



BACKGROUND PAPER

ON

Solidarity with Victims of Terrorism

Technical Workshop on Solidarity with Victims of Terrorism

Oñati, 9-10 March 2005

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 solidarity¹ 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.

The human rights implications of solidarity with the victims of terrorism include, among others, emergency and long-term assistance (medical and financial/social), specialised counselling for victims, and compensation of victims. All OSCE participating States, regardless of the country's social, economic or political situation, may have to deal with victims of terrorism. Permanent Council Decision 618 encourages the participating States to co-operate 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 identifying best practices in this area. The aim of the two-day meeting is to analyse and discuss national practices and feasible ways forward in promoting solidarity with victims of terrorist acts, in accordance with the OSCE Permanent Council decision No. 618 of 1 July 2004.

1. Scope

There is no clear-cut definition of who is a "victim of a terrorist act" in international treaty law. However, a definition of "victim" can be found in the UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power² (the 1985 UN Declaration hereinafter), at Article 1:

1. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*

2. *A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*

3. *The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.*

The definition is wide enough to include victims of terrorist acts. The first paragraph of the 1985 UN Declaration is clearly recalled in the definition of victim contained in the 2001 EU Council Framework Decision on the Standing of Victims in Criminal Proceedings,³ according to which “*victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.*” At the regional level,⁴

Some domestic laws make available compensation for losses resulting from terrorist acts **and** from counter-terrorism activities. For instance, the issue of internal displacement has been dealt with by the Turkish law on the compensation of damages resulting from terrorism.⁵ This Act has established 76 compensation committees that started to consider the applications. According to the Turkish government, as of the end of August 2005, 173,208 applications have been filed with the Commissions. 7,828 applications have been finalized and 2,200 applicants have been awarded compensation.

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- **Is it worth differentiating between victims of terrorism and victims of violent crimes more generally? On what basis?**
- **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 entail)?**
- **Do you believe there should be a “hierarchy” of victims of terrorism?**

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2. The international framework

A number of provisions regarding the rights of victims may be found in international law, both at the universal and regional level. The issue of “victims of terrorism” is not addressed specifically by all of them; nonetheless, some principles do not allow for differentiation among classes of victims. The following catalogue is not definitive; rather, it is a starting point for discussion of possible best practices at the domestic level:

- States should ensure appropriate **assistance to victims** of terrorist acts, including medical, psychological, social, material and spiritual assistance.⁶

The assistance should be provided in the immediate aftermath of the act of terrorism, as well as in the period following the emergency.⁷ In case the victim is not a citizen of the State where the terrorist act occurred, that State should co-operate with the State of residence of the victim.⁸

- **Compensation:** Victims should receive fair, appropriate and timely compensation for the damages suffered.⁹ States must contribute to compensation for victims where confiscation of property of perpetrators of terrorist acts is not sufficient or available.¹⁰ Compensation should not depend on the nationality of the victim.¹¹
- **Investigation** and prosecution of terrorist offences must respond to the criteria of effectiveness and promptness.¹² Victims should not need to file a complaint in order to be involved in the investigation and safeguard their legitimate interests.¹³ Victims should be able to ask for the review of a judicial decision not to take action to prosecute a suspected perpetrator of a terrorist act.¹⁴
- States should bring suspected perpetrators of terrorist acts to justice in order to obtain a judicial decision in a reasonable amount of time.¹⁵ Particular consideration is due to victims in criminal proceedings.¹⁶ Victims should be granted effective **access to law and justice**, including access to courts to file civil actions and free access to counsel in appropriate cases.¹⁷
- States should try to infringe the **privacy** of victims as little as possible in investigations and proceedings.¹⁸ While respecting freedom of expression, States should encourage the adoption of self-regulatory measures by the media in order to respect the victims' right to private life.¹⁹
- **Dignity and security:** the rights of victims and accordingly their inherent dignity should be taken into consideration at all stages of the proceedings.²⁰ The identity of victims should be protected where appropriate, such as when they appear as witnesses in court.²¹
- **Right to information:** essentially regarding information on the violence the victims experienced²² and information on their rights to assistance and to access to proceedings.²³
- States should encourage **training** for persons responsible for assistance to victims of terrorist acts.²⁴

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- **Which of the mentioned international standards are applied in your country?**
- **Do you find them useful for the protection of victims' rights?**
- **If they are not taken into consideration by your Government, what are the main reasons?**

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- **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?**

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3. The role of civil society

Civil society plays a key role in the initiation, development and implementation of policies and services that empower victims of terrorism. While States should in no way abrogate their responsibilities for what concerns assistance and compensation, civil society can play an active part in supporting victims and in providing spiritual care and psychological support to them. Especially support from past victims can play a vital role in recovering from the trauma of a terrorist attack.

An active non-governmental sector may have a very important function in shaping policies aimed at enhancing the support for and protection of victims. This requires an inclusive approach aimed at involving all actors and relevant stakeholders. This range of activities may include counselling, advocacy and supplementary therapies for victims, such as the creation of self-help groups. Civil society could, in this vision, represent a significant network of support for victims complementing the state's activities in this field.

Victim's associations also have a vital role to play in sensitising all societal actors to the needs of those affected by terrorist attacks and could take part in public discourse on their behalf.

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- **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?**

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Outlook

The OSCE Office for Democratic Institutions and Human Rights has been tasked by Permanent Council decision No. 618 of 1 July 2004 “to compile existing legislation relating to assistance to and compensation for the victims of terrorism, so as to promote best practices in this area.” The ODIHR is following this mandate by developing a project on solidarity with the victims of terrorism.

The workshop represents the first step in this direction. Its aim is to contribute to the debate on solidarity with victims of terrorism by analysing substantial issues relating to the international and domestic frameworks of assistance and protection. For this reason, the ODIHR invited individual experts from across the OSCE region including international organisations that may have relevant input.

The outcome of the workshop will serve as basis for further action. In the meanwhile, relevant pieces of domestic legislation are being compiled and put at disposal of States and civil society in the OSCE website (www.legislationline.org). ODIHR thanks very much in advance all participating States for the co-operation on the issue.

REFERENCES

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;
- 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:

- CoE Convention on the Prevention of terrorism of 16 May 2005;
- Guidelines of the Committee of Ministers of the Council of Europe on the Protection of Victims of Terrorist Acts (adopted by the Committee of Ministers on 2 March 2005);
- Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism (adopted by the Committee of Ministers on 11 July 2002);

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

¹ The idea of solidarity with victims of terrorism can be read also in the Preamble of UN General Assembly resolution 59/191 of 10 March 2005 on “Protection of human rights and fundamental freedoms while countering terrorism.” See also the 2005 World Summit Outcome, para. 89, where Heads of States stressed “the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.” The same wording may be found in the preamble of UN Security Council resolution 1624 of 14 September 2005. See also the preamble of UN Security Council resolution 1566 of 8 October 2004. At the regional level, see Article 13 of the CoE Convention on the Prevention of terrorism of 16 May 2005 that reads: “Each Party shall adopt such measures as may be necessary to protect and support the victims of terrorism that has been committed within its own territory. These measures may include, through the appropriate national schemes and subject to domestic legislation, inter alia, financial assistance and compensation for

victims of terrorism and their close family members.” A budget line has been included in the 2005 European Community budget for a pilot project to support the financing of projects which are intended to help the victims of terrorist acts and/or their families to recover from the tragic situation they have experienced, by means of social, medical, psychological, legal and material support provided by organizations and/or their networks, as well as to support the financing of projects which raise the awareness of the European public against terrorism. Finally, the Madrid Agenda, adopted at the International Summit on Democracy, Terrorism and Security (Madrid, March 2005) refers to “a moral and practical necessity to address the needs of victims of terrorism [and] therefore recommend to explore the possibility of creating a high commissioner for victims both at the international and the national level, who will represent the victims’ right to know the truth, as well as obtain justice, adequate redress and integral reparation.”

² Adopted by General Assembly resolution 40/34 of 29 November 1985.

³ EU Framework Decision on Victims in Criminal Proceedings, Article 1 (a).

⁴ In 2002, the Commonwealth Secretariat published the *Commonwealth Guidelines for the Treatment of Victims of Crime*, see at <http://publications.thecommonwealth.org/publications>.

⁵ Law 5233 on the Compensation of Losses Resulting From Terrorist Acts and the Measures Taken Against Terrorism. The deadline for applying for compensation has been prolonged till 27 July 2006.

⁶ “Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means”, 1985 UN Declaration, para.14. The 2005 CoE Guidelines on Victims of Terrorist Acts adopted a more detailed formula, see para. II and III. The right to assistance may be interpreted as a facet of the State’s duty to protect the right to life: see for instance ECtHR, *Cyprus v. Turkey*, 10 May 2001, para. 219 (“The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual’s life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”); see also ECtHR, *L.C.B. v. UK*, 9 June 1998, para. 36; and ECtHR, *Nitecki v. Poland*, 21 March 2002 (decision on the admissibility, Appl. 65653/01, where the Court recalls that “[...] It cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under Article 2”).

⁷ Concerning the issue of social assistance, the European Court of Human Rights did not rule out the possibility of a violation of Article 3 arising in the case of a “wholly insufficient amount of pension and other social benefits [...]”, ECtHR, *Larioshina v. Russia*, 23 April 2002, decision on admissibility of Appl. 56869/00. The right to protection of health and to enjoy from social welfare services is mentioned, at the European level, also in Articles 11 and 14 of the European Social Charter.

⁸ 2005 CoE Guidelines on Victims, para. III (2).

⁹ 2005 CoE Guidelines on Victims, para. VII.

¹⁰ See the 1985 UN Declaration, para. 13; the 2005 CoE Guidelines on Victims, para. VII (1), and the 2002 CoE Guidelines on Terrorism, para. XVII. The UN International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 December 1999 (entered into force in 2002), Article 8 (4) reads: “Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.” In UN Security Council Resolution 1566 (2004) of 8 October 2004 the Council “decides to establish a working group consisting of all members of the Security Council [...] to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions, which could consist in part of assets seized from terrorist organizations, their members and sponsors, and submit its recommendations to the Council”. Finally, the possibility of establishing an international fund is explicitly mentioned also in UN General Assembly resolution 59/195 of 22 March 2005 on “Human rights and terrorism”, para. 15, and in UN Commission on Human Rights, Resolution 2002/35 on Human Rights and Terrorism, para. 11.

¹¹ See in this respect para. 11 of EU Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims, which reads: “A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim’s residence.” See also the 2005 CoE Guidelines on Victims, para. VII (2,3,4).

¹² “States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life”, Human

Rights Committee, General Comment No. 06: The right to life (art. 6) of 30 April 1982. The Inter-American Court of Human Rights stated that “the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation”, *Case of Velázquez Rodríguez v. Honduras*, 29 July 1988, para. 174. See also *Case of Cabellero Delgado and Santana v. Colombia*, 8 December 1995, para. 56; *Case of Blake v. Guatemala*, Preliminary exceptions, 2 July 1996, para. 39; and *Case of Castillo Páez v. Peru*, 3 November 1997, para. 90. On the need of an official investigation, see ECtHR, *Ulku Ekinci v. Turkey*, 16 July 2002, spec. para. 144, where “the Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State’s general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of the applicant’s husband gave rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death. The nature and degree of scrutiny which satisfies the minimum threshold of an investigation’s effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work”; in the same vein ECtHR, *Semse Onen v. Turkey*, 14 May 2002, para. 87, and the 2001 “Irish cases”, i. e. *Jordan v. UK*, *Kelly v. UK*, *McKerr v. UK* and *Shanaghan v. UK*, 4 May 2001. See also ECtHR, *Tepe v. Turkey*, 9 May 2003, spec. the second part of para. 195 (“Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure”).

¹³ Article 10 (1) of EU Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA) reads: “Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State.” The involvement of the family of the victim has been considered by the ECtHR as a precondition for the “effectiveness” of the investigation in *Slimani v. France*, 27 July 2004, para. 32 (“the Court has stressed that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. It has specified that although the degree of public scrutiny required may vary from case to case the next-of-kin of the victim must in all cases be involved in the procedure to the extent necessary to safeguard their legitimate interests”) and 47 (“[...] such an investigation cannot be described as “effective” unless, among other things, the victim’s next-of-kin are involved in the procedure to the extent necessary to safeguard their legitimate interests”); in the same vein, *McKerr v. UK*, 4 May 2001, para. 148 and 159-60.

¹⁴ The European Court on Human Rights stressed that “[...] there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests”, ECtHR, *Finucane v. UK*, 1 July 2003, para. 71.

¹⁵ ECtHR, *Mutimara v. France*, 8 June 2004, spec. para. 69. “La Cour rappelle que le caractère raisonnable de la durée d’une procédure s’apprécie eu égard aux critères consacrés par sa jurisprudence, en particulier la complexité de l’affaire, le comportement du requérant et celui des autorités compétentes et suivant les circonstances de la cause, lesquelles commandent en l’occurrence une évaluation globale.”

¹⁶ Article 6 of EU Framework Decision on Victims in Criminal Proceedings reads “Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.” The European Court of Human Rights “[...] notes that the Convention does not confer any right, as demanded by the applicant, to “private revenge” or to an *actio popularis*. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim’s exercise of a right to bring civil proceedings in domestic law,

even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” [...] In any event, the waiver of such a right must be established, where appropriate, in an unequivocal manner”, ECtHR, *Perez v. France*, 12 February 2004 (Grand Chamber), spec. paras. 70-72.

¹⁷ Para. 6 of the 1985 UN Declaration reads: “The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

¹⁸ 1985 UN Declaration, para. 6 (d), quoted above.

¹⁹ 2005 CoE Guidelines on Victims, para. VIII (2,3).

²⁰ 1985 UN Declaration, para. 4; 2005 CoE Guidelines on Victims, para. IX.

²¹ 1985 UN Declaration, para. 6 (d), cit.

²² The ECtHR recognised that in certain circumstances a family member of a disappeared person may suffer inhuman or degrading treatment ex Article 3 if the State authorities do not unveil the fate of the disappeared, see *Cyprus v. Turkey*, cit., spec. paras. 156-57.

²³ Article 4 of EU Framework Decision on Victims in Criminal Proceedings states: “Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.”

²⁴ The 1985 UN Declaration, para. 16, reads: “Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.” In the same vein, Article 14 of the EU Framework Decision on Victims in Criminal Proceedings reads: “Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.”