

**Expert Workshop on Public-Private Partnerships:  
Engaging with the Media in Countering Terrorism  
(Vienna, 19-20 October 2009)**

**Session II: Public-private partnership initiatives  
with the media in preventing terrorism and promoting tolerance**

**Intervention by Gertraude E. Kabelka**

(Member and Former Chair of the Council of Europe Committee  
of Experts on Terrorism - CODEXTER)

Thank you, Mr. Moderator.

After having listened with great interest to the speakers of Session II, I'd like to add a few words particularly to the contribution of Ms. Mijatovic who was appointed to this workshop by the Council of Europe (CoE) as independent media expert. To some extent we are colleagues because I am here in my capacity as a member of the Council's Committee of Experts on Terrorism (CODEXTER) which is composed of government experts. However, in my statement I am equally independent.

Our appointment to participate is a token for the balanced approach of the CoE to the topics of this workshop, because after so many speakers with media background I am the first one who comes from a different area.

In substance I may refer to what Ms. Mijatovic has already pointed out: In the course of the past years the CoE has tackled the issue of media and counter-terrorism quite extensively, and the speaker has dealt with some relevant events and documents in detail<sup>1</sup>. Furthermore, she made them available to all participants by putting the pertinent papers on the racks. For this reason I do not have to dwell on them any more.

I'd rather like to concentrate my brief statement on a treaty which also has been implicitly touched by Ms. Mijatovic when she mentioned the criminalisation of incitement to terrorism. In doing so she referred in substance to the **Council of Europe Convention on the Prevention of Terrorism** of 2005 which has been elaborated by the aforementioned CODEXTER.

It is from the viewpoint of that committee that I would like to tackle some selected details on the Prevention Convention and to clarify a few issues. Let me start with the remark that the Convention comprises a number of provisions which have, *inter alia*, a bearing on the **media**. The following provisions are of special relevance in today's context:

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1. Throughout the text of the treaty, the drafters have been very careful to strike the balance between the fight against terrorism on the one hand and the observance of fundamental freedoms on the other hand. That starts with the **Preamble** which *inter alia* states "*that this Convention is not intended to affect established principles relating to freedom of expression and freedom of association*".

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<sup>1</sup> A) Declaration of the Committee of Ministers (CM) of the CoE on freedom of expression and information in the media in the context of the fight against terrorism (2005);  
B) Guidelines of the CM of the CoE on protecting freedom of expression and information in times of crisis (2007);  
C) Political declaration and resolutions adopted by the 1<sup>st</sup> CoE Conference of Ministers responsible for Media and New Communication Services (May 2009; Reykjavik, Iceland)

This is a crucial aspect of the Convention, given that it deals with issues which are on the border between the legitimate exercise of freedoms, such as the freedom of expression (which is one of the essential foundations of a democratic society), and criminal behaviour.

2. The next provision relevant for us is **Article 3 on national prevention policies** which obliges the Parties to take appropriate measures, *inter alia* in the fields of information (including the media) and public awareness raising, with a view to preventing terrorist offences. It also calls on States to involve in their efforts, where appropriate, NGOs and “*other elements of civil society with a view to preventing tensions that might contribute to the commission of terrorist offences*”. Again, this language is implicitly covering the media as well. Finally, the said provision reiterates the necessity “*to promote public awareness regarding the ... threat posed by terrorist offences*”.

I also want to mention that even Article 3 – which is a non-binding provision - contains a safeguard clause in respect of fundamental freedoms by providing that all measures referred to must be taken “*while respecting human rights obligations as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.*” That, again, includes the freedom of expression which is the basis for independent media.

To be sure, Article 3 contains in the first place obligations for governments, but which tools should they use for meeting the demands of the Convention? They will, *inter alia*, have to seek co-operation with the media as the main factor in society for forming and influencing public opinion. However: The provision is also relevant for the media whose co-operation might be sought. Moreover, and that has also been voiced today, journalists must take care of not becoming involved in activities aiming at the preparation of grounds for an atmosphere favourable to the development of terrorist ideologies. Otherwise there might be a danger for them as well to get into conflict with criminal law as stipulated by the Prevention Convention.

3. That brings me to one of the core provisions of the Convention, namely **Article 5 on Public provocation to commit a terrorist offence**. It contains a legally binding obligation for States to establish as a criminal offence the following, and I am quoting its **Paragraph 1** which reads: “*For the purposes of this Convention, “public provocation to commit a terrorist offence” means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.*” **Article 8** provides that the crime of provocation (as well as the other two crimes newly introduced by the Convention<sup>2</sup>) is perpetrated irrespective of whether or not a terrorist offence will be actually committed afterwards.

4. It is the penalisation obligation of Article 5 to which Ms. Mijatovic was alluding earlier today when she tagged the criminalisation of indirect incitement as “extremely problematic”. I agree that this provision may raise doubts at first sight and I can also add that drafting it has been very difficult. Since I had the honour of chairing the CODEXTER at that time, I maintain a first hand recollection of the pertinent discussions which have been utterly controversial.

However, and that is the point I really have to reiterate and underline once again, the Convention never loses sight of the indispensable balance in respect of guaranteed fundamental freedoms. For this reason Article 5 (as well as the other new crimes) must always be interpreted in conjunction with **Article 12 on Conditions and safeguards** which is another core provision of the Convention.

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<sup>2</sup> Articles 6 and 7 on recruitment and training for terrorism

Its **Paragraph 1** reads: “*Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.*”

**Paragraph 2** adds the principle of proportionality “*with respect to the legitimate aims pursued and to their necessity in a democratic society*”, and with the objective to “*exclude any form of arbitrariness or discriminatory or racist treatment*”.

For further details I may refer the participants to the CoE homepage and in particular to the site of the Council’s Treaty office<sup>3</sup> where all instruments collected in the Council of Europe Treaty Series (CETS) are to be found in full text, with the respective Chart of signatures and ratifications, the List of declarations, reservations and other communications, a Summary and, where available, the Explanatory Report.<sup>4</sup>

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In conclusion I hope that I have been able to clarify that we are dealing with a package of provisions which are closely interrelated and that we must not look at any of them in an isolated manner. I also hope that I was in the position to explain that the freedom of independent **media** is not infringed by the Prevention Convention which is – after all – an instrument drafted within the Council of Europe whose very pillars are those rights and liberties which are enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. It is unconceivable that the CoE would ever elaborate any text – whether it is binding treaty law or a non-binding instrument – which would be in contravention to those basic principles. In addition to a great number of conventions or protocols also many declarations, recommendations and resolutions both of the CM and the Parliamentary Assembly bear witness to that.<sup>5</sup>

Returning to the topic of this workshop I venture to say that the Prevention Convention, which implicitly includes provisions relating to the role of the **media**, is *inter alia* providing a basis for public-private co-operation in the area that it covers, tackling both sides of the coin: State action on the one side and a certain degree of alertness and co-operation on the other side.

Thank you for your attention.

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<sup>3</sup> [www.conventions.coe.int](http://www.conventions.coe.int)

<sup>4</sup> The CoE Convention on the Prevention of Terrorism is to be found under CETS No 196.

<sup>5</sup> In the given context I also refer to two particularly relevant instruments, namely the Guidelines of the CM of the CoE on Human Rights and the Fight against Terrorism (2002) and the CM’s Guidelines on the Protection of Victims of Terrorist Acts (2005).