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**Working Session 9 "Rule of Law"  
Protection of human rights and fighting terrorism**

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**Contribution of the Council of Europe**

The Council of Europe's approach to the protection of human rights in the context of the fight against terrorism is manifold and involves, on the one hand, the setting of standards and, on the other hand, monitoring and awareness raising.

**1. SETTING STANDARDS**

***Anti-Terrorism Conventions***

Council of Europe anti-terrorism specific conventions are

- European Convention on the Suppression of Terrorism (1977) (CETS No. 90)
- Amending Protocol to European Convention on the Suppression of Terrorism (2003) (CETS No. 190)
- Council of Europe Convention on the Prevention of Terrorism (2005) (CETS No. 196)
- Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) (CETS No. 198)

These Conventions contain specific human rights protection provisions. For example, the Amending Protocol to the European Convention on the Suppression of Terrorism reinforces the possibilities of refusing extradition and mutual assistance on human rights grounds.

The Council of Europe Convention on the Prevention of Terrorism, adopted in May 2005 at the Third Council of Europe Summit, is ground-breaking in that it establishes new criminal offences at international level for the first time, the most important being indirect incitement or *apologie*. It was drafted taking full account of the ECHR case-law. It was followed few months after its adoption by United Nations (UN) Security Council Resolution 1624(2005).

In the words of the UN Special Rapporteur on Human Rights and Terrorism, Martin Sheinin, the Council of Europe Convention on the Prevention of Terrorism is a best practice and "a sound response which would respect human rights". This view was further recalled in the Report of the Counter-Terrorism Committee to the Security Council on the implementation of Resolution 1624(2005).

On 5 December 2006, OSCE Ministerial Council adopted a Decision calling on participating States to consider becoming party to and to implement their obligations under the existing international and regional legal instruments, including the Council of Europe Convention on the Prevention of Terrorism.

Most recently, the Convention has received the endorsement from the EU (in the form of a statement by the EU Presidency on the occasion of its entry into force).

The Convention, which entered into force on 1 June 2007, has already been ratified by 7 Council of Europe member States and signed by 39.

### ***Guidelines on human rights and the fight against terrorism***

As a first response to the terrorist attacks of 11 September 2001, the Committee of Ministers of the Council of Europe decided that *Guidelines on human rights and the fight against terrorism* should be drawn up quickly in order to remind states of their legal obligations. These Guidelines were adopted on 11 July 2002.

The Guidelines' basic principle is that respect for human rights is not an obstacle to the fight against terrorism. On the contrary, it is the best defence against terrorism. The Guidelines are designed to serve as a realistic, practical guide for anti-terrorist policies, legislation and operations to be both effective and respectful of human rights.

The Guidelines moreover point out the limits that states shall respect in their fight against terrorism, such as: (i) the prohibition of arbitrariness, as well as of any discriminatory or racist treatment; (ii) the absolute prohibition of torture; (iii) legal guarantees for arrest and police custody as well as for pre-trial detention, such as the right to be brought promptly before a judge; (iv) the prohibition of the retroactivity of laws; (v) the right to a fair trial; (vi) the prohibition to extradite a person to a country where he or she risks being sentenced to the death penalty.

The main reference text of the Guidelines is the European Convention on Human Rights itself and the case-law of the European Court of Human Rights. The Guidelines also draw on other documents, such as Council of Europe and UN Conventions.

The Guidelines are designed for the member states of the Council of Europe. But they also have a wider audience: the principles and rules they contain are of universal application.

### ***Protection of victims of terrorist acts***

The Council of Europe considered that it should take into account the very specific nature of the situation of victims of terrorist acts. It therefore decided to draft additional *Guidelines on the protection of victims of terrorist acts* which were adopted by the Committee of Ministers on 2 March 2005.

These Guidelines recognise the suffering endured by victims and consider that they must benefit from national and international solidarity and support. States are encouraged to provide emergency and continuing assistance to victims and, in appropriate circumstances, to their close family,. Moreover, these Guidelines deal with key issues such as the need to grant fair and appropriate compensation, to facilitate access to the law and to justice, as well as to protect their private and family life, their dignity and security.

In 2005, the protection of victims of terrorism was also identified as one of the areas for the focus of further action by the Council of Europe in the "progress report of the Council of Europe Committee of Experts on Terrorism (CODEXTER) on future priority areas for the work of the Council of Europe in the fight against terrorism" (document CM(2005)172 Addendum).

In June 2006, the Committee of Ministers adopted Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, including victims of terrorism. This instrument, which updates Recommendation Rec(87)21 on assistance to victims, promotes dedicated

support services for victims, and encourages the establishment of specialised centres for victims of crimes of mass victimisation.

The theme of the 27th Conference of European Ministers of Justice (Yerevan, Armenia, 12-13 October 2006) was “Victims: place, rights and assistance”. The European Ministers of Justice adopted a resolution calling for improved assistance to victims, the facilitation of their rehabilitation and compensation for damage suffered, and identifying good practices to protect victims’ interests (both in legal aid and advice) and in terms of public and private insurance schemes.

As a result, the Committee of Ministers set up a Group of Specialists on remedies for crime victims (CJ-S-VICT). This Group of Specialists is entrusted with the task of:

- analysing the legislation and best practices in member states concerning civil, administrative and other remedies available to victims; and
- examining the role of publicly or privately financed insurance schemes in ensuring compensation for damages sustained by victims, in particular victims of terrorism.

In so doing, the Group of Specialists will work in close co-operation with the competent bodies of the Council of Europe and will focus on the production of a report based, *inter alia*, on the analysis of replies to a questionnaire sent to national authorities. The Group has already met twice and will hold a further meeting in autumn 2007 in order to fulfil its terms of reference.

## **2. MONITORING AND AWARENESS**

### ***Monitoring of Anti-Terrorist Conventions***

The above-mentioned conventions provide for their own specific follow-up mechanisms, namely, the *COSTER* for the European Convention on the Suppression of Terrorism as amended by the 2003 Protocol, and the *Consultation of the Parties* for the Council of Europe Convention on the Prevention of Terrorism. These follow-up mechanisms will begin their operation upon entry into force of these instruments. Pending that, the CODEXTER, which has overall responsibility for coordinating the Council of Europe’s action against terrorism, particularly in the legal field, closely monitors the implementation of the Conventions.

(see [www.coe.int/gmt](http://www.coe.int/gmt) )

### ***Protection against torture***

The European Court of Human Rights has underlined on many occasions the absolute nature of this prohibition, even in the most difficult circumstances, such as the fight against terrorism. This was recalled in the 2002 Guidelines.

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pays particular attention during its country visits to the treatment of persons detained on suspicion of terrorist acts and to the impact of anti-terrorism measures on the rights and health of persons deprived of their liberty. The CPT has deplored the fact that “there is a growing body of evidence that the methods of detention and interrogation employed in various locations, in the context of the fight against terrorism and of military operations it has spawned, have on occasion violated [the prohibition of torture and inhuman or degrading treatment]”. It has specifically stigmatized “waterboarding” as an act of torture. While fully acknowledging that resolute action is required to counter terrorism, the CPT has emphasised that flagrant human rights violations of the kind just mentioned will not serve anyone’s interests well.

In addition, after a careful study of the issue, the Council of Europe decided to reject the drafting of a legal instrument on minimum requirements/standards for the use of diplomatic assurances in the context of expulsion procedures, in cases where there is a risk of torture or inhuman or degrading treatment or punishment.

(see [www.cpt.coe.int](http://www.cpt.coe.int) )

### ***Combating racism while fighting terrorism***

The European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism on 17 March 2004. In this Recommendation, ECRI stresses the need for member states to refrain from adopting anti-terrorist measures which are discriminatory, notably on grounds of race, colour, language, religion, nationality or national or ethnic origin. ECRI underlines the responsibility of states to react promptly and effectively, including through legal measures, to acts of racism and racial discrimination resulting from tensions generated by the fight against terrorism.

In this context it is also important to mention ECRI's most recent General Policy Recommendation on Combating Racism and Racial Discrimination in Policing, which was adopted on 29 June 2007. This Recommendation contains a legal definition of racial profiling and asks member states to clearly define and prohibit racial profiling by law. As racial profiling has increased and assumed new dimensions as part of the fight against terrorism, ECRI's Recommendation is a useful means of countering this specific form of racial discrimination.

(see [www.coe.int/ecri](http://www.coe.int/ecri) )

### ***Freedom of expression and information in the context of the fight against terrorism***

The Council of Europe has also examined closely the question of freedom of expression and information in the media. The starting point is that the fight against terrorism does not justify extraordinary restrictions on the media. Quite on the contrary, freedom of expression can help combat and prevent terrorism. For their part, media professionals have the responsibility not to contribute to the aims of terrorists and to refrain from hate-speech and incitement to violence; they should also respect the dignity, safety and private life of victims, as well as the presumption of innocence of terrorist suspects. These principles are clearly reaffirmed in the *Declaration on Freedom of expression and information in the media in the context of the fight against terrorism*, adopted by the Committee of Ministers of the Council of Europe on 2 March 2005.

In implementation of the Action Plan adopted at the 7th European Ministerial Conference on Mass Media Policy (Kyiv, March 2005), the Steering Committee on Media and New Communication Services (CDMC) prepared draft *Guidelines on protecting freedom of expression and information in times of crisis*, a term which includes, *inter alia*, terrorist attacks. These guidelines are in essence an extension and further development of the above-mentioned *Guidelines on human rights and the fight against terrorism*, focusing on freedom of expression and information. The Committee of Ministers will examine these draft guidelines with a view to their adoption before the end of 2007.

Closely related to the issue of safeguarding freedom of expression and information in the fight against terrorism is another document prepared by the CDMC - the draft Declaration on the protection and promotion of investigative journalism. This draft will also be examined soon by the Committee of Ministers.

(see [www.coe.int/media](http://www.coe.int/media) )

### ***Inquiry by the Secretary General***

In application of Article 52 of the European Convention on Human Rights, the Secretary General of the Council of Europe decided to open a formal inquiry into recent reports suggesting that terrorist suspects may have been secretly detained in or transported through a number of Council of Europe member states with the possible involvement of foreign agencies. States Parties to the Convention sent back some explanations in spring 2006. The Secretary General presented proposals for follow-up to his inquiry early in September 2006. These proposals aimed at:

- enhance control over the activities of secret services, both domestic and, in particular, foreign ones, on the territory of member States,
- better safeguards and control over air traffic transiting through member States, and
- ensuring that the rules on State immunity do not lead to impunity for perpetrators of serious human rights violations discussions thereon are ongoing.<sup>1</sup>

These proposals are still under consideration by the Committee of Ministers.

(see [www.coe.int/T/E/Com/Files/Events/2006-cia/](http://www.coe.int/T/E/Com/Files/Events/2006-cia/) )

### ***Venice Commission report***

Upon a request of June 2006 from the Committee of Ministers of the Council of Europe, the Venice Commission prepared a report on the democratic oversight of the security services, in which it highlighted national best practices relating to the role of parliaments and their specialized committees as well as to that of national courts in overseeing internal security services. The Venice Commission also examined the particular accountability problems relating to international co-operation between intelligence agencies.

(see [www.venice.coe.int](http://www.venice.coe.int) )

### ***Addressing the conditions Conducive to the spread of terrorism***

On 25 and 26 April 2007, the Council of Europe organised an international conference “Why terrorism? Addressing the conditions conducive to the spread of terrorism”. The conference, which was an initiative of the CODEXTER, brought together experts from member and observer states of the Council of Europe and included the participation of NGOs and academia as well as other international organisations.

The Conference built on the UN Global Counter-Terrorism Strategy, in particular Section 1 of the Plan of Action on 'Measures to address the conditions conducive to the spread of terrorism', and on Article 3 of the Council of Europe Convention on the Prevention of Terrorism.

The conference was a discussion-orientated forum for exchanging information, experience and ideas with a view to understanding the conditions conducive to the spread of terrorism and finding ways and means to prevent individuals from turning to terrorism.

(see [www.coe.int/gmt](http://www.coe.int/gmt))

### ***Implementation of UN sanctions and respect of Human Rights***

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<sup>1</sup>See document Council of Europe, SG (2006) 1 of 30 June 2006.

The Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) has deployed significant efforts aimed at improving the implementation of UN sanctions and the respect of human rights. This activity addresses the tensions that member states face in being bound by two possibly conflicting obligations under international law: on the one hand, the UN Charter on the basis of which the Security Council decides on sanctions, and on the other, international human rights treaties, in particular the European Convention on Human Rights. The CAHDI's work in this respect can be seen as instrumental to the adoption by the UN Security Council of Resolutions 1730(2006) and 1735(2006), which has brought about improvements in the UN sanctions system from the human rights perspective.

The CAHDI has also set up a restricted database on National Implementation Measures of UN Sanctions and Respect for Human Rights. In March 2007, the CAHDI considered a request from the UN Security Council Committee established by Resolution 1267 (1999) for access to the information contained in this database and agreed to release the information to the members of the Security Council on a restricted basis.

(see [www.coe.int/cahdi](http://www.coe.int/cahdi) )

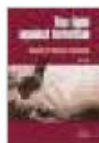
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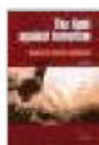
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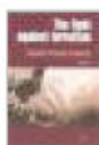
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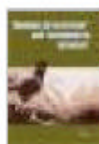
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