17 March 2005

Third High-level multilateral meeting

of the ministries of the Interior

Fight against terrorism and organised crime

to improve security in Europe

Warsaw (Poland)
Hotel Sofitel Victoria

17 -18 March 2005

Report by Gertraude E. Kabelka

Chair of the Council of Europe Committee of Experts on Terrorism
(CODEXTER)

1. The fight against terrorism and organised crime in a State governed by the Rule of Law

1. In a Council of Europe conference dedicated to the improvement of security in Europe by combating terrorism and organised crime, it is not surprising that the introductory working session is called upon to deal with the fight against these severe forms of criminality "in a State governed by the Rule of Law". Ever since its foundation in 1949, the predominant objective of this intergovernmental organisation has been to protect and promote human rights, pluralist democracy and the rule of law, *inter alia*, by demanding, in Article 3 of its ***Statute***, that "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council." Only one year later, in 1950, the ***European Convention for the Protection of Human Rights and Fundamental Freedoms*** was adopted; it has to date been supplemented and amended by 14 **Protocols**.

2. The contents, interpretation and implementation of every treaty that has been negotiated and adopted within the Council of Europe since then is subject to the fundamental requirements of this conventional framework, and it goes without saying that this is in particular true for the criminal law instruments. The two oldest and, if I may say so, "leading" treaties in this area were the *European Convention on Extradition,* adopted in 1957, and the *European Convention on Mutual Assistance in Criminal Matters*, dating back to 1959. Both conventions established principles followed by many States also when concluding bilateral treaties with non-member States of the Council of Europe, and among these principles was the old rule, generally accepted in public international law, that assistance may be refused, and extradition shall not be granted, if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

3. This clause, introduced for the legal protection of alleged offenders, became a problem with the emergence and fast increase of international terrorism. After all, terrorist acts might be considered "political offences", and terrorists themselves of course claim political motivation for their crimes. For this reason, in 1977 the Council of Europe adopted the *European Convention on the Suppression of Terrorism*, ETS No. 090, which was only recently (i.e. in 2003) amended by Protocol ETS No. 190. It was felt that the climate of mutual confidence among the likeminded member States of the Council of Europe, their democratic nature and their respect for human rights safeguarded by the institutions set up under the Human Rights Convention, justified opening the possibility and, in certain cases, imposing an obligation to disregard, for the purposes of extradition, the political nature of the particularly odious crimes in question. The human rights which must be respected are not only the rights of those accused or convicted of acts of terrorism but also of the victims or potential victims of those acts (cf. Article 17 of the European Convention on Human Rights).

4. I shall come back to the Convention on the Suppression of Terrorism and related instruments later, when dealing more specifically with the fight against terrorism - as required under the subtitles of my report. At this point, however, I would like briefly to return to the general topic of democratic States' response to both terrorism and organised crime. Do these offences have common features?, and is it therefore possible to apply, at least to some extent, the same or similar means when fighting them? In general, **terrorism and organised crime** are distinct in their goals and methods, and the operations of their perpetrators or networks are not interrelated. However, we can observe some common features and increasing convergences (such as mutual support or protection). The more frequent case is that of terrorists resorting to organised crime, because of their permanent need for funding. Needless to say that organised crime is, by its nature, primarily aimed at obtaining financial or other material benefits. However, terrorists themselves often use kidnapping or hijacking as tools not only to spread terror, but also to extort ransom for their financial needs.

5. I understand that this question will be tackled in much more detail this afternoon, in the course of the work sessions on measures taken by states at domestic level as well as in international co-operation. However, it is inevitable for me to state in my introductory remarks that in both cases the obligation to strike a balance between criminal prosecution and the defence of victims' rights on the one hand, and respect for the fundamental rights of the alleged offenders on the other hand, fully applies - irrespective of the seriousness of the offences and of the level at which measures are taken by States.

6. In general, the same range of tools is available for both areas of criminal behaviour - terrorism and organised crime. At the domestic level, states mainly tackle the problem through their law enforcement structures and by means of criminal law and procedure, whereas in the realm of international co-operation, the general conventions of criminal law (extradition, mutual assistance, transfer of prisoners, etc.) are equally applicable to the extent that no specialised treaty provisions prevail. A number of recent Council of Europe conventions are designed to deal with both forms of grave transnational crime. I may refer in this context particularly to the *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters* (ETS No. 182), the *Convention on Cybercrime* (ETS No. 185) and the new (draft) *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (this convention will presumably be adopted by the Committee of Ministers very soon in order for it to be opened for signature on occasion of the Third Summit of Heads of State and Government here in Warsaw in May). Outside the scope of the Council of Europe, reference must of course be made to the *United Nations Convention against Transnational Organized Crime* (opened for signature in Palermo in December 2000). However, irrespective of the source of law applicable in a particular case, Council of Europe member States are always bound, in the process of implementation, to observe the basic principles of human rights and the rule of law. That leads me to the first subtitle of my report:

2. Implementation of Council of Europe legal instruments concerning the fight against terrorism

7. Before dealing with implementation, we must first take stock of the **legal instruments** we are talking about. They are numerous, since from the early seventies of the last century onwards the Council of Europe has paid great attention to the threat of terrorism and to the necessity to take appropriate countermeasures, which it has done at different levels.

8. The **Parliamentary Assembly** (hereafter PACE) was the first Council organ to address the issue in *Recommendation 684 (1972) on International Terrorism*, and it has followed the subject over the decades with numerous recommendations and resolutions and one internal order. The majority of these non-binding instruments stress the need to defend democracy and respect human rights, thus never losing sight of the indispensable demand to strike a balance between the fight against terrorism and the protection of the fundamental freedoms which are the pillars of the European legal system. Immediately after the terrorist attacks of 11 September 2001 in the United States of America the Assembly issued, *inter alia*, *Resolution 1258 and Recommendation 1534* on 26 September 2001, both on *Democracies facing Terrorism*. These two instruments and the Assembly's *Recommendation 1550 (2002) Combating Terrorism and Respect for Human Rights* were among a number of different legal sources included in the terms of reference given to the Council of Europe Committee of Experts on Terrorism (CODEXTER) to which I shall refer later in this report.[1] Even more recently, i.e., in 2004, the Assembly issued further instruments of relevance for our considerations, i.e. *Resolution 1400 (2004) and Recommendation 1677 (2004)*, both on *The Challenge of Terrorism in Council of Europe Member States*, besides other instruments such as *Recommendation 1687 (2004) on Combating Terrorism through Culture*.

9. Staying on the level of non-binding instruments, there is also the need to mention a number of resolutions, recommendations and declarations of the **Committee of Ministers**, starting with *Resolution (74) 3 on International Terrorism*. Some of them are also listed as relevant sources in the terms of reference of the CODEXTER. That list furthermore comprises the *Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism*, adopted on 11 July 2002. Based on the applicable legal instruments as well as on the case law of the European Court of Human Rights, they are a clear statement of Council of Europe standards in this field, and thus they are of paramount relevance to the implementation of other legal instruments.

10. The **Guidelines** reaffirm the obligation of States to protect everyone against terrorism, and reiterate the need to avoid arbitrariness. They also stress that all measures taken by States to combat terrorism must be lawful, and that torture must be prohibited. The framework set out in the guidelines concerns, in particular, the collecting and processing of personal data, measures which

[1] See paragraph 27 *infra*.

interfere with privacy, arrest, police custody and pre-trial detention, legal proceedings, extradition and compensation of victims. The Guidelines are designed to help States strike the right note in their responses to terrorism. As their preface states, "*the temptation for governments and parliaments in countries suffering from terrorist action is to fight fire with fire, setting aside the legal safeguards that exist in a democratic State. But let us be clear about this: while the State has the right to employ to the full its arsenal of legal weapons to repress and prevent terrorist activities, it may not use indiscriminate measures which would only undermine the fundamental values they seek to protect. For a State to react in such a way would be to fall into the trap set by terrorism for democracy and the rule of law. It is precisely in situations of crisis, such as those brought about by terrorism, that respect for human rights is even more important, and that even greater vigilance is called for. At the same time, … the need to respect human rights is in no circumstances an obstacle to the efficient fight against terrorism. It is perfectly possible to reconcile the requirements of defending society and the preservation of fundamental rights and freedoms. The Guidelines … are intended precisely to aid States in finding the right balance. They are designed to serve as a realistic, practical guide for anti-terrorist policies, legislation and operations which are both effective and respectful of human rights".*

11. This reference to non-binding instruments adopted within the framework of the Council of Europe would be incomplete without having mentioned the resolutions adopted by the **24th and 25th Conference of European Ministers of Justice**. The former conference, convened in autumn 2001 in Moscow, issued Resolution No. 1 *on combating international terrorism*, the latter, held in October 2003 in Sofia, formulated Resolution No. 1 *on combating terrorism*. In particular the issues raised in the Sofia resolution were topical for the follow-up activities of the CODEXTER.

12. Notwithstanding the relevance of the aforementioned instruments, it goes without saying that it is **treaty law** which forms the foundation of co-operation between States. A look at the European Treaty Series (ETS; from 2004, continued by the "Council of Europe Treaty Series", CETS No. 194 and following) proves that the Council of Europe offers a wide range of tools in the area of criminal law, and - needless to stress - all of them are relevant to the fight against terrorism, and most of them also to the fight against organised crime. They are, as indicated before, the *European Convention on Extradition* (ETS No. 024) plus two *Additional Protocols* (ETS No. 086 and No. 098), the *European Convention on Mutual Assistance in Criminal Matters* (ETS No. 030), also with two *Additional Protocols* (ETS No. 099 and No. 182), the *European Convention on the Transfer of Proceedings in Criminal Matters* (ETS No. 073), the *European Convention on the Compensation of Victims of Violent Crimes* (ETS No. 116), the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS No. 141), the *Convention on Cybercrime* (ETS No. 185) with its *Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems* (ETS No. 189), and - of course - the *European Convention on the Suppression of Terrorism*, ETS No. 090, as amended by the 2003 Protocol ETS No. 190.

13. Talking of **implementation**, it is self-evident that the measures to be taken are dependent on the nature and contents of the respective instrument. In the case of a treaty, everything must necessarily start with its ratification or any other equivalent step (acceptance, approval or accession), and with the adaptation of national law and practice to comply with the demands of the treaty. In this context the aforementioned ***Guidelines on Human Rights and the Fight against Terrorism*** provide a relevant tool for orientation.

14. With both binding and non-binding instruments, it is essential to make their contents known to the public or at least to those who are responsible for applying them. Unfortunately government officials and other competent authorities at the domestic level are frequently unaware of so-called "soft law" instruments. Implementation of international instruments also requires the efficient co-operation of national authorities at different hierarchical levels, and here I am thinking not only of the chain of instances in the legal review process, but also of the interrelation between central and local authorities, which is of particular importance in states with a federal structure. Furthermore, close collaboration between justice and law enforcement authorities is indispensable to combat criminality in general and, even more so, in the area of those very serious crimes we are tackling in the given context.

15. As far as justice is concerned, through the European Commission for the Efficiency of Justice (CEPEJ), established in September 2002, the Council of Europe keeps an eye on the improvement of the efficiency and functioning of justice in the member states, and the development of the implementation of the instruments adopted by the Council of Europe to this end. Its tasks are to analyse the results of the judicial systems; to identify the difficulties they meet; to define concrete ways to improve, on the one hand, the evaluation of their results, and, on the other hand, the functioning of these systems; to provide assistance to member States at their request; and to propose to the competent instances of the Council of Europe the fields where it would be desirable to elaborate a new legal instrument. In 2004*,* the **CEPEJ** elaborated, *inter alia*, an ***Evaluation Report on the efficiency of the national judicial systems in their responses to terrorism.***

16. That being said, it is needless to stress that speedy and efficient domestic procedures are a precondition for international co-operation, and everything must be done to facilitate the latter. That implies the necessity of sufficient staffing - both in terms of quality and quantity - including, last but not least, the establishment of systems securing the availability of duly qualified interpretation and translation services.

17. **To sum up:** When implementing Council of Europe instruments, attention should be paid in particular to the *Guidelines of the Committee of Ministers on Human Rights and the Fight against Terrorism*, notwithstanding a range of more general, and also practical, considerations.

3. A new European legal instrument and the promotion of existing ones
3.1. A new legal instrument

18. In the area covered by this Conference, **three new conventions** have recently been elaborated within the Council of Europe: the draft *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, the draft *Council of Europe Convention on action against trafficking in human beings*, and the draft *European Convention on the Prevention of Terrorism*. The conference programme and time constraints suggest that I should deal with only one of them; given my background as Chair of the relevant expert committee - it is obvious that this has to be the instrument on the prevention of **terrorism**.

19. To understand the purpose, structure and contents of the new instrument on prevention, it is necessary to briefly refer to its history. As mentioned before, the Council of Europe adopted *a European Convention on the Suppression of Terrorism* as early as in 1977. However, the primary aim of that treaty was not to define terrorist offences and to oblige States to penalise such conduct; the convention was rather an instrument supplementing existing extradition treaties by excluding to the largest possible extent the political exception clause and by reaffirming the obligation to render mutual assistance in criminal matters in that area. Instead of defining particular acts of terrorism, Article 1 referred to offences defined in other conventions which existed at that time.

20. These “other conventions” were elaborated within the framework of the United Nations, and were followed by later ones, as the necessity arose resulting from the development of international terrorism. Today we speak of the *acquis* of **10 global conventions** against terrorism, namely the Convention of 1970 for the *Suppression of Unlawful Seizure of Aircraft*, the Convention of 1971 for the *Suppression of Unlawful Acts Against the Safety of Civil Aviation*, the Convention of 1973 on the *Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents*, the International Convention of 1979 *Against the Taking of Hostages*, the Convention of 1980 on the *Physical Protection of Nuclear Material*, the Protocol of 1988 for the *Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, the Convention of 1988 for the *Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, the Protocol of 1988 for the *Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*, the International Convention of 1997 for the *Suppression of Terrorist Bombings*, and the International Convention of 1999 for the *Suppression of the Financing of Terrorism*. All of these conventions, except for the last one, are called “sectorial” conventions, because each of them tackles just one particular kind of offence, although all of these offences have the common feature that they are committed through acts of violence. However, all ten conventions (i.e., also the Convention for the Suppression of the Financing of Terrorism) cover acts which are regarded as “terrorist offences”.

21. This is the generally accepted conventional system, and the new treaty on prevention will not change it. It does not introduce new “terrorist offences” to

those covered by the ten global conventions, but it calls for the penalisation of offences committed in preparation for the commission of a terrorist offence, irrespective of whether or not an "actual" terrorist offence will be committed afterwards.

22. How was the concept for this new instrument developed? It has its roots in a **plan of action** adopted by the Committee of Ministers in November 2001 as an immediate response to the preceding terrorist attacks in the United States, and taking into account also UN Security Council Resolution 1373 (2001). At the same time, the Committee of Ministers set up the Multidisciplinary Group on International Action against Terrorism (**GMT**) with the tasks of identifying priorities for future action by the Council of Europe and reviewing the relevant Council of Europe international instruments, in particular the European Convention on the Suppression of Terrorism of 1977. The GMT concluded its work in six sessions, with two main results.

23. On the one hand, a ***Protocol amending the European Convention on the Suppression of Terrorism*** (ETS No. 190) was drafted. The Protocol extends the list of offences which may never be regarded as political or politically motivated to the full range of the aforementioned global conventions; introduces a simplified amendment procedure in regard of that very list; opens the convention to certain non-member States; includes the possibility of refusing the extradition of offenders to countries where they risk the death penalty, torture or life imprisonment without parole; and restricts the possibilities to refuse extradition on the basis of reservations to the Convention. Also, the Protocol - which has not yet entered into force - provides for a Conference of States Parties against Terrorism (COSTER) as a monitoring body which would be responsible for supervising the implementation of the convention, and also for some more far-reaching tasks in connection with the future counter-terrorism activities of the Council of Europe.

24. On the other hand, the GMT submitted to the Committee of Ministers a Progress Report which identified **six priority areas** where the Council of Europe should take further action. Five of them comprised the issues of special investigation techniques; the protection of witnesses and collaborators of justice; action to cut terrorists off from funding sources; questions of identity documents which arise in connection with terrorism; and international co-operation on law enforcement. Except for the last one, all of these topics were included in mandates given to Council of Europe expert committees which thereafter worked on them and yielded remarkable results, creating instruments of either a binding or non-binding nature. The present Conference, too, will deal with these fields of action in its different working sessions.

25. However, there was a sixth issue defined as a priority area, and that gave rise to further-reaching deliberations. This topic had its roots in the French legal concept of "*apologie du terrorisme*", only insufficiently translated into English as "incitement to terrorism".[2] It soon became apparent that the

[2] As to the further development of the concept see paragraphs 34 and 35 *infra*.

implementation of such a concept would break new grounds in the area of penalisation, and thoughts about that coincided with another debate - i.e. whether a possible **comprehensive convention on terrorism** should be drafted in the framework of the Council of Europe. A number of member states, and in particular the PACE in several of its resolutions, have repeatedly called for such an instrument.

26. While this discussion was going on, the 25th Conference of European Ministers of Justice was convened in Sofia (October 2003). In its Resolution No. 1 *On Combating Terrorism* it invited, *inter alia,* the Committee of Ministers *to launch work with a view to examining, in the light of the opinion of the CODEXTER, the added value of a comprehensive European Convention against terrorism, open to observer States, or some elements of such a convention, which could be elaborated within the Council of Europe, and to contributing significantly to the UN efforts in this field*.

27. As to the **CODEXTER**: When adopting the *Protocol amending the European Convention on the Suppression of Terrorism,* the Committee of Ministers also decided to establish, for the time before the COSTER[3] would become operative following the entry into force of the Protocol, a Committee of Experts on Terrorism (CODEXTER) whose task would mainly be to make appropriate proposals on the basis of the priority issues defined by the GMT.[4] However, after the Sofia Conference, the mandate of the committee was extended to allow it to give an opinion on the issue of a possible comprehensive convention against terrorism.

28. After having commissioned and discussed an independent scientific report on possible gaps in international instruments against terrorism and on the "possible added value" of a European **comprehensive convention** in relation to existing universal and European instruments of relevance to the fight against terrorism, the CODEXTER could not reach a consensus on the question of whether or not the Council of Europe should elaborate a comprehensive convention on terrorism. However, it agreed that a **limited-scope instrument** or instruments, dealing with the prevention of terrorism and covering existing lacunae in international law or action, would bring added value. At the same time, the committee identified a number of such gaps.

29. The Committee of Ministers took note of this opinion and adopted revised specific terms of reference for the CODEXTER instructing it, *inter alia*, to "elaborate proposals for one or more instruments (which could be legally binding or not) with specific scope dealing with existing lacunae in international law or action on the fight against terrorism, such as those identified by the CODEXTER in its 2nd meeting report."

30. On the grounds of this mandate the CODEXTER started its drafting efforts, and it was able to conclude them just recently, during its 8th meeting earlier this month, where the committee finalised the draft ***European Convention***

[3] Cf. paragraph 23 *supra.*
[4] Cf. paragraphs 24 and 25 *supra.*

on the Prevention of Terrorism which will now be submitted to the Committee of Ministers, asking it to adopt the Convention and to open it for signature. It is anticipated that the latter will happen on the occasion of the Third Summit of Heads of State and Government on 16 and 17 May 2005 in Warsaw.

31. The **purpose** of the Convention is to enhance the efforts of States Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation. The Convention purports to achieve this objective, on the one hand, by establishing as criminal offences certain acts that may lead to the commission of terrorist offences, and, on the other hand, by reinforcing co-operation on prevention both internally, in the context of the definition of national prevention policies, and internationally. In the latter context it should be mentioned that the Convention will provide, *inter alia*, for additional tools such as spontaneous information, and for obligations relating to law enforcement such as the duty to investigate, but also for obligations relating to sanctions and measures, for liability of legal entities in addition to that of individuals, or for the obligation to prosecute where extradition is refused.

32. Starting with the Preamble, the Convention contains several provisions concerning the **protection of human rights and fundamental freedoms** both in respect of internal and international co-operation (including grounds for refusal of extradition and mutual assistance) on the one hand and as an integral part of the new criminalisation provisions (in the form of conditions and safeguards) on the other hand. This is a crucial aspect of the Convention, given that it deals with issues which are on the border between the legitimate exercise of freedoms, such as freedom of speech, association or religion, and criminal behaviour. It also contains a provision regarding the protection and compensation of **victims** of terrorism, because the human rights which must be respected are not only the rights of those accused or convicted of terrorist offences, but also the rights of the victims, or potential victims, of such offences.[5] It must be stated in the given context that the CODEXTER, in its negotiating process, took into account also the opinions of the PACE, the Human Rights Commissioner and a number of NGOs which it had received.

33. The Convention as such does not define new terrorist **offences** in addition to those included in the international conventions against terrorism, which are referred to in Article 1 and listed in the Annex to the Convention. They are the same 10 global conventions as are comprised in the *Protocol amending the European Convention on the Suppression of Terrorism*. I have referred to them earlier.[6] Rather, the Convention defines three new offences which are only connected with the possible perpetration of the aforementioned terrorist offences - "possible perpetration" meaning that it is irrelevant under this Convention whether or not an "actual" terrorist offence is later on committed. These new offences are: **public provocation to commit a terrorist offence, recruitment for terrorism,** and **training for terrorism**.

[5] See Article 17 of the European Convention on Human Rights.
[6] See paragraph 20 *supra*.

34. The Convention defines **public provocation** to commit a terrorist offence as the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed. A specificity of this offence is the additional requirement that the conduct involved be committed unlawfully and intentionally. The latter requirement reflects the insight that the conduct described is not always punishable *per se*, but may be legal or justified in some cases, e.g. for law enforcement purposes. The Convention, therefore, leaves unaffected conduct undertaken pursuant to lawful government authority (for example, where the Party's government acts to maintain public order, protect national security or investigate criminal offences). Furthermore, legitimate and common activities inherent to the design of networks, or legitimate and common operating or commercial practices should not be criminalised.

35. The provision on "provocation" is a result of an intensive discussion of the concept of "*apologie du terrorisme*", which I mentioned earlier[7]. It aims at preventing the particular objectives the perpetrators have in mind, namely: the recruitment of terrorists and the creation of new terrorist groups; the strengthening of tensions that might contribute to the commission of terrorist offences; the dissemination of "hate speech" and the promotion of ideologies favourable to terrorism, while paying particular attention to the case-law of the European Court of Human Rights concerning the application of Article 10 paragraph 2 of the European Convention on Human Rights, because freedom of expression is one of the essential foundations of a democratic society. However, in contrast to certain fundamental rights which are absolute rights, such as the prohibition of torture, restrictions on the freedom of expression may be allowed in highly specific circumstances. Thus, for instance, incitement to racial hatred cannot be considered admissible on the grounds of the right to freedom of expression.[8] The same goes for incitement to terrorist violence, and the Court has already held that certain restrictions on messages that might constitute an indirect incitement to terrorist violence are in keeping with the Human Rights Convention.[9] The question of course is where the boundary lies between indirect incitement to commit terrorist offences and the legitimate voicing of criticism - and this question will have to be judged in every individual case.

36. In relation to the concept of "public provocation", the other two new offences are easier to describe, and I'll keep to the terms of the Convention. **"Recruitment for terrorism"** therefore means to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group. "**Training for terrorism**" means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other

[7] Cf. paragraph 25 *supra.*
[8] See Article 9 paragraph 2 of the Convention on the Elimination of All Forms of Racial Discrimination.
[9] See *Hogefeld v. Germany*, 20 January 2000, HUDOC REF 00005340.

specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose. For both offences it is again an additional requirement that the conduct involved be committed unlawfully and intentionally.

37. In the setting of this Conference, particular mention must also be made of Article 3 of the Convention on **national prevention policies**, according to which States Parties shall take appropriate measures, particularly in the field of training of law enforcement authorities and other bodies, and in the fields of education, culture, information, media and public awareness raising, with a view to preventing terrorist offences. States Parties shall take such measures as may be necessary to improve and develop the co-operation among national authorities with a view to preventing terrorist offences and their negative effects, by *inter alia*: a) exchanging information; b) improving the physical protection of persons and facilities; and c) enhancing training and coordination plans for civil emergencies. Each State Party shall furthermore endeavour to promote public awareness regarding the threat posed by terrorist offences, and shall consider encouraging the public to provide factual, specific help to its competent authorities that may contribute to preventing terrorism.

38. This provision is supplemented by an obligation for **international co-operation on prevention** under which States Parties shall, as appropriate and with due regard to their capabilities, assist and support each other with a view to enhancing their capacity to prevent the commission of terrorist offences, including through exchange of information and best practice, as well as through training and other joint efforts of a preventive character.

39. In its other provisions on **international co-operation**, the Convention builds on the latest trends reflected by treaties such as the Protocol amending the European Convention on the Suppression of Terrorism, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and the United Nations Convention against Transnational Organized Crime. Where extradition and mutual assistance are concerned, it modifies the agreements concluded between member states of the Council of Europe, notwithstanding the rights, obligations and responsibilities of the Parties under international law. However, the Convention is not an extradition instrument as such. The legal basis for extradition remains the extradition treaty or other relevant law.

40. It goes without saying that the Convention does not affect the traditional rights of political **refugees** and of persons enjoying political **asylum** in accordance with other international undertakings to which the member states are Parties.

41. **To sum up**: The draft ***European Convention on the Prevention of Terrorism*** does not create new terrorist offences as such, but it deals with preparatory acts for such offences. It calls for enhanced national prevention policies, and it establishes obligations on the States Parties to take measures both at national level (in particular through the penalisation provisions creating three new offences) and through international co-operation. In its

entire scope it is designed to strike the indispensable balance between the fight against terrorism on the one hand and the protection of human rights, pluralist democracy and the rule of law on the other hand.

3.2. Promotion of existing instruments

42. I have dealt with the Convention on the Prevention of Terrorism as a new European legal instrument in some length. Coming to the end of my presentation, I should briefly like to turn to the promotion of existing instruments, as requested - but that would require a study in its own right. However, the most important question in the area of treaty law certainly is how to raise the level of ratifications in cases where the number of States Parties leaves much to be desired. Another point is that States should be urged to review their reservations and declarations in the light of the possible withdrawal of at least some of them.

43. It must be stated in the given context that the official organs of the Council of Europe are doing their best to convince member states, where necessary, of the need to take such steps, in particular when it comes to the issue of **ratification**. The PACE has again and again urged member States to ratify the Council of Europe treaties; one of the most recent decisions - i.e. Resolution 1400 (2004), together with Recommendation 1677 (2004), is just one of them. The Committee of Ministers has done the same, joined in by the Secretary General and his staff.[10]

44. Also, the question of **reservations** is regularly addressed by different bodies. One of them is the CEPEJ with its aforementioned *Evaluation Report on the efficiency of the national judicial systems in their responses to terrorism***.** The Report states - in paragraph 23 - the following: *In the context of the negotiation of international treaties, the issue of reservations has a direct impact on the efficiency of international co-operation, and then on the judicial answer.* The CEPEJ Report also refers to the European Observatory of reservations to international treaties within the CAHDI[11] which has been instructed by the Committee of Ministers at the level of the Deputies[12] to examine the question of reservations to regional and universal conventions on terrorism (and, also, to proceed to an exchange of views on conventions on terrorism under preparation within the United Nations, with a view to co-ordinating member States' positions).

45. In addition to that, I should perhaps mention that the Council of Europe is always prepared, upon a request from member states, to provide assistance with implementation procedures. Within the framework of its co-operation and assistance programmes, the Council may provide support in such areas as training, legal assistance. etc.

---

[10] See, for instance, the Report by the Secretary General in Sofia, MJU - 25 (2003) 2, paragraphs 25, 33, 62.
[11] The Committee of Legal Advisers on Public International Law
[12] Decision of 21 September 2001, CM/Del/Dec (2001) 765 bis, point 21

46. So much for treaties. In respect of non-binding instruments, I should like to refer to my previous statement[13] about the necessity of proper promulgation on the domestic levels.

I thank you for your attention.

[13] See paragraph 14 *supra*.