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

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Lausanne, 17 - 18 March 2005

**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

ACTIVITIES OF THE COUNCIL OF EUROPE AGAINST TERRORISM

As a regional organisation, the CoE 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 providing assistance to its member states for the improvement of their counter-terrorism capacity. At the same time, the CoE has strengthened its working relationship with other international organisations active in this field, including the EU, the OSCE and the UN.

The Council of Europe's action is threefold: (1) strengthening legal action against terrorism; (2) safeguarding fundamental values and (3) addressing the causes. This report concentrates mainly on the first two.

1 Strengthening legal action against terrorism (www.legal.coe.int)

The most significant developments in this area relate to the work of (A) the Committee of Experts on Terrorism (CODEXTER) and (B) the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL/PC-R-EV).

(A) International Legal Co-operation - The CODEXTER (www.coe.int/gmt)

(i) Reviewing applicable Council of Europe international legal instruments

The Amending Protocol to the 1977 European Convention on the Suppression of Terrorism (ETS No. 190) was opened for signature on 15 May 2003. This Protocol will enter into force when all the States Parties to the European Convention on the Suppression of Terrorism (ETS No. 090) have ratified it. The Committee of Ministers and the CODEXTER have undertaken to hold regular *tours de table* concerning the signature and ratification of this Protocol so as to press for its entry into force as soon as possible. At the time of this meeting, the European Convention on the Suppression of Terrorism had been ratified by 44 member states while its Amending Protocol has been ratified by 10 and signed by 32.

(ii) Priority areas for action

On 17 February 2003 the CODEXTER was set up by the Committee of Ministers to coordinate and supervise the Council of Europe's contribution to the fight against terrorism in the legal field and, in particular, the implementation of the priority activities endorsed by the Committee of Ministers in November 2002, as well as of the other priority areas identified by the 25th Conference of the European Ministers of Justice (Sofia, 9-10 October 2003). Since then, the CODEXTER has held 6 meetings, and several intergovernmental committees of experts are currently working on the elaboration of various legal instruments, of binding (conventions) and not-binding (recommendations) nature according to the issues dealt with.

- In the field of *protection of witnesses and collaborators of justice* a Committee of Experts is preparing a new draft recommendation and an opinion on the elaboration of a new convention, which are expected to be adopted by the pertinent steering committee in March and by the Committee of Ministers shortly thereafter.

- In the field of the use of *special investigation techniques*, a Committee of Experts is preparing a new draft recommendation, which is expected to be adopted by the pertinent steering committee in March and by the Committee of Ministers shortly thereafter.
- In the field of *identity documents*, a group of specialists is elaborating a new draft recommendation which is expected to be adopted by the CODEXTER at the beginning of March, and by the Committee of Ministers shortly thereafter.
- As to the action to cut terrorists off from funding sources (see also item (B) below), in the normative field, a Convention on money laundering and terrorist financing has been adopted on first reading by a Committee of Experts and is expected to be ready for adoption at the next Summit of Heads of State and Government.
- In the field of the protection and compensation of victims, the CODEXTER is examining national systems in order to allow a transfer of know-how and best practice, and the revision by a Group of Specialists of an existing recommendation on the prevention of victimisation is underway; moreover, the Committee of Ministers is expected to adopt Guidelines on the protection of victims of terrorism shortly.
- The European Commission for the Efficiency of Justice (CEPEJ) undertook an assessment of the *effectiveness of national judicial systems in their response to terrorism*, whose conclusions contained support for the ongoing activities in the CoE and provided suggestions for additional activities.
- The CODEXTER also launched the elaboration of *country profiles* on the legislative and institutional counter-terrorism capacity of member and observer states; 8 reports have been adopted and published so far; this activity takes place in close co-operation with the OSCE-OHDIR.
- The CoE *Co-operation programmes to strengthen the rule of law* have been extended to take into account the need to upgrade the legislative and institutional capacities of CoE member states against terrorism. Co-operation activities are essentially based on multilateral, regional or bilateral information and training seminars, expert appraisals, needs-assessments and study visits. Members of the CODEXTER have been designated as CoE experts in several co-operation activities, such as expert appraisals, workshops and seminars, organised by the Council of Europe, often in co-operation with other international organisations, in particular the UNODC.
- One of the key activities underway concerns the elaboration of a *new convention on the prevention of terrorism*. Following the opinion of the CODEXTER on the added value of a possible Council of Europe comprehensive convention on terrorism, or of some elements of such a convention, which could contribute significantly to the UN efforts in this field, the Committee of Ministers, at its 114th Session (12-13 May 2004), instructed the CODEXTER to elaborate proposals for one or more instruments (which could be legally binding or not) with specific scope dealing with existing lacunae in international law or action on the fight against terrorism. The CODEXTER is moving rapidly in the elaboration of a draft convention on the prevention of terrorism, which will include, *inter alia*, provisions on public provocation to commit acts of terrorism, recruitment and training for terrorist purposes, liability of legal entities coupled with safeguards and conditions. At its last meeting, 13-15 December 2004, the CODEXTER adopted on first reading the draft convention, which has been submitted to the CoE Parliamentary Assembly and to the Commissioner for Human Rights for opinion. The CODEXTER will reconvene to consider these opinions and review the draft in February 2005. Once approved by the CODEXTER, the Committee of Ministers is, in turn, expected to adopt the Convention and open it for signature on the occasion of the III Summit of Heads of State and Government.

(B) Fight against the financing of terrorism – The MONEYVAL (www.coe.int/moneyval)

The MONEYVAL comprises 27 Council of Europe states which are not members of the FATF.¹

Following the events of 11 September, on 30 April 2002 revised terms of reference were adopted to include the performance of States in complying with the FATF Eight Special Recommendations on terrorist financing (SR). Since the year 2003 the MONEYVAL has used for mutual evaluation a new comprehensive Anti-Money Laundering and Combating Terrorist Financing (AML/CFT) Methodology, which incorporates the financing of terrorism issue. This methodology was used for those new countries to MONEYVAL which underwent a first mutual evaluation in 2003. The evaluations will also act as blue prints for identifying technical assistance needs. MONEYVAL completed on-site mutual evaluation visits in 2003, which included terrorist financing issues in Azerbaijan, Armenia, Serbia and Montenegro, and Bosnia and Herzegovina. The reports on these visits have been adopted.

The MONEYVAL mandate has been extended to December 2007 to undertake a third round of mutual evaluations of all MONEYVAL states on both money laundering and terrorist financing issues. The third round will commence in January 2005 with the evaluation of Slovenia and Moldova on the basis of a further revised, global AML/CFT Methodology elaborated in collaboration with the FATF and IMF/World Bank. Following an agreement with the IMF/World Bank, MONEYVAL evaluations will in principle be accepted as the AML/CFT component in the IMF/World Bank's own full Financial Sector Assessments (FSAPs) in respect of MONEYVAL states.

2 Safeguarding fundamental values

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 Guidelines on Human Rights and the Fight Against Terrorism adopted by the Committee of Ministers of the Council of Europe on 15 July 2002.

Particular efforts have been made to disseminate the Guidelines widely in member and observer states, as well as to several other international fora. Currently translations are available in 10 languages. A Seminar has been scheduled in June 2005 on the implementation at the national level of the Guidelines with the purpose of evaluating the manner in which they have been applied and of exchanging field experiences, including examples of good practice or any difficulties encountered, and of collecting proposals for improving their implementation.

Following the adoption of Guidelines on Human Rights and the Fight against Terrorism, the Council of Europe embarked in July 2004 in the elaboration of supplementary Guidelines dealing with the protection of victims of terrorist acts. These Guidelines will be of a similar nature to the 2002 Guidelines, in that they will be based principally on existing legal standards arising mainly from the case-law of the European Court of Human Rights, Committee of Ministers' Recommendations

¹ Albania, Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Poland, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovak Republic, Slovenia, "The Former Yugoslav Republic of Macedonia" and Ukraine.

and other relevant international sources (EU, UN, etc.). The new Guidelines deal with specific issues relating to the protection of victims of terrorist acts and their family, such as: emergency assistance (in particular medical, psychological, financial, social); continuing assistance; place of the victims in the investigation process; effective access of the victims to the law and to justice; protection of victims' privacy and family life; information of the victims. They are expected to be adopted by the Committee of Ministers early in 2005.

It should also be recalled that the European Commission against Racism and Intolerance (ECRI) adopted a General Policy Recommendation (No. 8) on Combating Racism while Fighting Terrorism on 17 March 2004, and that the Steering Committee on the Mass Media (CDMM) is currently preparing a draft Declaration on freedom of expression and information in the media in the context of the fight against terrorism. The European Committee for the Prevention of Torture (CPT) has also paid close attention to the treatment of criminal suspects detained in connection with terrorist activities.

3 Addressing the causes

A number of activities and initiatives have been launched or intensified, based on the conviction that the in-depth work carried out by the CoE to develop strong democracies that respected their diversity and fostered greater social justice contributed to weakening the factors on which terrorism fed. Many of those activities and initiatives designed to reduce the risks of tension and radicalisation or to promote better understanding and greater cohesion have been conveniently brought together under the broad umbrella of "intercultural and inter-religious dialogue". A wide variety of CoE organs, authorities and bodies is involved in this task, also in co-operation with partners such as the OIC and the Arab League, as well as UNESCO.