



Strasbourg, 9 October 2002

CDL-DEM (2002) 1
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**INTERNATIONAL CO-OPERATION
IN FIGHTING TERRORISM**

**Information Note
prepared by
the Secretariat**

INTRODUCTION

1. At the 14th meeting of the Sub-Commission on democratic institutions, held in Venice on 4 July 2002, the Secretariat of the Venice Commission was entrusted with the task of providing an overview of the relevant activities undertaken by international bodies on terrorism. Several speakers attending the meeting underlined the interest in a possible Venice Commission activity on terrorism.

2. This document addresses, first, in section I, the issue of the international instruments against terrorism adopted by the most important international organisations and then, in section II, the issue of the definition of terrorism.

SECTION I

Relevant activities of international organisations in the field of terrorism

3. The purpose of this section is to give an overview of the activities of the international bodies on the issue of terrorism.

4. **In paragraph 1**, the United Nations action against terrorism will be considered: in particular, reference will be made to the relevant sources in that field - e.g. United Nations treaties, Resolutions of the General Assembly and of the Security Council - and to the most important activities carried out within the framework of the United Nations following the terrorist acts on the United States on September 11, 2001.

5. **In paragraph 2**, European action against terrorism will be examined, either at the Council of Europe level or at the OSCE and the European Union level. In this context the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism are of particular importance ¹.

§ 1 : The United Nations.

6. The United Nations has long been active in the fight against international terrorism. Reflecting the determination of the international community to eliminate this threat, the Organisation and its agencies have developed a wide range of international legal agreements that enable the international community to take action to suppress terrorism and bring those responsible to justice.

7. Dating back to 1963, these agreements provide the basic legal tools to combat international terrorism in its many forms, from the seizure of aircraft to hostage-taking, to the financing of terrorism. Generally, they provide for legal co-operation among states, requiring them to extradite or prosecute terrorists, or to punish terrorist acts by severe penalties. Many have been ratified by the majority of countries around the world, and only the most recent one - the international convention for the suppression of the financing of terrorism - is not yet in

¹ The *Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism* appear in **Appendix I**.

force. These agreements have been developed by the General Assembly, the International Civil Aviation Organisation (ICAO), the International Maritime Organisation (IMO), and the International Atomic Energy Agency (IAEA).

The United Nations agreements against international terrorism are:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963; 171 States parties as of 17 September 2001; authorises the airplane commander to impose reasonable measures on any person who has committed or is about to commit such acts, and requires States parties to take custody of offenders; developed by ICAO;
- Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; 174 States parties; requires parties to punish hijackings by "severe penalties", and either extradite or prosecute the offenders; developed by ICAO;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; 175 States parties; requires parties to punish offences by "severe penalties", and either extradite or prosecute the offenders; developed by ICAO; supplemented by the
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Montreal, 1988; 107 States parties; extends the provisions of the Convention to encompass terrorist acts at airports;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; adopted by the General Assembly; 107 States parties; requires parties to criminalise and punish attacks against State officials and representatives;
- Convention against the Taking of Hostages, New York, 1979; adopted by the General Assembly; 96 States parties; parties agree to make the taking of hostages punishable by appropriate penalties; to prohibit certain activities within their territories; to exchange information; and to carry out criminal or extradition proceedings;
- Convention on the Physical Protection of Nuclear Material, Vienna, 1980; 68 States parties; obliges parties to ensure the protection of nuclear material during transportation within their territory or on board their ships or aircraft; developed by IAEA;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 1988; 52 States parties; obliges parties to either extradite or prosecute alleged offenders who have committed unlawful acts against ships, such as seizing ships by force and placing bombs on board ships; developed by IMO; supplemented by the
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 1988; 48 States parties; extends the requirements of the Convention to fixed

platforms such as those engaged in the exploitation of offshore oil and gas;

- Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1991; 67 States parties; seeks to curb the use of unmarked and undetectable plastic explosives; developed by ICAO;
- International Convention for the Suppression of Terrorist Bombings, New York, 1997; adopted by the General Assembly; 26 States parties; seeks to deny "safe havens" to persons wanted for terrorist bombings by obliging each State party to prosecute such persons if it does not extradite them to another State that has issued an extradition request.
- International Convention for the Suppression of the Financing of Terrorism, New York, 1999; adopted by the General Assembly; four States parties; obliges States parties either to prosecute or to extradite persons accused of funding terrorist activities, and requires banks to enact measures to identify suspicious transactions; will enter into force when ratified by 22 States.

8. **The General Assembly and the Security Council** have adopted a wide range of instruments concerning terrorism.

9. On 11 September 2001, the Assembly strongly condemned by **resolution 56/1** the heinous acts of terrorism against the United States and called for urgent action to enhance international co-operation in preventing and eradicating acts of terrorism.

10. On 12 September 2001, the Security Council adopted **resolution 1368 (2001)**, in which it also condemned the terrorist attacks and called on all States to work together urgently to bring the perpetrators to justice.

11. On 28 September 2001, the Council adopted **resolution 1373 (2001)**, in which it laid out measures to be adopted in order to combat terrorism in a more effective way – e.g. the freezing of funds and other financial assets or economic resources belonging to terrorist groups; the obligation for member States to criminalise the wilful provision or collection of funds with the intention that the funds are used in order to carry out terrorist acts - and established a special **counter-terrorism committee**. This committee has been instructed to monitor the implementation of the resolution in all States; in order to facilitate the committee's task, member States are called to report on the steps they have taken to give full execution to the resolution.

12. Finally, it must be noted that an expert report has been recently released concerning the strategies the United Nations should adopt in the international fight against terrorism. The report, addressed to the Secretary general by a group of United Nations officials and outside experts, lays out 31 recommendations.

13. Three types of activities are recommended: firstly, actions *to dissuade* groups from embracing terrorism; secondly, activities *to deny* groups and individuals the means to carry out terrorist acts; thirdly, efforts *to sustain* a broad-based *co-operation* in the struggle against terrorism.

14. Moreover, the report states that the United Nations must send a clear message that terrorism, whatever the cause or in whose name it is undertaken, is unacceptable and deserves universal condemnation. The report also notes that if terrorist acts constitute an assault on human rights, the same human rights must also be respected in the fight against terrorism. It therefore warns that the United Nations should not offer, or be perceived to offer, a blanket endorsement of measures taken in the name of counter-terrorism, and that its efforts to reduce terrorism must not be at the expense of its core responsibilities.

§ 2 : Action against terrorism at the European level

15. This paragraph serves to outline the anti-terrorism actions taken by the main European organisations, namely the Council of Europe, the Organisation for security and Co-operation in Europe, and the European Union.

It should be noted that, after the 11 September terrorist attacks, all these organisations have multiplied their efforts in the struggle against terrorism, adopting new legal instruments for this purpose.

16. *At the Council of Europe level*, the Committee of Ministers adopted the first international text on human rights and anti- terrorism measures, on 15 July 2002.

The text not only states that terrorism can never justify human rights violation, but also that States must take all the necessary measures in order to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially with regards to the right to life. Anti-terrorist measures must respect the principle of the rule of law, thus excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision. Accordingly, anti-terrorist measures must be lawful and the restrictions they impose to fundamental rights must be defined as precisely as possible.

17. The text reiterates the absolute prohibition of torture and sets out a framework of rules concerning, in particular, the collecting and processing of personal data, privacy, arrest and police custody, pre-trial detention, legal proceedings, extradition and compensation of victims.

18. In addition, the text affirms strongly the need for States to respect the perentory norms of international and humanitarian law, where applicable.

19. Moreover, the Parliamentary Assembly also adopted two key texts immediately following the 11 September terrorist attacks: **Resolution 1258** and **Recommendation 1534**.

20. In January 2002, two further texts were adopted on combating terrorism and respecting human rights: **Resolution 1271** and **Recommendation 1550**.

21. The Assembly called upon Council of Europe member states to refuse the extradition of suspected terrorists if the death penalty is sought and stated that the measures recently adopted by the European Union in order to improve security on aircrafts and at airports, as well as the European arrest warrant, should be extended to the 44 members states of the Council of Europe.

22. Concerning the legal instruments adopted within the framework of the Council of Europe, it is worth mentioning the 1977 European Convention on the Suppression of Terrorism and the 1957 European Convention on Extradition, with its two additional protocols of 1975 and 1978.

23. **The European Convention on the Suppression of Terrorism** is intended to allow the extradition of persons who commit particularly serious acts such as hijacking aircraft, kidnapping, hostage-taking, the use of bombs, grenades, rockets, firearms etc and any serious act of violence directed against a person's life or freedom.

24. To date, 29 countries have signed and ratified the 1977 Convention on the Suppression of Terrorism. Many States have made reservations under Article 13 enabling them to refuse extradition when they consider that the offence committed is a political one. Some articles of the convention should be amended, such as the one allowing States not to treat offences committed with non-automatic firearms as terrorist offences and the one giving States excessive leeway for opposing extradition. In addition to the flaws it contains, the 1977 convention is rather out of date and now anachronistic in its scope: indeed, terrorism has taken on new forms that were inconceivable at the time (computer terrorism, nuclear terrorism made possible by trafficking in radioactive substances, acts by religious fanatics).

25. *At the OSCE (Organisation for security and Co-operation in Europe) level*, in December 2001 **a decision and an action plan to combat terrorism** were adopted.

26. The aim of the Action Plan is to establish a framework for comprehensive OSCE action to be taken by participating States and the Organisation as a whole to combat terrorism. The Plan seeks to expand existing activities in the OSCE area and to facilitate co-operation between member States. It focuses on the importance of preventive action in the struggle against terrorism, and encourages member States and OSCE bodies to take positive actions in the following fields: execution of the relevant international obligations and ratification of the United Nation conventions against terrorism; institution building and strengthening of the rule of law and of the state authorities; promotion of human rights, tolerance and multiculturalism; prevention of violent conflicts and promotion of peaceful settlements of disputes; strengthening of the national anti-terrorism legislation; fight against organised crime; suppression of the financing of terrorism; prevention of the terrorists' movements.

Finally, the Plan stresses the need for strengthening co-operation and information exchanges with all the relevant groups, organisations, and institutions involved in fighting terrorism.

27. Also *at the European Union level*, several steps have been taken for effectively fighting terrorism.

28. In December 2001, the Council of the European Union adopted **a common position on the application of specific measures to combat terrorism** (2001/931/CFSP).

The Council set out several obligations for European Union States: first, to criminalise the provision or collection of funds made with the intention to carry out terrorist acts; second, to freeze the funds and other financial assets or economic resources belonging to terrorist groups; third, to ensure that funds, financial assets or economic resources or financial or other related services are not made available, directly or indirectly, to terrorists.

Moreover, the Council sought to facilitate co-operation at a European level, providing that member States should, through police and judicial co-operation in criminal matters, afford each other the widest possible assistance in preventing and combating terrorist acts.

29. In September 2002, the European Commission issued a report concerning the European Union action in response to 11 September 2001².

30. **The report reviews one-year of action against terrorism**, focusing on the activities undertaken by the Commission in the following areas:

- **Police and judicial co-operation:** significant measures were adopted, such as the European arrest warrant and a common definition of terrorism, whilst other measures are underway (e.g., joint investigation teams of police and magistrates; the recognition, between judicial authorities of member States, of the orders for the freezing of assets and the preservation of evidence).

Moreover, substantial efforts have been undertaken to develop closer judicial co-operation with the United States.

- **Creation of a global coalition against terrorism:** pursuant to the United Nations resolution 1373 (2001), a regulation freezing terrorist assets was adopted in December 2001; relations with third world countries and regions have been strengthened by the conclusion of political and trade agreements, or by humanitarian interventions.
- **Air transport security:** new common rules on air security were adopted and material support was given to the air industry to face the negative consequences of the 11 September 2001 attacks.
- **Economic and financial policy:** a Directive on money laundering was adopted and European Union member States have been repeatedly invited to ratify the existing United Nations conventions on terrorism.
- **Emergency preparedness:** various activities were undertaken to make medicinal treatment available in all States in case of bio Terrorist threats and to develop research in the biological and chemical field. In this respect, an expert group was entrusted with the task of drawing up an inventory of current research activities, trying to co-ordinate them, identifying their gaps and developing new research activities in the short and long term.

² *The full text of the report appears in Appendix 2.*

SECTION II

Definition of terrorism

31. The definition of terrorism has been the subject of debate among states for decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. "Terrorism" was therein defined as follows:

"All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public".

32. In 1999, United Nations General Assembly adopted a similar definition, stating that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them" (General Assembly Resolution 51/210, *Measures to eliminate international terrorism*).

33. In 2001, the European Union adopted its own definition of terrorism. In its Common Position of 27 December 2001, the Council of the European Union defined "Persons, groups and entities involved in terrorist acts", "terrorist act", and "terrorist groups", as follows (see Article 1, § 2):

- (...) "**persons, groups and entities involved in terrorist acts**" shall mean:
 - persons who commit, or attempt to commit, terrorist acts or who participate in, or facilitate, the commission of terrorist acts,
 - groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons, groups and entities.

- (...) "**terrorist act**" shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:
 - (i) seriously intimidating a population, or
 - (ii) unduly compelling a Government or an international organisation to perform or abstain from performing any act, or
 - (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:
 - (a) attacks upon a person's life which may cause death;
 - (b) attacks upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;

- (e) seizure of aircraft, ships or other means of public or goods transport;
 - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;
 - (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
 - (i) threatening to commit any of the acts listed under (a) to (h);
 - (j) directing a terrorist group
 - (k) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.
- For the purposes of this paragraph, "**terrorist group**" shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts. "Structured group" means a group that is not randomly formed for the immediate commission of a terrorist act and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

34. In any case, it should be noted that the above definitions concern only European Union member States.

35. At international level, an agreement on the definition of terrorism has not yet been reached; indeed, the lack of agreement on such a definition constitutes one of the obstacles to the adoption of a general and comprehensive United Nations convention in the field³.

36. Scholars have also tried to define terrorism. One of the most interesting suggestions made in this respect was to take the existing consensus on what constitutes a "war crime" as a point of departure. If the core of war crimes - deliberate attacks on civilians, hostage taking and the killing of prisoners - is extended to peacetime, acts of terrorism may simply be defined as "peacetime equivalents of war crimes".

³ For further informations about the definition of terrorism, see the web-site of United Nations Office for Drug Control and Crime Prevention, http://www.undcp.org/odccp/terrorism_definitions.html

APPENDIX 1

Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism

Preamble

The Committee of Ministers,

[a.] Considering that terrorism seriously jeopardises human rights, threatens democracy, and aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society;

[b.] Unequivocally condemning all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed;

[c.] Recalling that a terrorist act can never be excused or justified by citing motives such as human rights and that the abuse of rights is never protected;

[d.] Recalling that it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights, the rule of law and, where applicable, international humanitarian law;

[e.] Recalling the need for States to do everything possible, and notably to co-operate, so that the suspected perpetrators, organisers and sponsors of terrorist acts are brought to justice to answer for all the consequences, in particular criminal and civil, of their acts;

[f.] Reaffirming the imperative duty of States to protect their populations against possible terrorist acts;

[g.] Recalling the necessity for states, notably for reasons of equity and social solidarity, to ensure that victims of terrorist acts can obtain compensation;

[h.] Keeping in mind that the fight against terrorism implies long-term measures with a view to preventing the causes of terrorism, by promoting, in particular, cohesion in our societies and a multicultural and inter-religious dialogue;

[i.] Reaffirming states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights and, for the member states in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights;

Adopts the following guidelines and invites member states to ensure that they are widely disseminated among all authorities responsible for the fight against terrorism.

I. States' obligation to protect everyone against terrorism

States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies states' fight against terrorism in accordance with the present guidelines.

II. Prohibition of arbitrariness

All measures taken by states to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision.

III. Lawfulness of anti-terrorist measures

1. All measures taken by states to combat terrorism must be lawful.
2. When a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

IV. Absolute prohibition of torture

The use of torture or of inhuman or degrading treatment or punishment, is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted.

V. Collection and processing of personal data by any competent authority in the field of State security

Within the context of the fight against terrorism, the collection and the processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing, in particular:

- (i) are governed by appropriate provisions of domestic law;
- (ii) are proportionate to the aim for which the collection and the processing were foreseen;
- (iii) may be subject to supervision by an external independent authority.

VI. Measures which interfere with privacy

1. Measures used in the fight against terrorism that interfere with privacy (in particular body searches, house searches, bugging, telephone tapping, surveillance of correspondence and use of undercover agents) must be provided for by law. It must be possible to challenge the lawfulness of these measures before a court.

2. Measures taken to fight terrorism must be planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and, within this

framework, the use of arms by the security forces must be strictly proportionate to the aim of protecting persons against unlawful violence or to the necessity of carrying out a lawful arrest.

VII. Arrest and police custody

1. A person suspected of terrorist activities may only be arrested if there are reasonable suspicions. He/she must be informed of the reasons for the arrest.
2. A person arrested or detained for terrorist activities shall be brought promptly before a judge. Police custody shall be of a reasonable period of time, the length of which must be provided for by law.
3. A person arrested or detained for terrorist activities must be able to challenge the lawfulness of his/her arrest and of his/her police custody before a court.

VIII. Regular supervision of pre-trial detention

A person suspected of terrorist activities and detained pending trial is entitled to regular supervision of the lawfulness of his or her detention by a court.

IX. Legal proceedings

1. A person accused of terrorist activities has the right to a fair hearing, within a reasonable time, by an independent, impartial tribunal established by law.
2. A person accused of terrorist activities benefits from the presumption of innocence.
3. The imperatives of the fight against terrorism may nevertheless justify certain restrictions to the right of defence, in particular with regard to:
 - (i) the arrangements for access to and contacts with counsel;
 - (ii) the arrangements for access to the case-file;
 - (iii) the use of anonymous testimony.
4. Such restrictions to the right of defence must be strictly proportionate to their purpose, and compensatory measures to protect the interests of the accused must be taken so as to maintain the fairness of the proceedings and to ensure that procedural rights are not drained of their substance.

X. Penalties incurred

1. The penalties incurred by a person accused of terrorist activities must be provided for by law for any action or omission which constituted a criminal offence at the time when it was committed; no heavier penalty may be imposed than the one that was applicable at the time when the criminal offence was committed.

2. Under no circumstances may a person convicted of terrorist activities be sentenced to the death penalty; in the event of such a sentence being imposed, it may not be carried out.

XI. Detention

1. A person deprived of his/her liberty for terrorist activities must in all circumstances be treated with due respect for human dignity.

2. The imperatives of the fight against terrorism may nevertheless require that a person deprived of his/her liberty for terrorist activities be submitted to more severe restrictions than those applied to other prisoners, in particular with regard to:

(i) the regulations concerning communications and surveillance of correspondence, including that between counsel and his/her client;

(ii) placing persons deprived of their liberty for terrorist activities in specially secured quarters;

(iii) the separation of such persons within a prison or among different prisons, on condition that the measure taken is proportionate to the aim to be achieved.

XII. Asylum, return ("refoulement") and expulsion

1. All requests for asylum must be dealt with on an individual basis. An effective remedy must lie against the decision taken. However, when the State has serious grounds to believe that the person who seeks to be granted asylum has participated in terrorist activities, refugee status must be refused to that person.

2. It is the duty of a State that has received a request for asylum to ensure that the possible return ("*refoulement*") of the applicant to his/her country of origin or to another country will not expose him/her to the death penalty, to torture or to inhuman or degrading treatment or punishment. The same applies to expulsion.

3. Collective expulsion of aliens is prohibited.

4. In all cases, the enforcement of the expulsion or return ("*refoulement*") order must be carried out with respect for the physical integrity and for the dignity of the person concerned, avoiding any inhuman or degrading treatment.

XIII. Extradition

1. Extradition is an essential procedure for effective international co-operation in the fight against terrorism.

2. The extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted. A requested State may however grant an extradition if it has obtained adequate guarantees that:

(i) the person whose extradition has been requested will not be sentenced to death; or

(ii) in the event of such a sentence being imposed, it will not be carried out.

3. Extradition may not be granted when there is serious reason to believe that:

(i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment;

(ii) the extradition request has been made for the purpose of prosecuting or punishing a person on account of his/her race, religion, nationality or political opinions, or that that person's position risks being prejudiced for any of these reasons.

4. When the person whose extradition has been requested makes out an arguable case that he/she has suffered or risks suffering a flagrant denial of justice in the requesting State, the requested State must consider the well-foundedness of that argument before deciding whether to grant extradition.

XIV. Right to property

The use of the property of persons or organisations suspected of terrorist activities may be suspended or limited, notably by such measures as freezing orders or seizures, by the relevant authorities. The owners of the property have the possibility to challenge the lawfulness of such a decision before a court.

XV. Possible derogations

1. When the fight against terrorism takes place in a situation of war or public emergency which threatens the life of the nation, a State may adopt measures temporarily derogating from certain obligations ensuing from the international instruments of protection of human rights, to the extent strictly required by the exigencies of the situation, as well as within the limits and under the conditions fixed by international law. The State must notify the competent authorities of the adoption of such measures in accordance with the relevant international instruments.

2. States may never, however, and whatever the acts of the person suspected of terrorist activities, or convicted of such activities, derogate from the right to life as guaranteed by these international instruments, from the prohibition against torture or inhuman or degrading treatment or punishment, from the principle of legality of sentences and of measures, nor from the ban on the retrospective effect of criminal law.

3. The circumstances which led to the adoption of such derogations need to be reassessed on a regular basis with the purpose of lifting these derogations as soon as these circumstances no longer exist.

XVI. Respect for peremptory norms of international law and for international humanitarian law

In their fight against terrorism, States may never act in breach of peremptory norms of international law nor in breach of international humanitarian law, where applicable.

XVII. Compensation for victims of terrorist acts

When compensation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State must contribute to the compensation of the victims of attacks that took place on its territory, as far as their person or their health is concerned.

APPENDIX 2

European Union action in response to 11 September 2001: one year after.

MEMO/02/187 – Brussels, 9 September 2002

The European Union responded swiftly to the terrorist attacks of the 11th September 2001. Within days of the attacks on America, a series of concrete measures were tabled by the European Commission, which led to a Plan of Action adopted by a special European Council (1) on the 21st September.

Over the past year, the European Union has sustained its efforts as one of the leading partners in the global fight against terrorism. Implementing the Plan of Action, all EU efforts are guided by:

- continued solidarity with the US,
- determination in the fight against terrorism,
- commitment to the security of all citizens in the EU,
- efforts to tackle root causes of terrorism and
- contributions to better understanding between civilisations.

The EU has focused on those areas where it can complement the efforts made by individual Member States:

Police and judicial co-operation

Europe-wide and transatlantic co-operation in the fight against international terrorism and cross-border organised crime has been stepped up, including on extradition, mutual legal assistance, migration and border control.

The EU adopted a European arrest warrant, a common definition of terrorism and a list of terrorist organisations. In addition, joint police investigation teams across the EU and a special Europol anti-terrorism unit have been created, as well as Eurojust, a co-ordinating body between Member States' law enforcement agencies.

Global fight against terrorism

Diplomatic efforts, supported by the quick mobilisation of trade and aid, have focused on Afghanistan, Pakistan and Iran, the Middle East and the Euro-Mediterranean Partnership. The EU is the main international donor to Afghanistan, providing generous financial assistance to alleviate human suffering, to help integrate returning refugees and to support the Transitional Authority.

The EU has incorporated the fight against terrorism into all aspects of the EU's external relations. While implementing UN Security Council Resolution 1373 it went beyond UN sanctions and froze the assets of an important number of terrorist organisations. The EU has agreed joint law enforcement actions in the fight against terrorism with a great number of third countries throughout this year. At the same time the EU has encouraged dialogue to promote mutual understanding with other civilisations.

Air transport security has been improved with Europe-wide measures to prevent future terrorist attacks and the air transport industry has been supported; Economic and financial measures have been taken to dry up the sources of terrorist funding through intensified money laundering directives;

Emergency preparedness has been increased to protect public health and enhance civil protection in the event of terrorist attacks through the availability of medicinal treatment and the creation of a Monitoring and Information Centre providing for immediate response in the case of major emergencies 24 hours a day.

Police and Judicial Co-operation

By September 13, the Commission had tabled proposals for a **European arrest warrant** to supplant the current system of extradition between Member States and a **common definition of terrorism** and related penalties. Both proposals have been formally adopted by the Council. They represent the first of many measures against all forms of **cross-border organised crime**, including terrorism. Other measures which are underway include:

- **Joint investigation teams of police and magistrates** from throughout the EU;
- Routine **exchange of information** about terrorism between the Member States and **Europol**;
- The creation of a specialist anti-terrorist unit within **Europol**;
- The establishment of **Eurojust**, a co-ordination body composed of magistrates, prosecutors and police officers;
- Political agreement of the Council on a framework directive on the **mutual recognition** between EU Member States judicial authorities on orders for the **freezing of assets and the preservation of evidence**.

Closer transatlantic co-operation:

- A co-operation agreement between **Europol** and the relevant US authorities was signed on 6 December 2001. A second agreement to allow the exchange of personal data is currently being negotiated;
- The EU is also engaged in talks with the United States to establish closer co-operation with **Eurojust** and the relevant US authorities;
- Efforts are underway to intensify co-operation in practical ways on **border control and migration management**;
- EU Justice Ministers agreed in April 2002 to begin negotiations with the US on closer co-operation on **extradition and mutual legal assistance**; negotiations are proceeding as planned;

- Efforts are being made to strengthen co-operation between relevant law enforcement authorities in the US and in each of the EU member states.

For more information:

http://europa.eu.int/comm/justice_home/news/terrorism/index_en.htm

Global fight against terrorism

The EU has adopted the fight against terrorism as a priority policy objective. It has worked with the US to build a global coalition against terrorism, and to establish joint initiatives designed to defeat international terrorism. The fight against terrorism has been incorporated into all aspects of the Union's external relations:

Horizontal actions:

- EC external assistance programmes support the efforts of third countries to comply with UNSC Resolution 1373 on the fight against terrorism, and further consideration is being given to how further **technical assistance** could be made available;
- **Freeze of terrorist assets:** A Regulation freezing funds and prohibiting provision of funds, assets, economic resources or financial services to terrorists (2) was adopted in December 2001. Since 1999, over € 100 million of terrorists' assets have been frozen throughout the EU;
- The events of September 11th demonstrated the need for **political and cultural dialogue** with those parts of the world where terrorism comes into being. The EU has supported dialogue to counter racial, religious and cultural prejudice. A **Euro-Mediterranean Foundation** is to be set up under the Barcelona Process (3) Firm commitments to enhanced inter-cultural dialogue have been made at a meeting of EU Member States, Candidate Countries and the Organisation of the Islamic Conference in Istanbul on 12-13 February 2002.

Bilateral relations with third countries and regions:

The European Union has redoubled its diplomatic efforts towards building an international coalition against terrorism:

- **Afghanistan :** The EU is the main donor helping to rebuild Afghanistan through reconstruction and humanitarian assistance. At the Tokyo donors' conference in January 2002, the contributions of the European Commission and of individual EU Member States together, made Europe the most generous contributor. The EC alone, has pledged €1 billion over the next five years;
- In 2002 the EC will go beyond its Tokyo pledge for this year, giving €265 million instead of €200 million. The sum available for humanitarian assistance has been raised to €60 million from €25 million;

This money has not merely been committed, but is being deployed on the ground very swiftly. The EC is contributing more than any other donor to the operating costs of the new government (including salaries for police, nurses, doctors, teachers and civil servants). It is supporting 450 primary schools, and 200 clinics, and cleaning up five cities around the country to prevent diseases like cholera. It is also making a major contribution to the clearance of mines and the fight against poppy production.

For more information on EC operations in Afghanistan:

http://europa.eu.int/comm/external_relations/afghanistan/intro/index.htm
(Political and economic relations, reconstruction aid)

http://europa.eu.int/comm/echo/en/whatsnew/whatsnew_1.htm
(Humanitarian Assistance)

- The EU responded to **Pakistan's** changed position on the Taliban regime and its commitments to return to democratic rule, with increased financial assistance and a new Co-operation Agreement. A package of trade measures designed to significantly improve access for Pakistani exports to the EU has been approved. Furthermore, the Commission has mounted a major Election Observation Mission in the run up to the Parliamentary elections on October 12th in order to assist this country in its difficult transition process towards restoration of full democracy;
- Negotiating directives for a Trade and Co-operation Agreement with **Iran** have been adopted by the Council. Negotiations will start in Autumn 2002, including on an intensified political dialogue. The EU calls on Iran to promote and protect human rights and fundamental freedoms, to sign, ratify and fully implement international instruments pertaining to the non-proliferation of arms and to join in the international fight against terrorism;
- The EU was already deeply involved in the search for peace and stability in the **Middle East** long before the attacks of September 11th 2001, but those events have undoubtedly thrown into even sharper focus, the urgent need to tackle regional problems that can give rise to terrorism. The EU plays a crucial role in preserving the Palestinian Authority as a negotiating partner, by providing substantial financial assistance. The EU is also a key player in the 'Quartet' (EU, US, UN and Russia) efforts to find a way forward in the Middle East, and has just prepared a 'road-map' to guide actions on all sides towards the creation of a Palestinian State in 3 years' time;
- Commitments to co-operate closely in the fight against terrorism have been included in or agreed alongside new **Association Agreements** between the EU, **Algeria, Lebanon and Chile**;
- **Concrete international commitments to fight against terrorism** have been agreed upon with the United States, Russia, the 13 accession candidates (4), Norway, Iceland and Liechtenstein, Switzerland, Russia, Ukraine, Moldova and the western Balkan countries, the 12 partner countries of the Euro-Mediterranean Partnership (5), Israel, Canada, and India, as well as the Council of Europe. At the Ninth Ministerial Council

of the Organisation for Security and Co-operation in Europe (OSCE), in December 2001 Ministers adopted a broad-ranging Action Plan on counter-terrorism measures.

Air transport security

The air transport sector was the hardest hit by the consequences of the 11 September 2001 terrorist attacks in the US. Over the last twelve months, the European Commission has continuously acted to deal with the security, commercial and financial consequences of the attacks for the sector.

New proposals have been put forward to support the industry in areas such as insurance, unfair competition and financial compensations. New initiatives have also been launched to increase security and prevent terrorist acts.

These measures were outlined in a Commission Communication of 10 October 2001 (6) which explored the situation of the industry, gave an overview of measures taken by Member States and looked specifically at the way the US was reacting. Based on this analysis, the Commission made, concrete proposals for enhanced air security rules (7) and outlined areas of action in a number of fields, including air transport insurance, state aid management, slots, capacity co-ordination and third country relations.

Prevention of illegal acts threatening security, notably through the International Civil Aviation Organisation (ICAO):

- **New common rules on air security.** The Commission proposed new common rules for air security: control of access to sensitive areas of airports and aircraft; control of passengers and their hand luggage; control and monitoring of hold luggage; control of cargo and mail; training of ground staff; classification of weapons and other items prohibited on board or into the sensitive areas of airports. These new rules include the audit for such measures and will become EU legislation once the Commission's proposed Regulation is adopted (8);
- The European Commission is co-ordinating the EU position in ICAO on new regulations on access to the cockpit, including strengthened doors, and remote surveillance of the cockpit.

Material support to the industry:

- **Financial compensation** by member states for lost business during the four days following 11 September was claimed and received by many airlines (9);
- **Governmental insurance** schemes in many Member States have taken on insurance cover which was lost when insurance companies cancelled their policies based on war risk clauses. The Commission outlined the way forward in a Communication in July 2002 (10) and will propose soon an air insurance package dealing with both insurable and non-insurable risks in the aviation industry;
- **Agreements between airlines:** the Commission made clear that it would examine on a case-by-case basis whether the conditions for an exemption under EC competition

rules (11) of the Treaty are met. It will also give favourable consideration to the capacity co-ordination agreements designed to maintain a regular service on less frequented routes or to co-ordinate schedules during off-peak periods of the day;

- **Slots:** The Commission considered that the airlines were entitled to retain their slots with grandfather status in EU airports during the summer 2002 and the winter 2002/2003 seasons;
- **Unfair competition:** The Commission proposed on 12 March 2003 (12) legal means to react against unfair competition from subsidised third country airlines exploiting subsidies to undercut normal market prices for air transport services.

For more information:

http://europa.eu.int/comm/dgs/energy_transport/en/whats_new_en.html

Economic and financial policy

One key EU aim is to **dry up the sources of terrorist funding**. The 19 October 2001 European Council in Ghent reiterated the importance of effective measures to combat the funding of terrorism by formal adoption of the Directive on money laundering and the speedy ratification by all Member States of the United Nations Convention for the Suppression of the Financing of Terrorism.

- The EU Council of Ministers adopted in November 2001 a Commission proposal to upgrade the EU's **money laundering Directive** which will now be implemented by national legislation in each EU Member State;
- The Commission and the Member States are playing an active role in the work of the **Financial Action Task Force**, the leading international body in the fight against money laundering and the financing of terrorism. At its last plenary meeting in October 2001 in Washington, the FATF adopted a series of recommendations to combat the financing of terrorism;
- In the wake of moves by **insurance companies** drastically increasing the cost of cover for acts of war or terrorism, for airlines and airports, the Commission asked the Council of Finance Ministers to come up with a co-ordinated response. The Council supported the Commission's flexibility, which allows Member States to provide exceptionally, and as a short-term measure, cover or pay the higher premiums. This possibility has been extended on a monthly basis until the end of the year;
- The Commission presented a report on the impact on the **tourism sector** of the September 11 terrorist attacks. If properly implemented, measures recently foreseen in a Communication on "the Future of European Tourism", should help alleviate the impact of any long-term negative effects;
- A Regulation regarding the **freezing of funds** of terrorists organisations was adopted in December 2001;

- The Finance Council reached political agreement in May 2002 on the proposed Directive to counter **insider dealing and market manipulation** (13).

For more information:

http://europa.eu.int/comm/internal_market/en/finances/banks/01-1580.htm

<http://europa.eu.int/comm/enterprise/whatsnew.htm>

Emergency preparedness

Public Health

In the event of a terrorist attack the public health response is critical in identifying the nature of the attack and the appropriate response. Civil protection measures must be in place to deal with these needs.

Since September 11, the Commission has promoted discussions on preparedness for bioterrorist threats. Health ministers have met several times to discuss EU-wide co-ordination of efforts. Each Member State has appointed a senior representative to discuss these measures, forming a Health Security Committee. The EU already has a communicable disease network, including a rapid alert system for any outbreak of infectious diseases. Their work focuses on:

- co-ordination of public health emergency planning and preparedness;
- availability of the appropriate treatments;

EU-wide action adds value by:

- drawing on all Member States' expertise (epidemiologists, microbiologists, logistics, IT, etc.) to assess what measures are needed;
- reinforcing warning systems, rapid response capacities, analytic capacity and surveillance;
- developing clear, authoritative communication with the general public;
- increasing training for the first line of alert: GPs, vets and pharmacists;
- planning for burden sharing of costly logistics like stockpiles and equipment;
- co-ordinating international co-operation with partner countries and organisations such as the WHO and the OECD.

At the international level, a concerted global action to strengthen the public health response to the threat of international biological, chemical and radio-nuclear terrorism was agreed in Ottawa in November 2001 by the G7 Health Ministers, together with Mexico and EU Health and Consumer Protection Commissioner Byrne. The WHO is a key partner in this effort. Risk assessment and management methodologies are being prepared within this framework and exercises are organised to test current response plans

Health Ministers of EU Member States agreed in November 2001 a set of priorities to establish a health expert consultation mechanism, strategies on availability and stocks of serums vaccines and antibiotics and a European network of experts for evaluating managing and communicating risks.

Availability of medicinal treatment

- Biological agents have already been prioritised for the various interventions required under the health system response plans being promoted by the health security programme. An assessment of medicine production capacities and national stockpiles has been carried out and advice issued by the European Medicines Evaluation Agency on antibiotics and vaccines. For antibiotics, it is estimated that production capabilities are sufficient to meet demands in the event of an emergency. The matter of creating a EU stockpile of vaccines, anti-toxins and anti-virals is under consideration;
- **A 25-point action programme** was swiftly agreed by the Health Security Committee, exchanging information rapidly and co-ordinating health responses in case of emergency;
- A major effort has since been undertaken at EU level to enhance co-operation in health security through the implementation of this programme with the help of a 14-member strong **Task Force** comprising experts nominated by EU Member States. Work is in hand to ensure that laboratory expertise and capacity is made available to cope with high-risk agents and complex technology and methods, as well as a surge in demand for analyses in case of threats or attacks. Proper and safe arrangements are being put in place for transportation of samples, reagents and specimens and for field investigation teams to analyse relationships between cases, establish common environmental exposures and co-ordinate additional case finding. This is key to determining potentially exposed groups of people who would require antibiotic prophylaxis, vaccination and / or monitoring depending on the agent.

Civil Protection

The EU wide **Community Civil protection action** aims at protecting European citizens in case of a terrorist attack. The mechanism is intended to facilitate reinforced co-operation on civil protection assistance interventions. It entered into force on 1 January 2002 and provides for immediate response and support in the event of major emergencies. On-site intervention teams, experts and other equipment can be dispatched promptly via its Monitoring and Information Centre. There is a comprehensive database with relevant contact details for intervention teams in Member States. Emergency response requests can be dispatched 24 hours a day, 7 days a week.

Research

The Commission has put in place a group of experts appointed by EU Member States to identify means of combating biological and chemical threats. The group has the the mandate to draw up an inventory of current research activities in this field; examine how these activities can be best exploited and co-ordinated; and identify what gaps there are and what additional research is needed in the short and long-term. Most of the research needs identified by the Research Expert Group will be addressed within the 6th EU Research Framework Programme (FP6).

As regards long term research needs, the development of fundamental knowledge and basic tools should help develop, amongst others, new rapid diagnostics for identifying potential

biological and chemical agents, new vaccines against potential bio agents and novel therapeutics. Short and medium-term research needs in support to policy will be addressed under a specific action within FP6, namely the one concerning issues related to civil protection (including bio-security and protection against risks arising from terrorist attacks), and crisis management.

Two studies have been launched by the Commission: a prospective study on EU vulnerable sides and weaknesses in front of potential bio-chemical terrorist attacks, and a Pilot study on the relationship between scientific advice on bio-chemical terrorism and society at large.

The first study includes a number of scenarios describing ways in which terrorists might try to achieve their possible objectives, such as to create panic, to inflict a large number of casualties, or to bring about economic damage for instance in the agricultural sector. These scenarios are evaluated in terms of their likelihood and resources needed to put them in action. The study emphasises how scientific advances are changing the prospects, either by using novel bio-agents, or by using existing ones in new ways, as well as how these advances make it possible to improve counter measures. The work is directed by the European Commission's Joint Research Centre and involves a consortium of European research institutions. An advisory group of high-level experts in biological and chemical weapons provides additional input. The results will be available late in the autumn of 2002

For more information:

http://europa.eu.int/comm/health/whatsnew/index_en.html

(1) Heads of State and Government of EU Member States and Commission President Prodi

(2) For the Council decision, see:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_344/l_34420011228en00700075.pdf

http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_344/l_34420011228en00700075.pdf

For the text of the Regulation, please consult the Official Journal, L344 of the 28/12/01

(3) For more information on the Euro-Mediterranean Partnership/Barcelona Process:

http://europa.eu.int/comm/external_relations/euromed/

http://europa.eu.int/comm/external_relations/euromed/

(4) Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovak Republic, Slovenia, Hungary, Bulgaria, Romania, Cyprus, Malta, Turkey.

(5) Morocco, Algeria, Tunisia, Egypt, Jordan, Israel, the Palestinian Authority, Lebanon, Syria, Turkey, Cyprus, Malta.

(6) COM (2001) 574 final

(7) COM (2001) 575, OJ C 51 E of 26 February 2002

(8) COM (2001) 575, OJ C 51 E of 26 February 2002

(9) See in particular:

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/981|0|RAPID&lg=EN&type=PDF IP/02/981"

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/767|0|AGED&lg=EN&type=PDF IP/02/767"

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/395|0|AGED&lg=EN&type=PDF IP/02/395 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/370|0|AGED&lg=EN&type=PDF IP/02/370 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/333|0|AGED&lg=EN&type=PDF IP/02/333 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/168|0|AGED&lg=EN&type=PDF IP/02/168 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/01/1883|0|AGED&lg=EN&type=PDF IP/01/1883 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/01/1791|0|AGED&lg=EN&type=PDF IP/01/1791 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/01/1682|0|AGED&lg=EN&type=PDF IP/01/1682 "

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/01/1473|0|AGED&lg=EN&type=PDF IP/01/1473,

(10) See:

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/977|0|RAPID&lg=EN&type=PDF IP/02/977, COM 2002(320) of 2 July 2002

(11) Article 81 concerns the incompatibility with the common market of all agreements between undertakings, decisions by associations of undertakings and concerted practices. Paragraph 3 enumerates the possible exceptions.

(12) COM (2002) 110, OJ C151 E of 25 June 2002

(13) See:

["http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/669|0|AGED&lg=EN&type=PDF"](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/02/669|0|AGED&lg=EN&type=PDF) IP/02/669 and **HYPERLINK**

[MEMO/01/203](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/01/203|0|AGED&lg=EN&display=)