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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

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**FIGHT AGAINST TERRORISM – INFORMATION ABOUT WORK UNDERTAKEN IN THE
COUNCIL OF EUROPE AND OTHER INTERNATIONAL BODIES**

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

The fight against terrorism Council of Europe activities

(Information prepared by Directorate General I – Legal Affairs *Counter-Terrorism Task Force*,
www.coe.int/gmt)

BACKGROUND

The Council of Europe has been dedicated since 1949 to upholding human rights, the rule of law and pluralist democracy, and is determined to combat terrorism which repudiates these three fundamental values. The Council of Europe has therefore been dealing with this matter since the 70s (see relevant Council of Europe instruments and documents). The terrorist attacks in the United States in 2001 were immediately followed by firm political commitments from the Committee of Ministers, the Parliamentary Assembly and the Conference of European Ministers of Justice to launch and implement a plan of action aiming at strengthening legal action against terrorism, adopted by the Committee of Ministers in November 2001. The Council of Europe's action is based on three cornerstones:

- strengthening legal action against terrorism
- safeguarding fundamental values
- addressing the causes of terrorism.

As a regional organisation, the Council of Europe is engaged in facilitating the implementation of UN Security Council Resolution 1373(2001), by providing a forum for discussing and adopting regional standards and best practice and for providing assistance to its member States in improving their counter-terrorism capacity. At the same time, it has strengthened its working relationship with other international organisations active in this field (EU, OSCE, UN).

The efforts to strengthen legal action against terrorism are based on the fundamental principle that it is possible and necessary to fight terrorism while respecting human rights, fundamental freedoms and the rule of law, in the spirit of the Parliamentary Assembly's Recommendation REC 1550 (2002) and Resolution RES 1271 (2002) on Combating terrorism and respect for human rights, adopted on 24 January 2002, and of the *Guidelines on Human Rights and the Fight Against Terrorism* adopted by the Committee of Ministers of the Council of Europe on 15 July 2002. The latter is the first international legal text on this topic and includes 17 principles specifying the limitations which States shall impose on themselves in their efforts to combat terrorism and which result from international texts and the case law of the European Court of Human Rights.

The most significant developments in the area of legal action against terrorism relate to the work of the Multidisciplinary Group on International Action against Terrorism (GMT), an intergovernmental committee of experts set up in November 2001 with the tasks of identifying priorities for future action by the Council of Europe and reviewing the relevant Council of Europe international instruments, in particular the European Convention on the Suppression of Terrorism of 1977. These tasks were completed in just one year.

THE REVISED EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

On 15 May 2003, an Amending Protocol (ETS No. 190) to the 1977 European Convention on the Suppression of Terrorism was opened for signature. Some 40 member States have already signed it and the ratification process is underway. It will enter into force when all the States Parties to the European Convention on the Suppression of Terrorism have ratified it.

The Protocol introduces a number of significant changes to the Convention:

- a substantial extension of the list of offences which may never be regarded as political or politically motivated, which now includes all the offences covered by all the UN anti-terrorist conventions
- the introduction of a simplified amendment procedure allowing new offences to be added to the list
- the opening of the Convention to observer states, and subject to a Committee of Ministers' decision, to other non-member states
- the possibility of refusing to extradite offenders to countries where they risk the death penalty, torture or life imprisonment without parole
- a significant reduction of the possibilities to refuse extradition on the basis of reservations to the Convention and such refusal will be subject to a specific follow-up procedure, which will also apply to the follow-up of any obligation under the Convention as amended.

The Counter-Terrorism priorities of the Council of Europe

The GMT also identified 6 priority areas, endorsed by the Committee of Ministers in November 2002, namely:

- research on the concepts of "*apologie du terrorisme*" and "incitement to terrorism"
- special investigation techniques
- protection of witnesses and collaborators of justice
- international co-operation on law enforcement
- action to cut terrorists off from funding sources
- questions of identity documents which arise in connection with terrorism

The six priority activities are currently being implemented with a view to the possible elaboration of instruments or to the evaluation of existing measures.

A number of specific intergovernmental committees have been set up in order to implement the priority areas. Their specific terms of reference reflect the Council of Europe's underlying concern to strike a balance between combating terrorism and respecting human rights: reference is constantly made to respect for the Council of Europe's standards in the fields of human rights and the rule of law.

THE 25TH CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE - NEW IMPETUS AND NEW TASKS

In Resolution No. 1 on combating terrorism adopted at the Conference (Sofia, 9-10 October 2003), the Ministers reaffirmed their intention to pursue their efforts, in particular in the priority areas, to reinforce the fight against terrorism and increase the security of citizens, in a spirit of solidarity and on the basis of the common values to which the Council of Europe is firmly committed: the rule of law, human rights and pluralist democracy. In addition, they identified other possible areas for further action, namely:

- protection, support and compensation of victims of terrorist acts
- assessment of the effectiveness of national judicial systems in their response to terrorism
- support for the upgrading of member States' counter-terrorism legislative and institutional capacities
- feasibility of setting up a European register of national and international standards, starting with standards in the field of the fight against terrorism
- possible added value of a comprehensive European Convention against terrorism, which would contribute significantly to the UN efforts in this field.

The Committee of Experts on Terrorism (CODEXTER) and future prospects

The CODEXTER, a governmental committee of experts, is in charge of coordinating and supervising the Council of Europe's contribution to the fight against terrorism in the legal field and, in particular, the implementation of the priority activities.

The CODEXTER has endorsed the preparation of international instruments on the protection of witnesses and collaborators of justice and on special investigation techniques, and has conducted a research on the concepts of "*apologie du terrorisme*" and "incitement to terrorism", with a view to the preparation of an international instrument in this area. In addition, the CODEXTER proposed to the Committee of Ministers ways to better protect, support and compensate victims of terrorist acts and will conduct country surveys on counter-terrorism capacity.

The CODEXTER has also considered the added value of a possible Council of Europe comprehensive convention on terrorism and has been called upon to elaborate one or more specific scope instruments to deal with existing lacunae in international law or action on the fight against terrorism.

The rapid adoption of these new instruments and the pursuance of the priority actions mentioned above will provide the European continent with a set of effective instruments and actively contribute to the efforts of the international community, whilst respecting the human rights standards which are Europe's common heritage.

The Council of Europe Co-operation programme to strengthen the rule of law:

The Council of Europe set up a number of specific legal co-operation programmes open to all member and applicant States. These programmes are designed to help beneficiary countries to proceed with their institutional, legislative and administrative reforms. They chiefly involve working with governmental authorities to prepare and introduce legal and operational frameworks adapted to a country's specific needs and features, and consistent with fundamental European standards and principles, and to ensure that reforms are concretely implemented with respect for these principles.

The activities are defined in close co-operation with the countries concerned and with other international organisations, on the basis of the specific features of the beneficiary States. Co-operation activities are essentially based on multilateral, regional or bilateral information and training seminars, expert appraisals, needs-assessments and study visits.

Council of Europe relevant instruments and documents

Conventions

- European Convention on the Suppression of Terrorism (ETS No. 90) and Amending Protocol (ETS No. 190)
- European Convention on Extradition (ETS No. 24) and first and second Additional Protocols (ETS No. 86 and 98)
- European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and first and second Additional Protocols (ETS No. 99 and 182)
- European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)
- European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)
- Convention on Cybercrime [ETS No. 185] and Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)

Committee of Ministers

- Declaration on Terrorism (1978)
- Tripartite Declaration on Terrorist Acts (1986)
- Resolution (74) 3 on International terrorism
- Recommendation R (82) 1 concerning International Co-operation in the Prosecution and Punishment of Acts of Terrorism
- Recommendation (2001) 11 concerning Guiding Principles on the Fight against Organised Crime
- Declaration on the Fight against International Terrorism (2001)
- Guidelines on Human Rights and the Fight against Terrorism (2002)

Parliamentary Assembly Recommendations and Resolutions

- Recommendations No. 684 (1972) and 703 (1973) on International Terrorism
- Recommendation No. 852 (1979) on Terrorism in Europe
- Recommendation No. 916 (1981) on the Conference on the Defence of Democracy against Terrorism in Europe – Tasks and Problems
- Recommendations No. 941 (1982) and 982 (1984) on the Defence of Democracy against Terrorism in Europe
- Recommendation No. 1024 (1986) and Res. No. 863 (1986) on the European Response to International Terrorism
- Recommendation No. 1170 (1991) on strengthening the European Convention on the Suppression of Terrorism
- Recommendation No. 1199 (1992) on the Fight against International Terrorism in Europe
- Recommendation No. 1132 (1997) on the Organisation of a Parliamentary Conference to reinforce Democratic Systems in Europe and Co-operation in the Fight against Terrorism
- Recommendation No. 1426 (1999) and Order 555 (1999) on European Democracies facing up to Terrorism
- Recommendation No. 1534 (2001) and Res. No. 1258 (2001) on Democracies facing Terrorism
- Recommendation No. 1550 (2002) and Res. No. 1271 (2002) on Combating Terrorism and Respect for Human Rights
- Recommendation No. 1549 (2002) on Air Transport and Terrorism: how to enhance security
- Recommendation No. 1584 (2002) on the Need for Intensified International Co-operation to Neutralise Funds for Terrorist Purposes
- Recommendation No. 1644 (2004) on Terrorism: a threat to democracies

Congress of Local and Regional Authorities

- Recommendation 134 (2003) and Resolution 159 (2003) on Tackling Terrorism - the role and responsibilities of Local Authorities.

Council of Europe Publications



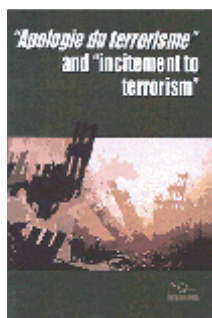
The Council of Europe has drafted a number of international legal instruments and standards reflecting the importance it attaches to combating terrorism and illustrating the underlying message of this Organisation, which is that it is possible to fight against terrorism efficiently while upholding the basic values that are the common heritage of the European continent. This publication contains these texts and is intended to provide a handy, comprehensive reference document.

English version: ISBN 92-871-5369-8, 400 pages, 23€ / 35US\$

FRENCH VERSION: ISBN 92-871-5367-1, 430 PAGES, 23€, 35 US\$

Russian version: to be published in 2004

New Publication: Apologie du Terrorisme and Incitement to terrorism



The fight against terrorism must never lead to a curtailing of the values and freedoms terrorists intend to destroy: the rule of law and freedom of thought and expression must never be sacrificed in this struggle. However, not everything can be justified in the name of such freedom. This report analyses the situation in member and observer States of the Council of Europe and their different legal approaches to the phenomenon of the public expression of praise, justification and other forms of support for terrorism and terrorists, referred to in this publication as "apologie du terrorisme" and "incitement to terrorism".

English version: ISBN 92-871-5468-6, 228 pages, 19€ / 29US\$

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