

VICTIMS OF TERRORISM: IN NEED OF SPECIAL ATTENTION?

Rianne Letschert *

Marc Groenhuijsen **

Antony Pemberton ***

In the wake of mass-terrorist attacks, increasing attention is paid to the plight of the victims of these acts. At the level of individual states, but increasingly at the international level as well, for example within the Council of Europe, the European Union and the OSCE. This article focuses on the results of a project commissioned by the European Union to develop specific standards for victims of terrorism. It presents the results of the study that analysed the differences between the needs of victims of crime in general and victims of terrorism. It furthermore discusses and presents the proposed EU Recommendation for Assistance to Victims of Acts of Terrorism.

I. INTRODUCTION

In the wake of the mass-terrorist attacks in New York, Bali, Madrid, London and Beslan increasing attention is paid to the plight of the victims of these acts. Not only at the level of individual states, but increasingly at the international

* Dr. Rianne Letschert, associate professor, International Victimology Institute, Tilburg (Netherlands)

** Prof. Marc Groenhuijsen, director of the International Victimology Institute, Tilburg (Netherlands)

*** Antony Pemberton, MA, senior researcher at the International Victimology Institute, Tilburg (Netherlands)

level as well, for example within the United Nations,¹ the Council of Europe,² the European Union and the OSCE.³ The topic of victims of terrorism is particularly appropriate for a 'Festschrift' in honour of Paul Separovic. Separovic is a well reputed scholar in the area of terrorism.⁴ And his track record in victimology in general is long as well as impressive. He was part of the pioneering group of experts who were able to lobby successfully for the adoption of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985.⁵ He served with distinction as president of the World Society of Victimology (1985-1988), he authored a large number of influential publications, he was an eloquent keynote speaker at countless occasions, all of which earned him the prestigious WSV Hans von Hentig Award in 2000. For these reasons - and in the light of his charm and the friendship that he has been kind enough to extend to us - we feel proud to have an opportunity to write this contribution in a volume of essays in his honour.

This article will present the results of a study commissioned by the European Commission that aims to develop more extensive standards for the aid and assistance of victims of terrorism at the European level.⁶ This study provided

¹ Just recently, in September 2008, the UN Secretary-General organized a symposium on the topic of victims of terrorism, aiming to collect best practices and decide on further steps that need to be taken.

² The Committee of Ministers adopted, on 2 March 2005, Guidelines on the Protection of Victims of Terrorist Acts.

³ The most important decision of the OSCE in the field of victims of terrorism is the Permanent Council Decision No. 618 of 1 July 2004 on 'Solidarity with Victims'. For more information on the activities of the OSCE in this field, see Letschert and Pemberton, Addressing the Needs of Victims of Terrorism in the OSCE Region, *Security and Human Rights*, December 2008.

⁴ Many contributions to this field could be cited. For present purposes, it suffices to refer to Separovic, Z.P. 2003, *International terrorism and its victims*. Paper presented at the XIth International Symposium on Victimology, Stellenbosch. Available at: www.victimology.co.za/new%20papers/separovic.doc

⁵ Zvonimir Paul Separovic, The Victim Declaration: A Substantial Moral Victory for Victims of Crime and Abuse of Power, in: Arlène Gaudreault & Irvin Waller (eds.), *Beyond Boundaries. Research and Action for the Third Millennium*, Montréal 2000, p. 279, where he modestly observes: "I had the privilege of being the first speaker on the victim issue on behalf of any government delegation and of setting the general tone for the discussion of the problems faced by victims and the need for international action to solve them".

⁶ The partners in the project were: European Forum for Restorative Justice, International Victimology Institute Tilburg (INTERVICT), the Centre for the Study of Terrorism and

the basis from which more extensive standards could be derived. It was felt that existing legal instruments of international bodies like the EU, the Council of Europe and the UN concerning victims of terrorism are relatively abstract or include victims of terrorism under the broader heading of victims of crime in general. The project focused particularly on developing standards in the field of continuing assistance, access to justice, administration of justice and compensation to victims of terrorism. Moreover, the possible role of restorative justice principles and practices in dealing with victims of terrorism was assessed.⁷

In the EU Framework Decision on Combating Terrorism it is noted that 'victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.' It is to be questioned whether, based on this sense of vulnerability, specific EU standards for victims of terrorism, next to the already existing EU victim's rights instruments,⁸ should be developed. It is often stressed, both by academics and international organizations, that the public dimension of terrorism might require a public response which may be seen as solidarity. In addition, in view of the specific characteristics of the violence and the special types of legal and especially social measures (be it individually-based or community-based) that are necessary to effectively address this form of victimization, a specific instrument to support victims of terrorism would be of added benefit above and beyond general instruments in support of victims and victim rights.

In order to answer these questions, the study developed for the EU came up with the following framework of analysis that was applied to all of the categories (compensation, access to justice etc) mentioned before. In order to determine whether victims of terrorism are in need of specific standards (next to standards that apply to all crime victims), the following questions were posed:

1. Do victims of terrorism have needs of a *different kind*, i.e. additional or other needs compared to other victims of crime?

Political Violence of the University of St. Andrews, the Catholic University of Leuven (K.U. Leuven) and Victim Support the Netherlands (in cooperation with the European Forum for Victim Services - now Victim Support Europe).

⁷ The study resulted in the publication Letschert, Staiger, Pemberton (eds), *Victims of Terrorism, Towards European Standards for Assistance*, 2009 (forthcoming).

⁸ EU Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA), 15 March 2001 and the EU Directive 2004/80/EC relating to Compensation to Crime Victims, 29 April 2004.

2. Do these needs *differ in degree*, i.e. whether the consequences of terrorism are more or less severe, making meeting the need in question more or less important?
3. Are there indications that meeting a need of victims of terrorism requires *additional efforts in implementation*?

This article will present the main conclusions from this EU study. First, a brief analysis of the difficulties in defining terrorism and its victims will be provided.

II. TERRORISM

Terrorism has many different faces and features.⁹ Typologies of terrorism distinguish between religious-motivated terrorism, left- and right wing terrorism, ethno-nationalist or separatist terrorism, vigilante terrorism and single issue terrorism - to name the most important types. Terrorism can be both single-phased (bombing and shooting), that is characterised by punctuated short-duration attacks and dual-phased incidents, involving protracted kidnappings, hijackings, and other acts of hostage-taking.

Although States generally agree on the importance of combating international terrorism, important disagreements exist on the definition of terrorism, which so far have prevented States from reaching a consensus definition as a basis for joint action. There are, however, various definitions in international instruments (adopted by the UN or EU) or in domestic legislation.¹⁰ The existing definitions of terrorism often incorporate three main elements:

- The intention to cause death or serious bodily harm and/or damage to public or private property;

⁹ This part is mainly distracted from Letschert et al, Chapter I, 2009 (forthcoming).

¹⁰ Thirteen conventions and protocols relating to the prevention of terrorism have been drafted, some under the auspices of the UN, others under the International Civil Aviation Organization or the International Atomic Energy Agency. The United Nations has furthermore developed a provisional draft legal definition of terrorism in its Comprehensive Convention on International Terrorism which the Ad Hoc Committee of the Sixth Committee of the General Assembly has been preparing for almost ten years now. The EU has adopted the Framework Decision of 13 June 2002 on Combating Terrorism which contains an extensive definition in Article 11.

- The targets are often randomly selected persons, in particular civilians and non-combatants;
- The purpose of such an act is to intimidate a population (or a specific segment within the population), or to compel a government or an international organisation to do or to abstain from doing any act or to attempt to destabilise governments or societies.

Nowadays, one of the characteristics of the 'new terrorism' appears to be the aim to produce large-scale victimisation in order to generate maximum public attention, often referred to as 'catastrophic terrorism'. To illustrate, on 9/11 2001, more than 2600 people died at the World Trade Center, 125 died at the Pentagon, and 256 died on the four planes, while some 250 others got injured. The Bali bombings of 12 October 2002 killed 202 people, 164 of whom were foreign nationals, and 38 Indonesian citizens. A further 209 people were injured. In Madrid, on 9/11 2004, 191 people were killed. The Beslan School Hostage that began on 1 September 2004 killed 334 civilians, including 186 children and hundreds more were wounded.¹¹ The latest Europol Situation and Trend Report showed, however, that of the 498 attacks that were carried out in the EU in 2006, the vast majority of them resulted only in *limited material damage and were not intended to kill*. Yet a different conclusion was reached with regard to Jihadist (Islamist) terrorism. The report notes that the failed attack in Germany and the foiled London multiple hijacking plot in the summer of 2006 demonstrate that jihadist terrorists aim at mass casualties.¹² The Europol Report nevertheless advises us that we should be careful not to conclude too quickly that catastrophic terrorism occurs on a frequent basis and that terrorist attacks are always intended to cause mass victimisation.¹³

¹¹ These serve as examples. Unfortunately, many more examples can be given, such as the Lockerbie plane crash on 21 December 1988 in which 270 people were killed, or the London Bombings on 7 July 2005 which killed 52 commuters and injured 700. See for terrorism databases: The National Consortium for the Study of Terrorism and Responses to Terrorism at <http://www.start.umd.edu/data/gtd/> and the RAND-MIPT Terrorism Incident Database at <http://www.tkb.org/RandSummary.jsp?page=about>.

¹² Europol Terrorism Situation and Trend Report, Executive Summary, 2007.

¹³ See also the Human Security Report 2005, War and Peace in the 21st Century, Human Security Centre, University of British Columbia, Canada, 2005, at p. 40: 'Data on international terrorism are too unreliable to permit any confident statements about trends.' See also pp. 42 ff.

III. DEFINING VICTIMS OF TERRORISM

Just as it is difficult to agree on a definition of terrorism, it also appears problematic to define the term 'victims' in the context of terrorist attacks. What makes the term 'victim' in relation to terrorism difficult to define relates to the variety of audiences that are affected by the act. According to Schmid, terrorism has the following audiences:

1. the adversary/-ies of the terrorist organization (usually one or several governments);
2. the constituency / society of the adversary/-ies;
3. the targeted direct victims and their families and friends;
4. others who have reason to fear that they might be the next targets;
5. "neutral" distant publics;
6. the supporting constituency of the terrorist organization;
7. potential sympathetic sectors of domestic (national) and foreign publics;
8. other terrorist groups rivaling for prominence;
9. the terrorist and his organization;
10. ...and last but not least: the media.¹⁴

What this list of terrorist audiences shows is the diversity in subjects of victimisation. Although categories 1 to 5 could be qualified as victimised entities, it remains to be seen whether they are all entitled to protection offered by existing international victims' rights instruments. Most of these instruments define who falls under the scope of protection. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power contains the following definition in Articles 1 and 2:

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. [...] The term "victim" also includes, where appropriate, the immediate family or dependants of the *direct* victim and persons who have suffered

¹⁴ Alex Schmid, Magnitudes and Focus of Terrorist Victimisation, in Dilip. K. Das and Peter C. Kratcoski (eds.), *Meeting the Challenges of Global Terrorism: Prevention, Control and Recovery*, Lanham, Lexington Books, 2003, pp. 33-74.

harm in intervening to assist victims in distress or to prevent victimisation (emphasis added).

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law uses the same definition as the 1985 Declaration. Legal persons are not entitled to protection under these two documents, contrary to the scope of protection offered by the Rules of Procedure and Evidence for the purpose of the Statute of the International Criminal Court. Rule 85 notes that the notion of victims may also include ‘organizations or institutions that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.’¹⁵

The EU Framework Decision on the standing of victims in criminal proceedings contains the following definition in Article 1 (a):

1 (a) ‘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 (emphasis added).

The Framework Decision thus limits the scope of protection to natural persons who suffered harm *directly* caused by acts or omissions that are in violation of the criminal law of a Member State. Article 8, however, broadens the scope to some extent in the sense that Member States ‘shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.’ The reason for this limited scope can be derived from the heading of this Framework Decision; it concerns the standing of victims specifically *in criminal proceedings*. Finally, legal persons do not fall under the scope of protection.¹⁶

¹⁵ The Rules of Procedure and Evidence set out general principles and clear descriptions of specific procedures underpinning and supplementing the provisions of the Statute. They are subordinate to the provisions of the Statute.

¹⁶ The European Court of Justice recently concluded that the Framework Decision must be interpreted as meaning that in criminal proceedings - in particular in enforcement

The CoE Guidelines on the Protection of Victims of Terrorist Acts mention in principle 1 that:

States should ensure that any person who has suffered *direct* physical or psychological harm as a result of a terrorist act as well as, in appropriate circumstances, their close family can benefit from the services and measures prescribed by these Guidelines. These persons are considered victims for the purposes of these Guidelines (emphasis added).

This definition does not cover economic loss, as included in the UN Declaration and the EU Framework Decision.

Analysing these definitions, it can be noted that not every category of the first five categories of Schmid's list could qualify as victim entitled to victim's protection. Only category 3 would fall under the scope of these instruments. Where does that leave those who were in another way confronted with the attack? One could think of first responders like the fireman who was involved in the rescue operation in the aftermath of the attack or the man or woman who guides tourists through Madrid who saw his/her income drastically decrease after the bombings in Madrid? Or what about the people who were confronted with the terrorist attack through the media (mainly television images) and show symptoms of PTSD? Only the fireman would fall under the definition enshrined in the UN Declaration (Article 2) and the UN Basic Principles and Guidelines (Article 8), but not under the European instruments.

The specific characteristics of terrorism, namely the intention to cause death or serious bodily harm to civilians and non-combatants or cause damage to property, with the purpose, *inter alia*, to intimidate the larger population, might justify the formulation of a broader definition. Indeed, taking into account existing definitions in international instruments and the specifics of terrorist

proceedings following a judgment which resulted in a final criminal conviction - the concept of 'victim' for the purposes of the Framework Decision does not include legal persons who have suffered harm directly caused by acts or omissions that are in violation of the criminal law of a Member State. This judgment followed a reference for a preliminary ruling under Article 234 EC, by the Tribunale di Milano (Italy), concerning the interpretation of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, page 1) ('Framework Decision') and of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, page 15).

victimization, the EU study proposes the following definition of victims, thereby making a categorisation of primary, secondary and tertiary (also referred to as vicarious) victims:

- Primary victims: those persons who suffered harm, including physical or mental injury, emotional suffering or economic loss directly caused by the terrorist act. Based on the definition in the UN 1985 Declaration and the EU Framework Decision, it was decided to also include those who experience property damage (economic loss) due to violent acts;
- Secondary victims: consists of dependants or relatives of the deceased and first responders to acts of terrorism (see also the definition in the UN Declaration);
- Tertiary victims: All others not listed under primary and secondary victims could be considered tertiary victims.¹⁷

IV. THE NEED FOR SPECIFIC EU STANDARDS FOR VICTIMS OF TERRORISM

The EU study assessed that, for the most part, the needs of direct victims of terrorism are similar to those of other victims of crime, differing not in kind but rather in degree or in possibilities for implementation. On average, the impact of terrorism in a financial, psychological and physical sense may be larger, but definitely not always. Often terrorist victims will require immediate medical and financial assistance, but this will be the case for some victims of crime as

¹⁷ See also Alex Schmid, *Magnitudes and Focus of Terrorist Victimization*, in U. Ewald & K. Turkovic (eds.), *Large-Scale Victimization as a Potential Source of Terrorist Activities, Importance of regaining security in post-conflict societies*, IOS Press, Amsterdam, 2006, pp. 3-19, p. 5. Kratcoski and Das note that 'the lives of many persons not directly touched by terrorist activities can also be affected. Attacks on cities or airports can result in the loss of millions of tourism dollars and persons whose occupations are linked to the tourist industries, including hotel and restaurant employees, shop owners, travel guides, or persons who work in factories that manufacture items used or purchased by tourists, may experience financial problems; Dilip K. Das & Peter C. Kratcoski, *Terrorist Victimization: Definition, Focus and Impact*, in: Dilip, K. Das & Peter C. Kratcoski (eds.), *Meeting the Challenges of Global Terrorism, Prevention, Control and Recovery*, Lexington Books, Lanham, Boulder, New York, Oxford, 2003, pp. 7-29, p. 13. See also Ashraf Mohsen, *Challenges of the Terrorist Phenomenon*, in the same book, p. 120.

well. Similarly, victims of terrorism, like victims of crime, will need to be treated respectfully and provided with information about and participation in their case. Both will need reassurance of their safety, and to come to terms with feelings of anxiety and anger they are likely to experience after the event.

The main difference appears to lie in the context in which terrorist victimization occurs, and its audience.¹⁸ Victims of terrorism, by definition, are attacked as representative of a larger group. Recognition of their victimization entails acknowledgement of this fact. The fact that terrorists use violence against direct targets to threaten, frighten and otherwise influence a wider group of indirect or vicarious victims, implies that the audience of the crime transcends the direct victims. Indeed, the effects on vicarious victims in absolute terms may outweigh those of the direct victims. It has been demonstrated that symptoms of posttraumatic stress disorder are found in members of the public not present at the site of terrorist attacks and unrelated to those who were. The increased levels of fear in the general public may result in various behavioural reactions, from lower levels of tourist activity, to decreased use of public transport systems and the occurrence of 'worrying well'. The anger at the attack may furthermore lead to a process of vicarious retribution, which can involve backlash attacks on people who in one way or another resemble the terrorists and a general antipathy against those who are seen to belong to the same group.

Regardless of the question whether the suffering of victims of terrorism requires a differential response in principle, the study made clear that in particular the implementation of victims' rights and assistance after especially a large-scale terrorist attack will differ from that of an individual crime.

An example relating to compensation/reparation:

As mentioned in several international instruments, victims should receive fair, appropriate and timely compensation, which is easily accessible. This need applies as much to victims of ordinary crime as to victims of terrorism (needs in kind). The need for reparation in the broader meaning could be more apparent for victims of large-scale terrorist acts than for victims of ordinary crime. Especially the various forms of satisfaction¹⁹ may be important, for in-

¹⁸ This part is mainly distracted from Pemberton, A., *The Needs of Victims of Terrorism*, in Letschert et al, Chapter III, 2009 (forthcoming).

¹⁹ See also the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 22.

stance, in the form of a public acknowledgement of the facts and acceptance of responsibility and commemorations and tributes to the victims. In addition, reparation could see at preventing indirect victimisation of minority communities that may be confronted with a backlash after a terrorist attack. Tertiary victims would also benefit from such reparation programmes, considering that allowing this category access to the regular compensation schemes would be practically impossible.

Given the fact that physical damage and large-scale property damage in case of large-scale terrorist acts are more likely to occur (even in the case of non-fatal terrorist acts), victims' financial needs are acute. It is open to question whether normal procedures for compensation will be sufficiently expeditious in reaction to large-scale terrorist victimisation, resulting in a large group of both primary and secondary victims. It is further estimated that the costs of murder and manslaughter are by far the highest in any compensation scheme and that for victims of terrorism the costs of casualties are unlikely to be much different from other victims of crime. Nevertheless, the injuries sustained through terrorist acts are on average more severe, and the chances of developing a psychological disorder are higher, which implies that the financial implications of suffering non-fatal terrorist victimization will be higher. The higher costs are further compounded by the increased likelihood of incurring material damage, due to the methods used by terrorists. The frequent use of explosive devices in terrorist attacks will be likely to cause material damage more often than is usual for personal victimization by crime. On top of this, 9/11 has had a dramatic impact on insurers policies vis-à-vis terrorism coverage, which may lead to terrorism being excluded from coverage. These factors illustrate that the needs of victims of large-scale terrorism differ in degree compared to victims of ordinary crime:

Another issue relating to differentiation in degree relates to the fact that terrorist attacks often result in cross-border victims. As terrorists attacks have not infrequently targeted tourist places, many victims come from abroad. Apart from the other difficulties this may pose for victims and their families, it also adds to the cost of victimization making meeting the financial need even more important.

Problems seem to come to the fore also at the implementation level (how should a State deal with, for instance, mass claims?), more than at the normative level (are victims of terrorism entitled to a different form of compensation?). For instance, one can have doubts about the adequacy of State compensation

schemes in case of large-scale terrorist acts, with regard to procedural matters and with regard to the possibility to receive compensation for property damage. We have seen that in countries confronted with terrorist attacks, specific funds, based on public/private charity gifts, will evolve. However, it is to be discussed whether this will reduce the need to create specific measures that will enable to provide adequate and prompt compensation schemes. It could be argued that standards for victims of (large-scale) terrorism should include provisions on different reparation possibilities and the processing of mass claims, in order to strive for a settlement within a reasonable time and to aim for fair and appropriate compensation.

V. PROPOSED EU RECOMMENDATION ON ASSISTANCE TO VICTIMS OF ACTS OF TERRORISM

Based on the study, it was concluded that, although the needs of victims of terrorism compared to those of victims of crime do not so much differ in kind, the differences in degree and implementation justify the development of a specific set of standards, in particular for instances when the terrorist act leads to mass-victimization. In addition, the public nature of terrorist victimization and the targeting of civilians and non-combatants justifies a public response based on solidarity with victims and special attention to their needs.

The standards were developed in different phases. The researchers and the members of the Steering Committee²⁰ drafted a first set of standards (based on the results of the study). These standards were discussed with experts in the field (both practitioners and academics) during two seminars in November 2007. Based on their comments, a second draft was produced which was discussed during workshops at an international conference organized in Tilburg, The Netherlands in March 2008. Moreover, participating organizations (like the UN, CoE and the OSCE) at the conference had the opportunity to comment on the draft standards in the plenary. These results were discussed

²⁰ The Steering Committee was composed of experts from the Institute of Criminology of the K.U. Leuven (Prof. Dr. Ivo Aertsen and Prof. Dr. Letizia Paoli), INTERVICT (Prof. Dr. Jan Van Dijk), the Centre for the Study of Terrorism and Political Violence of the University of St. Andrews (Prof. Dr. Alex Schmid), the European Forum for Restorative Justice (Dr. Inge Vanfraechem), and Victim Support the Netherlands (Rob Sardemann; in cooperation with Victim Support Europe).

in the last steering committee meeting, on the basis of which the final version of the standards was drafted.

The proposed EU Recommendation on Assistance to Victims of Acts of Terrorism (appended to the present contribution) covers a more extensive approach for the assistance to victims of terrorism, including, among other things, provisions relating to psycho-social assistance (both emergency and continuing assistance), access to justice, compensation, information strategies, and access for victims of terrorism to restorative justice practices and procedures. As regards, for instance, emergency assistance, Member States should ensure that evidence-based and well-coordinated emergency assistance, including the provision of information and medical, psychological, social, and material support is available. With regard to access to justice and administration of justice, particular focus was put on participatory rights for victims of terrorism and legal aid. In this respect, a more comprehensive approach than offered in the existing international legal instruments was incorporated in the standards. The compensation provision does not only focus on ensuring adequate financial compensation, but also calls upon States to consider other reparative measures such as commemorations and tributes to the victims. Finally, restorative justice was included in the proposed EU recommendation. This approach was not explicitly mentioned in the Council of Europe Guidelines on the Protection of Victims of Terrorist Acts (2005), though a reference to mediation, as one form of restorative justice practice, can be found in other legal instruments at CoE level.

VI. DISCUSSION AND SUGGESTIONS FOR FURTHER RESEARCH

A recent analysis of the legal practice concerning victims in Europe showed that the legal position of victims of terrorism is virtually identical to that of victims of (violent) crime.²¹ Victims' rights are closely connected to their needs and in general it is safe to say that the needs of victims of terrorism do not

²¹ Pemberton and Letschert carried out the analysis of a survey sent out by the Organisation for Security and Cooperation in Europe (OSCE). The complete analysis containing all data is available through the ODIHR or the authors. The questionnaire was intended to provide "detailed relevant information on laws and practice of participating States on solidarity with victims of terrorism with a view to identifying best practices in this area."

differ in kind from those of victims of crime. This was the conclusion of the expert group which drafted the recent Council of Europe Recommendation Rec (2006)8 on Assistance to Crime Victims²² and Letschert et al (2009)'s analysis of the needs of victims of crime and terrorism also revealed a close resemblance between the two.

This does not imply that, for instance, compensation schemes and assistance structures that suffice for meeting the needs of victims of crime will always be equally adequate for victims of terrorism. In Letschert et al's study it was shown that the need for compensation may not be different *in kind* when comparing victims of terrorism and victims of crime. However, this does not rule out the possibility that the need may be different *in degree*, i.e. there is a more pressing or urgent need for compensation concerning victims of terrorism. Moreover, state compensation may also be an expression of the state's attempt to meet a different need, as state compensation is not only related to the mere need of victims to compensate the damages incurred, but is also an expression of state and societal acknowledgement for victims.²³ Countries like France and Spain that have developed specific state compensation schemes for victims of terrorism have done so in order to articulate societal acknowledgement. Similar considerations apply to assistance structures for victims of terrorism. Again the need for support may not be different in kind, but more pressing or more complicated to meet. Letschert et al's study shows that in particular for terrorist attacks resulting in mass victimization, additional measures may have to be implemented to meet the need for assistance and support inherent to an incident of this scale. Moreover, the differences are not measurable in terms of the types of support and assistance available, for example in psychological and medical assistance but in the more precise form of these methods of meetings victims' needs and in the way they are implemented. This also relates to the possible added value of establishing and maintaining specialised centres for victims of mass-terrorist attacks as is suggested by the Council of Europe Recommendation (2006)8.

²² See Explanatory memorandum Recommendation Rec 2006(8).

²³ This need for public acknowledgment is also explicitly included in the 'UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', of 16 December 2005. The document contains extensive forms of reparation, which goes much further than only financial compensation. The need for public acknowledgement is also included in the Proposed EU Recommendation in the form of commemorations.

After the completion of the OSCE's survey and Letschert et al's study, some more steps could be taken to deepen our understanding of the needs of victims of terrorism and existing best practices that aim to meet these needs.²⁴ To be able to label a particular country's strategy of meeting the needs of victims of terrorism for compensation and assistance as a best practice, two considerations should guide further research. First of all the differences in needs between victims of crime and victims of terrorism mainly relate to differences in degree and implementation. This means that it is necessary to review the implementation of the variety of schemes in practice to be able to discern relevant characteristics of good practice. This should imply a more in-depth analysis of the content of these schemes and of the way they are implemented. To the extent possible, it should be further ascertained whether the legislation concerning compensation and the organisational structures available for compensation and assistance suffice to meet the needs of actual victims of terrorism.

Second, differing experiences with terrorism may imply a variety of best practices. In the analysis of the OSCE survey it was shown that experience with terrorism could be a catalyst for the development of policy. For one thing there are many countries that fortunately have no experience with terrorist attacks, while others experience terrorism on a regular if not daily basis. Moreover, those who do experience terrorism, have varying experiences as well. Some suffer from a large number of small scale domestic attacks, while others are confronted with one-time, large scale attacks. Best practice may therefore be context-specific and differ according to the circumstances. It is as yet unclear what the practical value is of the experience of countries often confronted with terrorism and with more elaborate schemes for victims of terrorism for countries that have yet to suffer terrorist attacks. As a corollary of these considerations we would argue that follow-up research should more fully and extensively review the implications of the compensation and assistance programmes across Europe and its relation to the experience that states have with terrorism. At least two features of this follow-up research seem important. First of all, the study should have a more qualitative approach, using in-depth interviews rather than standardized surveys. It should scrutinise the relationship between the various

²⁴ Of course these are not the only studies conducted in this field. For instance, an important study that should be mentioned was commissioned by the Council of Europe: Albrecht, H.J., & Kilchling, M., *Victims of Terrorism Policies and Legislation in Europe, An Overview on Victim related Assistance and Support*, Max Planck Institute for Foreign and International Criminal Law, October 2005, available at www.coe.int.tjc/.

elements of the compensation and assistance programmes in combination, their underlying motivations, in particular where it relates to differences between victims of violent crime and terrorism and the relationship with experience with terrorist attacks. Second, follow-up research should also empirically test the implications of programmes for terrorist victims in practice. This may well necessitate including non-governmental experts in the study, for example from academia or organisations supporting and assisting victims from terrorism.

In this manner, Europe would be able to ascertain valuable information on good practice, which due to the attention it pays to relevant differences between countries, may also be more easily translated from one state to another. This would constitute a worthwhile step forward in the international effort to combat the detrimental effects of terrorist attacks for the victims who have the misfortune to be confronted with it.

VII. DRAFT EU RECOMMENDATION FOR ASSISTANCE TO VICTIMS OF ACTS OF TERRORISM

Preamble

Fully aware of the EU Council Framework Decision of 13 June 2002 on combating terrorism, in particular paragraph 8 stating that victims of terrorist offences are vulnerable and therefore specific measures are necessary with regard to them;

Bearing in mind the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the Council Directive of 29 April 2004 relating to Compensation to Crime Victims;

Having regard to the 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes (CETS No. 116), the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the 2005 Council of Europe Guidelines on the Protection of Victims of Terrorist Acts and the 2006 Council of Europe Recommendation (2006)8 on Assistance to Crime Victims;

Considering that terrorist acts seriously jeopardise human rights, threaten democracy, aim to destabilise legitimately constituted governments, undermine pluralistic civil societies and challenge the ideals of everyone to lead a life free from fear;

Victims of Terrorism: In Need of Special Attention?

Considering that terrorist acts cause great harm to the victims by injuring them, inflicting psychological damage and causing death;

Considering that terrorist attacks have repeatedly aimed at causing mass casualties, challenging available institutional capacities;

Considering that terrorist acts can have devastating effects on the quality of life of primary and secondary victims and others who have reason to fear to be targeted and the community as a whole;

Aware that the public nature of terrorist victimisation and the targeting of civilians and non-combatants requires a public response based on solidarity with victims and special attention to their needs;

Aware that victimisation by terrorist acts often results in cross-border victimisation, complicating the provision of assistance;

Recognising the important role of associations dedicated to the protection of victims of terrorist acts;

Recognising that restorative justice approaches and processes are increasingly used to meet victims' needs and aware that they can play a valuable role in assisting victims to come to terms with their victimisation;

Adopts the following Recommendation for Assistance to Victims of Acts of Terrorism and invites Member States to implement them and make sure that they are widely disseminated among authorities responsible for the protection of victims of terrorist acts and those who provide care to them.

I. Use of terms

1. The definition of act of terrorism coincides with the use of the term 'terrorist offence' as contained in articles 1 and 2 of the Council Framework Decision of 13 June 2002 on combating terrorism.

2. 'Victim' is a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss directly caused by the terrorist act. The term also includes, where appropriate, dependants or close relatives of the injured or deceased.

3. A 'first responder' is a person who intervenes to assist victims in distress or to prevent further victimisation or damage in the immediate aftermath of a terrorist act.

4. A 'witness' is a person who could be called to a court or other appropriate forum to provide testimony.

5. 'Secondary victimisation' is victimisation that occurs not as a direct result of the terrorist act but as a result of the response of public or private institutions, including the media and individuals, to the victim.

6. 'Restorative justice' is a response to crime in which victims have an opportunity to express their needs and concerns at individual or collective level and to actively participate in the proceedings. Restorative justice aims to repair, in so far as possible, the harm suffered and to bring offenders to understand the consequences of their behaviour and accept responsibility.

II. Principles

1. Member States should ensure that all victims, without discrimination on the basis of any kind, such as race, colour, gender, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability, can benefit from services and measures contained in this Recommendation.

2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator(s) of the terrorist act or the involvement of the victim(s) in investigations or proceedings.

3. Member States must respect the dignity, private and family life of victims of terrorist acts and take all necessary steps to avoid secondary victimisation.

III. Emergency Assistance

1. In order to address the immediate needs of the victims, Member States should ensure that evidence-based and well-coordinated emergency assistance, including the provision of information and medical, psychological, social, and material support is made available. Member States should, when requested by a victim, also facilitate access to spiritual assistance.

2. In cases of mass victimisation, Member States should develop additional procedures and implementation strategies, including the identification of lead agencies.

3. Wherever possible, assistance should be provided in a language understood by the victim.

IV. Continuing Assistance and Support of Victim Involvement

1. Member States should provide for evidence-based continuing assistance, including medical, psychological, social, material assistance and information services for victims as well as for first responders.

2. Member States should promote and support community-based initiatives, including the formation of groups of victims or relatives with a view to stimulate mutual support, to empower them, and to strengthen solidarity in society.

3. If the victim does not normally reside on the territory of the Member State where the terrorist act occurred, that State should cooperate with the State of residence in ensuring that the victim receives such assistance, including through establishing links between victim support organisations or consular services.

V. Investigation and Prosecution

1. Member States on whose territory a terrorist act has taken place must launch an effective independent criminal investigation into this act.

2. In this framework, special attention must be paid to the interests of victims without it being necessary for them to make a formal complaint.

3. In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, Member States should allow victims to ask for this decision to be re-examined by another competent authority.

4. In appropriate cases, Member States should consider launching independent public inquiries in the aftermath of a terrorist act in order to give full and public disclosure of the background, circumstances and responsibilities.

5. Each Member State shall ensure that the victim of a terrorist act in a Member State other than the one where s/he resides can make a report before the competent authority of her/his State of residence, if s/he was unable to do so in the Member State where the terrorist act was committed. This competent authority shall transmit the report without delay to the competent authority in the jurisdiction in which the act was committed. In addition, each Member State should ensure that its authorities have recourse, as far as possible, to the provision of video conferencing and telephone conference facilities as laid down in the Convention on Mutual Assistance in Criminal Matters of the European Union of 29 May 2000(3).

VI. Access to Justice and Administration of Justice

1. Member States shall, in accordance with their national legislation, bring individuals suspected of terrorist acts to justice and obtain a decision from a competent civilian tribunal within a reasonable time.

2. Member States shall ensure that the position of victims is adequately recognised in criminal proceedings in accordance with domestic law, including by safeguarding the possibility for individual victims and/or associations representing victims' interests to communicate orally or in written form their views and concerns in the proceedings.

3. Member States shall provide effective access to justice for victims of terrorist acts, including through associations representing victims' interests, by providing them with:

(i) the right of access to competent courts in order to bring a civil action in support of their rights;

(ii) the status of parties to criminal proceedings in Member States where such possibility exists;

(iii) the right of access to restorative justice programmes;

(iv) free legal aid that should be ensured by the State or through special legal aid systems.

VII. Compensation and other Reparative Measures

A. Compensation

1. Victims of terrorist acts, and, where appropriate, first responders and dependants or close relatives, should receive fair, appropriate and timely compensation for damage resulting from a terrorist act, including for pain and suffering incurred. When compensation is not available from other sources, in particular through the confiscation of assets of the perpetrators, organisers and sponsors of terrorist acts, the Member State on the territory of which the terrorist act occurred should contribute to the compensation of victims for the consequences of direct material or psychological harm, irrespective of their nationality, either by applying existing provisions for compensation for victims of crime or by establishing a special fund for victims of terrorism.

2. Compensation from the State should be readily accessible to victims, irrespective of nationality. To this end, the Member State on the territory of

which the terrorist act occurred should introduce a simple procedure allowing for fair and appropriate compensation within a reasonable time, taking into account special complexities in cases of mass victimisation.

3. Member States whose nationals were victims of a terrorist act on the territory of another Member State should facilitate the use of systems of cooperation as foreseen in the Council's Directive relating to Compensation to Crime Victims. In addition, administrative cooperation should be encouraged between the competent authorities of Member States and non-Member States to facilitate access to compensation for their nationals.

4. Member States are encouraged to promote the principle that insurance policies should not exclude damages caused by acts of terrorism through consultation with insurance companies.

B. Other Reparative Measures

Apart from the payment of compensation, Member States are encouraged, depending on the circumstances, to consider taking other measures to mitigate the negative effects of the terrorist act suffered by the victims, their dependants and close relatives as well as first responders. Such other measures could include:

(1) The search for the whereabouts of the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims;

(2) Commemorations and tributes to the victims and first responders.

VIII. Restorative Justice

1. Member States should promote competent restorative justice programmes that prepare for and support dialogue between victims and perpetrators of terrorism, and/or between members of the communities involved. As a minimum, these processes should allow victims to communicate the full impact of the terrorist acts on their lives and to seek information about the offenders' motives. This dialogue can also take place between those victims or perpetrators who have not been involved in the same terrorist act. Through the involvement of affected communities, the societal consequences of terrorist acts should be recognised and dealt with.

2. Member States should ensure that qualified and/or experienced facilitators are available to assist the parties in these processes.

IX. Protection of the Private and Family Life

1. Member States should take appropriate steps to avoid, as far as possible, the undermining of respect for the private and family life of victims of terrorist acts, in particular when carrying out investigations or providing assistance after a terrorist act as well as within the framework of proceedings initiated by victims.

2. Member States should ensure that private and public institutions which interact with victims provide confidential services, including confidential record systems.

3. Member States should, where appropriate, while recognising the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory guidelines and take appropriate measures to ensure the protection of the private and family life of victims of terrorist acts as well as their relatives and first responders in the framework of their information activities. This protection is especially important in the immediate aftermath of a terrorist attack, when those involved are in a state of shock.

4. Member States shall ensure that victims of terrorist acts have an effective remedy when they raise a plausible claim that their right to respect for their private and family life has been seriously violated.

X. Protection of Dignity and Security

1. At all stages of the proceedings, victims of terrorist acts and their dependants and close relatives, as well as first responders should be treated in a manner which respects their personal security, their rights and their dignity.

2. Member States must ensure the protection and security of victims of terrorist acts as well as those of their dependants and close relatives and first responders and should take measures, where appropriate, to protect their identity, in particular where they intervene as witnesses.

XI. Information to Victims and the Public

1. Member States should provide information, in an appropriate form, to victims of terrorist acts about the act which led to their harm, except where victims indicate that they do not wish to receive such information. For this purpose, States should:

(i) set up an appropriate mechanism for the provision of information to victims regarding their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice as well as compensation;

(ii) ensure the provision to victims of appropriate information in particular about the progress of the investigations, decisions concerning prosecution, the date and place of the hearings in court, sentencing decisions including the granting of bail and release from custodial sentence and the conditions under which they may acquaint themselves with the contents of judicial decisions handed down. All information should be provided at the earliest possible stage and with full and clear explanations of the decisions which have been taken.

2. Member States should take steps to prepare an adequate information strategy with a view of minimising undue apprehension, fears and social stigmatisation among the larger public, bearing in mind the risks of retaliatory action against members of communities associated with the perpetrators of terrorist acts. Such an information strategy should be focused on well-balanced background information in order to achieve the required results.

XII. Specific Training for Persons Responsible for Assisting Victims

1. Member States should encourage specific training for persons responsible for assisting victims, including first responders and consular personnel, as well as granting the necessary resources to that effect.

2. Training should, as a minimum, include:

(1) evidence-based knowledge of the possible impact of terrorist acts on victims and first responders;

(2) state of the art knowledge and skills on ways to assist victims and first responders and prevent secondary victimisation.

Rianne Letschert, Mart Groenhuijsen, Antony Pemberton

XIII. Research and Exchange of Information

1. Member States should promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research concerning the impact of terrorist acts on victims, first responders and the public at large, including comparative cross-national and cross-cultural research in order to develop better coping mechanisms and strengthen the resilience of communities to terrorist acts.

2. Member States should encourage all governmental and non-governmental agencies dealing with victims to share their expertise with similar agencies in their country, in the European Union and where needed, elsewhere.

XIV. Increased Protection

Nothing in this Recommendation restrains Member States from adopting more far-reaching services and measures than described in this Recommendation.

Sažetak

Rianne Letschert, M. Groenhuijsen, A. Pemberton

ŽRTVE TERORIZMA: U POTRAZI ZA POSEBNOM PAŽNJOM?

S porastom napada masovnog terorizma, sve se više pažnje pridaje položaju žrtava ovih djela, kako na razini pojedinih država, tako sve više i na međunarodnoj razini; npr. unutar Vijeća Europe, Europske unije, OSCE-a.

Ovaj se članak usredotočuje na rezultate projekta zatraženog od strane Europske unije za razvoj posebnih standarda za žrtve terorizma. Članak prikazuje rezultate istraživanja koje se bavilo razlikama između potreba žrtava kriminala općenito i potreba žrtava terorizma. Nadalje, u članku se razmatra predložena Preporuka Europske unije za pomoć žrtvama terorizma.