



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CDPC(2008) 20

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

57th Plenary Session

Strasbourg, 2 (09 :30) - 6 (13 :00) June 2008
Agora Building
Room G03

MEETING REPORT

The following abbreviations are used in referring to the CDPC and its subordinate bodies Committees

CDPC	EUROPEAN COMMITTEE ON CRIME PROBLEMS
MONEYVAL	COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
PC-OC	COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS IN THE PENAL FIELD
PC-CP	COUNCIL FOR PENOLOGICAL CO-OPERATION
PC-CSC	CRIMINOLOGICAL SCIENTIFIC COUNCIL
PC-PM	COUNCIL FOR POLICE MATTERS
CDAP	CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATIONS
PC-S-CP	GROUP OF SPECIALISTS ON COUNTERFEIT PHARMACEUTICAL PRODUCTS
PC-ES	COMMITTEE OF EXPERTS ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE
PC-OC Mod	RESTRICTED GROUP OF EXPERTS ON INTERNATIONAL CO-OPERATION
PC-ISP	AD HOC COMMITTEE ON COUNTERFEITING OF MEDICAL PRODUCTS AND SIMILAR CRIMES INVOLVING THREATS TO PUBLIC HEALTH

ITEM 1 – OPENING OF THE MEETING

1. The Chair, Mr Branislav Boháčik, opened the meeting and welcomed the participants. Mr Philippe Boillat, Director General for Human Rights and Legal Affairs, in his speech first drew attention to the Memorandum of Understanding between the Council of Europe and the EU. He also pointed out that the structural changes which took place following the merger between the Directorates General of Human Rights and Legal Affairs brought improved synergies between Steering Committees as well as between standard-setting, assistance and monitoring activities. Mr Boillat provided information on the current main activities of the CDDH, CDCJ, CDMC and CDEG. He also highlighted the fact that the policy of zero budget growth for the Council of Europe remained in place. Mr Chiaromonte, Secretary to the CDPC, informed the participants on new developments in the criminal field since the last CDPC plenary and presented the working documents.

ITEM 2 – ADOPTION OF THE AGENDA

2. The Agenda was adopted, as it appears in Appendix II to this report and lists the documents relevant to each agenda item. Appendix I contains the list of participants.

ITEM 3 – APPROVAL OF THE DRAFT EUROPEAN RULES FOR JUVENILE OFFENDERS

3. The Chair of the Council for Penological Co-operation, (PC-CP), Ms Sonja Snacken, presented the work of the Council on the draft Recommendation on the European Rules for Juvenile Offenders Subject to Sanctions or Measures and its explanatory memorandum. She underlined the fact that, in addition to the standards of the European Prison Rules, the draft Recommendation took account of the specific needs of juveniles considering that they need better protection than adults. She explained that, following the Resolution N 2 on child-friendly justice adopted by the European Ministers of Justice in Lanzarote (see paragraphs 26-28 below) and in accordance with the instruction of the CDPC Bureau in January 2008, the work on this Recommendation had been prioritised over other items on the agenda of the PC-CP, such as probation and aftercare.
4. Ms Snacken stated that the PC-CP's work had to take into account the divergence in the national systems, often involving many different authorities, including, judicial, welfare or healthcare authorities. She also underlined the fact that the draft rules drew on various sources, such as the European Prison Rules, Rules on Community Sanctions, CPT standards, etc.
5. The CDPC examined in detail the draft Recommendation and its explanatory memorandum. It approved them with amendments (see Addenda I and II to this report) and decided to invite the Committee of Ministers 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. The CDPC congratulated the experts and the PC-CP for a text of very high quality prepared in a relatively short time.

ITEM 4 – PHARMACEUTICAL CRIME

- 4a. **Approval of the final report of the Group of specialists on counterfeiting pharmaceutical products (PC-S-CP)**
6. The Secretariat provided background information on the work in the field of pharmaceutical crime. As the first feasibility study commissioned by the CDPC had been favourable to initiating a Council of Europe activity in this area, an ad hoc group of specialists, the PC-S-CP, chaired by Mr Claude Debrulle was set up in 2007. The Bureau of the CDPC, having closely followed the work of these specialists, agreed in January and May that the group could be entrusted with the task of drafting a preliminary convention.

7. Mr Debrulle presented the final report of the PC-S-CP, which proposes the preparation of a Council of Europe Convention on Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health with a scope going beyond intellectual property questions and concentrating on public health issues. He gave information about the arguments in favour of drafting such a convention contained in the report, the work of the Group regarding the scope of the future convention and the definitions to be included therein, as well as the sanctions considered. He stressed that the Group had worked under time pressure, but had achieved good results, thanks to the multidisciplinary expertise of the Group and the support of the Secretariat.
8. The CDPC took note of the report and expressed its satisfaction with its quality. Some delegations considered that, while counterfeiting should be broadly defined, the scope of the future Convention should not be extended so as to include questions going too far beyond counterfeiting, such as diversion or clinical trials. Other delegations were of the view that the issue of clinical trials should be included in the Convention.
9. The representative of the European Commission thanked the Group of the comprehensive report and stated that the Commission supports future Council of Europe work in this field, which would complement the existing EU directive on counterfeiting in general.
- 4b. **Approval of revised specific terms of reference for the Group of specialists on counterfeiting pharmaceutical products (PC-S-CP)**
10. In the light of its discussions on the final report of the PC-S-CP, the CDPC decided that the Group should be entrusted with the preparation of a preliminary draft convention. It examined and amended the draft revised specific terms of reference of the PC-S-CP (see Appendix III to this report), allowing the Group to draft a preliminary draft Convention against counterfeiting of medical products and similar crimes involving threats to public health. The CDPC invited the Committee of Ministers to approve these draft terms of reference.
11. The CDPC decided that following the preparation of the preliminary draft Convention by the PC-S-CP, and once the Bureau of the CDPC considers the preliminary draft Convention sufficiently advanced for consideration, this text should be negotiated and finalised by an ad hoc Committee under the aegis of the CDPC and with the full participation of all Council of Europe States. To this end, the CDPC examined and amended 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) (see Appendix IV to this report), and invited the Committee of Experts to approve the draft terms of reference of this ad hoc Committee.
12. Regarding the draft terms of reference of the ad hoc Committee, while the CDPC accepted that the Steering Committee on Bioethics (CDBI) be included among the participants, it agreed that this should not entail an extension of the scope of the future Convention.

ITEM 5 – DOMESTIC VIOLENCE, INCLUDING VIOLENCE AGAINST WOMEN

13. 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. At its 56th plenary meeting (June 2007), the CDPC had taken note of a Feasibility Study for a Convention Against Domestic Violence and agreed that it could be necessary to draft a legally binding instrument in this field. It had taken 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).
14. The CDPC took note of the fact that the Feasibility Study for a convention on domestic violence had been transmitted to the CDEG and the EG-TFV for opinion. The Task Force adopted its

opinion at its last meeting on 1-4 April 2008 and transmitted it to the Chairman and Secretariat of the CDPC.

15. 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.
16. The CDPC fully shared the view of the Task Force that the phenomenon of gender-based violence is an extremely important problem. Nevertheless, the CDPC felt that it would be unfeasible to cover all the issues identified by the Task Force in one convention, as 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.
17. For these reasons, the CDPC expressed the 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.
18. 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 (see Appendices IX and X to this report), as well as the outcome of its discussions on this issue, as described above.

ITEM 6 – INTERNATIONAL CO-OPERATION IN THE CRIMINAL FIELD

6a. Simplified extradition and other normative measures

19. The CDPC took note of the oral information provided by its Chair and the Secretariat regarding the progress made within the PC-OC concerning the preparation of normative texts in order to modernise the European Convention on Extradition, and notably the drafting of a 3rd additional Protocol to the European Convention on Extradition, complementing the Convention by simplifying extradition procedures where the person concerned consents to her/his extradition. It also took note of the progress achieved in relation with other issues concerning extradition, such as compensation, lapse of time and the rule of speciality in extradition procedures.
20. The CDPC expressed its appreciation of the work of the PC-OC and instructed it to inform the CDPC Bureau as soon as possible on the outcome of this work.

6b. Practical measures

21. The CDPC is also took note of the presentation made by the Secretariat concerning the progress made towards the implementation of practical measures to improve the operation of relevant conventions, as approved by the CDPC at its previous meeting. These practical measures include the setting up of a network of single points of contact for international co-operation in criminal matters and the launching of a database on national procedures relating to extradition, mutual legal assistance and the transfer of sentenced persons. The CDPC also took note of the fact that the implementation of these practical measures did not have any budgetary implications.

6c. Approval of revised specific terms of reference for the PC-OC

22. The CDPC took note of the fact that, in order to continue its work, the PC-OC had proposed to extend the duration of its terms of reference until 31 December 2010. The CDPC approved the draft revised terms of reference of the PC-OC (see Appendix VI to this report) and invited the Committee of Ministers to adopt them.

6d. Article 23 of the Convention on the Transfer of Sentenced Persons (ETS N° 112)

23. The Chair provided information on developments in a case concerning the application of Article 23 of the Convention on the Transfer of Sentenced Persons between Canada and Bulgaria. The CDPC took note that a meeting organised by the Chair with the participation of delegations of the two countries in November 2007 had contributed greatly to clearing some misunderstandings between the parties.

24. The CDPC took note of a document distributed by the Georgian delegation relating to the application of the Convention on the Transfer of Sentenced Persons between Georgian and the Russian Federation. Following statements by the Georgian and Russian delegations and a brief exchange of views on the legal aspects relating to the question raised by Georgia, 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. The Chair stated that the CDPC and its Bureau would be kept informed of these discussions and their outcome.

6e. Proposal for a Second Additional Protocol to the Convention on the Transfer of Sentenced Persons

25. The CDPC took note of the fact that, following the instructions of the CDPC Bureau, the PC-OC had addressed to its members a questionnaire concerning the proposal of the Ministry of Justice of Greece to draft a Second Additional Protocol to the Convention on the Transfer of Sentenced Persons. At its plenary meeting in November 2007, the PC-OC continued its examination of this proposal in the light of the States' replies to this questionnaire. Having identified a number of key issues related to the proposal which require further consideration, the PC-OC decided to pursue the examination of this item. However, taking into account that questions relating to extradition have a higher priority, the PC-OC agreed that this item should be included on the agenda of one of its coming plenary meetings. The CDPC instructed the PC-OC to inform its Bureau of developments in this area.

ITEM 7 – COUNCIL OF EUROPE CONFERENCES OF MINISTERS OF JUSTICE

7a. Follow-up to the 28th Conference (25-26 October 2007, Lanzarote, Spain)

26. The CDPC took note of the follow-up given to Resolution No. 1 on access to justice for migrants and asylum seekers adopted at the 28th Conference of Ministers of Justice, and in particular its paragraph 16c in which the Committee of Ministers is invited to entrust the European Committee

on Crime Problems (CDPC) to “examine the relationship between asylum procedures and extradition procedures”. The CDPC Bureau decided to submit this part of the resolution to the PC-OC for consideration. At its last plenary meeting (April 2008), the PC-OC decided to send a questionnaire to all PC-OC delegations in order to take stock of the situation in different States concerning the relationship between asylum and extradition procedures. It examined and adopted a draft questionnaire prepared by the Swiss and Slovak delegations on this issue, which was sent out in May 2008 (deadline for replies: 1 September 2008). The CDPC instructed the PC-OC to continue its work on this matter and to inform the CDPC Bureau and plenary of the outcome of this issue.

27. As regards Resolution No. 2 on child-friendly justice, in particular paragraph 23e in which the Committee of Ministers is invited to entrust the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights (CDDH) as well as the European Commission for the efficiency of justice (CEPEJ) in co-operation with other competent bodies of the Council of Europe, “to (...) prepare elements for European guidelines for child-friendly justice.”., the CDPC Bureau had decided at its meeting in January to commission a report on criminal aspects from a consultant, including the compilation of information regarding existing provisions at the national and international level. The appointed consultant was Ms Ksenija Turkovic, the former vice-chair of the committee of experts that drafted the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.
28. The Secretariat presented the main elements of Ms Turkovic’s report and the reasons given for the preparation of guidelines. The CDPC took note of the information that the report would be presented at a conference organised in Stockholm on 8-10 September (“Building a Europe for and with children – Towards a strategy for 2009-2011”), together with the reports of the other committees.
29. The CDPC expressed its gratitude to the expert and agreed that the report should serve as a basis for future work on the elaboration of guidelines for child-friendly justice. Considering that the delegations needed more time to look into the report in detail, 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.

6b. Preparation of the 29th Conference (17-19 June 2009, Tromsø, Norway)

30. The CDPC took note of Resolution No. 3 and the fact that 29th Conference of the Council of Europe Ministers of Justice will take place in Tromsø, Norway on 17-19 June 2009. It held a preliminary discussion on the possible themes of the Conference and took note of the theme proposed by its Bureau: “A Safer Society for European Citizens: a) Domestic Violence and b) Dangerous Offenders”.
31. Following 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 held on 5 June 2008, the CDPC took note that Norway preferred to have “Domestic Violence” as the theme of the Conference. It decided 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.
32. The CDPC also took note of 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 agreed that a follow up to the 2006 Conference in Moscow would be useful and welcomed this suggestion. It invited the Romanian delegation to

pursue its dialogue with the Secretariat and the Bureau with a view to the preparation of this possible Conference.

ITEM 8 – PRISONS

8a. Election of three PC-CP members

33. The CDPC elected Ms Irene Koeck (Austria), Mr Pavel Stern (Czech Republic) and Mr André Vallotton (Switzerland) as new members of the PC-CP.

8b. Prolongation of the ad hoc terms of reference of the PC-CP relating to probation and aftercare services in the European criminal justice systems

34. The CDPC was called upon to prolong the ad hoc terms of reference PC-CP relating to probation and aftercare services in the European criminal justice systems. This was made necessary by the fact that the PC-CP had been instructed to prioritise its work on the European Rules for juvenile offenders (see paragraph 3 above). The CDPC agreed to propose to the Committee of Ministers to extend these ad hoc terms of reference until 30 September 2009 (see Appendix V to this report).

8c. Current and future activities and priorities of the PC-CP

35. The Secretariat presented the document PC-CP (2008) 04 rev2, containing the proposals of the PC-CP regarding its current and future activities and priorities, stating that these proposals should ensure the follow up to be given to the conclusions adopted at the 14th Conference of Directors of Prison Administration (CDAP) held in Vienna on 19-21 November 2007. The Secretariat also highlighted the fact that the proposals were modified to accommodate the comments made by the CDPC Bureau at its last meeting, and notably the inclusion of the issue of foreign prisoners among the priorities of the PC-CP.

36. The CDPC discussed and approved this document (see Appendix XI to this report). It decided to transmit it to the Committee of Ministers for information.

37. The CDPC took note of the replies to the Questionnaire on the Implementation of the European Prison Rules, extending the deadline for replies to 18th of July. It instructed the Secretariat to prepare a document for the attention of the CDPC Bureau and plenary, evaluating the replies to the questionnaire and proposing follow-up measures.

38. As regards statistics in the penitentiary field, the CDPC was informed that SPACE I and SPACE II will be resumed as of 2008 and welcomed the fact that the Council of Europe was able to restore the financing of these activities.

Approval of the revised draft terms of reference of the PC-CP

39. The CDPC examined and approved the revised draft terms of reference of the PC-CP (see Appendix VII to this report) and decided to submit it to the Committee of Ministers for adoption. It considered, however, that 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 should be subject to the reception by the Secretariat of a written request for observer status sent by these two bodies. The CDPC instructed the Secretariat to ensure that proposals for inclusion of new observers in the draft terms of reference of its subordinate bodies be accompanied by a written request from and background information on the potential observers.

8d. Conference on probation and aftercare (Roubaix, France, November 2008)

40. The CDPC was informed on the themes of the Conference, which include probation and surveillance and the improvement of data collection for SPACE II, notably in view of ensuring better comparability of data. Mr Patrick Madigou, President of the CEP (Conférence Permanente Européenne de la Probation), informed the CDPC that the CEP wished to be involved in the preparation of the Conference. The representative of the European Commission stated that the Commission was in favour of this conference and work on prisons in general, as the increase in prison populations and overcrowding is a source of common concern for EU Member States.

ITEM 9 – APPROVAL OF THE REVISED DRAFT TERMS OF REFERENCE OF MONEYVAL

41. The CDPC took note of the information provided by Mr John Ringguth, Executive Secretary of Moneyval, on the activities of MONEYVAL as well as on the changes proposed to its terms of reference, notably the addition of a new financial expert and observer status for the OSCE. Considering that CDPC should also be included under observers, the CDPC approved the revised terms of reference of MONEYVAL with amendments (see Appendix VIII to this report) and decided to submit it to the Committee of Ministers for adoption.

ITEM 10 – WORKING METHODS OF THE CDPC AND ITS BUREAU

42. The CDPC examined and adopted the revised document entitled “Working methods of the CDPC and its Bureau”. This document had been previously revised by the Bureau in the light of the Committee of Ministers Resolution Res(2005)47 on committees and supporting bodies, as well as two amendments proposed by the Maltese delegation.

ITEM 11 – CONVENTION ON CYBERCRIME

43. The CDPC took note of the Conclusions of the Octopus Interface Conference on co-operation against cybercrime (Strasbourg, 1-2 April 2008) and the report of the T-CY meeting of 3-4 April 2008, as well as the information provided by the Chair on these activities and developments in the field of cybercrime. He drew the CDPC’s attention to the fact that non-binding guidelines for law enforcement - service provider cooperation had been adopted at the Conference.
44. Mr Boháčik stated that new trends, challenges and threats had been discussed during these events, such as identity fraud and issues relating to electronic evidence, as well as the functioning of the 24/7 network. In this respect, he highlighted the fact that the lack of designation of 24/7 contact points by some parties to the Cybercrime Convention hampered the efficiency of the Convention. Consequently, the CDPC requested Armenia, Bosnia and Herzegovina and Ukraine to send information to the Secretariat about progress made with regard to the designation of 24-7 contact points before 31 July 2008 and instructed its Bureau to follow this issue.
45. As regard information requested by the T-CY on mutual legal assistance in computer-related cases, the CDPC took note of the fact that the PC-OC had sent to the T-CY preliminary replies to a questionnaire it prepared on this subject, with clearer guidelines to be prepared at a later stage. The CDPC took note about the information concerning the issues raised by the T-CY which are directly related to the PC-OC.
46. The European Commission underlined the importance of the Octopus Conference and gave information about the Communication of the Commission concerning the fight against cybercrime, which calls on member States to ratify the Cybercrime Conventions.

ITEM 12 – ACTIVITIES OF THE COUNCIL OF EUROPE OUTSIDE THE CDPC

47. The CDPC took note of Opinion No. 1 of the CCPE entitled "Ways of improving international co-operation in the criminal justice field". It examined draft comments on this Opinion, prepared by the Secretariat with the instruction of the Bureau, and adopted them with amendments. The CDPC decided to transmit this Opinion to the Committee of Ministers together with these comments.
48. The CDPC took note of the information on the activities 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.
49. The CDPC took note of 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.

ITEM 13 – DATES OF THE NEXT MEETINGS OF THE CDPC AND ITS BUREAU

50. The CDPC decided to hold its next meeting in September 2009. The Bureau decided to hold its next meeting in November 2008.

ITEM 14 – ANY OTHER BUSINESS

51. The CDPC re-elected Mr Eric Ruelle (France) as Vice-Chair for one year and appointed Mr Nikola Matovski ("the former Yugoslav Republic of Macedonia") as representative of the CDPC to CEPEJ and to CCJE.
52. The CDPC took note of the information provided by the Secretariat on the Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation, and notably that it had been signed by 22 States and that a promotion campaign with a series of regional conferences had been launched, starting with conferences in Copenhagen (21-22 May 2008) and Athens (27-28 June 2008).

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

ARMENIA / ARMÉNIE

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

AUSTRIA / AUTRICHE

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

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

AZERBAIJAN / AZERBAÏDJAN

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

BELGIUM / BELGIQUE

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

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

BULGARIA / BULGARIE

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

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1. 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.

CROATIA / CROATIE

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

CYPRUS / CHYPRE

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

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

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

DENMARK / DANEMARK

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

Mr Ketilbjørn HERTZ, Legal Adviser, Ministry of Justice

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

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

ESTONIA / ESTONIE

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

FINLAND / FINLANDE

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

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

FRANCE

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

GEORGIA / GÉORGIE

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

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

GERMANY / ALLEMAGNE

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

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

GREECE / GRÈCE

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

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

HUNGARY / HONGRIE

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

ICELAND / ISLANDE

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

IRELAND / IRLANDE

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

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

ITALY / ITALIE

**No nomination / Pas de nomination

LATVIA / LETTONIE

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

LIECHTENSTEIN

Mr Carlo RANZONI, Judge, Fürstliches Landgericht, Spaniagasse 1

LITHUANIA / LITUANIE

**No nomination / Pas de nomination

LUXEMBOURG

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

MALTA / MALTE

**No nomination / Pas de nomination

MOLDOVA

*Mme Rodica SECRIERU, Conseiller, Ministère de la Justice

MONACO

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

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

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

MONTENEGRO

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

NETHERLANDS / PAYS-BAS

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

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

NORWAY / NORVÈGE

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

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

POLAND / POLOGNE

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

PORTUGAL

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

ROMANIA / ROUMANIE

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

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

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

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

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

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

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

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

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

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

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

SLOVENIA / SLOVÉNIE

*Ms Andreja LANG, Constitutional Court of Republic of Slovenia

SPAIN / ESPAGNE

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

SWEDEN / SUÈDE

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

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

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

SWITZERLAND / SUISSE

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

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

**“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 »

TURKEY / TURQUIE

**No nomination / Pas de nomination

UKRAINE

Mr Vitaliy KASKO, Head of the International Law Department, Office of the Prosecutor General
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

UNITED KINGDOM / ROYAUME-UNI

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

Ms Emma HADDAD, Home Office, International Directorate

* * * *

CDPC BUREAU / BUREAU DU CDPC
(CDPC-BU)

AUSTRIA / AUTRICHE

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

DENMARK / DANEMARK

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

FRANCE / France

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

GERMANY / ALLEMAGNE

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

GREECE / GRECE

*Ms Maria GAVOUNELI, Assistant Professor of International Law, Faculty of Law, University of Athens
Apologised / Excusé

ROMANIA / ROUMANIE

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

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

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

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

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

SLOVENIA / SLOVÉNIE

*Ms Andreja LANG, Constitutional Court of Republic of Slovenia

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**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, **Chair of the PC-OC / Présidente du PC-OC**
Director, Head of Division for International Criminal Law, Ministry of Justice
Apologised / Excusée

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

Ms Sonja SNACKEN **Chair of the PC-CP / Présidente du PC-CP**
Professor, Department of Criminology, Faculty of Law, Vrije Universiteit Brussel

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

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

M. Claude DEBRULLE, **Chair of the PC-S-CP / Président du PC-S-CP**
Directeur Général, Direction Générale de la Législation, des Libertés et Droits fondamentaux, Ministère de la Justice

**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)

Ms Dubravka ŠIMONOVIĆ, Vice-Chair of the Task Force, Head of Department for Human Rights, Ministry of Foreign affairs

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**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,

**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

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EUROPEAN COMMUNITY / COMMUNAUTÉ EUROPÉENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

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

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

**No nomination / Pas de nomination

* * * * *

**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

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

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

PENAL REFORM INTERNATIONAL / REFORME PÉNALE INTERNATIONALE (PRI)

**No nomination / Pas de nomination

SOCIETY FOR THE REFORM OF CRIMINAL LAW / SOCIETE POUR LA REFORME DU DROIT PENAL (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 SOCIETES DE DROIT DE LA COMMUNAUTE EUROPEENNE

**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

* * * * *

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

* * * * *

**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 KLEIJSSSEN	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 / Secretary to the CDPC Chef de la Division du droit pénal / Secrétaire du CDPC

Ms Ilina TANEVA	Deputy head of the Criminal Law Division/ Secretary to the PC-CP Chef adjoint de la Division du droit penal / Secrétaire du PC-CP
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 Ms Marieke DANKERT	Trainee / Stagiaire Trainee / Stagiaire
Mme Marose BALA-LEUNG Ms Claire ROBINS Mme Christiane WELTZER	Assistant / Assistante Assistant / Assistante 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 / Excusé</u>
<u>Interpreters / Interprètes</u> Mme Sarah ADLINGTON Mme Rebecca BOWEN Mme Marianne HUMMEL 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 offenders¹**
Working documents
 Draft European Rules for juvenile offenders [PC-CP \(2006\) 13 rev9](#)
 Draft European Rules for juvenile offenders (with country comments) [PC-CP \(2006\) 13 rev10](#)
 Draft commentary [PC-CP \(2007\) 05 rev4](#)
 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](#)

- *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 Committee on medical product counterfeiting and related pharmaceutical crimes (PC-CPC)**
Working document
 Revised specific terms of reference [CDPC-BU \(2008\) 11 rev3](#)
 Draft terms of reference of the Committee on medical product counterfeiting and related pharmaceutical crimes (PC-CPC) [CDPC \(2008\) 07 rev](#)
 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.

¹ 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
 Summary meeting report (CDCJ Bureau, 7-8 April 2008) [CDCJ-BU \(2008\) 05](#),
 item 3
- *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](#)
- 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
 Secretariat information note
 Summary meeting report (CDPC Bureau, 13-14 May 2008)
- [Resolution No. 3](#)
[CDPC \(2008\) 09](#)
[CDPC-BU \(2008\) 14](#),
 item 4b
- *8. Prisons**
[Working documents](#)
 PC-CP 56th Summary meeting report
 PC-CP 57th Summary meeting report
 PC-CP 58th Summary meeting report
- [PC-CP \(2007\) 08](#)
[PC-CP \(2008\) 01](#)
[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
 Summary meeting report (CDPC Bureau, 13-14 May 2008)
- [PC-CP \(2008\) 08](#)
[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
 Summary meeting report (CDPC Bureau, 13-14 May 2008)
- [PC-CP \(2008\) 04 rev2](#)
[CDPC-BU \(2008\) 14](#),
 item 9
- 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 (Roubaix, France, November 2008)**
- 9. Approval of the revised draft terms of reference of MONEYVAL**
[Working documents](#)
 Revised draft terms of reference of MONEYVAL
 MONEYVAL activity report 2007-2008
- [MONEYVAL \(2008\) 11](#)
[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
 Cybercrime and the European Union
 Guidelines for the cooperation between law enforcement and internet service providers against cybercrime
 Conclusions of the Octopus interface Conference on co-operation against cybercrime (1-2 April 2008)
 T-CY Meeting report (3-4 April 2008)
 Note from the CDPC representative to T-CY
- [CDPC \(2007\) 13](#)
[T-CY \(2007\) 02](#)
[Guidelines](#)

[Conclusions](#)

[T-CY \(2008\) 04](#)
[CDPC \(2008\) ...](#)

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-BU \(2008\) 10 rev](#)
[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

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 Parliamentary Assembly Recommendations 1673 (2004) on "Counterfeiting: problems and solutions" and 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 declaration² 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.

² 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 a 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 organisation 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

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;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols;
- the Convention on the Elaboration of a European Pharmacopeia;
- the 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 Recommendations 1673 (2004) on "Counterfeiting: problems and solutions" and 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 declaration³ 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;
- 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);

³ http://www.coe.int/t/dc/press/News/20061107_fin_medicaments_en.asp.

- 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 No. R (81) 6 of the Committee of Ministers 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 Council of Europe 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 Organisation (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

Revised 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

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:

- i. to 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;
 - 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:

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.

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 PC-OC

Fact sheet

Name of Committee:	Committee of Experts on the Operation of European Conventions on co-operation in criminal matters (PC-OC)
Compliance with Resolution Res(2005)47:	YES
Programme of Activities project(s):	Project 2008/DG-HL/1432 "Monitoring the operation of Conventions on Co-operation in the criminal field"
Project relevance:	<p>Implementation of:</p> <p>The Declaration and the Action Plan adopted at the Third Summit of the Heads of State and Government of the Council of Europe (16 - 17 May 2005, Warsaw);</p> <p>The Road Map for the implementation of the Action Plan, adopted by the Committee of Ministers and revised as at 28 September 2005 (document CM(2005)145 revised);</p> <p>High level Conference of the Ministries of Justice and of the Interior (9-10 November 2006, Moscow);</p> <p>Resolution No. 1 on access to justice for migrants and asylum seekers, adopted by the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote).</p>
Project added value:	<p>Since 1982, the PC-OC has been monitoring the operation of the Council of Europe Conventions in the criminal field, and in particular the conventions on extradition, mutual legal assistance and transfer of sentenced persons, with a view to facilitating their implementation and keeping them up-to-date. Its activities fall in three categories:</p> <p>a) Normative measures: Under the authority of the CDPC, the PC-OC elaborates binding and non-binding legal instruments, as well as other tools, such as explanatory notes or guides on national procedures. Currently, the PC-OC is preparing a draft Protocol on simplified extradition and working on the modernisation of the Extradition Convention of 1957.</p> <p>b) Practical measures: The PC-OC develops practical tools to assist practitioners applying the conventions. In 2008, it launched a database on national procedures relating to extradition, mutual legal assistance and transfer of sentenced persons and a network of single points of contact dealing with the conventions.</p> <p>c) Solutions to concrete problems: Members of the PC-OC, who apply the conventions on a daily basis, bring practical problems to the attention of the PC-OC plenary with a view to finding solutions, notably by sharing their experience in similar cases. The forum that the PC-OC provides has been instrumental in identifying problems at an early stage and avoiding conflicts between member States.</p> <p>The added value and "the essential role of the PC-OC in monitoring the application of the Council of Europe conventions on international co-operation in criminal matters in order to find solutions to concrete problems, accelerate procedures and prevent disputes between States" has notably been</p>

	recognised by the High-level Conference of the Ministries of Justice and the Interior (<i>Moscow, 2006</i>).
Financial information:	Two plenary meetings and two restricted group meetings (9 members) per year. The annual budget for the PC-OC is €118 000 (plus €23 400 for interpretation).

APPENDIX VII

Revised terms of reference of the Council for Penological Co-operation (PC-CP)⁴

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 field;⁵
- 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 Assembly.⁶

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;

⁴ 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.

⁵ European 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; 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.

⁶ *Inter alia* Rec 1257 (1995); Rec 1469 (2000); Rec 1656 (2004) and Rec 1747 (2006).

- 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 ongoing 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

- i. The following bodies 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:
 - European Committee on Crime Problems (CDPC);
 - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- ii. The Parliamentary Assembly may send a representative/representatives to meetings of the Committee, without the right to vote and at the charge of its administrative budget.
- iii. The Council of Europe Commissioner for Human Rights may send a representative/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 member states of the Council of Europe may send a representative to the meetings of the Committee, without the right to vote or defrayal of expenses.

- ii. 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.
- iii. 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 Committee, without the right to vote or defrayal of expenses:

- the European Organisation for Probation (CEP);
- International Centre for Prison Studies ;
- International Association of Juvenile and Family Court Magistrates (IAJFCM).

6. Working methods and structures:

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.

7. Duration:

These terms of reference will expire on 31 December 2010.

APPENDIX VIII

Revised terms of reference of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)⁷

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, at 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/DG-HL/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

⁷ 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.

Europe which are not members of the FATF⁸ (subject to paragraph 5.A.ii below)⁹ in complying with the relevant 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;

adopt reports on each evaluated country's situation as to:

- v.
- 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 (subject to

⁸ 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 United Kingdom.

⁹ 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.

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 budget¹⁰ 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 to meetings of the Committee, without the right to vote or defrayal of expenses:

- 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);
 - United Nations Counter-Terrorism Committee (CTC);

¹⁰ A Special Account has been opened for that purpose.

- 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 to the meetings of the Committee, 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.¹¹ 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.

¹¹ 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

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.¹² 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.¹³ 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

¹² For an overview of data from recent international surveys, see the following reports: 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.cahrvi.uni-osnabrueck.de/reddot/CAHRVreportPrevalence\(1\).pdf](http://www.cahrvi.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.

¹³ 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.

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 measures comes under pressure. The Council of Europe has already decided to separately address the sexual abuse and exploitation of children.¹⁴ The relevant documents leading up to the present feasibility study¹⁵ 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.¹⁶

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.¹⁷ 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.

¹⁴ 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.

¹⁵ 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 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 Katenbrink 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.

¹⁶ 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-qsabrueck.de/reddot/CAHRVreportPrevalence\(1\).pdf](http://www.cahrv.uni-qsabrueck.de/reddot/CAHRVreportPrevalence(1).pdf).

¹⁷ 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.

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.

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 2007.¹⁸ Comparison of data from different countries has proven difficult time and again.¹⁹ 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.²⁰ 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%.²¹ 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.²²

1.4 Repetitive victimisation and psychological impact

¹⁸ 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).

¹⁹ 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.

²⁰ Schröttle et al. (2006), note 5 above; Römken et al. (2006), note 8 above.

²¹ 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.

²² Römken, R (2006), Protecting prosecution. The powers of criminal law to protect victims of stalking. *Violence against Women* 2, (2006), 160-187.

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 traumatisation. 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.²³

1.5 Social attitudes: on silence and ambivalence towards domestic violence

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.²⁴ 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

²³ 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.

²⁴ See *Stocktaking study* (2006), note 4 above.

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.²⁵

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

2.1 International and regional instruments relating to domestic violence²⁶

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.²⁷ 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,²⁸ 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.

²⁵ 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).

²⁶ 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).

²⁷ See *Information document*, note 4 above.

²⁸ 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).

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,²⁹ the Beijing Declaration and Platform for Action,³⁰ the outcome of the 23rd special session of the General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the 21st Century',³¹ and the Declaration adopted at the 49th session of the Commission on the Status of Women.³² In addition, the UN General Assembly recently adopted Resolution 61/143 entitled 'Intensification of Efforts to Eliminate All Forms of Violence against Women'.³³ 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'.³⁴

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 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.³⁵ 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'.³⁶ 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.³⁷ 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.³⁸ 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

²⁹ Resolution 48/104.

³⁰ *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.

³¹ Resolution S-23/2, annex, and Resolution S-23/3, annex.

³² 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.

³³ Adopted on 19 December 2006.

³⁴ GA Res. 61/143, para. 8, italics added by authors.

³⁵ 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.

³⁶ 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.

³⁷ Sam Garkawe, *Victims and the International Criminal Court: Three major issues*, *International Criminal Law Review*, 3, pp. 345-365, 2003.

³⁸ 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.'

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)*³⁹ 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 women⁴⁰ confirm this picture of wide divergencies and lack of comprehensiveness in the legislation on psychological violence. Differences are attributable to two factors in 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

³⁹ See *Stocktaking study 2006*, note 4 above.

⁴⁰ *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

develop national action plans on violence against women, only 19 have done so to date.⁴¹ 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.⁴²

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 laws devoted to prohibition of domestic violence.'⁴³ 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

⁴¹ *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.*

⁴² 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.

⁴³ *Information document concerning combating domestic violence against women, European Committee on Crime Problems, 5 April 2007, para. 28.*

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.⁴⁴ 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.⁴⁵

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 Abuse⁴⁶) 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 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.⁴⁷ 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.

⁴⁴ 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.

⁴⁵ 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/>.

⁴⁶ 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.

⁴⁷ 2001/220/JHA, 15 March 2001.

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.⁴⁸ 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.

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

⁴⁸ See *Stocktaking study 2006*, 25-26 (note 4 above).

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.⁴⁹

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 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

⁴⁹ Scott, J. (1986), Gender: A useful category of historical analysis, *The American Historical Review*, Vol. 91, No. 5, 1053-1075.

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 provisions⁵⁰ that enable public prosecutors to start criminal proceedings in cases of domestic violence.

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.⁵¹ 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-

⁵⁰ See also Rec. 2002/5, paras 38, 39 and 40.

⁵¹ 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.

level opinions could also be utilised by other Council of Europe bodies, such as the European Court of Human Rights, in future case law.⁵²

⁵² 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”

I. BACKGROUND

1. 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.”

2. 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.

3. 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.

4. 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;”.*

5. 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.

6. 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.

7. 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

8. 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 women⁵³, 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 Africa⁵⁴ 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.

9. 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.

10. 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).

11. 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.

12. 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:

⁵³ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Belem do Para, Brazil (1994).

⁵⁴ 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.

13. 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

14. 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

15. 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.

16. 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

17. 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).

18. 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.

19. 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

20. 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.

21. 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

22. 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.

23. 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

24. 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

CURRENT AND FUTURE PRIORITIES AND ACTIVITIES OF THE PC-CP

Current priorities and activities:

- a) drafting a recommendation on European Rules for juvenile offenders and its explanatory memorandum⁵⁵ (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 systems⁵⁶ (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)**

⁵⁵ 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)

⁵⁶ 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)

- 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 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)**