



THE AU PLAN ON TERRORISM

Joining the global war or leading an African battle?

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At a senior officials' meeting held in Algiers from 11-14 September 2002, the African Union proved ready and able to provide the political cohesion and sense of purpose needed for Africa to combat terrorism. While member states inevitably played to a global gallery in demonstrating their commitment to the 'war on terrorism', the practical counter-terrorist proposals adopted at the meeting substantially address Africa's security challenges. The resulting Plan of Action on the Prevention and Combating of Terrorism focuses on state building and inter-governmental co-operation, to literally and figuratively close Africa's borders to terrorist activities. Implementing the plan will be a tough challenge for many African governments, especially to ensure that their counter-terrorist measures adhere to international and regional human rights accords.

Introduction

In deliberate commemoration of the events of 11 September 2001, a senior officials' meeting of the African Union (AU) met on the same date this year in Algiers.

The aim was twofold: symbolically to demonstrate Africa's commitment to the 'global war on terrorism' and practically to give effect to the AU's own regional instrument, the Algiers Convention on the Prevention and Combating of Terrorism, 1999.

The opening speeches recalled terrorist atrocities on African soil—hundreds of thousands slaughtered in Algeria, thousands dead or injured in the US Embassy bombings

in Nairobi and Dar es Salaam, urban terrorism in Cape Town in the late 1990s. This was appropriate as an expression of solidarity with the victims of New York and Washington. It was also a way of saying that this was Africa acting in its own interests, and not just dancing again to donors' music.

Apart from the complex situation in Algeria, however, the suggestion that Africa's peoples are directly threatened by terrorism is a long shot. The numbers affected by terrorism are incomparable to the tally of hostages to Africa's perennial terrors of war, hunger and disease. International concern about Africa has more to do with her weak states providing safe haven for terrorists, from which to finance

and launch terrorist attacks or hide from international retribution.

But why would countries like Rwanda, Senegal or Mozambique focus on terrorism, when they are overwhelmed with the catastrophic effects of genocide, drought or HIV/Aids? Part of the answer is because the United Nations told them to. UN Security Council Resolution 1373 is mandatory and binding on all member states, whether or not they have the resources to comply. While this is certainly a burden on many African states, it is also an opportunity to secure resources needed to fulfill their obligations.

A cynic might say that some of this gathering of more than 200 high-powered delegates, from 49 of the 53 AU member states, turned out merely to repackage their everlasting problems and never-ending appeals for aid into an issue that is the global flavour of the month. For example, during plenary debate, countries like Rwanda argued that violent militias like the *Armée de Liberation du Rwanda (ALIR)*—comprising the former *Interahamwe* fighters responsible for the 1994 genocide—should be classified ‘terrorists’. Several countries were upfront in their requests for assistance.

To an extent, it is inevitable in the post-Cold War and now post-9/11 context that African countries fear their needs have been pushed even further to the margins of the global agenda. An undercurrent of this meeting was an assertion of the relevance of building stability and development in Africa to the long-term eradication of international terrorism.

However expedient the messages of condolence and rhetorical condemnations of terrorism may have been, it became apparent that the practical counter-terrorist proposals were relevant and constructive to addressing many of Africa’s security challenges. This is reflected in the Plan of Action on the Prevention and Combating of Terrorism adopted at the Algiers meeting.¹

AU Plan of Action

The Plan of Action is premised on the need to strengthen the capacity of African states

through intergovernmental co-operation and co-ordination. The Preamble recognises that:

terrorism is a violent form of transnational crime that exploits the limits of the territorial jurisdiction of States, differences in governance systems and judicial procedures, porous borders, and the existence of informal and illegal trade and financing networks.²

It states further that:

Eradicating terrorism requires a firm commitment by Member States to pursue common objectives. These include: exchange of information ... mutual legal assistance; exchange of research and expertise; and the mobilisation of technical assistance and co-operation, both within Africa and internationally, to upgrade the scientific, technical and operational capacity of Member States.

Joint action ... at intergovernmental level ... includes: co-ordinating border surveillance ... developing and strengthening border control-points; and combating the illicit import, export and stockpiling of arms, ammunition and explosives ... Few African governments are in a position, on their own, to marshal the requisite resources to combat this threat. Pooling resources, therefore, is essential ...³

Ratification of the Algiers Convention, 1999

Ratification and implementation of the Algiers Convention, 1999 is the first undertaking of the Plan of Action.⁴ A primary objective of the AU Commission and the Institute for Security Studies (who were partners in the project) in convening the Algiers Senior Officials’ Meeting was to build up momentum for the 15 ratifications required for the Convention to enter into force. This target was met and exceeded at the meeting, with member states competing to announce their recent or imminent ratifications. South Africa was the 15th member state to ratify the Convention.

Compliance with international obligations

Secondly, member states undertake to:

sign, ratify and fully implement all relevant international instruments concerning terrorism and, where necessary, seek assistance for amendments to national legislation so as to comply with the provisions of these instruments.⁵

These instruments include UNSC Resolution 1373 and the International Convention for the Suppression of the Financing of Terrorism, 1999.

Africa's shortcomings in terms of its international obligations came under scrutiny at the meeting. Ambassador Curtis Ward, advisor to the UNSC Counter-Terrorism Committee (CTC) pointed out that while 170 countries had filed first reports in compliance with UNSC Resolution 1373 by 3 September 2002, 12 African countries had not yet done so. He acknowledged that the mandatory requirements of the resolution "placed an immense burden on all states, and that states possessed varying capacities to implement them".⁶ Curtis advised states that lack capacity to compile their reports to formally request assistance through the CTC. Several AU member states indicated that they would do so.

Concrete support for implementing the international instruments relating to terrorism was offered by Alex Schmidt, officer-in-charge of the Terrorism Branch of the Center for International Crime Prevention of the UN. Schmidt informed the meeting that the UN Office for Drug Control and Crime Prevention (ODCCP) is planning to launch a new Global Programme against Terrorism, which would provide legislative guidelines and 'implementation kits' to various countries. The project is currently being piloted in an African country to establish its practicality and usefulness.⁷

Specific areas for action

Schmidt added that the ODCCP provides technical help in the areas of money laundering, corruption, human trafficking and organised crime. These are all serious challenges in Africa, and AU member states

would be well served by accepting such assistance. Article 10(d) of the Plan of Action recognises "the intimate relationship between terrorism and ... corruption and money laundering". Section C commits member states to 10 specific measures to suppress the financing of terrorism, including:

- national legislation to criminalise the financing of terrorism and money laundering;
- setting up 'financial intelligence units' in member states;
- training personnel to prevent and combat money laundering; and
- co-operation with international financial institutions for "the development of a global, comprehensive, anti-money laundering and combating the financing of terrorism (AML/CFT) methodology and assessment process".⁸

With regard to policing and border control, member states agreed to take a number of quite ambitious steps, which will certainly require external assistance. For example, they undertook to:

- "ensure that identity documents contain advanced security features that protect them against forgery;
- issue machine-readable travel documents that contain security features that protect them against forgery;
- keep a Passport Stoplist containing information of individuals whose applications would require special attention or who may not be issued with travel documents;
- check applications against the Passport Stoplist and the population register before the document is issued; and
- computerise all points of entry in order to monitor the arrival and departure of all individuals."⁹

While such hi-tech and tightly administered border control may be feasible in South Africa—the country that proposed several of these measures—their implementation in most African countries would be difficult, if not impossible, given the absence of population lists and rudimentary passport systems.

Measures to harmonise legal frameworks and judicial systems, and promote exchange

of information and co-ordination at regional, continental and international levels are more realistic in the short-term.

One of the measures to promote exchange of information is to:

establish a common Terrorism Activity Reporting (TAR) schedule as a data collection instrument on names of identified organisations, persons, places and resources by Member States. The TAR should then provide the source of information ... [for] an AU database that shall provide timely exchange of information, experience and lessons learnt on counter-terrorism tactics over a secured electronic network.¹⁰

The Nigerian delegation submitted a TAR form to the AU Commission during the meeting as an example to be used by member states. However, the experience of early warning systems established at regional and sub-regional level is that states are often unwilling to exchange sensitive information through this kind of multilateral process. The practicalities of gaining and sharing useful information on terrorist activities between states may therefore need further consideration.

Role of the AU Commission and PSC

The most glaring omission from the Algiers Convention of 1999 is any reference to monitoring or compliance mechanisms. The Constitutive Act of the African Union, 2000 Article 23(2) closes this gap, in theory, by providing for sanctions against a member states which “fails to comply with the decisions and policies of the Union”. In practice, however, the AU has no precedent and little power to enforce compliance.

Although it is not mandatory, the Plan of Action specifically sets out a monitoring and enforcement role for the new Peace and Security Council (PSC) and the Commission of the AU. Under Article 7 of the Protocol relating to the Establishment of the PSC, adopted at the AU Summit in Durban, July 2002, the PSC is specifically charged to ensure the implementation of the Algiers Convention and other relevant international, regional and sub-regional

instruments to combat terrorism. The PSC (or the existing Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution) shall request all member states to report annually on the steps they have taken to prevent and combat terrorism, and specifically, to implement the Algiers Convention, 1999; present an annual report on terrorism to the Assembly of the Union; and monitor and make recommendations on the implementation of the AU Plan of Action on the Prevention and Combating of Terrorism.¹¹

The AU Commissioner in charge of Peace and Security will also examine and follow up on the reports submitted by member states, and “provide advice on matters pertaining to counter-terrorism action including preparation of model legislation and guidelines to assist Member States”.

Additional Protocol rejected

In the weeks following the events of 9/11, Africa sought to demonstrate its common cause with the US. In October, President Wade of Senegal convened a meeting of African Heads of State in Dakar. The subsequent declaration provided for discussions and proposals on the formulation of an additional protocol to the Algiers Convention. The additional protocol was considered necessary to provide for monitoring implementation of the Algiers Convention, and to criminalise the financing of terrorism. Shortly afterwards, an extraordinary meeting of the Central Organ in New York condemned the attack on the US and welcomed the Dakar proposal to prepare an additional protocol to the Algiers Convention.

A draft Additional Protocol was presented to the Algiers meeting for adoption. An intense debate ensued. Senegal, which was instrumental in the drafting of the Additional Protocol, defended the document. The rather weak argument was that an additional protocol to the Algiers Convention was ‘expected’, and would demonstrate Africa’s awareness of ‘new realities which should be taken into account’ after the September 2001 terrorist attacks.

South Africa rallied Southern African Development Community (SADC) countries in favour of a more pragmatic stance, that UNSC Resolution 1373 already places an onerous reporting burden on African states, and that an additional protocol to the Algiers Convention would duplicate and add to this burden. It was argued that most of the measures contained in the draft protocol were administrative, and could be covered in the Plan of Action. The focus should be on the operationalisation of the Algiers Convention, rather than the elaboration of a new protocol. A number of important countries, such as Kenya and Egypt, supported the South African position. Others, most prominently Senegal and Algeria, argued in favour.

Eventually, the meeting decided not to adopt an Additional Protocol to the Algiers Convention. By way of compromise, the chairperson suggested that the AU Commission collect the proposals of member states to submit a 'comprehensive draft Protocol' for consideration by the next AU Summit in Maputo.

African Research Centre on Terrorism

Already when opening the conference, Algerian President Bouteflika proposed and offered to host an African Centre for Study and Research on Terrorism. This was clearly part of the Algerian agenda to attract international attention and support for combating domestic terrorism. Meeting in Algiers, the delegates would hardly refuse such an offer. Provided the centre is clearly under the auspices of the AU, however, there is no reason why Algeria's motivation to drive this project should not be to the benefit of the entire continent.

The Plan of Action states that the purpose of the centre will be:

to centralise information, studies and analyses on terrorism and terrorist groups and develop training programmes by organising, with the assistance of international partners, training schedules, meetings and symposia.¹²

The AU Commission was requested to look

at the modalities for the establishment of the centre, including the financial aspects.

Human rights challenges

The success of the Algiers meeting lay in its practical focus, and the conscious effort to avoid opening a contentious, highly politicised debate on the definition of terrorism, in which one country's terrorist can be another's freedom fighter. An example of this was the chairman's crafty deflection of attempts to categorise Israeli activities in the West Bank as terrorism. This reflected positively on the new approach of the AU, departing from the old-style OAU tendency to be a forum for political posturing.

The danger for the AU is that many of its member states are ruled by illegitimate, undemocratic regimes. There is a need to act against terrorists as a national security risk without destroying the often tenuous rule of law that exists in many of its constituent states. As the UN Policy Working Group points out:

The rubric of counter-terrorism can be used to justify acts in support of political agendas, such as the consolidation of political power, elimination of political opponents, inhibition of legitimate dissent ... labelling opponents or adversaries as terrorists offers a time-tested technique to de-legitimise and demonise them. The United Nations should beware of offering ... a blanket or automatic endorsement of all measures taken in the name of counter-terrorism.¹³

This warning is even more pertinent to the AU. While adherence to human rights standards was not made explicit in the Plan of Action, it was implicit as a principle and provision contained in the Algiers Convention, 1999. Specifically, the Preamble to the Algiers Convention asserts that: "terrorism constitutes a serious violation of human rights and ... impedes socio-economic development through destabilisation of states"; and Article 22 provides that: "Nothing in this Convention shall be interpreted as derogating from the

... principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights."¹⁴

This will have to be carefully monitored by the AU Commissioner for Peace and Security, in carrying out his or her role in terms of the Plan of Action. Vigilance by human rights groups and civil society interaction with the AU would be invaluable to this process. For example, in South Africa draft anti-terrorism legislation was sent back to the drawing board after human rights organisations criticised it as draconian and unconstitutional. Such scrutiny is even more necessary and challenging in other African countries drafting a single omnibus anti-terrorist law, as required by UNSC Resolution 1373.

The AU has a crucial role to play in policing its own members' adherence to human rights, particularly when the US seems prepared to turn a blind eye to the dubious human rights records of certain countries it regards as strategic in the campaign against terrorism. US relations with countries like Libya and Sudan have undergone significant changes as a result.

Conclusion

Promoting stability in Africa is a long-term investment for combating terrorism. The UN Policy Working Group points out that:

While there is not necessarily a direct cause and effect relationship between armed conflict and terrorism, containing a crisis, and showing evidence of progress towards resolving the issues underlying it, may lessen support among aggrieved communities for the terrorist groups that purport to represent them.¹⁵

No military operation can make failed or weak African countries safe unless it is linked to a process of reconciliation and reconstruction of a functioning and legitimate government. Recommendation 17 of the UN Policy Working Group is that:

states should be encouraged to view the implementation of Council resolution 1373 ... as an instrument of

democratic governance and statecraft that would help States more effectively control their borders, regulate trade and control the activities of illicit traffickers, terrorists, organised crime and other non-State actors.¹⁶

There is therefore a common interest in building stability, strength and legitimacy of African states, between the international community and Africa's peoples. The chance for Africa to garner resources for these ends is not to be missed. But it must also not be misused by African governments or foreign powers in the pursuit of narrow, short-term interests.

Africa's battle against terrorism can become a wider campaign against conflict and instability on the continent, and in this way, ensure that the 'global war on terrorism' works to the advantage of a truly global community. The AU meeting in Algiers indicated that Africa's newly transformed regional body is able to provide the political cohesion and sense of purpose needed to sustain regional co-operation to combat terrorism.

Notes

- 1 The Plan of Action of the African Union for the Prevention and Combating of Terrorism, adopted at Algiers 14/9/2002, is available on the ISS website <www.iss.co.za> under Africa Fact Files>regional organisations>OAU-AU.
- 2 Plan of Action of the African Union for the Prevention and Combating of Terrorism, 14/9/2002, Preamble, article 7.
- 3 Ibid, Preamble, articles 3, 4 & 6.
- 4 Ibid, General Provisions, 10(a).
- 5 Ibid, General Provisions, 10(b).
- 6 Report of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, Algiers, Algeria, 11-14 September 2002, p 11.
- 7 Ibid, p 10.
- 8 Plan of Action, Article 13(c), (h), (i) & (j).
- 9 Ibid, Article 11(b)-(e) & (g).
- 10 Ibid, Article 14(e).
- 11 Ibid, Article 16(b)-(d).
- 12 Ibid, Articles 19-21.
- 13 UN Report of the Policy Working Group on the United Nations and Terrorism, 2002.
- 14 OAU Convention on the Prevention and Combating of Terrorism, Algiers, 1999.
- 15 Ibid, p 11.
- 16 Ibid, p 14.