terrorists and can help to create a healthy climate of tolerance and respect in the society.
  6. To create the possibility for members of religious organizations legally to express dissatisfaction with the state policy: It is difficult if not impossible to reach full harmony with the state interests and the interests of religious organizations. There will always be some dissatisfaction with the actions of the state administration. However, it is easier to prohibit all dissatisfied persons and to declare them outside the law, but easier only at first sight. It is realistically possible that such prohibitions will lead to the formation of new terrorists. The more difficult task of the state is to ensure that dissatisfaction can be expressed legally. In order to achieve this goal, it is necessary to undertake deep changes regarding the exercise of the freedom of association and the freedom of expression as well as other democratic institutions.

In conclusion, I wish that in the future our meetings are dedicated to nicer questions than the fight against terrorism.

### **Introductory speech by Mr. John Kinahan, Assistant Editor, Forum 18 News Service**

(Written statement)

*How can freedom of religion be fostered as a tool in the fight against terrorism?*

It is Forum 18 News Service's experience that freedom of religion or belief is a litmus test of the state of human rights in any society, embracing, as it does, freedom of speech and association, freedom to publicise ones beliefs, freedom to change ones beliefs, freedom to think differently, etc. In other words, as the European Court of Human Rights

stated in 1993, it is "one of the foundations of a democratic society". Within the OSCE the Copenhagen Commitments, to which all member states are committed, are clear: "Everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards."

Terrorist organizations, relying as they do upon murder, coercion, involvement in criminal financial activities, etc., are in complete opposition to the democratic values set out in the OSCE commitments. OSCE commitments stress that terrorism must be combatted with respect for the rule of law and in accordance with obligations under international human rights, refugee and humanitarian law. This is not only the right moral thing to do. If states do adopt this approach, they will be denying terrorist organisations the grievances which fuel terrorist recruitment, and also encouraging the widespread popular support which is essential for effective anti-terrorism. Promoting religious freedom is one weapon in the fight against terrorism which no government can afford to neglect - especially against terrorists who claim to have a religious motivation.

The Copenhagen Commitments state that religious freedom may only be limited in a manner prescribed by law and consistent with international standards. Yet this is ignored by states in the OSCE region who violate religious freedom, such as in Central Asia. Here, opposition to religious freedom pre-dates 11th September 2001.

In Uzbekistan, the 1998 religion law was justified by President Karimov telling parliament that religion was dangerous, terrorists had to be controlled and that he was ready to shoot Islamic leaders himself. As Forum 18 has documented, many devout peaceful Muslims have been jailed and the state has achieved total control of the education and activity of imams in open mosques.

This policy has failed, Forum 18 has found that repeated high-level official condemnation of Hizb-ut-Tahrir has led many to believe that it is the only movement capable of challenging the discredited Karimov regime. But few in Uzbekistan know what Hizb-ut-Tahrir espouses, though activists have been open with Forum 18 in explaining their anti-democratic and anti-semitic views. As a Muslim scholar argued in a commentary we published in 2004, freedom of religion would allow the views of Islamist groups such as Hizb-ut-Tahrir to be openly debated and their support base to be reduced.

ODIHR found in investigating the Andijan massacre that there was no indication from refugees that religious fanaticism or extremism was behind the popular protests - despite government claims. The protestors appear to have been ordinary people frustrated at the suppression of their human rights and economic opportunities. Yet one reaction by the state was to force known devout Muslims in central Uzbekistan - a long way from Andijan - to sign pledges that they would not join "extremist organisations". As all unregistered religious activity is illegal - in defiance of Uzbek international human rights commitments - such "illegal organisations" range from bona fide peaceful religious

communities that have been unable or unwilling to obtain official registration, to militant Islamist groups seeking to use violence to further their aims.

One Protestant pastor in mid-June in Tashkent told Forum 18 that "the situation in the city remains very tense ... you hear people saying that Uzbeks need to seize state buildings, and that the police and army won't act against the demonstrators next time."

How far do politicians and officials realise that attacking religious freedom obstructs an effective antiterrorist policy? One Kazakh Protestant suggested to Forum 18 that punishing people for peacefully practising their faith damages national security in two ways. 1.) by alienating citizens from the state and 2.) by enabling incompetent law-enforcement personnel to claim successes in combating illegal but harmless religious organisations, instead of effectively policing real criminal and terrorist threats to Kazakh society.

One element in an ineffective anti-terrorism policy is a lack of clear definitions, such as the use of terms such as "wahabism" (an Islamic term sometimes used of Jehovah's Witnesses by Uzbek officials) and "extremism." The Kazakh legislation's use of this term without offering any clear definition has rightly been criticised by ODIHR. The March 2005 Kyrgyz banning of the Falun Gong spiritual movement - which is known for its steadfastly non-violent response to persecution - was another example of this sort of labelling. The real reason for the banning seems to have been pressure from the Chinese Embassy in that country. If officials willfully ignore - as in this case - any need to produce in court incontrovertible evidence of charges made, then one must question how far official denial of reality will blind officials to both real threats and also to effective counters to those threats.

Another element in fuelling terrorism is officials acting outside the law, thus reinforcing people's impression that grievances cannot be peacefully redressed. Religious communities in Kazakhstan have not needed state registration before now - a requirement imposed by the new law. But a Protestant church in the Caspian Sea port of Aytrau is the latest religious community to be attacked because "it is impermissible for a church to operate without registration." New Life Protestant Church, close to Almaty, has been "banned" by local administration chief Raspek Tolbayev, who told Forum 18 that "I will take the decision whether or not to open the church." Parliamentary deputies Forum 18 has spoken to described the new law as a weapon against the "ideological diversity" of the West. A further element in an ineffective anti-terrorism policy is wasting resources. Consider the waste involved in the kind of police raids on religious believers which are routine in countries such as Turkmenistan and Uzbekistan. A recent police raid on a Protestant church in Karakalpakstan involved action from the police, prosecutor's office, court, religious affairs committee, justice ministry and a second court - and undoubtedly the secret police also.

Those experienced in anti-terrorism will testify that, to be successful, large amounts of official resources must be used and time must be spent in ensuring that there is popular support for the state's actions. If Uzbekistan were really interested in anti-terrorism,

would it really waste resources on a peaceful community meeting for worship and use this to justify banning the last registered Protestant church in Karakalpakstan?

Many other examples could be given. The question that we have to face in Central Asia is this: are the OSCE member states in that region opponents or allies of terrorism? The practices of many states suggest that they are not interested in cutting off recruitment to terrorist organizations, nor in targeting the resources of the state most effectively, nor in gaining the widespread popular support essential for defeating terrorism.

In a world where terrorist organizations draw planning expertise, recruits, and material resources from across international frontiers, it is essential that all OSCE member states act to promote genuine religious freedom across the OSCE region, in order to help defeat terrorism, especially terrorism which claims a religious motivation.

**Introductory speech by Dr. Catherine de Wenden, Director of Research, CNRS (CERI), Paris**

(based on notes)

I want to speak about the perspective of immigration. In Europe there are 20/15 million Muslims of non-EU origin. Many of them have already received the citizenship of the host countries. A lot of them do not come from Europe, they have been 'importing' the Islamic culture to Europe already for around 20 years. However, that Islamic culture they have imported is not consistent. There are Turks who are secular; there is also a large population from Maghreb, Western Africa and from the Middle East who brought Islam to Western Europe. In many western European countries we have immigrants of the second and third generation. There is a large population in Europe which wishes to practice Islam.

France as a state is based on the concept of tolerance. However it is about tolerance for individuals but not for groups.

The second principle is secularity.

The third principle is tolerance understood as the respect for human rights. This is the foundation on which European identity has been built.

How did the Islam come to Europe? Most of Islam in Europe is rather calm; its martial form is marginal. However, the situation is getting worse due to the practices in many European countries like discrimination on religious grounds, the impossibility to live up to one's religion, the lack of recognition of foreigners. It gives rise to frustration caused by the inability to express oneself. The economic and social exclusion creates the feeling of non-belonging, of the lack of membership in spite having the citizenship of the country. All these aspects should be considered.

Another issue is the institutionalization of religion, the institutionalization of Islam. If the representatives of Islam are allowed to play a major role in everyday life, this would lead to a better acceptance of Islam in the country. Religious freedom together with non-discrimination would help to fight against the radicalization.

**Introductory speech by Ms. Geneive Abdo, Research Fellow, Georgetown University**  
(based on notes)

In the wake of the attacks in London the question is how does a Muslim transform from a tranquil believer to a suicide bomber? What do we expect in the future from the Muslim population? There are ca. 7,5 million Muslims in the US (?). For years they were almost 'invisible', their identity was not so strong. However, in the US the Islamic community has been segregated only in 4 years because of the lack of integration. The socio-economic profile of the Muslims in the US is different from the Muslims in the EU. Nevertheless, there are similarities. The reasons for the segregation of the Muslims are the following:

1. US policies (domestic and foreign), the war against Islam (as a fuller version of the war against terrorism)
2. The environment in the US advanced by the media and US Government: Many laws that the government has passed like for example the Patriot Act allow a strong interference with privacy and other rights of the Muslims and made them a particularly targeted group. Mosques have been raided, Muslim homes searched, and Muslim lists created. The effect of this act is why Muslims feel alienated in the US. In 2004, there were 15000 reports of violations of human rights filed by Muslims regarding illegal arrests, unlawful detention, etc.
3. Another factor is the biased media. Muslims are presented as animals that do not deserve the same human rights as the rest of the population. According to a study carried out in Cornell University a large number of Americans believe that the rights of Muslims should be curtailed. Biased media and governmental policy blur the social picture of the Muslims.

What should the government and the population do? The Government does not distinguish between a tranquil believer and an extremist. It is important to identify Muslims that matter in the community for a dialogue, to allow these Muslims to be a liaison and to start a dialogue with Muslim organizations. Muslim representatives should be integrated in the decision making process. Currently there are ideas to introduce kind of liaisons with major Islamic organizations because attempts to have 'insiders' did not work well. There are some Islamic organizations that became active after 9/11 who could act as 'policemen' within their own communities but they lack appropriate funding although they can be very effective in the Muslim society.

What can Muslims do? In the US Imams should also be involved to discourage extremism. Unfortunately, they have been identified as extremists themselves. It is

important to identify people who represent Islam the way they want to be represented. Many Islamic activists currently write in newspapers and run for political office; many do this so that their voice will be heard in the political debate. Muslims also try to form their own organizations and establish their own presence as a refuge from the mainstream American society. However, the creation of such organizations is dangerous because this way a separate society is created which can be radicalized. It is important that the leap to radicalization is not made in Europe.

## **SESSION 2 Torture and the Fight against Terrorism**

### **Introductory speech by Dr. John Pearse, Independent forensic psychologist, former Superintendent, Metropolitan Police, UK**

(based on notes)

Ladies and Gentlemen,

I will try to answer two questions in my presentation:

Firstly, how to use safeguards to reduce risk of ill-treatment during interrogation, on the basis of UK experience, and secondly, why evidence extracted through torture shall not be creditable?

My two main recommendations are:

1. need for transparency of interrogation procedures;
2. need for training of interrogators.

What is very important to understand is the banality of torture.

In 1631 a Jesuit writer in England wrote 'whatever the torturer wants to be true, is true'. He introduced however a division between mere first stage torture and 'real' torture.

1935 – 1939 there were massive arrests and torture in Russia. In England more subtle methods were introduced including food and sleep deprivation. However due to the psychological phenomena confession obtained through torture were found unreliable and there was a need to work out certain safeguards.

In 1986 the first legal definition of torture was introduced in England which included not only torture and inhuman treatment but a threat of use of violence as well. In 1994 new legislation with this regard was introduced.

In the US the approach to interrogating is a bit different. There is an assumption that the interrogated person is guilty and wants to deceive the interrogator. They introduced a 9-step techniques for interrogation. These include manipulation of perception of reality through causing internal anxiety (for example Abu Ghraib, Guantanamo).

There is a need of transparency at all stages of interrogation. In UK all interrogations are taped or video taped. Technology is a very important factor strengthening the transparency (DNA proofs, examination of data from mobile phones).

There is a very interesting account in Hannah Arendt's book on Eichmann process in Jerusalem where she touches upon psychological phenomena of interrogation. She calls Eichmann 'a baboon' referring to his inability to distance himself from his deeds.

**Introductory speech by Ms. Karinna Moskaleiko, Director, International Protection Centre, Moscow**

(based on notes)

Ladies and Gentlemen,

There is no need to convince anyone that torture is inadmissible. So we should focus on working on suggestions. I often visit Ingushetia and Dagestan where we do trainings for lawyers and human rights defenders and they give horrible account of the use of torture. The impunity of those responsible for it is grave, and there is no accountability.

There is basically no hope of success in the Russian Federation so that is why lawyers usually apply to international courts and organizations. Russian courts have to stop their inactivity and start to investigate cases concerning alleged use of torture.

New Russian criminal procedural code prohibits using evidence extracted through torture but there are still possibilities to get around this. For example if a lawyer was present at the interrogation such evidence can be used.

There are also problems with penitentiary system and the conditions there. It has to be more transparent especially with regard to the staff. Judicial control in the places of detention is unfortunately not really effective; the courts are not reacting to complaints. It cannot be resolved quickly.

Use of torture shall be criminalized itself. There are a lot of available legal methods and tools but they are not used. If we only would be clear that torture is completely inadmissible then probably we will be able to achieve something.

**Introductory speech by Mr. Michael Posner, Director, Human Rights First**

(based on notes)

Ladies and Gentlemen,

We are dealing with a very real set of threats from extremist organizations. They are both global and very well organized. Effective national security systems are necessary but they shall be neutral from the human rights perspective.

In the US certain new measures were introduced changing totally the relations between the government and citizens. Many of them unfortunately are undermining rule of law.

There is law and war. According to Rumsfeld's concept of law in the war against terrorism, law is luxury not a necessity. (Afghanistan is referred to as a 'law free zone', while Guantanamo is seen as 'outer space').

This approach is moreover supported by the Patriot Act or cases like the Padilla case. A zero-tolerance policy towards torture must however be adopted. Every person has rights and dignity. At the same time in US they are redefining torture. A concept has evolved of 'taking the gloves off'.

Over 100 people died in US custody in recent years including 28 criminal homicides.

The forms of interrogating against human dignity are unethical, wrong and unproductive. There is a need for accountability when people die in custody or are being ill-treated. There should be absolutely no detentions without access to the International Committee of the Red Cross (ICRC). 'Rendition' of people to countries where they are tortured cannot be accepted, especially to the countries where there is a well known pattern of use of torture. In the US they are now working on a concept of preventive detention. But this encourages torture.

Enhancing criminal justice system is necessary as well as transparency and public debate. There should be a public commission established for examining the alleged cases of violations.

**Introductory speech by Ms. Gabriela Echevarria, International Legal Adviser, REDRESS**

(based on notes)

Mr. Chairman, Ladies and Gentlemen,

The definition of torture is provided in Art. 1 of the Convention Against Torture (CAT). Prohibition of torture is a fundamental right and it cannot be derogated at any time. It is considered to constitute a norm of *ius cogens*.

The principle of *non-refoulement* was for the first time provided in Art. 33 of the Refugee Convention and then later on in Art. 33 CAT. It is also recognized by ECtHR and HRC (re Art. 7 ICCPR). This principle is also present in the American Human Rights Convention.

It is also a principle of international customary law. It does not matter whether it is called expulsion, extradition or rendition. It also falls within the scope of Art. 3 ECHR

One of the ways to circumvent the principle of *non-refoulement* is the use of 'diplomatic assurances'. Diplomatic assurances are however not effective since torture in most of the countries is not used officially. Nevertheless in some countries the national courts decided that diplomatic assurances are enough to save such country from being accused of breach of principle of *non-refoulement*.

Another way to circumvent this principle is to use evidence extracted through torture despite the fact that Art. 15 CAT prohibits it clearly. In the UK for example the court decided that as long as the torture itself was not used on the territory of the UK to obtain the evidence such evidence may be used in court in the UK. However the above mentioned ruling is appealed to the House of Lords.

It also breaches fair trial standards.

In the US there is a very similar approach. At Guantanamo most convictions are based on statements of other people detained, many of whom claimed to be the victims of torture. Where there is an issue of national security there is a tendency to dilute existing safeguards.

I would like to make the following recommendations:

1. states have to ensure effective judicial remedies with regard to counter-terrorism measures (not only administrative ones);
2. access to lawyers and doctors in detention facilities must be warranted;
3. there has to be a definite prohibition of use of information extracted through torture.

### **SESSION 3 The Role of Civil Society in the Fight against Terrorism**

#### **Introductory speech by Mr. Yevgeniy Zhovtis, Director, Kazakhstan International Bureau for Human Rights and Rule of Law**

(based on notes)

Mr. Chairman, Ladies and Gentlemen,

We need both strong government and strong civil society to pursue an efficient fight against terrorism.

Civil society has to be seen as part of this process, not as an object of limitations. Responsible media is necessary and we must develop ethical codes on how to work together to depict 'the enemy'.

Terrorism cannot be referred to any particular religion or region. Political opposition also plays a vital role while it is often depicted by government controlled media as defenders of criminals.

Death penalty should be abolished.

If there is no channel for the people to express their dissatisfaction then the radicals are taking over the communication channels. The same applies to the lack of space for the people to be heard in the political forums.

Using slogan of fighting terrorism or extremism in fight against the opposition may cause very serious negative consequences by creating a vacuum which radicals are happy to take over.

Only a strong civil society can help root out and marginalize the radical elements.

**Introductory speech by Prof. Vladimir Petrovsky, MGIMO University, Head of Foreign Policy Studies, Russian Political Science Association**

(based on notes)

Mr Chairman,

Our States' biggest problem is how to provide for human security; they know rather well how to protect own interests.

Governments alone are not able to deal with anti-terrorism – they can not provide for human security, protecting ordinary people, by themselves. Civil society need to assist governments in four ways:

1. to support independent media: interaction between government and civil society (this is the only way for governments to really know what's going on in society),
2. to promote human rights advocacy,
3. to promote civil control over military and security sector, and
4. to help governments with policy advice and advising on legislation.

An illustration of this is the Russian NGO Association of Political Scholars. They have been involved in policy and legislation advice, and civil control over security sector for a long time.

The OSCE recently organized a conference on the OSCE Code of Conduct on political and security measures. This was a 10 year celebration and offered a review of performance of member states according to this code. The aim was to try and expand these from military to other sectors – including police and intelligence sectors. A small group of independent scholars submitted a suggestion to try to review existing Russian laws to make them abide by this Code of Conduct. The military then expanded to security structures which are currently authorized to supervise all anti-terrorist activities.

Unfortunately there are gaps in the legislation which could be used as pretext to violate Human Rights. One example is the law on Combating Terrorism. When there's a major terrorist attack, an anti-terrorist commission will exercise full scope of authority. This doesn't regulate time-frame or space so there are no limitations to where it has mandate and for what time period.

Another example is the Law on Interior Troops (belong to interior ministry, police, also tasked to deal with terrorism). In the Chapter on the use of physical force and weapons, the military and troops are authorized to use any weapons and not subject to limitations with what they do with them under this order. This should be changed. The use of weapons should be proportionate and should avoid harm to civilians.

Another example is the Parliamentary regulation: all control is here exercised within executive power branch and not the legislative branch. After the Dubrovka theatre terrorist attack in 2003, gas was used to take the building by storm. There was an attempt to set up an independent investigatory commission, but the Parliament is not authorized to conduct investigations by the Russian Constitution. When they set it up it had to be as private individuals. Civil society and lobbyists here tried to meet Putin, but he refused and rejected the investigation.

A few months later the tragic episode in Beslan occurred, and the hostage taking of a number of schoolchildren in Ossetia schoolchildren hostages. This time the Government instigated the independent commission. They had learnt their lessons from Dubrovka.

The Russian Federation is trying to learn best practices from the US 9/11 Commission – not just by Congress but by independent experts as a collective work. Putin suggested the creation of a ‘Public Chamber’, a group of private individuals existing under Russian Parliament to provide public policy advice. This body is to start its operations in July 2005. We suggested an amendment to federal law to expand the functions of this body to be obliged to provide public comment on all laws.

My recommendations would be the following:

We should all try to review OSCE commitments to enhance the role of the independent media. The Copenhagen+ Document should for example include a special chapter on this.

Secondly, the OSCE Code of Conduct should be reviewed, trying to expand this document beyond the military but also the security sector at large.

Thirdly, national legislation guidelines on anti-terrorism measures. The ODIHR should continue its good work here.

**Introductory speech by Ms. Iruno Aguirrezabal, Director, Coalition for the International Criminal Court, expert consultant for Madrid Summit on counter-terrorism**

(based on notes)

Ladies and Gentlemen,

It is important to look at the role of the victims of terrorism (as well as their need for support).

In March 2005 the Madrid Agenda was adopted: 'Citizens are actors'. With it we saw the creation of a 'global citizens' network against terrorism'.

There are legitimate ways to represent any resentment or grievance.

Following the terrorist attacks on 11 March 2004, there was an impressive mobilization of civil society. It was similar to the developments in the Basque country. It took years to happen, but has been crucial. Commissioner for Human Rights stated that terrorism affected the free exercise of civil and political rights. Open democracies are threatened by terrorism. Methods to fight terrorism are the promotion of tolerance, the dialogue within civilizations and between civilizations and holding governments accountable.

1<sup>st</sup> recommendation: this panel and conference should also follow the recommendation of the Madrid Agenda to establish a 'global citizen's network against terrorism'. It is important to counter political support for terrorism from religious communities. Civil society can offer solidarity with victims and raise awareness on what has happened. Sensitive public opinion about the consequences for the victims of terrorism is needed. An important part of civil society is to take into account the victims of terrorism.

As far as the victims of terrorist acts are concerned, at the UN level, there are many treaties where rights of victims are included like the ICCPR, the Convention against Torture, etc. The UN Declaration of the Rights of Victims of Crime deals with the access to justice and fair treatments. The right to reparations is also crucial.

When it comes to victims of genocide and crimes against humanity in Rwanda and Yugoslavia, for example, their role was limited to serving as witnesses; and the rights to reparation were also limited. People need an enforceable mechanism of protection against terrorism and reparation for terrorist acts. A mechanism is needed for them to claim their rights.

Likewise, the victims of terrorism. After September 2001, UN Resolution 1373 was adopted; and the framework for international cooperation on anti-terrorism was created. The possibility of creating a trust fund for victims should be considered. Voluntary contributions don't work as one expects them to. It is important to reaffirm solidarity with the victims. My hope is that the Commission on Anti-Terrorism will look into victims' rights.

As far as the London attacks are concerned, victims were mentioned and sympathy was expressed by the UN Security Council. Kofi Annan participated in the Madrid conference; he liked the idea of a comprehensive strategy against terrorism. I hope that the delegates and NGOs will look at the Madrid Principles. We owe it the victims to bring to justice the criminals. It is important to address the needs of the victims of terrorism. The creation of a high commissioner for victims of terrorism as a representative of victims' rights should be considered.

In Spain, almost 1000 people have been killed, not just by the ETA, but also by others, such as al-Qaeda.

Both the State and regions have created 'comprehensive' legal foundations defending victims' rights; this has not always been the case. Spain can provide important lessons for other countries.

In 1999, the law of solidarity with the victims of terrorism was adopted which introduces the civil responsibility of the state in compensating victims. The law affects all victims of terrorism, those recognized or those who can prove to be affected. It includes honors and insignia. A Sub-directorate of the Ministry of Interior was created that provides coordination between victims at the State and regional levels. The position of a High Commissioner to support victims' rights was also created. A Basque office set up an office for victims' rights.

The main issues regarding reparations to the victims of terrorism are health, education, housing, labor rights, expenses related to travel, mortgages to support houses that need to be repaired. The distinction in Spain between high level and low level terrorism is important; about 40,000 people living under the threat of terrorist attacks, so not just dead victims are concerned.

Another example is that Spain granted nationalization of foreigners who happened to be in the 11<sup>th</sup> March trains.

Associations of Victims today provide legal assistance in access to criminal proceedings, as well as psychological support. They contribute to sensitizing society to problems of terrorism in the Basque country. One of them was awarded a prize by the European Parliament. Terrorists and victims live in the same villages (small or big) which creates a specific situation. For many years civil society completely ignored victims; they were not subject to ostracism. They wonder now why they were ignored. Until the 80s the targets were military and police. Only after socialization of ETA people became targets.

For a long time attention was placed on the political motivations of the terrorists, not on the political significance of the victims. However, they have a critical role as representatives of society. Persistence of memory of the 'crime' committed is what is going to make it impossible for the terrorists to continue living in the society.

The commitment not to use the issue of terrorism in political discussions between opponents was made. This promise was unfortunately broken, especially illustrated by the change of government. For as long as ETA stopped killing, government could engage in dialogue. This resolution led to major demonstration by half of the victims' associations (they were completely divided on the issue). Should victims have a say in defining counter-terrorism policies e.g. granting of amnesties, of governments? What is the risk of politicization of victims' associations? Is it alright to assimilate, to put at the same level, the victims of the state (e.g. torture, violations of HR and civil freedoms) and

the victims of terrorism? We should not put these types of victims at the same level because this just creates justifications for the terrorists to use violent means.

My recommendations are as follows:

Victims can not be an obstacle to peace and reconciliation – they are an integral part of this process. The language used is not proper; the “war against terrorism” is a mistake. Terrorism is criminal; victims are not casualties of a ‘war on terror’, but victims of crimes. It is wrong to talk about Islamic or Christian terrorism. They are just terrorists, e.g. separatists.

**Introductory speech by Dr. Gus Hosein, Senior Fellow, Privacy International, Visiting Fellow, London School of Economics and Political Science**

(based on notes)

Mr Chairman,

The situation regarding privacy and civil liberties is bad. I will try to be a bit more constructive than going on about this.

After last week’s attacks, journalists called me, often trying to stir the pot. A very common question was: shouldn’t the UK begin introducing more draconian laws? I could have answered pessimistically: ‘London’s already the most surveilled city on earth’. Instead I said, ‘look at laws introduced since 9/11; since then, e.g. US Patriot Act: the US has its problems and the Americans are dealing with it. It’s the way these laws become a part of a fabric of society, it’s this public debate and deliberation in civil society that is fascinating and important. It is important to question the legality of powers and how the laws are applied. Court cases over detention of suspected terrorists for the most part led to positive developments. In the US there was research on accumulation and processing data on potential terrorists. Because of the public pressure and the media, such projects were abandoned. It was an exciting time to see Congress men decide to remove funding from such projects because they were seen as dangerous. In the UK a recent debate about identity cards started; the same thing happened in France. The more people were educated about fine details as done by civil society and media, the more opposition grew where people were either passive or pro-active.

Enough optimism: now pessimism. When we speak about protecting due process in legal systems, we always have some blind spots in the system. Today, I will focus on the jurisdiction. Not the legal side of it (Guantanamo Bay), but more on the jurisdiction in the sense of what happens when decision-making processes are moved to the international level. For instance, the UK home secretary and the Prime Minister said that no amount of surveillance would have prevented the attacks. However, the following week on the level of the Presidency of the European Union there was a speech in favor of more surveillance. In the UK, there is the political will to pass laws to log all transactions, phone conversations, etc. However, the Prime Minister knows that such reforms can not be passed. Therefore, at the same time he tries to push them forward at

the European level so that later the argument can be used “We do not want these reforms, but we are obliged to carry them out”. Another issue is to include fingerprints on the IDs; there is no due process or deliberation on that level; no parliamentarians are involved in that process. That way the debate is reduced which is quite frighteningly.

Generally, there is the difficulty to reach a consensus; however, we don't see this when governments come up with police powers. They're constantly agreeing, e.g. G8 despite the huge disagreements on the issues. Later the governments can say ‘we're under international obligations’. There is a loss of due process at the international level. What rights do citizens have when being fingerprinted or being compared to ‘watch lists’? Rendition, sharing information across borders – we lose the laws that usually protect our rights as data moves internationally and international laws appealed to.

How should we preserve the debate and the deliberation at the international level (or when doing things at national and international level) – and maintain legal jurisdiction? Can we compel governments to discuss what they are going to do at the international level before they take issues there?

What goes on in Parliament is not debate and deliberation (e.g. information on US drivers' licenses). When discussed in the Senate, this bill was attached to a funding bill on the war in Iraq and to a bill on tsunami victims. This way it was assured that there is no way not to approve the bill on driver's licenses because it was impossible to reject the other two bills.

It's up to the legislators to come up with solutions to appearances like Guantanamo Bay. Instead the Government produces popular statements like ‘if you don't do anything wrong, you have nothing to fear’.

Civil society is a source of expertise and has to participate and contribute to these legislation making processes.

Pericles, an ancient Greek philosopher, said: ‘Governments can create laws but it's our duty to question them’.

**ANNEX V.                    OPENING AND CLOSING REMARKS by Ambassador  
Strohal, ODIHR Director**

(written statements)

**OPENING REMARKS**

Ladies and gentlemen,

I would like to welcome you all to this Supplementary Human Dimension Meeting on counter-terrorism and human rights. It is an opportunity to exchange views on one of the most urgent and difficult issues we are facing today: ensuring that human rights are respected in the fight against terrorism.

Before saying a few words about the meeting's context, I would like to take this opportunity to express my sincere condolences to the United Kingdom and to the families of the victims of the appalling terrorist attacks on commuters in London last week. It is at moments like this that we are brutally confronted with the challenge to stand up to terrorism. We must not allow it to question our commitment to uphold the principles of human rights, the rule of law and democracy. I applaud the measured and dignified response of the British authorities and the British public to these terrible attacks. Their response gave a clear message that terrorist acts will not be allowed to undermine the values of democratic society.

At the outset, allow me to underline the importance of the OSCE's concept of comprehensive, and cooperative, security. The concept's key elements are the indivisibility of security and the allegiance to shared values, commitments, and norms of behaviour. At the OSCE Istanbul Summit, 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."

This concept of comprehensive security is a crucial element of the fight against terrorism as the threat of international terrorism aims at affecting the fundamentals of security, including democracy and human rights. When developing a comprehensive security strategy for the 21<sup>st</sup> century, the OSCE participating States have emphasized the need to focus equally on prevention and on reaction to terrorism. This is also the approach the ODIHR has taken in developing its activities in this area.

Ladies and Gentlemen.

A strategy to tackle terrorism can only be comprehensive if it recognizes one crucial element: that curbing human rights, and using excessive force in civilian crisis management, will only have a destabilizing effect, generating conditions that foster radicalization of individuals and groups of society. Such recognition is manifested in the OSCE commitment to promote a climate of mutual respect and tolerance in all participating States. The ODIHR supports this work by offering its assistance to

strengthen democratic institutions, human rights, the rule of law, tolerance, and mutual respect.

This meeting offers the opportunity to study a number of key topics which need to be addressed in order to ensure that the fight against terrorism does not undermine the protection of human rights in the OSCE region.

The first session addresses the need to **protect freedom of religion** in the context of the international fight against terrorism. The fight against terrorism must not be used as an opportunity to suppress religious or political groups.

The ODIHR has raised concerns about the increased use of legislation proscribing 'extremism' in the OSCE region without any clear definition of the acts and offences which might be criminalised in the context of violent extremism.

The ODIHR is concerned about the prohibition and dissolution of political groups in some countries on account of their alleged extremist or terrorist activities. We will gather and analyse data on existing legislative provisions and practices. We will also monitor legal developments and implementation of relevant law. In response to a request from a participating State, the ODIHR is currently facilitating technical assistance on developing non-legislative ways of addressing extremism. Non-legislative measures include educational projects, confidence-building measures, inter- and intra-religious dialogue, community-based initiatives and civil society capacity building – these are all measures which in turn help to prevent conflict and to combat factors that may engender violent extremism and terrorism.

Another cause for concern in the OSCE region stems from the focus on religion in public debate about the threat of terrorism. Some media and politicians often stress a link between religion and terrorism. This can lead to immigrant and religious communities feeling stigmatized and discriminated against because of their beliefs. Instead, we need to strengthen the capacities to better integrate such communities into our societies.

The second topic to be dealt with at this meeting is **torture**. The prohibition on torture is absolute and non-derogable. Torture is also recognized as an international crime; and yet allegations of torture and public debates about the use of evidence extracted through torture and ill-treatment are still evident across the entire OSCE region, in particular in context of the fight against terrorism.

Extradition has been recognized as an important area of international cooperation in the fight against terrorism. The ODIHR is concerned, however, by risks posed in the transfer of persons across borders, whether through extradition, rendition or expulsion, which may expose them to torture or ill-treatment in breach of the principle of *non-refoulement*. This principle and other human rights obligations prohibit States from returning a person to a place where he or she would be at risk of torture or ill-treatment, whether or not that person is accused or convicted of a crime. This is an issue which many states face when cooperating in the fight against terrorism.

The third topic, the **role of civil society** in the fight against terrorism, is of particular significance in the OSCE comprehensive security approach to terrorism:

An active civil society demonstrates engagement in public life. It promotes democracy and respect for human rights. This, in turn, counters feelings of marginalization and powerlessness, which can serve as a breeding ground for terrorist ideology and recruitment. Civil society actors can provide legal expertise to assist the legislator in fulfilling human rights obligations in national terrorism legislation. They can contribute to establishing comprehensive approaches in legislation and practice in the face of an acutely perceived terrorist threat. Moreover, victims' associations also play an important role to assist in promoting and protecting the rights of victims of terrorism.

Ladies and Gentlemen,

Allow me to conclude with a few words on the work of the ODIHR in the field of anti-terrorism. It is a combination of monitoring, technical assistance and analysis of specific themes, such as the issue of extremism, protection of the rights of victims, and judicial cooperation. The ODIHR can provide technical legislative assistance, specific advice and training to participating States to address the complex issues involved in protecting human rights while combating and preventing terrorism. We are currently developing a training program for public officials who have to work on these questions on a daily basis.

The ODIHR is supporting initiatives bringing together public officials and civil society actors to discuss ways of addressing extremism. The ODIHR has continued its work on this issue, in particular by exploring non-legislative means of combating extremism.

We have also focused on the protection and promotion of the rights of victims. The ODIHR intends to launch a study of legislation and structures in OSCE states regarding the protection and promotion of the rights of victims of terrorism with a view to making recommendations of best practice on this subject. In this context let me express the gratitude of the Office to Spain for their generous contribution to our activities in this area, as well as to Liechtenstein and Austria for their support to our programme on human rights and counter-terrorism.

The ODIHR's work on counter-terrorism and human rights forms a part of the global strategy on the fight against terrorism and for this reason, the ODIHR is actively cooperating with the Anti-Terrorism Unit of the OSCE Secretariat to contribute to a comprehensive approach of the organization to counter terrorism. In addition, the ODIHR works closely with other international organizations such as the UN Office of the High Commissioner for Human Rights, the UN Office on Drugs and Crime, the UN Counter-Terrorism Committee, the Council of Europe and the European Union to ensure that our work provides added value in the region. The ODIHR along with the ATU have been involved in recent consultations within the Council of Europe on implementation of the 2002 and 2005 guidelines on protecting human rights while countering terrorism. The

ODIHR is currently exploring the possibility of the OSCE formally supporting the application of the guidelines.

Ladies and Gentlemen.

The effectiveness of the ODIHR's work depends on the willingness of participating States to effectively address the issues we are discussing here today. We stand ready to respond to further requests from States for technical assistance and training.

We are faced with a challenge. We must not allow that human rights and the rule of law become casualties of the fight against terrorism. That would be conceding a victory to terrorists.

I look forward to a concrete outcome of the discussions over the next two days.

## **CLOSING REMARKS**

Mr. Chairman,  
Excellencies,  
Ladies and Gentlemen,

We have come to the end of a couple of very full days.

The UK has demonstrated over the past few days that resolve in the fight against terrorism best translates into smart and efficient operations by investigators, forensic and other experts.

Where resolve translates into the application of crude and brute force, it unfortunately risks breeding more terrorism, rather than fighting or preventing it.

That is also why the question on how the global fight against terrorism is being conducted by states is of collective concern. If one state abuses its authority to crack down on legitimate opposition, to stifle freedom of expression, freedom of religion and freedom of association, it affects all of us, around the globe.

It is not just that terrorists and explosives travel around the world and cross many borders; it is also that ideas – unfortunately including the most destructive ones – flow freely and easily.

As the events in London last week and the revelations on the perpetrators have frighteningly revealed, metaphors of “us” and “them” do not really fit to the complex situation we actually face.

This regards also the debate about victims of terrorism. In the final analysis, we are all victims. The victims of the London attacks all had one thing in common: they were just

random people, like any of us, who were targeted precisely for that reason. When we therefore also include, in our discussions in the OSCE, the perspective of victims of terrorism, we do this not for some remote abstract group disconnected from societies, we are talking, at least potentially, about our own personal security.

The human rights challenges involved – many of which we have discussed here over the past two days - are only a reminder of how complicated the challenge is. What is not needed is “rallying around the flag”; and it will take more than “resolve” to adequately address that challenge. What is needed is effective and intelligent international cooperation including a wide range of professionals and agencies. This is especially true for the cooperation between governments and civil societies, as the last session highlighted.

We must reinforce the common goals of those who point to the importance of upholding human rights, and those who want to pursue the fight against terrorism and the pursuit of terrorists with the fervor it deserves. Many who have spoken over the past days have recalled the importance of ensuring that the basic tenets of our free societies – democracy, human rights and the rule of law – must not be sacrificed in the fight against terrorism, as that would, as it were, play into the hands of the very terrorists we fight.

Right. But how do we do that realistically in practice? That is a question to which this meeting has started to provide answers. It will require joint efforts, and clear thinking, to move ahead on this challenge. I really hope that this meeting – much more topical these days than any of us could have wished it be – contributed to developing what the OSCE can do concretely in this regard.

I therefore encourage participating States to endorse and implement the recommendations that have come out of the three working sessions. These recommendations are the results of constructive discussions among OSCE delegations, expert government representatives and civil society.

I also encourage a good preparation for following up concretely on these recommendations at the HDIM in September in Warsaw. ODIHR will be ready to strengthen our capacity to support our participating States and civil society in their activities.

Finally, I would like to thank the ODIHR staff, especially the human rights department, who have worked so hard to make this meeting the success that it has been.

I am grateful that Terry Davis was able to be with us at the beginning of the meeting. It demonstrates that relevant international organizations complement each other’s work and work jointly to address these challenges.

In the end, it is the wisdom and strength of democratic governments around the world which will determine whether what we are trying to preserve will prevail.

**ANNEX VI.**

**CLOSING REMARKS by Ambassador Janez Lenarcic,  
Permanent Representative of the Republic of Slovenia to the  
OSCE, Chairman of the Permanent Council**

(written statement)

Director,  
Your Excellencies,  
Ladies and Gentlemen,

This Meeting proved to be a very important event for the OSCE this year.

I would like to point out that this was the first time that an OSCE event was dedicated solely to the discussions on human rights and the fight against terrorism. Yet in the past two OSCE related seminars on the topic of terrorism and human rights were organized, first one in the Hague in 2001 by the Netherlands Helsinki Committee and the second one in Copenhagen in 2004 by the ODIHR together with Danish Government. While during the 2001 seminar the focus of the discussion was whether and to which extent the human rights should be respected in the fight against terrorism, and while in Copenhagen it was made clear that human rights should be fully respected while combating terrorism, it was evident during this seminar that we need to focus on concrete implementation of human rights standards and the application of the rule of law in each and every action against terrorism we take, including in the protection of the victims of terrorism. International law, in particular international human rights law, refugee, and humanitarian law should be fully applied.

At a time of globalization and openness, the interdependence of the international community and the indivisibility of international security are coming to the fore more than ever. Therefore the common and coordinated approach of international and regional organizations as well as cooperation between governments and even different sectors of the same government is needed in order to be successful. It is important to recognize that human dimension should not be left aside in this coordination effort. Protection of human rights is not a separate issue from core security issues in the context of fighting terrorism. The protection of human rights is part of the same security, or even more precisely, of the human security approach. We must be aware that full respect for values such as democracy, human rights and the rule of law represent the most efficient, long-term weapons against terrorism.

The Slovenian Chairmanship welcomes a number of recommendations made during this Meeting, and we are looking forward for the follow-up during the incoming HDIM in September in Warsaw, as well as at the Ljubljana Ministerial Council. We hope that we would be able to prepare a decision on the human rights and terrorism to be adopted on that occasion. In this respect we should in particular acknowledge the importance of the cooperation of the OSCE with the UN and the Council of Europe, as well as with the civil society. Additionally, relevant OSCE structures and institutions should enhance their co-

operation in this field as the main advantage of the OSCE is its comprehensive, cross-dimensional approach to fighting terrorism.

To conclude, I would like to thank the ODIHR and especially its Human Rights Department for excellent cooperation and work done in organizing this meeting. I would also like to thank keynote speakers, moderators, introducers and rapporteurs, and all others, who made this meeting possible.

## ANNEX VII. AGENDA OF SIDE-EVENTS

**Friday 15 July 12.00 – 13.30hrs**

**Venue: Segmentgalerie I**

### **Defence lawyers in the Age of Terror**

**Organizers: Rule of Law, ODIHR**

*In an atmosphere of increasing tension defence lawyers are finding that they face increasing difficulties as they try to ensure that trials of alleged terrorists comply with international human rights standards. What is the nature of those difficulties and how might the situation be improved.*

Speakers: Ms. Nozima Kamalova, Lawyer, Chair of the Legal Aid Society of Uzbekistan  
Ms. Mudassar Arani, Lawyer, UK

Moderator: Frank Ledwidge, ODIHR

**Friday 15 July 12.00 – 13.30hrs**

**Venue: Bibliotheksaal, 5<sup>th</sup> floor**

### **Anti-Terrorism as a Pretext to Restrict Human Rights**

**Organizer: International Helsinki Federation for Human Rights (IHF)**

*The problem of human rights violations and restrictions of civil and political rights committed in the name of fighting terrorism has become more acute. The briefing will concentrate on two examples, the Russian Federation and Uzbekistan.*

Speakers: Katya Sokirianskaia, Human Rights Center “Memorial”, Nazran Office  
Talib Yakubov, Human Rights Society of Uzbekistan  
Tanya Lokshina, IHF, Demos Center  
Eliza Moussaeva, IHF

Moderator: Joachim Frank, IHF

**Friday 15 July 16.00 – 16.15 hrs**

**Venue: Segmentgalerie I**

**Freedom and Security: Outreach and Prevention of Discrimination**

**Organizers: U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties**

*An essential element of security is preserving freedom and preventing racial, ethnic and religious profiling. This briefing will focus on the efforts of the U.S. Department of Homeland Security to engage and cooperate with various racial, ethnic and religious groups to preserve civil liberties and improve security. Following a brief introduction, Mr. Timothy Keefer will show a 12-minute film used by the Department of Homeland Security to train law enforcement officer about respecting Muslim and Arab cultures.*

## **ANNEX VIII. PARTICIPATION**

The SHDM was attended by a total of 206 participants, including 118 delegates from 43 of the 55 OSCE participating States. 2 representatives of Partners and Mediterranean Partners for Co-operation (Algeria and Japan) were also present.

In addition, 14 representatives of international organizations were present:

- Council of Europe
- European Monitoring Centre on Racism and Xenophobia
- European Parliament
- Int'l Committee of the Red Cross
- Int'l Federation of Red Cross and Red Crescent Societies
- Int'l Organization for Migration
- Office of UN High Commissioner for Human Rights
- South-East European Cooperative Initiative
- UN Counter-Terrorism Committee Executive Directorate
- UN Office on Drugs and Crime
- and Branch Office in Austria of the UN High Commissioner for Refugees

The Meeting was attended by 26 representatives of OSCE institutions and missions and by 46 representatives of 37 non-governmental organizations.

## ANNEX IX.

## INDEX OF DOCUMENTS DISTRIBUTED DURING THE SHDM

Reference Number	Date of Document	Originator	Title/Content
PC.SHDM.DEL/23/2005/Rev.1	14-Jul-2005	France	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Session 1, Contribution (F)
PC.SHDM.DEL/24/2005/	14-Jul-2005	Holy See	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution by the Holy See
PC.SHDM.DEL/25/2005/	14-Jul-2005	Germany	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Recommendations by Germany
PC.SHDM.DEL/26/2005/	14-Jul-2005	United Kingdom/EU	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Opening Session, EU Statement
PC.SHDM.DEL/27/2005/	14-Jul-2005	USA	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, US Statement by Mrs. Kutch - Helbling on Religious Freedom and the Fight against Terrorism
PC.SHDM.DEL/28/2005/	14-Jul-2005	CIO-Slovenia	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Opening Session, Welcoming Remarks by Mr. Sefic, Head of the Interdepartmental Working Group on Counterterrorism, Slovenia
PC.SHDM.DEL/29/2005/	15-Jul-2005	USA	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, US Statement on Freedom and Security - Outreach and Prevention of Discrimination

PC.SHDM.DEL/30/2005/	15-Jul-2005	USA	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, US Statement by Mr. Harris on Preventing Torture in the War against Terrorism
PC.SHDM.DEL/31/2005/	15-Jul-2005	Azerbaijan	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Statement
PC.SHDM.DEL/32/2005/	15-Jul-2005	Azerbaijan	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Statement
PC.SHDM.DEL/33/2005/Rev.1/ Corr.1	20-Jul-2005	CIO- Slovenia	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Closing Remarks by Amb. Lenarcic, Chairman of the Permanent Council
PC.SHDM.DEL/34/2005/	15-Jul-2005	USA	Supplementary Human Dimension Meeting on Human Rights and the Fight against Terrorism, Vienna, 14 - 15 July 2005: US Closing Remarks by Mr. Harris
PC.SHDM.DEL/35/2005/	18-Jul-2005	Norway	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 2, Talking Points
PC.SHDM.DEL/36/2005/	18-Jul-2005	United Kingdom/E U	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: EU Closing Statement
PC.SHDM.DEL/37/2005/	18-Jul-2005	Turkey	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Speaking Notes
PC.SHDM.DEL/38/2005/	20-Jul-2005	Armenia	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, Statement
PC.SHDM.DEL/39/2005/	20-Jul-2005	Armenia	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Closing Remarks

PC.SHDM.GAL/6/2005/	14-Jul-2005	ODIHR	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Opening Session, Welcoming Remarks by Amb. Strohal, Director of the ODIHR
PC.SHDM.GAL/7/2005/	14-Jul-2005	ODIHR	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Document Prepared by OSCE ATU and ODIHR on the OSCE Comprehensive Approach to Counter - Terrorism and Human Rights
PC.SHDM.GAL/8/2005/	18-Jul-2005	ODIHR	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Closing Remarks by Amb. Strohal, Director of the ODIHR
PC.SHDM.IO/2/2005/	14-Jul-2005	Novak	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Opening Session, Statement by Mr. Novak, Keynote Speaker
PC.SHDM.IO/3/2005/	14-Jul-2005	Council of Europe	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Opening Session, Address by H.E. Mr. Davis, Secretary General of the Council of Europe
PC.SHDM.NGO/2/2005/	12-Jul-2005	IHF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Side Event, Anti-Terrorism as a Pretext to Restrict Human Rights: Contribution (E,R)
PC.SHDM.NGO/3/2005/	14-Jul-2005	ATP	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Session 2, Contribution
PC.SHDM.NGO/4/2005/	14-Jul-2005	ATP	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Session 2, Contribution
PC.SHDM.NGO/5/2005/	14-Jul-2005	ATP	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 2, Contribution

PC.SHDM.NGO/6/2005/	14-Jul-2005	ACT	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Session 2, Final Report by Azerbaijan Committee against Torture about Cases of Torture Revealed within the Year 2004
PC.SHDM.NGO/7/2005/	14-Jul-2005	UHHRU	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Side Event, Contribution
PC.SHDM.NGO/8/2005/	14-Jul-2005	Podpriogora	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution by Mr. Podopriogor, Introducer (R)
PC.SHDM.NGO/9/2005/	14-Jul-2005	Kinahan	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution by Mr. Kinahan, Introducer
PC.SHDM.NGO/10/2005/	14-Jul-2005	Forum 18 News Service	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution
PC.SHDM.NGO/11/2005/	14-Jul-2005	Forum 18 News Service	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution by Forum 18 News Service
PC.SHDM.NGO/12/2005/	14-Jul-2005	USCIRF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution
PC.SHDM.NGO/13/2005/	14-Jul-2005	USCIRF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution
PC.SHDM.NGO/14/2005/	14-Jul-2005	USCIRF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution
PC.SHDM.NGO/15/2005/	14-Jul-2005	Forum 18 News Service	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution by Forum 18 News Service

PC.SHDM.NGO/16/2005/	14-Jul-2005	USCIRF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 1, Contribution
PC.SHDM.NGO/17/2005/	15-Jul-2005	HRWT	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, Contribution by Ms. Lokshina, HRWT
PC.SHDM.NGO/18/2005/	15-Jul-2005	IHF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, Contribution by IHFHR (E,R)
PC.SHDM.NGO/19/2005/	15-Jul-2005	IHF	Supplementary Human Dimension Meeting on Human Rights and the Fight Against Terrorism, Vienna, 14 - 15 July 2005: Working Session 3, Contribution by IHFHR (E,R)