

Speech of Mr. Azay Guliyev, OSCE PA Vice- President

**on “International (Humanitarian) Law and Terrorism:
Challenges and Responses”**

*to the Parliamentary Conference on Combating International Terrorism
St. Petersburg, 28 March 2017*

**Mr. Chairman,
Dear Collegiues,
Ladies and Gentlemen,**

Addressing the terrorism is a very complex and challenging issue. The challenge facing the international community is to translate the statements and well-elaborated declarations of condemnation of terrorism into concrete measures that can effectively address the very negative effects and consequences of terrorist activities.

Terrorism is one of the threats against which all States must protect their citizens. They have not only the right but also the duty to do so. We need to give every person on this globe a reason to cherish his or her own rights, and to respect those of others. We need also to ensure that innocent people do not become the victims of counter- terrorism measures. This is why states must take the greatest care to ensure that counter-terrorism activities are not abused with a view to justifying violations of human rights and recognized humanitarian standards.

On the contrary, a greater respect for human rights, democracy and social justice, which is well-established and elaborated in most important international instruments, such as the UN Charter, international covenants on human rights, and the Geneva Conventions will in the long-term prove the only effective cure against terror.

International law, particularly human rights law, humanitarian law, and refugee law provides that framework. These three branches of law define the boundaries of permissible measures, even military conduct, and strike fair balances between legitimate security and military concerns and fundamental freedoms. In this context, I would like to refer to the OSCE Basel Ministerial Council Declaration on countering the phenomenon of foreign terrorist fighters, in which the OSCE participating states committed themselves to respect their obligations under international law, including refugee law while countering the movement of foreign terrorist fighters across the OSCE area.

However, there has been a disturbing trend in recent years of increasing criminalization and stigmatizing of asylum-seekers and refugees in some of the OSCE countries.

While there may be some persons in both categories who may be associated with serious crime, this does not mean that the majority should be damned by association with the few. Likewise, their ethnic or religious backgrounds, which are misused by those who have committed grave crimes, can no circumstance be an excuse for any misbehavior against them.

It is clear that refugees and asylum-seekers are protected under international law and it is the obligation of individual states to uphold these obligations. Any discussion on security safeguards should take into due account that refugees are themselves escaping persecution and violence, including terrorist acts, and are not the perpetrators of such acts.

If we fail to uphold human rights in our responses to terrorist acts, it can only serve to purposes of terrorists. That is precisely what they aim at: destabilizing countries and destroying democratic values and principles.

Taking into account all these circumstances, I would like to briefly underline 4 major concerns and challenges that may directly affect refugees and asylum seekers in the following areas:

1) Access to Refugee Status Determination

The challenge is that legislation may be enacted which leads, in effect, to denial of access to refugee status determination, or even rejection at the border, of certain groups or individuals, based on religious, ethnic or

national origin or political affiliation, on the assumption of links to terrorism.

My opinion is that refugee status determination procedures in place to deal with suspected terrorists must comply with minimum standards of due process, ensuring that decisions are taken by those knowledgeable and qualified people to make refugee determination, with review possibilities built in.

2) Treatment of asylum seekers

The concern is that states might be inclined to resort to mandatory detention of asylum-seekers, or to establish procedures not complying with the due process standards.

I believe that detention of asylum seekers should be the exception, not the rule. Detention would only be acceptable when circumstances surrounding the individual case so justify, including where there are solid reasons for suspecting links with terrorism.

3) Exclusion

The challenge is that states may be inclined to automatic or improper application of exclusion clauses or criteria to individual asylum-seekers, based on religious, ethnic or national origin or political affiliation, on the assumption that they may be terrorists.

As I already mentioned that the genuine refugees are the victims of terrorism and persecution, not its perpetrators. Those responsible for serious crimes are excluded from refugee status by virtue of the terms of the international refugee instruments and we should encourage States to use those clauses rigorously where appropriate.

4) Withdrawal of Refugee Status and Deportation

The concern is that the states may be inclined to withdraw the refugee status of individuals in their country, again based on the same reasons.

I think the withdrawal of refugee status can only follow evidence of fraud or misrepresentation as regarding facts central to the refugee decision. The

ethnicity or origin of a refugee cannot be bases in themselves either for denying or withdrawing status.

At the end I would also like to touch upon the Security Council Resolution 1373, which makes certain unwarranted linkages between terrorists and asylum seekers or refugees. The vagueness of the language is an additional problem in that it could lead to the application of the resolution in a manner that deprives *bona-fide* asylum seekers and refugees of basic rights under cover of a claimed necessity to take anti-terrorist measures.

With this in mind, I strongly believe that the OSCE PA and other international organizations should intensify their efforts to promote human rights-based migration policy while contributing to combat terrorism.

In this context, I wish you fruitful and productive discussions.

Thank you Mr. Chairman.