



Organization for Security and Co-operation in Europe

Office of the Secretary General

**Review of the Implementation of OSCE Commitments
to Prevent and Combat Terrorism**

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I. Introduction

This report overviews the key OSCE commitments to fighting terrorism, and assesses the status of implementing these commitments by OSCE participating States. The report is divided into two sections. The first discusses the typology of assistance provided by OSCE in taking action against terrorism. The second addresses the status of OSCE participating States' implementation of OSCE commitments, including challenges to implementation. Both sections are structured to reflect the UNCTC "stages" of terrorism assistance (see Annex). Lastly, the report offers considerations for strengthening implementation activities.

The Bucharest Plan of Action (2001) called on OSCE bodies and Institutions to assist OSCE participating States in implementing the Plan and other OSCE commitments related to preventing and combating terrorism. The Plan tasks the OSCE Permanent Council, through the Chairman-in-Office and with assistance from the OSCE Secretariat, to *inter alia* monitor its implementation, and further identify sources for assistance in implementing anti-terrorism measures, including organizing expert teams

The OSCE recognizes that anti-terrorism measures should be addressed within the overall framework of the United Nations (UN), with the UN Counter-Terrorism Committee (UNCTC) as the lead UN body for monitoring the implementation of UN Security Council Resolution (UNSCR) 1373. Thus, this paper will address obstacles to implementation and how they relate to the three stages as defined by the UNCTC: creating the legislative framework and the prevention and suppression of terrorist financing (Stage A), creating executive machinery for implementation (Stage B), and international co-operation (Stage C).¹

The report draws on information from several sources. These include data and reports readily available to the OSCE's Action against Terrorism Unit (ATU) and the ODIHR, including the status of ratification by OSCE participating States of the 12 international conventions and protocols relating to terrorism, the UNCTC Assistance Matrix, consultations with the UN Office on Drugs and Crime (UNODC), UNCTC, other sources of expertise, and experience gained through ATU/ODIHR activities.

Effective implementation of an anti-terrorism agreement involves many institutional elements, including national security doctrine, budgetary allocations and administrative structures. "Full implementation" of the anti-terrorism conventions called for by the UN Security Council and the OSCE means far more than ratifying the 12 international conventions and protocols relating to terrorism and putting in place the supporting legislative framework. "Full implementation" also means implementation in conformity with international law, including international legally and politically binding human rights obligations. In practical terms, this translates into commitments to ensure the most efficient and appropriate application of anti-terrorism laws. The OSCE's comprehensive approach to security makes it uniquely suited to address the challenge of balancing the respect for civil liberties and other human rights, with the duty to protect citizens from potential terrorist attacks.

¹ See Annex for a more detailed description of these stages.

A. OSCE Commitments

Through the Bucharest Plan of Action, OSCE participating States pledged to combat terrorist threats by all means in accordance with their international commitments. The Plan of Action represented a reaffirmation of the OSCE's determination, as a regional arrangement under Chapter VIII of the Charter of the United Nations (UN), to contribute to the fulfilment of international obligations as enshrined *inter alia* in UN Security Council Resolution (UNSCR) 1373 (2001). The Plan of Action has since formed the basis for all OSCE activities to prevent and combat terrorism, and its implementation remains a top priority for the Organization.

A further document on preventing and combating terrorism, the Bishkek Programme of Action, was agreed to by OSCE participating States in 2001 and is also relevant to this report. In accordance with Part V(29) of the Bucharest Plan of Action, the *Bishkek International Conference on Enhancing Security and Stability in Central Asia: Strengthening Comprehensive Efforts to Counter Terrorism*, co-organized by the OSCE and the UN Office on Drugs and Crime (UNODC), was held on 13 and 14 December 2001. At this conference, the Bishkek Programme of Action was endorsed.

The Bishkek Conference brought together over 300 participants from 60 states and 20 international organizations. It thus served as an effective platform for strengthening co-ordination and improving international co-operation in preventing and fighting terrorism. The concrete outcome of the conference was embodied in two documents, the "Declaration" and the "Programme of Action". The Programme of Action aims at translating provisions from the Bucharest documents into concrete action in order to provide the OSCE bodies, Institutions and field operations with a tool for developing new initiatives in the fight against terrorism.

At the Porto Ministerial 2002, the OSCE strengthened its anti-terrorism regime by adopting an additional two documents, the OSCE Charter on Preventing and Combating Terrorism (MC(10).JOUR/2) and Decision No. 1: Implementing The OSCE Commitments And Activities On Combating Terrorism (MC(10).DEC/1), which decides that all OSCE participating States, bodies and Institutions shall continue on an urgent basis to implement and ensure the effectiveness of their Bucharest commitments.

In addition, several OSCE documents spell out the OSCE's political commitments, which are relevant to the fight against terrorism, such as the Document on Small Arms and Light Weapons, and the Code of Conduct on Politico-Military Aspects of Security.

B. The UN Legal Framework

Through the Bucharest Plan of Action, OSCE participating States recognized that the relevant UNSCRs and the 12 international conventions and protocols relating to terrorism constitute the global legal framework in the fight against terrorism. UNSCR 1373 obligates all Member States to ratify and implement the 12 international conventions and protocols relating to terrorism. In addition, several OSCE documents spell out the OSCE's political commitments, which are relevant to the fight against terrorism, such as the Document on Small Arms and Light Weapons, and the Code of Conduct on Politico-Military Aspects of Security.

The Bucharest Plan of Action reaffirms the OSCE's commitment to comply with international legal and political obligations. It specifically notes the requirements for technical assistance for drafting the legislation necessary for ratifying the 12 international conventions and protocols relating to terrorism and calls for enhanced implementation for existing politico-military commitments as well as a review of existing politico-military documents with the view to assessing their relevance to the fight against terrorism.

UNSCR 1373 mandated the UN Counter-Terrorism Committee (UNCTC) to facilitate its implementation. In line with Part V(30) of the Bucharest Plan of Action and as mandated by paragraph 6 of UNSCR 1373, the OSCE Secretary General submitted his reports in 2001 and 2002 to the UNCTC on OSCE actions taken to prevent and combat terrorism.

C. OSCE Road Maps and the OSCE Project Database

As called for in Part V(31) of the Bucharest Action Plan, all OSCE bodies, Institutions and field operations submitted "road maps" for the implementation of the tasks set forth in the Plan.² These "road maps" outlined concrete steps to be taken in 2002, and have been taken into account in the preparation of this report.

In May and June 2002 all OSCE bodies, Institutions and field operations submitted project proposals in line with their "road maps" and in accordance with the commitments in the Bucharest Plan of Action. In close co-operation with the OSCE Conflict Prevention Centre at the OSCE Secretariat, the project proposals were put into a consistent format and uploaded onto the on-line project database on the OSCE delegations website, so that OSCE participating States could offer to provide assistance for anti-terrorism projects.

II. Assistance to Implementation

As all OSCE anti-terrorism measures are to be addressed within the overall framework of the UN, with the UNCTC as the lead, this paper will address implementation and how the measures relate to the three stages as defined by the UNCTC: creating the legislative framework (Stage A), creating executive machinery for implementation (Stage B), and international co-operation (Stage C).

A. Creating the Legislative Framework (Stage A)

UNSCR 1373 imposes binding obligations on all Member States to become parties as soon as possible to the 12 international conventions and protocols relating to terrorism. OSCE participating States have pledged to become party to all 12 international conventions and protocols relating to terrorism by the end of 2002, if possible, and to review national legislation and compliance with international legal obligations. To this end, an important step is the review of existing national legislation and the development of effective new legislation that criminalizes activities that aim to support or commit terrorism. The UNCTC encourages Member States and international organizations with the necessary capacity to provide legislative assistance to other Member States upon request.

² The Road Maps are: ODIHR, ODIHR.GAL/0007/02 (27 December 2001); Freedom of the Media, FOM.GAL/0002/01 (8 March 2002); High Commissioner on National Minorities, HCNM.GAL/0004/02 (14 March 2002); Parliamentary Assembly, PA.GAL/0001/02 (18 March 2002); Secretariat, SEC.GAL/0035/02, (19 March 2002); Forum for Security Co-operation, FSC.DEC/0005/02 (20 March 2002).

The ODIHR has, in close co-operation with UNODC, developed a support package to assist OSCE participating States to develop or strengthen anti-terrorism legislation and implement the 12 international conventions and protocols relating to terrorism. To date the ODIHR has received one formal request from an OSCE participating State for assistance in implementing the 12 international conventions and protocols relating to terrorism. However, it is hoped that 2003 will see a marked increase in assistance, as OSCE participating States seek to fulfil their obligations under UNSCR 1373.

As part of its activities related to assisting OSCE participating States in implementing UN Security Council Resolution 1373, the ODIHR held a series of seminars and workshops for countries in the Southern Caucasus and Central Asia. In February 2003, a seminar took place in London with the participation of the UN Counter-Terrorism Committee, the UN Office on Drugs and Crime and the United Kingdom Foreign and Commonwealth Office (FCO). The seminar was attended by senior officials from Kazakhstan, Kyrgyz Republic, Tajikistan and Uzbekistan. The FCO's legal advisor, who had taken part in the negotiations for the Council of Europe's Guidelines on Human Rights in the Fight against Terrorism, gave a presentation on incorporating human rights standards into legislation. This was followed by a discussion on balancing security and human rights, with recommendations from the participants for experts in the field to be made available in follow-up workshops in the capitals. The first of these will be held in Bishkek in June.

Similar workshops were held in Baku and Tbilisi in April 2003, once more focusing on the implementation of UN SCR 1373, and including discussion on balancing security and human rights. The ODIHR's Co-ordinator on Anti-Terrorism Issues stressed the need to respect human rights as States take measures to prevent and combat terrorism and led a discussion on balancing security concerns and human rights. Participants from both Georgia and Azerbaijan suggested that it would be useful to have further discussions in this area, with the possibility of hearing from other OSCE participating States with experience of dealing with terrorism on practical steps taken to ensure compliance with international human rights law.

While speaking with one voice in their unequivocal condemnation of all acts, methods and practices of terrorism, OSCE participating States are also obliged to ensure that measures taken to combat terrorism are carried out in full conformity with obligations under international law, including international human rights law and OSCE commitments. Indeed, the Bucharest Plan of Action states in Part I(3) that any action taken as a whole to combat terrorism must fully respect international law, including international human rights law. The ODIHR Human Rights Section has incorporated the monitoring of anti-terrorism measures against human rights standards into its day-to-day work.

The Bucharest Plan of Action calls on ODIHR to increase its efforts to promote and assist in building democratic institutions, strengthen administrative capacity, local and central government structures, the judiciary, ombudsman institutions and civil society. ODIHR continues to develop projects to improve democratic institutions, civil society and good governance. The Bishkek Programme of Action focuses on the specific need to enhance the capacity of the judiciary to deal with all aspects of terrorism and related crime, including the provision of relevant expertise and training in order to further strengthen the independence and impartiality of the judiciary.

Suppressing the Financing of Terrorism

The OSCE Office of the Co-ordinator for Economic and Environmental Activities (OCEEA) has undertaken a number of initiatives designed to implement the recommendations contained in the Bucharest Plan of Action and the Bishkek Programme of Action. Specifically, the Bishkek Programme of Action highlighted the importance of the creation of anti-money laundering structures and legislation, as well as the ratification and implementation of international instruments, such as the 1999 UN International Convention for the Suppression of the Financing of Terrorism. In this regard, the UNODC Global Programme against Money Laundering (GPML) and the OCEEA co-operate on activities aimed at combating money laundering and suppressing the financing of terrorism.

The UNODC and the OCEEA conducted one of the first joint activities in May 2002 with the Working Session on the financing of terrorism in the framework of the 10th Economic Forum in Prague. In July 2002, as an immediate follow up to this event, OSCE participating States committed themselves, through a decision of the OSCE Permanent Council, to complete the FATF self-assessment questionnaire by 1 September 2002.³

The UNODC and the OCEEA are also co-operating on organizing national workshops on combating money laundering and suppressing the financing of terrorism. The workshops constitute the first phase of awareness raising and needs assessment. The approach consists of the following elements: legal framework development, implementation assistance (“mentorship” programme) and capacity building (including specific training elements).

The first four workshops on “Combating Money Laundering and Suppressing Financing of Terrorism” were implemented with the governments of Armenia, Azerbaijan, Kazakhstan and Kyrgyzstan. Follow-up roundtables to the workshops, aiming at assistance in creating anti-money laundering mechanisms, have been organized in three of the countries. Further interest has been expressed by the Governments of Uzbekistan, Tajikistan, as well as from countries in South Eastern Europe, and is being discussed with the UNODC.

B. Creating Executive Machinery for Implementation (Stage B)

Law Enforcement

The Bucharest Plan of Action recognizes the close link between terrorism and transnational organized crime, trafficking in drugs, human beings and arms, and money laundering. The ability of national police services to respond efficiently and appropriately to such issues is crucial to the efforts to successfully prevent and combat terrorism. In this respect, several OSCE bodies, Institutions and field operations are engaged in activities supporting OSCE participating States in strengthening law enforcement institutions in fighting the various aspects of transnational organized crime. Responsibility for such measures within the OSCE falls primarily under the OSCE Strategic Police Matters Unit (SPMU) in Vienna.⁴ However, efforts by the SPMU are supported by policing related activities within the ODIHR, the CPC (including the field operations and the FSC Support Unit), the OCEEA, and the ATU.

³ PC.DEC/487 (11 July 2002).

⁴ See also the Annual Report on Policing, SEC.DOC/2/02 (21 November 2002).

The SPMU police assistance projects contribute to the fight against terrorism. The SPMU has initiated technical assistance programmes related to policing in partnership with counterparts of OSCE participating States and with the assistance, whenever necessary, of international experts. As part of concrete counter-terrorism actions, the SPMU strategy, in the framework of current and future programmes and projects, will aim to systematically address all the major criminal issues. These include trafficking in weapons and in human beings, illegal immigration and organized crime.

Improving the necessary skills to investigate major crime, corruption and money laundering will help in the effective detection of terrorist activities. Elements of the police-related technical assistance projects will include training in crime information and criminal intelligence systems, crime reporting and criminal records systems, crime scene search and forensic science techniques. In addition, several field mission mandates include police training. The SPMU includes counter-terrorism as a component of general police training and development of training curricula.

Measures to Combat Trafficking in Small Arms and Light Weapons (SALW)

The main activities on combating trafficking in small arms and light weapons are outlined in Part II(B) above. Within context of law enforcement and organized crime, the FSC Support Unit of the CPC has focused on fostering the implementation of the OSCE Document on Small Arms and Light Weapons (SALW) among Central Asian OSCE participating States. As part of an effort to move towards practical initiatives requested by the Central Asian governments, the FSC Support Unit, with the support of the OSCE Centre in Tashkent, has organized and conducted a training course on combating cross-border trafficking in SALW on the border of Uzbekistan and Afghanistan. The course forms part of a comprehensive inter-agency programme led by the UNODC that is designed to increase the effectiveness of the Termez-Hayraton checkpoint, the only crossing point between the two countries. In view of OSCE expertise on SALW, the OSCE was asked to provide a component on arms trafficking, which was made possible through the participation of expert trainers from OSCE participating States, and funded by Germany. The OSCE module was held from 5-15 November 2002 at the Termez checkpoint.

Border Issues

Border security and the threat of international terrorism are issues of particular international concern. The policy challenge is to find ways to enhance border security to a level that is commensurate with the threat of transnational terrorism, while facilitating legitimate cross-border travel and commerce, and protecting human rights.

Responses to border issues within the OSCE include activities undertaken by various OSCE bodies, Institutions and field operations, and focus on a variety of aspects of border security, including police, customs and immigration. However, the primary responsibility for ensuring a coherent approach to border issues lies with the CPC. The CPC is in the process of formulating a comprehensive approach to border related issues in which the OSCE could play an active role. The CPC has launched an internal co-ordination process for sharing information within the OSCE Secretariat and developing specific border-related projects.

Travel Documents

The ATU has begun facilitating a series of project proposals promoting regional co-operation workshops on travel documents. Workshops bring together key governmental officials, as well as international experts. Workshops facilitate multilateral technical discussion on controlling travel documents and border interdiction. The workshops also facilitate the creation of informal, regional technical working groups, where possible, to serve as a network for information sharing after the workshop. The first workshop was held in Ohrid in April 2003, bringing together government officials from around South Eastern Europe. Participants affirmed the need for such informal, technical forums for information sharing on this topic.

C. International Co-operation (Stage C)

Both the Bucharest Plan of Action and the Bishkek Programme of Action identify co-operation with other organizations as an important aspect of OSCE activities in fighting international terrorism. OSCE participating States pledged to reinforce and develop co-operation “with the UN and with other international and regional organizations, in order to combat terrorism in all its forms and manifestations”.⁵

The UN

UNCTC

As a regional arrangement under Chapter VIII of the Charter of the UN, the OSCE contributes to the fulfilment of international obligations under UNSCR 1373 (2001). The OSCE Secretary General reported upon request to the UNCTC, to the UN Department of Peacekeeping Operations and to the Legal Counsel of the UN on OSCE activities with regard to Resolution 1373. The Chairman of the UNCTC visited Vienna on 4 April 2002, and met informally with OSCE participating States to discuss issues related to anti-terrorism activities and the UNCTC framework, including its mandate, composition, main achievements and future plans. Representatives of the UNCTC participated in both the 12 June High Level Meeting on the Prevention and Combat of Terrorism in Lisbon, as well as in the 6 September meeting with regional and sub-regional organizations and initiatives on preventing and combating terrorism in Vienna.

The OSCE has developed a constructive and collegial working relationship with UNCTC staff. The ATU periodically submit reports to the UNCTC regarding OSCE assistance activities aimed at implementation of OSCE commitments to prevent and combat terrorism. The ATU is in regular contact regarding the feedback from OSCE participating State reports on implementation of UNSCR 1373 and the associated requests for assistance.

The UNODC

As mentioned above, the OSCE works closely with the UNODC in several geographic regions on various issues related to fighting terrorism. For example, the ATU organizes workshops on money laundering, provides mutual support on assistance to legislative drafting, and plans the development of joint activities related to border security.

⁵ MC(9).DEC/1.

The OSCE Secretariat was represented at the “Ministerial Conference On The Promotion Of The Ratification And Future Implementation Of The UN Convention Against Transnational Organized Crime And Its Protocols” organized by UNODC in Algiers, Algeria, on 29-30 October 2002. The Ministerial Conference was one of a series of activities undertaken by the UN Centre for International Crime Prevention to promote the expeditious entry into force of the new Convention and its Protocols. It provided a forum for OSCE participating States of the region to review and exchange views and experience on progress in the ratification process as called for by the UN General Assembly.

Other UN Agencies

The OSCE works closely with the UN on small arms and light weapons. Specifically, the co-operation focuses on the full implementation of the UN Programme of Action on small arms and light weapons (SALW), and the UN Firearms Protocol, which is supplemental to the Convention on Transnational Organised Crime. Experts from the UN Department of Disarmament Affairs and the UNODC have provided briefings on both documents at OSCE events, including the Vienna workshop of February 2002 and the Almaty Regional Meeting of May 2002.

OSCE Informal Group of Friends

To further co-ordination on anti-terrorism activities, the Chairmanship created an “Informal Open-ended Group of Friends of the Chair on Assistance on the implementation of OSCE commitments and activities on Combating Terrorism” (“Informal Group of Friends”) in February 2003. The Informal Group of Friends promotes the implementation of UNSCR 1373, the twelve UN Conventions and Protocols related to terrorism and completion of the FATF Self-assessments on compliance with the eight special Recommendations on Terrorist Financing. The Informal Group of Friends reviews the need for assistance on the implementation of OSCE commitments in preventing and combating terrorism within the OSCE area, and develops plans for assistance, as appropriate, advising the Permanent Council on actions to be taken.

The Informal Group of Friends is chaired by Ambassador Thordur Aegir Oskarsson, Permanent Representative of Iceland to the OSCE, the ODIHR Anti-Terrorism Co-ordinator, Colonel Peter Gorissen of the Netherlands Permanent Representation, and is assisted by the ATU as secretary. The chairman is assisted by two vice-chairs, Mr. Dimiter Zhalnev of the Permanent Representation of Bulgaria and Mr. Marko Purkart of the Permanent Representation of Slovenia.

The Informal Group of Friends has focused on improving inter-organizational co-operation and transparency on anti-terrorism issues. The Informal Group of Friends invited Mr. Walter Gehr of the UNODC to discuss his organization’s activities and strategies. Also, as requested by the Informal Group of Friends, the ATU and the ODIHR Anti-Terrorism Co-ordinator completed in May a paper on challenges faced by OSCE participating States in the implementation of OSCE commitments related to terrorism.

Other Partner Organizations

The OSCE has also co-operated closely with the Council of Europe on anti-terrorism initiatives through other consultation mechanisms. On 2 and 3 May 2002 the OSCE Secretary General addressed the 110th Session of the Committee of Ministers of the Council of Europe,

in Vilnius. The Session focused on regional co-operation and international action against terrorism. On 12 July 2002, the OSCE hosted the annual “2+2/3+3” meeting at the level of senior officials in Vienna. The fight against terrorism received priority attention in the agenda, in particular on specific issues such as policing, trafficking and multi-cultural and inter-religious dialogue. This included co-operation between the two organizations at the field and regional level.

III. Implementation Challenges Faced by OSCE Participating States

Although the OSCE bodies, Institutions, and field operations are engaged in an array of activities to strengthen implementation of anti-terrorism commitments of OSCE participating States, full implementation remains a challenge for OSCE participating States. This section does not by far exhaustively reflect the obstacles OSCE participating States face in implementing their anti-terrorism obligations. However, it addresses a variety of topics that warrant consideration on how OSCE participating States may strengthen implementation and, in some cases, how assistance may be more targeted and effective.

A. Creating the Legislative Framework (Stage A)

UNSCR 1373 calls upon all Member States to become parties, as soon as possible, to the 12 international conventions and protocols relating to terrorism, to increase co-operation and to implement the relevant conventions, protocols and UNSCRs 1269 (1999) and 1368 (2001). UNSCR 1373 also calls upon the UN to create a Counter-Terrorism Committee (ultimately the UNCTC), to monitor implementation of the resolution and co-ordinate assistance programmes. The UNCTC encourages assistance programmes to be conducted through regional organizations.

In the Bucharest Plan of Action⁶ and the Bishkek Programme of Action,⁷ OSCE participating States reaffirmed their commitment to fully implement obligations under UNSCR 1373 and called upon OSCE bodies and Institutions to provide technical assistance upon request. The ODIHR is in a position to facilitate such assistance, in addition to any assistance related to anti-terrorism legislative frameworks in co-operation with UNODC. This includes assistance to address growing extremism through legislation, provision of guidance to rules and practical steps of derogation from human right commitments in times of public emergency.

Despite the UNCTC’s emphasis that there is a sequence (stages A, B, and C) to be followed for effective implementation of anti-terrorism commitments, the UNCTC Assistance Matrix reveals that very little assistance is requested or offered for legislative drafting under stage A. Most bilateral assistance that is not requested through the UNCTC is offered and accepted for more operational stage B-type activities.⁸ However, some OSCE participating States have noted that bilateral assistance not requested through the UNCTC needs to be tracked better in order to avoid duplication and identify gaps in assistance.

⁶ Annex to MC(9).DEC/1, Ninth Meeting of the Ministerial Council, 3-4 December 2001, Bucharest.

⁷ The "Bishkek International Conference on Enhancing Security and Stability in Central Asia: Strengthening Comprehensive Efforts to Counter Terrorism" (Bishkek Conference), 13-14 December 2001, co-organized by UN ODCCP and OSCE.

⁸ In the Assistance matrix, the UNCTC distinguishes between assistance requested through the UNCTC and assistance provided but not requested through the UNCTC. Most of such assistance is bilateral.

Development of domestic anti-terrorism legislation is perhaps the initial practical obstacle to a State Party's compliance with both UNSCR 1373 and ratification of the global anti-terrorism conventions. Either because of domestic law or as a matter of policy, some OSCE participating States may not ratify a treaty until they have legislation in place satisfies all their juridical obligations. Other OSCE participating States may incorporate international instruments into their domestic legal regimes by the act of ratification itself, but the specific obligations of an anti-terrorism convention can rarely be fully observed and enforced until implementing legislation is in place. As a practical example, even if a convention becomes part of state's domestic legal framework by virtue of its ratification, a court cannot adjudicate an offender who commits a convention offence if no applicable penalty has been established and the conduct is not punishable as a common crime.⁹

Ratification

OSCE participating States committed themselves in 2001 to becoming parties to all 12 international conventions and protocols relating to terrorism "as soon as possible". Although the OSCE record is quite good, the question still remains why those OSCE participating States that have not ratified the 12 international conventions and protocols relating to terrorism have not sought OSCE or UN assistance and support in their efforts to fulfil their commitments.¹⁰ The UN and the OSCE can assist those countries that currently do not have the capacity to draft the legislation required before ratification of the 12 international conventions and protocols relating to terrorism.

12 International Conventions and Protocols Relating to Terrorism

OSCE participating States that succeeded the former Soviet Union and became parties to treaties through succession, may in fact confront a particular constraint in implementation: access to the treaties themselves. It is unclear if succession states becoming party to a treaty receive certified copies of the treaty.¹¹ It seems that in the case of the 12 international conventions and protocols relating to terrorism, most states of the former Soviet Union only have copies in Russian.¹² This presents a problem for drafters who are not proficient enough in Russian to draft legislation based on documents only available in Russian. Thus, drafters could face language-related obstacles when going through the process of drafting national legislation.

⁹ "Explanatory Materials on Legislative Implementation of the International Legal Regime against Terrorism", Micheal de Feo, UNODC.

¹⁰ Some OSCE participating States that have not ratified the 12 international conventions and protocols relating to terrorism undoubtedly have the capacity, but have not ratified for a variety of other reasons, including possibly the Political Offence Exception in certain Conventions.

¹¹ In the practice of the Secretary-General of the UN, Certified True Copies are distributed by the depositary to member States at the moment of their printing, which follows closely the finalization of the international agreement and its opening for signature. Additional Copies are distributed on a discretionary basis. Usually, member states require additional copies of Certified True Copies before starting the domestic process for becoming a party to a treaty, and not once it is concluded, as such copies are necessary for parliamentary purposes. Later requests are, again, dealt with on a discretionary basis, but usually satisfied, depending on the stock availability. Other depositaries may follow a different practice on this matter.

¹² The Treaty Section of the UN does not provide assistance on matters of treaty translation. However, all the treaties and other international agreements registered with the Secretariat (except those agreements subject to the limited publication policy) are translated in English and French, as the case may be, for publication in the United Nations Treaty Series.

Definition of Offences

In order to prosecute more efficiently, it is necessary to clearly define offences in line with UNSCR 1373 and the 12 international conventions and protocols relating to terrorism, *and* to harmonize legislation among OSCE participating States to facilitate extradition (Stage C). Unfortunately, the 12 international conventions and protocols relating to terrorism do not provide much guidance in terms of clearly articulating offences. However, UNODC and other organizations have produced useful reference materials in this regard, but the actual task of drafting remains a challenging one. As an example, there is confusion surrounding the definition of the offence of money laundering and its separate application as a separate offence of financing of terrorism. This confusion can lead to the common misunderstanding that adopting anti-money laundering legislation is sufficient to suppress financing of terrorism. The tool of using 'clean money' by terrorist groups is often overlooked as it involves the sensitive issue of monitoring humanitarian NGOs or private businesses.

Awareness and Capacity

A number of OSCE participating States may be unaware of their implementation obligations. Consider a common misconception of a landlocked OSCE participating State. As it does not have oil drilling, fixed platforms or a significant commercial fleet registered under its flag, it would appear that the Maritime Conventions and its Fixed Platform Protocol are not relevant. Yet a landlocked OSCE participating State that has not ratified the Maritime Conventions may encounter any of the following scenarios: a national is killed or injured aboard a fixed platform in another country; a national commits offences under the Maritime Conventions; suspected offenders under the Maritime Conventions are on the State's territory; or other nationals on the State's territory plan a terrorist act against a fixed platform in another country. Each of these scenarios argues the relevance of ratifying the Maritime Conventions.

Implementing international anti-terrorism commitments as prescribed in UNSCR 1373 is indeed a daunting task. Awareness of the complexities of implementation and the resources required is crucial. Some OSCE participating States are not aware of the complexities, and other OSCE participating States are aware find them insurmountable. Recent work within the OSCE has highlighted that some States are struggling to fulfil obligations due to limited capacity within government structures. This is compounded by the rapid development of sophisticated and technologically advanced methods potentially used by terrorist groups (See also *Movement of Terrorists*). The threat of biological terrorism is such an example. It is an area where legislative standards are required is the prevention of terrorist access to weapons of mass destruction, in particular biological weapons. Interpol has taken the lead in enhancing the law enforcement capabilities to deal with the threat of biological weapons, but in terms of developing legislation, and harmonizing it, much remains to be done

Multi-Disciplinary Approach

(Re-)Drafting anti-terrorism legislation is a complex process requiring collaboration between governmental ministries and agencies. In many established democracies, it is extremely difficult to co-ordinate a multi-disciplinary and cross-departmental approach to anti-terrorism. Moreover, in some countries of the former Soviet Union with hybrid legal systems, ministries and departments are less accustomed to co-ordinating or co-operating. In other countries, it may be said that there can be even too much inter-agency or inter-ministerial co-

ordination, which often slows down legislative initiatives. It has been the experience of the UNODC and the UNCTC that shortcomings in multi-disciplinary and cross-departmental approaches often significantly hamper the process of drafting anti-terrorism legislation and, importantly, efficient implementation.

Legislative and Judicial Reform

Some OSCE participating States may be undergoing a legal reform process that stalls amending or adopting legislative measures. However, it is possible to begin drafting the legislation to be adopted at a later stage.

Compliance with Human Rights Commitments and Standards

National anti-terrorism legislation may comply with the 12 international conventions and protocols relating to terrorism and UNSCR 1373, but may fall short in meeting human rights standards and commitments. According to Human Rights Watch and other human rights organizations, some OSCE participating States have enacted legislation or engaged in conduct that violates their own constitutional provisions protecting human rights. The thematic areas that are most problematic from the human rights perspective are:

- a) Detention, whether for the purposes of investigation of criminal or immigration matters, prevention, or upon arrest pursuant to charges. Grounds upon which persons can be detained have been broadened and new ones added, together with more restricted rights to bail.
- b) Overly broad and vague definitions of offences and other key legal concepts.
- c) Expanded powers of investigation, surveillance, search and seizure.
- d) Restricted access to judicial review.
- e) Compelled testimony in investigatory proceedings.
- f) Designation of persons and groups as “terrorist”, with legal sanctions and restrictions following automatically from the designation. Typically the person or group subject to this procedure is given no notice and no opportunity in advance to clear suspicions.
- g) Independence and impartiality concerns in respect of special courts and tribunals.
- h) Evidentiary issues in trial and other legal proceedings involving disclosure of evidence and information, and the burden and onus of proof.
- i) Freezing and forfeiture of financial assets and other property.

UNODC and other organizations have produced reference guides for drafting legislation in compliance with the 12 international conventions and protocols relating to terrorism and UNSCR 1373. However these guides do not fully integrate international human rights standards. Although such standards are not ignored, the emphasis is on effective investigation and prosecution. Assessing these guides or other related documents for human rights compliance may offer a unique area of intervention for the OSCE.

In addition, clear articulation is needed among the several legislative areas concerned with the problem of terrorist financing. Effective monitoring, investigation and enforcement require legislation that clearly defines the jurisdiction, authority, responsibilities and powers among the several regulatory and enforcement bodies, and facilitates co-ordination among them. As stated above, such multidisciplinary approach causes difficulties in virtually all OSCE participating States.

B. Creating Executive Machinery for Implementation (Stage B)

Political imperatives for action, combined with media attention on operational aspects of counter-terrorism have resulted in the neglect of the more basic issues of anti-terrorism legislation. Many OSCE participating States have requested or are receiving assistance to strengthen law enforcement capability in fighting terrorism. Strengthening Stage B activities without having met Stage A criteria, such as establishing the necessary legislation, can complicate and hinder the efficient investigation of suspected terrorist crimes and ensuing prosecution or extradition. Efficient legislation and a knowledgeable court system are prerequisites for the success of counter-terrorism law enforcement and customs operations.

The OSCE is already involved in assisting and strengthening police and prosecutorial authorities, and if so requested, these activities could be strengthened.

Preventing Recruitment for Terrorist Groups

According to the UNCTC Assistance Matrix, bilateral donor states focus less attention on prevention of recruitment by terrorist groups. It should be stressed that young people, mostly young men, from countries without terrorist groups, are recruited for terrorist groups from other countries. Thus, no country escapes the possibility that their nationals can become involved in terrorist activities abroad or even become instrumental in terrorist attacks against their own country. There should be more attention on the prevention of the exploitation of young disadvantaged people by extremist and terrorist organizations, and on addressing social and economic conditions. Support for terrorism also springs from the lack of education, religious and cultural tolerance at all levels of the economic and social spectrum. Greater support for programs promoting tolerance among all ages can help in this regard.

Preventing the Movement of Terrorists

Border security has become an issue of international concern also in the context of trans-national terrorism. The challenge is to find ways to enhance border security to a level that is commensurate with the threat of trans-national terrorism, while facilitating legitimate cross-border travel and commerce, and protecting human rights. Counterfeiting of travel documents can allow terrorists and other criminals virtually free passage from country to country.

In almost every crime area false travel documents are a principal means for criminals to ply their trades, from terrorism, drugs, and trafficking in human beings to money laundering. In each of these areas, organized criminal enterprises exploit weak or non-existent identity-verification systems. The urgency of responses to this issue is demonstrated by the fact that new technologies (including scanners and laser printers) enable any computer-literate person to become an expert counterfeiter in a very short time. As a result, countries with weak or non-existent identity verification systems are left nearly powerless.

Law Enforcement

Where resources or political priorities have resulted in poorly trained and equipped law and customs services, specialised police training should be accompanied by basic training. The OSCE is focusing significant attention on strengthening democratic police services and community policing.

Controls Preventing the Access to Weapons by Terrorists

Most OSCE participating States have adequate legislation governing the transfer of military goods and technologies, as well as dual-use items. Some of these legal provisions have been inherited by successor states. Some have been substantially updated and revised in the light of geopolitical changes during the last decade, as well as the agreement of a number of new international commitments.

However, gaps between legislation and enforcement persist in many OSCE participating States. This may be due to an absence of regulations governing the enforcement of such legislation, or a result of a lack of capacity in government ministries and training for licensing and law enforcement officials. As a result, export control legislation is sometimes only weakly enforced and can be circumvented by unscrupulous dealers and brokers, whose activities are, in most states, completely unregulated by any legal provisions.

Awareness and Operationalization

Not all decision-makers are aware of how international commitments can be operationalized. For instance, laws may be passed without clear articulation and provision for enforcement. Some commitments may be clearly operationalized, but others not at all. Existing templates and best practices are not sufficiently available to explain to decision makers exactly the measures they must adopt to implement the international commitments. For example, preventing terrorist access to weapons of mass destruction has been recognised as a priority, but no document exists to describe exactly what legislation must be in place to allow law enforcement agencies to investigate terrorist acquisition attempts and judiciaries to effectively prosecute suspects.

Political Will and Prioritization

Anti-terrorism measures may not receive priority by a government for various reasons. Limited resources can restrict the capacity of OSCE participating States to adequately address implementation of anti-terrorism commitments. However, the possibility exists that OSCE participating States are not seeking assistance to implementing anti-terrorism commitments due to lack of political will. Also, lack of experience in prioritizing the assistance items requested from external parties may lead to inefficient use of limited assistance funds or requests being turned down as unrealistic or irrelevant.

C. International Co-operation (Stage C)

OSCE participating States' ability to successfully prevent and combat terrorism rests to a large extent on their ability and willingness to take into consideration what happens outside the region, and deepen the existing co-operation with multilateral organizations inside, as well as outside the region.

The disagreements that are currently obstructing comprehensive anti-terrorism conventions to be drafted under the aegis of the UN and Council of Europe centre around disagreements on definitions and ideological approach. For example, the international duty to prosecute or extradite presents one main obstacle: the political offence exception. The result is that

offenders resort to countries from which the likelihood of extradition is remote or non-existent, or where the prospects of trial and punishment are equally remote and non-existent. As mentioned, it is important to ensure relatively standard approaches to offence definitions to facilitate extradition proceedings. Regrettably, modalities on inter-state co-operation in penal matters remain at a stage that risk hampering efficient co-operation.¹³ Bilateral agreements on extradition and mutual legal assistance are by their nature inefficient and politicized. Multilateral agreements are far more efficient, harmonize legislation, and reduce political influences. In this context, 43 OSCE participating States have ratified the European Convention on Extradition (Council of Europe). The possibility exists to further improve efficiency by allowing the remaining OSCE participating States outside the Council of Europe to become parties to this Convention.

Harmonizing domestic legislation through multilateral means is generally more efficient when dealing with a threat that, to a large extent, is trans-national in nature. Thus, a few examples include harmonization of legislation to criminalize active participation in or support for terrorist and criminal organizations.

IV. Considerations for Strengthening Implementation Activities

The following thoughts on ways to alleviate obstacles and strengthen implementation of OSCE anti-terrorism commitments are based on the above analysis:

- 1) Capitals of OSCE participating States could invite their OSCE delegation representatives responsible for terrorism to the Ministry of Foreign Affairs together with the ATU and UN experts to discuss the issues of implementation with their experts from all relevant authorities involved in combating terrorism.
- 2) Continue ODIHR's proactive approach to organize workshops to raise the awareness of the complexity and new legal developments in requirements of SCR 1373 in terms of adopting anti-terrorism legislation. The ODIHR should continue and perhaps strengthen their efforts to assist in drafting legislation.
- 3) The ODIHR could draft guidelines on proportionality, derogation, case law, etc in the context of the integration of international human rights standards in anti-terrorism measures.
- 4) Awareness-raising conference, involving OSCE Institutions and relevant International Organisations exploring practical measures to ensure maximum protection against terrorist attacks while respecting civil liberties and other human rights.
- 5) ODIHR could provide human rights perspective to existing legislative guides that do not fully incorporate international human rights standards.
- 6) The OSCE (SPMU) could develop best practice seminars on investigative issues, as well as a model curriculum for counter-terrorism training for law enforcement officials addressing the specific issues to be aware of when investigating a suspected terrorist crime.
- 7) The OSCE could adopt some of the counter-terrorism standards of other regional and sub-regional organizations and expand them to the entire OSCE region. Such

¹³ Ideally, these modalities of international co-operation in penal matters should be integrated in domestic legislation and harmonized through multilateral agreements: extradition, mutual legal assistance, transfer of criminal proceedings, transfer of prisoners, seizure and forfeiture of assets, and recognition of foreign penal judgements, freezing and seizing of assets derived from criminal activity, and law enforcement and prosecutorial co-operation.

standards include European Union standards for criminalization of active participation in terrorist and criminal organizations, which also include investigative and judicial co-operation modalities. Naturally, this is a measure that needs to be advanced at the political level, but on request the ATU/ODIHR can assist the Chairmanships in this and other similar approaches by providing analytic and preparatory capacity.

- 8) The UNODC and the Commonwealth Secretariat have produced very useful reference material, which should be promoted by the OSCE. Providing reference materials and technical consultation (on-line, telephonically, and in-person when cost-effective) to drafters and other persons involved in legislative adoption of the 12 international conventions and protocols relating to terrorism directly helps achieve the international co-operation and full implementation of anti-terrorism instruments called for by UNSCR 1373. Because development of acceptable legislation removes technical obstacles to ratification, legislative assistance is an indirect but practical way to encourage countries to promptly become parties to the instruments. By presenting examples of implementing legislation actually in force, solutions can be found to issues which might otherwise delay ratification or lead to reservations to the conventions.
- 9) Given that the Council of Europe accepts non-member states acceding to their multilateral agreements, the possibility of the remaining 12 OSCE participating States becoming parties to the European Convention on Extradition. The OSCE or UNODC could consider offering those states assistance to harmonize their domestic legislation.
- 10) To raise awareness and to facilitate co-operation as described in Stage C, the ATU could establish a Distance Learning Course, similar to a concept developed by the Organization of American States, aimed at establishing a standard level of expertise and common terms of reference among anti-terrorism officials of the OSCE participating States.
- 11) The ATU could collate information available on bilateral as well as multilateral assistance through UNCTC, OSCE, G8, EC, and others in order to develop a better overview of gaps and duplication.
- 12) OCEEA continue co-operation with UNODC on assistance to developing anti-money-laundering legislation, but expand activities beyond money-laundering into other aspects of financing of terrorism.

Annex

Stages of implementation as defined by the UN Counter-Terrorism Committee:

Stage A: Creating Legislative

Having legislation in place covering all aspects of 1373, and a process in hand for becoming party as soon as possible to the 12 international conventions and protocols relating to terrorism; having in place effective machinery for preventing and suppressing terrorist financing.

Stage B: Creating Executive Machinery for Implementation

Having in place effective and co-ordinated executive machinery covering all aspects of 1373 and in particular preventing recruitment to terrorist groups, the movement of terrorists, the establishment of terrorist safe havens and any other forms of passive or active support for terrorists or terrorist groups. Effective executive machinery includes, inter alia, having in place: police and intelligence structures to detect, monitor and apprehend those involved in terrorist activities and those supporting terrorist activities, customs, immigration and border controls to prevent the movement of terrorists and the establishment of safe havens, and controls preventing the access to weapons by terrorists.

Stage C: International Co-operation

Co-operation on bilateral, regional and international levels, including exchange of information; judicial co-operation between States and action on bringing terrorists and their supporters to justice (e.g. prosecution or extradition, exchange of information and early-warning, and law enforcement and practical judicial co-operation); and links between terrorism and other threats to security (arms trafficking, drugs, organised crime, money laundering and illegal movement of CBN weapons).