

Address by the Minister for Justice, Equality and Law Reform, Mr John O'Donoghue, T.D., on the occasion of the Urban Hazards Forum at the John Jay College of Criminal Justice, New York, from Tuesday 22 January, 2002 - Thursday 24 January 2002.

I would like to thank you for inviting me here today to address this Conference on Urban Hazards and for your kind words of welcome.

I would especially like to thank President Lynch and to take this opportunity to thank him publicly for his work on policing in Northern Ireland.

The atrocities committed in this city and elsewhere in the United States on September 11 represented a defining moment for the world in which we live.

The close ties between European States and the United States of America meant that those horrific and barbarous acts were especially felt in Europe generally, and very much so among the people of Ireland who have many blood ties with the citizens of New York. A number of those killed were Irish born and many, not least those in the emergency services who lost their lives in the course of the initial rescue, had Irish connections.

As a concrete expression of our solidarity, the Government declared a national day of mourning, which took place on 14 September. Public offices, industry, businesses and places of entertainment all over Ireland closed and social events cancelled in order to enable people to attend special services.

The horror with which we, as individuals and States, witnessed the attacks on the World Trade Centre here in New York, on the Pentagon in Washington and Pennsylvania and the tremendous outpouring of sympathy has led to a renewed determination to ensure that the forces of evil do not prevail.

There was immediate recognition that the response to the challenge of international terrorism represented by those atrocities would require concerted action and greater co-operation by the international community as well as action on the part of individual States. The United Nations Security Council, of which Ireland is a member, adopted Resolutions 1368 and 1373 with the intention of creating a framework for action by the world community. Security Council Resolution 1368 condemned the attacks of September 11 and called on states to work together to bring the perpetrators to justice and to redouble their efforts to prevent and suppress terrorist acts. Security Council Resolution 1373 specifies a range of measures which states are required to take action on. As part of those measures the United Nations have also called on states to cooperate, through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

At European level there was also an immediate recognition that the situation is extremely serious and represents one of the greatest challenges in the world today. The struggle to meet that challenge will be a long and difficult one, but it is one which we have to

undertake and conclude successfully. The European Union, of which Ireland is a member, is leading the response at European level and it is in relation to its response, in particular, that I have been asked to address my remarks today.

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The EU Justice and Home Affairs Ministers held a special meeting on 20 September to review the measures necessary to maintain the highest level of security and to decide what other action was needed. A number of actions were agreed and a plan of action adopted.

The Heads of State and Government of the 15 Member States of the European Union convened an extraordinary European Council meeting on the following day. At this Council meeting they declared their total support for the American people in the face of the deadly terrorist attacks they had endured. The European Council also expressed its determination to play its full part by stepping up its action against terrorism through a coordinated and inter-disciplinary approach embracing all Union policies while ensuring respect for the fundamental freedoms which form the basis of our civilisation. To that end it endorsed the plan adopted by the Justice Ministers and adopted the Plan of Action on a European policy to combat terrorism embracing a wide range of measures. The aim is to increase the capacity of the Union to fight effectively the threat posed by international terrorism.

Much has already been achieved in taking forward that Action Plan. A Framework Decision on Combating Terrorism was agreed at the meeting of the Justice and Home Affairs Ministers in December. That Framework Decision provides a common definition of a terrorist act. A terrorist act is defined by the Framework Decision to include a wide range of offences traditionally associated with acts of terrorism when committed with the aim of seriously intimidating a population, of unduly compelling a government or international organisation to perform or abstain from performing any act, or of seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation. The principle established by the Framework Decision regarding the sanctions to apply to such offences is that they should be effective, proportionate and dissuasive and, in the case of custodial sentences, greater than those imposable in national law for similar offences committed without the special intent required for a terrorist act. That new common understanding of what terrorism means will be important not only in providing a coordinated European Union wide response to terrorism but in facilitating cross-border co-operation in tackling it.

Agreement was also reached on arrangements to replace extradition arrangements between EU member States with an arrest warrant system.

The Framework Decision on the European Arrest Warrant introduces a significant change in the case of a list of over 30 serious offences, including all the major terrorist offences. It will no longer be necessary to consider the dual criminality requirement for these major

offences where the offence carries a penalty of at least three years imprisonment in the requesting state. As you are probably aware, dual criminality is a concept in extradition law around the world, whereby it must be established that the offence for which the person is being sought is an offence in both the requesting and requested states. From 2004 onwards, the test will not be required within the European Union if the offence on which the warrant is based is a major offence as defined under the new arrangements and it is an offence under the law of the requesting Member State; it will no longer be necessary to establish the position in relation to that offence under the law of the requested Member State. The dual criminality test will continue to be applied to warrants relating to offences other than the listed major offences.

The Member States were mindful of the need to act in a proportionate way that would not diminish the rights to fair procedures and processes but they were equally mindful that terrorists and international criminals do not respect national borders; they exploit differences in practice to their advantage. The new Arrest Warrant system strikes an appropriate balance between the need to protect society and the need to uphold individual liberties.

Another equally important aspect is the systems we have in place to afford each other legal assistance in bringing the perpetrators of terrorist and criminal acts to justice. Currently, these arrangements are governed by the 1957 Council of Europe Convention. Following the events of September 11, the Member States of the European Union are working towards the early ratification of the Convention of 29 May, 2000 on Mutual Assistance in criminal matters. This Convention sets out the circumstances in which mutual assistance may be requested and details the procedures governing the service and sending of documents in such requests. It will be ratified by Member States later this year.

Article 13 of this Convention provides for the establishment of Joint Investigation Teams. Following the events of September 11, the Council of the European Union decided that a specific instrument on joint investigation teams should be adopted without delay. Article 13 has, therefore, been brought forward in the form of a Framework Decision. Member States must take the measures necessary to comply with the provisions of the Framework Decision by 1 July, 2002.

Following the Irish Government's approval to sign the Convention on Mutual Assistance in Criminal Matters and to adopt the Framework Decision on Joint Investigation Teams, work has already begun in my Department on the legislation necessary to make the changes to our criminal law which will enable Ireland to comply with both the Convention and the Framework Decision on schedule.

I would also like to mention the draft Framework Decision on the execution in the European Union of orders freezing assets or evidence, the scope of which has been extended to terrorist-related crimes. This Framework Decision is due for adoption by Member States in the very near future.

The European Union also agreed at the end of last year a range of specific restrictive measures to freeze the assets of terrorist individuals and organisations with a view to combating terrorism. These include a Regulation, which is legally binding on the Member States, and what are called Common Positions, which define the approach of the EU to a particular matter. Member States must ensure that their national policies conform to these Common Positions. The effect of these is that all funds, other financial assets and economic resources belonging to individuals and groups specified on lists are frozen. Furthermore, no funds, other financial assets and economic resources may be made available for the benefit of these individuals and groups. Banks and other financial institutions must provide any information which would assist in this, and they must co-operate with the competent authorities. The measures apply widely: they apply throughout the European Union, to any citizen of a Member State, to any entity incorporated under the law of a Member State or to any person or group doing business within the European Union. The lists of specified individuals and entities will be regularly updated and added to on a continuing basis.

The European Council at its meeting on 21 September and the UN Security Council on 28 September called for the full implementation of all relevant international Conventions relating to terrorism as quickly as possible and in particular for the urgent ratification of the 1989 United Nations Convention on the Suppression of the Financing of Terrorism.

Funding in whatever shape or form it may take, is the oxygen needed by international terrorists to survive. Cut off the supply of funds to the terrorists and you go a long way towards curtailing their ability to operate, particularly in another country. With that in mind, Ireland signed the United Nations Convention for the Suppression of the Financing of Terrorism on 15 October last. The Government recently approved my legislative proposals which will allow Ireland to ratify the Convention and as soon as the enabling Bill has been drafted and passed by both Houses of the Irish Parliament our instrument of ratification of the Convention will be deposited with the United Nations.

The Government also approved the drafting of a Criminal Justice (United Nations Conventions) Bill last month. The Bill will enable Ireland to become party to three UN Conventions. The Conventions in question are the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the UN Convention against the taking of Hostages and the UN Convention for the Suppression of Terrorist Bombings. The Conventions provide a framework for the international community to prosecute and punish acts of hostage taking, terrorist bombing and crimes against internationally protected persons.

Enactment of the legislation will enable us to ratify the Conventions and so more fully play our part in the international effort against terrorism. All European Member States are taking the same action.

In addition at our December meeting Ministers agreed to the creation of an institution to be known as Eurojust which will bring together prosecutors from each of the 15 Member States so as to facilitate investigation of cross border crime, including terrorism.

There has also been action directed to improving operational cooperation among Member States at EU level. Those measures have included improved information exchange and the strengthening of Europol - the European Law Enforcement Organisation - which aims at improving the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime - through the addition of specialist anti-terrorist team and other related initiatives.

Prior to September 11, Europol had seven staff assigned to the terrorism area. Following the events of September 11 and the setting up of the special anti-terrorist unit, an additional twelve staff were redeployed within Europol to address the situation immediately. The approval of a supplementary budget of 3.16 m euro to finance the new unit will allow for the recruitment of a further 20 staff. Additional specialists from Member States were also requested by Europol. To date 20 such specialists have been assigned to the unit. Ireland, who had lent a terrorism specialist to build up Europol's expertise at the initial stage, assigned a terrorism expert, a member of the Garda Síochána to the unit.

The Police Chiefs Task Force, comprised of Heads of Police from each member state has also been actively involved together with their Deputies.

To facilitate the exchange of information and intelligence between Europol and the USA, the Justice and Home Affairs Council on 20 September 2001 effectively called upon Europol to give the highest priority to entering into a formal agreement with the USA. It also called that, in the interim, there should be informal co-operation within the framework allowed by the Europol Convention of 1995. US Secretary of State, Colin Powell, was present at our meeting in December as formal arrangements were put in place.

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In addition to the response to September 11 from the international community in the well-recognised institutions of the UN and the European Union, swift action has also been taken in the framework of the, perhaps, lesser-known international body of the Financial Action Task Force, known as FATF.

FATF has 31 members across the globe, primarily representative of governments, and 18 FATF - style regional bodies and observer organisations. It is an intergovernmental organisation, without a Treaty base, whose purpose is the development and promotion of policies to combat money laundering. It builds on the results of co-operation which began between the G-7 group of countries. The policies of FATF aim to prevent the

proceeds of criminal operations from being used in future criminal activities, and from affecting legitimate economic business.

FATF brings together the policy-making powers of legal, financial and law enforcement experts. This need to cover all aspects of the fight against money laundering is reflected in the scope of the forty FATF Recommendations – the measures which the Task Force have agreed to implement, and which all countries are encouraged to adopt.

The Recommendations were originally drawn up in 1990. In 1996, they were revised to take account of experience gained, and to reflect the changes which occurred in the money laundering problem. They set out the basic framework for anti-money laundering efforts and are designed to be of universal application.

An essential element in ensuring the discipline of compliance with the Forty FATF Recommendations is the fact that all member countries are monitored through a two pronged approach - an annual self-assessment exercise and a more detailed mutual evaluation process. In addition, FATF carries out cross-country reviews, and recommends the application of counter-measures where a dialogue with non-cooperative third countries has failed to generate significant progress in meeting the FATF standards.

In direct response to the September 11 atrocities, and primarily at the instigation of the US government, an extraordinary meeting of FATF was held in Washington last October. This special meeting was a recognition of the vital need to take action to combat the financing of terrorism. It was also a vivid demonstration of the collective intention of the FATF members to address the problem of terrorist financing, and of the ability of FATF to take concrete action quickly.

FATF will now also focus its energy and expertise on the world-wide efforts to combat the financing of terrorism and related criminal activity. In Washington, FATF issued new international standards by way of Special Recommendations on Terrorist Financing and called on all countries in the world to adopt and implement them. The new Recommendations commit members:

- to take immediate steps to ratify and to implement international instruments;
- to criminalise the financing of terrorism;
- to freeze and confiscate assets;
- to provide the widest range of mutual assistance;
- to impose anti-money laundering requirements and to strengthen customer identification requirements and, finally,
- to ensure that entities, especially non-governmental organisations, cannot be misused to finance terrorism.

In order to ensure effective implementation of the new standards, FATF agreed to secure a commitment from each FATF member to comply with the Special Recommendations. In addition, later this year, a process will be initiated to identify jurisdictions that lack appropriate measures, followed by discussion of the next steps, including the possibility of counter-measures for those that do not counter terrorist financing.

Traditionally, the focus of law enforcement against criminal and related activity has been arrest and prosecution. That was the position in Ireland, as elsewhere, up to fairly recently. However, in the late seventies and early eighties, it was recognised internationally that, in order to tackle major criminal activity successfully, it would be necessary to deprive those involved of the benefits of their crimes. A number of international instruments were subsequently negotiated which focus on the identification and confiscation of the proceeds of crime.

In Ireland, the introduction of the reporting of suspicious transactions under the Criminal Justice Act, 1994, marked a watershed in the fight against major crime. The improved level of information to our national police service, the Garda Síochána, helped to identify those using the financial system to conceal the proceeds of their criminal activities. The 1994 Act also introduced offences of money laundering, and handling the proceeds of drug trafficking and other criminal activity, as well as providing for “freezing,” confiscation and forfeiture of property of those charged with and convicted of drug trafficking and other serious crime.

Responding to the problem of drug trafficking is one of the most difficult problems faced by law enforcement agencies worldwide. Experience has shown that the major players tend to distance themselves from the day-to-day dirty business, and the fear factor means that possible witnesses are unable or unwilling to give evidence against them. This has produced a situation in many countries where persons involved in drug trafficking, and other serious crime, are openly enjoying the proceeds of their suspected crimes, and where sufficient evidence to prosecute and/or to convict is not available.

In the mid-nineties in Ireland, a number of murders took place, many of them drug-related. On 26 June, 1996, the well-known journalist, Veronica Guerin was shot dead in Dublin. Arising from the considerable public concern on these issues, and responding to legislative measures which I had initiated, the Irish Government enacted legislation aimed at the identification of the proceeds of crime, and the taking of action to deny those enjoying their ill-gotten gains of those proceeds.

The core legislation enacted was:

- the Criminal Assets Bureau Act, 1996 (known as “the CAB Act”)
- the Proceeds of Crime Act, 1996

- the Disclosure of Certain Information for Taxation and Other Purposes Act, 1996 and
- Amendments to the Revenue and Social Welfare Acts.

The overall result was to provide a legislative basis to identify the suspected proceeds of crime and to deny criminals the enjoyment of those proceeds. The Criminal Assets Bureau, known as the CAB, was charged with the primary responsibility for the enforcement of these laws.

A multi-agency approach was adopted with the formation of the CAB. It consists of members of the Garda Síochána, officials of the Revenue Commissioners (both Taxes and Customs), officials of our Department of Social, Community and Family Affairs, together with a Bureau Legal Officer, and technical staff.

CAB was empowered to take action on three fronts, with the necessary legislative powers to support its activities

- firstly, by enforcing the Proceeds of Crime Act, 1996, whereby specified property can be made the subject of “freezing” orders, and eventually realised for the benefit of the State.
- secondly, by fully applying the Revenue Acts to the proceeds of criminal activity and
- thirdly, by applying our social welfare legal provisions to persons engaged in criminal activity.

It is noteworthy that the Proceeds of Crime Act, 1996 provides for applications to be made to a court where it can be shown, to the satisfaction of the Court, that specified property constitutes, directly or indirectly, the proceeds of crime. What is envisaged is that there must be sufficient objective evidence in the civil standard of proof, that is to say on the balance of probabilities, that the property is the proceeds of crime.

Since its formation, the main focus of the Bureau has been in relation to the proceeds of drug trafficking. However, a number of actions have been taken against the proceeds of other serious criminal activity. Property targeted includes cash, transportation and real and personal property.

Since its inception in 1996, and while a number of major cases are still being pursued, CAB has obtained “freezing orders” on property to the value of more than 19 million Euro. In the same period, CAB has demanded over 47 million Euro, and has collected almost 13 million Euro, in taxes and interest. In addition, the return of overpayments and savings in social welfare assistance has amounted to over 2 million Euro.

Clearly, CAB has been, and continues to be, successful in bringing the full force of the State machinery to bear on persons who engage in drug trafficking and other serious criminal activity.

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It is worth noting that the Council of Europe, which is the main proponent of Human Rights in Europe, has also taken action on terrorism since September 11.

At the 24th Conference of European Ministers of Justice held in Moscow in October 2001 a number of resolutions were adopted which covered issues on international terrorism.

The main aim of the Resolutions adopted by the Council of Europe includes an invitation to Member and Observer States to become parties to the European Convention on the Suppression of Terrorism and a decision to set up the Multidisciplinary Group on International Action against Terrorism. The Committee of Ministers were invited to urgently adopt all normative measures considered necessary for assisting States to prevent, detect, prosecute and punish acts of terrorism.

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Terrorism, unfortunately, is something with which we in Ireland are familiar. For too many years we have experienced domestic terrorism in the context of republican and loyalist groups. As a result, our existing legislation and judicial arrangements are more comprehensive than those in many other countries. As this legislation was primarily framed with reference to the threat posed by groups indigenous to Ireland, we are conscious that in the changed environment created by the 11 September we need to review these legislative provisions. We are doing this in order to see how we can develop that legislation to meet the challenges which we now face and the commitments which we are undertaking as a member of the European Union and of the United Nations. From our experience in combating domestic terrorism we know that, no matter what legislative provisions and arrangements we have in place, they are at their most effective when the population supports them and understands what they are aiming to achieve. For these reasons, we will devote a lot of effort to explaining to the public why the provisions we are proposing are necessary and what they are intended to achieve.

Our national police force, the Garda Síochána, are playing a central role in the fight against terrorism. In particular, they are assisting in the investigations into the outrages of 11 September. They also, of course, maintain and foster mutual assistance and co-operation with police forces and security services world-wide to ensure an effective flow of intelligence relevant to this vital task. The Garda, along with their colleagues in the other Member States, are discussing improved operational co-operation between Member States and third countries, in particular the United States. They are also co-ordinating measures in Ireland which are being implemented in all the EU Member States to

guarantee security, including in the field of air safety. The Garda also have an important role to play in dealing with national emergencies.

In relation to civil protection EU Council Ministers formally adopted on 23 October, 2001 a Community Mechanism to facilitate reinforced co-operation in Civil Protection assistance interventions.

The Mechanism is intended to help ensure better protection, primarily of people but also of the environment and property, including cultural heritage, by improving and co-ordinating the Member States response to major emergencies such as natural, technological, radiological or environment accidents including marine pollution occurring inside or outside the EU.

The Mechanism will require:

- The identification of intervention teams, experts and other intervention support such as specialised personnel and equipment to deal with a particular emergency, available to Member States for assistance intervention,
- The setting up and implementation of a training programme for these teams,
- The pooling of information on capabilities of the Member States for maintaining a production of serums and vaccines or other necessary medical resources and on the stocks which might be available for intervention in the event of a major emergency and the compilation of this information in the information system,
- The establishment and management of:
 - a Monitoring and Information Centre and
 - a common emergency communications and information system.

And finally, other support actions such as measures to facilitate transport of resources for assistance intervention etc.

The Irish Government, in partnership with the other Member States of the European Union, the United States and all other governments which support the rule of law and the dictates of humanity, has offered its assistance in the pursuit of those responsible for these acts and their associates and in bringing them to justice.

Thank you for your attention.