

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Committee of Experts on the Operation
of European Conventions in the Penal Field
(PC-OC)

SUMMARY REPORT
of the 46th meeting
Strasbourg, 3 – 5 March 2003

Secretariat memorandum
prepared by the
Directorate General of Legal Affairs,
to be submitted for approval at the 47th meeting of the PC-OC

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1. The PC-OC held its 46th meeting from 3 – 5 March 2003, at the Council of Europe headquarters in Strasbourg. The Committee met under the chairmanship of Mr Eugenio Selvaggi (Italy).
2. The two Vice-Chairs were elected in September 2002 (45th meeting) at the same time as the Chair and in no order of precedence. The Bureau of the Committee is therefore formed as follows :
 - Ms Imbi Markus (Estonia), Vice-Chair
 - Ms Astrid Offner (Switzerland), Vice-Chair
 - Mr Eugenio Selvaggi (Italy), Chairman
3. The list of participants forms [Appendix I](#) to this report.
4. The Agenda of the meeting, as adopted by the Committee, forms [Appendix II](#) to this report.
5. During its 46th meeting the Committee worked in particular on the basis of the following:

¹ This document is classified only with respect to the list that appears in Appendix I which identifies participants and their contact details. The list does not appear in the internet version of this document : cf. www.coe.int/tcj ('meetings')

(a) Conventions

- ETS 24 European Convention on Extradition
 ETS 30 European Convention on Mutual Assistance in Criminal Matters
 ETS 51 European Convention on the Supervision of Conditionally Sentenced or
 Conditionally Released Offenders
 ETS 112 Convention on the Transfer of Sentenced Persons

(b) Working papers

Agenda no. odj	List of Documents	Liste des documents
2	Draft Annotated agenda PC-OC (2003) OJ 1 Rev	Projet d'ordre du jour annoté PC-OC (2003) OJ 1 Rev
	List of Participants	Liste des participants
3	Summary report of the PC-OC's 45 th meeting PC-OC (2002) 11	Rapport sommaire de la 45e réunion du PC-OC PC-OC (2002) 11
4	PC-OC (2002) 10	PC-OC (2002) 10
5	Summary report of the PC-OC's 44 th meeting PC-OC (2002) 5	Rapport sommaire de la 44e réunion du PC-OC PC-OC (2002) 5
	Reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1527 (2001) on Operation of the Council of Europe Convention on the Transfer of Sentenced Persons - critical analysis and recommendations - CM/AS(2003)Rec1527 final - Text of the Assembly's Recommendation	Recommandation 1527 (2001) de l'Assemblée parlementaire relative au fonctionnement de la Convention du Conseil de l'Europe sur le transfèrement des personnes condamnées - Analyse critique et recommandations - CM/AS(2003)Rec1527 final - Texte de la Recommandation de l'Assemblée
6	Summary report of the PC-OC's 44 th meeting PC-OC (2002) 5	Rapport sommaire de la 44e réunion du PC-OC PC-OC (2002) 5
	Secretariat notes for a preliminary draft Recommendation concerning the practical application of ETS 30, 99 and 182 PC-OC (2002) 07	Notes du Secrétariat en vue de la Rédaction d'un Avant-projet de Recommandation sur l'application pratique de la Convention STE 30, et ses Protocoles STE 99 et 182 PC-OC (2002) 07
7	List of declarations made with respect to treaty no. 030 List of declarations made with respect to treaty no. 099 List of declarations made with respect to treaty no. 182	Liste des déclarations du traité n° 030 Liste des déclarations du traité n° 099 Liste des déclarations du traité n° 182
8	Summary Report of the 1st meeting of the Working Party to follow up the New Start Report (doc. PC-OC / WP (2003) 1 <i>Restricted</i>)	Rapport sommaire de la 1ère réunion du Groupe de Travail chargé du suivi du Rapport 'New Start' (doc. PC-OC / WP (2003) 1 <i>Restreint</i>)
9	Note from the Secretariat to Heads of Delegation to the CDPC regarding follow-up to the GMT report, dated 29 November 2002	Note du Secrétariat aux Chefs de Délégation du CDPC concernant le suivi du Rapport du GMT, datée 29 novembre 2002
12	Report on the third evaluation of Recommendation No. R (87) 15 regulating the use of personal data in the police sector	Rapport sur la troisième évaluation de la Recommandation n° R (87) 15 visant à réglementer l'utilisation de données à caractère personnel dans le secteur de la police
12	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems	Protocole additionnel à la Convention sur la cybercriminalité, relatif à l'incrimination d'acte de nature raciste et xénophobe commis par le biais de systèmes informatiques

12	Protocol amending the European Convention on the Suppression of Terrorism	Protocole portant amendement à la Convention européenne pour la répression du terrorisme
12	summary of the main changes introduced by the Protocol)	Sommaire des changements principaux introduits par le protocole
13	Ne bis in idem judgment of the European Court of Justice	Arrêt ne bis in idem de la Cour Européenne de Justice
13	Press release by Human Rights Court Registrar - Shamayev and 12 Others v. Georgia and Russia	Communiqué du Greffier de la Cour Européenne des Droits de l'Homme - Chamaïev et 12 autres c. Géorgie et Russie

(c) Information documents

Information documents are made available under the reference PC-OC/INF. The reference of the relevant web page is www.coe.int/tcj (from this page you may find the list of information documents by clicking on 'Information'). In particular, the documents referred to by the Chair under point 18 of this report, may be found on this list.

6. Change of Secretariat

As from the 46th meeting of the Committee, Ms Caterina Bolognese is Secretary of the PC-OC, replacing Mr Candido Cunha. On behalf of the Committee, the Chair thanked Mr Cunha for his many years of service to the PC-OC. In particular, he underlined Mr Cunha's dedication, professionalism and ability to assist the Committee in achieving results it might not normally have achieved.

7 Adoption of the report of the 45th meeting

The Committee adopted the report of its 45th meeting, as it appears in document PC-OC (2002) 11Rev.

8. Transfer of Sentenced Persons : Possible more extensive use of the Council of Europe Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51) (Agenda item 4)

Discussion of the interrelationship between ETS 51 and ETS 112 followed on from the previous meeting, based on the note (PC-OC (2002) 10) prepared by Mr Örjan Landelius (Sweden). This note explores the possibility of applying the Supervision Convention as a way of supplementing the Transfer Convention, in particular in order to increase the likelihood for foreigners to qualify for conditional release, and to allow for the transfer of conditionally released persons, so that they may be supervised in their home country. (See PC-OC (2002) 11Rev at paragraph 14 for an account of the discussions at the 45th meeting).

The issue was discussed whether certain concrete cases might be covered by ETS 112, which, for the above-mentioned purpose, could be interpreted broadly, or whether they are solely covered by ETS 51. It should be noted that ETS 51 has, to date, been ratified by 16 states and, in general, does not appear to be widely used.

It was decided that a questionnaire would be sent out, the results of which would inform discussions at the next meeting. In this respect, answers to the questionnaire should be sent to the Secretariat **by 29 August 2003** (the Questionnaire is produced in doc PC-OC (2003) 2). In particular, it would be important, in this context, to consult persons dealing with prison administration and bodies supervising the enforcement of sentences.

9. Transfer of Sentenced Persons : follow-up to Assembly report and recommendation (Agenda item 5)

The Committee took note of the Reply by the Committee of Ministers (825th meeting of the Deputies, item 10.6) to Parliamentary Assembly Recommendation 1527 (2001). In particular, the Committee of Ministers noted that the Secretariat will do its utmost within available resources, to issue, via the Council of Europe website, information on how each party interprets and applies the Transfer Convention, and stated that it would give close consideration to implementing proposals of the PC-OC regarding ETS 112 in its future programmes of activities.

- 10 Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols (Agenda item 6)

The Chair invited national experts to consult with national authorities in order to indicate practical difficulties or legal problems that might be encountered and which could be introduced in a Recommendation regarding the practical application of the relevant Conventions (ETS 30 and its two Protocols). In doing so, members should take into account PC-OC (2002) 07, as well as the EU Council Recommendation on a model agreement for setting up a joint investigation team.²

It was noted that the Second Additional Protocol to the Mutual Legal Assistance Convention (ETS 182) as well as the Convention on Mutual Legal Assistance in Criminal Matters between the Members States of the EU (2000) had not yet entered into force. ETS 182 will enter into force with three ratifications, whereas the EU 2000 Convention requires 8 ratifications.

Furthermore, it appeared that recommendations in particular regarding videoconferences might be of some use (see also discussion below, point 14 B under item 10 of the agenda « practical difficulties »).

² A draft version was distributed at the 46th meeting of the PC-OC. The Recommendation has since been adopted on 8 May 2003. It is available on the EU Council's website and also on www.coe.int/tcj under documents for the 47th meeting. The Recommendation was prepared further to the EU Council Framework Decision of 13 June 2002 on Joint Investigation Teams.

Depending on contributions received by the Secretariat, a revised preliminary draft Recommendation or a summary of the contributions will be prepared for the next meeting of the PC-OC in September 2003.

11. Mutual Assistance in Criminal Matters: reservations entered with respect to the European Convention and its Protocols (ETS 30, 99 and 182) (Agenda item 7)

The Committee considered the need for a periodical verification to check whether Reservations or Declarations are out of date, in particular as regards mutual legal assistance. It is clear that, notwithstanding language in the conventions themselves, which encourages States to withdraw reservations as soon as possible (see e.g. Art. 26.2, ETS 24 and Art. 23.2, ETS 30), the competence with regard to reservations lies with Parliaments and governments. It is, therefore, not suggested that this review would be undertaken with a view to a withdrawal of reservations.

One should also note that the Committee of Advisers on International Law (CAHDI) holds an Observatory function for the discussion of reservations during the period reserved for objections by States.

The Committee decided, in accordance with its terms of reference, to explore the practical difficulties or problems of a legal nature encountered (e.g. double criminality, death penalty (see below, point 14 G), or life imprisonment) when applying the conventions, where these difficulties stem from a reservation.

Committee members are therefore invited to inform the Secretariat of any such difficulties. Some participants pointed out that countries might no longer, in practice, invoke reservations which are out of date. Such information from experts would also be useful for practitioners. Participants are invited to make contributions on this issue.

12. Working Party to follow up the New Start Report

Participants were informed that the Working Party deliberations are still at an early stage. Thus, it was too early to provide information on possible conclusions. Participants were reminded, however, that suggestions might nevertheless be given to the Secretariat on the basis of the New Start Report and the Summary Report of the 1st meeting (PC-OC / WP (2003) 1), in particular as regards the accession to Council of Europe conventions from third countries, and the issue of the death penalty.

13 Multidisciplinary Group on International Action against Terrorism (GMT)

Having fulfilled its mandate, the GMT submitted a report to the Committee of Ministers on 6 November 2002.³ Following the GMT's recommendations, the Committee of Ministers adopted a Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190) on 13 February 2003.⁴ Mrs Gertraude KABELKA (Austria), who had participated in the work of the GMT, reported to the PC-OC on the content and significance of this new Protocol. Two changes are significant for international co-operation in criminal matters. The list of offences to be « depoliticised » has been extended and updated, so that these offences will fall outside the political offence ground for refusal to extradite. Furthermore, the classical discrimination clause has been expanded to include a clause authorising the refusal to extradite to a country where there is a risk of applying a death sentence, or a risk of being subject to torture or life imprisonment without parole.

In its report the GMT had also raised the issue of improving efforts in the fight against terrorism in the area of international cooperation in criminal matters. Two follow-up Committees of experts on special investigative means (PC-TI) and on the protection of witnesses (PC-PW) will also be considering international cooperation in criminal matters. They plan to finalise their work in September 2003.

One of the proposals of the GMT was that the PC-OC should explore ways to strengthen international law-enforcement co-operation in the fight against terrorism. The relevant extracts from the report (CM(2002)148 (restricted) 18 October 2002) read as follows :

- ...
13. *Developing measures (I) to intensify and accelerate exchange of information, in particular concerning the actions and movements of terrorists and of terrorist groups and (ii) to improve mutual assistance in criminal matters in view also of the need for obtaining evidence.*
- ...
19. *This question could be dealt with by the European Committee on crime problems (CDPC) and, in particular, the PC-OC (by the end of 2004).*
- ...

The Committee of Ministers approved the proposals of the GMT on 13 November 2002, and the relevant extract of its decision reads as follows:

816th meeting - 13 November 2002
Item 1.5

5. *in relation to the implementation of Council of Europe priority actions for the fight against terrorism.:*

³ This Report may be found on the Council of Europe website at :

http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Fight_against_terrorism/Meetings/GMT_2002_23E-1.pdf

⁴ This treaty was opened for signature on 15 May 2003. It will enter into force once it is ratified by all States parties to the European Convention on the Suppression of Terrorism (ETS 090).

- a. *instructed the Secretariat and the competent committees, in particular the CDPC, the CDCJ and their relevant Bureaux and committees of experts, to undertake all necessary steps for appropriate and speedy follow-up to these priority actions and to report back to them;*
- b. *agreed to take into account the above decision, in the framework of the preparation of the Council of Europe Budget for 2003;*

.....

Follow-up to the GMT proposals was also explained in a [note from the Secretariat to Heads of Delegation to the CDPC dated 29 November 2002](#).

The PC-OC took note of this information. With regard to international co-operation in criminal matters in the context of the death penalty, see below, under point 14 G of this report. The Committee considered that, due to the threats posed by terrorism, awareness of the value of judicial cooperation and mutual legal assistance in particular has increased. The tools of cooperation are not to be considered simply as allowing one state to assist another, but as allowing states to face challenges together. Effective cooperation in this area requires prompt answers and speedy procedures, considering, in particular, that such challenges are faced by several countries at the same time.

The PC-OC considered that it would be useful to collect ideas from Committee members on this subject, and to discuss this matter at its next meeting. One may consider, for example, efforts that have already been made in this direction, such as Article 11 of the Second Additional Protocol to European Convention on Mutual Assistance in Criminal Matters (ETS no. 182). This Article concerns the spontaneous forwarding of information. The Second Additional Protocol has not yet entered into force (1 ratification to date, 3 required).

14. Practical difficulties arising out of the application of the Conventions (Agenda item 10)

In accordance with the practice of the PC-OC, participants were invited to report on any difficulties arising out of the application of the Conventions. The Committee examined the following issues :

A Revocability of consent in the context of temporary transfers for the purpose of giving testimony (article 3 ETS 182 and article 11 ETS 30)

Issue : In the context of transfers under art 3 of the ETS 182, once consent has been given by the person, is that consent revocable ?

The Second Additional Protocol (ETS 182) to the Convention on Mutual Legal Assistance (ETS 30) is silent on the revocability of consent. The issue will ultimately depend on the law of the state in which the person is in custody.

The experts held a full discussion on this issue, considering two possible scenarios :

- a - the transfer has taken place
- b - the transfer has not yet taken place

- a. Where the transfer has already taken place, consent should be considered irrevocable.
- b. Where the transfer has not yet taken place, consent can be revoked, even at the very last moment.

State A presented the problem of preparations for a transfer having been made, but when police officers of the requesting State travelled to the requested State to receive the person in question, they were informed that the person had withdrawn his consent.

Unlike in ETS 112, under Art 11 of the Convention on Mutual Legal Assistance (as modified by the Second Additional Protocol) transfer « *may* be refused if (a) the person in custody does not consent »

Some experts pointed out that in cases where consent is not given, the usefulness of the transfer is questionable, as the person would not necessarily prove to be cooperative once transferred. Nevertheless, in this context one should also consider that a refusal to give testimony might also have a useful legal effect.

B Consent in the context of videoconferences

Issue : When criminal proceedings are ongoing in the requested country, should persons be entitled to rely on the privilege against self-incrimination and refuse to consent to testimony by videoconference?

It was recalled that videoconferencing is a measure which allows transfers to be avoided. Procedures for videoconferences should in principle be simpler or more expedient than transfers.

One expert mentioned the possibility that consent is only partially given. Thus a person might object to the video-conference itself, i.e. to the *means* of taking the testimony, or to the fact of being cross-examined under foreign law. It was suggested that in such a case, one would have to resort to classical mutual legal assistance.

Some experts considered that in the case of video-conferences there should be prior contact between the central authorities of the different States and between central and judicial authorities, with the aim of reducing the risk of problems arising during the video-conference. Due respect to the independence of the judiciary would have to be ensured.

In conclusion, it was suggested that some of these aspects of video-conferencing could be addressed in a recommendation and in domestic guidelines. A study of video-conferencing experiences might be undertaken.

C. Direct and cross-examination and the manner of questioning

Issue : The problem was raised of how to deal with the fact that a certain type of questioning, such as leading questions during the direct examination, might be normal in the requested State but inadmissible in the requesting State.

In principle, details such as swearing-in procedures, the refusal to testify and perjury issues need to be regulated by the executing state (see articles 3 and 8, Second Additional Protocol, ETS 182). However, the issue of direct and cross-examination, miranda warnings and the presence of the defence counsel, are listed in the Explanatory Report as some of the types of formality requirements which the requesting State can expect a requested State to follow, as long as they do not conflict with the requested State's fundamental principles of law.

In this respect, information should be shared on such possible differences prior to the examination, in order to prepare judicial cooperation adequately.

D Universal jurisdiction and its effect on international cooperation in criminal matters

Issue : Universal jurisdiction and its impact on judicial cooperation as a whole.

Universal jurisdiction and its impact on judicial cooperation as a whole. The Committee devoted part of its meeting to a discussion of this issue.

It is possible for States to exercise jurisdiction on the basis of different principles. A useful overview of the bases of criminal jurisdiction may be found in a study of *Extraterritorial criminal jurisdiction*⁵ prepared by the CDPC.

During the discussion, the Committee found it useful to distinguish between extraterritorial and universal jurisdiction, the latter relating to very grievous, serious crimes which offend the collective conscience (in particular, the crimes within the *complementary* jurisdiction of the International Criminal Court, for crimes committed after 1 July 2002).

One particular issue raised in the context of universal jurisdiction was the requirement of the presence of the person on the territory of the State claiming jurisdiction, either for the commencement of proceedings or for the person to stand trial.

Some experts also raised the question whether the competence of the requesting state might be scrutinized by the requested state.

Because this item appeared to be relevant under art. 7 (2) of the Extradition convention, the Committee decided to circulate a note (prepared by the Secretariat on the basis of the discussions) to member states asking their opinions regarding the legal issues arising under Universal jurisdiction and Extraterritorial jurisdiction, together with a paper from Israel to be discussed at the next meeting.

E The Convention on Extradition and the reviewability of the requesting State's jurisdiction

Issue : In the context of an extradition request, to what extent, if any, can the requested State examine the jurisdiction of the requesting State ?

⁵ Council of Europe Publishing, Strasbourg 1990, ISBN 92-871-1786-1

State A had received from State B a request for extradition of a person suspected of having committed premeditated murder. While proceedings were pending, the court in State B cancelled the extradition application. The arrest warrant issued in State B was also invalidated by the domestic Court as it was not in compliance with the new Code of Criminal Procedure of State B. Upon this information, the suspect was granted bail in State A. The Interpol office in State B also informed State A that the suspect was no longer wanted. State A was informed by letter from State B, that State B authorities nevertheless intended to proceed with the case.

Mutual trust and fairness are the foundations of international cooperation in criminal matters. When one state's authorities make a provisional arrest on behalf of another state, they undertake a very serious action on behalf of the requesting state.

This does not mean that there is no possibility of a retraction of an extradition request. New evidence may surface, such as an alibi or a confession by another person, which will mean that it would be pointless to continue the proceedings, even though they were justified to begin with.

However, state authorities must bear in mind the importance of preserving mutual trust, so as not to endanger future cooperation and, in particular, in order to avoid unnecessary (and time-consuming) examinations of the validity of requests by the requested State.

F Extradition Convention, Articles 16, 18 and 19

Issue : Extradition was granted, but surrender was subsequently blocked by the requested State. The person sought was not in custody and was in fact subject to an expulsion order.

The requested State approved an extradition to the requesting State and informed the requesting State, which contacted INTERPOL with regard to the further steps. When the police authorities of the requesting State travelled to the requested State to receive surrender of the person, the requested State issued a decision not to surrender and an arrest warrant was required.

In principle, once a request for extradition is granted, a transfer must take place. Nevertheless, domestic legislation might complicate compliance with this obligation. For example, during provisional arrest or during custody pending extradition, some countries may provide for release from custody for certain reasons. Problems might also arise in the application of Article 19 (postponed or conditional surrender).

One State pointed out that the possibility of suspended extradition custody is a useful option. Once the court finds the person extraditable, if the person is already in custody then the extradition custody is suspended. This decision is communicated to the penitentiary department, so that as soon as any domestic decision or trial is over, the custody switches to extradition custody. The danger posed by this solution is that extradition custody (which is not limited in time) may be exploited for the purposes of domestic proceedings.

Another option, raised by a State considering domestic legislation to deal with this issue, would be to include in the person's file a reference to a pending extradition.

As for the issue of the concurrence of an expulsion order and an extradition request, the Chair mentioned the case law of the European Court of Human Rights regarding the issue of expulsion. In particular he referred participants to a document (PC-OC INF 19) which summarises the case law regarding *Legal Co-operation in Criminal Matters and the Rights of the Defence*.⁶

G The Death Penalty

From a human rights point of view, the death penalty cannot simply be considered an obstacle to international cooperation in criminal matters. One should also consider that, even where the death penalty is involved, the granting of mutual legal assistance could have beneficial results for the accused.

Members of the Committee are invited to examine the document *Draft opinion on mutual assistance to countries applying the death penalty* (CDPC (2002) 12), which was adopted at the CDPC's plenary session in 2002, with a view to discussing this issue at the next meeting.

15. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site

The Committee was informed of developments on the Council of Europe's website on transnational criminal justice. The shortcut for this website is <http://www.coe.int/tcj>. Follow the link to the 'Meetings' page to find the documents regarding the PC-OC meetings. PC-OC INF documents, containing information documents on international co-operation in criminal matters, can be found by following the link to the 'Information' page.

Members discussed the fact that contact lists (such as the PC-OC's yellow paper), containing names of persons responsible for judicial cooperation, the conventions for which they are competent, the language used, the body or the central authority etc, have proved to be very useful for the functioning of judicial cooperation. It would be useful to update the list more regularly than twice yearly, during the PC-OC's meetings.

⁶ This document may be found on the Council of Europe's website on transnational criminal justice <http://www.coe.int/tcj> (on the *Information* page). The relevant part of the report concerning expulsion reads as follows: "...the Court held that there had been a violation of Article 5 para. 1(f) when the state expelled an individual, making use of the expulsion procedure in order to circumvent a national court ruling against extradition and thereby conducting a "disguised extradition", as established by the domestic courts themselves (European Court H. R., *Bozano v. France* judgment of 18 December 1986, Series A No. 111). See, however, as a contrary example: European Court H. R., *Stocké v. Germany* case of 19.3.91, Series A No. 199, in which the applicant alleged that the German authorities had arranged, with the assistance of a police informer, to have his plane land in Saarbrücken where they could arrest him without having to make a request for extradition or deportation (non-violation of Article 5 para. 1) but in which neither the domestic authorities, the Commission nor the Court succeeded, despite the hearing of several witnesses, in establishing either the existence of such a plan or the German authorities' direct responsibility."

This list should be used more widely than the circle of people who are listed on it. Judicial authorities could have access to it. PC-OC members should be encouraged to distribute it, where useful.

The issue was discussed whether, and what type of, contact information should be available on the website. The Committee will be asked to specify in writing at the next meeting, which contact information they would be willing to share on the website.

16. Information about work being carried out in the Council of Europe of interest to the PC-OC.

The Secretariat informed the Committee about on-going work within the Council of Europe which could be of interest to the PC-OC. In particular:

- Protocol to the Money Laundering Convention - the CDPC Bureau considered draft terms of reference for a select committee to prepare a Protocol updating the Convention. Participation of the PC-OC on this select committee would be foreseen;
- Data protection in international co-operation in criminal matters - The draft Report on the impact of data protection principles on judicial data in criminal matters was to be considered by the Bureau of the CDCJ at its next meeting (12-14 March) and then formally approved by the plenary of the CDCJ in May; At its meeting in October the CJ-DP also adopted the [Report on the third evaluation of Recommendation No. R \(87\) 15 regulating the use of personal data in the police sector](#), which, the Ministers' Deputies agreed, would be the final periodic evaluation report, though future evaluations on specific issues could be carried out. Further to the request of the CJ-PD, the Bureau of the CDCJ also decided to transmit the report to the CDPC and its interested sub-committees, including in particular the PC-OC;
- Cyber-crime (An [Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#) was opened for signature on 28 January 2003) ;
- Conference of Prosecutors General of Europe; new shortcut to the website: <http://www.coe.int/prosecutors> ;
- Council of Europe activities concerning the International Criminal Court.

17. Information on co-operation in criminal matters between
- Members of the European Union
 - other states

Bearing in mind its role in co-ordinating developments in co-operation in criminal matters involving member States of the Council of Europe, the Committee collected information from participants on the latest such developments.

Mr Nicolaos Paraskevopoulos, the expert from Greece, informed the Committee about the latest developments in co-operation in criminal matters within the European Union. In particular, he referred to the recent decision of the European Court of Justice concerning *ne bis in idem*, and to a working group monitoring the implementation of the European Arrest Warrant.

Mr Bent Mejborn, from the Council of the European Union, also informed the Committee of ongoing negotiations between the EU and the USA on mutual legal assistance and presented developments regarding the European Arrest Warrant.

The Committee considered resuming discussions on *ne bis in idem* and the European Arrest Warrant at its next meeting. In particular, it would be interesting to examine the impact of the European Arrest Warrant on the Extradition Conventions and its Protocols, in particular with reference to the transitional phase, from January 2004, when Extradition provisions will cease to apply for countries party to the European Arrest Warrant.

Mrs Astrid Offner, the expert from Switzerland briefly informed the PC-OC about an agreement between Switzerland and France concerning simplified extradition proceedings.

Mr Masayoshi Kozawa, the expert from Japan, announced his country's accession to the Transfer Convention (ETS 112) with effect from 1 June 2003. He enlisted the assistance of PC-OC members in the application of the Convention by Japan.

18. Miscellaneous

The Chair brought to the attention of the Committee the idea of compiling the reports of discussions on practical difficulties encountered in the application of the conventions. The object of such a compilation would be to provide experts with user-friendly resource material on past experience in applying the Conventions. The compilation would not, of course, constitute a binding interpretation of the Conventions.

Various issues were discussed, regarding the form, content and accessibility of such a compilation. In particular, each issue discussed could be presented in a standardised format (Question – Discussion – Conclusion) and in a thematic order, according to the factual scenario. Access to the document could be an issue, if e.g. wider distribution were to result in the stifling of the PC-OC's normally open and frank discussions. At any rate, persons or states would not be identified in such a compilation.

Reference was also made to a number of useful documents in the PC-OC INF series, which are available on the Council of Europe's website on transnational criminal justice (<http://www.coe.int/tcj>, and in particular on the 'Information' page of that site), including:

[PC-OC INF 4 ADDENDUM - REV](#)

Provisional Arrest under Article 16 of the Extradition Convention ;

[PC OC INF 19](#)

Legal Cooperation in Criminal Matters and the Rights of the Defence – Case-law of the European Commission and Court of Human Rights ;

[PC OC INF 21](#)

Explanatory Notes to the European Convention on Extradition (ETS 24) ;

[PC OC INF 22](#)

Arrest in the context of the European Convention on Extradition, Human Rights and other requirements ;

[PC OC INF 31](#)

European Standards of Police Custody;

as well as the guides to procedures and other standard information:

[PC-OC INF 4](#)

European Convention on Extradition (ETS 24) – A Guide to Procedures;

[PC OC INF 5 Rev3](#)

Convention on the Transfer of Sentenced Persons (ETS 112) – A Guide to Procedures;

[PC OC INF 7](#)

Chart showing requirements of States with respect to languages used in requests received under the Conventions ;

[PC OC INF 9](#)

Manual on Mutual Assistance in Criminal Matters ;

[PC-OC Inf 12](#)

Standard text providing information about the Convention on the transfer of sentenced persons.

19. Dates of the next meeting

The dates of the Committee's 47th meeting had been set for 29 September - 1 October 2003. However, as the Autumn session of the Parliamentary Assembly was subsequently shifted and overlapped with those dates, the following dates for the PC-OC's next meeting were proposed and approved:

47th meeting: 15-17 September 2003

APPENDIX I / ANNEXE I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

Restricted / Diffusion restreinte

APPENDIX II / ANNEXE II**AGENDA**

1. Opening of the meeting
2. Adoption of the Agenda
3. Adoption of the report of the previous meeting
4. Transfer of sentenced persons: Possible more extensive use of the CoE Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51)
5. Transfer of sentenced persons : Follow-up to Assembly Report and Recommendations
6. Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols
7. Mutual Assistance in Criminal Matters: reservations entered with respect to the European Convention and its Protocols
8. Working Party to follow up the New Start Report
9. Terrorism - Follow-up to the GMT
10. Practical difficulties arising out of the application of the Conventions
11. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site
12. Information about work being carried out in the Council of Europe with interest to the PC-OC
13. Information on co-operation in criminal matters between (a) the Members of the European Union and (b) others
14. Information on co-operation in criminal matters between (a) the Members of the European Union and (b) others
15. Dates of next meetings