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## **Freedom of Religion or Belief in the OSCE: challenges to law after September 11th**

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“No peace among nations without peace among religions and no peace among religions  
without dialogue between the religions”

Hans Kung

### **ABSTRACT**

Freedom of thought, conscience, religion or belief were among the most long-standing OSCE human dimension commitments. They have been repeatedly reaffirmed and expanded substantially in subsequent OSCE documents, notably the 1989 Vienna Concluding Document and the 1990 Copenhagen Concluding Document. The responsible for fostering implementation of these commitments is the Office for Democratic Institutions and Human Rights (ODIHR) which established, under its auspices, an Advisory Panel of Experts on Freedom of Religion or Belief at the beginning of 2000.

This paper will review the role and effectiveness of the Advisory Panel to construct approaches that might be undertaken by the ODIHR to advance religious freedom. First, I will analyse the commitments of the OSCE with human rights, in particular, with freedom of religion and belief (Part I and II). Secondly, I will study two Panel's priority areas of concern: religious education and training and legal personality of religious organizations (Part III). And third, I will describe the main effects of September 11, as a turning point after which freedom of religion and belief began to be challenged, in the OSCE-participating States (Part IV). At this point, taking into consideration that in the name of countering terrorism many national laws have been changed, I will conclude with concrete suggestions and recommendations that the ODIHR has made regarding proper limitations on religion or belief based on “national security” (Part V).

## I. INTRODUCTION: THE OSCE AND HUMAN RIGHTS

The Organization for Security and Co-operation in Europe (OSCE) traces its origins back to the early 1970's, when the Conference on Security and Cooperation in Europe (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West[1]. Meeting over two years in Helsinki and Geneva, the CSCE reached agreement on the Helsinki Final Act, which was signed on 1 August, 1975. This document contained a number of key commitments on political, military, economic and human rights issues that became central to the so-called "Helsinki process"[2]. From the beginning, the CSCE was conceived as more than a simple international conference. The provision in the Final Act for a follow-up meeting marked the CSCE as an ongoing process. The concluding section of the Final Act declares that follow-up meetings will include both "a thorough exchange of views ... on implementation" and discussion of the "deepening of their mutual relations" among the participating states. During the Cold War three follow-up meetings were held in Belgrade (1977-1978), Madrid (1980-1983) and Vienna (1986-1989).

Until 1990, the CSCE functioned as a series of meeting and conferences that build on and extended the participating States' commitments, while periodically reviewing their implementation[3]. However, the revolutions in Eastern Europe in 1989 changed the nature of the CSCE. The Paris Summit of November 1990 set up the Paris Charter for a New Europe which turned an *ad-hoc* international Conference into a permanent organization. The Charter of Paris created a Secretariat, a Conflict Prevention Center and an Office for Free Elections. Since the Secretariat and first institutions were set up, meeting became more regular, missions were established and the Conference's work became more structured. In order to reflect better the changing nature of the process, the 1994 Budapest Summit renamed the CSCE as the Organization for Security and Co-operation in Europe[4].

The Lisbon Summit of 1996 strengthened the key role of the OSCE in fostering security and stability and it also stimulated the development of an OSCE Charter for European Security, adopted later on at the Istanbul Summit in November 1999. Today the OSCE, compared with other organizations such United Nations, occupies an unique place due to several factors: its broad membership of Euro-Atlantic and Eurasian States (55 participating States[5]); its comprehensive approach to security; its conflict prevention instruments; its well-established tradition of open dialogue and consensus-building; its large network of missions and its well-developed cooperation with other international organizations.

As noted above, the Helsinki Final Act stressed and endorsed the importance of "respect for human rights and fundamental freedoms". Much time at the follow-up meetings mentioned before was devoted to discussions of the implementation of the commitments for human rights in the Final Act. The fundamental expansion of the OSCE human rights commitments came at the end of the Cold War with the 1990 Copenhagen Meeting of the Conference on the Human Dimension. The OSCE states agreed that free elections, representative government, the rule of law, separation of powers, the independence of the judiciary, the right to a fair trial were essential to the enjoyment of human rights and fundamental freedoms. This revolutionary expansion of OSCE human rights commitments set forth in the Copenhagen Document was reaffirmed in the Paris Summit in 1990. The Charter of Paris for a New Europe added

important foundations that are needed to understand the OSCE human dimension as it exists today.

In OSCE terminology, the term “human dimension” describes the set of norms and activities related to human rights and democracy and covers a wider area than traditional human rights law. Conventional human rights treaties commonly specify individual or groups rights and spell out that State Parties undertake the obligations to respect and/or guarantee those rights. However the way of implementing these obligations, is most often left to the discretion of the States. The OSCE human dimension goes much further in linking human rights with the institutional and political system of a State because OSCE States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights. Therefore, the OSCE is not simply an organization of 55 participating States, but a “community of values” reflected in the strong commitment to the rule of law and in the way it is formulated, as a concept based on dignity of the human person and a system of rights through legal structures[6].

The OSCE process is essentially a political process which does not create legally binding norms and principles. Unlike many other human rights documents, OSCE human dimension commitments are rather politically than legally binding. Therefore OSCE commitments cannot be enforced in a court of law. However, this does not mean that the commitments lack binding force: “The distinction is between ‘legal’ and ‘political’ and not between ‘binding’ and ‘no binding’”. This means that the OSCE commitments are more than a simple declaration of will or good intention, but a political promise to comply with these standards”[7]. This political nature leads to the situation that once the consensus among the States has been achieved, decisions enter into force immediately and, in principle, are binding upon all OSCE States.

One of the fundamental aspects of the human dimension within the OSCE is that human rights and pluralistic democracy are not considered an internal affair of a state. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern. This explains why the OSCE is not only a “community of values” but also a “community of responsibility” which assist each other in solving specific problems.

The principal institution of the OSCE responsible for the human dimension is the Office for Democratic Institutions and Human Rights (ODIHR). It is based in Warsaw. The ODIHR promotes democratic elections through observations of elections and assistance projects aimed at improving the elections process. It provides technical support in consolidating democratic institutions and the respect for human rights, for civil society and rule of law. Other fields of activity include gender equality, migrations and freedom of movement and freedom of religion.

## **II. THE OSCE AND FREEDOM OF RELIGION OR BELIEF**

Freedom of thought, conscience and religion were first proclaimed as OSCE Commitment in the Helsinki Final Act 1975, making them among the most long-standing OSCE human dimension commitments[8]. The Soviet Bloc agreed to freedom of thought, conscience, religion and belief while obtaining legitimization of

their political system by Principle VIII of the Final Act which stressed that “peoples always have the right ... to determine their internal and external political status”.[9]

After the Helsinki Final Act, the OSCE human dimension documents, after the Helsinki Final Act, have continued to deal with issues regarding freedom of religion. The Vienna Concluding Document of 1989 and the Copenhagen Document of 1990 are the most outstanding document in this subject[10]. Commitment to ensure freedom of conscience and religion and the fostering of a climate of mutual understanding between believers and non-believers was reaffirmed in the Budapest, 1994, and Istanbul in 1999[11].

As the main human dimension institution of the OSCE responsible for the implementation of these commitments, the ODIHR created an Advisory Panel of Experts on Freedom of Religion in 1997. The Panel, among other functions, calls attention about issues regarding religious freedom that deserve attention. The experts from different backgrounds who are part of the Panel serve in their personal capacities as expert and they do not represent any organization or confession. They are ready to give advice and to mediate among States or between a participant State and religious communities located in such State via the ODIHR[12].

The Panel is divided into three working groups which reflect the Panel’s three areas of activity: 1. conflict prevention and dialogue, 2. legislative issues and 3. education/awareness for tolerance. Since its re-establishment in 2000, the Panel has undertaken a number of projects in cooperation with governments. The most important ones include:

1. Legislative reviews at the request of governments to bring their legislation into line with international standards;
2. The development of new legislation intended to foster improved relations among religious groups;
3. The promotion of dialogue between governments and religious groups upon request by the OSCE;
4. The promotion of tolerance through development of school curricula and media in participating States.[13]

The first Supplementary Meeting dedicated to the issue of Freedom of Religion and Belief was held in March 1999. We can identify the priorities regarding freedom of religion in two outstanding topics: Religious Dialogue and Conflict Prevention and Religious Pluralism and Limitations on Freedom of Religion. These were the central themes before the Sept. 11 terrorist attacks.

Regarding the first topic -focused on strategies to promote dialogue and reconciliation in situations where religion is a factor or potential factor in conflict- the participating States stress the need for consultation process among religious groups and between government officials and religious communities. In many countries there is no process or mechanism for consultation and when religious leaders are consulted it is generally at a high level, and only includes representative from majority or “traditional” religions[14]. But also it was urgent that the OSCE explored more deeply the role that religion plays in accelerating conflict. During this meeting, the participating States stress the importance of promoting tolerance in public education

in a way that eliminate the negative stereotypes and help a better understanding of the religious difference.

The second topic about religious pluralism and limitation on Freedom of Religion introduced the need to protect freedom of religion from non permissible limitations. In 1999, the “moral panic” of the issue of new religious movements in certain Western European countries rose restrictions on registration or legal status of minority religious groups. In March 1999, the OSCE call for the elimination of discriminatory and burdensome registration law. Later on, in September 1999, the expert Cole Durham presented, under the auspices of ODIHR, the report on laws affecting the structuring of religious communities. Thus, the growing intolerance toward “non-traditional” religions in both new and established democracies led to the OSCE to take into consideration new areas of concern such as the role of the media to foster or to diminish the respect of certain religious groups, the anti-Semitic statements by government officials, the misuse of religion to promote political ends and the use of “religious extremism” and “terrorism” by government as a pretext to repress religious activity.

The September 11, 2001, was a turning point after which some aspects of freedom of religion and belief began to be challenged. Minorities, especially Jews and Muslims have been victims of attacks and the so-called sects continue to be marginalized. The OSCE has reacted to Sept. 11 by increasing its effort on tolerance, non-discrimination and freedom of religion across the region.

### **III. TWO IMPORTANT ISSUES ADDRESSED BY THE ADVISORY PANEL OF EXPERTS ON FREEDOM OF RELIGION OR BELIEF**

The Panel has promoted the co-operation with international organizations, NGOs and leaders of civil society in different areas of concern. There are two increasing important areas of activity that the Advisory Panel have taken into consideration: a) education and training and b) legal personality of religious entities. The first has a key role in preventing intolerance and discrimination and the second one is misused in many countries as control mechanisms that can interfere with religious freedom.

**Religious education and training on tolerance.** Basic human rights declarations and conventions underline the close relationship between promotion of tolerance and freedom of religion. For instance, the 1981 UN Declaration about the elimination of intolerance and non-discrimination on the grounds of religion or belief states that: “The child shall be protected from any form of discrimination on the grounds of religion and belief. He shall be brought up in the spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others (...)” (article 5, paragraph 3). But also “Every child shall enjoy the right to have access to education in the matter of religion in accordance with the wishes of his parents or, as the case may be, legal guardians (...) (Article 5, paragraph 2)[15]. According to both statements, two main concerns must be taken into consideration: On one hand, the public educational aim of promoting tolerance and mutual understanding between people of different faiths and, on the hand, the rights of parents to choose the religious or philosophical and moral education. Experts called upon OSCE request have dealt with this difficult balance[16].

In that regard, the OSCE Advisory Panel have stressed that any religious instruction should focus on peaceful and tolerant aspects of religion and the teaching of appreciation of other religions' values[17]. In fact, the knowledge and respect for the freedom of religion or belief of others can be seen as a precondition for tolerance and peaceful co-existence in pluralistic societies. We must not only tolerate but recognize the right of others to think and believe differently than we do, even when we believe they are wrong. Moreover, not only education about religion or belief but also other school subjects (for instance civic education) might contribute to inter-religious tolerance and respect for human rights[18].

**Legal personality of religious organizations.** The OSCE has recognized the importance of legal personality and entity structure to religious organization as part of their right to freedom of religion or belief[19]. This concern was emphasized during the OSCE Human Dimension Seminar on “Constitutional, Legal and Administrative Aspects of Freedom of Religion” held in 1996. Every OSCE participating State has laws and regulations dealing with the registration, or the incorporation of religious communities and religious associations. Moreover, in many of the legal systems of OSCE participating States, there are two or more levels of legal status available to religious associations for carrying out their affairs. As Cole Durham points out “the first level includes what can be called ‘base level’ entities. These includes entities that religious associations can use to acquire rudimentary forms of legal personality that are sufficient to carry out their affairs, but typically lack significant additional benefits”[20]. Above the base level are a diverse kind of country-specific ‘upper tier’ entities which receive direct and indirect financial benefits from State and various other privileges. It is very reasonable to expect that the OSCE participating States will satisfy the access to ‘base level’ entities to any community of believers.

The first step in order to achieve the legal personality is the formal registration or recognition. Many OSCE participating States do not require religious organization to register and a religious group can operate without entity status. However a few OSCE countries with a socialist past, do require registration as a condition for operating as a religion.

The role of the state in the process of requiring entity status should be a facilitative one. However in some countries the criteria to be met in order to register are burdensome. For instance, one requirement to get the recognition is the duration requirement. The most controversial duration requirement in the recent past is the one adopted in the 1997 Russian Law on Freedom of Conscience and on Religious Associations. A religious group under this law cannot acquire full religious entity status unless it has been in the country of fifteen years[21]. Lithuania had previously adopted a 25 year waiting period to acquire status as a traditional Church and that period starts from the date that the base-level entity status was acquired.

Another requirement I think it could be also problematic for religious groups is the review by the State of all the documents needed to register. In most OSCE participating States, review tends to be formal. However in many Central and East European countries they are very slow in granting approval and in many countries there are advisory committees of experts on religion. Sometimes the expert committee is composed by people from dominant religious groups very skeptical toward new religious groups[22]. A particular area of concern related with the document

requirement has to do with substantive review of matters that belong to a religious organization's "own affairs". State officials violate a religious organization's religious freedom rights when they interfere in such matters[23].

Taking into account the situation described above, OSCE has recommended to take effective measures to prevent and eliminate discrimination against religious groups that result from denial of access to legal entity. Also the provisions *requiring* registration should be eliminated and the option to register should be quick and simple. Finally, it must be emphasized the importance of avoiding narrow definitions of religion at the time of recognition in ways that discriminate against less known or less popular groups.

#### **IV. HOW TO FIGHT AGAINST TERRORISM WITHOUT INFRINGING ON RELIGIOUS FREEDOM**

*"While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms"*

(Mr. Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights[24])

In the last months even long-standing and well-developed democracies have difficulties with finding appropriate responses to the changed and new security environment following September 11. It is crucial that the legitimate right of states to combat terrorism be exercised in full accordance with international human rights law. This approach has been taken by all OSCE participating States with the adoption of the Bucharest Action Plan for Combating Terrorism in December 2001. This requires the ODIHR to address the various social, economic, political and other factors identified as engendering conditions conducive to terrorism. In December 2002, the Ministerial Council in Porto adopted the OSCE Charter on Preventing and Combating terrorism[25]. Moreover following the issue at the top of the OSCE's Agenda since the tragedy of September 11, the Netherlands OSCE Chairmanship in cooperation with the Netherlands Helsinki Committee (NHC) formulated in September 2003 a declaration on *The Fight Against Terrorism and the Protection of Human Rights: A Resolvable Conflict*[26]. And, recently, the ODIHR held a workshop on the Protection of Human Rights while Countering Terrorism in Denmark in March 2004[27]. In addition to this, the OSCE has also shared the common support for United Nations Security Council resolutions 1373 (2001) of 28 September 2001 and 1377 (2001) of 12 November 2001, as well as the recent Recommendation 1644 (2004) entitled "Terrorism: a threat to democracies" by the Parliamentary Assembly of the Council of Europe[28].

The cliché "Terrorism is a treat to democracy" has been lately repeated especially in the political discourse and it is true that terrorism actually aims to destroy democracy therefore democracy must be defended against terrorism. However, terrorism may destroy democracy by reaction because democracy is based upon a certain conception of human rights. Sometimes efforts to respond to terrorism

may be used to restrict personal liberty that the very heart of liberal societies and often the real target of the terrorism[29] (i.e. Patriot Act)[30]

When faced with terrorism, States can take measures restraining or derogating from human rights and freedoms, *inter alia*, freedom of religion. However, States do not enjoy discretionary powers in doing so. Participating States recognize that the exercise of rights to the freedom of religion or belief may be subject to only to such limitations as are provided by law and consistent with their obligations under international law and with international obligations.

The first step to figure out the way to fight terrorism without infringing on religious freedom is to study which are the permissible limitations on religion or belief under international law and OSCE commitments. The second one should be to outline the proper limitations based on “national security” and the last one to study how States can avoid the intrusions limiting religion or belief while maintaining security.

1. The permissible limitations are well known in international law but it is worthy to emphasize this point. Only manifestations of religion or religious practices can be restricted. In other words, the freedom of thought and conscience and the freedom to hold religious beliefs are beyond to any restriction[31]. Article 18 of the Universal Declaration of Human Rights proclaims the freedom of thought, conscience and religion and article 29 of the Universal Declaration subjects the exercise of the rights and freedoms provides in article 18 “*only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society*”. Article 18, paragraph 3 of the International Covenant on Civil and Political Rights of 1966 (ICCPR) sets out the legal provisions on limitations of manifestation: “*Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order health, or morals or the fundamental rights and freedoms of others*”. It should be noted that the permissible limitations requires to be “prescribed by law”. This means that any regulation related to registration of religions must be based on pre-existing law accessible to those to whom it is applied. Also it means that any decision affecting religious freedom or belief should be either undertaken by a judicially independent agency or be able of being challenged before an independent court.

The Human Rights Committee in its General Comment No. 22 (20 July 1993) offered guidance for States on the scope of Article 18[32]. The paragraph 8 is devoted to the restrictions on freedom of religion. Here are the main points: 1. Restriction should be narrowly drawn and should be only for the purposes permitted. Therefore, article 18 may not be restricted on grounds of national security; 2. Restrictions must not be imposed for discriminatory purposes; 3. The freedom from coercion to have or adopt a religion or belief or the liberty of the parents and guardians to ensure religious and moral education should not be restricted; 4. States should approach the interpretation of permissible limitations from the position of the need to protect the right under the Covenant as a whole and in particular the right to equality and non-discrimination[33].



In addition, the most important international instrument regarding religious rights, the United Nations 1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion and Belief, deals with the regime of limitations in article 1.3: *“Freedom to manifest one’s religion or beliefs may be subject only to such limitation as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others”* Proposals to add “national security” to list of permissible limitation in Article 1.3 were not accepted[34].

We also need to point out the limitations clauses provided in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR). The limitations should be *“prescribed by law and are necessary in a democratic society in the interest of public safety, for the protections of public order, health or morals or for the protection of the right and freedom of others”*. Unlike Article 18 of the ICCPR, Article 9 is not included among the rights that cannot be derogated from in times of war or public emergency. According to Article 15 of the ECHR, this may be done only to *“the extend strictly required by the exigencies of the situation”*[35]. The limitations prescribed by law have to be interpreted restrictively[36].

Also, the OSCE human dimension documents have also dealt with the permissible limitations to freedom of religion, specially in the Vienna Document of 1989 and in the Copenhagen Document of 1990. The paragraph 17 of the Vienna Document states that *“participating States recognize the exercise of the above mentioned rights relating to freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their law and regulations and in their applications the full and effective exercise of freedom of thought, conscience, religion or belief”*. The Copenhagen Document reaffirms this statement. During the OSCE Ministerial Council in Bucharest in December 2001, the participating States agreed that the fight against terrorism is not a war against religions or peoples and confirmed the commitment to the protection of human rights and fundamental freedoms.

Unfortunately, in OSCE region the threat to terrorism has been used as an excuse to infringe on the right of individuals and groups to freely choose and manifest their religion. The Advisory Panel has played an important role offering advisory opinions on amendments to religious law that curtailed religious freedoms. For instance, in Kazakhstan the Panel has pointed out that the prohibition of “Extremist” religious associations in the draft amendments to the 1992 religion law permits excessive intervention in religious activity[37]. Also regarding the Kyrgyz Republic, the Panel conducted two analysis of the draft Kyrgyz religion bills in order to accommodate the bill “On Freedom of Religion and Belief and on Religious Organizations (Congregations)” to international human rights standards. Among the recommendations proposed by the Panel to Kyrgyz, there is one related to reduce the limitations clauses and to use the language prescribed in/for that regard in the ICCPR[38].

2. National Security and Freedom of religion and belief. In the wake of the March 11 terrorist attacks in Spain more than 300 radical and potentially dangerous Islamists

have been identified, stressing the need for new measures to control their activities and the organizations they support. The Spanish Interior Minister José Antonio Alonso recently proposed efficient methods of control mosques and imams such as those that exist in Britain and France. The security forces and police are demanding a need of legislation such as that in existence in those mentioned countries to allow the authorities to carry out preventive arrests without charge or to expel suspected militants from their countries[39]. In June 1, the Interior Ministry confirmed that it has used immigration regulations to expel an Algerian national from Spain in order to “protect national security”[40]. This is just an example of how my country, Spain, is considering new legislation in reaction to March 11 terrorist attacks in Madrid. But it is a worldwide spread reaction.

If we have a look at the international legal standards regarding freedom of religion, there are some permissible restrictions to this freedom. In fact, Article 18.3 of the ICCPR contains a limitation clause that refers only to limitations to be placed on freedom to manifest one’s religion or belief. Article 18.3 of the ICCPR is a right from which there can be no derogation in time of public emergency and it cannot be limited at any time by reference to national security considerations. In addition to that, the limitations of Article 18 refer not to “national security” but to “public safety”. On the other hand, the limitation clause of the article 19 contains the expression “national security” and those of Articles 20 and 21, the expression “national security or public safety”. So it seems to exist a difference between “national security” and “public safety”. Anyway the problem is that the invocations of claims of security can be easily abused[41]. The principles by which the public authority should operate to prevent these abuses are: 1. Governmental action should be in pursuit of a legitimate aim; 2. It has to be prescribed by law and it has to be necessary in a democratic society; 3. It is necessary to ask the following questions about the governmental action: do they pursue a urgent and pressing social need?, are actions proportionate, not excessive? and which are the reason to justify that action?[42].

3. How can States avoid the intrusions limiting religion or belief while maintaining security? The OSCE Supplementary Human Dimension on Freedom of religion and belief in Vienna, 2003 answers this question in the following manner: “Efforts to combat terrorism in the interest of national security should not violate fundamental human rights, and particularly the right to freedom of religion or belief”. All OSCE participating States will uphold values of human rights, the rule of law and democracy but some governments are misusing “security” to suppress and curtail freedom of religion. Some outrageous examples are the violations of the rights to freedom of religion in Uzbekistan, Turkmenistan and Georgia[43].

During the OSCE Conference On “The Role of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism” in Baku, 2002, a representative from Canada offered a number of recommendations based upon her country’s experiences that I think the OSCE could take into consideration as a preventive way to avoid violations of human rights. She suggested that the following factors should take into account to assess whether a participating State is combating terrorism in accordance with human rights:

1. Whether government publishes the legal measures they are taking to combat terrorism. It should be clearly published so that the public knows the rules by which the government is operating;
2. Whether government provides accurate information about how they are enforcing the laws, including the information about the number of people arrested and the nature of the accusations against them;
3. Whether government reports information about anti-terrorism activities to parliament and respond to questions how the laws are being enforced;
4. Whether government exercises great care and ensure that the law do not employ terms such as “Islamic terrorism” or “dangerous sects” in order to avoid that those laws may be used against groups that are different or unpopular[44].

Another measure of paramount importance to prevent governments from curtailing religious freedom when implementing antiterrorist methods is involving civil society in the promotion of dialogue among different cultures In this respect, the OSCE have made some recommendations to the OSCE participating States to “(...) facilitate inter-church dialogue within a framework for promoting tolerance and create an environment which allow for exchange and dialogue between all communities of religion and beliefs, (...) In order to promote tolerance, active work must be carried out by States at the local and community level in co-operation with the local communities; (...) and the idea of tolerance and religious freedom should be introduced to both religious and non-religious education” [45].

In sum, the OSCE participating countries have agreed that the religion and belief has an important role to play democratic societies, for the individual and for society as a whole and the use of terrorism under the name of religion does not demonstrate a clash of cultures but a clash based on ignorance. They have also agreed that it is essential, in the fight against terrorism, to respect fully human rights and freedom of religion and belief in particular. The Recommended Actions that the participants States have discussed in the different OSCE conferences and workshops can be gathered, in my opinion, around three topics: tolerance, education and respect for minorities. First, through tolerance the States should promote careful preservation of cultural and religious heritage and foster the peaceful relations between religions and cultures; 2. through educational policies promoting the principle of mutual respect the States will create the favorable conditions for tolerance and will avoid fundamentalism. And third, the respect for minorities will prevent the States from combating terrorism indiscriminately against any national, ethnic or religious community as such.

## **V. FINAL REMARKS**

I believe that fight against terrorism must not be a fight against religion or culture. The purpose of anti-terrorism measures is to guarantee security for all citizens but, in long term, however, the fight against terrorism is also a fight to protect the set of fundamental values and freedoms developed over the second half of the 20<sup>th</sup> century.

The OSCE since its establishment has paid special attention to freedom of religion and belief and the role of religion in our democratic society. It is a unique intergovernmental institution because the promotion and preservation of human rights, *inter alia*, freedom of religion is committed to the rule of law and democratic pluralism. This means that the approach to the implementation of human rights is a holistic one that can take into consideration many different factors. Also, as a “community of responsibility”, the OSCE participating states have the duty to assist each other in solving specific problems. This duty has to be translated into a stronger cooperation to enforce religious freedom and the fight against terrorism.

I would like to highlight three recommended actions that the OSCE participating states made in the OSCE Conference held in Baku under the aegis of ODIHR:

- There must not be any double standards or selectivity on political, ethnic and religious grounds in interpreting acts and manifestations of terrorism in various regions of the world;

- All States should establish and apply educational policies to strengthen the eradication of prejudices and misconceptions in the field of freedom of religion and belief.

- States and individuals should address, at the earliest possible moment, the social, economic and political factors that engender conditions in which terrorist organizations are able to win support.

It is very welcomed the ODIHR’s efforts to assist and advice to participating States on anti-terrorism legislation as well as the projects that the Office has developed to promote tolerance and foster dialogue between governments and civil society, reviewing legislation and training of members of the judiciary and law enforcement. But, as a final remark, I would like to make two suggestions to the Office in order to be taken into consideration: First, it could be very useful to consider publishing an annual report on violations of freedom of religion and belief in the OSCE region that could call countries into account with respect to their own commitments and, second, it could be a notable advance if the Offices consider the establishment of a Special Representative on Freedom of Religion and Belief<sup>[46]</sup> or an Ombudsman for religious matters.

Concluding, the specific value of the OSCE involvement with issues of religious liberty lie in their focus on the long term and in the contribution it can make to create a forum for dialogue and the building of understanding, under the acknowledgment of an adherence to its human rights commitments. Unfortunately, some made the mistake of pitting religious freedom against security in a zero-sum game but the unique characteristic of an open interdialogue forum that the OSCE has could allow us to show how freedom actually enhances security.

ANNEX: Freedom of thought, conscience, religion or belief in the OSCE Documents:

**Helsinki 1975** (“Declaration on Principles Guiding Relations between Participating States”, principle VII, par. 1 and 3)

The Participating States will respect (...) freedom of thought, conscience, religion or belief, for all without distinction as to race, language or religion.

(...)

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, along or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

**Madrid 1983** (“Questions relating to Security in Europe”, par. 12, 13 and 14)

The participating States reaffirm that they will recognize, respect and furthermore action necessary to ensure the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favorably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.

**Vienna 1989** (“Questions Relating to Security in Europe”, par. 11, 16.1 to 16.11 and 17)

(11) (The participating States) (...) confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion and belief, for all without distinction as to race, sex, language or religion (...)

(...)

(16) In order to ensure the freedom of individual to profess and practice religion or belief, the participating States will, *inter alia*,

(16.1)-take effective measures to prevent and eliminate discrimination against individual or communities on the grounds of religion or belief in the recognition,

exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2)-foster a climate of mutual tolerance and respect between of different communities as well as between believers and non-believers:

(16.3)-grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4)- respect the right of these religious communities to:

-establish and maintain freely accessible places of worship or assembly,

-organize themselves according to their own hierarchical and institutional structure,

-select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their States,

-solicit and receive voluntary financial and other contributions;

(16.5)- engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6)- respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7)-in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8)- allow the training of religious personnel in appropriate institutions;

(16.9)-respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10)-allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials,

(16.11)- favorably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their applications the full and effective exercise of the freedom of thought, conscience, religion and belief.

### **Copenhagen 1990** (Par. 9.4 and 18.1 to 18.6)

The participating States reaffirm that:

(9.4)-everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject to restrictions as are prescribed by law and are consistent with international standards;

(The participating States)

(18.1)-note that United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

(18.2)-note recent measures taken by a number of participating States to permit exemption from military service on the basis of conscientious objections;

(18.3)- note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

(18.4)- agree to consider introducing where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

(18.5) –will make available to the public information on this issue;

(18.6)-will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

### **Budapest 1994** (Chapter VIII, par. 27)

Reaffirming their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different

communities as well as between believers and non-believers, expressed their concern about the exploitation of religion for aggressive ends.

### **Istanbul 1999** (Charter for European Security, par. 19)

19. (...) We commit ourselves to counter such threats to security as violations of (...) the freedom of thought, conscience, religion or belief (...)

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[1] The Organization for Security and Co-operation in Europe (OSCE) was originally known as the Conference on Security and Co-operation in Europe (CSCE), until the name changed at the Budapest Summit Meeting in 1994. "OSCE" will be used to refer to both phases of the organization.

[2] The Final Act of 1975, establishing principles which guide relations between participating States, was drafted in accordance with the purpose and principles of the United Nations. Its points contain elements of customary law such as sovereignty (Point I), prohibition of use of force (Point II), inviolability of frontiers (Point III), territorial integrity of States (Point IV), peaceful settlement of disputes (Point V) non-intervention in internal affairs (Point VI) and respect for human rights and fundamental freedoms (Point VII), See Ch. BERGER, "OSCE and International Law", *International Journal of Legal Information*, Spring, 1996, pp. 36-47.

[3] A short comment about OSCE structure: The OSCE structure is an *ad hoc* creation. The Helsinki Final Act was the concluding document of an international conference, not a formal treaty and de concluding documents of subsequent meetings were created in the same way. There is no a single document that sets forth the overall structure of the OSCE. The OSCE comprises the following bodies: 1. Meetings of Heads of State or Government: They occur every two years on the occasion of review conferences. They set priorities and provide orientation at the highest political level; 2. Review Conferences: These are meetings of the permanent representatives to the OSCE. They precede the meetings of heads of States or government; 3. Ministerial Council: Before the Budapest Summit 1994 was known as the Council of Ministers for Foreign Affairs. They meet at least once a year and constitute the central decision-making and governing body of the OSCE; 4. Senior Council: It meets at least twice a year to set policy and budgetary guidelines; 5. Permanent Council: It comprises permanent representatives of the participating states and serve as the regular body for political consultation and decision-making; 6. Chairman-in Office (CIO): This person assumes responsibility for co-ordination of current OSCE business; 7. Conflict Prevention Center (CPC): It was established to reduce the risk of conflict in the OSCE area; 8. Office for Democratic Institutions and Human Rights (ODIHR): It was created to facilitate exchange of information on elections and to review implementation of human rights commitments; 9. High Commissioner on National Minorities (HCNM): It provides early warning and early action with regard to tensions involving national minorities; 10. Secretary General: It acts under the guidance of CIO in order to manage OSCE structures and operations and the work of the OSCE Secretariat; 11. Secretariat: It is an administrative organ which provides support to the executives bodies of the OSCE; 12. Parliamentary Assembly: Delegates from parliaments in participating states comprises the Assembly but, unlike most OSCE organs, there is weighted representation and majority decision-making. See a short description of OSCE structure in S. FORD, "OSCE National Minority Rights in the United States: The limits of conflict prevention, *Suffolk Transnational Law Review*, Winter 1999, p. 2-55.

[4] See M. SAPIRO, "Changing the CSCE into the OSCE: Legal Aspects of a Political Transformation", *American Journal of International Law*, July 1995, p. 632-637.



[5] Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uzbekistan.

[6] See, OSCE, *The OSCE Human Dimension Commitments. A Reference Guide*, Warsaw, 2001, p. XVI.

[7] *Ibid.*

[8] The Guiding Principle VI of the Helsinki Final Act was entitled “Respect of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief”. See Annex.

[9] Taking into consideration the military and security nature of the CSCE, it is very surprising the fact that both the Soviet Union and the United States during the cold war agreed on the same document but also that the Holy See wanted to play a very active role since the beginning of the Helsinki negotiations. See G. BARBIERI, “La partecipazione della Santa Sede alla Conferenza di Helsinki. Un contributo alla tutela dei diritti umani et della libertà religiosa” in S. FERRARI e T. SCOVAZZI, *La tutela della libertà di religione. Ordinamento internazionale e normative confessionali*, Padova, Cedam, 1998, p. 172-190.

[10] See Annex.

[11] See Annex.

[12] <http://www.osce.org/odihr>

[13] Also the Advisory Panel have the following functions, among others: (...) Inform the ODIHR about important developments and major trends relating to freedom of religion or belief in the OSCE area and, upon request, provide the ODIHR with thematic and other reports relating to freedom of religion; Serve as a monitoring and early warning resource to the ODIHR, following cases of violation of OSCE commitments pertaining to freedom of religion or belief; and when requested, represent the ODIHR at international meetings related to freedom of religion and belief, <http://www.osce.org/odihr/>

[14] Several participating States, including the European Commission, Canada, Norway, the Russian Federation, and the United States shared examples of initiatives that they undertook to promote dialogue with various religious communities.

[15] The right of parents(of guardians) to decide upon the religious and moral education of their children is stated in several other human rights treaties: e.g. The 1948 UN Universal Declaration on Human Rights (art. 26.3); the 1950 European Convention on Human Rights (art. 2 of Protocol N° 1 to the Convention), the 1966 Convention on Civil and Political Rights (art. 18.4), the 1966 Convention on Economic, Social and Cultural Rights (art. 13.3).

[16] See the Remarks by Ms. Ingvill Plesner, Oslo Coalition on Freedom of Religion or Belief in The role of Education promoting tolerance and combating the growth of religious extremism” in the OSCE Conference On The Role of Freedom of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism”, 2002, p. 60.

[17] See G. ROBBERS, *OSCE Conference on The Role of Freedom of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism*, 2002, p. 89-90. Also UNESCO, Declaration on the Role of Religion in the Promotion of a Culture of Peace of 18<sup>th</sup> December 1994.

[18] See the Working Session III “The role of Education promoting tolerance and combating the growth of religious extremism” in *OSCE Conference On The Role of Freedom of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism*, 2002, p. 60.

[19] At the time of the adoption of the Helsinki Final Act in 1975, the participating States recognized rights of “religious faiths, institutions and organizations”. In the Madrid Meeting in 1983, the participating States expressly stated that “they will favorably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provides for in their respective countries for religious faiths, institutions and organizations”. The Vienna Concluding Document (1989) indicated that Participating States would not only “favorably consider applications” but that they “will grant upon their request to communities of believers, practicing or prepared to practice their faith within constitutional framework of their States, recognition of the status provided for them in their respective countries”.

[20] See. C. DURHAM, “Freedom of Religion or Belief: Laws affecting the structuring of religious communities”, ODIHR Background Paper 1999/4, p. 36.

[21] “The drafters of the Russian legislation attempted to remedy this defect by creating limited entity status but also it fails to satisfy the OSCE commitment because the limited status does not confer right to carry out the most important religious functions”, See C. Durham, *Ibid.* p. 41.

[22] In Greece the Orthodox Bishop have something to say in granting approvals for other churches. *Ibid.*, p. 45.

[23] This problem is growing in Russia and Ukraine, *Ibid.*

[24] Statement to the UN Commission on Human Rights 59<sup>th</sup> Session, Geneva, 3 April 2003.

[25] “(...) undertake to implement effective and resolute measures against terrorism and to conduct all counter-terrorism measure and co-operation in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law”, the OSCE Charter of Preventing and Combating Terrorism, paragraph 7.

[26] For further information see <http://www.nhc.nl/ovse.phpseminarhumanrights-terrorism>

[27] The ODIHR approach in the area of human rights and terrorism is fourfold: 1. To provide a basis for preventing and combating terrorism through promoting the implementation of the existing OSCE human dimension commitments; 2. To monitor the implementation of measures introduced since September 11 in view of human rights standards and the OSCE commitments; 3. To help to ensure that anti-terrorism measures fully comply with the OSCE commitment and states’ obligations under international human rights law and to provide assistance to participating States with drafting or amending anti-terrorism legislation and with implementing the provisions of UN Security Council Resolution 1371, including the 12 UN protocols and conventions relating to terrorism. ODIHR activities in this area are mainly focused on Central Asia and the Caucasus; 4. To support calls for the Counter-Terrorism Committee to include human rights within its mandate and appoint an experts in that regard.

[28] Assembly debate on 29 January 2004 (6<sup>th</sup> Sitting) (see Doc. 10056, report of the Political Affairs Committee, rapporteur: Mr. Mercan). Text adopted by the Assembly on 29 January 2004.

[29] See. M. W. REISMAN, “International Legal Responses to Terrorism”, *Houston Journal of International Law*, sol. 22:1, 1999, p. 61.

[30] The Congress enacted a new anti-terrorism law, the U.S. Patriot Act of 2001, that granted the attorney general unprecedented powers to detain any alien in the United States on national security grounds. Eager to expedite the prosecution of alleged terrorism, President Bush issued an executive

order establishing military tribunals to try foreign nationals which lack fundamental guarantees for fair trial, (Amnesty International, “United States of America” in Annual Report 2002 in <http://web.amnesty.org/web/ar2002.nsf/amr/usa!Open>)

[31] See N. LERNER, “Religious Human Rights Under the United Nations” in J. D. VAN DER VYVER and J. WITTE, *Religious Human Rights in Global Perspective-Legal Perspective*, Martinus Nijhoff Publisher, 1996, p. 92.

[32] See M. NOWAK, U.N. Covenant on Civil and Political Rights-ICCPR Commentary, N. P. Engel, Publisher, Kehl-Strasbourg-Arlington, 1993, p. 320.

[33] See K. BOYLE, Working session 1 in Supplementary Human Dimension Meeting on Freedom of Religion or Belief, OSCE, Vienna, 17-18 July, 2003, p. 27.

[34] See B. TAHZIB, *Freedom of Religion and Belief. Ensuring an Effective International Legal Protection*, Martinus Nijhoff Publishers, Hague, 1996, p. 169.

[35] Article 15 of the ECHR entitled “Derogations in time of emergency”: “1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Conventions to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law”

[36] See J. MARTÍNEZ-TORRÓN, “The Permissible Scope of Legal Limitations on the Freedom of Religion of Belief: The European Convention on Human Rights”, *Global Jurist Advances*, vol. 3, issue 2, article, 3 p. 1-41.

[37] “(...) the inherent vagueness of the notion provides officials with excessive discretion to harass legitimate groups that do not threaten violent actions”, see Update of the Analysis of Proposed Amendments to the Republic of Kazakhstan’s Law on Freedom of Religion and Religious Associations, prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE/ODIHR, 16 January 2002, p. 5.

[38] See Analysis of the February 2002 Draft Law of the Kyrgyz Republic “On Freedom of Religion and Belief and on Religious Organizations (Congregations)”, prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE/ODIHR, 7 March 2002, p. 10.

[39] See El Pais, May 8 and May 17, 2004.

[40] See El Pais, June 1, 2004.

[41] See K. BOYLE, op. cit. p. 27.

[42] In the ECHR, the Court’s task is to determine whether the measures taken at national level are justified in principle and proportionate, see M. EVANS, *Religious Liberty and international law in Europe*, Cambridge University Press (1997) p. 366.

[43] In Uzbekistan (admitted in the OSCE in January 30<sup>th</sup> 1992) the government has imprisoned and persecuted those who peacefully practice Islam beyond government controls. After the September 11 the Uzbek government justified it as a legitimate measure in the war on terrorism. In Turkmenistan, one of the most repressive countries in the OSCE region (entered the OSCE in January 30<sup>th</sup> 1992) the government has officially allowed only two religious denominations, Sunni Islam and Russian Orthodox Christianity, and has persecuted those who follow other faiths which it considers illegal. In Georgia, the authorities didn’t respond to the attacks on non-Orthodox Church Christian faiths, primarily Jehovah’s Witnesses, Evangelists, Pentacostalists and Baptists. See, Human Rights Watch Statement: Freedom of Religion (September 12, 2002), <http://www.hrw.org/press/2002/09/osce-religion0912.htm>

[44] See OSCE Conference On The Role of Freedom of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism, Baku, Azerbaijan, 10-11 October 2002, p. 90.

[45] See Supplementary Human Dimension Meeting on Freedom of Religion and Belief, Vienna, 2003, p. 6-8.

[46] This recommendation was made by OSCE participants States in the Conference in Baku, 2002.