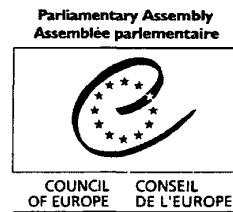


**Parliamentary Assembly
Assemblée parlementaire**

Europarådet
ERD alm. del - Bilag 6
Offentlig



Doc. 10312
5 October 2004

Challenge of terrorism in Council of Europe member states

Report
Political Affairs Committee
Rapporteur: Mr Konstantin Kosachev, Russia, European Democrat Group

Summary

The resurgence of acts of terrorism of an extreme brutality shows that the international community, including the states of Europe, have not been sufficiently alert to the gravity of the danger and have failed to take effective action to counter a new-style terrorism which stops at nothing.

The report suggests that the Assembly must confirm its position of principle - total rejection of any terrorist act, regardless of where it occurs, the reasons given, targets, methods used or demands made by the terrorists. It further stresses that the fight against terrorism must always be compatible with the fundamental freedoms and human rights.

The report envisages measures to be taken at national and international levels in order to strengthen the common response by the Council of Europe member states to the challenge of terrorism.

I. Draft Resolution

1. The Parliamentary Assembly is outraged by the recent wave of acts of terrorism which have plunged several Council of Europe member states into mourning, killing and injuring hundreds of innocent people. It extends its deepest sympathy to the victims' families and all who have suffered as a result of these odious crimes.
2. In spite of the international community's efforts, the scourge of terrorism continues to spread throughout the world, assuming ever more terrible and murderous forms. The resurgence of acts of terrorism of an extreme brutality shows that the international community, including the states of Europe, have not been sufficiently alert to the gravity of the danger and have failed to take effective action to counter a new-style terrorism which stops at nothing.
3. Through its barbaric methods, international terrorism attacks the fundamental values of society and challenges the very existence of democracy. Terrorism which hides behind radical, mainly Islamist, slogans is today the most dangerous element in international terrorism.
4. The Assembly refers in particular to Recommendation 1426 (1999) where it considered an act of terrorism to be "any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society or the general public".
5. Faced with this challenge, our societies have no choice but to mount an uncompromising campaign against all those who perpetrate, plan or inspire acts of terrorism.
6. Terrorism, which heeds neither law nor morality, exploits the freedoms and advantages of modern society to spread terror throughout society and paralyse its institutions. Terrorists take hostage not just their individual victims but also the public authorities and the whole of democratic society by facing them with two options, one as unacceptable as the other: give in to the terrorists' demands in the hope of saving lives, or imperil those lives by rejecting the demands.
7. The Assembly considers that no cause can justify terrorism. Those who attempt to "justify" their actions are merely giving them moral support and becoming accomplices in their crimes.
8. The Assembly firmly reiterates its condemnation and utter rejection of terror as a means of achieving political ends. Every act of terrorism, regardless of the reasons given, aims pursued, methods used or demands made by the terrorists, is a challenge to democracy and must be considered a crime against humanity. It is unacceptable and dangerous to apply double standards to terrorists, depending on their alleged motives. There are no "good" or "bad" terrorists.
9. Democracy cannot compromise over terrorism. For terrorists, human life, which is the supreme value in a democratic society, is a bargaining counter and nothing more. Complacency to terrorism, or the hope of concluding a non-aggression pact with terrorists, are reckless and irresponsible. Any concession made to terrorists is a signal that they can achieve their goals and encourages them to commit further crimes.
10. The Assembly is concerned about the fact that the threat or effects of terrorism can profoundly alarm and unsettle the community and affect the institutions and machinery of democracy. It believes that action must be taken to ensure that terror can exert no direct influence on democratic choices.
11. The Assembly reaffirms its position of principle that the fight against terrorism must always be compatible with the fundamental freedoms and human rights which it has the task of protecting, taking as its basis the absolute primacy of the fundamental and inalienable right to life, which implies the right to protection from terrorism and all other attacks on human life and health. All the member states of the Council of Europe must ensure that the action they take against terrorism respects the principles on which democratic states are founded, their international commitments and internal legislation. In this connection, it welcomes the adoption by the Committee of Ministers of the Council of Europe of guidelines on human rights in the fight against terrorism.

12. The Assembly remains convinced that the deep-rooted causes - poverty, exclusion, inequality, despair - which provide fertile soil for terrorism, must be carefully analysed and systematic action taken to remove them. This work must be undertaken in parallel with necessary urgent measures to prevent further acts of terrorism.

13. The Assembly accordingly calls on national parliaments to:

i. adopt an integrated and co-ordinated approach to countering terrorism at all its stages, including drawing up a legislative framework aimed at:

- a. overcoming the causes of terrorism;
- b. suppressing the sources and channels of finance and recruitment of terrorists, as well as centres that spread terrorist information and pseudo-religious propaganda;
- c. organising operational co-operation between special services, police and justice systems as part of anti-terrorist and preventive action;
- d. protecting, rehabilitating and compensating victims of terrorist acts;
- e. developing mechanisms and a legal basis for protecting witnesses, collaborators of justice and reformed criminals;

ii. pass laws for reinforcing public security, while ensuring that human rights and fundamental freedoms are respected;

iii. make full use of their powers in promoting intensified international co-operation in the fight against terrorism, with paramount emphasis on harmonising Council of Europe member states' anti-terrorism law so as to create a unified European legal area in anti-terrorism matters;

iv. ratify, using the accelerated procedure, the Protocol amending the European Convention on the Suppression of Terrorism (CETS No. 190), so that it can take effect as soon as possible;

v. ensure that their states, if they have not already done so, sign, ratify and effectively implement the Council of Europe instruments concerned with action against terrorism and particularly:

- the European Convention on the Suppression of Terrorism (1977)
- the European Convention on Extradition (1957) and its Protocols (1975 and 1978),
- the European Convention on Mutual Assistance in Criminal Matters (1959) and its Protocols (1978 and 2001),
- the European Convention on the Transfer of Proceedings in Criminal Matters (1972),
- the European Convention on the Compensation of Victims of Violent Crimes (1983),
- the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990),
- the Convention on Cybercrime (2001) and its Protocol (2003);

vi. consider the need for decisions, nationally and internationally, to regulate use of the "political clause" as justification for refusing to extradite implicated persons or refusing to provide legal assistance in connection with crimes which the national justice and security authorities view as political; acts which are criminal offences under international conventions to which the requesting state and the requested state are parties must not be regarded as political; no political, philosophical, ideological, racial, ethnic, religious or other motive can justify acts of terrorism;

14. The Assembly calls on all the political forces in member states to:

i. resolutely condemn all terrorist action, regardless of the country in which it takes place, and employ all the means at their disposal to put a stop to all activity whose purpose is to organise, finance or spread propaganda on behalf of terrorist action or harbour terrorists;

ii. prevent manifestations of ethnic hatred, racism and xenophobia and also the justification of terrorism;

iii. consolidate democratic institutions and interaction with civil society so as to ensure maximum support for national and international anti-terrorism measures;

iv. rally society around the principles of total rejection of and opposition to terror and that any form of psychologically pressuring the population or manipulating public opinion is unacceptable;

v. prevent extremists or persons implicated in terrorism or spreading propaganda on behalf of the ideas or objectives of terrorist organisations from infiltrating financial or economic institutions or voluntary-sector organisations;

vi. promote social cohesion and intercultural and inter-confessional dialogue for the purpose of attacking the causes of terrorism and not allow spreading of extremist or aggressive religious theories or propaganda on their behalf.

15. Moreover, the Assembly deems it necessary:

i. to elaborate a comprehensive Council of Europe convention against terrorism;

ii to analyse the effectiveness of Council of Europe conventions and other international instruments on combating terrorism and, on the basis of that analysis, draw up protocols to render those instruments equal to the new terrorist threats;

iii to instigate extension of the list of offences in the 1998 Rome Statute of the International Criminal Court so as to include certain offences of a terrorist nature, thereby widening ICC jurisdiction to encompass such offences;

iv to review European Union experience with the European arrest warrant and to look into creating a legal basis for extending its applicability to Council of Europe member states;

v. to intensify work on drawing up a Council of Europe "convention on reinforcing the protection of witnesses and *pentiti* / collaborators of justice in the context of acts of terrorism", the protocol to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and a recommendation on special investigation techniques in relation to acts of terrorism;

vi. to begin the groundwork for setting up a European register of national and international standards so as to provide a system for computer access to law of member states of the Council of Europe and other European organisations and for exchange of legal information.

16. Serious thought must be given by the Council of Europe to ways of ensuring that terrorists cannot abuse freedom of expression and information and manipulate the media for the purpose of propagating their message.

17. The Assembly decides to follow closely, through its relevant committees, international developments concerning terrorism, action by member governments and by national parliaments and the activities of the Council of Europe's Committee of Ministers in this field.

II. Draft Recommendation

1. The Parliamentary Assembly refers to Resolution ... (2004), to the many Resolutions, Recommendations and Orders which it has adopted on terrorism since 1972 and to the action taken by the Committee of Ministers for the purpose of introducing, within the Council of Europe, co-ordinated measures to counter terrorism.

2. The Assembly refers in particular to Recommendation 1426 (1999) where it considered an act of terrorism to be "any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society or the general public".

3. In spite of undeniable progress with the introduction of convention-based European co-operation on action against terrorism, the Council of Europe's collective response to the growing threat of terrorism remains insufficient.

4. Failings in national and European legislation on the suppression and prevention of terrorism still leave the way open for trafficking in arms, munitions and funds for international terrorism and for movement of persons associated with terrorism in Council of Europe member states.

5. The global nature of the terrorist threat makes total cohesion and solidarity within the international community, unwavering political determination and full and effective co-operation between Council of Europe member states, essential. The security of Europeans in the face of terrorism is indivisible.

6. The Assembly notes that, following the terrorist attacks of September 2001, the Committee of Ministers attempted to intensify co-operation between Council of Europe member states against terrorism, particularly within the Committee of Experts on Terrorism (CODEXTER).

7. The Assembly nonetheless considers that a more sustained commitment on the part of member states is needed to ensure an adequate response to the challenge of terrorism.

8. The Assembly asks the Committee of Ministers to:

i. intensify its efforts to establish a common legal area for action against terrorism in Europe, based on human rights and the fundamental values of the Council of Europe and, for this purpose to:

a. start the preparation of a comprehensive Council of Europe Convention against terrorism, as it was requested by Assembly Opinion No. 242 (2003) and Recommendation 1644 (2004);

b. conclude, in the meantime, without delay its work on remedying existing omissions in international law or action taken against terrorism, by adopting instruments on which member states can reach a consensus;

c. analyse the effectiveness of Council of Europe conventions and other international instruments on combating terrorism and, on the basis of that analysis, draw up protocols to render those instruments equal to the new terrorist threats;

d. review European Union experience with the European arrest warrant and to look into creating a legal basis for extending its applicability to Council of Europe member states;

e. promote a homogeneous definition of the crime of terrorism in the law of member states and at international level, along the lines of afore-mentioned Recommendation 1426 (1999);

f. consider ways of depoliticising crimes linked with terrorism and restricting the use of "political" clauses to justify refusals to extradite, inter alia by preparing protocols to the European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959);

- g. intensify work on drawing up a Council of Europe Convention on reinforcing the protection of witnesses and *pentiti* (reformed criminals) in the context of acts of terrorism, the protocol to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and a recommendation on special investigation techniques in relation to acts of terrorism;
 - h. begin the groundwork for setting up a European register of national and international standards so as to provide a system for computer access to the law of member states of the Council of Europe and other European organisations and for exchange of legal information;
 - ii. ask the member states to:
 - a. increase multilateral co-operation and reciprocal assistance concerning the prevention and punishment of acts of terrorism;
 - b. bring the Protocol amending the European Convention on the Suppression of Terrorism (2003) into force as soon as possible;
 - c. sign and/or ratify, if they have not yet done so, the Council of Europe's conventions on action against terrorism;
 - iii. repeat the appeal to member states, made in Assembly Recommendations 1534 and 1644, to "give urgent consideration to amending and widening the Rome Statute to allow the remit of the International Criminal Court to include acts of international terrorism";
 - iv. turn its attention once again to the relevant parts of the earlier Assembly Recommendations, and particularly Recommendation 1644 (2004), in which the Assembly asked the Committee of Ministers, inter alia:
 - a. to invite the member states
 - A. "to condemn strongly countries encouraging, helping, providing financial support, or offering safe haven to terrorists and introduce economic and other appropriate measures against them";
 - B. "to promote democracy and human rights in their foreign relations and refrain from complacency towards despotic and obscurantist regimes for reasons of strategic and economic interests";
 - b. "to study, in consultation with the European Union, the possibility of transforming Europol into an effective pan-European agency, with sufficient means to challenge international terrorism";
 - v. invite the Council of Europe agencies and institutions to abstain from all contacts with organisations and individuals implicated in action which may be assimilated to terrorism, or regarding such action as legitimate.
9. The Assembly wishes to be fully informed about work on action against terrorism done by the Committee of Ministers and by committees and working parties which it establishes.
10. The Assembly recommends that the Committee of Ministers include the question of European co-operation in the fight against terrorism on the agenda for the third Council of Europe Summit.

III. Explanatory memorandum

1. The Parliamentary Assembly has continually focused on the problem of terrorism. Since 1972, it has adopted no fewer than 26 Resolutions, Recommendations and Directives considering the phenomenon of terrorism and means of combating it.
2. The last Assembly debate on the topic took place in January 2004. On that occasion, our colleague, Mr Mercan, presented a detailed analysis of terrorism today, and as your Rapporteur I wish to make special reference to that excellent report.
3. For its part, the Committee of Ministers has drawn up a series of instruments aimed at preventing and punishing acts of terrorism, notably the European Convention on the suppression of terrorism (1977).
4. However, despite the international community's efforts, the scourge of terrorism continues to spread throughout the world, taking on ever more terrible and murderous forms. The recent tragic events in a number of European countries oblige us once again to turn our thoughts to this odious phenomenon.
5. It has to be said that, in the post-cold war era, terrorism poses the greatest threat to the international community. Unlike the terrorist movements of the 1960s, 70s and 80s, modern terrorism is international and global. It does not attack individual countries but the very values and principles underpinning our society.
6. The resurgence of acts of terrorism of an extreme brutality shows that the international community, including the states of Europe, have not been sufficiently alert to the gravity of the danger and have failed to take effective action to counter a new-style terrorism which stops at nothing.
7. It is time to react and find common responses to this common challenge.
8. Firstly, the Assembly must confirm its position of principle - total rejection of any terrorist act, regardless of where it occurs, the reasons given, targets, methods used or demands made by the terrorists.
9. Your Rapporteur then proposes measures to step up and coordinate the legislative work of our parliaments in order to establish a harmonised framework for preventing the causes of terrorism, combating terrorism and rehabilitating the victims of terrorism.
10. We must also mobilise and consolidate society to give it greater cohesion in the face of terrorism.
11. Finally, the Committee of Ministers and the governments of the Council of Europe's member states must take more vigorous and better coordinated action against terrorism.
12. It is essential to create a common legal area in Europe for combating terrorism. To do so, it is very important to achieve a common understanding of the essential nature and manifestations of terrorism as a criminal phenomenon, and to reflect this in an international treaty, while taking care to identify the mechanisms of joint anti-terrorist activities.
13. In the light of recent events in Russia and other European states, the need to draw up a comprehensive European convention on action against terrorism has acquired a new urgency.
14. The Council of Europe could make a significant contribution to the fight against terrorism by adopting a comprehensive approach, encompassing issues relating to the criminalisation of certain acts, terrorism prevention and control, action on terrorist financing, victim protection and international anti-terrorist cooperation. In performing this task, the Council of Europe could draw on the work already done in this area by the European Union (including the definition of terrorism), the Council of Europe itself and the CIS, and by law-makers in individual member states of the Council of Europe.

15. Drafting an anti-terrorist convention within the Council of Europe framework could also help boost the UN's efforts in this area. In the absence of any progress on drafting a universal treaty at UN level, a European convention could be opened for signature by all countries worldwide.

16. In various international instruments, repeated mention is made of the connection between terrorism and other types of transnational crime (including drug trafficking, trafficking in human beings, illegal immigration). It is no secret that when it comes to matters involving criminal prosecution or extradition, those accused often cite political motives for committing their acts or claim they are being prosecuted for political reasons.

17. It is essential that the Council of Europe adopt decisions regulating the use of the so-called "political clause" found in many treaties on extradition and legal assistance in criminal matters (according to which a request for extradition or legal assistance will be refused if it relates to a political offence, an offence inspired by political motives or an offence connected with a political offence). The most acceptable arrangement appears to be one where the requested state would not regard as a political offence or an offence inspired by political motives, or an offence connected with a political offence, the acts stipulated in international treaties (both universal and regional) to which the requesting state and the requested state are parties. A similar approach was adopted, for example, in the 2003 Protocol to the European Convention on the Suppression of Terrorism of 1977.

18. The present proposal is prompted by the fact that the majority of states, including European states, do not have a legislative definition of the terms "political offence", "offence inspired by political motives" and "offence connected with a political offence" employed in international treaties, including in the relevant European conventions. As a result, the judicial and executive bodies in these countries often interpret them arbitrarily.

19. Such a standard could notably be established by concluding additional protocols to the European Convention on Extradition of 1957 and the European Convention on Mutual Assistance in Criminal Matters of 1959, which encompass over 40 states, and also by supplementing the relevant UN treaties.

20. Efforts should also be made to expand the list of offences provided for in the Rome Statute of the International Criminal Court (1998), by incorporating a number of terrorist offences, thus bringing them within the jurisdiction of the ICC.

21. It is also essential that the relevant Council of Europe bodies and its member states begin work on drafting, within the framework of the Council of Europe, a convention on the protection of witnesses and "pentiti", an additional protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and recommendations concerning special measures for investigating criminal offences.

Reporting Committee: Political Affairs Committee.

Reference to Committee: Request for an urgent procedure, Reference 3000 of 4 October 2004

Draft Resolution adopted three against and two abstentions by the Committee on 5 October 2004

Draft Recommendation adopted three against and two abstentions by the Committee on 5 October 2004

Members of the Committee: MM. **Jakic** (Chairman), **Margelov** (Vice-Chairman), Spindelegger (alternate: Mrs **Hakl**), (Vice-Chairman), **Ates** (Vice-Chairman), Mrs **Aguiar**, MM. **Arzilli** (alternate: Mr **Masi**), Atkinson, **Azzolini**, **Beneš**, Berceanu, Bianco, Blankenborg, Bokeria, van den Brande, Mrs **Brestenská**, MM. Čekuolis, Curiel Alonso, Davern (alternate: Mr **O'Keeffe**), Dreyfus-Schmidt, Mrs **Druviete**, Mr Duivesteijn, Mrs Durrieu, MM. **Elo**, **Goerens**, Goulet, **Gross**, Hedrich, Henry, Hörster, **Iwinski**, **Jahić** (alternate: Mr **Avdić**), Jovašević, **Judd**, Kalezić, Karpov, **Koçi**, **Kosachev**, Kostenko, **Lindblad**, **van der Linden**, Lloyd (alternate: Mrs **Griffiths**), Loutfi, **Magnusson**, Marty, **Matušić**, Medeiros Ferreira, **Meimarakis**, **Mercan**, **Mignon**, Mihkelson (alternate: Mr **Herkel**), Mrs Narohnitskaya, Mrs Nemcova (alternate: Mrs **Curdova**), MM. **Németh**, **Oliynyk**, **Pangalos**, Mrs **Petrova-Mitevskaja**, Mrs Petursdottir, Mrs **Pintat Rossell**, MM. Pourgourides, Prentice, Prijmireanu, **Prisacaru**, Puche, **de Puig**, Pulicino Orlando (alternate: Mr **Brincat**), Ranieri (alternate: Mrs **de Zulueta**), Roth, **Rzymelka**, **Severin**, Mrs Severinsen, MM. **Seyidov**, **Slutsky**, Szabó, Tekelioglu, **Torosyan**, **Toshev**, Mrs Tritz (alternate: Mr **Bindig**), MM. **Vakilov** (alternate: Mr **Mollazade**), **Wielowieyski**, Mrs Wohlwend, Mrs Wurm, Mr Zacchera.

Ex-officio: MM. Eörsi, Einarsson, Lord Russell-Johnston

N.B. : The names of the members who took part in the meeting are printed in bold

Head of the Secretariat : Mr **Perin**

Secretaries to the Committee: Mrs **Nachilo**, Mr **Chevtchenko**, Mr **Dossow**

