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Remarks by

Raphael F. Perl – Head of the OSCE Action against Terrorism Unit

Respected hosts, ladies and gentlemen, dear colleagues,

First of all, I would like to say how honored and pleased I am to be addressing this distinguished audience. I would like to thank the organizers of this important high-level conference and wish them every success in their future work.

My remarks today will be divided into five parts. First, I will address the problem – the threat – of organized crime and terrorism. Second, I will address the issue of obstacles to international legal co-operation in criminal matters. Third, I will speak about the role of the International Community: what more could be done to address the threat of organized crime and terrorism. Fourth, I will briefly share with you what the Organization for Security and Co-operation in Europe (OSCE) has been doing to promote international legal co-operation relating to the crime of terrorism, and I will conclude by offering some "bottom line" concluding thoughts.

The threat of organized crime and terrorism

Organized crime is a major and growing problem. It is increasingly becoming a threat with national security dimensions and implications. Organized crime also costs a lot to our societies in terms of lost tax revenues, at a time when there is increasing demand on governments to provide social services. Organized crime feeds on and stimulates corruption as well, and weakens public trust in government. It is a threat to the rule of law and damaging to the welfare of societies.

I think that terrorism is first and foremost a crime, although resorting to terrorist activity might be regarded by some as a fulfilling a duty. In any case, terrorism always involves elements of criminal behaviour, or at least, behaviour outside the collective norms of most contemporary societies. Terrorism, like organized crime, is costly to societies. Osama Bin

Laden has estimated the macro-economic costs of added security for the global economy since 9/11 to be one trillion dollars. A study by the Congressional Research Service, the research and advisory arm of the United States Congress, is inclined to agree.

Increasingly there are connections between organized crime and terrorists. Terrorists resort to the “services” of criminals, in terms of fraudulent travel documents or smuggling of weapons and explosives for instance. At a time when fewer and fewer states support terrorism, drug trafficking and other criminal activities offer profitable sources of income for terrorists who need to provide their own sources of funding. Abusing non-profit organizations is another attractive alternative for financing terrorism.

Many of the measures adopted to combat organized crime are thus beneficial to the fight against terrorism. An emphasis on greater transparency has been put in the regulations applying to charities in some instances. Specific pieces of legislation adopted by some countries to combat criminal conspiracy have also proven very successful, such as the Racketeer Influenced and Corrupt Organizations Act in the United States (the so called RICO Law). Procedural provisions, such as plea bargains and independent prosecutors, have also proven to be useful tools to facilitate rapid and more effective prosecution.

But organized crime, unlike terrorism, does not seek to destroy the state; it is a parasite that needs its host. And the criminal underworld very often knows no ideological loyalty. Hence the terrorists’ reliance on organized crime is also a vulnerability, which we can try to exploit to our advantage.

It is also very telling that to date terrorism has been largely addressed as a form of serious international crime. The universal conventions and protocols related to the fight against terrorism, of which the oldest dates back to 1963 (so called Aircraft Convention), require the criminalization of certain terrorist related offences independently of terrorist motivations. They require for example the criminalization of hijacking, hostage-taking, or attempts against internationally protected persons.

A cornerstone activity of my Unit, the OSCE Action against Terrorism Unit, is to promote the ratification and implementation of these anti-terrorism instruments and to enhance international legal co-operation in criminal matters related to terrorism. Most of our experience in this field is also relevant to legal co-operation on other serious crimes, and I would like to share with you the following observations.

Obstacles to international legal co-operation in criminal matters

There are many obstacles to effective co-operation against terrorism and transnational organized crime alike. Terrorists and criminals take advantage of these obstacles to escape justice, and unfortunately authorities may at times be tempted to resort to extra-judicial methods to settle the score with them.

Sometimes there is a lack of political will to co-operate, as it is the case when persons seen as terrorists by some are considered to be “freedom fighters” by others. At other times there may be concerns over the compliance with international human rights and refugee law by law enforcement authorities in countries requesting extradition or mutual legal assistance. Important here is trust in diplomatic assurances, national positions

regarding the principle of *non-refoulement*, and the potential issue of credible allegations of torture and degrading treatment of suspects.

Importantly, different countries have different laws. The definition of crimes and sentences varies across jurisdictions: a crime in one place may not be a crime in another; *here* one might face death penalty, *there*, life imprisonment. Different rules of evidence and standards of proof apply in one country than in another. Some states have also difficulties to protect witnesses and their families, especially when they are foreigners. In some countries, corruption is used to rig investigations and prosecutions. In some other countries, criminal activities enjoy significant social support as they may benefit whole segments of a society, as it is the case in Bolivia or Afghanistan where the drug trade provides people with a livelihood.

There can be different procedural and evidentiary requirements for mutual legal assistance and extradition requests in different legal systems. Absence of relevant bilateral agreements and insufficient implementation of existing multilateral instruments which could provide the necessary legal basis for judicial co-operation can also pose problems. Judicial officials might not be adequately trained in issues of legal co-operation in criminal matters. Language barriers and bureaucratic hurdles further complicate and slow down attempts to co-operate.

What could and should be done by the International Community?

Much has been done but even more needs to be done by the International Community to facilitate and enhance international legal co-operation on criminal matters, including terrorism. There is a strong need to continue promoting the ratification and implementation of existing multilateral instruments, including the universal counter terrorism conventions and protocols, as well as the UN conventions and protocols against transnational organized crime, corruption, illicit traffic in narcotic drugs and psychotropic substances. All these instruments contain valuable provisions for co-operation in criminal matters. We must seize every opportunity to strengthen political will and maintain our very positive momentum in this regard. International and regional organizations in particular have an essential role to play in reminding states that the UN Security Council Resolutions, especially resolutions 1373 and 1566, require them to fully co-operate in the fight against terrorism, an area of transnational criminal activity which is of grave concern to the International Community.

Important also is the continued promotion and utilization of the wide range of technical assistance tools developed by the United Nations Office on Drugs and Crime (UNODC), including model laws and treaties on mutual legal assistance and extradition, legislative guides for the implementation of international conventions in national law. The UNODC has also developed a very practical *Mutual Legal Assistance Request Writer Tool*, already available in English, French, Spanish, soon in Russian and Portuguese and somewhat later in Chinese and Arabic. A similar software for writing extradition requests is expected to be finalized this year.

Training is an essential component of effective international co-operation on criminal matters. Sadly, what has been done in this respect remains insufficient. Additional efforts are needed to train prosecutors, judges and judicial officials on issues of international

legal co-operation in criminal matters. The international community should develop and focus on “train-the-trainers” capacity building programmes in order to enhance the impact of its work and achieve better results. Unfortunately, trainers are often less aware of available international legal co-operation options and procedures in criminal matters related to terrorism than is the case with mutual legal assistance or extradition options and procedures related to other serious crimes. This is a gap that needs to be addressed.

We should not let an absence of relevant bilateral agreements impede legal co-operation between our different nations. Under such circumstances, customary international law, as well as multilateral or regional instruments may provide an alternative legal basis for mutual legal assistance, extradition, freezing, seizure and confiscation of illicit proceeds of crime.

On the regional level again, it seems realistic and potentially beneficial to establish supranational mechanisms of international legal co-operation. Indeed, examples of regional integration demonstrate that it is possible and advantageous. For example, within the European Union judicial co-operation has been greatly facilitated by the creation of a common European arrest warrant. Judicial co-operation has also been enhanced with the creation of Eurojust, which provides a framework for three or more jurisdictions to co-operate on a given case. In this regard, let us ask ourselves: is there perhaps room for creation of an Arabjust or Gulfjust – Arabpol or Gulfpol – within such a regional framework structure?

Speed is also an issue in international legal co-operation in criminal matters. Formal requests for mutual legal assistance via diplomatic channels are often slow and delay the course of justice. It only takes a short trip to the airport for a criminal to avoid apprehension and detention. Likewise, there is a strong need to encourage informal information-sharing to assist in speeding up investigations, especially for the collection and securing of relevant evidence. This would prevent jeopardizing investigations and allow building up cases, while giving time to formally meet legal assistance requirements necessary for prosecution.

Law-enforcement information exchange on serious crimes should be encouraged and intensified as much as possible in an overall and generic manner. The 24 hours - 7 days a week - round the clock (24/7) network maintained and coordinated by Interpol could play a critical role in this regard. Also worthy of exploration with Interpol might be the possibility of creating a diplomatic but expedited channel for the transmission of mutual legal assistance and extradition requests within its existing secure network of communication.

Many models for advanced co-operation in criminal matters exist. These are often supplemented by best practices both at the investigative and prosecuting levels. The challenge here is to promote the use of these models and reliance upon these practices. For example, some countries have established liaison offices abroad which are staffed with intelligence officials and/or magistrates (e.g. FBI and US Department of Justice overseas liaison representatives). In addition other countries have set up joint investigative teams for comprehensive co-operation on connected cases (e.g. Spain and France on ETA).

When speaking about transnational crime, one cannot ignore both the threat and importance of terrorism as a law-enforcement issue. It is therefore critical that nations put decisive efforts in the adoption of a comprehensive universal convention against terrorism. I believe that the UN Global Counter Terrorism Strategy adopted by the UN General Assembly in September 2006 is a step in the right direction; a very valuable terminological compromise was achieved to encompass the “conditions conducive to the spread of terrorism”. Nevertheless, a universal definition of terrorism remains of course the core issue here. We cannot let terrorists take further advantage of a definitional issue. Killing women and children is simply not acceptable. Nothing can justify the indiscriminate use of violence against civilian populations with the purpose to provoke a state of terror, intimidate a population or compel a government to act in a certain way (UN Security Council Resolution 1566, op. para. 3).

The OSCE contribution to enhancing legal co-operation in criminal matters related to terrorism

Terrorism, I repeat, always involves elements of criminal behaviour, in terms of clandestine activities, destruction of life or property, and illegal use of arms for example. My unit, the OSCE Action against Terrorism Unit (ATU), has a strong record of activity in promoting international legal co-operation in criminal matters related to terrorism within the OSCE area. Following a suggestion of the UN Counter-Terrorism Executive Directorate (CTED), the ATU started with a workshop in 2005 which looked at issues and gaps in international legal co-operation in criminal matters related to terrorism. Because training is an important issue, we have since then organized in close co-operation with UNODC, two other large scale OSCE-wide workshops in Vienna (March 2006 and March 2007), three sub-regional workshops (in Bucharest in November 2006 for Central and South Eastern Europe, in Antalya in February 2007 for Central Asia and Caucasus, and in Helsinki in October 2007 for the Nordic and Baltic Countries) and two national training workshops for judges and prosecutors of Serbia and Montenegro (December 2005) and of Armenia (June 2006)

All in all, more than 750 legal practitioners (prosecutors, judges) and other officials from 64 OSCE participating States and Partners for Co-operation have attended these OSCE workshops. They had an opportunity to discuss major legal developments with UNODC experts and other international partners such as the UN Counter-Terrorism Committee (CTC), the UN High Commissioner for Refugees (UNHCR), the Council of Europe, the Anti-Terrorism Centre and Secretariat of the Commonwealth of Independent States (CIS), Interpol, Europol, Eurojust and others.

Discussions during our workshop have focused on the universal and European legal framework for mutual legal assistance and extradition, as well as relevant practical issues, challenges and possible solutions. Relevant human rights aspects were also highlighted and discussed. Case study sessions reinforced the theoretical knowledge deepened and refreshed by the workshops. Relevant UNODC technical assistance tools, including the “Mutual Legal Assistance Request Writing Tool” software, were presented.

In an annex to these remarks one can find a compilation of some of the suggestions resulting from these workshops.

Concluding observations

I would like to conclude now by emphasizing a few thoughts. The process of globalization offers many opportunities and advantages to mankind. Inherent in this process is the facilitation and free movements of people, goods, services, money and ideas, in a relatively open and unregulated environment. The flip side of globalization is that such conditions provide the same advantages for illicit criminal activities as well. Effective legal co-operation is thus essential to address this challenge.

Moreover, terrorism is a form of transnational crime of growing concern worldwide. And I suggest that in the future we are going to see more use of the terrorist tactics by criminal organizations.

We all live today in a world increasingly linked by travel, trade, communications, money flows, investment and law. In this “global village”, neither nations nor events can remain isolated. Think of us as all together in the same lifeboat – seeking to survive. We simply cannot allow someone in our boat to explode a bomb regardless of how noble his political, religious, economic or social motivations or cause might appear to some of us. We are all in this together and we all must co-operate together through the rule of law, if ultimately we are to move forward and survive in a meaningful manner.

If I can leave you with one thought, it would be the importance of concluding a comprehensive universal convention against terrorism. But we cannot expect terrorists to wait for us, and one cannot ignore the broader issue of transnational crime. In the interim we have to increasingly rely on and improve existing mechanisms to promote and enhance international legal co-operation in combating international crimes.

Challenges abound, but the ultimate choice rests with us: a world which is increasingly linked by networks of criminal activity; or a world which is increasingly linked by the rule of law. I thank you again for this opportunity to offer my thoughts on this important and timely topic.

Office of the Secretary General Action against Terrorism Unit

Wallnerstrasse 6
A - 1010 Vienna

Tel: +43 1 514 36 6702

Fax: +43 1 514 36 6687

Mail: atu@osce.org

osce.org/atu

Annex

Summary of suggestions emanating from OSCE Workshops on Enhancing Legal Co-operation in Criminal Matter Related to Terrorism.

(NB: This compilation is not a consensus document, but might nevertheless serve as a basis for discussion to advance legal co-operation in criminal matters, in particular those related to terrorism.)

I. Strengthening and Complying with the International Framework

- The establishment of better legal bases for such co-operation is needed. Bilateral and multilateral agreements on mutual legal assistance are one option. In their absence, the international framework, particularly the universal anti-terrorism instruments (UATI) and the Palermo Convention against transnational organized crime provide sufficient basis for legal co-operation. Becoming party to all UATI and implementing them is an obligation of UN member States and OSCE participating States under UNSCR 1373 and the OSCE counter-terrorism commitment.
- Fully implementing the universal legal framework against terrorism in national legislation is essential, not only as a requirement of the UN Security Council resolutions and an international treaty obligation for those who have ratified the relevant Conventions and Protocols, but also because it offers concrete legal tools to co-operate with other States, provides the universally accepted standards and terminology for the reform of domestic penal laws, all of which facilitate the prevention and repression of most manifestations of terrorism and help countries avoid (a) becoming targets of terrorist attacks, and (b) being used as bases for the commission of terrorist acts against other States or their citizens.
- Several UN Security Council resolutions call upon States to co-operate fully in the fight against terrorism. Such co-operation in criminal matters is essential, both between judicial authorities and between law enforcement. Multilateral mechanisms of such co-operation should be used, when available.
- In criminal cases related to the UATI the principle of international law *aut dedere aut judicare* (extradite or prosecute) is applicable and should be applied.
- Political, religious or other reasons cannot justify terrorism. Therefore 'political exception', which allows declining extradition requests in some criminal cases, should not apply to terrorism related offences covered by the UATI.
- Effective law enforcement activities should be in conformity with international human rights obligations. Requests for extradition should be considered in accordance with legal requirements with regard to human rights practices in the requesting State.

II. Enhancing National Capabilities

- Well functioning integrated criminal justice systems are essential to effective international legal co-operation

- It is important to have national legislation in place implementing the universal anti-terrorism instruments in full, and also to introduce further legislative and administrative measures encompassing the various modalities of international co-operation particularly to remedy the absence of bilateral or multilateral agreements on cooperation. Standardizing criminal and criminal procedure legislation and elaborating model anti-terrorism laws as means to harmonisation of legislation should be considered. The Model Law on Extradition, prepared by the United Nations Office on Drugs and Crime (UNODC), is recommended as an option for consideration.
- Establishing national financial intelligence units (FIUs) facilitates successful financial investigations and international co-operation. Direct methods of execution of mutual legal assistance requests in restraining terrorist assets and adoption of a non-conviction based civil forfeiture regime should also be considered.
- Designating a central authority responsible for all incoming and outgoing legal assistance and extradition requests is important in enabling a requested State to stand ready to respond expeditiously to requests for cooperation from any requesting State.

III. Promoting and Adapting Bilateral and Multilateral Co-operation

- More information sharing on terrorist activities is needed to ensure successful investigation and prosecution of terrorists. Mutual trust and networking between the parties involved are fundamental prerequisites for successful co-operation.
- Intelligence sharing should be strengthened. Also, more needs to be done to continuously improve turning intelligence into evidence.
- For speeding up the processing of legal assistance requests it was suggested that States establish in national criminal procedure legislation and regulations shorter time frames for replies to extradition and legal assistance requests in terrorism related criminal cases. Officials directly responsible for this should be designated as well.
- Liaison offices between judicial and police/law enforcement authorities often proved crucial to successful counter-terrorism investigations and should be encouraged.
- States might consider permitting officials from other countries to operate on their territory. Allowing foreign investigators to cross over into another country's territory to carry out investigations, as well as the creation of joint investigation teams and temporary extradition of suspects for the purpose of investigation and court procedures can facilitate co-operation in criminal matters.
- The use of standardised forms and procedures to request legal assistance and extradition was recommended. The UNODC has developed software for preparing such requests and using it could facilitate writing Mutual Legal Assistance (MLA) requests which will not be declined on formal grounds of not being properly prepared.