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## Countering Terrorism while Protecting Freedom of the Media: A Crucial Balance for Governments

Since the terrorist attacks in the United States in 2001, many of the OSCE participating States have revised their legislation and policies relating to fighting terrorism. New laws have been adopted, old laws have been revised, and policies and practices have been changed. Most of these revisions have expanded the powers of governments to fight terrorism and related crimes.

As with all new legislation in democratic societies, a vigorous debate accompanied the legislative process, the core question of which concerned the extent to which new measures would undermine civil liberties, including freedom of expression and freedom of the media. The role of the Office of the OSCE Representative on Freedom of the Media is to help safeguard the right to free expression while striking a balance with the legitimate aims of governments to protect their citizens.<sup>1</sup>

Media professionals bear special responsibilities when addressing the question of terrorism, and must exercise care in the judgments they make. The spread of public terror depends largely on the images and messages carried by media reports. Even with objective reporting, this outcome may be unavoidable. But sensationalist reporting can contribute to terrorists' objectives. People who work in the media should be aware that terrorists try to use their channels in order to reach the widest possible audience and have the strongest possible impact on the public. The use of new media – the internet in particular – to raise funds and spread terrorist propaganda is well known.

However, a free media should not just be seen as a tool that may assist terrorists in achieving their goals, but as essential to fighting the threat. The media can help save lives by spreading information of public interest. It can show the true face of terrorism by engaging in investigative reporting. It can raise awareness of the danger of terrorism and of efforts to combat it. Finally, it can counter the objective of terrorists – to destroy societies' basic human rights, including the right of free expression.

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Note: The views expressed in this article are those of the author and do not necessarily represent the official position of the OSCE.

1 For a critical assessment of the effects of legislation on civil liberties, see David Banisar, *Speaking of Terror*, Council of Europe 2008, at: [http://www.coe.int/t/dghl/standardsetting/media/doc/SpeakingofTerror\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/SpeakingofTerror_en.pdf).

### *OSCE Commitments*

The role of the Office of the OSCE Representative on Freedom of the Media is to ensure that the fight against terrorism is not used as a pretext to restrict media freedom.<sup>2</sup>

As a collection of democratic nations, the OSCE participating States must guarantee the security of their citizens, but they must also remain committed to universal rights, of which the right to free expression is the touchstone of all liberties.

As a result, governments must find a balance between ensuring the security of their people and protecting free expression. This need is well reflected in various international documents adopted by the OSCE participating States.

At the December 2001 Bucharest Ministerial Council, the participating States mandated the OSCE Representative on Freedom of the Media to “co-operate in supporting, on request, the drafting of legislation on the prevention of the abuse of information technology for terrorist purposes, ensuring that such laws are consistent with commitments regarding freedom of expression and the free flow of information”.<sup>3</sup>

At the December 2002 Porto Ministerial Council, the participating States recognized “the positive role the media can play in promoting tolerance and understanding among religions, beliefs, cultures and peoples, as well as for raising awareness of the threat of terrorism”.<sup>4</sup>

They also agreed to combat hate speech and to take the necessary measures to prevent the abuse of the media and information technology for terrorist purposes, ensuring that such measures are consistent with domestic and international law and OSCE commitments.

As early as November 2004, the Representative on Freedom of the Media was specifically included to assist in monitoring laws that could infringe basic free-media commitments:

The OSCE Representative on Freedom of the Media will continue an active role in promoting both freedom of expression and access to the Internet and will continue to observe relevant developments in all the participating States. The Representative will advocate and promote

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2 For a comprehensive overview of media-related OSCE commitments, see: Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media (ed.), *Freedom of expression, Free flow of information, Freedom of Media: OSCE/OSCE Main Provisions 1975-2007*, Vienna 2007, at: <http://www.osce.org/fom/13881>.

3 *Decision No. 1, Combating Terrorism*, MC(9).DEC/1, *The Bucharest Plan of Action for Combating Terrorism*, Annex to MC(9).DEC/1, in: Organization for Security and Co-operation in Europe, Ninth Ministerial Council, 3 and 4 December 2001, MC.DOC/2/01, Bucharest, 4 December 2001, pp. 7-13, here: p. 12.

4 *OSCE Charter on Preventing and Combating Terrorism*, in: Organization for Security and Co-operation in Europe, Tenth Meeting of the Ministerial Council, 6 and 7 December 2002, MC.DOC/1/02, Porto, 7 December 2002, pp. 9-11, here: p. 11.

OSCE principles and commitments. This will include early warning when laws or other measures prohibiting speech motivated by racist, xenophobic, anti-Semitic or other related bias are enforced in a discriminatory or selective manner for political purposes which can lead to impeding the expression of alternative opinions and views.<sup>5</sup>

Further, at the December 2004 Sofia Ministerial Council Meeting, participants issued a statement saying they would “exchange information on the use of the Internet for terrorist purposes and identify possible strategies to combat this threat, *while ensuring respect for international human rights obligations and standards, including those concerning the rights to privacy and freedom of opinion and expression*”.<sup>6</sup>

The December 2006 Brussels Ministerial Council resolved as follows: “Remaining gravely concerned with the growing use of the Internet for terrorist purposes [...] reaffirming [...] *the importance of fully respecting the right to freedom of opinion and freedom of expression* [...] the Ministerial Council] invites participating States to increase their monitoring of websites of terrorist/violent extremist organizations and their supporters and to invigorate their exchange of information in the OSCE and other relevant fora on the use of the Internet for terrorist purposes [...] while ensuring respect for international human rights obligations and standards, including those concerning the rights to privacy and freedom of opinion and expression, and the rule of law”.<sup>7</sup>

The role of the OSCE Representative on Freedom of the Media is to carry out the mandate given it by the Bucharest Ministerial Council in 2001. Since that time, the Office has been monitoring new media laws and regulations relating to terrorism and has consistently reported examples of instances where new measures unduly restrict the rights to free expression and free media.<sup>8</sup>

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5 Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 633, Promoting Tolerance and Media Freedom on the Internet*, PC.DEC/633, 11 November 2004.

6 *Decision No. 3/04, Combating the Use of the Internet for Terrorist Purposes*, MC.DEC/3/04 of 7 December 2004, in: Organization for Security and Co-operation in Europe, Twelfth Meeting of the Ministerial Council, 6 and 7 December 2004, MC.DOC/1/04, Sofia, 7 December 2004, p. 19 (emphasis added).

7 *Decision No. 7/06, Countering the Use of the Internet for Terrorist Purposes*, MC.DEC/7/06 of 5 December 2006, in: Organization for Security and Co-operation in Europe, Fourteenth Meeting of the Ministerial Council, 4 and 5 December 2006, Brussels, 5 December 2006, pp. 26-28, here: pp. 26-27 (emphasis added).

8 Published Reports of the OSCE Representative on Freedom of the Media to the Permanent Council can be found at: <http://www.osce.org/fom/documents>.

### *New Challenges*

The most significant challenge arises from the creation of new criminal penalties for speech that is seen to encourage terrorism, either directly or indirectly. Restrictions have expanded from existing prohibitions on incitement to much broader and less defined areas such as the “glorification” of and “apology” for terrorism.

Examples abound throughout the OSCE region. As stated in a Council of Europe report, laws in the United Kingdom prohibit the direct or indirect encouragement of terrorism. A relevant section states: “For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which (a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.”<sup>9</sup>

Similarly, the 2006 Anti-terror law in Russia criminalizes, as a terrorist activity, the “popularisation of terrorist ideas, dissemination of materials or information urging terrorist activities, substantiating or justifying the necessity of the exercise of such activity”.<sup>10</sup> Organizations, including media organizations that are found liable under the Act, can be liquidated. A second statute amended the mass media laws in 2006 to prohibit “distributing materials, containing public appeals to exercising terrorist activity or justifying terrorism publicly, other extremist materials”.<sup>11</sup> The law also prohibits journalists from discussing counter-terrorism operations.

Other nations have adopted laws that go further, criminalizing not just incitement to terrorism but also statements and acts that may be considered to offend the victims of terrorists.

Concerned about the proliferation of anti-terrorism laws, three international *rapporteurs* on Freedom of Expression (the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the Special Rapporteur on Freedom of Expression of the Organization of American States, OAS) adopted in December 2005 a Joint Declaration, which states that:

While it may be legitimate to ban incitement to terrorism or acts of terrorism, *States should not employ vague terms such as “glorifying” or*

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9 *Terrorism Act 2006*, section 1 para. 3, at: <http://www.legislation.gov.uk/ukpga/2006/11/section/1/enacted>.

10 Federal Law No. 35-FZ, 6 March 2006, *On Counteraction of Terrorism*, Article 3 para. 2f, at: <http://www.legislationline.org/documents/action/popup/id/4365>.

11 *Law of the Russian Federation on Mass Media*, as amended on 24 July 2007, Article 4, at: <http://www.russland.no/filestore/Massmedia.htm>.

“promoting” terrorism when restricting expression. Incitement should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.”<sup>12</sup>

It is the duty of the OSCE Representative on Freedom of the Media to ensure the free flow of information, including information about terrorism issues. Freedom of expression and information encompasses the right of the public to be informed on matters of public concern, including terrorist acts and threats, as well as the response to them by states and international organizations.

Various reports and interventions show that the media have increasingly been placed under pressure in many jurisdictions by means such as the detention and prosecution of journalists and the closure of newspapers. There have been several cases where new laws designed to protect national security have limited journalists’ ability to access information.<sup>13</sup>

In the United Kingdom, Neil Garrett of *ITV News* was arrested in October 2005 and detained on several other occasions under the Official Secrets Act after publishing internal police information on the mistaken shooting of Jean Charles de Menezes in a counter-terrorism operation. The story revealed that the police had misled the public about de Menezes’ actions in an effort to deflect criticism.

Police were forced to pay damages after searching the office and home of the Northern Ireland editor of the *Sunday Times* in 2003. He had published a book that contained transcripts of phone calls illegally intercepted by security services.

In November 2005, the government threatened to charge several newspapers with violating the Official Secrets Act if they published stories based on a leaked transcript of conversations between Prime Minister Tony Blair and President George Bush about the possibility of bombing *Al Jazeera* television’s premises in Doha and other locations.

In Canada, *Ottawa Citizen* reporter Juliet O’Neill was threatened in January 2004 with prosecution under the Security of Information Act, and her home and office were searched after the *Citizen* published an article in November 2003 on the controversial arrest and transfer to Syria of Maher Arar

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12 *International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*, 21 December 2005, at: <http://www.osce.org/fom/27455> (emphasis added).

13 Please refer to the Reports of the Representative for Freedom of the Media to the OSCE Permanent Council, cited above (Note 8); cf. also OSCE, The Representative on Freedom of the Media Miklós Haraszti, *Access to information by the media in the OSCE region: trends and recommendations*, Vienna, 30 April 2007, at: <http://www.osce.org/fom/24892>; and Banisar, cited above (Note 1).

on allegations of terrorism. The Ontario Court of Justice ruled in October 2006 that the Act violated the Canadian Charter of Rights and Freedoms.

These examples show the enhanced procedural powers that have been granted to governmental authorities to obtain information and discover journalists' sources through surveillance and searches.

In France, journalist Guillaume Dasquie was detained for two days in December 2007 after he published an article in *Le Monde* that quoted from French intelligence documents indicating that they were aware of plans to hijack aircraft prior to the September 11 attacks. The authorities demanded that he disclose the identity of sources or face charges of violating the state secrets law.

In Germany, echoing a similar case in the 1960s that led to major reforms and improvements in press freedom, *Cicero* magazine's offices and a journalist's home were raided and searched in 2004 after it published an article quoting a federal criminal police document on an *Al Qaida* leader. The Constitutional Court ruled in February 2007 that searches of newsrooms violated constitutional protections of freedom of the press. The court found that mere publication of a state secret without other evidence is not sufficient to accuse the journalist of violating state secret laws and that a search to identify a source was not constitutionally permissible.

### *The OSCE Representative's Statements*

The OSCE Office of the Representative on Freedom of the Media suggests there is a straightforward way to address the challenges posed by new measures designed to combat terrorism: encouraging media self-regulation.

Effective media self-regulation would help promote respect for ethical standards for media professionals regarding terrorism and would prevent excessive intervention by states in regulating the media in that field.

The Media Self-regulation Guidebook published by the Representative's Office addresses the issue of terrorism: "Acts of terror should be reported accurately and responsibly. Special care must be taken with the wording, which should avoid praise for violent acts and eliminate terms that contain emotional or value judgments. [...] The journalist's goal remains the same as in reporting any story: to let the readers make their own judgment."<sup>14</sup>

Most of the codes of ethics of media self-regulatory bodies do not have a specific section dedicated to reporting terrorism. But the issue is addressed in other guidelines, including those relating to respecting the privacy and human dignity of victims, reporting accurately, using reliable sources, and similar provisions.

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14 The OSCE Representative on Freedom of the Media, Miklós Haraszti, *The Media Self-Regulation Guidebook*, Vienna 2008, p. 26, at: <http://www.osce.org/fom/31497>.

Public broadcasters carry more responsibilities and therefore frequently have detailed internal guidelines concerning reporting on terrorism. The BBC editorial guidelines, for instance, address the question of terrorism in a huge section on “War, terror and emergencies”. In France, the “*Chartre de l’Antenne*” also dedicates a section to “terrorism and hostages”.

The OSCE Office of the Representative on Freedom of the Media makes specific recommendations, including the following: Media should refrain from disseminating pictures or images of terrorist acts that violate the privacy and human dignity of victims; events must be covered accurately and impartially; reporting should be careful in its choice of terminology; the media should avoid contributing to the goal of terrorists by adding to the feeling of fear and terror; and the media should avoid a race for sensational news and images of terrorist acts.

These common-sense proposals will go a long way to ensuring that the rights of freedom of the media and free expression are not curtailed by efforts to combat terrorism.