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**EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)**

53rd Plenary Session

Strasbourg, 16 - 19 March 2004

List of items discussed and decisions taken

The European Committee on Crime Problems (CDPC) held its 53rd plenary session (28th meeting as a Steering Committee) in Strasbourg from 16 to 19 March 2004 with Mr E. Selvaggi (Italy) in the Chair. The list of participants is reproduced as Appendix I to the meeting report [CDPC (2004) 13] and the agenda appears in Appendix I to the present document, respectively. The plenary meeting was preceded by a meeting of the Bureau (15 March 2004).

The CDPC elected:

- Messrs Andreas KAPARDIS (Cypriot), Tapio LAPPI-SEPPÄIÄ (Finnish) and Arno PILGRAM (Austrian) as members of the Criminological Scientific Council (PC-CSC).

Items requiring action by the Committee of Ministers

1. The CDPC examined the final activity report and the conclusions of the Committee of experts on special investigation techniques in relation to acts of terrorism (PC-TI) and approved the draft specific terms of reference for a new Committee of experts on special investigation techniques (PC-TI).

The Committee of Ministers is invited to adopt the specific terms of reference for a new Committee of experts on special investigation techniques (PC-TI) (Appendix II to the present report).

2. The CDPC examined the final activity report and the conclusions of the Committee of experts on the protection of witnesses and *pentiti* in relation to acts of terrorism (PC-PW) and approved draft specific terms of reference for a new Committee of experts on the protection of witnesses and collaborators of justice (PC-PW).

The Committee of Ministers is invited to adopt the specific terms of reference for a new Committee PC-PW (Appendix III to the present report).

3. The CDPC amended and approved the draft revised terms of reference for the Group of specialists on the protection of children against sexual exploitation (PC-S-ES).

The Committee of Ministers is invited to adopt the revised specific terms of reference for the Committee PC-S-ES (Appendix IV to the present report).

4. The CDPC considered the report of the Committee of Experts on the Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-RM), submitted to it in accordance with the PC-RM's terms of reference. Following a debate, the CDPC amended and approved the draft revised terms of reference for the PC-RM.

The Committee of Ministers is invited to adopt the revised specific terms of reference for the Committee PC-RM (Appendix V to the present report).

Other items

5. The CDPC noted the activities which have been, or are expected to be, finished in 2004, as well as those to be carried out under new or extended terms of reference (cf. paragraphs 1 – 4 above). Mindful of the priorities of the Organisation in the context of the preparation of the third Summit of Heads of State and Government and of the likely budgetary situation in the years to come, the CDPC agreed, subject to the availability of the necessary resources in 2005/2006, to include the following activities in its future work programme:

- a. the updating of the European Prison Rules, by the end of 2005;
- b. the elaboration of legal instruments on the protection of witnesses and *pentiti* (PC-PW) and on the use of special investigative techniques (PC-TI) to counter serious forms of crime;
- c. the elaboration of a convention on trafficking in human beings (CAHTEH);
- d. the elaboration of a Protocol to update the Convention on laundering, search, seizure and confiscation of the proceeds from crime (PC-RM);
- e. the completion of the work of the Committee of Experts on Transnational Criminal Justice (PC-TJ) by 31 May 2005.

6. The CDPC examined the Parliamentary Assembly Recommendation 1647 (2004) on "Economic aspects of European Union enlargement: the crucial years ahead", as well as a draft opinion on it. It instructed its Bureau to finalise the opinion in the light of possible comments sent in by delegations and of further developments in this field.

7. The CDPC took note of progress reports of the advisory bodies, committees and groups of specialists working under its authority: Council for Penological Co-operation (PC-CP), Criminological Scientific Council (PC-CSC), Experts Committees on the operation of European Conventions in the Penal Field (PC-OC), criminological and criminal law aspects of organised crime (PC-S-CO), remand in custody and its implications for the management of penal institutions (PC-DP), protection of children against sexual exploitation (PC-S-ES), evaluation of anti-money-laundering measures (MONEYVAL [PC-R-EV]), the revision of the Convention on laundering, search, seizure and confiscation of the proceeds from crime (PC-RM) and the treatment of sex offenders in penal institutions and the community (PC-DS).

8. The CDPC took note of the Parliamentary Assembly Recommendation 1604 (2003): "Role of the public prosecutor's office in a democratic society governed by the Rule of Law and of the Reply by the Committee of Ministers inviting the CDPC to debate the issues raised therein, taking into account the Conclusions of the 4th Conference of Prosecutors General of Europe in Bratislava. The CDPC discussed in particular the proposal to institutionalise the Conference as a permanent Council of Europe body with appropriate resources and instructed the Secretariat to draft an opinion on the basis of its discussions, to submit this draft to the delegations in the CDPC and to entrust the CDPC Bureau with the finalisation of the CDPC opinion following a written consultation procedure.

9. The CDPC took note of status of preparation for the 5th Conference of Prosecutors General of Europe, which will be held in Celle, Germany, from 23-25 May 2004.

10. The CDPC decided to declassify the 2002 Report on the situation of organised crime in Council of Europe member States, and welcomed the preparations for a 2003 Report which will have a particular focus on cybercrime. It took note that the new questionnaire was being circulated and that replies were required by 10 May 2004.

11. The CDPC took note of the Best Practice Surveys prepared by the Group of Specialists on organised crime (PC-S-CO), welcoming their publication in the form of a book. The CDPC agreed that best practice surveys and the 2002 report should be available on its website and should be transmitted for information to the Conference of Prosecutors General of Europe and to the Council for Police Matters.

12. The CDPC took note of a range of technical cooperation activities under way or recently finalised: PACO, Octopus, MOLLI, LARA, CARDS and other projects.

13. Further to the decision taken in its previous plenary session, the CDPC decided to postpone till 2005 the review of the implementation of Recommendations Nos R (99) 19 on mediation in penal matters and R (99) 22 on prison overcrowding and prison population inflation. This review will be based on analytical reports to be prepared by consultants, who have been appointed.

14. The CDPC took note of the issues raised in connection with the protection and compensation of victims and in particular the invitation to the Committee of Ministers formulated in Resolution n°1 adopted at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October) "to review the European Convention on the Compensation of Victims of Violent Crimes (ETS 116) or, where necessary, adopt new rules concerning the improvement of the protection, support and compensation of victims of terrorist acts and their families". They took note of the fact that the Committee of Experts on Terrorism (CODEXTER) considered this invitation at its first meeting (27-30 October) and decided to postpone any decision until a study would have been made on the reasons explaining the limited number of ratification of this Convention. The CDPC was furthermore informed that, upon a proposal by its Bureau, the PC-OC had conducted a rich exchange of information on this issue during its 48th meeting (1-3 March). The CDPC considered that, for the time being, the information which had been collected provided sufficient material for consideration by the CODEXTER at its second meeting.

15. The CDPC took note of the Madrid Declaration adopted at the 1st International Congress of Victims of Terrorism (Madrid, 26-27 January 2004) which calls *inter alia* on the Council of Europe to address the concerns of victims of terrorism.

16. The CDPC furthermore considered the draft terms of reference for the updating of Recommendation n° R (87) 21 on assistance to victims and the prevention of victimisation prepared by the Criminological Scientific Council. It considered that discussions on related issues in other Committees should also be taken into account in order to ensure a coherent approach. Therefore the CDPC decided to instruct its Bureau to finalise the draft terms of reference at its next meeting in the light of the comments received from delegations and of the developments in other committees working on related issues, such as the CODEXTER.

17. The CDPC took note that the Council for Police Matters (PC-PM), whose specific terms of reference were adopted in 2002, and whose members were elected in 2003, will hold its first meeting in the second half of 2004.

18. The CDPC welcomed the entry into force of the Convention on cybercrime on 1 July 2004. Indeed, Lithuania was the 5th State to ratify it on 18 March 2004. The CDPC also held a fruitful exchange of views on the "state of affairs" on the signature and ratification of the Cybercrime Convention and its Additional Protocol. It welcomed the Conference which is being organised on 15-17 September 2004 at the Council of Europe on "The challenge of cybercrime".

19. The CDPC took note of the work of the Council for Penological Cooperation (PC-CP), in particular as regards progress on the updating of the European Prison Rules and the work ongoing regarding the European Rules for juveniles subject to imprisonment or community sanctions or measures. The CDPC welcomed the forthcoming publication of the 2003 simplified SPACE I enquiry and 2003 SPACE II. The CDPC also took note that the PC-CP is conducting an enquiry regarding the translation and availability to prison staff of Council of Europe penological instruments.

20. The CDPC took note of the completion by the CSC of a study entitled "Crime Policy in Europe: Good practices and promising examples". The study will be published by the Council of Europe in 2004.

21. The CDPC heard the oral report submitted by its representatives in the CAHTEH on the progress achieved in the drafting of the European Convention on action against trafficking in human beings.

22. The CDPC took note of the information concerning the state of signatures and ratification of the European Convention for the Suppression of Terrorism (ETS 090) and of its Amending Protocol (ETS 190). It also took note of the information concerning the activity of the Committee of Experts on Terrorism (the CODEXTER) and the implementation of the priority areas for action identified by the Committee of Ministers, particularly in the light of Resolution No. 1 on Combating Terrorism adopted in Sofia by the 25th Conference of the European Ministers of Justice. The CDPC was further informed of Parliamentary Assembly Recommendation 1644 (2004): "Terrorism: a threat to democracies" and the reply to it adopted by the Committee of Ministers on 18 February 2004.

23. The CDPC took note of Parliamentary Assembly Recommendation 1621 (2003): "The promotion of art history in Europe" and decided to consider it at a further meeting. It instructed the Secretariat to prepare an information paper on Council of Europe instruments and activities in this field which are of relevance to the CDPC.

24. The CDPC took note of state of preparations for the 26th Conference of European Ministers of Justice in Helsinki on 7 and 8 April 2005, which will deal, *inter alia*, with “the Social Mission of the Criminal Justice System”. It learned with interest that the Finnish Ministry of Justice is preparing a questionnaire on this topic, which is to be disseminated by the end of June with a view to enrich discussions at the Conference.

25. The CDPC took note of the report of the 22nd Criminological Research Conference, which was held in Strasbourg from 24 to 26 November 2003 on the topic “Opinions, attitudes and images of crime and its control”.

26. The CDPC was informed by the Italian delegation of the organisation of an ad hoc Conference of Directors of Prison Administration (CDAP) in Rome, at the end of November 2004. The CDPC agreed to extend the participation in this Conference to members of probation services of the member States. It also welcomed the proposal to hold an exchange of views on the occasion of this Conference on the first draft of the revised European Prison Rules.

27. The CDPC was informed of the activities carried out within the co-operation programmes for strengthening the Rule of Law, the Octopus and PACO Programmes, the Integrated Project on responses to violence in everyday life, and those by the Group of States against Corruption (GRECO), the Consultative Council of European Judges (CCJE), the European Commission for the Efficiency of Justice (CEPEJ), the Committee of Legal Advisers on Public International Law (CAHDI) and the Pompidou Group.

28. The CDPC discussed its working methods, in particular the distribution of tasks between the Plenary and the Bureau, in the light of a document submitted by its Bureau. Delegations welcomed the proposals contained therein and indicated a number of possible amendments. The Secretariat was instructed to reflect the discussion in the meeting report. Further, delegations were invited to submit written comments by 15 May at the latest. The Bureau was instructed to review the draft in the light of those comments and to submit it to the next plenary for adoption.

29. The CDPC held an exchange of views with Mr Luis Moreno Ocampo, Prosecutor of the International Criminal Court (ICC). The CDPC took note of the Prosecutor’s priorities and the mutual benefit to be gained from cooperation with his Office (OTP). In particular, States could support the work of the ICC by entering into agreements with the OTP on the possible deployment of investigation teams. Besides, the CDPC took note of information regarding the 3rd Consultation Meeting on the implications for member States of the ratification of the Statute of the International Criminal Court, which was held in Strasbourg on 17 September 2003.

30. The CDPC held an exchange of views with the Secretariat of the Parliamentary Assembly’s Committee on Legal Affairs and Human Rights and with the Secretariat of the United Nations Office on Drugs and Crime (UNODC).

APPENDIX I

AGENDA

OPENING OF THE MEETING

- 1 Adoption of the agenda
- 2 Statement by the Head of the Department of Crime Problems – Directorate General of Legal Affairs – DG I
- 3 Information provided by the Secretariat

STRUCTURES OF THE CDPC

- 4 Election of:
 - three members of the Criminological Scientific Council (PC-CSC)
- 5 Working methods
 - Distribution of tasks between Plenary and Bureau
 - Consultation with Delegations between plenary sessions
 - Information system for the transmission of CDPC working documents: further development of the public CDPC website and opportunity for setting up of a restricted access

ACTIVITIES OF THE CDPC

Committees

- 6 Council for Penological Co-operation (PC-CP):
 - Updating of the European Prison Rules: progress report
 - European Rules for juveniles subject to imprisonment or community sanctions or measures: terms of reference
 - SPACE: progress report
 - Consultation with member States regarding the translation of penological instruments
- 7 Criminological Scientific Council (PC-CSC):
 - Updating of Recommendation N° R (87) 21 on assistance to victims and the prevention of victimisation: terms of reference
 - Item for information: Study entitled "Crime policy in Europe: Good practices and promising examples"
- 8 Evaluation of anti-money laundering measures (Moneyval [PC-R-EV]):
 - Progress report
- 9 Treatment of sex offenders in penal institutions and in the community (PC-DS):
 - Progress report
- 10 Revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-RM):
 - Extension of the terms of reference

- 11 Criminological and criminal law aspects of organised crime (PC-S-CO):
- Reports on the organised crime situation: declassification
 - Best practice surveys (for information)
 - Future reports and surveys
- 12 Remand in custody and its implications for the management of penal institutions (PC-DP):
- Progress report
- 13 Protection of children against sexual exploitation (PC-S-ES):
- Interim report
 - Extension of terms of reference
- 14 Protection of witnesses and *pentiti* in relation to acts of terrorism (PC-PW):
- Final activity report
 - Adoption of new terms of reference
- 15 Special investigation techniques in relation to acts of terrorism (PC-TI):
- Final activity report
 - Adoption of new terms of reference
- 16 Action against trafficking in human beings (CAHTEH):
- Progress report
- 17 Cybercrime Convention
- Exchange of views on the development concerning the signatures and ratifications of the Convention on Cybercrime (ETS 185) and its Additional Protocol (ETS 189)
- 18 European Convention on the Suppression of Terrorism (ETS 090) and Amending Protocol (STE 190)
- 19 Terrorism (CODEXTER)
- 20 Protection and compensation of victims
- 21 Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC):
- Progress report
- 22 Parliamentary Assembly Recommendation 1604 (2003): "Role of the public prosecutor's office in a democratic society governed by the rule of law"
- Reply by the Committee of Ministers of 4 February 2004 [CM/AS (2004) Rec 1604 final]
- 23 Parliamentary Assembly Recommendation 1621 (2003): "The promotion of art history in Europe"
- Invitation by the Committee of Ministers for possible comments
- 24 Parliamentary Assembly Recommendation 1644 (2004): "Terrorism: a threat to democracies"
- Reply by the Committee of Ministers of 18 February 2004 [CM/AS (2004) Rec 1644 final]
- 25 Parliamentary Assembly Recommendation 1647 (2004): "Economic aspects of European Union enlargement: the crucial years ahead"
- Possible comments by the CDPC

Conferences and Colloquia

- 26 25th Conference of European Ministers of Justice (Sofia, 2003): conclusions
- 27 26th Conference of European Ministers of Justice (Helsinki, 2005): preparation

- 28** Ad hoc Conference of Directors of Prison Administration (Rome, 2004): for information
- 29** 22nd Criminological Research Conference (Strasbourg, 2003): conclusions
- 30** 1st International Congress of Victims of Terrorism (Madrid, 26-27 January 2004)
- 31** 4th Conference of Prosecutors General of Europe (Bratislava (1-3 June 2003): conclusions
- 32** 5th Conference of Prosecutors General of Europe (Celle, Germany, 23-25 May 2004): preparation

Future work programme

- 33** New activities for 2004/2005

34 ITEMS FOR INFORMATION

- Progress on the establishment and work of the International Criminal Court (ICC)
- Co-operation programmes for strengthening the Rule of Law
- "Octopus" programme
- PACO programme
- Stability Pact for South Eastern Europe: corruption and organised crime initiatives
- Group of States against Corruption (GRECO)
- New developments in legislation, policy and administrative practice in member States in the field of crime problems
- Co-operation with the European Union
- Co-operation with United Nations
- Activities of international organisations (other than United Nations) in the field of crime problems
- Co-operation with Financial Action Task Force (FATF)
- Forum for Children and Families
- CARDS – Police and Organised Crime
- MOLI – RU – MOLI - UA
- Pompidou Group
- Consultative Council of European Judges (CCJE)
- European Commission for the Efficiency of Justice (CEPEJ)
- Committee of Legal Advisers on Public International Law (CAHDI)
- Publications

OTHER SUBJECTS

- 35** Activities of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly
- 36** Penological Information Bulletin
- 37** Police prospects
- 38** Implementation of Recommendations
- 39** Other business
- 40** Date of the next plenary session

APPENDIX II

SPECIFIC TERMS OF REFERENCE

COMMITTEE OF EXPERTS ON SPECIAL INVESTIGATION TECHNIQUES (PC-TI)

1. Name of committee:

Committee of Experts on special investigation techniques (PC-TI)

2. Type of committee:

Committee of Experts

3. Source of terms of reference:

European Committee on Crime Problems (CDPC)

4. Terms of reference:

Pursuant to

- the decisions taken by the Committee of Ministers at its 111th Session (6-7 November 2002);
and

- the decisions taken by the Committee of Ministers at the 816th meeting of their Deputies
(13 November 2002, item 1.5);

- the decisions taken by the Committee of Ministers at the 864th meeting of their Deputies
(4 December 2003, item 10.1);

taking into account

- Recommendation No. Rec(2001)11 concerning guiding principles on the fight against
organised crime;

- Articles 17-20 of the 2nd Additional Protocol to the European Convention on Mutual Assistance
in Criminal Matters (ETS no 182);

- Articles 19-21 of the Convention on Cybercrime (ETS no. 185);

- Article 4 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds
from Crime (ETS no. 141);

- Article 23 of the Criminal Law Convention on Corruption (ETS 173)

- The reports of the Multidisciplinary Group on International Action against Terrorism (GMT) (documents CM(2002) 57 and 148); and
- The Guidelines on Human Rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002;
- Resolution N° 1 on Combating Terrorism adopted by the European Ministers of Justice at their 25th Conference (Sofia, 9-10 October 2003);
- The reports of the Committee of Experts on Terrorism (CODEXTER);
- The work of other international institutions active in the field of special investigation techniques;
- The final report on special investigation techniques in relation to acts of terrorism prepared by the committee of experts on special investigation techniques in relation to Acts of Terrorism (document PC-TI(2003)11 rev).

On the basis of the conclusions of the final report on special investigation techniques in relation to acts of terrorism prepared by the Committee of Experts on Special Investigation Techniques in relation to Acts of Terrorism, and with a view to the development of common principles governing the use of special investigation techniques and the improvement of international co-operation in matters related to the use of special investigation techniques, including in relation to acts of terrorism. the Committee is called upon:

- as a matter of priority to draw up a recommendation taking into account the relevant international instruments already adopted, in particular within the Council of Europe;
- where appropriate, and upon request, to advise other Council of Europe committees on the development of standards aiming to improve the conventional framework in this field.

5. Membership of the committee

- a. States whose governments are entitled to appoint members: all member states.
- b. Desirable qualifications of persons serving on the Committee: experts on criminal law, criminal procedure and international co-operation in criminal matters.
- c. One representative of the Committee of Experts on terrorism (CODEXTER).
- d. The Council of Europe budget will bear the travelling and subsistence expenses of:
 - i) one expert from each member State:
 - ii) the representative of the CODEXTER.
- e. The European Commission and the Secretariat General of the Council of the European Union may send representatives to the meetings of the Committee, without the right to vote or defrayal of expenses.

f. The Observer States to the Council of Europe and applicant States for Council of Europe membership may send representatives to the meetings of the Committee without the right to vote or defrayal of expenses.

g. The following international organisations and bodies may send representatives to the meetings of the Committee without the right to vote or defrayal of expenses: UN and its specialised bodies, ICPO-Interpol, Europol, OSCE, ICRC.

h. The Bureau of the CDPC may authorise the admission of further observers to the Committee.

6. Structures and working methods:

The Committee may set up working parties, conduct hearings of experts and have recourse to consultants.

7. Duration:

These terms of reference will expire on 31 December 2005.

APPENDIX III

SPECIFIC TERMS OF REFERENCE

**COMMITTEE OF EXPERTS ON THE PROTECTION OF WITNESSES
AND COLLABORATORS OF JUSTICE
(PC-PW)**

1. Name of committee:

Committee of Experts on the protection of witnesses and collaborators of justice (PC-PW)

2. Type of committee:

Committee of Experts

3. Source of terms of reference:

European Committee on Crime Problems (CDPC)

4. Terms of reference:

Pursuant to

- the decisions taken by the Committee of Ministers at its 111th Session (6-7 November 2002); and
- the decisions taken by the Committee of Ministers at the 816th meeting of their Deputies (13 November 2002, item 1.5);
- the decisions taken by the Committee of Ministers at the 864th meeting of their Deputies (4 December 2003, item 10.1);

taking into account

- Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence;
- Recommendation No. Rec (2001) 11 concerning guiding principles on the fight against organised crime;
- Article 22 of the Criminal Law Convention on Corruption;
- Article 23 of the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;
- The reports of the Multidisciplinary Group on International Action against Terrorism (GMT) (documents CM(2002)57 and 148); and
- The Guidelines on Human Rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002;
- Resolution N° 1 on Combating Terrorism adopted by the European Ministers of Justice at their 25th Conference (Sofia, 9-10 October 2003);

- The reports of the Committee of Experts on Terrorism (CODEXTER);
- The work of other international institutions active in the field of protection of witnesses and collaborators of justice;
- The final report on protection of witnesses and pentiti in relation to acts of terrorism prepared by the committee of experts on the protection of witnesses and *pentiti* in relation to Acts of Terrorism (document PC-PW (2003)17);

The Committee is called upon to prepare a draft legal framework for international co-operation in matters related to the protection of witnesses and collaborators of justice, including in relation to acts of terrorism, on the basis of the conclusions of the final report prepared by the Committee of Experts on the protection of witnesses and *pentiti* in relation to Acts of Terrorism (appearing in Appendix to the present Specific Terms of Reference).

The Committee is in particular called upon to:

- identify issues that should be addressed by means of international non-binding legal instruments and, where appropriate, elaborate draft texts.
- identify issues that should be addressed by means of international binding legal instruments and, after the interim report is approved by the CDPC, elaborate draft texts.

5. Membership of the committee

a. States whose governments are entitled to appoint members: all member States.

b. Desirable qualifications of persons serving on the Committee: experts on criminal law, criminal procedure and international co-operation in criminal matters.

c. One representative of the Committee of Experts on terrorism (CODEXTER).

d. The Council of Europe budget will bear the travelling and subsistence expenses of:

- i) one expert from each member State:
- ii) the representative of the CODEXTER.

e. The European Commission and the Secretariat General of the Council of the European Union may send representatives to the meetings of the Committee, without the right to vote or defrayal of expenses.

f. The Observer States to the Council of Europe and applicant States for Council of Europe membership may send representatives to the meetings of the Committee without the right to vote or defrayal of expenses.

g. The following international organisations and bodies may send representatives to the meetings of the Committee without the right to vote or defrayal of expenses: UN and its specialised bodies, ICC, ICPO-Interpol, Europol, OSCE, ICRC.

h. The Bureau of the CDPC may authorise the admission of further observers to the Committee.

6. Structures and working methods:

The Committee may set up working parties, conduct hearings of experts and have recourse to consultants.

The Committee will provide the CDPC with an interim report on its activities and findings on the different aspects of its terms of reference by 31 December 2004.

7. Duration:

These terms of reference will expire on 31 December 2005.

APPENDIX TO THE SPECIFIC TERMS OF REFERENCE OF THE COMMITTEE OF EXPERTS ON THE PROTECTION OF WITNESSES AND COLLABORATORS OF JUSTICE (PC-PW)

CONCLUSIONS OF THE FINAL REPORT ON PROTECTION OF WITNESSES AND PENTITI IN RELATION TO ACTS OF TERRORISM

1. The PC-PW considers that criminal organisations, including terrorist organisations, are operational almost all over the world and that fighting these organisations has become a priority. A great contribution to this fight can be made by witnesses and collaborators of justice who decide to co-operate with the judiciary. Such contribution can be ensured only if persons who can provide useful information and evidence enjoy adequate protection and support that allows them to deal with all the risks and implications related to the decision to co-operate with justice.
2. The replies received to the questionnaire addressed to the States and the analyses by the scientific experts, as well as the contribution provided by the representatives of the ICTY and of Europol, show the need to develop a coherent common international framework for the effective protection of witnesses and collaborators of justice. Given the essentially trans-national nature of serious crimes – such as organised crime and terrorism – and violations of international humanitarian law, improved and effective international co-operation seems to be particularly important. The PC-PW considers that from a technical point of view it is necessary to move a step forward with respect to the existing Recommendation R (97)13 concerning the intimidation of witnesses and the rights of the defence in order to define a comprehensive set of measures to increase the protection of witnesses and collaborators of justice, especially with respect to the fight against terrorism, and in particular to the need to strengthen international co-operation.
3. The protection of witnesses and collaborators of justice giving evidence in terrorism-related cases is crucial in order to achieve successful results in the fight against terrorism and terrorist organisations, as was also recalled in Resolution No.1 on Combating International Terrorism approved at the 24th Conference of European Ministers of Justice in Moscow. Witness protection is especially important in the fight against organised crime and terrorism because the closed nature of criminal and terrorist groups makes it very difficult to use traditional investigative methods successfully. Testimony obtained in this way can provide useful information about a whole criminal group, which is capable, by intimidating, harming or bribing witnesses, of obstructing investigations and justice.
4. The PC-PW considers, therefore, that it would be technically feasible and advisable to establish an international legal framework for international co-operation in matters related to the protection of witnesses and collaborators of justice.
5. The framework might consist of a combination of different complementary instruments:
 - a) The core of this framework should be a Conventional instrument, which could take the form of a new independent Convention or of an additional instrument to existing conventions.

Such an instrument should aim, in particular, at facilitating international co-operation on issues such as mutual recognition of decisions, mutual assistance, exchanges of information, use of advanced technical (tele-) communication means, relocation and other practical matters concerning the effective protection of witnesses and collaborators of justice, including security and confidentiality aspects.

It may also be necessary to recommend that terrorism-related crimes always be included in the offences for which specific witness protection measures/programmes/mechanisms are envisaged. The PC-PW recognises the need to ensure that protective measures for witnesses and collaborators of justice involved in terrorism-related crimes are adopted in all countries and are the subject of international agreements facilitating international co-operation. Such an important issue could be part of an international instrument specifically aimed at the protection of witnesses and collaborators of justice, as well as of a possible comprehensive international instrument related to the fight against terrorism.

Finally, such an instrument should set common criteria aiming at preserving an acceptable balance between the protection measures and the human rights and fundamental freedoms of all the parties involved (witnesses/collaborators of justice, defendants, victims).

- b) The framework should be completed by elements of “soft law”, like a Recommendation to member States, with the purpose of enhancing the compatibility of national criminal justice systems in relation to the other aspects of the protection of witnesses and collaborators of justice. For this purpose, it could be recommended to proceed to a revision of Recommendation R(97)13 concerning the intimidation of witnesses and the rights of the defence. This revision should be aimed at extending its scope on the basis of the additional experience and information acquired since the adoption of this Recommendation. Moreover, this new instrument could be supplemented by practical suggestions, such as models of regulatory texts.
6. Considering the work of the GMT in the field of the fight against terrorism and the work undertaken, in the past and recently, in the fight against organised crime, the Council of Europe would have the necessary expertise to develop an international instrument in this field. The development of international common standards would also facilitate and reinforce the activity of international legal institutions. The existence of a regional or international instrument for the protection of witnesses and collaborators of justice would, for instance, provide a stronger legal basis for the agreements currently concluded between the ICTY and some States, and facilitate the work of the witness protection service at the International Criminal Court.

APPENDIX IV

SPECIFIC TERMS OF REFERENCE

GROUP OF SPECIALISTS ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION (PC-S-ES)

1. Name of Committee:

Group of Specialists on the protection of children against sexual exploitation (PC-S-ES)

2. Type of Committee:

Group of specialists

3. Source of terms of reference:

European Committee on Crime Problems (CDPC)

4. Terms of reference:

Under the authority of the CDPC and in close co-operation with the European Committee on Legal Co-operation (CDCJ), the PC-S-ES has the task to develop measures designed to ensure the protection of children against sexual exploitation.

Its work is to be carried out in particular in the light of:

- Recommendation Rec (2001) 16 on the protection of children against sexual exploitation;
- the Commitment and Plan of Action, adopted at the preparatory Conference for the Second World Congress in Yokohama (Budapest, November 2001), which formally request the Council of Europe to provide follow-up and support for the practical application of Recommendation Rec (2001) 16 and of the Budapest Regional Commitment and Plan of Action;
- the Yokohama Global Commitment 2001; and
- the United Nations Convention on the Rights of the Child;

The Group of Specialists shall:

- a. finalise the Logframe Follow-up Tool on the protection of children against sexual exploitation and set up a Web-based resource centre, integrating the Logframe Follow-up Tool as a database;
- b. co-ordinate its activities with those of other bodies in particular with UNICEF, INTERPOL and the European Union in order to adopt a common approach to the protection of children against sexual exploitation.

5. Membership of the Group:

a. The Group shall be composed of seven specialists in the field of the protection of children against sexual exploitation, to be appointed by the Secretary General. One of the appointed specialists will be from the office of a national children's ombudsman.

b. The travel and subsistence expenses of the specialists will be borne by the budget of the Council of Europe.

c. The Secretariat General of the Council of the European Union and the Commission of the European Communities may send representatives to meetings of the Group, without the right to vote or defrayal of expenses.

d. The following observers may send representatives, without the right to vote or defrayal of expenses:

d.1 The Forum for children and families of the Council of Europe

d.2 UNICEF and INTERPOL

e. The Bureau of the CDPC may authorise the admission of other observers to the Committee.

6. Working structures and methods:

a. The Group will co-operate closely with intergovernmental and non-governmental bodies.

b. The Group may co-operate (e.g. by holding joint meetings) with relevant Committees of the Council of Europe in matters of common interest.

c. In order to discharge its functions, the Group may seek the advice of external experts and have recourse to studies by consultants. When carrying out its work, it should seek, through appropriate bodies, the views of children.

d. The Group may organise hearings and written consultations, and prepare questionnaires to be sent to member States, non-member States and NGOs.

7. Duration:

The terms of reference of the Group of Specialists shall be reviewed before 31 December 2005.

APPENDIX V

REVISED SPECIFIC TERMS OF REFERENCE

COMMITTEE OF EXPERTS ON THE REVISION OF THE CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME (PC-RM)

1. Name of committee: Committee of Experts on the revision of the Convention on laundering, search, seizure and confiscation of the proceeds from crime (PC-RM)
2. Type of committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:

On the basis of the final activity report on the advisability of drawing up an additional protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N° 141) (doc. CDPC (2002) 5), in particular, its Chapter III, Section 3 (recommendations) and bearing in mind recent developments and existing international instruments related to money laundering matters in the Council of Europe as well as in other international *fora* (e.g. Financial Action Task Force on Money Laundering, European Union, Egmont Group, United Nations), the Committee shall draw up an additional protocol to Convention ETS N° 141, in order to update and complement it as necessary.

Within the context of the negotiations of the draft Protocol, consideration should be given to the introduction of provisions concerning the prevention of money laundering and the financing of terrorism.

a) as regards preventive measures, consideration should be given, for instance, to introducing a context-setting provision or provisions on measures of prevention to facilitate subsequent coverage of the treatment of the powers and duties of FIUs, particularly those dealing with the duty to control (identification and verification of the identity of clients, identification of beneficial owners, suspicious transactions' reports), the definition of FIUs and the principles of co-operation between them, as well as transparency of legal entities. Such provision or provisions, if introduced, should make appropriate reference to existing international standards and, particularly, a reference to the FATF recommendations on money laundering and terrorist financing either in the Preamble to the Protocol¹ or as a self-standing provision;

b) as regards financing of terrorism, consideration should be given to introducing one or several provisions ensuring the application of the provisions of the 1990 Money Laundering Convention to the fight against the financing of terrorism and which, while giving added value, are in full conformity with internationally accepted standards, including the UN International Convention on the suppression of the financing of terrorism;

¹ Such a provision could read as follows : "Underlining the need for States to implement without delay the FATF recommendations on money laundering and terrorist financing."

c) a mechanism should also be found to ensure that the Convention, as revised by the Protocol, could be adapted accordingly, should the internationally accepted standards referred to therein be changed.

5. Membership of the committee:

- a. a representative of each Party to the Convention;
- b. a representative of the Select Committee of Experts on the evaluation of anti-money laundering measures (Moneyval - PC-R-EV);
- c. a representative of the Group of States against Corruption (GRECO);
- d. a representative of the Committee of Experts on Terrorism (CODEXTER)
- e. a representative of the Committee of Experts on the operation of European conventions in the penal field (PC-OC);
- f. two scientific experts appointed by the Secretary General.

The travel and subsistence expenses of Committee members from Council of Europe member States will be borne by the Council of Europe budget.

6. Working structures and methods: -

7. The Secretariat General of the Council of the European Union and the Commission of the European Communities may send representatives to meetings of the Group, without the right to vote or defrayal of expenses.

8. Observers:

The following may send a representative, without the right to vote and reimbursement of expenses:

- Council of Europe member States and observer States which are not Parties to the Convention
- Financial Action Task Force on Money Laundering
- United Nations
- Egmont Group
- European Commission

The Bureau of the CDPC may authorise the admission of other observers to the Committee.

9. Duration:

These terms of reference will expire on 31 December 2004.