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NEW START

a report

This document contains the full version of the report prepared by the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) and approved by the European Committee on Crime Problems (CDPC) in June 2002.

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transnational justice

a European area of shared justice

REPORT

Terms of reference

The Group was given the following terms of reference:

"reflect on developments in international co-operation in criminal matters, in particular

- *the role of the Council of Europe in the future,*
- *the nature and aims of European co-operation in criminal matters,*
- *the inter-relationship between different forms of co-operation,*
- *the organisation of co-operation in Europe,*

and report back to the CDPC."

In a decision taken at the 765bis meeting (21 September 2001) of their Deputies, the Committee of Ministers adressed the Group's activities in the following terms:

> *"The Deputies*
> *……*
> *decided to give high priority to the activity currently being carried out by the Reflection Group on developments in international cooperation in criminal matters (PC-S-NS) and instructed the latter to intensify its efforts in searching new and more effective means of cooperation in the criminal field, including with respect to terrorism, as well as fostering coordination between international organisations and institutions working in that field;*
> *……"*

Introduction

The present report concerns primarily international co-operation in criminal matters within the area covered by the member States of the Council of Europe only. Occasionally, it makes reference to co-operation between States in this area and third States. Additionally, the enhanced need for harmonised vertical co-operation is addressed as well as the necessity of permanent contacts between the Council of Europe and other European authorities working in this field, e.g., Eurojust within the framework of the European Union.

International co-operation in criminal matters is an expression which has until now been understood to include State-to-State relations pertaining to the prevention of offences, the investigation of offences as from the time of their being committed, the ensuing criminal proceedings, including the execution of the sentence and beyond, including procedures for retrial. Transnational justice is a term that better reflects present-day realities and requirements.

The statutory aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage. Among such ideals and principles are:

- peace based upon justice and international co-operation
- the realisation of human rights
- the rule of law
- genuine democracy.

In a different plane, one should recall that in their Declaration of 10 October 2001 on the International Criminal Court, the Committee of Ministers "stresses its readiness to consider further appropriate steps to ensure that, in the process of elaboration and implementation of Council of Europe instruments relevant to international co-operation in the criminal field, full account is taken of the principles and provisions of the Rome Statute of the International Criminal Court". This should be expressed in harmonised principles vis-à-vis the ICC, aiming at a common European approach to global challenges.

Common subordination of all European legal systems to the imperatives of the European Convention on Human Rights (ECHR) already ensures a minimum degree of unity in Europe in terms of justice, human rights, the rule of law and democracy.

However, in order to achieve its aim in the field of transnational justice, the CoE must go further and realize a European area of shared justice, where a high degree of unity has to be envisaged.

The European area of shared justice should be construed upon a platform of consistency among States, in law, in procedure, in standards. To a great extent the common platform corresponds to the present acquis of the CoE. However, the acquis must be:

- identified;
- completed or consolidated;
- updated where and when necessary;
- made visible.

Visibility is the keyword for the first chapter of this report.

The European area of shared justice should rely on rules and procedures that are consistent and apply throughout our continent in a coherent way. Moreover, national systems must be able to meet the requirements of co-operation, which means that domestic regulations must be of a high standard and national judicial systems must be effective.

Consistency is the keyword for the second chapter.

However, should the European area of shared justice achieve its objectives it must adopt a fresh approach to justice across borders that goes beyond mere semantic changes. It must, inter alia, uphold the rights of individuals, reconsider the role of governments in that respect and enhance the trend towards the "judicialisation" of transnational justice.

Renewal is the keyword for the third chapter.

Finally, in view of the above-mentioned Committee of Ministers' decision of 21 September 2001, a separate section on "terrorism" was added at the end of this report.

I. VISIBILITY

A. Improving the knowledge of and access to European instruments

Visibility means firstly to draw up a "European Code of Transnational Justice" that would bring together what already exists in the form of conventions and practice, including the norms of the ECHR and the case-law of the Court. The Code should include different levels, each applicable to a different group of States. It could also include a commentary on the different Council of Europe Conventions in the criminal field, incorporating the case-law of the European Court of Human Rights. The "Code" would very much build on existing materials and include bibliography.

The exercise would not be to draw up new norms, but rather to present existing norms in a comprehensive way.

Even if the ECHR and the case-law of the Court are already easily accessible on the Internet, it is necessary to show in which way the provisions of the Convention, as they are interpreted and applied by the Court, have implications in the field of transnational justice.

The web offers excellent possibilities of delivering the "Code" to all interested parties.

B. Ensuring the best possible application of European rules and regulations by providing practical tools

Those involved in criminal co-operation must have simple tools to help them apply European rules and regulations, in particular standard forms (international requests for judicial assistance, models for the exchange of criminal records, requests for provisional arrest pending extradition, extradition requests, etc): these tools could be appended to the European Code of Transnational Justice.

Moreover, a practical guide for judicial co-operation that includes a common part as well as a national part corresponding to the particular rules of the different member States of the Council of Europe, should be prepared and largely disseminated. Such a guide would include the rules applicable in each country in the fields of mutual legal assistance and extradition, as well as, where applicable, specific rules concerning all forms of crimes threatening civilised co-existence in Europe ("umbrella crimes – crimes chapeaux"), including terrorism.

The guide could be organised under the following plan :

I – The legal framework

1. Multilateral and bilateral instruments linking member States to their partners in matters pertaining to international co-operation, i.e. the different existing circles of co-operation
2. The general framework of legal co-operation at domestic level
3. The specific principles applicable to mutual legal assistance and extradition in member States
4. The framework of the fight against terrorism

II – The specialised national authorities

5. The role of central agencies in legal co-operation
6. The contact points that link each member State to its partners (in particular liaison officers/magistrates)

III – The procedure

7. The procedure followed when each member State is the requesting State (who may forward a request for mutual assistance or extradition and by which channel ?)
8. The procedure followed when each member State is the requested State (to whom should requests be forwarded and by which channel ?)
9. The follow-up to mutual assistance and extradition
10. Remedies and appeals against requests for mutual assistance and extradition

C. Setting up support structures

One of the difficulties of the present situation lies in the multiplicity of sources of law, each applying to a specific form of co-operation, a different circle of States, at different points in time, under circumstances that vary according to the reservations entered by one and the other.

Thus Council of Europe Conventions address mainly its member States (presently 43). However, third States may become a Party and several show an interest in doing so, although only some actually become a Party. In fact, each Convention applies to the States that have consented to become a Party to it; just as each Convention applies only within the limits of the reservations entered by each contracting State.

European Union instruments include Conventions prepared under different legal frameworks (European Political Co-operation, European Communities, then 3rd Pillar, now enhanced in the treaties of Amsterdam/Nice, tomorrow possibly in another context). They are in principle addressed exclusively to the member States of the EU (presently 15).

The Schengen Implementation Agreement, now a part of the EU acquis, applies to the EU members, save Ireland and the UK, plus Iceland and Norway. However, when other States become a member of the EU, they are expected to sign up to the existing EU instruments.

The Minsk Convention applies to a group of 12 Eastern European States, of which 10 signed and 4 ratified (Armenia, Belarus, Moldova and Ukraine) the 1991 Protocol. A revised version of the Minsk Convention is presently being negotiated.

The Nordic countries and the Benelux countries each have their own specific arrangements.

Some UN Conventions often apply (or will probably apply in the future) within the European area. Such is the case in particular with the 1988 Vienna Convention on Drugs and the new Palermo Convention on Organised Crime with its three additional Protocols.

And of course each State has its own law (substantive and procedural) and practice.

Access to such many different sources is usually not easy, even for practitioners well acquainted with existing tools. In particular, the person concerned and his or her counsel will find it extremely difficult to move through the intricate and often bureaucratic forest of agencies and languages before reaching, if at all successful, the information sought. However, in this context and in a democratic society, the law is presumed to be known by all and therefore all must have the possibility of an easy access to the law.

The complexity of the rules and regulations means that it is necessary to set up support structures with a thorough knowledge of international instruments that can help those operating in the field to use these instruments.

Notwithstanding more in-depth solutions in the framework of regional or sub-regional groups of States (for example: European Union), pan-European solutions on the level of the Council of Europe are an outstanding opportunity to tackle trans-European crime together and effectively in the common spirit of human rights. In the interests of justice, the Council of Europe should prepare and make available all the instruments that are necessary in a pan-European context. Only tools of co-operation not available within this framework should be left to sub-regional co-operation, where an even closer mutual trust, established against a specific historical backdrop, forms the basis for achieving even further-reaching solutions. Council of Europe solutions should never solely be a copy of sub-regional solutions: there can be no question of the CoE being reduced to an inductive role, i.e. to identify general laws applicable to the whole of Europe from particular examples of laws previously applied to a sub-region, such as the EU. Such a role may also be the CoE's, but only occasionally and provided that the legitimate rights and expectations of non-Members of the EU are respected.

With regard to practitioners in member States, especially those who are not involved with these matters on a daily basis, one of the main obstacles to effective transnational justice is the difficulty in having access to

- all conventions to be applied in one concrete case at the same point in time and concurrently, especially those of different origins (e.g. United Nations, Council of Europe, CIS , EU)
- the domestic law to be applied in the partner State(s) (law on co-operation in criminal matters; Code of Criminal Procedure and how procedures actually develop; substantive Criminal Law, probably also national jurisdiction and practice guidelines);
- a person in the other State, the addressee of the request or another person, with whom to establish a direct and personal contact.

Above all, in the pan-European context, language barriers form one of the most important obstacles to effective solutions in the fight against transnational crime with regard to

- access to conventions and, in particular, foreign law
- the use of direct contacts in the partner State(s)

The Additional Protocol to the European Convention on Information on Foreign Law (ETS 97) which does offer solutions is unfortunately hardly known to practitioners, is seldom applied and does not always lead to results which are compatible with the principle of speedy administration of justice reflected in particular in Article 6 of the ECHR.

The Council of Europe as such must become the visible reference to all practitioners in criminal law all over Europe. Existing outstanding possibilities, unique contacts and facilities already inherent in the present tasks of the Council of Europe should be activated in the common fight against crime. Answers to questions on the applicable law have to be provided, contacts between practitioners in member-states have to be established, language barriers have to be overcome.

The Council of Europe was not designed to exercise any function in the proceedings concerning individual cases. That does not however exclude desirable developments, such as, for example, a partnership with Eurojust.

Nothing prevents the CoE from playing a dynamic role in communicating information and technical data where States face specific difficulties or the latter arise between States.

No proposals are being made by the Group for the CoE to establish any judicial or quasi-judicial body acting in the domain of public international law, that would deliver binding assertions on the sense and value of conventional law. However, it emphasises the special role of the European Court of Human Rights, on the one hand, and the Committee of Ministers, on the other hand, in the implementation of the European Convention on Human Rights.

The CoE should organise and operate a data-base along the following lines:

a) The present CoE's data-base, despite language problems, already grants almost perfect access to CoE-Conventions. However, it can only serve as a perfect working tool if it is expanded to include all existing sub-regional conventions and bilateral treaties, most of which aim at facilitating the application of the CoE mother conventions. Relevant UN Conventions should also be added. The compilation of these data should ultimately result in an intelligent working tool: the input of a small amount of relevant data (e.g. States involved and type of crime) leading to the output of all relevant information: treaties applicable, reservations and declarations applicable; recipients of requests; channels of communication; language to be used etc. In standard situations, even the question of priority between concurrent conventions could be solved with the help of such a data-base - which, incidentally, would serve the valuable purpose of ensuring equality of arms between the prosecution and the defence;
b) Standardized forms for requests have to be made available electronically. These forms can only be sent when completed in accordance with the rules governing the respective concrete relationship. These forms should already include the recipients: for example pressing the button "Country A" ought either to open a new window with all possible decentralised contact-points of "Country A" or even to forward this message directly to the authority responsible according to the applicable law in the

other member-state. These forms should have a standard section indicating what text is to be expected "in the blank spaces above". The standard sections should be provided in all official languages of member-states. The standard section will be accessible both in the language of the author and in the language of the recipient;

c) To a certain extent the CoE data-base could even provide for access to national law relevant to transnational justice. An additional search function could be of major assistance as regards typical questions of legal assistance (e.g. the necessity or possibility that a defence counsel be present whilst a witness is heard);
d) Member States should be invited to update information on their law and the bilateral treaties into which they enter; "treaty offices" of sub-regional conventions should be invited to update information on such conventions (signatures, ratifications, accessions, declarations and reservations). The same rules have also to be applied for the translation.
e) The data-base should cater for materials translated into "third" languages (languages other than the CoE official languages) and keep them available and easily accessible to all.

A department of the Secretariat should be entrusted with all work that cannot be carried out by electronic means, above all

- to assist practitioners all over Europe in their search for the applicable law and, if not directly possible, establish a contact with persons indicated beforehand by the partner State on all the questions mentioned above (applicable law, double criminality, responsible representatives etc.)
- to provide interpretation where necessary.

It is henceforth indispensable that the Council of Europe lends its support to the setting up of structures of assistance, such as :

- liaison officers/magistrates at bilateral level or for a group of States: a recommendation to that effect would be helpful. Moreover, it would be interesting to organise a conference on this subject at Council of Europe level in order to raise the awareness of States to this function which is particularly useful to legal co-operation;
- pan-European network of contact points for mutual assistance in each country;
- central structure of specialists supporting international co-operation and sitting next to the Secretariat of the Council of Europe.

Moreover, one should envisage ways and means to participate in the training of judicial officers (magistrats) in the different member States, as well as networking of the training institutions.

II. CONSISTENCY

A. Coordinating norm-making activities

The present situation is one of inflation of international legal texts, coupled with under-use of such texts. Nothing exists to manage and integrate such a complex set of texts. The situation can only become worse in the future if nothing is done.

What should be done in the future is to consolidate what exists in an integrated and purpose-oriented way. What should not be done is to run away forwards by producing more and more texts which are not linked to one another and are not purpose-oriented. *A la carte* Conventions must be avoided.

Organising norms, cataloguing norms under a hierarchy, defining the purpose of a system, is a task more appropriately given to an international organisation than to bilateral governmental action. Where different international organisations are involved, the different partners should sit around a table and discuss organisation. However, this approach might not take care of present realities.

Because that method is bound to prove unrealistic, the solution might rather be that a small structure be set up, representing all the interested parties. The structure would be entrusted with monitoring and coordinating developments in the law of international co-operation in Europe. Such a structure would also be a permanent inter-organisational consultation mechanism.

Important developments are taking place within the EU that have implications for the wider co-operation within the CoE. Any strategic thinking within the CoE should take into account the trend for the EU fully to occupy a larger portion of the terrain, coupled with the difficulties – for political and organisational reasons - to bring about a mutually beneficial co-ordination between the EU and the CoE in this field.

Nevertheless, it has to be emphasised that only co-operation on the basis of Council of Europe instruments and instances reflects the necessary pan-European co-operation. There is no doubt that a solution found together with now 43 countries can serve the interests of an effective fight against transnational crime better than the co-operation on the level of 15 or fewer countries. Therefore, this systematic approach requires priority. What can be solved on a pan-European level should be done on a pan-European level first. It always was the principle, and it should be maintained, that member states and groups of member states are, of course, invited to work together more closely if they so wish. In the interest of avoiding confusion or even chaos in the jungle of norms, one should always respect the Council of Europe conventions as the mother conventions.

The Group recognised the disparities between the aims, the scope, the methods and the means of the EU when compared with those of the CoE.

It judged that, in spite of such an imbalance, some kind of scheme must be designed in order to ensure compatibility between developments in Europe, respectively inside and outside the EU.

Chaos can only be avoided by way of a shared and systematic approach to a commonly defined criminal policy in Europe, which in turn implies the definition of the nature, the aims, the limits and the guiding principles of transnational justice in Europe.

There can be no criminal justice, national or international, without the proper guidance of a previously defined crime policy. The CoE must pursue its efforts in that direction, in particular it must organise the reflection on a European crime policy and engage the necessary acton in order to put it into practice.

It would be regrettable should the two legal systems develop upon sterile competition rather than matching together.

Moreover, States should further coordinate their respective actions within both the EU and the CoE.

On a more practical approach, a compilation of provisions common to the different conventions, or to the different conventional families, in Europe could be organised. It would usefully assist the drafters of any future treaty-law.

Provisions regulating the relations between different treaties applicable to the same matters can be found in different CoE Conventions. By way of example, one may quote from both the European Convention on Extradition (Article 28) and the European Convention on Mutual Assistance in Criminal Matters (Article 26), as follows:

> *1. This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.*
> *2. The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.*

In practical terms, the effect of these provisions remains doubtful.

In order to facilitate the understanding of the relationship between different treaties in this same area, Member States should be recommended :

- to notify the CoE of any treaty in this area that they sign, both bilateral and multilateral, both within and without the European zone, including EU and CIS treaties;
- to transmit the text of such treaties to the CoE;
- to notify the CoE of any signature, ratification, accession, reservation and declaration made in respect of such treaties;
- when preparing bilateral treaties that build upon or "add to" any CoE Convention clearly to indicate with respect to every article the corresponding provision of the mother Convention.

The CoE should in turn afford the largest possible publicity to such information.

The provisions of the abovementioned articles 28 of the Extradition Convention and 26 of the Mutual Assistance Convention, when applied to countries where co-operation takes place on the basis of a uniform law, e.g. the Nordic countries, have had quite positive effects and form the basis of a common policy.

With respect to the relations between CoE member States and third States, the need is very much there for the CoE to have a clear and coherent policy on the accession of such States to its conventions in the penal field. Such a policy should allow for differentiating the response depending both on the nature of the convention and the ability of the State concerned to respect CoE values. It should exclude the use of federal clauses of any kind.

A pure ratification without the willingness or readiness to implement does not help (see the experiences and the gap between theory and practice when implementing conventions). Nor does the accession of States not ready for the application of a convention in the criminal field.

B. Improving methods of drafting international rules and regulations

When drafting international rules and regulations, the CoE – as much as other treaty-making entities - should carefuly seek to produce texts that are clear and up to the point, using language that is unambiguous bearing in mind the international context in which it will be read and interpreted, language that is harmonised with that of other instruments in this field, and avoiding useless elements. In particular, instruments aimed at harmonising the criminal legislation in a specific area should not include provisions on international co-operation unless there are serious reasons justifying a departure from the general rules.

Using harmonised language in new instruments involves for the CoE the effort of developing harmonised concepts and general rules.

C. National systems to meet requirements of transnational justice

Visibility, consistency and renewal are the three main aspects of the changes required in criminal co-operation in a European area of shared justice, but they are not sufficient. Such an area can only exist if national systems are able to meet the requirements of transnational justice, which means that domestic regulations must be of a high standard and national judicial systems must be effective. That should also be our aim.

It also means that criminal law and procedure must not lie as an undue obstacle to achieving the aims of transnational justice. The harmonising of domestic substantive criminal law is to a great extent not a realistic proposal. Conversely, it should be possible to establish guiding principles for an internationally recognised criminal procedure. In such a way transnational justice must build upon its own aims.

Transnational justice must also build upon mutual trust among European States, as well as upon a common culture of justice. The training of national judges, prosecutors and investigators is a necessary step in that way.

Transnational justice also builds upon the principle of good faith that requires States to find ways and means around difficulties that prevent them from achieving the aims that they undertook to achieve under international law.

The CoE should assist its member States in bringing their domestic law and practice in line with the requirements of transnational justice. Member States should thus be encouraged to seek such assistance. This applies in particular to such aspects of the law and practice that lead to the speeding up of internal procedures.

Mutual evaluation has emerged as a frequently used method. It may indeed be quite useful in appropriate cases, in particular as a confidence-bulding measure as much as a telling indicator for the evaluated system. However, its advantages must be weighed against the costs involved, as well as the natural limits to the ability of assesseing complex foreign systems. While the EU already does it with respect to its member States and will extend it to candidate States, the CoE could perhaps envisage to carry out similar exercises with respect to its other member States. The Group however decided not to make any recommendation in this respect.

D. Reducing the number of obstacles to transnational justice

A New Start in this area requires the CoE to invite States, firstly to ratify[1] without reservations the existing Conventions in this field and secondly to review the reservations and declarations that they entered with respect to those Conventions that they have already ratified.

It is well known that States suffer frequently from a natural inertia which prevents them from voluntarily looking back into reservations and declarations. An active CoE policy is therefore required in order to move things forward.

Double criminality, already recognised as redundant for the purposes of mutual legal assistance not involving the application of any coercive measure, remains a topical issue in the other procedures of transnational justice. The Group recalled the principle of legality which amounts to a safeguard for individuals, not an obstacle to justice. In particular, there can be no execution of a sentence in a country where the facts for which the sentence was passed would not have constituted an offence had they been committed there.

In more general terms, the Group deemed it inappropriate to do without double criminality as such, in procedures concerning extradition, transfer of proceedings and the execution of foreign judgments. Indeed, in all such instances, no one shall be incarcerated in any country – neither shall any other coercive measures be used against him in that country – on account of facts that would not have constituted an offence had they been committed there.

Keeping double criminality does not preclude States from doing away with technicalities that often do not derive from accepted principles, but rather result from an old-fashioned idea of "sovereignty" that, on reflection, would not match the requirement of solidarity.

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[1] A chart is appended that shows the state of signatures and ratifications, at the date of this report, of Council of Europe conventions in the criminal field.

The concept of double criminality as it should apply requires, however, fine-tuning. In particular, the concept should accommodate variations in the abstract legal definition of criminal behaviour, as much as differences in terminology. The CoE should work towards the harmonisation of the concept and the corresponding training of the legal professions.

The Group also examined the question from the angle of the harmonisation of the legal definition of offences. It judged that fine-tuning the concept of double criminality included the idea that this concept should accommodate variations in the abstract legal definition of criminal behaviour, as much as differences in terminology.

Also in respect of the definition of offences, the time has not come to proceed systematically in that direction. The CoE should however continue to play a substantial role in criminalising behaviour which is deemed to be detrimental to civil society and calls for penal reaction.

It is however underlined that, when it comes to the relations between Europe and countries of a different culture, difficulties of an otherwise more complex nature arise that should be studied by the CoE so as to ensure a common approach from its different member States.

E. Making it easier to settle disputes

The different proposals made in this report, in particular with respect to the concept of transnational justice, the role of the judiciary, the setting up of support structures and data bases, should all contribute to smoothing the operation of transnational justice and thus avoid disputes.

In particular, the introduction of the new concepts will contribute to mitigate the distinction between, on the one side, disputes between States as to the interpretation of international law or the application of treaties in concrete cases and, on the other side, disputes resulting from attitudes clearly driven by domestic legal reasons, which may appear, for instance in court decisions.

Moreover, the existing structures for the informal examination of difficulties (in particular, the Committee of experts on the Operation of Conventions in the Penal Field, PC-OC) as much as the existing structures for the friendly settlement of difficulties (in particular, the European Committee on Crime Problems, CDPC), should all be maintained. In this respect, Recommendation (1999) 20 concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field (text appended), remains relevant and applicable.

III. RENEWAL

A. Reconsidering the role of governments and that of judicial authorities

In traditional terms, co-operation in criminal matters was organised and carried out in the past under the rule of sovereignty, which for this matter may be described as follows:

- States enjoy the indisputable monopoly of the use of force within the limits of their territory;
- the right to punish is an exclusive right of the State;

- the right to investigate and prosecute with a view to trial and eventually punishment, is also an exclusive right of the State;
- States exercise their right to punish (and investigate/prosecute/try) exclusively in accordance with their own rules;
- States do not share with other States the right to punish and therefore the right to investigate/prosecute/try in the same case;
- Thus the territory of each State limits the space within which their respective right to punish is exercised;
- The State's right to punish is a political right, in the meaning that – in general terms - it rests within the discretion of the State whether or not it wishes to exercise this right in any given circumstance (and whether the State applies the principle of legality or that of opportunity, i.e. mandatory or discretionary prosecution, respectively).

Thus sovereignty imposes an absolute barrier - which could be represented by a wall built upon the frontiers of the territory - to pursuing criminal cases across borders. There are only two ways of overcoming that obstacle.

The first is the consent of the States concerned, on a case-by-case basis, usually given on the basis of reciprocity (do ut des).

The second consists in concluding treaties. Existing treaties are all based upon the assumption that their purpose is to overcome the sovereignty barrier to the extent necessary to carry out business in terms of international co-operation.

It is opportune to reflect on whether a different approach to the relations between sovereignty and international co-operation could not be envisaged. Certainly, it is not a matter of doing away with or undermining sovereignty; it is a matter of redefining the notion of sovereignty when it comes to the exercise of a function – namely justice - that States can no longer exercise individually. Indeed no State alone is capable of effectively responding to crime. It is thus worth reflecting on whether States could not freely enter into agreements whereby they accept to share with other States their rights and duties in matters pertaining to their response to crime.

As a matter of principle, the interest common to all the European area in seeing to it that justice is done, must prevail over any possible conflicting national interest.

In this respect, experience shows that in many cases crime – in particular serious crime - is not Polish, German or Belgian: it is European; it is not committed in Latvia, Austria or Italy: it is committed in Europe. This European challenge has to be met by European answers. The present situation is already a common area for crime.

One must henceforth think of the future in terms of a "common area" of justice. This holds true as much as one must be aware that the effectiveness of responses to crime depends greatly on their being harmonised within a coherent and concerted European crime policy.[2] In global terms,

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[2] See preamble to Recommendation No. R (96) 8 on crime policy in Europe in a time of change.

the efficiency of justice in each and any European State depends on the efficiency of justice in all other European States[3].

Justice can no longer be perceived exclusively as a national prerogative; it is the responsibility of the international community to see to it that justice is done, in spite of, or as an extension of individual State sovereignty. States share an interest in justice being done; just as they share responsibility for seeing to it that it is done. Justice is thus a matter of shared interest as well as one of shared responsibility. The law should recognise the one and the other. This applies to domestic law, as much as treaty law.

There can be no point in weighing up sovereignty against crime control in order to choose one over the other. The point must be to adapt sovereignty to the reality that crime, because it knows no borders, cannot be controlled within the confines of national borders, i.e. within the limits of exclusive sovereignty. Shared interest plus shared responsibility means shared exercise of sovereignty.

At the outset, it must be said that sovereignty also serves the purpose of protecting designated persons. Such is the case with the rule followed by many States of not extraditing their own nationals. However, one may ask whether the proper way to protect individual rights in present-day Europe is to provide such protection on the basis of nationality.

In fact, sovereignty has already given way in some respects. One is linked to technological developments, for example in the field of interception of telecommunications or in that of hearing persons across borders through audio or video means. It is probably recommendable to encourage such developments without allowing sovereignty to constitute an obstacle.

Another example is that of mutual legal assistance where – contrary to e.g. extradition – there is a development towards forms of co-operation that overcome sovereignty, such as service by post (authorities of State A directly addressing, by post, procedural documents and judicial decisions, to persons who are in the territory of State B). One step further is to recognise in a more general way that States can act on each other's territories, for instance by hearing evidence. Whether or not that will include the use of coercive measures will depend on political and technical developments.

Moreover, existing rules and practices whereby States may refuse or otherwise hold back co-operation for non-legal reasons, should be revised – either to abolish them or to reduce their negative effects.

Requests for co-operation coming from a foreign jurisdiction should be treated exactly in the same way as requests coming from a national jurisdiction. Sovereignty cannot be a pretext to discriminating against foreign criminal proceedings. No-one wins at that game, except crime. This also means that requests coming from another country should be granted the same degree of priority as a similar request coming from a national jurisdiction.

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[3] Of course, this does not necessarily apply for example to the control of vandalism in suburban Manchester; it no doubt applies to organised crime, in the Swiss Alps as much as in St Petersburg.

Sovereignty may however be perceived differently depending on whether the matter is one of mutual legal assistance or one of extradition.

In terms of extradition, the old principle "aut dedere aut judicare" is already a way of reconciling sovereignty with justice, because it replaces one way of responding to crime (namely extradition for the purpose of bringing a person to trial in State A) with an equivalent way of responding to the same crime (namely bringing that person to trial in State B). Again, justice is a matter of shared responsibility and shared interest.

This idea of replacing one way of responding to crime with an equivalent way of responding to the same crime should further be reflected upon.

Other ideas mentioned were:

- inter-action between judicial and executive powers: the trend towards "judicialisation" (meaning: to vest co-operation powers in the judiciary, limited by the "ordre public" principle only as a kind of emergency-brake);
- the functional need to recognise a leading role for the requesting State;
- the trend towards progressive withdrawal of substantive obstacles to co-operation;
- the trend towards de-territoriality

B. Upholding the rights of individuals (defendants, victims, witnesses, right of appeal)

The protection of the accused

The individuals concerned in procedures of international co-operation in criminal matters are mostly "accused persons", meaning persons in respect of whom the international procedure is carried out with the purpose of contributing to the determination of a criminal charge against them[4]. However, the individuals concerned can also be individuals at risk of becoming "accused persons", such as suspects; they can also be formerly accused, namely sentenced persons.

International co-operation in criminal matters must not operate as if it were a mere mechanism for inter-State relations. International co-operation concerns individuals who must in all circumstances be at the centre of the procedure, their fundamental rights being duly taken into consideration in the framework of all decisions taken, and ultimately respected. This concern cannot be met exclusively by way of atomised references to the national Human Rights' obligations of the Parties concerned. It must be a legally recognised and accepted common concern. This basic idea must be couched in the law.

On a different plane, the development of international co-operation in criminal matters must be accompanied by more appropriate rules concerning the protection of the individuals concerned.

A weakness in the present system is that the ECHR provides insufficient protection to the individual in extradition proceedings as well as in proceedings regarding other mutual legal assistance. Art. 5 of the ECHR is only partly applicable to detention in extradition

[4] Cf. Article 6.1 of the ECHR.

proceedings, since the important provision of Art. 5 para.3, which provides that detention shall not last longer than a reasonable time is not applicable to a person detained for the purpose of extradition. Moreover, Article 6 of the Convention is not, according to the case-law, applicable to extradition proceedings or to proceedings regarding mutual legal assistance in another country. There would seem to be strong reasons for strengthening the individual's rights in these respects.

Moreover, in co-operation with States which are not members of the Council of Europe and thus not parties to the ECHR, the guarantees of that Convention do not at all serve as a complementary element of protection, and consideration of the individual's rights in such situations is therefore an important and urgent matter.

The protection of the individuals requires:

- that persons concerned have proper access to information;
- that the relevant provisions of Article 5 of the ECHR are fully respected where a person is deprived of his liberty in the course of co-operation procedures and that the duration of any deprivation of liberty is not unreasonable;
- that, irrespective of the question of the applicability of the ECHR (cf. judgment of the Court in the case of Maaouia v. France), the basic principles inherent in Article 6 of that Convention are applied to co-operation procedures, in particular paragraph 1 (equality of arms; adversarial procedure; decisions within a reasonable time);
- that the principle "ne bis in idem" is applied, possibly with some exceptions[5], across borders and not only "under the jurisdiction of the same State"[6];
- that the principle of equality is respected;
- that the principle of the rule of law is fully complied with.

The ECHR grants minimum rights for everyone charged with a criminal offence (Article 6) and the right to liberty for all (Article 5). Since 1950 the environment in which these rules are to be applied has changed. The freedom of movement, the greater geographical scope of application, the accompanying increase in the number of transnational crimes, the sometimes rather inconsistent exercise of jurisdiction in the one or the other national jurisdiction, all these were factors that could not have been taken into account when drafting the ECHR. The exceptional nature of extradition, then a mere affair between States alone, therefore found its expression in Article 5.1(f) of the ECHR. However, paragraphs 2 and 4 of Article 5 also apply to detention with a view to extradition.

Nothing prevents us from thinking further along the lines of the criteria and solutions laid down by the mothers and fathers of our fundamental European rights. Seen from the perspective of an alleged perpetrator, there is no difference whether he is tried in his present country of residence or abroad. There is no reason to justify the person not enjoying in transnational proceedings the same rights that he would have otherwise enjoyed in national proceedings. Therefore, translating Article 5, paragraphs 3, into the context of extradition, a person arrested for the purposes of extradition should be brought promptly before a competent judge and be heard on all obstacles to, and prerequisites for, extradition applicable

[5] See "abuse-clauses" in the Statutes of International Tribunals/Courts, which exclude show-trials from the operation of this principle.

[6] See Article 4.1 of Protocol 7 to the ECHR.

in the concrete case. Release may be conditioned by guarantees to appear for extradition or surrender.

It is highly desirable that Article 6 which, according to the case-law of the European Court of Human Rights, is not directly applicable to extradition proceedings, should nevertheless be applied to such proceedings, at least to a large extent. The precise limits of such application would however require more detailed analysis. In any case, this means in particular that a person to be extradited:

- is entitled to a fair hearing on the envisaged extradition within a reasonable time by an independent and impartial tribunal established by law;

- shall have adequate time and facilities for the preparation of his motion, if any, against the envisaged extradition;

- has the right to prepare a motion, if any, against the envisaged extradition or the waiver of the formal extradition procedure and his defence in the requesting country through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

- is entitled to free assistance of an interpreter if he cannot understand or speak the language used in court.

The Group recognised that Article 6, paragraph 2, clearly does not apply in the context of the extradition procedure as such. In particular, States' decisions to grant or not to grant extradition are not subject to any form of evidence being produced concerning the innocence or the guilt of the person concerned. However, the person concerned must enjoy the above-listed procedural rights in the light, inter alia, of his rights under Article 6, paragraph 2, of the European Convention of Human Rights.

Moreover, present-day practice in mutual legal assistance procedures often does not allow for the recognition of the principle of equality of arms, nor does it protect the legitimate interest of the persons concerned to escape the death penalty or other outlawed sanctions, such as actual life imprisonment.

The rule of law relates in this context to:

- the quality of the law;
- the nature of the law on international co-operation;
- the legal definition of the purpose of the law on international co-operation.

Reference to the law must include "the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them - if need be, with appropriate legal advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." (see the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 25, para.75).

Or, as the European Court also put it, the law is *"a concept which comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability*" (see the S.W. and C.R. v. the United Kingdom judgments of 22 November

1995, Series A nos. 335-B and 335-C, pp. 41-42, para. 35, and pp. 68-69, para. 33, respectively).

Since delays in executing requests for co-operation are a frequent cause of delays in ongoing criminal proceedings in the requesting State and sometimes result in an unnecessary prolongation of the deprivation of liberty of the suspect/accused, it is highly desirable that the State that causes such delays should be ultimately held responsible for the delays according to the standards of Article 6, paragraph 1, of the ECHR.

In this context, the protection of the persons concerned means in particular that the international dimension of a procedure must neither remove nor add any rights relating to such persons' place in the procedure. Persons should neither be less well treated nor better treated in the framework of an international procedure than they are in the framework of, for example, an inter-city procedure. All must be equal before justice. It follows, for example, that persons should not be allowed remedies or appeals in matters pertaining to international co-operation that they would otherwise not enjoy in national procedures. In particular, the right to challenge the same decision twice, one in State A, the other in State B, cannot be admitted.

On the same grounds, the principle of speciality should be revisited in the light of the envisaged development of the relationship between the accused on the one hand and justice on the other (justice being indistinctly represented by one or another State).

Issues such as legal security, the rehabilitation of offenders, knowledge about the offender and his personality, witnesses and the execution of judicial decisions, were mentioned by the Group.

The protection of the rights of the accused must also be envisaged in the perspective of co-operation with third countries (i.e. non-Members of the CoE), in particular mutual assistance in respect of offences carrying the death penalty.

Some of the preceding paragraphs involve proposals which would require the development (and, perhaps also, reform) of the law of the ECHR. Equally, the proposals could be given effect by reform of the law of international criminal co-operation or by action in national laws.

The protection of victims

The last twenty years have witnessed in most European countries an important change in the place afforded to the victim in crime policy and therefore in the criminal procedure. Presently, "*it must be one of the fundamental functions of criminal justice to safeguard the interests of the victims of crime. To this end it is necessary both to enhance the confidence of victims in criminal justice and to have adequate regard, within the criminal justice system, to the physical, psychological, material and social harm suffered by victims*"[7].

Criminal justice, within borders as much as across borders, must therefore have victims as a major concern.

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[7] Recommendation N° R (96) 8 of the Committee of Ministers to member States on Crime Policy in Europe in a time of change.

It is desirable to draw up a catalogue of the rights of the victims "at international level". In this respect, facilitation of the transmission of complaints was mentioned as a topic to be discussed.

C. Enhancing the trend towards shared responsibility

The question of jurisdiction is mainly – not only - that of avoiding impunity. It is linked to the rights of the victim.

Jurisdiction in terms of *ne bis in idem* is already mentioned elsewhere in this report. Three other issues will be discussed, namely positive conflicts of jurisdiction, negative conflicts and *aut dedere aut judicare*.

Shared objectives and shared responsibility in pursuing the ends of justice also means that States are prepared (a) to relinquish jurisdiction to the benefit of another State when this would contribute to the ends of justice and (b) conversely, to recognise their own duty to exercise jurisdiction where no other State is in a position to do it.

positive conflicts

Where more than one State has an interest in exercising jurisdiction, or a duty to exercise jurisdiction, a system could be envisaged for determining – preferably on objective grounds and at a very early stage - which State should be given priority. The objective should not be seen as one of interpreting the law, or finding a necessary consequence of the law, as it would have been the case of a court finding. The objective is to devise a practical way to determine, on the face of the concrete circumstances of the case, using objective criteria, how better to ensure that justice is done and that it is done in the best possible way.

The first stage of the system could be an optional procedure (bilateral or multilateral, depending on how many States are involved). The provisions of Part IV of the European Convention on the Transfer of Proceedings in Criminal Matters might be seen as an example in this respect. The solution would be found by the States involved.

Should such a procedure fail, the second stage could be a "clearing house" procedure conducted within an intergovernmental context (in principle, the Council of Europe). The solution would be found by the clearing house in conjunction with the States concerned and proposed to them.

Should the second stage also fail, one might envisage a procedure conducted by some independent body. The solution would be found by that body and "imposed" upon the States concerned. This stage could be compared to the arbitration provisions that can be found in some CoE Conventions (namely, Terrorism, Money Laundering and Illicit Traffic by Sea, as well as the draft Comprehensive Convention).

A side-benefit of such a system would be to provide a legal framework which would prevent or reduce present practices of prosecutorial (or other) forum-shopping.

Such a system supposes that objective criteria on jurisdiction (priority between conflicting jurisdictions) must be worked out.

negative conflicts

This expression is being used in its proper sense, which is to describe the situations in which no State has jurisdiction over a given offence; it is equally used to describe a wider group of situations in which States either do not have jurisdiction or otherwise do not wish to exercise it.

The situations in which no State has jurisdiction over a given offence appear to be rare and will probably become even more rare in the future, given the trend to enlarge the scope of national jurisdiction.

The situations in which States do not wish to exercise their jurisdiction, for example because of political reasons, entail the risk of denial of justice and impunity. The progressively wider conscience of a shared responsibility to do justice and eventually the legal recognition of that responsibility is the answer to such situations.

aut dedere aut judicare

It is mentioned below that the old principle "*aut dedere aut judicare*" is a way of reconciling sovereignty with transnational justice. It is also a first step towards solving difficulties concerning jurisdiction. What again is missing is the legal recognition of a shared interest and indeed responsibility to do justice.

One way forward in this respect consists in developing the "aut dedere" principle. It may also consist in developing the "Dutch" system of reacting to an extradition request by provisionally transferring the person sought, especially when he is a national / citizen / permanent resident of the requested State, for the sole purpose of his trial, not for the purpose of serving any sentence. The sentence, if any, will be served in the requested State once the person is transferred back. An essential element in the system must be that the requesting State is legally obliged, by treaty or by an undertaking in the concrete case, to transfer the person back once his sentence is final.

Another way of making the "aut dedere" principle more effective would be that, where extradition is refused and the requested State is to exercise its own jurisdiction, the requesting State should be under a general duty to provide that State with all evidence that may be of assistance in the further relevant criminal proceedings.

D. Establishing a common platform

A European area of shared justice must be based on a shared and systematic approach to a commonly defined transnational justice in Europe. It will ensure unity of purpose and principle. It will take the form of legal provisions (necessarily in the shape of a treaty) that introduce into the law the definition of the nature, the aims, the limits and the guiding principles of transnational justice.

The nature

Transnational justice is the continuation or the extension of national justice beyond national borders. It is carried out according to the same basic principles and procedures that apply to national justice. It is not done in the interest of any country in particular, but rather corresponds to a shared concern and a common responsibility of European States at large.

The aims

Transnational justice pursues the aims of national justice, as shared by all member States of the CoE. In particular, it seeks to ensure:

- that justice is done;
- that justice is seen to be done;
- that decisions of justice are carried out;
- that crime in Europe is contained at the lowest possible levels;
- that proper responses are given to crime that fulfil the following requirements:
  - the interests of the victims of crime are safeguarded
  - the individualisation of criminal reactions
  - the social reintegration of offenders
  - the promotion of alternatives to custodial sentences

The limits

Every response to crime, including transnational justice, must conform to the basic principles of democratic States governed by the rule of law and subject to the paramount aim of guaranteeing respect for human rights.

In particular, justice must conform to the principle – as much as its implications - according to which the determination of any criminal charges against a person is ultimately a matter for an independent and impartial tribunal.

The guiding principles

Transnational justice is indivisible and must be approached holistically: its unity is reflected, for example, in the legal imperative according to which the different instruments / conventions are interpreted and applied as part of the same set of legal norms.

Transnational justice in Europe is pan-European in scope; it shall not be governed by national or sub-regional considerations alone.

ON TERRORISM

The Group took note of the Committee of Ministers' Decisions of 21 September 2001 concerning the fight against international terrorism, in particular the passage quoted at the outset of this report, under "terms of reference":

The Group took the view that terrorism is a species of crime. Fighting terrorism is part of fighting crime in general. Co-operation against terrorism must be part of co-operation against all

forms of criminality. As much as responses to other forms of criminality, responses to terrorism must build upon existing standards.

While aware of the importance of taking care of the present circumstances, the Group does not wish to be driven by them. Circumstancial forms of criminality pass, whilst "ordinary criminality" remains. Crime policy should result from a global reflection on crime in general; it must not bend to the particular circumstances of the day. Such was right before 11 September 2001; it remains right after that date.

The Group acknowledged that States have in the past shown an inclination to adapt the patterns of their co-operation to the particular nature of certain forms of criminality. Such a sectoral approach can be beneficial, for example, where it leads to the adoption of new procedures, such as controlled deliveries or particular anti-money laundering measures. However, the issue with terrorism is not one of new procedures and that approach carries with it the dangers of lack of consistency, as well as the dangers of any action that is not founded on principles of a general nature. In particular, because criminal law and thus fundamental rights of the individuals are concerned, it carries with it the danger of encroaching upon the rights and liberties of the individuals. One must not protect freedom by killing freedom.

Changes to and developments in the existing international co-operation in the criminal field are necessary in terms of crime in general; terrorism alone cannot in itself be seen as the reason for changes and developments. In particular, terrorism alone cannot justify the drafting of any new treaty provisions on the forms of co-operation.

If one should improve the effectiveness of the fight against terrorism at international level, one must first and foremost improve the effectiveness of the fight against crime in general, notably by increasing the consciousness of a common interest.

What is specific to terrorism and makes it different from other species of crime are the alleged political motives of the unlawful action. What in the past made the difference in inter-state co-operation on terrorism offences when compared with inter-state co-operation on other offences was precisely the incidence of the political element of the offence on the attitude of States.

Should, as it is proposed elsewhere in this report, courts rather than goverments be given the main powers over transnational justice; should, as it is proposed elsewhere in this report, national sovereignty in this field integrate the concepts of shared responsibility and shared aims with respect to transnational justice, the incidence of the political element of terrorist offences would be reduced and consequently the effectiveness of the fight against terrorism would increase.

The best European contribution to the fight against terrorism, in whatever non predictable form it will appear in the future, is enhanced co-operation of the European judiciary on the common basis of human rights and the rule of law. It is at the same time the awareness that certain categories of transnational crime can only be tried in international solidarity. As a last resort, this has to be done on the same transnational (European or global) level on which the crimes have been committed.

Where terrorist crime reaches the level of an offence within the substantive jurisdiction of the ICC, then States should co-operate fully with the ICC in cases where the principle of complementarity provides it with personal jurisdiction. To that end, all CoE members should be encouraged to become Parties to the Rome statute and to co-operate fully with it.

The CoE should call upon States in general as soon as possible to become a Party to the relevant international treaties relating to terrorism, in particular the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. Member States should participate actively in the elaboration of the draft United Nations comprehensive Convention on International Terrorism.

The above-mentioned Committee of Ministers' decision encouraged the Group to pursue its work along the path it had already engaged, i.e. towards greater, and more efficient, co-operation in general. In particular, it led the Group to lay greater emphasis on its recommendation for States within the CoE to agree on the definition of the aims, the limits and the guiding principles of transnational justice.

***ETS** - European treaty series number (cf. page 28)*
***STE** – numéro dans la série des traités européens (voir page 28)*

***P** – Party / partie*
***S** – Signatory / signataire*
***R** - Ratified (Conv. not in force/ Ratifié (Conv.pas en vigueur)*

ADDENDUM I

ETS / STE	24	86	98	30	99	182	51	52	70	71	73	82	88	90	97	101	112	167	116	119	130	133	141	156	172	173	185
Albania/Albanie	P	P	P	P	P	S	P	-	S	-	P	-	-	P	S	-	P	-	-	-	-	-	P	-	-	P	S
Andorra/Andorre	P	P	-	-	-	-	-	-	-	-	-	-	-	S	-	-	P	-	-	-	-	-	P	-	-	S	-
Armenia/Arménie	P	S	S	P	S	-	-	-	-	-	S	-	-	S	-	-	P	-	S	-	-	-	S	-	-	-	S
Austria/Autriche	P	-	P	P	P	-	P	S	P	S	P	-	-	P	P	-	P	P	-	-	-	-	P	P	S	S	S
Azerbaijan/Azerbaïdjan	S	S	S	S	S	-	-	-	-	-	S	-	P	S	-	P	P	-	P	-	-	-	S	-	-	-	-
Belgium /Belgique	P	P	P	P	P	S	P	S	S	S	S	S	-	P	P	-	P	S	S	-	-	-	P	-	S	S	S
Bulgaria/Bulgarie	P	P	P	P	P	S	-	-	-	-	-	-	-	P	P	-	P	-	-	-	-	-	P	-	-	P	S
Croatia/Croatie	P	P	P	P	P	-	P	-	-	-	-	-	P	S	-	-	P	-	-	-	-	-	P	-	-	P	S
Cyprus/Chypre	P	P	P	P	P	S	-	P	P	-	P	-	S	P	P	P	P	P	P	S	P	P	P	P	-	P	S
Czech R./R. Tchèque	P	P	P	P	P	-	S	-	-	-	P	-	-	P	P	P	P	S	P	-	P	P	P	S	-	P	-
Denmark/Danemark	P	P	P	P	P	S	S	P	P	-	P	-	S	P	P	P	P	P	P	-	-	-	P	-	S	P	-
Estonia/Estonie	P	P	P	P	P	-	S	-	P	-	P	-	-	P	P	-	P	P	-	-	-	-	P	S	S	P	S
Finland/Finlande	P	-	P	P	P	-	-	-	-	-	-	-	-	P	P	-	P	P	P	-	P	P	P	-	S	S	S
France	P	-	-	P	P	S	P	P	-	S	-	S	S	P	P	-	P	S	P	-	-	-	P	-	S	S	S
Georgia/Georgie	P	P	P	P	S	-	-	S	S	-	-	-	-	P	P	-	P	P	-	-	-	-	-	-	-	S	-
Germany/Allemagne	P	-	P	P	P	S	S	S	S	S	-	-	-	P	P	P	P	S	P	-	-	-	P	P	S	S	S
Greece/Grèce	P	S	S	P	P	S	S	S	S	S	S	-	P	P	P	S	P	S	S	S	-	-	P	S	S	S	S
Hungary/Hongrie	P	P	P	P	P	-	-	-	-	-	S	-	-	P	P	-	P	P	S	-	-	-	P	-	-	P	S
Iceland/Islande	P	P	P	P	P	S	-	-	P	-	S	-	-	P	P	P	P	P	S	-	-	-	P	-	S	S	S
Ireland/Irlande	P	-	-	P	P	S	-	-	-	-	-	-	-	P	-	S	P	-	-	-	-	-	P	-	-	S	S
Italy/Italie	P	-	P	P	P	-	P	S	S	R	S	-	P	P	P	P	P	S	-	S	-	-	P	S	S	S	S
Latvia/Lettonie	P	P	P	P	P	-	-	-	-	-	P	-	-	P	P	-	P	S	-	-	-	-	P	-	-	P	-
Liechtenstein	P	-	-	P	-	-	-	-	-	-	S	-	P	P	-	-	P	-	-	S	-	-	P	-	-	-	-
Lithuania/Lituanie	P	P	P	P	P	-	-	-	P	-	P	-	-	P	-	-	P	P	-	-	-	-	P	-	-	P	-
Luxembourg	P	P	-	P	P	-	P	S	S	S	S	-	S	P	P	P	P	S	P	-	P	P	P	-	S	S	-
Malta/Malte	P	P	P	P	S	-	S	-	-	-	-	-	-	P	P	S	P	S	-	-	-	-	P	S	-	S	S
Moldova	P	P	P	P	P	-	-	-	S	-	S	-	-	P	P	S	S	S	-	-	-	-	S	-	-	S	S

Netherlands/Pays-Bas	P	P	P	P	P	S	P	S	P	S	P	R	-	P	P	P	P	S	P	-	P	P	P	-	-	S	S
Norway/Norvège	P	P	P	P	P	S	-	-	P	-	P	-	S	P	P	-	P	P	P	-	P	P	P	P	-	S	S
Poland/Pologne	P	P	P	P	P	-	-	-	-	-	-	-	-	P	P	-	P	P	-	-	-	-	P	-	-	S	S
Portugal	P	P	P	P	P	S	P	S	S	-	S	-	S	P	P	P	P	S	P	S	-	-	P	-	-	S	S
Romania/Roumanie	P	P	P	P	P	S	-	P	P	-	P	R	P	P	P	P	P	P	-	-	-	-	S	S	S	S	S
Russia/Russie	P	P	P	P	P	-	-	-	-	-	S	-	-	P	-	S	-	-	-	-	-	-	P	-	-	S	-
San Marino/St-Marin	S	-	-	S	-	-	-	-	S	-	-	-	-	S	-	-	-	-	-	-	-	-	P	-	-	-	-
Slovakia/Slovaquie	P	P	P	P	P	-	-	-	-	-	P	-	-	P	P	-	P	-	-	-	-	-	P	S	-	P	-
Slovenia/Slovénie	P	P	P	P	P	-	P	-	S	-	-	-	P	P	-	P	P	-	-	-	S	S	P	P	-	P	-
Spain/Espagne	P	P	P	P	P	-	-	-	P	-	P	-	-	P	P	S	P	-	P	-	-	-	P	-	-	-	S
Sweden/Suède	P	P	P	P	P	S	P	P	P	-	P	-	-	P	P	P	P	P	P	-	P	P	P	S	S	S	S
Switzerland/Suisse	P	P	P	P	S	S	-	-	-	-	-	-	P	P	P	-	P	S	P	-	-	-	P	-	-	S	S
MK*	P	P	P	P	P	S	P	-	-	-	S	-	P	S	S	-	P	P	-	-	-	-	P	-	-	P	S
Turkey/Turquie	P	-	P	P	P	-	S	S	P	R	P	-	-	P	S	S	P	-	S	S	-	-	S	-	-	S	-
Ukraine	P	P	P	P	P	S	P	-	S	-	P	-	-	P	P	-	P	S	-	-	-	-	P	-	-	S	S
UK/Royaume-Uni	P	-	P	P	P	S	-	-	-	-	-	-	-	P	P	S	P	-	P	-	P	P	P	S	-	S	S
Australia/Australie	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-
Bahamas	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Belarus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	S	-
Bosnia-Herzegovina	-	-	-	-	-	-	P	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	P	-
Canada	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	S
Chile / Chili	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Costa Rica	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Israel	P	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Japan/Japon	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	S
Panama	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
South Africa/Afrique S	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	S
Tonga	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
Trinidad and Tobago**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-
USA***	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	S	S
Yugoslavia****	-	-	-	-	-	-	P	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* The Former Yugoslav Republic of Macedonia / L'Ex-République Yougoslave de Macédoine
** Trinité et Tobago
*** United States of Amecira / Les Etats-Unis d'Amérique
**** Yougoslavie

24 European Convention on Extradition

86 Additional Protocol to the European Convention on Extradition

98 Second Additional Protocol to the European Convention on Extradition

30 European Convention on Mutual Assistance in Criminal Matters

99 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

182 Second Additional Protocol to the Europ. Convention on Mutual Assistance in Criminal Matters

51 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released

52 European Convention on the Punishment of Road Traffic

70 European Convention on the International Validity of Criminal Judgments

71 European Convention on the Repatriation of Minors

73 European Convention on the Transfer of Proceedings in Criminal Matters

82 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes

88 European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle

90 European Convention on the Suppression of Terrorism

97 Additional Protocol to the European Convention on Information on Foreign Law

101 European Convention on the Control of the Acquisition and Possession of Firearms by Individuals

112 Convention on the Transfer of Sentenced Persons

167 Additional Protocol to the Convention on the Transfer of Sentenced Persons

116 European Convention on the Compensation of Victims of Violent Crimes

119 European Convention on Offences relating to Cultural Property

130 Convention on Insider Trading

133 Additional Protocol to the Convention on Insider Trading

141 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

156 Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

172 Convention on the Protection of the Environment through Criminal Law

173 Criminal law Convention on Corruption

185 Convention on Cybercrime

ADDENDUM II

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation No. R (99) 20
of the Committee of Ministers to member States
concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field

(adopted by the Committee of Ministers on 15 September 1999
at the 679th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b*. of the Statute of the Council of Europe,

Having regard to the Council of Europe Conventions in the penal field;

Recognising that through such Conventions it pursues the goals notably of:

- upholding the rule of law;
- promoting human rights;
- fighting for democratic stability in Europe;
- strengthening European legal co-operation in criminal matters
- supporting victims and redressing their rights;
- pursuing the ends of justice by bringing before a court of law those who are accused of having committed a crime;
- promoting the social rehabilitation of offenders.

Desirous of strengthening its ability to pursue such goals in a comprehensive and harmonious fashion;

Convinced that to that effect it is proper to facilitate, in accordance with the guidelines appended, the friendly settlement of any difficulty arising out of the application of any one or more of the Council of Europe Conventions in the penal field;

1. Recommends the governments of member States:

a. To continue to keep the European Committee on Crime Problems (CDPC) informed through the PC-OC about the application of all the Conventions in the Penal Field and of any difficulty that may arise thereof;

b. Pending the entry into force of provisions formally extending the CDPC's role in this area to the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, to accept that the CDPC be called upon to do whatever is necessary to facilitate a friendly settlement of difficulties arising out of the application of those Conventions;

c. when experiencing difficulties that may be seen as concerning two or more Conventions simultaneously, to assign them jointly to the CDPC;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the governments of the non-member States which are a Party to any of the above-mentioned Conventions and to the governments of States invited to accede to any such Convention.

Appendix to Recommendation No. R (99) 20

Procedural guidelines for the friendly settlement of difficulties arising out of the application of conventions in the penal field

1. Any request for a friendly settlement should be forwarded in writing to the Secretariat.

2. The Secretariat shall transmit the requests to the Bureau for consideration at the earliest meeting, whether a Bureau meeting or a CDPC plenary session.

3. Where the request is urgent, the Secretariat, in consultation with the Bureau of the CDPC, shall put into motion an urgent procedure.

4. Whenever friendly settlements coincide in time with plenary sessions of the CDPC, they shall be sought within an open-ended working party of the CDPC.

5. Whenever they do not coincide in time with plenary sessions of the CDPC, friendly settlements shall be sought within an *ad hoc* working party of the CDPC set up and convened to that effect.

6. The members of such an *ad hoc* working party shall then be:

a. persons appointed by the States involved in the difficulties or disputes under review;

b. persons designated by the Bureau of the CDPC, amongst:

- the Heads of Delegation to the CDPC, or their substitutes designated to that effect;

- persons appointed to that effect by States not members of the Council of Europe yet a Party to one or more of the Conventions in respect of which the difficulties or disputes have arisen;

7. All Heads of Delegation shall be informed of the request and the procedure followed; they shall be allowed to submit written comments;

8. The Chair of the CDPC, or a member of the Bureau, should assume responsibility for and preside over any meetings that might be held in the context of friendly settlements;

9. The number of persons appointed by the States involved, as well as the number of persons appointed by the Bureau of the CDPC, shall be measured against the nature of the difficulties involved and the need to proceed both effectively and efficiently.

10. The State that sets the procedure in motion should put into writing the facts of the case, the difficulties that it is faced with, whether or not it considers the request to be urgent, as well as the aim that it seeks to achieve.

11. The respondent State should likewise put into writing its point of view or any comments that it deems fit.

12. At the end of the procedure, a paper must emerge, stating the facts, the difficulties encountered, as well as suggestions that the CDPC, or in urgent situations the *ad hoc* working party, wishes to submit to the States involved.

13. Finally, States involved in friendly settlements may be invited to feed back information on what happened as a consequence of the procedures, or following the procedures, in particular where such information might be of relevance to the interests of other States.