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**Information Documents  
SG/Inf(2010)4**

16 February 2010

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**CONTRIBUTION OF THE SECRETARY GENERAL  
OF THE COUNCIL OF EUROPE**

**TO THE TWELFTH UNITED NATIONS CONGRESS  
ON CRIME PREVENTION AND CRIMINAL JUSTICE**

**SALVADOR, BRAZIL, 12-19 APRIL 2010**

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## Executive Summary

The Twelfth United Nations Congress on Crime Prevention and Criminal Justice will be held in Salvador, Brazil, from 12 to 19 April 2010 and is entitled "comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world". The present document constitutes the contribution of the Secretary General of the Council of Europe to the UN Crime Congress.

The Council of Europe will continue to support the work of the UN Crime Congress and seek to strengthen its cooperation with the United Nations Office on Drugs and Crime, in particular with regard to crime-related technical assistance. The specific instruments and tools of the CoE as well as the practical experience gathered over more than sixty years should provide valuable inputs in this respect.

The specific approach of the Council of Europe, namely to ensure that common standards (conventions and recommendations) are actually implemented by monitoring compliance and providing technical assistance, should also be of interest to members of the UN Crime Congress.

While the CoE is a regional organisation, some of its instruments have a reach beyond Europe and are open to accession by any country. With regard to the themes of the UN Crime Congress these include in particular the:

- "Budapest" Convention on Cybercrime (CETS 185)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108)
- Convention on the Prevention of Terrorism (CETS 196)
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201).

The "Budapest" Convention on Cybercrime *de facto* already serves as a global standard for the development of domestic legislation. Proposals regarding the preparation of a new international treaty may entail certain risks that should be examined in detail. It may be more appropriate to focus resources on the actual implementation of existing tools and instruments.

The concerns expressed by many United Nations Member States regarding the threat of cybercrime are nevertheless very valid. Common and urgent efforts are required in order to strengthen legislative frameworks, criminal justice capacities, international cooperation and public/private cooperation, the protection of children and measures against criminal money flows on the Internet are required.

The Crime Congress may therefore consider discussing the launching of a global capacity building effort to allow countries to stem the threat of cybercrime. The Council of Europe would be prepared to cooperate with the United Nations Office on Drugs and Crime and other interested parties in such an initiative.

## 1 Introduction

1. The 12<sup>th</sup> United Nations Crime Congress in Salvador, Brazil, from 12 to 19 April 2010 is very timely and covers themes that are highly relevant for the Council of Europe, such as children and youth, terrorism, money laundering, trafficking in human beings, prisons and cybercrime within a human rights and rule of law framework.

2. The Council of Europe (CoE), established in 1949, is a regional organisation with currently 47 member States and is aimed at promoting human rights, democracy and the rule of law. Crime threatens to undermine these common values, and the CoE has therefore been developing common responses for more than sixty years.<sup>1</sup> It has been pursuing an approach combining the setting of standards with the monitoring of compliance and technical assistance.

3. The importance of the rule of law in the work of the CoE and its interconnection with democracy and human rights was underlined again in June 2009 by the Ministers of Justice of CoE member States meeting in Tromsø (Norway).<sup>2</sup> The Ministers, *inter alia*, adopted a resolution in which they:

RECOMMEND that the Council of Europe pursues its work of promoting the rule of law worldwide by developing co-operation with the United Nations, the OSCE/ODIHR and other international institutions working in this field and by increasing the global reach of relevant Council of Europe conventions, such as:

- the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108, 1981) and its Additional Protocol regarding supervisory authorities and transborder data flows (CETS No. 181, 2001);
- the Convention on Cybercrime (CETS No. 185, 2001) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189, 2003);
- the Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007).

4. Enhanced cooperation between the CoE and the United Nations and other international organisations and initiatives is particularly important in the light of challenges related to the information society.

5. The purpose of this report – in particular in the absence of a regional preparatory meeting for Europe – is to share relevant European experience and good practices with the UN Crime Congress and to offer cooperation.

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<sup>1</sup> For example, treaties on international cooperation in criminal matters (extradition, mutual legal assistance and others) date back to the 1950s.

<sup>2</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/steering\\_committees/cdcj/cj\\_s\\_just/R%C3%A9solution%203%20Eng%20Tromso.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/R%C3%A9solution%203%20Eng%20Tromso.pdf)

See also: Council of Europe/Rapporteur Group on Legal Co-operation (2008): The Council of Europe and the Rule of Law - An overview (document GR-J(2008)11 of 18 September 2008). The case law of the European Court of Human Rights shows that States governed by the rule of law and human rights have the positive obligation to ensure the security of their citizens. <https://wcd.coe.int/ViewDoc.jsp?id=1341223&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=FDB021&BackColorLogged=F5D383>.

**Provisional agenda<sup>3</sup>**

In its resolution 63/193, the General Assembly approved the following **provisional agenda** for the Twelfth Congress, finalized by the Commission on Crime Prevention and Criminal Justice at its seventeenth session:

1. Opening of the Congress.
2. Organizational matters.
3. Children, youth and crime.
4. Provision of technical assistance to facilitate the ratification and implementation of the international instruments related to the prevention and suppression of terrorism.
5. Making the United Nations guidelines on crime prevention work.
6. Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime.
7. International cooperation to address money-laundering based on existing and relevant United Nations and other instruments.
8. Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime, including the case of cybercrime.
9. Strengthening international cooperation in fighting crime-related problems: practical approaches.
10. Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families.
11. Adoption of the report of the Congress.

In the same resolution, the General Assembly decided the following issues shall be considered in **workshops** within the framework of the Twelfth Congress:

- (a) International criminal justice education for the rule of law;
- (b) Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system;
- (c) Practical approaches to preventing urban crime;
- (d) Links between drug trafficking and other forms of organized crime: international coordinated response;
- (e) Strategies and best practices against overcrowding in correctional facilities.

<sup>3</sup> <http://www.unodc.org/unodc/en/crime-congress/crime-congresses.html?ref=menuaside>

## 2 Children, youth and crime (item 1)

### 2.1 Children and youth in the criminal justice system

Useful instruments and tools:

- Building a Europe for and with children – 2009-2011 strategy<sup>4</sup>
- Guidelines on child-friendly justice, and other resources<sup>5</sup>
- Legal texts on children<sup>6</sup>

6. Since the 3<sup>rd</sup> Summit of Heads of State and Government of the Council of Europe (Warsaw 2005), the promotion of children's rights has become one of the organisation's strategic objectives. A programme "Building a Europe for and with children"<sup>7</sup> was set up in 2006 in order to support the implementation of international standards in the field of children's rights, to mainstream the rights of the child in all the Council of Europe's policies and activities, and to eliminate violence against children.

7. In 2006-2008, under the programme's umbrella, over eighty activities were organised and increased the Council of Europe's regional and global impact and visibility. Introduction of innovative working methods, including transversal and multi-stakeholder approaches, resulted in a number of break-through initiatives, including a pan-European campaign against corporal punishment of children (launched in June 2008 in Croatia).

8. The new Council of Europe Strategy on the Rights of the Child (2009-2011) outlines three priority areas for the programme's new cycle: promotion of child participation and of children's influence in society; eradication of all forms of violence against children; and promotion of children's access to justice.

9. In 2010, the programme will focus on the promotion of Recommendation (2009)<sup>10</sup> of the Committee of Ministers to member States on Integrated National Strategies for the Protection of Children from Violence (this text was developed as a follow up to the recommendations of the UN Committee on the Rights of the Child and of the UN Secretary-General's Study on Violence against Children). The programme will launch a Europe-wide campaign against sexual violence against children.

10. Over the years, the Council of Europe has also developed many binding and non-binding standards relating to the protection and the promotion of the rights of children, in particular child victims and witnesses, or child perpetrators of crime. In 2007, at their 28<sup>th</sup> Conference, the Ministers of Justice of the 47 member States of the Council of Europe adopted a resolution (Resolution No. 2) on child-friendly justice in which they highlight the particular vulnerability of children and the necessity to ensure respect for their rights and pay attention to their specific needs and concerns in all aspects of the justice system. They agreed on the importance of taking measures to develop child-friendly justice.

<sup>4</sup> [http://www.coe.int/t/transversalprojects/children/pdf/StrategyProgramme\\_en.pdf](http://www.coe.int/t/transversalprojects/children/pdf/StrategyProgramme_en.pdf)

<sup>5</sup> [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp)

<sup>6</sup> [http://www.coe.int/t/transversalprojects/children/keyLegalTexts/Default\\_en.asp](http://www.coe.int/t/transversalprojects/children/keyLegalTexts/Default_en.asp)

<sup>7</sup> [www.coe.int/children](http://www.coe.int/children)

11. As a follow-up to this ministerial Resolution, a number of major events were organised in 2008 and 2009 which have paved the way towards the preparation of Council of Europe Guidelines on Child Friendly Justice.<sup>8</sup> These guidelines - building on existing national, European and international standards – will aim to ensure effective and favourable access to justice for children as well as to assist member States in identifying good practices. These Guidelines will deal with the issue of the place and the voice of the child at all stages of judicial as well as extrajudicial proceedings as well as in alternatives to such proceedings. They shall apply to all ways in which children are likely to be, for whichever reason and in whichever capacity brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law, be it as a party to proceedings, witnesses, victims or perpetrators. They shall promote the rights of children, including the right to information, to representation and to participation. Being a practical tool, they shall refer to case law and present good practices and propose practical solutions to remedy eventual lacunae. The preparatory work of these Guidelines started in 2009 and included a hearing with international NGOs and stakeholders. In 2010, a consultation with children will be organised and the Council of Europe hopes the Guidelines will be completed for their possible adoption by the end of 2010 or beginning of 2011.

## 2.2 Protecting children’s dignity, security and privacy on the Internet

Useful instruments and tools:

- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)
- Convention on Cybercrime (CETS 185)
- Recommendation Rec(2006)12 of the Committee of Ministers to member States on empowering children in the new information and communications environment<sup>9</sup>
- Declaration on protecting the dignity, security and privacy of children on the Internet, adopted by the Committee of Ministers on 20 February 2008<sup>10</sup>
- Recommendation CM/Rec(2009)5 of the Committee of Ministers to member States on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment, adopted on 8 July 2009<sup>11</sup>
- Recommendation CM/Rec(2009)10 of the Committee of Ministers to member States on integrated national strategies for the protection of children from violence<sup>12</sup>
- Parliamentary Assembly Recommendation 1882 (2009) on the promotion of Internet and online media services appropriate for minors.<sup>13</sup>

<sup>8</sup> [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp)

<sup>9</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2006\)12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2006)12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>10</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(20.02.2008\)&Language=lanEnglish&Ver=0001&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(20.02.2008)&Language=lanEnglish&Ver=0001&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>11</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>12</sup> <https://wcd.coe.int/com.intranet.InstraServlet?Index=no&command=com.intranet.CmdBlobGet&IntranetImage=1407961&SecMode=1&DocId=1497848&Usage=2>

<sup>13</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/EREC1882.htm>

12. Fostering children's trust and confidence in the Internet coupled with the protection of their dignity, security and privacy is a priority for the CoE. The Internet is a space of freedom to express and to communicate, to search for information and to learn, to work and to play. Access to the Internet thus offers great potential for children to exercise and enjoy their rights and values through the Internet.

13. At the same time, threats such as cybercrime and the sexual exploitation and abuse of children through information and communication technologies pose particular challenges. The CoE is addressing these by setting common standards and policies, by supporting educational, preventive and other measures to empower children, by promoting criminal justice action and by strengthening multi-stakeholder and international cooperation.

14. CoE standards as regards the protection of children and promotion of their rights include numerous treaties and recommendations, some of which are specifically related to the online environment.

### **The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)<sup>14</sup>**

15. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) represents the most advanced and comprehensive standard in this field. A body to monitor compliance with this treaty is envisaged to be set up in 2010. The Convention provides for:

- the criminalisation of sexual abuse of children, child prostitution, child pornography, grooming and other conduct
- preventive measures, including education of children on the risks of sexual exploitation and abuse through the use of new information technologies
- assistance to victims
- the participation of children, the private sector, the media and civil society in measures to protect children and prevent their abuse
- holding nationals accountable for offences committed abroad
- the protection of children in the course of criminal proceedings
- international cooperation.

16. Children of increasingly young ages are taking part in social networking websites and chatrooms and expose themselves to the risk of being groomed for sexual purposes. In very few states is the conduct of grooming defined as a criminal offence. The CoE has contributed to closing this legal loophole through the Convention by making it an offence for an adult to arrange to meet a child through information and communication technologies with the intention of engaging in unlawful sexual activities with the child.

17. The Convention contains many references to the use of information and communication technologies in the context of the sexual exploitation and sexual abuse of children. For example, it requires states to criminalise conduct such as knowingly accessing child pornography on the Internet. This treaty and the Convention on Cybercrime thus complement each other.

18. Broadest possible implementation of this treaty together with the Convention on Cybercrime is recommended as an effective means to protect children against sexual exploitation and abuse and to hold offenders accountable.

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<sup>14</sup> [www.conventions.coe.int](http://www.conventions.coe.int)

### **The Convention on Cybercrime (CETS 185)<sup>15</sup>**

19. The "Budapest" Convention on Cybercrime (CETS 185) is the global standard on cybercrime. With regard to criminal justice action for the protection of children, the following provisions are of relevance. State parties are required to:

- criminalise offences against and through computer systems. Article 9 covers child pornography in a broad manner
- introduce procedural law measures to provide law enforcement with effective means to investigate cybercrime including child pornography and the sexual exploitation and abuse of children related to computer systems
- cooperate efficiently with each other and provide a framework for international cooperation, including police and judicial cooperation in computer-related cases involving crimes against children.

### **Educative and preventive measures and empowering children<sup>16</sup>**

20. Among the preventive measures related to the new media are the Council of Europe's online Internet safety game for children ("Through the Wild Web Woods") and an Internet Literacy Handbook.<sup>17</sup> Available in 24 languages, the game has been played by over 2.5 million children and adults across Europe. The game is now accompanied by a Teachers' Guide offering model lessons on issues, such as online identity, addiction, privacy, and children's rights in real and virtual worlds.

*"Through the Wild Web Woods"<sup>18</sup>* is an online game designed by the CoE which helps children learn basic Internet safety rules. The game uses familiar fairy tales to guide children through a maze of potential dangers on the way to the fabulous e-city Kometa, while teaching them to protect identity and personal data, participate safely in chat rooms, recognise sites and online games containing dangerous or harmful content, develop critical approach towards information found on the Internet, and protect their computers against spam and viruses. The game also promotes key concepts and values underlying the work of the CoE, such as democracy, respect for others and children's rights.

The game, mainly for children between 7 and 10, is now available in 24 languages. It is accompanied by an online teaching guide proposing structural ways for teachers to discover Internet safety together with children.

21. The future Council of Europe's campaign against sexual violence against children (to be launched in autumn 2010) will refer to the new media.

<sup>15</sup> [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

<sup>16</sup> [www.coe.int/children](http://www.coe.int/children)

<sup>17</sup> <http://www.coe.int/t/transversalprojects/children/publications>

<sup>18</sup> [http://www.wildwebwoods.org/popup\\_langSelection.php](http://www.wildwebwoods.org/popup_langSelection.php)

## 2.3 Preventing juvenile delinquency

Useful instruments:

- Recommendation R (87) 20<sup>19</sup> on social reactions to juvenile delinquency
- Recommendation R (88) 6<sup>20</sup> on social reactions to juvenile delinquency among young people coming from migrant families
- Recommendation Rec (2000) 20<sup>21</sup> on the role of early psychosocial intervention in the prevention of criminality
- Recommendation Rec(2003)20<sup>22</sup> concerning new ways of dealing with juvenile delinquency and the role of juvenile justice
- Recommendation CM/Rec(2008)11<sup>23</sup> on the European Rules for juvenile offenders subject to sanctions or measures

22. The Council of Europe has for a number of years paid particular attention to preventing juvenile delinquency and to taking care of juvenile offenders in full respect of their human rights and their specific needs. The Council of Europe's position is that juvenile offenders and children at risk are two categories which are inter-linked and therefore should be considered with the same amount of care and attention. The juvenile justice system is only part of the overall response to juvenile crime. The focus should be on education and reintegration, and less on a purely repressive approach. The age of criminal responsibility should not be too low. Deprivation of liberty, even in specially designed institutions for children, should be a measure of last resort and should be for the shortest possible time. Young adult offenders should be dealt with as far as possible as juveniles.

23. The above standard-setting texts regulate both preventing and dealing with crime committed by juveniles, as well as their treatment in the community and in closed settings. These standards build upon the United Nations standards in this area and develop them further from a European perspective. Recommendation CM/Rec (2008)11 adapts to the specific needs of juveniles and further develops the standards contained in the European Rules on community sanctions and measures (Committee of Ministers Recommendation No. R(92) 16) and the European Prison Rules (Committee of Ministers Recommendation Rec (2006)2).

<sup>19</sup> <https://wcd.coe.int/ViewDoc.jsp?id=704821&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>20</sup> <https://wcd.coe.int/ViewDoc.jsp?id=707505&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=DB021&BackColorLogged=F5D383>

<sup>21</sup> <https://wcd.coe.int/ViewDoc.jsp?id=376361&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>22</sup> <https://wcd.coe.int/ViewDoc.jsp?id=70063&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>23</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

### 3 Prevention of terrorism (item 4)

Useful instruments and tools:

- European Convention on the Suppression of Terrorism (CETS 90) and Amending Protocol (CETS 190)<sup>24</sup>
- Convention on the Prevention of Terrorism (CETS 196)
- Convention on Cybercrime (CETS 185)
- Guidelines on Human Rights and the Fight against Terrorism (2002) and the Guidelines on the Protection of Victims of Terrorist Acts (2005)<sup>25</sup>
- Declaration on freedom of expression and information in the media in the context of the fight against terrorism (2005)<sup>26</sup>
- Recommendation Rec(2005)7 of the Committee of Ministers to member States concerning identity and travel documents and the fight against terrorism<sup>27</sup>
- Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice<sup>28</sup>
- Recommendation Rec(2005)10 of the Committee of Ministers to member States on "special investigation techniques" in relation to serious crimes including acts of terrorism<sup>29</sup>
- Recommendation Rec(2006)8 of the Committee of Ministers to member States on assistance to crime victims<sup>30</sup>
- Recommendation Rec(2007)1 of the Committee of Ministers to member States regarding co-operation against terrorism between the Council of Europe and its member States, and the International Criminal Police Organization (ICPO – Interpol)<sup>31</sup>
- Guidelines on protecting freedom of expression and information in times of crisis (2008)<sup>32</sup>

24. Regarding the prevention of terrorism, the Council of Europe and the United Nations pursue similar objectives and have developed strong synergies. Relations are excellent, in particular with the UN Counter-Terrorism Committee of the United Nations Security Council (the CoE's Jurisconsult has held an exchange of views with this Committee in December 2009) and the Counter Terrorism Executive Directorate (CTED).

25. As for the Council of Europe's instruments, several innovative international treaties addressing terrorism have been drawn up since the 1970s. The most recent and relevant instrument is the 2005 Convention on the Prevention of Terrorism<sup>33</sup> that, like the Convention on Cybercrime, has a global application and has received considerable international support. It is

<sup>24</sup> For this and other conventions see the full list at <http://www.conventions.coe.int/>

<sup>25</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Guidelines%20HR%202005%20E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Guidelines%20HR%202005%20E.pdf)

<sup>26</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Declaration%20freedom%20and%20media%202005%20E%20pdf.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Declaration%20freedom%20and%20media%202005%20E%20pdf.pdf)

<sup>27</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Rec\\_2005\\_7E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Rec_2005_7E.pdf)

<sup>28</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/rec\\_2005\\_9E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/rec_2005_9E.pdf)

<sup>29</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/rec\\_2005\\_10E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/rec_2005_10E.pdf)

<sup>30</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Rec\(2006\)8E%20Assistance%20to%20crime%20victims.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Rec(2006)8E%20Assistance%20to%20crime%20victims.pdf)

<sup>31</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Rec\\_2007\\_1E%20Interpol.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Rec_2007_1E%20Interpol.pdf)

<sup>32</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/fight\\_against\\_terrorism/2\\_adopted\\_texts/Guidelines%20media%202008%20E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_adopted_texts/Guidelines%20media%202008%20E.pdf)

<sup>33</sup> The Council of Europe Convention on the Prevention of Terrorism (CETS 196) entered into force on 1 June 2007. By February 2010 it had been ratified by 23 and signed by additional 20 countries.

regarded as a precursor to certain developments at global level, notably to the adoption by the United Nations Security Council of Resolution 1624 in September 2005.

26. This Convention is the first international treaty to require that States establish as criminal offences conduct that may lead to the commission of acts of terrorism, including public provocation or indirect incitement, recruitment and training for terrorist purposes. The Convention applies, *inter alia*, to the glorification and justification of terrorism and terrorist acts, to recruitment for terrorism and to terrorist training, even carried out by using the Internet or other electronic communication systems. It also requires that the establishment, implementation and application of the relevant criminal law provisions respect human rights obligations, in particular the rights to freedom of expression, association and religion. As a result, the Convention has been characterised as “a sound response which would respect human rights”.<sup>34</sup>

27. Apart from this Convention, the Council of Europe also drafted important recommendations on special investigation techniques, on the protection of witnesses and collaborators of justice, on cooperation with Interpol and on travel identity documents in the context of the fight against terrorism.

28. In order to technically assist countries in the implementation of the existing instruments, the Council of Europe recently launched a technical assistance project on “bringing terrorists to justice”, aiming at supporting national judges, prosecutors and law enforcement agencies in applying Council of Europe counter-terrorist Conventions and Recommendations. The first event of this project was organised in Skopje (“the former Yugoslav Republic of Macedonia”) in December 2009 with the support and participation of the UN CTED. It is expected that this project be expanded to different European countries in 2010, in particular with the support of the UN relevant counter-terrorism bodies.

29. Regarding the terrorist use of the Internet, if the CoE Convention on the Prevention of Terrorism effectively addresses the Internet *as a means*, the question then arises: what about the Internet and other electronic communication systems *as a target* of cyber attacks by terrorists? Examples of massive attacks on private and national Internet resources already exist and international community should prepare for the growing cyber capabilities of terrorists in addition to the threats posed by cyber criminals and other such actors. There is a growing consensus that the combined effect of the Convention on Cybercrime and its Additional Protocol, and the CoE Convention on the Prevention of Terrorism allows states to respond adequately to Internet security challenges. The CoE will continue to promote a widespread adherence to these instruments as a basis for international cooperation in countering the terrorist use of the Internet.

30. Clearly, technical assistance should be provided to countries worldwide to support the implementation of relevant treaties and recommendations.

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<sup>34</sup> See Report of the United Nations Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, E/CN.4/2006/98, para. 56 (c), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement> This position was also underlined in the Report of the Counter-Terrorism Committee to the Security Council on the implementation of Resolution 1624(2005).

## 4 Trafficking in human beings (item 6)

### Useful instruments and tools

- Convention on Action against Trafficking in Human Beings (CETS 197)<sup>35</sup>
- Group of Experts on Action against Trafficking in Human Beings (GRETA)<sup>36</sup>

31. The respect for the human rights and the protection of victims are the paramount objectives of the Council of Europe Convention on Action against Trafficking in Human Beings. The human-rights based approach of this treaty triggers a new perspective to the prosecution and judicial proceedings on trafficking in human beings as victims can no longer merely be considered as a tool to prosecute the traffickers – on the contrary they are the very reason why we are fighting this modern form of slavery.

32. At the outset, it should be underlined that there is a difference between the smuggling of migrants and trafficking in human beings. The main difference is that while the aim of smuggling of migrants is the unlawful cross-border transport in order to obtain, directly or indirectly, a financial or other material benefit, the purpose of trafficking in human beings is exploitation. In the field of trafficking in human beings, there are two binding international legal instruments. The first one is the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (hereinafter: the Palermo Protocol)<sup>37</sup>. The second instrument is the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197)<sup>38</sup>

33. This Convention was opened for signature in Warsaw on 16 May 2005 on the occasion of the 3<sup>rd</sup> Summit of Heads of State and Government of the Council of Europe. It entered into force on 1 February 2008. As of 13 January 2010, it has been ratified by 26 member States of the Council of Europe. It has also been signed, but not yet ratified, by 15 other member States. The Convention is not restricted to Council of Europe member States; non-members states and the European Union also have the possibility of becoming a Party to the Convention.

34. The Council of Europe Convention is the first international legal instrument which affirms that trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and the integrity of the human being. It is a comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking and prosecuting traffickers. The Council of Europe Convention used the Palermo Protocol as a starting point and adopted the same definition of trafficking in human beings. Therefore, it applies to all forms of trafficking in human beings (trafficking for the purpose of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs). The Council of Europe Convention has a broader scope than the Palermo Protocol and applies not only to transnational trafficking but also to national trafficking, and whether or not the trafficking is linked to organised crime. In addition, it takes a human-rights centred approach, focusing on the victims, and by stipulating a number of binding provisions, it considerably enhances the protection offered to victims.

<sup>35</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=8&DF=01/02/2010&CL=ENG>

<sup>36</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/trafficking/default_EN.asp?)

<sup>37</sup> Another Protocol to this United Nations Convention deals with the issue of the smuggling of migrants: the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>38</sup> Hereinafter: the Council of Europe Convention.

35. No other international text defines a "victim", leaving it to each State to define who is a victim and therefore deserving the measures of protection and assistance. In the Council of Europe Convention a victim is any natural person who is subject to trafficking as defined in the Convention. The Convention makes it clear that it applies to all victims - women, men and children alike and that the consent of a victim to the exploitation is irrelevant.

36. In order to combat trafficking in human beings it is essential to protect victims but also to prosecute traffickers. The human-rights based approach of this treaty is reflected in all the provisions dealing with the prosecution of traffickers. In accordance with this approach, the protection of the victim of trafficking in human beings is central before, during and after the judicial proceedings. This is clearly reflected in Article 19 dealing with the adoption by parties of legislative and other measures to establish as criminal offences under their internal law the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking in human beings. Furthermore, it provides in Article 26 for the possibility of not imposing penalties on victims for their involvement in unlawful activities, if they were compelled to do so by their situation. In addition, it sets out in Article 24 a list of aggravating circumstances (for instance, when the life of the victim is endangered or when the offence was committed against a child) parties should apply when determining penalties for the offences established under this convention. It also requires that parties adopt measures to ensure the liability of legal persons for a criminal offence established under this convention (Article 22) and measures enabling to confiscate or otherwise deprive offenders of the instrumentalities and proceeds of criminal offences established under this convention (Article 23 Paragraph 3). Parties shall provide for the possibility of non-governmental organisations to assist a victim with his or her consent during criminal proceedings (Article 27 Paragraph 3).

37. In addition to substantive provisions on fighting trafficking in human beings, the Council of Europe Convention provides for the setting up of an effective and independent monitoring mechanism capable of controlling the implementation of the obligations contained in the Convention. This independent human rights monitoring mechanism of the Convention is one of its main strengths. The entry into force of the treaty on 1 February 2008 triggered the setting up of its monitoring mechanism which is now fully operational.

38. The monitoring mechanism consists of two pillars: the *Group of Experts on Action against Trafficking in Human Beings* (GRETA), a technical body, composed of independent and highly qualified experts, and the Committee of the Parties, a more political body, composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. GRETA is responsible for monitoring implementation of the Council of Europe Convention by the Parties. GRETA will regularly publish reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Council of Europe Convention will be required to step up their action. The Committee of the Parties may also, on the basis of GRETA's report and conclusions, make recommendations to a Party concerning the measures to be taken to follow up GRETA's conclusions.

## 5 Money laundering (item 7)

### Useful instruments and tools

- Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime and the Financing of Terrorism (CETS 198)<sup>39</sup>
- Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141)
- Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)<sup>40</sup>
- Technical assistance projects<sup>41</sup>

39. The Council of Europe is pursuing a comprehensive approach against money laundering and the financing of terrorism by setting standards in the form of Conventions and Recommendations, by monitoring compliance with international standards and by supporting their implementation through technical cooperation projects.

40. The "Strasbourg" Convention CETS 141 dates back to 1990. The aim of this Convention is to facilitate international co-operation and mutual assistance in investigating money laundering and acquisitive crime generally and tracking down, seizing and confiscating the proceeds thereof. The Convention is intended to assist States in attaining a similar degree of efficiency even in the absence of full legislative harmony. This Convention has been ratified by all Council of Europe member States, which makes it a particularly useful tool for international cooperation due to its various provisions on mutual assistance. Furthermore, it is opened also to countries which are not members of the organisation. It has not only been ratified by all 47 member states of the CoE but also by Australia.

41. The "Warsaw" Convention CETS 198 of 2005 updated and broadened the previous treaty. It is the first comprehensive international treaty covering both the prevention and the control of money laundering and the financing of terrorism. The text recognises that successful money laundering prosecution and the imposition of significant confiscation orders can and does deter the commission of major proceeds-generating criminal offences. Accordingly the Convention contains important new provisions to further facilitate effective money laundering prosecution and the confiscation of proceeds. It also contains important new investigative powers to obtain financial information from banks and other financial institutions, which can be used to track down those who finance terrorism and those who launder money and in other financial investigations. The convention also includes a mechanism to ensure the proper implementation by parties of its provisions.

42. MONEYVAL is a monitoring body that was established in 1997 and currently evaluates 28 Council of Europe States which are not members of the FATF and Israel, which is an observer State participating in the evaluation process. The aim of MONEYVAL is to ensure that the States it monitors have in place effective systems to counter money laundering and terrorist financing and comply with relevant international standards in these fields. MONEYVAL not only monitors compliance with standards of the CoE but also of the FATF<sup>42</sup>, the United Nations and the European Union through a system of mutual peer evaluations. MONEYVAL is one of the leading 'FATF style' regional bodies (FSRBs), and is an Associate Member of FATF.

<sup>39</sup> [www.conventions.coe.int](http://www.conventions.coe.int)

<sup>40</sup> <http://www.coe.int/t/dghl/monitoring/moneyval/>

<sup>41</sup> [www.coe.int/economiccrime](http://www.coe.int/economiccrime)

<sup>42</sup> Financial Action Task Force.

43. MONEYVAL actively pursues research projects into new methods and techniques in money laundering and terrorist financing. Currently it is producing a study on money laundering through the insurance sector and through internet gambling.

44. Technical cooperation projects of the CoE help countries to implement international agreements and standards and to follow up on the results of evaluation reports. Examples include joint projects of the European Commission and the Council of Europe:

- MOLI-RU projects on money laundering and financing of terrorism in the Russian Federation<sup>43</sup>
- MOLI-UA projects on money laundering and financing of terrorism in Ukraine
- MOLICO project on corruption and money laundering in Moldova<sup>44</sup>
- PACO Serbia project on economic crime<sup>45</sup>

45. A typology study on criminal flows on the internet is also currently under way as a joint activity of MONEYVAL, the global Project on Cybercrime and the MOLI-Russia project.

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<sup>43</sup> [http://www.coe.int/t/dghl/cooperation/economiccrime/moneylaundering/Projects/MOLI%20RU-2/moliru2\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/moneylaundering/Projects/MOLI%20RU-2/moliru2_en.asp)

<sup>44</sup> [http://www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/Projects/MOLICO/Molico\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/Projects/MOLICO/Molico_en.asp)

<sup>45</sup> [http://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/Projects/PACO%20Serbia/PacoSerbia2\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/Projects/PACO%20Serbia/PacoSerbia2_en.asp)

## 6 Cybercrime (item 8)

Useful instruments and tools:<sup>46</sup>

- "Budapest" Convention on Cybercrime (CETS 185)
- Additional Protocol covering the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS 189)
- Technical assistance through the global Project on Cybercrime and other projects
- Guidelines for the cooperation between law enforcement – Internet service providers in the investigation of cybercrime
- Concept for cybercrime training of judges and prosecutors

### 6.1 The "Budapest" Convention on Cybercrime (CETS 185)

46. This treaty was opened for signature in Budapest in 2001. It treaty provides for:

- Substantive criminal law measures, including offences against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, data interference, system interference, misuse of devices), computer-related offences (computer-related forgery, computer-related fraud), content-related offences (child pornography), and infringement of copyright and related rights.
- Procedural law, that is, measures for more effective investigations of cybercrime, expedited preservation of stored computer data and partial disclosure of traffic data, production order, search and seizure of stored computer data, real-time collection of traffic data and interception of content data. The procedural measures are to apply to any offence committed by the means of a computer system and the collection of evidence in general. Conditions and safeguards are to prevent the abuse of such powers.
- International cooperation, including general principles (related to extradition, principles related to mutual legal assistance, spontaneous information, mutual legal assistance, etc.), and specific measures (expedited preservation of stored computer data, the expedited disclosure of preserved computer data, mutual assistance regarding accessing stored computer data, trans-border access to stored computer data, mutual assistance in the real-time collection of traffic data, mutual assistance regarding interception of content data, 24/7 points of contact).

47. The Convention on Cybercrime is thus fairly comprehensive, not only in terms of its substantive law, but also with respect to procedural law. With regard to international cooperation it combines the traditional mutual assistance regime with urgent measures to allow efficient cooperation, and it follows the principle of subsidiarity, that is, that existing bi- or multilateral agreements may be used first before resorting to the provisions of the Convention on Cybercrime.

48. The Convention is supplemented by an Additional Protocol covering the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS 189). Further protocols could be added in the future to address emerging challenges should the need arise.

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<sup>46</sup> See [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

49. The Cybercrime Convention Committee (T-CY) follows the implementation of the Convention and its Protocol and is also responsible for dealing with policy issues and legal questions arising from cooperation under these instruments.

50. The Convention on Cybercrime also serves the European Court of Human Rights as a standard of reference.<sup>47</sup>

51. Countries that are not member States of the Council of Europe or that have not participated in the preparation of this Convention can nevertheless accede to it under Article 37.

52. The Convention serves as a guideline or "model law" for the development of national legislation even if a country does not actually become a party to this treaty. However, actual accession to the Convention on Cybercrime implies additional benefits:

- It serves as a legal basis for international cooperation in cybercrime cases. Parties to the Convention can make full use of the provisions of chapter III on international cooperation, ranging from police to judicial cooperation.
- Parties to the Convention participate in the Cybercrime Convention Committee (T-CY). This Committee follows the implementation of the Convention and also initiates future work related to the Convention, such as the preparation of additional protocols. This means that countries that have not been involved in the drafting of the original treaty would still be involved in the elaboration of future international cybercrime standards, provided that they become a party.

53. As of January 2010, the Convention on Cybercrime had been ratified by twenty six European countries and the United States of America. An additional twenty countries had signed it, including non-member States that participated in its preparation (Canada, Japan and South Africa). Chile, Costa Rica, the Dominican Republic, Mexico and the Philippines have been invited to accede. In addition to these more than fifty states, a wide range of other countries around the world have been making use of the Convention on Cybercrime as a guideline when preparing domestic legislation.

54. The Convention on Cybercrime has received strong support by the Asia-Pacific Economic Cooperation, the European Union<sup>48</sup>, Interpol, the Organisation of American States<sup>49</sup> and other organisations<sup>50</sup> and initiatives as well as the private sector. It is furthermore noted that many model laws, guidelines or handbooks are based on this treaty.

55. Nevertheless, suggestions have been made that the UN Crime Congress recommend the drafting of a new "United Nations Convention against Cybercrime".

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<sup>47</sup> See application no. 2872/02 KU vs Finland at: <http://cmiskp.echr.coe.int/tpk197/view.asp?item=1&portal=hbkm&action=html&highlight=2872/02&sessionid=41896292&skin=hudoc-en>

<sup>48</sup> In the Stockholm Programme for the period 2010-2014 (adopted in December 2009), the European Union states, for example, that "This Convention should become the legal framework of reference for fighting cyber-crime at global level" (section 4.4.4). [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf)

<sup>49</sup> See for example the recent Recommendations of Sixth Meeting of the Working Group on Cybercrime, Washington DC, 21-22 January 2010. [http://www.oas.org/juridico/english/cyb\\_VIrec\\_en.pdf](http://www.oas.org/juridico/english/cyb_VIrec_en.pdf)

<sup>50</sup> For example, several detailed workshops on cybercrime legislation on the basis of the Budapest Convention have been held with ASEAN member states, the most recent one in Manila, Philippines, on 26-28 January 2010 as a joint activity of the ASEAN Secretariat, the European Union and the Council of Europe.

56. Thus, on the one hand, the Convention on Cybercrime provides a clear and comprehensive solution, is already in place and has been proven to function. Some fifty countries covering about one third of current internet users have ratified, signed or been invited to accede to this treaty. In the majority of countries globally, legal and subject-matter experts make extensive use of it.

57. On the other hand, it is understandable that, for political reasons, countries may be reluctant to accede to a treaty without having participated in its preparation, and for which they require an invitation by the Committee of Ministers of the Council of Europe, and that therefore they would prefer a United Nations treaty, even though countries that accede to the "Budapest" Convention will be members of the Cybercrime Convention Committee and thus be involved in the further development of this treaty<sup>51</sup>.

58. This raises a number of questions and concerns. Before engaging in the preparation of a new treaty, risks and adverse effects, as well as the added value, should be examined in detail. For example:

- Would the launching of a multi-year work on a new treaty not risk to disrupt the legislative reform processes already underway in the majority of countries and further delay the adoption of legislation and other measures?
- Would countries that have already undergone complex legislative reforms and implemented the Convention be ready to repeat the effort?
- What would be the scope of such a new treaty? Would such a treaty focus on a specific issue (such as identity theft or child abuse<sup>52</sup> or "cyberterrorism"<sup>53</sup>) or would the intention be to develop a comprehensive treaty?<sup>54</sup>
- The "Budapest" Convention is a comprehensive treaty with not only substantive law but also a range of procedural law measures and specific procedures for international cooperation. Is it conceivable to develop a treaty with a similar or even higher standard at the level of the United Nations?
- Would the outcome not risk to be a more basic treaty which would *de facto* establish a lower standard for developing countries, and thus further enhance the digital divide and prevent effective cooperation? What would be the added value?
- Would lower and less specific procedural law provisions not entail fewer safeguards and conditions, that is, reduce the protection of human rights when investigating cybercrime?

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<sup>51</sup> For example, in the preparation of additional protocols.

<sup>52</sup> Which to a large extent is already covered by the Convention on Cybercrime (CETS 185) in combination with the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201).

<sup>53</sup> It should be noted that the Council of Europe's Committee of Experts on Terrorism (CODEXTER) between 2005 and 2008 evaluated the question as to whether a new instrument on "cyberterrorism" was needed and concluded that the Convention on Cybercrime in combination with other existing treaties (such as the Convention for the Prevention of Terrorism, CETS 196) are sufficient to address the terrorist use of the internet. See: [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/fight\\_against\\_terrorism/4\\_theme\\_files/Cyberterrorism%20opinion%20E.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/fight_against_terrorism/4_theme_files/Cyberterrorism%20opinion%20E.pdf)

<sup>54</sup> In the case of an instrument with a specific focus countries would still need to implement the "Budapest" Convention.

- Given the efforts already underway in the majority of countries and the general scarcity of funding, may it not be more appropriate – rather than duplicating efforts – to focus resources on the implementation of existing instruments, that is, provide technical assistance to countries in the implementation of the “Budapest” Convention and related measures?

## 6.2 Capacity building

59. In the face of the growing threat of cybercrime, the concerns expressed by countries in different regions of the world are very valid. Common efforts to strengthen legislative frameworks, criminal justice capacities, international cooperation and public/private cooperation, the protection of children and measures against criminal money flows on the Internet are required.

60. Experience suggests that many countries require assistance in the following fields:

- Development of legislation
- Establishment of high-tech crime units
- Training of law enforcement, prosecutors and judges<sup>55</sup>
- International cooperation, including the establishment of 24/7 points of contact but also with regard to efficient means of mutual legal assistance<sup>56</sup>
- Public-private cooperation, including cooperation between law enforcement and Internet service providers<sup>57</sup>
- Specific measures (educational, preventive, enforcement) for the protection of children<sup>58</sup>
- Legislative and other measures for the protection of personal data<sup>59</sup>
- Measures preventing the terrorist use of information and communication technologies<sup>60</sup>
- Measures to search, seize and confiscate criminal money on the Internet and to prevent the use of new technologies for money laundering and terrorist financing.

61. The Council of Europe has been providing support to help countries worldwide address these needs through its global Project on Cybercrime.<sup>61</sup> Additional projects are in preparation.

62. Obviously, a more comprehensive concerted global effort is required. The UN Crime Congress may therefore wish to consider the launching of a global capacity building initiative to allow countries to stem the threat of cybercrime and to enhance trust and confidence in information and communication technologies in an urgent manner.

63. Such an initiative could, for example, involve a global review of needs by UNODC and the Council of Europe in partnership with other interested parties. This would allow UN Member States to determine specific actions to be taken and identify the assistance required. It could be accompanied by measures to mobilise donor funding for technical assistance against cybercrime, and be followed by specific support to countries.

64. The parties, signatories and invitees to the “Budapest” Convention as well the European Union would seem particularly well placed to support such efforts.

<sup>55</sup> Eg [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Training/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Training/default_en.asp)

<sup>56</sup> Eg [www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Internationalcooperation/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Internationalcooperation/default_en.asp)

<sup>57</sup> Eg [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/LEA\\_ISP/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/LEA_ISP/default_en.asp)

<sup>58</sup> See for example: [www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Protecting%20children/Default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Protecting%20children/Default_en.asp)

<sup>59</sup> For example in line with the Council of Europe’s Convention on the Protection of Individuals with regard to the Automatic Processing of Personal Data (CETS 108). See: [http://www.coe.int/t/dc/files/events/2008\\_data\\_protection/default\\_en.asp](http://www.coe.int/t/dc/files/events/2008_data_protection/default_en.asp)

<sup>60</sup> For example in line with the Convention for the Prevention of Terrorism (CETS 196).

<sup>61</sup> See [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

## 7 Prisons (workshops 2 and 5)

Useful instruments and tools:

- European Committee for the Prevention of Torture<sup>62</sup>
- Recommendation R (92) 16 on the European Rules on community sanctions and measures
- Recommendation R (99) 22 concerning prison overcrowding and prison population inflation
- Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners
- Recommendation Rec(2006)2 on the European Prison Rules
- Recommendation Rec(2006)13 on remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- Recommendation CM/Rec (2010) 1 on the Council of Europe Probation Rules (forthcoming adoption 20 January 2010)
- Council of Europe Annual Penal Statistics SPACE
- [www.coe.int/prison](http://www.coe.int/prison)

### 7.1 Standards

65. The Council of Europe is the European intergovernmental organisation with the most comprehensive and long-lasting experience in the prison field. As far back as 1973 the Committee of Ministers adopted the European Standard Minimum Rules for the Treatment of Prisoners (Resolution (73) 5). They sought to adapt to European conditions the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated in 1955. These Rules have been thoroughly revised twice since then.

66. The Council of Europe has in parallel developed standards and strategies aimed at reducing prison overcrowding and at increasing the role of probation services and the use of alternatives to custody.

67. The new European Prison Rules were adopted by the Committee of Ministers on 11 January 2006 (Recommendation Rec (2006)2). They set out the fundamental principles governing imprisonment and the rights and safeguards of those detained. They are developed further in the remainder of the text, which contains rules on general conditions of imprisonment, health, good order, management and staff, inspection and monitoring, and untried and sentenced prisoners. The Rules are based on European prison practice and research, as well as on the relevant decisions of the European Court of Human Rights and on the findings of the Committee for the Prevention of Torture (CPT). They also provide for their regular revision in order to align them to the latest developments in the field. Their revision is scheduled for 2011.

68. Biannual Conferences of Directors of Prison Administration (CDAP) of the 47 member States are held in order to promote the latest Council of Europe standards in the area, discuss their practical implementations and agree on other priorities and major issues of common interest.

69. For the last 25 years the Council of Europe has collected annual penal statistics SPACE I on prisons. They are a very useful and important tool for the national prison administrations and for other professionals. More recently annual penal statistics on community sanctions and measures,

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<sup>62</sup> <http://www.cpt.coe.int/en/>

SPACE II, are also being collected which are expected to be of much use for the national probation services.

## **7.2 Monitoring (CPT)**

70. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a Council of Europe monitoring body, set up under the 1987 European Convention of the same title. The CPT's task is to examine the treatment of persons deprived of their liberty by a public authority in order to strengthen their protection from torture and inhuman or degrading treatment and punishment. This is achieved through unannounced visits to detention places (police stations, prisons, juvenile detention centres, holding centre for immigration detainees, psychiatric hospitals, etc.) in all States parties to the Convention.

71. In order to achieve this goal, CPT delegations have unlimited access to places of deprivation of liberty and the right to move inside such places without restriction. They interview detainees in private and communicate freely with anyone who can provide information. The delegation's findings are subsequently set out in a visit report which includes concrete recommendations for improvements and forms the basis for an ongoing dialogue with the State concerned.

72. The role of the Committee is not to condemn States, but rather to assist them to prevent ill-treatment of persons deprived of their liberty. Cooperation lies at the very heart of the CPT's activities. Further, the CPT is guided by the principle of confidentiality. However, almost all States have chosen to publish their visit reports as well as their responses. In exceptional circumstances, if a country refuses to co-operate or fails to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement. Such an exceptional measure has only been taken five times in the 20 years of the CPT's activities.

73. The UN Optional Protocol to the 1984 Convention against Torture (OPCAT) gives the recently set up Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) similar powers to those of the CPT, extending monitoring activities to all countries - inside and outside Europe - parties to the OPCAT. The CPT maintains close contacts with the SPT to ensure the best possible synergy between the two bodies. The CPT also looks forward to working closely with the National Preventive Mechanisms (NPMs) set up under the OPCAT in the European region.

74. The CPT has been active in developing a corpus of standards concerning the treatment of persons deprived of their liberty. They cover issues such as police custody, imprisonment, health case services in prisons, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments, juveniles and women deprived of their liberty, deportation of foreign nationals by air, combating impunity and safeguards for irregular migrants deprived of their liberty. A compilation of these "standards" is available in several languages on the CPT's website (<http://www.cpt.coe.int>).

75. In many visit reports and annual reports, the CPT has commented on and made recommendations about overcrowding in prisons, which it considers an issue of direct relevance to the Committee's mandate. Unconvinced that providing additional accommodation for prisoners will of itself offer a lasting solution, it considers that current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed and has noted that the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level.

### 7.3 Technical cooperation

76. Support for prison reform and prison development remains a core Council of Europe area of activity, raising issues of human rights and the rule of law. The technical cooperation activities are focused on capacity-building through training, expert assistance and advice, training-of-trainers and cascade training sessions. Special reference was made to the specific findings the CPT and its general standards, the case law of the European Court of Human Rights (ECHR), the Human Rights Commissioner's Reports, the European Prison Rules (EPR) and the relevant CM Recommendations in respect of the individual target countries. In this way, it has been possible to address immediate needs and assist the target countries in meeting their international obligation and improve the general protection of human rights in prisons and the respect of the rule of law.

77. The technical cooperation activities take as their starting point the fact that the CoE is the owner of the main European standards in the penitentiary area through a number of recommendations including the EPR and through its monitoring bodies, the CPT and the Human Rights Commissioner.

78. Priorities were reviewed on an ongoing basis to ensure that the activities remained targeted and relevant.

79. The objective of the training part of the technical cooperation activities has been that in the near future the national training capacities in respect of human rights and CPT standards and EPR would be self-sustainable. Teams of national trainers were created and used in the implementation of the training activities (Azerbaijan, Bosnia and Herzegovina, Serbia, Croatia, "the former Yugoslav Republic of Macedonia").

80. Legal expertises and assistance in drafting elements of national strategies on prison reform were based on CoE standards on sanctions policy, imprisonment and rehabilitation, which could assist the national authorities in the preparation of the overall national strategy on prison reform and bringing the national legislation in line with the European standards.

81. CoE also organised a number of study visits which enabled participants to gain a first-hand practical experience to complement the theoretical knowledge and help them to examine possible changes to their approaches and attitude, as well as facilitating professional networking.

82. Regular reporting and feedback from experts and the CoE field staff helped to assess results and contributed to the design of future activities. The activities achieved the expected results and overall there was positive feedback from the beneficiaries.

## 8 Preventing urban crime (workshop 3)

Useful instruments and tools:

- Recommendation 216 (2007) and Resolution 237 (2007): Community policing: local and regional authorities guaranteeing a new partnership (Strasbourg, 2007)
- Seminar on a new partnership for security: local authorities, police and civil society (2 April 2008, Genoa, Italy)

83. The Congress of Local and Regional authorities of the CoE has been working for many years on local police forces and urban security and more recently on community policing. On 31 March 2007, at its 14<sup>th</sup> Plenary Session, the CoE Congress adopted a recommendation and a resolution on the specific role local and regional authorities can play in enhancing neighbourhood policing and police relations with the community. Their role as the key players in creating and maintaining a partnership for security with all relevant actors (police, judiciary, civil society) was emphasised.

84. As a follow-up to the adoption of these texts, the Committee on Social Cohesion of the CoE Congress held a seminar to examine further how local authorities can work with the police and civil society to increase urban security. Based on practical experience, including a visit to the Genoa's central police station to see the new Security Plan in action, the seminar covered such subjects as community policing, making the police more accessible and more representative of the local population, partnership between local institutional and voluntary sector players and the important role of cultural mediators and street educators.

## 9 Drug trafficking and organised crime (workshop 4)

85. The Council of Europe – over a period of more than 50 years – developed a wide range of treaties regarding international cooperation in criminal matters, starting with the European Convention on Extradition (CETS 24) from 1957 to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) that entered into force in 2008. In addition, monitoring bodies and committees evaluate compliance with the provisions of these treaties and technical cooperation projects help countries implement the standards established by these treaties and to follow up on the results of monitoring (see [www.coe.int/economiccrime](http://www.coe.int/economiccrime)). All of these help meet the challenge of organised crime.

86. Concerning drug control issues specifically, within the Council of Europe, the Pompidou Group (Partial Agreement established to combat drug abuse and drug trafficking), has as a core mission to contribute to the development of multidisciplinary, innovative, effective and evidence-based drug policies in its member States.

87. Within the Pompidou Group, the so called "Airports Group", which comprises customs and law enforcement officers from 35 countries, is to develop and harmonise tools and systems to improve drug detection in European airports. The Group meets once a year, and is a forum for the exchange of practical information on problems and operational practice related to drug trafficking. It has also increasingly developed joint operational activities in the form of multilateral drug seizure operations among its member States. The results of these operations are presented to the Airports Group and discussed among practitioners.

88. In the framework of these activities, law enforcement officers (and equivalent) compare 'modi operandi' between trafficking of human beings, money laundering and trafficking in drugs and drug precursors from a multidisciplinary perspective (police, customs, border guards). Their objective is to identify criminal organisations involved in trafficking and to share relevant knowledge and experience with other sectors of the Council of Europe, as well as international organisations involved (UNODC, Interpol, Europol and the WCO).

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