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## **Technical Workshop on Solidarity with Victims of Terrorism**

### **FINAL REPORT**

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Oñati, Spain

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## **Introduction**

OSCE Permanent Council decision No. 618 of 1 July 2004 recognizes that acts of terrorism seriously impair the enjoyment of human rights and that there is a need to strengthen solidarity among participating States for the victims of terrorism, who have suffered bodily injury or impairment of health, and dependants and family members of persons who have died as a result of such attacks, in accordance with each State's domestic law. Pursuant to this participating States are invited to explore the possibility of introducing or enhancing appropriate measures, subject to domestic legislation, for support, including financial support, to victims of terrorism and their families. Permanent Council Decision 618 encourages the participating States to cooperate with relevant institutions and civil society in expressing solidarity with and providing support for the victims of terrorism and their families.

The ODIHR is developing a project on solidarity with the victims of terrorism with a view to possibly identifying best practices in this area. The two-day technical workshop has been organised with the aim of analysing, discussing and exchanging experiences from all over the OSCE region and to identifying the feasibility of possible approaches to promoting solidarity with victims of terrorist acts, in accordance with the OSCE Permanent Council decision No. 618 of 1 July 2004.

The workshop consisted of four sessions, dealing with respectively:

1. **Scope** (definition of victim; the case for a differentiation between victims of terrorist acts and of ordinary crimes; definition of solidarity);
2. **The International Framework** (the OSCE framework; the Council of Europe legal framework; the European Union framework; the UN framework);
3. **Models of Compensation and Support** (access to justice for victims; national funds/international funds; the criteria for compensation and support; the role of psychological support and pastoral care);
4. **The Role of Civil Society** (the importance of victims associations; civil society as a network of support for victims; the political role of victims associations).

Each session was introduced by three short presentations by relevant experts (see the attached agenda of the workshop for details). Participants were then divided into two separate working groups in some sessions reporting to the plenary about their discussions. The debate continued in the plenary, taking advantage of the working groups' suggestions and conclusions.

### **1. First Session: Scope**

Ms. **Carmen Bujan** from the Spanish Ministry for Foreign Affairs and Co-operation summarized the efforts of the Spanish government towards the inclusion of victims in the international debate on terrorism. From the adoption of OSCE Permanent Council decision No. 618 to the on-going discussions at the UN General Assembly, passing through the 2005 Council of Europe Convention on the Prevention of Terrorism, the awareness of the international community on the issue of victims of terrorism is now very high.

The first session started with three introductory speeches by Mr. Xabier Etxeberria Mauleón (Professor of Ethics – Deusto University), Mr. John Townley (Criminal Injuries Compensation Authority - Head of Claims Assessment Section/UK) and Mr. Tahir Elçi (Lawyer/Diyarbakır Bar Association - Turkey). Each speaker took a different approach to the question of the potential scope of ‘solidarity with victims of terrorism’.

Prof. **Etxeberria** started his presentation by summing up the main features of the process of victimization: victims of terrorist acts suffer from illegitimate violence and are instrumental to the terrorist cause. The differentiation between victims of terrorism and victims of crime finds a justification both in theory and in practice: in theory, because their characteristics are not identical; in practice, because each violent phenomenon needs a tailored response. According to Prof. Etxeberria the most fundamental feature of solidarity should be the social and political acknowledgment of the victim as a victim (among other things, solidarity should include the right to be heard, to know the truth, to reparation and to the punishment of the guilty).

Mr. **Townley** gave a concise description of the British compensation system, which does not differentiate between victims of violent crime in general and those of terrorist acts in particular. He underlined the moral importance of public recognition of the status of victims, and not only in terrorism cases. The non-punishment of the victimisers may have severe psychological repercussions (so called second victimisation), not to mention the possible threat to the physical security of the victim. The conviction of the offender in such cases often serves the victims better than a considerable financial compensation. Financial compensation is, however, sometimes the only form of reparation victims may be awarded, since the standard of proof is lower in administrative than in criminal proceedings and therefore it may be easier to make a successful civil case rather than a successful prosecution.

The presentation by Mr. **Elçi** focused on the Turkish counter-terrorism framework and on the political and legal developments since the early 1980s, including the declaration of a state of emergency in Turkey and the subsequent human rights violations, in particular in the South-Eastern part of the country. Both victims of terrorism and victims of counter-terrorism activities, especially internally displaced persons, can now apply for compensation under Turkish Law 5233 of 4 October 2004. However, the new law has been criticised for its insufficiencies in practice.<sup>1</sup>

The two working groups based their discussions on the following open questions. The debate continued in the plenary.

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| <ul style="list-style-type: none"><li>• <b>Should there be a differentiation between victims of terrorism and victims of violent crimes more generally? On what basis?</b></li></ul> |
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<sup>1</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, after his visit to Turkey on 16-23 February 2006, stated: “Whereas the adoption of the Act on Compensation of Victims of Terrorism is a very laudable step in the right direction, the Special Rapporteur would like to remind the Government that it is confined to material compensation and falls short of full restitution and rehabilitation. Hence, measures should be taken to address rehabilitative and other needs of victims of violence related to terrorism and counter-terrorism”, *Preliminary note*, Doc. E/CN.4/2006/98/Add.2, page 6, Recommendation K.

- **Is there a definition of victims of terrorism in your country? If so, what are its main distinguishing features?**
- **Should the definition include victims of counter-terrorism activities?**
- **What is “solidarity” with victims of terrorism? What does it entail (or should it entail)?**
- **Is there a “hierarchy” of victims of terrorism?**

The outcome of the discussion in the working groups was particularly striking for the difference in many of the lines of discussion and consequently in the conclusions reached by the participants.

Both working groups found that it is desirable to differentiate between victims of terrorism and victims of violent crime in general at the political level. Victims of terrorism are different from victims of violent crime in that they may be seen as “instruments” used by terrorists in order to modify or intervene in the political process. This public dimension requires a public response which may be seen as solidarity.

However, some distinctions in approach appeared, mostly stemming from the complex nature of the terrorist phenomenon. The first group considered that there should be no different treatment in the compensation process on the assumption that ‘victims’ are defined as those who have been direct victims of illegitimate violence (whether legal or illegal); nonetheless, they recognised the need for acknowledgement at the public level for victims of terrorism. Any differentiation between types of victims should also take into consideration the diversity of terrorist acts that may take place, and should recognise the different socio-political impact of global and local terrorism (e.g. victims of ETA need security and protection in a different form than victims of 11 March bombings; victims of global and local terrorism differ with regard to the potential for reconciliation and participation in potential restorative justice programs). In certain cases, specific targets for terrorists may be identified (because of their political position, job etc.) and this type of victim may require specific forms of assistance and expressions of solidarity.

The second group felt that while a political differentiation between victims of violence and victims of terrorism is practically self-evident (terrorism involves a different psychological impact on victims and often targets large groups of people), it is almost impossible to differentiate at the legal level (e.g.: no legal distinction was included in the Irish Bill of Rights). This difficulty arises out of the gaps and political complexities that exist even in defining terrorism. Without a clear-cut definition of terrorism, it is not possible to define its victims in a legal sense. The discussion touched upon several issues, including the possibility of State sponsored terrorist acts, the difference between inter-regional conflicts and global terrorism, the intimidating purpose of terrorism and the issue of self-determination. The group agreed that for the purpose of assistance and compensation, there is no value in defining a new type of victims. Instead, it is more important to draw a red line: no impunity for victimizers. The purpose of terrorists is to influence the political process. Victims must be high on the agenda of States, as a matter of justice and of application of the rule of law.

The existence and scope of a definition of victims of terrorism varies from country to country across the OSCE region. In the UK, for instance, the financial compensation

scheme does not distinguish between victims of terrorism and victims of violent crime. In Northern Ireland a specific definition of victims of terrorism could not be included in the Bill of Rights. In Germany the whole issue of terrorism is not as relevant as in other countries and no specific definition of victims of terrorism is provided. France has considered victims of terrorism as civilian victims of war since 1990, according them some special rights and benefits. This concept finds its roots in World War I and considers terrorism as a war crime during peacetime.

The question of compensation for victims of counter-terrorism activities is addressed only in Turkey, where Law 5233/2004 includes them (mainly internally displaced persons) within the wider definition of victims of terrorism, providing for assistance and compensation.

The first group considered that solidarity with victims of terrorism should consist of assurances of physical protection and guarantees of compensation. Solidarity is not merely an expression of compassion. Victims should be allowed to play an active and participative role in the whole process of addressing terrorism (consultation before the adoption of legal instruments affecting them, peace processes and peace education). Solidarity should not consist of talking about victims, but rather should give victims the opportunity to speak.

The second group viewed the notion of solidarity as the response to impunity. In cases of terrorism it is often difficult to identify the perpetrators and bring them to justice. Victims are innocent, and they deserve protection. In cases of regional terrorism, such as in Northern Ireland and in the Basque Country, the issue of solidarity can be quite thorny. Reconciliation and peace processes may be perceived as threatening substantial impunity for the perpetrators of terrorist acts. It was agreed that these very sensitive political issues need to be taken into account when looking at solidarity with the victims of terrorism.

There was no support for the establishment of a 'hierarchy of victims'. Distinguishing between "innocent" and "culpable" victims could be seen as attributing to some groups the monopoly of suffering. That said, in some countries, compensation claims may be limited according to a victim's previous criminal convictions. A differentiation among types of victims could, however, potentially better satisfy the specific needs of each group of victims.

## **2. Second Session: The International Framework**

The second session started with four introductory speeches by Ms. Susie Alegre (OSCE/ODIHR Adviser on Counter-terrorism issues), Ms. Lucie Viersma (Office of the High Commissioner for Human Rights - Rule of Law and Democracy Unit), Mr. Nicola-Daniel Cangemi (Council of Europe) and Ms. Isabelle Delattre (European Commission - Police co-operation in the fight against terrorism Unit).

Ms. **Alegre** outlined the OSCE framework and in particular OSCE Permanent Council decision No. 618 of 1 July 2004, which invites the participating States to explore the possibility of introducing or enhancing appropriate measures for support to victims of terrorism and their families, encourages the participating States to co-operate with civil society in expressing solidarity with and providing support for the victims of

terrorism and their families and tasks the ODIHR with compiling existing legislation relating to assistance to and compensation for the victims of terrorism.

Ms. **Viersma** described the relevant UN legal framework in relation to the rights of victims of terrorism. In particular, her presentation touched upon the relevant provisions contained in Security Council resolution 1566 of 8 October 2004 concerning the establishment of an international fund and on the applicable international standards (e.g.: Article 8 of the 1999 UN Convention for the Suppression of the Financing for Terrorism, the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law and the Guidelines on Justice Involving Child Victims and Witnesses of Crime).

Mr. **Cangemi** presented the main instruments of the Council of Europe (CoE) relating to the rights of victims of terrorism. Since 1983 (European Convention on the Compensation of Victims of Violent Crimes) the CoE has in fact been at the forefront in tackling terrorism and addressing the issue of victims: this role was more recently reinforced by the adoption of the 2005 Convention on the Prevention of Terrorism (in particular Article 13) and with the adoption of two sets of guidelines (2002 Guidelines on Human Rights and the Fight against Terrorism and 2005 Guidelines on the Protection of Victims of Terrorist Acts). On-going activities include bi-annual exchange of views and national practices within the Committee of experts on terrorism (CODEXTER) and the revision of Recommendation no. R (87) 21 of the CoE Committee of Ministers on assistance to victims and prevention of victimisation: the Steering Committee on criminal law will discuss the final draft and in a few months time propose it to the Committee of Ministers for approval. This document will be based on the results of an expert study on legal practices of all 46 CoE member States regarding the protection of victims of terrorism and violent crime.

Ms. **Delattre** outlined the European Union legal framework relating to access to justice and compensation to victims of crime, an issue that stands high in the European agenda since the European Council of Tampere in 1999. In particular, she spoke about the EU Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims, the EU Council Framework Decision of 13 June 2002 on Combating Terrorism and EU Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings. Moreover, a new budget line has been recently added to the general budget, tasking the European Commission to manage a two-year pilot project in favour of victims of terrorism. It has two main aims: first of all to provide medical support to victims and secondly to develop solidarity and awareness among EU citizens on the issue (one of the projects that has been funded is a master's programme in Spain). Next year the pilot project will become a Preparatory Action, mostly focused on networking experts and civil society.

The discussion which took place in the plenary was stimulated by the following open questions.

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| <ul style="list-style-type: none"><li>• <b>Which of the mentioned international standards are applied in your country?</b></li><li>• <b>Do you find them useful for the protection of victims' rights?</b></li></ul> |
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- **If they are not implemented by your Government, what are the main reasons for this?**

The participants agreed that since terrorism is a trans-national phenomenon, it must be addressed on both the international and domestic level. Accordingly, the international legal framework represents a valuable instrument for filling the gaps existing at the national level. Nevertheless, it was pointed out that it is crucial to establish clear rules on the protection of victims at the domestic level: these preventative measures are the first line of defence against terrorist attacks. Potential victims feel safer if a strong legal system is in force, both at the national and international level.

The plenary recognised that a major shortcoming of the international legal framework is its limited enforceability. In this regard, the jurisdiction of the European Court of Human Rights is a fortunate exception. Another problem is speed: for example at the UN level, the decision-making process is very slow and even non-binding documents can sometimes wait fifteen years before being adopted (e.g. Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law). Nonetheless, the difficulties in creating new legal instruments have paved the way to the adoption of significant soft-law documents at the global and regional level. The Council of Europe Guidelines of 2002 and 2005 are not legally binding but may be seen as relevant steps forward in the legal debate at the regional level. Practical activities represent a sound alternative to the complications posed by the adoption of new instruments - for example, regular exchange of best practices among States, the implementation of technical assistance programmes, trainings and so forth. The European Commission is currently funding training schemes for trainers and practitioners, and started last year to take into consideration the root-causes of terrorism, such as the radicalisation phenomenon.

Participants from the UK in particular highlighted the influence of the international framework in the domestic panorama. The international legal framework on the protection of victims has had a major influence on the Bill of Rights of Northern Ireland. Among other things, the Bill creates the post of Interim Commissioner for Victims and Survivors, who co-ordinates the delivery of services to victims and survivors across departments and agencies, reviews how well the current funding arrangements in relation to victims and survivors groups are addressing the need and considers the practical issues around establishing a Victims and Survivors Forum. Moreover, a Victims' Minister has been created to improve the overall coordination. In the UK, on 1 April 2007 the Victims' Code of Practices for the police will enter into force, establishing tight deadlines for the police to inform victims on the progresses of trials. Moreover, the right of victims to compensation, fair trial, private life and information are guaranteed according to international standards.

### **3. Third Session: the Domestic Frameworks**

- **Does your country have any mechanism providing for assistance and compensation for victims of terrorist acts? If this is the case:**
  - *Is there an ad hoc law in force?*
  - *Is there a special fund covering solidarity with victims?*
  - *What kind of assistance is provided?*

- *Does it include psychiatric support?*
- *Is emergency assistance included in the package?*
- *What kind of compensation is provided?*
- *Does compensation cover only expenses or losses too? If so, which ones?*
- *Who are the beneficiaries? Are there any limitations on the basis of nationality?*
- *Is a criminal investigation necessary for victims to obtain compensation?*
- *In this case, is there any special provision concerning access to counsel for the victims?*
- **Are there any specific provisions on the protection of the privacy of victims of terrorism?**

The third session started with four introductory speeches by Ms. Karinna Moskalenko (Lawyer, International Protection Centre – Russian Federation), Ms. Anna Pagotto (Liaison Magistrate – Italian Embassy in London), Mr. Guntram Hahne (Senior Public Prosecutor - Germany) and Mr. Dominique Mallassagne (Ministry of Justice - Deputy Head of the Department on Assistance to Victims - France). The discussion in the plenary, after the division into working groups, has been based on the above reported open questions.

Ms. **Moskalenko** gave an overview of the Russian legal framework on the protection of victims of terrorism. Her presentation, highlighting some major shortcomings afflicting the Russian legal system and specifically the compensation scheme, stressed the importance of the international legal framework for the effective protection of civil and political rights (mainly the possibility to file cases at the UN Human Rights Committee and the European Court of Human Rights) and its relevance to the victims of terrorism in cases of domestic denials of justice. In particular, delays and absence of funding were identified as major obstacles to victims in obtaining the support, assistance and compensation that they were due. She also highlighted the need for victims to have information as to ongoing proceedings and spoke of the distress that victims suffer when they are deprived of information and justice. She also spoke of the need for victims to see perpetrators brought to justice and the frustration that is felt by victims where this is not possible (for example, where the alleged perpetrators are dead before a trial can take place). In the Russian Federation victims of terrorist acts are entitled to compensation according to the Anti-terrorist Act of 25 July 1998. The federal districts where the terrorist acts took place decide on the applications. Compensation is provided according to a fixed set of tariffs; disability pensions are not an option included in the package. Compensation covers the social rehabilitation of the victims (judicial assistance, medical and psychological care and assistance in finding new employment and accommodation). Moral damages were ruled out by the Russian Supreme Court in the *Nord-Ost* case. In the same case, applications from foreign victims were dismissed. In general, the concrete amount of compensation received by victims and their relatives was insufficient, as well as the level of psychological and pastoral assistance.

Ms. **Pagotto** presented to the audience an outline of the Italian compensation scheme for victims of terrorism and, as a consequence of Law 302 of 20 October 1990, of victims of organised crime (mafia). Both types of victims are entitled to compensation, on equal footing. The Italian compensation scheme for victims of terrorism has recently been modified by Law 206 of 3 August 2004. In summary, the



main benefits provided are: the right to an amount of money fixed by law in proportion to the gravity of the disability; the right to retire immediately with pension supplements; contributions for medicines and health services; the exemption from costs arising out of compensation procedures; the provision of legal aid and the provision of psychological help; scholarships for victims and their children; tax relief; preferential consideration for employment; life annuity for most serious cases of permanent disability. Similar benefits are set for surviving partners and children, parents or other people who were economically dependent on the victim since at least three years before the death of the victim. The principle of territoriality applies (that is, the nationality of victims is not taken into consideration if the terrorist act happened on Italian soil; for terrorist acts which occurred abroad, only Italian victims are entitled to compensation). The criminal record of victims is not taken into account by the compensation committees. The final decision on the applications is adopted by a Special Commission of the Ministry of Interior through an administrative procedure.

Mr. **Hahne** offered a summary of the German legal system for the protection of victims of violent crimes. Germany has not adopted any special legislation on victims of terrorism. According to the German Criminal Procedure Act, victims can join the criminal proceeding as joint plaintiff obtaining largely the same rights as the prosecutor and as the defendant. In case the public interest in the criminal prosecution is denied victims have the right to pursue a criminal proceeding on their own (this action is not very relevant in terrorism cases, it is mostly used in cases concerning petty crimes, such as defamation, and so forth). Victims can seek civil claims resulting from the crime during the criminal procedure (“Adhäsionsverfahren”). However, courts may decline to decide the claim for compensation if this involves a delay in the criminal proceeding. Moreover, this procedure has limited relevance because of the defendant’s frequent lack of funds. If social security does not provide compensation for health damages resulting from violent acts, victims are entitled to some governmental benefits according to the Victim Compensation Act of 1976. Medical care, vocational trainings and loss of income are covered by the compensation scheme. No compensation is provided for immaterial damages. The law covers acts of violence which occurred within German territory to German citizens and legally resident foreigners. Finally, German victims of the terrorist acts may receive compensation from the government on an *ad hoc* basis (e. g. the federal government authorized on 24 April 2002 an extra-budgetary sum of 2 millions Euros to support the 32 German victims of the terrorist bombings in Djerba. This scheme covered also immaterial damages. However, victims do not enjoy any legal title on these solidarity funds).

Mr. **Mallassagne** analysed the French legal framework. In France victims of terrorism are given the status of victims of war, a status that involves several benefits to descendants of deceased victims and their partners according to Law 589 of 11 July 1990. This law amended the 1986 Act by which the FGVAT (“Fonds de garantie des victimes des actes de terrorisme et autres infractions”) was created in order to cover compensation to victims of terrorism and of violent crime. Two separate departments are in charge of these victims. The FGVAT is an independent body funded through allocations from private insurance premiums. Each year a fixed amount is defined (e.g. 3, 30 Euros in 2005) and it directly alimentes the Fund. The compensation procedure starts with a friendly settlement: the FGVAT makes an offer to the victim and if they are not satisfied with the proposed amount of money, they can go to court.

The compensation scheme covers medical expenses, pain and suffering, loss of income, rehabilitation and vocational training. The principle of territoriality applies (compensation is provided to all victims of terrorist acts which occurred within French territory, independently of legal status). Law 64 of 23 January 2006, overturning a judgment of the Cassation Court<sup>2</sup>, established that non-French widows of French citizens deceased abroad as a consequence of a terrorist act also have a right to compensation.

The discussion in the plenary touched upon other relevant national experiences.

Turkey recently adopted a law on Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism (Law 5233 of 4 October 2004). The victim compensation committees (81, one for each province) are the bodies in charge of the procedure. These administrative entities are composed of 7 members; one of them is an independent lawyer from the local bar association. Nationality is not relevant in order to apply for compensation. Compensation covers material damages and medical care. The applicant can file a complaint in court if he does not agree with the compensation proposed by the committee. The deadline to apply for compensation has been extended until 27 July 2006. No legislation covering compensation for victims of violent crimes is in force.

In the UK no distinction is made between victims of terrorism and victims of violent crime. The Crime Injuries Compensation Authority (CICA) provides compensation to victims of violent crime, including victims of terrorism. Since 2001, a tariff system of compensation for criminal injuries is in force. The maximum compensation for a single victim is 500.000 GBP. The principle of territoriality applies; members of terrorist organisations or persons with a criminal record are excluded from the compensation scheme, which covers pain and suffering, loss of income, medical care and, according to the particular situation, loss of parental service and dependency awards. The decisions on compensation may be appealed to the Crime Injuries Compensation Appeals Panel. A special fund for victims of the terrorist bombings of July 2005 was set up by the Mayor of London (4 millions GBP). The Terrorism Act 2000 allows compensation for material damages which incurred as a result of counter-terrorist activities in Northern Ireland: involvement in acts of terrorism automatically excludes individuals from any compensation scheme.

A compensation scheme for victims of terrorism was already adopted in Spain in 1979, covering medical care and psychological support for victims and their relatives on the basis of a fixed-tariffs scheme. Compensation includes medical and psychological care; victims enjoy several types of tax exemption. Beneficiaries are only the victims of terrorist acts which occurred within Spanish territory; however, Law 32 of 8 October 1999 was amended on the occasion of the 9/11 attacks in order to allow compensation for Spanish victims in the US. A special fund (*Fundo de Ayuda de 11-M*) was created by the Ministry of Labour and Social Affairs in response to the 11 March 2004 bombings. In 2004, the post of High Commissioner for Victims

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<sup>2</sup> Cour de Cassation, 2<sup>nd</sup> Civil Chamber, Judgment No. 1069 of 30 June 2005. The case was filed by Mrs. Hadda Allouche, an Algerian national married with a French national who died in Algeria as a consequence of a terrorist act. The widow lived in France since a long time with her five children: according to the Judgment, the five children had right to compensation, not the widow (Article L 126-1 of the Insurance Code required French nationality as a precondition for compensation).

of terrorism was created with the task of co-ordinating national, regional and local initiatives of support to victims. Victims of terrorist acts in the Basque Country are covered by a specific programme established by Decree 214 of 24 September 2002.

In countries where specific funds have been set up (such as in France) or specific agencies deal with compensation to victims (such as UK and Italy), it may easily happen that the *ad hoc* compensation schemes overlap with civil claims. The principle applied in all these countries is that victims cannot receive “double” compensation for the same event. If it happens, they can either be asked to return the undue amount of money received or, in case one compensation procedure is more generous than the other, they will be paid the difference arising from the two payments. The same principle applies at the international level, when national compensation schemes overlap (for instance, after the 7 July 2005 bombings in London, Italian victims received compensation both from the British and the Italian agencies. The same happened with some French victims).

#### **4. Fourth Session: the Role of Civil Society**

The fourth session started with three introductory speeches by Mr. Brian Gormally (Justice Associates - Consultant Researcher), Ms. Chloe Davies (Citizens against Terror) and Mr. Dominique Mallassagne (France).

Mr. **Gormally** gave a presentation dealing specifically with the situation of victims groups in Northern Ireland (more than forty groups of victims are active in the region). He highlighted the inherent dangers in the politicisation of victims associations. According to him, and mainly at the end of a conflict, nobody can claim to speak on behalf of all victims. Victims’ groups should be supported to meet the needs of their members and advocate their rights. The leaders of victims’ groups fully enjoy freedom of expression and should be able to get involved in politics but the State should not necessarily fund them to do so. The important thing is that the diversity of voices of victims be heard.

Ms. **Davies** argued that, from a citizen’s perspective and most of all from a victim’s perspective, it is irrelevant to differentiate between terrorist violence coming from State or non-State actors. She brought the attention of the audience to some actions undertaken by civil society in the aftermath of terrorist attacks providing concrete models of solidarity between victims (for instance putting in touch victims of 9/11 with victims of the more recent London bombings). She also spoke of the very different situations of victims globally, comparing the experience of victims in Western Europe and the United States with the experience of victims in places where terrorist acts are a daily reality, such as Iraq. Solidarity can and should find expression in the establishment of citizens’ networks of support through communication and mutual help, a type of help that States are not usually in best position to provide.

Mr. **Mallassagne** outlined the French policy of support to civil society. Since 1980 a network of charities has in fact been supported under the drive of the Ministry of Justice. Now, in almost every district of Court of Appeals there is a magistrate in charge of relations with these associations: they are funded according to a three year memorandum of understanding with the Ministry of Justice and they take an active

part in the National Council of Victim Support (CNAV - chaired by the Minister of Justice and including representatives of other ministries concerned, elected representatives, professionals from the victim support field, representatives of the National Office of Victim Support and Mediation and victim support organizations. Its mission is to evaluate victim support efforts, prepare an annual report on activities and training, make recommendations, and coordinate research programs). Moreover, a telephone hotline has been created.

The discussion which took place in the plenary was stimulated by the following open questions.

- **Does your country support associations of victims, and especially of victims of terrorism?**
- **Is any specific provision in place concerning funding of civil society activities involving solidarity with victims of terrorism?**
- **What criteria do victims' associations need to satisfy in order to get access to the public funds?**

“Civil society” is a term of art that does not indicate the same phenomenon across the OSCE region, in particular for what concerns victims of terrorism. This clearly emerged from the debate, and is possibly due to the different traditions of public participation existing in the area. One can find groups of victims of terrorist acts beside associations *representing* victims of terrorist acts, and often involved in different types of activities (mutual support, legal assistance, political lobby, and so forth).

In the UK, for instance, the immediate aftermath of the London bombings in July 2005 saw the very quick and spontaneous creation of groups of “survivors”, a remarkable example of public participation and mutual support. While most of the charities (and victims groups) receive public funding, they do not seem shy of expressing critical views on the action of the government in the field of support to victims. The UK strongly supports civil society and its role in the assistance of victims of violence and terrorism (the Home Office funds among others “Victims’ support”, an NGO composed of volunteers). In France, the Ministry of Justice organises the presence of non-governmental organisations that support victims in each Court of Appeal: no tradition of civil society self-organisation such as that in the UK exists, however the charity S.O.S. Attentats, created twenty years ago plays a very active role in this. In Germany, contact points for victims of violence have been created in courts. In Italy, some associations ensure legal co-ordination of victims of specific terrorist attacks, for instance of the Bologna massacre of 2 August 1980. In Northern Ireland associations representing victims of terrorism are very much involved in the political debate and in the peace process itself, sometimes quite controversially. The Spanish experience concerns more associations *of* victims of terrorism rather than associations *representing* victims of terrorism: they receive public funding but they preserve a high degree of autonomy from the government. They play a key role although not all the groups follow the same political agenda. In Turkey a lot of NGOs and foundations help victims of torture, enforced disappearances, IDPs and migrants, for example. The EC is contributing to the “Justice for all” project which focuses on providing legal information to victims of human rights violations.

One of the issues debated was the role of civil society in peace and/or reconciliation processes within society. It was assumed that victims may have a crucial role to play in conflict resolution. It was stressed that the diversity of voices to be heard should be respected. It was noted that the role and agenda of victims groups may be very different according to the situation and the group, ranging from exclusively dealing with the private sphere (mutual support, self help groups and so on) to having a strong voice on the political level and even possibly monopolising the public debate.

The possible role and added value of international organisations in supporting civil society was raised. In particular, the possibility of creating an international network of victims of terrorism was discussed and the unanimous opinion was that this kind of process must be genuine and can only begin at grass roots level. The important role IGOs may play in supporting victims was recognised; however, if the process is driven from above it may do more damage than good, for example by giving a stronger voice to associations of victims that are not coming from the communities directly affected by the terrorist violence.

## **Outlook**

The discussions in the workshop were wide and varied, thanks to the expertise and knowledge of all the participants. The technical workshop provided a rich and practical panorama of the issues affecting solidarity with the victims of terrorism in a number of OSCE participating States. It was clear that, while the need for solidarity with the victims of terrorism is recognised across the OSCE region, there is little consensus as to what this may mean in practical terms.

The issues that were raised are extremely complex and reflect the different legal and social traditions of different participating States. It was also very clear that there were significant differences in the needs of victims of different types of terrorism or terrorist acts.

Participants recognised the value of the discussions in exchanging experience and information on different models. In particular, the question of addressing the needs of victims of terrorism where different jurisdictions may overlap, such as the case of non-nationals affected by a terrorist act in a participating State, raised interesting questions.

Implementation of the OSCE Permanent Council decision No. 618 of 1 July 2004 could be enhanced by a continuation of these discussions, focussing on methods of addressing specific issues to allow for an exchange of information on national practices on a wider scale among participating States. While the divergence of practice may preclude the establishment of concrete lines of best practice in the OSCE region, a continued exchange of information on positive models for promoting solidarity with the victims of terrorism could provide a useful platform for improving the protection of and solidarity with victims of terrorism across the OSCE.

The following topics in particular merit further in depth discussion:

- Models of compensation and assistance for victims of terrorism;

- Access to justice for victims of terrorism;
- The different roles for civil society in solidarity with victims of terrorism;
- Solidarity with victims of terrorism on an international level.

## Appendix I

### **Relevant Documentation**

**OSCE/ODIHR**, *Background paper on solidarity with victims of terrorism*, Warsaw, 2006;

**S.O.S Attentats**, *Terrorism, victims and international responsibility*, Paris, 2003;

**Criminal Injuries Compensation Authority**, *Compensation for the victims of the London bombings of 7 July 2005*, London, 2005;

**Brian Gormally**, *Needs, rights and politics: victims groups in Northern Ireland*, 2006;

**Council of Europe**, *Assistance to Victims - Compendium of Council of Europe texts*, 2005.

#### **Organisation for Security and Co-operation in Europe:**

**OSCE/ODIHR**, *OSCE Human Dimension Commitments*, vol. I and II (thematic and chronological compilation), Warsaw, September 2005;

**OSCE** Permanent Council decision No. 618 on Solidarity with victims of terrorism, 1 July 2004 (PC.DEC/618);

#### **United Nations:**

- UN International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (entered into force in 2002);
- UN Security Council resolution 1624 of 14 September 2005;
- UN Security Council resolution 1566 of 8 October 2004;
- Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, Annex to UN Commission on Human Rights Resolution 2005/35 of 19 April 2005;
- UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of 29 November 1985;
- UN General Assembly resolution 59/191 of 10 March 2005 on “Protection of human rights and fundamental freedoms while countering terrorism”;
- UN Commission on Human Rights, Resolution 2002/35 on “Human Rights and Terrorism”;

#### **Council of Europe:**

- European convention on the compensation of victims of violent Crimes (1983);
- Convention on the prevention of terrorism (2005);
- Guidelines of the committee of ministers of the Council of Europe on human rights and the fight against terrorism (2002);
- Guidelines on the protection of victims of terrorist acts (2005);
- Recommendation no. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation;

- Recommendation no. R (83) 7 of the Committee of Ministers to member States on participation of the public in crime policy;
- Recommendation no. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure;
- Recommendation no. R (91) 11 of the Committee of Ministers to member States concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;
- Recommendation no. R (96) 8 of the Committee of Ministers to member States on crime policy in Europe in a time of change;
- Recommendation no. R (97) 13 of the Committee of Ministers to member States concerning intimidation of witnesses and the rights of the defence;
- Recommendation no. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters;
- Recommendation no. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation;
- Recommendation R (2005) 9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice;
- Resolution on the prevention of everyday violence in Europe (2004);
- Resolution no. 2 on the social mission of the criminal justice system - restorative justice (2005);

#### **EU:**

- EU Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims;
- EU Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA);
- EU Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA);

#### **Commonwealth:**

- **Commonwealth Secretariat**, *Commonwealth Guidelines for the Treatment of Victims of Crime*, 2002.



## Appendix II

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