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**Cooperation between the United Nations
and regional and other organizations:
cooperation between the United Nations
and the Council of Europe**

**Letter dated 1 August 2002 from the Permanent Representative
of Luxembourg to the United Nations addressed to the
Secretary-General**

The Chargé d'affaires a.i. of Luxembourg to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to transmit herewith the following two documents of the Council of Europe:

- Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism (see annex I);
- Final activity report of the Group of Specialists on Human Rights and the Fight against Terrorism (see annex II).

The Chargé d'affaires a.i. of Luxembourg requests the Secretary-General to have these two documents issued and circulated as United Nations documents, under item 22 of the provisional agenda of the fifty-seventh session of the General Assembly, entitled "Cooperation between the United Nations and the Council of Europe".

* A/57/150.

Annex I to the letter dated 1 August 2002 from the Permanent Representative of Luxembourg to the United Nations addressed to the Secretary-General

[Original: English and French]

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.

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Annex II to the letter dated 1 August 2002 from the Permanent Representative of Luxembourg to the United Nations addressed to the Secretary-General