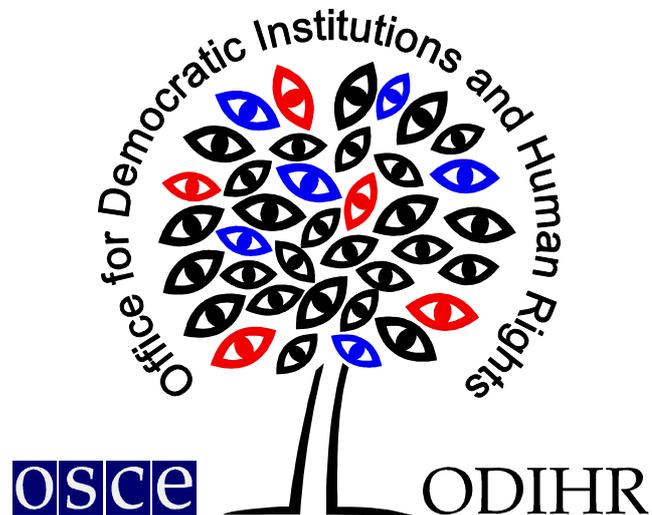


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Preventing and Combating Terrorism: The New Security Environment

Food for Thought Paper

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PART 1: BACKGROUND

Introduction

The purpose of this paper is to highlight the role of human rights, democracy and the rule of law in countering both terrorism and the growth of religious and political extremism. It should be seen as a follow-up to the paper submitted for the first OSCE Annual Security Review Conference held in Vienna in 2003. The paper will discuss the challenges of human rights promotion and protection in the global fight against terrorism and highlight those rights and freedoms which are at risk in the changing and challenging security environment of the 21st Century. Terrorism is one of the most significant causes of instability in the current security environment. According to the OSCE Strategy to Address Threats to Security and Stability in the 21st Century, terrorism ‘seeks to undermine the very values that unite participating States’. The Strategy paper also reminds us that there can be no justification whatsoever for terrorist acts, further stating that, at the same time, countering terrorism ‘requires a global approach, addressing its manifestations, as well as the social, economic and political context in which it occurs’. The obligation of each participating State to protect everyone within its jurisdiction from potential terrorist attacks is central to the OSCE approach, as is the commitment that anti-terrorism measures taken by participating States fully comply with OSCE commitments and obligations under international law, in particular human rights, humanitarian and refugee law.

The essence of human rights is that human life and dignity must not be compromised and that certain acts are never justified no matter what the ends. A reckless approach towards human life and liberty undermines counter-terrorism measures.¹

The Comprehensive Approach to Security and the Human Dimension

The OSCE approach is one of co-operative security based on democracy, respect for human rights, fundamental freedoms, the rule of law, a market economy, and social justice. This concept’s key elements are the comprehensiveness and indivisibility of security and the allegiance to shared values, commitments, and norms of behaviour. At the OSCE Summit in Istanbul, participating States reaffirmed that ‘respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE’s comprehensive concept of security’. OSCE participating States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively. Indeed, ‘respect for and compliance with international law and the principles of the Charter of the United Nations remain central to efforts to prevent and combat threats to stability and security’.²

The Tasks of the ODIHR

The main OSCE documents³ outlining commitments to prevent and combat terrorism are the Bucharest Plan of Action (2001)⁴ and the OSCE Charter on Preventing and Combating Terrorism (2002).⁵ The Bucharest Plan of Action established a framework for comprehensive OSCE action fully respecting international law, including international human rights law. The Plan of Action states that, while no circumstance can justify acts of terrorism, ‘... there are various social, economic and political and other factors, including violent separatism and violent extremism, which engender conditions in which terrorist organizations are able to recruit and win support’. The Bucharest Plan of Action tasks the ODIHR to address those factors and further states that the ODIHR will be active in strengthening democratic institutions, human rights, tolerance, and multiculturalism.

¹ Mary Robinson, UN High Commissioner for Human Rights, 2002

² MC(11).JOUR/2 OSCE Strategy to Address Threats to Security and Stability in the Twenty-first Century

³ All OSCE documents relating to anti-terrorism can be found in the Reference Guide at www.osce.org/odihhr

⁴ MC(9).DEC/1 adopted the Bucharest Plan of Action

⁵ MC(10).DEC/1 adopted the OSCE Charter on Preventing and Combating Terrorism

PART 2: UNDERSTANDING THE NEW SECURITY ENVIRONMENT

Human Rights and Counter-Terrorism Measures: Rights at Risk

There is general worldwide consensus that violating human rights as part of the fight against terrorism is counter-productive. Indeed counter-terrorism measures that fall outside the framework of the rule of law and democratic principles effectively roll back well-established norms and lay the foundations for further insecurity. Concern remains, however, that violations continue and the 'war on terrorism' is used as a pretext. This concern centres on the suppression of legitimate expressions of dissent and the limitation of fundamental freedoms, in particular freedom of religion and belief, freedom of expression and freedom of assembly. In addition, standards of privacy and the right to a fair trial are at risk. The Bucharest Plan of Action states that measures taken to combat terrorism must fully respect international law, including international human rights law, obligations which can also be found in UN General Assembly and Security Council Resolutions⁶

*We should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights.*⁷

Rights at Risk

Any discussion of human rights in the context of preventing and combating terrorism must recognise the basic premise that state authorities have a duty to take steps necessary to protect society from terrorism and that at the same time, in attempting to protect its citizens, the state must take care not to erode the basic values of liberty and right to privacy that are central to the character of democracies. This is a delicate balance to achieve and in addressing this dilemma, concerns have arisen with respect to the protection of certain rights, as outlined below:⁸

- a) Freedom from arbitrary arrest and detention
- b) Pre-trial detention
- c) Freedom of expression and association. Particular attention should be drawn to the clampdown on NGOs in the aftermath of 11 September.
- d) Freedom from discrimination. The prohibition of discrimination on the grounds of race, colour, sex, religion, political opinion or national or ethnic origin has been recognised as non-derogable by several UN bodies.
- e) Right to privacy. Various international and bilateral agreements on the exchange of information and intelligence between States give cause for concern, as well as the numerous measures introduced since 11 September.
- f) Migration, refugee and asylum. Concerns have been raised over attempts to create links between refugees and terrorism and to erode the right to seek asylum. In all circumstances states must respect the principle of *non-refoulement*, which prohibits the expulsion or return of a refugee to a country where his or her life or freedom is threatened.
- g) Extradition. The so-called Soering Principle, established by the European Court for Human Rights has attained broad recognition. This principle set down that a person may not be extradited to the country where there is a risk of treatment that is torture or amounting to cruel, inhuman or degrading treatment or punishment (see further under 'States of Emergency').

Additional concerns have been raised with respect to non-derogable rights, as discussed below.

⁶ Most notably UN GA Resolution 57/219 (2002) and UNSCR 1456 (2003)

⁷ Kofi Annan, 2002

⁸ Amnesty International Rights at Risk report at <http://www.amnestyusa.org/waronterror/rightsatrisk.pdf>

Derogation and States of Emergency

Provisions exist in international and regional human rights instruments that allow States to declare a state of emergency, enabling derogation from certain rights subject to a specific regime of safeguards. Concern has been raised that these provisions could be subject to abuse, where a state of emergency could be declared without adequate justification. The ODIHR was designated by the Concluding Document of Helsinki (1992) as the OSCE's clearing house for information on states of public emergency. Paragraph 28.10 of the Moscow Document (1991) requires participating States to notify the ODIHR when a state of public emergency is declared or lifted, as well as of any derogation made from the State's international human rights obligations. In this regard, the ODIHR is well placed to monitor developments regarding any measures taken in derogation of international human rights obligations and OSCE commitments resulting from a national emergency.⁹ Certain rights are protected as being of such fundamental and universal importance that they may not be derogated from under any circumstances, including during a state of emergency. Concerns have arisen in the fight against terrorism with regard to these rights, in particular:

- a) Right to life. The most fundamental human right, which is non-derogable in all circumstances. States must implement legislation to protect the right to life. This is notwithstanding the application of the death penalty which must be applied in accordance with the law
- b) Torture. The right to freedom from torture, inhuman and degrading treatment or punishment is also non-derogable in all circumstances (see above in 'Rights at Risk').
- c) Freedom of religion or belief. This is a particular focus of the ODIHR, which co-ordinates an Advisory Panel on Freedom of Religion or Belief.
- d) The principle of legality is to be respected in all circumstances. A government may not introduce legislation that has a retroactive application nor may legislation be ill-defined and open to too broad an interpretation. The principle of legality is the backbone of the rule of law.
- e) Right to a fair trial. The UN Human Rights Committee in its general comment has interpreted the right to a fair trial as being de facto non-derogable as it is crucial to guaranteeing the implementation of other rights. The right to a fair trial includes the fundamental principles of the presumption of innocence and *habeas corpus*

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.¹⁰

The Question of Definition

The problem of the definition of terrorism is widely regarded as an open question, and efforts towards a comprehensive definition have been ongoing for a number of years¹¹. The main questions relating to issues of definition and terminology centre on the understanding of what is an act of terrorism and who can be identified as engaging in acts of terrorism – i.e. State and non-State actors. The universal anti-terrorism instruments (the conventions and protocols) include 'acts of terrorism', such as kidnapping, hijacking and the bombing of civilians. International humanitarian law also includes prohibitions, but no clear definitions. The United Nations General Assembly's Sixth Committee is currently considering a draft Comprehensive Convention on International Terrorism which would include a definition of terrorism if adopted.¹²

⁹ More information on States of Emergency and the ODIHR as a clearing house is available at http://www.osce.org/odihr/?page=human_rights

¹⁰ UN Committee against Torture A/51/44 (1997) Inquiry under Article 20

¹¹ E/CN.4/Sub.2/2001/31 Progress report on Terrorism and Human Rights prepared by Kalliopi K. Koufa for the Sub-Commission on the Promotion and Protection of Human Rights

¹² For more on this please refer to the web site of the Sixth Committee at: www.un.org/ga/57/sixth/index.html.

Understanding the Root Causes

Although the question of the ‘root causes’ or ‘enabling conditions’ of terrorism is a contested issue, it is clear that in order to counter international terrorism, the international community needs to address the political, economic and social factors that create the conditions in which extremism and terrorism breed. While these may be direct factors in some cases of terrorism, more often terrorist organizations exploit these conditions to gain sympathy for their cause. Addressing these factors, however, requires a long-term approach. Many governments’ foreign policy and development goals include improving respect for human rights and adherence to the rule of law and to democracy and good governance. Poverty reduction and concerted international action against major health concerns are also issues of primary concern. Above all, these efforts should be supported by the promotion of better understanding between cultures and religions. The OSCE Bucharest Plan of Action states that ‘...there are various social, economic, political and other factors, including violent separatism and extremism, which engender conditions in which terrorist organizations are able to recruit and win support’.

The motivation to understand the phenomenon of terrorism is not to justify it, but rather to ensure the prevention of future terrorist attacks. As the international community strives for long-term peace and security, it must also proactively address the hopeless socio-economic conditions and repressive political systems that prevail in many parts of the world which can drive people to despair and violence.¹³

While terrorism is an evil with which there can be no compromise, we must use our heads, not our hearts, in deciding our response. The rage that we feel against terrorist attacks must not remove our ability to reason. If we are to defeat terrorism, it is our duty ... to try to understand this deadly phenomenon, and carefully to examine what works, and what does not, in fighting it.¹⁴

Anti-Terrorism Legislation

While specific counter-terrorism legislation may be justified because of the nature of the terrorist threat, the crime of terrorism, as far as possible, should be addressed through the normal criminal justice system and established security structures. In addition various principles have been identified which could form the basis for an outline of best practice relating to anti-terrorism legislation: ‘Such counter-terrorist legislation must be sufficiently flexible to meet the potential threat to society, but it must also contain proper protections for the privacy and liberty of the individual and...stand apart from other law so that it can be accompanied by its own tailored safeguards, including careful monitoring and review of its use. It is important that it commands broad public support, otherwise its use risks being mistrusted and therefore less effective.’¹⁵ Since 11 September 2001, many governments in the OSCE region have introduced specific anti-terrorism legislation, elements of which have raised concern with regard to human rights protection, most notably in the following areas:

- Overly broad definitions of terrorism
- Immigration laws and procedures leading to deportation of persons who may be subject to torture
- Introduction of preventive arrest and detention
- Increased surveillance powers and their impact on the right to privacy
- Insufficient parliamentary oversight

¹³ Rights and Democracy Think Tank, May 2002, Promoting Human Rights and Democracy in the Context of Terrorism can be found at www.ichrdd.ca

¹⁴ Kofi Annan, September 2003

¹⁵ Anti-terrorism, Crime and Security Act 2001 Review: Report, UK Privy Counsellor Review Committee, 18th December 2003, for further information see <http://www.atcsact-review.org.uk/>

PART 3: RESPONDING TO THE NEW SECURITY ENVIRONMENT

The Activities of the ODIHR

Longer-term preventive measures - promoting human rights, tolerance, and multiculturalism

A comprehensive approach to counter the threat of international terrorism requires the international community to address the political, social and economic factors that create the conditions in which extremism breeds. Within the ODIHR, work is already being carried out across a broad range of core mandated tasks, including the promotion of human dimension commitments in the area of human rights, democracy, and the rule of law. The Human Rights Section also conducts programme activities in the field of freedom of religion or belief. Terrorism prevention focuses on tolerance promotion, awareness raising, and addressing those factors described above. In many cases 'economic deprivation and political alienation may be direct factors in the emergence of terrorism; but more typically, terrorists exploit social and political grievances for their own purposes.'¹⁶ Commitments on freedom of thought, conscience, religion, or belief were first enshrined as OSCE commitments in the Helsinki Final Act of 1975, making them among the longest-standing OSCE human dimension commitments. These initial commitments have been repeatedly reaffirmed and have been expanded substantially in subsequent OSCE documents, notably the Vienna Concluding Document of 1989. The ODIHR is responsible for fostering implementation of these commitments, and freedom of religion and belief is central to the work of the Human Rights Section. The promotion of tolerance through education and training activities is central to any strategy to prevent and combat terrorism.

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*¹⁷

ODIHR Tolerance on Non-discrimination Programme

The ODIHR's tolerance and non-discrimination programme is based on the Maastricht Ministerial Decision on Tolerance and Non-Discrimination (Decision No. 4/03) and the Permanent Council Decision on Combating Anti-Semitism (Decision No. 607). Under Maastricht Ministerial Decision and the Permanent Council Decision on Combating Anti-Semitism, the ODIHR is tasked to serve as a collection point for information and statistics collected by participating States on hate crimes, including forms of violent manifestations of racisms, xenophobia, discrimination and anti-Semitism and to closely follow anti-Semitic incidents in the OSCE area. The ODIHR is tasked to report its findings of the information and statistics to the Human Dimension Implementation Meeting and the Permanent Council. The ODIHR also was tasked with collecting and disseminating information throughout the OSCE area on best practices for preventing and responding to racism, xenophobia, anti-Semitism and discrimination and, if requested, offering advice to participating States, including legislative assistance in the drafting and review of legislation regarding crimes fuelled by intolerance and discrimination. The ODIHR has now commenced implementation of these tasks and is in the process of developing mechanisms, including a network of focal points from the OSCE participating States, to collect and compile consistent and reliable information and statistics from participating States on hate crimes, including forms of violent manifestations of racism, xenophobia, discrimination and anti-Semitism. The ODIHR is also in the process of increasing co-operation with international institutions, in particular with ECRI, EUMC and UNCERD, as well as with NGOs.

¹⁶ United Kingdom Foreign and Commonwealth Office progress report on the campaign against international terrorism, available at <http://www.fco.gov.uk/Files/kfile/One%20Year%20On,0.pdf>

¹⁷ Article 1, Universal Declaration of Human Rights

Advisory Panel on Freedom of Religion or Belief

Commitments on freedom of thought, conscience, religion or belief were first enshrined as OSCE commitments in the Helsinki Final Act of 1975, making them among the most long-standing OSCE human dimension commitments. The ODIHR is responsible for fostering implementation of these commitments and in order to further these efforts, a newly restructured Advisory Panel of Experts on Freedom of Religion or Belief was established in 2000. The Panel, which serves as an advisory body and highlights means to advance religious freedom, consists of experts from different backgrounds and of various faiths from throughout the OSCE region. The panel also undertakes concrete activities and projects, often in close co-operation with OSCE field missions and offices on the ground, as part of its efforts to advance religious freedom in the OSCE region. Experts of the Panel are ready to give advice and to mediate, if invited, by any participating State via the ODIHR.

Human rights are inter-related and interdependent. In practice, violations of the right of freedom of religion are often accompanied by violations of other rights; for instance, of freedom of speech and association, freedom from torture and the right to a fair trial.¹⁸

Training Seminars on Human Rights and Counter-Terrorism Measures

The role of civil society and, in particular, of human rights defenders is crucial in the quest to eliminate the root causes of terrorism. A training seminar entitled 'Human Rights and Counter-Terrorism Measures' has been developed jointly by the ODIHR and the Office of the UN High Commissioner for Human Rights, which aims to raise awareness among government and civil society of the impact of terrorism and counter-terrorism efforts.

Copenhagen Workshop on the Protection of Human Rights while Countering Terrorism

In March 2004 the ODIHR organised a workshop on the protection of human rights while countering terrorism, supported by the governments of Canada and Denmark. The workshop was designed as a natural follow-up to the Netherlands Chairmanship's seminar on terrorism and human rights in September 2003. The Copenhagen workshop gathered together representatives from the police and security services, international organisations, international and local NGO's and other relevant government officials. It was opened by the Foreign Minister of Denmark, who highlighted the perceived dilemma between security and freedom. He stated that there is no dilemma there, that there is no freedom without security. The presentations and discussion that followed highlighted:

- The critical role of the various bodies of the United Nations
- The crucial role of national courts in overseeing counter-terrorism legislation and practice
- The inherent dangers of rushing through complex anti-terrorism legislation
- The importance of an inter-departmental and multi-disciplinary approach to the counter-terrorism threat assessment

A representative from the Anti-Terrorism Branch of the UK's Metropolitan Police outlined a case-study on the planning process for a raid on a London mosque, which was suspected of international terrorist-related activity. A number of important factors were highlighted with regard to the planning process, including media and community liaison, but stressed above all the importance of the question of human rights protection in the planning, preparation and execution of counter-terrorist operations. The presentation by Human Rights Watch posed the question '*Has the war on terror undermined the global struggle against torture?*' Participants were reminded that there can be no margin for states to adopt an attitude of 'thinking the unthinkable', that is to say setting aside well-established norms. A central theme to both days of the workshop was that security and human rights policies were not seen as conflicting in any way but rather as mutually reinforcing.¹⁹

¹⁸ www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1028302591879

¹⁹ The full report from the workshop can be found at www.osce.org/odihr

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

The absence of the rule of law and effective governance in states often enables terrorists to flourish. States that lack legitimacy and control over the economy and other traditional levers of power provide the space and oxygen for terrorist groups to thrive. Full participation in the economic and political systems of states gives citizens a voice and a belief that their voice counts. Supporting an independent judiciary is also an important part of the strategy to address the root causes of violence. An independent judiciary is transparent and effective in checking abuse and providing remedies. Encouraging states to ratify international human rights conventions is one way of promoting and ensuring respect for human rights.

Legislationline

Since 2002, the ODIHR has collected major anti-terrorism legislation from 35 OSCE participating States. The collected legislation is posted on the *Legislationline* website²⁰ and is organized by subject and by country. This compilation is a resource for lawmakers, providing examples of best practice in anti-terrorism legislation. In particular it provides models that may be used by lawmakers seeking examples of legislation to implement obligations under UNSCR 1373. The legislation is organized into major legislation, including codes of criminal law, criminal procedure, administrative law, and specially enacted anti-terrorism legislation, and, in addition, portions of legislation are posted in subsections organized by subject to make reference easier for those undertaking specific research.

Legislative Technical Assistance

The ODIHR's programme on legislative technical assistance focuses on supporting participating States' efforts to ratify and implement the 12 UN conventions and protocols and is carried out in co-operation with the UN Office on Drugs and Crime and the OSCE ATU. The ODIHR's approach is also to assist participating States in their commitment to take measures to prevent and combat terrorism that fully comply with international law, including international human rights law. In this regard, the ODIHR has conducted activities in Central Asia, the Southern Caucasus and South-Eastern Europe, supported by the governments of the United Kingdom, Canada and Austria. In addition to the work already undertaken and planned, the ODIHR stands ready to provide technical assistance to any participating State, on request, in the field of drafting anti-terrorism legislation and the legislative implementation of UNSCR 1373.

International and Inter-Organisational Co-operation

UN Security Council Resolution 1373 calls upon all States to 'co-operate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorism attacks and take action against perpetrators of such acts.' It is clear that co-ordinated and concerted action is in the best interests of all participating States and international and non-governmental organisations. The OSCE places great emphasis on co-operation and co-ordination with other organisations, in particular the G8, NATO, the European Union, the Council of Europe and all the relevant bodies and agencies of the United Nations to maximise the effect and potential of the role of the ODIHR Co-ordinator on Anti-Terrorism Issues.

The international reach of terrorist groups such as Al Qaeda - their ability to carry out terrorist attacks, their support networks and their ability to recruit - means that no one state acting in isolation will be able to combat the threat they pose. Effective action against terrorism has to be conducted on the international stage.²¹

²⁰ www.legislationline.org.

²¹ UK Foreign and Commonwealth Office, *The International Fight against Terrorism*, can be found at : <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394239>

PART 4: CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Human rights and security policies should be seen as complementary and mutually reinforcing. It is clear that human rights cannot be set aside in order to achieve security. Ensuring respect for human rights while creating a democratic environment is the best long-term guarantee of security. Much of this work is already being done as part of the ODIHR's continuing human dimension programmes, in particular in the area of rule of law, good governance, legislative support, human rights training and activities to promote tolerance and non-discrimination. These projects have a vital role to play in promoting security and addressing the causes of instability. Preventing and combating terrorism requires concerted and co-ordinated action. The ODIHR wholeheartedly supports the overall co-ordinating function of the ATU and will continue to work closely with the Unit on all aspects of counter-terrorism. The ODIHR also enjoys close working relationships with the Council of Europe, the UN Office on Drugs and Crime, the Counter-Terrorism Committee and the Office of the High Commissioner for Human Rights. More could be done, however, among all international organisations, to ensure complementarity and non-duplication of effort.

Further Action and Recommendations

The ODIHR will continue to monitor counter-terrorism practice to assess conformity with OSCE commitments and international human rights law and to promote discussion and analysis of the root causes of terrorism. The ODIHR, in conjunction with other elements of the OSCE, will maintain a focus on the threat of religious and political extremism, in particular through the field missions. An additional area of activity will be tolerance promotion through human rights training and education. As the institution tasked with legislative support on anti-terrorism issues, the ODIHR will also continue its proactive approach in organizing workshops to raise awareness of the requirements of UNSCR 1373. Additionally the Office will repeat the format of the Copenhagen workshop on a regional basis throughout 2004/5. Furthermore, it is recommended that the OSCE:

- **Continues to keep action to prevent and combat terrorism at the top of its agenda**
- **Emphasises the role of rule of law development, democratic institution building and human rights promotion in the fight against terrorism and extremism**
- **Continues to promote ratification and implementation of the 12 conventions and protocols**
- **Continues to place emphasis on the co-ordination of action against terrorism with relevant international, regional and sub-regional organisations**
- **Seeks to formalise its endorsement of the Council of Europe's Guidelines on Human Rights and the Fight against Terrorism**
- **Raises awareness of human rights issues surrounding the fight against terrorism, in particular through specialised information exchange programmes among governments, international and non-governmental organisations**
- **Increases its efforts to address the various political and socio-economic factors which contribute to the rising tide of political and religious extremism, in co-operation with relevant local and regional partners**
- **Continues to share experience and best practice with other regional and sub-regional organisations, in particular among the Mediterranean Partners and Partners for Co-operation, especially as regards the issue of human rights protection**