Counter-terrorism, human rights, and the United States

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Introduction
Terrorism is by no means a new phenomenon in the OSCE region. Indeed, terrorism is directly referred to in Principle VI of the 1975 Helsinki Final Act. Nevertheless, the attacks in the United States on September 11 2001, ushered in, for many, a fundamentally new perception of this threat. Human rights advocates, scholars, government officials, military planners and television’s talking heads continue to debate on how to prevent and punish acts of terrorism while safeguarding civil liberties.

The questions raised in this new environment are complex, sweeping and fundamental. Which legal paradigm applies: military law or civil law — or no law at all? Which should have priority: law-enforcement or intelligence gathering? What checks and balances exist to ensure that a proper equilibrium is struck when weighing the government’s simultaneous responsibility to protect its citizens against its obligation to respect human rights? These questions line up like dominoes; how one question is answered determines the way in which successive dominoes fall. If military law applies, for example, certain practices might be countenanced which would be prohibited under a civil law regime.

There is no shortage of relevant commitments in the OSCE that speak of these questions. The principal ones relate to freedom from arbitrary arrest or detention and pre-trial detention; the right to a fair trial; freedom of thought, conscience, religion or belief; freedom of expression; free media and information; freedom of association and the right of peaceful assembly; equality and non-discrimination; and the promotion of tolerance. In addition, commitments relating to the prohibition on the use of torture or other forms of cruel, inhuman or degrading treatment, international humanitarian law, and derogations during a state of public emergency are critical. Finally, additional relevant OSCE commitments have been adopted in the military-security field, particularly the 1994 Code of Conduct on Político-Military Aspects of Security, adopted at the Budapest Summit.

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Until September 11, 2001, issues relating to human rights and terrorism were primarily raised in OSCE fora in connection with Turkey’s struggle against the Kurdistan Workers’ Party (PKK) and, more recently, Uzbekistan’s reaction to bomb attacks in 1999. Since the attacks in New York, Pennsylvania, and at the Pentagon, however, the issue has been more broadly debated. Indeed, a host of subsequent developments have heightened OSCE attention to these issues: the 2002 attempted coup d’état in Turkmenistan (portrayed by Turkmenistani officials as terror attacks), the 2004 attacks in Madrid on March 11, the August 2004 siege in Beslan, Russia, and the November 2004 murder of the Dutch film-maker Theo van Gogh.

For a variety of reasons, the United States has, arguably, received greater scrutiny than other participating States. First, the United States has become the principal actor in both the actual war on terrorism (e.g., the war in Afghanistan, which is war in the traditional sense) as well as the metaphorical war on terrorism (e.g., national and multilateral efforts to combat terrorism through diplomatic, military, financial, intelligence, investigative, and law-enforcement actions). In other words, there is simply more US action to scrutinise. Second, as non-governmental organisations point out, US actions potentially set negative examples for other countries. Even policies that might be benign in the context of a country with long democratic traditions and an independent judiciary, parliament, media and civic society have the potential to wreak havoc when transplanted to a country with executive power that operates without effective checks. Third, wrongdoing on the part of the United States undermines its role as a global advocate for human rights. Moreover, some non-governmental groups have expressed concern that US counter-terrorism goals may lead Washington to downplay human rights advocacy in the overall conduct of its foreign policy. All in all, they argue that there is more at stake if the United States fails to fulfil its human rights commitments.

On the counter-terrorism front, the United States has spearheaded efforts within the OSCE to focus on the full implementation of OSCE commitments to improve travel document security, combat terrorist financing, and increase controls on MANPADS to reduce the risk to civil aviation\(^3\). At the same time, OSCE meetings have provided a forum for the discussion of concerns regarding the human rights implications of counter-terrorism measures implemented by the United States and other participating States.

**General concerns raised**

Over the course of the past three years, numerous human rights concerns have been raised with the United States in OSCE fora regarding US counter-terrorism practices