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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

List of decisions of the 57th Plenary Session

(32nd meeting as a Steering Committee)

(Strasbourg, 2-6 June 2008)

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The following abbreviations are used in referring to Committees

CCPE	CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
CDAP	CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATION
CDEG	STEERING COMMITTEE FOR EQUALITY BETWEEN WOMEN AND MEN
CDPC	EUROPEAN COMMITTEE ON CRIME PROBLEMS
CPGE	CONFERENCE OF EUROPEAN PROSECUTORS GENERAL
EG-TFV	COUNCIL OF EUROPE TASK FORCE TO COMBAT VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE
MONEYVAL	COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM
PC-CP	COUNCIL FOR PENOLOGICAL CO-OPERATION
PC-CSC	CRIMINOLOGICAL SCIENTIFIC COUNCIL
PC-OC	COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS IN THE PENAL FIELD
PC-S-CP	GROUP OF SPECIALISTS ON COUNTERFEIT PHARMACEUTICAL PRODUCTS
T-CY	CYBERCRIME CONVENTION COMMITTEE

BRIEF FOREWORD

1. The European Committee on Crime Problems (CDPC) met in Strasbourg from 2 to 6 June 2008. The list of participants and the agenda appear in Appendices I and II respectively.

ITEMS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR DECISION

2. The CDPC invited the Committee of Ministers:
 - a. to adopt the draft Recommendation on the European Rules for Juvenile Offenders subject to Sanctions or Measures and to authorise the publication of the Commentary on the draft Recommendation (see item 3 of the agenda; for the texts of the draft Recommendation and the Commentary, see Addenda I and II);
 - b. to approve the draft revised specific terms of reference of the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP), which will allow the Group to draft a preliminary draft Convention against counterfeiting of medical products and similar crimes involving threats to public health (see item 4b of the agenda and Appendix III to this report);
 - c. to approve the draft terms of reference of the Ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP), a Committee of Experts with the full participation of all Council of Europe member States, entrusted with the task of negotiating and finalising the draft Convention on the basis of the preliminary draft Convention prepared by the PC-S-CP (see item 4b of the agenda and Appendix IV to this report);
 - d. to approve the draft revised ad hoc terms of reference of the PC-CP relating to probation and aftercare services in the European criminal justice systems (see item 8b of the agenda and Appendix V to this report);
 - e. to approve the draft revised terms of reference of the PC-OC, PC-CP¹ and MONEYYVAL (see items 6c, 8d and 9 of the agenda, as well as Appendices VI, VII and VIII to this report).

ITEMS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR INFORMATION

3. The CDPC invited the Committee of Ministers to note:
 - a. that, having examined the results of the three meetings of the PC-S-CP, the CDPC took note of the final report of the PC-S-CP and expressed its satisfaction with the quality of this report (see item 4a of the agenda, Addenda III to this report);
 - b. the feasibility study of the CDPC for a convention against domestic violence, and the opinion of the EG-TFV on this study, as well as a document prepared by the Secretariat summarising the results of the discussions on the necessity of drafting a Council of Europe convention in this field (see item 5 on the agenda and Appendices IX, X and XI to this report);
 - c. as regards Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice in Lanzarote in October 2007, that the CDPC instructed the PC-OC to continue dealing with this issue and inform the CDPC Bureau on further developments (see item 7a of the agenda);

¹ Secretariat note: The inclusion of Penal Reform International (PRI) and International Centre for Prison Studies as observers under point 5.D of the draft revised terms of reference of the PC-CP is subject to the reception by the Secretariat of a formal request for observer status sent by these two bodies, as provided in the Committee of Ministers Resolution Res(2005)47.

- d. as regards Resolution No. 2 on child-friendly justice adopted by the Ministers of Justice in Lanzarote in October 2007, that the CDPC took note of a report prepared by Ms Ksenija Turkovic on criminal aspects in view of the future work on European guidelines for child-friendly justice (see Addenda IV to this report). The CDPC requested all delegations to send to the Secretariat their comments on this report and other issues concerning child-friendly justice by 18 July 2008 and instructed the Secretariat to prepare a compilation of these comments, accompanied by a summary including elements for future discussions (see item 7a of the agenda);
 - e. that the CDPC had a preliminary discussion on the possible themes of the 29th Conference of the Council of Europe Ministers of Justice, which will be held in Tromsø, Norway on 17-19 June 2009 and took note of the theme proposed by its Bureau: “A Safer Society for European Citizens: a) Domestic Violence and b) Dangerous Offenders” (see item 7b of the agenda);
 - f. that, after a meeting between the Chairs and Vice-Chairs of the three Steering Committees of the Council of Europe involved in the preparation of the Ministers of Justice Conferences (CDPC, CDCJ and CDDH) and Norwegian representatives, the CDPC took note that Norway preferred to have “Domestic Violence” as the theme of the Conference. It decided that the theme “Domestic Violence” would be presented to the Committee of Ministers and that the CDPC should prepare elements regarding criminal aspects of this theme in view of the preparation of the Ministers’ resolutions, which would also contain some points relating to the issue of dangerous offenders (see item 7b of the agenda),
 - g. that the CDPC approved the proposals of the PC-CP concerning its current and future priorities and activities (see item 8c of the agenda and Appendix XII to this report);
 - h. that the CDPC adopted comments on the Opinion No. 1 of the CCPE entitled “Ways of improving international co-operation in the criminal justice field” and decided to transmit this Opinion to the Committee of Ministers together with these comments (see item 12 of the agenda and Appendices XII and XIV to this report).
4. The CDPC took note of:
- a. the latest version of the draft 3rd Additional Protocol to the European Convention on Extradition, as elaborated by the PC-OC, which will complement the Convention by simplifying extradition procedures where the person consents to her/his extradition, and congratulated the PC-OC on its work (see item 6a on the agenda);
 - b. the decisions taken by the PC-OC in relation to the preparation of normative texts regarding compensation issues, lapse of time and the rule of speciality in extradition procedures (see item 6a on the agenda);
 - c. the progress achieved by the PC-OC regarding the implementation of practical measures to improve the operation of relevant conventions (list of points of contact and a database on national procedures relating to extradition and mutual legal assistance in criminal matters) and of the fact that these measures have had no budgetary implications (see item 6b of the agenda);
 - d. the fact that the possibility of drafting a Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons will be included on the agenda of one of the future meetings of the PC-OC (see item 6e of the agenda);
 - e. the fact that the Convention on the Transfer of Sentenced Persons had its 25th anniversary in 2008 and highlighted the importance of this convention, also ratified by many non member States of the Council of Europe, as a tool for co-operation.

- f. information provided by the Chair concerning a case between Canada and Bulgaria relating to the application of Article 23 of the Convention on the Transfer of Sentenced Persons (see item 6d of the agenda);
 - g. a question raised by the Georgian delegation on the application of the Convention on the Transfer of Sentenced Persons between Georgia and the Russian Federation, and held an exchange of views on the legal aspects relating to this question. The two delegations concerned accepted the proposal made by the Chair of the CDPC to continue discussions on this matter with the Chair in co-operation with the Secretariat in the framework of the procedure provided in Article 23 of the Convention;
 - h. information provided by the Secretariat on recent developments concerning the state of signatures and future ratifications of the Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation;
 - i. a proposal by Romania to host a Conference of Council of Europe Ministries of Justice and of the Interior in Bucharest in 2010, on issues relating to international co-operation in criminal matters. The CDPC welcomed this suggestion and invited the Romanian delegation to pursue its dialogue with the Secretariat and the Bureau with a view to the preparation of this possible Conference;
 - j. the replies to a Questionnaire on the Implementation of the European Prison Rules and decided to extend the deadline for replies until 18 July 2008. It instructed the Secretariat to prepare a document evaluating these replies and proposing follow-up measures to the Bureau and the plenary of the CDPC (see item 8c of the agenda);
 - k. the resumption of SPACE I and SPACE II as of 2008 and welcomed the fact that the Council of Europe was able to restore the financing of these activities;
 - l. information provided by the Secretariat on the organisation of a Conference on probation and aftercare in Strasbourg in November 2008 (see item 8e of the agenda);
 - m. information provided by the representative of the CDPC to the T-CY, Mr Branislav Boháčik, on developments in the field of Cybercrime and in particular the results of a Conference organised by the Council of Europe on 1-2 April 2008 and the T-CY meeting which took place on 3 and 4 April 2008 (see item 11 of the agenda);
 - n. the fact that Armenia, Bosnia and Herzegovina and Ukraine, despite becoming Parties to the Cybercrime Convention, had not yet designated a point of contact in accordance with Article 35 of the Convention, and requested the CDPC delegations of these States to send information to the Secretariat about progress made in this respect before 31 July 2008;
 - o. information on the activities of MONEYVAL provided by Mr John Ringguth, Executive Secretary of MONEYVAL, of GRECO provided by Mr Wolfgang Rau, Executive Secretary of GRECO, and of CODEXTER, provided by Mr Tihomir Kralj, representative of the CDPC to CODEXTER (see item 12 of the agenda).
5. The CDPC appointed Ms Irene Koeck (Austria), Mr Pavel Stern (Czech Republic) and Mr André Vallotton (Switzerland) as members of the PC-CP (see item 8a of the agenda).
 6. The CDPC appointed Mr Nikola Matovski (“the former Yugoslav Republic of Macedonia”) as representative of the CDPC to CEPEJ and to CCJE.
 7. The CDPC re-elected Mr Eric Ruelle (France) as Vice-Chair for one year (see item 14 of the agenda).
 8. The CDPC adopted the revised document “Working methods of the CDPC and its Bureau” (see item 10 of the agenda).

9. The CDPC requested its Bureau to:
 - a. follow closely the progress made by the PC-S-CP, in particular with a view to authorising the initiation of the work of the PC-ISP (see item 4b of the agenda and points 2b and c above);
 - b. follow closely the preparation of elements for European guidelines for child-friendly justice (see point 3d above)
 - c. prepare elements for resolutions to be adopted by the Ministers of Justice at the 29th Conference of the Council of Europe Ministers of Justice (see points 3e and f above);
 - d. follow the work within the PC-OC regarding a possible Second Additional Protocol to the European Convention on the Transfer of Sentenced Persons (see point 4d above);
 - e. follow closely the progress made toward the designation of 24/7 contact points under the Convention on Cybercrime (see point 4n above);
10. The CDPC decided to hold its next meeting in September 2009. The Bureau decided to hold its next meeting in November 2008 (see item 14 of the agenda).
11. The CDPC invited the Committee of Ministers to take note of this report as a whole.

APPENDIX I

List of participants / Liste des participants ^(*)

MEMBER STATES / ETATS MEMBRES

ALBANIA / ALBANIE

**No nomination / Pas de nomination

ANDORRA / ANDORRE

- * M. André PIGOT, Magistrat honoraire, Ancien membre du Conseil Supérieur de la Justice, BOLQUERE

ARMENIA / ARMÉNIE

- * Mr Hovhannes POGHOSYAN, Head of the International Co-operation Division, Police Headquarters, YEREVAN

AUSTRIA / AUTRICHE

Mr Wolfgang BOGENSBERGER, Director General, Directorate for Penal Legislation, Federal Ministry of Justice, VIENNA

- * Mr Roland MIKLAU, Head of Mission, European Assistance Mission to the Albanian Justice System (EURALIUS), TIRANA

AZERBAIJAN / AZERBAÏDJAN

Ms YSIFOVA Saadat, Senior Adviser, Division of the work with law enforcement bodies, Executive Office of the President, BAKU

BELGIUM / BELGIQUE

M. Freddy GAZAN, Conseiller général adjoint à la politique criminelle, Service Public Fédéral de la Justice, Ministère de la Justice, BRUXELLES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

- * Mr Damir VEJO, Chef du Service pour le crime organisé et la corruption, Ministère de la Sécurité de la Bosnie-Herzégovine, SARAJEVO

BULGARIA / BULGARIE

Ms Irena BORISOVA, Senior expert, Directorate of International Legal Co-operation and European Affairs, Ministry of Justice, SOFIA

CROATIA / CROATIE

- * Mr Tihomir KRALJ, Assistant Director, Criminal Police Directorate, General Police Directorate, Ministry of Interior, ZAGREB

* States are listed in alphabetical order by their English names. The names of participants are also in alphabetical order, the names of the Heads of Delegation being preceded by an asterisk.
Les Etats sont mentionnés par ordre alphabétique anglais. Les noms des participants sont également indiqués par ordre alphabétique, les noms des Chefs de délégation étant précédés d'un astérisque.

CYPRUS / CHYPRE

- * Ms Troodia DIONYSIOU, Administrative Officer, Ministry of Justice and Public Order, NICOSIA

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

Ms Helena LISUCHOVA, Legal Expert, Department of International Organizations and Cooperation, Ministry of Justice, PRAGUE

DENMARK / DANEMARK

Ms Annette ESDORF, Deputy Director-general, Department of Prisons and Probation, Ministry of Justice, COPENHAGEN

Mr Ketilbjørn HERTZ, Legal Adviser, Ministry of Justice, COPENHAGEN

- * Mr Jesper HJORTENBERG, Deputy Director of Public Prosecution, Office of the Director of Public Prosecution, COPENHAGEN

Ms Malene Maxe PETERSEN, Prosecutor, Office of the Director of Public Prosecutions, COPENHAGEN

ESTONIA / ESTONIE

- * Ms Ülle RAIG, Adviser of Criminal Policy Department, Ministry of Justice, TALLINN

FINLAND / FINLANDE

Mr Olavi KAUKONEN, Deputy Head of Department, Department of Criminal Policy, Ministry of Justice, HELSINKI

Ms Ulla MOHELL, Counsellor of Legislation, Department of Criminal Policy, Ministry of Justice, HELSINKI

FRANCE

- * M. Eric RUELLE, Chargé de Mission pour les Négociations Pénales Internationales, Direction des Affaires Criminelles et des Grâces, Ministère de la Justice, PARIS

Deputy Chair of the CDPC / Vice-Président du CDPC

GEORGIA / GÉORGIE

Ms Tina GOLETIANI, Head of the Legal Department, Office of the Prosecutor General, TBILISI

Mr Mamuka JGENTI, Deputy Permanent Representative of Georgia to the Council of Europe, STRASBOURG

GERMANY / ALLEMAGNE

- * Mr Hans-Holger HERRNFELD, Regierungsdirektor, Head of International Criminal Law and European and Multilateral Criminal Law Cooperation Division, BERLIN

Ms Gudrun TOLZMANN, Leiterin des Referats Strafvollzug und Bewährungshilfe, Bundesministerium der Justiz, BERLIN

GREECE / GRÈCE

- * Ms Maria GAVOUNELI, Lecturer in International Law, Faculty of Law, University of Athens, ATHENS
Apologised / Excusée

Mr Georgios VOULGARIS, Procureur auprès de la Cour de Grande Instance d'Athènes, ATHENS

HUNGARY / HONGRIE

- * Mme Klara NÉMETH-BOKOR, Directrice Générale Adjointe du Département, Ministère de la Justice et de la Police, BUDAPEST

ICELAND / ISLANDE

- * Mr Gunnar Narfi GUNNARSSON, Legal expert, Department of Legal Affairs, Ministry of Justice, REYKJAVIK

IRELAND / IRLANDE

Mr Ben RYAN, Assistant Principal Officer, Department of Justice, Equality & Law Reform, International Policy Division, DUBLIN

- * Ms Joyce DUFFY, Principal Officer, International Policy Division, Department of Justice, Equality and Law Reform, DUBLIN

ITALY / ITALIE

**No nomination / Pas de nomination

LATVIA / LETTONIE

- * Ms Inga MELNACE, Deputy Head, Criminal Law Department, Ministry of Justice, RIGA

LIECHTENSTEIN

Mr Carlo RANZONI, Judge, Fürstliches Landgericht, VADUZ

LITHUANIA / LITUANIE

**No nomination / Pas de nomination

LUXEMBOURG

- * M. Jean-Pierre KLOPP, Procureur Général d'Etat, LUXEMBOURG

MALTA / MALTE

**No nomination / Pas de nomination

MOLDOVA

- * Mme Rodica SECRIERU, Conseiller, Ministère de la Justice, CHISINAU

MONACO

Mme Claudette GASTAUD, Ambassadeur Extraordinaire et Plénipotentiaire, Représentation Permanente de Monaco auprès du Conseil de l'Europe, STRASBOURG

- * M. Philippe NARMINO, Directeur des Services Judiciaires , Palais de Justice, MONACO
Apologised / Excusé

Mme Antonella SAMPO, Administrateur à la Direction des Services Judiciaires, Palais de Justice, MONACO

MONTENEGRO

Mr Janko ĐURĐIĆ, Senior Advisor, Head of Suspicious Transactions Department, Administration for the Prevention of Money Laundering and Terrorist Financing, PODGORICA

NETHERLANDS / PAYS-BAS

* Ms Marjorie BONN, Senior Legal Adviser, Legislation Department, Ministry of Justice, THE HAGUE
Apologised / Excusée

M. Gerard C. DE BOER, Adjoint au Représentant Permanent, Conseiller juridique, STRASBOURG

NORWAY / NORVÈGE

Ms Aina Mee ERTZEID, Acting legal Adviser, Legislation Department, Ministry of Justice and the Police, OSLO

Mr Per Eirik Vigmostad OLSEN, Adviser, Legislation Department, Ministry of Justice and the Police, OSLO

POLAND / POLOGNE

Mr Sławomir BUCZMA, Judge, Judicial Assistance and European Law Department, Ministry of Justice, WARSAW

PORTUGAL

Ms Claudia REDINHA, Legal Adviser, Bureau of International Affairs – DGPJ, Ministry of Justice, LISBON

ROMANIA / ROUMANIE

* M. Florian Razvan RADU, Directeur, Direction des Relations Internationales et des Droits de l'Homme, Ministère de la Justice, BUCAREST

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

* Mr Vladimir ANDREEV, Deputy Director, Department on New Challenges and Threats, Ministry of Foreign Affairs, MOSCOW

Mr Oleg FILIMONOV, Head, Department of Legal Affairs, Federal Service of Execution of Punishment, Ministry of Justice, MOSCOW

Ms Irina SILKINA, Second Secretary, Department on new challenges and threats, Ministry of Foreign Affairs, MOSCOW

Ms Tatiana SUTYAGINA, Senior Prosecutor, Main Department International Legal Co-operation, Office of the Prosecutor General, MOSCOW

Mr Ivan A.VOLODIN, Head of Section, Legal Department of the Ministry of Foreign Affairs, MOSCOW

Mr Alexander ZMEYEVSKIY, Director, Department on the Issues of New Challenges and Threats, Ministry of Foreign Affairs,
Apologised / Excusé

SAN MARINO / SAINT-MARIN

**No nomination / Pas de nomination

SERBIA / SERBIE

- * Ms Jasmina SAHINOVIC, Chief Inspector, Criminal Police Department, Unit for International Police Co-operation, Ministry of the Interior, BELGRADE

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

- * Mr Branislav BOHÁČIK, Head of the Division for Judicial Co-operation in Criminal Matters, International and European Law Department, Ministry of Justice, BRATISLAVA
Chairman of the CDPC / Président du CDPC

Ms Stanislava JURICEKOVA, Division for Judicial Co-operation in Criminal Matters, Ministry of Justice, BRATISLAVA

SLOVENIA / SLOVÉNIE

- * Ms Andreja LANG, Constitutional Court of Republic of Slovenia, LJUBLJANA

SPAIN / ESPAGNE

Mr Francisco ALVAREZ, Sous-Directeur Général des Affaires de Justice pour l'Union Européenne et les Organismes Internationaux , Ministère de la Justice, MADRID

SWEDEN / SUÈDE

Mr Per LENNERBRANT, Deputy Director, Division for Criminal Law, Ministry of Justice, STOCKHOLM

Mr Olof NYMAN, Legal Adviser, Division for Criminal Law, Ministry of Justice, STOCKHOLM

- * Ms Hedvig TROST, Deputy Director, Division for Criminal Law, Ministry of Justice, STOCKHOLM
Apologised / Excusée

SWITZERLAND / SUISSE

Mme Anita MARFURT, Juriste, Unité Droit pénal international, Office Fédéral de la Justice, Département Fédéral de Justice et Police, BERNE

- * M. Bernardo STADELMANN, Vice-directeur, Domaine de direction Droit pénal, Office Fédéral de la Justice, Département Fédéral de Justice et Police, BERNE

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”

- * M. Nikola MATOVSKI, Professeur, Faculté de Droit de l'Université « S-TS Cyrille et Methode », SKOPJE

TURKEY / TURQUIE

**No nomination / Pas de nomination

UKRAINE

Mr Vitaliy KASKO, Head of the International Law Department, Office of the Prosecutor General, KYIV
Apologised / Excusé

Ms Tetiana SHORSTKA, Head of the Division of Execution of International Treaties on Legal Assistance in Criminal Matters, Directorate for International Private Law and Mutual Legal Assistance, Ministry of Justice, KYIV

UNITED KINGDOM / ROYAUME-UNI

- * Mr Dion AZORDEGAN, Head of European Criminal Justice and Rights Team, Home Office, LONDON

Ms Emma HADDAD, Home Office, International Directorate, LONDON

* * * * *

CDPC BUREAU / BUREAU DU CDPC
(CDPC-BU)

AUSTRIA / AUTRICHE

- * Mr Roland MIKLAU, Head of Mission, European Assistance Mission to the Albanian Justice System (EURALIUS), TIRANA

DENMARK / DANEMARK

- * Mr Jesper HJORTENBERG, Deputy Director of Public Prosecution, Office of the Director of Public Prosecution, COPENHAGEN

FRANCE / FRANCE

- * M. Eric RUELLE
Chargé de Mission pour les Négociations Pénales Internationales, Direction des Affaires Criminelles et des Grâces, Bureau L2, Ministère de la Justice, PARIS
Deputy Chair of the CDPC / Vice-Président du CDPC

GERMANY / ALLEMAGNE

- * Mr Hans-Holger HERRNFELD, Regierungsdirektor, Head of International Criminal Law and European and Multilateral Criminal Law Cooperation Division, Bundesministerium der Justiz, BERLIN

GREECE / GRECE

- * Ms Maria GAVOUNELI, Assistant Professor of International Law, Faculty of Law, University of Athens, ATHENS
Apologised / ExcuséE

ROMANIA / ROUMANIE

- * M. Florian Razvan RADU, Directeur, Direction des Relations Internationales et des Droits de l'Homme, Ministère de la Justice, BUCAREST

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Mr Alexander ZMEYEVSKIY, Director, Department on the Issues of New Challenges and Threats, Ministry of Foreign Affairs, MOSCOW
Apologised / Excusé

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

- * Mr Branislav BOHÁČIK
Director – Division for Judicial Co-operation in Criminal Matters, Ministry of Justice, BRATISLAVA
Chair of the CDPC / Président du CDPC

SLOVENIA / SLOVÉNIE

* Ms Andreja LANG, Constitutional Court of Republic of Slovenia, LJUBLJANA

* * * * *

**COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS / COMITE D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES DANS LE DOMAINE PENAL
(PC-OC)**

Ms Barbara GOETH-FLEMMICH, Director, Head of Division for International Criminal Law, Ministry of Justice, VIENNA

Chair of the PC-OC / Présidente du PC-OC

Apologised / Excusée

**COUNCIL FOR PENOLOGICAL CO-OPERATION /
CONSEIL DE COOPERATION PENOLOGIQUE
(PC-CP)**

Ms Sonja SNACKEN

Professor, Department of Criminology, Faculty of Law, Vrije Universiteit Brussel, BRUSSELS

Chair of the PC-CP / Présidente du PC-CP

Mr Dirk VAN ZYL SMIT, Professor of Comparative and International Penal Law, School of Law, University of Nottingham, NOTTINGHAM

**GROUP OF SPECIALISTS ON COUNTERFEIT PHARMACEUTICAL PRODUCTS
GROUPE DE SPECIALISTES SUR LES PRODUITS PHARMACEUTIQUES CONTREFAITS
(PC-S-CP)**

M. Claude DEBRULLE

Ancien Directeur Général, Direction Générale de la Législation, des Libertés et Droits fondamentaux, Ministère de la Justice, BRUXELLES

Chair of the PC-S-CP / Président du PC-S-CP

**COUNCIL OF EUROPE TASK FORCE TO COMBAT VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC
VIOLENCE / TASK FORCE DU CONSEIL DE L'EUROPE POUR COMBATTRE LA VIOLENCE A L'EGARD DES
FEMMES, Y COMPRIS LA VIOLENCE DOMESTIQUE
(EG-TFV)**

Ms Feride ACAR, Professor, Department of Political Science and Public Administration, Middle East Technical University (METU), ANKARA

Ms Dubravka ŠIMONOVIĆ, Head of Department for Human Rights, Ministry of Foreign affairs, ZAGREB

Vice-Chair of the Task Force / Vice-Présidente du Task Force

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS /
CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS
(CCPE)**

**No nomination / Pas de nomination

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE /
COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE
(CEPEJ)**

Apologised / Excusé

**STEERING COMMITTEE FOR HUMAN RIGHTS /
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)**

**No nomination / Pas de nomination

PARLIAMENTARY ASSEMBLY - ASSEMBLÉE PARLEMENTAIRE

**COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS /
COMMISSION DES QUESTIONS JURIDIQUES ET DES DROITS DE L'HOMME**

M. Andrew DRZEMCZEWSKI, Chef du Secrétariat

Apologised / Excusé

**COMMITTEE ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN /
COMMISSION SUR L'EGALITE DES CHANCES POUR LES FEMMES ET LES HOMMES**

Mme Tanja KLEINSORGE, Secrétaire du Comité

**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE /
CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX DU CONSEIL DE L'EUROPE**

**No nomination / Pas de nomination

**COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS / COMMISSAIRE AUX DROITS DE
L'HOMME DU CONSEIL DE L'EUROPE**

**No nomination / Pas de nomination

**CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFERENCE DES OING DU CONSEIL DE
L'EUROPE**

**No nomination / Pas de nomination

* * * * *

EUROPEAN COMMUNITY / COMMUNAUTÉ EUROPÉENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Ms Adrienne BOERWINKEL, National Seconded Expert , DG JLS – Justice, Freedom and Security, BRUSSELS

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPÉENNE

**No nomination / Pas de nomination

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**OBSERVERS WITH THE COUNCIL OF EUROPE /
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

HOLY SEE / SAINT-SIÈGE

M. Thierry RAMBAUD, Professeur des Universités, Institut d'études politiques de Strasbourg, STRASBOURG

UNITED STATES OF AMERICA / ÉTATS-UNIS D'AMÉRIQUE

**No nomination / Pas de nomination

CANADA

Apologised / Excusé

JAPAN / JAPON

Mr Akiro TAKANO, Consul (Attorney), Consulate General of Japan, STRASBOURG

MEXICO / MEXIQUE

**No nomination / Pas de nomination

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**INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES**

**UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS / INSTITUT POUR LA PREVENTION DU CRIME ET LE TRAITEMENT DES
DELINQUANTS EN ASIE ET EN EXTREME-ORIENT DES NATIONS UNIES (UNAFEI)**

**No nomination / Pas de nomination

**UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE / INSTITUT
INTERREGIONAL DE RECHERCHE DES NATIONS UNIES SUR LA CRIMINALITE ET LA JUSTICE (UNICRI)**

**No nomination / Pas de nomination

**UNITED NATIONS LATIN AMERICAN INSTITUTE FOR THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS / INSTITUT LATINO-AMERICAIN POUR LA PREVENTION DU CRIME ET LE
TRAITEMENT DES DELINQUANTS (ILANUD)**

**No nomination / Pas de nomination

UNITED NATIONS OFFICE ON DRUGS AND CRIME / OFFICE CONTRE LA DROGUE ET LE CRIME DES NATIONS UNIES (UNODC)

**No nomination / Pas de nomination

I.C.P.O. INTERPOL

**No nomination / Pas de nomination

**INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES NON-GOUVERNEMENTALES**

EUROPEAN INSTITUTE FOR CRIME PREVENTION AND CONTROL / INSTITUT EUROPEEN POUR LA PREVENTION DU CRIME ET LA LUTTE CONTRE LA DELINQUANCE (HEUNI)

**No nomination / Pas de nomination

INTERNATIONAL ASSOCIATION OF PENAL LAW (IAPL) / ASSOCIATION INTERNATIONALE DE DROIT PÉNAL (AIDP)

**No nomination / Pas de nomination

INTERNATIONAL CENTRE OF SOCIOLOGICAL PENAL AND PENITENTIARY RESEARCH AND STUDIES (INTERCENTER) / CENTRE INTERNATIONAL DE RECHERCHES ET D'ÉTUDES SOCIOLOGIQUES, PÉNALES ET PÉNITENTIAIRES (INTERCENTER)

Apologised / Excusé

INTERNATIONAL PENAL AND PENITENTIARY FOUNDATION (IPPF) / FONDATION INTERNATIONALE PÉNALE ET PÉNITENTIAIRE (FIPP)

**No nomination / Pas de nomination

INTERNATIONAL SOCIETY FOR CRIMINOLOGY (ISC) / SOCIÉTÉ INTERNATIONALE DE CRIMINOLOGIE (SIC)

**No nomination / Pas de nomination

INTERNATIONAL SOCIETY OF SOCIAL DEFENCE (ISSD) / SOCIÉTÉ INTERNATIONALE DE DÉFENSE SOCIALE (SIDS)

**No nomination / Pas de nomination

PERMANENT EUROPEAN CONFERENCE ON PROBATION AND AFTERCARE / CONFÉRENCE PERMANENTE EUROPÉENNE DE LA PROBATION (CEP)

M. Patrick MADIGOU, Président de la CEP, Directeur du Service Pénitentiaire d'Insertion et de Probation (SPID) de Paris, PARIS

PENAL REFORM INTERNATIONAL / REFORME PÉNALE INTERNATIONALE (PRI)

**No nomination / Pas de nomination

SOCIETY FOR THE REFORM OF CRIMINAL LAW / SOCIÉTÉ POUR LA REFORME DU DROIT PÉNAL (SRCL)

**No nomination / Pas de nomination

WORLD SOCIETY OF VICTIMOLOGY / SOCIÉTÉ MONDIALE DE VICTIMOLOGIE

**No nomination / Pas de nomination

INTERNATIONAL BAR ASSOCIATION / ASSOCIATION INTERNATIONALE DU BARREAU

**No nomination / Pas de nomination

COUNCIL OF BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY / CONSEIL DES BARREAUX ET DES SOCIÉTÉS DE DROIT DE LA COMMUNAUTÉ EUROPÉENNE

**No nomination / Pas de nomination

EUROPEAN FORUM FOR VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE / FORUM EUROPEEN POUR LA MEDIATION VICTIME-DELINQUANT ET LA JUSTICE REPARATRICE

**No nomination / Pas de nomination

EUROPEAN MAGISTRATES FOR DEMOCRACY AND LIBERTIES / MAGISTRATS EUROPEENS POUR LA DEMOCRATIE. ET LES LIBERTES (MEDEL)

**No nomination / Pas de nomination

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EXPERT ON CHILD FRIENDLY JUSTICE / EXPERT EN JUSTICE ADAPTEE AUX ENFANTS

Ms Ksenija TURKOVIĆ, J.S.D., Professor of Criminal Law, Faculty of Law, University of Zagreb, ZAGREB

* * * * *

**SECRETARIAT OF THE COUNCIL OF EUROPE /
SECRETARIAT DU CONSEIL DE L'EUROPE**

**Directorate General of Human Rights and Legal Affairs /
Direction Générale des droits de l'Homme et des affaires juridiques**

M. Philippe BOILLAT	Director General / Directeur général
Mr Jan KLEIJSEN	Director of Standard-Setting / Directeur des Activités Normatives
Ms Margaret KILLERBY	Head of the Law Reform Department a.i. Chef du Service des Réformes Législatives a.i.
M. Carlo CHIAROMONTE	Head of the Criminal Law Division / <u>Secretary to the CDPC</u> Chef de la Division du droit pénal / <u>Secrétaire du CDPC</u>
Ms Iliana TANEVA	Deputy head of the Criminal Law Division/ <u>Secretary to the PC-CP</u> Chef adjoint de la Division du droit pénal / <u>Secrétaire du PC-CP</u>

Mr Hasan BERMEK	Administrative Officer / Administrateur <u>Secretary to the PC-OC - Deputy Secretary to the CDPC</u> <u>Secrétaire du PC-OC - Secrétaire adjoint du CDPC</u>
Ms Camilla TESSENYI	Administrative Assistant / Assistante administrative
Ms Antonella MASCIA LODI	Administrative Assistant / Assistante administrative
Mr Wolfgang RAU	Executive Secretary of the Group of States against Corruption (GRECO) Secrétaire Exécutif du Groupe d'Etats contre la corruption (GRECO)
Mme Marta REQUENA	Head of the Gender and Anti-Trafficking Equality Division/ Chef de la Division pour l'Egalité entre les femmes et les hommes et la lutte contre la traite
Mr John RINGGUTH	Executive Secretary of MONEYVAL / Secrétaire exécutif du MONEYVAL
Mr Jörg POLAKIEWICZ	Head of the Human Rights Law and Policy Division/ Chef de la Division du Droit et de la politique des droits de l'Homme
Ms Emilie MONSAILLIER	Trainee / Stagiaire
Ms Marieke DANKERT	Trainee / Stagiaire
Mme Marose BALA-LEUNG	Assistant / Assistante
Ms Claire ROBINS	Assistant / Assistante
Mme Christiane WELTZER	Assistant / Assistante

**European Directorate for the Quality of Medicines and Healthcare (EDQM) /
Direction Européenne de la Qualité du médicament et Soins de Santé (DEQM)**

Mr Jean-Marc SPIESER	Head of Department Biological Standardisation, OMCL Network & HealthCare Department (DBO) / Chef du département Standardisation Biologique, Réseau des OMCLs & Soins de Santé (DBO) <u>Apologised / Excusé</u>
Ms Sabine WALSER	Administrative Officer / Administratrice <u>Apologised / Excusée</u>

Interpreters / Interprètes

Mme Sarah ADLINGTON
Mme Rebecca BOWEN
M. Philippe QUAINÉ
M. Jean-Louis WUNSCH

APPENDIX II

Agenda

1. **9.30 a.m. – Opening of the meeting by Mr Philippe Boillat, Director General of Human Rights and Legal Affairs**
2. **Adoption of the agenda**
Working documents
 Draft agenda [CDPC \(2008\) OJ](#)
 Annotated agenda [CDPC \(2008\) 04](#)
- *3. **Approval of the draft European Rules for juvenile offenders²**
Working documents
 Draft European Rules for juvenile offenders [CDPC \(2008\) 15](#)
 Draft commentary [CDPC \(2008\) 16](#)
 Draft European Rules for juvenile offenders (with country comments) [PC-CP \(2006\) 13 rev11](#)
 Comments of the CPT on the draft European Rules for juvenile offenders [CDPC \(2008\) 08](#)
 Comments of UNICEF on the draft European Rules for juvenile offenders [CDPC \(2008\) 11](#)
 Comments from Council of Europe member States on the draft European Rules for juvenile offenders [CDPC \(2008\) 10 rev](#)
- *4. **Pharmaceutical crime**
Information documents
 Feasibility study for a Council of Europe convention on counterfeit medicines/pharmaceutical crime [CDPC-BU \(2007\) 01](#)
 Prioritised elements for a Council of Europe convention on the protection of public health against pharmaceutical and healthcare product crime [CDPC-BU \(2007\) 12](#)
 Parliamentary Assembly Recommendation on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods [PACE Rec 1793 \(2007\)](#)
- 4a. **Feasibility of future work in the field**
Working documents
 Final Report (PC-S-CP) [PC-S-CP \(2008\) fin](#)
 2nd Summary meeting report [PC-S-CP \(2008\) 04](#)
 3rd Summary meeting report [PC-S-CP \(2008\) 09](#)
- 4b. **Approval of revised specific terms of reference for the Group of Specialists on counterfeit pharmaceutical products (PC-S-CP) and draft terms of reference of the ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP)**
Working document
 Revised specific terms of reference [CDPC-BU \(2008\) 11 rev5](#)
 Draft terms of reference of the ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP) [CDPC \(2008\) 07 rev4](#)
 Summary meeting report (CDPC Bureau, 16-18 January 2008) [CDPC-BU \(2008\) 07,](#)
 item 6
 Summary meeting report (CDPC Bureau, 13-14 May 2008) [CDPC-BU \(2008\) 14,](#)

* Items marked with an asterisk indicate that discussions on this agenda item are likely to last or exceed 1 hour.

² Room G02 (with interpretation) will also be available for discussions whenever necessary during the meeting of the Plenary.

item 3

- *5 Violence against women, including domestic violence**
Feasibility of drafting a binding instrument to combat domestic violence
Working documents
 Feasibility study for a Convention against domestic violence [CDPC \(2007\) 09 rev](#)
 Opinion of the EG-TFV on the feasibility study [EG-TFV \(2008\) 2 final](#)
 Recommendation Rec(2002)5 on the protection of women against violence [Rec\(2002\)05](#)
 Summary meeting report (CDPC Bureau, 13-14 May 2008) [CDPC-BU \(2008\) 14](#),
 item 7
 Extract of the Summary meeting report (CDCJ Bureau, 7-8 April 2008) [CDCJ-BU \(2008\) 14](#)
 Comments from the German delegation [CDPC \(2008\) 12](#)
- *6. International co-operation in the criminal field**
- 6a. Initiatives to improve the efficiency of international co-operation in criminal matters:**
Simplified extradition and other normative measures
Working documents
 PC-OC-Mod Summary meeting report [PC-OC-Mod \(2008\) 03](#)
 PC-OC 54th Summary meeting report [PC-OC \(2008\) 16](#)
 Draft 3rd Additional Protocol to the European Convention on Extradition [PC-OC \(2008\) 05 rev2](#)
 Mutual Legal Assistance in computer-related cases [PC-OC \(2008\) 08](#)
- 6b. Practical measures**
- 6c. Approval of revised specific terms of reference for the Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)**
Working document
 Revised draft terms of reference of the PC-OC [CDPC-BU \(2008\) 12](#)
- 6d. Article 23 of the Convention on the Transfer of Sentenced Persons (CETS N°112)**
Information document
 Convention on the Transfer of Sentenced Persons [CETS No. 112](#)
- *7. Council of Europe Conferences of Ministers of Justice**
- 7a. Follow-up to the 28th Conference (25-26 October 2007, Lanzarote, Spain)**
Working document
 Resolution No. 1 on access to justice for migrants and asylum seekers [Resolution No. 1](#)
 Questionnaire on the relationship between asylum procedures and extradition procedures [PC-OC \(2008\) 13 rev](#)
 Information document on extradition-asylum [PC-OC \(2008\) 15](#)
 Resolution No. 2 on child-friendly justice [Resolution No. 2](#)
 Guidelines on child-friendly justice [CDPC \(2008\) 06](#)
 Summary meeting report (CDPC Bureau, 16-18 January 2008) [CDPC-BU \(2008\) 07](#),
 item 3
- 7b. Preparation of the 29th Conference (17-19 June 2009, Tromsø, Norway)**
Working document
 28th Conference - Resolution No. 3 [Resolution No. 3](#)
 Secretariat information note [CDPC \(2008\) 09](#)
 Summary meeting report (CDPC Bureau, 13-14 May 2008) [CDPC-BU \(2008\) 14](#),
 item 4b

- *8. Prisons**
Working documents
 PC-CP 56th Summary meeting report [PC-CP \(2007\) 08](#)
 PC-CP 57th Summary meeting report [PC-CP \(2008\) 01](#)
 PC-CP 58th Summary meeting report [PC-CP \(2008\) 06](#)
- 8a. Election of three PC-CP members**
Working document
 List of candidates [CDPC \(2008\) 05](#)
- 8b. Extension of the ad hoc terms of reference of the PC-CP relating to probation and aftercare services**
Working document
 Revised *ad hoc* terms of reference relating to probation and aftercare services [PC-CP \(2008\) 08 rev](#)
 Summary meeting report (CDPC Bureau, 13-14 May 2008) [CDPC-BU \(2008\) 14](#),
 item 10
- 8c. Current and future activities and priorities of the PC-CP**
Working document
 Current and future priorities and activities of the PC-CP [PC-CP \(2008\) 04 rev2](#)
 Summary meeting report (CDPC Bureau, 13-14 May 2008) [CDPC-BU \(2008\) 14](#),
 item 9
 Implementation of the European Prison Rules [CDPC \(2008\) 14](#)
- 8d. Approval of the revised draft terms of reference of the PC-CP**
Working document
 Revised draft terms of reference of the PC-CP [PC-CP \(2008\) 03 rev](#)
- 8e. Conference on probation and aftercare (Strasbourg, 27-28 November 2008)**
- 9. Approval of the revised draft terms of reference of MONEYVAL**
Working documents
 Revised draft terms of reference of MONEYVAL [MONEYVAL \(2008\) 11](#)
 MONEYVAL activity report 2007-2008 [rev](#)
[MONEYVAL \(2008\) 18](#)
- 10. Working methods of the CDPC and its Bureau**
Working document
 Working methods of the CDPC and its Bureau [CDPC \(2007\) 02 rev5](#)
- 11. Convention on cybercrime**
Working documents
 The Convention on cybercrime [CDPC \(2007\) 13](#)
 Cybercrime and the European Union [T-CY \(2007\) 02](#)
 Guidelines for the cooperation between law enforcement and internet service providers against cybercrime [Guidelines](#)
 Conclusions of the Octopus interface Conference on co-operation against cybercrime (1-2 April 2008) [Conclusions](#)
 T-CY Meeting report (3-4 April 2008) [T-CY \(2008\) 04](#)
 Note from the CDPC representative to T-CY [CDPC \(2008\) 13](#)
- 12. Activities of the Council of Europe outside the CDPC**
- **Parliamentary Assembly**
 - **Committee of Ministers**
 - **Steering Committees (CDCJ, CDDH, CDEG)**

- **Other Committees (CODEXTER, CEPEJ, CCPE)**

Opinion of the Consultative Council of European Prosecutors (CCPE)

Working documents

CCPE opinion N° 1 (2007) on “Ways of improving international co-operation in the criminal justice field” [CCPE \(2007\) 25](#)

CDPC comments and implementation of the Recommendations
Summary meeting report (CDPC Bureau, 16-18 January 2008)

[CDPC \(2008\) 18](#)
[CDPC-BU \(2008\) 07](#),
item 13

Summary meeting report (CDPC Bureau, 13-14 May 2008)

[CDPC-BU \(2008\) 14](#),
item 5

- **Conferences and other meetings**

- **Congress of Local and Regional Authorities**

13. Date of the next meeting of the CDPC

14. Any other business

APPENDIX III

Draft revised terms of reference of the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP)

Draft revised terms of reference of the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP)

1. **Name of Committee:** Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP)
2. **Type of Committee:** Ad hoc Advisory Group
3. **Source of terms of reference:** Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)

4. **Terms of reference:**

Having regard to:

- the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issue related to the security of citizens;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols;
- Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine, and its additional Protocols;
- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
- Resolution ResAP(2001)2 concerning the pharmacist's role in the framework of health security;
- the reply adopted by the Committee of Ministers on 6 April 2005 concerning Recommendation of the Parliamentary Assembly 1673 (2004) on "Counterfeiting: problems and solutions" and Recommendation 1794 (2007) on "The quality of medicines in Europe";
- the survey report on counterfeit medicines prepared by the Ad hoc Group on Counterfeit Medicines (P-SP-PH/CMED) under the aegis of the Partial Agreement in the Social and Public Health field and the conclusions of the Seminar on counterfeit medicines (2005);
- the Declaration on "Combating IPR piracy and counterfeiting", adopted by Heads of State and Government at the G8 Summit meeting, St. Petersburg on 16 July 2006;
- the International Conference "Europe against counterfeit medicines" (Moscow, 23-24 October 2006) and the declaration¹ adopted by its participants;
- the conclusions of the High-level Conference of the Ministries of Justice and of the Interior on "Improving European Co-operation in the Criminal Justice Field" (Moscow, 9-10 November 2006);
- the feasibility study prepared for the CDPC on counterfeit medicines and pharmaceutical crime and the report on prioritised elements for a Council of Europe Convention on the protection of public health against pharmaceutical and healthcare product crime;
- the binding and non-binding instruments of the Council of Europe in the fields of cybercrime, money laundering, search, seizure and confiscation of the proceeds from crime, mutual assistance in criminal matters, victims and other forms of international co-operation.

¹ http://www.coe.int/t/dc/press/News/20061107_fin_medicaments_en.asp

Under the authority of the European Committee on Crime Problems (CDPC), and in relation with the implementation of Project 2008/DG-HL/1432 “Monitoring the operation of conventions on co-operation in the criminal field” of the Programme of Activities, and bearing in mind the criteria developed in document CM(2006)101 final, the Group is instructed to:

i) prepare a report, in the light of the instructions given by the CDPC and the document CDPC-BU (2007) 12, focusing on the key elements, which could be included in a possible international binding legal instrument to fight crime concerning counterfeit pharmaceutical products. This report:

- should deal first with the criminal law aspects of counterfeit medicines and other medical products including the means to prevent such crime and to strengthen international co-operation;
 - should focus on conducts, which may jeopardise public health, and take account of existing national legislation in this field;
 - could indicate whether further provisions could be prepared to deal with specific issues concerning health care products;
 - should take full account of other work being carried out at an international level, in particular by the European Union and the World Health Organisation;
- ii) prepare a preliminary draft Convention against counterfeiting of medical products and similar crimes involving threats to public health, such as tampering with and adulteration of medical products (hereinafter the “preliminary draft Convention”) taking account of the instructions of the CDPC and the conclusions of the final report of the PC-S-CP on the key elements which could be included in a possible international legally binding instrument to fight crime concerning medical products. Such draft instrument should take due account of international and domestic law and practice where existing and applicable, existing legal gaps, as well as of the need to ensure compatibility and coherence between any new instrument and international, including Council of Europe instruments, and national legislation.

5. Composition of the Committee:

5.A Members

The Group shall be composed of 11 specialists in the field of counterfeiting of medical products and criminal law. The CDPC shall appoint one specialist who shall chair the Group. The Secretary General shall appoint the remaining specialists in consultation with the Chair of the CDPC. With this in mind, member states are invited to submit names of experts to the Secretary General, if they so wish.

The Council of Europe budget will bear the travel and subsistence expenses of the 11 above members of the Group.

5.B Participants

- i. The Parliamentary Assembly may send (a) representative(s) to meetings of the Group, without the right to vote and at the charge of its administrative budget.

5.C Other participants

- i. The European Commission, may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
- ii. The following intergovernmental organisations may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses:

- the World Health Organisation (WHO).

6. Working methods and structures:

The Group shall present its report at the next plenary meeting of the CDPC (2-6 June 2008) and finalise the preliminary draft Convention by 28 February 2009.

With a view to increasing transparency of the drafting process, the meetings of the Group aimed at preparing a preliminary draft Convention may, upon request, be enlarged, without defrayal of expenses, to representatives of member States.

The Bureau of the CDPC will follow closely the progress made and, if appropriate, give further instructions concerning the work of the Group.

Once the Bureau of the CDPC considers the preliminary draft Convention sufficiently advanced for consideration and finalisation by all member States, it shall seek the authorisation of the Committee of Ministers to convene a multidisciplinary Committee with the full participation all member States to negotiate the draft convention in 2009 under the aegis of the CDPC.

7. Duration:

These terms of reference will expire on 28 February 2009.

APPENDIX IV

Draft Terms of Reference of the Ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP)

Draft Terms of Reference of the Ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP)

1. **Name of Committee:** Ad hoc Committee on counterfeiting of medical products and similar crimes involving threats to public health (PC-ISP)
2. **Type of Committee:** Committee of Experts
3. **Source of terms of reference:** Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)
4. **Terms of reference:**

Having regard to:

- the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issue related to the security of citizens;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols;
- the Convention on the Elaboration of a European Pharmacopeia;
- Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine, and its additional Protocols;
- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
- Resolution ResAP(2001)2 concerning the pharmacist's role in the framework of health security;
- the reply adopted by the Committee of Ministers on 6 April 2005 concerning Recommendation of the Parliamentary Assembly 1673 (2004) on "Counterfeiting: problems and solutions" and Recommendation 1794 (2007) on "The quality of medicines in Europe";
- the survey report on counterfeit medicines prepared by the Ad hoc Group on Counterfeit Medicines (P-SP-PH/CMED) under the aegis of the Partial Agreement in the Social and Public Health field and the conclusions of the Seminar on counterfeit medicines (2005);
- the Declaration on "Combating IPR piracy and counterfeiting", adopted by Heads of State and Government at the G8 Summit meeting, St. Petersburg on 16 July 2006;
- the International Conference "Europe against counterfeit medicines" (Moscow, 23-24 October 2006) and the declaration¹ adopted by its participants;
- the conclusions of the High-level Conference of the Ministries of Justice and of the Interior on "Improving European Co-operation in the Criminal Justice Field" (Moscow, 9-10 November 2006);
- the feasibility study prepared for the CDPC on counterfeit medicines and pharmaceutical crime and the report on prioritised elements for a Council of Europe Convention on the protection of public health against pharmaceutical and healthcare product crime;
- the binding and non-binding instruments of the Council of Europe in the fields of cybercrime, money laundering, search, seizure and confiscation of the proceeds from crime, mutual assistance in criminal matters, victims and other forms of international co-operation;

¹ http://www.coe.int/t/dc/press/News/20061107_fin_medicaments_en.asp

- the report prepared for the CDPC by the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP) on the key elements which could be included in a possible international legally binding instrument to fight crime concerning counterfeit pharmaceutical products (document PC-S-CP (2008) fin – Report);
- the preliminary draft Convention against counterfeiting of medical products and similar crimes involving threats to public health, such as tampering with and adulteration of medical products prepared by the PC-S-CP.

Under the authority of the European Committee on Crime Problems (CDPC), and in relation with the implementation of Project 2008/DG-HL/1432 “Monitoring the operation of conventions on co-operation in the criminal field” of the Programme of Activities, and bearing in mind the criteria developed in document CM(2006)101 final, the Committee is instructed to:

- negotiate and finalise a Council of Europe Convention against counterfeiting of medical products and similar crimes involving threats to public health, such as tampering with and adulteration of medical products.

When preparing this Convention, the Committee shall:

- consider that counterfeiting of medical products and similar crimes involving threats to public health are becoming a growing international problem, threatening public health and undermining the right to life enshrined in Article 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms;
- bear in mind that the objective of a future Convention should be focused on protecting the public health by defining to that end constitutive elements of criminal offences related to the counterfeiting of medical products and similar crimes involving threats to public health and sanctions corresponding to those offences, taking into account the member States’ legal systems and legal traditions and without prejudice to the need of protecting intellectual property rights;
- work towards a Council of Europe Convention that would be a significant contribution to the fight against counterfeiting and trafficking of counterfeit pharmaceutical products, and could have a worldwide impact by enabling non-Member States of the Council of Europe to become Parties to this Convention;
- focus the Convention to cover medical products, including medicinal products and medical devices, for human and veterinary use;
- put a specific focus on rights of victims of counterfeit medical products and similar crimes involving threats to public health bearing in mind the principles laid down in Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims;
- define a monitoring mechanism to ensure compliance of States Parties with the provisions of the Convention which target crime with an impact on public health and the sphere of healthcare;
- take into account the standards of the Council of Europe in the fields of human rights, criminal law and judicial co-operation which are specific to these offences, in particular on the basis of existing legal instruments in the sphere of public health protection, healthcare and the quality of medicines, such as the Convention on the Elaboration of a European Pharmacopoeia (ETS No. 50), and those instruments dealing with other serious forms of crime which are related to it such as the conventions on cybercrime, on money laundering, search, seizure and confiscation of the proceeds from crime, on mutual assistance in criminal matters, on compensation of victims and other instruments of international co-operation;
- consider the previous and current work carried out in the field of counterfeiting and in particular

counterfeiting of medicines by the World Health Organisation, the European Union and the previous work of the Council of Europe in this area, including the Parliamentary Assembly of the Council of Europe and the previous and current work carried out by the European Committee on Pharmaceuticals and Pharmaceutical care (CD-P-PH) under the aegis of the European Directorate for the Quality of Medicines and HealthCare (EDQM) and the former Public Health Committee (CD-P-SP) under the aegis of the Partial Agreement in the Social and Public Health Field.

5. Composition of the Committee:

5.A Members

Governments of member states are entitled to appoint representatives of the highest possible rank and with the following qualifications: senior national officials with an extensive knowledge or expertise in criminal law, in particular pharmaceutical crime, and/or pharmaceutical and healthcare products regulatory matters.

The Council of Europe budget will bear the travel and subsistence expenses of one representative from each member state.

Governments of member states are invited to appoint their representatives bearing in mind Recommendation N° R (81) 6 of the Committee of Ministers of the Council of Europe on the participation of women and men in an equitable proportion in committees and other bodies set up in the Council of Europe. It is recalled in this connection that governments, entitled to appoint representatives, have the option of sending, at their own expenses, one or more additional representatives to sit on Council of Europe committees.

5.B Participants

- i. The following Committees may each send one representative to meetings of the Committee, without the right to vote and at the charge of the corresponding CoE budget sub-heads:
 - The European Committee on Crime Problems (CDPC);
 - The European Committee on Pharmaceuticals and Pharmaceutical care (CD-P-PH);
 - The Steering Committee on Bioethics (CDBI).
- ii. The Parliamentary Assembly may send representatives to meetings of the Committee, without the right to vote and at the charge of its administrative budget;
- iii. The European Pharmacopoeia Commission may send representatives to meetings of the Committee, without the right to vote and at the charge of its administrative budget.

5.C Other participants

- i. The European Commission and the Council of the European Union may send representatives to meetings of the Committee without the right to vote or defrayal of expenses.
- ii. The states with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send one representative to meetings of the Committee without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send one representative to meetings of the Committee without the right to vote or defrayal of expenses:
 - The World Health Organisation (WHO);
 - The Organisation for Security and Cooperation in Europe (OSCE);
 - The Organisation for Economic Co-operation and Development (OECD);
 - The United Nations Office on Drugs and Crime (UNODC);
 - The International Narcotics Control Board (INCB);

- Interpol;
- Europol;
- European Patent Office (EPO);
- The World Customs Organization (WCO);
- The Network of Official Medicines Control Laboratories (OMCL).

6. Working Methods and Structures:

In line with the interdisciplinary approach to the issue of counterfeiting of medical products and similar crimes involving threats to public health set out in these terms of reference, the Committee should be assisted by a joint Secretariat composed of staff of the Directorate General of Human Rights and Legal Affairs (DG-HL) and of the European Directorate for the Quality of Healthcare (EDQM).

The Committee will be assisted by three scientific experts in the fields of criminal law and pharmaceutical and healthcare products regulatory matters to be nominated by the Secretary General, without the right to vote but with defrayal of expenses of the budget envelope allocated to this Committee.

In the framework of its terms of reference and within the limits of its budgetary attributions, the Committee may have recourse to consultant experts. It shall have the possibility to have whatever contacts and consultations with organisations or professionals and others that it deems necessary for the implementation of its terms of reference, in particular through hearings or written consultations.

Other steering committees may be consulted at an appropriate stage of the drafting of the Convention.

7. Duration:

These terms of reference will expire on 31 December 2009.

APPENDIX V

Extension of the *ad hoc* terms of reference of the Council for Penological Co-operation relating to probation and aftercare services in the European criminal justice systems¹

1. **Name of Committee:** Council for Penological Co-operation (PC-CP)
2. **Type of Committee:** Ad hoc Advisory Group
3. **Source of terms of reference:** Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)

4. **Terms of reference:**

Having regard to:

- the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issue related to the security of citizens;
- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
- and based on the Council of Europe's and other international standards and having regard to the latest developments in the field of probation and aftercare in Europe;

Under the authority of the European Committee on Crime Problems (CDPC), and in relation with the implementation of Project 2008/DG-HL/1430 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment" of the Programme of Activities, the PC-CP is entrusted, in conformity with paragraph v. of its terms of reference (see the PC-CP's attached terms of reference)² to:

- i. Address the issue of probation and aftercare services in Europe and the development of their tasks and structures. It should consider more specifically the following aspects:
 - legal systems and structure of probation and aftercare services in the Council of Europe member states;
 - tasks of the services at the pre-sentencing phase of the criminal procedure;
 - tasks of probation services in diverting accused persons from prosecution;
 - provision of supervision, help and assistance to the offender at every stage of the criminal proceedings, as well as during his or her deprivation of liberty and after release;
 - work with specific groups of offenders (serious, violent or persistent offenders, foreigners, ethnic and linguistic minorities; women; sex offenders, elderly offenders);
 - work with victims and with the families of the offenders;
 - aftercare and the carrying out of community sanctions and measures;

¹ Adopted by the Committee of Ministers at the 1006th meeting of the Ministers' Deputies on 10 October 2007

² As adopted by the Committee of Ministers at its 967th meeting (14 June 2006).

- selection, recruitment and training of staff;
 - relations with the judiciary, social service centres, victim support agencies, police, health services and penitentiary institutions, private companies, volunteers and local communities, religious and charitable organisations in planning and managing probation work (including questions relating to sharing of information and professional secrecy);
 - scientific research and evidence based evaluation, multi-agency risk assessment panels;
 - work with the media and the general public.
- ii. draft a recommendation on the role and place of probation and aftercare in Europe and its explanatory memorandum.

5. Composition of the Committee:

The ad hoc terms of reference will be implemented by the PC-CP.

6. Working methods and structures:

- a. In its work, the PC-CP will need the assistance of two scientific experts with specific knowledge of relevant legislation and legal practice, of international norms and conventions relating to probation and aftercare, as well as of recent developments in research and practice on probation in the different member states.
- b. The PC-CP will work in close consultation with the CDPC and its Bureau and will report to the CDPC at its plenary sessions on the state of its work so that full account is taken of possible views expressed by the CDPC delegations on the texts drafted before their approval by the CDPC.

7. Duration:

These terms of reference will expire on 30 September 2009.

APPENDIX VI

Revised terms of reference of the Committee of Experts on the operation of European conventions in the penal field (PC-OC)

Terms of reference of the Committee of Experts on the operation of European conventions in the penal field (PC-OC)

1. Name of Committee: Committee of Experts on the operation of European conventions on co-operation in criminal matters (PC-OC)
2. Type of Committee: Committee of Experts
3. Source of terms of reference: Committee of Ministers, on the suggestion of the European Committee of Crime Problems (CDPC)

4. Terms of reference:

Under the authority of the European Committee of Crime Problems (CDPC), and in relation with the implementation of Project 2008/DG-HL/1432 "Monitoring the operation of conventions on co-operation in the criminal field" of the Programme of Activities, the Committee is instructed to:

- i. monitor the operation of the Conventions on international co-operation in criminal matters with a view to facilitating their practical implementation;¹
- ii. consider various steps and initiatives to improve the efficiency of international co-operation in criminal matters This would be carried out in particular through various measures to improve practical co-operation and, in conformity with instructions given by the CDPC,² through the development of normative texts;
- iii. follow developments in other international frameworks (e.g. United Nations, European Union) in the fields covered by these conventions and, where appropriate, propose measures likely to ensure their conformity with such developments;
- iv. follow the application of the European Convention on Human Rights with regard to international co-operation in criminal matters.

5. Composition of the Committee:

5.A Members

Governments of member states are entitled to appoint representatives in the field of criminal law and with the following qualifications: experience and/or expertise in the field of international co-operation in criminal matters.

The Council of Europe budget will bear the travel and subsistence expenses of one representative

¹ These Conventions include ETS No. 24 (extradition, and Protocols ETS Nos 86 and 98), 30 (mutual legal assistance and Protocols ETS Nos 99 and 182), 51 (supervision of sentence), 52 (road traffic offences), 70 (validity of criminal judgments), 73 (transfer of criminal proceedings), 88 (deprivation of right to drive), 97 (information on foreign law), 101 (possession of firearms), 112 (transfer of sentenced persons and its Protocol ETS No. 167), 116 (compensation of crime victims), 156 (illicit traffic by sea).

² On the basis of the elements presented, notably, in the following documents: Proposals of the PC-OC concerning normative and practical measures to improve the operation of relevant conventions (PC-OC (2008) 05 and 06), approved by the CDPC at its 56th Plenary Session (CDPC (2007) 23).

from each member state (two in the case of the state whose representative has been elected Chair).

5.B. Participants

The following committees may each send a representative to meetings of the Committee, without the right to vote and at the charge of the corresponding Council of Europe budget sub-heads:

- the Steering Committee for Human Rights (CDDH);
- the Consultative Council of European Prosecutors (CCPE);
- the European Commission for the Efficiency of Justice (CEPEJ).

5.C Other participants

- i. The European Commission and the Council of the European Union may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. The states with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:
 - United Nations Office for Drugs and Crime (UNODC);
 - United Nations Interregional Crime and Justice Research Institute (UNICRI);
 - Office of the United Nations High Commissioner for Human Rights (OHCHR);
 - International Criminal Court (ICC);
 - International Criminal Tribunal for the former Yugoslavia (ICTY).

5.D Observers

The following non-member state may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- Israel.

6. Working methods and structures:

The Committee may have recourse to consultants or scientific experts. It can organise hearings or exchanges of views with external experts/personalities.

The Bureau of the Committee is composed of the Chair and the Vice-Chair. The Chair and the Vice-Chair are elected for a term of one year. The terms of the Chair and of the Vice-Chair are renewable once.

The Committee may entrust a limited group of members to elaborate steps and initiatives to improve the efficiency of international co-operation in criminal matters mentioned under 4.ii. above. It would be composed of a maximum of nine members.

7. Duration:

These terms of reference will expire on 31 December 2010.

APPENDIX VII

Revised terms of reference of the Council for penological co-operation (PC-CP)¹

TERMS OF REFERENCE OF THE COUNCIL FOR PENOLOGICAL CO-OPERATION (PC-CP)²

1. Name of committee: Council for Penological Co-operation (PC-CP)
2. Type of committee: Ad hoc Advisory Group
3. Source of terms of reference: Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)
4. Terms of reference:

Having regard to:

 - Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
 - The Declaration and Action Plan adopted by the third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issues related to the promotion of common fundamental values: human rights, rule of law and democracy as well as the security of citizens;
 - the Council of Europe conventions and their protocols as well as to the recommendations of the Committee of Ministers in the penal field³;
 - the relevant case-law of the European Court of Human Rights;
 - the standards developed by the Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (CPT);
 - the work of the Commissioner for Human Rights; and
 - the relevant recommendations of the Parliamentary Assembly⁴;

¹ Adopted: see CM/Del/Concl(87)410/35(10) and CM(87)167, Addendum V
 Revised: see CM(91)118, item I.B.9 and CM/Del/Concl(91)461/20a(9)
 see CM/Del/Dec(94)516/10.4 and CM(94)112, item 3
 see CM/Del/Dec(94)523, item 11.3
 see CM/Del/Dec(95)551, item 11.2 (first part) concl10
 see also CM/Del/Dec(96)572, item 10.1 and CM(96)99, Appendix VII
 see CM/Del/Dec(97)600, item 10.2a and Appendix 18 (Appendix 19 for the revised rules of procedure)
 see CM/Del/Dec(2006)967, item 10.3

² Adopted: see CM/Del/Concl(87)410/35(10) and CM(87)167, Addendum V
 Revised: see CM(91)118, item I.B.9 and CM/Del/Concl(91)461/20a(9)
 see CM/Del/Dec(94)516/10.4 and CM(94)112, item 3
 see CM/Del/Dec(94)523, item 11.3
 see CM/Del/Dec(95)551, item 11.2 (first part) concl10
 see also CM/Del/Dec(96)572, item 10.1 and CM(96)99, Appendix VII
 see CM/Del/Dec(97)600, item 10.2a and Appendix 18 (Appendix 19 for the revised rules of procedure)
 see CM/Del/Dec(2006)967, item 10.3

³European Treaty Series of the relevant conventions: 24, 30, 51, 82, 86, 98, 99, 112, 126, 167, and 182. Reference number of the relevant recommendations: R (82) 16; R (82) 17; Rec. R (84) 11; R (84) 12; R (88) 13; R (89) 12; R (92) 16; R (93)6; R (97) 12; R (98) 7; R (99) 19; R (99) 22; Rec (2000) 22; Rec (2003) 22; Rec(2003) 23; Rec(2006)2 and Rec(2006)13.

⁴ *Inter alia* Rec 1257 (1995); Rec 1469 (2000); Rec 1656 (2004) and Rec 1747 (2006)

Under the authority of the CDPC and in relation with the implementation of Project 2008/DG-HL/1430 “Criminal law and penal sanctions – prison systems and alternatives to imprisonment” of the Programme of Activities, the PC-CP is instructed to:

- i. follow the development of European prison systems and of the services concerned with the implementation of community sanctions and measures;
- ii. examine the functioning and implementation of the European Prison Rules and the European Rules on community sanctions and measures as well as of other relevant Committee of Ministers recommendations, and make proposals for improving their practical application;
- iii. make proposals to the CDPC for revision of existing legal instruments and other legal acts in the penal field with a view to achieving coherence and comprehensiveness of the standards in the area;
- iv. re-examine on a regular basis the European Prison Rules and to propose to the CDPC their updating if necessary, as detailed in its rules of procedure;
- v. prepare new draft legal instruments and reports on penological matters on the basis of ad-hoc terms of reference;
- vi. formulate opinions on penological matters at the request of the CDPC and of member states;
- vii. While taking account of the progress of its on-going work, prepare, under its responsibility and within its field of competence, proposals to the CDPC for the programme of activities for the coming years;
- viii. prepare the Conferences of Directors of Prison Administration (CDAP) and choose rapporteurs;
- ix. provide guidance with regard to the collection and publication of the annual penal statistics of the Council of Europe SPACE I and SPACE II.

5. Composition of the Committee:

5.A. Members

The PC-CP shall be composed of 9 members, elected by the CDPC, with the following desirable qualifications: high-level representatives of prison administrations and/or of services entrusted with the implementation of community sanctions and measures; researchers or other experts having a thorough knowledge of penological questions.

The Council of Europe budget will bear their travel and subsistence expenses.

5.B. Participants

The following bodies may each send a representative to meetings of the PC-CP, without the right to vote and at the charge of the corresponding CoE budget sub-heads:

- European Committee on Crime Problems (CDPC)
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- the Commissioner for Human Rights
- the Parliamentary Assembly

5.C Other participants

- i. The European Commission and the Council of the European Union may send representatives to meetings of the PC-CP without the right to vote or defrayal of expenses.

ii. The following intergovernmental organisations may send representatives to meetings of the Committee without the right to vote or defrayal of expenses:

- United Nations Committee against Torture (CAT)
- United Nations Children's Fund (UNICEF)

5.D. Observers

The following non-governmental organisations may send a representative to meetings of the PC-CP without the right to vote or defrayal of expenses:

- Conférence Permanente Européenne de la Probation (CEP);
- International Centre for Prison Studies ;
- International Association of Juvenile and Family Court Magistrates (IAJFCM)

6. Working Methods and Structures

The term of office of the Chair of the PC-CP is three years, as specified in its own rules of procedure⁵.

In its work the PC-CP shall be assisted by three scientific experts with specific knowledge of relevant legislation and legal practice, of international norms and conventions relating to penitentiary issues and community sanctions and measures, as well as of the European Convention on Human Rights and its case law and of recent developments in research and practice in the different European member states.

The Council of Europe budget will bear the travel and subsistence expenses of the scientific experts.

The PC-CP may organise, within its available budgetary resources, hearings or written exchange of views with external experts.

The PC-CP may appoint one or more drafting committees, and may entrust specific tasks to a limited number of members of the committee.

7. Duration

These terms of reference will expire on 31 December 2010.

* * * * *

RULES OF PROCEDURE OF THE COUNCIL FOR PENOLOGICAL CO-OPERATION (PC-CP)

Article 1

1. The Council for Penological Co-operation (PC-CP), hereafter referred to as "the Penological Council", set up by the Committee of Ministers of the Council of Europe at the 321st meeting of their Deputies in June 1980⁶, acts as an advisory body to the European Committee on Crime Problems (CDPC).

⁵ As adopted by the Committee of Ministers at their 335th meeting (June 1981) and revised at the 600th meeting of their Deputies (September 1997), and further revised at the 967th meeting (14 June 2006) which constitutes a dispensation from Article 12.e of Appendix 1 of Resolution Res(2005)47

⁶ Then called "Committee for Co-operation in Prison Affairs (PC-R-CP)".

2. The Penological Council gives advice, collects information, prepares draft legal instruments and reports on the basis of ad-hoc terms of reference or other instructions and makes suggestions with a view to preparing and implementing the penological work programme of the CDPC.
3. The PC-CP makes proposals to the CDPC for revision of existing legal instruments and other legal acts in the penal field with a view of achieving coherence and comprehensiveness of the standards in the area. It has a special responsibility to re-examine the European Prison Rules every five years, or more frequently if ECHR case law or CPT reports so require. When necessary it will update the European Prison Rules taking into account the instructions of the CDPC.
4. The Chairperson of the Penological Council shall attend plenary sessions of the CDPC and CDPC Bureau meetings when the work programme and matters of penological interest are discussed.

Article 2

1. The Penological Council shall be composed of nine members, who shall be high-level representatives of prison administrations and of services entrusted with the implementation of community sanctions and measures and/or researchers or other experts having a thorough knowledge of penological questions.
2. Candidates for membership of the Penological Council shall be proposed by national delegations to the CDPC, the Secretary General and members of the Penological Council.
3. The members of the Penological Council shall be elected for a term of 5 years by the CDPC at its plenary sessions from a list of candidates drawn up in accordance with paragraph 2 above. When electing these members, the CDPC shall take into account their qualifications and the desirability of giving preference to candidates whose professional obligations and linguistic abilities permit them to take a full and active part in the work of the Penological Council.
4. No two members may be nationals of the same State.
5. A newly elected member shall not be of the same nationality as one of the outgoing members.
6. Any member who fails to attend three consecutive meetings shall be regarded as having resigned and shall be replaced in accordance with paragraphs 2-5 of this article.

Article 3

1. The Penological Council shall elect its Chairperson, by majority ballot, for a three-year term of office.
2. The provisions of Article 2 paragraph 3 shall not apply to the Chairperson during his/her three-year term.
3. If the Chairperson is temporarily prevented from carrying out his/her duties he/she shall be replaced by the most senior member according to the date of his/her election or, if there are more than one, according to age.
4. If the Chairperson resigns, the most senior member according to election shall perform the duties of Chairperson until the Penological Council, at the meeting following the resignation, elects a new Chairperson for a three-year term of office.

Article 4

1. Meetings of the Penological Council shall be convened by the Secretary General of the Council of Europe.

2. The draft agenda of each meeting shall be drawn up by the Secretary General and shall be transmitted to the members together with the letter of convocation.
3. The agenda shall be adopted by the Penological Council at the beginning of the meeting.

Article 5

The present Rules may be amended by the Committee of Ministers at the request of the CDPC.

APPENDIX VIII

Draft revised terms of reference of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

1. **Name of Committee:** Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)
2. **Type of Committee:** Committee of Experts
3. **Source of terms of reference:** Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)
4. **Terms of reference:**

Having regard to:

- the Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government (Warsaw, 16-17 May 2005), and particularly to the Heading II.2 of the Action Plan;
- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
- the importance of the fight against money laundering and terrorist financing and other forms of serious crime, for the purpose of which the Council of Europe has adopted a variety of instruments, in particular the 1990 Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime (ETS No.141), and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (CETS No.198);
- the status of the Council of Europe/MONEYVAL since June 2006 as an Associate Member of the Financial Action Task Force on Money Laundering (FATF).

Under the authority of the European Committee on Crime Problems (CDPC), and in relation with the implementation of Project 2004/DG1/78 (which will subsequently become 2008/DG6HL/1431) "Anti-money laundering measure evaluation programme (MONEYVAL)" of the Programme of Activities, and bearing in mind the criteria set out in the document CM(2006)101 final, the Committee is instructed to:

Taking into account the procedures and practices used by the FATF, the IMF and the World Bank:

- i. elaborate appropriate documentation, including questionnaires for self- and mutual evaluations;
- ii. evaluate, by means of self- and/or mutual evaluation questionnaires (and/or other documentation agreed between MONEYVAL, the FATF and the IMF/World Bank representing a common AML/CFT methodology) and periodic on-site visits, the performance of those member states of the Council of Europe which are not members of the FATF¹ (subject to paragraph 5(A)ii below)² in complying with the relevant

¹ Council of Europe member states members of the FATF: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Russian Federation, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

international anti-money laundering and countering terrorist financing standards, as contained in the recommendations of the FATF, including the Special Recommendations on Financing of Terrorism and Terrorist Acts and related Money Laundering, the 1988 United Nations Convention on illicit traffic in narcotic drugs and psychotropic substances, the United Nations Convention against Transnational Organised Crime, the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and the relevant implementing measures and the 1990 Convention on laundering, search, seizure and confiscation of the proceeds from crime, concluded within the Council of Europe, and, where necessary, provide assistance, upon request, to enable them to comply with the recommendations;

- iii. evaluate, by means of questionnaires (and/or other documentation agreed between MONEYVAL and the FATF and the IMF/World Bank representing a common AML/CFT methodology) and periodic on-site visits, the performance of those applicant states for membership of the Council of Europe which are not members of the FATF in complying with the international anti-money laundering and countering terrorist financing standards enumerated in the paragraph above, provided the following requirements are met: the applicant state must make the request in writing; the request must be accepted by the Committee of Ministers; the applicant state must undertake in its request to participate fully in the evaluation procedure and comply with the results and recommendations formulated by the MONEYVAL; and the applicant state must contribute to the cost of the evaluation procedure;
- iv. evaluate, by means of questionnaires (and/or other documentation agreed between MONEYVAL, the FATF and the IMF/World Bank representing a common AML/CFT methodology) and periodic on-site visits, the performance of the state of Israel, a non-member state of the Council of Europe, which has observer status with MONEYVAL and participates in the MONEYVAL mutual evaluation process. The participation of Israel in the mutual evaluation process implies that (a) it participates fully in the evaluation procedure and complies with the results and recommendations formulated by MONEYVAL and (b) it contributes to the cost of the evaluation procedure;
- v. adopt reports on each evaluated country's situation as to:
 - the features and magnitude of money laundering, including typologies;
 - the efficiency of measures taken to combat money laundering and terrorist financing in the legislative, financial regulatory, law enforcement and judicial sectors;
- vi. where appropriate, make recommendations to the evaluated countries, with a view to improving the efficiency of their anti-money laundering and countering terrorist financing measures and to furthering international co-operation;
- vii. submit to the CDPC an annual summary of its activities and any recommendations it deems appropriate with a view to furthering the adoption or implementation of anti-money laundering measures.

5. Composition of the Committee:

5.A Members

- i. Governments of the following Council of Europe member states, not members of the FATF

² Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia" and Ukraine. See also 5.A.ii. below.

(subject to paragraph 5.A.ii below): Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, “the former Yugoslav Republic of Macedonia” and Ukraine are, each, entitled to appoint three experts in the anti-money laundering and the financing of terrorism field and with the following desirable qualifications: senior officials and experts with responsibility for regulation or supervision of financial institutions, senior members of financial intelligence units, law enforcement or judicial bodies, with particular knowledge of questions related to money laundering, including national and international anti-money laundering instruments, (e.g. FATF recommendations).

- ii. Government of any Council of Europe member state referred to under 5A. i. above which has become a member of the FATF and thus would, save for this paragraph, cease to be a member of MONEYVAL, but decides to remain a member of the latter as well, is entitled to appoint three experts in the same field and with the same qualifications, as mentioned above in paragraph 5.A.i.. Such a state may also agree to submit to the evaluation process of MONEYVAL;
- iii. The Presidency of the Financial Action Task Force (FATF) is entitled to appoint two experts from FATF countries for two-year periods.

The Council of Europe’s budget³ bears the travel and subsistence expenses of three experts from each of the member states mentioned under 5.A.i. and 5.A.ii. These member states may send additional experts at their own expense.

5.B. Participants

- i. The European Committee on Crime Problems (CDPC) may send one representative to meetings of the Committee, without the right to vote and at the charge of its administrative budget.

5.C Other participants

- i. The European Commission and the Secretariat General of the Council of the European Union may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. The following observer states with the Council of Europe may send a representative, without the right to vote or defrayal of expenses to meetings of the Committee:

- Canada;
- Holy See;
- Japan;
- Mexico;
- United States of America.

5.D Observers

- i. The following intergovernmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:
 - Secretariat of the Financial Action Task Force on Money Laundering (FATF);
 - ICPO-Interpol;
 - Commonwealth Secretariat;
 - International Monetary Fund (IMF);
 - United Nations Drug Control Programme (UNDCP);

³ A Special Account has been opened for that purpose.

- United Nations Counter-Terrorism Committee (CTC);
- United Nations Crime Prevention and Criminal Justice Division;
- World Bank;
- European Bank of Reconstruction and Development (EBRD);
- Offshore Group of Banking Supervisors (OGBS);
- Organisation for Security and Co-operation in Europe (OSCE)
- Egmont Group;
- Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG);
- Any other Financial Action Task Force Style Regional Body which is, or becomes, an Associate Member of the FATF on the basis of reciprocity.

5.E Other observers

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

- Members of the FATF other than those referred to in 5.A.ii;
- Israel.

6. Working methods and structures:

The term of office of the Chairman and Vice-Chairman shall be two years. It may be renewed once.⁴

The Committee may elect a Bureau to facilitate its discussions and adopt internal rules of procedure.

It will work with the assistance of four scientific experts, appointed by the Secretary General.

The Council of Europe's budget bears their travel and subsistence expenses.

7. Duration:

These terms of reference will expire on 31 December 2010.

Adopted: see CM/Del/Dec(97)600, item 10.2a and Appendix 17
Extended: see CM/Del/Dec(99)679, item 10.4a
Revised: see CM/Del/Dec(99)690, item 10.1 and CM(99)158 item 3 and Appendix II
see CM/Del/Dec(2002)794, item 10.2, CM(2002)47 item 4, Appendix IV
see CM/Del/Dec(2003)853, item 10.1aF.
see CM/Del/Dec(2007)1006, item 10.2c, Appendix III

⁴ In derogation of Article 12.e of Appendix 1 to Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods (see also decision of the Committee of Ministers at their 924th meeting on 20 April 2005).

APPENDIX IX

Feasibility Study for a convention against domestic violence

Document prepared for the Directorate General
of Human Rights and Legal Affairs by

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 - 4.8 Monitoring mechanism**

Introduction

Domestic violence constitutes a profound attack on individual victims, but also on society. It violates a central value which is of great concern to the Council of Europe: promoting safety and security in the community at large. If the well-being and physical integrity of a large number of fellow citizens is chronically and structurally endangered in their home and family – the very place where they should be able to expect safety and security – then society has a serious problem. Violence in intimate relations is severely disruptive and exacts a high price, both in a material sense and in a non-material and moral sense. It is therefore crucial that measures be taken to curb domestic violence and to address its consequences when it occurs. This report assesses whether a Council of Europe convention on domestic violence would be a viable measure at the current point in time.

The first chapter deals with several aspects of the phenomenon of domestic violence which are central to its understanding. The focus is on the specific characteristics of *domestic* violence, as distinguished from other, more general forms of violent victimisation as well as from violence against women in general.

A number of initiatives and instruments have been developed both nationally and internationally to tackle violence against women, some of which touch on domestic violence either directly or indirectly. In our second chapter, we briefly address the most significant and relevant accomplishments so far, both international ones (2.1) and national ones within Council of Europe member states (2.2).

In the third chapter, we reflect on two issues: the *need* for an international legal instrument to combat domestic violence (3.1) and the *potential* of the Council of Europe for creating such an instrument (3.2).

The final chapter highlights the major issues that must be considered in drafting a future, legally binding instrument. After identifying some important basic requirements (4.1), we focus on the purpose and scope of a convention on domestic violence (4.2), prevention measures (4.3), substantive criminal law (4.4), civil law (4.5), the protection of victims (4.6), investigation, prosecution and procedural law (4.7) and a monitoring mechanism (4.8).

Our study weighs the available information to determine whether an international legal instrument is necessary and feasible, and whether its implementation will help to combat domestic violence through national and international means. We conclude that the effort to curb domestic violence would benefit from a comprehensive form of international legislation encompassing both criminal and non-criminal dimensions and solutions. It would serve as a general framework and reference point for the Council of Europe member states.

1. The phenomenon of domestic violence: background information

1.1 Aspects of victim-perpetrator relationships and the scope of the problem

Child abuse, elderly abuse, interpersonal or partner abuse

In a literal sense, domestic violence refers conceptually to violence taking place in the home. It thus includes various forms of violent behaviour as perpetrated against different categories of victims. It can involve violence by parents or caretakers against children (child abuse and neglect, sexual abuse and exploitation), violence by children against parents or grandparents (elder abuse) and violence between partners (interpersonal violence or IPV). This means we have to clearly determine the definition and scope of the domestic violence concept as employed in this feasibility report before we examine the scope of any legal instrument such as a convention.

The social and psychological dynamics underlying the various forms of violence are very different, especially in terms of the psychological and material dependencies between victims and perpetrators. The power differentials that prevail in abusive relationships between parents and children, between partners, and between ex-partners are profoundly dissimilar, and so are the ways these relate to wider forms of socially embedded power, abuse and exploitation of women, children or elderly people. This severely complicates any commonalities in private family settings that can be identified with respect to child abuse, elder abuse, and abuse between partners or ex-partners.

Most importantly, the violence differs in relation to gender. Physical and psychological violence against *children* or against *parents* or *grandparents* in the home has no clear correlation with gender. In other words, domestic violence directed at victims of a different generation – against children, parents or grandparents – victimises both genders, and it is perpetrated more or less to an equal degree by fathers and mothers, by sons and daughters, or by stepparents or stepchildren of either gender.

Domestic violence between *adults*, in contrast, is distinctly gendered. It disproportionately victimises women more than men, whilst men are overrepresented as perpetrators. It is also strongly related to socially determined power differentials between men and women. Although the debate resurfaces now and then about the reliability of prevalence data on women's physical abuse of male partners, the leading researchers and policymakers increasingly agree that such violence, however prevalent, is far *less serious* on average than partner violence against women.¹ Equally if not more important, violent abuse of men by a female partner is not known to continue *systematically* after separation, in contrast to partner violence against women. A substantial proportion of the latter (stalking or outright physical violence by the ex-partner) is perpetrated during separation and continues thereafter, particularly when the break was initiated by the victim. That period also carries the highest risk of *lethal* violence for the (female) victim, and to a lesser extent for the male perpetrator as well.² It is the *gendered nature* of partner-related violence that distinguishes domestic violence from violent crime in general as well as from other types of violence in the home.

The defining *relational* characteristic of domestic violence lies in the *intimacy and/or dependency between the victim and the perpetrator in the private domain*. Clearly there are essential characteristics shared between child abuse, elder abuse and intimate personal violence. However, the distinctions in the nature of the violence and the relational and gender dynamics that underlie it have far-reaching implications for the types of interventions, both penal and non-penal, that are needed to effectively protect victims, punish perpetrators and carry out preventative measures. If a broad definition of domestic violence is used, the coherence of the necessary

¹ For an overview of data from recent international surveys, see the following reports: Schröttele, M., Martinez, M. et al. (2006), *Comparative reanalysis of prevalence of violence against women and health impact data in Europe - obstacles and possible solutions. Testing a comparative approach on selected studies*. [http://www.cahrv.uni-osnabrueck.de/reddot/CAHRVreportPrevalence\(1\).pdf](http://www.cahrv.uni-osnabrueck.de/reddot/CAHRVreportPrevalence(1).pdf) Also, Römkens, R, J. van Poppel et al. (2006), *Preliminary study on domestic violence in the Netherlands. Literature review of research methods and findings on prevalence, determinants, consequences and help-seeking behaviour*. http://www.emancipatieweb.nl/uploads/2221/Translation_total_small.pdf. Sundaram V., Curtis T., Helweg-Larsen K., Bjerregaard P. (2003), Can we compare violence data across countries? *Circumpolar Health*, pp. 389-396. http://ijch.oulu.fi/issues/63suppl2/ICCH12_Sundaram.pdf. The World Health Organization estimates that about 30% of the female population is victimised by domestic violence. See García-Moreno, C., Henrica A.F.M. Jansen, Mary Ellsberg, Lori Heise, Charlotte Watts (2005), *WHO multi-country study on women's health and domestic violence against women: Initial results on prevalence, health outcomes and women's responses*. Geneva: World Health Organization.

² Walby, S., Allen, J., (2004). *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey. Home Office Research Study 276*. London: Home Office Research, Development and Statistics Directorate.

measures comes under pressure. The Council of Europe has already decided to separately address the sexual abuse and exploitation of children.³ The relevant documents leading up to the present feasibility study⁴ have focused on domestic violence defined as the abuse of partners and ex-partners. Yet it is also important to underline that children who grow up in a violent environment obviously suffer from harmful effects on their emotional, cognitive and social development. Curbing domestic violence will therefore have a preventative impact on the next generation.

Domestic interpersonal violence cannot be considered to be predominantly a problem of heterosexual or married couples. The extent to which intimate violence is reported by teenagers and young women shows that marital status, or even cohabitation, are not essential conditions for violence between partners.⁵

To date there are no reliable (i.e. population-based and generalisable) statistics available on the prevalence of domestic violence – in terms of interpersonal violence between partners or ex-partners – among same-sex couples. Qualitative data indicate that violence in gay or lesbian relationships is not exceptional.⁶ The question is whether this can be labelled as gender-based violence which is related to wider, socially based power differentials between the partners involved. The issue of domestic violence in homosexual relationships raises the interesting question of how closely gender and gender dynamics are indeed related to sex differences. Further research is needed on this form of domestic violence to find out what kinds of measures are necessary and feasible.

For all these reasons, the focus in the present study is on domestic violence defined as interpersonal partner- or ex-partner-related violence in male-female relationships. Since a comprehensive approach is needed that includes measures directed at perpetrators as well as at victims, it is important to include both men and women, as both can be victims and perpetrators of domestic violence.

1.2 Types of violence

With regard to the violent behaviour *per se*, a distinction is commonly made between three types of violence:

1. *Physical violence*: violations of a person's bodily integrity (or threat to do so) against that person's will, resulting in pain or injury; this implies assault, aggravated assault and, most severely, homicide. Particularly during a process of separation from a partner, abused women run the risk of being killed. Domestic violence usually involves repeated violent acts.
2. *Sexual violence*: sexual acts perpetrated against a person's will and/or under coercion, regardless of the marital status of the victim and perpetrator. This implies rape (defined as oral, vaginal or anal penetration of the body) and other forms of sexual coercion by a partner or ex-partner.
3. *Psychological violence*: forms of systematic intimidation, harassment or other conduct that limits a victim's behavioural freedom against her/his will. This implies coercion of a victim to endure behaviours that constitute an infringement of her/his freedom or safety.

³ Committee of Experts on the Protection of Children against Sexual Exploitation and Sexual Abuse (PC-ES). *Draft convention on the protection of children against sexual exploitation and sexual abuse*. Strasbourg: 10 April 2007. PC-ES (2007) 6 E FIN.

⁴ Those documents include the following: *Information document concerning combating domestic violence against women*. CDPC-BU (2007) 20. Strasbourg, 5 April 2007; *Summary meeting report*. CDPC-BU (2007) 23 fin, 26 April 2007, notably para.19-23; *Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence and explanatory memorandum; Implementation of and follow-up to Recommendation Rec (2002)5 on the protection of women against violence*. (EG-S-MV (2004) RAP FIN rev. *Combating violence against women. Stocktaking study on the measures and actions taken in Council of Europe member states*. 2006, prepared by Carol Hagemann-White with the assistance of Judith Katzenbrink and Heike Rabe. Directorate General of Human Rights, Strasbourg, 2006. Task Force to Combat Violence against Women (TFV), *Selection of international instruments and declarations relevant to combating violence against women* (EG-TFV (2006)4); and *Information document on the Council of Europe's action to combat violence against women* (EG-TFV (2006) 2 rev. *Legislation in the member states of the Council of Europe in the field of violence against women. Volumes I and II* (EG (2007). Directorate General of Human Rights, Strasbourg, January 2007.

⁵ Römken, R., S. Mastenbroek (1998), Budding happiness. The relational dynamics of the abuse of girls and young women by their boyfriends. In R. Klein (Ed), *Multidisciplinary perspectives on family violence*. London: Routledge, 58-75. See also Schröttle, M., Martinez, M. et al. (2006), Comparative reanalysis of prevalence of violence against women and health impact data in Europe - obstacles and possible solutions. Testing a comparative approach on selected studies. [http://www.cahrv.uni-osnabrueck.de/reddot/CAHRVreportPrevalence\(1\).pdf](http://www.cahrv.uni-osnabrueck.de/reddot/CAHRVreportPrevalence(1).pdf).

⁶ Ristock, J. (2002), *No more secrets. Violence in lesbian relationships*. New York: Routledge. See also 'Domestic violence in gay and lesbian couples'. http://www.psychpage.com/gay/library/gay_lesbian_violence/dv_gay_couples_intro.html.

These types of violence often occur in conjunction with one another.

Forced marriages and *honour-based killings* are two particular forms of domestic violence that need to be mentioned explicitly. They are directly related to the growing migration in Council of Europe member states, and they may therefore increase in the future. They embody a mixture of the forms of violence distinguished above. In some migrant communities, some families prefer that their children marry a person of the same community. Young women from the country of origin are forced to migrate to Europe to marry a man from the corresponding community in the host country. So-called honour killings may occur in such communities if young women resist submitting to this tradition or prefer a romantic relationship of their own choice. The woman, and sometimes the partner, are at risk of being murdered by her relatives.

1.3 Prevalence of domestic violence

The complexity of the domestic violence concept, in combination with the personal and social sensitivities that the subject evokes, poses major challenges to the collection of reliable research data on the scale of domestic violence in societies. Definitions of domestic violence vary widely in research. Cultural and social differences between countries inevitably also affect data collection. Currently we do not yet have a validated and tested international instrument for measuring domestic violence, although promising initiatives have been taken and results are expected by late 2007.⁷ Comparison of data from different countries has proven difficult time and again.⁸ Bearing this in mind, we can present a general picture of data that inevitably allows for a wide margin in the statistics to do justice to the underlying differences in definitions.

Across countries, one-fifth to one-quarter of all women have experienced physical violence at least once during their adult lives. Transnational comparison indicates that 12% to 15% of all women over 16 have ever experienced *repeated* physical, emotional and sexual abuse.⁹ Figures on sexual violence differ more widely, due to varied definitions of sexual violence and rape. The narrowest definitions of rape as a 'forced' sexual act elicit prevalence figures indicating that from 5% to 7% of all women have been raped by a partner or ex-partner at some point in their lives. Broader definitions produce prevalence rates of sexual violence around 10%.¹⁰ We do not have data reliable enough to present transnational statistics on psychological violence. Reported rates of stalking by an ex-partner vary widely. Based on international and North American research, we can conservatively estimate that the prevalence data will be in a range from 5% to 10% of all adult women.¹¹

1.4 Repetitive victimisation and psychological impact

A substantial proportion of the domestic violence is not limited to single incidents, but develops into patterns of repeated violations. Many victims of domestic violence suffer from symptoms of chronic traumatising. This often develops into posttraumatic psychosomatic and depressive symptoms that diminish only gradually after the separation. The specific psychological and physical health impact of domestic violence is an important factor to bear in mind in planning legal measures, since it negatively affects the willingness and the psychological capacity of victims to engage with the criminal justice system (as by lodging complaints or testifying). Fear of retaliation is one common consequence of chronic victimisation which can persist for many years after the actual threat has subsided.¹²

1.5 Social attitudes: on silence and ambivalence towards domestic violence

⁷ The International Violence Against Women Survey (IVAWS), which contains a subsection on domestic violence, so far includes Australia, Switzerland, Denmark, Greece, Mozambique, Poland, Costa Rica, Hong Kong and the Czech Republic. Australia presented its results in 2004. A comparative report on all collected data is forthcoming (late 2007).

⁸ See Römken, R, J. van Poppel et al. (2006), Preliminary study on domestic violence in the Netherlands. Literature review of research methods and findings on prevalence, determinants, consequences and help-seeking behaviour, http://www.emancipatieweb.nl/uploads/2221/Translation_total_small.pdf; Schröttle et al., (note 4 above) and Sundaram V., Curtis T., Helweg-Larsen K., Bjerregaard P. (2003), Can we compare violence data across countries? *Circumpolar Health*, pp. 389-396. http://ijch.oulu.fi/issues/63suppl2/ICCH12_Sundaram.pdf.

⁹ Schröttle et al. (2006), note 5 above; Römken et al. (2006), note 8 above.

¹⁰ Schröttle et al., note 5 above; Römken et al., note 8 above. See also Römken, R (1997) Prevalence of wife abuse in the Netherlands. Combining quantitative and qualitative methods. *Journal of Interpersonal Violence*. 12, 1997, 1, 99-125.

¹¹ Römken, R (2006), Protecting prosecution. The powers of criminal law to protect victims of stalking. *Violence against Women* 2, (2006), 160-187.

¹² Jones, L. M. Hughes, Unterstaller, (2001), Post-traumatic stress disorder (PTSD) in victims of domestic violence. A review of the research, *Trauma, Violence, & Abuse*. Vol. 2, No. 2, 99-119.

Domestic violence is a phenomenon that evokes strong moral responses. In this section we highlight several aspects of this that should be taken into account in preparing regulatory measures, as they will affect the level of consensus and social support for any kind of regulation.

Social attitudes towards the moral and/or legal unacceptability of domestic violence

It is only rather recently that violence against women and children has met with growing and unequivocal condemnation on a social level and in the domain of policy and legislation. This is a significant yet fragile historical shift. Although Recommendation (2002)⁵ on Violence against Women reveals tremendous progress towards publicly denouncing violence against women, substantial parts of the recommendation still await implementation in the member states.¹³ The fact that domestic violence takes place within intimate relationships where individuals expect non-interference in what they consider to be their private lives makes it even harder for domestic violence to be accepted as a target of public regulation. A clear and strong positioning of governments is therefore vital to fostering a public understanding that 'private violence' – which constitutes a large-scale violation of the fundamental human rights of many individuals, notably women – is not only rightfully the object of public regulation but should also be a matter of serious public concern. This awareness raising is an essential step towards successfully combating practices that condone domestic violence.

Silencing and susceptibility to intimidation

The intimacy of the victim's relationship to the perpetrator often implies that loyalty ties and ambivalences vis-à-vis the perpetrator will continue for some time, even after a separation. Notably in the case of children who have had to witness the abuse, their emotional and material dependency hampers their ability to distance themselves from the abuser(s). For both adult and child victims, this translates into susceptibility to intimidation and pressure exerted by perpetrators. Knowledge about the psychological dynamics that operate in contexts of intimacy and dependency is crucial in order to adequately approach victims in criminal and other legal contexts and to support them in ways that can facilitate successful investigation and prosecution.

Limited visibility of injuries and the collection of evidence

Most of the victimisation takes place in ways that are literally invisible to others and without any witnesses. At the social and psychological levels, this adds to the victims' isolation. Their isolation is a serious obstacle for them to overcome before they can stand up against the perpetrator and search for help. From a criminal law perspective, this aspect of domestic violence obviously complicates the collection of evidence. The psychological impact, and even the physical severity of the abuse, is not always immediately visible, because hiding the injuries and pain is a common coping mechanism in repeatedly abused victims.

1.6 Help-seeking behaviour

Initially, the majority of domestic violence victims are reluctant to seek any help at all while the relationship with their partner is ongoing. To the extent that we have internationally comparable data available, we can conclude that the professionals to whom victims eventually most often turn are general practitioners (for medical injuries and psychosomatic complaints), social workers and police. A minority of victims seek refuge in shelters (an estimated 5% of all victims). A substantial proportion of victims do not seek any professional help, even when they sustain serious injuries. Telephone help lines that can be called anonymously and 24/7 are a crucial provision for helping victims to break their isolation, overcome the shame, and start a process of empowerment by speaking out against the victimisation by their partner.¹⁴

2. Initiatives and activities to tackle domestic violence, including existing international legal instruments

2.1 International and regional instruments relating to domestic violence¹⁵

¹³ See *Stocktaking study* (2006), note 4 above.

¹⁴ Plichta, S.B., (2004). Intimate partner violence and physical health consequences, *Journal of Interpersonal Violence*, 19, 11, 1296-1323. Campbell, J.C. (2002), Health consequences of intimate partner violence, *Lancet* 359, 1331-1336; World Health Organization (2005).

¹⁵ For a thorough overview, see *Selection of international instruments and declarations relevant to combating violence against women*, Task Force to Combat Violence against Women, including Domestic Violence, EG-TFV (2006) 4, 1st meeting of the Task Force, (Strasbourg, 21-23 February 2006).

At both international and regional levels, activities have been undertaken to fight violence against women, and instruments are being adopted to regulate this complex field. The launch in 2006 of the Task Force to Combat Violence against Women, including Domestic Violence, highlights the growing commitment of the Council of Europe. This group is charged with evaluating progress at national levels and creating instruments to quantify developments at the pan-European level.¹⁶ Domestic violence – usually defined as repeated abuse and violations of the physical, sexual and psychological integrity of the subject – is often not the object of *specific* regulation or instruments. This section gives a brief overview of the main activities and instruments that now exist. It will aid us in assessing whether a specific convention in the field of domestic violence is needed (3.1).

The Council of Europe has adopted two recommendations that address domestic violence specifically: Recommendation (85)4 on Violence in the Family; and Recommendation (90)2 on Social Measures concerning Violence within the Family. It has also agreed a more general recommendation, (2002)5, on the Protection of Women against Violence,¹⁷ which includes provisions aimed at all forms of violence against women, as well as additional measures on violence within families (paras. 55-59). This recommendation in particular, with its extensive explanatory memorandum, could serve as an example for a European convention on domestic violence. Beyond these thematic documents, the Council has published several recommendations aiming to ensure specific rights for crime victims within criminal justice systems. One of these is Recommendation (85)11 on the Position of the Victim within the Framework of Criminal Law and Procedure, passed in 1985. The most recent and comprehensive document is Recommendation (2006)8 on Assistance to Crime Victims, adopted 14 June 2006. The Parliamentary Assembly of the Council of Europe has also passed several resolutions and recommendations pertaining to violence against women. Recommendations 1582 (2002) and 1681 (2004) specifically address domestic violence against women. Finally, the European Convention for the Protection of Human Rights and Fundamental Freedoms is also relevant here, notably its provisions on non-discrimination, the right to respect for private and family life, the right to liberty and security, the prohibition of torture and inhuman or degrading treatment, and the right to life.

On an international or global level, the United Nations has undertaken various activities and has adopted declarations and resolutions that deal with violence against women. The most important ones are the Declaration on the Elimination of Violence against Women,¹⁸ the Beijing Declaration and Platform for Action,¹⁹ the outcome of the 23rd special session of the General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the 21st Century',²⁰ and the Declaration adopted at the 49th session of the Commission on the Status of Women.²¹ In addition, the UN General Assembly recently adopted Resolution 61/143 entitled 'Intensification of Efforts to Eliminate All Forms of Violence against Women'.²² It urges states, *inter alia*, 'to take action to eliminate all forms of violence against women by means of a more *systematic, comprehensive, multisectoral and sustained approach*, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans, including those supported by international cooperation and, where appropriate, national development plans, including poverty eradication strategies and programme-based and sector-wide approaches'.²³

At earlier stages, the UN has created several international instruments that are relevant here. The three most important UN legal instruments to reflect on are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

¹⁶ See *Information document*, note 4 above.

¹⁷ The 3rd Ministerial Conference on Equality between Women and Men (Rome, October 1993) is viewed as the starting point of intensified action to curb violence against women. One of the results was a Plan of Action comprising political, judicial, administrative, educational, cultural and other means to combat violence against women. See *Information document concerning combating domestic violence against women, Secretariat memorandum* prepared by the Directorate General of Legal Affairs, 5 April 2007. For more detailed information regarding the Council of Europe activities in the field of domestic violence, see *Information document on the Council of Europe's action to combat violence against women*, EG-TFV (2006) 2 rev, Task Force to Combat Violence against Women, including Domestic Violence, 2nd meeting of the Task Force, (Strasbourg, 25-27 April 2006).

¹⁸ Resolution 48/104.

¹⁹ *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

²⁰ Resolution S-23/2, annex, and Resolution S-23/3, annex.

²¹ See *Official records of the Economic and Social Council, 2005, Supplement No. 7* and corrigendum (E/2005/27 and Corr.1), chap. I, sect.

A.

²² Adopted on 19 December 2006.

²³ GA Res. 61/143, para. 8, italics added by authors.

Women and Children (supplementing the UN Convention against Transnational Organized Crime) and the Rome Statute of the International Criminal Court (ICC), which criminalises gender-related crimes and crimes of sexual violence.

None of those instruments addresses domestic violence specifically.²⁴ Nevertheless, they deserve mention here by virtue of their extensive victims' rights provisions that could serve as examples of how the specific needs of a specified victim group can be taken into account (ICC Statute and UN Protocol), or because authoritative bodies have addressed violence against women in their recommendations (CEDAW).

To start with the ICC Statute, it has been hailed as 'a milestone in victimology'.²⁵ Compared to the procedural rules governing previous international tribunals (such as those on the former Yugoslavia and Rwanda), the main improvements involve extending victim protection, increasing victim participation, and better provisions on reparation.²⁶ The greatest significance of this Rome Statute, though, lies in its provision of a more universal model for how legal systems can respect legitimate victim rights without prejudicing a fair trial for the accused. As to CEDAW, the committee that monitors its implementation has published two recommendations affirming that violence against women also falls within the Convention's scope: General Recommendation 12 (8th session, 1989) and most notably General Recommendation 19 (11th session, 1992) on violence against women.²⁷ Recommendation 12 notes that 'articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life.' Recommendation 19, para. 24(r) provides that 'measures that are necessary to overcome family violence should include: (i) criminal penalties where necessary and civil remedies in cases of domestic violence; (ii) legislation to remove the defence of honour in regard to the assault or murder of a female family member; (iii) services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes; (iv) rehabilitation programmes for perpetrators of domestic violence; (v) support services for families where incest or sexual abuse has occurred.' The UN Protocol on Victims of Trafficking could also serve as an example, in that it takes into account the specific needs of those victims, thereby also addressing immigration issues. The difficulty of maintaining a balance between law enforcement and prosecution on the one hand and the protection of victims on the other was one concern that came to the foreground while the UN protocol was being negotiated.

2.2 Current legislation within Council of Europe member states

The Council of Europe's *Stocktaking Study* (2006)²⁸ concluded that the legal measures to prevent domestic violence, protect victims and punish perpetrators are rather scattered and differ substantially among the member states. Most member states do not have specific legislation in place on physical domestic violence. In the majority of countries, it falls under general legislation (on assault, aggravated assault or murder). In some countries it is addressed under general provisions pertaining to family-related offences. Very few countries have implemented specific domestic violence laws or specific laws on violence against women that also cover domestic violence against women.

Legislation on sexual violence against adult ex-partners differs widely as well. Rape within marriage is not yet a crime in every member state. Only twelve countries have removed the rape-in-marriage exemption.

Psychological violence as such is not a concept that is penalised *per se*. In some states, specific stalking laws have criminalised harassment – recognising that repeated infringements of personal integrity through phone calls, letters and shadowing in the public domain constitute serious intimidation and threat. The recent Council of Europe reports on legislation on violence against women²⁹ confirm this picture of wide divergencies and lack of comprehensiveness in the legislation on psychological violence. Differences are attributable to two factors in

²⁴ Note that the Vienna Declaration and Programme of Action adopted at the 1993 United Nations World Conference on Human Rights explicitly recognised domestic violence and other forms of violence against women as human rights violations.

²⁵ Marc Groenhuijsen, International protocols on victims' rights and some reflections on significant recent developments in victimology, in R. Snyman & L. Davis (eds.), *Victimology in South Africa*, Pretoria: Van Schaik Publishers 2005, pp. 333-351.

²⁶ Sam Garkawe, Victims and the International Criminal Court: Three major issues, *International Criminal Law Review*, 3, pp. 345-365, 2003.

²⁷ The CEDAW Committee, in General Recommendation No. 19, declared in Article 6 that 'the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.'

²⁸ See *Stocktaking study* 2006, note 4 above.

²⁹ *Legislation in the member states of the Council of Europe in the field of violence against women*. Volume I (Albania to Ireland) and Volume II (Italy to United Kingdom). January 2007. www.coe.int/equality

particular: whether the legal system is adversarial or inquisitorial (this usually affects procedure more than content), and whether there is a constitution that safeguards human rights. The existence of a convention would aid in determining whether acts of violence against women are a violation of human rights and fundamental freedoms. Of the 40 countries that submitted information on their legislation for the reports on violence against women, most are clearly aiming to address domestic violence by law in one way or another. Some have introduced specific legislation and/or legal procedures, thus sending a clear message that domestic violence is unacceptable. There is also a growing willingness on the part of some states to introduce innovative measures such as restraining orders that prohibit the perpetrator from entering the victim's home and/or other premises. This trend could have a significant incentive effect on other member states. We conclude that, despite differences between the member states, there is a sufficiently strong legal and political basis to start from in order to harmonise law through a convention on domestic violence.

3. A legally binding international instrument on domestic violence: preliminary conclusions

3.1 Analysis of the need for a legally binding instrument

Among the Council of Europe member states, there is a growing sense of social and political urgency to develop an effective policy on domestic violence. This heightened awareness can provide the needed impetus for Council initiatives to induce the member states to better harmonise their approaches. The *Stocktaking Study* underlined the need 'to link different legal frameworks (such as criminal law and protective measures, penalisation of domestic violence and child contact regulation, domestic violence measures with immigration law) in order to provide a coherent and effective response to violence against women.' It also urged stricter regulation. Although Recommendation (2002) 5 states that countries should develop national action plans on violence against women, only 19 have done so to date.³⁰ The Council's Deputy Secretary General recently emphasised the profound importance of a new, binding legal instrument for the Council with respect to domestic violence.³¹

A preliminary issue to consider when reflecting on the need for a convention on domestic violence is how such a convention would operate in relation to the existing international instruments in this domain. On the one hand, it is important not to underestimate the value of the existing international recommendations and resolutions which address domestic violence indirectly and sometimes directly. Recommendations often have a powerful moral force, as well as giving practical guidance to member states in their conduct. Such instruments are valuable because they are recognised and accepted by a large number of states and, even without legally binding effect, they may be seen as declaratory of broadly accepted goals and principles within the international community. As such, they are often used as benchmarks to assess progress in the areas they apply to. Hence, even though soft law norms may lack formal legal consequences, states still often aspire to comply with them.

On the other hand, if soft law can be more rigorous than one might think at first sight, the opposite also holds – hard law is not always the most adequate instrument to influence policy and practice. Adopting legally binding documents does not automatically induce countries to adapt their national legislation, create the necessary infrastructures to effectuate those rights, or enforce compliance. More is needed, as we will argue below in more detail when discussing the importance of an adequate monitoring mechanism.

Notwithstanding these two considerations, we want to put forward four important arguments in favour of a legally binding international instrument such as a convention. First, no international legally binding document exists today that would deal with penal and non-penal aspects of interpersonal violence in a comprehensive, sufficiently detailed and specific way. Given the scale and urgency of the problem, a concerted approach is necessary and timely. We currently face rather fragmented, widely differing approaches in the Council of Europe member states. The European Committee on Crime Problems recently concluded that 'from the responses of member states it is clear that domestic violence is not specifically defined in the legislations of all of them. In some cases it is not mentioned in the legislation at all, and is considered to be part of a general body of offences against personal liberty or against the human dignity. Some other member states however do have separate

³⁰ *Information document concerning combating domestic violence against women. Secretariat memorandum prepared by the Directorate General of Legal Affairs, 5 April 2007, para. 18; Stocktaking study (2006), note 4 above.*

³¹ *Speech of the Deputy SG of the Council of Europe. Seminar on Men's Active Participation in Combating Domestic Violence. Zagreb (Croatia), 9 May 2007, italics added by authors.*

laws devoted to prohibition of domestic violence.³² A Council of Europe convention could therefore enhance uniformity among member states – a value that is important in and of itself in the Council of Europe context, and even more acute since the recent expansion of the EU.

Second, the increasing migration in member states brings specific vulnerabilities into the foreground which involve the violent victimisation of women. Not only are we witnessing a rapid growth of trafficking in women, who are usually forced into prostitution and sexual slavery, but we also see an increase in two forms of domestic violence in some ethnic minority communities: forced marriages and the killing of women in the name of preserving so-called family honour. This connection between migration and domestic violence against women underlines the urgent need for an active Council of Europe stance on the issue of domestic violence. That would signal the moral importance of the fight against domestic victimisation, which mostly affects women, as a fundamental human rights concern of the Council. In the context of the ongoing debate on cultural diversity in relation to political unity, it is crucial to establish regulation which allows for cultural differences without jeopardising the protection of victims of domestic violence.

Third, adopting a convention would imply an unequivocal recognition of the rights of domestic violence victims. The social and psychological empowerment that could emanate from such a measure must not be underestimated, given the scope of the problem. In view of the specific characteristics of the violence and the special types of legal and social measures that are necessary to effectively address this specifically *domestic* form of victimisation, a specific instrument to support victims of domestic violence would be of added benefit above and beyond general instruments in support of victims and victim rights.³³ At the same time, it is important to articulate a new specific convention with existing victims' rights instruments and those now in the drafting process.³⁴

Finally, a convention would enable creation of a monitoring mechanism (like that proposed in the Draft Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse³⁵) which could play a critical role in promoting implementation and compliance. A supervisory body of independent experts will be needed which can employ a set of robust monitoring methods (including a requirement for states to periodically report on their practices and the right to conduct on-site visits if need be).

3.2 The potential of the Council of Europe

One of the key reasons for founding the Council of Europe was to secure democracy based on the freedom of the individual and to prevent the resurgence of gross human rights violations as took place in the Second World War. The Council covers all major issues facing European society, other than military defence, and aims to promote democracy, human rights and the rule of law, and to develop common responses to political, social, cultural and legal challenges in its member states. The task of actively promoting adherence to the rule of law becomes particularly urgent when human rights violations are involved, as is the case in domestic violence. By virtue of the work it has already done in this area, the Council of Europe is now the leading intergovernmental organisation in combating violence against women, including domestic violence. In particular, its integrated, multifaceted approach allows it to address issues from criminal, civil, administrative and human rights law perspectives, and this is especially needed in the fight against domestic violence.

In view of the broad membership of the Council (to date 46 member states), a Council of Europe instrument would potentially have a powerful impact. The Council of Europe is also capable of planning and adopting conventions in relatively short periods of time. In accordance with its human rights-based approach, a Council of Europe convention on domestic violence would provide a link to the European Convention on Human Rights by

³² *Information document concerning combating domestic violence against women*, European Committee on Crime Problems, 5 April 2007, para. 28.

³³ For an overview of international victims' rights instruments and an analysis of their legal status, see Marc Groenhuijsen & Rianne Letschert, *Compilation of international victims' rights instruments*, Tilburg: Wolf Legal Publishers, 2006.

³⁴ The World Society of Victimology and the International Victimology Institute of Tilburg University, INTERVICT, convened an informal meeting with experts from different regions to discuss the need for and content of a UN convention on victims' rights. The meeting took place at Tilburg University in December 2005, and led to the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power. For more information, see <http://www.tilburguniversity.nl/intervict/undeclaration/>.

³⁵ The explanatory report to the Draft Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse notes that 'the monitoring system foreseen by the Convention, is based essentially on a body, the Committee of the Parties, composed of representatives of the Parties to the Convention.' See para. 262.

placing a positive obligation on each party to protect its citizens against these particular human rights violations (notably, of the right to respect for private and family life, the right to liberty and security, and the torture prohibition).

The adoption of a Council of Europe convention of domestic violence could also prompt further action by the European Union, as already witnessed with respect to standards for the treatment of crime victims – Council of Europe Recommendation 1985(11) is seen as a forerunner to the 2001 EU Framework Decision on the Standing of Victims in Criminal Proceedings.³⁶ In an international legal perspective, a Council of Europe convention could provide a basis for other international instruments. This is not to say that Council of Europe initiatives are unidirectional. A Council of Europe convention could also benefit by drawing on the *acquis* of the UN, the World Health Organization and EU. Nonetheless, given the ongoing developments in the UN as well as the WHO, a Council of Europe convention could also provide a ready-made model that could inspire developments globally. As noted above, the UN itself has firmly underlined the importance of a *systematic, comprehensive, multisectoral and sustained approach* in combating violence against women.

4. Points to consider in a Council of Europe convention on domestic violence

4.1 Basic requirements: the need for coherent and evidence-based instruments

This final chapter addresses several aspects that merit further consideration in the context of a Council of Europe convention. Before addressing them separately, we wish to underline some general requirements for developing a coherent approach that would link together a range of measures. Many legal, social, medical and psychological issues intersect in domestic violence. For a convention to be efficient and effective in its implementation, it is crucial that it provide a framework that encourages member states to develop coherency in the measures they develop and implement.

From the 2004 report on the implementation of Recommendation (2002)5 on the Protection of Women against Violence, we can conclude that a minority of Council of Europe member states have started to systematically develop action plans on violence against women, or on domestic violence in particular. Much still needs to be done. The nature and content of the measures taken so far still vary widely. In its monitoring report, the Group of Specialists on Recommendation (2002)5 provided an excellent overview of points to be addressed – most of which would also apply to a Council of Europe convention. In the context of our limited feasibility study, this chapter confines itself to the primary points that deserve attention in a convention. As the Group of Specialists focused its report on violence in the family and on sexual violence (mainly against adult women), the report contains excellent analyses of the problem of domestic violence and valuable insights to draw and build upon in preparing a future convention.

Coordinated and multisectoral interventions

A multisectoral approach that engages professionals from all the fields involved will be crucial if it is to be effective for both victims and perpetrators. This has been emphasised repeatedly in various international documents and instruments discussed in chapter 2. Drawing up a *national action plan* that provides for a national coordinating body for implementation and evaluation is an indispensable step to that end. A convention would form a unique opportunity to provide overall guidelines for such action plans.

The Spanish Organic Act 1/2004 is exemplary for the development of integrated protection measures relating to domestic violence.³⁷ It addresses not only the victims' rights to protection and to a range of social, legal and medical services. It also deals with the impact that violence can have on employment for victims. In criminal law, special violence against women courts have been established, headed by specialised investigating judges. In the health care sector, early detection and intervention measures have been established. Most importantly, the law's implementation is monitored in the various domains in order to collect data that promote an effective, long-term implementation.

³⁶ 2001/220/JHA, 15 March 2001.

³⁷ See *Stocktaking study* 2006, 25-26 (note 4 above).

Related to the need for a multisectoral approach is the need to link different *legal* domains that deal with victim support and with preventing revictimisation through sanctions and/or treatment for perpetrators. It is important to fully explore the options that civil and criminal law can offer here.

Data collection and research

Monitoring and evaluation are indispensable to developing solid, evidence-based policies. Systematic data collection is necessary for all the legal or policy measures proposed here. It is particularly important to keep accurate data on police records of the handling of domestic violence cases, on prosecutions and convictions, and on medical and mental health care provided to victims. More generally, nationally representative survey data on prevalence and help-seeking behaviour is also vital to coherent policy development.

4.2 Purpose and scope

The purpose of a convention would be (1) to prevent and combat domestic violence in all its forms, (2) to protect the rights of domestic violence victims, (3) to sanction perpetrators and bring about behavioural change to prevent recidivism and revictimisation, and (4) to promote international cooperation in combating transnational aspects of domestic violence, in particular forced marriages and killings in the name of honour.

In establishing the scope of a convention, the starting point is that it should be *comprehensive*, providing for a *complete* set of policies to prevent violence, restrain and punish perpetrators, and help the victims by providing both legal assistance and immediate and long-term psychological and social support. In sections 4.3 to 4.8 below, we address in general terms the most important dimensions that a future convention ought to address.

In the light of the arguments presented in chapter 1, the nature of ongoing policy developments within the Council of Europe, and the need for coherence of measures, it seems most feasible to focus on domestic violence as *interpersonal violence between adult partners or ex-partners*. Children should be covered in the regulations only to the extent that they are affected by violence against an abused parent. This is consistent with the current trend globally (as in UN and WHO contexts), whereby domestic violence is usually defined in relevant international instruments as violence between partners or ex-partners. Even though the majority of victims are women, a convention would preferably use gender-neutral terminology. That would not preclude a gender-based analysis of the underlying problem, nor a gender-sensitive implementation of the convention. Furthermore, it would provide the tools to address male victimisation in domestic violence when necessary.

Domestic violence can be understood as any act of violence between partners or ex-partners which results in (or is likely to result in) physical, sexual or psychological harm or suffering, including threats of such acts, coercion, or arbitrary deprivation of liberty. It includes physical and mental aggression, emotional and psychological abuse and sexual violence. The violence may take place in a range of relationships, including marriage-based family units, registered or unregistered partnerships, and whether or not the partners are cohabiting.

Inclusion of the term *gender-based* in a *legal definition* could open a fundamental debate on the legal interpretation of the meanings of *gender* and *gender-based*. In drafting a convention, it is important to be explicit about the meaning of the gender concept. It is crucial to emphasise that gender is not a synonym or an alternative for the term *biological sex*. The essence and added value of the concept of *gender* over *sex* is that it extends beyond biological male or female bodies. It refers to masculinity and femininity as sets of behavioural repertoires that are the results of intersecting layers of cultural, historical, social and psychological practices and mechanisms which have become normatively associated with men and women.³⁸

4.3 Prevention: awareness raising, education and information distribution

Considering the long time it has taken for domestic violence to become a focus in national action plans on violence against women, and given the persisting attitudes that minimise or even deny the severity of the violations involved, it is crucial that awareness-raising campaigns about domestic violence continue to be implemented to educate the wider social community. This is also necessary with an eye to disseminating information to victims and to society at large on the available support provisions. At this writing, a minority of 14

³⁸ Scott, J. (1986), Gender: A useful category of historical analysis, *The American Historical Review*, Vol. 91, No. 5, 1053-1075.

member states conduct any campaign at all on violence against women in general. The recently established Council of Europe Task Force on Violence against Women, which also covers domestic violence, has launched a Council of Europe publicity campaign in 2007.

Information on the subject of domestic violence should become part and parcel of the curriculum in primary and secondary schools, combined with provisions in schools that make it clear whom children can turn to *while at school* (specified teachers, social workers) for help or support. This can have an important preventative effect by helping to empower the victims. Systematic training and education of professionals in the medical, legal and social service domains is another activity crucial to the prevention of secondary victimisation of children through early detection and adequate intervention.

4.4 Substantive criminal law

In accordance with Recommendation (2002)5 on the Protection of Women against Violence, the following measures are needed in specific relation to domestic violence:

- Ensure that criminal law provides that any act of physical or sexual violence against spouses, ex-spouses, regular or occasional partners or cohabitants constitutes a violation of that person's *physical, psychological and/or sexual freedom and integrity*, and not solely a violation of morality, honour or decency. Given the range of definitional issues that then arise, it seems crucial to present a clear definition of the behaviours that are subject to regulation. To that end, the definition of domestic violence set out above may serve as a starting point.
- Penalise sexual violence, including rape and any bodily sexual act or penetration against the will and/or without consent of the victim, between spouses, regular or occasional partners and cohabitants.
- Penalise psychological violence. This needs to be behaviourally defined and circumscribed in detail in any legislation to enable effective criminal investigation and prosecution. Particular attention is required for the *systematic* nature of behaviours which, if viewed as mere incidents, would seldom constitute infringements of freedom or safety (such as phone calls, e-mails, letters). Special attention is also needed for the different ways in which children can be misused in exercising psychological violence (intimidation, threats) against a partner or ex-partner.
- Ensure that cultural and/or religious traditions justifying violence against or the killing of a family member, particularly women, cannot be accepted as mitigating circumstances or so-called cultural defences.
- Ensure that criminal law provides options for the treatment of perpetrators as part of a legally based sanctioning regime.

4.5 Civil law – intervention and prevention

In general, judicial protection orders for domestic violence victims need to be available in national legal systems. This entails:

- Provisions that allow victims to have the perpetrator of domestic violence temporarily barred from the premises shared by the victim and perpetrator (barring orders).
- Provisions that allow protection of a victim's privacy (orders of protection, non-contact orders).
- Provisions that take the victim's and the children's safety into full consideration in deciding on custody and visiting arrangements after divorce or separation.

4.6 Protection of victims

Criminal justice system

In general terms, it is essential that an eventual convention on domestic violence call for appropriate measures and sanctions in national legislation, thus enabling swift, effective action to restrain perpetrators and to redress the wrongs done to victims. There appears to be an international consensus on the nature and the extent of victims' rights in the criminal justice system. Essentially, this involves the following principles:

- The right to respect and recognition at all stages of the criminal proceedings.
- The right to receive information about the progress of the case. This right is particularly relevant for victims of domestic violence, in view of the social isolation that many of them have suffered.
- The right to provide information to officials responsible for decisions relating to the offender.
- The right to have legal counsel available, regardless of the victims' means.
- The right to protection of victims' privacy and their physical safety. In the case of domestic violence victims, specific needs may be present. They could be enabled to use a different entrance and exit than the suspect if they fear retaliation after testifying. If there is a serious structural risk of retaliation beyond the courtroom, the victim should receive support in finding adequate protection and safety, even in the form of alternative housing. Another crucial option is that of providing testimony via video link to avoid a potentially traumatising encounter between the victim and the offender.
- The right to compensation from the offender and the state for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity and including legal costs incurred.
- The right to receive victim support. In providing support to domestic violence victims, it is essential that both the legal and the social and psychological needs be taken into account, in order to balance the interests of prosecuting the perpetrator and protecting the victim. With the growing involvement of the criminal legal system in addressing domestic violence, it is important to acknowledge that prosecutorial interests might not necessarily concur with a victim's needs for safety and peace of mind. Providing support to victims should never depend on their willingness to testify.

Social and clinical support of victims

As to the rights of domestic violence victims outside the criminal justice system, it is important that governments more specifically ensure the following provisions in the social and clinical fields:

- *Shelters* providing safety against revictimisation. Shelters that are available 24/7 are an indispensable provision.
- *Telephone help lines* available 24/7.
- Supportive provisions for children who have been traumatised by witnessing the violence against (usually) the mother.

Perpetrators

- *Treatment programmes*. In addition to criminal justice-based treatment programmes, it is essential with respect to preventing revictimisation that perpetrators be offered treatment programmes that they can attend on a voluntary basis.

4.7 Investigation, prosecution and procedural law

Profound problems still exist in the implementation of existing laws that penalise domestic violence. The problems are revealed most clearly in the low victim reporting rates and high case attrition rates in the criminal

justice system. Without proper enforcement, any effort to harmonise substantive criminal law will be ineffectual. The following points deserve particular attention:

- *Training*: In general, adequate training is a prerequisite for any improvement in the performance of police and the judiciary. This should be part of the basic training of any professional in the criminal justice domain (police, prosecutors and judges) and should continue through on-the-job training. Once awareness-raising campaigns are intensified, the lowered threshold for victims to seek help is likely to translate into increased demand for police assistance. This calls for more focused professional training of police, prosecutors and judges. Developing adequate advocacy support for victims is equally important.
- *Data collection and monitoring*: The systematic recording of domestic violence cases by police forces is fundamental to any monitoring of police performance in handling domestic violence cases. It could also provide evidence for why the case attrition rate is so high and what can be done to counteract that tendency.
- *Special expert teams*: It is worthwhile to consider setting up specialised domestic violence units, or violence against women units, within police and prosecutors' offices to ensure that the required level of training and expertise is available.
- *International cooperation* in investigation is particularly important in cases of so-called honour killings and forced marriages. This is in line with the debate on victim rights which calls on states to foster, develop and improve cooperation with other states in cases of cross-border victimisation, in order to more effectively protect victims' interests in criminal proceedings.
- *Prosecution ex officio*: Domestic violence is an offence against the public order. It is essential to have legal provisions that enable public prosecutors to start criminal proceedings in cases of domestic violence.³⁹

4.8 Monitoring mechanism

A final point to consider is the issue of monitoring the implementation of a future Council of Europe convention. The convention would clearly benefit from a monitoring mechanism. The Task Force on Violence against Women, including Domestic Violence, could play a vital role in monitoring and encouraging national initiatives in this area, in order to keep the implementation of the convention on national political agendas. It deserves consideration to include the Task Force as a structural part of the monitoring mechanism to be planned as part of the convention.

Representatives of non-governmental organisations and other bodies actively involved in preventing and combating domestic violence should also have a role in the monitoring procedure.⁴⁰ An example is the Group of Specialists on the Implementation of and Follow-up to Recommendation (2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence (EG-S-MV). Another good example within the Council of Europe lies in the Framework Convention for the Protection of National Minorities, which has installed an Advisory Committee composed of independent experts as well as assigning a decision-making role to a political body (in this case, the Committee of Ministers of the Council of Europe). Even though most monitoring committees can produce only non-binding opinions (in contrast to the European Court of Human Rights), they nonetheless play a critical role in producing a collection of best practices that subsequently could serve as models for other states parties. Such high-level opinions could also be utilised by other Council of Europe bodies, such as the European Court of Human Rights, in future case law.⁴¹

³⁹ See also Rec. 2002/5, paras 38, 39 and 40.

⁴⁰ See also para. 269 of the explanatory note to the Draft Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which provides for a similar construction.

⁴¹ The value of such opinions is demonstrated by the fact that the European Court of Human Rights has turned to the opinions of the Advisory Committee on the Protection of Minorities for guidance. See ECtHR, *Gorzelik and others v. Poland*, No. 44158/98, 17 February 2004.

APPENDIX X

Opinion of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence on the “Feasibility study for a convention against domestic violence” prepared by the European Committee on Crime Problems (CDPC)

Gender Equality and Anti-Trafficking Division
Directorate General of Human Rights and Legal Affairs

I. BACKGROUND

Chapter II.4 of the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) reads as follows:

“The Council of Europe will take measures to combat violence against women, including domestic violence. It will set up a task force to evaluate progress at national level and establish instruments for quantifying developments at pan-European level with a view to drawing up proposals for action. A pan-European campaign to combat violence against women, including domestic violence, will be prepared and conducted in close co-operation with other European and national actors, including NGOs.”

The expected results of the Task Force, as outlined by the Committee of Ministers in the framework of the Follow-up to the Action Plan adopted during the Third Summit of the Council of Europe, are among others to evaluate the effective functioning of the measures for preventing and combating violence against women adopted at national and international level and to make proposals for revising these measures or for adopting new measures.

It is clear that one of the main responsibilities of the Task Force is to draw up proposals for future action by the Council of Europe to prevent and combat violence against women. Following its deliberations, the main proposal of the Task Force will be to draw up a Council of Europe legally binding human rights instrument to prevent and combat violence against women and to protect its victims.

During their 27th Conference (Yerevan, Armenia, 12-13 October 2006), the European Ministers of Justice invited, in the adopted Resolution No 1, the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC) to:

- a. *examine, in co-operation with other competent bodies of the Council of Europe, the measures concerning violence against the partner contained notably in the appendix to Recommendation Rec(2002)5 on the protection of women against violence in order to determine the feasibility of and the need for an additional Council of Europe legal instrument on violence against the partner taking into account the discussions of this Conference;*
- b. *report back to the Committee of Ministers on the results of this examination so that it can decide whether there is a need for the Council of Europe to carry out work in this field, possibly in the form of an international normative instrument to combat domestic violence, in particular violence against the partner;”.*

In accordance with this Resolution, the Committee of Ministers of the Council of Europe decided at its 984th meeting (17-18 January 2007) to instruct the CDPC to examine whether the Council of Europe should prepare a new convention on violence against the partner and report back to the Committee of Ministers.

To this end, the CDPC instructed a consultant, Ms Renée Römken, (PhD, IVA Policy Research and Consultancy, INTERVICT, University of Tilburg, Netherlands) to prepare a *Feasibility study on a convention to combat domestic violence*. This study was examined by the CDPC at its 56th meeting on 21 June 2007.

At its 1006th meeting on 10 October 2007, the Ministers' Deputies instructed the CDPC to transmit the *Feasibility study for a convention against domestic violence*, for opinion, to the Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV) and to the Steering Committee for Equality between Women and Men (CDEG).

II. TASK FORCE'S OPINION ON THE FEASIBILITY OF A COUNCIL OF EUROPE CONVENTION TO PREVENT AND COMBAT VIOLENCE AGAINST WOMEN

On the basis of its work, the Task Force is of the opinion that there is a clear need for a European Convention to prevent and combat violence against women and to protect its victims. In addition, the Task Force considers that the Council of Europe has a unique opportunity to lead the process for the preparation of the first European human rights treaty to prevent and combat violence against women. The Task Force highlighted the absence of a universal treaty and a European treaty in this field. Indeed, at present only the Organisation of American States and the African Union have treaties in this field. The Organisation of American States was the first international organisation to adopt, in 1994, a legally binding convention to combat all forms of violence against women¹, in force since March 1995. The fact that this is the most widely ratified convention within the inter-American system demonstrates the strong political will to set common legally binding standards in this field. The African Union, in 2003, adopted the Protocol on the Rights of Women in Africa² which explicitly calls for the protection of women from violence – in private and public life – as a form of guaranteeing the right to life, integrity and security of the person.

The Task Force pointed out that one of the main messages of the *Council of Europe Campaign to combat violence against women, including domestic violence* was “to urge States to demonstrate political will to stop violence against women”. In this respect, the Task Force considers that the agreement among Council of Europe member States to prepare a legally binding human rights instrument will demonstrate their commitment to eradicating violence against women.

The Task Force also underlines that in conformity with the Council of Europe Campaign Blueprint “Violence against women is a human rights violation and therefore States have the responsibility to act with due diligence to prevent this type of violence, to protect its victims, to award them compensation and to prosecute and punish the perpetrators”. Consequently the Task Force strongly recommends that a future Council of Europe Convention to prevent and combat violence against women should be a human rights instrument containing justiciable rights in relation to the protection of the rights of victims (eg European Convention on Human Rights).

The Task Force welcomes the initiative to explore the feasibility of the need for a Council of Europe legally binding instrument to prevent and combat violence against women taken by other Council of Europe committees as well as some of the findings of the *Feasibility Study for a convention against domestic violence* prepared by the CDPC. The Task Force considers the Feasibility Study as an input to its current work and as an important recognition of the need for a new Council of Europe legally binding instrument. As mentioned above the Task Force is mandated to make proposals in relation to the preparation by the Council of Europe of a legally binding instrument to prevent and combat violence against women. However, the Task Force expresses its concern over the fact that the Feasibility Study focuses on only one form of violence against women – domestic violence - and only on the criminal aspects. The Task Force firmly believes that any future Council of Europe legally binding instrument to combat violence against women should be a broad human rights treaty and its paramount objectives should be the prevention of gender-based violence, the protection of victims and the prosecution of the perpetrators.

The Task Force and the CDEG (see report 38th meeting of the CDEG 28 – 30 November 2007) agree on the following elements concerning a future Council of Europe legally binding human rights instrument in this field:

¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Belem do Para, Brazil (1994).

² Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, entry into force on 25 November 2005, 21 ratifications as of 17 January 2008.

- the necessity to draft a convention on combating violence against women based on the underlying principle that gender-based violence affects women disproportionately;
- the scope of application of this convention should cover women from birth to death and should not be limited to domestic violence, but should cover all forms of violence against women;
- the convention should take a holistic approach covering prevention, protection and prosecution
- the convention should be prepared by a group having multidisciplinary expertise;
- the convention should include an independent monitoring mechanism.

The Task Force's opinion in relation to the scope, areas to be covered and possible monitoring mechanism of a future Council of Europe Convention in this field is detailed in the sections III to VIII below.

III. UNDERLYING PRINCIPLE

The Task Force points out the gendered nature of the phenomenon of domestic violence, and reiterates and emphasises the structural causes of violence against women, of which domestic violence is only one form. The Task Force further points out that women are subjected to many forms of violence disproportionately. Therefore, we can speak about gender-based violence; women are subjected to this violence because they are women. It is the result of an imbalance of power between women and men and a human rights violation, presenting an obstacle to achieving gender equality.

IV. PERSONAL SCOPE OF A FUTURE CONVENTION

The Task Force notes the proposal of the Feasibility Study to limit the scope of a possible convention to violence against women as violence between adults and therefore to exclude violence against children in general. However, the Task Force is of the opinion that a new legal instrument needs to cover gender-based violence against girls. Restricting its application to women who have reached the age of majority will limit the reach and effectiveness of such an instrument, as severe forms of gender-based violence such as female genital mutilation, forced marriages and honour killings often affect girls under the age of 18. Furthermore, girls under 18 also suffer violence at the hands of partners before marriage.

In conformity with the Council of Europe *Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence*, which covers gender-based violence throughout the lifetime of women, the Task Force considers that a legally binding human rights instrument in this field should comprise all forms of gender-based violence perpetrated against women from birth to death, and should therefore include girls.

V. MATERIAL SCOPE OF A FUTURE CONVENTION

While the Feasibility Study of the CDPC focuses on domestic violence from a criminal aspect, the Task Force recommends that any legally binding international instrument of the Council of Europe in this field should be a human rights instrument and framed in a broader context of violence against women as gender-based violence. It therefore considers it vital to expand the scope of a possible convention to cover other forms of gender-based violence against women, including girls. This can be done by covering various forms of the three types of violence it proposes (physical violence, sexual violence and psychological violence).

Therefore, the forms of violence against women covered by such an instrument would include, *inter alia*, forms of gender-based violence such as physical violence among partners or former partners, rape, sexual violence as well as sexual harassment, but also female genital mutilation, forced marriages and crimes committed in the name of the honour. Furthermore, the Task Force recommends that any definition of violence against women should be sufficiently broad to encompass emerging forms of violence.

The Task Force is of the opinion that including a range of forms of violence against women is all the more justified as other existing international instruments do the same. *Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence* covers all forms of gender-based violence. Other international legally binding instruments such as the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* ("Convention of Belem

do Para”), and the *Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa*, also extend to various forms of violence against women and are not confined to one type of violence only. In particular, the definition of violence against women on which the Protocol operates includes not only all acts causing physical, sexual and psychological harm, but also economic harm. This goes beyond the scope of violence against women included in both, the General Recommendation 19 to the CEDAW Convention and the inter-American Convention Belem do Para.

VI. AREAS TO BE COVERED BY A FUTURE CONVENTION

Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence proposes a comprehensive strategy to prevent violence, protect its victims and punish the perpetrators.

The Task Force is of the view that any legally binding human rights instrument in this field should also cover these three areas. This implies a holistic approach to preventing and combating violence against women, meaning that a future convention should contain a comprehensive set of measures covering the three areas above. To this end, the Task Force welcomes the proposal in the Feasibility Study that the scope of the convention be comprehensive.

VII. MONITORING MECHANISM OF A FUTURE CONVENTION

It is generally recognised that the effectiveness of international instruments can be measured by the effectiveness of their monitoring mechanism. The Task Force is therefore of the opinion that a future convention should be equipped with an effective and independent monitoring mechanism. Such independent human rights monitoring mechanisms are very well known in the framework of the Council of Europe and enjoy high credibility – as a result of the independence and impartiality of their members and due to the quality of their reports and conclusions resulting from the monitoring procedure. The Task Force is therefore of the opinion that the monitoring body of such a convention should be composed of independent and highly qualified experts capable of monitoring implementation of the obligations contained therein.

In relation to the composition and competences of such a monitoring mechanism, the Task Force suggests examining existing human rights treaty bodies or monitoring mechanisms such as the monitoring mechanism of the *Council of Europe Convention on Action against Trafficking in Human Beings (GRETA)*, the *United Nations Committee on the Elimination of Discrimination against Women (CEDAW)* or the *Mechanism to Follow Up on the Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (MESECVI)*.

VIII. PRACTICAL MODALITIES

To guarantee that such a wide range of diverse subject matters are adequately addressed in a future convention, the Task Force recommends that the group in charge of drafting such a human rights instrument be multidisciplinary and include experts with different professional experience, on violence against women, gender equality, human rights in general, criminal and civil law, including non-governmental organisations. It therefore proposes the setting up a new ad-hoc committee with the multidisciplinary expertise mentioned above and with the participation of representatives of the European Committee on Crime Problems (CDPC), the Steering Committee for Equality between Women and Men (CDEG), Steering Committee for Human Rights (CDDH), European Committee on Legal Co-operation (CDCJ) as well as other Steering Committees concerned (eg composition similar to the Ad-Hoc Committee on Action against Trafficking in Human Beings, (CAHTEH)).

APPENDIX XI

Domestic violence / Violence against women

Outline of the discussions held during the 57th plenary session of the CDPC
(2-6 June 2008)

Background

1. At the 27th Conference of European Ministers of Justice, held in Yerevan, Armenia, on 12-13 October 2006, the Ministers, in Resolution No. 1 on victims of crime, invited the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC) to:

“2°- Domestic violence, in particular violence aga inst the partner

- a. *examine, in co-operation with other competent bodies of the Council of Europe, the measures concerning violence against the partner contained notably in the appendix to Recommendation Rec (2002) 5 on the protection of women against violence in order to determine the feasibility of and the need for an additional Council of Europe legal instrument on violence against the partner taking into account the discussions of this Conference;*
- b. *report back to the Committee of Ministers on the results of this examination so that it can decide whether there is a need for the Council of Europe to carry out work in this field, possibly in the form of an international normative instrument to combat domestic violence, in particular violence against the partner;”*

Feasibility Study for a convention against domestic violence

2. In conformity with these instructions, the CDPC commissioned a study to be carried out by an independent expert on the feasibility of a convention against domestic violence. The study, entitled “Feasibility Study for a Convention against Domestic Violence” (see Appendix I) was adopted by the CDPC in June 2007. It highlighted the need for an international normative instrument on this subject and stated that the Council of Europe was the best placed organisation to carry out this task.
3. The CDPC agreed that it could be necessary to draft a legally binding instrument to combat domestic violence. It took the view that any work should be carried out in co-operation with the Steering Committee for Equality between Women and Men (CDEG) and with the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV, hereafter, the Task Force). It agreed that a possible convention should cover penal, civil and human rights aspects of the problem and that preparing such a convention required a multi-disciplinary approach.
4. Taking into account that the final report of the Council of Europe campaign “Stop domestic violence against women” would be finalised in June 2008, the CDPC concluded that it would discuss the issue concerning the preparation of a possible Convention in this field at its next plenary meeting in 2008 and instructed its Bureau to continue to examine issues related to violence against the partner in close co-operation with other Council of Europe bodies dealing with this subject.

Opinion of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV)

5. The Feasibility Study for a Convention against Domestic Violence was transmitted to the Task Force and to the CDEG for opinions. The Task Force adopted its opinion (see Appendix II) at its meeting on 1-4 April 2008. After acknowledging the position of the Task Force and the position expressed by the Bureau of the European Committee on Legal Cooperation (CDCJ) at its last meeting (7-9 April 2008) that finds it regrettable to restrict the scope of a future convention to women and girls, the CDPC Bureau invited the CDPC to have a discussion on this issue and to transmit the results of this discussion to the Committee of Ministers for information.

Outcome of CDPC plenary discussions

6. At its plenary meeting on 2-6 June 2008, the CDPC discussed different issues related to the future work of the Council of Europe in this field and in particular the scope of a possible future convention.
7. Ms Simonović and Ms Acar, members of the Task Force, presented the views expressed in the opinion. The Task Force was clearly in favour of the future convention taking a specific gender-based approach, dealing with violence against women, including domestic violence, recognising that violence against women is a form of discrimination and a human rights violation. The members of the Task Force highlighted that while some other regions of the world have developed binding instruments to combat violence against women, there is no such instrument in Europe. They stressed that an international binding instrument is required to tackle gender-based violence against women in the home, within the family, in the workplace, in domestic-work settings, in armed conflict, etc, addressing issues of physical, psychological and sexual violence, and taking a multi-dimensional and multi-disciplinary approach. They also felt that it would be desirable to maintain a continuity of work within the Council of Europe, building on the success of the campaign “Stop violence against women” and up-grading the Committee of Ministers Recommendation (2002) 5 on the protection of women against violence into a legally binding convention.
8. The CDPC fully shared the view of the Task Force that the phenomenon of gender-based violence is an extremely important problem and a serious human rights issue. Nevertheless, the CDPC felt that it would be unfeasible to cover all the issues identified by the Task Force in one convention; the scope would be so wide as to make such a convention unworkable. The CDPC agreed that the future convention, to be effective, needed to be restricted to a specific domain, that of domestic violence or violence within close relationships. Account should also be taken of existing legal instruments protecting women and girls from violence in order to avoid duplication, in particular the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). Finally, the CDPC noted that a gender-based approach to violence could not easily be translated into criminal law provisions. As such provisions would form the substantive law part of the future convention, difficulties could arise in this respect.

Opinion of the CDPC on the scope of the future convention

9. For these reasons, the CDPC expressed the clear view that a future convention should be limited in scope to domestic violence or violence where there is a close/intimate relationship between the victim and the perpetrator. In so doing, the primary victims of this type of violence – women – would be the principal beneficiaries of the convention.
10. The CDPC decided to send to the Committee of Ministers its Feasibility Study for a Convention against Domestic Violence and the opinion of the Task Force on this study, as well as the outcome of its discussions on this issue, as described above.

APPENDIX XII

Current and future priorities and activities of the PC-CP

1. Current priorities and activities:

- a) drafting a recommendation on European Rules for juvenile offenders and its explanatory memorandum¹ (deadline 31/12/2008) **(will be finalised for the CDPC plenary meeting in June 2008)**
- b) drafting a recommendation on probation and aftercare services in the European criminal justice systems² (deadline 31/12/2008) – **prolongation of the terms of reference by 9 months**
- c) re-examining the European Prison Rules on a regular basis and proposing to the CDPC their updating if necessary, as detailed in its rules of procedure **(on-going task)**
- d) to collect information on the status of implementation of the European Prison Rules and the European Rules on Community Sanctions and Measures in CoE member States and on any positive developments and possible difficulties in this respect **(on-going task)**
- e) preparation of the Conferences of Directors of Prison Administration (CDAP) **(on-going task)**
- f) providing guidance with regard to the collection and publication of SPACE I and SPACE II **(on-going task)**
- e) following the development of European prison systems and of the services concerned with the implementation of community sanctions and measures, examination of the functioning and implementation of the European Prison Rules and the European Rules on community sanctions and measures and other relevant standard-setting texts, and making proposals for improving their practical application **(on-going task)**

2. Priorities and proposed activities for future action in the penitentiary field:

- a) to finalise the drafting of a recommendation on probation and aftercare services in the European criminal justice systems (end 2009)
- b) to hold jointly with CEP (France, November 2008). a Conference of Directors of Probation Services. Main topics: (1) the role of probation services in increasing the use of alternatives to imprisonment and in combating prison overcrowding; (2) electronic monitoring and other surveillance techniques: ethical principles and safeguards. **(follow-up to the conclusions adopted at the 14th CDAP Conference in Vienna in 2007)**
- c) to carry out a survey regarding the implementation in general of Recommendation n° R(98)7 and of Recommendation Rec(2003)23 and in particular regarding the treatment of elderly prisoners and mentally disordered prisoners. **(follow-up to the conclusions adopted at the 14th CDAP Conference in Vienna in 2007)**
- d) to carry out a study of the methods and procedures used in the Council of Europe member States to evaluate the risks for safety and security in prison that detainees may pose, as well as the risks of

¹ On the basis of ad hoc terms of reference adopted by the Minister's Deputies at their 949th meeting – 1 December 2005 (CM(2005)163)

² On the basis of ad hoc terms of reference adopted by the Minister's Deputies at their 1006th meeting on 10 October 2007 (CM(2007)114)

escape and harm to society, the existing laws, practices and safeguards regarding preventive detention for security reasons and other forms of ensuring their control and supervision and to examine whether a Council of Europe standard-setting text is needed in this respect. **(follow-up to the conclusions adopted at the 14th CDAP Conference in 2007)**

- e) to examine the situation with the treatment of foreign prisoners in the Council of Europe member States and the existing policies at national level aimed at facilitating their social reintegration, where appropriate by transferring them to their home country. **(follow-up to the conclusions adopted at the 14th CDAP Conference in 2007)**

APPENDIX A

*Ministers' Deputies***Decisions**CM/Del/Dec(2005)949 6 December 2005

949th meeting, 1 December 2005Decisions adopted

*Item 10.2b***European Committee on Crime Problems (CDPC)**

b. Draft ad hoc terms of reference for the Council for Penological Co-operation (PC-CP) relating to the drafting of European Rules for juvenile offenders deprived of their liberty or subject to community sanctions and measures
(CM(2005)163)

Decision

The Deputies approved the ad hoc terms of reference for the Council for Penological Co-operation (PC-CP) relating to the drafting of European Rules for juvenile offenders deprived of their liberty or subject to community sanctions and measures, as they appear at Appendix 7 to the present volume of Decisions.

Appendix 7
(Item 10.2b)**Ad hoc terms of reference of the Council for Penological Co-operation (PC-CP)****1. Name of the Committee:**

Council for Penological Co-operation (PC-CP)

2. Type of Committee:

Advisory body to the European Committee on Crime Problems (CDPC)

3. Source of terms of reference:

European Committee on Crime Problems (CDPC)

4. Terms of reference:

The European Prison Rules (EPR) play an important role in the treatment of prisoners, as well as in improving the conditions in penal establishments and the management of penal institutions. The EPR acknowledge the principle that juveniles are a category requiring special concern. However the specific provisions relate only to the principle of separate detention from adults and to the adoption of a regime which takes account of the needs

peculiar to their age. And they do not extend to those partially deprived of their liberty through, for example, home detention curfews.

The European Rules on community sanctions and measures, which were first introduced in 1992 – Recommendation No. R (92) 16 – and later amended in 2000 – Recommendation Rec(2000)22 explicitly state that they do not apply to juveniles. The same applies to Recommendation No. R (98) 7 on ethical and organisational aspects of health care in prison and Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures. The latter covers the selection, recruitment, training, management and status of prison, reintegration and probation staff and covers ethical obligations, some of which can be different for juveniles.

Since both sets of rules and related Council of Europe recommendations are not (or are not sufficiently) juvenile-oriented, Recommendation Rec(2003)20 on new ways of dealing with juvenile delinquency and the role of juvenile justice suggests the development of European rules of juveniles covering both prison institutions designed to accommodate juveniles and community sanctions and measures. Combining these two areas in one set of rules would reflect current trends in some European states towards combining elements of custody, supervision and support in the community in one sentence and assigning to one and the same agency treatment during detention, reintegration and probation. Both of these trends require serious new thinking.

The Council for Penological Co-operation should consider in particular the following aspects:

- a. The European rules for juvenile offenders should apply to juveniles who, as a result of their involvement in criminal activity, are subject to a deprivation of liberty or to community sanctions or measures.
- b. The new rules should take account of current trends in some European states towards combining elements of custody, supervision and support in the community and merging prisons and probation into a new corrections service.
- c. The rules must build upon Council of Europe Recommendation No. R (87)20 on social reactions to juvenile delinquency and Recommendation Rec(2003)20 on new ways of dealing with juvenile delinquency and the role of juvenile justice. It must reflect the principles contained in the UN Convention on the Rights of the Child and would need to revise and update, as well as address the gaps and shortcomings in, existing international instruments that explicitly apply to juveniles, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). They should also address the issues raised in the 9th General Report (1999), of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which is specifically devoted to juveniles deprived of their liberty.

Inter alia, the PC-CP should address:

- i. The legal framework for depriving juvenile offenders of their liberty, taking into account in particular their human rights and the rights and responsibilities of their parents or legal guardians.
- ii. The design and management of penal and welfare institutions specifically opened for juveniles and the planning and implementation of community sanctions and measures such that they reflect the best interest of the juveniles and current knowledge on best practice, taking account of recent developments in research, policy and practice and addressing the need for good order.
- iii. The selection, recruitment, training and status of prison, reintegration and probation staff, as well as staff dealing with child protection and their ethical obligations in relation to the education, care and supervision of juveniles in institutional and community settings.
- iv. The treatment, conditions and services, especially health, education and training, to which juvenile offenders wholly or partially deprived of their liberty or serving community sentences, have access.

- v. The specific needs of certain categories of juvenile offenders, such as girls, ethnic or linguistic minorities, juveniles who are foreign nationals and disabled juveniles.
- vi. Young adult offenders.

The outcome of the PC-CP's work will comprise one or more draft recommendations containing European rules for juvenile offenders deprived of their liberty or subject to community sanctions and measures with explanatory memoranda. To achieve this, the Committee will undertake an assessment of the current situation with regard to the deprivation of liberty of offending juveniles and the use of community sanctions and measures in member states. In determining the prison rules which are specific for detained juvenile offender, the PC-CP will take into account the contents of the EPR in their updated version.

5. Working methods:

- a. While drawing up the new rules, the PC-CP will work closely with the CPT and other bodies and organisations as deemed appropriate, such as the International Association of Juvenile and Family Court Magistrates (IAJFCM) and the United Nations Children's Fund (UNICEF).
- b. In its work the PC-CP will also need the assistance of three scientific experts and ad hoc consultants with specific knowledge of relevant legislation and legal practice, of international norms and conventions relating to juveniles, as well as the European Convention on Human Rights and its case law and of recent developments in research and practice as regards dealing with juvenile offenders in closed institutions and in the community in the different European member states.
- c. The PC-CP will work in close consultation with the CDPC and its Bureau and will report to the CDPC at its plenary sessions on the state of its work so that full account is taken of possible views expressed by the CDPC delegations on the texts drafted before their approval by the CDPC.
- d. The Commission of the European Communities and the Council of the European Union may send representatives to meetings of the PC-CP, without the right to vote or defrayal of expenses.

6. Observers:

- a. The following may send a representative to meetings of the PC-CP, without the right to vote or defrayal of expenses: UNICEF, IAJFCM.
- b. The Bureau of the CDPC may authorise the admission of other observers to the PC-CP, provided that the Committee of Ministers does not object.

7. Duration:

These terms of reference will expire on 31 December 2008.

APPENDIX B

*Ministers' Deputies***Decisions**

CM/Del/Dec(2007)1006 12 October 2007

1006th meeting, 10 October 2007

Decisions adopted

Item 10.2a,b,c,d

European Committee on Crime Problems (CDPC)

...

d. Draft ad hoc terms of reference for the Council for Penological Co-operation (PC-CP) relating to probation and aftercare services in the European criminal justice systems (CM(2007)114)

Decisions

The Deputies

...

3. adopted ad hoc terms of reference for the Council for Penological Co-operation (PC-CP) relating to probation and aftercare services in the European criminal justice systems, as they appear at Appendix 14 to the present volume of Decisions;

...

Appendix 14

(Item 10.2d)

Council for Penological Co-operation relating to probation and aftercare services in the European criminal justice systems (PC-CP)**Fact sheet**

Name of Committee:	Council for Penological Cooperation (PC-CP)
Compliance with Resolution Res(2005)47:	YES
Programme of Activities: project(s)	Project 2007/DG1/1134 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment" (to be entitled

	2008/DG-HL/1430 “Criminal law and penal sanctions – prison systems and alternatives to imprisonment” at a later date)
Project relevance:	<p>Committee of Ministers’ decision (taken at the 925th meeting of the Ministers’ Deputies (CM/Del/Dec(2005)925/10.4, paragraph 5) on 3-4 May 2005) by which the CDPC is instructed to examine the issue of probation and post-prison assistance with a view to addressing the need to develop the role of probation services.</p> <p>Implementation of Resolution No. 2 (paragraph 19) adopted by the 26th Conference of the European Ministers of Justice (Helsinki, 7-8 April 2005), by which the Committee of Ministers is invited to entrust the CDPC to examine the issue of probation and post prison assistance with a view to addressing the need to develop the role of probation services.</p> <p>The outcome of the PC-CP’s work will be to elaborate a draft recommendation containing guidelines and standards regarding the functioning of probation and aftercare services in the European criminal justice systems.</p> <p>The work is very timely as in a number of Council of Europe member states probation and aftercare services have been either recently established or are undergoing or intend to undergo restructuring and revision of their place and responsibilities.</p>
Project added value:	<p>The Council of Europe is the leading European organisation in the field of penitentiary questions and alternatives to imprisonment. So far, two very important texts have been adopted in the latter area, namely Recommendation n° R (92) 16 on the European Rules on community sanctions and measures and Recommendation n° R (97) 12 on staff concerned with the implementation of sanctions and measures. There is also the need to consider the structure and functioning of the services concerned with the implementation of these sanctions and measures and to give guidance to member states in that respect.</p>
Financial information:	<p>5 meetings, 9 members, 2 scientific experts. The ad hoc terms of reference will be carried out under the existing budget for the PC-CP, which has an annual budget of €60 000.</p>

Ad hoc terms of reference for the Council for Penological Co-operation relating to probation and aftercare services in the European criminal justice systems (PC-CP)

1.	Name of Committee:	Council for Penological Co-operation (PC-CP)
2.	Type of Committee:	Ad hoc Advisory Group
3.	Source of terms of reference:	Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)
4.	Terms of reference:	
	Having regard to:	
		<ul style="list-style-type: none"> - the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issue related to the security of citizens; - Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods; - and based on the Council of Europe's and other international standards and having regard to the latest developments in the field of probation and aftercare in Europe;
		Under the authority of the European Committee on Crime Problems (CDPC), and in relation with the implementation of Project 2007/DG1/1134 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment" (to be entitled 2008/DG-HL/1430 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment" at a later date) of the Programme of Activities, the PC-CP is entrusted, in conformity with paragraph v. of its terms of reference (see the PC-CP's attached terms of reference) ³ to:
i.	Address the issue of probation and aftercare services in Europe and the development of their tasks and structures. It should consider more specifically the following aspects:	<ul style="list-style-type: none"> - legal systems and structure of probation and aftercare services in the Council of Europe member states; - tasks of the services at the pre-sentencing phase of the criminal procedure; - tasks of probation services in diverting accused persons from prosecution; - provision of supervision, help and assistance to the offender at every stage of the criminal proceedings, as well as during his or her deprivation of liberty and after release; - work with specific groups of offenders (serious, violent or persistent offenders, foreigners, ethnic and linguistic minorities; women; sex offenders, elderly offenders); - work with victims and with the families of the offenders; - aftercare and the carrying out of community sanctions and measures; - selection, recruitment and training of staff; <p>relations with the judiciary, social service centres, victim support agencies, police, health</p>

³ As adopted by the Committee of Ministers at its 967th meeting (14 June 2006).

	services and penitentiary institutions, private companies, volunteers and local communities, religious and charitable organisations in planning and managing probation work (including questions relating to sharing of information and professional secrecy);
	scientific research and evidence based evaluation, multi-agency risk assessment panels; work with the media and the general public.
ii.	draft a recommendation on the role and place of probation and aftercare in Europe and its explanatory memorandum.
5.	Composition of the Committee:
	The ad hoc terms of reference will be implemented by the PC-CP.
6.	Working methods and structures:
a.	In its work, the PC-CP will need the assistance of two scientific experts with specific knowledge of relevant legislation and legal practice, of international norms and conventions relating to probation and aftercare, as well as of recent developments in research and practice on probation in the different member states.
b.	The PC-CP will work in close consultation with the CDPC and its Bureau and will report to the CDPC at its plenary sessions on the state of its work so that full account is taken of possible views expressed by the CDPC delegations on the texts drafted before their approval by the CDPC.
7.	Duration:
	These terms of reference will expire on 31 December 2008.

APPENDIX C

Conclusions of the 14th Conference of Directors of Prison Administration (CDAP) “Managing prisons in an increasingly complex environment” (Vienna, 19-21 November 2007)

The 14th Conference of Directors of Prison Administration (CDAP), organised jointly with the Austrian Ministry of Justice (Vienna, 19-21 November 2007) discussed issues related to managing prisons in an increasingly complex environment and more specifically management of vulnerable groups of prisoners (women, juveniles, foreigners, elderly and mentally disordered) as well as of prisoners detained for terrorism or organised crime.

The Conference:

EXPRESSED its adherence to the European Prison Rules (EPR), to the Recommendation Rec(2006) 13 on remand in custody and to the standards contained in the other relevant Council of Europe recommendations;

UNDERLINED the importance of the standard-setting work of the European Committee on Crime Problems (CDPC) and of the Council for Penological Cooperation (PC-CP) in the penitentiary area;

RECALLED that the Ministers participating in the 28th Conference of the European Ministers of Justice (Lanzarote, Spain, 25 and 26 October 2007) underlined “that alternatives to custody should be developed for children perpetrators of crime and that, where deprivation of liberty is absolutely necessary as a measure of last resort, the conditions and regime of detention should take into account their specific needs as children”;

RECALLED also that the European Ministers of Justice underlined “that children should be detained separately from adults including in cases of preventive detention unless this is considered to be against the best interests of the child”;

WELCOMED in this respect the work of the PC-CP on European Rules for juvenile offenders subject to community sanctions or measures or deprived of their liberty and underlined that juveniles need to be dealt with differently from adults;

WELCOMED also the work of the PC-CP regarding probation and after-care services in the European criminal justice and social welfare systems;

UNDERLINED the importance of the work aimed at improving prison conditions and the treatment of prisoners carried out by the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Commissioner for Human Rights;

STRESSED that, in order to approximate life in prison as closely as possible to the positive aspects of life in free society, attention should be paid to Rule 4 of the EPR that “prison conditions that infringe prisoners’ human rights are not justified by lack of resources”;

DREW THE ATTENTION of national authorities to the ever rising number of persons remanded in custody or serving prison sentences, as well as to the increasing number of long-term prisoners. These phenomena create significant problems for prison administrations in ensuring a humane and efficient management of institutions, lead to deterioration of prison conditions and hinder the successful preparation for release of detainees;

REQUESTED the CDPC to examine on a regular basis the putting into practice by national authorities of the EPR and of Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation and, if needed, to propose specific measures to improve their implementation;

REQUESTED the CDPC, in the light of the discussions at the Conference regarding vulnerable groups of prisoners:

- a) **Women:** to examine the need to prepare a specific recommendation on measures to be taken regarding women who come in conflict with the criminal law and the appropriate non-custodial and custodial measures to deal with them;
- b) **Children:** to ensure the speedy approval of the forthcoming draft European Rules for juvenile offenders and encourage national delegations to promote their efficient implementation;
- c) **Foreigners:** to propose specific measures to improve the implementation of Recommendation (84)12 on foreign prisoners, the specific rules contained in the EPR and the other relevant Council of Europe recommendations and the CPT standards; to consider whether specific rules should be developed for irregular immigrants who are detained for administrative reasons either in penitentiary institutions or in premises outside the penitentiary system;
- d) **Elderly prisoners:** to draw the attention of national delegations to the existing Council of Europe recommendations that deal with elderly prisoners, in particular Recommendation n°R(98)7 concerning the ethical and organisational aspects of health care in prison and Recommendation Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners. The CDPC should also consider the best practices in respect of elderly prisoners and whether further steps need to be taken to ensure that such practices are more widely adopted;
- e) **Mentally disordered:** to encourage the full implementation of Rule 12.1 of the European Prison Rules, which provides that “persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose”; and to take further steps to ensure that persons suffering from mental illness who are detained in a prison receive treatment which is equivalent to that available to the general population and is designed to deal with the particular problems created by imprisonment.

AGREED that the risk posed to safety and security by persons detained for terrorism or organised crime should be assessed on an individual basis. Where such persons are detained in high security regimes, these regimes should be tailored to avoiding their physical and mental deterioration and should be reviewed on a regular basis.

APPENDIX XIII

Opinion N°(2007) 1 of the Consultative Council of European Prosecutors on "Ways of improving international co-operation in the criminal justice field"

adopted by the CCPE at its 2nd plenary meeting
(Strasbourg, 28 – 30 November 2007)

INTRODUCTION

1. The Consultative Council of European Prosecutors (CCPE) was set up by the Committee of Ministers on 13 July 2005 to prepare opinions on issues related to the prosecution service and promote the effective implementation of Recommendation Rec(2000)19 of 6 October 2000 on the role of public prosecution in the criminal justice system. The rule of law and respect for human rights constitute basic underlying principles for public prosecutors, as "... *public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system*"¹.
2. The Warsaw Declaration and the Plan of Action adopted by the third Summit of Council of Europe Heads of State and Government of the member states of the Council of Europe² highlighted, at the highest political levels, the Council of Europe's role in promoting human rights, democracy and the rule of law and its commitment to combating terrorism, corruption and organised crime and to further develop the Council of Europe's legal instruments and mechanisms of legal cooperation. The Warsaw Summit also included a commitment to strengthening cooperation and interaction with the European Union, particularly in the field of human rights³, democracy and the rule of law.
3. Paragraphs 37 to 39 of the Recommendation Rec(2000)19 include a number of provisions on international co-operation in criminal matters, which are expanded on in the subsequent Explanatory Memorandum. In particular, the Committee of Ministers notes that "*given the number of existing international instruments and recommendations and the fact that this field is under specific scrutiny within the Council of Europe itself, the committee concentrated on identifying practical measures for improving the current situation, bearing in mind the important role normally played by the public prosecutor in international judicial co-operation on criminal matters.*" The Committee of Ministers is aware of the obstacles to international cooperation that exist in institutional practice and of the need for coordination mechanisms, above all within each country. In the Recommendation, it indicates that public prosecutors "*participate, either directly or by submitting memoranda, in all procedures relating to the execution of requests for mutual legal assistance*". In most national systems public prosecutors have responsibilities both as active participants in international cooperation and when their countries received requests for cooperation, whether in the form of extraditions, arrest warrants or rogatory commissions. This dual responsibility implies a range of knowledge geared to all aspects of cooperation and of the possibilities of coordination at a more general level.
4. This Opinion has been prepared according to the Framework overall Action Plan for the work of the CCPE adopted by the Committee of Ministers on 29 November 2006⁴. It aims to underline the essential elements which contribute to strengthening international cooperation in criminal matters and judicial mutual assistance from the point of view of prosecutors, as legal practitioners and main players of such cooperation.
5. The CCPE is aware that the issues of international cooperation in criminal matters are not important matters of concern only for the prosecutors. Extradition, arrest warrants and the gathering of evidence abroad are mainly the

¹ Paragraph 1 of Recommendation Rec(2000)19.

² Warsaw, 16 – 17 May 2005 – see documents CM(2005)79 final and CM(2005)80 final.

³ The CCPE will address the issue of the human rights training for public prosecutors at a later stage.

⁴ CCPE(2006)05 Rev final.

responsibility of our colleagues, the judges, who have their own representative body in the Council of Europe, the Consultative Council of European Judges (CCJE). There are other committees in the Council of Europe, like the European Committee of Crime Problems (CDPC), namely through the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) which have a pre-eminent role to play in this field⁵, as well as the European Commission for the efficiency of Justice (CEPEJ).

6. Within the framework of this Opinion, the CCPE has taken into account universal and regional legal instruments, and in particular the relevant conventions of the Council of Europe which appear in the Appendix. It refers also to the Opinion N^o(2006) 9 of the Consultative Council of European Judges (CCJE) on the role of national judges in ensuring an effective application of international and European law.
7. The CCPE has taken into account the work and conclusions of various fora where political and law enforcement authorities and representatives of public prosecution offices have addressed issues related to international cooperation in the field of criminal justice, and in particular the 1st pan-European Conference of public prosecutors specialised in cases relating to organised crime (Caserte, 2000)⁶, the 7th European Conference of General Prosecutors (Moscow, 2006)⁷ and the High level Conference of the ministers of Justice and the Interior (Moscow, 2006)⁸.
8. To prepare this Opinion, the CCPE analysed, with the support of a scientific expert⁹, the answers by 30 member states to a questionnaire¹⁰ drafted for this purpose. The subsequent report was discussed at the European Conference of prosecutors on international co-operation in the criminal field (Warsaw, 4-5 June 2007)¹¹, in the presence of representatives of the public prosecution services of most of the member states and judicial cooperation bodies of the European Union (Eurojust and the European Judicial Network in criminal matters).
9. In its approach, the CCPE also wanted to be consistent with the Council of Europe - EU Memorandum of Understanding¹², whose "*shared priorities and focal areas for co-operation*" include "*human rights and fundamental freedoms; rule of law, legal co-operation and addressing new challenges*".

PRESENT SITUATION AND EXISTING SHORTCOMINGS

10. Strengthening international co-operation in the criminal justice field is essential as the community of states' answer to the attacks levelled at society by international crime, terrorism and corruption. Although the Resolution of the Committee of Ministers in 1997¹³ was related specifically to corruption, it is worth mentioning it here because it also has a more general application: "*corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development*".
11. The Recommendation Rec(2000)19 was enriched by a number of significant achievements in the field under consideration:
 - major conventions have been adopted within the Council of Europe, such as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No 182), the Convention on Cybercrime (CETS No 185) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No 189), the Protocol amending the

⁵ See in particular the decisions by the CDPC on international cooperation in the criminal field taken at its 56th plenary meeting (Strasbourg, 18 – 22 June 2007).R

⁶ Organised by the Council of Europe, in conjunction with the national anti-Mafia office and Naples University II, and held in Caserta (Italy) on 8-10 September 2000.

⁷ 7th session of the Conference of Prosecutors General of Europe (Moscow, 5 - 6 July 2006) organised by the Council of Europe in cooperation with the Office of the Prosecutor General of the Russian Federation on: "The role of public prosecutors in the protection of individuals".

⁸ High level Conference of the Ministries of Justice and of the Interior (Moscow, 9-10 November 2006): "Improving European cooperation in the criminal justice field".

⁹ Ms Joana GOMES-FERREIRA, Public Prosecutor, General Public Prosecutor's Office (Portugal). See report in CCPE-BU(2007)12.

¹⁰ Document CCPE-Bu (2006) 06

¹¹ The conclusions appear in document CPE(2007)Concl1.

¹² Signed in Strasbourg on 23 May 2007.

¹³ Resolution (97) 24 on the twenty guiding principles for the fight against corruption, adopted by the Committee of Ministers on 6 November 1997.

European Convention on the Suppression of Terrorism (CETS No 190), the Convention on the Prevention of Terrorism (CETS No 196), the Convention on Action against Trafficking in Human Beings (CETS No 197) or the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No 198). Moreover, the UN Palermo Convention against Transnational Organised Crime¹⁴, the UN Convention against corruption¹⁵, the International Convention for the Suppression of Acts of Nuclear Terrorism¹⁶, the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union¹⁷ and the CIS Convention on judicial assistance and legal relations in civil, family and criminal matters¹⁸ have also served to strengthen judicial cooperation. However it must be noted that not all the states concerned have yet become party to these Conventions and some of them have not entered into force so far. This minimizes their impact and slows down their effective implementation by legal practitioners. Furthermore, shortcomings in the existing relevant Council of Europe's instruments were underlined in the above mentioned European Conference of General Prosecutors in Moscow.

- within the European Union, new instruments such as the Council's Framework Decision of 2002 on the European arrest warrant and the surrender procedures between member states of the European Union were adopted, and new bodies such as Eurojust, liaison magistrates and the European Judicial Network in criminal matters were set up, which give effect to the principle of mutual recognition.
 - direct contacts in the field of judicial mutual assistance, through bilateral, regional or international agreements between judicial bodies¹⁹ of the various member states are becoming increasingly frequent.
12. However, the real innovation lies in the further option provided for in these agreements. The agreements referred to provide for the spontaneous transmission of information from one national judicial authority²⁰ to that of another country. Legal instruments that are fully operative in most of the Council of Europe member states authorise national judicial authorities to report criminal offences and transmit the relevant information. This practice was advocated by the Committee of Ministers in Recommendation Rec(2000)19, according to which *"lastly, the possibility should be considered of extending existing mechanisms facilitating spontaneous exchange of information between public prosecutors of different countries"*²¹.
13. Consideration should now be given to the practical responses to these innovations, namely whether the international agreements concerned have led to significant changes in the member states' domestic law and practice and, at least, whether, and to what extent, public prosecutors use these new instruments and are aware of the recent changes that have taken place.
14. The preliminary study by the CCPE²² shows that international cooperation has been improved since the nineties, sometimes thanks to pragmatic solutions implemented through cooperation and the setting up of direct contacts between the players in the process concerned. Some states underline an increased specialisation of the relevant players and smoother internal information regarding the opportunities offered within the framework of the mutual legal assistance system.
15. However, many elements are stressed as hampering the necessary development of mutual legal assistance in criminal matters and as being the cause of excessive length in international cooperation procedures today, in particular:
- pan-European mechanisms of legal cooperation are not always in line with the today's challenges and demands;
 - the drafting of requests for assistance (e.g. too brief or with too many details, not signed or poorly researched, incorrectly translated, not precise or not following the proper procedure, etc.) can undermine

¹⁴ United Nations Convention against Transnational Organised Crime, signed at the Palermo Conference of 12-15 December 2000.

¹⁵ Signed at the High level political Conference in Merida (Mexico) on 9 – 11 December 2003.

¹⁶ Adopted on 13 April 2005 during the 91st plenary meeting of the UN General Assembly by Resolution A/RES/59/290.

¹⁷ Established by Council Act of 29 May 2000, on the basis of Article 34 of the Treaty on European Union.

¹⁸ Signed in Chisinau (Moldova) on 7 October 2002.

¹⁹ The expression "judicial bodies" is to be taken here in the broad sense to include judges, public prosecutors and senior law enforcement authorities who are responsible for international judicial cooperation in criminal matters.

²⁰ Idem as in the footnote above.

²¹ Commentary on recommendation 39.

²² Report CCPE-BU(2007)12, mentioned above.

the cooperation process; the lack of training, the complexity of procedures, the shortage of resources provided can mostly explain these shortcomings;

- the transmission of requests remains too often linked only to diplomatic channels, though the European Convention on mutual judicial assistance in criminal matters (CETS N°30) and its Second Additional Protocol (CETS N°182) make possible direct contacts between competent judicial authorities to submit and execute requests; the lack of information (details of the competent authorities) often forces requests to go through central authorities; moreover, the simultaneous use of different channels of communication is a disruptive factor for the smooth implementation of the cooperation procedure;
- the increase in the number of mutual assistance requests is a factor contributing to the paralysis of the procedures, requested authorities being repeatedly bogged down by the execution of requests sometimes relating to minor cases;
- as regards the execution of the requests, the lack of a European culture of judicial cooperation and a degree of resistance in practical terms result in cooperation procedures being systematically relegated by internal procedures.

16. But serious difficulties arise from the differences between legal systems. The means by which evidence is obtained, the problem of dual criminal liability or *ne bis in idem*, the competence of the requesting authority or the system of judgments *in absentia* are main examples of concepts and procedures which would benefit from being more coherent with each other at international level to facilitate the cooperation between the systems. A better mutual knowledge of these systems would also enable to favour this cooperation.
17. Such difficulties are increased when addressing extradition. For example cases of extradition procedures aborted after political grounds were mentioned, interpretation of the same legal concept differed or the impossibility of extraditing nationals reiterated.
18. Another generally criticised negative aspect is that of delays for no objective reason. Here, one is no longer talking about structural or legal problems but simply about professional dysfunctions with no legal complications.
19. Therefore measures and tools should be developed so as to build a genuine culture of international judicial cooperation in criminal matters, both at the level of central authorities and at the level of individual players in this cooperation.
20. In that regard, the CCPE recalls that the First pan-European Conference of public prosecutors specialising in cases relating to organised crime²³ formulated recommendations in this way and proposed "*to organise contacts and exchanges of information between public prosecutors, in a more structured way*" and invited "*the Council of Europe to set up a liaison group, made up of a small number of public prosecutors, informally to organise contacts and exchanges of information between public prosecutors in general, supplementing existing arrangements, and, in particular, between public prosecutors specialising in cases involving organised crime*" while specifying that "*contacts should be established between the Council of Europe's liaison group and Eurojust (...)*".
21. Similarly, the European ministers of Justice and of the Interior who met in Moscow in November 2006²⁴ supported the idea that "*a network of national contact points be developed in order to facilitate contacts between those responsible for international judicial co-operation, notably in the areas of combating terrorism, corruption and organised crime, trafficking in human beings and cybercrime*".

RECOMMENDATIONS BY THE CCPE

22. The CCPE stressed the major improvements in international cooperation in criminal matters, as regards the European and international instruments adopted in the recent years, the institutional structures set up to facilitate exchanges between the players of this cooperation as well as the effective contacts developed between the practitioners. The CCPE encourages relevant bodies of the Council of Europe and member states to pursue and intensify their efforts so as to set up the institutional, normative and inter-personal conditions for the development of a genuine European legal culture of cooperation in the criminal field between the various member states, and even beyond.

²³ See above.

²⁴ See above.

Acting on the normative framework of international cooperation

23. To strengthen the normative framework of international cooperation and allow the improvement of the day to day work of judicial practitioners entrusted with the concrete application of mutual assistance, the CCPE recalls that it is essential that the relevant Conventions, namely those mentioned under paragraph 11 above, are swiftly ratified and effectively applied by the states concerned, and in particular the Council of Europe's member states.
24. Furthermore, the CCPE fully supports the ongoing work within the PC-OC which aims to modernise the relevant Council of Europe's instruments. Following the conclusions of the 7th European Conference of General Prosecutors (Moscow, 2006)²⁵, the CCPE invites the Committee of Ministers and the relevant committees of the Council of Europe to keep priority on the work of updating instruments on extradition, mutual assistance and transfer of criminal proceedings in order to set up more flexible cooperation procedures, based on mutual trust and confidence between the systems to speed up a procedure for handing persons over, by simplifying it, on the basis of the consent of the individual whose extradition is requested and whose fundamental rights would obviously remain fully guaranteed.
25. In this regard the CCPE recommends the Committee of Ministers to think about the preparation of a comprehensive Council of Europe convention on international co-operation in criminal matters.²⁶
26. The CCPE also invites the legislature in the member states to study the possibility of simplifying national procedures targeted to the effective functioning of international cooperation, so that the weight of these procedures does not hamper the application of cooperation requests, in particular as regards extradition procedures. In any case, such simplified procedures would have to respect fully the rights of the persons concerned.

Acting on the quality of international cooperation

27. Relying namely on Recommendation Rec(2000)19 (in particular Article 38), on the Opinions of the Consultative Council of European Judges (CCJE) N°4 (2003) on appropriate initial and in-service training for judges at national and European levels²⁷ and n°9 (2006) the role of national judges in ensuring an effective application of international and European law²⁸, as well as on the conclusions of the European Conference of prosecutors in Warsaw²⁹, the CCPE recommends that the training of prosecutors engaged in international judicial cooperation as well as other players in such cooperation is strongly developed. Improved professional training on international cooperation should take account not only of existing conventions on the subject but also operational information collated by existing organisations and systems. It should equip practitioners with the necessary skills to better draft their requests for assistance and better understand and execute the requests that are addressed to them. Efforts for raising awareness of the international judicial cooperation players could also be undertaken in order to develop their skills so as to formulate their request for assistance more precisely and to avoid overloading third systems with misdemeanour requests.
28. It might not be necessary or even possible that every prosecutor or judge should be well aware of the relevant international instruments and channels. But it is essential that some of them are specialists on this issue and thus specifically trained. Therefore the CCPE recommends that each member state sets up an appropriate structure by which this specialisation should be guaranteed.
29. This training focused on international cooperation in the criminal justice field must include human rights training for judges and prosecutors, as well as for defence lawyers where specifically appropriate. In addition to the general overview of the fundamental elements of human rights law, it is essential to explicitly identify those basic rights and

²⁵ See above.

²⁶ On 18 June 2007 in his speech opening the 56th session of the European Committee on Crime Problems (CDPC) the Secretary General of the Council of Europe T. Davis suggested reviving this initiative from some ten years ago: "The aim would be to update, make more efficient and bring under a single "roof" all our existing conventions on international co-operation in criminal matters. I know that this is a long-term, ambitious and possibly also controversial project, but I do not think that we can be too ambitious when it comes to the fight against crime". Such a draft Convention was elaborated several years ago but was put aside at that time.

²⁷ See in particular paragraphs 43 and 44 of Opinion N° (2003) 4 of the Consultative Council of European Judges (CCJE).

²⁸ See in particular paragraphs 7, 8 and 11 of Opinion N°(2006) 9 of the Consultative Council of European Judges.

²⁹ "Given that the human factor is crucial in improving and making full use of international co-operation, the Conference, drawing attention to the importance which Recommendation Rec(2000)19 affords the training of prosecutors, strongly emphasises that appropriate training must be provided, in particular in order to keep pace with developments in international crime".

relevant standards which concern directly individuals in criminal proceedings related to the execution of requests for international assistance in criminal matters. This should result in commentaries on each of the relevant law sources, as the applicable rights and standards differ according to the cooperation forms. Such commentaries or specialised documents should also rely on the prevailing practice and case-law.

30. This knowledge must be disseminated by appropriate means, and by training organisations, in particular judicial and prosecutorial national training institutions. The relevant European bodies for judicial and prosecutorial training such as the Lisbon Network of the Council of Europe and the European Judicial Training Network could also play a leading role in this context.
31. This training should also be completed by training in foreign languages, namely to contribute to improve direct contacts between practitioners, the quality of their assistance requests and a better understanding of the requests addressed to them.
32. Furthermore, the CCPE recommends that necessary information tools for practitioners are developed by the competent national authorities. It underlines in particular the usefulness of setting up a handbook on mutual judicial assistance containing a wide range of information on national investigation systems, like the so-called *Fiches belges*³⁰, which the European Judicial Network in criminal matters uses as a working tool and which facilitate the understanding of the states' legal systems. Circulars or guidelines summarising the applicable machinery, compendia of good practices and multilingual forms aimed at making uniform and facilitating the implementation of the most usual assistance measures could be developed, updated and disseminated among the practitioners, including through the Internet.

Where appropriate, this should be done with the support of the CCPE. In this context, the CCPE recalls that the European ministers of Justice and the Interior encouraged in Moscow in November 2006³¹ "*the establishment of a database of procedures in force in the member states concerning the various types of co-operation which would allow for easier access to this information*" and reiterates its support of this proposal. The above mentioned tools could be transmitted to the Council of Europe in order to enrich such a data base.

33. As regards professional training and information of prosecutors, the CCPE could also play a role in organising meetings of specialised prosecutors from member states, such as the above mentioned Caserta conference, where appropriate in cooperation with other interested bodies within the Council of Europe, and in partnership with other relevant European and international institutions and organisations.
34. The efficiency of the transmission of assistance requests and the way they are addressed depend also on the development of the transmission methods. The CCPE underlines that the opportunities offered by the new information technologies could thus be widely used to facilitate namely the exchanges through secure electronic channels provided that the principle of confidentiality and the authentication of documents are fully guaranteed.

Extending exchanges between legal practitioners

35. At the level of the Council of Europe, the CCPE invites the Committee of Ministers to reflect on the relevance of setting up structured cooperation and information exchange along the lines of the European Judicial Network in criminal matters and Eurojust, which would in particular enable the member states which are not party to such bodies of the European Union to benefit from similar services, on the basis of the relevant Council of Europe's instruments.
36. Based on the arguments and undertakings in the "Memorandum of Understanding between the Council of Europe and the European Union"³², one possible approach could be to assign a formal or informal mediation role to the Council of Europe wherever problems arise concerning cooperation within the criminal justice field.
37. Without challenging the direct and decentralised ways of transmission, the member states could also consider the issue of identifying in each country, at an appropriate level according to the national legal system, a "specialised

³⁰ The so-called "*Fiches belges*" give to the practitioners of mutual judicial assistance all the useful information on the legislation and organisation in the states of the European Union with which an action of judicial cooperation is envisaged.

³¹ See above.

³² See paragraph 29 of this Memorandum.

unit" entrusted with assisting to solve the difficulties met by practitioners of the requesting and requested states regarding judicial assistance requests. This unit would be entrusted in particular to deal with problems that impede or slow down assistance procedures.

38. The CCPE also calls member states to strengthen the willingness as regards international cooperation in the criminal justice field and to facilitate the full and direct participation of legal practitioners. The CCPE invites member states to compile a list of contacts and addresses giving the names of the relevant contact persons, as well as their fields of specialisation, their areas of responsibility, etc., and to publish this list on a restricted web site which might be administered by the Council of Europe. This list should be regularly updated by the states, so as to ensure the efficiency of the system. This would enable, while respecting the relevant Conventions, direct exchanges between practitioners, without going through the diplomatic channels which might be heavy procedures.
39. Moreover, the CCPE considers that the exchange of liaison judges / prosecutors between states, as encouraged by Article 38 of Recommendation Rec(2000)19, constitutes good practice which should be developed as far as possible, as it facilitates contacts between national justice systems, fosters a better mutual knowledge of these systems and therefore contributes to enhancing mutual trust and confidence between the international cooperation players.
40. The CCPE recommends that the prosecution services foster mutual cooperation also at the stage of drafting and executing requests, where appropriate.

Fostering cooperation with third countries and criminal international courts

41. Within the framework of the Council of Europe's activity, as regards international cooperation in criminal matters, an increased attention should be given to the problems arising from the cooperation with international criminal courts. Such an approach should also consider the necessary efforts for ensuring the full cooperation of member states with international criminal courts, subject to legal recognition of the competence of these courts by the member states concerned.
42. It should also be taken into consideration more increasingly that the relevant conventions of the Council of Europe are also applicable to some non-European countries.
43. In order to widen the legal basis for cooperation of the member states with third countries, the CCPE recommends that the Committee of Ministers considers the issue of inviting some states outside Europe to accede the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters, and the protocols thereto.

Acting on the resources allocated to international cooperation

44. The CCPE recommends that the member states' governments allocate appropriate financial, material and human resources so that international cooperation in criminal matters can be increased both in quantity and in quality, namely at the level of courts and prosecution offices. Such efforts should mostly be targeted at considering the appointment within the courts concerned specialised of judges and prosecutors for judicial mutual assistance in criminal matters. These efforts should also allow practitioners to dedicate the necessary time for addressing properly the requests, both as regards the way there are drafted and the way they are answered. Resources should finally be allocated for improving the linguistic quality of international cooperation, giving to courts and prosecution services the appropriate translation and interpretation means.

CCPE'S AVAILABILITY TO COOPERATE WITH OTHER BODIES

45. Where appropriate, the CCPE is prepared to cooperate with any such initiative. It reiterates its full availability to work firstly together with the other relevant committees within the Council of Europe, as well as with other relevant European and international institutions and organisations. Public prosecution services that were increasingly well prepared, professionally, to deal with such matters could then become the "*custodians of the interests of international co-operation*" as it is pointed out in Recommendation Rec(2000)19³³.

³³ See paragraph 3.

SUMMING UP OF THE RECOMMENDATIONS

In order to improve the institutional, normative and inter-personal conditions for the development of a genuine European legal culture of cooperation in the criminal field, the CCPE recommends to the Committee of Ministers and the Council of Europe's member states:

- to act on the normative framework of international cooperation in:
 - keeping priority on the work of updating the existing European conventions in the sphere of criminal justice, especially the European Convention on extradition;
 - accelerating the ratification and effective application of the relevant conventions and in seeking to simplify internal procedures to favour mutual assistance;
- to act on the quality of international cooperation:
 - in developing appropriate training of prosecutors as well as other players in international judicial cooperation,
 - in setting up in each member state an appropriate structure to guarantee the specialisation of some prosecutors and judges as regards international cooperation,
 - in issuing specialised documents or commentaries on the applicable human rights and standards in international criminal proceedings, to be regularly updated,
 - in giving to practitioners mutual information tools on judicial systems and procedures, including through the establishment within the Council of Europe of a data base,
 - in multiplying the opportunities for practitioners from the various member states to meet and exchange, namely through specialised colloquies and seminars for prosecutors,
 - in improving the transmission of assistance requests and the way they are addressed through new information technologies and the improvement of the quality of the request as regards their drafting and foreign language issues;
 - in facilitating the spontaneous and direct transmission of information;
- to extend exchanges between legal practitioners:
 - in setting up at the level of the Council of Europe structured cooperation and information exchange properly articulated with the European Judicial Network in criminal matters and Eurojust;
 - in setting up in each country, at an appropriate level according to the national legal system, a "specialised unit" entrusted with assisting to solve the difficulties met by practitioners of the requesting and requested states regarding judicial assistance requests;
 - in compiling a list of contacts and addresses giving the names of the relevant contact persons, as well as their specialist fields, their areas of responsibility, etc. and to publish this list on a restricted web site administered by the Council of Europe;
 - in developing the exchange of liaison judges / prosecutors;
 - in cooperating also that the stage of drafting and executing requests for assistance;
- within the framework of the Council of Europe, to foster cooperation with third countries, international criminal courts and relevant European and international institutions and organisations;
- to increase budgetary and human resources allocated to international cooperation in criminal matters within the courts and the prosecution offices.

Appendix

Council of Europe's Conventions regarding legal cooperation in criminal matters

024	European Convention on Extradition
030	European Convention on Mutual Assistance in Criminal Matters
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders
052	European Convention on the Punishment of Road Traffic Offences
070	European Convention on the International Validity of Criminal Judgments
071	European Convention on the Repatriation of Minors *
073	European Convention on the Transfer of Proceedings in Criminal Matters
082	European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes
086	Additional Protocol to the European Convention on Extradition
088	European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle
090	European Convention on the Suppression of Terrorism
097	Additional Protocol to the European Convention on Information on Foreign Law
098	Second Additional Protocol to the European Convention on Extradition
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
101	European Convention on the Control of the Acquisition and Possession of Firearms by Individuals
112	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 *
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
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons
172	Convention on the Protection of Environment through Criminal Law *
173	Criminal Law Convention on Corruption
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
185	Convention on Cybercrime
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems
190	Protocol amending the European Convention on the Suppression of Terrorism *
191	Additional Protocol to the Criminal Law Convention on Corruption
196	Council of Europe Convention on the Prevention of Terrorism
197	Council of Europe Convention on Action against Trafficking in Human Beings *
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism *

The Conventions followed by * have not entered into force so far.

APPENDIX XIV

Comments on Opinion No (2007) 1 of the the Consultative Council of European Prosecutors (CCPE) on "Ways of improving international co-operation in the criminal justice field"

adopted by the CDPC
at its plenary meeting of 2-6 June 2008

SUMMARY

This document contains CDPC's comments on the CCPE Opinion on "Ways of improving international co-operation in the criminal justice field". The CDPC decided to transmit this Opinion to the Committee of Ministers along with these comments.

The CDPC welcomes the Opinion of the CCPE and considers it as a recognition of the work of the CDPC and the PC-OC. The CDPC points to the recent activities of the PC-OC, which have already provided solutions to a number of shortcomings identified in this document.

In particular, the CDPC considers the ongoing work on the modernisation of the European Convention on Extradition (see paragraphs 4-5), as well as the creation of a database on national procedures concerning the application of Council of Europe conventions on co-operation in criminal matters (see paragraphs 7-8) and a network of single points of contact (see paragraphs 11-12), as important contributions to international co-operation in the criminal justice field.

The CDPC notes that, in accordance with its terms of reference, the Consultative Council of European Prosecutors "reports on its activities to the Committee of Ministers and to the CDPC and all texts for the Committee of Ministers will be forwarded through the CDPC to ensure proper coordination and consistency on matters relating to criminal justice policy".

In forwarding the Opinion of the CCPE on "Ways of improving international co-operation in the criminal justice field"¹ to the Committee of Ministers, the CDPC would like to make the following observations on some of the recommendations contained in this document. It particularly wishes to highlight certain initiatives taken by the CDPC and its subordinate bodies, and in particular by the PC-OC², which deal in substance with a number of issues raised in the recommendations of the CCPE.

TO ACT ON THE NORMATIVE FRAMEWORK OF INTERNATIONAL COOPERATION

The CDPC welcomes the fact that the CCPE fully supports the ongoing work within the PC-OC on the modernisation of Council of Europe instruments concerning co-operation in criminal matters (paragraph 24 of the Opinion). The PC-OC has consistently elaborated new solutions to modernise the relevant conventions, which are notably contained in the protocols to the conventions, the most recent examples of which are the Additional Protocol to the Convention on Transferred Persons (ETS No. 167) and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182). The CDPC attaches great

¹ Opinion N°(2007) 1, adopted by the CCPE at its 2nd plenary meeting (Strasbourg, 28 – 30 November 2007).

² The PC-OC, composed of national experts in the field of international legal co-operation, has notably the task of monitoring "the operation of the conventions on international co-operation in criminal matters with a view to facilitating their practical implementation". The CCPE is entitled to participate in the meetings of the CDPC, as well as of the PC-OC.

priority to the work conducted within the PC-OC, and in particular its activities related to the modernisation of the relevant Council of Europe Conventions and the ratification of existing legal instruments.

In 2007 the CDPC mandated the PC-OC to examine several issues relating to the European Convention on Extradition, and to elaborate binding and non-binding instruments to modernise the Council of Europe standards applying in this field. In the light of this mandate, the PC-OC is currently preparing a text introducing simplified extradition procedures subject to the consent of the person concerned. Negotiations are ongoing and a draft 3rd Additional Protocol to the European Convention on Extradition will be submitted to the plenary meeting of the CDPC in 2009.

In addition, the PC-OC is currently working on the modernisation of a number of other aspects relating to the European Convention on Extradition, such as the rule of speciality, lapse of time in extradition procedures, channels and means of communication or compensation of persons in connection with extradition procedures. Having taken stock of the problems encountered by States Parties in applying the European Convention on Extradition and their views on possible solutions, the PC-OC is currently elaborating new standards to adapt the Convention to the modern needs of international co-operation in the field of extradition. As regards the question of a comprehensive Convention (paragraph 25 of the Opinion), the CDPC would like to point out that the PC-OC and the CDPC already worked on this issue and decided that such a comprehensive convention would not be feasible for the time being.

TO ACT ON THE QUALITY OF INTERNATIONAL COOPERATION

The CDPC fully agrees with the CCPE that appropriate training for judges, prosecutors and other practitioners is essential for international co-operation in criminal matters. As regards the “issuing of specialised documents or commentaries” on the applicable standards, the CDPC would like to point to the publication of a compendium entitled “Extradition: European Standards” (Council of Europe Publishing) in 2007. This publication brings together the relevant Council of Europe standards in the field of extradition, as well as the discussions and conclusions of the PC-OC on several topics.

Concerning the CCPE recommendation to give “to practitioners mutual information tools on judicial systems and procedures, including the establishment within the Council of Europe of a data base” (paragraph 32 of the Opinion), the CDPC would like to draw attention to the fact that in June 2007, it mandated the PC-OC to create such a database, since a better cooperation between States requires a better knowledge of the judicial systems and applicable procedures in States Parties to the Conventions.

Accordingly, the PC-OC launched a database containing relevant information on national procedures relating to extradition in March 2008, and to mutual legal assistance in April 2008. The database will be complemented with information on national procedures regarding the transfer of sentenced persons in June 2008. This database, available on the PC-OC website (www.coe.int/tcj) replies to principal questions relating to international legal co-operation in criminal matters and is available to all practitioners who need guidance on judicial co-operation with specific countries. The information available on the database is provided by the members of the PC-OC. It will be updated on a yearly basis and adapted, if necessary, to future needs.

Concerning language-related problems in international co-operation in criminal matters (paragraph 31 of the Opinion), the CDPC and the PC-OC are well aware of the difficulties encountered in this context. In the framework of the modernisation of the Council of Europe standards for extradition, the PC-OC suggested that new legally binding instruments be drafted in order to allow a simpler, less expensive and quicker execution of requests³. This work is ongoing.

As regards the facilitation of “spontaneous and direct transmission of information” (paragraph 34 of the Opinion), the CDPC would like to refer to a new network of national single points of contact (see paragraph 12 below), as well as to the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which allows for such spontaneous exchanges of information.

³ Draft proposals of the PC-OC concerning normative measures to improve operation of relevant conventions as discussed and agreed by the restricted group of experts on international co-operation (PC-OC mod) at its 3rd meeting Strasbourg, 22-23 January 2007, CDPC-BU (2007) 10.

TO EXTEND EXCHANGES BETWEEN LEGAL PRACTITIONERS

In order to improve communication among national authorities in charge of international legal co-operation, and thus the efficiency of such co-operation, the PC-OC maintains a “list of national officials in charge of international co-operation”⁴. This list comprises names and contact details of officials from national central authorities dealing with co-operation requests and is updated on a regular basis.

In addition, the PC-OC recently requested each member State to designate one person (with substitutes) as a contact point for all co-operation requests, in order to improve efficiency. The persons thus designated constitute a network of national points of contacts from States Parties to the Council of Europe conventions. On a short term basis, this initiative will contribute to speeding up the execution requests for legal co-operation, notably by ensuring that the proper person, body or institution is contacted from the outset. It will also improve the dissemination of information on the relevant applicable law or on specific questions concerning the national legal system. These contact points will also act as national correspondents and will be involved in the updating of the database mentioned above (see paragraph 9 above).

As regards assistance to “solve the difficulties met by practitioners of the requesting and requested states regarding judicial assistance requests”, it is worth noting that the PC-OC devotes an important part of its plenary meetings to discussing practical difficulties relating to the operation of the relevant conventions, brought to its attention by its members. These discussions have proved very successful, as they allow for the sharing of practical experience and the identification of possible solutions to concrete problems⁵.

TO FOSTER CO-OPERATION WITH THIRD COUNTRIES, INTERNATIONAL CRIMINAL COURTS AND RELEVANT EUROPEAN AND INTERNATIONAL INSTITUTIONS AND ORGANISATIONS

The CDPC agrees with the CCPE that ratification of Council of Europe conventions in the criminal field by third countries, whose national legislation and practice are compatible with the Conventions and who respect minimum human rights standards, should be encouraged. It would like to stress that an effective co-operation with third countries also requires the effective implementation of these conventions by these countries. For this purpose, the PC-OC is currently examining ways of finding contact points dealing with international legal co-operation in criminal matters in third countries which are Parties to the relevant conventions.

The European Union and the relevant United Nations organs and institutions are represented during the elaboration of new instruments on co-operation in criminal matters. The CDPC would like to point out that the Observers to the Council of Europe and Israel, as well as the European Commission and the Council of the European Union actively participate in the work of the PC-OC, while the World Health Organisation was represented during the preparatory work concerning a future Convention on Counterfeit Pharmaceutical Products.

CONCLUSIONS

The CDPC welcomes the Opinion of the CCPE on “Ways of improving international co-operation in the criminal justice field”. It considers the contents of this opinion, as well as the recommendations contained therein, as a support for and recognition of the work conducted by the CDPC, and in particular by the PC-OC, its subordinate Committee of Experts on the operation of European Conventions on co-operation in criminal matters. In so far as the CCPE continues its activities in the field of international co-operation in criminal matters, the CDPC recommends that stronger co-ordination between the CCPE and the PC-OC be ensured.

As indicated above, the work of the CDPC and the PC-OC is highly relevant to the issues raised in the Opinion of the CCPE. The CDPC would like to stress in particular that the recent activities of the PC-OC have already provided solutions in connection with a number of shortcomings identified by the CCPE.

⁴ PC-OC Inf 6.

⁵ As a recent example, see paragraphs 36-38 of the Summary Report of the 54th meeting of the PC-OC.

The CDPC considers that the recommendations of the CCPE contain many elements that could provide useful guidance to member States when developing policies to reinforce international co-operation in the criminal justice field. The CDPC therefore decides to forward this Opinion to the Committee of Ministers, along with these comments.