



Assessing the implementation of  
international and European  
Anti-Terrorism instruments  
in South-East Europe

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## A. Preface

### I. Acknowledgments

This report, hereinafter referred to as the study presents the results of a one-year research project conducted by Ms Pazit Schragar, Legal Researcher, under the supervision of Mr Sorin Sterie, Expert on law-enforcement, organised crime and terrorism at the Stability Pact for South Eastern Europe. The study presents an analysis based on interviews and questionnaires of various experts and practitioners, which are listed below. The results illustrated were analysed by the research team and therefore only present the view of the authors and not necessarily those of the experts consulted.

The study was conducted with permanent appointed contact points in ten<sup>1</sup> South Eastern European countries, located in either Ministries of Justice/Interior/Foreign Affairs.

We wish to thank the following experts and representatives:

#### Albania

Ms Ledia Hysi, Director for the Juridical and Treaties Department at the Ministry of Foreign Affairs; Mr Bujar Bala, First Secretary of Mission to EU.

#### Bosnia and Herzegovina

Ms Sandra Malesic, Expert Adviser at the Ministry of Justice; Zoran Skenderija, Second Secretary of Mission to EU.

#### Bulgaria

Mr Ivo Neykov, Senior Expert at the International Co-operation Directorate at the Ministry of Interior.

Ms Antoanetta Angelova, First Secretary of Mission to EU.

#### Croatia

Ms Lilijana Vodopija Cengic, Assistant Minister at the Ministry of Justice. Ms Sonja Stimac Legal Expert on Organized Crime, Corruption and Terrorism at the Ministry of Justice; Mr Kristijan Turkalj, Second Secretary of the Mission to EU.

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<sup>1</sup> Romania, Bulgaria (Acceding Countries to the European Union); Croatia, The former Yugoslav Republic of Macedonia (Candidate Countries); Albania, Bosnia and Herzegovina, Serbia and Montenegro (Potential Candidate Countries); Moldova (The Partnership and Cooperation Agreement (PCA) is the legal basis for EU relations with Moldova)

The former Yugoslav Republic of Macedonia<sup>2</sup>

Mr. Goran Stevceviski, Deputy Head of Sector at the Ministry of Foreign Affairs; Mr. Stojanov, Minister Counselor at the Mission to EU; Zoran Popov, Second Secretary at the Mission to EU.

Romania

Mr. Radu Dobre, First Secretary of Mission to EU.

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<sup>2</sup> Hereinafter referred to as Macedonia

## II. Introductory remarks

The study deals with signing, ratifying and introducing relevant legislation by South Eastern Europe countries regarding international legal instruments on counter-terrorism. The research team identified **priority areas** by presenting a **cross-section** of the relevant international documents, concentrating primarily on the implementation of UN Resolution 1373 including the 12 UN Conventions, also partly considering the European approach.

The information illustrated in the report was researched on the basis of:

- Questionnaires<sup>3</sup>
- Interviews and liaising over a period of one year with the contact points
- Criminal Codes of the respective countries

The answers given by the contact points about (concrete) implementation were double checked with existing provisions in the actual Criminal Codes and analysed by consulting the following documents:

- The text of the 12 UN Conventions against Terrorism<sup>4</sup>
- UN Legislative Guide<sup>5</sup> to the Universal Anti-Terrorism Conventions and Protocols to the provisions in the respective Criminal Codes
- Country Reports<sup>6</sup> given to the Counter-Terrorism Committee (CTC)
- Questionnaires of other international organisations<sup>7</sup>
- Model Laws and explanatory material for the 12 Conventions prepared by the Commonwealth Secretariat<sup>8</sup>

Duplication was avoided by thoroughly analysing already existing material on that issue. In these regards the Contact Points were very helpful by pointing out, if questions had already been answered in other contexts (other organisations, questionnaires, reports etc).

With most of the appointed contact points, the exchange of information was satisfactory. However, we faced difficulties to obtain information on implementation from the **Republic of Montenegro**<sup>9</sup> (Ministry of Justice) and **Bosnia and Herzegovina**. The latter appointed at a very late stage of the project

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<sup>3</sup> Annex database

<sup>4</sup> Compare below with D.I/II.

<sup>5</sup> [http://www.unodc.org/pdf/crime/terrorism/explanatory\\_english2.pdf](http://www.unodc.org/pdf/crime/terrorism/explanatory_english2.pdf)

<sup>6</sup> [http://www.un.org/Docs/sc/committees/1373/submitted\\_reports.html](http://www.un.org/Docs/sc/committees/1373/submitted_reports.html)

<sup>7</sup> As far as submitted by the Contact Person, i.e. EU JHA Questionnaire Section H. Fight against Terrorism

<sup>8</sup> [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B32AF830D-F83A-4432-8051-750C789531A5%7D\\_final\\_terrorism\\_law.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B32AF830D-F83A-4432-8051-750C789531A5%7D_final_terrorism_law.pdf)

<sup>8</sup> [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B8AE4DB15-88A5-46F2-8037-357DFF7D3EC1%7D\\_Implementation%20Kits%20for%20Counter-Terrorism.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B8AE4DB15-88A5-46F2-8037-357DFF7D3EC1%7D_Implementation%20Kits%20for%20Counter-Terrorism.pdf)

<sup>9</sup> Hereinafter referred to as Montenegro

(autumn) two contact persons, but due to the project time line it was too late for any substantial exchange of information.

It is important to point out that the Criminal Codes (CC/CCs) analysed, were **English translations**, provided to us by the Contact Points. Only for **Moldova**, there was no actual English Translation of the Criminal Code available. The Moldavian Contact Points translated the provisions required individually. **Bulgaria, Romania, Croatia, Macedonia, Serbia and Montenegro** provided us with a comprehensive text of their Criminal Code. **Albania** submitted an enumeration of connected criminal legislation, including updates and changes of the Criminal Code.

**It needs to be emphasised that the study does not claim to present the complete status of implementation. Due to limited research capacity, the report reflects the South Eastern European positions regarding meeting international anti-terrorism standards in 2005. The conducted study presents an interim report and is open to any further research and update.**

## B. Background

Terrorism presents a global threat to democracy, the rule of law, human rights, peace and security. The Security Council in its **resolution 1373 of 28 September 2001**<sup>10</sup>, declared acts, methods and practices of terrorism contrary to the purposes and principles of the United Nations. The Council in the same resolution emphasized the need for enhanced coordination of national and international efforts in order to strengthen a global response. The financing, planning and inciting of terrorist acts, as well as any organized crime related activities, had to be prevented and combated in a joint effort.

An important part of a concerted international effort to combat terrorism in all its forms and manifestations is the establishment of the necessary legal framework for the prevention and suppression of terrorism. Over the past four decades, the international community has adopted **twelve**<sup>11</sup>**universal legal instruments relating to the prevention and suppression of international terrorism**<sup>12</sup>.

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<sup>10</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>

<sup>11</sup> The respective Conventions and Protocols are available at [www.un.org/terrorism](http://www.un.org/terrorism) and at [http://www.unodc.org/unodc/en/terrorism\\_conventions.html](http://www.unodc.org/unodc/en/terrorism_conventions.html)

<sup>12</sup> Recently, a thirteenth instrument, The International Convention for the Suppression of Acts of Nuclear terrorism has been adopted by the General Assembly and was opened for signature on September 14, 2005. Compare: [http://www.unodc.org/unodc/en/terrorism\\_convention\\_overview.html](http://www.unodc.org/unodc/en/terrorism_convention_overview.html)

In principle, these instruments should offer a flexible framework for international cooperation.

However, there is great variation in the degree to which each of these instruments have been ratified and implemented. As the study elaborates, most of the international instruments were ratified, but merely ratification has not led to the necessary adaptation of national legislation in the countries of South Eastern Europe. In other cases, both international accession and national adaptation of laws have taken place but implementation in terms of law enforcement practices is falling short of expectations, which facilitates the creation of safe-havens for terrorists and, in turn, results in deficiencies in international cooperation, including weaknesses in extradition and mutual legal assistance.

Security Council Resolution 1373 calls on Member States to become parties, as soon as possible, to the relevant universal instruments related to the prevention and suppression of international terrorism. This will often require far reaching reforms of the criminal justice systems of Member States with regard to new legislation and new institutional structures, as in the case of financial oversight mechanisms.

## European Union

The implementation of the EU Counter Terrorism Strategy<sup>13</sup> has been and will be a high priority for the next EU Presidencies. In the wake of the terrorist attacks of London (7 July 2005) and Madrid (11 March 2004) and of several prevented attacks it emerged that the terrorism threat in Europe is permanent and real. The Union is confronted with informal loose networks of unpredictable extremists operating inside and outside of its borders. In this regard, special attention has to be given to the link between organised crime and terrorism. The Madrid bombings for example were financed by drug trafficking<sup>14</sup>. Generally accepted is that the Balkans can be considered to be one of the major widely used transit region for drug trafficking and other serious crimes (the so-called Balkan route<sup>15</sup>). But the need to fight terrorism in South Eastern Europe is not only of theoretical nature. The collapse of Communism in the former Yugoslavia and the USSR allowed for re-islamisation of many Muslim communities in the new born democracies<sup>16</sup>. This nourished recruitment and indoctrination as illustrated by terrorist organisations like Al Qaeda, Muslim Brotherhood, Hamas and Hizbollah.

The study gives priority to the area of legislation, considering that States need to have in place the legislative framework implementing UN Resolution 1373 in

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<sup>13</sup> <http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf>

<sup>14</sup> <http://www.cnn.com/2005/WORLD/europe/05/24/spain.arrests/index.html>

<sup>15</sup> <http://www.europol.eu.int/publications/SeriousCrimeOverviews/2005/organised%20illegal%20immigration2005.pdf>

<sup>16</sup> European Policy Centre issue paper no.40

order to develop an executive machinery to prevent and suppress terrorism<sup>17</sup>. Likewise, a legislative framework is required to bring to justice terrorists and their supporters.

### C. Relevant international legislation

The following international treaties were identified as important to be ratified and implemented by the countries of South Eastern Europe in order to counter terrorism successfully:

#### I. The 12 UN Conventions and protocols ranging from air safety to financing of terrorism.

Those instruments were set up between 1963 and 1999. Four instruments<sup>18</sup> deal in the broadest sense with air safety, including aircraft hijackings, unlawful acts on airplanes and at airports, two treaties relate to the Safety of Maritime Navigation<sup>19</sup>, three conventions deal with either criminal usage and/or physical protection of lethal devices which are dangerous to public safety, such as nuclear material<sup>20</sup>, plastic explosives<sup>21</sup> and other explosives being used for terrorist bombings. The remaining treaties deal specifically with the protection of diplomatic agents<sup>22</sup>, hostage taking<sup>23</sup> and the 12<sup>th</sup> convention obliges the ratifying states to suppress the financing of terrorism<sup>24</sup>. To fulfil their obligation state parties are *inter alia* required to establish jurisdiction over the offences described in the treaties, make the offences punishable by appropriate penalties, take the alleged offender into custody, prosecute or extradite him. Of the 12 universal Anti Terrorism instruments, eight conventions and two related protocols provide a definition of the respective offences. Typically the format in instruments comprises four elements:

<sup>17</sup> <http://www.un.org/docs/sc/committees/1373/priorities.html> (Counter Terrorism Committee -Setting Priorities)

<sup>18</sup> Convention on Offences and Certain Other Acts Committed On Board Aircraft, Tokyo 4 Dec 1969 <http://www.icao.int/icao/en/leb/tokyo.htm>; Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague 16 Dec 1970; <http://www.icao.int/icao/en/leb/hague.htm>; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 23 September 1971 <http://www.icao.int/icao/en/leb/mtl71.htm>; **Protocol** for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, **supplementary** to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 24 February 1988 <http://www.icao.int/icao/en/leb/via.htm>

<sup>19</sup> <http://untreaty.un.org/English/Terrorism/Conv8.pdf> ; <http://untreaty.un.org/English/Terrorism/Conv9.pdf>

<sup>20</sup> <http://untreaty.un.org/English/Terrorism/Conv6.pdf>

<sup>21</sup> <http://untreaty.un.org/English/Terrorism/Conv10.pdf>

<sup>22</sup> <http://untreaty.un.org/English/Terrorism/Conv4.pdf>

<sup>23</sup> <http://untreaty.un.org/English/Terrorism/Conv5.pdf>

<sup>24</sup> <http://untreaty.un.org/English/Terrorism/Conv12.pdf>

- **Definition** of a **particular type** of terrorist activity as an offence under the convention
- Requirement to **penalize** that conduct in their **domestic law**
- **Identification of certain bases** (i.e. country of registration of ship or vessel, territoriality, nationality) upon which the Parties responsible are required to **establish jurisdiction** over the defined offence
- Creation of **further jurisdictional obligation** regarding prosecution, extradition etc. (principle of “no safe havens for terrorists)

**Extradition** is a connective link between the different instruments. It is an accepted principle in international extradition law that political offences may not give rise to extradition. Since no precise definition of a political offence exists in international law, it is usually up to the requested country to determine whether a given offence is political. According to the penal UN Conventions since 1970<sup>25</sup> the defined criminal offences shall be deemed to be extraditable ones, meaning that they should not be treated as **political offences**<sup>26</sup>.

According to the central UN Resolution 1373 and the October 2002 launched UN Global Programme against Terrorism the implementation of all instruments has the overall purpose to deny safe havens to those who finance, commit, plan or support terrorist acts. The reason behind it is that, many States have only either limited or incomplete jurisdiction over crimes committed abroad. Hence, it shall be provided, if prosecution is not fully possible or desired to extradite the suspect.

II. Other relevant international Conventions for the Region of South Eastern Europe, are the Council of Europe Convention on the Suppression of Terrorism from 1977 -to which all South Eastern European countries are party - and its amending Protocol from May 2003.

So far **Bulgaria, Romania, Croatia, Albania** and **Moldova** ratified this Protocol. **Bosnia and Herzegovina** and **Serbia and Montenegro** have signed but not ratified yet.

The Protocol will only enter into force after all Parties to the Convention have agreed. Due to the fact that most Council of Europe Conventions are integral part of the *acquis communautaire*, they are of particular importance to future EU member states. The initial Council of Europe Convention is designed to facilitate the extradition of persons having committed acts of terrorism .The treaty lists the offences that shall not be considered as political offences, which often hinder extradition. Due to the time of signature (1977) in this regards it touches upon 3 of the 12 UN Conventions directly. The amending Protocol - from May 2003 – includes the remaining 9 Conventions<sup>27</sup>.

<sup>25</sup> Except the Plastic Explosives Convention

<sup>26</sup> Legislative Guide, p. 37

<sup>27</sup> Art 1 of the Protocol amending the European Convention on the Suppression of Terrorism

The treaty aims at making the fight against terrorism compatible with human rights protection. Death penalty, torture and similar shall be acceptable reasons to refuse extradition. Recently the Council of Europe has adopted a new European Convention on the Prevention of Terrorism, to increase the effectiveness of existing international texts on the fight against terrorism.

#### D. Implementation in South Eastern Europe\_

- I. Ratification of international counter Terrorism instruments in South Eastern European
  1. 12 Universal United Nations Conventions<sup>28</sup>

**Bulgaria, Romania, Croatia, Albania, Bosnia and Herzegovina, and Moldova** have signed and ratified all 12 UN AT Conventions.

**Serbia and Montenegro** have signed and ratified 11 of the 12 UN AT Conventions. The Convention on the Marking of Explosives for the Purpose of Detection has not been ratified yet. According to the Serbian authorities, ratification was planned for autumn of 2005.

As for the **Macedonia** there are two remaining Conventions to be ratified, namely the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Due to geographical reasons, Macedonia has not ratified the treaties so far. As a landlocked country, becoming party was- so far- not considered relevant.

*Irrespective from the fact of being "landlocked", the UN Anti Terrorism Conventions apply also to those countries. Pursuant to the principle of denying safe havens, each country needs to ratify each convention on order to avoid obstacles regarding extradition.*

However, to reach universality Macedonia has initiated intergovernmental procedure to become party to both of the respective maritime treaties. Ratification is expected in 2006.

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<sup>28</sup> <http://untreaty.un.org/English/Terrorism.asp> (links to convention texts)

## 2. Regional Instruments

### Council of Europe Conventions<sup>29</sup> Status of Ratification in South Eastern European

Countries	Bulgaria	Romania	Croatia	Albania		Macedonia	S&M	Moldova
CoE Conventions								
Suppression of Terrorism (ETS 90)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
Amending Protocol (ETS 190)	(r)	(r)	(r)	(r)		(r)		(r)
Extradition (ETS 24)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
1 <sup>st</sup> additional Protocol (ETS 86)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
2 <sup>nd</sup> add protocol (ETS 98)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
Mutual Legal Assistance in Criminal Matters (ETS 30)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
1 <sup>st</sup> add Protocol (ETS 99)	(r)	(r)	(r)	(r)	-	(r)	(r)	(r)
2 <sup>nd</sup> add Protocol (ETS 182)	(r)	(r)	-	(r)	-	-	-	-
Transfer of Proceedings in criminal matters (ETS 73)	(r)	(r)	-	(r)	(r)	(r)	(r)	-
Laundering, Search, Seizure, Confiscation of the Proceeds from crime (ETS 141)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
Convention on Cybercrime (ETS 185)	(r)	(r)	(r)	(r)	(r)	(r)	(r)	(r)
Add Protocol (ETS 189)	-	-	-	(r)	-	+	-	-
Prevention of Terrorism (ETS 196)	(s)	(s)	(s)	(s)	(s)	(s)	(s)	(s)
Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)	-	(s)	-	(s)	(s)	(s)	(s)	(s)

(s) = signature  
(r) = ratification  
(-) = neither

<sup>29</sup> Taken from <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

## II. Implementation of UN Resolution 1373 in South Eastern Europe

This study presents a cross-section analysis of the main legal requirements of each of the 12 Conventions, also reflecting main points of UN Resolution 1373, which call upon implementing the respective conventions.

The **main goals** of UN Resolution 1373 are:

- Upgrading legislation and executive machinery to fight terrorism
- Denying safe havens to all sorts of contributors

There is a wide range of **means to achieve** these goals:

- Becoming party to 12 AT UN Conventions<sup>30</sup>
- Establishing jurisdiction over the criminal offences<sup>31</sup>
- Principle *aut dedere aut judicare*<sup>32</sup>
- Criminalizing all sorts of contribution/support to Terrorism (so called elements of criminal conduct) such as Planning, Organising, Financing, Participating, Recruiting etc.
- Coordinating national institutions
- Relevant domestic measures
- International cooperation/Regional Cooperation
- Preventive and repressive measures

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<sup>30</sup> Illustrated in above mentioned ratification summary

<sup>31</sup> As for the concrete jurisdiction over criminal offences this study extracted the main requirement of each of the 12 Conventions and screened what the respective Criminal Code contains in this matter and if state parties meet the exact requirements of the UN treaties.

<sup>32</sup> A country that does not extradite an alleged offender shall prosecute the offender according to national laws

## 1. Legislative implementation of 12 universal UN Convention (Cross-section)

### a) The UN Convention on Offences and Certain Other Acts committed on Board Aircraft <sup>33</sup>

This Convention applies to the Safety of Aviation. It requires the state parties to establish its jurisdiction as the State of registration of the Aircraft over offences committed on board of the aircraft in flight. For this Convention there is no requirement to define any particular conduct. The States Parties are expected to establish jurisdiction for offences committed on board aircraft registered in that state<sup>34</sup>.

All respective South Eastern European Countries ratified this Convention.

As for **Bulgaria, Romania, Croatia, Albania, Macedonia, Serbia and Montenegro** and **Moldova** there were no noticeable problems in the implementation of this jurisdiction regarding the establishment of jurisdiction as State of registration of the Aircraft over offences committed on board aircraft in flight.

Detailed analysis of the respective provisions can be found in attached database.

#### *Excerptions*<sup>35</sup>

##### **Romania**

Art.3-6 CC, Art.143 CC establish general jurisdiction as the State of registration of the Aircraft; for crimes committed on Romanian aircrafts, meaning being the State of registration; territorial clause Art 142 CC) in the Air code (Art 98-112), as well as in Law nr 535/2004 for preventing and combating terrorism. The penalties vary depending on the degree of social danger, the most serious one being punished with imprisonment up to 25 years.

##### **Albania**

Art. 5-8 CC establish jurisdiction over all criminal offences committed within the Republic of Albania's territory (or outside) by Albanian citizens, aliens. Art 5 CC defines the Albanian territory in the sense of criminal law including the carriers of civil aviation.

<sup>33</sup> □ Tokyo, 1963; [http://www.unodc.org/unodc/terrorism\\_convention\\_aircraft.html](http://www.unodc.org/unodc/terrorism_convention_aircraft.html)

<sup>34</sup> Art. 3 par 1 of the Convention

<sup>35</sup> The following passages have been excerpted from the data base

## b) The UN Convention for the Suppression of Unlawful Seizure of Aircraft<sup>36</sup>

This Convention applies to aircraft hijackings. It requires contracting states to penalize the unlawful seizure and exercise of control of the aircraft; hijackings should be made punishable by "severe penalties".

All respective South Eastern European countries ratified this Convention.

As for **Bulgaria**, Romania, **Croatia**, **Albania**, **Macedonia**, **Serbia** and **Moldova** there were no noticeable problems in the implementation of this jurisdiction as regards the penalisation of the unlawful seizure and exercise of control of the aircraft.

### *Excerptions*

#### **Macedonia**

Art 302 CC stipulates hijacking an aircraft or ship as criminal offence: a person who by force or by serious threat takes over the control over an aircraft during flight or over a ship when sailing, shall be punished with imprisonment of at least one year. In case of death of one or more persons, or the destruction of the aircraft or the ship, at least 5 years of imprisonment. If the killing is deliberately, the offender shall be punished with a prison term of at least ten years.

#### **Serbia**

Art 240 par 1 CC penalises taking control of an airborne aircraft; punishable by minimum 1 year of imprisonment; at least 5 years if death of a person or destruction of the airplane has been caused (par. II); Art 241 I CC regulates the threat to flight safety.

## c) The UN Convention for the Suppression of Unlawful Acts against the safety of civil aviation applies to aviation sabotage<sup>37</sup>

This Convention obliges state parties to make it an offence for any person unlawfully and intentionally: *to perform a serious attack on aircraft in service or airport, to place an explosive device on an aircraft, if that is at least likely to endanger the safety, and to attempt such acts or to be an accomplice.*

<sup>36</sup> The Hague, 1970 <http://untreaty.un.org/English/Terrorism/Conv2.pdf>

<sup>37</sup> Montreal, 1971 <http://untreaty.un.org/English/Terrorism/Conv3.pdf>

All respective South Eastern European countries ratified this Convention.

As for **Bulgaria, Romania, Croatia**, there were no noticeable problems in the implementation of this jurisdiction as regards the penalisation of performing a serious attack, placing an explosive device on an aircraft in the manner described above.

Whereas **Albania, Macedonia, Serbia** and **Moldova** seem not to have fully implemented the requirements of the Civil Aviation Convention:

### *Comments*

#### **Albania**

The Convention for the Suppression of Unlawful Acts against the safety of civil aviation seems not to be fully implemented by the Albanian Law. The convention expects the parties to criminalize serious attacks on aircrafts in service or airport, to place an explosive device on an aircraft, if that is at least likely to endanger the safety, and to attempt such acts or be an accomplice. The Albanian Criminal Code does not penalise serious attacks on aircrafts or the placing of explosives on the aircrafts specifically. Art 152 CC penalises only the *destroying or damaging of "property"* as such. "*Committing violent acts*" on board an aircraft is only penalised by establishment of jurisdiction over all offences committed on board (compare above with UN Convention on Offences and Certain Other Acts committed on Board Aircraft)

#### **Macedonia**

Art 303 CC purports to penalise a serious attack such as placing an explosive device on an aircraft under the conditions described in the respective convention. Art 303 CC deals with "Endangering the air traffic safety" penalises *inter alia* the placing of explosives on an aircraft or destroying it differently (par I). A serious attack against a person on an aircraft is not clearly penalised, it could only be covered through the provision of endangering the safety of the aircraft "in another way". The punishment of placing an explosive is punished with imprisonment of at least 5 years. Art 300 CC penalises the act of causing serious injuries to a person "*in traffic*". This seems too general and doesn't outline the special danger of attacking a person on board an aircraft.

#### **Serbia**

Art 240 CC also purports to implement the respective provision. It penalises only the "taking of control" (= seizure) of an aircraft not also as from the Civil Aviation Convention required also the "*serious attack*" on aircraft or at airports. In this way it can be considered that the "serious attack component is not implemented through Art 240 CC.

## **Moldova**

The provision of the Moldavian Criminal Code seems also to lack the concrete provision of penalising the act of attacking a person seriously on board an aircraft.

Art 268 CC regulates placing an explosive device on an aircraft. As mentioned above the Civil Aviation Convention requires not only to penalise placing an explosive device on an aircraft but also performing a serious attack on aircraft in service or airport. This seems not to have been regulated especially for serious attacks on aircrafts in the Criminal Code. In this respect, such crimes can be only absorbed by general provisions protecting physical integrity (Art 145, 151 to 153 CC).

## **d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents<sup>38</sup>**

This Convention applies to attacks on senior government officials and diplomats. It requires parties to criminalize violent attacks directed against internationally protected persons, whether actual, attempted or threatened.

All respective South Eastern European Countries ratified this Convention.

As for **Bulgaria, Romania, Croatia, Albania, Macedonia, Serbia** and **Moldova** there were no noticeable problems in the implementation of this jurisdiction as regards the criminalization of violent attacks directed against internationally protected people.

## *Comments*

### **Croatia**

Art.170 CC (kidnapping or attacking an internationally protected person), general punishment minimum 1 year, in case of intentional killing of such persons imprisonment of at least 10 years (par 2); causing death of one or more persons not less than 5 years (par 3)

### **Albania**

Art 226 CC criminalizes violent attacks against prime ministers, cabinet members, parliamentarians of foreign states, diplomatic representatives or representatives of recognized international bodies who are officially in the Rep of Albania.

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<sup>38</sup> New York, 1973 <http://untreaty.un.org/English/Terrorism/Conv4.pdf>

### e) The Convention against the Taking of Hostages<sup>39</sup>

This Convention requires penalization of any seizure or detention and threat to kill, injure or continue to detain a hostage to compel any State, international organization or person to do or abstain from any act.

All respective South Eastern European countries ratified this Convention.

As for **Bulgaria, Romania, Croatia, Albania, Serbia** and **Moldova** there were no noticeable problems in the implementation of jurisdiction regarding the criminalization of the above-mentioned requirements.

However, it is unclear whether **Macedonia** has fully implemented these requirements. Art 421 CC penalizes *kidnapping or detention and threat to kill, injure or continue to detain a hostage in order to compel any State, international organization*. The Article does not mention those actions in connection to compelling/blackmailing another person to do or abstain from any act. To blackmail/compel another person for that purpose seems not to have been considered by the Macedonian legislation.

### f) The UN Convention on the physical protection of Nuclear Material<sup>40</sup>

This Convention applies to the unlawful taking and use of nuclear materials<sup>41</sup>. It requires penalization of the unlawful possession and handling (use, transfer etc) of dangerous nuclear material, the theft, robbery etc of such substances, the threat to use nuclear material to cause death, serious injuries<sup>42</sup>.

All respective South Eastern European countries ratified this Convention.

Only for **Romania** and **Croatia** there were no noticeable problems in the implementation of this jurisdiction as regards the criminalization of the above mentioned.

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<sup>39</sup> New York, 1979 <http://untreaty.un.org/English/Terrorism/Conv5.pdf>

<sup>40</sup> Vienna, 1987 [http://untreaty.un.org/English/Terrorism/English\\_18\\_15.pdf](http://untreaty.un.org/English/Terrorism/English_18_15.pdf)

<sup>41</sup> The Convention on the physical protection of Nuclear Material does not apply to nuclear material used for military purposes, Art 2 par. 1 of the Convention limits the Convention to nuclear material used "for peaceful purposes"; Art 1 a) b) contain a definition of nuclear material.

<sup>42</sup> Art. 7 of the Convention

The respective Criminal Codes of **Bulgaria, Croatia, Albania, Macedonia** and **Moldova** seem not to contain specific or at least related provisions for the “theft” and “robbery” of nuclear material. However, such acts can always be penalised through general provisions as put forward by the countries. This cannot be enough to consider the special danger of stealing such materials by –most probably- inexperienced persons. Since the Convention dedicates Art7 par 1 b) entirely to the theft or robbery of nuclear material it must be assumed that State Parties are expected to penalise the act as such.

### *Comments*

#### **Bulgaria**

Even though the Criminal Code addresses the issue of unlawful handling/use of nuclear material, neither theft nor robbery are regulated in these respects.

Art. 356 CC penalises damaging nuclear devices. Art. 356g CC penalises causing substantial property damages, injuries or death by negligence. Art. 356h CC criminalizes violating the rules for nuclear safety by causing serious property damages, injuries or death. Art 356k addresses the unlawful acquisition and possession of nuclear material. Insofar theft and robbery of nuclear material are not penalised as special crimes, but as general crimes against property as stipulated in Art. 194, 195, 198, 199 CC. Art.356f par 1, 356h CC in connection with Art 108a par 1 (Threat to use nuclear material to cause death or serious injury).

#### **Moldova**

Art 292 CC penalises the illicit manufacture, procurement, possessing, storage, transportation, handling etc of explosives and of radioactive materials (2 to 7 years of imprisonment) Art 295 CC penalises the threatening to steal radioactive material or to use them illicitly (sanctions: fine, 6 to 5 years of imprisonment). But theft and robbery of nuclear material as required by the UN Nuclear Material Convention are not penalised as special crimes, but as general crimes against property as stipulated in Art. 186, 187 CC.

**g) The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving international civil aviation<sup>43</sup>**

This Convention supplements the provisions of the Civil Aviation Convention by extending the scope of the Convention to offences including acts of violence at airports.

The Protocol applies to "safety at the airport", namely

- a) Serious violent acts against persons at civil airports in general
- b) Destruction or serious damage of the facilities of an airport or an aircraft not in service).

All respective South Eastern European countries ratified this Protocol.

Only for **Romania** and **Croatia** there were no noticeable problems in the implementation of this jurisdiction as regards the criminalization of the above-mentioned offences.

The other South Eastern European countries did not incorporate the precise penalisation of the respective offence at airports.

*Comments*

**Serbia**

The act of performing serious attacks against persons at civil airports seems not to be implemented by the Criminal Code. Art 126 CC is rather vague, dealing with destroying and damaging unspecified facilities with the intention of "menacing" the constitutional order or security of Serbia and Montenegro. Finally, Art 242 CC deals with destroying and removing signs serving air traffic safety purposes.

**Macedonia**

The Criminal Code does not explicitly deal with violence at airports. Art 304 CC penalizes solely the damaging, destroying or removing of safety signs for air traffic. Art 303 CC furthermore penalizes all sorts of damaging or destroying the aircraft without specifying whether this aircraft should be in service or not. In these regards, the requirements of the respective Protocol are met. The Protocol applies only to an aircraft not in service.

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<sup>43</sup> This Protocol is supplementary to Convention no 3, the treaties shall be read and interpreted as one single instrument

## Moldova

Art. 268 CC penalises the deliberate damaging or destructing the *inter alia* "means of transport". It is not clear as to what extent the special facilities of an airport are addressed. There is no mentioning of violence at airports either.

## h) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation<sup>44</sup>

applies to terrorist activities on ships. It requires *inter alia* the penalization of seizure and exercise of control over a ship by force or threat, furthermore penalisation of serious acts of violence against a person on board of a ship and placing of destructive devices.

Apart from **Macedonia** all South Eastern European countries have ratified this Convention. Therefore implementation in the Macedonian Criminal Code was not considered.

Only for **Romania** and **Croatia** there were no noticeable problems in the implementation of this jurisdiction as regards the criminalization of the above-mentioned offences.

### Comments

## Bulgaria

Art. 340, par 1 CC penalises *inter alia* damaging a ship. The seizure and exercise of control over a ship seems not to be penalised by the CC. There is no equivalent provision as Art 341b par 1 to 3 CC regarding the seizure of aircrafts. Neither is the violence against a person on board a ship penalised. Also there seems to be no provision *for placement of destructive devices*, which apart from "*damaging*" as stipulated in Art 340 par 1 CC involves a greater danger for passengers and crew members.

## Albania

Art. 111 CC deals not only with air safety but also penalises the seizure of ships and other means of transportation. Regarding "*violence against a person on board*" and *placing of destructive devices on board*" a ship the same problem occurs as elaborated above (compare comments on Civil Aviation Convention). The Albanian CC does not take the aspect of greater danger of those actions on

<sup>44</sup> Rome, 1988 <http://untreaty.un.org/English/Terrorism/Conv8.pdf>

board a ship into account. It remains unclear whether this is considered within the individual sentence.

**i) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf<sup>45</sup>**

is supplementary to the previous convention and applies to terrorist activities on fixed offshore platforms. It extends the coverage of the Maritime Convention to attacks upon fixed platforms located on the continental shelf.

Apart from **Macedonia** all SOUTH EASTERN EUROPEAN countries have ratified this Protocol. Therefore implementation in the **Macedonian** Criminal Code was not considered.

Only for Romania and **Croatia** there were no noticeable problems in the implementation of this jurisdiction as regards the criminalization of the above-mentioned offences.

*Comments*

**Albania**

There are no provisions for fixed platforms in the Albanian CC. Art 111 CC (as stated above) only applies to "*means of transportation*", whereas according to Art 1 par 3 of the Protocol defines "fixed platform" as an *artificial island* etc. In any case, a fixed platform cannot be regarded as means of transportation and therefore Art 111 CC is not applicable.

Same applies to the Criminal Codes of **Bulgaria, Serbia** and **Moldova**.

**j) The UN Convention on the Marking of Plastic Explosives for the Purpose of Detection<sup>46</sup>**

covers the topic of chemical marking to facilitate detection of plastic explosives. It requires the State Parties to prohibit and prevent the manufacture of unmarked plastic explosives in its territory. This Convention differs from the other eleven. As the Convention on Offences and Certain Other Acts committed on Board Aircraft it is not directed to law-enforcing perpetrators, but rather to oblige the State Party to detect a particularly dangerous explosive used by potential terrorists, mainly develop and control a preventive strategy against the illicit manufacturing of plastic explosives. But to reach the latter the domestic legislation will have to create a respective offence referring to the manufacture, usage, possession and transport of unmarked explosives.

<sup>45</sup> Rome, 1988 <http://untreaty.un.org/English/Terrorism/Conv9.pdf>

<sup>46</sup> Montreal 1998 <http://untreaty.un.org/English/Terrorism/Conv10.pdf>

Due to complex technical issues of this convention and the available research capacity of this study, the analysis was limited as to whether the illicit manufacture and usage of explosives was penalised in the Criminal Code of the respective South Eastern European countries.

None of the States provided us with information related to real implementation as regards preventive measures. The information received can therefore not be correctly analysed as to whether international requirements have been implemented correctly (cfr. relevant section in data base, also compare with analysis to Convention for the Suppression of Terrorist Bombing)

Apart from **Serbia** all South Eastern European countries have ratified this Convention. Therefore implementation in the Serbian Criminal Code was not considered.

### k) The UN Convention for the Suppression of Terrorist Bombing<sup>47</sup>

This Convention requires State Parties to criminalize the intentional and unlawful delivery, placement, discharge or detonation of an explosive or other lethal device (Art. 2). The Convention only applies if the act involves international element<sup>48</sup>.

All South Eastern European countries ratified this Convention.

The respective Criminal Codes contain provisions about detonation of explosives.

#### *Excerptions*<sup>49</sup>

The **Macedonian** Criminal Code penalises in Art 288 CC the creation of general danger by placing/dischage or detonation of explosives or other lethal devices, if this action causes a significant danger. The required international element can be found in Art 419 CC, which addresses international terrorism, including the intentional detonation of an explosive, as required by the UN Convention for the Suppression of Terrorist Bombing. In case of serious consequences the deprivation of liberty shall be for a minimum period of 3 years, at least 5 years in case death of one or more persons. 5 years to life imprisonment if death was caused intentionally.

Similar provisions can be found in the other Criminal Codes.

<sup>47</sup> New York, 2001, <http://untreaty.un.org/English/Terrorism/Conv11.pdf>

<sup>48</sup> Does not apply to conflicts between armed forces (Art 19 par 2 of the Convention)

<sup>49</sup> Due to overlapping responses of all Contact Points analysis of implementation of Plastic Explosives Convention and Terrorist Bombing Convention must be read in conjunction. This is due to the fact that as criminal legislation is concerned all SEE Countries cumulate the *manufacture/producing* (plastic explosives convention) and the *discharge, placement etc* (Terrorist Bombing Convention) in one single provision.

## Comments

Only in case of **Albania** it remains unclear whether the requirements of the Terrorist Bombing Convention have been fully implemented.

In this context, only Art 152 CC of the Albanian Criminal Code penalises the destroying or damaging of property by explosives or therewith causing serious problems to the health of people. At the most, this article can be considered as penalisation of terrorist bombing on the national level. But the respective Convention requires that the act involve an international element. It remains unclear whether this has been considered by the Albanian CC. The Albanian contact point did not respond to respective inquiries.

### l) The UN Convention for the Suppression of the Financing of Terrorism<sup>50</sup>

entered into force on 10 Apr 2002. It *requires to criminalize the providing and collecting of funds with intention/knowledge that they will be used for acts of terrorism.*

All South Eastern European countries ratified this Convention. Almost all Criminal Codes contain such provisions. Only in case of **Macedonia** such regulations were not clear.

#### **Bulgaria**

Art. 108a, par 2 CC of the CC regulates criminalization of collecting or providing "resources" with intention/knowledge that they will be used for acts of terrorism (compare with Art 108a par 1 CC).

#### **Romania**

Art.36 of the Law no.535/2004<sup>51</sup> penalises the providing of a terrorist entity with assets or the collecting of funds, carrying out financial or banking operations (15 to 20 years of imprisonment). Furthermore the general penalties provided for the legislation of money laundering offences are increased with 3 years each, if committed with the intention to benefit to a terrorist entity.

#### **Croatia**

Art 187a par 2 CC regulates procuring or collecting financial means with knowledge that they will be used for acts of terrorism as stated in Art 187a par 1 and Articles 169 through 172 CC, punishable with imprisonment of 1 to 5 years.

<sup>50</sup> New York, 2002 <http://untreaty.un.org/English/Terrorism/Conv12.pdf>

<sup>51</sup> Amending the Criminal Code

## Albania

Art 230a CC penalises the financing and supporting of terrorism, punishable by 15 years of imprisonment to life sentence (and by fine from 5 million lek) Compare also with Art 230b (Transferring, converting, hiding, moving etc of funds

## Serbia

Art.393 CC penalises providing and collecting of funds for offences specified in Articles Art 312, 391 and 392 (1 to 10 years).

## Moldova

Art 279 CC penalises "financing terrorist actions" international granting or collecting, directly or indirectly with the goal to commit terrorist activities is sanctioned with imprisonment from 10 to 25 years.

## 2. Legal regulation of terrorism acts\_

Following the overall approach of UN Resolution 1373 the study also examines the **legal regulation of terrorism acts** in the countries of South Eastern Europe. If there are specific national counter terrorism acts in place the database presents them as starting point. If not existing, it refers directly to the central article of the Criminal Codes, which penalize acts of terrorism followed by the definition of terrorism.

This is of special interest, because a generally accepted definition of the term "terrorism" still does not exist. Indeed defining terrorism as a term that could be applicable to all clashing interests represents one of the most complex problems of current jurisprudence. The following passages contain a brief outline on the *status quo* of the United Nations, Council of Europe and the European Union as regards the definition of terrorism.

### a) The United Nations

Despite of the present 12 conventions and protocols the Member States of the United Nations have still not agreed upon a definition. This lack of agreement is the main obstacle for a single comprehensive convention on terrorism and the major blockage to significant international counter measures<sup>52</sup>.

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<sup>52</sup> [http://www.unodc.org/unodc/terrorism\\_definitions.html](http://www.unodc.org/unodc/terrorism_definitions.html)

## b) The Council of Europe

According to the Council of Europe 2005 Convention on the Prevention of Terrorism<sup>53</sup> which summarizes in these regards the scope of the 1978 Convention on the Suppression of Terrorism<sup>54</sup> and its amending protocol<sup>55</sup> a terrorist offence is defined as: *any of the offences under the 12 existing UN Conventions on terrorism.*

Anyhow the 2005 Council of Europe Convention establishes three specific offences, namely the public provocation to commit a terrorist offence, the recruitment and training of terrorists.

## c) The European Union

The Council of the European Union adopted in 2002 a framework decision<sup>56</sup> to fight more efficiently against terrorism. It contains a definition of terrorist offences that comprises two elements:

- *Objective, as it draws a list of serious offences (such as attacks upon a person's life or physical integrity, kidnapping or hostage taking, seizure of aircrafts, etc),*
- *Subjective, as these acts will only be considered as terrorist offences when intentionally committed with a specific terrorist aim, as described in the framework decision.*

Furthermore it defines infringements linked to terrorist acts, covers behaviours that may contribute to such acts, approximates the level of sanctions between Member States and explicitly guarantees the respect for fundamental rights<sup>57</sup>.

## d) South Eastern Europe

To have or not to have a special act on countering terrorism or related activities depends in South Eastern Europe on the national practice.

**Romania** and **Moldova** for instance have comprehensive acts next to provisions in the Criminal Code:

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<sup>53</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=196&CM=1&DF=&CL=ENG>

<sup>54</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=090&CM=1&DF=&CL=ENG>

<sup>55</sup> <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

<sup>56</sup> [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett)

<sup>57</sup> Passages taken from [http://europa.eu.int/comm/justice\\_home/fsj/criminal/terrorism/fsj\\_criminal\\_terrorism\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/criminal/terrorism/fsj_criminal_terrorism_en.htm)

The main legal provisions in **Romania** on terrorism are incorporated in Law no 535/2004 adopted in 25.11.2004 on Preventing and Countering Terrorism. This act regulates the National System for Preventing and Combating Terrorism. It implements Council Framework Decision of 2002 on Combating Terrorism and includes Directive 2001/97/EC on prevention of abusing the financial system *inter alia* for terrorism financing and money laundering. Art 1 of the law gives a definition of an act of terrorism, Art 2 deals with terrorist acts committed by Terrorist entities, Art 3 defines transborder terrorist acts, Art 4 defines *inter alia* terrorist entity, terrorist group, terrorist organisation, terrorist act, financial resources etc.

**Moldavian** Law No. 539-XV (12.10.2001) deals with the combat against terrorism. Also Law No. 54-XV (21.02.2003) refers to other counter terrorist activities. These laws set the legal framework for coordination of national institutions involved in the matter, central and local public authorities, NGOs and responsible individuals.

**Albania, Croatia, Macedonia** and **Serbia** fully incorporate the existing anti-terrorism provisions into their criminal codes, without having a special national act next to the penal provision in place.

Art. 141 CC (Anti-State Terrorism) penalizes endangering of the constitutional order of **Croatia** by causing an i.e. an explosion or by any other dangerous act or device imperils the lives of people or endangers property or kidnaps a person or commits some other act of violence within the Croatian territory. The definition of the act of international terrorism as such is defined in Art 169 CC.

Among the above-mentioned countries, only **Croatia** and **Macedonia** clearly distinguish between national and international terrorism. The main characteristic of international terrorism is the intention of the perpetrator towards a foreign state or an international organization.

The **Macedonian CC** serves as a good example for that distinction.

Art. 313 CC of Criminal Code regulates the national terrorism: "... a person who, with the intention of endangering the constitutional system or the security of the Republic of Macedonia, causes or seriously threatens to cause an explosion, fire, flood or some other generally dangerous act...creating a sense of insecurity or fear among the citizens.." Whereas Art 419 CC international terrorism: "A person who, with the intention of causing detriment to a foreign state or an international organisation, kidnaps a person or commits some other act of violence, causes an explosion or fire, or with some other generally dangerous act or by generally dangerous means causes a danger to the life of people and to property to a significant value, shall be punished with imprisonment of at least three years".

The **Romanian** and the **Bulgarian** Criminal Codes draw the distinction between national and international terrorism in a more complex manner:

Starting point for penalising all sorts of terrorism acts in the **Bulgarian** Criminal Code is Art. 108, par 1, which refers to other relevant provisions depending on the concrete act committed:

*"Art. 108a. (New, SG 92/02) (1) Who, for the purpose of causing commotion and fear to the population, or threat or compel a body of the authority, a representative of the public or a representative of a foreign country or of an international organisation, to do or commit something in the sphere of his functions, commits a crime according to Art. 115, 128, Art. 142, par 1, Art. 216, par 1, Art. 326, Art. 330, par 1, Art. 334, Art. 334, par 1, Art. 337, par 1, Art. 339, par 1, Art. 340, par 1 and 2, Art. 341a, par 1 - 3, Art. 341b, par 1, Art. 344, Art. 347, par 1, Art. 348, Art. 349, par 1 and 3, Art. 350, par 1, Art. 352, par 1, Art. 354, par 1, Art. 356f, par 1, Art. 356h...."*

As elaborated above the main provisions on terrorism in **Romania** are regulated in Law no 535/2004. Art. 1 of that law defines terrorism as follows:

*Art. 1. –" .. terrorism represents an array of actions and / or threats that menace the public order and affect the national security, having the following features:*

- a) Are deliberately perpetrated by terrorist entities that share extremist views and attitudes and are hostile to other entities that they target by violent and / or destructive means.*
- b) Are aimed at achieving specific goals of political nature.*
- c) Are directed against human and / or material factors representing the authorities and public institutions, civilians or any other element belonging to these entities.*
- d) Generate situations that have powerful impact on the population designated to draw the attention to their objectives."*

3. Establishment of jurisdiction over the offences (no safe havens) including principle of "aut dedere aut judicare" and offences of participation

a) "**aut dedere aut judicare**"

The most important objective of UN Resolution 1373 as regards jurisdiction is to ensure that there shall be no safe havens for terrorist. The fundamental principle of anti-terrorism instruments "*aut dedere aut judicare*" states that a country that does not extradite an alleged offender shall prosecute the offender according to national laws. All the above-mentioned UN Conventions and protocols require State parties to establish jurisdiction whenever the alleged offender is present in their territory and the party with custody does not extradite to a party that has established jurisdiction pursuant to that Convention or Protocol.

The **Bulgarian** jurisdiction contains the principle “*aut dedere aut judicare*”. According to Art. 439a of the Criminal Procedure Code terrorist acts are offences for which extradition may be allowed. A foreign national, who has committed an offence abroad, affecting the interest of another State or of a foreign national, may be extradited in general. If the alleged offender is not being extradited for some reason<sup>58</sup> the competent Bulgarian authorities have to exercise criminal jurisdiction and accordingly open up criminal proceedings against the foreign national, if this is provided in an international agreement to which the Republic of Bulgaria is party (for instance the 12 Universal UN Conventions).

The **Romanian** law concerning international judicial cooperation in criminal matters (Law.nr/302/2004) regulates that if the extradition of a person sought is not granted, the Romanian authorities shall apply the provisions on the transfer of proceedings. To that end, the examination of its own competence and the exercise of the criminal action shall take place *ex officio*, without exception and without delay. Consequently, the principle of “*aut dedere aut dedecare*” has been implemented into Romanian jurisdiction.

The **Croatian** jurisdiction also implements the principle of “*aut dedere aut judicare*”. According to Art 9 of the Constitution of the Republic of Croatia only extraditing a Croatian citizen to another state is generally forbidden. Exceptionally extradition of a Croatian Citizen is possible, if the request for extradition is based upon international conventions (including the provisions on political issues). A suspected non-national, which is present within the territory of Croatia, can be extradited in compliance with Art 33 of the Croatian Constitution and the respective international agreement to which the Republic of Croatia is party. If a suspected, convicted or condemned offender is not extradited, the domestic courts are expected to exercise jurisdiction over the offender (Art 14 CC). The provision applies as well if the criminal offence was committed outside the territory of Croatia.

It remains unclear as to what extent **Albania** has implemented the principle. Articles 5-8 of the Criminal Code establish jurisdiction over all criminal offences committed within Albanian's territory or outside, committed by either Albanian citizens, foreign citizens or persons without nationality. A respective provision on extraditing in case of not prosecuting was could not be registered in the Criminal Code. Inquires to the Albanian authorities remained unanswered.

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<sup>58</sup> Pursuant to Art 6 par 2 CC extradition of such a suspected person may be denied for some reasons

Pursuant to the **Macedonian** legislation (Art 4 and Art 29 of the Constitution of Macedonia, Article 510 of the Law on Criminal Procedure) terrorist acts are offences for which extradition may be allowed. Acts of terrorism are not considered as political criminal offences, for which extradition would not be possible. Art. 510 of the Criminal Procedure Code prescribes the conditions for extradition. It remained unclear what provision of the Macedonian Criminal Code applies if the alleged offender has not been extradited. In this case, the above-mentioned principle of *aut dedere aut judicare* is only implemented if the offender faces prosecution in Macedonia.

The **Serbian** jurisdiction clearly implements the principle of “aut dedere aut judicare” as regards the prosecution and extradition of non-nationals. Article 107 CC par. 2 CC stipulates that Serbian legislation shall be applicable also to a foreigner who has committed a criminal offence abroad, be it against a foreign state or another foreigner. If the perpetrator is not extradited to another state, he shall be prosecuted in Serbia and Montenegro. The Serbian Code is not allowed to impose a heavier punishment than the one provided by the law of the country where the offence took place.

**Moldova** has implemented the principle of *aut dedere aut judicare* into its jurisdiction: In case the alleged offender is not being extradited, Art 546 CC stipulates that national prosecution shall be exercised.



## b) Offences of participation/elements of criminal conduct

Due to logistical preparations of terrorist attacks, most of the offenders have different helpers to support them either before, during or even after committing the crime. Most of the UN Conventions against international terrorism require not only the penalisation of the respective acts but also the penalisation of participation as an accomplice. Many require also that other specific forms of participation be made offence, such as organising, directing or contributing in any other way. According to the UNODC legislative guide to the universal anti-terrorism conventions and protocols the publication of the Commonwealth Secretariat entitled *Model Legislative Provisions on Measures to Combat Terrorism* serves as a good interpretation as to how the mandatory requirement of Resolution 1373 can be implemented correctly. Part III of that publication lists 16 specified types of forms of participation related to terrorist acts. Following this example, which according to the UNODC guide would satisfy the penalisation requirements of all UN counter terrorism instruments, this study extracted 12 types of participation to be analysed in the legislation of South Eastern Europe.

- Organising a terrorist attack (aa)
- Planning
- Financing
- Participating
- Supporting
- Facilitating
- Recruiting (bb)
- Inciting
- Supplying
- Conspiring
- Membership (cc)

The Criminal Codes of South Eastern Europe regulate most of the listed forms of participation in the context of a general terrorist act rather than in the concrete context of the individual conventions. Many countries do not even refer to the concrete act of terrorism but penalise various types of participation randomly as general forms of collaboration.

Insofar the study only presents whether the listed types of participation are penalised in the context of “general” act of terrorism. The following represents 3 examples as an extract from the database to illustrate its content in these regards.

### aa) Organising (a terrorist attack)

**Romania, Croatia, Albania** and **Macedonia** penalise the organisation or directing of an act of terrorism as such.

**Macedonia** punishes in Art 324 CC the creation of a group with the intention to commit an act of terrorism. A terrorist organisation is defined in Art 394a par 1 CC as *a group which comes together with the intention to perform inter alia the following crimes: murder, body injuries, kidnapping persons, destruction of public facilities transport systems* etc. This provision contains a long enumeration of imaginable acts.

**Albania** penalises establishing, organising, directing and financing a terrorist organisation in Art 234a CC.

**Bulgaria** penalises in Art 110 CC the act of organising a terrorist attack in general as a *"preparation" of a crime*, but refers in this provision to acts of terrorism as elaborated under Art 108 par 1 CC.

**Serbia** and **Moldova** do not specially penalise organising a terrorist attack or group. This behaviour is punished through provision on general participation to a crime. At least this act would be punished in **Serbia** as equivalent to organising another criminal act, Articles 254, 26 CC.

Art 83 of the **Moldavian** Criminal Code stipulates that the *organiser, instigator and accomplice of a crime* receives the same punishment as the *main perpetrator*.

### bb) Recruiting (terrorists)

Apart from **Romania**, no other country penalises the recruiting of persons to be members of terrorist groups or to participate in terrorist attacks.

Art.33 par.1 lett. b) of the **Romanian** Law no.535/2004 penalises the recruitment, instruction and training of terrorists.

**Bulgaria, Croatia, Albania** do not have any similar provisions.

**Macedonia** and **Moldova** refer in their Criminal Codes at least to the *creation or managing of a criminal organisation*.

#### cc) Membership

Only **Romania**, **Croatia** and **Macedonia** criminalize the act of becoming member of a terrorist organisation. The **Bulgarian** Criminal Code criminalizes in these regards only becoming a member of an organised criminal group in Art 109 CC without reference to terrorist activities. So does **Serbia** according to Art. 254 par 2 CC. There is neither a specific offence referring to being or becoming a member of a terrorist organization in the **Moldavian** Criminal Code. According to Art 47 CC the respective member could be punished individually for the specific actions/crimes, which he/she has actually committed (including preparation). In certain cases, the Republic of **Moldova** applies also the provisions of " Banditry" (Art 283 CC), which is defined as the " creation/involvement of/in an armed gang with the intention to attack people etc. This seems not to be plausible. The motivation/intention of armed gangs are often relating to assets and similar, whereas a terrorist organization could be purely politically/religiously motivated.

4. Coordination amongst national institutions  
- not incorporated for confidential reasons-

#### 5. International/Regional Cooperation in Criminal matters (Mutual assistance)

International Cooperation in legal and criminal matters is one of the most important measures to fight terrorism effectively.

UN Resolution 1373 calls states upon cooperating, *particularly through bilateral and multilateral arrangements and agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts*<sup>59</sup>.

There is a wide range of possible areas of agreements on criminal matters such as treaties on mutual legal assistance, law-enforcement cooperation, extradition, etc. Specific information on international agreements as far as provided by the contact points can be found in the database. The following table simply illustrates the minimum basic of regional cooperation in the area of criminal matters, by simply outlining whether there are such agreements in place at all

<sup>59</sup> UN Resolution 1373 3c

<http://daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>

### Bilateral Agreements on (mutual) criminal matters

	Bulgaria	Romania	Croatia	Albania	BiH	Macedonia	S&M	Moldova
Bulgaria		+	+	No	No	+	+	+
Romania	+		+	+	+	+	+	+
Croatia	+	+		+	+	+	+	No
Albania	No	+	+		No	+		No
BiH	No	+	+	No		No?	+	No
Macedonia	+	+	+	+	No?		+	No
Serbia&M	+	+	+	?	+	++		No
Moldova	+	+	No	No	No	No	No	

No agreement on criminal matters between

Bulgaria ↔ Albania

Bulgaria ↔ Bosnia and Herzegovina

Croatia ↔ Moldova

Albania ↔ Bulgaria

Albania ↔ Bosnia and Herzegovina

Albania ↔ Moldova

Macedonia ↔ Bosnia and Herzegovina

Macedonia ↔ Moldova

Analysis based on information of official contact points in the countries

