

2000



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 17 July 2000

[cdpc plenary\docs 2000\18e (list of points)]

CDPC (2000) 18

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

49th Plenary Session
(24th meeting as a Steering Committee)

Strasbourg, 26-30 June 2000

List of items discussed and decisions taken

1. The European Committee on Crime Problems (CDPC) held its 49th plenary session (24th meeting as a Steering Committee) in Strasbourg from 26 to 30 June 2000 with Mr M. Grotz (Germany) in the chair. The list of participants and the agenda appear at Appendices I and II respectively.
2. The CDPC elected Mr Michael Levi (United Kingdom) and Mrs Helena Válková (Czech Republic) as members of the Criminological Scientific Council.

Items requiring action by the Committee of Ministers

3. The CDPC approved the draft Recommendation concerning the role of the public prosecution in the criminal justice system and the accompanying explanatory memorandum. The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the explanatory memorandum (Addendum I to the present report).
4. The CDPC approved the draft Recommendation concerning early psychosocial intervention in the prevention of criminality, the accompanying explanatory memorandum and the summary report on the same subject. The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the explanatory memorandum and the report (Addendum II to the present report).
5. The CDPC approved the draft Recommendation on improving the implementation of the European Rules on community sanctions and measures and the report on achieving a more effective use of community sanctions and measures (including a commentary on the draft Recommendation). The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the report (Addendum III to the present report).
6. The CDPC adopted specific terms of reference for the Committee of Experts on the management of life-sentenced and other long-term prisoners (PC-LT) for which provision is already made in the Intergovernmental Programme of Activities for 2000. However, in order to respond to Delegations' requests for participation in this new activity, the CDPC agreed to increase the number of experts whose expenses are borne by the Council of Europe from 10 to 14. The Committee of Ministers is invited to approve the terms of reference for this new committee (Appendix III).
7. In order to enable the Committee of Experts on police ethics and problems of policing (PC-PO) to conclude its work on a "European Code of Police Ethics" and to consider, upon future instruction from the CDPC or its Bureau, other problems of policing, including the preparation of proposals for the attention of the Committee of Ministers in the context of its monitoring exercise (CM/Monitor (2000) 11), the CDPC agreed to extend the terms of reference of Committee PC-PO (expiry 31 December 2000) until 31 December 2001. The Committee of Ministers is invited to approve this extension of the terms of reference of Committee PC-PO.
8. In pursuance of ad hoc terms of reference assigned to it by the Committee of Ministers, the CDPC adopted opinions on the following Assembly Recommendations:
 - 1426 (1999) on European democracies facing up to terrorism (Appendix IV)
 - 1427 (1999) on respect for international humanitarian law in Europe (Appendix V)
 - 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection (Appendix VI)
 - 1443 (2000) on international adoption: respecting children's rights (Appendix VII)

The Committee of Ministers is invited to take note of these opinions.

Other items

9. The CDPC was informed by the Director General of Legal Affairs of developments in European legal co-operation and the role and working methods of the Council of Europe in this field, including the activities for the development and consolidation of democratic stability (ADACS).

10. Having noted the activities which have been, or are expected to be, finished in 2000, and having been informed of the likely budgetary situation in the years to come, the CDPC agreed, subject to the availability of the necessary resources in 2001/2002, to include the following activities in its future work programme:

- future developments in international co-operation in criminal matters (to be examined by a Reflection Group - terms of reference to be adopted by the Bureau);
- advisability of drafting an additional protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N° 141) (to be examined by a Reflection Group – terms of reference to be adopted by the Bureau);
- access to a judge and judicial control with respect to detention, in pursuance of the decision of the Committee of Ministers taken at the 693rd meeting of their Deputies in the context of their monitoring of the functioning of the criminal justice systems in member States (to be carried out by a Working Group, in consultation with Committee PC-EJ – terms of reference to be adopted by the Bureau).

Moreover, the CDPC agreed to pursue the following two activities already agreed on at its 48th plenary session (June 1999):

- pre-trial detention and its implications for the management of penal institutions (to be examined by a Committee of Experts – terms of reference to be prepared by the Bureau in consultation with the Council for Penological Co-operation);
- dealing with sex offenders in penal institutions and in the community (to be examined by a Committee of Experts – terms of reference to be prepared by the Bureau in consultation with the Council for Penological Co-operation).

11. The CDPC endorsed the Bureau's proposal to replace, for lack of funds, the Group of Specialists on updating the European Sourcebook of Crime and Criminal Justice Statistics (PC-S-SB) by a network of correspondents which would operate under the auspices of the Council of Europe, but would be administratively and financially independent.

12. The CDPC took note of the progress made by the Committee of Experts on Crime in Cyberspace (PC-CY) in the elaboration of a draft Convention and of the Committee's intention to finalise the text by December 2000. It expressed the wish that the Parliamentary Assembly be consulted on the draft Convention as soon as possible.

13. The CDPC took note of the progress of work of the Multidisciplinary Group on Corruption (GMC), the Group of States against Corruption (GRECO), and the “Octopus II” programme on the fight against corruption and organised crime in states in transition.

14. The CDPC took note of the general report and the recommendations of the 12th Criminological Colloquium on “police powers and accountability in a democratic society” (Strasbourg, 24-26 November 1999), the conclusions of the ad hoc Conference of Directors of Prison Administration (Berlin, 3-5 May 2000), the conclusions of the Pan-European Conference on the theme “What public prosecution in Europe in the XXIst century?” (Strasbourg, 22-24 May 2000), the resolutions of the 23rd Conference of European Ministers of Justice (London, 8-9 June 2000) and the conclusions of the 2nd High Level Meeting of Ministries of the Interior (Bucharest, 22-23 June 2000). It also took note of the preparations for the 6th Conference on Crime Policy (Strasbourg, 22-24 November 2000), the 24th Conference of European Ministers of Justice (Moscow, autumn 2001) and the 13th Conference of Directors of Prison Administration (Strasbourg, November 2001).

15. The CDPC also took note of the conclusions of the Consultation Meeting on the Statute of the International Criminal Court (Strasbourg, 16-17 May 2000). It agreed to continue, by appropriate means, to facilitate consultation on the implementation of the Statute and expressed the wish that the Secretariat of the CDPC serve as a clearing house for mutual information on the subject, in particular by setting up a web site for this purpose.

16. The CDPC considered a discussion paper presented by the Liechtenstein Delegation on the relations between the Select Committee of Experts on the Evaluation of Anti-Money-Laundering Measures (PC-R-EV) and the Financial Action Task Force (FATF) with regard to FATF’s procedure of defining so-called non-cooperative countries and territories and decided to bring it to the attention of the Committee of Ministers (Appendix VIII).

APPENDIX I

LIST OF PARTICIPANTS

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(*) 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.
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Apologised / Excusé

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COMMISSION

GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN UNION

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Apologised / Excusé

* * * * *

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Apologised / Excusé

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APPENDIX II

AGENDA

OPENING OF THE MEETING

- 1* Adoption of the agenda
- 2 Statement by the Director General of Legal Affairs
- 3 Information provided by the Secretariat

STRUCTURES OF THE CDPC

- 4* Election of:
 - two members of the Criminological Scientific Council

ACTIVITIES OF THE CDPC

Committees

- 5* Role of the public prosecution in the criminal justice system (PC-PR):
Final activity report (draft Recommendation)
- 6* Early psychosocial intervention in the prevention of criminality (PC-IN):
Final activity report (draft Recommendation and Report)
- 7* Implementation of the European Rules on community sanctions and measures (PC-ER):
Final activity report (draft Recommendation and Report)
- 8* Criminological and criminal law aspects of organised crime (PC-CO/PC-S-CO):
 - Draft Recommendation concerning guiding principles on the fight against organised crime
 - 1998 report on the organised crime situation
 - Best practices surveys
- 9 Operation of European Conventions in the penal field (PC-OC):
 - Draft Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters: progress report (for information)
 - Other items for information

NB: Items marked with an asterisk (*) require a decision.

- 10** Council for Penological Co-operation (PC-CP):
- Conditional release (parole): progress report (for information)
 - SPACE: progress report (for information)
 - Other items for information
- 11** Trends in crime and criminal justice (PC-S-ST):
Updating of the European Sourcebook of Crime and Criminal Justice Statistics (for information)
- 12** New ways of dealing with juvenile delinquency (PC-JU):
Progress report (for information)
- 13** Protection of children against sexual exploitation (PC-SE):
Progress report (for information)
- 14** Crime in cyber-space (PC-CY):
Draft Convention: progress report (for information)
- 15** Evaluation of anti-money laundering measures (PC-R-EV):
Progress report (for information)
- 16*** Police ethics and problems of policing (PC-PO):
- Extension of terms of reference
 - Progress report (for information)
- 17** Partnership in crime prevention (PC-PA):
Progress report (for information)
- 18*** Management of long-term prisoners (PC-LT):
Terms of reference

Conferences and Colloquia

- 19** Consultation meeting on the Statute of the International Criminal Court (Strasbourg, 2000): conclusions
- 19bis** Pan-European Conference “What Public Prosecution in Europe in the XXIst century?” (Strasbourg, 2000): conclusions
- 20** 23rd Conference of European Ministers of Justice (London, 2000): resolutions
- 21** 12th Criminological Colloquium (Strasbourg, 1999): general report and recommendations
- 22** European Conference on the implementation of European standards for imprisonment and community sanctions and measures (ad hoc Conference of Directors of Prison Administration) (Berlin, 2000): conclusions

23 2nd High Level Meeting of Ministries of the Interior (Bucharest, 2000): conclusions

23bis 6th Conference on Crime Policy (Strasbourg, 2000): preparation

Future work programme

24* International legal co-operation (“New Start”)

25* Efficiency of justice

26* Police Matters

27* New activities of the CDPC (2001/2002)

OPINIONS

28* Opinions on Assembly Recommendations

a) 1426 (1999) on European democracies facing up to terrorism

b) 1427 (1999) on respect for international humanitarian law in Europe

c) 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection

d) 1443 (2000) on international adoption: respecting children’s rights

ITEMS FOR INFORMATION

29 Multidisciplinary Group on Corruption (GMC)

29bis Group of States against Corruption (GRECO)

30 European Conferences of Specialised Services against corruption

31 Co-operation with countries of Central and Eastern Europe (ADACS)

32 Co-operation with the European Union

33 “Octopus” Project

34 Publications

35 New developments in legislation, policy and administrative practice in member States in the field of crime problems

36 Pompidou Group

37 Collaboration with United Nations

38 Activities of international organisations (other than United Nations) in the field of crime problems

- 39 Relations between the Council of Europe and OECD
- 40 Co-operation with Financial Action Task Force (FATF)
- 41 International Criminal Tribunal for the former Yugoslavia / Establishment of an International Criminal Court
- 42 Stability Pact for South Eastern Europe: corruption and organised crime initiatives

OTHER SUBJECTS

- 43 Activities of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly
- 44 Abolition of the death penalty: exchange of information
- 45* State of signatures and ratifications of European Conventions in the penal field
- 46* Control of the implementation of Resolutions and Recommendations in the penal field
- 47 Other business
- 48* Date of the next plenary session.

APPENDIX III

**SPECIFIC TERMS OF REFERENCE OF THE COMMITTEE OF EXPERTS
ON THE MANAGEMENT OF LIFE-SENTENCED
AND OTHER LONG-TERM PRISONERS
(PC-LT)**

DECISION CDPC/113/300600

1. Name of the Committee: **Committee of Experts on the management of life-sentenced and other long-term prisoners (PC-LT)**
2. Type of Committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:

As highlighted by the 12th Conference of Directors of Prison Administration (Strasbourg, 26-28 November 1997) there has been a noticeable increase in the number of life-sentenced and other long-term prisoners in a number of European countries, which places a heavy burden on prison administrations and society as a whole. It has also been emphasised that the theory and practice concerning the management of long-termers vary considerably from country to country.

Despite this variation there is growing awareness among practitioners and penologists that the management of long-termers should aim at a balance between several factors such as preventing escapes, ensuring good order and discipline in penal institutions and providing active regimes and opportunities for them.

The issue of long-termers is a permanent item on the agenda of the Steering Groups for the reform of the prison systems of several countries in eastern Europe, in particular in connection with the abolition of the death penalty or moratoria to its execution. It has gained a new dimension with the ageing of prison populations in Europe.

The Committee of experts should consider in particular the following questions:

- Which are the most pertinent criteria for classifying long-term prisoners (Duration of sentence? Type of offence committed? Assumed dangerousity? Specific needs in terms of psychosocial interventions and treatment etc.?)
- Should long-term prisoners be separated from prisoners serving short(er) sentences?
- How to ensure that the negative effects of imprisonment on the prisoners concerned do not make any positive adjustment to the community impossible?
- How to assess the risk of re-offending before releasing long-term prisoners?
- How to make pre-release preparation as effective as possible while ensuring an appropriate level of comfort for this category of prisoners in penal institutions?
- How to co-ordinate pre-release work and post-release assistance?
- How to handle 'real' lifers, i.e. prisoners who are not eligible to any form of early release?

The study conducted by the Committee should lead to a report and a Recommendation setting out, in particular, a guide for good practice in this area, bearing in mind Resolution (76) 2 on the treatment of long-term prisoners.

5. Membership of the Committee:

- a. One expert appointed by the Government of each of the following member States:
Belgium*, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Ireland, Lithuania, Moldova, Romania, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom
- b. Two consultants and the Chairperson of the Council for Penological Co-operation (PC-CP)
- c. The Council of Europe’s budget bears the travel and subsistence expenses for one expert from each of the aforementioned members States (except Belgium), the two consultants and the Chairperson of the PC-CP.
- d. Qualifications required of Committee members:

Prison practitioners with experience in the management of long-term prisoners; social workers, psychologists involved in treatment programmes for long-termers; experts having conducted research in this field.
- e. The following may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses:

Canada, Permanent European Conference on Probation and Aftercare (CEP), Penal Reform International (PRI)
- f. The Bureau of the CPDC may authorise the admission of other observers to the Committee.

6. Working structures and methods: -

7. Duration:

These terms of reference will expire on 31 December 2002.

* participates at Government’s expense.

APPENDIX IV

Opinion on Assembly Recommendation 1426 (1999) on European democracies facing up to terrorism

The Committee of Ministers, at the 682nd meeting of their Deputies on 6 October 1999 (Decision N° CM/729/061099), assigned ad hoc terms of reference to the CDPC, instructing it to give, by 30 June 2000, an opinion on Assembly Recommendation 1426 (1999) on European democracies facing up to terrorism adopted on 23 September 1999. The Recommendation appears in the appendix to the present document.

At its 49th plenary session from 26 to 30 June 2000, the CDPC examined this Recommendation and adopted the following

Opinion

1. Reminder

The European Convention on the Suppression of Terrorism (ETS 90) constitutes the Council of Europe's major contribution to international co-operation in responding to terrorism. It was opened for signature in Strasbourg on 27 January 1977 and has since been ratified by 32 member States and signed by 4 others.

The Convention (Article 1) provides that, for the purposes of extradition between contracting States, none of a number of enumerated offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. That provision modifies the consequences of, for instance, Article 3, paragraph 1 of the European Convention on Extradition (ETS 24), which provides that extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence (the "political offence exception"). The Terrorism Convention thus eliminates – as a general rule - the possibility for the requested State to invoke the political offence exception in respect of an extradition request. Where, the Convention allowing, the requested State invokes the political offence exception, then that State, although not extraditing the person wanted, must submit the case to the competent authorities for the purpose of prosecution. The obligation to bring the person wanted before the criminal justice system (« judicare ») is subsidiary in that it is conditional on the preceding refusal of extradition in a given case.

2. General observation

Assembly Recommendation 1426 in general condemns terrorism in all its forms. The CDPC cannot but support that statement.

The CDPC, either directly or through its subordinate body, the Committee of Experts on the Operation of Conventions in the Penal Field (PC-OC), constantly follows developments in international legal co-operation in criminal matters, seeking in particular to solve difficulties or otherwise take initiatives dictated by changing circumstances.

In this context, the CDPC is presently engaged in an exercise of reflection concerning the whole way in which co-operation – both legal and police co-operation – is organised in Europe.

Any definite reaction to the number of different issues raised in the Assembly Recommendation would therefore be premature at this stage. The following opinion is in that sense provisional.

Despite the points of view expressed below on this subject, it should be noted that, subsequently to the ongoing discussions, the CDPC might possibly take the following points into consideration:

- extending suppression of terrorist acts, to include attacks against property, as well as certain forms of aiding and abetting crime (preparatory acts, funding, participation in gangs);
- accepting universal jurisdiction, necessary for the effective implementation of the principle "aut dedere aut judicare";
- protection of victims, taking account of the significant changes that have taken place over two decades in protecting victims of terrorist attacks.

3. Comments on the preambular part of Recommendation 1426

Paragraph 5 contains a definition of terrorism that should be amended insofar as it takes account of motive, whereas there is a general trend towards the principle of de-politicising terrorist offences so as to facilitate mutual assistance and extradition. This principle has been confirmed, *inter alia*, by the recent UN Conventions for the Suppression of Terrorist Bombings (15 December 1997) and for the Suppression of Financing of Terrorism (9 December 1999). The CDPC therefore expresses reservations with regard to the definition of terrorism as set out in the Assembly recommendation.

Paragraph 6 concerns operational co-operation and the exchange of information between specialised services. From this perspective, it may be appropriate to highlight the further advantages that Interpol might contribute. Article 18.4 of the Convention on the Financing of Terrorism, for example, provides for the possibility of information exchanges being conducted through the intermediary of Interpol.

With regard to paragraph 10, the CDPC wishes to emphasise that this should not be interpreted as opening up any possibility of infringing the freedom to inform the press.

4. Comments on the individual recommendations

(a) Concerning points i and ii of paragraph 16

In points i and ii of paragraph 16, the Assembly recommends the Committee of Ministers to revise the Convention ETS 90 in the sense of extending its scope of application to act presently not covered by it.

The CDPC considers that the United Nations Convention for the Suppression of the Financing of Terrorism as well as the United Nations Convention for the Suppression of Terrorist Bombing cover to a large extent the above-mentioned Assembly recommendations. It sees no merit in duplicating the work already done within the United Nations.

Member States of the Council of Europe could however be encouraged to sign and ratify those two conventions.

(b) Concerning point iii of paragraph 16

In point iii of paragraph 16, the Assembly calls for the deletion of Article 13 of the said Convention, that allows for reservations to be made.

The CDPC has great sympathy with this recommendation. However, it stresses that Article 13 may only be deleted from the Convention upon a unanimous vote of all States Party to it. Seventeen out of 32 parties to the Convention have availed themselves of the possibility given by Article 13. Under these circumstances, the CDPC doubts whether this recommendation is likely to be generally acceptable.

(c) Concerning point iv of paragraph 16

In point iv of paragraph 16, the Assembly recommends the Committee of Ministers to amend the European Convention on Extradition by defining the concept of political offence and proposing a simplified extradition procedure.

The CDPC is not aware of any difficulties arising out of the absence of a definition of the concept of political offence.

The idea of providing for a simplified extradition procedure has its merits. It was taken up, in particular, within the European Union and the results appear to be satisfactory. The CDPC has already instructed the PC-OC to consider that idea as soon as it starts working on a 3rd Additional Protocol to the European Convention on Extradition. In this respect, the CDPC wishes nevertheless to observe that it fails to see any link between terrorism and simplified extradition.

(d) Concerning point v of paragraph 16

In point v of paragraph 16, the Assembly recommends the Committee of Ministers to consider the possibility of setting up a European criminal court.

This recommendation will be examined in the context of both (a) the proposal to create a Judicial Authority within the Council of Europe and (b) the setting-up of the International Criminal Court.

(e) Concerning point vi of paragraph 16

In point vi of paragraph 16, the Assembly recommends the Committee of Ministers to consider the establishment of a procedure whereby in certain cases a person accused of committing a terrorist offence could be charged and tried for such an offence in a country other than the one in which the offence is committed.

A number of legal avenues are already available in Europe that allow for a person accused of having committed an offence in one country to be charged and tried for such an offence in another country. In practice, however, such avenues are not sufficiently explored. In particular, there is uncertainty with respect to such questions as the circumstances under which such avenues may or should be taken, the right (or duty) of initiative in that respect, and the involvement (where appropriate) of more than two countries. The CDPC is presently examining these questions.

(f) Concerning point vii of paragraph 16

In point vii of paragraph 16, the Assembly recommends the Committee of Ministers to initiate co-operation with the United Nations.

The CDPC is already closely cooperating with the United Nations in criminal matters, particularly with the UN Commission on Crime Prevention and Criminal Justice.

(g) Concerning point viii of paragraph 16

In point viii of paragraph 16, the Assembly recommends the Committee of Ministers to encourage member States to co-operate more closely with Interpol and to examine with the European Union the possibility of extending Europol to the whole of the European area.

The CDPC fully supports any initiative designed to increase the already high level of co-operation with Interpol. As to the extension of Europol, this is an internal matter for the European Union.

(h) Concerning point ix of paragraph 16

This point does not fall within the fields for which the CDPC is responsible.

(i) Concerning point x of paragraph 16

In point x of paragraph 16, the Assembly recommends the Committee of Ministers to provide fuller protection for the victims of terrorist acts.

The CDPC recalls that the European Convention on the Compensation of Victims of Violent Crimes (ETS N° 116) applies to victims of terrorist acts.

(j) Concerning point xi of paragraph 16

In point xi of paragraph 16, the Assembly recommends the Committee of Ministers to invite member States to incorporate the principle “aut dedere aut judicare” in their legislation.

This question is complex and the CDPC will give consideration to it within its present reflection on a new start in co-operation in criminal matters in Europe.

(k) Concerning point xii of paragraph 16

In point xii of paragraph 16, the Assembly recommends the Committee of Ministers to invite member States to strengthen bilateral co-operation.

It has been the Council of Europe’s policy for over forty years, as well as the policy of many of its member States, to privilege multilateral co-operation over bilateral co-operation in criminal matters. However, privileging multilateral co-operation does not exclude strengthening bilateral co-operation where it leads to a more effective fight against crime, and to that extent the CDPC can endorse the Assembly’s recommendation.

APPENDIX V

Opinion on Assembly Recommendation 1427 (1999) on respect for international humanitarian law in Europe

1. The Committee of Ministers, at the 682nd meeting of their Deputies on 6 October 1999 (Decision N° CM/730/061099), assigned *ad hoc* terms of reference to the European Committee on Crime Problems (CDPC), instructing it to give an opinion on Recommendation 1427 (1999) on respect for international humanitarian law in Europe adopted on 23 September 1999. The Recommendation appears in the appendix to the present document. These terms of reference expire on 30 June 2000.

2. At its 49th plenary session on 26-30 June 2000, the CDPC considered the Recommendation from the point of view of criminal law and, in particular, international criminal law and international co-operation in criminal matters, and adopted the following

Opinion

General observations

3. The CDPC welcomes Parliamentary Assembly Recommendation 1427 (1999) which calls for a strengthening of the respect for international humanitarian law in Europe.

4. The interests that international humanitarian law seeks to protect include fundamental human rights – such as the right to personal physical integrity – which are normally also protected under national criminal law. In particular, international humanitarian law seeks to prevent, and punish the authors of, crimes committed in the context of armed conflict. The definitions and scope of these types of crime are set out in various international instruments (the Geneva Conventions of 1949 and their 1977 Additional Protocols, the Hague Conventions, the Statute of the International Criminal Court of 1998). A widespread implementation of these instruments would constitute a considerable advancement in the respect for international humanitarian law.

5. Recent years have seen an increase in attempts to use criminal law as a means of furthering human rights and peace internationally. In particular, this has involved the development and/or reinforcement of such principles as command responsibility, individual criminal responsibility for certain crimes (war crimes, crimes against humanity and genocide), and, to a certain extent, universal jurisdiction (national courts' jurisdiction over certain crimes).

6. In its programmes of assistance on criminal law reform in member and applicant States, the Council of Europe regularly provides expertise which includes issues of international humanitarian law.

7. Within its mandate, the CDPC has been following the development of international criminal jurisdictions, set up for the prosecution, *inter alia*, of violations of international humanitarian law. In view of the establishment by Security Council Resolution 827 of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the CDPC convened a consultation meeting on obligations for Member States. It continues to receive and disseminate national legislation and other information on this topic, including agreements reached between States and the ICTY.

8. More recently, the CDPC has taken the initiative to hold, together with the *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI), a consultation meeting on the implications of ratification and implementation of the Rome Statute of the International Criminal Court (ICC). This meeting was held on 16 and 17 May 2000. It was an opportunity for member and observer States to exchange experience and plans for ratification and implementation of the Statute. In particular, the problems encountered and envisaged in the process of the adaptation of internal laws were discussed. Furthermore, the participants also held an exchange of views on the ways in which the Council of Europe could assist 1. member states in this process and 2. the future ICC in its functioning and, in particular, the ICC's cooperation with member States.

Observations on paragraph 8 of the Assembly Recommendation

9. With regard to section 8 (i) of the Recommendation, the CDPC is in favour of giving greater emphasis to international humanitarian law in drawing up programmes of legal cooperation and training (a). The CDPC is also in favour of including compliance with international humanitarian law in the Council of Europe's monitoring activities (b), provided this does not overlap with the monitoring activities of other Organisations, such as the International Committee of the Red Cross (ICRC).

10. The CDPC would also be able to give greater assistance in studying the role the Council of Europe could play in the development of international humanitarian law (section 8 (i) c). The CDPC would like to recall that the European Convention of Human Rights (ECHR) and its Sixth Protocol refer (in Article 15 and Article 2, respectively) to the derogation from the right to life (Article 2, ECHR) only in times of war, public emergency threatening the life of the nation, or in times of imminent threat of war, limiting such derogations to "lawful acts of war" (Article 15.2) or "instances laid down in the law" (Protocol No. 6, Article 2). With respect to factual situations which might entail violations of international humanitarian law as well as infringements of rights protected under the ECHR, the CDPC would like to recall that a number of mechanisms are available under the ECHR. Apart from individual applications under Article 31, inter-state cases are possible under Article 33, and Article 52 provides for inquiries by the Secretary-General. Furthermore, the Rules of Court of the European Court of Human Rights provide for the possibility of interim measures (Rule 39).

11. The CDPC is of the opinion that strengthening the universality principle could be achieved through broader signature, ratification and implementation of existing instruments relating to international humanitarian law, including those mentioned under section 8 (ii) (a, b, j). A systematic review by governments of their compliance with these obligations would also be desirable (c). The establishment of national interministerial commissions responsible for this monitoring task might also prove to be very effective (d).

12. The CDPC is also of the opinion that States should be encouraged to submit to the external monitoring mechanisms mentioned in section 8 (ii) (e) and (g).

13. The CDPC finds that the dissemination of information and instruction regarding the principles of international humanitarian law particularly among personnel in the armed forces, in the police and in prisons (f) would certainly be essential to raise awareness of international humanitarian law.

14. Although the CDPC would agree that the International Committee of the Red Cross performs a very important role, it finds that it is not competent to give an opinion on recommendation h of section 8 (ii).

15. In section 8 (ii) i of the Recommendation, the Assembly recommends that the Committee of Ministers invite governments to introduce the principle of *aut dedere aut iudicare* in their criminal law. This question is complex and the CDPC will give consideration to it within its present reflection on a new start in co-operation in criminal matters in Europe.

APPENDIX VI

Opinion on Assembly Recommendation 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection

The Committee of Ministers, at the 689th meeting of their Deputies on 24 November 1999 (Decision No. CM/733/241199), assigned ad hoc terms of reference to the CDPC, instructing it to give, by 30 June 2000, an opinion on Assembly Recommendation 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection adopted on 4 November 1999. The Recommendation appears in the appendix to the present document.

At its 49th plenary session from 26 to 30 June 2000, the CDPC examined the Recommendation and adopted the following

Opinion

The CDPC shares the Assembly's concern over the increasing threats to the global environment as a result of the continuing release of damaging substances into the environment and the degradation of nature in general. It supports the Assembly's view that the Council of Europe has a role to play in the protection of the environment and recalls that in the legal field the two Council of Europe conventions referred to by the Assembly, i.e. the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS N° 150) and the Convention on the Protection of the Environment through Criminal Law (ETS N° 172) are important contributions to the protection of the environment by providing for liability for environmental damage. The CDPC therefore strongly endorses the Assembly's call for speedy ratification of both instruments, none of which is in force yet.

The CDPC stresses that so far only 11 countries have signed, but none ratified, the Convention on the Protection of the Environment through Criminal Law (ETS N° 172), although it had been opened for signature already in November 1998. This convention, which contains a comprehensive set of substantive provisions, e.g. on serious environmental violations to be criminalised, jurisdiction, liability of legal persons, sanctions and measures, as well as provisions on procedural law issues and international co-operation, would contribute to strengthening, throughout Europe, the criminal law arsenal against such violations and thus contribute better to protect the environment. The CDPC recalls in this respect that the Committee of Ministers adopted already in 1978 a resolution (N° R (77) 28) on the contribution of criminal law to the protection of the environment which sets out a number of principles later endorsed by Convention ETS N° 172.

Finally, the CDPC would like to draw attention to the risk of duplication of effort in this area by the proposed elaboration of a legal instrument, very similar to Convention N° 172, recently undertaken within the European Union. The CDPC deems it advisable that those member States which are also members of the European Union ascertain, before engaging in negotiations on a European Union treaty on environmental crime, that there is a genuine need for such an instrument and, if so, that it will be fully compatible with the Council of Europe convention.

APPENDIX VII

Opinion on Assembly Recommendation 1443 (2000) on international adoption: respecting children's rights

The Committee of Ministers, at the 698th meeting of their Deputies on 9 February 2000 (Decision N° CM/743/09022000) assigned ad hoc terms of reference to the CDPC, instructing it to give, by 31 December 2000, an opinion on Assembly Recommendation 1443 (2000) on International adoption: respecting children's rights, adopted on 26 January 2000, in particular on its paragraph 6. The Recommendation appears in the appendix to the present document.

At its 49th plenary session from 26 to 30 June 2000, the CDPC examined this Recommendation and adopted the following

Opinion

Only one point in Assembly Recommendation 1443 (2000) can be seen as falling within the field of competence of the CDPC, namely point 6 in which the Assembly calls on the Committee of Ministers to invite the member States to co-operate more closely by every possible means, and notably through Europol, in order to combat trafficking in children and eliminate mafia-type or other criminal networks, and to ensure that in the field of international adoption no abuses, however minor, go unpunished.

The CDPC supports wholeheartedly these recommendations. However, it must in that respect emphasise the fact that co-operation through Europol is not open to most member States of the Council of Europe.

The CDPC is presently involved - through the Committee of Experts on the protection of children against sexual exploitation (PC-SE) - in reviewing the implementation of Recommendation R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, with a view to updating this Recommendation, preparing guidelines for member States and providing for a monitoring mechanism.

APPENDIX VIII

Evaluation of anti-money laundering measures

Discussion paper submitted by the Liechtenstein delegation

The Delegation of Liechtenstein wishes to raise the following issue under item 15 (in connection with item 40):

Under item 15 the CDPC is invited to take note of PC-R-EV's annual report. In principle, this is meant to be a mere procedural matter without any substantial discussion. However, the situation with regard to the work of PC-R-EV has recently undergone such radical change that a discussion on the work and the role of this important committee seems to be more than appropriate. In fact, at its 5th Plenary meeting, 7-11 February 2000, PC-R-EV has had an extensive discussion on its future cooperation with the Financial Action Task Force (FATF) following FATF's decision to establish a new evaluation procedure aimed at defining so-called non-cooperative countries and territories (NCCTs) worldwide. We would like to refer in this context to the Summary Report of the 5th PC-R-EV Plenary meeting (Document PC-R-EV (2000) 12) as well as to the letter of the Chairman of PC-R-EV to the President of the FATF, dated 10 March 2000. The discussion at the 5th Plenary meeting has shown that there is serious concern among PC-R-EV Delegations over the potential effects of FATF's review of NCCTs on PC-R-EV mutual evaluations. We would like to mention just a few of these concerns:

- Participation in PC-R-EV work and submission to mutual evaluation is *per se* evidence of willingness to "co-operate";
- FATF has been associated with all PC-R-EV evaluations since the beginning: two FATF examiners participated in each evaluation team and agreed to the mutual evaluation reports;
- PC-R-EV has its own procedure for dealing with non-complying members, including application of Recommendation 21;
- FATF members had two rounds of mutual evaluations since 1990, whereas the PC-R-EV has only begun its evaluations in April 1998; half-way through its first round, PC-R-EV's achievements are tangible, as progress reports clearly show;
- Some PC-R-EV countries have come a very long way to be able to implement anti-laundering standards;
- A rapid, non-participatory procedure conducted by the FATF is clearly contrary, on methodological grounds, to the regularly conducted mutual evaluation procedure within the PC-R-EV;
- FATF work on NCCTs is a clear duplication of efforts, the result of which could be that countries lose their interest in working with the PC-R-EV.

Especially the last two points seem to us of utmost importance. Therefore, we continue fully to support the decision of the PC-R-EV no longer to participate in this new FATF process. In our view, it is not only the important work of PC-R-EV which is threatened by the NCCT initiative, but also the role of the Council of Europe in the fight against organised crime, a role which has been defined as a priority at the Second Summit of Heads of State and Government in 1997. This matter should therefore be brought to the attention of the Committee of Ministers.