Finding a balance between ensuring security and protecting human rights in the fight against terrorism

Gérard Stoudmann

1. The challenge of asymmetrical conflict
Over the past decades, the nature of armed international conflicts has changed significantly. The guerrilla wars accompanying the process of decolonialization, the conflict in the former Yugoslavia or, most recently, the threat of international terrorism all display common features which distinguish them from traditional wars. It is in particular the emergence of non-state actors that characterizes these 'modern', asymmetrical conflicts. The so-called war against terrorism also falls into this category. International terrorist networks do not confine themselves to recognizable geographic or national delimitations, and neither do they control state structures, nor command regular armies in uniforms. The boundaries between criminal offences and acts of war have become blurred.

The increasing importance of terrorist networks and other non-state actors as a major source of conflict and instability creates tremendous challenges for our societies, and impacts negatively on the human rights safeguards developed over a century to protect individuals — be they fighters or civilians — against disproportionate cruelty and other human rights abuses linked to war.

2. The need for a balance between security and protecting common values
Clearly, terrorism represents a serious threat to security and stability, freedom and democracy. The tragic events of 11 September 2001, and more recently the terrorist attack of 12 October on Bali, demonstrated this to us in the most violent and shocking way possible. There can be no doubt that states need to address these challenges with a variety of new tools and methods in order to be effective in what must be the overriding goal: the eradication of terrorism and the protection of their citizens from this security threat.

However, in the absence of a clear legal basis and defined modi operandi for responses to these new types of security threats, it remains important that any measures which are taken not contrary to the values and human rights standards which the OSCE countries are committed to, or undermine the international

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mechanisms which are in place to ensure respect for these values and standards. A balance must therefore be found, ensuring that there is no backtracking on established fundamental values, and that the rule of law and civil rights do not become victims of ‘friendly fire’.

3. Post-11 September concerns

In the 2001 Bucharest Action Plan all OSCE participating States committed themselves to respect international and human rights law in the fight against terrorism. Nevertheless, it appears that there is a worrying tendency in several countries across the whole OSCE region not to take human rights and rule of law commitments too seriously in responses to the threat of terrorism.

Some countries have adopted, or are in the process of adopting, new legislation or practices that appear to violate fair trial guarantees or other human rights standards. This includes the indefinite detention of large numbers of alleged terrorists of foreign nationality, the setting up of special military courts with limited fair trial guarantees for non-citizens suspected of terrorism, and a lack of respect for international humanitarian law in the determination of the status of certain groups of prisoners. It also includes the use of broad definitions of ‘terrorism’ which opens the door to abusive interpretation.

In addition, some states appear to take advantage of the fact that terrorist acts do not fall neatly into a particular category of law. The result can be a pick-and-mix style of response with states choosing to apply the body of law which best suits their purposes rather than applying, in good faith, the body of law which provides the most safeguards. This can lead to discrimination as suspects charged with the same offences end up being tried under different legal regimes with different degrees of safeguards.

Elsewhere, the fight against terrorism appears to be used as a pretext to tighten the grip on the opposition or civil society and to restrict fundamental freedoms such as freedom of expression, freedom of religion, or freedom of association. There are trends of tightening registration requirements for religious groups, even though they might not be involved in, or advocate, extremism. Whatever the level of deterioration might be, it is worrying that states with poor human rights records now often get away with it much easier than before 11 September.

In several countries, the increased control of NGOs and charity organizations is sought by requiring them to register with the authorities and to receive authorization for any foreign grants they receive, irrespective of any concrete suspicion of terrorist activity. Such attempts contradict the importance that the OSCE States accord to the role of civil society and the fundamental value of religious belief.

Across the whole OSCE region, there is an increase in extraditions and requests for extradition in connection with charges linked to terrorism. Often in such cases, credible evidence and sufficient guarantees of a fair trial are absent in the requesting country. There is frequently a risk of torture or the application of the